

## Terms and Conditions of Service

### Transcript Ordering.

#### Superior Court of California, County of El Dorado

##### 1. Definitions

In this document:

**Account Client** means a Client that has completed a credit application and that has an existing account with FTR.

**Agreement** means the agreement between FTR and You, comprised of these Terms and Conditions and an Order Form.

**Audio** means a digital sound recording, transmission, reception and reproduction.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the state in which the Court is located.

**Client** means a person or organization using the Services of FTR.

**Court** means The Superior Court of California, County of El Dorado.

**Estimate** means the estimate of fees provided by FTR to You in accordance with clause 5 (as the context dictates).

**Force Majeure** means any delay by FTR in carrying out its obligations under this Agreement or any act necessary for the discharge of or compliance with such obligations which is beyond the reasonable control of FTR.

**FTR** means FTR Limited of 1401 17<sup>th</sup> Street, Suite 525, Denver CO 80202.

**FTR Website** means the website maintained at the fortherecord.com domain name.

**Non-Account Client** means a Client who does not hold an account with FTR.

**Pricing Schedule** means the list of prices set out in the Order Form or the FTR Website.

**Proceeding** means the legal proceeding heard in the Court and listed on the Order Form.

**Provision of Audio** means a copy of or access to audio of Proceedings via FTR's online system.

**Order Form** means any form requesting Services, including online, email, or mail in the format required by FTR.

**Services** means but is not limited to the provision of Transcripts and Audio of Proceedings.

**Style Guide** means the Court's style manual on the production of transcripts.

**Terms and Conditions** refers to this document.

**Transcript** means the written literary work which has been or will be created by FTR, following the relevant California Rules of Court, in relation to the Proceeding, Audio or other matter referred to in the Order Form.

**We, us** and **our**, are a reference to FTR. This definition applies whether the defined words are in title or lower case.

**You** means the person listed in the Order Form being the person who has ordered, or may order, a Transcript or Audio from FTR. This definition applies whether the defined word is in title or lower case.

- 1.1 In this document, unless the contrary intention appears;
- 1.2 Reference to:
  - 1.2.1 this Agreement or another document includes any variation or replacement of it notwithstanding any change in the identity of the parties;
  - 1.2.2 one gender includes the others;
  - 1.2.3 the singular includes the plural and the plural includes the singular;
  - 1.2.4 a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any of them;
  - 1.2.5 a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
  - 1.2.6 any statute, ordinance, code or other law includes regulations and other instructions under any of them and consolidations, amendments, re-enactments or replacements of any of them;
  - 1.2.7 money is to US dollars, unless otherwise stated; and
  - 1.2.8 a time is a reference to El Dorado County, CA time unless otherwise specified.
  - 1.2.9 The words "include", "including", "such as", "for example" and similar expressions are not to be construed as words of limitation.
  - 1.2.10 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
  - 1.2.11 Headings are for convenience only and do not affect the interpretation of this Agreement.
  - 1.2.12 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
  - 1.2.13 Except as set out in clause 11 (Turnaround Times) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
  - 1.2.14 Except as set out in clause 11 (Turnaround Times) if an act is required to be done on a particular day it must be done before 5:00pm on that day or it will be considered to have been done on the following day.

## **2. Amendments to Terms and Conditions**

- 2.1 We reserve the right to amend these Terms and Conditions subject to the appropriate approvals from the Court. Amendments will be effective immediately upon the placement of a notification of such amendment on the FTR Website. Your continued use of the Website, (such as by the submission of an Order Form) will represent an agreement by You to be bound by the Terms as amended. Any term appearing on an Order Form and Estimate which is not drafted by FTR is expressly excluded, unless agreed to in writing.

### **3. Compliance with Policies**

- 3.1 While using the Services, you agree that you will comply with all posted policies as updated from time to time. We may suspend or stop providing you with the Services if you fail to comply with our posted policies.

### **4. Additional Terms and Conditions**

- 4.1 These Terms and Conditions are specific to the Services. If you purchase other FTR services, additional terms and conditions specific to those services may be applicable. We will make those additional terms and conditions available to you with the relevant service.

### **5. Privacy**

- 5.1 FTR's privacy policy can be found at <https://fortherecord.com/policies/#privacy>
- 5.2 FTR's privacy policy explains the data we collect, use, store and process while You use and access the Services. By using the Website, You have read, understood, and agree to the terms of our privacy policy, and You agree that we may use such data in accordance with the terms of our privacy policy. If You have any questions regarding our privacy policy, please contact us at [dataprotection@fortherecord.com].
- 5.3 FTR integrates with Stripe.com to facilitate credit card purchases. Stripe.com will store Your billing and credit card information. FTR will also store incomplete parts of Your credit card information to allow You to access a list of Your saved credit cards. Payment for the Services is via payment gateway provider Stripe and subject to the Stripe terms of use. You may review the Stripe terms of use at Stripe.com.
- 5.4 The provision of the Services may involve transmission of data through Your carrier or service provider's network. You are responsible for all carrier, text/SMS, data or other related fees or charges You incur from Your carrier or service provider in connection with, or related to Your use of the Services. FTR assumes no liability or responsibility for the payment of any charges you may incur.

### **6. Order and payment process**

- 6.1 By completing and giving an Order Form to FTR, You request that FTR provide You with either:
- a. the Transcript; or
  - b. an Estimate of FTR 's fees for producing the Transcript; or
  - c. provision of Audio; or
  - d. an Estimate of FTR's fees for providing the Audio.

- 6.2 If You are not an Account Client, FTR will provide You with an Estimate of FTR's fees for producing the Transcript or the Audio, as applicable.
- 6.3 If FTR provides You with an Estimate of FTR 's fees for producing the Transcript, You agree that:
  - 6.3.1 FTR's Estimate is based on specific assumptions (some of which You may have given to FTR) such as the average length of proceedings, average number of pages produced per day and other relevant factors. At the time that the Estimate is given, these variables are unknown;
  - 6.3.2 Accordingly, the Estimate is not binding on FTR. FTR reserves the right to charge for producing the Transcript in accordance with the Pricing Schedule; and
  - 6.3.3 FTR will request that:
    - 6.3.3.1 You complete, authorize and submit the Order Form to FTR, and that by doing so You confirm that You agreed;
      - 6.3.3.1.1 to all of the terms and conditions set out in this Agreement; and
      - 6.3.3.1.2 to pay all of FTR 's fees for producing the Transcript, calculated in accordance with the Pricing Schedule; and
    - 6.3.3.2 Unless You are an Account Client, before FTR will commence production of the Transcript, You must provide to FTR a pre-authorization to charge the credit card You nominate an amount equal to the Estimate.
  - 6.3.4 If FTR's actual fees for producing the Transcript exceed the amount of Your pre-authorization, You agree that FTR will charge Your nominated credit card the actual fees.
  - 6.3.5 If FTR's fees for producing the Transcript are less than the amount You pre-authorize, FTR will immediately release the difference between the amount pre-authorized on Your credit card and the actual amount of the fees.
  - 6.3.6 If an Order is no longer required and You notify FTR after you authorize the pre-payment of the Estimate but before FTR commences or completes production of the Transcript, such that either no fees are applicable (where no steps towards production have commenced) or where reduced fees are applicable (where steps towards production have commenced, but where the full Transcript is not completed) FTR will immediately release the difference between the amount pre-authorized on Your credit card and the actual amount of the fees.
- 6.4 If You are an Account Client and have not requested an Estimate of FTR's fees for producing the Transcript, then by completing and submitting the Order Form to FTR, You agree:
  - 6.4.1 to all of the terms and conditions set out in this Agreement;
  - 6.4.2 to pay all of FTR 's fees for producing the Transcript, calculated in accordance with the Pricing Schedule; and
  - 6.4.3 that FTR will invoice You upon completion of the Transcript; and
    - 6.4.3.1 to pay each invoice rendered by FTR upon receipt of FTR 's invoice (which can be provided electronically or via post or delivery); and
    - 6.4.3.2 If payment is not received within 7 days upon receipt of invoice, FTR reserves the right to take whatever action it considers necessary to collect the outstanding debt and You agree to indemnify FTR for all costs of and incidental to these actions.

## **7. Transcript style**

7.1 Transcripts will be compliant with California Rules of Court rule 8.144, California Rules of Court, Rule 2.952(g),(h) and (j), El Dorado County Superior Court Local Rules and Appeals Transcript Guidelines.

## **8. Intellectual Property**

8.1 You acknowledge and agree that:

8.1.1 All intellectual property rights in the Audio and Transcript is the sole and exclusive property of the Court and will remain the sole and exclusive property of the Court..

8.1.2 The Court has granted FTR a licence to use the Court's intellectual property rights in the Audio and Transcript to produce, record, copy, transcribe, distribute and sell the Audio and Transcripts for the purposes of providing Audio and Transcription services.

## **9. Turnaround Times**

9.1 FTR will use its best endeavours to produce and deliver the Transcript in accordance with the turnaround time set out in the Order Form (**Turnaround Time**).

9.2 You acknowledge that:

9.2.1 the Turnaround Time for the Services only commences upon FTR receiving all required information from the Court, including the digital audio and any agreed meta data.

9.2.2 The Turnaround Time will be calculated in Business Days. Where an order is received after 3pm on a Business Day, it will be considered as having been received on the next Business Day. The Turnaround Time will be calculated as if the Order Form was received on the next Business Day.

## **10. Force Majeure**

10.1 Any failure by FTR to carry out any of its obligations under this Agreement shall not be deemed to be a breach of this Agreement if such failure is caused by Force Majeure.

10.2 If FTR 's ability to perform this Agreement is delayed, curtailed or prevented by Force Majeure:

10.2.1 FTR will use reasonable notice to give notice of the occurrence of Force Majeure to You;

10.2.2 the time for carrying out of the activity affected by Force Majeure shall be extended for a period equal to the total of the periods during which such causes or their effects were operative, and for such further periods, if any, as shall be necessary to make good the time lost as a result; and

10.2.3 You will have no claim against FTR for any loss or damage arising from the Force Majeure.

## **11. Warranties**

11.1 FTR warrants to You that the Transcript is an original work and that FTR has been granted a license, as stated in section 8.1, of the copyright in the Audio and Transcript.

11.2 OTHER THAN AS SET OUT IN CLAUSE 13.1, YOU ACKNOWLEDGE AND AGREE THAT FTR HAS NOT MADE OR GIVEN ANY WARRANTIES TO YOU IN RELATION TO ANY FTR AUDIO AND THE TRANSCRIPT. FTR DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY,

**FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.**

- 11.3 Other than as set out in clause 13.1 You agree that FTR is not liable for any loss, damage or injury sustained by You or anyone else directly or indirectly as a consequence of production by FTR of any Audio and the Transcript or the use by You or anyone else of any Audio or the Transcript.
- 11.4 TO THE EXTENT CLAUSE 13.3 DOES NOT APPLY OR IS NOT EFFECTIVE TO EXCLUDE FTR'S LIABILITY UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, THEN FTR'S LIABILITY (WHETHER UNDER CONTRACT, TORT, STATUTE OR OTHERWISE) WILL BE LIMITED, CUMULATIVELY AND IN THE AGGREGATE, TO THE AMOUNT PAID TO FTR BY YOU UNDER THE AGREEMENT. THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THE AGREEMENT FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN THE PARTIES AND REFLECT AN AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES.

**12. Indemnity**

- 12.1 You agree to indemnify FTR (and hold FTR harmless) against any loss, injury or damage (including any legal costs or expenses incurred) incurred by FTR directly or indirectly as a consequence of any breach by You of these Terms and Conditions, including for any claims made against FTR by any third parties for breach of copyright or other intellectual property rights, where such claims arise from or are related to Your use of the Transcript in any way not specifically authorised by this Agreement.
- 12.2 It is not necessary for FTR to make any payment before enforcing the right of indemnity conferred by subclause 14.1.

**13. Taxes**

- 13.1 You agree that all amounts expressed in the Pricing Schedule and any Estimate are exclusive of applicable taxes, unless otherwise stated.

**14. Miscellaneous**

- 14.1 This Agreement shall be governed by and constructed in accordance with the laws of California.
- 14.2 The parties each irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of California and each waives any immunity or any objection it may have to any action in those Courts and to a claim that any action has been brought in an inconvenient forum or to those Courts not having jurisdiction.
- 14.3 If You have any dispute with us or any related third party, arising out of, relating to, or connected with this Agreement or the Services, You agree to contact us directly and provide a brief, written description of the dispute and your contact information (including your username, if Your dispute relates to an account); and give us thirty (30) days from the date of filing Your written description with us within which to resolve the dispute to your reasonable satisfaction. If the parties do not resolve the dispute through good faith negotiations under this informal process, then You may pursue the matter.
- 14.4 All legislation which varies prevents or prejudicially affects the exercise by FTR of any right, power or remedy conferred upon it under this Agreement to the extent permitted by law is excluded.
- 14.5 A right in favor of FTR under this Agreement, subject to any express provision of this Agreement to the contrary, may be waived prospectively or retrospectively by writing signed by FTR. No other act, omission or delay will constitute a waiver of a right.

- 14.6 A single or partial exercise or waiver by FTR of any right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- 14.7 The rights and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 14.8 If any provision of this Agreement shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of this Agreement will not be affected and will continue in full force and effect.
- 14.9 You cannot assign Your rights and obligations under this document.
- 14.10 The person that signs any Order Form or Estimate on Your behalf warrants that they have the authority to bind You to these Terms and Conditions.