

Feedsy Terms and Conditions

These Feedsy Terms and Conditions (as updated from time to time by us) are the terms and conditions on which Feedsy Pty Ltd ACN 606 000 426 (**Feedsy, we, us and our**) grant a Subscription to you as our customer (**you and your**) to use and access this website and the Feedsy Products.

By using this website, or by purchasing or accessing any Feedsy Products you accept these Terms and Conditions. If you do not agree to these Terms and Conditions, you must not use our website or the Feedsy Products.

We may update these Terms and Conditions from time to time in accordance with clause 15.13 below.

Terms and Conditions Snapshot

The full legal Terms and Conditions that apply to you are set out below but as quick guide we provide you with the following summary of the key terms.

1. **Definitions we use through these Terms and Conditions**

What we mean when we use certain capitalised words in these Terms and Conditions.

2. **Other terms that apply to you**

We have a few policies that apply in addition to these Terms and Conditions including our Privacy Policy and Cookie Policy. It is important that you read them before you agree to these Terms and Conditions.

3. **How you access and use the Feedsy Products**

We offer the Feedsy Products to you on condition that you don't share login information amongst yourselves or with others and you don't use the Feedsy Products to do anything unlawful or offensive.

4. **Our use of your Customer Data including Feedster and Subscriber Personal Information**

You provide the Personal Information of your Feedsters and Subscribers to us and we collect certain information in order to provide you with the Feedsy Products. We each have to take steps to ensure that we collect and process that information lawfully.

5. **Our obligations to you**

We will provide you with the Feedsy Products that you purchase from us but cannot guarantee that your use will be uninterrupted, error free, without delay or will meet your requirements.

6. **Your obligations to us**

So that we can provide you with the Feedsy Products, we need you to do certain things including cooperating with us in a timely manner, providing information to us, keeping information up to date, ensuring that you are entitled to share Personal Information with us and that we can lawfully process Personal Information for you, making sure that your Feedsters and Subscribers comply with these Terms and Conditions and maintaining your network connections.

7. **How you pay for the Feedsy Products**

Our Feedsy Products are available on a monthly subscription. You must provide us with valid credit card or bank account details so that we can charge the initial Set Up Fee and recurring Monthly Subscription Fees (or any other applicable Fees) to you.

8. What we own and what you own

You keep what's yours and we keep what's ours. So that we can provide you with the Feedsy Products you let us use what belongs to you and we let you use what belongs to us subject to a few conditions. You may reject the Feedsy Content but you cannot edit any of our Stories or use the images we provide for any other purpose. You can share the Feedsy Content through the Feedsy Channels or certain other Permitted Channels. We compile i) Analytics Data about your Feedsters Use of the Feedsy Products and ii) Email Engagement Data about your Subscribers which we make available to you during the term. This data belong to us and we may publish it so long as we don't identify you without your permission or any of your Feedsters or Subscribers. Customer Content created by you and uploaded to the Feedsy Products and Bespoke Content we create for you belongs to you and you give us permission to publish it via your Feedsy Channels and promise that you have the rights necessary to authorise us to publish it.

9. Protecting your and our Confidential Information

We will be sharing commercially sensitive and confidential information with each other and each promise to keep that information confidential unless we are required by law to disclose the information.

10. Indemnity

If you don't follow these Terms and Conditions you will make good any of our losses.

11. Our liability to you is capped

Apart from losses which we are required to compensate you for under applicable law, the most you can recover from us for any reason is the one month's Monthly Subscription Fee.

12. Disclaimer

We promise to provide you with the Feedsy Products you have purchased from us but we do not promise that it will guarantee you any particular results from your marketing campaigns or that the products will be error free and uninterrupted.

13. Term, termination and consequences of termination.

You have a month to month subscription which you or we can cancel at two (2) days' notice. When you cancel you will have 30 days to download your Subscriber List and Customer and Bespoke Content.

14. When disaster strikes

Sometimes things happen that are outside of our control, like natural disasters. If an event of this kind happens and affects our or your ability to carry our obligations (other than your obligation to pay the Fees) it will be not be a breach of these Terms and Conditions.

15. Miscellaneous

Any other miscellaneous topics that we haven't already covered are set out.

Full legal Terms and Conditions that apply to you

1. Definitions we use through these Terms and Conditions

What we mean when we use certain capitalised words in these Terms and Conditions.

1.1 The following definitions apply unless the context requires otherwise.

Applicable Data Protection Legislation means data protection legislation of the country or state which apply to our processing of your Customer Data which constitutes Personal Information including:

- (a) if you are based in Australia, the Privacy Act 1988 (Cth) and the Spam Act 2003 (Cth); and
- (b) if you are based in the United Kingdom, the European Union General Data Protection Regulation 2016/679 as enacted into local laws.

Bespoke Content means all content including trade marks, logos, headline text, text, photos, images, graphics, videos, messages, tags interactive elements (e.g. surveys) and other materials and content that you commission us or our licensors to create for your exclusive use and publication and distribution via your Feedsy Channels including Stories but excluding Feedsy Content.

Business Day means a day that is not a Saturday, Sunday or public holiday in Adelaide, Australia.

Content means Feedsy Content, Customer Content and Bespoke Content

Customer Content means all content including trade marks, logos, headline text, text, photos, images, graphics, videos, messages, tags, interactive elements (e.g. surveys) and other materials and content that you or your licensors create and upload to the Feedsy Product for publication and distribution via your Feedsy Channels.

Customer Data means the data input by you, your Feedsters, or by us on your behalf for the purpose of using the Feedsy Products or facilitating your use of the Feedsy Products including the Subscriber List and your Feedsters' personal information.

Customer means you as a customer of the Feedsy Products or as a representative of an entity that is a customer of the Feedsy Products and whose information is provided for identification purposes in the sign up process.

Feedsters means your employees, agents or users who are authorised by you to use the Feedsy Products, as further described in clause 3.

Feedsy Channels means all current and future distribution channels by which the Feedsy Content and Customer Content may be published and distributed from time to time.

Feedsy Content means all content including trade marks, logos, headline text, text, photos, images, graphics, videos, messages, tags interactive elements (e.g. surveys) and other materials and content that we or our licensors create for publication and distribution via the Feedsy Channels including Stories but excluding Customer Content and Bespoke Content.

Feedsy means Feedsy Pty Ltd a company incorporated in Australia with company number 606 000 426 and its registered office c/o SGK & Associates, Unit 3/26 The Parade West, Kent Town, South Australia, Australia 5071.

Feedsy Affiliate means a parent or subsidiary company of Feedsy, or a company with the same ultimate holding company as Feedsy.

Feedsy Products means the products and services available from www.feedsy.info (or our other websites) including as may be amended from us from time to time:

- (a) software as a service, provided by us and/or our licensors or subcontractors, including, but not limited to, software development kits, other software code supplied by us to you that allows for integration of the Feedsy Products into third party websites, and any related updates or modifications provided by us from time to time;
- (b) services provided in creating the Feedsy Content;
- (c) Analytics Data and Email Engagement Data;
- (d) products, services, applications, tools and other resources provided or made available by us or accessible at our website (or our other websites), including any applicable support services, manuals, documentation and related material;
- (e) domain hosting services;
- (f) any other services we may provide you associated with the Feedsy Products; and
- (g) all related service names, logos, design marks, slogans, and all other material and Intellectual Property Rights comprising the above.

Intellectual Property Rights means any and all forms of intellectual property rights title and interest in:

- (a) patents, trade marks, service marks, trade names, domain name or URLs, goodwill, designs, databases, circuit layouts, trade dress, copyrights (including moral rights), rights to sue for passing off or unfair competition, and all other forms of intellectual or industrial property (in each case in any part of the world, whether or not registered or registrable for their full period of registration together with all extensions, renewals and revivals, and including all applications for registration or otherwise and rights to apply for or protect and enforce such rights);
- (b) inventions, formulae, confidential information (including know-how or secret processes);
- (c) rights in computer software; and
- (d) any similar or equivalent rights in assets which may now or in the future subsist anywhere in the world.

Order means any order you place with us to purchase Feedsy Products or additional services in the form that we prescribe from time to time which we confirm to you by providing you with a receipt for your order. All Orders will be deemed to incorporate, and will be subject to and governed by these Terms and Conditions.

Personal Information has the meaning given to that term or the term 'personal data' under the Applicable Data Protection Legislation.

Policies mean the Privacy Policy, the Cookie Policy and any other policy we may notify you of from time to time.

Subscriber List means the list of email addresses, first names and last names (optional) of your intended recipients of your Feedsy Content.

Subscribers means any person who is included in your Subscriber List or subscribes via the

Feedsy Products.

Subscription means the agreement between us and you to access and use the Feedsy Products set out in your Order(s) for the duration of the Term in accordance with these Term and Conditions.

Term has the meaning given in clause 13.

Virus means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. Other terms that apply to you

We have a few policies that apply in addition to these Terms and Conditions including our Privacy Policy and Cookie Policy. It is important that you read them before you agree to these Terms and Conditions.

2.1 The following additional terms also apply to visitors to our website, your Subscription and your Feedsters and Subscribers' use of the Feedsy Products and are incorporated by reference into these Terms and Conditions :

- (a) Our Privacy Policy as amended by us from time to time and available at feedsy.com.au/privacy-policy
- (b) Our Cookie Policy as amended by us from time to time and available at feedsy.com.au/cookie-policy

Any reference to these Terms and Conditions is also a reference to these Policies and any other policy that we may notify you of from time to time.

2.2 Terms specified in any purchase order confirmations or other communications sent by you to us are not binding on us unless expressly agreed to in writing by us referencing this clause.

2.3 Documents that we sign acknowledging receipt of the Customer Content or your purchase orders do not constitute acceptance of the Customer Content or terms of your purchase orders. We may modify or cancel any of your purchase orders without liability before you deliver Customer Content to Customers.

2.4 To the extent of any inconsistency In the event of any conflict, ambiguity or inconsistency between:

- (a) the terms and conditions of these Terms and Conditions and the Privacy Policy or Cookie Policy, it will be resolved in the following order:
- (b) these Terms and Conditions will prevail over the Privacy Policy; and
- (c) the Privacy Policy will prevail over the Cookie Policy.

- 2.5 Any amendment to the Privacy Policy or Cookie Policy will be deemed to apply to all further Customer Content, Feedsy Products and Feedsy Channels provided after the date of such amendment.
- 2.6 No standard terms and conditions attached in any document sent by you to us shall apply to modify these Terms and Conditions or the Privacy Policy or Cookie Policy.

3. How you access and use the Feedsy Products

We offer the Feedsy Products to you on condition that you don't share login information amongst yourselves or with others and you don't use the Feedsy Products to do anything unlawful or offensive.

- 3.1 Subject to these Terms and Conditions and the restrictions set out in this clause 3, during the Term we grant you a right to permit your Feedsters to access and use the Feedsy Products purchased by you pursuant to your Order(s) solely for your internal business operations. You cannot transfer or sub-licence this right to any third party. This right is not an exclusive right and we are free to provide the Feedsy Products to our other current or future customers.
- 3.2 Subject to these Terms and Conditions and the restrictions set out in this clause 3, during the Term we grant you a right to use the Feedsy Products to publish or distribute the Feedsy Content and Customer Content via the Feedsy Channels purchased by you pursuant to your Order(s) for your internal business operations. You cannot transfer or sub-licence this right to any third party. This right is not an exclusive right and we are free to provide the Feedsy Product to our other current or future customers.
- 3.3 You undertake that:
- (a) you will only authorise your own employees to be Feedsters and if you require any other persons to be a Feedsters you must obtain advance written consent from us;
 - (b) you will not allow any Feedster account to be used by more than one individual employee unless it has been permanently reassigned to another individual in which case the prior employee will no longer have any right to access or use the Feedsy Products;
- 3.4 You must maintain written and up to date lists of current Feedsters and Subscribers and provide such lists to us within five (5) Business Days after our written request at any time.
- 3.5 You must procure that any Feedster or person using the account name and password issued to a Feedster will not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Feedsy Products that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) promotes unlawful violence;
 - (d) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (e) in a manner that is otherwise illegal or causes damage or injury to any person or property.

We reserve the right, without liability to you or prejudice to our other rights, to disable remove any

material that breaches the provisions of this clause.

4. Our use of your Customer Data including Feedster and Subscriber Personal Information

You provide the Personal Information of your Feedsters and Subscribers to us and we collect certain information in order to provide you with the Feedsy Products. We each have to take steps to ensure that we collect and process that information lawfully.

- 4.1 You will own all right, title and interest in and to all of the Customer Data and have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data you provide to us.
- 4.2 We will, in providing the Feedsy Products, comply with clause 4.3 and any data protection agreement which may be entered into by us with you in writing from time to time.
- 4.3 We process the Personal Information in the Customer Data on your behalf when performing our obligations under these Terms and Conditions and you acknowledge that you are the data controller and we are a data processor of such Personal Information and in any such case:
- (a) you acknowledge and agree that the Personal Information may be transferred or stored outside the country where you, your Feedsters and your Subscribers are located in order for us to provide the Feedsy Products and carry out our other obligations under these Terms and Conditions;
 - (b) you warrant that you are entitled to transfer the relevant Personal Information to us so that we may lawfully collect, use, process, disclose and transfer the Personal Information in accordance with these Terms and Conditions on your behalf;
 - (c) you warrant represent and undertake that all Feedsters and Subscribers have been informed of (including, but not limited to, by way of a privacy policy or notice), and if necessary, have given their consent to, or that there is otherwise a lawful basis for such use, processing, and transfer as required by Applicable Data Protection Legislation;
 - (d) you acknowledge that we may process the Personal Information only as necessary to perform our obligations under these Terms and Conditions and, where required under Applicable Data Protection Legislation and any lawful instructions reasonably given by you from time to time;
 - (e) you agree that you will and we may take technical and organisational measures against unauthorised or unlawful processing of the Personal Information or its accidental loss, destruction or damage;
 - (f) you authorise us to update your Subscriber List with any new Subscribers who opt in using a mechanism available in the Feedsy Channels to receive marketing communications from us on your behalf;
 - (g) you agree that we may not send marketing communications on your behalf via the Feedsy Channels to any Subscriber who has opted out from such communications using a mechanism available in the Feedsy Channels; and
 - (h) you agree that we may not sell your Customer Data to third parties for marketing purposes.

5. Our obligations to you

We will provide you with the Feedsy Products that you purchase from us but cannot guarantee that your use will be uninterrupted, error free, without delay or will meet your requirements.

- 5.1 We will provide the Feedsy Products substantially in conformance with the Order(s) and with reasonable skill and care.
- 5.2 Clause 5 does not apply to the extent of any non-conformance which is caused by your use of the Feedsy Products contrary to our instructions, or modification or alteration of the Feedsy Products by any party other than us. If the Feedsy Products do not conform with your Order, we will use reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for non-conformance.
- 5.3 Notwithstanding the foregoing, we:
- (a) do not warrant that you and your Feedsters' or Subscribers' use of the Feedsy Products will be uninterrupted or error-free; or
 - (b) to the maximum extent permitted under applicable law, are not responsible or liable to you or any other person for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Feedsy Products may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
do not warrant that the Feedsy Products and/or the information obtained by you or your Feedsters or Subscribers through the Feedsy Products will meet your requirements.

6. Your obligations to us

So that we can provide you with the Feedsy Products, we need you to do certain things including cooperating with us in a timely manner, providing information to us, keeping information up to date, ensuring that you are entitled to share Personal Information with us and that we can lawfully process Personal Information for you, making sure that your Feedsters and Subscribers comply with these Terms and Conditions and maintaining your network connections.

Under these Terms and Conditions it your responsibility to do the following and you agree to do it:

- (a) provide us with all necessary co-operation in relation to your Subscription;
- (b) provide us with reasonable notice (not being less than ten (10) Business Days) of any changes to the domain name or domain name hosting records used in association with any of your Feedsy Products and you agree that we are not responsible for any unavailability of the Feedsy Products if you fail to comply with this clause (b);
- (c) provide us with the text of any disclaimer legally required or recommended to be displayed with the Feedsy Content under applicable law;
- (d) carry out all of your other responsibilities set out in these Terms and Conditions in a timely and efficient manner. In the event of any delays in your provision of such responsibilities we may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) provide us with all necessary access to such information as may be required by us;

- (f) provide us with your Subscriber List and immediately inform us of any changes to your Subscriber List including if any Subscriber opts out of receiving marketing communications from you using any opt out mechanism other than those available in the Feedsy Channels;
- (g) review your Subscriber List as frequently as necessary to ensure that any persons who have opted out from receiving the Feedsy Content via the Feedsy Channels are reflected in any other marketing mailing list you use and such persons do not receive unlawful marketing communications from you. You must inform us if you wish to receive a notification when a Subscriber opts out using a mechanism available in the Feedsy Channels;
- (h) ensure that at all times each person on your Subscriber List has provided valid consent under Applicable Data Protection Legislation and has not withdrawn such consent (other than via the opt out mechanism available in the Feedsy Channels) to receive marketing communication from us on your behalf and for us to collect and process their Personal Information as contemplated by these Terms of Service;
- (i) ensure that you have a current and up to date privacy policy applicable to your Subscribers and displayed with the Feedsy Product in accordance with Applicable Data Protection Legislation;
- (j) comply with all applicable laws and regulations with respect to your activities under these Terms and Conditions;
- (k) obtain and maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their obligations under these Terms and Conditions, including without limitation providing the Feedsy Products;
- (l) ensure that your Feedsters and Subscribers use the Feedsy Products and Feedsy Content in accordance with these Terms and Conditions and acknowledge that you are responsible for any Feedster's or Subscriber's breach of these Terms and Conditions; and
- (m) procure and maintain your network connections and telecommunications links from your systems to our data centres, and agree that we are not responsible for any problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

7. How you pay for the Feedsy Products

Our Feedsy Products are available on a monthly subscription. You must provide us with valid credit card or bank account details so that we can charge the initial Set Up Fee and recurring Monthly Subscription Fees (or any other applicable Fees) to you.

7.1 For the purpose of this clause 7:

Fees means the Set Up Fee, Monthly Subscription Fee and Gap Fee or any other one off or recurring charges for additional services provided by us charged on a time and materials basis applicable pursuant to any Order entered into by you;

Gap Fee means as applicable:

- (a) the difference between the initial Set Up Fee paid you and the then current Set Up Fee applicable to any upgrade that you purchase from us; or

- (b) the then current one off fees applicable to any Feedsy Product you purchase, in each case the Gap Fee paid is non-refundable.

Monthly Subscription Fees means the monthly subscription fees payable by you to us for access and use of the Feedsy Products, as set out in your Order;

Set Up Fee means the non-refundable one off fees for set up of the Feedsy Products you purchase pursuant to your Order; and

Upgrade means any additional purchases of Feedsy Products your make after your first purchase.

- 7.2 You will pay the Fees to us for your Subscription in accordance with this clause 7 and your Orders(s).
- 7.3 When purchasing a Feedsy Product, you must provide us with:
 - (a) valid, up-to-date and complete credit card details acceptable to us and any other relevant valid, up-to-date and complete contact and billing details; or
 - (b) valid, up-to-date and complete bank account details and any other relevant valid, up-to-date and complete contact and billing details
- 7.4 You represent, warrant and undertake that anyone using your nominated credit card is authorised by you to use that card, and that any and all Fees may be billed to that credit card and will not be rejected.
- 7.5 By providing your credit card or bank account details to us, you authorise us to bill or direct debit the Fees due to such credit card or bank account including:
 - (a) the applicable Set Up Fee as set out in your Order immediately on purchase of any Feedsy Product; and
 - (b) the applicable recurring the Monthly Subscription Fee as set out in your Order payable in respect of the next Renewal Period commencing on the date that is one month after the date on which you purchased any Feedsy Product or such other period as agreed by us in writing (**Billing Cycle**);
 - (c) when you purchase any Upgrade, the applicable Gap Fee as set out in your Order immediately on purchase. Your subsequent Monthly Subscription Fee and each Monthly Subscription Fee thereafter will be adjusted to include the monthly fees associated with the Upgrade and the Monthly Subscription Fee pro-rated from the date purchased to the dated of the next Billing Cycle as set out in your Order.
- 7.6 If your card is automatically replaced with a new card by a payment processor, you authorise us to charge the Fees as set out in this clause 7 to the new credit card.
- 7.7 You are responsible for ensuring that your payment information is accurate and up to date and undertake to update the information for any credit card that expires with information for a valid credit card. We are not responsible for any direct or indirect consequences of your failure to provide valid, inaccurate or up to date credit card information during the Term.
- 7.8 If you are suffering financial hardship you may submit a request to place your Subscription on hold, after which we may determine, in our sole discretion, whether we will grant your request which may subject to payment of a holding fee that we may notify you of at the time.
- 7.9 If we are unable to process payment of the Fees or other applicable charges using the bank account details or credit card information you have provided to us on the date such Fees or other charges are due as set out in these Terms and Conditions, and without prejudice to any of our

other rights and remedies:

- (a) we may, without liability to you, disable or suspend your Subscription, your Feedsters' or Subscribers' passwords, accounts and access to all or part of the Feedsy Products and we will be under no obligation to provide any or all of the Feedsy Products until your payment has been successfully processed; and
- (b) we may charge you interest which will accrue on a daily basis on such due amounts at an annual rate equal to three per cent (3%) over the then current base lending rate of our nominated bankers in Australia from time to time, commencing on the due date and continuing until fully paid, such interest to be charged to your bank account or credit card.

7.10 All amounts and Fees stated or referred to in these Terms and Conditions are:

- (a) payable in Australian dollars or English pounds sterling as indicated when you purchase the Feedsy Products;
- (b) subject to clause 13, non-cancellable;
- (c) non-refundable;
- (d) unless expressly stated otherwise as excluding Australian GST, will include the GST inclusive amount but exclude any other applicable Australian taxes or applicable taxes imposed by any other jurisdiction (you are responsible for paying all such taxes and any other customers duties or taxable levies).

7.11 Any taxes payable by you may be added to the final price charged to your credit card.

7.12 You must pay all taxes payable by you with no reduction or offset in the amounts payable to us.

7.13 If any withholding taxes are required under applicable law to be withheld from payment by you to us, then you may deduct the amount of such withholding but you must also increase the amount the payment that you make to us so that the final amount we receive from you is equal to the amount has such withholding tax not been deducted by you. You authorise us to bill your bank account or credit card for any and all taxes payable including reimbursing any withholding taxes which you have deducted from our payments (and any applicable penalties for no payment) that we may be required to pay in connection with your Subscription. We will notify you of such charges.

7.14 We are entitled to increase the Subscription Fees at the start of each Renewal Period upon our telling you in writing or email in advance by thirty (30) days after which your Subscription will be deemed to have been automatically amended accordingly.

8. What we own and what you own

You keep what's yours and we keep what's ours. So that we can provide you with the Feedsy Products you let us use what belongs to you and we let you use what belongs to us subject to a few conditions. You may reject the Feedsy Content but you cannot edit our Stories nor use the images we provide for any other purpose. You can share the Feedsy Content through the Feedsy Channels or certain other Permitted Channels. We compile i) Analytics Data about your Feedsters Use of the Feedsy Products and ii) Email Engagement Data about your Subscribers which we make available to you during the term. This data belong to us and we may publish it so long as we don't identify you without your permission or any of your Feedsters or Subscribers. Customer Content created by you and uploaded to the Feedsy Products and Bespoke Content we create for you belongs to you and you give us permission to publish it via your Feedsy Channels and promise that you have the rights necessary to authorise us to publish it.

8.1 In this clause 8:

Analytics Data means aggregated and de-identified analytical, statistical and performance information based on and/or related to you and your Feedsters' use of the Feedsy Products and your Subscribers' interaction and use of the Feedsy Channels and Feedsy Content;

Email Engagement Data information which may include personal information, about how your Subscribers interact with emails sent to them via the Feedsy Channels and any links sent in the emails;

Our IP has the meaning given to it in clause 8.2(a);

Permitted Channels means any social media account, your website or any other channel that may notify you of from time to time; and

Story means a single article or blog post created by us.

8.2 **Our stuff**

- (a) We own or license of all Intellectual Property Rights in the Feedsy Products and Feedsy Content (**Our IP**).
- (b) During the term we grant you a licence to use Our IP to the extent necessary for you to use the Feedsy Products. This licence is not exclusive to you and we can provide Our IP to our other current and future customers. We can revoke this licence in accordance with clause 13. You cannot transfer or sublicense your licence to any other person.
- (c) Except that you may not edit or manipulate an image or a Story or deal with an image or a Story other than in its entirety, during the Term we grant you a licence to the Feedsy Content to the extent necessary for you to do any of the following:
 - (i) publish and distribute the Feedsy Content or part thereof via the Feedsy Channels or other Permitted Channels in accordance with these Terms and Conditions;
 - (ii) reject Feedsy Content or part thereof before the publishing date notified to you, if you do not reject any Feedsy Content it will be deemed accepted by you and published automatically on the publishing date; or
 - (iii) to stop or suspend publishing of the Feedsy Content or any part thereof via the Feedsy Channels.

This licence is not exclusive to you and we can provide Our IP to our other current or future customers. We can revoke this licence in accordance with clause 13. You cannot transfer or sublicense your licence to any other person.

8.3 **Permitted Channels**

- (a) Except that you may not edit or manipulate a Story or deal with a Story other than in its entirety, you may publish and distribute the Feedsy Content or part thereof via a Permitted Channel. Any support you request from us in order to publish or distribute via a Permitted Channel will be charged to you on a time and materials basis and you must comply with any technical specifications we may inform you of from time to time. You acknowledge that we are not responsible for any error or unavailability of Feedsy Content or Customer Content published or distributed via the Permitted Channels.
- (b) Other than as permitted by this clause 8 you must not:

- (i) copy, imitate or use the Feedsy Content, in whole or in part;
 - (ii) use any part of the Feedsy Content for any other purposes;
 - (iii) edit any Feedsy Content or manipulate or deal with it in any way; or
 - (iv) publish, broadcast or distribute the Feedsy Content by any method in any forum other than the Feedsy Channels or a Permitted Channel.
- (c) We may provide certain parts of the Feedsy Products under a licence from a third party and you agree to comply with any additional restrictions on the use of the Feedsy Products which we may notify you of from time to time and which arise in connection with such third party licence.
- (d) Feedsy reserves all rights not expressly licensed under this clause 8.

8.4 Analytics Data and Email Engagement Data

- (a) Notwithstanding anything to the contrary in these Terms and Conditions, and in accordance with our Privacy Policy, we may monitor, analyse, and compile:
- (i) Analytics Data about how your Feedsters and Subscribers use the Feedsy Products;
 - (ii) Email Engagement Data about your Subscribers' and their interactions with Content emailed to them via the Feedsy Channels. We may make this Email Engagement Data available to you in the Feedsy Product during the Term.
- (b) You agree that:
- (i) we and our third party licensors may use such data to improve our products;
 - (ii) provided that any data is aggregated and de-identified and that it is not attributed to you unless you have granted us permission, we may make Analytics Data and Email Engagement Data publicly available; and
 - (iii) we or our licensors own all right, title and interest in and to the Analytics Data and Email Engagement Data and all related software, technology, documentation, and content provided in connection with the Analytics Data Email Engagement, including all Intellectual Property Rights.

8.5 Your Stuff

- (a) You may provide us with or upload Customer Content to the Feedsy Products to be displayed in your Feedsy Products or published and distributed via your Feedsy Channels. You warrant that:
- (i) you own or are otherwise authorised to license the Customer Content as contemplated by this clause 8.5 and these Terms and Conditions;
 - (ii) the Customer Content and our use of the Customer Content does not infringe the rights of any third parties including Intellectual Property Rights;
 - (iii) Customer Content will comply with clause 3 of these Terms and Conditions.
- (b) You acknowledge that you are solely responsible for the Customer Content and the

consequences of submitting, uploading, publishing or distributing the Customer Content on the Feedsy Products and the Feedsy Channels and release us from any liability arising out of or in connection with the use, distribution or publication of the Customer Content.

- (c) You retain all Intellectual Property Rights that you hold in any of the Customer Content that you submit, upload, publish or distribute on your Feedsy Products or via the Feedsy Channels. So that we can provide you with the Feedsy Product you grant us a licence to use, store, reproduce, communicate, publish, display or distribute such content via your Feedsy Channels or otherwise necessary to provide you with the Feedsy Products in accordance with these Terms and Conditions. The licence you grant us applies throughout the world, may be transferred or sublicensed by us to a third party, cannot be revoked by you and does not require us to make any payment to you now or in the future. You warrant and represent that you are authorised and have all rights necessary to grant us this licence.

8.6 What happens if you modify our stuff

- (a) If you or any third party acting on your behalf acquire any Intellectual Property Rights or any other rights including any future rights to any part of Our IP automatically by operation of applicable law, you agree to execute or procure from such third parties the execution of all such documents and do all such acts and things as we may reasonably require in order to assign any such rights and the goodwill associated with those rights to us and to obtain a waiver of any moral rights that any individual has in or to Our IP or Feedsy Products or Feedsy Content.
- (b) This clause 8.6 survives termination of these Terms and Conditions.

9. Protecting your and our Confidential Information

We will be sharing commercially sensitive and confidential information with each other and each promise to keep that information confidential unless we are required by law to disclose the information.

- 9.1 For the purpose of this clause 9 **Confidential Information** means any information that is proprietary or confidential to a party and disclosed by or on behalf of that party and is:
 - (a) clearly labelled or identified as Confidential Information in clause 9.5; or
 - (b) reasonably understood by the recipient given the nature of the information and circumstances in which it is disclosed to be the confidential of the disclosing party.
- 9.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms and Conditions. A party's Confidential Information will be deemed not to include information that:
 - (a) is or becomes publicly known other than through any act or omission of or on behalf of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.3 Each party will hold the other's Confidential Information in confidence and, unless required by applicable law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms and Conditions.
- 9.4 Each party will take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms and Conditions.
- 9.5 You acknowledge that Analytics Data and Email Engagement Data, these Terms and Conditions and confidential details of Feedsy Products will constitute our Confidential Information.
- 9.6 We acknowledge that Customer Data constitutes your Confidential Information.
- 9.7 This clause 9 survives termination of these Terms and Conditions.

10. Indemnity

If you don't follow these Terms and Conditions you will make good any of our losses.

- 10.1 You agree to defend, indemnify and hold us harmless against liability, claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with each of the following:
 - (a) your use, or use by your Feedsters or Subscribers (or any person using their account and password) of the Feedsy Products, Feedsy Content or Customer Content published via a Feedsy Channel in breach of these Terms and Conditions;
 - (b) your material breach of these Terms and Conditions; or
 - (c) breach of any warranty or representation given by you under these Terms and Conditions.
- 10.2 This clause 10 survives termination of these Terms and Conditions.

11. Our liability to you is capped

Apart from losses which we are required to compensate you for under applicable law, the most you can recover from us for any reason is the one month's Monthly Subscription Fee.

- 11.1 This clause **Error! Reference source not found.** sets out our entire financial liability (including any liability for acts or omissions of our employees, agents and sub-contractors) to you:
 - (a) arising under or in connection with these Terms and Conditions;
 - (b) in respect of your use of Feedsy Products, Feedsy Content or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions.
- 11.2 Nothing in these Terms and Conditions excludes our liability for:

- (a) any liability which cannot be limited or excluded under applicable law;
- (b) death or personal injury caused by our negligence;
- (c) our fraud or fraudulent misrepresentation; or
- (d) breach of the consumer guarantees in Part 3.2 Division 1 of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) or the United Kingdom *Consumer Rights Act 2015* if applicable.

11.3 Subject to clause 11.2:

- (a) we are not liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, wasted management resources, loss of opportunity, business interruption, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising out of or in connection with these Terms and Conditions; and
- (b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with the performance or contemplated performance of these Terms and Conditions will be limited to the one month's Monthly Subscription Fee paid by you during the month immediately preceding the date on which the giving rise to the claim arose.

11.4 This clause 11 survives termination of these Terms and Conditions.

12. Disclaimer

We promise to provide you with the Feedsy Products you have purchased from us but we do not promise that it will guarantee you any particular results from your marketing campaigns or that the products will be error free and uninterrupted.

- 12.1 You assume sole responsibility for results obtained from the use of the Feedsy Products by you, your Feedsters and Subscribers and for conclusions drawn from such use. To the maximum extent permitted by applicable law we have no liability for any damage caused by errors or omissions in any of the Feedsy Content or the Customer Content, information, instructions or scripts provided to us by you in connection with the Feedsy Products, or any actions taken by us at your direction.
- 12.2 The Feedsy Products and Feedsy Content are provided to you on an "as is" basis.
- 12.3 You acknowledge and agree that it is not possible to guarantee that the performance of the Feedsy Products will be successful in producing any specific results. In particular, you acknowledge that it is not possible for us to warrant that the Feedsy Products or Feedsy Content guarantee:
 - (a) high deliverability;
 - (b) high engagement with Content; or
 - (c) a successful marketing campaign.
- 12.4 You acknowledge and agree that we will not be liable for the failure of the performance of the Feedsy Products or Content to generate any expected or useful results.
- 12.5 You acknowledge that the Feedsy Content does not constitute professional advice of any kind including financial, legal or tax and that we not licensed to provide professional advice and we are

not liable and you are solely responsible for reliance on the Content by your Subscribers.

- 12.6 Save for any rights you may have under the consumer guarantees in Part 3.2 Division 1 of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) or the United Kingdom *Consumer Rights Act 2015* which cannot be excluded (if applicable), all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and Conditions.

13. Term, termination and consequences of termination.

You have a month to month subscription which you or we can cancel at two (2) days' notice. When you cancel you will have 30 days to download your Subscriber List and Customer and Bespoke Content.

- 13.1 For the purpose of this clause 13:

Initial Subscription Term means the initial term of your Subscription as set out in clause 13.2;

Renewal Period means the period described in clause 13.2;

Sign Up Date means the date on which you complete the online sign up process to purchase the Feedsy Products;

Term has the meaning give in clause 13.2; and

Termination Notice Period means 2 Business Days.

- 13.2 Your Subscription, unless otherwise terminated as provided in this clause 13, commences on the Sign Up Date and continues for a period of one (1) month (**Initial Subscription Term**), after which your Subscription will be automatically renewed for successive periods of one (1) month (each a **Renewal Period**)(together, the Initial Subscription Term and any Renewal Periods are the **Term**), unless:

- (a) either party notifies the other party their intention not to renew the Subscription, in writing, with as much notice as possible but no less than two (2) Business Days (**Termination Notice Period**) before the next Renewal Period, in which case your Subscription will terminate on the last day of the Initial Subscription Term or Renewal Period during which the Termination Notice Period expires;
- (b) otherwise terminated in accordance with the provisions of these Terms and Conditions.

- 13.3 We may terminate your Subscription with immediate effect by giving written notice to you, without affecting any other right or remedy available to us, if;

- (a) you fail to pay any amount due under these Terms and Conditions on the due date for payment and remains in default not less than five (5) days after such payment was due;
- (b) you commit a material breach of these Terms and Conditions which breach is irremediable or (if such breach is remediable) fail to remedy that breach within a period of ten (10) days after being notified in writing to do so;
- (c) you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or suffer any other event of insolvency.

- 13.4 On termination of these Terms and Conditions for any reason:

- (a) all licences granted by us to you under these Terms and Conditions will immediately terminate;
- (b) we will grant you access to the Feedsy Product only for the purpose of exporting your Subscriber List and Customer an Bespoke Content for a period of thirty (30) days after termination but no other data, after which we are entitled destroy or otherwise dispose of any Customer Data held by us;
- (c) your access to or use of the Feedsy Products under clause (b) must comply with all your obligations under these Terms and Conditions;
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination will not be affected or prejudiced.

14. When disaster strikes

Sometimes things happen that are outside of our control, like natural disasters. If an event of this kind happens and affects our or your ability to carry our obligations (other than your obligation to pay the Fees) it will be not be a breach of these Terms and Conditions.

- 14.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident; and
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).
- 14.2 Provided it has complied with clause 14.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under these Terms and Conditions by a Force Majeure Event (**Affected Party**), the Affected Party will not be in breach of these Terms and Conditions or otherwise liable for any such failure or delay in the performance of such obligations (other than your obligation to pay the Fees). The time for performance of such obligations will be extended accordingly.
- 14.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 14.4 The Affected Party will:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later

than seven (7) days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 14.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than thirty (30) days, the party not affected by the Force Majeure Event may terminate these Terms and Conditions by giving thirty (30) days written notice to the Affected Party.

15. Miscellaneous

Any other miscellaneous topics that we haven't already covered are set out.

15.1 Entire agreement

These Terms and Conditions constitute the entire agreement between the parties and supersede any prior conduct, arrangement, agreement or understanding. You agree that you are not relying on any representations made by our sales representatives or agents which are inconsistent with the express provisions of these Terms and Conditions and expressly included in them. You warrant and present that you have sought independent legal advice before agreeing to these Terms and Conditions and that you have independently assessed whether Feedsy Products are suitable for your needs. Any of your customer terms sent or attached to any communication or purchase order are not effective and do not vary or supersede these terms.

15.2 Further assurances

Each party must promptly do all things necessary in order to give effect to these Terms and Conditions, including executing and delivering documents.

15.3 Severability

If a provision in these Terms and Conditions is unenforceable or invalid in any jurisdiction, it will be ineffective in that jurisdiction to the extent that it is unenforceable or invalid. No provision in these Terms and Conditions will otherwise be affected in any jurisdiction.

15.4 Costs

Unless provided to the contrary in these Terms and Conditions, each party must pay its own costs in relation to the negotiation, preparation, execution and performance of these Terms and Conditions.

15.5 Counterparts

These Terms and Conditions may be executed electronically by the acceptance of web forms, by counterparts and exchanged by email or by such other method as may be agreed between the parties and those counterparts taken together form one agreement.

15.6 Consent to use of electronic communications

The parties to these Terms and Conditions consent to the use of electronic communications as a means of communicating about these Terms and Conditions and the matters contained within it.

15.7 Rights of third parties

These Terms and Conditions are not intended to, and do not, give to any person who is not a party to them any right to enforce any provisions contained in these Terms and Conditions except for any Affiliate of Feedsy who may enforce these Terms and Conditions as though it is a party to them. Save as set out in the foregoing, for the purpose of the *Contracts (Rights of Third Parties) Act 1999*, no person who is not a party to these Terms and Conditions has any right to enforce any provision contained in them.

15.8 Notices

Except as otherwise set out in these Terms and Conditions, a notice or other communication to or by a party under these Terms and Conditions:

- (a) must be in writing;
- (b) may be delivered by email to the email address of the recipient specified in these Terms and Conditions or provided during the sign up process or any new address of the recipient known to the sender; and subject to paragraph (c), is deemed to be effective upon delivery to the recipient;
- (c) if delivered or received on a day which is not a Business Day, it is taken to have been delivered or received on the following Business Day and, if delivered or received after 4:00pm (addressee's time), then notice is taken to have occurred at 9:00am on the following Business Day.

15.9 No assignment

You may not assign, novate or encumber any right or liability under these Terms and Conditions without our prior written consent.

15.10 No merger

Unless provided to the contrary in these Terms and Conditions, the rights and obligations of the parties under these Terms and Conditions do not merge on completion and will survive after completion.

15.11 Relationship of parties

No party is authorised to bind another party and nothing in these Terms and Conditions is to be construed as creating an employment, agency, franchise, partnership, fiduciary or joint venture relationship between any of the parties.

15.12 Remedies

Unless provided to the contrary in these Terms and Conditions, the rights and powers under these Terms and Conditions are in addition to, and do not exclude or limit, any right or power provided by law or equity.

15.13 Variations

We may amend or update these Terms and Conditions by notifying you including notification within your Feedsy Products, posting a notice on our website, emailing the account associated with your Subscription. You may only amend or replace these terms with our written agreement.

15.14 Waivers

A waiver of any of our rights, powers or remedies must be in writing and signed by us. Any failure or delay by us to exercise any power or right or rely on a remedy under these Terms and Conditions does not operate as a waiver of that power, right or remedy.

15.15 **Governing law**

The laws of South Australia, Australia govern these Terms and Conditions.

15.16 **Jurisdiction**

Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in Adelaide, South Australia, Australia and waives any right to claim that those courts are an inconvenient forum. Notwithstanding the foregoing, either party may seek injunctive relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of such party's, its affiliates' or any third party's intellectual property or other proprietary rights. The United Nations Convention on Contracts for the International Sale of Goods, and any local laws implementing the Convention on Contracts for the International Sale of Goods, do not apply to this Agreement. To the extent permitted by applicable law you hereby waive any rights that you may have to bring disputes before any other court, tribunal or forum. You and we each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. We each waive any right to a jury trial.

15.17 **Interpretation**

In this document, unless the context requires otherwise:

- (a) the singular includes its plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) headings, subheadings and summary descriptions including the Terms and Conditions Snapshot provided at the begging of these Terms and Conditions and after each section heading in italics are for convenience only and do not affect interpretation;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a party to these Terms and Conditions includes its successors and permitted assigns;
- (g) a reference to a particular day or time is to that day or time in Adelaide, South Australia, Australia;
- (h) a reference to any agreement (including these Terms and Conditions) or document is to the agreement or document as amended, supplemented, novated or replaced from time to time;
- (i) a reference to a clause, paragraph, schedule or annexure is to a clause, paragraph, schedule or annexure in or to these Terms and Conditions;
- (j) a reference to these Terms and Conditions includes any schedules and annexures to these Terms and Conditions;
- (k) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form;
- (l) a reference to **dollars** or **\$** is to Australian currency and a reference to **pounds** or **£** is to the currency of the United Kingdom;
- (m) a reference to legislation (including subordinate legislation) or a provision of it is to that

legislation or provision as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (n) words such as **including** or **for example** do not limit the meaning of the words preceding them;
- (o) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally; and
- (p) nothing in these Terms and Conditions is to be interpreted against a party solely on the ground that the party or its advisers drafted it.

15.18 **Business Days**

Unless expressed to the contrary in these Terms and Conditions, if the day on or by which a party must do something under these Terms and Conditions is not a Business Day, the party must do it on or by the next Business Day.

15.19 **Consents or approvals**

Unless expressed to the contrary in these Terms and Conditions, if the doing of any act, matter or thing under these Terms and Conditions is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.