



# Solution Partner General Terms and Conditions

## 1. Background

- 1.1. Funnel is a provider of a software as a service for measurement, analysis and reporting of advertising, marketing, and other business data via [Funnel's group company websites](#) (the "**Service**").
- 1.2. The Partner is a provider of consultancy services to Partner's clients ("**Partner Services**") and wishes to, in connection with the provision of the Partner Services, enable its clients to benefit from the Service, as needed for the respective clients' various use cases.
- 1.3. The Parties wish to collaborate in the marketing of their partnership hereunder, and Partner wishes to market the Service to the Partner's current and prospective clients of Partner's and refer such clients to Funnel with the aim of these clients using the Service, thus becoming customers of both Funnel and Partner subject to separate customer relationships.

## 2. Scope and Definitions

- 2.1. In the light of this background, the Parties have agreed to commence a partnership where the Partner is enrolled as a Funnel solution partner in Funnel's partner program, as further specified in the partnership confirmation undersigned by Partner and Funnel ("**Partnership Confirmation**"). The Parties' collaboration throughout the partnership shall be governed by these solution partner general terms and conditions (the "**General Terms**"), which together with the Partnership Confirmation and any other schedules, documentation, supplements, exhibits or appendices thereto, whether attached or incorporated by reference, form the solution partner agreement (the "**Agreement**"), set forth the applicable terms and conditions for Funnel's partner program and Partner's rights and obligations in participating therein.
- 2.2. The following order of precedence shall be applied in the event of conflict or inconsistency between terms and conditions of the Agreement: 1) the Partnership Confirmation; 2) these General Terms; 3) schedules or other documentation included with or referenced to in the Partnership Confirmation.
- 2.3. Capitalized terms used in this Agreement shall have the following meaning:

**"Active Customer Management"** means the Partner's ongoing customer relationship with the relevant Funnel customer; such as an ongoing retainer, consultancy, or maintenance contract, or similar, which include Partner Services supporting the relevant customer's use of the Service.

**"Affiliate"** means any entity that controls the Party or is controlled by or under common control with the Party, where "control" or variations of "control" means the ability to, directly or indirectly, direct the affairs of the other entity by means of ownership, management, contract or otherwise.

**"Confidential Information"** means any non-public information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") that (i) the Disclosing Party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood by the Receiving Party to be confidential given the nature of the information and the circumstances surrounding its disclosure. In addition to the foregoing, Confidential Information includes customer or client information, marketing and business plans, financial information, generally with regard to each Party and/or its Affiliates and the Service and the Partner Services, respectively, the contents of the Program Resources, the Partnership Confirmation, this Agreement, and other service offering terms, including, without limitation, all (i) computer software (both object and source code) and related documentation or specifications; (ii) techniques, concepts, methods, processes and designs embodied in or relating to the Service or Partner Services; and (iii) all application program interfaces, system security and system architecture design relating to the Service or Partner Services; and (iv) each Party's research and development, service offerings, pricing

and availability.

**"Effective Date"** means the date specified in the Partnership Confirmation.

**"Funnel"** means the Funnel entity specified in the Partnership Confirmation.

**"Lead"** means a contact person at a company that is a current or prospective client of the Partner, that is not currently, or has not previously been, engaging with Funnel and that meets Funnel's definition of a sales qualified lead, as further detailed by Funnel ("**SQL**"), for a subscription for the Service subject to Funnel's standard price list, and whose contact details the Partner delivers to Funnel. However, a contact person does not qualify as a Lead if the company that the contact person represents is or has been a Funnel SQL, an active customer, or a churned customer. That said, a company being listed by Funnel on a target account list will not disqualify a contact person at such company from qualifying as a Lead if the prerequisites for a Lead are met. Contact persons at the same company will qualify jointly as one Lead regardless of if referred at different points in time.

**"Monthly Contract Value"** means the monthly fee that a Funnel customer pays Funnel for the Service, regardless of contract and billing cycle, including any increases and decreases thereof during the term of the relevant customer agreement. If the relevant customer has a different billing cycle than monthly, the Monthly Contract Value is calculated by dividing the fee that the customer pays in its billing cycle with the number of months in that billing cycle.

**"Partner"** means the entity specified as the "Partner" in the Partnership Confirmation.

**"Partner Instrumental Deal"** means a deal that the Partner is instrumental in closing (in Funnel's sole discretion and determination), even though the Partner did not formally register or qualify the Lead with Funnel before the Lead becomes a paying customer for the Service.

**"Program Resources"** means resources that may be made available by Funnel to the Partner for enabling or facilitating the Partner's performance of the Partner's obligations hereunder, as varying among the Partner Tiers as specified in the Partner Program Policies, and as may be changed further by Funnel from time to time as set forth in Section 4, below, including, where applicable the demo account for the Service.

**"Partner Sourced Deal"** means a deal that originates from the Partner delivering or referring to Funnel a Lead which results in a customer signing a customer contract with Funnel to be a paying customer of the Service.

**"Partner Tier"** means the partner tier described in the Partner Program Policies in which the Partner is enrolled, as specified in the Partnership Confirmation, or as may be updated from time to time in accordance with the terms of this Agreement.

**"Party"** means Funnel or Partner individually, the "**Parties**" means Funnel and Partner jointly.

**"Program Year"** means the time period that the solution partner program follows, which coincides with the calendar year, January 1st to December 31st.

### 3. Partner Program Structure

- 3.1. Partner Obligations. The Partner shall be responsible for ensuring that it fulfills the requirements and obligations of the relevant Partner Tier. The Partner warrants that: (i) its performance of its obligations under this Agreement will not violate any applicable laws (ii) it will act professionally and in good faith at all times in its dealings with any customer; and that (ii) it will not act or omit in a way that is likely to have an adverse effect on the reputation of Funnel, Funnel Affiliates or any customer. The Partner acknowledges it being of fundamental importance to Funnel that the Partner itself carries out its obligations and responsibilities hereunder and that no subcontractor may be engaged in carrying out such obligations without Funnel's prior written approval. The Partner shall ensure that its Affiliates, where allowed to collaborate with Funnel alongside the Partner under the relevant Partner Tier, abide by the Agreement and the Partner shall remain fully liable to Funnel for any acts or omissions by the Partner's Affiliates. Affiliates are not granted any rights under the Agreement other than as expressly stated herein. Should the Partner be reassigned to a Partner Tier that does not allow Affiliates to participate in the collaboration with Funnel, Affiliates may no longer participate in carrying out the Partner's obligations and responsibilities from the date of the reassignment.

- 3.2. Structure. Any use of the Service shall be governed by Funnel's terms and conditions for the Service, available at <https://funnel.io/general-terms-and-conditions>. Partner's provision of the Partner Services to its clients shall be governed by the terms and conditions between the Partner and such client, as directed by the Partner from time to time.
- 3.3. Other Solution Partners. The Partner acknowledges that a customer of the Service may choose to engage other Funnel solution partners and that it shall be at the customer's discretion to determine with which Funnel solution partner it shall continue to work. The Partner agrees and acknowledges that there is nothing in this Agreement hindering such transition or preventing Funnel from continuing to work with such customer. There will not be more than one (1) solution partner per customer and the solution partner designated by the customer will be the Funnel solution partner responsible for that customer relationship. Such transition will also result in Funnel no longer paying any remuneration to the Partner for the relevant customer relationship.
- 3.4. Partner Tier. As of the Effective Date, the Partner enrolled in the Partner Tier specified in the Partnership Confirmation, and the Partner undertakes to continuously fulfill the requirements and obligations applicable for its Partner Tier, as outlined in this Agreement and in the Partner Program Policies. The Partner acknowledges that the requirements and obligations for each Partner Tier may vary, and that any changes to the requirements of a Partner Tier, and to the Partner's obligations for the fulfillment of such requirements, may be made unilaterally by Funnel, as communicated by Funnel from time to time. To remain enrolled at the relevant Partner Tier, the Partner is obligated to continuously throughout the partnership under this Agreement ensure that it, and where applicable its Affiliates, always fulfill the obligations specified for the relevant Partner Tier, within such timeframes as specified by Funnel.
- 3.5. Review of Partner Tier. While it is the Partner's responsibility to ensure that it fulfills the requirements and obligations of the relevant Partner Tier, Funnel shall have the right to review the Partner's compliance with the applicable requirements and obligations. Partner is expected to and shall fully cooperate in Funnel's performance of such reviews. Funnel has the right to remove the Partner from Funnel's partner program or reassign the Partner to another Partner Tier if a review shows that the Partner, at Funnel's sole discretion, is inactive or does not meet the requirements and obligations of the Partner Tier in which the Partner is enrolled. Once reassigned to another Partner Tier, the Partner is responsible to ensure that it fulfills the requirements and obligations of that Partner Tier. The reviews shall be carried out as specified in the Partner Program Policies.
- 3.6. Reassignment Request. The Partner may request reassignment to another Partner Tier in accordance with the Partner Program Policies.

#### **4. Use of Program Resources**

- 4.1. Program Resources. For enabling the Partner's performance of its obligations under this Agreement, Funnel may, where relevant, make available Program Resources to the Partner. Such Program Resources will be provided in the form and manner as indicated by Funnel from time to time, and always subject to the restrictions of use set forth in this Section 4. As of the Effective Date, Funnel will provide access to the Program Resources as specified in the Partner Program Policies. The Partner acknowledges Funnel's right to unilaterally make changes to the Program Resources as well as to issue instructions or restrictions on the use of such Program Resources.
- 4.2. License to Program Resources. Funnel hereby grants to the Partner a non-exclusive, non-transferable, non-sublicensable right, throughout the term of this Agreement, for the Partner and, where permitted for the relevant Partner Tier, its Affiliates to remotely access and use the Program Resources solely for the Partner's fulfillment of the Partner's obligations under this Agreement. The Partner's, and where applicable its Affiliates', use of the Program Resources shall always be subject to the restrictions in Section 4.3, and such other instructions as from time to time may be issued by Funnel.
- 4.3. Restrictions. The Partner shall not: (i) use the Program Resources for any other purposes than to fulfill the main objective of this Agreement; (ii) sublicense, license, sell, lease rent or otherwise make the Program Resources available to a third party; (iii) circumvent or disclose the user authentication or security of the Program Resources or any host, network, or account related thereto; (iv) share nonpublic Program Resources features or content with any third party; (v) copy any ideas, features,

functions or graphics of the Program Resources or translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Program Resources; (vi) infringe the intellectual property rights of any entity or person; (vii) interfere with or disrupt software or systems used to provide or host the Program Resources, or other equipment or networks connected to the Program Resources; (viii) access the Program Resources in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Service, or to copy any ideas, features, functions or graphics of the Service; or (ix) use the Program Resources in a way that does not comply with applicable law. The Partner shall safeguard all user authentication credentials in its possession or under its control. The Partner is responsible for all activities that occur under its Funnel sandbox account for the Service, including without limitation unauthorized access. The Partner shall notify Funnel immediately if the Partner believes an unauthorized third party may be using the Partner's account or if the Partner's account information is lost or stolen.

## **5. Revenue Share**

- 5.1. General. Where applicable for the relevant Partner Tier, the Partner shall be entitled to receive a part of the revenue generated by Funnel for each Partner Sourced Deal and/or Partner Instrumental Deal generated by the Partner and, where applicable, its Affiliates. The right to receive such revenue share for each Partner Sourced Deal or Partner Instrumental Deal applies for the first year of the customer's Service subscription. If Funnel confirms that the respective requirements of a Partner Sourced Deal and/or Partner Instrumental Deal having been met, the revenue share starts accruing on the first month of the customer's subscription; provided, always, that payment of the revenue share shall not be owed or payable to Partner until the relevant customer has paid its subscription fee for the Service. To be entitled to receive revenue share beyond the first year of the customer's subscription, the Partner must be enrolled at an eligible Partner Tier and provide Active Customer Management to the relevant customer. Funnel may request that the Partner demonstrates that it provides Active Customer Management to relevant customers as a prerequisite for being entitled to revenue share beyond the first year. The Partner shall be entitled to receive revenue share throughout the term of the Agreement and until the end of the calendar quarter following the effective date of termination of the Agreement and shall receive payment of the revenue share accrued prior to the effective date of the termination of the Agreement, subject to having fulfilled the invoicing provisions set out in Section 5.5.
- 5.2. Calculation. The revenue share shall be calculated each quarter as a percentage of the Monthly Contract Value for each Partner Sourced Deal or Partner Instrumental Deal. The revenue share is calculated using the applicable percentages set out in the Partner Program Policies based on the Partner Tier applicable to Partner at the time the revenue share is calculated, meaning that if the Partner has been reassigned from one Partner Tier to another, the revenue share model for the Partner's new Partner Tier shall govern the calculation of revenue share for all new Partner Sourced Deals and Partner Instrumental Deals calculated after the reassignment, starting from the month during which the reassignment takes effect.
- 5.3. Ineligible deals. The Partner is not entitled to receive any revenue share in the following situations:
  - 5.3.1. Existing deals. The Partner is not entitled to receive any revenue share for Partner Instrumental Deals or Partner Sourced Deals where the customer was already in Funnel's active sales process

at the time of the referral or had been in Funnel's sales process within the last ninety (90) days prior to the referral.

5.3.2. Renewals. The Partner is not entitled to receive any revenue share for customers that renew their subscriptions, unless otherwise specified in Section 5.2.

5.3.3. Failure to Follow Process. The Partner is not entitled to receive any revenue share for Partner Instrumental Deals or Partner Sourced Deals where the Partner has failed to follow the process of Lead registration set out in the Partner Program Policies.

5.3.4. Self-Referrals. The Partner is not entitled to receive any revenue share for Partner Instrumental Deals or Partner Sourced Deals where the customer is the Partner or an Affiliate of the Partner.

5.3.5. Prohibited by Applicable Law. The Partner is not entitled to receive any revenue share for Partner Instrumental Deals or Partner Sourced Deals where the Partner is prohibited from receiving, or Funnel is prohibited from providing, such revenue share due to applicable law.

5.4. Reporting. Funnel shall report to the Partner on a quarterly basis, based on the calendar year, the Partner's total accrued revenue share that the Partner is entitled to receive, meaning that regardless of the Effective Date of the Agreement, the Partner will receive one report for each quarter of the calendar year following the Effective Date.

5.5. Invoicing. The Partner shall invoice Funnel according to Funnel's revenue share report, delivered by Funnel according to Section 5.4, within ninety (90) days from the date of Funnel's sending such report. The Partner may only send one invoice per revenue share report, regardless of whether the Partner's Affiliates are allowed to participate in the partner program according to the Partner Program Policies. If the Partner fails to invoice Funnel within the time-period specified in this Section, the revenue share shall be considered forfeited, and the Partner shall not be entitled to make any claims with regard to such forfeited revenue share. However, the failure by the Partner to timely invoice Funnel shall not affect the Partner's enrolment in any particular Partner Tier, provided that the Partner fulfills the relevant requirements to remain enrolled at such Partner Tier.

5.6. Payment and Taxes. Provided that the relevant invoice includes all information required by Funnel from time to time, such instructions being provided to the Partner by Funnel without undue delay at request, Funnel shall pay undisputed invoices for revenue share within forty-five (45) days net of Funnel's receipt of an accurate invoice. The Partner is responsible to maintain all applicable registrations, certificates, and authorizations with regard to any tax matters related hereto.

## **6. Ownership of Intellectual Property Rights**

6.1. Funnel IP. Funnel, or its licensors, own all right, title and interest in and to any and all copyrights, trademark rights, patent rights, database rights and other intellectual property or other rights in and to the Service and the Program Resources, including without limitation all software, integrations, integrations with data sources and data destinations, technology and other rights used to provide the Service and/or the Program Resources, and all graphics, user interfaces and any documentation, any improvements, design contributions or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. The Agreement does not transfer from Funnel any proprietary right or interest in the Service or the Program Resources.

6.2. Partner IP. Partner, or its licensors, own all right, title and interest in and to any copyrights, trademark rights, patent rights, database rights and other intellectual property or other rights in and to the Partner Services, including without limitation all software, integrations, integrations with data sources and data destinations, technology and other rights in and to the Partner Services, and all graphics, user interfaces and any documentation, any improvements, design contributions or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. The Agreement does not transfer from Partner any proprietary right or interest in the Partner Services.

6.3. Collaboration. The Parties explicitly agree that with regard to any results being developed and any intellectual property created hereunder, if any, each Party shall be the exclusive owner of any results and intellectual property rights created which can be considered to be a derivative work in respect of its intellectual property rights in the Service, Program Resources, or the Partner Services,

respectively. For the purposes hereof, each Party hereby transfers and assigns to the other Party all results and all intellectual property rights created which could be considered being an improvement or derivative work of intellectual property rights held by the other Party continuously as such results arise, including to the Service, Program Resources and Partner Services, as applicable. The assigning Party grants the other Party the exclusive right to copy or make available to the public such improvements and derivative works, in the original or an altered form, in translation or adaption, in another literary or artistic form or in another technical manner.

## 7. Personal Data

- 7.1. Individual Controllers; no Joint Controller Relationship. Neither Party will process personal data on behalf of the other Party, but rather the transfer of personal data that may occur regarding customer referrals made under this Agreement is considered to be a controller-controller transfer. Each Party will be an individual controller and there will be no joint controller relationship with regard to the collaboration under this Agreement. It will be each Party's obligation to ensure its respective compliance with data protection laws, as applicable. Where the transfer requires the Parties to conclude a separate data transfer agreement, which may include the standard contractual clauses, the Partner undertakes to undersign any such data transfer agreement presented by Funnel with regard to such transfer.
- 7.2. Privacy Notice. Each Party will process personal data of the other Party's contact persons in the performance of this Agreement. Each Party is a controller for such processing and will provide to the other Party such privacy notices as may be required under applicable laws. Funnel's privacy notice with regard hereto is available at <https://funnel.io/privacy>. The Partner undertakes to ensure each relevant individual being informed about the contents of Funnel's privacy notice and the personal data processing of such individual's personal data carried out by Funnel.

## 8. Confidentiality

- 8.1. Restrictions on Use and Disclosure. Confidential Information shall not be used or reproduced in any form except as required to accomplish the intent of the Agreement. Any reproduction of any Confidential Information of the shall remain the property of the Disclosing Party and shall contain any and all confidential or proprietary notices or legends, which appear on the original. With respect to the Disclosing Party's Confidential Information, the Receiving Party (i) shall protect all Confidential Information using the same degree of care the Receiving Party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care; and (ii) shall not disclose any Confidential Information to any third party other than to individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder and who are under obligations of confidentiality substantially similar to those set forth herein. The Disclosing Party's Confidential Information disclosed prior to execution of the Agreement shall be subject to the protections afforded hereunder.
- 8.2. Exclusions. Confidential Information does not include information that the Receiving Party can establish: (i) has entered the public domain without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) has been rightfully received by the Receiving Party from a third party without confidentiality restrictions; (iii) is known to the Receiving Party without confidentiality restrictions prior to first receipt by the Receiving Party from the Disclosing Party; or (iv) has been independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.
- 8.3. Disclosure Required by Law. If the Receiving Party is compelled by law or legal process to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prompt prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, to allow the Disclosing Party to contest the disclosure.

## 9. Term and Termination

- 9.1. Term. The term of the Agreement shall begin on the Effective Date and shall continue for an initial term remaining until the date specified in the Partnership Confirmation (the "**Initial Term**"). If not terminated, the Agreement will renew automatically for additional time periods of one (1) year each (each a "**Renewal Term**"), any such Initial Term and Renewal Term generally referred to as the "term"

herein.

- 9.2. Termination for Cause. Each Party may terminate the Agreement for material breach by the other Party, via written notice, effective in thirty (30) days unless the other Party within such time period has cured the breach with evidence thereof having been provided to the other Party.
- 9.3. Termination without Cause. Each Party may terminate the Agreement without cause by providing notice of termination at least sixty (60) days prior to the end of the Initial Term and each Renewal Term, as applicable.
- 9.4. Effects of Termination. Upon termination of the Agreement, each Party shall cease all promotion and referral activities and delete, destroy, or return all copies of any documentation or Confidential Information of the other Party in its possession or control. The Partner shall immediately cease to use the Program Resources and shall return or destroy, as instructed by Funnel, any Program Resources in its possession. The Partner shall not be entitled to any compensation beyond the remuneration regulated in Section 5, following the effective date of termination of the Agreement regardless of the duration of the Agreement.
- 9.5. Surviving Sections. Any provision of the Agreement that must survive to fulfill its essential purpose shall survive termination or expiration of the Agreement.

#### 10. Limitation of Liability

- 10.1. Liability Not Excluded. Nothing in the Agreement shall limit or exclude either Party's liability for death or personal injury caused by its negligence; or for fraud or fraudulent misrepresentation; corrupt business practices; or any other liability that may not be excluded or limited by law.
- 10.2. Exclusion of Liability. SUBJECT TO SECTION 10.1, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, NOR FOR DAMAGES FOR LOSS OF DATA, GOODWILL, DIRECT OR INDIRECT PROFITS, INVESTMENTS, INTERRUPTION IN USE, AVAILABILITY OF DATA, STOPPAGE OF ANY WORK, OR IMPAIRMENT OF OTHER ASSETS, WHETHER FORESEEABLE OR UNFORESEEABLE OR EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT, AND WHETHER THE CLAIM OR CAUSE OF ACTION IS FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE..
- 10.3. General Limitation of Liability. Subject to Section 10.1 and 10.2, and excluding Section 4.3 Restrictions, Section 8 Confidentiality, the aggregate liability of each Party to the other Party, or any third party in connection with the Agreement, shall not exceed USD2,000.

#### 11. Miscellaneous

- 11.1. No Regulated Partnership. The Parties are independent contractors, and no regulated partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties is created hereby. Notwithstanding any other provision in the Agreement, nothing in the Agreement shall create or confer, whether expressly or by implication, any rights or other benefits in favor of any person not a party hereto.
- 11.2. Publicity. Provided that a Party complies with any trademark usage requirements notified to it by the other Party, each Party may refer to the other Party as a collaboration partner and use the other Party's logo as part of such reference. Each Party's publications of individual press releases referencing the partnership between the Parties, or the Service, if issued by Partner, and the Partner Services, if issued by Funnel, shall be subject to the other Party's prior written approval where the contents have not been previously approved by such Party.
- 11.3. Anti-Corruption. The Partner undertakes to carry out its obligations under this Agreement in an ethical manner and always in compliance with anti-corruption policies and practices communicated by Funnel from time to time. The Partner represents and warrants that the Partner has not and will not in the future directly or indirectly offer or pay, or authorize the offer or payment of, any money or anything of value in an effort to influence any government representative or any representative of any third party in order for Funnel to improperly obtain or retain business or to gain an improper

business advantage, and has not accepted, and will not accept in the future, such a payment. Funnel may terminate the Agreement with immediate effect if the Partner is, or Funnel has objectifiable reasons to suspect the Partner will be, in breach of the above representation and warranty. In the event of such termination, the Partner shall not be entitled to any further commission, regardless if such commission has accrued prior to the date of the termination notice, and the Partner shall be liable for damages or remedies as provided by law. Further, the Partner will indemnify and hold Funnel harmless from any claim, liability, fine, penalty, loss, or damage that arises as a result of the Partner's failure to comply with this Section 11.3.

- 11.4. Force Majeure. Any delay or non-performance of any provision of the Agreement caused by conditions beyond the reasonable control of the performing Party (force majeure) shall not constitute a breach of the Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
- 11.5. Severability. To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any Section of the Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of the Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of the Agreement will continue in full force and effect.
- 11.6. Waiver. Except as expressly stated herein, neither Party will be deemed to have waived any of its rights under the Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of the Agreement will constitute a waiver of any other breach of the Agreement.
- 11.7. Construction. The Parties agree that the terms of the Agreement result from negotiations between them. The Agreement will not be construed in favor of or against either Party by reason of authorship.
- 11.8. Execution of the Agreement. The Agreement shall be signed by electronic signature, with each copy of such electronically signed document being considered one and the same instrument and the signature by electronic means (facsimile or scanned and sent via email, or signed by electronic signature service where legally permitted) shall be deemed original signatures.
- 11.9. Assignment. Neither Party may assign any of its rights or obligations under the Agreement without the prior written consent of the other, which will not be unreasonably withheld, conditioned, or delayed. However, Funnel shall be entitled to assign or delegate some or all of its rights and obligations under the Agreement to any of its Affiliates, or to an entity to which it has merged, or that acquires all of its assets upon notification thereof to the other Party. The Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- 11.10. Entire Agreement. The Agreement constitutes the complete and exclusive statement of the agreement between Funnel and Partner in connection with the Parties' business relationship related to the subject matter hereof, and all previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the Parties disclaim any reliance on any such representations, discussions, and writings. The Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions, which may appear on any document furnished by the Partner, and any additional terms and conditions in any such document shall have no force and effect, notwithstanding Funnel's acceptance or execution of such document. Funnel may from time to time unilaterally make changes to these General Terms and to the Partner Program Policies, including but not limited to the fees, benefits, requirements, and processes of the partner program. At Funnel's discretion, Funnel will notify the Partner of any significant changes to the General Terms or Partner Program Policies, or, where the changes are minor, post the changes where available to the Partner. Any changes shall be deemed accepted and become effective upon notification or posting thereof.
- 11.11. Notices. Any notice required to be given by either Party in writing under the Agreement may be made by email to the contact persons specified in the Partnership Confirmation and shall be



deemed to have been duly received on the date of confirmation of receipt from the notified Party.

## **12. Dispute Resolution**

12.1. Settlement by Good-Faith Discussions. All disputes arising out of or in connection with the Agreement shall be attempted to be settled by good-faith negotiations between senior management of each Party. Such negotiations shall commence within two (2) weeks from the date of written request from a Party to the other. In the event that negotiations do not resolve the dispute within one (1) month from said written request, a Party may proceed as set forth in Section 12.2. Commencement of any dispute resolution process shall not relieve either Party from its continued duties and obligations under the Agreement.

12.2. Governing Law and Jurisdiction: Jury Trial Waiver.

12.2.1. If Funnel AB is the Party to the Agreement: Subject to Section 12.1, the Agreement and any dispute or claim arising therefrom shall be interpreted, construed, and enforced in all respects in accordance with Swedish law, without regard to its conflict of law principles, and shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal shall be composed of three arbitrators. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the proceedings shall be English. The arbitration award shall be final and binding upon the Parties.

12.2.2. If Funnel, Inc. is the Party to the Agreement: Subject to Section 12.1, the Agreement and any dispute or claim arising therefrom shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Delaware, without regard to its conflict of law principles and the Parties hereby accept the exclusive jurisdiction of the federal and state courts located in the State of Delaware. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THE AGREEMENT.

12.3. Confidentiality. The confidentiality undertaking in Section 8 shall apply to any arbitration process or court proceedings hereunder, including any award or judgment.

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