

## **ALPHA DOG TRANSCRIPTIONS TERMS OF SERVICE**

(As of 05/21/12)

I (“Client”) agree to pay Imaginal Cells, Inc. d/b/a Alpha Dog Transcriptions (“ADT”) for any and all transcription or other services performed by ADT (the “Work”) on my or my company’s behalf on audio or video material submitted by me (“Source Material”). Client has reviewed and agrees to the rates advertised on ADT’s website for its Work and agrees to pay for all Work performed by ADT promptly and in full. Client agrees to the following Terms of Service:

### **Submission of Transcription Order Form:**

Client understands and agrees that no order shall be processed until ADT receives a completed Transcription Order Form either by online submission, fax, email, hand delivery or mail.

### **Classification of Source Material:**

Client is fully aware and agrees that they are responsible for an accurate and truthful description of the content contained within Source Material. Regardless of Client’s description of the Source Material, in the event the description is inaccurate, the appropriate classification by ADT will apply for all purposes hereunder, including rates and turnaround times. If ADT determines that its own classification of any Source Material is different than the Client’s, ADT will notify the Client before proceeding with the Work.

### **Quality of Audio:**

Client also agrees and understands that audio issues of their Source Materials might increase the price of the Work. ADT guarantees a 98% accuracy rate or higher for professionally recorded audio only. This is any Source Material that is clearly recorded with professional-standard microphones and recording devices in a controlled environment with either one person talking or one person interviewing one subject with minimal background noise interference and no media noise or defects. The format must be recorded digitally, on standard audio cassette, VHS, or DVD. Client understands that poor duplication processes can lead to degradation of the original Source Material and could result in a higher price, depending on the degree of degradation. While ADT does its best to get the most accurate transcript possible regardless of the quality of audio, Client should be aware that any audio that does not meet the previous criteria may impact the quality of the Work and cause a drop below 98% accuracy rate.

### **Dissatisfaction with Work:**

If for some reason the Client is not satisfied with ADT’s Work, and believes the accuracy to be below 98%, and the Source Material contains professionally recorded audio, Client has 5 working days to notify ADT so the Work can be analyzed and, if possible, ADT will correct any errors free of charge. Client accepts that a “re-working” of the Work will be Client’s only claim of satisfaction for Work rejected by the Client. Client further agrees that “re-working” will only apply to specifically rejected files and not entire jobs. Under no circumstances will refunds be issued once Work has been delivered to Client.

### **Accuracy:**

Client understands and accepts that no transcript is ever “perfect.” Transcription is highly subjective with regards to punctuation, spelling, grammar, etc. Furthermore, the spoken word consists of run-on sentences, colloquialisms, slang, and often grammatically incorrect language. ADT does not correct grammar, proof-read, or edit for clarity. Alpha Dog Transcriptions does not research uncommon words, names or other terminology, unless specifically ordered by the Client. A “best phonetical guess” is made and may vary from transcription to transcription. ADT does offer a “terminology research” additional service, the cost of which is stated on ADT’s rate sheet. Such “terminology research” is also guaranteed at a 98% accuracy rate.

**Right to Decline Orders:**

All Source Materials are subject to ADT's review and acceptance, which it may exercise in its sole and absolute discretion. ADT has the right to reject any Source Material for any reason whatsoever, including a determination Client's Source Material is considered to be of such poor quality that: 1) transcription is not possible or 2) the project is beyond ADT's resources. If the audio quality of any Source Material appears to be different than the quality represented by Client, ADT will contact Client and discuss this discrepancy and any necessary rate increases. If the parties are unable to agree on an appropriate rate, ADT may decline to work on the project and, in such case, all Source Materials will be returned, if applicable, and no Work will be performed for Client by ADT.

**Submission of "Poor Quality" Audio:**

If the Source Material contains what appears to be poor quality audio, which may result in a large number of indistinct, unintelligible, or indiscernible words or inaudible sections, ADT will contact the client immediately. ADT can supply the Client with a 5 minute sample of the questionable material, if requested, and all work will stop for any and all Source Material submitted by the Client until the Client has notified ADT they would like to proceed with the submitted Source Material regardless of the number of indistinct, unintelligible, or indiscernible words or inaudible sections. If Client prefers to not proceed, ADT will not charge the client for the 5 minute sample transcript. If Client chooses to proceed with transcription, and the 5 minute sample transcript contains content from a longer file, such content will be included in any such transcription and billed accordingly. Though ADT always endeavors to produce the best quality and accurate transcription possible, Client agrees to waive the 98% accuracy guarantee for such transcription.

**Master Source Materials:**

ADT does not accept any original or master Source Materials ("Masters"). In the event that Client elects to submit Masters of its original Source Material, Client shall do so solely at its own risk. Client hereby acknowledges that any Source Materials submitted to ADT shall have no (\$0.00) commercial value. Client hereby agrees to indemnify and hold ADT harmless from any expenses, claims, losses, costs, actions or damages, including reasonable attorneys' fees, ("Claims") arising out of or related to damage to or loss of any Source Materials whether Masters or duplicates, including and without limitation data and media. Client agrees not to hold ADT responsible for any loss or damage that may happen to the Source Material during the digitizing and transcription process. ADT makes no guarantee that Source Material will be received by ADT or returned to Client free from damage during the shipping or delivery process. Client agrees to not hold ADT liable for any loss or damages to or destruction of any Source Materials, including those that may occur in shipping or transmission electronically.

**Shipping and Delivery:**

Client agrees to pay all shipping or delivery costs for submission and return of Source Materials. ADT shall return Source Material to Client according to Client's preference submitted on the Transcription Order Form. If no preference is selected, ADT will ship Source Material at its own discretion, which shall often be the most cost effective (and not necessarily fastest) method.

**Billing:**

Client acknowledges that for its transcription services, ADT bills per minute of each file of Source Material and not on the cumulative minutes of any submitted order, page count, number of characters, or transcriber's own work hours, unless previously discussed and agreed to by Client. Client agrees to a \$50 (fifty dollars) minimum per order and a five minute minimum per file submitted. If any file is submitted that is less than five minutes in length, Client agrees to pay the five minute rate for any and all such files. Any additional seconds after each minute mark to :30 (thirty) seconds are billed at the originating minute, and any additional minutes including and after :31 (thirty-one) seconds are billed at the next consecutive minute. Other Work, such a rush rate, additional services, translation services, etc., performed by ADT for

Client may be billed at a rate different from the per minute rate and Client agrees to pay for such Work as outlined in ADT's most current rate sheet.

**Combining/Splitting files:**

Each individual file submitted by Client will be processed as an individual transcription. If Client wishes to combine multiple files into a single transcription, Client must include such instructions on or with an ADT Transcription Order Form. For this service, Client agrees to pay a "combine files" service fee as outlined in ADT's most current rate sheet. Client may elect to combine short Source Material files into one file; however, such combined Source Material shall be treated as one individual file and processed as one transcription. If Client wishes such combined files to be split into separate transcriptions, Client agrees to pay a "split transcription" fee as outlined ADT's most current rate sheet.

**Duplicate or Extraneous Source Material:**

Client is responsible for the cost of transcription of all Source Material submitted for transcription, including any duplicate or extraneous Source Material. Client affirms they have reviewed the Source Material submitted to ADT and has outlined specifically in submitted Transcription Order Form any portions of Source Material not to be transcribed, otherwise Client acknowledges all Source Material will be transcribed and Client agrees to pay for all Work performed by ADT, irrespective of any duplicate or extraneous material.

**Assessed Fees:**

In the event that any files or portions of files of Source Material submitted by Client are submitted in error and/or are determined to be non-transcribable, blank, or falls under the specific guidelines of Client of material they do not wish to be transcribed, said files will be billed with a "File Viewing Fee" service charge at the rate outlined in ADT's most current rate sheet. If any order submitted by Client is cancelled after ADT has begun processing such order, the order, and any and all Source Material contained therein, including applicable rush rate charges, will be billed with a "Cancellation of Order" service fee at the rate outlined in ADT's most current rate sheet.

If any Source Material file submitted contains a running time of more than 60 (sixty) minutes, ADT reserves the right to split that file into multiple files for transcription and will assess a "Split File" service fee at the rate outlined in ADT's most current rate sheet. If any Source Material file submitted by Client to ADT is larger than 180mb per 60 minutes of content, ADT reserves the right to compress such files into smaller sized files and will assess a "Compress Large File" service fee at the rate outlined in ADT's most current rate sheet. Client agrees to pay any and all of the above service fees if assessed by ADT for any order submitted by Client.

**Turnaround Times:**

ADT's turnaround times are estimates only and are based on ADT's current workload, which fluctuates daily. Client agrees to contact ADT in advance of submitting any order if Client requires a specific turnaround and delivery date. If Client submits Work without contacting ADT beforehand, ADT reserves the right to schedule Work at its own discretion. ADT may refuse any order if ADT determines it is not capable of delivering work by Client's requested day and time. Business days are governed by ADT's normal operating hours and exclude weekends, holidays and any other day we elect not to open for business.

**Accounts:**

Client agrees to pay the rates advertised on ADT's website at the time the Work is submitted, which is subject to change any time and for any reason whatsoever. Client may choose to open a Net 25 day account with ADT, subject to approval of submitted Deferred Payment Application (aka Credit Account application), which takes a minimum of three (3) working days to process after receipt by ADT. ADT may withhold providing any transcription services until said account application is processed. Client

agrees to pay all late fees and finance charges associated with unpaid Work as outlined in ADT's Policies and Procedures and submitted Deferred Payment Application (aka Credit Account Application), including without limitation attorney's fees, court costs, third party fees, and all other costs relating to collecting payment for unpaid Work. If Client has paid for Work by credit card and Client disputes the charges by ADT for its Work, Client agrees to pay triple-damages in addition to above stated costs to ADT in any legal action that would follow such dispute for ADT to collect payment for unpaid Work.

Client may also choose to pay upon completion of Work with any of ADT's accepted payment options: business check, money order, MasterCard, Visa, Discover, Amex and Paypal, with a 50% deposit before ADT will begin Work. Client, whether paying by business check or credit card, must submit a valid Credit Card Authorization form to be kept on file at ADT. If Client is on a Net 25 day account and has not paid any outstanding invoices within 30 days, ADT reserves the right to charge the credit card on file for the total amount due. Agreement to these Terms of Service hereby authorizes ADT to charge the credit card on file. Client further understands and agrees that ADT may withhold any Source Materials and Work until it receives payment in full from Client for any unpaid Work related to such Source Materials.

**Non-Disclosure of Confidential and Proprietary Information:**

ADT acknowledges that by reason of its relationship with Client, it may have access to certain information and materials contained in Source Materials in relation to the Client's business, products, services, clients and marketing strategies that are confidential and of substantial value to the Client ("Confidential Information"). ADT shall not use Client's Confidential Information in any way for its own purposes, nor for the purposes of any third party, nor disclose to any third party such Confidential Information revealed to ADT by Client unless and until required by court order or other legal process to do so. ADT shall retain copies of Work performed for Client for a period of 60 (sixty) calendar days, and any Source Material digitally copied by ADT for the purpose of performing Work for Client for a period of 30 (thirty) days, for the sole purpose of providing Client a backup of Work and Source Materials. If requested by Client, ADT will delete any Work and/or Source Materials immediately after delivery of Work to Client. Such request shall be made in writing by Client at the time of submission of Source Materials.

**Copyrighted Source Material:**

Client shall not copy, upload, post, publish, transmit, reproduce or distribute in any way, information or other material which is protected by copyright or other proprietary right, or derivative works with respect thereto, without obtaining permission of the copyright owner or the right holder or violate any individual's/organization's right of privacy, right of publicity or other rights. The Work and any work product of the Work shall be used solely for lawful purposes only. Client agrees that it will not use the Work or any work product of the Work in any way that is, or is reasonably likely to be, harmful either to ADT's customers, or operations or its reputation. Client hereby indemnifies and holds ADT and its employees, officers, directors, and agents harmless from and against any and all Claims or threat of Claims and damages against ADT and/or its employees, officers, directors, and agents arising out of or related to Client's Source Materials and any use of the Work based thereon.

**Client's use of Work:**

Client agrees to release and hold ADT, its employees, contractors, officers, directors, and agents harmless of any Claims or damages that may occur from the publication, quotation, distribution, public use or any other use of a quotation from the Work that may contain a typographical or factual or other error or even quotations that are without error. Client agrees that it is their responsibility to proofread and confirm the accuracy of ADT's Work before information from such Work is published or printed or otherwise used, and Client will not take any action against or include or implicate ADT, its employees, officers, directors, or agents as defendants in any litigation arising out of or related to Client's use of Work.

**Liability:**

ADT shall not be held liable for any indirect, incidental, special or consequential damages, or loss of profits, revenue, data or use, by the Client or any third party, whether in an action in contract or tort or strict liability or other legal theory, even if ADT has been advised of the possibility of such damages. If Client is dissatisfied with the Work, Client's sole and exclusive option is to have ADT correct mistakes in the Work. ADT's sole liability for any Claim or loss, damage or expense from any cause whatsoever arising out of or related to this agreement, the Work or any Source Materials, shall in no event exceed sums actually paid to ADT by Client. ADT shall not be liable for any failure or delay in performing its obligations hereunder, if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or labor disturbance, interruption of or delay in transportation, or inability to obtain raw materials, supplies or power used in, or the equipment needed for the provision of the Work.

**Acknowledgement:**

Client acknowledges that submission of a Transcription Order Form indicates understanding and acceptance of ADT's rates and terms, as specified in ADT's Info Packet and Terms of Service, and affirms Client's ability to bind themselves and/or the company Client represents to these rates and terms, in which all prior or contemporaneous agreements are merged. During the term of this agreement, each instance of provision of services hereunder shall be subject to ADT's Terms of Service. ADT reserves the right to make changes to its Terms of Service agreement from time to time. Any such modifications of these Terms of Service shall be posted on ADT's website.

**Severability:**

This agreement is not assignable by either party. To the extent that any provision hereof is deemed unenforceable, all remaining provisions of this Agreement will not be affected thereby and will remain in full force and effect. All indemnifications and limitations on liability will survive any termination or expiration of this agreement.

**Governing Law and Exclusive Jurisdiction:**

This agreement and any Claim related directly or indirectly to this agreement shall be governed and construed in accordance with the laws of the State of California (without giving regard to the conflicts of law provisions thereof). No such Claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of California located in the County of Los Angeles or in the United States District Court for the Central District of California, and each of the parties hereby submits to the jurisdiction of such courts. Each of the parties hereby waives on behalf of itself and its successors and assigns any and all right to argue in any legal action that this choice of forum provision is or has become unreasonable.

**Term of Agreement:**

This agreement commences as of the date of the first submitted Transcription Order Form executed by the Client and terminates upon the date of the last service contract in effect between the parties.