

Nuance® Healthcare EULA

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Nuance® Healthcare

HOSTED SERVICES SUBSCRIPTION AGREEMENT

(for Dragon® Medical One, PowerMic® Mobile, and other Nuance® Hosted Services)

Revised July 1, 2019

THIS HOSTED SERVICES SUBSCRIPTION AGREEMENT (THE "**AGREEMENT**") IS BETWEEN NUANCE COMMUNICATIONS, INC. ("NUANCE") AND YOU, THE HEALTHCARE ENTITY OR SOLE PROPRIETOR (THE "**COMPANY**" OR "**END USER**") THAT IS PURCHASING SUBSCRIPTION LICENSES TO NUANCE HOSTED SERVICES PURSUANT TO AN ORDER PLACED WITH AN AUTHORIZED RESELLER THAT INCORPORATES THIS AGREEMENT BY REFERENCE OR BY ATTACHMENT (AN "**ORDER**").

THIS AGREEMENT DEFINES THE TERMS AND CONDITIONS APPLICABLE TO COMPANY'S ACCESS TO AND USE OF THE HOSTED SERVICES (DEFINED BELOW) THAT ARE IDENTIFIED IN ONE OR MORE ORDERS. THIS AGREEMENT SUPERSEDES ANY CLICK-THROUGH LICENSES THAT MAY BE PRESENTED TO COMPANY OR ITS AUTHORIZED USERS IN THE COURSE OF ACCESSING THE HOSTED SERVICES OR INSTALLING THE NUANCE SOFTWARE (DEFINED BELOW).

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE EXECUTING AN ORDER FOR THE HOSTED SERVICES. WHEN COMPANY EXECUTES AN ORDER FOR HOSTED SERVICES, THIS AGREEMENT BECOMES A BINDING AND ENFORCEABLE CONTRACT BETWEEN NUANCE AND COMPANY FOR THE DURATION OF THE SUBSCRIPTION TERM DEFINED IN THE ORDER. AFTER COMPANY EXECUTES THE ORDER, COMPANY MAY NOT CANCEL OR TERMINATE THE ORDER, THIS AGREEMENT OR THE SUBSCRIPTION LICENSES DURING THE SUBSCRIPTION TERM EXCEPT FOR CAUSE AS AUTHORIZED BY THIS AGREEMENT.

IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT EXECUTE THE ORDER.

PLEASE NOTE THIS AGREEMENT GRANTS COMPANY NON-EXCLUSIVE RIGHTS TO USE CERTAIN HOSTED SERVICES AND RELATED SOFTWARE AND SERVICES BUT DOES NOT CONSTITUTE A SALE OR TRANSFER OF ANY SOFTWARE CODE.

General Terms and Conditions

This Agreement consists of the following terms and conditions (the "**General Terms and Conditions**") and all Exhibits and Schedules attached to or incorporated by reference in this Agreement. Nuance and Company are each sometimes referred to in this Agreement individually as a "**Party**", and collectively as the "**Parties**."

For good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Company and Nuance agree to the following terms and conditions with respect to the Services that Company acquires based on one or more Orders.

1. **Definitions.** The following terms used in this Agreement shall have the meanings set forth below:
 1. "**Affiliate**" means any entity that is directly or indirectly controlled by, under common control with, or in control of a Party to this Agreement. For these purposes, an entity shall be treated as being controlled by another entity if: (i) that other entity has fifty percent (50%) or more of the voting power in such entity, or (ii) is able to direct such entity's affairs and/or to control the composition of its board of directors or equivalent body.
 2. "**Authorized Reseller**" means the Nuance authorized reseller identified in the Order(s).
 3. "**Authorized User**" means an individual who is authorized by Company to be a registered user of one of Company's Subscription Licenses on the terms permitted by this Agreement and who is a Company employee or officer, a partner in Company's business if legally organized as a partnership, or an independent contractor who provides services to Company. If Company is a sole proprietor, Company is also the Authorized User.
 4. "**Data**" means the speech data, audio files and/or text data input via the Hosted Services and Nuance Software and all data elements output via the Hosted Services and Nuance Software (including voice-to-text conversions, interpretation of clinical contents, structured data in xml or other format), associated transcripts or medical reports, whether in draft or final form, any information received from Company from any Order under this Agreement, or any other clinical information received by Nuance from Company under this Agreement. Data may include PHI or Personal Information as such terms are defined in Exhibit B to this Agreement.

5. **"Distributor"** means an entity appointed by Nuance to act a distributor of the Hosted Services who has engaged the Authorized Reseller as a reseller of those Hosted Services. Resellers may contract directly with a Distributor or the Distributor's authorized third party provider for payment processing, order management and other administrative services and Resellers may subcontract the delivery of the End User Training Package to such third party providers.
6. **"Documentation"** means the administrative guide and user's guide provided by Nuance to Company to facilitate the use of the Nuance Software and Hosted Services.
7. **"Hosted Service"** means each Nuance hosted service described in the Schedule, as identified in an Order, to which Nuance provides access via the internet as a cloud-based software-as-a-service (SaaS) offering hosted by or on behalf of Nuance at one or more secure data centers, the location of which may be changed at Nuance's discretion.
8. **"NMS"** and **"NMS Account"** mean, respectively, the hosted version of Nuance's proprietary Nuance Management Server software as described Section 3.7 ("NMS"), and the Subscription License management account that Distributor and/or Authorized Reseller create, manage and maintain for Company using NMS.
9. **"Nuance Software"** means the binary object code version of any Nuance proprietary thin client software or Web application that Nuance provides to Company and its Authorized Users that provides functionality on a supported device (as identified in the Documentation) for accessing and utilizing a Hosted Service. "Nuance Software" includes all corrections, modifications, enhancements, updates and upgrades to the Nuance Software, if any, that Nuance may provide to Company under this Agreement, and all related Documentation.
10. **"Order"** means an order that Company executes through an Authorized Reseller, pursuant to which Company commits to purchasing the Subscription Licenses and other Services identified in the Order, subject to the terms of this Agreement. An Order includes any Statement of Work that is attached to or incorporated by reference in the Order.
11. **"Professional Services"** means any of the installation, project management, and/or consulting services that Nuance is contracted to provide to Company using its own personnel as indicated in an order. Professional Services as a defined term in this Agreement does not include the End User Training Package or other professional services or training services that Company purchases from an Authorized Reseller or Distributor.

12. **"Schedule"** means the document attached here as **Exhibit A** that lists the Hosted Services that are covered by this Agreement if purchased by Company pursuant to an Order, and which includes any Hosted Service-specific license rights and obligations that apply in addition to these General Terms and Conditions.
13. **"Services"** means the Hosted Services, Training Services, and Professional Services Company acquires pursuant to an Order.
14. **"Statement of Work"** or "SOW" means any supplement to an Order that describes in further detail the End User Training Package (as defined in Section 2.3) or other Professional Services and/or Training Services identified in the Order.
15. **"Subscription License"** means the per-user license that Nuance grants to Company in this Agreement for each Subscription License identified in an Order. Each Subscription License allows Company to permit a single Authorized User to access and use a single Hosted Service and the Nuance Software associated with that Hosted Service, if any, during the Subscription Term pursuant to the terms of this Agreement and the applicable Order and Schedule terms.
16. **"Subscription Start Date"** means the first day of the Subscription Term, which for each Subscription License shall be the date that Distributor creates Company's NMS Account and/or enables use of the Subscription License, after which Authorized Reseller will send Company the welcome letter and access codes necessary to use the Hosted Service.
17. **"Subscription Term"** means the duration of each Subscription License which defines the period during which Company is authorized to use the Hosted Service covered by the Subscription License and the period during which Company is committed to paying for such Hosted Service. The Subscription Term will be 36 months beginning on the Subscription Start Date unless a different Subscription Term is indicated in the End User Order. The Subscription Term may also be identified in the Order as the Service Term, Order Term or by a similar term indicating the duration of the Subscription Licenses.
18. **"Term"** means the duration of this Agreement as defined in Section 6.1 of the General Terms and Conditions.
19. **"Territory"** means the United States excluding its territories and possessions.
20. **"Training Services"** any of training services that Nuance is contracted to provide to Company using its own personnel as indicated in an order. Training Services as a defined term in this Agreement does not include the End User Training Package or other professional services or training services that Company purchases from an Authorized Reseller or Distributor.

2. **PROVISION OF SERVICES.**

1. **Hosted Services.** Nuance will provide Company with access to and use of the Hosted Services identified in an Order during the Subscription Term of each Subscription License, subject to the terms of this Agreement. Nuance will host, operate and maintain the equipment and software comprising the Hosted Services.
2. **Hosted Services Support.** During the Subscription Term, Authorized Reseller will provide Company with the telephone question and answer support for the Hosted Services as described in the Order, provided Company is current in its payment obligations. Authorized Reseller may subcontract the delivery of these support services to the Distributor or a Distributor affiliate, which will be disclosed in the Order, but will remain responsible to Company for the performance of these services.
3. **Professional Services and Training Services.** Authorized Reseller will require Company to purchase an End User Training Package for each Subscription License to ensure proper use and adoption of the Hosted Services. The End User Training Package consists of a defined training program that Authorized Reseller will deliver to each Authorized User based on Nuance's proprietary training curriculum and methodology that Authorized Reseller, Distributor and Distributor's third party servicer have been authorized to use. Authorized Reseller may subcontract the delivery of the End User Training Package to the Distributor or Distributor's third party servicer, which will be disclosed in the Order, but Authorized Reseller will remain responsible to Company for the performance of these services. Company agrees to promptly schedule and to participate in the training provided as part of the End User Training Package. In addition, Company may purchase additional Professional Services and Training Services to be delivered by Nuance if custom implementation services are required. Unless otherwise indicated in the Order or Statement of Work, Professional Services and Training Services will be provided during Nuance's normal business hours. Company shall ensure that all Authorized Users attend the required training sessions and that all attendees are registered Authorized Users and have the skills and experience to participate in the training sessions. If End User Training Packages, Professional Services or Training Services are provided at facility other than the service provider's facilities, Company shall provide or arrange for the necessary equipment, information, and facilities that the service provider requires. Company may purchase additional professional services and training services to be delivered by the Authorized Reseller, Distributor or their agents. Nuance shall have no responsibility for any services not delivered directly by Nuance personnel.

4. **Infrastructure and Services.** Company is responsible for providing and/or modifying at its own expense all computer hardware, software, communications equipment, telecommunications services, internet connectivity, firewall functionality and related infrastructure that are necessary for Authorized Users to access and use the Hosted Services (collectively, the "**Systems**") as recommended in the Documentation. Company will provide Systems access and information to Authorized Reseller, Distributor and Nuance to the extent reasonably required by any of them in order to provide Services to Company. Company agrees to provide a reasonably skilled individual who shall serve as the Company's contact person in connection with the provision of services to Company, and shall maintain a knowledgeable employee or contractor who will assist with any issues that may arise during routine operation of the Hosted Services during the Subscription Term. Company acknowledges its responsibility to adequately test use of the Nuance Software and Hosted Services in a configuration that reasonably simulates Company's planned production environment before initial production use and before continued use following any change to such environment.
5. **Data Back-up.** Company acknowledges that the Hosted Services do not serve as a repository for Company's Data and it is Company's responsibility to store and regularly back-up its Data.

3. **GRANT OF RIGHTS.**

1. **Subscription License Grant.** Subject to the terms and conditions of this Agreement and any additional requirements or restrictions indicated in the Schedule, Nuance grants to Company, and Company accepts the following licenses.

1. Licenses. For each Subscription License to a particular Hosted Service that Company purchases, as indicated in the applicable Order, Nuance hereby grants Company, and Company accepts, a revocable, non-exclusive, non-transferable, limited right to allow a single Authorized User at Company's healthcare facility:
 - (a) to remotely, via the Internet, access and use that Hosted Service during the Subscription Term solely from within the Territory; provided such access and use is: (i) in a manner commensurate with the intended use of the Hosted Services (as prescribed by this Agreement, and the Documentation), and (ii) solely for Company's internal business purposes associated with that healthcare facility;
 - (b) to use the Nuance Software during the Subscription Term solely within the Territory for the sole and limited purpose of accessing and using that Hosted Services in connection with the rights granted in subsection 3.1.1(a) and to download and copy the Nuance Software to as many devices as reasonably necessary to exercise the right granted in subsection 3.1.1(a), provided that all such use and copying is in a manner commensurate with the intended use of the Nuance Software as prescribed by this Agreement and the Documentation.
2. Restrictions. Company shall not allow any Authorized User to access and use the Hosted Services or the Nuance Software for the Authorized User's own personal use or the benefit of any third party. Company and its Authorized Users shall not (i) allow anyone other than the Authorized Users to access or use the Hosted Services or the Nuance Software, or any components thereof, or (ii) interfere with or disrupt the integrity or performance of the Hosted Services.

3. Reassignment of Subscription Licenses to Different Authorized Users. If an Authorized User ceases to be a Company employee or contractor or elects to cease using a Hosted Service for the remainder of the Subscription Term, Company may request in writing that Authorized Reseller reassign Authorized User's Subscription License to another Company employee or contractor. Each Subscription License may be reassigned once per 12-month period. Any request for an additional reassignment in a 12-month period will require Nuance's written consent, which it may grant in its sole discretion. Company will be required to purchase an additional End User Training Package in connection with each reassignment of a Subscription License. In order to activate the reassignment, Authorized Reseller will arrange for Distributor or Distributor's agent to terminate the former Authorized User's user profile within NMS and will create a user profile for the new Authorized User. The former Authorized User's right to use the Applicable Software shall immediately terminate when the reassignment is effective and Company shall promptly terminate the former Authorized User's use of the Hosted Services and ensure that the Nuance Software is uninstalled from the former Authorized User's devices. The reassignment of a Subscription License pursuant to this Section will be considered a continuation of the original Subscription License and will not constitute an early termination or default, provided that Company continues to make timely payment of the Monthly License Fee without interruption.
2. **Proprietary Rights.** All rights not expressly granted to Company under this Agreement are reserved by Nuance and/or its licensors. Notwithstanding any use of the term "sale," "purchase" or other similar terms in this Agreement, Nuance and its licensors retain all right, title and interest in and to the Hosted Services and Nuance Software, and any derivative works thereof, including, but not limited to, all patent, copyright, trade secret, and trademark rights and other intellectual property rights associated with the Hosted Services and Nuance Software. In no event shall anything in this Agreement or in Nuance's conduct or course of dealing convey any license, by implication, estoppel or otherwise, under any patent, copyright, trademark or other intellectual property right not explicitly licensed.

3. **Restrictions.** Without limiting the generality of Section 3.2, Company will not itself, directly or indirectly, and will not permit Authorized Users, employees, contractors, or any third party to do any of the following: (i) access the Hosted Services with software or means other than as described in this Agreement, submit any automated or recorded requests to the Hosted Services except as otherwise provided in this Agreement, or interfere with or disrupt the integrity or performance of the Hosted Services; (ii) subject any Hosted Service or its infrastructure to security testing including penetration testing, network discovery, port and service identification, vulnerability scanning, password cracking, or remote access testing without the written approval of Nuance; (iii) modify, port, translate, or create derivative works of the Hosted Services, Nuance Software or Documentation; (iv) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Hosted Services or Nuance Software by any means (except to the extent permitted by mandatory laws); (v) sell, lease, license, sublicense, copy, assign, transfer, share, market, or distribute the Hosted Services, Nuance Software or Documentation, except as expressly permitted in this Agreement; (vi) grant any access to, or use of, the Nuance Software or Hosted Services through a service bureau, timesharing or application service provider basis; (vii) remove any proprietary notices, labels or marks from the Hosted Services, Nuance Software, or Documentation; (viii) release to a third party the results of any benchmark testing of the Hosted Services or Nuance Software; or (ix) defeat or circumvent any controls or limitations contained in or associated with the use of the Hosted Services or Nuance Software.
4. **Compliance by Authorized Users.** Company is responsible for each Authorized User's compliance with the terms of this Agreement and guarantees each Authorized User's full and faithful compliance with the terms of this Agreement. Company will be liable for any act or omission by an Authorized User that, if performed or omitted by Company, would be a breach of this Agreement. Except to the extent of Nuance's liability under Section 11.1, Company will, at its expense, defend any and all claims, actions, suits, or proceedings made or brought against Nuance by any Authorized User with respect to this Agreement (each, a "User Claim"), and pay any losses, claims, costs, expenses, damages, or liabilities (including reasonable attorneys' fees) incurred by Nuance arising from a User Claim. Company shall promptly notify Nuance upon learning of any actual or suspected unauthorized possession or use of any Software or Hosted Services supplied under this Agreement.
5. **Notice of Unauthorized Use.** Company shall promptly notify Nuance upon learning of any actual or suspected unauthorized possession or use of any Software or Hosted Services supplied under this Agreement.

6. **Updates and Upgrades.** From time to time, Nuance may provide Company and its Authorized Users with updated or upgraded versions of the Nuance Software, which Nuance may distribute directly or through the Authorized Reseller or Distributor. Company is required to implement and deploy such updates and upgrades to Authorized Users within 12 (twelve) months from Nuance's release date unless otherwise authorized by Nuance in writing. Following Nuance's general release of an upgrade that constitutes a new version of the Nuance Software (defined as an upgrade increment of 0.1 or higher), Nuance will continue to support the immediately preceding version of the Nuance Software for 12 (twelve) months from the date of Nuance's general release of the new version and at any point in time will support any other version released within the preceding 12 months. Upon installation of a Nuance Software update or upgrade, Company shall discontinue use of the previous version of such Nuance Software and Company will be licensed to use only the updated or upgraded version of the Nuance Software. From time to time, Nuance may enhance and modify a Hosted Service provided such changes do not significantly reduce its functionality.
7. **NMS Account Management.** Company's use and administration of the Subscription Licenses and the creation of user profiles for its Authorized Users is managed by Nuance's proprietary Nuance Management Server software ("NMS") which is hosted by Nuance. NMS constitutes part of the Hosted Services. Nuance has contracted with Authorized Reseller and Distributor to administer the NMS Console portion of NMS for Company and Company consents to having Authorized Reseller, Distributor or their authorized agents provide such administrative services. Company will provide reasonable cooperation and assistance to Authorized Reseller and Distributor in connection with their administration of Company's NMS Account.

4. **MEDICAL CARE RESPONSIBILITY.** COMPANY ACKNOWLEDGES (a) THAT THE SOFTWARE AND HOSTED SERVICES MAY EMPLOY SPEECH RECOGNITION, NATURAL LANGUAGE PROCESSING, AND MEDICAL FACT EXTRACTION WHICH ARE STATISTICAL PROCESSES AND THAT INACCURACIES ARE INHERENT IN SUCH PROCESSES AND IN THE OUTPUT FROM NUANCE PRODUCTS AND SERVICES EMPLOYING SUCH PROCESSES; AND (b) THAT ERRORS (INCLUDING HUMAN ERRORS) ARE INHERENT IN TRANSCRIPTION SERVICES. COMPANY FURTHER ACKNOWLEDGES THAT INACCURACIES AND ERRORS IN THE OUTPUT FROM NUANCE PRODUCTS AND SERVICES ARE INEVITABLE, AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF COMPANY, ITS AUTHORIZED USERS TO IDENTIFY AND CORRECT ANY INACCURACIES AND ERRORS BEFORE USING AND/OR RELYING ON THE RESULTS OF THE USE OF ANY SOFTWARE, HOSTED SERVICES AND/OR TRANSCRIPTION SERVICES PROVIDED UNDER THIS AGREEMENT. ACCORDINGLY, COMPANY SHALL INDEMNIFY, AND HOLD HARMLESS, NUANCE, EACH DISTRIBUTOR AND EACH AUTHORIZED RESELLER, AND THEIR RESPECTIVE AFFILIATES, AND THE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS OF EACH OF THEM (EACH, AN "INDEMNIFIED PARTY") FROM AND AGAINST ALL LIABILITIES, LOSSES, COSTS, DAMAGES, CLAIMS AND EXPENSES ARISING OUT OF, OR RELATED TO, ANY CLAIMS OR SUITS BROUGHT OR MADE AGAINST ANY INDEMNIFIED PARTY ARISING FROM AN ALLEGATION THAT USE OF ANY SOFTWARE, HOSTED SERVICE AND/OR TRANSCRIPTION SERVICE BY COMPANY OR ANY AUTHORIZED USER, DIRECTLY OR INDIRECTLY CAUSED OR CONTRIBUTED TO THE WRONGFUL DEATH OR PERSONAL INJURY OF A THIRD PARTY TO WHOM COMPANY OR AN AUTHORIZED USER OFFERED OR PROVIDED MEDICAL-RELATED SERVICES.

5. **ORDERS, PAYMENT AND DELIVERY.**

1. Company acquires rights to use a Hosted Service by purchasing Subscription Licenses from an Authorized Reseller on the basis of more or more Orders. A separate Subscription License is required for each Authorized User for each different Hosted Service. Subscription Licenses on different Orders will have different Subscription Terms as identified in the Order.
2. **Invoices and Payments to Authorized Reseller.** Authorized Reseller will invoice Company for the Hosted Services on a monthly basis beginning on the Subscription Start Date, and will invoice other Services in accordance with the payment schedule in the Order. Company is responsible for paying all fees, expenses and related taxes and assessments indicated in the Order(s) to or as directed by the Authorized Reseller.

3. **Assignment of Company's NMS Account or Orders; Payments to Assignees.**
Under certain circumstances, Company's NMS Account, its Orders and/or Company's payment obligations under one or more Orders may be transferred by Authorized Reseller to Distributor or to Nuance or may be reassigned by Distributor or Nuance to another Authorized Reseller. Such a transfer will not terminate the Orders, this Agreement or Company's Subscription Licenses. Company agrees that after receiving notice of such a transfer, Company will make all payments to the party to whom the transfer or assignment is made if directed to do so by Nuance or Distributor.
4. **Payments to Nuance.** If Company purchases any Services directly from Nuance, pursuant to an Order placed with Nuance, such purchases may be made subject to the terms of this Agreement if indicated in the Order, in which case Company shall pay all amounts due to Nuance under the Order in accordance with Nuance's standard payment and delivery terms and conditions which will apply to the extent they do not conflict with this Agreement.
5. **Audit** Company shall keep full, true and accurate records and accounts to support its use of the Hosted Services, as applicable, under this Agreement. Nuance, or a third party appointed by Nuance, will have the right, not more than once a year and upon reasonable notice, to conduct an audit of Company's systems and records to confirm compliance with the terms of this Agreement. Any audit will be performed during Company's normal business hours. If an audit reveals that Company's Hosted Services usage exceeds the usage authorized by this Agreement, Company shall pay Nuance for all such excess usage, based on Nuance's standard pricing in effect at the time of the audit. If such excess usage exceeds five percent (5%) of the authorized usage, Company shall also pay Nuance's reasonable costs of conducting the audit. Nothing in this Section 5.5 will limit any other remedy available to Nuance.
6. **Delivery and Shipment.** The delivery terms for Nuance-supplied Services that Company purchases from Authorized Reseller are between Company and Authorized Reseller, as stated in Company's agreement or End User Order with Authorized Reseller. Company agrees to accept electronic delivery of the Nuance Software at Nuance's option.

6. **TERM; TERMINATION.**

1. **Term.** This Agreement commences on the date the Order is executed by Company and accepted by Authorized Reseller ("**Effective Date**") and will continue in effect until the expiration or earlier termination of all Orders (the "**Term**"). An Order will be in effect from the Order date until the later of the expiration or early termination of the Subscription Licenses that Company acquires under the Order and the completion or early termination of any other Services ordered pursuant to the Order. Expiration or termination of an Order will terminate all Subscription Licenses that Company acquired under that Order.
2. **Subscription Term and Renewal.** The initial Subscription Term for a Hosted Service Subscription License is stated in the applicable Order. The Subscription Term will automatically renew for successive one-year periods unless either Company or Nuance gives notice of nonrenewal to the other party and to the Authorized Reseller not less than 30 days before the expiration of the current term, at the renewal rate set forth in Company's Order or, if no renewal rate is specified, at the contracted rate applicable under Company's Order immediately before renewal.
3. **Suspension of Hosted Services.** Nuance may suspend Company's access to and use of applicable Hosted Services immediately if Nuance reasonably determines that (a) that Company or its Authorized Users have violated their confidentiality obligations, their license grant, or the intellectual property rights provisions and use restrictions in this Agreement; (b) Company fails to pay all past due amounts within 15 (fifteen) days of written demand and Company continues to owe Authorized Reseller, Distributor or Nuance undisputed amounts that are more than 45 (forty-five) days past due; (c) Company, its employees, Authorized Users or vendors are causing disruptions to the Hosted Services Infrastructure or the delivery of the Hosted Services; (d) unlawful activities are occurring and such actions may result in liability on the part of Nuance; or (e) Nuance is prevented from providing the Hosted Services by any governmental order, direction of any government agency, or order of a court of competent jurisdiction. Nuance will use reasonable commercial efforts to promptly notify Company of such suspension promptly and will cooperate with Company to resolve the issue.

4. **Termination for Cause.** Either Party may terminate this Agreement, effective immediately upon delivery of written notice (or effective as of any later date identified in the termination notice), if the other Party commits a material breach of its obligations under this Agreement, and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching Party. Without limiting the foregoing, failure of Company to pay when due any sum owed to the Authorized Reseller under an Order, or due to Nuance or Distributor directly or as a result of Authorized Reseller's assignment of Orders and/or related accounts, is a material breach of this Agreement. Notwithstanding the foregoing, Nuance may terminate this Agreement immediately upon delivery of written notice to Company if (a) Company or any of Company's Authorized Users infringes Nuance's intellectual property rights, breaches the intellectual property rights and use restrictions provisions of this Agreement or commits, or permits any third party to commit, any breach of confidentiality obligations under Section 7 [Confidentiality]; or (b) if Company has a receiver appointed to handle its assets or affairs, admits that it is insolvent, files for bankruptcy, or is otherwise unable to pay its debts as they mature, or ceases to do business in the ordinary course.
5. **Effect of Termination.** Upon termination of this Agreement, all Subscription Licenses and/or other Services obtained by Company under any Order shall immediately terminate and Company and its Authorized Users shall immediately (a) cease use of the Hosted Services and applicable Nuance Software; (b) within ten days of the expiration or termination, return to Nuance or destroy all copies of the Nuance Software and certify in writing to Nuance that no copies have been retained; and (c) pay any outstanding amounts due under the Orders. The expiration or termination of this Agreement, the Order, or any Subscription License shall not affect Company's payment obligations under the Orders.
6. **Early Termination Fee.** If Nuance terminates this Agreement pursuant to Section 6.4, the balance of all fees that would have become due under the Subscription Licenses had they not been terminated will immediately become due and payable. Nuance, Distributor or Authorized Reseller will invoice Company for such fees and Company will pay such invoice within 30 (thirty) days.
7. **Survival.** Notwithstanding anything to the contrary in this Section 6, the provisions of Sections 1, 4, 5, 6.4 through-6.7, inclusive, 7, 8, 9, 10, 11 and 13 of these General Terms and Conditions shall survive expiration or termination of this Agreement.

7. CONFIDENTIALITY.

1. **Definition.** Subject to the exceptions contained in this Section 7.1, "**Confidential Information**" shall mean (a) all information disclosed by a Party or its Affiliates (the "**Disclosing Party**"), in whatever tangible form or otherwise, to the other Party or its Affiliates (the "**Receiving Party**") that is clearly marked "confidential" or with some other proprietary notice, (b) all information disclosed orally or otherwise in intangible form by the Disclosing Party and designated as confidential or proprietary at the time of the disclosure, (c) the Nuance Software, Documentation, and information provided as part of any Services, and (d) Nuance pricing, Orders, Statements of Work, and proprietary nonpublic information relating to Nuance's products and business plans. Notwithstanding the above, information shall not be deemed Confidential Information to the extent that it: (i) was generally known and available in the public domain at the time it was disclosed or subsequently becomes generally known and available in the public domain through no fault of the Receiving Party; (ii) was rightfully known to the Receiving Party at the time of disclosure without any obligation of confidentiality; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of the Confidential Information of the Disclosing Party; or (v) is protected health information or any other personally identifiable information, the protection of which is governed by the Business Associate Addendum identified in Section 8. The obligation not to use or disclose Confidential Information will remain in effect until one of these exceptions occurs.
2. **Use and Obligations.** The Receiving Party will only use the Disclosing Party's Confidential Information for the purpose of performing its obligations under this Agreement and for other purposes authorized in this Agreement (the "Authorized Purposes"). The Receiving Party shall protect the Disclosing Party's Confidential Information from unauthorized use, disclosure or publication by using the same degree of care, but no less than a reasonable degree of care, as the Receiving Party uses to protect its own Confidential Information of a like nature. A Receiving Party may disclose Confidential Information to its employees, agents and contractors, and to those of its Affiliates (the "Authorized Recipients"), only to the extent necessary for the Authorized Purposes. A Receiving Party shall be liable for any act or omission by its Authorized Recipients, which if performed or omitted by the Receiving Party, would be a breach of this Agreement. Each Party agrees that its Authorized Recipients shall be bound by the terms of an agreement that protects the Disclosing Party against unauthorized use or disclosure of Confidential Information that is at least as protective of the Disclosing Party's rights as this Agreement. No Confidential Information shall be disclosed to any person who does not have a need for such information.

3. **Permitted Disclosure.** Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure (a) is in response to a valid order of a court or other governmental body, provided, however, that the responding Party shall first have given notice to the other Party hereto and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued; (b) is otherwise required by law; or (c) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.
4. **Return of Confidential Information.** Upon the written request of the Disclosing Party or upon the expiration or termination of this Agreement, whichever comes first The Receiving Party shall return to the Disclosing Party, or destroy, all Confidential Information of the Disclosing Party in tangible form and all electronic copies that can be feasibly destroyed. Any copies that cannot be feasibly destroyed shall be safeguarded against unauthorized access until destruction is feasible. In either case, the Receiving Party shall, upon request, promptly certify in writing that it has complied with the obligations of this Section 7.4. Notwithstanding the foregoing, each Party may retain a copy of the Confidential Information for legal purposes in electronic format in accordance with its corporate security and/or disaster recovery procedures.
8. **HIPAA.** The Parties agree that the HIPAA Business Associate Addendum between Company and Nuance set forth in Exhibit B-1 (the "**BAA**") shall apply to the Protected Health Information ("**PHI**"), as defined by HIPAA, that is transmitted to or by Nuance or maintained by Nuance under this Agreement. The Authorized Reseller is not a Nuance subcontractor and is not covered by the BAA in Exhibit B-1. Company is responsible for entering into a separate Business Associate Agreement with the Authorized Reseller and Distributor as it deems necessary to comply with HIPAA.

9. **DATA.** Company authorizes Nuance to use the Data in accordance with this Section 9 and is solely responsible for obtaining all necessary consents under applicable laws and regulations in order to allow Nuance to do so. Data that consists of PHI, if any, is also subject to the BAA identified in Section 8. Nuance may use, compile, annotate and otherwise analyze the Data (including creating statistical and other models), to develop, train, tune, enhance and improve the speech recognition, natural language understanding and other components of its software and services. Nuance will own all intellectual property rights in the software and services it develops, improves and enhances using the Data. Nuance may de-identify the Data in accordance with 45 C.F.R. §164.514 for its internal uses only. Nuance will keep all Data confidential and will only provide access to Data to Nuance employees and contractors working for Nuance under Nuance's direction pursuant to confidentiality agreements. Notwithstanding the foregoing, Nuance may disclose Data to the minimum extent necessary to meet legal or regulatory requirements, such as a court order or government agency request. Nuance will not use the names of individuals and companies to contact anyone for any reason. Data generated in one territory or region may be relocated to a secure Nuance data center in another region or territory to the extent permitted by law.

10. **LIMITED WARRANTIES.**

Disclaimer. To the maximum extent permitted by applicable law, THE WARRANTIES EXPRESSLY SET FORTH IN THIS Section 10 [limited warranties] are exclusive and there are no OTHER WARRANTIES APPLICABLE TO THE SERVICES. the NUANCE SOFTWARE and Hosted Services are provided on an "AS IS" and "AS AVAILABLE" basis without warranty of any kind. to the extent permitted by law, NUANCE AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NUANCE DOES NOT GUARANTEE THAT THE NUANCE SOFTWARE, EQUIPMENT OR SERVICES WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULT, OR THAT THE SERVICES WILL BE PERFORMED WITHOUT ERROR OR INTERRUPTION. NUANCE MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR ANY THIRD PARTY EQUIPMENT.

11. **Limitation of Liability.**

1. **Application.** Nothing in this Agreement shall be taken to exclude or limit Nuance's liability for fraud or fraudulent misrepresentation; for intentional or criminal misconduct; for death, personal injury or tangible property damage caused by its negligence in providing services at Company locations; or to the extent that such exclusion or limitation is not otherwise permitted by law.

2. **Limitation of Liability.** EXCEPT FOR NUANCE'S LIABILITY FOR INTELLECTUAL PROPERTY INDEMNIFICATION UNDER SECTION 12 AND NUANCE'S LIABILITY FOR BREACH OF THE BAA (WHICH IS ADDRESSED IN THE BAA), THE TOTAL AGGREGATE LIABILITY OF NUANCE, ITS DISTRIBUTORS AND AUTHORIZED RESELLERS, THEIR RESPECTIVE AFFILIATES, MEMBERS, OFFICERS, DIRECTORS, AGENTS, SUPPLIERS AND EMPLOYEES OF EACH OF THEM, TO COMPANY and its affiliates, and their respective officers, agents, customers, contractors and employees, for any and all claims arising under this Agreement or otherwise arising from the transactions contemplated herein, regardless of the form of action (including, but not limited to actions for breach of contract, negligence, strict liability, rescission and breach of warranty) will not exceed the aggregate fees actually paid to Nuance for the hosted services and other services delivered by nuance under this Agreement during the one year preceding such claim. Nuance's limitation of liability is cumulative with all Company's payments during such one-year period being aggregated to determine satisfaction of the limit. The existence of more than one claim shall not enlarge or extend the limit.
3. **No Consequential Damages.** IN NO EVENT SHALL NUANCE, ITS DISTRIBUTORS AND AUTHORIZED RESELLERS, THEIR RESPECTIVE AFFILIATES, AND THE MEMBERS, OFFICERS, DIRECTORS, AGENTS, SUPPLIERS AND EMPLOYEES OF EACH OF THEM, BE LIABLE TO COMPANY OR ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, AGENTS, CUSTOMERS, CONTRACTORS AND EMPLOYEES, FOR LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF OR LOSS OF USE OF SOFTWARE OR DATA, LOSS OF CUSTOMERS, LOSS OF ANTICIPATED SAVINGS, OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF, OR LOSS OF USE OF, SOFTWARE OR DATA, LOSS OF CUSTOMERS, LOSS OF ANTICIPATED SAVINGS AND LOSS OF PROFITS) WHETHER SUCH ALLEGED DAMAGES ARE LABELED IN TORT, CONTRACT OR INDEMNITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
4. **Third Party Suppliers.** Under no circumstances shall Nuance's third party suppliers of any component of the Nuance Software, Hosted Services or Nuance Equipment be responsible or liable to Company or its affiliates for any damages, direct or otherwise, arising under this Agreement or otherwise arising from the transactions contemplated herein. Such third party suppliers are third party beneficiaries of this Section 11.4.

5. **Essential Basis.** The disclaimers, exclusions, and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different. The disclaimers, exclusions, and limitations of liability set forth in this Agreement shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

12. INDEMNIFICATION.

1. **By Nuance.** Nuance shall, at its own expense, defend or, at its option, settle, any claim or action brought against Company by a third party during the Term to the extent it is based on a claim that the Nuance Software and/or Hosted Services directly infringes any patent, copyright or trademark of such third party issued by the country in which Company is located, or misappropriates a trade secret of such third party protected by the laws of the country in which Company is located. Nuance will indemnify Company against any losses, damages, and expenses that are attributable to such claim or action and are assessed against Company in a final judgment. Nuance shall have the foregoing obligations only if Company provides Nuance with: (a) a prompt written request to undertake the defense in such claim or action; (b) sole control and authority over the defense and settlement thereof; and (c) all available information, assistance, and authority reasonably necessary to settle and/or defend any such claim or action. Nuance shall not be responsible for any attorneys' fees or other expenses or costs that Company incurs before receipt of Company's request for indemnification or defense.
2. **Limited Remedies.** If the Nuance Software and/or Hosted Services becomes, or in the opinion of Nuance, is likely to become, the subject of an infringement claim or action, Nuance may, at its option and in its sole discretion, discharge its obligations under this Section 12 (Indemnification) by: (a) procuring, at no cost to Company, the right to continue using the Nuance Software and/or Hosted Services; (b) replacing or modifying the Nuance Software and/or Hosted Services to render it non-infringing, provided there is no material loss of functionality; or (c) if, in Nuance's reasonable opinion, neither (a) nor (b) above are commercially feasible, terminating Company's rights to use such Nuance Software and/or Hosted Services by written notice and refunding or causing the Authorized Reseller or Distributor to refund to Company any unused fees Company may have prepaid for the infringing Hosted Services for the terminated portion of the Subscription Term.

3. **Exclusions.** Nuance will have no obligation or liability under this **Section 12** (Indemnification) for any claim or action regarding any claim resulting from any of the following: (i) modifications to the Nuance Software and/or Hosted Services by a party other than Nuance; (ii) the combination or use of the Nuance Software and/or Hosted Services with other products, processes, or materials if the Nuance Software and/or Hosted Services itself would not infringe; (iii) where Company continues allegedly infringing activities after being provided with modifications from Nuance that would have avoided the alleged infringement; (iv) any development, modification, or customization of the Nuance Software and/or Hosted Services by Nuance based on specifications or requirements supplied by Company; (v) components of software programs that are not Nuance Software and were not provided by Nuance; or (vi) Company's use of the Nuance Software and/or Hosted Services in a manner that is not in compliance with the terms of this Agreement.
 4. **Exclusive Obligation.** This Section 12 (Indemnification) states the sole obligation and exclusive liability of Nuance (express, implied, statutory or otherwise), and the sole remedy of Company, for any third-party claims or actions alleging infringement of any intellectual property rights or other proprietary rights.
13. **Miscellaneous.**
1. **Assignment.** Company shall not assign or otherwise transfer its rights, obligations or remedies under this Agreement, in whole or in part, to a third party unless such assignment is approved in writing by Nuance. Notwithstanding the foregoing, Company may assign or transfer its rights hereunder in their entirety pursuant to: a merger, sale of substantially all of its assets, or consolidation with a third party; provided (a) Company provides Nuance and Authorized Reseller with prompt written notice of such sale, merger or consolidation, (b) the assignee/transferee agrees to be bound by all terms and conditions set forth by this Agreement and in each Order issued in connection with this Agreement, (c) the number of Authorized Users remains the same after the assignment or transfer unless Company's successor purchases additional Subscription Licenses, and (d) Company's NMS Account and all Orders for all Subscription Licenses covered by this Agreement are assigned to and assumed by the same assignee/transferee. Except as authorized by this Section, any purported transfer or assignment of this Agreement by Company shall be void and without effect. Nuance shall be free to assign or otherwise transfer its rights and obligations under this Agreement, in whole or in part, to a third party who agrees in writing to assume and perform Nuance's obligations hereunder, provided that Nuance provides Company with prompt written notice of the assignment.

2. **Force Majeure.** Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, acts of God, governmental acts or orders or restrictions, acts of terrorism, war, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party and not due to its fault or negligence.
3. **Notices.** All notices hereunder shall be sent by the notifying Party, in writing, to the other Party at its address set forth above (or such other address as they may communicate to the notifying Party in writing), to the attention of the General Counsel. Notices shall be deemed delivered on the date of personal delivery or on the date of delivery confirmed by the records of the carrier or courier, or if there is no delivery confirmation available from the courier, then five days after posting when sent by certified United States mail (return receipt requested), or one day after posting when sent by reputable private overnight courier (e.g., DHL, Federal Express, etc.).
4. **Relationship Between the Parties.** In all matters relating to this Agreement, Company and Nuance shall act as independent contractors. Neither Party will represent that it has any authority to assume or create any obligation, expressed or implied, on behalf of the other Party, or to represent the other Party as agent, employee, or in any other capacity, unless such authority is granted by this Agreement. Nuance shall at all times have the sole right and obligation to supervise, manage, contract, direct, procure, perform, and/or cause to be performed all work that is necessary for delivery of the Hosted Services.
5. **Authorized Reseller and Distributor.** Authorized Reseller and Distributor, and their agents and affiliates, are independent legal entities separate from Nuance. Nuance is not responsible for the actions, omissions, statements or recommendations of Authorized Reseller, Distributor or their agents and affiliates, or any obligations that Authorized Reseller, Distributor or their agents or affiliates have to Company.
6. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods which shall not apply. The Parties agree to the jurisdiction of the courts in Massachusetts and the applicable service of process in that jurisdiction. The official text of the Agreement and any notices required hereby shall be in English. In Canada, Province of Quebec for all contracts drafted in English, both Parties agree to write this document in English. Les Parties ont convenu de rédiger le présent document en langue anglaise.

7. **Injunctive Relief.** Each Party recognizes and acknowledges that any use or disclosure of Confidential Information by the receiving Party in a manner inconsistent with the provisions of this Agreement may cause irreparable damage to the disclosing Party for which remedies other than injunctive relief may be inadequate, and the receiving Party agrees that in any request by the disclosing Party to a court of competent jurisdiction for injunctive or other equitable relief seeking to restrain such use or disclosure, the receiving Party will not maintain that such remedy is not appropriate under the circumstances. The Parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.
8. **Partial Invalidity; Waiver.** If any provision of this Agreement or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event the Parties shall use reasonable efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any deviation by either Party from the terms and conditions required under applicable laws, rules and regulations shall not be considered a breach of this Agreement. No failure of either Party to exercise any power or right given either Party hereunder or to insist upon strict compliance by either Party with its obligations hereunder, and no custom or practice of the Party at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms of this Agreement.
9. **Publicity.** The Parties may mutually agree upon a press release announcing this Agreement to be issued at a mutually agreed upon time. Either Party may refer to statements made in such press release in future marketing materials and advertisements. Nuance may include Company's name in Nuance's customer list, and may identify Company as its customer in its sales presentations, marketing materials, advertising, promotion and similar public disclosures. Any additional statements regarding the relationship of the Parties hereunder shall require mutual written consent, except that either Party may refer to the existence of this Agreement or the relationship of the Parties in connection with a press release related to regulatory filings.
10. **Order of Precedence.** In the event of conflicting terms in the following documents, the order of precedence shall be as follows: (i) the Schedule, (ii) General Terms and Conditions, (iii) Business Associate Terms and Conditions, and (v) each Order.

11. **Third Party Beneficiaries.** Except as expressly stated otherwise in this Agreement, nothing in this Agreement is intended to create any rights in, or confer any benefits upon, any person or entity other than the Parties to this Agreement. Company acknowledges and agrees that Nuance is a third party beneficiary of Company's Orders and has the right to directly enforce Company's payment obligations under such Orders in addition to the right to require the Authorized Reseller or Distributor to collect against such Orders and to assign such Orders and related accounts receivable to Nuance.
12. **Export Controls.** Company will not directly or indirectly export or re-export any technical information or software that is subject to or acquired in connection with this Agreement.
13. **Anti-Corruption Laws.** By signing this Agreement, Company confirms it has knowledge and understanding of the Foreign Corrupt Practices Act of the United States of America ("FCPA") and has not violated that law in connection with the transactions associated with this Agreement. Company shall comply with all applicable laws or regulations in all countries in which Company conducts business. The fact that in some countries certain laws prohibiting particular conduct are not enforced in practice or that violation is not subject to public criticism or censure, will not excuse noncompliance with those laws.
14. **HHS Audit Right.** If Company is subject to US laws, then until the expiration of four (4) years after the furnishing of Services under this Agreement, Nuance shall make available, upon written request of the Secretary of the Department of Health and Human Services ("**Secretary**"), or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Nuance that are necessary to certify the nature and extent of the costs for which Company seeks reimbursement. Nuance further agrees that if Nuance carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after furnishing services pursuant to such subcontract, the related organization shall make available to the Secretary or the Comptroller General, as the case may be, or any of their duly authorized representatives, the subcontract, and such books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

15. **Entire Agreement; Headings; Counterparts.** This Agreement and the exhibits and other attachments to this Agreement that are incorporated by reference herein, including but not limited to the BAA and the Schedule, constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersede all prior agreements, arrangements and undertakings between the Parties. No addition to or modification of any provision of this Agreement shall be binding upon the Parties unless made by a written instrument signed by a duly authorized representative of each Party that purports to amend or modify this Agreement. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument.

Exhibit A

(to Nuance Healthcare Hosted Services Subscription Agreement)

Hosted Services Schedule

The following Hosted Services are subject to the terms and conditions of this Agreement only if purchased pursuant to an Order and are subject to the additional terms and conditions stated below.

1. Dragon Medical One. No additional terms apply.
2. PowerMic Mobile. As a condition to any Subscription Licenses granted by this Agreement with respect to the PowerMic Mobile Hosted Service, Company agrees to the following additional terms and conditions:
 - (a) Each Authorized User of PowerMic Mobile is required to be an Authorized User of one of Company's Dragon Medical One Subscription Licenses.

Exhibit B-1

(to Nuance Healthcare Hosted Services Subscription Agreement)

HIPAA Business Associate Addendum

WHEREAS, Nuance Communications, Inc. ("Business Associate" or "Nuance") may perform certain services on behalf of or for Licensee pursuant to this Nuance Healthcare Subscription Agreement for Hosted Services (the "Agreement") that require Nuance to access, create and use health information that is subject to the federal privacy regulations

(the "Privacy Rule") and the federal security regulations (the "Security Rule") issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and codified at 45 C.F.R. parts 160 and 164, and Subtitle D of the Health Information Technology for Economic and Clinical Health Act and their implementing regulations, as amended (collectively, "HIPAA"); and

WHEREAS, this Exhibit B-1, which is attached to and made part of the Agreement, serves to establish the responsibilities of both parties regarding Protected Health Information, and to bring this Agreement into compliance with HIPAA and the HITECH Act.

NOW, THEREFORE, the parties agree to the following additional terms and conditions to those otherwise in the Agreement:

AGREEMENT

1. Definitions. Capitalized terms used in this Exhibit B-1, but not otherwise defined, shall have the same meanings ascribed to them in the Privacy Rule, the Security Rule and the HITECH Act.
2. Permitted Uses and Disclosures. Except as otherwise specified herein, Business Associate may use and/or disclose Protected Health Information ("PHI") to perform the functions, activities, or services for or on behalf of Covered Entity as specified in this Agreement, provided that such use and/or disclosure would not violate HIPAA if done by Covered Entity. Except as otherwise limited in this Agreement, Business Associate may:
 - a. use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, and except as otherwise limited by this Exhibit B-1 or the Agreement, as permitted by HIPAA.
 - b. disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, provided that the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of PHI has been breached.
 - c. use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. §164.504(e)(2)(i)(B).
 - d. use PHI to create de-identified health information in accordance with 45 C.F.R. §164.514(b) and may disclose de-identified health information for any purpose permitted by law.
3. Responsibilities of Business Associate. Except as otherwise required by law, Business

Associate shall use PHI in compliance with 45 C.F.R. §164.504(e). To comply with the security and privacy obligations imposed by HIPAA, Business Associate agrees to:

- a. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement.
- b. not use or further disclose PHI other than as permitted or required by this Agreement, HIPAA, or as required by law.
- c. use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.
- d. report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including breaches of unsecured protected health information as required by §164.410, and any successful security incident of which it becomes aware. The Parties acknowledge and agree that this section 3.d. constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.
- e. in accordance with §164.502(e)(1)(ii), ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to substantially the same restrictions and conditions that apply to Business Associate with respect to such information.
- f. make PHI available to Covered Entity for Covered Entity to comply with an Individual's right of access to their PHI in compliance with 45 C.F.R. §164.524 and Section 13405(e) of the HITECH Act. This provision shall be applicable only if Business Associate maintains a Designated Record Set on behalf of Covered Entity.
- g. make PHI available to Covered Entity for amendment and incorporate any amendment(s) to PHI that Covered Entity directs, in accordance with 45 C.F.R. §164.526. This provision shall be applicable only if Business Associate has PHI in a Designated Record Set.
- h. document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 and Section 13405(c) of the HITECH Act.

- i. make available to Covered Entity in response to a request from an Individual, the information required to provide an accounting of disclosures of PHI with respect to the Individual in accordance with 45 C.F.R. §164.528 and Section 13405(c) of the HITECH Act.
- j. to the extent this Agreement requires Business Associate to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered entity in the performance of such obligation(s).
- k. make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the Department of Health and Human Services or his/her designee (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining Covered Entity's compliance with the HIPAA.
- l. notify Covered Entity following Business Associate's discovery of a security breach of Unsecured PHI, in accordance with Section 13402 of the HITECH Act.
- m. refrain from exchanging any PHI with any entity (including Covered Entity) of which Business Associate knows of a pattern of activity or practice that constitutes a material breach or violation of HIPAA, and upon becoming aware of such behavior by an entity with which Business Associate has already exchanged PHI, take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract or arrangement with such entity, if feasible; or if termination is not feasible, report the problem to the Secretary, in accordance with Section 13404 of the HITECH Act and 45 C.F.R §164.504(e).
- n. limit the use, disclosure or request for PHI in accordance with Section 13405(b) of the HITECH Act; to the extent required by the "minimum necessary" requirements of HIPAA, Business Associate shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.
- o. refrain from receiving any remuneration in exchange for any Individual's PHI unless such exchange (i) is pursuant to a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual, or (ii) satisfies one of the exceptions enumerated in the HIPAA regulations and specifically Section 13405(d)(2) of the HITECH Act.
- p. refrain from marketing activities that would violate HIPAA and specifically Section 13406 of the HITECH Act.

4. Responsibilities of Covered Entity. Covered Entity shall:

- a. provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice.
- b. provide Business Associate, in writing, with any changes in, or revocation of, permission by Individual to the use or disclosure of PHI, if such changes affect Business Associate's permitted or required uses or disclosures. Upon receipt by Business Associate of such notice of changes, Business Associate shall cease the use and disclosure of any such Individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under HIPAA expressly applies.
- c. notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522.

5. Termination.

- a. Termination for Cause. Either party may immediately terminate this Agreement if such party (the "Non-Breaching Party") determines that the other party (the "Breaching Party") has breached a material term of this Exhibit B-1. Alternatively, the Non-Breaching Party may choose to provide the Breaching Party with written notice of the existence of an alleged material breach and afford the Breaching Party an opportunity to cure the alleged breach. Failure to cure the material breach within thirty (30) days of the written notice constitutes grounds for immediate termination of this Agreement.
- b. Effect of Termination.
 1. Except as provided in paragraph (2) of this Section 5(b), upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This Section 5(b) shall apply to PHI that is in the possession of Business Associate and its subcontractors or agents. Business Associate shall retain no copies of the PHI.
 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity, in writing, notification of the conditions that make return or destruction infeasible, and Business Associate shall extend the protections of this Exhibit B-1 to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. Liability.

Business Associate's liability to the Covered Entity for all breaches of this Business Associate Addendum, Security Incidents and breaches of PHI maintained by Business Associate or Business Associate's agent or subcontractor (each a "Breach/Incident"), shall be limited to the costs, expenses and other direct damages that Covered Entity reasonably and necessarily incurs in providing notifications to individuals or government agencies, credit monitoring for affected individuals and other mitigation steps taken by Covered Entity to comply with HIPAA or state law, and fines or settlement amounts Covered Entity owes to a state or federal government agency to the extent resulting from a Breach/Incident, up to an aggregate total of \$250,000.

7. No Third Party Beneficiary. Nothing in this Exhibit B-1 is intended, nor shall be deemed, to confer any benefits on any third party.

Exhibit B-2

(to Nuance Healthcare Hosted Services Subscription Agreement)

Canadian Terms Attachment

The following modifications to the Sections of the General Terms and Conditions referenced below, and to Exhibit B, shall apply where Company is located in Canada.

Exhibit B-1 ("Business Associate Terms and Conditions") is replaced by this **Exhibit B-2 ("Canadian Terms Attachment")** including the Privacy Agreement set forth on Attachment 1 hereto.

1. **DEFINITIONS.** There are no changes to Section 1, except, in the definition of "Data" in Section 1.4, add the following to the end of Section 1.4: "Data may include PHI and Personal Information (as those terms are defined in Exhibit B attached to this Agreement)."
8. **HIPAA.** Section 8 ("HIPAA") is replaced with the following:
 8. **PRIVACY LAWS.** It is the intent of Nuance to assist Company with its compliance requirements in connection with applicable Canadian health privacy laws, including but not limited to the Personal Health Information Protection Act (2004) (Ontario) ("*PHIPA*") and the Personal Information Protection and Electronic Documents Act 2000 ("*PIPEDA*"). Nuance and Company therefore accept and agree to the Nuance Privacy Agreement incorporated herein by reference as Attachment 1 to Exhibit B-2.

9. **DATA.** Section 9 ("DATA") is replaced with the following:

9. **DATA.** Company is solely responsible for obtaining all necessary consents under applicable laws and regulations in order to allow Nuance to use the Data in accordance with this Section 9 and to process the Data in Canada and/or the United States. Company gives Nuance the right, and Nuance has permission to de-identify the Data in accordance with applicable Canadian law or in any other manner such that there is no reasonable basis to believe that the Data could thereafter be used to identify an individual. Nuance and third parties acting under the direction of Nuance also may use, compile (including creating statistical and other models), annotate and otherwise analyze the Data to train, tune, enhance and improve the speech recognition, natural language understanding and other components of its software and services that are provided to Company under this Agreement. Nuance shall own all intellectual property rights in all enhancements and improvements to its software and services that result from such use of the Data. Any and all information that Company provides will remain confidential, and Nuance may only provide access to Data to third parties acting under the direction of Nuance in order to fulfill the foregoing use of the Data, pursuant to confidentiality agreements, or to meet legal or regulatory requirements, such as under a court order or to a government institution if required or authorized by law. Nuance will not use the names of individuals and companies to contact anyone for any reason. Nuance receives, uses and/or maintains only copies of official medical records or portions thereof, the originals of which must continue to be maintained by Company or its contractors. Accordingly, the foregoing Data shall not be deemed an official medical record or health record for any patient.

13. Section 13, Subsection 6: **Governing Law.** Section 13.6 is replaced by:

13. Section 13, Subsection 6: **Governing Law.** This Agreement will be governed by the laws of the Province of Ontario, and the federal laws of Canada applicable therein, without regard to principles of conflict of laws. The parties hereto agree to submit all disputes related to this Agreement exclusively to the courts in the Province of Ontario to which each party consents to the jurisdiction of such courts and waives any objection it may have with respect to venue.

Notwithstanding the above, Company agrees that any infringement by Company of Nuance's intellectual property rights or unauthorized use of the license granted under this Agreement will result in irreparable harm to Nuance or its licensors, and therefore, that upon any such Breach or any threat thereof, Nuance shall be entitled to seek appropriate equitable relief in any court of competent jurisdiction, including but not limited to injunctive relief, in addition to whatever remedies it might have under this Agreement or at law. The official text of the Agreement and any Addendum or any notices given on accounts or statements required hereby shall be in English. It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.

13. Section 13, Subsection 7: **Injunctive Relief.** In Section 13.7, the last sentence of the Section is replaced by: "The Parties further agree that in the event such equitable relief is granted in the United States or Ontario, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States or Ontario judgments."

13. Section 13, Subsection 14: **HHS Audit Right.** Section 13.14 ("HHS Audit Right"), to the extent it is not applicable under Canadian law, and is not applicable due to lack of nexus or jurisdiction under US law, shall not apply.

Attachment 1 to Exhibit B-2

(Replacement to Exhibit B for Canadian Customers)

Nuance Privacy Agreement

Whereas

(a) Company may be a health information custodian, trustee or other similarly regulated entity ("HIC") as defined under applicable Canadian privacy laws and the regulations thereunder, if any, including the Personal Health Information Protection Act, 2004 (Ontario) ("*PHIPA*") and the Personal Information Protection and Electronic Documents Act 2000 ("*PIPEDA*") (collectively, the "Canadian Privacy Laws");

(b) Nuance Communications, Inc. ("Nuance") may be an agent, a provider or similarly regulated service provider of Company ("Provider") as defined under Canadian Privacy Laws, including, but not limited to, section 10(4) of the Personal Health Information Protection Act, 2004 (Ontario);

(c) Company and Nuance have executed an agreement between the parties hereto, of which this Privacy Agreement is a part (the "Agreement"); and

(d) the parties hereto intend to comply with the applicable provisions of Canadian Privacy Laws by agreeing to this Privacy Agreement and executing and adopting the information practices described herein.

Nuance agrees to receive personal health information protected under PHIPA ("PHI") and, as applicable, personal information protected under PIPEDA ("Personal Information") from Company in the course of supplying goods and services to Company in order to perform repair, maintenance services, or other services as described in the Agreement on behalf of Company. For the purposes of this Privacy Agreement, the terms PHI and Personal Information shall be collectively referred to as the "Protected Data." Nuance and Company are providing the following assurances to each other that the Protected Data will be appropriately safeguarded and that each party will abide by the applicable provisions of Canadian Privacy Laws:

1. Nuance will only use and disclose any Protected Data it receives from Company as is permitted or required under the Agreement between the parties or the laws of Canada.
2. Company warrants and represents that, to the extent that it may be a HIC under certain Canadian Privacy Laws:
 1. Company is permitted or required to collect, use, disclose, retain, or dispose of the Protected Data under such Canadian Privacy Laws which is received by Nuance;
 2. The collection, use, disclosure or disposition of the Protected Data by Nuance as provided for in this Agreement is not contrary to any limitations imposed by Company, Canadian Privacy Laws or other applicable laws; and
 3. Company has met any prescribed requirements under applicable Canadian Privacy Laws.
3. Nuance will only access and use as much Protected Data as is reasonably necessary to perform its obligations and exercise its rights under the Agreement.
4. Nuance will use appropriate safeguards to prevent the use or disclosure of the Protected Data other than as provided for in the Agreement.
5. Nuance will report to Company at its first reasonable opportunity any material use, access, disclosure, theft or disposal of PHI not permitted or authorized by the Agreement of which it becomes aware.

6. Nuance will ensure that any of its employees or subcontractors to whom Nuance provides Protected Data that is received from Company under the Agreement will agree to the same restrictions and conditions that apply to Nuance with respect to such Protected Data.
7. Except as may be required to perform its obligations or exercise its rights under the Agreement, Nuance shall not disclose Protected Data to any affiliated or unaffiliated third party, other than its employees or subcontractors, without the prior written consent of Company. Company acknowledges that PHI may be transferred outside Canada to perform support and maintenance services.
8. To the extent practicable, Nuance will, upon request, make PHI available to Company for access requests and amendments and incorporate any amendments to such PHI into Nuance's own records of such PHI. Company acknowledges that, depending on the product involved, searching by Nuance of audio and text dictations by data subject, and amendments of audio and text dictations by Nuance, may not be practicable.
9. Company reserves the right to inspect, at its sole expense, and upon reasonable advance notice, any Nuance records maintained in connection with the provision of services to Company, and otherwise audit and verify compliance with this Privacy Agreement.
10. At termination of the Agreement, Nuance will, if feasible, return or destroy all Protected Data received by Nuance from Company under this Agreement that Nuance still maintains in any form and retain no copies of such Protected Data thereafter. If such return or destruction is not feasible, Nuance will extend the protections of the Agreement to Protected Data and discontinue any and all further uses and disclosures of such Protected Data.
11. The parties authorize termination of the Agreement by either party with 4 weeks' written notice in the event that either party reasonably determines that the other party has violated a material term of Canadian Privacy Laws. The aforesaid termination shall only take effect provided that such a breach has not reasonably been cured within the notice period.
12. The contact information for the Nuance and Company employees responsible for privacy matters under this Privacy Agreement are:

Nuance: Data Protection Officer, Nuance Communications, Inc., 1 Wayside Road, Burlington, MA 01803 Email: privacy@nuance.com.

Company: Privacy or Data Protection Officer

Company Contact Information as set forth on the applicable Order.