

# Caption Pro Terms & Conditions

LAST UPDATED JANUARY 2022

## **BACKGROUND:**

These Terms and Conditions, together with any and all other documents referred to herein, set out the terms of use under which you may use Caption Pro ("Our App"). Please read these Terms and Conditions carefully and ensure that you understand them. You will be required to read and accept these Terms and Conditions when signing up for an Account, logging in or purchasing a Subscription. If you do not agree to comply with and be bound by these Terms and Conditions, you will not be permitted to download, install or use the Software and you must stop using Our App immediately.

## **1. Definitions and Interpretation**

- 1.1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Account"</b>	Means an account required to access and use Our App, as detailed in Clause 4;
<b>"Content"</b>	means any and all text, images, audio, video, scripts, code, software, databases and any other form of information capable of being stored on a computer that appears on, or forms part of, Our App;
<b>"Contract"</b>	means the contract between Us and you for the purchase and sale of a Subscription to Our App, as explained in Clause 6;
<b>"Order"</b>	means your order for a Subscription;
<b>"Subscription Confirmation"</b>	means Our acceptance and confirmation of your Order;
<b>"Subscription"</b>	means a subscription to access Our App, purchased in accordance with these Terms and Conditions;
<b>"User"</b>	means a user of Our App;
<b>"User Content"</b>	means images uploaded by Users to Our App;
<b>"We/Us/Our"</b>	means Caption Pro Ltd, a limited company registered in England under company number 11370951, whose registered address is 125a, Valetta Road, London, United Kingdom, W3 7TA.

- 1.2. The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.3. Words imparting the singular number shall include the plural and vice versa.
- 1.4. References to any gender shall include the other gender.

## **2. Information About Us**

- 2.1. Our App is owned and operated by Caption Pro Ltd, a limited company registered in England under company number 11370951, whose registered address is 125a Valetta Road, London W3 7TG.

## **3. Access and Changes to Our App**

- 3.1. Access to Our App requires a Subscription. Upon purchasing a Subscription, Our App will be available to you for the duration of that Subscription and any and all subsequent renewals or until cancellation.
- 3.2. We may from time to time make changes to Our App:
  - 3.2.1. Minor changes may be required to make underlying technical alterations, for example, to fix an error or to address a security issue. We will inform you by in-app notification or email of any such changes (including, if applicable, anything that you need to do), however they will be unlikely to materially affect your use of Our App;
  - 3.2.2. Minor changes may be made to reflect changes in the law or other regulatory requirements. We will inform you by in app notification or email of any such changes (including, if applicable, anything that you need to do), however they will be unlikely to materially affect your use of Our App; and
  - 3.2.3. We may continue to develop and improve Our App over time, in some cases making significant changes to it. You will be kept fully informed of any and all such changes.
- 3.3. We will always aim to ensure that Our App is available at all times. In certain limited cases, however, We may need to temporarily suspend availability to make certain changes outlined under sub-Clause 3.2. Unless We are responding to an emergency or an urgent issue, We will inform you in advance of any interruptions to the availability of Our App.

## **4. Accounts**

- 4.1. An Account is required to use Our App.
- 4.2. You may not create an Account if you are under 18 years of age. If you are under 18 years of age and wish to use Our App, your parent or guardian should create the Account for you and you must only use the Account with their supervision.
- 4.3. When creating an Account, the information you provide must be accurate and complete. If any of your information changes at a later date, it is your responsibility to ensure that your Account is kept up-to-date.

- 4.4. We recommend that you choose a strong password for your Account, consisting of a combination of lowercase and uppercase letters, numbers, and symbols. It is your responsibility to keep your password safe. You must not share your Account with anyone else. If you believe your Account is being used without your permission, please contact Us immediately. We will not be liable for any unauthorised use of your Account.
- 4.5. You must not use anyone else's Account without the express permission of the User to whom the Account belongs.
- 4.6. Any personal information provided in your Account will be collected, used, and held in accordance with your rights and Our obligations under the Data Protection Act, as set out in Clause 21.
- 4.7. If you wish to close and delete your Account, you may do so at any time by contacting [support@caption-pro.com](mailto:support@caption-pro.com). We reserve the right to close and delete your account upon cancelling your subscription. Closing your Account will result in the removal of your information from Our system. If you have an active Subscription, cancelling it may make you lose access to your account immediately, in this case please contact [support@caption-pro.com](mailto:support@caption-pro.com) to have access granted for the remainder of your paid-for period. Closing your Account will cancel the auto-renewal of your Subscription, where applicable. Closing your Account will also remove any User Content that you have created or uploaded from Our system. It may take a number of weeks for all of the data you have supplied through your account to be permanently deleted from our system and the system allocated to facial recognition processing. To avoid losing anything that you have created or uploaded using Our App, please ensure that you save your User Content to your computer or device before closing your Account.

## **5.Subscriptions, Pricing and Availability**

- 5.1. We make all reasonable efforts to ensure that all general descriptions of the services available from Us (specifically, Our App) correspond to the actual services that will be provided to you. There may, however, be minor variations from descriptions from time to time.
- 5.2. Please note that sub-Clause 5.1 does not exclude Our responsibility for mistakes due to negligence on Our part and refers only to minor variations in Our services, not to different services altogether.
- 5.3. Where appropriate, you may be required to select your required Subscription. Different types of Subscription provide access to different features in Our App. Please ensure that you select the appropriate Subscription when prompted.
- 5.4. All pricing information is correct at the time of going online. We reserve the right to change prices and to add, alter, or remove special offers from time to time and as necessary. Changes will not affect Subscriptions that have already been purchased, but may affect renewals of Subscriptions.
- 5.5. In the unlikely event that We have shown incorrect pricing information, We may contact you in writing before processing your purchase to ask you how you wish to proceed. In this event We will not charge you or activate your Subscription until you respond. If We do not receive a response from you within 7 days, We will treat your purchase as cancelled and notify you accordingly in writing.

5.6. All prices do not include VAT unless otherwise stated.

## **6.Subscriptions – How Contracts Are Formed**

- 6.1. You will be guided through the Subscription process when you make a purchase. Before confirming a purchase, you will be given the opportunity to review your chosen Subscription and amend any errors in your Order. Please ensure that you check carefully before confirming your purchase.
- 6.2. No part of Our App, website or any other material constitutes a contractual offer capable of acceptance. By purchasing a Subscription, you are making Us a contractual offer that We may, at Our sole discretion, accept. Our acceptance is indicated by Us sending you a Subscription Confirmation by email. Only once We have sent you a Subscription Confirmation will there be a legally binding contract between Us and you (“the Contract”).
- 6.3. Subscription Confirmations may take the form of a purchase receipt in the case of purchases made through our online payment provider. In cases where payment has been completed through direct invoicing, the Subscription Confirmation may take the form of a direct email from a sales representative. Subscription Confirmations should contain the following information:
  - 6.3.1. Confirmation of your chosen Subscription including full details of the main characteristics and features of Our App available as part of that Subscription;
  - 6.3.2. Fully itemised pricing, including, where appropriate, taxes and other additional charges;
  - 6.3.3. Details of the duration of your Subscription including the start date and the end and/or renewal date;
- 6.4. If We do not accept or cannot process your Subscription purchase for any reason, no payment will be taken under normal circumstances. If We have taken payment in such circumstances, the payment will be refunded to you as soon as possible.
- 6.5. Subject to the cancellation provisions in Clause 8, once you have confirmed your Subscription purchase, your Subscription cannot be changed until the end or renewal date of that Subscription. Changes made to an auto-renewing Subscription will take effect when the Subscription is renewed.
- 6.6. By purchasing a Subscription, you are expressly requesting that you wish access to Our App to be made available to you immediately (and will be required to acknowledge this). If you are a consumer, this will result in your right to cancel during the “cooling-off” period being lost. Please be aware that We do not offer any Subscriptions that do not begin immediately. For more details of cancellation, please refer to Clause 8.
- 6.7. If upon downloading Our App you are given access to a limited free trial period these terms and conditions during this period still apply. The trial period will be limited in duration and upon completion of the time or processing allowance, you will be prompted to purchase a subscription in order to continue using Our App.

## **7.Payment**

- 7.1. Payment for Subscriptions will be due at the time of purchase and subsequent payment for additional content (such as the processing of additional images beyond those included in the standard subscription) will be debited at the end of the period at a rate stipulated during purchase or renewal of your Subscription. If your subscription includes discounts or specific payment options these are at the discretion of Caption Pro Ltd and will be outlined in the details of your offered subscription or stipulated in their correspondence with you. Your chosen payment method will be billed immediately upon confirmation of your Subscription.
- 7.2. We accept the following methods of payment:  
Most Debit and Credit cards.

## **8.Cancellation**

- 8.1. Consumers (but not business customers) in the European Union have a legal right to a “cooling-off” period within which distance sales contracts (including those formed online) can be cancelled for any reason. This period, if applicable, begins once a contract is formed and ends at the end of 14 calendar days after that date.
- 8.2. Please note that, as explained in sub-Clause 6.6, because access to Our App is made available immediately upon the purchase of a Subscription, the 14-day cooling-off period does not apply.
- 8.3. In lieu of the 14-day cooling-off period, We offer a limited short-term cancellation right to both consumers and business customers if you have purchased a Subscription by mistake or have allowed a Subscription to auto-renew when you did not want it to be renewed. Please contact Us within 2 days of the start date of the Subscription at support@caption-pro.com.
- 8.4. You may cancel at any time in the following limited circumstances:  
We have incorrectly described Our App or it is faulty (please refer to Clause 16 for more details); or  
We have informed you of an upcoming change to Our App or to these Terms and Conditions that you do not agree to; or  
We have informed you of an error in the price or description of your Subscription or Our App and you do not wish to continue; or  
There is a risk that the availability of Our App may be significantly delayed due to events outside of Our control; or  
We have breached these Terms and Conditions or have in any way failed to comply with Our legal obligations to you.
- 8.5. Subject to sub-Clause 8.4, non-renewing Subscriptions cannot be cancelled. (This is also subject to the short-term right set out in sub-Clause 8.3). Auto-renewing Subscriptions can be cancelled at any time, however (also subject to sub-Clause 8.4 and to sub-Clause 8.3), no refunds can be provided and you will continue to have access to Our App for the duration of the remainder of the Subscription period you are currently in (in cases where you lose access to the app after

cancelling please contact [support@caption-pro.com](mailto:support@caption-pro.com) to have your access granted manually). Cancelling an auto-renewing Subscription only prevents it from being auto-renewed.

- 8.6. To cancel a Subscription for any reason, please inform us using one of the following methods:

By telephone on 0207 157 9832; or

By email at [support@caption-pro.com](mailto:support@caption-pro.com); or

By contacting us via the In-App Chat.

- 8.7. We may ask you why you have chosen to cancel your Subscription and may use any answers you provide to improve Our App in the future, however please note that you are under no obligation to provide any details if you do not wish to.

- 8.8. Any and all refunds due to you will be made no later than 14 calendar days after the date on which We acknowledge your cancellation. Refunds will be made to your original payment method. Depending on the reason for the refund request, a partial refund may be granted and calculated based on the usage of the software during the period being refunded. This includes but is not limited to cases where We may deduct from your refund the cost of images processed during the period in question, at the rate stipulated in the subscription confirmation, or reduce the refund based on how many days you have had access to the software for up until the refund request. In any circumstances where we immediately remove access to the software upon cancellation, we may be in contact with you to issue a refund for the remaining duration of the paid for subscription period.

- 8.9. In certain limited circumstances, We may cancel your Subscription and/or close your Account. If We take such action, you will be notified by email and We will provide an explanation for the cancellation and/or closure. If your Account is closed and your Subscription cancelled because you have breached these Terms and Conditions, you will not be entitled to a refund. If you believe We have closed your Account and cancelled your Subscription in error, please contact Us at [support@caption-pro.com](mailto:support@caption-pro.com). If your Account is closed and/or your Subscription is cancelled for any other reason, you will be refunded the remainder of your Subscription fee. The refund will be calculated based upon the price of your Subscription being divided by the total number of days in the Subscription and multiplied by the number of whole days remaining until the end of the Subscription (or, in the case of auto-renewing Subscriptions, until the renewal date). Any and all refunds due to you will be made no later than 14 calendar days after the date on which the closure and/or cancellation becomes effective. Refunds will be made to your original payment method. You may still be charged based on usage where applicable, such as for images processed during that chargeable period.

## **9. Our Intellectual Property Rights and License**

- 9.1. We grant Users a limited, non-exclusive, revocable, worldwide, non-transferable license to use Our App to process and distribute images and apply metadata, for personal (including research and private study) and business purposes, subject to these Terms and Conditions.

- 9.2. Subject to the license granted to Us under sub-Clause 12.3, Users retain the

ownership of copyright and other intellectual property rights in their User Content (subject to any third party rights in that User Content and the terms of any license under which you use such Content).

9.3. All other Content included in Our App (including all user-facing material, and all underlying material such as code, software and databases) and the copyright and other intellectual property rights in that Content, unless specifically labeled otherwise, belongs to or has been licensed by Us. All Content is protected by applicable United Kingdom and international intellectual property laws and treaties.

9.4. By accepting these Terms and Conditions, you hereby undertake:

Not to copy or otherwise attempt to acquire any part of Our App;

Not to disassemble, decompile or otherwise reverse engineer Our App;

Not to allow or facilitate any use of Our App that would constitute a breach of these Terms and Conditions; and

Not to embed or otherwise distribute Our App on any website, ftp server or similar.

## **10. Links to Our App**

10.1. You may link to where Our App is hosted provided that:

10.1.1. You do so in a fair and legal manner;

10.1.2. You do not do so in a manner that suggests any form of association, endorsement or approval on Our part where none exists;

10.1.3. You do not use any of Our logos or trademarks (or any others displayed on Our App) without Our express written permission; and

10.1.4. You do not do so in a way that is calculated to damage Our reputation or to take unfair advantage of it.

10.2. You may not link to Our App from any other website the content of which contains material that:

10.2.1. Is sexually explicit;

10.2.2. Is obscene, deliberately offensive, hateful or otherwise inflammatory;

10.2.3. Promotes violence;

10.2.4. Promotes or assists in any form of unlawful activity;

10.2.5. Discriminates against, or is in any way defamatory of, any person, group or class of persons, race, sex, religion, nationality, disability, sexual orientation, or age;

10.2.6. Is designed or is otherwise likely to threaten, harass, annoy, alarm, inconvenience, upset, or embarrass another person;

10.2.7. Is calculated or is otherwise likely to deceive another person;

10.2.8. Is designed or is otherwise likely to infringe (or threaten to infringe) another person's privacy;

10.2.9. Misleadingly impersonates any person or otherwise misrepresents the identity or affiliation of a particular person in a way that is calculated to

deceive (obvious parodies are not included in this definition provided that they do not fall within any of the other provisions of this sub-Clause);

10.2.10. Implies any form of affiliation with Us where none exists;

10.2.11. Infringes, or assists in the infringement of, the intellectual property rights (including, but not limited to, copyright, trade marks, patents and database rights) of any other party; or

10.2.12. Is made in breach of any legal duty owed to a third party including, but not limited to, contractual duties and duties of confidence.

10.3. Please note that the content criteria described above in sub-Clause 10.2 apply only to content over which the owner and/or operator of the website in question has direct control. You will not, therefore, be in breach of these Terms and Conditions if, for example, other users of a website on which you establish a link to Our App post content such as comments that violate the above criteria.



## **11. Links to Other Content**

- 11.1. We may provide links to other content such as websites, Apps and downloadable apps. Unless expressly stated, this content is not under Our control. We neither assume or accept responsibility or liability for such third party content. The provision of a link by Us is for reference only and does not imply any endorsement of the linked content or of those in control of it.

## **12. User Content**

- 12.1. You agree that you will be solely responsible for any and all User Content that you create or upload using Our App. Specifically, you agree, represent and warrant that you have the right to create or upload the User Content and the right to use all materials of which it is comprised and that it will not contravene any aspect of Our Acceptable Usage Policy, detailed in Clause 14.
- 12.2. You agree that you will be liable to Us and will, to the fullest extent permissible by law, indemnify Us for any breach of the warranties given by you under sub-Clause 12.1. You will be responsible for any loss or damage suffered by Us as a result of such breach.
- 12.3. You (or your licensors/users as appropriate) retain ownership of your User Content and all intellectual property rights subsisting therein. By creating or uploading User Content, you grant Us permission to use, store, archive, transmit, edit, distribute, and display your User Content for, but not limited to, the purposes of operating Our App and fulfilling our services to you. You also grant permission for this content to be shared with our third party affiliates who we rely on for certain processes in order for Our App to function so that we may fulfill our service to you. For more detailed information about what data is shared and how it is used by these third parties, please contact us at [support@caption-pro.com](mailto:support@caption-pro.com) and we will direct you to where such information can be found.
- 12.4. If you wish to remove User Content, you may do so by deleting it within the App or contacting Us and we can process this request for you. Removing User Content also revokes the license granted to Us to use that User Content under sub-Clause 12.2. You acknowledge, however, that caching or references to your User Content may not be made immediately unavailable (or may not be made unavailable at all where they are outside of Our reasonable control).
- 12.5. We may reject, reclassify, or remove any User Content created or uploaded using Our App where that User Content, in Our sole opinion, violates Our Acceptable Usage Policy, or if We receive a complaint from a third party and determine that the User Content in question should be removed as a result.
- 12.6. Whereby your Subscription stipulates that you gain access to a shared database, you give permission for your relevant User Content to be displayed, edited and distributed to other users who also have access to the shared database for the duration of your Subscription or whilst you specifically have access to the shared database feature.

- 12.7. If you are using the software from access given through an agency package whereby the accounts are managed or paid for by an umbrella organisation, any User Content you upload to the shared database may remain in our system and part of that database, accessible to its other members beyond the closure of your account. In order to request a specific user's data, Content or database contributions to be removed from a business-controlled agency account please have an administrator for that account contact us at [support@caption-pro.com](mailto:support@caption-pro.com).
- 12.8. If you are an umbrella organisation or company providing accounts for your employees, freelancers or contributors to use, it is your responsibility to ensure that those users understand that their uploaded User Content will be contributing to the company owned and managed database and that their Content will be saved and processed appropriately in accordance with the requirements associated with providing all relevant company users access to the shared facial recognition database, for the duration of that agency account's existence or until the specific data gets deleted or replaced by an administrator. If they request for us to have their contributions deleted we will require a company administrator to authenticate and confirm the deletion of such information.

### **13. Intellectual Property Rights and User Content**

- 13.1. All User Content and the intellectual property rights subsisting therein, unless specifically labeled otherwise, belongs to or has been licensed by the relevant User. All User Content is protected by applicable United Kingdom and international intellectual property laws and treaties.
- 13.2. Users may not copy, distribute, publicly display, reproduce or create derivative works based upon, another User's User Content without first obtaining the express consent of the User to whom the User Content in question belongs.
- 13.3. We take technical measures to restrict the ability of Users to unlawfully copy User Content using Our App. Despite such measures, We can not be held responsible for the unlawful copying of such content without your permission.

### **14. Acceptable Usage Policy**

- 14.1. You may only use Our App in a manner that is lawful and that complies with the provisions of this Clause 14. Specifically:
- 14.1.1. You must ensure that you comply fully with any and all applicable local, national and international laws and/or regulations;
  - 14.1.2. You must not use Our App in any way, or for any purpose that is unlawful or fraudulent;
  - 14.1.3. You must not use Our App to knowingly send, upload, or in any other way transmit data that contains any form of virus or other malware, or any other code designed to adversely affect computer hardware, software or any data of any kind; and
  - 14.1.4. You must not use Our App in any way, or for any purpose, that is intended to harm any person or persons in any way.
- 14.2. The following types of User Content are not permitted on Our App and you must not create, submit, communicate or otherwise do anything that:
- 14.2.1. is sexually explicit;

- 14.2.2. is obscene, deliberately offensive, hateful, or otherwise inflammatory;
  - 14.2.3. promotes violence;
  - 14.2.4. promotes or assists in any form of unlawful activity;
  - 14.2.5. discriminates against, or is in any way defamatory of, any person, group or class of persons, race, sex, religion, nationality, disability, sexual orientation, or age;
  - 14.2.6. is intended or otherwise likely to threaten, harass, annoy, alarm, inconvenience, upset, or embarrass another person;
  - 14.2.7. is calculated or otherwise likely to deceive;
  - 14.2.8. is intended or otherwise likely to infringe (or threaten to infringe) another person's right to privacy;
  - 14.2.9. misleadingly impersonates any person or otherwise misrepresents your identity or affiliation in a way that is calculated to deceive (obvious parodies are not included within this definition provided that they do not fall within any of the other provisions of this sub-Clause 14.2);
  - 14.2.10. implies any form of affiliation with Us where none exists;
  - 14.2.11. infringes, or assists in the infringement of, the intellectual property rights (including, but not limited to, copyright, patents, trade marks and database rights) of any other party; or
  - 14.2.12. is in breach of any legal duty owed to a third party including, but not limited to, contractual duties and duties of confidence.
- 14.3. We reserve the right to suspend or terminate your Account and/or your access to Our App if you materially breach the provisions of this Clause 14 or any of the other provisions of these terms and conditions. Specifically, We may take one or more of the following actions:
- 14.3.1. Suspend, whether temporarily or permanently, your Account and/or your right to access Our App (for more details regarding such cancellation, please refer to sub-Clause 8.9);
  - 14.3.2. Remove any of your User Content which violates this Acceptable Usage Policy;
  - 14.3.3. Issue you with a written warning;
  - 14.3.4. Take legal proceedings against you for reimbursement of any and all relevant costs on an indemnity basis resulting from your breach;
  - 14.3.5. Take further legal action against you as appropriate;
  - 14.3.6. Disclose such information to law enforcement authorities as required or as we deem reasonably necessary; and/or
  - 14.3.7. Any other actions which We deem reasonably appropriate (and lawful).
- 14.4. In the event that information is stored, or the biometric information is processed within Caption Pro, of a child below the age of 16 years, consent must be given or authorised by the holder of parental responsibility over the child. It is the responsibility of the user to be able to provide proof of such permission.
- 14.5. It is the responsibility of any user or administrator in control of a private database to delete the record of any person should they request it, or if they have

unlawfully processed the person's information in the first place. Any requests from people whose data is being stored by a user of Caption Pro to have their data made available or deleted needs to be made known to the admin of the account so they can be deleted. Additionally users must inform us at [privacy@caption-pro.com](mailto:privacy@caption-pro.com) of any request to be deleted from a user's database or for someone's data to be made available if the user is unable to fulfil that request for any reason.

- 14.6. Users should only process images and identify people within an image as long as doing so is compliant with the guidelines set out by the General Data Protection Regulation (GDPR). More information on these guidelines can be found here: <https://ico.org.uk>. It is the responsibility of users to provide model release forms to attain and record permission to process the biometric information of individuals when necessary. As such, it is advised to only use the software to process images and identify individuals within images for journalistic and newsworthy purposes, if you have explicit consent, or if there is another legitimate reason valid under the regulations of the GDPR.
- 14.7. Users or Businesses will not use the software, or any Content created with the software, in any way to help develop or improve, directly or indirectly a conflicting or competing product or service, or that of any Artificial Intelligence services other than those used by Caption Pro in order to fulfill their service to you. Additionally you may not:
  - 14.7.1. Modify the Software in any way;
  - 14.7.2. Reverse engineer, decompile or disassemble the Software;
  - 14.7.3. Create derivative works based on the Software;
  - 14.7.4. Reproduce the Software (subject to the right to make additional copies of the installation package for installation and use of the Software on one additional computer, with a limit of it being installed on two computers per user account in total);
  - 14.7.5. Resell the Software; or
  - 14.7.6. Sub-licence the Software.
- 14.8. We hereby exclude any and all liability arising out of any actions (including, but not limited to, those set out above) that We may take in response to breaches of these Terms and Conditions.

## **15. Advertising**

- 15.1. We may feature advertising within Our App and We reserve the right to display advertising on the same page as any User Content.
- 15.2. You agree that you will not attempt to remove or hide any advertising using HTML/CSS or by any other method.
- 15.3. We are not responsible for the content of any advertising in Our App. Each advertiser is responsible for the content of their own advertising material. We will not be responsible for any advertising in Our App including, but not limited to, any errors, inaccuracies, or omissions.

## **16. Problems with Our App and Consumers' Legal Rights**

- 16.1. If you have any questions or complaints regarding Our App, please email Us at

[support@caption-pro.com](mailto:support@caption-pro.com) or by using any of the methods provided in the app or on our website.

16.2. If you are a consumer, you have certain legal rights under the Consumer Rights Act 2015 that may apply to Our App:

16.2.1. Any digital Content provided by Us must be as described, fit for purpose, and of satisfactory quality. If digital Content is faulty, you may be entitled to a repair or replacement. If a fault cannot be remedied, or has not been remedied within a reasonable time and without significant inconvenience to you, you may be entitled to a full or partial refund. If, as a result of Our failure to exercise reasonable care and skill, any digital Content of which Our App is comprised (that is not User Content) damages your device or other digital content belonging to you, you may be entitled to a repair or compensation. Any services provided by Us must be provided with reasonable care and skill and in compliance with information provided by Us. If We fail to do so, you may be entitled to require Us to repeat or otherwise fix the problem or, if We cannot provide such a remedy, a full or partial refund. For more details concerning your rights and remedies as a consumer, please contact your local Citizens Advice Bureau or Trading Standards Office.

## **17. Disclaimers**

17.1. No part of Our App or any accompanying documentation (whether provided in electronic form or otherwise) constitutes advice on which you should rely and is provided for general information purposes only.

17.2. Subject to your legal rights if you are a consumer (as summarised above in Clause 16), insofar as is permitted by law, We make no representation, warranty, or guarantee that Our App will meet your requirements, that it will be fit for a particular purpose, that it will not infringe the rights of third parties, that it will be compatible with all software and hardware, or that it will be secure.

17.3. We make reasonable efforts to ensure that the content contained within Our App is complete, accurate and up-to-date. We do not, however, make representations, warranties or guarantees (whether express or implied) that Our App (and the content therein) is complete, accurate or up-to-date.

17.4. We are not responsible for the content or accuracy, or for any opinions, views, or values expressed in any User Content created or uploaded using Our App. Any such opinions, views, or values are those of the relevant User, and do not reflect Our opinions, views, or values in any way.

17.5. We are not obliged to carry out any additional tasks, such as edit, redistribute or transfer User Content, or any Content created using the software, back to the user or organisation, outside of those required to fulfil the stated functionality of the application.

## **18. Our Liability**

18.1. If you are a consumer, We will be liable to you for any foreseeable loss or damage that is caused by Us as a result of Our breach of these Terms and Conditions or Our failure to exercise reasonable care and skill. Loss or damage is foreseeable if

it is either obvious that it will occur or was contemplated by you and Us when the Contract between us was formed.

- 18.2. If you are a business, to the fullest extent permissible by law, We accept no liability for any foreseeable loss in contract, tort (including negligence), for breach of statutory duty, or otherwise arising out of or in connection with the use of (or inability to use) Our App or the use of or reliance upon any Content (whether that Content is provided by Us or whether it is User Content) included in Our App.
- 18.3. To the fullest extent permissible by law, We accept no liability to consumers or businesses for loss or damage that is not foreseeable.
- 18.4. To the fullest extent permissible by law, We exclude all representations, warranties, and guarantees (whether express or implied) that may apply to Our App or any Content (including User Content) included in Our App.
- 18.5. If you are a business, We accept no liability for loss of profits, sales, business or revenue; loss of business opportunity, goodwill or reputation; loss of anticipated savings; business interruption; or for any indirect or consequential loss or damage.
- 18.6. We exercise all reasonable skill and care to ensure that Our App is free from viruses and other malware. Subject to sub-Clause 16.2.1, We accept no liability for any loss or damage resulting from a virus or other malware, a distributed denial of service attack, or other harmful material that may adversely affect your hardware, software, data or other material that occurs as a result of your use of Our App (including the downloading of any Content (including User Content) from it) or any other website or service that We may provide a link to.
- 18.7. We neither assume nor accept responsibility or liability arising out of any disruption or non-availability of Our App resulting from external causes including, but not limited to, ISP equipment failure, host equipment failure, communications network failure, natural events, acts of war, or legal restrictions and censorship.
- 18.8. Nothing in these Terms and Conditions excludes or restricts Our liability in any situation where it would be unlawful for us to do so including fraud or fraudulent misrepresentation, for death or personal injury resulting from negligence, or for any other forms of liability which cannot be excluded or restricted by law. For full details of applicable consumers' legal rights, including those relating to digital content, please contact your local Citizens' Advice Bureau or Trading Standards Office.
- 18.9. We are not liable for any inaccuracies in the suggestions provided by our App nor are we responsible for the consequences of any mis-captioned images as a result of incorrectly identified people.
- 18.10. The celebrity database we rely on is by no means exhaustive and the people included or missed out from this database is in no way a reflection of our opinion of their celebrity status.
- 18.11. We can not be held responsible for incorrectly named people nor the consequences of such, in relation to that information being shared and displayed among team or agency databases. It is the responsibility of the user to accurately confirm and maintain the records within these databases.

## **19. Viruses, Malware and Security**

- 19.1. We exercise all reasonable skill and care to ensure that Our App is secure and free from viruses and other malware. We do not, however, guarantee that Our App is secure or free from viruses or other malware and accept no liability in respect of the same, as detailed in sub-Clause 18.6.
- 19.2. You are responsible for protecting your hardware, software, data and other material from viruses, malware and other internet security risks.
- 19.3. You must not deliberately introduce viruses or other malware, or any other material which is malicious or technologically harmful either to or via Our App.
- 19.4. You must not attempt to gain unauthorised access to any part of Our App, the server on which Our App is stored, or any other server, computer, or database connected to Our App.
- 19.5. You must not attack Our App by means of a denial of service attack, a distributed denial of service attack, or by any other means.
- 19.6. By breaching the provisions of sub-Clauses 19.3 to 19.5 you may be committing a criminal offence under the Computer Misuse Act 1990. Any and all such breaches will be reported to the relevant law enforcement authorities and We will cooperate fully with those authorities by disclosing your identity to them. Your right to use Our App will cease immediately in the event of such a breach and, where applicable, your Account will be suspended and/or deleted.

## **20. Privacy and Cookies**

- 20.1. The Use of Our App is also governed by Our Privacy and Cookie Policy, available from <https://caption-pro.com/privacy-policy>. This policy is incorporated into these Terms and Conditions by this reference.

## **21. Data Protection**

- 21.1. All personal information that We may collect (including, but not limited to, your name and contact details) will be collected, used, and held in accordance with the provisions of the Data Protection Act 1998 and your rights and Our obligations under that Act. Under certain circumstances we may also obtain details about your computer's system configuration and its IP and MAC addresses.
- 21.2. We may use your personal information to:
  - 21.2.1. Reply to any communications that you send to Us;
  - 21.2.2. Send you important notices, as detailed in Clause 22;
- 21.3. We will not pass your personal information on to any third parties without first obtaining your express permission to do so.
- 21.4. Further information regarding what data we collect and how we use it can be found in our Privacy Policy: <https://caption-pro.com/privacy-policy>

## **22. Communications from Us**

- 22.1. If you have an Account, We may from time to time send you important notices by email. Such notices may relate to matters including, but not limited to, service changes, changes to these Terms and Conditions, changes to Our App, and changes to your Account.
- 22.2. We will never send you marketing emails of any kind without your express consent. If you do give such consent, you may opt out at any time. Any and all marketing emails sent by Us include an unsubscribe link. If you opt out of receiving emails from Us at any time, it may take a few business days for Us to comply with your request. During that time, you may continue to receive emails from Us.
- 22.3. For questions or complaints about email communications from Us (including, but not limited to, marketing emails), please contact Us at [support@caption-pro.com](mailto:support@caption-pro.com)

## **23. Other Important Terms**

- 23.1. We may transfer (assign) Our obligations and rights under these Terms and Conditions (and under the Contract, as applicable) to a third party (this may happen, for example, if We sell Our business). If this occurs, you will be informed by Us in writing. Your rights under these Terms and Conditions will not be affected and Our obligations under these Terms and Conditions will be transferred to the third party who will remain bound by them.
- 23.2. You may not transfer (assign) your obligations and rights under these Terms and Conditions (and under the Contract, as applicable) without Our express written permission.
- 23.3. The Contract is between you and Us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any provision of these Terms and Conditions.
- 23.4. If any of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable by any court or other authority, that / those provision(s) shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.
- 23.5. No failure or delay by Us in exercising any of Our rights under these Terms and Conditions means that We have waived that right, and no waiver by Us of a breach of any provision of these Terms and Conditions means that We will waive any subsequent breach of the same or any other provision.



## **24. Changes to these Terms and Conditions**

24.1. We may alter these Terms and Conditions at any time. Any such changes will become binding on you upon your first use of Our App after the changes have been implemented. You are therefore advised to check this page from time to time.

In the event of any conflict between the current version of these Terms and Conditions and any previous version(s), the provisions current and in effect shall prevail unless it is expressly stated otherwise.

## **25. Contacting Us**

25.1. To contact Us, please email Us at [support@caption-pro.com](mailto:support@caption-pro.com) or by using any of the methods provided in our app or on our website.

## **26. Law and Jurisdiction**

26.1 These Terms and Conditions, the Contract, and the relationship between you and Us (whether contractual or otherwise) shall be governed by, and construed in accordance with the law of England & Wales.

26.2 If you are a consumer, you will benefit from any mandatory provisions of the law in your country of residence. Nothing in Sub-Clause 26.1 above takes away or reduces your rights as a consumer to rely on those provisions.

26.3 If you are a consumer, any dispute, controversy, proceedings or claim between you and Us relating to these Terms and Conditions, the Contract, or the relationship between you and Us (whether contractual or otherwise) shall be subject to the jurisdiction of the courts of England, Wales, Scotland, or Northern Ireland, as determined by your residency.

26.4 If you are a business, any disputes concerning these Terms and Conditions, the relationship between you and Us, or any matters arising therefrom or associated therewith (whether contractual or otherwise) shall be subject to the exclusive jurisdiction of the courts of England and Wales.