

UNDERLINE TRANSCRIPTION TERMS AND CONDITIONS

These Conditions govern the supply of Services by Jennifer Smith trading as a sole trader under the business name, Underline Transcription (“**Underline Transcription**”).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1. Definitions:

Assignment: Each attendance by Underline Transcription to a Client’s Premises for the purpose of Live Note Taking or other Service.

Charges: the charges payable by the Client for the supply of the Services, and the other sums payable by the Client, in accordance with the Contract.

Client: the person or company which purchases Services from Underline Transcription.

Client Default: has the meaning set out in clause 6.3.

Client Materials: any materials that the Client provides to Underline Transcription to enable Underline Transcription to perform the Services, including documents, audio, and video.

Client’s Premises: any premises at which Underline Transcription or its employees, officers, or Subcontractors attends the Client in order to perform any of the Services.

Conditions: these terms and conditions.

Contract: the contract between Underline Transcription and the Client for the supply of Services.

Data Controller: determines the purposes and means of processing personal data has the meaning as more specifically defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and for so long as and to the extent that the law of the European Union has legal effect in the UK, the GDPR and every other directly applicable European Union regulation relating to privacy.

Data Subject: an individual who is the subject of Personal Data.

Deliverables: the documents produced by Underline Transcription for the Client as prescribed in the Order.

GDPR: the General Data Protection Regulation ((EU)2016/679).

Intellectual Property Rights: copyright and neighbouring and related rights, moral rights, trade marks, business names, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or shall subsist now or in the future in any part of the world.

Live Notetaking: a service provided by Underline Transcription as more clearly defined in clause 4 of these terms.

Order: the Client's confirmation (whether in writing, made via the Website or by telephone) that it wishes to purchase the Services provided by Underline Transcription.

Personal Data: has the meaning set out in the Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which Underline Transcription is providing Services under the Contract.

Processing and process: have the meaning set out in the Data Protection Legislation.

Services: the services, including the Deliverables, supplied by Underline Transcription to the Client as set out in the Order.

Subcontractor: a subcontractor engaged by Underline Transcription to perform the Services.

UK Data Protection Legislation: any data protection legislation from time to time in the UK involving the Data Protection Act 1998 or 2018 or any successor legislation.

Underline Transcription IPR: Intellectual Property Rights belonging to Underline Transcription and subsisting prior to the commencement of the Services.

Website: Underline Transcription's website found at <http://www.underlinetranscription.co.uk/>

1.2. Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes emails but not faxes.

2. Basis of contract

2.1 All Orders are subject to acceptance by Underline Transcription.

2.2 An Order will only be deemed accepted by Underline Transcription if it gives confirmation to such effect to the Client.

2.3 Underline Transcription may in its absolute discretion refuse to accept any order, or provide that acceptance be subject to such condition as Underline Transcription may impose.

3. Supply of Services

3.1 Underline Transcription shall use reasonable endeavours to supply the Services to the Client in accordance with the terms contained in the Order in all material respects.

3.2 Underline Transcription warrants to the Client that the Services shall be provided using reasonable care and skill.

3.3 In accordance with clause 3.2, if a Deliverable does not accurately reflect the relevant Client Materials, Underline Transcription shall correct such inaccuracy at no cost to the Client, provided that the

Client notifies Underline Transcription of the inaccuracy within twelve hours after Underline Transcription provides the Deliverable and at the time of such notification, the Client has complied with its obligations in relation to the Assignment and the amendment is within the scope of the Order.

- 3.4 Underline Transcription may agree to make amendments beyond the scope of paragraph 3.3, subject to the Client agreeing to pay any further Charges specified by Underline Transcription.
- 3.5 Any specific requests which the Client may have in relation to the Services must be communicated to Underline Transcription in the Order.
- 3.6 Due to the complex and subjective nature of language translation Services, any timescales set out in the Order or the Specification for such Services are non-binding guidelines, unless expressly agreed otherwise in writing by Underline Transcription beforehand.
- 3.7 If for any reason, Underline Transcription is unable to provide the Services as prescribed in the Order, then the Client will be contacted as soon as possible, providing notice of this fact.

4. Live Notetaking

- 4.1 Live Notetaking means any Service that requires a person engaged by Underline Transcription (a “**Notetaker**”) to attend the Client’s Premises to perform a service.
- 4.2 When requesting a Live Notetaking Service, the Client shall specify the time, date, location and duration of the relevant Assignment. The Client may re-arrange the date of the Assignment, in the same way that the Client booked it. If the Client seeks to rearrange the Assignment less than 96 hours before the agreed intended date the Assignment was due to commence Underline Transcription may charge the Client a fee to accommodate such re-arrangement.
- 4.3 Unless expressly agreed otherwise by Underline Transcription:
 - (a) Charges for Live Notetaking are calculated based on the hourly rate specified in the Order or (if no rate is specified) at Underline Transcription’s then current rates, calculated to the nearest hour;
 - (b) the Charges for an Assignment shall be calculated for the actual amount of time the Assignment lasts, to the nearest hour;
 - (c) in addition to the Charges for the Live Notetaking Services the Client shall pay to Underline Transcription the reasonably incurred travel, accommodation, and other expenses of the Notetaker.
- 4.4 The Client shall supervise the Notetaker for the duration of the Assignment, and shall ensure the Notetaker is provided with suitable working conditions in order to carry out the Assignment. This includes, a suitable power source for the Notetaker’s equipment, a clear and stable working space including a desk and appropriate chair, and an area where the speech the Notetaker needs to hear is clearly audible without distractions.
- 4.5 Notetakers shall be under the direction and control of the Client for the duration of the Assignment. The Client shall promptly notify the Notetaker and Underline Transcription of any relevant health and safety considerations relating to the Assignment.
- 4.6 The Client shall indemnify and keep indemnified and hold harmless Underline Transcription from and against any losses, damages, liability, costs (including legal fees), expenses, claims, actions, proceedings, arising out of, or in connection with any claim by a third party in relation to an Assignment.

4.7 The minutes of any Live Notetaking shall be emailed to the Client to the contact detail provided in the Order by 9.00am the next working day (or later by prior arrangement). The Client will be entitled to one set of changes to the minutes, such changes should be communicated to Underline Transcription within 12 hours of receipt and such amendments shall be provided by 9.00am on the following working day.

5. Cancellation

5.1 Except where these Conditions state otherwise, the Client shall not be entitled to cancel any of the Services under the Contract, but Underline Transcription may at the Client's request agree to rearrange the date on which a Service is provided or alternatively to suspend the provision thereof for a reasonable period, the length of such period is reserved by Underline Transcription in its absolute discretion.

5.2 Should a request be made under clause 5.1 Underline Transcription shall be entitled to the rate agreed in the Quotation pro rata for work already carried out and materials specially ordered.

6. Client's obligations and Client Materials

6.1 The Client shall:

- (a) co-operate with Underline Transcription in all matters relating to the Services;
- (b) provide Underline Transcription, its employees, and Subcontractors, with access to the Client's Premises as reasonably required by Underline Transcription for the performance of the Services;
- (c) provide Underline Transcription with such information as Underline Transcription may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects, and in particular where the information is in the form of an audio recording that the audio recording is clearly audible; and
- (d) ensure that all information provided to Underline Transcription is true to the best of the Client's knowledge.

6.2 The Client warrants that any information it supplied to Underline Transcription upon which Underline Transcription based the Quotation or the Specification is true and complete.

6.3 If Underline Transcription's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any obligation (**Client Default**), Underline Transcription shall have the right to suspend performance of the Services until the Client remedies the Client Default, and the Client shall reimburse Underline Transcription on written demand for any costs or losses sustained or incurred by Underline Transcription in connection with the same.

6.4 Underline Transcription recommends that the Client keeps a backup copy of any Client Material sent to Underline Transcription and recommends "Special Delivery" be used so far as possible. The Client shall be responsible for all delivery costs to and from Underline Transcription.

6.5 Underline Transcription shall retain all Client Materials for one calendar month from the date that the Statement (as defined in clause 7.4 below) relating to the Order is raised.

- 6.6 Underline Transcription reserves the right not to provide the Services if, on reviewing the Client Materials, it considers that they include anything that is illegal, indecent, immoral, or which may infringe the rights of third parties. In such cases:
- (a) Underline Transcription shall inform the Client that Underline Transcription will not provide the Services;
 - (b) no Charges shall be payable for the Services that Underline Transcription declines to provide and Underline Transcription shall refund to the Client any Charges that the Client has already paid for those Services;
 - (c) Underline Transcription may delete any electronic copies and dispose of any physical copies it holds of the Client Materials; and
 - (d) Underline Transcription reserves the right to contact the police in relation thereto.

7. Charges and payment

- 7.1 The Client shall pay the Charges to Underline Transcription on the basis set out in invoice sent by e-mail (or dropbox by arrangement) on the same day as the Services are provided.
- 7.2 Underline Transcription may amend the Charges if the Client Materials actually supplied differ from those described when the Client requested in the Quotation, or if the information that the Quotation was based on is materially inaccurate. Underline Transcription shall use reasonable endeavours to notify the Client of any such amendments to the Charges before commencing the Services, but failure to notify the Client shall not excuse the Client's obligation to pay the amended Charges.
- 7.3 Underline Transcription reserves the right to submit its invoice and require payment before commencing the Services. If the Services involve the provision of more than one Deliverable, Underline Transcription reserves the right to invoice upon the provision of each Deliverable. Where Underline Transcription invoices upon the provision of an individual Deliverable the amount invoiced shall be the part of the Charges that relates to that Deliverable.
- 7.4 Underline Transcription will provide the Client with a statement by e-mail on the last day of the month detailing the Services provided during that month (the "**Statement**"). Payment of the invoices contained in the Statement is due by no later than the 14th day of the following month (the "**Due Date**").
- 7.5 Time for payment of Underline Transcription's invoices shall be of the essence of the Contract.
- 7.6 The Client shall be responsible for paying value added tax due on the Services at the applicable rate at the date of supply.
- 7.7 If the Client fails to make a payment due to Underline Transcription under the Contract by the Due Date, then, without limiting Underline Transcription's remedies under clause 12, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 shall accrue daily at a rate of 8% per annum above the base rate of the Bank of England and charge £15.00 for each reminder that is sent after the Due Date.
- 7.8 All amounts due under the Contract shall be paid in full by the Client without any set-off, counterclaim, deduction or withholding.

8. Intellectual property rights

- 8.1 Underline Transcription assigns to the Client its right, interest, and title to the Intellectual Property Rights in Deliverables. Where such Intellectual Property Rights do not yet exist, they shall vest in the Client upon their creation. The Client grants Underline Transcription and its Subcontractors a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use (including by copying and modifying) any Deliverables or Client Materials for the purpose of providing the Services to the Client and their use shall not infringe the Intellectual Property Rights of any third party.
- 8.2 Underline Transcription shall execute any document or do any other thing necessary to give full effect to clause 8.1, provided that the Client shall reimburse Underline Transcription's reasonable costs of doing so.
- 8.3 Notwithstanding the rest of this clause 8 nothing in the Contract shall assign or grant rights over any of the Underline Transcription IPR.

9. Confidentiality.

- 9.1 For the purpose of the Contract, Confidential Information means any and all information, in any form and however recorded or held, that is confidential in nature and is made available by the Client directly or indirectly to Underline Transcription in connection with the Contract, including such information contained in the Client Materials. For the avoidance of doubt, information need not be novel, unique, patentable, information in which copyright may subsist or constitute a trade secret in order to be Confidential Information.
- 9.2 Underline Transcription undertakes that, unless it and the Client agree otherwise, Underline Transcription shall not at any time disclose to any person any Confidential Information, except as permitted by clause 9.3.
- 9.3 Underline Transcription may disclose the Confidential Information:
- (a) to its employees, officers, Subcontractors or advisers who need to know such information for the purposes of performing the Services or carrying out Underline Transcription's obligations under the Contract. Underline Transcription shall ensure that its employees, officers, Subcontractors or advisers to whom it discloses the Confidential Information comply with confidentiality obligations no less strict than this clause 9 ; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10. Data protection and data processing

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Underline Transcription is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by Underline Transcription, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.

- 10.3 Without prejudice to the generality of clause 10.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Underline Transcription for the duration and purposes of the Contract.
- 10.4 Without prejudice to the generality of clause 10.1, Underline Transcription shall, in relation to any Personal Data processed in connection with the performance by Underline Transcription of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Client as contained in the Specification unless Underline Transcription is required by the laws of any member of the European Union or by the laws of the European Union applicable to Underline Transcription to process Personal Data (**Applicable Laws**). Where Underline Transcription is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Underline Transcription shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Underline Transcription from so notifying the Client;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or Underline Transcription has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Underline Transcription complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Underline Transcription complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
 - (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Client without undue delay on becoming aware of a Personal Data breach;

- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10.
- 10.5 The Client consents to Underline Transcription appointing Subcontractor as a third-party processor of Personal Data under the Contract. Underline Transcription confirms that it has entered into or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10. As between the Client and Underline Transcription, Underline Transcription shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.
- 10.6 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 11. Limitation of liability**
- 11.1 Nothing in the Contract shall limit or exclude Underline Transcription's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to clause 11.1, Underline Transcription shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of damage to goodwill; and
 - (g) any indirect or consequential loss.
- 11.3 Subject to clause 11.1, Underline Transcription's total liability to the Client, arising under or in connection with the Contract shall be limited to the total Charges paid by the Client to Underline Transcription in respect of the Assignment being carried out by Underline Transcription under the Contract preceding the event giving rise to the claim.
- 11.4 The Client has final responsibility for proofreading all completed Services and no responsibility or liability will be accepted by Underline Transcription for any errors in the final copy or completed

transcriptions or any loss, damages, costs, expenses or liability suffered by the Client and arising from the Client's use of the Deliverables.

11.5 The Client accepts and agrees to not hold Underline Transcription responsible if the audio recording provided is unclear or of poor quality and as a result Underline Transcription were unable to produce an accurate transcript.

11.6 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 Underline Transcription is entitled to terminate any Contract on giving notice to such effect if the Client breaches any of its Conditions. In this circumstance, the Customer will forfeit the return of any advance payments and Underline Transcription will cease to perform the Services as from such notice.

12.2 Without affecting any other right or remedy available to it, Underline Transcription may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

12.3 Without affecting any other right or remedy available to it, Underline Transcription may suspend the supply of Services under the Contract or any other contract between the Client and Underline Transcription if the Client fails to pay any amount due under the Contract on the due date for payment, the Due Date or if Underline Transcription reasonably believes that the Client will be unable to meet payment on the next Due Date.

13. Consequences of termination

13.1 On termination of the Contract the Client shall immediately pay to Underline Transcription all of Underline Transcription's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Underline Transcription shall submit an invoice, which shall be payable by the Client immediately on receipt.

13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. General

14.1 Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14.2 Assignment and other dealings.

(a) Underline Transcription may at any time assign any or all of its rights and obligations under the Contract.

(b) The Client shall not assign any of its rights or obligations under the Contract without the prior written consent of Underline Transcription.

14.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) The Client acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. The Client agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.4 Variation.

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.5 Waiver

No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same.

14.6 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.7 Notices

- (a) All notices served by Underline Transcription to the Client shall be sent to its address in the United Kingdom most recently provided by e-mail, fax or letter and shall be effective if sent by e-mail or fax upon the date of transmission, or if sent by post, upon its posting in a duly addressed pre-paid envelope.
- (b) All notices served by the Client to Underline Transcription shall be by e-mail, fax or letter and shall be effective upon the date of supply by Underline Transcription.

14.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

14.9 Governing law.

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

14.10 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1

Processing, Personal Data and Data Subjects

1. Processing by Underline Transcription

1.1 Scope

Underline Transcription will only process Personal Data which is ancillary to the completion of the Services contained in the Contract or is included in any Client Materials.

1.2 Nature

The nature of the Personal Data will vary depending on the Services requested by the Client. Underline Transcription also require contact details from the Client.

1.3 Purpose of processing

The purpose of collecting Personal Data is to allow Underline Transcription to complete the Services contained in the Contract. The Client's contact details are required to provide notification that the Services under the Contract has been completed, including the provision of any deliverables, and to obtain payment.

1.4 Duration of the processing

Underline Transcription will only retain the Personal Data for as long as is necessary to complete the Services contained in the Contract and to obtain payment.

2. Types of personal data

This will depend on the nature of the Services requested by the Client. However it is believed that the following types of personal data may be involved:-

- i) an individual's name;
- ii) an individual's date of birth;
- iii) an individual's address;
- iv) an individual's occupation;
- v) an individual's place of work

3. Categories of data subject

This will depend on the nature of the Services requested by the Client. However it is believed that the following categories of data subject may be involved:-

- i) the Client;
- ii) employees of the Client;
- iii) attendees to Client Premises;
- iv) third parties associated with the Client Materials;
- v) research participants