

# scribewriters.

## Terms and Conditions

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Document, unless the context otherwise requires, capitalised terms have the meaning given to them in the Proposal, and:

**Business Day** means a day on which banks are open for general banking business in Victoria, excluding Saturdays, Sundays and public holidays.

**Confidential Information** includes information or documentation which:

- (a) is disclosed to the Client in connection with this Document (whether before or after the Effective Date);
- (b) is prepared or produced under or in connection with this Document (whether before or after the Effective Date); or
- (c) relates to:
  - (1) the business, assets or affairs of the Provider; or
  - (2) the subject matter of, the terms of and/or any transactions contemplated by this Document,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and whether it is disclosed to the Client or received, acquired, overheard or learnt by the Client in any way whatsoever.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Document** has the meaning given in the Proposal.

**Effective Date** means the earlier of the date on which this Document is:

- (a) signed by each of the Parties, as set out in the Proposal; or
- (b) otherwise accepted in accordance with its terms.

**Errors** has the meaning given under Clause 3.3(a).

**Insolvency Event** means the occurrence of any one or more of the following events in relation to the Client:

- (a) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
- (b) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of its property;
- (e) it is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;

- (f) a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
- (g) it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
- (i) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Client.

**Intellectual Property** means any:

- (a) copyright;
- (b) registered or unregistered design, patent or trade mark rights;
- (c) trade, business, company or domain names;
- (d) know-how, inventions, processes, trade secrets or Confidential Information;
- (e) circuit layouts, databases or source codes; or
- (f) similar rights in any part of the world, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Liability** means any expense, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Party** means a party to this Document, and **Parties** means all of them.

**Personnel** means any employee, consultant, supplier, subcontractor or agent with reference to one of the Parties, whether based in Australia or in any other country.

**Transcript** means the transcribed text that is provided to the Client by the Provider on completion of the Services.

#### 1.2 Interpretation

In this Document, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph,

schedule or annexure, as the case may be, of this Document;

- (d) if any act which must be done under this Document is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (h) includes and similar words mean includes without limitation;
- (i) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (j) a reference to a party to an instrument includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (k) a reference to this Document or any other instrument includes the instrument, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (l) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them severally;
- (m) a reference to time is to local time in Victoria, Australia; and
- (n) a reference to \$ or dollars refers to the currency of Australia from time to time.

## 2 Commencement

- (a) This Document takes effect on and from the Effective Date. The Client cannot cancel or terminate the Agreement after the Effective Date, other than in accordance with clause 8 of these Terms.
- (b) The Provider will proceed with the provision of the Services within a reasonable time after the later of:
  - (1) the Effective Date; and
  - (2) the satisfaction of any other conditions precedent contemplated by this Document.

## 3 Provider's obligations

### 3.1 Services

- (a) In consideration of the Client's payment of the Price, the Provider will provide the Services in accordance with this Document, whether itself or by using its Personnel.
- (b) The prices charged by the Provider may vary from client to client, depending on a number of factors including but not limited to things like audio quality, turnaround time, accented speaker and

the number of speakers (**Price Variants**). The Price Variants are set out in Schedule 1 to this Agreement and may not be known until after the transcription has occurred and the prices set out at Schedule 1 are agreed upon by the Client at the point of sending through transcription requests by email or telephone, having regard to the Price Variants contained in the relevant audio.

- (c) The Client acknowledges and agrees that while the Provider will use reasonable commercial endeavours to keep all material and audio files provided secure and confidential, it is not liable for any material or information that is intercepted or stolen by a third party. This clause 3.1(c) survives termination or expiry of this Document.
- (d) The Provider will delete any and all media files and material provided by the Client for transcription (**Media Files**) after payment has been made by the Client and subject to clause 3.3 of these Terms.
- (e) The Provider will use reasonable commercial endeavours to preserve the Confidential Information provided to it by the Client.
- (f) Despite anything to the contrary, to the maximum extent permitted by law, the Provider will not be responsible, and will have no Liability, for any works, services, goods, materials or items which:
  - (1) do not form part of the Services, as expressed in the Proposal;
  - (2) are delayed because of circumstances reasonably beyond our control; or
  - (3) have not been provided by the Provider.This clause 3.1(f) will survive the termination or expiry of this Document.

### 3.2 Variations

- (a) Subject to clause 3.2(b), the Client may request a variation or change to the Services, by providing written notice to the Provider, with details of the variation or change, noting the pricing schedule at Schedule 1 to these Terms.
- (b) Despite anything to the contrary:
  - (1) the Provider will not be obliged to vary or change the Services, including the timing for the provision of the Services, unless:
    - (A) the Provider confirms:
      - (i) that it accepts the variation or change; and
      - (ii) the effect of the variation or change, including to the Price (**Price Variation**), in writing to the Client;
    - (B) the Price has been adjusted to reflect the Price Variation; and
    - (C) the Client has paid the Provider the Price (as adjusted by the Price Variation) in accordance with the Payment Terms; and
  - (2) without limiting and in addition to clause 3.2(b)(1), where:

- (A) the Services are varied or changed, or the costs of providing the Services increase; and
  - (B) the cause of that variation, change or increase relates to, or is connected with, an event or circumstance beyond the Provider's reasonable control,
- the Client must pay the Provider the additional costs and expenses it suffers or incurs as a debt due and immediately payable to the Provider.

### 3.3 Quality Control

- (a) We are committed to providing top quality Services and accurate Transcripts. However, subject to Clause 3.3(c), if, within 48 after the provision of the Transcript to the Client, the Client has notified the Provider in writing of any major error beyond a reasonable error margin or any quality control issues in the Transcript which is due to the Provider's negligent fault or omission (**Error**), the Provider will, at its own cost correct or remedy the Error.
- (b) If the Client does not notify the Provider of any Errors within 48 hours of receiving the Transcript, this will be taken by the Provider to mean there are no Errors and the Provider will not be liable to remedy any errors or pay any costs. The Client agrees that the ultimate proofreading and accuracy check is the Client's responsibility and the Provider does not provide these services.
- (c) The Client agrees and acknowledges that in receiving the Transcript:
  - (1) Errors do not include acceptable standard errors, which will be determined by the Provider in its sole and reasonable discretion;
  - (2) the accuracy of the Transcript will depend on the quality of the Media Files provided; and
  - (3) the Provider does not provide editing or proofreading Services other than those included as part of our quality control measures and in this regard, draw your attention to clause 4.1(e) of these Terms.
- (d) Despite anything to the contrary, to the maximum extent permitted by law, the Provider's aggregate Liability for any fault, defect, error, omission or lack of functionality or suitability with respect to the Services will be limited to, and must not exceed, the costs it incurs in complying with clause 3.3(a) or **Error! Reference source not found.** (as applicable). This clause 3(e) will survive the termination or expiry of this Document.

## 4 Client's obligations

### 4.1 General

- (a) The Client must comply with:
  - (1) this Document;
  - (2) all reasonable requests or requirements of the Provider; and
  - (3) all laws.
- (b) The Client must:

- (1) obtain, and provide to the Provider, all Media Files and any access and permissions necessary to enable the Provider and its Personnel to provide the Services; and
- (2) not on-sell, re-supply, re-distribute or otherwise provide the Services to any third party (whether for commercial profit or gain or otherwise) beyond the purpose of the scope of work and without the Provider's prior and express written consent.

- (c) In providing the Media Files, the Client acknowledges that if any of the Price Variants are found to apply after the Provider has heard the Media Files (including poor audio quality or strong accents), then this will incur additional costs as set out at Schedule 1.
- (d) In providing the Media Files, the Client consents to the Provider sharing the Media Files with its Personnel.
- (e) The Client acknowledges and agrees that the transcription service provided by the Provider is to transcribe audio to text and that the Provider does not have specific industry specific training. To this end the Client will be liable for and indemnify the Provider against any outcomes as the result of the use of the transcript. Noting the Client should always proofread the transcript personally before using.

(f)

### 4.2 Payment

- (a) The Client must pay the Provider:
  - (1) the Price; and
  - (2) any other amount payable to the Provider under this Document,
 in accordance with the Payment Terms.
- (b) If any payment has not been made in accordance with the Payment Terms, the Provider may (at its absolute discretion):
  - (1) immediately cease providing the Services, and recover as a debt due and immediately payable from the Client its costs, expenses, damages or losses suffered or incurred in doing so;
  - (2) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date;
  - (3) engage debt collection services and/or commence legal proceedings in relation to any such amounts; and/or
  - (4) report the Client to any independent credit data agencies.

### 4.3 Confidentiality

- (a) Subject to clause 4.3(b), the Client must (and must ensure that its Personnel do):
  - (1) keep confidential; and
  - (2) not use or permit any unauthorised use of, all Confidential Information.
- (b) Clause 4.3(a) does not apply where:

- (1) the Client has the prior written consent of the Provider;
  - (2) the disclosure is required by law; or
  - (3) the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Document and provided that the Client ensures the adviser complies with the terms of clause 4.3(a).
- (c) To the maximum extent permitted by law, the Client indemnifies, and must continue to indemnify, the Provider against all Liability it suffers or incurs arising from or as a consequence of a breach of this clause 4.3 by the Client.

#### 4.4 Warranty

The Client warrants that it has not relied upon any warranty, representation, statement, offer or documentation made or provided by or on behalf of the Provider, whether before or after the Effective Date.

#### 4.5 Survival

This clause 4 will survive the termination or expiry of this Document.

### 5 Intellectual Property

- (a) As between the Parties, all Intellectual Property developed, adapted, modified or created by or on behalf of the Provider or its Personnel (including in connection with this Document or the provision of the Services), whether before or after the Effective Date, will at all times vest, or remain vested, in the Provider. For clarity, this does not include the content of the transcript that the Provider has created for you or any of the Media files, it relates to Intellectual Property created around our systems and other related ideas.
- (b) The Client must, upon the Effective Date, grant the Provider a perpetual, royalty-free, worldwide, unconditional, transferable and irrevocable licence to use, develop, adapt and modify (**Use**) all Intellectual Property owned by, or licensed to, the Client. The Client must ensure that any such Use does not infringe any Intellectual Property rights of any person.
- (c) If the Client or any of its Personnel has any Moral Rights in any material provided, used or prepared in connection with this Document, the Client must (and must ensure that its Personnel) consent to the use or infringement of those Moral Rights.
- (d) To the maximum extent permitted by law, the Client indemnifies, and must continue to indemnify, the Provider against all Liability it suffers or incurs arising from or as a consequence of a breach of this clause 5 by the Client.
- (e) Notwithstanding any other clause in this agreement, the parties agree that all content contained in any Media Files provided by the Client that are transcribed and contained in a Transcription remains the Client's property and is confidential.
- (f) This clause 5 will survive the termination or expiry of this Document.

### 6 Limitation of Liability

- (a) Despite anything to the contrary, to the maximum extent permitted by law:
  - (1) the Provider's maximum aggregate Liability arising from or in connection with this Document (including the Services and/or the subject matter of this Document) will be limited to, and must not exceed the portion of the Price paid by the Client to the Provider for the Services the subject of the relevant claim; and
  - (2) the Provider will not be liable to the Client for any loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- (b) Despite anything to the contrary, to the maximum extent permitted by law, the Provider will have no Liability, and the Client releases and discharges the Provider from all Liability, arising from or in connection with any:
  - (1) loss of, or damage to, the Services (or any item used in the provision of the Services), or any injury or loss to any person;
  - (2) failure or delay in providing the Services; or
  - (3) breach of this Document or any law, where caused or contributed to by any;
  - (4) event or circumstance beyond the Provider's reasonable control; or
  - (5) act or omission of the Client or its Personnel, and, in any event, any defect, error, omission or lack of functionality or suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services.
- (c) The Client agrees that, to the maximum extent permitted by law, this Document excludes all terms, conditions and warranties implied by statute, in fact or on any other basis, except to the extent such terms, conditions and warranties are fully expressed in this Document.
- (d) This clause 6 will survive the termination or expiry of this Document.

### 7 Dispute Resolution

- (a) A Party must not commence court proceedings relating to any dispute arising from, or in connection with, this Document (**Dispute**) without first complying with this clause 7 unless:
  - (1) that Party is seeking urgent interlocutory relief; or
  - (2) the Dispute relates to compliance with this clause.
- (b) In the event of a Dispute, the Party claiming there is a Dispute must give written notice to the other Party setting out the details of the Dispute and proposing a resolution (**Dispute Notice**).

- (c) Within 5 Business Days after receiving the Dispute Notice, the Parties must, by their senior executives or senior managers (who have the authority to reach a resolution on behalf of the Party), meet at least once to attempt to:
  - (1) resolve the Dispute; or
  - (2) agree on the method of resolving the Dispute by other means,
 in good faith. All aspects of every such conference, except the fact of the occurrence of the conference, will be privileged.
- (d) If the Parties do not:
  - (1) resolve the Dispute; or
  - (2) (if the Dispute is not resolved) agree on an alternate method to resolve the Dispute,
 within 15 Business Days after receipt of the Dispute Notice, the Dispute may be referred by either Party (by notice in writing to the other Party) to litigation.
- (e) Notwithstanding the existence of a Dispute, the Parties must continue to perform their obligations under this Document.
- (f) This clause 7 will survive the termination or expiry of this Document.

## 8 Termination

- (a) This Document will terminate immediately upon written notice by:
  - (1) either Party, if mutually agreed in writing between the Parties;
  - (2) the Provider, if the Client seeks to cancel or withdraw its acceptance of the Proposal after the Effective Date, or otherwise does not accept the Services which have been provided in accordance with this Document;
  - (3) the Provider, if the Client is in breach of this Document and that breach has not been remedied within five Business Days of being notified by the Provider;
  - (4) the Provider, if the Client is subject to an Insolvency Event; or
  - (5) the Client, if the Provider is in breach of a material term of this Document and that breach has not been remedied or overcome within 15 Business Days of being notified by the Client.
- (b) Termination of this Document will not affect any rights or liabilities which a Party has accrued under it.
- (c) Upon termination of this Document, the Client agrees that it will (and will ensure that its Personnel):
  - (1) where this Document is terminated under clauses 8(a)(1) to 8(a)(4) (inclusive), pay:
    - (A) the Price in full; and
    - (B) all costs, expenses, damages or losses suffered or incurred by the Provider resulting from the termination of this Document,
 to the Provider as a debt due and immediately payable;

- (2) where this Document is terminated under clause 8(a)(5), immediately pay the Price and all other amounts due and payable to the Provider, as if an invoice had been issued by the Provider to the Client under clause 4.2 on the date of termination;
- (3) not disparage or otherwise make any unfavourable statements or comments regarding the Provider or its Personnel, either directly or by implication, verbally or in writing;
- (4) immediately return to the Provider all property, including Confidential Information and Intellectual Property belonging to the Provider or its Personnel, in its or its Personnel's possession; and
- (5) not use any Intellectual Property belonging to the Provider or its Personnel.

This clause 8(c) will survive the termination or expiry of this Document.

## 9 General

### 9.1 Representations

The Client represents and warrants to the Provider:

- (a) it has full legal capacity and power to enter into this Document, to perform its obligations under this Document, to carry out the transactions contemplated by this Document, to own its property and assets and to carry on its business;
- (b) no Insolvency Event has occurred in respect of it;
- (c) this Document constitutes legal, valid and binding obligations, enforceable in accordance with its terms; and
- (d) the execution and performance by it of this Document and each transaction contemplated by it does not conflict with any law, order, judgment, rule or regulation applicable to it or any instrument binding on it.

### 9.2 Notices

- (a) A notice or other communication given under this Document must be:
  - (1) in writing, in English and signed by the sender; and
  - (2) addressed and delivered to the intended recipient by hand, prepaid post or email in accordance with the notice details last notified by the recipient to the Parties.
- (b) A Party's notice details are set out in the Proposal. A Party may change its notice details by written notice to the other Parties.
- (c) A notice or communication is taken as having been given:
  - (1) when left at a Party's current address for notices;
  - (2) if mailed, on the third Business Day after posting (if delivered to an address within the same country) or on the tenth Business Day after posting (if delivered to an address within another country); or
  - (3) if sent by email, if sent before 5pm on a Business Day in the place of receipt then on

the Business Day when it is sent, otherwise on the following Business Day.

**9.3 Waiver**

Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Document does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing.

**9.4 Powers, rights and remedies**

Except as provided in this Document or permitted by law, the powers, rights and remedies of a Party under this Document are cumulative and in addition to any other powers, rights and remedies the Party may have.

**9.5 Consents or approvals**

Except as provided in this Document, a Party may give, attach conditions to or withhold any consent or approval under this Document at its sole and absolute discretion. A Party is not obliged to give reasons for giving or withholding its consent or approval or for giving its consent or approval subject to conditions.

**9.6 Assignment**

No Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Document without the prior written consent of the other Party. Any purported dealing in breach of this clause 9.6 is of no force or effect.

**9.7 Further assurance**

Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to this Document and their obligations under it.

**9.8 Costs and expenses**

Each Party must pay its own costs and expenses (including legal costs) in connection with the negotiation, preparation and execution of this Document and any instrument relating to it.

**9.9 Relationship of Parties**

This Document is not intended to create a partnership, joint venture or agency relationship between the Parties. Nothing in this Document gives a Party authority to bind the other Party in any way.

**9.10 Independent legal advice**

Each Party acknowledges and agrees that it has had an opportunity to read this Document, it agrees to its terms and, prior to executing it, it has been provided with the opportunity to seek independent legal advice about its terms.

**9.11 Severance**

- (a) If a provision of this Document is held to be void, invalid, illegal or unenforceable, that provision must be read down as narrowly as necessary to allow it to be valid or enforceable.
- (b) If it is not possible to read down a provision (in whole or in part), that provision (or that part of that provision) is severed from this Document without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Document.

**9.12 Entire agreement**

This Document contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations,

understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

**9.13 Amendment**

This Document may only be amended by written instrument executed by all Parties.

**9.14 Counterparts**

This Document may be executed in any number of counterparts that together will form one instrument.

**9.15 Governing law and jurisdiction**

The laws of Victoria govern this Document. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

## SCHEDULE 1 – PRICE VARIANTS

### Update November 2021:

- Our prices are currently under review, thanks for your patience.
- Prices will be discussed, and an estimate will be provided via email.
- There are factors that may affect the estimated price including:
  - accented speakers, more than two speakers, turnaround time, poorer audio quality and extra timestamping.
- However, we will get in touch to let you know if this is the case before completing the work