

**TRANSCRIPT DIVAS
AUSTRALIA.
CLIENT
NON-DISCLOSURE
AGREEMENT.**

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Parties

NAME: _____

ADDRESS: _____

ABN / ACN (if applicable): _____

(Discloser)

NAME: Andrew Dodson (trading as Transcript Divas Australia)

ADDRESS: 14/365-377 Kent St, Sydney NSW 2000, Australia

ABN: 44 925 005 362

(Recipient)

Background

- A. The Discloser wishes to engage the services of the Recipient and to disclose Confidential Information to the Recipient only for the Permitted Purpose.
- B. In consideration of the Discloser disclosing the Confidential Information to the Recipient and agreeing to engage the services relating to the Permitted Purpose with the Recipient, and the Recipient agreeing to keep the Confidential Information confidential and providing services relating to the Permitted Purpose with the Discloser, the Parties have agreed to undertake the obligations set out in this Agreement.
- C. The Parties have agreed to disclose and receive that Confidential Information on the terms and conditions of this Agreement.

Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

In this Agreement the following words and phrases have the following meanings (unless the context otherwise requires):

Business Days means any day other than a Saturday, Sunday or public holiday in the Jurisdiction.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the Discloser as confidential; or
- (c) the Recipient knows or ought to reasonably have known is confidential in nature;
- (d) and includes all information which related to the Permitted Purpose, whether in a Document or provided orally but does not include information which:

- (e) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;
- (f) is in the possession of the Party without restriction in relation to disclosure before the date of receipt from the other Party;
- (g) is by law or the rules of any stock exchange required to be disclosed by the Recipient; or
- (h) has been independently developed, gained or acquired by the Recipient without any reference to the Confidential Information.

Consequential Loss means any loss recoverable at law other than arising in the usual course of things and includes any consequential or economic loss including:

- (a) loss of anticipated or actual profits or revenue;
- (b) loss of production or use;
- (c) financial or holding costs;
- (d) loss or failure to realise any anticipated savings;
- (e) loss of business or business interruption;
- (f) loss or denial of business or commercial opportunity;
- (g) loss of or damage to goodwill, business reputation, future reputation or publicity;
- (h) downtime costs or wasted overheads; and
- (i) special, punitive or exemplary damages.

Document includes:

- (a) any paper or other materials on which there is writing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (b) any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device; and
- (c) information in a form of data, text, or images stored or communicated by means of guided or unguided electromagnetic energy, or both.

Intellectual Property Rights includes all copyright and neighbouring rights, all rights in relation to inventions and discoveries (including patent and utility model rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including applications for grant of any of these rights or other rights of a similar nature arising (or capable of arising) anywhere in the world.

Parties means both the Discloser and the Recipient referred together.

Permitted Purpose means to provide transcription services of Audio or Video recordings to the Discloser.

Jurisdiction means **New South Wales, Australia**.

1.2 Interpretation

- (a) In this Agreement unless specified to the contrary:
 - (i) the singular includes the plural and vice versa;

- (ii) use of the word including and similar expressions are not, nor are they to be interpreted as, words of limitation;
 - (iii) a reference to a person includes a natural person, a company or other entities recognised by law;
 - (iv) a reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes electronic transmission; and
 - (v) a reference to a party includes the party's executors, administrators, successors and permitted assigns.
- (b) The language in all parts of this Agreement is to be in all cases construed in accordance with its fair and common meaning and not strictly for or against either of the parties.
 - (c) This Agreement is to be interpreted so that it complies with all applicable laws of the Jurisdiction and if any provision does not comply then it must be read down so as to give it as much effect as possible. If it is not possible to give that provision any effect at all then it is to be severed from this Agreement and this Agreement is to be construed as if the severable portion did not exist. The remainder of this Agreement will continue to have full force and effect.
 - (d) Any headings are for ease of reference only and do not affect the interpretation of this Agreement.

2 Confidentiality Obligations

2.1 Confidentiality

The Recipient:

- (a) acknowledges the confidential, sensitive, and proprietary nature of the Confidential Information and that it is valuable to the Discloser; and
- (b) agrees to keep confidential, and not directly or indirectly divulge or communicate or otherwise disclose the Confidential Information, in whole or part, to any third party.

2.2 Use of Confidential Information

The Recipient must not:

- (a) use any of the Confidential Information for any purpose other than the Permitted Purpose;
- (b) exploit the Confidential Information for its own benefit, for the benefit of any other person or for any other purpose, or allow any other person to do so without the prior written consent of the Discloser (which may be withheld in its absolute discretion);
- (c) use any of the Confidential Information in a manner or for a purpose detrimental to the Discloser or its related bodies corporate (if any); or
- (d) use any Confidential Information that has been returned to the Discloser under clause 3 of this Agreement (unless express permission is granted in writing by the Discloser to continue use that Confidential Information).

2.3 Protection of Confidential Information

The Recipient must;

- (a) keep effective control of all Confidential Information received under or in connection with this Agreement;
- (b) take all precautions that are reasonably necessary to prevent any theft, loss or unauthorised use or disclosure of that Confidential Information, this includes but is not limited to the implementation and use of the following security processes

SECURITY PROCESS
Email is enabled with two factor authentication.
Cloud based systems are enabled with two factor authentication e.g. dropbox, google drive etc.
Computer& Mobile Phone devices are locked with passwords that only the receiving party has knowledge of.
Computer hard drives are encrypted.

- (c) must promptly inform the Discloser of any suspected or actual unauthorised use or disclosure of the Discloser's Confidential Information.

2.4 Authorised Recipients

- (a) The Recipient may disclose the Confidential Information to its directors, officers, agents, employees, advisers, and financiers on a strictly "need to know" basis provided that:
 - (i) The Recipient must ensure that these persons are under equivalent obligations of confidence to the Recipient as provided in this Agreement; and
 - (ii) The Recipient ensures compliance by these persons with the terms and conditions of this Agreement which impose any obligation on the Recipient, as if those persons were a party to this Agreement; and
- (b) A breach of such a term or condition by such a person shall be regarded as a breach of this Agreement by the Recipient.

3 Return of Confidential Information

Within 60 days of completing the permitted purpose for the Discloser or upon the written request of the Discloser, the Recipient must promptly return (or procure the return of) to the Discloser the following (or, if any of the following is incapable of being returned, irretrievably destroy or delete and be willing to certify in writing that it has been so destroyed or deleted):

- (a) the Confidential Information of the Discloser; and
- (b) all copies, extracts, summaries, notes and records in whatever form (including, without limitation, any electronic records or any unwritten form) of the whole or any part of the Confidential Information of the Discloser.

4 **Intellectual Property Rights**

The Recipient acknowledges that there is no transfer or licence to it or any third party of any Intellectual Property Rights in and to, or arising from, any Confidential Information disclosed under or in connection with this Agreement.

5 **Acknowledgements**

The Recipient acknowledges that:

- (a) a breach of any of the Recipients' obligations under this Agreement may result in the Discloser suffering loss and damage including, without limitation, Consequential Loss, and may cause irreparable damage to the Discloser; and
- (b) in the event of a breach, or threatened or anticipated breach, of this Agreement:
 - (i) damages alone may be an inadequate remedy for the Discloser; and
 - (ii) that the Discloser entitled to seek an interim, interlocutory or permanent injunction restraining the Recipient without showing or proving any actual loss or damages sustained by the Discloser.

6 **Duration of Obligations**

The obligations imposed by this Agreement continue indefinite.

7 **Notices**

- (a) Any notice to be given to one party by another under this Agreement:
 - (i) must be in legible writing, in English and addressed to the intended recipient; and
 - (ii) must be delivered to the recipient in person or by courier hand delivery, by prepaid ordinary post, by facsimile or by email; and
 - (iii) must be signed by an authorised officer of the party giving or making it, or (on its behalf) by any solicitor, director, secretary or authorised agent of that party.
- (b) A notice is regarded as being given by the sender and received by the recipient:
 - (i) if by delivery in person, when delivered to the recipient;
 - (ii) if by post, three Business Days from and including the date of postage;
 - (iii) if by facsimile transmission, whether or not legibly received, when the machine from which the facsimile is sent generates a transmission report confirming that all pages of the notice have been sent to the recipient's facsimile number; or
 - (iv) if by email, immediately unless sender receives an automated reply that the email was not delivered by reason of the address being invalid or otherwise.
- (c) If a notice is received on a day which is not a Business Day or after 5:00pm on a Business Day, that notice is regarded as received 9:00am on the following Business Day.

8 Termination

If the Recipient breaches this Agreement, the Discloser may terminate this Agreement by providing written notice in accordance with clause 7 to the Recipient.

Upon termination of the Agreement under this clause:

- (a) The Recipient must destroy or deliver to the Discloser any Confidential Information that was made available to the Recipient under or in anticipation of this Agreement; and
- (b) Rights accrued by the Parties under Intellectual Property Rights (clause 4), and Acknowledgments (clause 5) of this Agreement survives termination and is enforceable against the Recipient notwithstanding termination.

9 General Conditions

9.1 Date of provision of Confidential Information

This Agreement binds the Recipient in respect of any and all Confidential Information provided by the Discloser to the Recipient, whether the Confidential Information was provided to the Recipient prior to or after the date of this Agreement.

9.2 Non-Merger of Provisions

A provision of this Agreement which can and is intended to operate after its conclusion will remain in full force and effect.

9.3 No Exclusion of Law or Equity

This Agreement will not be construed to exclude the operation of any principle of law or equity intended to protect or preserve the confidentiality of any Confidential Information.

9.4 Waiver

- (a) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- (b) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.
- (c) A right expressed under this Agreement may only be waived by a party in writing and communicated to the other party to the extent that is expressly set out in that waiver.

9.5 No Amendments without Agreement

This Agreement may not be modified, discharged or abandoned unless by a document signed by the parties.

9.6 Agreement in Entirety

The Parties agree that this Agreement contains the entire agreement between the Parties and supersedes any prior written agreements in existence (whether in writing or otherwise).

9.7 Jurisdiction

This Agreement is to be governed by and construed in accordance with all applicable laws in force in the Jurisdiction from time to time, and the parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.

EXECUTED and **DELIVERED** as a deed on _____

SIGNED SEALED AND DELIVERED by

ABN / ACN _____

Signature

Name

SIGNED SEALED AND DELIVERED by
**Andrew Dodson ABN 44 925 005 362 trading
as Transcript Divas Australia**

Signature

Andrew Dodson
Name