Terms and Conditions

1. General

1.1. Wherever these Terms and Conditions differ from an existing contract or service agreement, the conditions of the contract or service agreement take precedence.

1.2. Governing law and jurisdiction: The terms of this Agreement shall be governed and constructed in accordance with the law of Queensland, Australia, and the parties submit to the jurisdiction of the Courts of Queensland and the Commonwealth of Australia.

2. Definitions and Interpretation

2.1. **Pacific Solutions/We/Us** means Pacific Solutions Pty Ltd ABN: 67 100 292 171, any employees, agents or Subcontractors of Pacific Solutions.

2.2. **Rates Sheet** refers to any of Pacific Solutions' pricing brochures and rates letters as applicable in the current calendar year.

2.3. **Client/You** means anyone by whom Pacific Solutions has been engaged in the provision of services.

2.3.1. **Research Clients** are clients to whom the Research Rates Sheet applies, that is, clients who utilise Pacific Solutions services for the Transcription of research or other interviews or focus groups.

2.3.2. **Professional Dictation Clients** are clients to whom the Professional Rates Sheet applies, that is, clients who utilise Pacific Solutions services for the Transcription of professional dictation, whether it be medical, legal, or otherwise in nature.

2.4. **Transcript** means the type-written version of audio provided by the Client to Pacific Solutions, and **Transcription** means the production of a Transcript by Pacific Solutions.

2.5. **Manager** refers to a duly authorised manager of Pacific Solutions.

2.6. **Personal Information** means the information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

2.7. **Confidential Information** means information that:

2.7.1. is by its nature confidential;

2.7.2. is identified (whether in writing or not) as confidential by the Client to Pacific Solutions;

2.7.3. Pacific Solutions knows or ought to know is confidential;

2.7.4. Is Personal Information.

2.8. Words importing a gender include the other; words in the singular number include the plural and vice versa; and references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation.

3. Supply of Services

3.1. Pacific Solutions provides a Transcription, typing, and document-production service for businesses, institutions and also individuals.

3.1.1. Pacific Solutions is also a supplier of Olympus digital audio recorders and qualitative analysis software programs.

3.1.2. Pacific Solutions also provides translation services.

3.2. Pacific Solutions may be engaged in the provision of services explicitly, by verbal and written negotiation, or implicitly, by the provision of audio to Pacific Solutions by Client for the purpose of Transcription.

3.3. By engaging Pacific Solutions in the provision of services, the Client acknowledges that the Client has read and accepted the Terms and Conditions set out herewith. These Terms and Conditions are also maintained in Client logins and are freely available on request.

3.4. Pacific Solutions reserves the right to decline to engage in the supply of services to any Client. This will usually be as a result of very poor quality audio. If Pacific Solutions declines to engage in the supply of services to a Client, the Client will be notified.

3.5. Supply of services may be carried out by either a Pacific Solutions employee or an authorised Pacific Solutions subcontractor.

4. Rates

4.1. Rates Sheets are available either:

4.1.1. in Client login;

4.1.2. in a separate rates letter/Client agreement; or,

4.1.3. in the case of prospective Clients, by email.

4.2. Upon providing Pacific Solutions with audio for Transcription, it is deemed that you have read, understood and accepted all information contained in the Rates Sheet, and are liable for all subsequent Transcription costs incurred by Us.

4.3. Itemised quotations for cost of services are provided in good faith, and are an approximation of anticipated charges based on information provided by Client. A precise assessment of final charges will be made once the audio has been received and typed, and other factors relevant to the Transcription of the audio are known. Pacific Solutions reserves the right to alter the final charges made to Clients, in line with Rates Sheet, where circumstances change.

4.4. For Research Clients, pricing is based on a rate per audio minute, dependent on audio quality.

4.4.1. ‘Audio minutes’ refers the total minutes of transcribed audio per file, with each file rounded up to the nearest whole minute.

4.4.2. ‘Audio quality’ is rated from low through to high, with ‘low’ audio charged at a higher rate in line with our standard rates.

4.5. For Professional Clients, pricing is based on a rate per line, or per audio minute depending on the negotiated agreement.

4.5.1. ‘Per line’ has the meaning attributed in our Rates Sheets, namely: every 65 characters typed with spaces (i.e. 65 keystrokes), but not white space. This can be audited against the Microsoft Word character count. Part lines are rounded up to the nearest whole line.

4.6. Pacific Solutions will only inform Client of a divergence from a quotation if the cost of services is likely to vary by greater than 10%.

4.7. In special circumstances, Pacific Solutions is able to provide an enforceable pricing agreement with a Client. To do so, the entirety of audio subject to the pricing agreement needs to be provided by the Client in order for Pacific Solutions to make an assessment of anticipated costs.

4.8. Discounts are available in the following circumstances:

4.8.1. For Research Clients, a 5% discount is available to Not-for-Profit organisations and researchers or students paying for Transcripts out of private funds.

4.8.2. For Research Clients, a 5% volume discount is available to Clients sending greater than 20 hours of audio in a single batch with flexible turnaround.

4.8.3. The decision as to whether or not the 5% discount is applicable is at the discretion of the Pacific Solutions Manager and is determined on a case-by-case basis, however this will be confirmed with the Client prior to any costs being incurred.

5. Invoicing

5.1. An invoice for work completed is issued monthly or at the end of the project, unless other arrangements are made.

5.2. Pacific Solutions reserves the right to issue invoices more frequently to new Clients, and also to require payment of outstanding invoices before continuing to provide services.

6. Payment

6.1. Any Client residing within Australia has the obligation to pay GST upon any service provided by Pacific Solutions.

6.2. Pacific Solutions reserves the right to charge late fees on overdue amounts at a rate of 10% of the outstanding balance or $25 whichever is greater, per month.

6.2.1. Late fees will be charged after an invoice remains outstanding for 60 days from the date of invoice.

6.3. Pacific Solutions retains ownership of all Transcripts until the invoice for those Transcripts is paid and reserves the right to take reasonable measures to recover costs from invoices outstanding greater than 60 days.

6.4. In the event of a cheque from Client being refused by the bank, or a refund being made by the credit card, Client will be responsible for all bank charges resulting from the returned cheque/credit card refund.

6.5. In the event of invoices that remain unpaid, Pacific Solutions has the right to commence legal proceedings to recover the debt.

6.6. Foreign Clients should note that whilst invoices are issued in local currency, credit cards are debited in Australian dollars (AUD). When reviewing credit card debits by Pacific Solutions, Client should allow for small price differences caused by short term currency exchange rate fluctuations.

6.7. Prepayment for Transcription is available at the discretion of Manager, and such funds provided to Pacific Solutions with this purpose in mind remain in your credit until exhausted by payment for services, or for a maximum of three years.

6.8. Surcharges apply for all payments made by credit card.

7. File Retrieval/Archiving

7.1. For security and confidentiality purposes, unless archiving is requested by Client, Pacific Solutions purges all Client Transcripts from our servers approximately one month after payment of invoice has been received.

7.2. A general offsite backup is maintained for approximately one year. Files may be retrieved during this time where possible for a small retrieval fee, outlined in the Rates Sheet.

7.3. Pacific Solutions' archiving service keeps completed Transcripts (and, by negotiation, audio) on Pacific Solutions' server for as long as the archiving fee continues to be paid by Client.

7.3.1. Where Client fails to pay the archive service fee, Pacific Solutions reserves the right to purge documents and/or audio in line with usual security and confidentiality policies as outlined in Clause 14.

8. Turnaround

8.1. Except where another arrangement exists, turnarounds detailed in Rates Sheets operate as guidelines only and may vary depending on audio quality and volume of work. Turnarounds are not enforceable in any way. Pacific Solutions endeavours to meet all reasonable requests for specific turnaround times, and the Client may add notes detailing a specific turnaround request to any audio uploaded. Pacific Solutions will notify the Client if any reasonable deadline specified in a note is unlikely to be met.

9. Style

9.1. Slightly Edited is the style in which, unless otherwise agreed, all research-style transcripts are produced. The Slightly Edited style, in order to improve readability of the Transcript excludes false sentence starts, repeated words, verbal acknowledgements, repetitive speech habits, over-talking and trailing off.

9.2. Dictation, unless instructions are given to the contrary, will be transcribed using the exercise of reasonable care, skill and discretion by the typist, with regard to punctuation, capitalisation, and spelling of words. This applies to all Professional Transcription.

10. Trials

10.1. Where requested, and at the discretion of the Manager, Pacific Solutions may offer a free trial of services for ten minutes of audio for the purpose of confirming template, style and quote specifications.

11. Cancellation

11.1. Where Transcription of a standard turnaround cancelled file has not yet been commenced, there is no fee charged for cancellation.

11.2. Where Transcription of a cancelled file has been commenced, Client will be charged for the audio minutes transcribed at the time of cancellation.

11.3. Where Transcription of a cancelled file has been completed, the full amount for Transcription of the file is payable.

11.4. Where the service provided by Pacific Solutions involves the attendance of stenographers/ court reporters/minute-takers, cancellation less than five business days prior to the attendance date will incur loss of deposit/attendance fees, and/or any other term specified in a letter to Client regarding this service, unless this is explicitly waived at the discretion of the Manager.

12. Dispute resolution

12.1. Although all Transcripts are quality assured prior to return to Client, it must be noted that the final checking of Transcripts is the responsibility of the Client.

12.1.1. Pacific Solutions will comply with any reasonable request for correction of typing errors free of charge, but does so at Manager's discretion, taking into account quality of audio, nature of Transcript, and types of errors.

12.1.2. a request for the correction of a Transcript must be made within 28 days of issuance of invoice for the Transcript.

12.1.3. Pacific Solutions is liable for any charges the Client might incur correcting a Transcript.

12.2. Pacific Solutions endeavours to resolve all disputes to the satisfaction of Client and aims to do so in a peaceable and amicable manner. If any dispute or difference arises out of, or in connection with, these Terms and Conditions which we are unable to resolve by negotiation, then Pacific Solutions and Client agree that the dispute shall be submitted to an independent mediator appointed by agreement between Pacific Solutions and Client to assist in resolving the dispute. Any disputes regarding the quality of a Transcript should be assessed by a mediator familiar with the nature and standard practices of the profession. Costs for mediation are to be shared by the parties. In the event that either Pacific Solutions or Client should fail or refuse to agree to, or participate in, this dispute resolution procedure, then either party shall be free to seek to resolve matters by obtaining independent legal advice.

13. Warranties and liability

13.1. Pacific Solutions warrants that services will be provided using reasonable care and skill, and that all typists are subject to strict confidentiality agreements, have appropriate experience and have undergone a rigorous quality review process.

13.2. Sale of goods and services

13.2.1. Where Pacific Solutions supplies in connection with the provision of the services any goods supplied by a third party, such as the sale of merchandise, Pacific Solutions does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to Client the benefit of any warranty, guarantee or indemnity given by the party supplying the goods to Pacific Solutions.

13.2.2. Refunds for sale of goods such as digital audio recorders or software are dealt with in accordance with the manufacturer's standard refund policies.

13.2.3. Refunds for Transcription will only be considered after a mediation assessment.

13.3. Pacific Solutions shall not be liable for any loss, damage, costs, expenses or other claims for compensation arising from:

13.3.1. any breach by Client of these conditions;

13.3.2. any Client material or instructions supplied by Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non arrival, or any other fault attributable to Client;

13.3.3. any use by Client of the transcribed or typed material for illegal or libellous purposes;

13.3.4. the production by Pacific Solutions of any Transcript, or the use by Client or anyone else of any Transcript.

13.4. Pacific Solutions recommends that any Client material sent to Pacific Solutions through the postal services is sent via Express Post. Pacific Solutions shall not be liable for any loss, damage, costs, expenses or other claims arising from any Client material which is lost or damaged through the postal system or of which Client have not retained a copy.

13.5. Pacific Solutions will not be liable for any loss or damage to any cassettes/discs or due to any mechanical failure of a cassette/disc. For this reason we recommend that Client maintain a duplicate copy of any material provided to us.

13.6. Force Majeure

13.6.1. Pacific Solutions does not accept liability for failing to supply services due to Acts of God, fire, flood, electrical or telecommunications problems or any other reason beyond our control.

13.7. All incoming emails, discs, CDs or other media will be scanned for viruses. Pacific Solutions will not open unsolicited emails or email attachments which do not have an accompanying explanatory message.

13.7.1. Pacific Solutions will endeavour to scan all email attachments sent to customers. However, it is the responsibility of all recipients to check attachments prior to opening the file as no responsibility or liability will be accepted by Pacific Solutions.

14. Confidentiality

14.1. The Client warrants that it has the right to disclose any Confidential Information which it discloses to Pacific Solutions.

14.2. The Client agrees to save, protect, defend, indemnify and hold Pacific Solutions harmless from and against any and all claims and/or financial losses of any type whatsoever arising from any third party claim that use of the information disclosed by Pacific Solutions hereunder in accordance with these Terms and Conditions violates or infringes any third party's property or proprietary rights of any kind.

14.3. Pacific Solutions and its operations will at all times adhere to the letter and spirit of the National Privacy Principles as set out in the *Privacy Act 1988 (Cth)* (available on request from Pacific Solutions).

14.4. Pacific Solutions at all times acknowledges that Confidential Information remains the exclusive property of Client and this agreement does not convey any proprietary or other interest in the Confidential Information to Pacific Solutions, except in circumstances where Clause 6.3 applies.

14.5. Pacific Solutions will use the Confidential Information provided by the Client only for the purpose of providing the services to Client.

14.6. Pacific Solutions agrees that during and after the provision of services:

14.6.1. It will only disclose the Confidential Information on a "need to know" basis to its directors, employees, agents or subcontractors for the purposes of providing the Services.

14.6.2. It will inform its directors, employees, agents or Subcontractors of their obligation under these Terms and Conditions and will ensure they sign any confidentiality agreements which are necessary to ensure their compliance with these Terms and Conditions and the standards required by the *Privacy Act 1988 (Cth)*.

14.6.3. Confidential Information will be kept in a secure location where it cannot be accessed by any third party.

14.7. The obligations of Pacific Solutions under these Terms and Conditions will not be taken to have been breached where the Confidential Information:

14.7.1. is legally required to be disclosed, provided the Client is notified promptly in order to contest such a disclosure;

14.7.2. is or becomes generally available to the public through no wrongful act, omission or breach of these Terms and Conditions by Pacific Solutions;

14.7.3. was in Pacific Solutions' possession prior to the time it was acquired from the Client free from any obligation as to confidentiality and was not acquired, directly or indirectly, from the Client;

14.7.4. has been independently developed or acquired by Pacific Solutions;

14.7.5. forms part of a Transcript that falls under the conditions set out in Clause 6.3 retaining ownership of the Transcripts until the invoice for those Transcripts is paid.

14.8. Term and Termination:

14.8.1. obligations as to the non-disclosure of Confidential Information are ongoing and will survive the expiration or termination of the provision of the services.

14.9. Waiver and Variation:

14.9.1. a provision or obligation under these Terms and Conditions may not be waived except in writing signed by the party granting the waiver

14.9.2. a provision or obligation under these Terms and Conditions may not be varied except in writing signed by the parties.

15. Signing

15.1. All Clients are taken to have read, understood, accepted and agreed to Terms and Conditions set out above. For Clients who require a signed agreement for their own administrative purposes, please refer to the signing page overleaf.

Signing is optional unless clients require a formal agreement.

IN WITNESS WHEREOF, the parties have read, understood, accepted and agreed to all of the Terms and Conditions contained in this document.

For _____ , _____
(Client name) **(Company/Institution)**

of _____
(Address)

Signature: _____ Signature of Witness:_____

Name: _____ Name of Witness: _____

Position: _____ Date: _____

Date: _____

for **PACIFIC SOLUTIONS PTY LTD**, ABN 67 100 292 17

Signature: _____ Signature of Witness:_____

Name: _____ Name of Witness: _____

Position: _____ Date: _____

Date: _____