



Terms of Sale

PLEASE PRINT AND RETAIN A COPY OF THIS DOCUMENT FOR YOUR RECORDS

Customer desires to license Programs (as defined below) and/or purchase related equipment and services from Nuance Communications, Inc (“Nuance”), as identified on the purchase order submitted by Customer to Nuance. If Nuance accepts such purchase order by written or electronic acknowledgement, the parties will have entered into a binding contract on the terms and conditions set forth in these Terms of Sale, which shall govern the parties’ rights and obligations with respect to the applicable transaction. ***Neither party shall be bound by any pre-printed provisions of any purchase order, acknowledgment, or other similar form.*** If Nuance fails to accept or reject the purchase order within five (5) business days of receiving the same, the purchase order will be deemed rejected.

1. Definitions. As used in this Agreement, the following defined terms have the meanings indicated below.

“*Affiliate(s)*” are those business entities that are controlled by, controlling, or under common control with Customer. “*Control*” as used herein means control through ownership of more than a majority of shares of stock eligible to vote for members of the Board of Directors, or control by contract.

“*Authorized User(s)*” are those employees and contractors of Customer, as further specified in the applicable Order, who are permitted to access the Programs subject to the terms and restrictions contained in this Agreement and the applicable Order.

“*Contracting Period*” means the period commencing on the Effective Date and ending (i) upon the expiration or termination of this Agreement or (ii) on the third (3rd) anniversary of the Effective Date, whichever occurs first.

“*Documentation*” means the administrative guide and user’s guide provided to Customer in the performance of an Order.

“*Equipment*” means hardware manufactured by Nuance and supplied to Customer pursuant to an Order. Except as expressly provided by this Agreement or the applicable Order, “*Equipment*” does not include Third Party Equipment.

“*First Productive Use*” means the date Nuance has completed the Professional Services set forth in an Order related to the installation of the Product(s) and, therefore, capable of processing data in Customer’s commercial environment.

“*Implementation Services Order*” or “*ISO*” means the ordering document setting forth the Professional Services and Training Services related to the implementation of Products, Third Party Equipment, and/or Third Party Software.

“*Maintenance Services*” are those services Nuance provides with respect to the maintenance and support of the Products pursuant to this Agreement and the “*Hardware and Software*

Maintenance Options Terms and Conditions” set forth at <http://support.nuance.com/healthcare>.

“*Order*” means a supplement substantially in the form set forth in Exhibit A to this Agreement that is entered into by the parties from time to time during the Contracting Period, which lists the specific Products, Third Party Equipment, Third Party Software, and Maintenance Services purchased by Customer, and may also include an ISO.

“*Products*” means the Programs (or licenses thereto) and Equipment, individually or collectively.

“*Professional Services*” shall mean those services, other than Maintenance Services and Training Services, set forth in an Order and provided by Nuance pursuant to Section 7 of this Agreement.

“*Programs*” means (i) the object code version of any Nuance proprietary software product specified in an Order, (ii) all Updates and Upgrades thereto, (iii) any customized features and functions provided by Nuance pursuant to this Agreement, and (iv) all related Documentation. Except expressly stated to the contrary, “*Program*” does not include Third Party Software.

“*Services*” means Professional Services, Training Services and/or Maintenance Services, as applicable.

“*Third Party Equipment*” means hardware that is not manufactured by Nuance.

“*Third Party Software*” means software proprietary to a third party.

“*Training Services*” means the training services set forth in an Order and provided by Nuance pursuant to Section 7 of this Agreement.

“*Update*” means a release of a Program that Nuance generally releases to its customers as part of its Maintenance Services which may include minor feature enhancements, and/or bug fixes and/or fixes of minor errors and/or corrections, and

typically is identified by an increase in a release or version number to the right of the first decimal (for example, an increase from Version 5.1 to 5.2 or from Version 5.1.1 to 5.1.2). “Update” shall not be construed to include Upgrades.

“Upgrade” means a release of a Program that Nuance generally releases to its customers as part of its Maintenance Services which may include some feature enhancements and/or additional capabilities (functionality) over versions of the Programs previously supplied to Customer, and typically is identified by an increase in the release or version number to the left of the decimal (for example, an increase from Version 5.2 to Version 6.0). Upgrades do not include new software and/or products that Nuance, in its sole discretion, designates and markets as being independent from the Program.

2. Scope of Agreement.

a. *Scope.* Subject to the terms and conditions of this Agreement, Nuance shall supply to Customer the Products, Third Party Software, Third Party Equipment, and/or Services specified by each Order. Each Order will constitute a separate contract between the parties, and will be governed in all respects by the terms and conditions of this Agreement.

b. *Order Process.* From time to time during the Contracting Period, Customer may purchase Products and associated Maintenance Services, Third Party Software, Third Party Equipment, Professional Services and/or Training Services from Nuance by entering into additional Orders with Nuance. An Order shall become effective when signed by Customer and accepted by Nuance. If Customer issues purchase orders as part of its standard business operations, Customer shall provide Nuance with a purchase order upon returning a signed Order to Nuance, provided that failure of Customer to provide a purchase order to Nuance for any reason shall not diminish Customer’s obligations set forth in this Agreement or the applicable Order. Nuance may accept an Order by fulfillment of the Products, Third Party Software, Third Party Equipment, and/or Services contained in said Order. Customer acknowledges that, for reasons including Nuance’s modification of supplier base and third party revision to product lines, the part numbers for Products, Third Party Software, Third Party Equipment and/or Services actually delivered may differ from the part numbers set forth in the applicable Order, provided such change has no impact on functionality or price as originally contracted.

c. *Designated Affiliate.* Nuance may enter into Orders with Customer’s Affiliates listed on Exhibit C (“Designated Affiliates”). Customer hereby guarantees the full and faithful performance of each Designated Affiliate’s obligations under this Agreement and the applicable Order. Notwithstanding the foregoing, in no event shall Customer be relieved of its obligations under this Agreement or any Order between Customer and Nuance. In the event Nuance enters into an Order with a Designated Affiliate, the term “Customer” as used in this Agreement and the applicable Order shall be deemed, for purposes of the contract formed by the applicable Order and this Agreement, to refer to such Designated

Affiliate. Exhibit C may be updated from time to time upon mutual written agreement of the parties.

3. Grant of License; Limitations; Other Restrictions.

a. *License Grant.* Subject to the terms and conditions of this Agreement, Nuance hereby grants Customer a perpetual, non-exclusive, non-transferable license to allow the Authorized Users to utilize the Programs specified by the applicable Order in a manner commensurate with their intended use, as prescribed by said Order, and solely for Customer’s internal business purposes.

b. *Limitations and Restrictions.* Customer agrees that it shall not, and shall not permit the Authorized Users, other employees, contractors, or any third party to (i) duplicate the Programs for any purpose other than for archival and disaster recovery purposes; (ii) reverse engineer, disassemble, decompile or translate the Programs; (iii) change, modify or otherwise alter the Programs, (iv) assign, transfer, pledge, rent, share or sublicense any of the Programs without Nuance’s prior written consent; (v) grant any third party access to or use of the Programs on a service bureau, timesharing or application service provider basis or otherwise; or (vi) defeat or circumvent any controls or limitations the Program places on its use.

c. *Notice of Unauthorized Use.* Customer shall notify Nuance of the unauthorized possession or use of any Program supplied under this Agreement, by any third party not authorized by this Agreement to have such possession, immediately upon its obtaining any knowledge or notice thereof.

4. Third Party Software. Subject to the terms and conditions of this Agreement, Customer shall purchase the Third Party Software as designated in the applicable Order in the quantity and at the price set forth therein. Notwithstanding the foregoing, such Third Party Software shall be governed in all respects only by the license, maintenance terms and other terms and conditions specified by the applicable third party vendor.

5. Equipment. Subject to the terms and conditions of this Agreement, Customer shall purchase Equipment and/or Third Party Equipment from Nuance in the quantity and at the price set forth in the applicable Order. Notwithstanding the foregoing, the Third Party Equipment shall be governed in all respects only by terms and conditions specified by the applicable third party vendor of such Third Party Equipment.

6. Shipping.

a. *Delivery.* Customer shall bear all shipping, freight and transportation charges from Nuance’s facility.

b. *Title; Risk of Loss.* Title to the Equipment shall pass to Customer upon Nuance’s receipt of payment. Risk of loss or damage to the Products shall pass to Customer upon delivery to the carrier.

7. Professional Services; Training Services.

a. *Provision of Professional Services and Training Services.* Subject to the terms and conditions set forth in this Agreement, Nuance will provide such Professional Services and Training Services as may be specified by the applicable Order.

b. *Professional Services.*

(i) Nuance shall perform Professional Services related to installation of Products, Third Party Software, and Third Party Equipment pursuant to its project delivery methodology set forth at:

ftp://ftp.scansoft.com/nuance/dictaphone/whitepapers/wp_prof_ServicesMethodology.pdf.

(ii) Within forty five (45) days of the Effective Date of the applicable Order, Nuance shall develop a final detailed implementation plan based on the applicable Order and ISO ("Implementation Plan"). The Implementation Plan shall include an allocation of responsibility for each task to Nuance or Customer, any technical or physical requirements necessary for Nuance to complete the installation of the purchased Products, and any assumptions and/or critical events, the occurrence or non-occurrence of which serves as condition upon which the installation services occur. The Fees for the Professional Services are subject to Customer's fulfillment of its responsibilities, and/or the occurrence or non-occurrence of any assumptions and/or critical events, each as set forth in this Agreement, the applicable Order, ISO, or Implementation Plan. Failure of Customer to fulfill a responsibility, the nonoccurrence of an assumption and/or critical event, or any other modification to Implementation Plan may result in an extended timeline for Nuance to complete the applicable Professional Services and/or Customer incurring additional Fees. Scope changes to the Implementation Plan shall be identified in writing by Nuance and presented to the Customer for approval before such additional Professional Services are delivered, provided Nuance shall not be liable for any uncompleted or undelivered installation services should Customer not approve such changes.

(iii) Nuance will send an email notification to the Customer indicating when the Professional Services related to installation have been completed. Said email will be sent to the email address provided by the Customer in the applicable ISO, and the date of completion of the Professional Services contain therein shall be deemed the date of First Productive Use. The parties acknowledge that First Productive Use may occur prior to Nuance completing those Services set forth in an Order that are intended by the parties to be performed post-installation (e.g., training services).

c. *Training Services.*

(i) Unless otherwise agreed to by the parties hereto, all training sessions scheduled hereunder will be held at a designated Nuance location during Nuance's standard business hours, excluding Nuance recognized holidays. In the event the parties agree to hold training sessions at Customer's site, all such sessions (including travel time) will occur during

the hours of 8:00 a.m. to 5:00 p.m. local Customer site time, Monday through Friday, excluding Nuance recognized holidays.

(ii) Customer shall ensure that (a) all training session attendees are Authorized Users and (b) said Authorized Users have the necessary skill and experience to participate in the training sessions. Nuance shall have the right to request that any attendee who, in Nuance's reasonable judgment, is found not to have the requisite skill and experience (i.e., does not have a working knowledge of the applicable operating system) be removed from training sessions.

d. *Rescheduling of Professional Services or Training Services.* Customer agrees to reimburse Nuance for any actual incurred costs (e.g., airline ticket deposits, etc.) as a result of any rescheduling or cancellation of Professional Services or Training Services less than five (5) business days prior to the scheduled start of such Services provided the cancellation is not due to a breach by Nuance.

e. *On-Location Professional Services or Training Services.* If an Order contemplates that Nuance will perform Services at any location other than Nuance's facilities, Customer shall provide or arrange for the necessary equipment, information, and facilities specified by Nuance to Customer.

8. Maintenance Services.

a. *Scope.* For an initial term of one (1) year following (i) First Productive Use (in the case of Products that, pursuant to the applicable Order, are to be installed by Nuance) or (ii) initial delivery if no Professional Services are involved (the "Initial Service Term"), Nuance shall provide the Maintenance Services selected by Customer in the applicable Order. Thereafter, Maintenance Services shall automatically renew for four (4) consecutive one-year terms (each, a "Renewal Service Term") unless (i) canceled in writing by either party at least thirty (30) days prior to the annual renewal date, or (ii) terminated by either party pursuant to Section 11 of this Agreement. Unless otherwise agreed, Maintenance Services with respect to any Program shall apply to all copies of the Program licensed to Customer. All Maintenance Services shall be provided subject to Nuance's Hardware and Software Maintenance Options, Terms and Conditions in effect as of the provision of such Maintenance Service.

b. *Exclusions from Maintenance Services.* Unless otherwise agreed, Nuance shall not be obligated to provide Maintenance Services for, or required as result of (i) any Product modified by anyone other than Nuance; (ii) any Product used for other than its intended purpose; (iii) any Product used with any Third Party Equipment not specified as compatible with said Product in the Product's Documentation; (iv) any Product being used with Third Party Software not supplied or specified by Nuance; (v) any Product (including any associated equipment, software or firmware) which Customer failed to properly install or maintain; (vi) any willful or negligent action or omission of Customer, (vii) any computer malfunction not attributable to the Products; or (viii) damage to Products from any external source, including computer

viruses unattributable to Nuance, computer hackers, or force majeure events.

9. Customer's Obligations. Customer shall timely perform the obligations imposed on it by this Agreement and each Order. In addition, Customer agrees as follows:

a. *Data Preservation.* Customer will create and preserve reasonable backup copies of its data and other business information and records, perform accuracy checks on a routine basis, and take such other precautions as may reasonably be required to detect and guard against possible malfunctions, loss of data, or unauthorized access to Customer's computer systems.

b. *Speech Recognition.* Customer acknowledges that speech recognition and medical fact extraction are statistical processes, errors are inherent in such processes, and applications employing such processes are designed to allow for such errors. Customer further acknowledges that such errors are inevitable and agrees that it is the sole responsibility of Customer to identify and correct any such errors before using and/or relying on the results of the use of any speech recognition or medical fact extraction software program licensed hereunder. Accordingly, Customer agrees to indemnify and hold harmless Nuance, its affiliates, licensors and suppliers, and their respective officers, agents, and employees (collectively, the "Indemnified Parties") from and against all liabilities, losses, costs, damages, claims or expenses (including reasonable attorneys fees) arising out of, or related to, any claims or suits, whatever their nature and however arising, which may be brought or made against any Indemnified Party by reason of, or arising from, any allegation that the use by Customer of any speech recognition or medical fact extraction software program licensed hereunder directly or indirectly caused or contributed to the wrongful death or personal injury of a third party to whom Customer offered or provided medical-related services.

c. *Customer Data.* In order to continually improve the quality of speech recognition of the Programs, Customer shall provide Nuance access to voice and text data residing on the Products located at Customer's installation site and grants Nuance a perpetual, royalty-free license to copy, use and analyze such data for speech recognition research. All products created in whole or part using said data shall be and remain the sole property of Nuance.

10. Payments. In consideration for the Products, Third Party Software, Third Party Equipment, and/or Services provided by Nuance under this Agreement and/or Orders, Customer agrees to pay, as applicable, all of the fees and other charges (including, but not limited to, all taxes, shipping, freight, handling and similar costs) specified in the applicable Order (collectively, the "Fees") as follows:

a. *Fees for Product, Third Party Equipment, Third Party Software, Professional Services, Training Services, and Maintenance Services provided during the Initial Service Term (as applicable).*

(i) If the value of the Order is less than \$50,000, or if Nuance is not providing Professional Services related to the delivery of the Products, Third Party Equipment, and/or Third Party Software at Customer's location, then Customer will pay all Fees for the Products, Third Party Equipment, Third Party Software, Training Services and/or Maintenance Services related to the Initial Service Term in full within thirty (30) days of date of Nuance's invoice.

(ii) If the value of the Order is \$50,000 or greater, and Nuance is performing Professional Services related to the installation of the Product, Third Party Equipment, and/or Third Party Software at Customer's location, then the following shall apply:

(1) Nuance shall invoice Customer thirty-three percent (33%) of the Fees related to the Product, Third Party Equipment, Third Party Software, Professional Services, Training Services and/or Maintenance Services related to the Initial Service Term upon execution of the applicable Order, and Customer shall pay said invoice within thirty (30) days of the date thereof.

(2) Nuance shall invoice Customer thirty three percent (33%) of the Fees related to the Product, Third Party Equipment, Third Party Software, Professional Services, Training Services and/or Maintenance Services related to the Initial Service Term upon shipment of the Products, Third Party Equipment and/or Third Party Software, and Customer shall pay said invoice within thirty (30) days of the date thereof.

(3) Nuance shall invoice Customer the remaining Fees related to the Product, Third Party Equipment, Third Party Software, Professional Services, Training Services and/or Maintenance Services related to the Initial Service Term upon First Productive Use, or one hundred and eighty (180) days after the execution of the applicable Order if the Professional Services related to installation was delayed through no fault of Nuance (whichever shall first occur), and Customer shall pay said invoice within thirty (30) days of the date thereof.

(4) Unless Customer waives in writing the right to review as specified herein, Customer shall have fourteen (14) days from the date of First Productive Use (a "Review Period") to provide Nuance written request ("Corrections Request") reasonably detailing how the Product, Third Party Equipment, and/or Third Party Software failed to materially comply with the specifications, tests and other criteria set forth in the Documentation ("Completion Criteria"). Any Corrections Request should be sent to the applicable project manager, with a copy e-mailed to corrections.request@nuance.com. Nuance shall use commercially reasonable efforts to correct any material failure(s) of the Product, Third Party Equipment, and/or Third Party Software documented in the Corrections Request to conform to the Completion Criteria. Nuance shall deliver the revised Product, Third Party Equipment, and/or Third Party Software to Customer within fifteen (15) business days of receiving such Corrections Request and Customer shall have an additional Review Period of fourteen (14) days from the

date of receipt of such revised Products, Third Party Equipment, and/or Third Party Software in which it may provide Nuance another Corrections Request pursuant to the above. The foregoing review/correction process shall be repeated until such time a Review Period concludes without Nuance receiving a Corrections Request; provided that, if Nuance is unable to correct material failure(s) in a particular Product, Third Party Equipment, and/or Third Party Software to satisfy the Completion Criteria after three (3) attempts, Nuance may terminate the applicable Order and refund (i) Fees received for the Product, Third Party Equipment, and Third Party Software less a twenty percent (20%) restocking fee, and (ii) Fees received for Training Services and Maintenance Services unperformed by Nuance due to the termination. Upon such termination, Customer shall return the Product, Third Party Equipment, and/or Third Party Software, including any copies thereof and related documentation, to Nuance.

(5) Upon conclusion of any Review Period in which Nuance does not receive a Corrections Request, or Nuance's receipt of Customer's waiver of review specified in Section 10.a.(ii)(4) (whichever shall first occur), Nuance's obligations set forth in the applicable Order shall be deemed fulfilled and the applicable Product, Third Party Equipment, and/or Third Party Software accepted by Customer.

b. *Fees for Maintenance Services for Renewal Service Terms.* Nuance will invoice Customer for Maintenance Service Fees in respect of each Renewal Service Term at Nuance's list price for such Maintenance Services, then in effect when initially contracted in the applicable Order, at least thirty (30) days prior to the first day of such Renewal Service Term, and Customer will pay such Maintenance Service Fees within thirty (30) days of the invoice date. If the applicable Order does not specify a Maintenance Service Fee for a given unit of Product, the applicable Maintenance Service Fee will equal then-current rates as of the first day of the Initial Service Term or Renewal Service Term, as applicable.

c. *Expenses.* All prices are net to Nuance and are exclusive of any duties, travel, telecommunication, meals, boarding, lodging, and other out-of-pocket expenses that may be incurred. Customer shall pay all such expenses within thirty (30) days of Nuance's invoice.

d. *Taxes.* All amounts described herein are exclusive of any applicable sales, use, excise or withholding taxes or any other taxes, fees, customs duties and charges now in force or enacted in the future. Accordingly, all payments are subject to an increase equal to any charges Nuance may be required to collect or pay, other than the tax due on the net income of Nuance. If Customer claims tax-exempt status, Customer shall provide a valid exemption certificate to Nuance upon the execution of this Agreement and/or upon the execution of each Order. If Customer fails to provide a valid exemption certificate, it will be responsible for any and all sales taxes.

e. *Late Fees.* If Customer fails to pay any Fees when due, Nuance shall be entitled to assess a late fee equal to one and one-half percent (1.5%) of the past due balance for each

month or part thereof that the balance remains outstanding or, if lower, the maximum rate permitted by applicable law.

f. *Leasing Arrangements.* If Customer has entered into a lease arrangement with Fleetwood Financial ("Lessor") to finance the Order, then Nuance shall submit its invoice for the Order to and accept payment for the Order from, the Lessor. Acceptance of a purchase order from the Lessor is for administrative convenience only. Upon delivery of the Products by Nuance to Customer if Lessor fails to pay Nuance the amounts owing in accordance with the lease arrangement then Customer remains fully liable to Nuance for all amounts due and owing under the Order and shall pay all amounts immediately upon receipt of Nuance's invoice, in accordance with the payment schedule outlined below.

11. Term; Termination.

a. *Term of Agreement; Purchases.* This Agreement shall become effective as of the Effective Date and, unless sooner terminated in accordance with Section 11.b hereof, shall continue until the expiration or termination of the last existing Order ("Agreement Term").

b. *Termination for Cause.* Either party may terminate any Order by written notice if (i) the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach or (ii) the other party shall be or becomes insolvent. Notwithstanding the foregoing, Nuance may immediately terminate any license granted pursuant to this Agreement without notice if Customer commits a material breach of Section 3 and/or 12 herein.

c. *Suspension.* Nuance reserves the right to suspend Services to Customer under any and all Orders during any period in which Customer's account under any one or more Orders is more than thirty (30) days past due.

d. *Effect of Termination or Expiration.* Upon the termination or expiration of any Order by either party, all licenses granted to Customer under such Order shall terminate and Customer shall cease using the applicable Programs and shall return same to Nuance. Neither the expiration nor termination of this Agreement, any individual Orders, or any license shall affect the parties' respective payment obligations or their rights and obligations under Sections 9 – 20 herein.

12. Ownership and Proprietary Rights. Except for the limited licenses granted pursuant to this Agreement, the terms of the Agreement do not convey any ownership or other rights of any kind to Customer in or to the Programs. Nuance, as between Nuance and Customer, shall own all right, title and interest in and to all Programs (including, without limitation, all Updates, Upgrades, improvements, enhancements, and/or custom features and functions) and all patents, copyrights and other intellectual property rights therein. Effective on delivery of each Update or Upgrade to Customer, Nuance shall be deemed to have granted Customer a license to use such Update or Upgrade in conjunction with the Program to which such Update or Upgrade relates, subject to the terms of this Agreement.

13. Confidentiality.

a. “*Confidential Information*” for the purposes of this Agreement shall mean all tangible and intangible confidential and proprietary information and trade secrets (whether or not patentable or copyrightable) owned or possessed by either party (“*Disclosing Party*”) prior to the expiration or termination of this Agreement, including without limitation, each party’s and its affiliates’ and subsidiaries’ business/customer information, business practices, data processes, computer or software products or programs and all related documentation, cost and pricing data, know-how, marketing or business plans, analytical methods and procedures, hardware design, technology, financial information, personnel or customer data, in each case that is disclosed to the other party (“*Receiving Party*”) or to which the Receiving Party gains access in connection with this Agreement. Confidential Information shall not include Protected Health Information or PHI (as defined in Exhibit B), the protection of which is governed by Exhibit B.

b. *Nondisclosure.*

(i) The Receiving Party agrees (1) to hold the Disclosing Party’s Confidential Information in strict confidence, and apply at least the standard of care used by the Receiving Party in protecting its own Confidential Information, and not to disclose such Confidential Information to any third party, and (2) without the written permission of the Disclosing Party, not to use any Confidential Information of the Disclosing Party except as reasonably required to exercise its rights or perform its obligations under this Agreement.

(ii) The Receiving Party agrees to limit disclosure of the Disclosing Party’s Confidential Information to those employees who need to know the same to accomplish the purposes of this Agreement, and who have executed a written agreement with terms substantially similar to those contained herein.

c. *Exclusions.* The obligations to preserve the confidential nature of any of the Confidential Information described herein shall not apply to information that (i) was previously known to the Receiving Party free of any obligation to keep it confidential; (ii) is or becomes generally known to the public or is obtainable from public sources other than as a result of an act or omission of the Receiving Party; (iii) is independently developed by or on behalf of the Receiving Party without use of or reference to the Disclosing Party’s confidential information; or (iv) the Receiving Party is compelled to disclose the Confidential Information by a governmental agency or a court of law having proper jurisdiction. If disclosure is compelled pursuant to subsection (iv) of this section, the Receiving Party shall give the Disclosing Party reasonable notice to enable such party to try to protect the confidentiality of the Confidential Information.

14. Limited Warranties.

a. *Title Warranties.* Nuance warrants that it has sufficient right, title and interest in the Programs to grant the licenses contemplated by this Agreement, and that the Equipment will

be free and clear of all liens and encumbrances when and as delivered.

b. *Program Warranty.* Nuance warrants that, upon First Productive Use (in the case of Programs that, pursuant to the applicable Order, are to be installed by Nuance) or initial delivery (in all other cases) and for a period of ninety (90) days thereafter, the Programs shall conform in all material respects to the applicable Documentation.

c. *Equipment Warranty.* Nuance warrants that, upon First Productive Use (in the case of Equipment that, pursuant to the applicable Order is to be installed by Nuance) or initial delivery (in all other cases) and for a period of ninety (90) days thereafter, the Equipment shall conform in all material respects to the applicable Documentation.

d. *Services Warranty.* Nuance warrants that the Services provided by Nuance pursuant to this Agreement shall be of a competent and professional quality and performed in a competent and professional manner.

e. *Limitation of Warranties.* The aforementioned warranties of Sections 14.a – 14.d shall not apply, and Nuance shall have no warranty obligation or liability with respect to (i) any Product that is damaged through no fault of Nuance; (ii) any Product that is modified by anyone other than Nuance; (iii) any Product that is used for any purpose other than its intended purpose; (iv) any Product that is used with Third Party Equipment not specified as compatible with said Product in the Product’s Documentation; (v) any Product that is used with Third Party Software not specified as compatible with said Product in the Product’s Documentation; (vi) any Product that Customer fails to properly install or maintain; (vii) any Product that is misused by any party other than Nuance; (viii) any computer malfunction not attributable to the Products or Nuance; (ix) any incorrect use of the Products by any party other than Nuance; or (x) any willful or negligent action or omission of Customer. THE EQUIPMENT MAY CONTAIN RECYCLED, REMANUFACTURED OR RECONDITIONED COMPONENTS, WHICH COMPONENTS ARE WARRANTED AS NEW. As Customer’s exclusive remedy in the event of any warranty claim hereunder, Nuance, during the foregoing respective warranty periods and at its sole option, will make reasonable efforts to correct or cure such nonconformity, defect, contaminant or breach; or replace such Products in lieu of curing such nonconformity, defect, contaminant or breach.

f. *Disclaimer.* WITH THE SOLE EXCEPTION OF THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NUANCE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. NUANCE MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR THIRD PARTY EQUIPMENT. Nuance’s sole obligation with respect to such Third Party Software and Third Party Equipment shall be to

make commercially reasonable efforts to assist Customer to enforce the warranties extended by the producer of the applicable Third Party Software or Third Party Equipment, if any.

15. Limitation of Liability. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 3 AND CUSTOMER'S OBLIGATIONS SET FORTH IN SECTION 9.B ABOVE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY HAVE ANY OBLIGATION OR LIABILITY TO THE OTHER HEREUNDER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, COLLATERAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES INCURRED BY THE OTHER PARTY (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS, COSTS OF COVER, COSTS OF DELAY, DAMAGES TO BUSINESS REPUTATION, OR LOSS OR DESTRUCTION OF DATA), REGARDLESS OF HOW SUCH DAMAGES ARISE, WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE, OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL NUANCE HAVE ANY OBLIGATION, OR BE LIABLE FOR ANY DAMAGES, DIRECT OR OTHERWISE, IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER TO NUANCE PURSUANT TO THE APPLICABLE ORDER IN THE TWELVE (12) CALENDAR MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. THIS LIMITATION IS CUMULATIVE; THE SUM OF MULTIPLE CLAIMS MAY NOT EXCEED THIS LIMIT. UNDER NO CIRCUMSTANCE SHALL NUANCE'S THIRD PARTY SUPPLIERS BE RESPONSIBLE OR LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES, DIRECT OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

16. Intellectual Property Indemnification.

a. Customer, at its expense, will defend, indemnify and hold Nuance harmless from any claim, action, suit or proceeding made or brought against Nuance by a third party resulting from Customer's designs, specifications, modifications, translations or combination of the Programs with other equipment or software infringes a third party's United States patent, trade secrets, copyright or other intellectual property right.

b. Nuance, at its expense, will defend Customer from any claim, or suit made or brought against Customer by an unaffiliated third party alleging that Customer's use of the Programs within the scope of this Agreement infringes such third party's United States patent, trademark or copyright (each, a "Claim"), and indemnify Customer from any resulting judgment of the Claim finally awarded against Customer by a court of competent jurisdiction, or settlement of the Claim agreed to by Nuance. Nuance's obligation under this Section 16 shall be subject to Customer's providing Nuance with

prompt notice of any Claim, cooperation with Nuance in the defense and settlement of the Claim, and granting Nuance sole control over the defense or settlement of the Claim.

c. In the event a court of competent jurisdiction makes a determination that any Program infringes, or if Nuance determines that the Program likely infringes, Nuance, at its option and expense, shall: (i) modify the infringing portion of the Program so as to make it non-infringing; (ii) replace the infringing Program with a non-infringing program having substantially similar functionality; (iii) obtain the right to continue using the infringing portion of the Program; or (iv) refund Customer the Fees paid for the affected Program prorated over a five-year period from the delivery date.

d. Nuance's obligations under this section shall not apply to the extent of any Claim or infringement resulting from (i) Customer's continued use of the infringing Program after receipt of notice from Nuance of a claim or after receipt of the remedy required of Nuance under this section; (ii) modifications to the Programs by any party other than Nuance; (iii) modifications to the Programs made pursuant to Customer's express instructions; (iv) combination or use of the Programs with other products, processes or materials not provided by Nuance or specified by the applicable Documentation; or (v) Customer's use of the Programs other than in accordance with the terms of this Agreement.

e. Nuance's indemnity obligations set forth in this Section 16 shall constitute the sole liability of Nuance, and the sole remedy of Customer, with regard to claims, actions, suits or proceedings made or brought against Customer by a third party alleging that Customer's use of the Programs infringe such third party's United States patent, trade secret, copyright or other intellectual property right.

17. HIPAA Compliance. The parties hereby agree to the terms of the Business Associate Agreement attached hereto as Exhibit B and made a part of this Agreement.

18. US Government End Users. This section applies to all acquisitions of Programs (collectively or individually for the purposes of this section, the "Government Acquired Products") by or for the government of the United States of America (the "Federal Government"), or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal Government. By accepting delivery of the Government Acquired Products, the Federal Government hereby agrees that this software qualifies as "commercial" computer software within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Federal Government's use and disclosure of the Government Acquired Products, and shall supercede any conflicting contractual terms or conditions. If this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with United States law, the Federal Government agrees to return the Government Acquired Products unused. The following additional statement applies only to acquisitions by the Federal Government that are governed by DFARS Subpart

227.4 (October 1988): “Restricted Rights - Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data – Noncommercial Items clause at DFARS 252.227-7013 (1995).”

19. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without regard to principles of conflict of laws. The parties hereto agree to submit all disputes related to this Agreement to the courts in the Commonwealth of Massachusetts, to which, each party consents to the jurisdiction of such courts and waives any objection it may have with respect to venue.

20. Miscellaneous Provisions.

a. *Audit*. Nuance, or a third party appointed by Nuance, shall have the right, not more than once a year and upon reasonable notice, to conduct an audit of Customer’s records to confirm compliance with the terms of this Agreement. Any audit shall be performed during Customer’s normal business hours.

b. *Injunctive Relief*. The parties hereto agree that remedies at law may be inadequate to protect against a breach of Sections 3, 12, 13 and 17 hereof and both parties hereby agree to grant injunctive relief in favor of the other party without proof of actual damages for any breach of those sections.

c. *Export*. Where applicable, each party agrees to comply with all export laws and restrictions and regulations that the Department of Commerce or other United States or foreign agency or authority issues, and not to knowingly export, or allow the export or re-export in violation of any such restrictions, laws or regulations, or without all required licenses and authorizations.

d. *Independent Status of Parties*. Nothing contained in this Agreement, nor in the relationship created thereby, shall be interpreted to evidence a joint venture, partnership or principal-agent relationship between Nuance and Customer. Neither party shall have any right or authority to act on behalf of, or incur any obligation for, the other party.

e. *Publicity*. Following the execution of this Agreement, the parties agree to issue a joint press release announcing the relationship established between the parties hereunder. Nuance may include Customer’s name in Nuance’s Customer list, may identify Customer as its Customer in its sales presentations, marketing materials, advertising, promotion and similar public disclosures.

f. *Order of Precedence*. The Agreement, Business Associate Agreement, Hardware and Software Maintenance Options Terms and Conditions, and each Order, as applicable and to the extent reasonably possible, shall be construed so as to be consistent with each other. If the aforementioned documents cannot reasonably be construed as consistent with each other,

then each document shall prevail over all documents listed subsequently in the preceding sentence.

g. *No Third Party Beneficiaries*. Except as set forth in Section 9.b, 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.

h. *Assignment*. In no event may Customer assign its rights or obligations hereunder or subcontract any portion of its performance hereunder without Nuance’s prior written consent.

i. *Force Majeure*. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party, including without limitation, acts of God, strikes, lockouts, riots, acts of war, acts of terrorism, epidemics, fire, communication line failures, power surges or failures, earthquakes or other disasters. Nuance shall not be liable for delays or for failure to manufacture and/or deliver due to causes beyond its reasonable control.

j. *Notices*. All notices hereunder shall be sent to the parties at their respective addresses first set forth above, or at such other addresses as they may designate by written notice. Customer shall also send a copy of all notices it sends to Nuance to Nuance’s General Counsel at 1 Wayside Road, Burlington, MA 01803. All notices shall be deemed to have been given when (i) delivered personally, (ii) sent via certified mail (return receipt requested), (iii) sent fax (all with confirmation of receipt), or (iv) sent via recognized air courier service.

k. *Entire Agreement, Amendments, Waiver, Severability*. This Agreement (i) is being entered into among competent and experienced business persons and the terms and provisions of this Agreement shall not be construed in favor of or against either party and (ii) constitutes the sole and complete agreement between the parties with regard to its subject matter, and may not be modified or amended except by a writing signed by both parties hereto. Neither party shall be subject to any provisions of any pre-printed purchase order, or any Customer policies, regulations, rules, or the like, including those set forth in any Customer sponsored registration system, regardless if such requires affirmative acknowledgement from a Nuance representative. Any failure to insist on the exact performance of any provision shall not constitute a waiver of any rights by either party, all of which are hereby expressly reserved. If any of the provisions of this Agreement shall be or become invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the remaining provisions of this Agreement. The section headings used herein are for references and convenience only, and shall not enter into the interpretation hereof. This Agreement may be executed in multiple counterparts and delivered by facsimile transmission, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

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EXHIBIT A
ORDER FORM

INTENTIONALLY BLANK

EXHIBIT B
BUSINESS ASSOCIATE AGREEMENT

Whereas, Customer Name _____, a hospital, clearinghouse, or provider who transmits health care information in electronic form, hereinafter "Covered Entity" (as defined in 45 C.F.R. 160.103) and Nuance Communications, Inc., hereinafter "Business Associate" (as defined in 45 C.F.R. 160.103), have executed an agreement between the parties hereto (the "Agreement") and the parties hereto intend to comply with the applicable provisions of the Health Insurance Portability and Accountability Act (1996) ("HIPAA") by executing this document (this "Document") and agreeing to the following:

Business Associate agrees to receive protected health information ("PHI") and/or electronic protected health information ("EPHI") from Covered Entity in accordance with regulations 164.502(e)(1) and (2), 164.504(e)(1) and (2), 164.308(b)(1) and (2), and 164.314(a)(1) and (2), in order to perform administrative processing functions on behalf of Covered Entity. Business Associate is providing the following assurances to Covered Entity that the PHI will be appropriately safeguarded:

1. Business Associate will only use and disclose any PHI or EPHI it receives from Covered Entity as is permitted or required under the Agreement between the parties or the law.
2. Business Associate will use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for in the Agreement.
3. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity.
4. Business Associate will report to Covered Entity any use or disclosure of PHI not provided for in the Agreement or any security incident of which it becomes aware.
5. Business Associate will ensure that any of its agents or subcontractors to whom Business Associate provides Covered Entity's PHI or EPHI will agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI or EPHI, and agree to implement reasonable and appropriate security safeguards to protect such EPHI.
6. Business Associate will, upon request, make PHI available to Covered Entity in accordance with §164.524.
7. Business Associate will, upon request, make PHI available to Covered Entity for amendment and incorporate any amendments in accordance with §164.526.
8. Business Associate will make available the information required to provide an accounting of disclosures in accordance with §164.528.
9. Business Associate will 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 Health and Human Services (HHS) or any other officer or employee of HHS to whom the authority invoked has been delegated for purposes of determining the Covered Entity's compliance with the privacy regulations promulgated under HIPAA.
10. At termination of the Agreement, Business Associate will, if feasible, return or destroy all PHI or EPHI received from or created or received by the Business Associate on behalf of Covered Entity that the Business Associate still maintains in any form and retain no copies of PHI or EPHI. If such return or destruction is not feasible, Business Associate will extend the protections of the Agreement to PHI or EPHI and limit further uses and disclosures to those purposes that make the return of PHI or EPHI infeasible.
11. Business Associate authorizes termination of the Agreement by Covered Entity in the event that Covered Entity determines Business Associate has violated a material term of this Document.

IN WITNESS WHEREOF, the parties have executed this Addendum through their duly authorized representatives on the dates indicated below, to be effective on the date signed by the last party.

Nuance Communications, Inc.

Customer Name

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT C

DESIGNATED AFFILIATE LIST

Designated Affiliate	Address