

HEALTHCARE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE EXECUTING THE ORDER. This Healthcare Agreement, including all Exhibits and Schedules (together, the "Agreement"), is between Nuance Communications, Inc. ("Nuance") and you ("Company"), the party to the Order with Authorized Reseller. By executing the Order, Company accepts, and is bound by, all of the terms and conditions of the Agreement. Company agrees that this Agreement is like any written negotiated agreement signed by Company. If Company does not agree to the terms and conditions of this Agreement, do not execute the Order. Nuance and Company are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**".

THIS IS A LICENSE TO USE SOFTWARE AND NOT A SALE OF SOFTWARE CODE. COMPANY IS OBTAINING THE SOFTWARE, EQUIPMENT AND/OR SERVICES INDICATED IN THE ORDER FROM AUTHORIZED RESELLER. THIS AGREEMENT APPLIES TO COMPANY'S USE AND ENTITLEMENT OF SUCH SOFTWARE, EQUIPMENT AND SERVICES, ONLY AND UP TO THE FULL EXTENT AND QUANTITIES (e.g., LICENSE MODEL, NUMBER OF LICENSES, etc.) THAT AUTHORIZED RESELLER HAS BEEN AUTHORIZED BY NUANCE TO PROVIDE TO COMPANY.

General Terms and Conditions

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:

1. 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:

- 1.1. "**Affiliates**" 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 if: (i) that other entity has fifty percent (50%) or more of the votes in such entity, or (ii) is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.
- 1.2. "**Authorized Reseller**" means Nuance's authorized reseller, Siemens Medical Solutions USA, Inc., with offices at 51 Valley Stream Parkway, Malvern, PA 19355.
- 1.3. "**Authorized User(s)**" are those individuals who are authorized, subject to the terms and conditions of this Agreement, to access and use the Nuance Software and/or Hosted Services, which individuals are limited to those identified in the applicable Schedule.
- 1.4. "**Data**" means the audio and/or text data input, all data elements output (e.g. interpretation of clinical contents xml or other format), associated transcripts or medical reports, whether in draft or final form, any information received from Company under any Order under this Agreement, or any other clinical information received by Nuance from Company under this Agreement.
- 1.5. "**Documentation**" means the administrative guide and user's guide provided by Nuance to Company to facilitate the use of the Nuance Products and Hosted Services.
- 1.6. "**Equipment**" means Nuance Equipment and Third Party Equipment, collectively.
- 1.7. "**General Terms and Conditions**" means the terms of this Agreement contained under the heading "General Terms and Conditions".
- 1.8. "**Hosted Service**" means a Nuance proprietary subscription-based software as a service (SaaS) offering specified in an Order; as more particularly described in the applicable Schedule.
- 1.9. "**Maintenance Services**" means the services that Nuance provides, pursuant to an Order, to maintain Software and Equipment (as applicable), as more fully described at URL- <http://support.nuance.com/healthcare> under "Healthcare Hardware and Software Maintenance Options," or as otherwise provided in an applicable Schedule. Maintenance Services for any period shall mean the then current Maintenance Services terms and conditions in effect as of the date of purchase of such Maintenance Services.
- 1.10. "**Nuance Equipment**" means Nuance manufactured hardware specified in an Order.
- 1.11. "**Nuance Products**" means the Nuance Software and Nuance Equipment, collectively.
- 1.12. "**Nuance Software**" means the object code version of any Nuance proprietary software product specified in an Order, including all corrections, modifications, enhancements, Updates and Upgrades (if any) thereto that Nuance may provide to Company under this Agreement, and all related Documentation.
- 1.13. "**Order**" means an order for Software licenses, Equipment and/or Services that is signed and issued by Company to Authorized Reseller, and (a) lists the Software licenses (including number of license units and license type), Equipment, and/or Services that Company is ordering; (b) includes the Statement of Work (if any); and (c) to which this Agreement is attached (physically or by reference).
- 1.14. "**Professional Services**" means any installation, project management and/or consulting services provided by Nuance pursuant to an Order, as specified in an Order, and which may be more fully described in a Statement of Work.
- 1.15. "**Schedule**" means each of the schedules indicated in Exhibit B of this Agreement, which schedules are a part of the Agreement and define the specific terms that apply to the applicable Nuance Products and Services.
- 1.16. "**Services**" means Maintenance Services, Training Services, Professional Services, Hosted Services and/or Transcription Services, as applicable.
- 1.17. "**Software**" means Nuance Software and Third Party Software, collectively.

1.18. **“Statement of Work”** or **“SOW”** means the supplement to an Order, setting forth, in more detail, the Professional Services and/or Training Services purchased under the Order.

1.19. **“Term”** is as defined in Section 6.1 of these General Terms and Conditions.

1.20. **“Third Party Equipment”** means any third party manufactured hardware (provided by Nuance) specified in an Order.

1.21. **“Third Party Software”** means any third party proprietary software (provided by Nuance) specified in an Order.

1.22. **“Training Services”** means any training services provided by Nuance pursuant to an Order, as specified in an Order.

1.23. **“Transcription Services”** means any transcribing services and/or editing services provided by Nuance pursuant to an Order, as specified in an Order and more fully described in the Schedule for Transcription Services.

1.24. **“Update”** means a release of Nuance Software, issued as part of Maintenance Services (or an Authorized Reseller maintenance plan authorized by Nuance), that 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.

1.25. **“Upgrade”** means a release of Nuance Software, issued as part of Maintenance Services (or an Authorized Reseller maintenance plan authorized by Nuance), that may include some feature enhancements and/or additional capabilities (functionality) over versions of the Nuance Software previously supplied to Company, 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 Nuance Software.

2. SCOPE OF AGREEMENT. Subject to the terms and conditions of this Agreement, Company is obtaining the Software licenses, Equipment, and Services from Authorized Reseller.

3. GRANT OF RIGHTS.

3.1. Software

3.1.1. **License Grant.** Subject to the terms and conditions of this Agreement, Nuance hereby grants to Company, and Company accepts, a limited, non-exclusive, non-transferable, non-sub-licensable license to permit its Authorized Users to use the Nuance Software that Nuance provides to Company pursuant to the applicable Order strictly in accordance with the license grant specified in the applicable Schedule; provided such use is (i) commensurate with the intended use of the Nuance Software (as prescribed in this Agreement and the applicable Documentation), and (ii) solely for Company’s internal business purposes.

3.1.2. **Third Party Software.** Third Party Software supplied by Nuance is subject to the terms and conditions of this Agreement and the applicable third party terms.

3.1.3. **Updates and Upgrades.** Upon installing any Update or Upgrade to Nuance Software, 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, in accordance with the license granted by Nuance with respect to such Nuance Software. Company will not be entitled to Updates and Upgrades if it is not under a current Nuance-authorized maintenance services plan with Nuance (or Authorized Reseller, if applicable) under which Updates and Upgrades are made available.

3.2. **Equipment.** Equipment supplied by Nuance is subject to the terms and conditions of this Agreement and, if Third Party Equipment, the applicable third party terms.

3.3. **Services.** Subject to the terms and conditions of this Agreement, Nuance will provide the Services, as may be specified in an Order.

3.3.1. **Maintenance Services.** If purchased, Nuance will provide the annual Maintenance Services indicated in the Order. After the initial annual Maintenance Services term, an invoice will be issued to Company, in accordance with Nuance’s renewal policy, for subsequent one-year terms of Maintenance Services, at least thirty (30) days prior to the end of the then-current Maintenance Service term, if Maintenance Services for the applicable Software and/or Equipment is made available by Nuance. Company shall, if it wishes to renew annual Maintenance Services for the applicable Software and/or Equipment, pay the invoice for renewal Maintenance Services, in full, within thirty (30) days of the date of such invoice. Company acknowledges that failure to pay such invoice within such 30 day period will result in Maintenance Services expiring with respect to such Software and/or Equipment. Unless expressly stated otherwise in the applicable Schedule or Order, Maintenance Services provided hereunder will commence on the date of initial delivery of the applicable Software and/or Equipment (or anniversary thereof if Company is purchasing renewal Maintenance Services). To purchase Maintenance Services with respect to any Software or any Equipment, Company is required to purchase Maintenance Services for all licenses of such Software and all units of such Equipment respectively. Maintenance Services will be subject to the then current Maintenance Services terms and conditions in effect as of the date of purchase of such Maintenance Services. Unless otherwise agreed, Nuance shall not be obligated to provide Maintenance Services for, or required as result of (i) any Software or Equipment modified by anyone other than Nuance; (ii) any Software or Equipment used for other than its intended purpose; (iii) any Software or Equipment used with any equipment not specified as compatible with the Software or Equipment in its Documentation; (iv) any Software or Equipment being used with software not supplied by Nuance in conjunction with such Software or Equipment, or specified in the applicable Documentation as compatible with the respective Software or Equipment; (v) any Software or Equipment (or any associated equipment, software or firmware) which Company failed to properly install or maintain; (vi) any willful misconduct or negligent action or omission of Company, (vii) any computer malfunction not attributable to the Software or Equipment; or (viii) damage to Software or Equipment from any external source, including computer viruses not attributable to Nuance, computer hackers, or force majeure events.

3.3.2. **Training Services.** Unless otherwise agreed to by the Parties, Training Services will be held at a designated Nuance location during Nuance’s standard business hours, excluding Nuance recognized holidays. If the Parties agree to hold any Training Services at Company’s site, all such Training Services (including associated travel time) will be conducted between the hours of 8:00 a.m. to 5:00 p.m. local

Company site time, Monday through Friday, excluding Nuance recognized holidays. Company shall ensure that all Training Services attendees are or will be Authorized Users and have the skills and experience to participate in the training sessions.

3.3.3. **Professional Services.** Unless otherwise agreed to by the Parties, all Professional Services (including associated travel) will be conducted between the hours of 8:00 a.m. to 5:00 p.m. local Company site time, Monday through Friday, excluding Nuance recognized holidays.

3.3.4. **Hosted Services.** Hosted Services will be as further described in, and will be provided by Nuance in accordance with, the applicable Schedule. Unless stated otherwise in the applicable Schedule, Hosted Services will be provided from a U.S. data center.

3.3.5. **Transcription Services.** Transcription Services will be as further described in, and will be provided by Nuance in accordance with, the applicable Schedule.

3.3.6. **On-Location.** If Nuance will perform Services at a location other than a Nuance facility, Company shall provide or arrange for the necessary equipment, information, and facilities required by Nuance to perform such Services, as specified by Nuance.

3.4. **Proprietary Rights; Restrictions.** 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 Software, Services and Documentation, and any derivative works thereof, including, but not limited to, all patent, copyright, trade secret, trademark and other intellectual property rights associated therewith. Without limiting the generality of the foregoing, Company will not itself, directly or indirectly, and will not permit Authorized Users, other employees or contractors, or any third party to: (i) access the Hosted Services with software or means other than as described in this Agreement; (ii) submit any automated or recorded requests to the Hosted Services except as otherwise provided in this Agreement; (iii) modify, port, translate, or create derivative works of the Software, Services, or Documentation; (iv) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Software or Services by any means (except to the extent permitted by mandatory laws); (v) sell, lease, license, sublicense, copy, assign, transfer, share, market, or distribute the Software, Services or Documentation, except as expressly permitted in this Agreement; (vi) grant any access to, or use of, the Nuance Software or Services through a service bureau, timesharing or application service provider basis; (vii) remove any proprietary notices, labels or marks from the Software, Services or Documentation; (viii) release to a third party the results of any benchmark testing of the Software or Services; or (viii) defeat or circumvent any controls or limitations contained in or associated with the use of the 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. All rights not expressly granted to Company under this Agreement are reserved by Nuance and/or its licensors.

3.5. **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. 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) sustained or incurred by Nuance arising from a User Claim.

3.6. **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.

4. **MEDICAL CARE RESPONSIBILITY.** COMPANY ACKNOWLEDGES THAT SOFTWARE AND SERVICES ARE NOT ERROR FREE. FURTHERMORE, SPEECH RECOGNITION, NATURAL LANGUAGE PROCESSING, AND MEDICAL FACT EXTRACTION ARE STATISTICAL PROCESSES, AND INACCURACIES OCCUR. COMPANY AGREES THAT IT IS THE SOLE RESPONSIBILITY OF COMPANY (AND ALL AUTHORIZED USERS) TO IDENTIFY AND CORRECT ANY SUCH ERRORS AND INACCURACIES BEFORE USING AND/OR RELYING ON THE CONTENT, RESULTS OR OUTPUT OF ANY SOFTWARE, AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT FOR ANY MEDICAL PRACTICE RELATED PURPOSES. IN ADDITION, ANY CONTENT, RESULTS OR OUTPUT FROM THE SOFTWARE AND/OR SERVICES PROVIDED BY NUANCE TO COMPANY IS DESIGNED TO PROVIDE COMPANY WITH CERTAIN INFORMATION. COMPANY AGREES THAT NUANCE IS NOT PROVIDING MEDICAL PRACTICE ADVICE, AND THAT COMPANY WILL CONSULT WITH AND RELY EXCLUSIVELY ON ITS OWN PHYSICIANS OR OTHER MEDICAL DIRECTION FOR REVIEW, NECESSARY REVISIONS AND APPROVAL OF ANY AND ALL SUCH MEDICAL PRACTICE-RELATED CONTENT, RESULTS OR OUTPUT. NUANCE ASSUMES NO RESPONSIBILITY FOR ANY OF THE FOREGOING, AND COMPANY SHALL INDEMNIFY, AND HOLD HARMLESS, NUANCE AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS (EACH, AN “INDEMNIFIED PARTY”) FROM AND AGAINST ANY DAMAGES, CLAIMS OR OTHER LIABILITIES FOR THE WRONGFUL DEATH OR PERSONAL INJURY OF A THIRD PARTY DIRECTLY OR INDIRECTLY CAUSED OR ARISING OUT OF ANY OF THE FOLLOWING: (i) COMPANY’S USE OR NON-USE OF ANY SOFTWARE OR SERVICE, (ii) ANY CONTENT, RESULTS OR OUTPUT FROM ANY SOFTWARE OR SERVICE, (iii) ANY MEDICAL PRACTICE-RELATED RECOMMENDATIONS PROVIDED BY NUANCE, AND/OR (iv) COMPANY’S FAILURE TO IDENTIFY AND CORRECT ANY INACCURACIES AND/OR ERRORS IN THE CONTENT, RESULTS OR OUTPUT OF ANY SOFTWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT.

5. **PAYMENT AND DELIVERY.** Company is responsible for paying Authorized Reseller all fees indicated in the Order, and all applicable taxes and assessments related thereto. In the event that any fees are payable directly to Nuance under this Agreement, as indicated in the Agreement, the terms of this Section 5 will apply to such payments.

5.1. **Fees.** Nuance shall invoice Company for any fees and other charges payable to Nuance under this Agreement, as indicated in the Agreement, and Company shall pay to Nuance all fees and other charges specified in such invoice. All fees due to Nuance under the Agreement are non-cancelable.

5.2. **Expenses.** Prices do not include travel expenses that may be incurred in the course of providing Services, including, but not limited to, transportation, meals, lodging and other living expenses. Company shall pay or reimburse Nuance for all such charges and expenses reasonably incurred.

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 effect 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.

5.4. **Payment.** Except as expressly stated otherwise in the applicable Order or Schedule, Company shall pay all invoices issued by Nuance under this Agreement or any Orders in U.S. dollars, 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 reimburse Nuance for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts from Company. If Company fails to pay for any Equipment, Nuance reserves the right to repossess such Equipment. Nuance reserves the right to suspend Services to Company in the event any invoice is past due. Company shall notify Nuance within thirty (30) days of the date of invoice if it disputes any amount contained in an invoice. Notwithstanding the foregoing, if Company elects not to renew annual Maintenance Services for Software licenses and/or Equipment purchased by Company hereunder, Company shall not be required to pay the invoice for such renewal Maintenance Services. Company acknowledges that failure to pay such invoice when due will result in Maintenance Services expiring with respect to such Software and/or Equipment.

5.5. **Company Purchase Orders.** 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. Neither Party shall be subject to provisions of any pre-printed terms on or attached to purchase orders generated by Company, or any Company policies, regulations, rules, or the like, including those set forth in any Company sponsored registration system, regardless if such requires affirmative acknowledgement from a Nuance representative.

5.6. **Payments to Authorized Reseller.** Company's failure to pay Authorized Reseller any fees payable to Authorized Reseller for the Software licenses, Equipment or Services, as indicated in the Order, will be a material breach of this Agreement by Company.

5.7. **Audit.** Company shall keep full, true and accurate records and accounts to support its use of the Software and 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 Software or Hosted Services usage exceeds its usage rights, as granted by Nuance, 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 5.7 will limit any other remedy available to Nuance.

5.8. **Shipment.** For Orders with Software and/or Equipment requiring delivery by Nuance within the United States, such Software and/or Equipment will be shipped "FOB Shipping Point". For Orders with Software and/or Equipment requiring delivery by Nuance outside the United States, such Software and/or Equipment will be shipped "FCA Shipping Point". As between Nuance and Company, Company shall bear all shipping, freight and transportation charges from Nuance's warehouse facility.

6. TERM; TERMINATION.

6.1. **Term.** This Agreement commences on the date of the Order ("Effective Date") and, unless terminated earlier in accordance with the terms hereof, will continue in effect until the expiration or termination of the Order (the "**Term**"). Unless terminated earlier in accordance with the terms hereof, Company's rights, and Nuance's obligations, related to Nuance Software licenses and/or Services delivered pursuant to an Order shall be limited to the duration or term of such Nuance Software license or Service as specified in the applicable Schedule or Order. The Order will be considered to have expired upon the expiration of the licenses, and the completion of any Services, ordered pursuant to the Order.

6.2. **Termination for Cause.** Either Party may terminate the Agreement and/or the Order 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 of such breach by the non-breaching Party. Without limiting the foregoing, failure of Company to pay any sum due to Nuance hereunder in accordance with the payment terms in Subsection 5.4 above [Payment] is a material breach. Notwithstanding the foregoing, Nuance may terminate this Agreement and/or the Order immediately upon written notice to Company if Company (a) infringes Nuance's intellectual property rights; (b) commits, or permits any third party to commit, any breach of confidentiality obligations under Section 8 [Confidentiality]; or (c) Company has a receiver appointed to handle its assets or affairs, admits that it is insolvent, or is otherwise unable to pay its debts as they mature, or ceases to do business in the ordinary course.

6.3. **Effect of Termination.** Upon termination of this Agreement, all Orders issued under this Agreement will immediately terminate. Upon the termination of an Order, all Nuance Software licenses and all Services obtained by Company under such Order shall immediately terminate, and Company shall immediately (a) cease use of the applicable Nuance Software (in any form, including partial copies in its possession or under its control) and/or Services; (b) return to Nuance or destroy all copies of the Nuance Software and certify in writing to Nuance that no copies have been retained by Company within ten (10) days of any expiration or termination; and (c) pay any outstanding amounts due to Nuance. The expiration or termination of this Agreement, the Order, or any license shall not affect Company's payment obligations to Nuance (or its Authorized Reseller, as applicable) under this Agreement.

6.4. **Survival.** Notwithstanding anything to the contrary in this Section 6, the provisions of Sections 1, 3.4, 3.5, 4, 5, 6.3, 6.4, 7, 8, 9, 10, 11, and 13 of these General Terms and Conditions shall survive expiration or termination of this Agreement.

7. **HIPAA.** The Parties agree to the Business Associate Terms and Conditions attached hereto as Exhibit A and made a part of this Agreement, wherein, Nuance is referred to as “Business Associate” and Company is referred to as “Covered Entity”.

8. CONFIDENTIALITY.

8.1. **Definition.** Subject to the exceptions contained in this Section 8.1, “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; and (c) the Nuance Software, Documentation, and information provided as part of any Services. 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 Exhibit A). The obligation not to use or disclose Confidential Information will remain in effect until one of these exceptions occurs.

8.2. **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.

8.3. **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 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.

8.4. **Return of Confidential Information.** The Receiving Party shall return to the Disclosing Party, or 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 8.4. 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.

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. Company gives Nuance the right, and Nuance has permission to use, the Data in accordance with this Section 9, and to de-identify the Data in accordance with 45 C.F.R. §164.514. Nuance and third parties acting under the direction of Nuance may use, compile (including creating statistical and other models), annotate and otherwise analyze the Data to develop, train, tune, enhance and improve the speech recognition, natural language understanding and other components of its software and services. To the extent any Data is compiled or used by Nuance in or with any such software and services, all intellectual property rights in such software and services shall be owned by Nuance. 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.

10. LIMITED WARRANTIES.

10.1. **Nuance Software Warranty.** Nuance warrants that upon initial installation of the Nuance Software (in the case of Nuance Software that, pursuant to the applicable Order, is to be installed by Nuance) or initial delivery of the Nuance Software to Company (in all other cases), and for a period of ninety (90) days thereafter (the “Software Warranty Period”), the Nuance Software will operate in all material respects in conformity with its Documentation. Company’s sole and exclusive remedy and Nuance’s sole obligation for any breach of the warranty set forth in this Section 10.1 will be for Nuance, at Nuance’s option, to undertake reasonable efforts to correct or replace the nonconforming Nuance Software reported by Company during the Software Warranty Period, or to accept a return of, and refund to Company the fees paid by Company to Nuance for, such non-conforming Nuance Software, and terminate the license to any such non-conforming Nuance Software.

10.2. **Nuance Equipment Warranty.** Nuance warrants that upon initial installation of the Nuance Equipment (in the case of Nuance Equipment that, pursuant to the applicable Order, is to be installed by Nuance) or initial delivery of the Nuance Equipment to Company (in all other cases), and for a period of ninety (90) days thereafter (the “Equipment Warranty Period”), the Nuance Equipment will operate in all material respects in conformity with its Documentation. Company’s sole and exclusive remedy and Nuance’s sole obligation for any breach of the warranties set forth in this Section 10.2 will be for Nuance, at Nuance’s option, to undertake reasonable efforts to correct or replace the nonconforming Nuance Equipment reported by Company during the Equipment Warranty Period, or to accept a return of, and refund to Company the fees paid by Company to Nuance for, such non-conforming Nuance Equipment.

10.3. **Services Warranty.** Nuance warrants that the Maintenance Services, Training Services and Professional Services provided by Nuance pursuant to this Agreement shall be performed in a professional manner by trained and skilled personnel. Company must notify Nuance of any

breach of such warranty within ninety (90) days from performance of the non-conforming Services giving rise to the breach of warranty claim. Company's sole and exclusive remedy and Nuance's entire liability for any breach of the warranty set forth in this Section 10.3 will be for Nuance to re-perform such non-conforming Services that Company notified Nuance of in accordance herewith.

10.4. Limitation of Warranties. The warranties set forth in this Section 10 [Limited Warranties] shall not apply, and Nuance shall have no warranty obligation or liability with respect to (a) any Nuance Product that (i) is damaged through no fault of Nuance; (ii) is modified by anyone other than Nuance; (iii) is used for any purpose other than its intended purpose (as specified in the Documentation); (iv) is used with equipment not specified as compatible with the Nuance Product in such Nuance Product's Documentation; (v) is used with software not specified as compatible with said Nuance Product in the Nuance Product's Documentation; (vi) Company fails to properly install or maintain; (b) any computer malfunction not attributable to the Nuance Products or Nuance; (c) any incorrect use of the Nuance Products; or (d) any willful misconduct or negligent action or omission of Company.

10.5. 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, EXPRESS OR IMPLIED, AND NUANCE HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT AND TITLE. NUANCE DOES NOT GUARANTEE THAT THE 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. Company acknowledges its responsibility to regularly back-up data and to adequately test prior to deployment each production version of the Software in a configuration that reasonably simulates Company's planned production environment.

11. LIMITATION OF LIABILITY.

11.1. Application. Nothing in this Agreement shall be taken to exclude or limit liability to the extent that such exclusion or limitation is not permitted by applicable law.

11.2. Limitation of Liability. THE TOTAL AGGREGATE LIABILITY OF NUANCE AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, AGENTS, SUPPLIERS AND EMPLOYEES, 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 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.

11.3. No Consequential Damages. IN NO EVENT SHALL NUANCE OR ITS AFFILIATES, OR THEIR RESPECTIVE OFFICERS, AGENTS, SUPPLIERS AND EMPLOYEES, BE LIABLE TO COMPANY OR ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, AGENTS, CUSTOMERS, CONTRACTORS 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 PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.4. 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.

11.5. 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.

12.1. By Nuance. Nuance shall, at its own expense, defend or, at its option, settle, any action brought against Company by a third party, during the Term, that is based on a claim that the Nuance Software and/or Hosted Services directly infringes any United States patent, copyright or trademark, or misappropriates a trade secret, of such third party. 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. Notwithstanding anything to the contrary in the foregoing, Nuance's obligations under this Section 12.1 shall not apply to open source software.

12.2. 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 and (i) with respect to perpetual Nuance Software licenses, refunding the license fees Company paid for such Nuance Software, depreciated on a straight-line sixty (60) month basis from the delivery date, and (ii) with respect to Hosted Services and term licenses of Nuance Software, refunding any unused, prepaid fees Company may have paid to Nuance for the infringing Nuance Software or Hosted Services.

12.3. **Exclusions.** Nuance will have no obligation or liability under this Section 12 (Indemnification) for any claim or action 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 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; or (v) 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. Company shall, at its own expense, defend or at its option, settle, any claim or action brought against Nuance to the extent it is based on the conditions described above. Company will indemnify Nuance against any losses, damages, and expenses that are attributable to such claim or action and are assessed against Nuance in a final judgment. Company shall have the foregoing obligation only if Nuance provides Company 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. Company shall not be responsible for any attorneys' fees or other expenses or costs that Nuance incurs before receipt of Nuance's request for indemnification or defense.

12.4. **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 of infringement of any intellectual property or other proprietary right.

13. Miscellaneous.

13.1. **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 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.

13.2. **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.

13.3. **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. 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.).

13.4. **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.

13.5. **Governing Law.** This Agreement shall be governed by the laws of the country indicated below, without regard to choice of law rules, and Company hereby submits to the jurisdiction of the courts located in the jurisdiction below and the applicable service of process. The official text of the Agreement or 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.

Address of Company (set forth above)	Governing Law	Jurisdiction
United States, Taiwan, Korea, Japan, Canada or Mexico	Commonwealth of Massachusetts, U.S.	Federal or state courts of Massachusetts
Hong Kong or China	Hong Kong Special Administrative Region	Courts of Hong Kong Special Administrative Region
India or Singapore	Singapore	Courts of Singapore
Australia or New Zealand	New South Wales	Courts in New South Wales, Australia
Rest of world	Irish law, excluding the United Nations Convention on Contracts for the International Sale of Goods	Dublin, Ireland

13.6. **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.

13.7. **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 Party 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.

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

13.9. **Entire Agreement; Headings; Counterparts.** This Agreement, all Orders issued hereunder, and the exhibits attached hereto, 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.

13.10. **Order of Precedence.** In the event of a conflict between or among the provisions in this Agreement and any Order, the order of precedence shall be as follows: (i) Schedules, (ii) General Terms and Conditions, (iii) Business Associate Terms and Conditions, (iv) Maintenance Services terms, and (v) each Order.

13.11. **No 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.

13.12. **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.

13.13. **Foreign Corrupt Practices Act.** 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. Furthermore, Company confirms by way of signature of this Agreement that Company has knowledge and understanding of the Foreign Corrupt Practices Act of the United States of America ("FCPA") and shall comply with the FCPA at all times.

13.14. **HHS Audit Right.** 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.

13.15. **Authorized Reseller.** Authorized Reseller remains independent and separate from Nuance. Nuance is not responsible for the actions, statements or recommendations of Authorized Reseller or any obligations that Authorized Reseller has to Company.

Exhibit A

Business Associate Terms and Conditions

WHEREAS, Nuance may perform certain services on behalf of or for Company pursuant to this 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 provisions of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"); and

WHEREAS, this Exhibit A 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:

1. Definitions. Capitalized terms used in this Exhibit A, 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.
 - 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).

Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).

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. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by HIPAA. Business Associate acknowledges that pursuant to Section 13401(a) of the HITECH Act, 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 shall apply to Business Associate in the same manner that such sections apply to Covered Entity.
 - b. notify Covered Entity of any successful Security Incident of which Business Associate becomes aware.
 - c. not use or further disclose PHI other than as permitted or required by this Agreement, or as required by law.
 - d. use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.
 - e. report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, and.
 - f. ensure that any agents, including a subcontractor, to whom it provides PHI (received from, or created or received by Business Associate on behalf of, Covered Entity) agrees in writing to the same restrictions and conditions on the use or disclosure of PHI that apply to Business Associate with respect to such PHI.
 - g. make PHI available to Covered Entity or, as directed by Covered Entity, to an Individual who is the subject of the PHI, 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.
 - h. 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.
 - i. 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.
 - j. 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.
 - 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.
 - 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 A. 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)(1) 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 A 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. Miscellaneous.
- a. Amendment. The Parties agree to negotiate in good faith an amendment to this Exhibit A from time to time as is necessary for the Parties to comply with the requirements of HIPAA, as amended from time to time. No amendment shall be effective unless in writing and signed by duly authorized representatives of both Parties.
 - b. Survival. The respective rights and obligations of Business Associate under Section 5(b) of this Exhibit A shall survive termination of this Agreement.
 - c. Interpretation. Any ambiguity in this Exhibit A shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA.
 - d. No Third Party Beneficiary. Nothing in this Exhibit A is intended, nor shall be deemed, to confer any benefits on any third party.

Exhibit B

Schedules

SCHEDULES	INCLUDED
Schedule for <i>PowerScribe 360 / Reporting: Exam Volume License</i>	YES <input type="checkbox"/>
Schedule for <i>PowerScribe 360 / Reporting: Transactional License</i>	YES <input type="checkbox"/>
Schedule for <i>PowerScribe 360 / Critical Results</i>	YES <input type="checkbox"/>
Schedule for <i>Assure for PowerScribe 360 / Reporting</i>	YES <input type="checkbox"/>

(attached on following pages)

SCHEDULE for
PowerScribe 360 / Reporting: Exam Volume License

The terms of this Schedule for *PowerScribe 360 / Reporting: Exam Volume License* ("Schedule") apply to the Exam Volume Program and any Licensed Modules specified in an Order (such Order, the "Applicable Order"). In the event of a conflict between the General Terms and Conditions and the terms of this Schedule, the terms of this Schedule will prevail.

1. **Definitions.** For purposes of this Schedule, the following terms shall have the following meanings:

- "Affiliate" means a business entity that is controlled by Company. "Control" as used within this definition means control through ownership of a majority of shares of stock eligible to vote for members of the Board of Directors, or control by contract.
- "Annual Exam Period" means each successive one (1) year period following First Productive Use.
- "Annual Exam Volume" means the aggregate total number of Exams (i) that Company (and its Licensed Affiliates and Named Entities, if any) performed during the prior Annual Exam Period and (ii) with respect to which, the Exam Volume Program was used to generate a Report.
- "Annual Exam Volume Report" means a report indicating the Annual Exam Volume for the prior Annual Exam Period, which report shall be in the form set forth in Appendix A of this Schedule.
- "Authorized User" is as defined in Section 2 of this Schedule.
- "Baseline Exam Volume" means the presumed number of Exams (i) to be performed by Company (and its Licensed Affiliates and Named Entities, if any) during an Annual Exam Period and (ii) with respect to which, the Exam Volume Program is used to generate a Report; which Exam count is used to calculate the Exam Volume License Fee. The Baseline Exam Volume is as initially specified in the Applicable Order and as subsequently increased pursuant to Section 4.2 of this Schedule (if applicable).
- "Client Component" means the component of the Exam Volume Program that provides functionality on a Device to utilize the functionality in conjunction with accessing or utilizing the Server Component.
- "Core" means a smaller processing unit contained within a physical Processor. Some Processors have two Cores, some four, some six or eight, and so on.
- "Core Limit" means (a) when running the SQL Server component of the Exam Volume Program in a Physical Operating System Environment, the maximum number of Cores that a Physical Server running the SQL Server component can have; and (b) when running the SQL Server component of the Exam Volume Program in a Virtual Operating System Environment, the maximum number of Cores that can be allocated to the Virtual Operating System Environment running an instance of SQL Server.
- "Device" means a personal computing device as specified in the accompanying Documentation.
- "Exam" means each individual radiological imaging study (e.g. CT of Abdomen, CT of Chest, MRI of the Brain, Fetal ultrasound).
- "Exam Volume License Fee" means the license fee (including any Add-on Exam Volume Fees) for the right to use the Exam Volume Program, which fee is based upon the Baseline Exam Volume.
- "Exam Volume Program" means the *PowerScribe 360 / Reporting* Software specified in the Order as being licensed to Company pursuant to the "Exam Volume License", and which Software consists of a "Server Component" and a "Client Component".
- "First Productive Use" means the date installation of the Exam Volume Program is completed and, therefore, the Exam Volume Program is capable of processing data in Company's commercial environment.
- "Instance". An "Instance" of the Server Component of the Exam Volume Program is created by installing the Server Component, or by duplicating an existing "Instance". References to the Server Component in this Schedule include "Instances" of the Server Component.
- "Licensed Affiliate" means each Affiliate that is authorized, subject to the terms and conditions of the Agreement, to use the Exam Volume Program and any Licensed Modules hereunder, which Affiliates are set forth below. **[If applicable, please complete]**

Licensed Affiliate

Address

- “License Conversion” means the Parties’ agreement to exchange a license to the Replaced Product for a license to use the Exam Volume Program subject to the terms of the Agreement, provided such an option to exchange is made available by Nuance.
- “Licensed Module” means any Optional Module specified in an Order.
- “Named Entity” means each entity listed in Appendix C.
- “Operating System Environment” means a single instance of an operating system and instances of applications, if any, configured to run on that single operating system instance.
- “Optional Modules” means Nuance proprietary software that is licensed separate and apart from, and supplements, PS360 Reporting; including, but not limited to, *PS360 Workflow Orchestrator*; *PS360 Peer Review*; *PS360 Assisted Diagnosis*; *PS360 Mobile Radiologist*; and any *PS360 Interfaces* (including Data Integration). “Optional Modules” specifically excludes Nuance’s *Assure for PS360 Reporting*, which, too, is licensed separate and apart from PS360 Reporting, and is governed by terms other than those in this Schedule.
- “Physical Operating System Environment” means an Operating System Environment configured to run directly on a physical hardware system that uses physical Processors, each occupying a single socket on a system’s motherboard in a physical hardware system.
- “Processor” is generally a physical chip that resides in a physical socket of the hardware partition and contains one or more Cores.
- “Processor Limit” means (a) when running the SQL Server component of the Exam Volume Program in a Physical Operating System Environment, the maximum number of Processors that a Physical Server running the SQL Server component can have; and (b) when running the SQL Server component of the Exam Volume Program in a Virtual Operating System Environment, the maximum number of Processors that can be allocated to the Virtual Operating System Environment running an instance of SQL Server.
- “Replaced Product” means a Nuance software product that Company previously obtained a license to use (either from Nuance directly or from a Nuance authorized reseller); which license is identified in Appendix B, and for which, Company can show proof of entitlement to such license.
- “Report” means an individual document, such as a medical report, or an addendum to a medical report, that is created by the Exam Volume Program.
- “Server Component” means the component of the Exam Volume Program that provides services or functionality on Company’s server (physical hardware systems capable of running the Server Component are “servers”. A hardware partition or blade is considered to be a separate physical hardware system).
- “SQL Server” means Microsoft SQL Server software.
- “Virtual Operating System Environment” means an Operating System Environment configured to run on a virtual (or otherwise emulated) hardware system that uses virtual processors, whereby a “virtual processor” is a Processor in a virtual (or otherwise emulated) hardware system. A “virtual processor” is considered to have the same number of threads and Cores as a physical Processor on the underlying physical hardware system.

2. **Grant of Rights.** Subject to the terms and conditions of the Agreement (including this Schedule), Nuance hereby grants Company a limited, non-exclusive, non-transferable, non-sublicensable license to:

(a) install and run, at any one time, one Instance of the Server Component on one compatible Physical Operating System Environment or one Virtual Operating System Environment, whereby, to “run an Instance” means to load the Server Component into memory and execute one or more of its instructions (once running, an Instance is considered to be running, whether or not its instructions continue to execute, until it is removed from memory). One Instance of the Server Component is only licensed for use with one database.

(b) allow Company’s (and any Licensed Affiliate’s) employees and contractors (each such employee or contractor, an “Authorized User”) to use the Exam Volume Program solely with respect to Exams performed by Company, a Licensed Affiliate (if any), or a Named Entity (if any); provided such use is (i) in a manner commensurate with the Exam Volume Program’s intended use (as prescribed by the Agreement and the Documentation), and (ii) solely for Company’s (and any Licensed Affiliate’s or Named Entity’s) internal business purposes. Company shall not allow any Authorized User to use the Exam Volume Program for (a) the Authorized User’s own personal use, or (b) the benefit of any third party (excluding Licensed Affiliates and Named Entities, if any). Company shall not allow anyone other than the Authorized Users to use the Exam Volume Program.

(c) allow Authorized Users to use each Licensed Module (if any) in conjunction with the Exam Volume Program, provided such use is (i) in a manner commensurate with the Licensed Module’s intended use (as prescribed by the Agreement and the Documentation), and (ii) solely for Company’s (and any Licensed Affiliate’s or Named Entity’s) internal business purposes. Company shall not allow any Authorized User to use any Licensed Module for (a) the Authorized User’s own personal use, or (b) the benefit of any third party (excluding Licensed Affiliates and Named Entities, if any). Company shall not allow anyone other than the Authorized Users to use any Licensed Module.

3. **Licensed Affiliates.** Company is responsible for the performance of each Licensed Affiliate (if any) and each Authorized User in connection with its use of the Exam Volume Program and any Licensed Module, and guarantees each Licensed Affiliate’s and Authorized User’s full and faithful compliance with the terms of the Agreement. Company will be liable under the terms of the Agreement for any act or omission by any Licensed Affiliate or any Authorized User to the same extent as if Company itself had taken such action or made such omission. Company will, at its expense, defend and indemnify Nuance, and hold Nuance harmless, from any (i) claims, actions, suits, or proceedings made or brought against Nuance by any Licensed Affiliate, Authorized User, or Named Entity (each such claim, action, suit or proceeding, a “Wrongful Claim”), and (ii) losses, claims, costs, expenses, damages, or liabilities sustained by Nuance arising from a Wrongful Claim.

4. **Payments.**

4.1 Intentionally omitted

4.2 **Add-on Exam Volume; License Fees.** If the Annual Exam Volume exceeds the then-current Baseline Exam Volume by ten percent (10%) or more in any Annual Exam Period, or if Company indicates, within the Annual Exam Volume Report, its desire to increase the Baseline Exam Volume based on Company's forecast of Annual Exam Volume for the upcoming Annual Exam Period, then Company shall pay Nuance additional fees ("Add-on Exam Volume Fees") for the additional Exam volume that exceeds the then-current Baseline Exam Volume, based on Nuance's then-current pricing. The additional Exam volume will then be added to the existing Baseline Exam Volume to establish a revised Baseline Exam Volume for each successive Annual Exam Period, subject to further increase as provided in this Section 4.2, and the annual Maintenance Services fee for subsequent renewal Maintenance Services terms shall be calculated based on such revised Baseline Exam Volume. Payment will be due and payable to Nuance within thirty (30) days of the date of each invoice.

4.3 **Add-on Exam Volume; Back Maintenance Fees.** If the Annual Exam Volume exceeds the Baseline Exam Volume by ten percent (10%) or more in any Annual Exam Period, and the Exam Volume Program was under Maintenance Services during the reported Annual Exam Period, then Company shall pay Nuance the applicable Maintenance Services fee for such additional Exam volume for the reported Annual Exam Period. Payment will be due and payable to Nuance within thirty (30) days of the date of each invoice.

4.4 **Maintenance Services Fees.** The Exam Volume License Fee (and the fees for Licensed Modules) does not provide for Maintenance Services, which services are charged for separately.

5. **Reporting.** Within thirty (30) days following each Annual Exam Period, Company shall provide Nuance with an Annual Exam Volume Report for such Annual Exam Period, in which, Company shall indicate the applicable Annual Exam Volume and the then-current Baseline Exam Volume for the applicable Annual Exam Period, and the disparity between them. Company shall provide a breakdown of the reported Annual Exam Volume, as between Company and each Licensed Affiliate and Named Entity (if any). Each Annual Exam Volume Report must be sent by mail, and via email, to the respective mailing and email addresses set forth in the Annual Exam Volume Report form set forth in Appendix A, attached hereto, or such other address as Nuance may designate by written notice. This reporting requirement is a material element of the Agreement.

6. **Review Period.** Provided that Nuance is performing Professional Services related to the installation of the Exam Volume Program at Company's location, as indicated in the Applicable Order, then unless Company waives in writing the right to review as specified herein, Company shall have a period of fourteen (14) days (a "**Review Period**"), commencing on the date of First Productive Use, to provide Nuance a written request ("Corrections Request") reasonably detailing how the Exam Volume Program 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 Exam Volume Program documented in the Corrections Request to conform to the Completion Criteria. Nuance shall deliver the revised Exam Volume Program to Company within fifteen (15) business days of receiving such Corrections Request and Company shall have an additional period of fourteen (14) days from the date of receipt of such revised Exam Volume Program (such 14 day period, also a "Review Period") 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 the Exam Volume Program to satisfy the Completion Criteria after three (3) attempts, Nuance may terminate the Applicable Order and refund (i) Fees received for the Exam Volume Program, and (ii) Fees received for Training Services and Maintenance Services unperformed by Nuance due to the termination. Upon such termination, Company shall return the Exam Volume Program, including any copies thereof and related Documentation, to Nuance. Upon conclusion of any Review Period in which Nuance does not receive a Corrections Request, or upon Nuance's receipt of Company's waiver of review (whichever shall first occur), the Exam Volume Program will be deemed accepted by Company.

7. **License Conversion.** If the Exam Volume Program is identified on the Applicable Order as being a "License Conversion", then by Company installing the Exam Volume Program obtained pursuant to such Applicable Order, Company's rights to the Replaced Product terminates, except that if the Replaced Product was licensed to Company by a Nuance authorized reseller, then Company's rights to the Exam Volume Program are subject to Company first terminating its license rights with respect to the Replaced Product. At the time of installation of the Exam Volume Program, Company shall un-install, and return to Nuance or destroy, all copies of the Replaced Product, which were the basis for Company's eligibility for the License Conversion, and certify to Nuance, in writing, that Company has done so.

8. **Termination.**

Within thirty (30) days following termination of Company's rights to the Exam Volume Program, Company will provide an Annual Exam Volume Report in accordance with Section 5 above and pay Nuance any applicable fees in accordance with Sections 4.2 and 4.3 above. Neither the expiration nor termination of the Agreement or the Applicable Order shall affect Company's obligations under Sections 3, 4, and 8 of this Schedule.

9. **Optional Modules.** Optional Modules are separate and distinct from the Exam Volume Program, and although Optional Modules may ship with the Exam Volume Program, Company has no right to use any Optional Module unless Company has purchased and maintains a valid license to such Optional Module.

10. **Maintenance Services.** If, pursuant to the Order, the Exam Volume Program is to be installed by Nuance, then Maintenance Services for the Exam Volume Program, if purchased, will commence upon First Productive Use (or the anniversary thereof if Customer is purchasing renewal Maintenance Services).

11. **SQL Server.** Company acknowledges that SQL Server is required for the Exam Volume Program to work, and, as such, Nuance makes available a version of the Exam Volume Program with a licensed SQL Server component embedded therein (Company may opt for a version of the Exam Volume Program without the licensed SQL Server component if Company already has, or intends to acquire, the rights to SQL Server that provide Company the requisite right to use such SQL Server with the Exam Volume Program). Nuance will only provide SQL Server if Company orders the version of the Exam Volume Program with the licensed SQL Server component included.

11.1 **Limitations.** If SQL Server is provided as a licensed component of the Exam Volume Program, as indicated in the Order, Company shall not exceed (a) the Core Limit with respect to such SQL Server if the SQL Server is version 2012 or beyond; and (b) the Processor

Limit with respect to such SQL Server if the SQL Server is version 2008 R2 or earlier. The Core Limit and the Processor Limit are as indicated in the Applicable Order.

11.2 Restrictions. If SQL Server is provided as a licensed component of the Exam Volume Program, as indicated in the Order, Company shall not unbundle the SQL Server from the Exam Volume Program and use it with any other product or service.

Appendix A
(to Schedule for *PowerScribe 360* | Reporting: Exam Volume License)

Annual Exam Volume Report

Company Name:

Installation Location:

First Productive Use Date:

Licensed Nuance Software: PowerScribe 360 | Reporting

Total Exam Volume: Indicate Annual Exam Volume, Baseline Exam Volume, and the amount the Annual Exam Volume is over or under the Baseline Exam Volume:

Annual Exam Volume	Baseline Exam Volume	Over (Under)

Exam Volume Breakdown: Allocate to Company and each Licensed Affiliate and Named Entity (if any) their respective percentage of the Annual Exam Volume:

Company/Licensed Affiliates/Named Entity	Address	Percentage of the Annual Exam Volume
Total		

Based on the report above, please check the applicable box below:

- ☐ Annual Exam Volume exceeded the Baseline Exam Volume by 10% or more. Company needs to increase the Baseline Exam Volume and Maintenance Services in accordance with the Agreement.
- ☐ Annual Exam Volume did not exceed the Baseline Exam Volume by 10% or more. Nevertheless, Company wants to increase the Baseline Exam Volume and Maintenance Services based on Company's forecast of Annual Exam Volume for the upcoming Annual Exam Period.
- ☐ Annual Exam Volume did not exceed the Baseline Exam Volume by 10% or more. Company does not want to increase the Baseline Exam Volume at this time.

Authorized Signature

Date

Print Name and Title

Note:

This form must be used for all Annual Exam Volume Reports.
All Annual Exam Volume Reports must be submitted no later than thirty (30) days following each Annual Exam Period.
Annual Exam Volume Reports should be sent via e-mail to **aevreports@nuance.com** and by physical mail to:

Site License Administrator
Nuance Communications Inc.
3984 Pepsi Cola Drive
Melbourne, FL 32934

SCHEDULE for
PowerScribe 360 / Critical Results

The terms of this Schedule for *PowerScribe 360 / Critical Results* ("Schedule") apply to the Hosted Services and Licensed Add-on(s) specified in an Order (such Order, the "Applicable Order"), as well as any Client Software. In the event of a conflict between the General Terms and Conditions and the terms of this Schedule, the terms of this Schedule will prevail.

1. **Definitions.** For purposes of this Schedule, the following capitalized terms shall have the following meanings:

- "Active Clinician" means a Clinician who is eligible to receive diagnostic exam results and notifications thereof from Company's diagnostic departments by means of the Hosted Services.
- "Active Clinician Directory" means a database of Active Clinicians and their respective contact information (at a minimum: first name, last name, primary phone number, address, email, and fax number).
- "Authorized User" is as defined below in Section 2.1 of this Schedule.
- "Client Software" means the Nuance Software, *Desktop Client*, which may be provided to Company, by Nuance, as part of the Hosted Services.
- "Clinician" means a person qualified in the clinical practice of healthcare (including, but not limited to, a physician, nurse, chiropractor, physical therapist, and physicians assistant).
- "Department" means the branch of medicine or department (e.g., radiology, pathology, cardiology, etc.) identified in Exhibit 1 of this Schedule.
- "Fees" means the fees for the Hosted Services and Client Software, as set forth on the Applicable Order.
- "First Productive Use" means the date upon which the following tasks have been completed: (i) the setup of the Hosted Services website, (ii) establishment of Company specific toll free numbers, (iii) the loading of Active Clinician Directory during Company setup, with data collected by Nuance and/or supplied by Company, and (iv) Company has been provided access to the Hosted Services to process data.
- "Healthcare Facility" means a hospital or other healthcare facility that is wholly owned or controlled by Company. For purposes of this definition, "control" means (i) the power to elect a majority of the directors of a corporation or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a health care facility.
- "Hosted Services" means the PowerScribe 360 | Critical Results (f.k.a. Veriphy) offering owned and operated by Nuance, and specified in an Order; which software as a service (SaaS) offering is made available to Company via the internet.
- "Location" means each of Company's Healthcare Facilities listed on Exhibit 1 of this Schedule, and only includes the building or portion of such building of each such listed Healthcare Facility that is located at the physical address stated in Exhibit 1 as of the date of the Applicable Order. A Location does not include (i) a new facility or physical structure constructed at a physical address listed on Exhibit 1, or (ii) a physical structure added to a Healthcare Facility listed on Exhibit 1 (e.g. additional floors or a wing added to a physical structure), after the date of the Applicable Order.
- "Licensed Add-on" means any Optional Add-on specified in an Order as being licensed to Company.
- "Optional Add-ons" means Nuance Software that adds functionality to the Hosted Service and is licensed separate and apart from the Hosted Service, which Optional Add-ons are identified in Nuance's then-current price list; including, but not limited to, the following: *PS 360 | Critical Results Bridge-EMR*; *PS 360 | Critical Results Bridge-Directory Synchronization*; *PS 360 | Critical Results Bridge-Custom*; and *Desktop Application Connector*.
- "Payment Schedule" means the payment schedule set forth on the Applicable Order.
- "Service Term" means the term for which Company is granted the rights to the Hosted Services, Licensed Add-on (if any), and Client Software (if any), which term is as specified in Section 6.1 of this Schedule.
- "System" means the collective functionality of Client Software and the Hosted Services.

2. **Grant of Rights.**

2.1 **Hosted Services.** Subject to the terms and conditions of the Agreement (including this Schedule), Nuance hereby grants Company a revocable, non-exclusive, non-transferable, limited right to allow its employees, agents and contractors who are providing medical services within the Department located at a Location (each such employee, agent and contractor, an "Authorized User") to remotely, via the Internet, access and use the Hosted Services, during the Service Term, solely for Company's internal business purposes within the Department within such Locations; provided that such access and use is in a manner commensurate with the intended use of the Hosted Services (as prescribed by the Agreement and the applicable Documentation).

2.2 **Client Software.** Subject to the terms and conditions of the Agreement (including this Schedule), Nuance hereby grants Company, and Company hereby accepts, a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to allow Authorized Users to use the Client Software (if applicable), during the Service Term, for the sole and limited purpose of accessing and using the Hosted Services as per the rights granted in Section 2.1 of this Schedule; provided that such use is in a manner commensurate with the intended use of the Client Software (as prescribed by the Agreement and the applicable Documentation).

2.3 **Licensed Add-ons.** Subject to the terms and conditions of the Agreement (including this Schedule), Nuance hereby grants Company, and Company hereby accepts, a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to allow Authorized Users to use the Licensed Add-ons (if any), during the Service Term, solely in conjunction with the Hosted Services.

2.4 **Restrictions.** Company shall not allow any Authorized User to access and use the Hosted Services, or the Client Software or Licensed Add-ons (if any), for (a) the Authorized User's own personal use, (b) the benefit of any Healthcare Facility, other facilities, or any other branch of medicine or department not listed on Exhibit 1 of this Schedule, or (c) the benefit of any third party. Company shall not (i) allow anyone other than the Authorized Users to access or use the Hosted Services, or the Client Software or Licensed Add-ons (if any), or any components thereof, or (ii) interfere with or disrupt the integrity or performance of the Hosted Services.

3. **Nuance Responsibilities.**

3.1 **Hosted Services.** Nuance agrees to host, operate and maintain the equipment and software comprising its Hosted Services, and to allow Company to access and use the Hosted Services, during the Service Term, in accordance with the terms of the Agreement. The communications and network interoperability requirements for Internet access to the Hosted Services are as described in the Documentation. All services and infrastructure for the Hosted Services are located and maintained within the United States.

3.2 **Support.** During the Service Term, Nuance shall provide Company with support in accordance with the terms set forth in Exhibit 2 to this Schedule.

3.3 **Active Clinician Directory.** Once per calendar year, Company may request to have the Active Clinician Directory updated by adding and removing named Active Clinicians and their respective contact information, provided such information is provided to Nuance in electronic format in either database or spreadsheet format.

4. **Company Responsibilities.**

4.1 **Project Manager.** During installation and operation of the System, Company shall provide a qualified individual who will manage and monitor the installation and assist with any issues that may arise during routine operation of the System.

4.2 **Equipment and Internet Connectivity.** Company shall provide, at its own expense, telecommunications (including Internet connectivity), firewall, and all equipment and operating system software necessary for Authorized Users to access and use the System, as recommended in the Documentation. Nuance shall have no responsibility for any costs incurred in connection with modifications or enhancements to Company's system necessary for implementing Company's interface with the Hosted Services or in connection with Company's use of the Hosted Services. Proxy servers are not supported. Specified ports will need to be available.

4.3 **Roles and Responsibilities.** Exhibit 3, incorporated herein, defines the stages of the Hosted Services workflow (as further detailed in the Documentation), and identifies each Party's level of involvement. Ultimately, Company is solely responsible for ensuring that the critical notification has received the appropriate review and response.

4.4 **Medical Care Responsibility.** Company acknowledges and agrees that Nuance has no responsibility whatsoever for the conduct of Company's business or provision of patient care, and that any reliance upon the Hosted Services shall not diminish Company's responsibility for patient care. Company shall ensure that the Authorized Users are advised and understand that the Hosted Services are an aid in the practice of healthcare and are not a substitute for professional judgment. The Hosted Services are not intended to be used to provide medical treatment, unless there is an accuracy review by Company's staff.

5. **Payments.** Upon commencement of the Service Term, Nuance shall invoice Company for the Fees in accordance with the Payment Schedule, and Company shall pay to Nuance each invoice within thirty (30) days of the date of such invoice; except that if the Applicable Order is between Company and an Authorized Reseller, Company shall pay Authorized Reseller all fees indicated in the Applicable Order in accordance with the payment terms specified in such Applicable Order.

6. **Term and Termination.**

6.1 **Service Term.** Subject to the right to terminate set forth in the Agreement, the initial Service Term shall be as set forth in the Applicable Order. Thereafter, subject to the right to terminate set forth in the Agreement, the Service Term will automatically renew for up to two (2) consecutive one (1) year periods unless (a) either party notifies the other party, in writing and at least sixty (60) days prior to the expiration of the then-current Service Term, of its decision not to renew the Service Term, or (b) the Service Term has been terminated in accordance with the Agreement. The initial Service Term shall commence upon First Productive Use or one hundred eighty (180) days following the date of the Applicable Order, whichever occurs first.

6.2 **Effect of Termination.** Upon the expiration or termination of the Service Term, the Applicable Order or this Agreement by either party, Company's rights to access and use the Hosted Services, as well as Company's rights to use the associated Client Software and Licensed Add-ons (if any), will terminate. Neither the expiration nor termination of the Service Term, the Applicable Order, or this Agreement shall affect Company's payment obligations or their rights and obligations under this Section 6.2. In the event the Hosted Services are terminated prior to the completion of the then-current Service Term, other than by Company for cause, the Fees that otherwise would have come due over the remainder of the Service Term shall immediately become due and payable to Nuance, and Nuance shall invoice Company for such remaining Fees.

Exhibit 1
(to Schedule for *PowerScribe 360* / *Critical Results*)

Locations & Departments

Exhibit 2
(to Schedule for *PowerScribe 360* / *Critical Results*)

Support

1. **Error Correction.** Nuance shall promptly repair any errors which are reported either in writing or verbally. An error is defined as any operation of the Hosted Solution that is different than described in the Documentation. An error also includes a “bug” or “crash” in which the Hosted Solution or portions of the Hosted Solution cease to function.
2. **Question and Answer Support.** Nuance will provide question and answer support. These services are only offered to the trained and authorized System/Site Administrative Contact(s) or their designee. Nuance is not responsible for providing support services directly to End Users.
3. **Service Hours.** Nuance shall provide remote support services for Hosted Solutions on a 24-Hour / 7-Days per week basis. Nuance shall return all Emergency Support calls within one (1) hour following receipt of the call by Nuance. An Emergency call is defined as a problem where the Hosted Solution fails to operate in accordance with the Specifications, and the failure is of such a nature as to prevent the continuation of the day-to-day business operations of Customer, and for which no immediate workaround is available. Nuance shall return all Non-Emergency Support calls within four (4) hours following receipt of the call by Nuance.
4. **Company Contacts.** Company shall identify up to two (2) trained and authorized System Administrative Contacts per Site. These individuals will communicate to Nuance about the services rendered hereunder and then will be responsible for communicating, as needed, with the staff at Company.
5. **No commitment to program interoperability.** In a Microsoft environment, it is possible that programs provided by other vendors (e.g. an email program), may conflict with the Client Software. Nuance does not agree to resolve any such conflicts, if they are discovered.
6. **No support for Vendor Supplied Software.** Software residing on Company’s work stations (such as Word and Microsoft Operating Systems) is not covered by this Agreement. Upgrades and new releases of all such third-party software are not provided or maintained by Nuance and must be obtained separately by Company.
7. **Adequate Training.** Nuance does not give a specific limit on the amount of Question/Answer support that it will give, but assumes that the existing System/Site Administrative Contact will be adequately trained. If, for a period of two consecutive weeks, Company calls Nuance persistently for question/answer support, and Company’s System/Site Administrative Contact(s) have not previously attended the appropriate Nuance training class, then Company agrees to send those individuals to the Nuance classes at the then-standard rates, or, alternatively, meet with Nuance to review the situation. For the purposes of this Section, the term “persistently” shall mean multiple telephone calls with questions every day.

Exhibit 3
(to Schedule for *PowerScribe 360 | Critical Results*)

PowerScribe 360|Critical Results(f.k.a Veriphy)
Message Stages, Actions and Responsibilities

Message Stage	Description	Action and Responsible Party
Primary	An alert is sent to the Ordering Clinician's primary device at the time of message creation. There is no intervention from a facility's Administrator or Coordinator. Nuance support staff will only intervene if the alert notification failed or the Ordering Clinician's profile has no defined device.	The Ordering Clinician is responsible for retrieving and acknowledging the Critical Results message.
Backup	An escalation event that will send an alert to a backup device defined in the Ordering Clinician's profile. There is no intervention from Company facility's Administrator or Coordinator. If no backup device is defined, the alert will go the primary device. Also at Backup, Nuance support staff is notified.	The Ordering Clinician is responsible for retrieving and acknowledging the Critical Results message. Nuance support staff will make one (1) attempt to contact the Ordering Clinician via a phone call. The conversation will be documented in the Message Notes via the PS360 Critical Results web application.
End Escalation/Fail-Safe	A final escalation event that will send an alert to a fail-safe device defined in the Ordering Clinician's profile. If no fail-safe device is defined, the alert will go the primary device. Also at End Escalation, Company facility's Coordinator is sent an alert.	The Ordering Clinician is responsible for retrieving and acknowledging the Critical Results message. The Company facility's Coordinator is responsible for accessing the PS360 Critical Results web application, reviewing the Activity Log and Message Notes, and determining the next course of action. <u>For example</u> , the Coordinator will compare the order with the message to determine if the correct Ordering Clinician was listed as the message recipient. If not, the Coordinator will follow the guidelines for their facility which may include reaching out to the radiologist for further direction and or forwarding the message to the correct recipient.

		<p>Dependent on the individual Facility's Compliance Management guide, the following may be steps taken for non-responsiveness from the ordering clinician. For inpatients, the Coordinator will call the nursing unit and communicate the need for message retrieval, and clearly document the conversation in the web application.</p> <p>For outpatients, the Coordinator may review the message and message notes with the Radiologist for further instructions.</p>
Compliance	A final alert sent to the Company facility's Administrator device indicating the compliance goal has not been met.	<p>The facility's Administrator is responsible for accessing the PS360 Critical Results web application, reviewing the Activity Log and Message Notes, and determining the next course of action. For example, for inpatients, the Coordinator may call the Administrator on duty and communicate the need for message retrieval and clearly documenting the conversation in the web application, ensuring message closure.</p> <p>For outpatients, the Administrator may review the message and message notes with the Radiologist for further instructions, ensuring message closure.</p>

Notes:

- When the status is "Embargoed" during any Stage, no alerts are sent during such period.
- Company must appoint its own personnel to be Coordinator and Administrator.
- Additional roles responsibilities and functionality of PS360|Critical Results are as per the Documentation provided to the Company.
- Final responsibility for message closure remains with the Company.

Table A-1 below provides Company specific settings as of the Amendment One Effective Date. The parties may change the specifications (time associated with each stage and settings for alerts) by mutual agreement in writing. Company has opted for a secondary [incremental] alert to go to the Primary device. Therefore two notifications will go at the Primary stage to the primary device - the secondary incremental device is set at the same time as the backup notification.

Table A-1

Finding Classification	Critical Messages	Significant Messages	Important Unexpected	Outpatient PAT	Breast Center Priority I	Breast Center Priority 2
First Alert	0 minute	0 minute	0 minute	0 minute	0 minute	0 minute
Incremental notification	10 minutes	60 minutes	1440 minutes / 24 hours	480 minutes/ 8 hours	240 minutes / 4 hours	480 minutes/ 8 hours
<u>Start Backup At</u>	10 minutes	60 minutes	1440 minutes / 24 hours	480 minutes/ 8 hours	240 minutes / 4 hours	480 minutes/ 8 hours
<u>Fail Safe - End Escalation</u>	30 minutes	120 minutes	5880 minutes / 98 hours	1440 minutes / 24 hours	960 minutes / 16 hours	1920 minutes/ 32 hours
<u>Compliance Goal</u>	30 minutes	240 minutes / 4 hours	7320 minutes / 122 hours	1920 minutes/ 32 hours	1440 minutes / 24 hours	2400 minutes / 40 hours
Embargo?	no	no	yes	yes	yes	yes
Embargo Start Time (PM)	no	no	5:00 PM	5:00 PM	5:00 PM	5:00 PM
Embargo End Time (AM)	no	no	9:00 AM	9:00 AM	9:00 AM	9:00 AM
Embargo Weekends?	no	no	Yes	Yes	Yes	Yes

**SCHEDULE for
Assure for PowerScribe 360 / Reporting**

The terms of this Schedule for *Assure for PowerScribe 360 / Reporting* (“Schedule”) apply to the Hosted Services (as defined below) specified in an Order (such Order, the “Applicable Order”). In the event of a conflict between the General Terms and Conditions and the terms of this Schedule, the terms of this Schedule will prevail.

1. **Definitions.** For purposes of this Schedule, the following capitalized terms shall have the following meanings:

- “Affiliate” means a business entity that is controlled by Company. “Control” as used within this definition 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” is as defined below in Section 2.1 of this Schedule.
- “Fees” means the fees for the Hosted Services (excluding the fees for Professional Services and Training Services, if applicable), as set forth on the Applicable Order.
- “Hosted Services” means the *Assure for PowerScribe 360 / Reporting* software as a services (SaaS) offering owned and operated by Nuance, and specified in an Order; which SaaS offering is made available to Company via the Internet.
- “First Productive Use” means the date upon which the setup of the Hosted Services is completed.
- “Licensed Affiliate(s)” means the Affiliates that are authorized, subject to the terms and conditions of the Agreement (including this Schedule), to use the Hosted Services hereunder, which Affiliates are set forth below:

Licensed Affiliate

Address

- “Healthcare Facility” means a hospital or other healthcare facility that is wholly owned or controlled by Company. For purposes of this definition, “control” means (i) the power to elect a majority of the directors of a corporation or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a health care facility.
- “Location” means each of Company’s Healthcare Facilities listed on Exhibit 1 of this Schedule, and only includes the building or portion of such building of each such listed Healthcare Facility that is located at the physical address stated in Exhibit 1 as of the date of the Applicable Order. A Location does not include (i) a new facility or physical structure constructed at a physical address listed on Exhibit 1, or (ii) a physical structure added to a Healthcare Facility listed on Exhibit 1 (e.g. additional floors or a wing added to a physical structure), after the date of the Applicable Order.
- “Payment Schedule” means the payment schedule set forth on the Applicable Order.
- “PowerScribe 360 Program” means Nuance’s proprietary PowerScribe 360 / Reporting (v.1.5 or greater) software that Company has licensed from Nuance, separate and apart from the Hosted Services, pursuant to either a “Transactional License” or “Exam Volume License” License Model.
- “Service Term” means the term for which Company is granted the rights to the Hosted Services, which term is as specified in Section 6.1 of this Schedule.

2. **Grant of Rights.**

2.1 Hosted Services. Subject to the terms and conditions of the Agreement (including this Schedule), Company is granted a revocable, non-exclusive, non-transferable, limited right to allow its (and any Licensed Affiliate’s) employees, agents and contractors practicing at a Location (each such employee, agent and contractor, an “Authorized User”) to remotely, via the Internet, access and use the Hosted Services, during the Service Term and in conjunction with a valid licensed copy of the PowerScribe 360 Program, solely for Company’s internal business purposes associated with such Locations; provided that such access and use is in a manner commensurate with the intended use of the Hosted Services (as prescribed by the Agreement and the applicable Documentation).

2.2 Restrictions. Company shall not allow any Authorized User to access and use the Hosted Services for (a) the Authorized User’s own personal use, (b) the benefit of any Healthcare Facility, or any other facility, not listed on Exhibit 1 of this Schedule, or (c) the benefit of any third party. Company shall not (i) allow anyone other than the Authorized Users to access or use the Hosted Services, or any components thereof, or (ii) interfere with or disrupt the integrity or performance of the Hosted Services.

2.3 Requirement. Use of the Hosted Services requires that Company have a valid license to the PowerScribe 360 Program.

3. **Nuance Responsibilities.**

3.1 Hosted Services. Nuance agrees to host, operate and maintain the equipment and software comprising its Hosted Services, and to allow Company to access and use the Hosted Services, during the Service Term, in accordance with the terms of the Agreement.

3.2 Support. During the Service Term, Nuance shall provide Company with support in accordance with the terms set forth in Exhibit 2 to this Schedule.

4. **Company Responsibilities.**

4.1 Project Manager. During the Service Term, Company shall provide a qualified individual who will assist with any issues that may arise during routine operation of the Hosted Services.

4.2 Equipment and Internet Connectivity. Company shall provide, at its own expense, telecommunications (including Internet connectivity), firewall, and all equipment and operating system software necessary for Authorized Users to access and use the Hosted Services, as recommended in the Documentation. Nuance shall have no responsibility for any costs incurred in connection with modifications or enhancements to Company's system necessary for implementing Company's interface with the Hosted Services or in connection with Company's use of the Hosted Services. The communications and network interoperability requirements for Internet access to the Hosted Services are as described in the Documentation.

5. **Fees and Payment**. Upon commencement of the Service Term, Nuance shall invoice Company for the Fees in accordance with the Payment Schedule, and Company shall pay each invoice within thirty (30) days of the invoice date; except that if the Applicable Order is between Company and an Authorized Reseller, Company shall pay Authorized Reseller all fees indicated in the Applicable Order in accordance with the payment terms specified in such Applicable Order.

6. **Term and Termination.**

6.1 Service Term. Subject to the right to terminate set forth in the General Terms and Conditions, the initial Service Term shall be as set forth in the Applicable Order. Thereafter, subject to the right to terminate set forth in the General Terms and Conditions, the Service Term will automatically renew for successive one (1) year periods unless either party notifies the other party, in writing and at least ninety (90) days prior to the expiration of the then-current Service Term, of its decision not to renew the Service Term. The initial Service Term will commence upon First Productive Use or, to the extent Nuance is not responsible for delays in implementation, one hundred eighty (180) days following the date of the Applicable Order, whichever occurs first. Each renewal Service Term, if applicable, will commence immediately following expiration of the prior Service Term.

6.2 Effect of Termination. Upon the expiration or termination of the Applicable Order, this Agreement, or Company's license to the PowerScribe 360 Program by either party, the Service Term, and Company's rights to access and use the Hosted Services will terminate. Neither the expiration nor termination of the Service Term shall affect Company's payment obligations or their rights and obligations under this Section 6.2. In the event the Hosted Services are terminated prior to the completion of the then-current Service Term, other than by Company for cause, the Fees that otherwise would have come due over the remainder of the Service Term shall immediately become due and payable to Nuance, and Nuance shall invoice Company for such remaining Fees.

Exhibit 1
(to Schedule for *Assure for PowerScribe 360 / Reporting*)

Locations

Exhibit 2
(to Schedule for *Assure for PowereScribe 360 / Reporting*)

Support

1. **Error Correction.** Nuance shall promptly repair any errors which are reported either in writing or verbally. An error is defined as any operation of the Hosted Solution that is different than described in the Documentation. An error also includes a “bug” or “crash” in which the Hosted Solution or portions of the Hosted Solution cease to function.
2. **Question and Answer Support.** Nuance will provide question and answer support. These services are only offered to the trained and authorized System/Site Administrative Contact(s) or their designee. Nuance is not responsible for providing support services directly to End Users.
3. **Service Hours.** Nuance shall provide remote support services for Hosted Solutions on a 24-Hour / 7-Days per week basis. Nuance shall return all Emergency Support calls within one (1) hour following receipt of the call by Nuance. An Emergency call is defined as a problem where the Hosted Solution fails to operate in accordance with the Specifications, and the failure is of such a nature as to prevent the continuation of the day-to-day business operations of Customer, and for which no immediate workaround is available. Nuance shall return all Non-Emergency Support calls within four (4) hours following receipt of the call by Nuance.
4. **Company Contacts.** Company shall identify up to two (2) trained and authorized System Administrative Contacts per Site. These individuals will communicate to Nuance about the services rendered hereunder and then will be responsible for communicating, as needed, with the staff at Company.
5. **No commitment to program interoperability.** In a Microsoft environment, it is possible that programs provided by other vendors (e.g. an email program), may conflict with the Client Software. Nuance does not agree to resolve any such conflicts, if they are discovered.
6. **No support for Vendor Supplied Software.** Software residing on Company’s work stations (such as Word and Microsoft Operating Systems) is not covered by this Agreement. Upgrades and new releases of all such third-party software are not provided or maintained by Nuance and must be obtained separately by Company.
7. **Adequate Training.** Nuance does not give a specific limit on the amount of Question/Answer support that it will give, but assumes that the existing System/Site Administrative Contact will be adequately trained. If, for a period of two consecutive weeks, Company calls Nuance persistently for question/answer support, and Company’s System/Site Administrative Contact(s) have not previously attended the appropriate Nuance training class, then Company agrees to send those individuals to the Nuance classes at the then-standard rates, or, alternatively, meet with Nuance to review the situation. For the purposes of this Section, the term “persistently” shall mean multiple telephone calls with questions every day.