

Terms of Use

TERMS AND CONDITIONS These Terms and Conditions ("Terms") govern the provision of transcription services (the "Services") by the Bureau of Office Services, Inc. (the "Company") to the customer (the "Customer") listed on the enclosed statement of work ("Statement"). Acceptance of the price quotation by the Company for the Services constitutes acceptance by the Customer of these Terms. No conflicting terms and conditions included in any communication between the parties, including without limitation a purchase order from Customer (a "Purchase Order"), shall be binding on the Company unless explicitly accepted in writing by the Company. If these Terms conflict with any quotation or other documentation from the Company, then these Terms shall control unless the Company by written acknowledgment expressly modifies any provision of the Terms. **TIME OF PERFORMANCE AND DELIVERY:** All Services shall be performed by the Company according to the schedule set forth on the Statement. All performance dates for Services are estimated at the time of quotation and may need to be modified based on conditions current at the time the Statement is executed by the Customer. Company shall notify Customer of any anticipated issues that would prevent Company from performing the Services according to the schedule in the Statement. Company shall not be responsible for damages due to delay in completion of Services or delay in delivery of transcripts. Any change in Services by the Customer is subject to acceptance by Company, and time of performance of Services shall be delayed for the period that Company reasonably determines appropriate based on such changes. If the Customer cancels a Statement, the Company shall be entitled to recover damages including without limitation expenses incurred in performing the Services until the time of cancellation.

PRICE AND PAYMENT: Company's pricing for the Services shall be according to the payment schedule set forth in the Statement. Prices shall become firm upon Customer's acknowledgement and acceptance of Company's price quote based on these Terms. Subsequent modification by Customer of any Services shall entitle Company to modify its pricing for the Services. Taxes and delivery charges are not included in price estimates and will be charged separately. On any invoice not paid when due, Customer shall pay an additional amount equal to 1-1/2% per month commencing the first day of the month following the month in which the invoice was due. If Customer fails to pay any invoice when due, Company may defer performance on any outstanding portion of the Statement from Customer until all outstanding bills have been paid, without liability by Company for delay or non-delivery and in addition to Company's other rights and remedies under applicable law. Customer shall pay to Company any reasonable expenses incurred by Company for collection from Customer of monies due and unpaid, including reasonable attorney's fees and related costs. Should Customer reasonably dispute any portion of any invoice, which dispute must be made within 30 days of receipt of invoice, the undisputed portion of the invoice and other invoices not in dispute shall nevertheless be paid when due without offset. All counter-claims and claims for adjustment are barred, however, unless asserted in writing by Customer within 30 days after Customer's receipt of the Services upon which a claim is asserted and accepted in writing by Company. **TERMS OF ACCESS TO COMPANY DATABASE.** If the Company grants Customer permission to access the Company database (the "Database") to access Customer transcripts prepared by the Company (such access to be granted in the sole discretion of the Company), the Customer's access to the Database is conditioned on the following: (a) Customer's use of this website is solely for purposes of conducting business with the Company and accessing Customer transcripts; (b) Customer will not copy or distribute any part of the Database or try to access information belonging to any other customer of the Company; and (c) Customer will not alter or modify any part of the Database. Access to the Database may be revoked by the Company at any time. Customer agrees to not abuse, circumvent, disable or otherwise interfere with security-related features of the Database. **LIMITED WARRANTY:** The Company warrants to the Customer for a period of 12 months after the performance of the Services (the "Limited Warranty") that: (a) the Database shall not infringe upon the intellectual property rights of any third party; (b) the Services shall be performed accurately and in accordance with industry standards; (c) the Database will not contain or transmit to Customer any viruses, disabling codes or devices, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents programs or other computer software routine or hardware components which are designed to (i) permit any unintended third party access to or use of the Database; (ii) disable or damage hardware or damage, erase or delay access to software or data, or (iii) perform any other similar destructive or malicious actions (collectively the "Malicious Code") except for possibly any Malicious Code originating from Customer; (d) except as required by applicable law, it will not disclose Customer Data (as defined below) to any third party for any purpose other than to provide the Database or implementation services to Customer; and (e) the Database will provide security and availability protections at industry standards. The Limited Warranty provided by Company to Customer under these Terms is limited only to Customer and is not assignable. If any Services fail to comply with the Limited Warranty, Company may, at its sole option re-perform the defective or nonconforming Services with Services that conform to the Limited Warranty or refund the applicable amount of the Customer's fees. Customer abuse, circumvention, disabling or other interference with security-related features of the Database shall void the Company's Limited Warranty regarding security and protections. **COMPANY'S LIMITED WARRANTY STATED IN THESE TERMS IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, RATE OF PERFORMANCE, INFRINGEMENT OF INTELLECTUAL PROPERTY OR FITNESS FOR A PARTICULAR PURPOSE ALL OF WHICH ARE SPECIFICALLY DISCLAIMED.**

CONFIDENTIALITY. The term "Confidential Information" shall mean the information in any form or media, whenever received, that relates to a party's business and that is disclosed, provided or made available to a party (the "Receiving Party") by the other party (the "Disclosing Party"). Confidential Information shall include, but not be limited to, proprietary software and other intellectual property, tools, methodologies, techniques,

processes, inventions, company financial planning and financial data, business plans and strategies, products, contractual agreements, pricing, charges, fees, and compensation and any other information that reasonably should be understood to be confidential to the Receiving Party. Either party may label the information it considers Confidential Information but is not required to do so. Each party shall use the same degree of care as it uses to protect its own Confidential Information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the other party. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or suspected breach of confidentiality of Disclosing Party's Confidential Information. The parties acknowledge that Confidential Information is a valuable asset and that if the confidentiality provisions under these Terms are violated, the value of such Confidential Information will be irreparably damaged, to a degree and in an amount not fully ascertainable. Then in that event the Disclosing Party is entitled to seek injunctive relief without being required to post a bond to redress any violation of the confidentiality provisions and shall provide the Receiving Party with prompt notice of the intended action. OWNERSHIP; LICENSES. Company shall retain all ownership rights in the Database and the Company's Confidential Information. Customer shall retain all ownership rights in the data provided by Customer for transcription ("Customer Data") and Customer Confidential Information. Company shall have a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable, sublicensable license to use, copy, modify, or distribute, including by incorporating into the Database, any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Database.

INDEMNIFICATION BY COMPANY. Company shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that: (i) the use of the Database as contemplated hereunder infringes the intellectual property rights of, or has otherwise harmed, such third party; or (ii) Company's breach of its confidentiality obligations relating to Customer Data harmed such third party; provided, that Customer: (a) promptly gives written notice of the Claim to Company, provided, however, the failure to so notify Company shall not relieve Company of any liability that it may have to Customer, except to the extent Company demonstrates that it has been materially prejudiced thereby; (b) gives Company sole control of the defense and settlement of the Claim (provided that Company may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Company, at Company's cost, all reasonable assistance. Company may, at its sole option and expense: (i) procure for Customer the right to continue using the Database under these Terms; (ii) replace or modify the Database to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the Statement and refund Customer all prepaid fees for the remainder of its subscription term after the date of termination. This section represents Customer's sole and exclusive remedy for Company's breach of its non-infringement warranty. INDEMNIFICATION BY CUSTOMER. Customer shall defend,

indemnify and hold Company harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Company by a third party alleging that the Customer Data, or Customer's use of the Database in violation of these Terms (to the extent not caused by Company's violation and confidentiality and security obligations), infringes the intellectual property rights of, or has otherwise harmed, such third party; provided, that Company: (a) promptly gives written notice of the Claim to Customer, provided, however, the failure to so notify Customer shall not relieve Customer of any liability that it may have to Company, except to the extent Customer demonstrates that it has been materially prejudiced thereby; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Company of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

LIMITATION OF LIABILITY. EXCEPT FOR THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, LIABILITY FOR DEATH, BODILY INJURY, DAMAGE TO TANGIBLE OR REAL PROPERTY, THEFT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THE STATEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER OVER THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY (OR OVER THE FIRST 12 MONTHS IF SUCH INCIDENT ARISES DURING THE FIRST 12 MONTHS). EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS, LIABILITY FOR DEATH, BODILY INJURY, DAMAGE TO TANGIBLE OR REAL PROPERTY, THEFT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

FORCE MAJEURE: Company assumes no responsibility for loss or damage occurring by reason of delay or inability to deliver caused by fires, strikes, accidents, embargoes, delays of common carriers, insurrection, riots, terrorist acts, acts of civil or military authorities, or from any other cause which is unavoidable or beyond Company's reasonable control, and if delays from such causes shall occur, Company's delivery time shall be correspondingly extended.

GENERAL: These Terms supersede any prior oral or written agreements relating to the subject matter hereof and represent the final agreements of the parties. No oral representations shall be binding on either party. Company is not bound by any printed matter on a Purchase Order or other forms that may impose upon Company conditions at variance with the Terms hereof unless expressly accepted by the Company in writing. Waiver by Company of the operation of any of these Terms or of any breach by Customer shall not constitute a continuing waiver, and Company reserves the right to insist upon the operation of all provisions hereof and to enforce Company's rights with respect to any subsequent breach. The invalidity of any provision hereof shall not affect any other provision or the application of such provision to other parties or circumstances. No non-exercise or single or

partial exercise by any party of any right or remedy will preclude any later, further, or other exercise of that or any other right or remedy. These Terms, the Statement and all Purchase Orders will in all respects be governed by, and enforced and interpreted in accordance with the substantive law of, without regard to the law of conflicts of, the State of Illinois as applied in DuPage County, Illinois. The Customer agrees that any disputes arising under these Terms shall be litigated in Illinois state courts located in DuPage County, Illinois. The prevailing party in any action shall be entitled to recover its reasonable attorney's fees, court costs and expenses. No modification of any Purchase Order, the Statement or the Terms shall be binding on Company unless specifically approved in writing by Company. Customer agrees that any action of any kind by the Customer against Company must be commenced within one (1) year of delivery date of the Services that are the subject of the dispute.