



# Terms and Conditions

**Confabulate Limited**  
 9 Market Row, Saffron Walden,  
 Essex CB10 1HB United Kingdom  
 Telephone: 01799 581681 Fax: 01799 581682  
[support@audiominutes.com](mailto:support@audiominutes.com)

## Section 1: Customer Details

Contact name								
Company Name		Website:		Tick one	Authority Limited	PLC Partnership		
Billing Address								
Town:		County:		Post Code:		Direct Phone:		
Main Tel. No:		Fax:		E-mail:				

- Please Read:**
- If you sign and return this form by fax you will be deemed to have read Confabulate standard Terms and Conditions and will be bound by them.
  - You should also read any "additional information" relating to specific products
  - All prices quoted are exclusive of VAT.

## Section 2: Service Details

Handsets	Service Description	In Service Date	Monthly charge	Term
1	<a href="#">Audiominutes Lite Service (see Appendix 1)</a>			

## Section 3: Technical Contact

Technical Contact Name:	
Email address:	
Telephone/Mobile/Skype:	

## Section 4: Bank account Details for Standing Order (preferred payment option)

Name of account holder(s)	CONFABULATE LIMITED									
Bank / Building society address	BARCLAYS BANK PLC									
Account Number:	0	0	6	6	8	9	2	3		
Sort code:	2	0	-	7	4	-	0	5		

## Section 5: Declarations

Customer Signature:		Print Name:		Date:	
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Confabulate Limited Signature:		Print Name:		Date:	
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## Terms and Conditions

### 1. DEFINITIONS

In these Conditions and every proposal, quotation, order and agreement to which they apply:

"Agreement"	means the agreement effected between us and you for the provision of Services and Software
"Conditions"	means these standard terms and conditions of business
"Content"	means the recorded sounds other data created stored or relayed or linked to for Broadcast all as is or as encoded
"person"	includes any person legal or natural or set of persons
"Software"	means only the computer programs or applications which we supply or agree to supply to you under the Agreement
"Broadcast"	As a verb means to broadcast audio on the World Wide Web via the Internet, and the nouns "Broadcast" and "Broadcasting" will be construed accordingly
"Website"	means the text, graphics, pictures, screen designs, screen layouts, sound, audio-visual material or software contained on a site on the World Wide Web
"you/your"	Refers to the person which has entered into the Agreement with us.

### 2. SUPPLY OF EQUIPMENT AND SERVICES

#### 2.1. Terms and Conditions

All proposals made, quotations given, orders accepted and contracts entered into by us with you for supply of Services and/or Software are subject to these Conditions. All other terms and conditions, whether expressly stipulated by you or implied by trade custom, course of dealing, statute, or otherwise, are excluded. No variation to these Conditions will be effective unless agreed to in writing by us signed by a duly authorised person.

### 3. RESPONSIBILITIES

#### 3.1. The Purposes of Audio Recording and Broadcasting

3.1.1. You will use the Services only as may be lawful and for lawful purposes.

#### 3.2. Consent

You will obtain the consent of any person to be Broadcast if necessary, or, in the case of minor children, obtain the consent of their parent or guardian.

#### 3.3. Reproduction of the Content

To the extent that we have such rights, we assign all intellectual property rights in the Content to you. You have full rights over the Content and may store, publish or reproduce the Content on to any other server or location without our prior written consent.

### 4. SUPPORT

#### 4.1. Support of the Service

We will provide support Services as described in Appendix 1.

#### 4.2. Maintenance Releases and Upgrades

We may at our discretion free of charge upload maintenance releases or upgrades to the Software that from time to time become available to us. The timing of the installation of any maintenance releases or upgrades will be agreed in advance between you and us.

#### 4.3. Services Not Included

Unless otherwise agreed by us in writing the Services do not include:

4.3.1. providing any hardware or accessories, supplies or operating materials or consumables (e.g. DVDs etc.);

#### 4.4. Website Protection

We may at any time take whatever action we consider necessary to protect the Website, the Software or our ability to provide the Services, and/or suspend the provision of such Services for such purposes and/or for scheduled or necessary maintenance.

### 5. PRICE AND PAYMENT

#### 5.1. Prices

You will pay to us all fees, costs and expenses ("prices") as stated in Section 2, subject as follows:

5.1.1. unless otherwise stated by us in writing, prices exclude VAT and you will pay VAT in addition if properly chargeable by us;

5.1.2. unless expressly stated in the Agreement, or otherwise stated by us in writing, all prices paid and/or payable by you under the Agreement are unconditional, irrevocable and non-refundable, including any deposit or payment on account paid by you under the Agreement;

5.1.4. prices exclude all additional amounts that we are entitled to charge you under the Agreement, and you will pay us all such additional amounts promptly;

5.1.5. we are entitled from time to time, but not more than once every 12 months, to increase the Standard Rate and any periodic fee by a percentage equal to the percentage increase in the Index of Retail Prices published by the Department of Trade and Industry of the United Kingdom (or any successor government department) since the In Service Date or, if there has been a previous increase in such fee, since the date of the last such increase.

#### 5.2. Time of Payment

If the Agreement does not state elsewhere when any sum is payable, you will pay all sums due to us within 14 days of the date of our demand or request for payment.

#### 5.3. Late Payment

If any payment due from you to us is overdue then, in addition to any other right or remedy, we may:

5.3.1. charge you interest compounded daily at the highest of the following arithmetical rates from time to time: -

5.3.1.1. 1% per calendar month or part calendar month by which payment is overdue;

5.3.1.2. the judgment rate;

5.3.1.3. the applicable rate under the Late Payment of Commercial Debts (Interest) Act; or

5.3.1.4. the highest rate charged to us on any borrowing or overdraft, and/or

5.3.2. suspend our performance of the Agreement, with a corresponding extension of the Programme.

### 6. SOFTWARE LICENCE

6.1. In consideration of all payments due to us under the Agreement, we grant to you a non-exclusive, royalty free, non-transferable licence to use the Software in accordance with the Agreement subject as follows:

6.1.1. you will only use the Software as directed; and

6.1.2. except to the extent that such acts may not lawfully be prevented, you will not access the Software in source code nor modify, adapt,



disassemble, decompile or otherwise reverse engineer any or all of the Software; and

6.1.3. this licence will continue until terminated in accordance with the Agreement.

## 7. OWNERSHIP OF THE CONTENT

### 7.1. The Content

We assign to you all intellectual property rights in the Content.

### 7.2. Unauthorised use

You will give prompt notice to us if you become aware of any unauthorised use or exploitation of the whole or any part of the Content by any person.

## 8. CONFIDENTIALITY AND PUBLICITY

### 8.1. Confidentiality

8.1.1. Each party will, and will procure that its employees and sub-contractors will, keep secret and confidential all information of a confidential or of a technical or commercially sensitive nature obtained from the other in the course of the Agreement, and will

8.1.1.1. use such information exclusively for the purposes of the Agreement, and

8.1.1.2. disclose such information only to those of its employees and subcontractors pursuant to the Agreement to whom and to the extent that such disclosure is reasonably necessary for the purposes of the Agreement.

8.1.2. This Clause will not apply to information which

8.1.2.1. prior to its receipt from one party was in the possession of the other and at its free disposal, or

8.1.2.2. is subsequently disclosed to the recipient party without any obligations of confidence by a third party who has not derived it directly or indirectly from the other party, or

8.1.2.3. which is or becomes generally available to the public through no act or default of the recipient party.

### 8.2. Publicity

Subject to obtaining your prior written consent (which will not be unreasonably withheld or delayed) we may, for the purposes of our own publicity, name you as our customer and disclose the nature of the Equipment and Services supplied by us to you.

### 8.3. Unpublished Content

Any Content which has been stored on our servers but not published by the client will be kept secret and confidential.

## 9. WARRANTIES

### 9.1. Services Warranty

We warrant that we will perform all Services with reasonable care and skill. If we are shown to be in breach of this warranty in relation to particular Services, then we will take such steps as may be necessary prospectively to render the results of such Services as they would have been had we supplied them in accordance with such warranty; or, alternatively, we will, subject to the minimum period, refund to you a fair proportion of the sums you have paid to us in respect of such particular Services which have not met the terms of the warranty.

### 9.2. Use of the Software

9.2.1. We warrant that to the best of our knowledge your use of our Software in accordance with the Agreement will not result in the infringement of the copyright or other intellectual property rights of any person. If such use infringes any such rights then we will as soon as

reasonably practicable at our option and cost use our reasonable endeavours to alter such Software to make it non-infringing without materially reducing its functionality, and/or to obtain such licence as may be necessary to avoid the infringement.

9.2.2. As to third party software we will use our reasonable efforts (but shall not be obliged to incur legal costs or commence litigation) to obtain for you from the licensor to us the like warranties indemnities and other obligations as they would have had to us.

### 9.3. No Other Warranties

Clauses 9.1 and 9.2 state the only warranties given in relation to the Services and your only remedies and our entire liability for breach of these warranties. They are in lieu of and substitution for any other obligations to you in respect of any claim by any third party that your use of the Services infringes any right of that third party.

### 9.4. Investigation

If, on investigating a claim by you that any of the warranties given by us in Clauses 9.1 to 9.5 has been breached, we find that there is no or has been no such breach, then you will pay us at our Standard Rates for all of our time and expenses incurred by us and/or on our behalf in carrying out such investigation(s).

### 9.5. Your Warranties

You warrant that:

9.5.1. it was and is within your power to enter into the Agreement and to perform the Agreement; and

9.5.2. the Agreement has been properly and validly executed by you so as to bind you.

## 10. LIMITATION OF LIABILITY

### 10.1. This Clause Prevails

This Clause 10 prevails over all other provisions of the Agreement.

### 10.2. Certain Liability Accepted

Neither party excludes or limits its liability to the other in negligence in respect of death or personal injury, or for wilful default or fraudulent misrepresentation or otherwise insofar as any exclusion or limitation of its liability is void, prohibited or unenforceable by law.

### 10.3. Exclusion of Warranties

Except as expressly otherwise stated in the Agreement, we give no guarantees or warranties and make no representations (nor shall we be subject to any conditions) in relation to any Services, Software or otherwise in relation to the Agreement. All such guarantees warranties and representations and conditions, whether express or implied by law or otherwise, are hereby excluded. We make no representation or warranty nor are subject to any condition as to merchantability, satisfactory quality or fitness for any particular purpose, or compatibility with computer programs not supplied by us under the Agreement.

### 10.4. Limitation of Liability

Subject to Clause 10.2, in no circumstances will we be liable to you, for breach of contract, in negligence or otherwise, for any direct or indirect loss of profit, business, revenue, goodwill, anticipated savings or any payment made or due to a third party, or for any consequential, special, indirect or incidental loss arising in any way out of or in connection with the Agreement.

### 10.5. Amount of Liability

Subject to Clause 10.2, if, despite provisions in the Agreement purporting to limit or exclude our liability we are found liable to you, then our liability to you will nevertheless be limited to the amounts paid by you to us under the Agreement up to a maximum amount equivalent to the Fees for



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6 months, calculated on a time apportionment basis, of the Minimum Period.

### 10.6. Your Services

You will be exclusively responsible for all services you provide through or involving use of the Services. You will indemnify us against all claims by third parties arising directly or indirectly from your services or your failure to provide services and against all losses, costs, damages and expenses resulting directly or indirectly from such claims. In particular but without limitation you will obtain effective consents from or on behalf of any person appearing in any Broadcast.

### 10.7. Responsibility for Broadcasting

You will be exclusively responsible for any liability arising from unauthorised access or alteration to the Content while under your control. You will also be responsible for any liability arising from any material or data which has been Broadcast that includes any threatening, defamatory, obscene, offensive or illegal material or any material which infringes any person's intellectual property rights. Except as expressly otherwise stated in the Agreement, we will not be responsible for any liability arising from the failure to Broadcast any material or data.

## 11. TERM AND TERMINATION

11.1. The Agreement will come into force on the In Service Date or on the date which it is accepted by you evidenced by your signature. Subject to Clause 11.4 it will continue in accordance with its terms, subject to earlier termination as provided in the Agreement, but either party may terminate the Agreement giving to the other at least 3 months' notice in writing.

11.2. Either party may at any time by notice in writing to the other party terminate the Agreement with immediate effect if the other party commits a material breach of the Agreement which is not remedied within 28 days of such party being given written notice of the breach and requiring it to be remedied.

11.3. We may at any time by notice in writing to you terminate the Agreement with effect from the date of service of such notice if

11.3.1. you are unable to pay your debts as they fall due or if we reasonably believe that this will or may become the case;

11.4. Notwithstanding the provisions of Clause 5.3, we may forthwith terminate the Agreement, including all rights granted under it whether by licence or otherwise, in the event of the non-payment of any fees due to us within the required time for payment.

## 12. CONSEQUENCES OF TERMINATION

12.1. Termination of the Agreement, for whatever cause, will not affect the rights of either party which have accrued before termination.

12.2. All licences to use the Software is granted to you will automatically terminate 6 months after the date of termination of the Agreement. However, if we terminate the Agreement in accordance with Clause 11.2 or 11.3, or if we are otherwise entitled to terminate the Agreement forthwith, then such licences will terminate forthwith upon termination of the Agreement. You will, as soon as the licences have terminated, stop using the Software and will return to us the Software together with all whole or partial copies of it and all user manuals.

12.3. If you terminate the Agreement under Clause 11.2 we will refund a proportion, calculated on a time apportionment basis, of the Fees paid by you for the unexpired portion of the term.

12.4. If we terminate the Agreement under clause 11.3.2 above there will be no refund and all sums payable or otherwise payable by you relating to the then current year shall remain payable.

## 13. GENERAL

### 13.1. Notices

Any notice given under the Agreement will be in writing and served either by eMail or first class post. The address for service will be the address set out in the Agreement or such other address as the addressee has nominated by notice in writing in accordance with this Clause. Any notice served by first class post will be deemed to have been served two days after posting.

### 13.2. Force Majeure

A party will be deemed not to be in breach of the Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations under the Agreement to the extent that such delay or non-performance is caused by any event or circumstance beyond its control ("force majeure"). The party affected by force majeure will promptly notify the other party of it in writing and will use all reasonable endeavours to continue to perform its obligations under the Agreement as soon as reasonably practicable. This Clause will not apply to your obligations to make payments to us under the Agreement. Lack of funds is not an event of force majeure.

### 13.3. Assignment

We may sub-contract our obligations under the Agreement and/or we may assign our rights and obligations under the Agreement, but you may not assign, sub-contract or delegate your rights or obligations under the Agreement without our prior written consent (which will not be unreasonably withheld).

### 13.4. Waiver

Any failure or neglect by either party to enforce at any time any of the provisions of the Agreement will not be construed nor deemed to be a waiver of that party's rights under that or any other provision the Agreement or a previous or subsequent breach of the relevant provision.

### 13.5. Severability

If the whole or any part of any provision of the Agreement is determined to be invalid or unenforceable, then such provision or part of it shall be severed from the body of the Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.

### 13.6. Interpretation

In these Conditions and every proposal, quotation, order and Agreement to which they apply, headings are for convenience only and shall not affect interpretation; the singular includes the plural and vice versa; references to Clauses are to clauses in these Conditions; and any list of particular items or matters used in conjunction with general wording covering those items or matters shall not limit that general wording.

### 13.7. Law and Jurisdiction

The Agreement shall be governed and construed in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.



## Appendix 1

### Description of the Audiominutes Lite Service

#### What is included?

The Audiominutes service comprises:

- an 'App'; a software application for use on the Android platform which captures and encodes audio (11,025 Hz 16 Bit mono at 64kbps – MP3) and dispatches the audio over a suitable network to our system. Features included:
  - Record/Stop
  - Pause (recorded message played to listeners during a break)
  - Profanity filter (replaces last 5 seconds of audio with pre-recorded message)
  - Meeting selection (pick the next meeting to broadcast – ad-hoc meetings not in CMS also supported)
  - Email based meeting set-up system
  - Agenda item tagging in real time (ad-hoc items can be added on the fly)
  - Current and peak listeners displayed
  - Publish/unpublish button (this can be done as soon as the meeting is over)
  - Back-up copy of meeting stored on host device
  - Security checksum stored (proves audio file has not been tampered with)
  - A test stream facility
- A branded web page and supporting web services hosted in the 'cloud' to capture, store and make available the live audio stream to up to 100 concurrent listeners
- An audio player to allow listeners to connect to the live stream on all recent web browsers
- A branded web page and supporting web services to make available up to 500 hours of archived audio recordings (more space is available – subject to agreement)
- An audio player to allow listeners to connect to the archived stream on all recent web browsers
- Web APIs to allow you to host a web page from which your listeners can connect to both live and archived audio
- Web APIs to connect to your Twitter account to facilitate agenda items to be Tweeted in real time
- Email support during normal working hours (Monday to Friday 8:30 am to 6:30 pm)

#### What is not included?

You will need the following:

- A suitable tablet from our recommended list (see website)
- A Samson Go Mic condenser microphone
- A USB Host OTG Cable
- A good quality Internet connection
- A subscription to the Audiominutes service