

NUANCE ENTERPRISE DIVISION

PROFESSIONAL SERVICES - GENERAL TERMS AND CONDITIONS OF SALES
(HEREINAFTER REFERRED TO AS THE "AGREEMENT")

APPLIES TO US RESELLERS AUTHORIZED BY NUANCE

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

1.1 Company desires to purchase professional services from Nuance Communications Inc, 1 Wayside Road, Burlington, MA 01803, USA ("Nuance") and as identified in the Statement of Work (as defined below) that it signed by and between Company and Nuance and includes a reference to this Agreement. Upon signature of such Statement of Work, the Parties will have entered into a binding contract on the terms and conditions set forth in this Agreement and in the Statement of Work. In the event of a conflict between or among the provisions in this Agreement and a Statement of Work, the order of precedence shall be as follows: (i) Agreement, and (ii) Statement of Work.

Nuance and Company are sometimes referred to individually as a "Party" and collectively as the "Parties".

Neither Party shall be bound by any preprinted provisions of any purchase order, acknowledgment letters, nor other similar form.

In consideration of the mutual covenants stated below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

2 DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, the following terms used in this Agreement shall have the meanings set forth below:

2.1 "Acceptance Criteria" shall mean, with respect to any Deliverable, the criteria set forth in Section 3.2, or the tests and other acceptance criteria as otherwise set forth in the applicable Statement of Work.

2.2 "Affiliate" shall mean 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 if that other entity has fifty percent (50%) or more of the votes in such entity, is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

2.3 "Deliverable" shall mean the items to be delivered by Nuance to Company as described in the applicable Statement of Work. Deliverable specifically excludes Nuance Commercial Software. Unless otherwise provided in a Statement of Work, any software code that may be part of a Deliverable shall be provided by Nuance in object code form only.

2.4 "End Customer" shall mean a customer of Company identified in a particular Statement of Work and located within the Territory which has entered into an agreement with Company to purchase services, a portion of which Company wishes to acquire from Nuance in the form of Deliverable(s) as provided for in a particular Statement of Work.

2.5 "Fees" shall mean the fees (exclusive of sales and other taxes) for the delivery of professional services, or the development of a Deliverable, under the applicable Statement of Work.

2.6 "Nuance Commercial Software" shall mean commercially available software licensed by Nuance in the ordinary course of business, which is licensed by Nuance under a separate license agreement.

2.7 "Pre-existing Materials" shall mean all software or materials developed by a Party, the development of which pre-dates the Effective Date or was developed outside the scope of an applicable SOW.

2.8 "Specifications" shall mean, with respect to any software Deliverable, the functions to be performed by such software Deliverable and expressly referenced in the relevant Statement of Work. For the avoidance of doubt none of the parties shall be obliged to enter into any Statements of Work under the Agreement.

2.9 "Statement of Work" or "SOW" shall mean a written document executed by authorized representatives of Company and Nuance, or their Affiliates, which details the professional services to be performed and Deliverables to be provided by Nuance or its Affiliates.

2.10 "Term" shall have the meaning as set forth in section 11.1.

2.11 "Territory" shall mean U.S.A.

3 ENGAGEMENT AND PERFORMANCE

3.1 **Statements of Work.** Subject to the terms and conditions of this Agreement, Company agrees to retain Nuance, and Nuance agrees to provide professional services to Company on a non-exclusive basis pursuant to a Statement of Work.

3.2 **Completing Statements of Work.** Nuance will use commercially reasonable efforts to perform the professional services in accordance with the timetable and other specifications set forth in the applicable Statement of Work. Unless the applicable Statement of Work states otherwise, Nuance may perform all professional services remotely. Nuance shall not be responsible for any delays in a professional services project that result directly or indirectly from the delay of either the Company, an Affiliate of the Company and/or a third party supplier of the Company. Any additional fees related to the delay will be identified in a PCR (as defined in the Subsection titled "Project Change Requests") and will be the responsibility of Company.

3.3 **Project Change Requests.** Either Nuance or Company may initiate a Project Change Request ("PCR"), which modifies or amends a Statement of Work. All proposed PCR's shall be submitted in writing (including, without limitation, by e-mail). Each proposed PCR will specify the nature and reason for the proposed change, and any subsequent impact to schedules, billing milestones, deliverables and cost. A PCR will become effective upon signature by both Parties. SOWs or other documents occasionally refer to a PCO as a Project Change Request ("PCR"). Both designations (PSO and PSR) shall have the same meaning.

4 ACCEPTANCE TESTING OF DELIVERABLES

3.1 **Acceptance Testing.** Nuance shall inform Company as Nuance completes each Deliverable. Company shall have 5 business days (the "Acceptance Period") after receipt of a Deliverable to either: (i) accept the Deliverable, or (ii) provide written notice (the "Rejection Notice") to Nuance that Company rejects such Deliverable because the Deliverable fails to satisfy the Acceptance Criteria for such Deliverable. In any such Rejection Notice, the Company shall document in reasonable detail the relevant part of the Acceptance Criteria which the Deliverable failed to satisfy.

3.2 **Acceptance Criteria.** Unless otherwise specified in the applicable Statement of Work, the Acceptance Criteria for any software Deliverable shall be that it conforms to the Specifications in all material respects. For any non-software Deliverable, the Acceptance Criteria shall be that it reasonably satisfies the requirements of the Statement of Work under which the non-software Deliverable was developed in all material respects.

3.3 **Corrections.** Nuance shall correct any failures of a Deliverable to satisfy the Acceptance Criteria that: (i) are documented in a Rejection Notice provided by Company; and (ii) are reproducible or confirmed by Nuance. Nuance shall deliver the corrected Deliverable to Company within ten (10) business days of receiving such Rejection Notice or such longer period as may be stated in the Statement of Work. Upon re-delivery of the Deliverable, Company shall have an additional Acceptance Period to establish that the corrected Deliverable conforms to the Acceptance Criteria. After redelivery, Company shall within such additional Acceptance Period, either accept the Deliverable or provide a Rejection Notice to Nuance of any continuing failure(s) to satisfy the Statement of Work or Acceptance Criteria (as applicable). The foregoing acceptance/rejection/correction process shall be repeated until all such failures have been corrected by Nuance and Company has accepted the Deliverable; provided, however, that if, after two (2) or more Acceptance Periods, Nuance is unable to correct failure(s) to satisfy the Acceptance Criteria, either Party may terminate the Statement of Work by written notice to the other Party. In the event of termination of the Statement of Work, Company shall return such rejected Deliverable, and the related documentation, including any copies thereof, to Nuance. In such event, unless the Parties otherwise agree in writing: (i) Company shall be under no obligation to remit any further Fees; (ii) Nuance shall provide Company with a full refund of all Fees paid for such Deliverable; and (iii) Nuance shall be under no obligation to continue to provide professional services or Deliverables under the Statement of Work for which the rejected Deliverable was provided.

3.4 **Deemed Acceptance.** Notwithstanding anything to the contrary in this Section, a Deliverable will be deemed accepted and the associated Fee shall be due immediately if: (i) Company deploys such Deliverable into commercial production (i.e. starts to use the Deliverable outside of a closed-off development environment); or (ii) Nuance does not receive a Rejection Notice from Company within the Acceptance Period. For professional services provided under a Statement of Work that does not identify Deliverables, such professional services will be deemed accepted upon delivery.

5 PRICING AND PAYMENT

5.1 **Price.** In consideration of the professional services performed by Nuance under this Agreement, Company shall pay to Nuance all Fees, and reimburse Nuance for all expenses, properly invoiced in accordance with the terms of the applicable Statement of Work. Nuance shall submit invoices to Company: (i) on a monthly basis for services delivered on a time and materials basis, (ii) in accordance with the milestones set forth in the applicable Statement of Work for services delivered on a fixed fee basis, (iii) on a monthly basis for expenses incurred in accordance with the terms of the applicable Statement of Work and (iv) otherwise as expressly agreed to by the Parties in a Statement of Work.

5.2 **Payments.** Unless otherwise stated in the Statement of Work, payments shall be made to Nuance in the currency as set out in the applicable Statement of Work, either by mail or wire transfer within thirty (30) days of the date of invoice in accordance with the remittance information contained on the invoice. Interest shall accrue at the rate of one and one half percent (1.5%) per month on any amounts past due. Company shall notify Nuance within fourteen (14) days of the date of invoice if it disputes any amount contained in an invoice.

5.3 **Taxes.** Company shall pay all taxes, duties, import and export fees, and any other charges or assessments, except the withholding of income taxes, which are applicable to the performance of this Agreement, and shall reimburse Nuance for any encumbrance, fine, penalty, or other expense which Nuance may incur as a result of Company's failure to pay any such taxes, duties, fees, charges, or assessments. For purposes of this Agreement, the term "taxes" shall include, but is not limited to any and all assessments and other governmental charges, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use, value added, ad valorem, consumption, transfer, franchise and withholding taxes, except taxes imposed on the net income of Nuance, together with all interest, penalties and additions imposed with respect to such amounts. If any applicable law requires Company to withhold an amount from any payment to Nuance hereunder Company shall affect such withholding, remit such amount to the appropriate taxing authority, and supply Nuance with the tax receipt evidencing the payment of such amount to the government within sixty (60) days of its receipt by Company. To the extent that an income tax convention between the country of Nuance and the country of Company

permits, upon the filing of a proper application, for a reduction or elimination of such withholding tax, the Parties shall cooperate in the completion and filing of such application. Company shall provide to Nuance, and Nuance shall complete and return to Company, all applicable forms required by the governing tax authority in order to secure the reduction or elimination of withholding tax as authorized by the convention. Nuance shall add sales tax or similar tax to the invoice as required by applicable law. If the Company (Licensee or Reseller) provides a properly executed and valid exemption certificate, Nuance shall accept this certificate in good faith for the purpose of assessing sales tax or similar tax.

5.4 **Company Purchase Orders.** Unless expressly stated otherwise in the Statement of Work, Company agrees to pay Nuance's invoices without a purchase order reference. Company acknowledges and agrees that if it is Company's standard practice to issue unsigned purchase orders, such purchase orders are valid and binding. Nothing contained in any purchase order will modify or add to the terms of this Agreement.

6 INTELLECTUAL PROPERTY

6.1 **Deliverables.** Subject to Company's payment of the applicable Fees required hereunder, Nuance shall be deemed to have granted to Company a non-exclusive, non-transferable, royalty free, perpetual, worldwide and irrevocable right and license (a) to use all Deliverables provided to Company under a Statement of Work with Nuance Commercial Software solely to provide services to the End Customer(s) identified in the Statement of Work, (b) to grant to the End Customer(s) identified in the applicable Statement of Work a non-exclusive, non-transferable, perpetual, worldwide and irrevocable right to use Deliverables solely in conjunction with Nuance Commercial Software for internal business operations, provided that Company enters into a written agreement with such End Customer(s) that are at least as protective of Nuance as those set forth in the Exhibit A, and (c) to modify and create derivative works of a Deliverable which is in the form of software for the purpose of correcting errors and adding new functionality. Such use may include use by a third party provided such third party is bound by written obligations restricting use of the Deliverables solely for the purposes set forth in this Section and binding such third party to obligations of confidentiality substantially similar to those set out in the Section titled "Confidential Information".

6.2 **Proprietary Rights.** Nuance or its licensors retain all right, title, and interest in and to the Deliverables, the Nuance Pre-Existing Materials, any new language models, speech data or other enhancements to any Nuance Commercial Software that result directly or indirectly from the professional services contemplated hereunder, all Nuance trademarks contained in the Deliverables, and any derivative works of the foregoing developed by Nuance, including all intellectual property rights associated therewith. Nuance reserves all rights not expressly granted to Company in this Agreement. Nuance Commercial Software is licensed under a separate license agreement between the Parties or a license agreement between Company and a Nuance reseller.

6.3 **Company Pre-existing Materials.** Nuance acknowledges that, during the performance of professional service hereunder, Company may provide Company Pre-existing Materials to Nuance. Nothing herein shall transfer ownership of Company Pre-Existing Materials to Nuance. Company retains ownership in all Company Pre-existing Materials. Company grants Nuance a license to use such Company Pre-existing Material solely for the performance of Nuance's obligations hereunder.

7 CONFIDENTIAL INFORMATION

7.1 **Definition.** Subject to the exceptions contained in this Section, "**Confidential Information**" shall mean all information, including third party information, (a) disclosed by a Party or its Affiliates (the "**Disclosing Party**"), in whatever tangible form or otherwise, to the receiving Party or its Affiliates (the "**Receiving Party**") that is clearly marked "confidential" or with some other proprietary notice, (b) disclosed orally or otherwise in intangible form by the Disclosing Party and designated as confidential or proprietary at the time of the disclosure; and (c) for Nuance, the Deliverables. 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 as evidenced by that party's written records; (iii) is disclosed with the prior written approval of the Disclosing Party; or (iv) was independently developed by the Receiving Party by persons without any access to the Confidential Information of the Disclosing Party. The obligation not to use or disclose Confidential Information will remain in effect until one of these exceptions occurs.

7.2 **Permitted Disclosure.** Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall be permitted if such disclosure (a) is in response to an 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; or (b) is otherwise required by law.

7.3 **Use and Obligations.** The Receiving Party will not use the Disclosing Party's Confidential Information for purposes other than as provided in this Agreement. The Receiving Party shall protect the Disclosing Party's Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure, or publication of the Confidential Information to third parties as the Receiving Party uses to protect its own like Confidential Information of a like nature. Confidential Information received by a Receiving Party hereto may be disclosed to and used by such Receiving Party's employees, agents and contractors in accordance with the terms and conditions of this Agreement, and each Party shall be liable for any act or omission by its Affiliates, and its and their respective employees, agents and contractors, which, if performed or omitted by such Party, would be a breach of this Agreement. Each Party agrees that its Affiliates, and its and their respective employees, agents and contractors, shall be bound by the terms of an agreement protecting 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.

7.4 **Return of Confidential Information.** The Receiving Party shall return to the Disclosing Party, or, at the Disclosing Party's option, destroy,

all Confidential Information of the Disclosing Party in tangible form: (i) upon the written request of the Disclosing Party; or (ii) upon the expiration or termination of this Agreement, whichever comes first. In both cases, the Receiving Party shall, upon request, promptly certify in writing that it has complied with the obligations of this Section. Notwithstanding the foregoing, each Party may retain a copy of the Confidential Information in electronic format in accordance with its corporate security and/or disaster recovery procedures.

8 LIMITED WARRANTY

8.1 **Limited Warranty.** Nuance warrants that, for a period of thirty (30) days after the delivery date (the “**Warranty Period**”): (i) professional services will be performed in a good and workmanlike manner; and (ii) each Deliverable, when used in accordance with the applicable Statement of Work, will conform to the material functional specifications set out in the relevant Statement of Work (the “**Warranty**”). This Warranty is made only to the Company and Nuance shall have no liability to any third party as a result of such Warranty. Nuance shall have no obligation to the Company under section (ii) of this Warranty, or otherwise, if: (i) the Deliverable is used in connection with any computer equipment or software that is not specified in the applicable Statement of Work, (ii) the Deliverable has been modified by any party other than Nuance; or (iii) the failure of the Deliverable to conform to the Warranty can be attributable to Company or a third party.

8.2 **Exclusive Remedy.** Nuance’s sole obligation under the warranty provided in the Subsection titled “Limited Warranty” shall be to use commercially reasonable efforts to provide materials or services to remedy the non-conformity of the Deliverable and/or any professional services during Nuance business hours in response to written reports of non-conformity which are received by Nuance prior to the expiration of the relevant Warranty Period. When providing written notice of such non-conformity, Company shall provide Nuance with a documented example of such non-conformity or error.

8.3 **Non-Warranty Service.** In the event the Company requests, and Nuance agrees to provide, professional services for the Deliverables for problems encountered by the Company during the Warranty Period that are outside the scope of the Warranty provided in the Subsection titled “Limited Warranty”, the Parties will execute a separate Statement of Work for such services. If, after the expiration of the Warranty Period, the Company requires additional services for any Deliverable, the Parties shall negotiate a separate Statement of Work for the provision of such services.

8.4 **DISCLAIMER.** THE PROVISIONS OF THE SUBSECTION TITLED “LIMITED WARRANTY” STATES COMPANY’S SOLE REMEDY AND NUANCE’S SOLE OBLIGATION TO COMPANY FOR BREACH OF WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NUANCE MAKES NO ADDITIONAL WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER WHATSOEVER AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

9 INDEMNIFICATION

Nuance shall, at its own expense, defend or, at its option, settle, any action brought against Company by a third party, during the Term, to the extent it is based on a claim that the Deliverable infringes any patent, copyright or trademark of any country that is a signatory to the Berne convention or misappropriates a trade secret of such third party. Nuance will indemnify Company against any damages and losses 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 and assistance necessary to settle and/or defend any such claim or action. If the Deliverable becomes, or in the opinion of Nuance, is likely to become, the subject of an infringement claim or action, Nuance may, at its option, (a) procure, at no cost to Company, the right to continue using the Deliverable; or (b) replace or modify the Deliverable 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, terminate Company’s right to use such Deliverable and refund the amounts Company paid for such Deliverable depreciated on a straight-line sixty (60) month basis. Nuance will have no obligation or liability under this Section for any claim or action resulting from any of the following: (a) modifications to the Deliverable by a party other than Nuance; (b) the combination of the Deliverable with other products, processes, or materials not provided by Nuance if the Deliverable itself would not infringe; (c) specifications or requirements supplied by Company or its End Customer that were used for the development of the Deliverables; or (d) where Company or its End Customer continues allegedly infringing activities after being provided with modifications that would have avoided the alleged infringement. This Section 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 of infringement of any intellectual property or other proprietary right.

10 LIMITATION OF LIABILITY

10.1 The following provisions set out the exclusions and limitations of liability of Nuance and its Affiliates, and their respective officers, agents, contractors and employees, to Company and its Affiliates, and their respective officers, agents, customers, contractors and employees, under or in connection with this Agreement; and/or any tortious act or omission including without limitation negligence and/or breach of duty including statutory duty arising under or in connection with this Agreement.

10.2 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.

10.3 Subject to the foregoing provisions of this Section, Nuance shall not be liable for loss of profits or revenues, loss of anticipated savings, loss of customers, loss of, or loss of use of any software or data, nor for any special, consequential or indirect loss or damage, costs, expenses or other claims for consequential compensation, howsoever caused, which arise out of or in connection with this Agreement or the services.

10.4 Save for Nuance's liability under the second subsection of this Section "Limitation of Liability", which shall not be excluded or limited under this Agreement, the Parties, having assessed the risks, agree that Nuance's total liability shall not exceed an aggregate amount equal to 100% of the total amount paid by the Company under the applicable SOW in relation to which the liability arises.

11 TERMINATION

11.1 **Agreement Term and Renewal.** This Agreement will commence on the Effective Date and, unless terminated in accordance with the terms hereof, will continue for the duration of the Statement of Work. (the "Term").

11.2 **Termination By Either Party for Cause.** Either Party may terminate this Agreement immediately upon written notice if the other Party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice specifying such breach. Notwithstanding the foregoing, Nuance may terminate this Agreement immediately upon written notice to Company if Company breach its obligations hereunder related to Nuance's intellectual property rights or commits, or permits any third party to commit, any breach of confidentiality obligations under the Section titled "Confidential Information".

11.3 **Effect of Termination.** Upon the termination or expiration of this Agreement, Company shall immediately remit any outstanding Fees (which amounts shall include Fees for completed professional services and Deliverables and Fees related to the pro rata portion of each milestone that is partially completed as of the effective date of such termination). Thereafter, Nuance shall be under no obligation to complete any further Deliverables or other work under this Agreement or any Statement of Work that contains a reference to this Agreement.

11.4 **Survival.** Notwithstanding anything to the contrary in this Section, the provisions of the Sections titled "Definitions", "Confidential Information", "Limitation of Liability", "Termination", and "General Terms", and the Subsection titled "Disclaimer", shall survive expiration or termination of this Agreement.

12 GENERAL TERMS

12.1 **Assignment.** Company shall not assign or otherwise transfer its rights and/or obligations 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 its rights hereunder in their entirety pursuant to: (i) a merger with; (ii) the sale of substantially all of its assets to; or (iii) a consolidation with, a third party; provided (a) Company provides Nuance with prompt written notice of such sale, merger or consolidation, and (b) the assignee agrees to be bound by all terms and conditions set forth by this Agreement. 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, provided that Nuance provides Company with prompt written notice of the assignment.

12.2 **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.

12.3 **Notices.** All notices hereunder shall be sent by the notifying Party, in writing, to the other Party at its address set forth in the Statement of Work, to the attention of the General Counsel. Notice shall be deemed delivered and effective: (i) when delivered personally, (ii) five (5) days after posting when sent by registered mail, or (iii) one (1) day after posting when sent by reputable private overnight courier (e.g., DHL, Federal Express, etc.).

12.4 **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. 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. Each Party is authorized use the name and logo of the other Party on its website solely to identify such Party's relationship.

12.5 **Relationship Between the Parties.** In all matters relating to this Agreement, Company and Nuance shall act as independent contractors. Except as may be otherwise expressly permitted hereunder, 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. Nuance shall at all times have the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by Nuance hereunder unless otherwise provided herein. Nuance shall, at all times, be responsible for the compliance of its third parties involved in the delivery of the services with the terms and conditions of this Agreement. Nothing in this Agreement shall be construed to create any contractual relationship between Company and any such third parties, nor any obligation on the part of Company, to pay or to ensure the payment of any money due any such third party.

12.6 **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, U.S. and the Parties hereby submit to the jurisdiction of the Federal or state courts of Massachusetts.

12.7 **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, they will not object to courts in other jurisdictions granting provisional remedies enforcing such judgments.

12.8 **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.

12.9 **Entire Agreement; Headings; Counterparts.** This Agreement and all Statements of Work that incorporate the terms of this Agreement by reference, 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 of the Parties. 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.

12.10 **Export Controls; Government Use.** Company will comply with all applicable export and import laws and regulations and, unless authorized by applicable governmental license or regulation, not directly or indirectly export or re-export any technical information or software subject to this Agreement to any prohibited destination. If software or services are being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), the software, services and related documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101. The software and documentation consists of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein.

12.11 **Anti-Bribery.**

12.11.1 Company represents and warrants that neither it nor any of its officers, employees, agents or other representatives have taken or will take any action that might cause Company and/or Nuance to violate any applicable anti-bribery law, including the US Foreign Corrupt Practices Act ("FCPA") and the UK Anti-Bribery Act ("Bribery Act"). Company acknowledges that it understands and is bound by the Nuance Foreign Corrupt Practices Act Policy (available at the following URL: <http://investors.nuance.com/phoenix.zhtml?c=110330&p=irol-govconduct>) which prohibits payments, or offers of payment, of money or anything of value, directly or indirectly, to foreign officials for the purpose of obtaining or retaining business.

12.11.2 Company has implemented and must at all times maintain adequate procedures designed to comply with its obligations under Section 12.11.1 above. This includes, without limitation, providing adequate compliance training.

12.11.3 If and where requested by Nuance, Company agrees to provide annual written certifications of Company's continuing anti-corruption compliance and notice of any changed circumstances related to the information last provided by Company in response to the Nuance Partner Application Questionnaire or Company's prior annual certifications.

12.11.4 Company acknowledges and agrees that Nuance and its auditors shall have the right, upon reasonable written notice, to inspect the books and records of Company related to Company's performance under this Agreement and its compliance with sections 12.11.1, 12.11.2 and 12.11.3 above. Nuance may elect to conduct the inspection through the delivery of Company's documents to a Nuance office.

12.11.5 Breach of any of the provisions in this Section 12.11 is a material breach of this Contract for the purpose of the subsection titled "Termination By Either Party" and, in addition to any other right, relief or remedy, entitles Nuance to terminate this Contract immediately and seek compensation for any damages caused.

EXHIBIT A

TERMS AND CONDITIONS OF END CUSTOMER LICENSE AGREEMENT EXHIBIT

Each End-User Agreement will contain at a minimum protect Nuance and its interests consistent with the terms of the Agreement, including:

1. License Grant. A license grant no broader than that permitted for End Customers in the Section “Deliverables” of the Agreement.
2. Ownership and Proprietary Rights. End-User acknowledgement of Nuance’s ownership and proprietary rights in the Deliverables and other intellectual property of Nuance, and agreement to the proprietary rights and restrictions, contained in the Section “Proprietary Rights” of the Agreement.
3. Confidentiality. End-User agreement to confidentiality obligations consistent with the Section “Confidential Information” of the Agreement with respect to any Nuance Confidential Information delivered to End Customer.
4. LIMITATION OF LIABILITY. The liability of Nuance and its Affiliates, and their respective officers, agents, suppliers and employees, to End Customer and its Affiliates, and their respective officers, agents, customers and employees, for any claims arising under the End Customer License Agreement or otherwise arising from the delivery of services or Deliverables by Nuance to Company for the benefit of End Customer, 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 lesser of (a) the aggregate fees actually paid to Nuance for such services and Deliverables in the six months preceding the date of such claim or (b) the actual damages sustained by the End Customer.
5. CONSEQUENTIAL DAMAGES. NUANCE AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, AGENTS, SUPPLIERS AND EMPLOYEES, SHALL HAVE NO LIABILITY THE END CUSTOMER AND ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, CUSTOMERS AND EMPLOYEES, 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 END CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES