



v1.3, October 2021

Application, Interpretation, Definitions and entire Agreement

1. These Terms and Conditions (hereinafter “conditions”) apply between *Podspike*, a trading name of *Why did the Chicken? Limited*, (hereinafter “Podspike”, “We” or “Us”) and users (hereinafter “customer” or “You”) of our website, newsletter and podcast promotion services (hereinafter “services”).
2. You are deemed to have accepted these conditions when you use our Website, sign up to our newsletter/The Podcast Clinic, sign up for a Pro Membership or purchase our Services. These conditions apply to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, and supersede any previous conditions agreed between us for a given project/provision of services.
3. “Podcast” is defined as a digital audio recording containing entertainment or factual content, provided for the purposes of general consumption, and made available via the Internet for downloading onto a computer or mobile device, typically available as a series, new instalments of which can be received by subscribers automatically.
4. “Promotions Team” is defined as any of our employees, subcontractors, agents or 3rd party individuals we have used to help provide our services.
5. “Services” are defined as activities undertaken to promote/market a podcast and typically include (but are not limited to) audience analysis, copy editing, graphic design, social media content creation and advertising, PR, story, interview and article recommendations, marketing and advertising features/placements, review submissions, cross-promotional partnerships and advice and guidance. Any advice and guidance provided via The Podcast Clinic is excluded from this definition.
6. “Content” is defined as podcasts, audio, graphical or video files, audiograms, scripts, promotional copy, templates, tools, methods, data, written and verbal advice and guidance, and other outputs required to enable the provision of your services.

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7. “Pro Members” refers to customers who have subscribed to our “Pro Membership” subscription service, which enables them to receive monthly store credit in return for a set fee, and access a Members-only store offering access to small units of promotional support (“Powerups”) tailored to the needs of individuals or small organisations.
8. “The Podcast Clinic” refers to our free newsletter and blog, incorporating both general and podcast-specific advice and guidance and the answering of reader questions.
9. “Business Customers” refers to customers using our bespoke promotions service to receive a more substantial set of promotional support tailored to brands, businesses, organisations and larger podcasts. Services provided to Business customers shall be detailed in separate proposals and their delivery will be subject to Terms and Conditions agreed separately to those described here.
10. The headings in these Terms and Conditions are for convenience only and do not affect their interpretation. Words imparting the singular number shall include the plural and vice-versa.
11. All of these Terms and Conditions apply to the supply of any goods as well as services unless we specify otherwise.

Using our Website and Newsletters

12. Unless uploaded by you, all graphics, images, page layouts, underlying code, software video, text, ideas, names, terms and data included on this Website or The Podcast Clinic are the property of Podspike, our affiliates, or relevant third parties. By continuing to use this Website and/or our Newsletters you acknowledge that these aspects are protected by copyright, trademarks, database rights and other intellectual property rights. Nothing on this site shall be construed as granting, by implication or otherwise, any license or right to use, reproduce, modify or distribute these aspects, without prior written permission.

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13. You may not use this Website, Pro Membership, The Podcast Clinic or any of our Services in any way which causes, or may cause damage to the Website, Pro Memberships, The Podcast Clinic or our Services, interferes with their use by you or others, or is in any way harmful, illegal, unlawful, abusive, harassing or threatening.
14. You must ensure that any details you provide us are correct and complete at the time of provision, informing us of any changes required for us to continue to provide our services to you.
15. You should keep confidential and not disclose or share any passwords you create when using the Website. If we have reason to believe there has been, or is likely to be, any misuse or breach of security caused by you or 3rd party individuals or groups, we may require you to change your password or we may take steps to improve security including, but not limited to, account suspension.
16. This Website and The Podcast Clinic may contain links to other websites not under our control. We assume no responsibility for the content of such websites and disclaim liability for any and all forms of damage arising from the use of them
17. Use of the Website, Pro Memberships, The Podcast Clinic and our Services is subject to acceptance of our [Data Protection and Privacy Policy](#).
18. Whilst we will use reasonable endeavours to ensure that our Website, The Podcast Clinic, Pro Memberships and our Services are secure and free from errors, viruses and other malware, we give no warranty or guarantee in this regard. You agree that you will take reasonable precautions to protect your own data.
19. We make no guarantee for, and accept no liability arising from, the availability or otherwise of the Website, Pro Memberships, The Podcast Clinic or our Services.
20. Any information, advice or guidance we provide through the Website, Pro Memberships, The Podcast Clinic and our Services is provided “as is” and on an “as available” basis and we offer no warranty (express or implied) as to its accuracy, fitness for purpose or completeness.

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Our and Your Obligations

21. We warrant that we will use reasonable care and skill in the delivery of the agreed services, to the advertised (or otherwise agreed in writing) specification. We will use our reasonable endeavours to complete the performance of the services within the advertised or agreed timeframes, however time shall not be of the essence in the performance of our obligations. Services purchased under our Pro Membership service will have a target completion timeframe of within 30 calendar days unless otherwise specified or advised.
22. Where possible, we will share with you (in advance of purchase) the plausible outcomes you may reasonably expect to achieve as a result of using our services. Whilst we will make reasonable efforts in the fulfillment of our service, we cannot however guarantee that use of our service will result in those outcomes being achieved - for instance, we cannot guarantee how many clicks or subscribers you will receive when purchasing a featured spot.
23. Successful provision of our services will be reliant upon your timely and effective participation. You agree that you will make reasonable efforts to support and enable delivery of our services, by (including but not limited to):
 - a. giving us timely access to any relevant and reasonable podcast materials (e.g cover art, links, host and guest information and other descriptive information);
 - b. sharing reasonable and accurate information about your Podcast, your needs, your audience and your existing promotional activities;
 - c. positive, constructive and active engagement with our team to work collaboratively on positive outcomes;
 - d. avoiding unwarranted negative representation of both your Podcast, The Podcast Clinic, Pro Memberships, our Services and Podspike on open fora, both real and virtual;

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- e. you being responsible for ensuring that you have all the necessary licences, clearances and copyright permissions for any podcast you ask us to promote;
- f. you making us aware, prior to the commencement of this contract, of any reasonable and relevant personal, health, mobility or technical requirements, which we will make reasonable efforts to cater for;
- g. you warranting that your podcast and associated promotion materials (including, but not limited to, music, spoken word, imagery, show notes, social media postings, public talks, videos, blog posts and episode names) adhere to our [acceptable content policy](#).

Fees and Payment

- 24. The fee for Pro Memberships and Powerups are specified on the website and confirmed at the point of payment. Pro Memberships are a subscription-based service with a recurring monthly payment from the date of purchase. You may choose to Pause or Cancel your Pro Membership at any time, subject to the conditions laid out in the section entitled 'Cancellation, Termination and Amendment'.
- 25. Pro Members can pay for Powerups via the Members-only store using credit card or store credit. Store credit can be obtained via a Pro Membership, use of our referral schemes, or gifted via customer services.
- 26. Once purchased or gifted, store credit cannot be refunded, except in the circumstances detailed in these Terms and Conditions, or at our discretion.
- 27. Store credit cannot be exchanged for currency.
- 28. Our fees are inclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.
- 29. All payments will be handled through our payments partner Stripe. By making payments to us via Stripe you agree to Stripe's [terms and conditions](#).

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Subcontracting and Assignment

30. We can at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under these Terms and Conditions and can subcontract or delegate in any manner any or all of our obligations to any third party.
31. You must not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under these conditions.

Intellectual Property, Rights & Editorial

32. You authorise us and grant us all necessary rights to distribute and share necessary content related to your podcast over the course of our delivery of the agreed services including, but not limited to, advertising materials, artwork, show and episode, descriptions, host and guest details and other relevant and related content.
33. You authorise us and grant us all necessary rights to distribute and share on our websites, social media channels and other marketing materials and adverts, any testimonials you have provided to us.
34. With the exception of written promotional copy and cover art, we retain full rights and Intellectual Property (IP) to all content provided in or via the Website, Pro Memberships, The Podcast Clinic or provided during our delivery of Services to you. For content provided as part of our services, we will grant you an 'Intended Use' licence, allowing you and necessary 3rd parties to use the content in a reasonable manner in accordance with its intended purpose. Use outside of this purpose, such as for training or course materials, reselling of the content, transferring to 3rd parties for them to sell, adding to stock libraries, use on merchandising platforms and other exploitation for financial gain is strictly prohibited without first obtaining both our written permission and agreement on an appropriate remuneration package.

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35. Content provided to you as part of the Website, Pro Memberships, The Podcast Clinic or in delivering our Services may contain copyrighted material from 3rd parties (e.g. audio or image files) or usage restrictions. In these instances, we will inform you of any limitations associated with its use.
36. We will take the editorial lead on any content provided to you in the course of delivering our services to you, but will make any reasonable or necessary changes in order to encompass your editorial views, correct any material errors or omissions or aspects that have the potential to cause health and safety, reputational, legal, or financial damage.

Cancellation, Termination and Amendment

37. We may amend these Terms and Conditions at any time, communicating any changes to affected users, in a timely and appropriate manner.
38. We may suspend or discontinue any part (or the whole of) the Website, Pro Memberships, The Podcast Clinic and our Services at any time. In the event we discontinue Pro Memberships, we will refund any subscription fee paid in the month of the discontinuation that has not already been used to purchase a service from us. We shall not refund or otherwise compensate you for any positive credit balance in your account.
39. We can withdraw or cancel a service you have purchased from us if the provision of said service has not yet started. In the event we do so, you will be offered a full refund in the medium of the form of payment (e.g. store credit for store credit or currency for credit card payments).
40. From time to time we may review, amend, add or withdraw the nature and/or price of services available for purchase on the Website and The Podcast Clinic, including Pro Memberships.

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41. Any significant changes to the nature and operation of Pro Memberships will be communicated to existing Pro Members in advance of the change, allowing them to make an informed choice about whether they wish to continue, Pause or Cancel their membership in advance of their next scheduled payment.
42. Pro Members may Pause or Cancel their Membership at any time by selecting the corresponding option in their account dashboard. Paused Memberships may be unpaused and Cancelled Memberships may be reactivated at any time, again through the account dashboard. Any recurring payments made prior to a Pause or Cancel decision will not be refunded, unless at our discretion.
43. If your Membership is Paused, you will no longer make recurring payments in return for store credit, but may still earn credit through referral and make purchases at the Members store, using store credit or credit card.
44. If you choose to Cancel your Membership, then your Membership will be marked 'Pending Cancellation' until the date of the next due recurring payment, at which point they will automatically be marked as Cancelled. Memberships that are Pending Cancellation will operate in the same way as Paused Memberships.
45. Once a Membership has switched from Pending Cancellation to Cancelled, you will no longer be able to access the Members store and any store credit associated with cancelled Memberships may be removed from your account.
46. We will routinely close and remove Cancelled accounts from our system after 3 months, or any account (including Paused accounts) that has been inactive for longer than 6 months. Any store credit associated with these closed accounts will be lost and not refunded. Similarly, account information such as Purchase History will be deleted.
47. We may make reasonable changes to the scope, quality or timing of our services in order to deal with issues arising due to circumstances beyond our control, or take advantage of opportunities that present themselves. We will inform you of any changes at the point of delivery.

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48. Whilst we will make reasonable attempts to cater for any reasonable and timely requests to cancel purchased services, once we have initiated delivery of a purchased service cancellation will not be possible.
49. We reserve the right to make any changes to the services necessary to comply with any applicable legal, copyright or safety requirements, notifying you if this is necessary.
50. In the event we are unable to fulfil our obligations, we will notify you in a timely fashion and work to agree a reasonable alternative specification or due date. If no agreement can be reached, we will refund your purchase as store credit.
51. We will make clear to you any dependencies and obligations we require from you in order to enable us to deliver the services, alongside any limits of scope or exclusions. If you, your representatives or your relevant 3rd parties fail to fulfil these dependencies or obligations in a timely manner and/or fulfil them in a sub-standard, unsafe or illegal manner, then we may reasonably reduce the scope, quality and/or timeliness of our service or terminate provision without penalty.
52. We can terminate the provision of our services and/or pause and/or cancel your membership immediately and without penalty if you:
 - a. commit a material breach of your obligations under these Terms and Conditions; or
 - b. fail to make pay any amount due; or
 - c. are or become or, in our reasonable opinion, are about to become, the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtor; or
 - d. enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or convene any meeting of your creditors; or
 - e. convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver

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appointed in respect of your assets or undertakings or any part of them, any documents are filed with the court for the appointment of an administrator in respect of you, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or

- f. create, share, provide, promote or support (during the course of this contract) any content that fails to adhere to our [acceptable content policy](#).

Liability and Indemnity

- 53. You will not us hold us or any member of our Promotions Team liable (whether caused by our employees, subcontractor, agents or otherwise), in connection with our provision of the Website, Pro Memberships, The Podcast Clinic, our Services or the performance of any of our other obligations under these Terms and Conditions, for:
 - a. any indirect, special or consequential loss, damage, costs, or expenses or;
 - b. any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; or
 - c. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; or
 - d. any losses caused directly or indirectly by any failure or your breach in relation to your obligations; or
 - e. any losses arising directly or indirectly from the choice of services and how they will meet your requirements or your use of the services or any goods supplied in connection with the services.

- 54. Equally, you will not transfer, pass on or in any other way make claims against us or the Promotions Team for any liabilities you hold with the end customer.

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55. Nothing in these Terms and Conditions shall limit or exclude either party's liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, or for any other matters for which it would be unlawful to exclude or limit liability.
56. For all other liabilities arising out of or related to this agreement, regardless of the forum and regardless of whether any action or claim is based on contract, tort, or otherwise, the aggregate total liability for either party shall not exceed five times the value of this agreement,

Data Protection and Confidentiality

57. When you sign up to The Podcast Clinic, Memberships, contact us for information or help, or purchase services from us, we may gain access to and/or acquire the ability to transfer, store or process personal data from you, your employees, associated third parties or end customers. You agree that where such processing of personal data takes place, you shall be the 'data controller' and we shall be the 'data processor' as defined in the General Data Protection Regulation (GDPR) as may be amended, extended and/or re-enacted from time to time. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.
58. We shall Process Personal Data in accordance with our [Data Protection and Privacy Policy](#).
59. We shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict 'need-to-know' basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.
60. We shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by us on behalf of you.

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61. For any enquiries or complaints regarding data privacy, you can email:
data@podspike.com.

General

62. No delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy, nor stop further exercise of any other right or remedy.
63. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).
64. These Terms and Conditions shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Contract (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.
65. In the event of the insolvency, bankruptcy or winding up of *Why did the Chicken?* then unfulfilled obligations may not be met.
66. In the event that you are unhappy with any work we have conducted for you, then please let us know as soon as possible, stating:
- a. The issue you have experienced
 - b. The nature and size shortfall against the published or otherwise agreed specification
 - c. All relevant order details
 - d. What reasonable steps you expect us to take to correct the matter

We will then review your complaint and take reasonable steps to address your concerns, taking into account the size and nature of the shortfall.