



COUNTY OF MONTEREY - BOARD OF SUPERVISORS

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File #: A 13-241 Name: Nuance Communications Inc
 Type: BoS Agreement Status: Consent Agenda
 File created: 9/25/2013 In control: Board of Supervisors
 On agenda: 10/15/2013 Final action:
 Title: Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute an Agreement with Nuance Communications Inc. for Dragon Medical 360 Edition Network Software/Hardware, Licensing, Installation, Training and Maintenance Services at NMC in an amount not to exceed \$792,755 for the period October 15, 2013 to August 31, 2016.
 Sponsors: Sid Cato
 Attachments: 1. Nuance Communications Inc, 2. Completed Board Order

History (0) Board Report

Title

Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute an Agreement with Nuance Communications Inc. for Dragon Medical 360 Edition Network Software/Hardware, Licensing, Installation, Training and Maintenance Services at NMC in an amount not to exceed \$792,755 for the period October 15, 2013 to August 31, 2016.

Report

RECOMMENDATION:

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute an Agreement with Nuance Communications Inc. for Dragon Medical 360 Edition Network Software/Hardware Licensing, Installation, Training and Maintenance Services at NMC in an amount not to exceed \$792,755 for the period October 15, 2013 to August 31, 2016.

SUMMARY/DISCUSSION:

In July of 2004 this Board approved and NMC initiated its Health Care Information System Software (Electronic Medical Record) system with Medical Information Technology (Meditech). Since that time NMC has added and continues to add additional modules to the Meditech system.

This new Agreement provides essential and ongoing licensure/software support and updates to the Electronic Health Record applications utilized by Natividad Medical Center.

As part of NMC's ongoing EHR strategy we now must implement electronic Physician Documentation (PDOC) as dictated by the Centers of Medicaid and Medicare Services laid out by the HITECH ACT of 2009. PDOC is an essential part to meeting the requirements of Meaningful Use. For NMC to meet Meaningful Use Stage II, PDOC must be in place and fully functional by October 1, 2014. PDOC is an application of NMC's Meditech software modules, Physician Care Manager 2(PCM II) and Emergency Department 2 (EDM 2). PCM II is Meditech's module for all hospital units except the Emergency Department and EDM 2 is Meditech's module for the Emergency Department. PDOC allows for physicians to electronically document in the electronic health record, including but not limited to patients subjective histories, physical exams, relevant results, assessments and plans. The patient plan is then executed via Computerized Physician Order Entry (CPOE) as previously referenced in earlier board reports.

PDOC is closely coupled with the speech recognition software, Nuance's Dragon Medical 360 Network Edition, commonly referred to as simply "Dragon". Dragon allows the provider to dictate, customize, and then document into PDOC in real time. To achieve this Nuance will provide Dragon software as well as support hardware and customizable Natividad specific content. An integrated PDOC and Dragon training approach will be employed. Navin Haffty will take the lead of the PDOC project over all for NMC including PDOC/Dragon training. Nuance will be augmenting this training and will be providing expertise specifically related to Dragon throughout the project. The project will begin September 1, 2013 and estimated completion by December 31, 2014.

The license allows for future expansion including into NMC's ambulatory system regardless of ambulatory EHR utilized.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed and approved this Agreement as to legal form and risk provisions. Auditor-Controller has reviewed and approved this Agreement as to fiscal provisions. The Agreement has also been reviewed and approved by Natividad Medical Center's Board of Trustees.

FINANCING:

The cost for this Agreement is \$792,755. \$642,755 is included in the Fiscal Year 2013/2014 Adopted Budget. Amounts for remaining years of the Agreement will be included in those budgets as appropriate. There is no impact to the General Fund.

Prepared by: Jim Fenstermaker, Senior IT Strategist, 831-783-2559
Approved by: Harry Weis, Chief Executive Officer, 783-2553

Attachments: Agreement
Attachments on file with the Clerk to the Boards Office



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No. A-12588

Upon motion of Supervisor Potter, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute an Agreement with Nuance Communications Inc. for Dragon Medical 360 Edition Network Software/Hardware, Licensing, Installation, Training and Maintenance Services at NMC in an amount not to exceed \$792,755 for the period October 15, 2013 to August 31, 2016.

PASSED AND ADOPTED on this 15th day of October 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter
NOES: None
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on October 15, 2013.

Dated: October 16, 2013
File Number: A 13-241

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By  Deputy



Healthcare Master Agreement

This NUANCE HEALTHCARE MASTER AGREEMENT ("Agreement"), effective on the date as approved by the Monterey County Board of Supervisors, which said date is _____, 2013 ("Effective Date"), is by and between **Nuance Communications, Inc.** ("Nuance" or "CONTRACTOR") and **Natividad Medical Center** ("Customer" or "NMC"), and consists of the General Terms and Conditions, and all Exhibits and applicable Schedules. Nuance and Customer are each a "Party" and are collectively referred to as the "Parties".

SCHEDULES
Schedule 1 (Nuance Management Server for Dragon Medical Enterprise Network Edition)
Schedule 2 (Dragon Medical 360 Network Edition Health System Site License)

This Agreement is executed by an authorized representative of each Party.

NATIVIDAD MEDICAL CENTER

By: [Signature]
 Name: Henry Weiss
 Title: CEO
 Date: 7/24/13

NUANCE COMMUNICATIONS, INC.

By: [Signature]
 Name: DANIEL CARLTONSON
 Title: VP WW SALES OPS
 Date: 7/18/13

Customer Address:
 1441 Constitution Blvd.
 Salinas, CA 93906

Nuance Address:
 One Wayside Road
 Burlington, MA 01803

Nuance Legal Approved



Healthcare Master Agreement

This NUANCE HEALTHCARE MASTER AGREEMENT ("Agreement"), effective on the date as approved by the Monterey County Board of Supervisors, which said date is _____, 2013 ("Effective Date"), is by and between Nuance Communications, Inc. ("Nuance" or "CONTRACTOR") and Natividad Medical Center ("Customer" or "NMC"), and consists of the General Terms and Conditions, and all Exhibits and applicable Schedules. Nuance and Customer are each a "Party" and are collectively referred to as the "Parties".

SCHEDULES

Schedule 1 (Nuance Management Server for Dragon Medical Enterprise Network Edition)

Schedule 2 (Dragon Medical 360 Network Edition Health System Site License)

This Agreement is executed by an authorized representative of each Party.

NATIVIDAD MEDICAL CENTER

By: [Signature]

Name: Nancy Weiss

Title: CEO

Date: 9-13-13

NUANCE COMMUNICATIONS, INC.

By: _____

Name: _____

Title: _____

Date: _____

Customer Address:
1441 Constitution Blvd.
Salinas, CA 93906

Nuance Address:
One Wayside Road
Burlington, MA 01803

A.B.
A.B. revert on
Sept. 20, 2013
Deputy County Counsel

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey
9/20/13

General Terms and Conditions

1. **Definitions.** Capitalized terms in the Agreement have the meanings set forth below, in Exhibit A, or in the Schedules.

2. **Ordering Process.** During the Agreement Term, Customer may purchase Nuance Products and associated Maintenance Services, Third Party Equipment, and/or Training Services from Nuance by entering into Orders with Nuance. An Order shall become effective when signed by Customer and accepted by Nuance. Each Order will constitute a separate contract between the Parties, and will be governed in all respects by the terms and conditions of this Agreement. If Customer issues purchase orders as part of its standard business operations, Customer shall provide Nuance with a purchase order in conjunction with returning a signed Order to Nuance, provided that failure of Customer to provide a purchase order to Nuance for any reason shall not diminish Customer's obligations set forth in this Agreement or the applicable Order. Nuance may accept an Order by fulfillment of the Software, Equipment and/or Services contained in said Order. Customer acknowledges that, for certain reasons (including Nuance's modification to Software and/or Equipment, or a third party vendor's revision to its product lines), the Software, Equipment and/or Services actually delivered may differ from that set forth in the applicable Order, provided such change has no impact on functionality or price as originally contracted.

3. **Products and Services.**

3.1. **Software**

3.1.1. **License Grant.** Subject to the terms and conditions of this Agreement, Nuance hereby grants Customer, and Customer accepts, a limited, non-exclusive, non-transferable, non-sublicensable, perpetual license to use the Software specified on an Order in a manner commensurate with its intended use (as prescribed by said Order and the Documentation) and solely for Customer's internal business purposes.

3.1.2. **License Restrictions and Notice**

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

(b) **Notice of Unauthorized Use.** Customer shall immediately notify Nuance upon learning of any third party's unauthorized possession or use of any Software supplied under this Agreement.

3.1.3. **Government Customer Rights.** This section applies to all acquisitions of Software (collectively or individually for the purposes of this section, the "Government Acquired Products") by or for the government of the United States of America (the "Federal Government"), or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal Government. By accepting delivery of the Government Acquired Products, the Federal Government hereby agrees that this software qualifies as "commercial" computer software within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Federal Government's use and disclosure of the Government Acquired Products, and shall supercede any conflicting contractual terms or conditions. If this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with United States law, the Federal Government agrees to return the Government Acquired Products unused. The following additional statement applies only to acquisitions by the Federal Government that are governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights - Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data - Noncommercial Items clause at DFARS 252.227-7013 (1995)."

3.2. **Equipment.** Subject to the terms and conditions of this Agreement, Customer shall purchase from Nuance the Equipment specified in an Order, in the quantity and at the price set forth in such Order. Third Party Equipment shall be governed in all other respects by terms and conditions specified by the applicable third party vendor of such Third Party Equipment. For purposes of clarification, both Parties acknowledge there is no Third Party Equipment being purchased by Customer on the Order to be executed simultaneously with this Agreement. For any subsequent Orders which include Third Party Equipment (if any) Nuance will request the third party vendor to provide copies of such terms to Customer. Customer does not have any obligation to execute an Order until is has obtained a copy of such terms.

3.3. **Services.**

3.3.1. **Maintenance Services.**

(a) **Scope.** If purchased, as indicated in the Order, for an initial term of one (1) year following initial delivery (the "Initial Service Term"), Nuance shall provide the Maintenance Services selected by Customer in the applicable

Order. Thereafter, Maintenance Services may renew upon the written mutual consent of both parties for one-year terms (each, a "Renewal Service Term") unless terminated by either party pursuant to Section 7 of this Agreement. Unless otherwise agreed, Maintenance Services with respect to any Software shall apply to all copies of such Software licensed to Customer. All Maintenance Services shall be provided subject to Nuance's Hardware and Software Maintenance Options, Terms and Conditions set forth in Exhibit C to this Agreement. For a period of three (3) years from the Effective Date, the Maintenance Services Fees for any applicable Renewal Service Term shall not, for the originally supported Software, exceed a percentage of the previous annual fee that is the lesser of; (a) three percent (3%), or (b) the percentage increase in the Consumer Price Index (Medical Services). For purposes of clarification, for the initial Order (to be executed simultaneously with this Agreement) Customer is purchasing three (3) years of Maintenance Services in advance, the annual Maintenance Services Fees (for Option I Level Maintenance Services) will be fixed at \$63,810.00 per year for a three (3) year total of \$191,430.00 in Maintenance Services Fees.

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

3.3.2. Training Services.

(a) Scope. Subject to the terms and conditions set forth in this Agreement, Nuance will provide the Training Services specified in the applicable Order (if any).

(b) Location. Unless otherwise agreed to by the parties hereto, all 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 Customer'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 Customer site time, Monday through Friday, excluding Nuance recognized holidays.

(c) Attendees. Customer shall ensure that all Training Services attendees: (i) are Authorized Users, and (ii) have the skills and experience to participate in the training sessions. Nuance may require that a Training Services attendee reschedule their Training Services if, in Nuance's

reasonable judgment, such attendee does not have the requisite skills and experience (i.e., a working knowledge of Windows).

(d) Rescheduling. Customer agrees to reimburse Nuance \$300 USD per scheduled trainer per training day, as scheduled, and for any actual incurred travel arrangement costs (e.g., airline ticket deposits, etc.) due to rescheduling or cancellation of Training Services less than ten (10) business days prior to the scheduled start of such Training Services, provided the cancellation is not due to a breach by Nuance. For purposes of clarification, all reimbursements for actual incurred travel arrangement costs due to rescheduling or cancellation by Customer will be in accordance with the Monterey County Travel Policy attached to this Agreement as Exhibit D.

(e) On-Location. If Customer requests that Training Services occur at a location other than a Nuance facility, Customer shall provide the necessary equipment, information, and facilities required by Nuance to perform such Training Services.

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

4. Customer Obligations.

4.1. Data Preservation. As between Nuance and Customer, it is Customer's responsibility to create and preserve reasonable backup copies of its data and other business information and records, and take such other precautions as may reasonably be required to detect and guard against possible malfunctions, loss of data, or unauthorized access to Customer's computer systems.

4.2. Speech Recognition. CUSTOMER ACKNOWLEDGES THAT SPEECH RECOGNITION IS A STATISTICAL PROCESS, ERRORS ARE INHERENT IN SUCH PROCESS, AND APPLICATIONS EMPLOYING SUCH PROCESS ARE DESIGNED TO ALLOW FOR SUCH ERRORS. CUSTOMER ACKNOWLEDGES THAT SUCH ERRORS ARE INEVITABLE AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF CUSTOMER TO IDENTIFY AND CORRECT ANY SUCH ERRORS BEFORE USING AND/OR RELYING ON THE RESULTS OF THE USE OF ANY SPEECH RECOGNITION SOFTWARE PROGRAM LICENSED HEREUNDER. CUSTOMER ACKNOWLEDGES AND AGREES THAT NUANCE DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, AND THAT CUSTOMER'S USE OF THE SOFTWARE DOES NOT ABSOLVE CUSTOMER OF ITS OBLIGATION TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS. CUSTOMER ACKNOWLEDGES THAT THE PROFESSIONAL DUTY TO THE PATIENT IN PROVIDING HEALTHCARE SERVICES LIES SOLELY WITH CUSTOMER. CUSTOMER AGREES THAT ANY RELIANCE UPON

THE SOFTWARE SHALL NOT DIMINISH CUSTOMER'S RESPONSIBILITY FOR PATIENT CARE.

4.3. Customer Data. The Software has a feature by which Customer may enable Nuance to collect Speech Data. By turning on the feature to provide Nuance with Speech Data, Customer acknowledges, consents and agrees that Nuance may collect and use the Speech Data as provided hereunder. The Parties agree that Speech Data shall only be used by Nuance or third parties acting under the direction of Nuance, pursuant to confidentiality provisions, to tune, enhance and improve the speech recognition and other components of the Software, and other Nuance services and products. Nuance will not use the information elements in any Speech Data for any purpose except as set forth above.

5. Payment.

5.1. Invoicing Terms. In consideration for the Software, Equipment and Services provided by Nuance under this Agreement and/or Orders, Customer will pay, as applicable, all of the fees and other charges (including, but not limited to, all taxes, shipping, freight, handling and similar costs) specified in the applicable Order (collectively, the "Fees"), in full and in U.S. dollars, within thirty (30) days after the invoice date. Notwithstanding the foregoing, Nuance agrees to the following:

(i) Fees shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. Customer does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement;

(ii) Nuance shall not receive reimbursement for travel expenses unless set forth in this Agreement; and then only in accordance with any applicable County policies set forth in Section 5.2 below;

(iii) Invoice amounts shall be billed directly to the ordering department; and

(iv) Nuance shall submit such invoice periodically or at the completion of any Services, but in any event, not later than thirty (30) days after completion of any Services. The invoice shall set forth the amounts claimed by Nuance for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Customer shall certify the invoice (said Customer certification shall not exceed five business days), either in the requested amount or in such other amount as Customer approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

5.2. Expenses. Nuance shall abide by the Monterey County Travel Policy attached to this Agreement as Exhibit D for any actual and reasonable expenses arising in the delivery of the Software, Equipment and Services pursuant to an Order.

5.3. Taxes. All amounts described herein are exclusive of any applicable sales, use, excise or withholding taxes or any

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

5.4. Intentionally Omitted

5.5. Leasing Arrangements. If Customer has entered into a lease arrangement with Fleetwood Financial ("Lessor") to finance the Order, then Nuance shall, at Customer's request, submit the invoice(s) for the Order to, and accept payment for the Order from, Lessor. Notwithstanding the foregoing, Customer remains fully liable to Nuance for all amounts due and owing under the Order. If Lessor fails to pay Nuance any amount due under the Order, when due, Customer shall pay such amounts to Nuance immediately upon receipt of Nuance's invoice.

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

6. **Delivery.**

6.1. Shipping Terms. For Orders with Software and Equipment requiring delivery within the United States, such Software and Equipment will be shipped "FOB Shipping Point". For Orders with Software and Equipment requiring delivery outside the United States, Software and Equipment will be shipped "FCA Shipping Point". Customer shall bear all shipping, freight and transportation charges from Nuance's warehouse facility.

6.2. Risk of Loss. Title to any Equipment, risk of loss or damage to the Software and Equipment shall pass to Customer upon delivery to the common carrier at Nuance's warehouse facility. If Customer fails to pay for any Equipment, Nuance reserves the right to repossess such Equipment.

7. **Term; Termination.**

7.1. Term. This Agreement shall become effective as of the Effective Date and, unless sooner terminated in accordance with Section 7.2 below, shall continue until the third anniversary of the Effective Date ("Agreement Term"). Thereafter, the Agreement may renew upon the written mutual consent of both parties for one-year terms (each, an "Agreement Renewal Term").

7.2. Termination for Cause. Either Party may terminate the Agreement or any Order by written notice if the other Party: (i) commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach, or (ii) materially breaches the Agreement in a manner that cannot be remedied; or (iii)

becomes insolvent, commences dissolution proceedings or ceases to operate in the ordinary course of business.

7.3. Effect of Expiration or Termination. Upon the expiration or termination of any Order, by either party, all licenses granted to Customer, and all Services obtained by Customer, under such Order shall terminate and Customer shall cease using the applicable Software and shall return same to Nuance. Neither the expiration nor termination of this Agreement, any individual Orders, or any license shall affect the parties' respective payment obligations or their rights and obligations under Sections 3.1.3, 4, 5, and 7 – 14 herein. For the purpose of clarification, expiration of the Agreement shall merely affect Customer's ability to license additional Software or order Training Services pursuant to the terms and conditions of this Agreement after the date of such expiration. Software licenses previously ordered and not terminated or expired by Nuance pursuant to Section 7.2 above shall not be affected in addition to any associated Renewal Service Term(s) for any Software not expired or terminated.

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

9. Confidentiality.

9.1. Use and Disclosure. The Receiving Party agrees (1) to hold the Disclosing Party's Confidential Information in strict confidence, and to use at least the same standard of care that the Receiving Party uses to in protect its own Confidential Information, (2) not to disclose the Disclosing Party's Confidential Information to any third party, and (3) not to use any Confidential Information of the Disclosing Party without first obtaining the Disclosing Party's written consent, except as reasonably required to exercise its rights or perform its obligations under this Agreement. The Receiving Party agrees to limit disclosure of the Disclosing Party's Confidential Information to those employees who need to know the same to accomplish the purposes of this Agreement, and who have executed a written agreement with terms substantially similar to those contained herein.

9.2. Exclusions. The obligations to preserve the confidential nature of any of the Confidential Information described herein shall not apply to information that (i) was previously known to the Receiving Party free of any obligation to keep it confidential; (ii) is or becomes generally known to the public or is obtainable from public sources other than as a result of an act or omission of the Receiving Party; (iii) is independently

developed by or on behalf of the Receiving Party without use of or reference to the Disclosing Party's confidential information; or (iv) the Receiving Party is compelled to disclose the Confidential Information by a governmental agency or a court of law having proper jurisdiction. If disclosure is compelled pursuant to subsection (iv) of this section, the Receiving Party shall give the Disclosing Party reasonable notice to enable the Disclosing Party to try to protect the confidentiality of the Confidential Information. Notwithstanding the foregoing, if either Party is required to disclose Confidential Information pursuant to a court order, subpoena, search warrant, summons or other operation of law, prior to disclosing Confidential Information such Party shall, if permitted by law (and if it is reasonably practical in the circumstances), give reasonable notice to the Disclosing Party of such order of law and an opportunity to object to or limit such production.

10. Limited Warranties.

10.1. Software Warranty. Nuance warrants that upon initial delivery, and for a period of ninety (90) days thereafter, the Software shall conform in all material respects to the applicable Documentation.

10.2. Equipment Warranty. Nuance warrants that upon initial delivery, and for a period of ninety (90) days thereafter, the Nuance Equipment shall conform in all material respects to the applicable Documentation.

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

10.4. Nuance warrants it has the authority to enter into the Agreement.

10.5. Nuance warrants there is no pending or threatened litigation that would have a material impact on Nuance's ability to perform the Services set forth in this Agreement.

10.6. Limitation of Warranties. The aforementioned warranties of Sections 10.1 - 10.3 shall not apply, and Nuance shall have no warranty obligation or liability with respect to (i) any Nuance Product that is damaged through no fault of Nuance; (ii) any Nuance Product that is modified by anyone other than Nuance; (iii) any Nuance Product that is used for any purpose other than its intended purpose; (iv) any Nuance Product that is used with Third Party Equipment not specified as compatible with the Nuance Product in such Nuance Product's Documentation; (v) any Nuance Product that is used with third party software not specified as compatible with said Nuance Product in the Nuance Product's Documentation; (vi) any Nuance Product that Customer fails to properly install or maintain; (vii) any Nuance Product that is misused by any party other than Nuance; (viii) any computer malfunction not attributable to the Nuance Products or Nuance; (ix) any incorrect use of the Nuance Products by any party other than Nuance; or (x) any willful or negligent action or omission of Customer. THE EQUIPMENT MAY CONTAIN RECYCLED, REMANUFACTURED OR RECONDITIONED COMPONENTS, WHICH

COMPONENTS ARE WARRANTED AS NEW. As Customer's exclusive remedy in the event of any warranty claim hereunder, Nuance, during the foregoing respective warranty periods and at its sole option, will make reasonable efforts to correct or cure such nonconformity, defect, contaminant or breach; or replace such Nuance Products in lieu of curing such nonconformity, defect, contaminant or breach.

10.7. Disclaimer. WITH THE SOLE EXCEPTION OF THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NUANCE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. NUANCE MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY EQUIPMENT. Nuance's sole obligation with respect to such Third Party Equipment shall be to make commercially reasonable efforts to assist Customer to enforce the warranties extended by the producer of the applicable Third Party Equipment, if any.

11. Limitation of Liability.

11.1 UNDER NO CIRCUMSTANCES WILL EITHER PARTY HAVE ANY OBLIGATION OR LIABILITY TO THE OTHER HEREUNDER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, COLLATERAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES INCURRED BY THE OTHER PARTY (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS, COSTS OF COVER, COSTS OF DELAY, DAMAGES TO BUSINESS REPUTATION, OR LOSS OR DESTRUCTION OF DATA), REGARDLESS OF HOW SUCH DAMAGES ARISE, WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE, OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11.2 EXCEPT FOR CUSTOMER'S BREACH OF SECTION 3, CUSTOMER'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12, AND IT'S CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 9, CUSTOMER'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR AN APPLICABLE ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO CUSTOMER'S INSURANCE COVERAGE LIMITS,

EXCEPT FOR NUANCE'S BREACH OF ITS BUSINESS ASSOCIATE OBLIGATIONS SET FORTH IN EXHIBIT B, NUANCE'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12, NUANCE'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12.7, AND IT'S CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 9, NUANCE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR AN APPLICABLE ORDER,

WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES CUSTOMER PAID NUANCE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM CUSTOMER'S USE OF PROGRAMS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES CUSTOMER PAID NUANCE FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY.

11.3 UNDER NO CIRCUMSTANCE SHALL NUANCE'S THIRD PARTY SUPPLIERS BE RESPONSIBLE OR LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES, DIRECT OR OTHERWISE, EXCEPT TO THE EXTENT AS PROVIDED BY ANY TERMS AND CONDITIONS PASSED THROUGH AND APPLICABLE TO CUSTOMER DIRECTLY FROM SUCH THIRD PARTY SUPPLIERS.

12. Intellectual Property Infringement and General Indemnity.

12.1. Duty to Defend. Nuance, at its expense, will defend Customer from any claim, or suit made or brought against Customer by an unaffiliated third party alleging that Customer's use of the Software within the scope of this Agreement infringes such third party's United States patent, trademark or copyright (each, a "Claim"), and indemnify Customer from any resulting judgment of the Claim finally awarded against Customer by a court of competent jurisdiction, or settlement of the Claim agreed to by Nuance. Nuance's obligation under this Section 12 shall be subject to Customer's providing Nuance with prompt notice of any Claim, cooperation with Nuance in the defense and settlement of the Claim, and granting Nuance sole control over the defense or settlement of the Claim.

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

12.5 Exclusions. Nuance's obligations under this Section 12 shall not apply to the extent of any Claim or infringement resulting from (i) Customer's continued use of the infringing Software after receipt of notice from Nuance of a claim or after receipt of the remedy required of Nuance under this Section 12; (ii) modifications to the Software by any party other than Nuance; (iii) modifications to the Software made pursuant to Customer's express instructions; (iv) combination or use of the Software with other products, processes or materials if the Software itself does not infringe; or (v) Customer's use of the Software other than in accordance with the terms of this Agreement. Customer shall indemnify,

defend and hold Nuance harmless (including all costs and attorneys' fees) against any claims concerning infringement brought against Nuance allegedly arising from any of the foregoing.

12.6 Exclusive Remedy. Nuance's obligations set forth in this Section 12 shall constitute the sole liability of Nuance, and the sole and exclusive remedy of Customer, with regard to any claims, actions, suits or proceedings concerning intellectual property rights.

12.7 Nuance shall defend and indemnify Customer and the against any and all claims of bodily injury, wrongful death and/or tangible personal property damage resulting from the grossly negligent or intentionally wrongful actions of Nuance or a person employed by Nuance (i.e., as an employee or independent contractor) while performing Services pursuant to this Agreement, if such actions were not proximately caused by the action or omission of Customer or any third party. Customer will notify Nuance promptly of Customer's receipt of such a claim. Following such notification, Nuance will be entitled to assume sole control of the defense and all related settlement negotiations. Customer will provide Nuance with the assistance, information and authority reasonably necessary to perform the above. As used in this Section, the term "tangible personal property" shall not include software, documentation, data or data files. This Section states the parties' entire liability and exclusive remedy for bodily injury, wrongful death and property damage.

13. Governing Law. This Agreement will be governed by the laws of the State of California, without regard to principles of conflict of laws.

14. Miscellaneous.

14.1. Injunctive Relief. The Parties agree that remedies at law may be inadequate to protect against a breach of Sections 3.1 (3.1.1 - 3.1.3), 8, 9 and 14.9 hereof and both Parties hereby agree to grant injunctive relief in favor of the other Party without proof of actual damages for any breach of those sections.

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

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

14.4. Publicity. Following the execution of this Agreement, the parties agree to issue a joint press release announcing the relationship established between the parties hereunder. Nuance may include Customer's name in Nuance's Customer list, may identify Customer as its Customer in its sales

presentations, marketing materials, advertising, promotion and similar public disclosures.

14.5. Order of Precedence. The Schedules, General Terms and Conditions, Business Associate Agreement, Hardware and Software Maintenance Options Terms and Conditions, and each Order, as applicable and to the extent reasonably possible, shall be construed so as to be consistent with each other. If the aforementioned documents cannot reasonably be construed as consistent with each other, then each document shall prevail over all documents listed subsequently in the preceding sentence.

14.6. No Third Party Beneficiaries. 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.

14.7. Assignment. Customer may not assign its rights or obligations hereunder or subcontract any portion of its performance hereunder without Nuance's prior written consent.

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

14.9. Business Associate. The Parties agree to the Business Associate Terms and Conditions attached hereto as Exhibit B, wherein, Nuance is referred to as "Business Associate" and Customer is referred to as "Covered Entity".

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

14.11. Amendments. This Agreement may not be modified or amended except by a written document signed by the authorized representatives of both Parties.

14.12. Waiver. Any failure to insist on the exact performance of any provision of this Agreement shall not constitute a waiver of any rights by either Party, all of which are hereby expressly reserved.

14.13. Severability. If any of the provisions of this Agreement shall be or become invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the remaining provisions of this Agreement.

14.14. Construction of Agreement. This Agreement will not be presumptively construed for or against either Party. The

section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Agreement may be executed in multiple counterparts and delivered by facsimile transmission, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

14.15. Entire Agreement. This Agreement constitutes the sole and complete agreement between the parties with regard to its subject matter. Neither Party shall be subject to any provisions of any pre-printed purchase order, or any Customer policies, regulations, rules, or the like, including those set forth in any Customer sponsored registration system, regardless if such requires affirmative acknowledgement from a Nuance representative.

14.16. Insurance.

(a) Evidence of Coverage

Prior to commencement of this Agreement, the Nuance shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Nuance upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The Nuance shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

(b) Qualifying Insurers

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

(c) Insurance Coverage Requirements

Without limiting Contractor's duty to indemnify, Nuance shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

(d) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

(e) Workers' Compensation Insurance, If Nuance employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

(f) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the Nuance shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

(g) Other requirements

(i) All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Nuance completes its performance of services under this Agreement.

(ii) Upon NMC's written request, Nuance shall provide evidence of insurance to NMC. Each policy shall provide coverage for Nuance and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a

certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

(iii) Commercial general liability and automobile liability policies shall contain a blanket additional insured endorsement with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000) and/or the then-current applicable ISO Form. The required endorsement form for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

(iv) Prior to the execution of this Agreement by NMC, Nuance shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the Nuance has in effect the insurance required by this Agreement. The Nuance shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

(v) Nuance shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify Nuance and Nuance shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Nuance to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

Exhibit A

Definitions

"Authorized User(s)" means an individual: (a) Customer employee, or (b) contractor who has a need to use the applicable Software based upon a contractual relationship with Customer.

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

"Documentation" means the administrative guide and user's guide provided to Customer in the performance of an Order.

"Equipment" means Nuance Equipment and Third Party Equipment collectively.

"Implementation Services Order" or "ISO" means the ordering document attached to the Order, setting forth the Training Services.

"Maintenance Services" are the services that Nuance provides, pursuant to an Order, to maintain the Nuance Products (as applicable), which services are as posted on Nuance's website at URL-<http://support.nuance.com/healthcare> under "Hardware and Software Maintenance Options Terms and Conditions". Nuance may update the URL from time to time.

"Nuance Equipment" means hardware manufactured by Nuance and supplied to Customer pursuant to an Order.

"Nuance Products" means the Software (or licenses thereto) and Nuance Equipment, individually or collectively.

"Order" means a supplement to this Agreement that is entered into by the parties from time to time during the Agreement Term to purchase Software licenses, Equipment and/or Services, which identifies the specific Software (including

license type), Equipment, and Services purchased by Customer, and the price associated with each, and also includes the ISO (if applicable).

"Prevailing Rate" means Nuance's then-current pricing at the date the Customer places an Order for the applicable Software, Equipment and/or Services.

"Schedule" means each of the numbered Schedules attached to this Agreement.

"Services" means Training Services and/or Maintenance Services, as applicable.

"Software" means (i) the object code version of any Nuance proprietary software product specified in an Order, (ii) all Updates and Upgrades thereto that are provided to Customer, (iii) any customized features and functions provided by Nuance pursuant to this Agreement, and (iv) all related Documentation.

"Speech Data" means the audio files, associated transcriptions and log files provided by Customer hereunder or generated in connection with the Software.

"Third Party Equipment" means hardware that is not manufactured by Nuance and supplied to Customer pursuant to an Order.

"Training Services" means the training services set forth in an Order.

"Update" means a release of Software that Nuance generally releases to its customers as part of its Maintenance Services which may include minor feature enhancements, and/or bug fixes and/or fixes of minor errors and/or corrections, and typically is identified by an increase in a release or version number to the right of the first decimal (for example, an increase from Version 5.1 to 5.2 or from Version 5.1.1 to 5.1.2). "Update" shall not be construed to include Upgrades.

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

Exhibit B

Business Associate Terms and Conditions

WHEREAS, Nuance may perform certain services on behalf of or for Customer pursuant to the Agreement that require Nuance to access, create and use health information that is subject to the federal privacy regulations (the "Privacy Rule") and the federal security regulations (the "Security Rule") issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and codified at 45 C.F.R. parts 160 and 164, and Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"); and

WHEREAS, this Exhibit B serves to establish the responsibilities of both Parties regarding Protected Health Information, and to bring the Agreement into compliance with HIPAA and the HITECH Act.

NOW, THEREFORE, the Parties agree to the following additional terms and conditions:

AGREEMENT

1. Definitions. Capitalized terms used in this Exhibit B, but not otherwise defined, shall have the same meanings ascribed to them in the Privacy Rule, the Security Rule and the HITECH Act.

Specific definitions:

- Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning given to such term in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
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 the Agreement, provided that such use and/or disclosure would not violate HIPAA if done by Covered Entity. Except as otherwise limited in the 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 the Agreement, or as required by law.
- d. use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by the Agreement.
- e. report to Covered Entity any use or disclosure of PHI not provided for by the 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 the Agreement if such party (the "Non-Breaching Party") determines that the other party (the "Breaching Party") has breached a material term of this Exhibit B. 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 the Agreement.
 - b. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this Section 5(b), upon termination of the 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 B 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 B 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 B shall survive termination of the Agreement.
- c. Interpretation. Any ambiguity in this Exhibit B 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 B is intended, nor shall be deemed, to confer any benefits on any third party.

Exhibit C

Hardware and Software Maintenance Options Terms and Conditions

Customer is responsible for having trained staff available to support remote access connections. Nuance requires the identification of trained and authorized callers to its Technical Help Desk. (PowerScribe Customers Only: Each PowerScribe Customer site is required to provide a dedicated, fully-trained PowerScribe administrator.) Additionally, the Customer is responsible to define and manage its data back up and recovery strategy in accordance with its operational needs.

Further, if Customer licenses DNS Programs, only Option I support is available. Nuance will provide support for the latest release and the immediate prior release in accordance with the provisions described herein.

POLICIES

Cancellation and Reinstatement of Services

If there is a break between the expiration or termination of Maintenance Services with respect to any Product and the reinstatement of Maintenance Services for such Product, Customer shall pay Nuance (i) the Maintenance Services fees that would have accrued during the intervening period between expiration or termination of the Maintenance Services and the reinstatement thereof, and (ii) for any Professional Services, at Nuance's then-current rates, for the repairs or modifications necessary to bring Customer into compliance with Nuance's then-current specifications. Such payments shall be made prior to renewing any Maintenance Services, which will be renewed at then current Nuance rates.

Matching Support Service Options

All Programs and Equipment must be covered by a Service Option that provides the same level of support.

Customer Obligations

Our support technicians have been trained to undertake a process to ensure the fastest possible resolution. To do this, the technician will request Customer's assistance to help "troubleshoot" the problem in order for the technician to diagnosis the fault.

- Running diagnostic test appropriate for the problem reported
- Installation of service packs, components, updates, upgrades and patches to address the problem
- Contacting select third party vendors and facilitating immediate resolution or managing resolution plans
- Engineer to engineer collaboration between Nuance experts and Customer for more complex issue resolution

DEFINITIONS

"Update" means a release of a Program 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.

"Upgrade" means a release of the Program that may include some feature enhancements and/or additional capabilities (functionality) over versions of the Programs previously supplied to Customer, and typically is identified by an increase in the release or version number to the left of the decimal (for example, an

increase from Version 5.2 to Version 6.0) For clarification purposes, "Upgrade" shall not be construed to include either a release that contains major new feature enhancements or a release that contains major new capabilities such that, in either case, Nuance, in its sole discretion, deems such release to constitute a new product or substantial extension of the product line.

SERVICE OPTIONS

A. OPTION I - 24x7 Remote Only Coverage. Under this Option, Nuance will use commercially reasonable efforts to diagnose and resolve any issues concerning the Programs via telephone, email, web page and/or fax support. Regular telephone support and assistance is provided for Updates and Upgrades. Customer shall receive any Updates and Upgrades released by Nuance in the ordinary course of its business during the term of this Maintenance Services. Customer is also entitled to receive documentation and minor enhancements as Nuance makes them available during the Term of this Maintenance Plan. The following additional terms apply:

1. Remote Support Requirements

For remote support, Nuance requires either dial-in or Internet access to all Customer systems. In order to provide this support, Nuance requires the utilization of (i) pcANYWHERE (ii) Citrix GoToAssist Web based support technology or (iii) Microsoft Terminal Services (each a "Supported Solution") for console and workstation level access. If the Customer is unwilling to allow the use of a Supported Solution, then Nuance will be severely limited in its ability to provide support and resulting in additional support fees through a maintenance upcharge.

2. Emergency Remote Support

Emergency remote support is provided on a 24-hour/7 days per week basis. An Emergency Support call is authorized when the Programs (excluding DNS for which support is delivered remotely) or Equipment 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 will make commercially reasonable efforts to assist the Customer in becoming operational and will return all Emergency Support calls within one (1) hour following receipt of the call by Nuance. (PowerScribe Customers Only: The PowerScribe administrator will make all emergency support calls.)

3. Non-Emergency Remote Support - Response Time

For Non-Emergency Remote Support calls, Nuance will contact Customer within four (4) hours following receipt of the call.

4. Update and Upgrade Coverage

Nuance will provide to Customer Updates and Upgrades of the applicable Programs released during the Term of this Maintenance Plan. On-site installation of Updates by Nuance is provided only under Options II and III (described below).

5. Virus Protection

Nuance ships all bundled server-based products with the latest Nuance-approved version of anti-virus software product and ensures proper operation of the Nuance core application and essential utility software when used in conjunction with such Nuance approved anti-virus software Nuance, as part of the installation process, will configure server-based products to perform automated virus definition updates over the Internet if requested by the Customer and if Internet access is provided by the Customer.

Customer is responsible for protecting its network environment from viruses and damages resulting from virus infection. Customer is also responsible for ensuring virus definition updates are performed consistent with Customer internal virus protection policies. Customer is responsible for maintaining any subscriptions necessary to obtain virus updates. Customers who chose to implement anti virus software other than a Nuance-approved solution, do so at their own risk.

6. Third Party Software Support

Coverage for Third Party Software sold by Nuance to Customer includes telephone support as required to the extent that the applicable Third Party Software relates to the Programs. If Nuance determines that such an upgrade is required for Customer, Nuance shall obtain for and transfer to Customer the necessary licenses with respect to any Third Party Software upgrades and Nuance shall invoice Customer for the amount of said Software upgrade. For purposes of clarification, both Parties acknowledge there is no Third Party Software being purchased by Customer on the Order to be executed simultaneously with this Agreement.

Nuance ships all bundled products with the latest Nuance-approved Third Party Software service packs, patches and hot fixes. Nuance will identify any applicable Third Party Software service packs, patches, or hot fixes necessary to ensure proper operation of Nuance core application or essential utility software contained in the Programs. Customer is responsible for providing installation of Third Party updates.

If Customer determines that additional or different versions of the Nuance-supplied Third Party Software service pack, patches, or hot fixes are necessary to meet their operational needs, Customer may contact and advise Nuance of such requirement. Nuance will make a good faith effort to confirm and advise Customer whether such additional or different version of such Third Party Software are compatible with Nuance's core application and essential utility software.

Any Third Party Software upgrades implemented by Customer without the approval of Nuance will not be supported by Nuance and Customers who elect to install Third Party Software updates without contacting Nuance, do so at their own risk.

7. Additional Data Field Mappings on HL7 Integrations.

Customers who have standard HL7 integrations to an HIS system will be entitled to up to five (5) free additional HL7 data field mappings within their integration. Maintenance Services does not provide for an entire new integration when HL7 standards migrate to new levels (e.g. HL7 version 3), Customer replaces their host environment nor does Maintenance Services cover any custom requests.

8. Equipment Upgrades.

From time to time Updates and/or Upgrades on applicable Programs may result in the requirement or recommendation by Nuance that Customer upgrade the Equipment and/or upgrade Customer-provided hardware components. Any such necessary Equipment and/or Customer-provided hardware upgrades shall be at the sole responsibility and cost of Customer, whether the original Equipment was purchased from Nuance or purchased separately by Customer.

9. Implementation Services and Upgrades.

From time to time Updates and/or Upgrades on applicable Programs may result in the requirement or recommendation by Nuance that Customer receives various services to implement the software effectively. Such services include but are not limited to user training, administrator training, software programming and project management. Any such necessary services shall be charged at the discretion of Nuance and are at the sole cost of Customer.

10. Equipment Support

During the equipment warranty period, Nuance will provide Customer with remote support help desk guidance on Equipment replacement. Under Option I, Customer will be responsible for (i) Equipment fault troubleshooting, (ii) any labor related to Equipment replacement, and (iii) returning any defective Equipment directly to the applicable manufacturer. Nuance will provide hardware replacement parts for only Nuance- proprietary hardware products covered hereunder. However, Customer will be responsible to obtain any post warranty Equipment coverage directly from any applicable third party manufacturer of Equipment. Defective third party manufacturer Equipment parts are not covered by Nuance under Option I.

11. Depot Repair Support

Nuance maintains a depot repair center located in Melbourne, Florida for its desktop and portable Nuance products (*i.e.*, connections telephones (*i.e.*, C-Phones), telephones, microphones and similar peripherals, foot pedals and accessories (collectively, "Desktop, Portable and Peripheral Products"). In the event Customer requires repair support for any Desktop, Portable and Peripheral Product, Customer may chose to collect, ship, receive and deploy the applicable Desktop, Portable and Peripheral Product to the Nuance depot repair center. Outside of the specified equipment warranty period for Desktop, Portable and Peripheral Products, Customer will be charged at Nuance's then standard hourly rates.

NOTE: On-site visits are not covered under Option I.

B. OPTION II - Remote & 8x5 On-site Coverage. In addition to the support coverage provided in Option I above, Nuance will provide on-site installation of Updates (excluding DNS for which support is delivered remotely), and on-site support for Equipment repair not otherwise provided for by Depot Repair Support during Nuance's Normal Working Hours. Normal Working Hours are defined as 8:00 a.m. (0800 hours) to 5:00 p.m. (1700 hours) local time (including travel time), Monday through Friday, excluding U.S. federal holidays. Nuance shall not be obligated to provide on-site support coverage outside of the Normal Working Hours unless Customer has purchased Option III coverage. If Customer requires on-site support coverage outside of the Normal Working Hours, Customer will be charged at Nuance's then standard hourly over-time rates. Services under Option II also include:

1. Equipment Support

Nuance will provide all necessary on-site labor for all Equipment not otherwise provided for by Depot Repair Support and Equipment replacement parts to Customer in accordance with the applicable Option II or III coverage purchased by Customer. In addition, Nuance will provide Equipment fault troubleshooting and will be responsible for the return of any defective Equipment to the applicable manufacturer.

C. OPTION III - Remote & 24x7 On-site Coverage: In addition to support coverage provided in Options I and II, Nuance will provide on-site installation of Updates (excluding DNS for which support is delivered remotely), and on-site support for Equipment repair not otherwise provided for by Depot Repair Support on a twenty-four (24) hours per day, seven (7) days per week (24x7) basis.

TRAVEL AND BUSINESS EXPENSE REIMBURSEMENT POLICY

I. PURPOSE

The purpose of this policy is to establish uniform travel and business expense reimbursement policies, rules and claim procedures for persons authorized to conduct County business.

II. SCOPE

The County travel and business expense reimbursement policy applies to all County employees, members of legislative bodies established by the Board (salaried or not), non-County employees (such as contractors who receive travel and/or business expense reimbursements) and volunteers traveling on County business.

III. DEFINITIONS

Unless the context otherwise requires, the definitions contained in this part govern the construction of this policy. They do not necessarily apply in other County contexts.

A. Accountable Expense Reimbursement Plan

Reimbursements of travel and other business expenses to a County employee, contractor or volunteer will be considered to be made under an "Accountable Expense Reimbursement Plan" if the following three requirements are met:

- The person substantiates his or her expenses by submitting an expense report with
 - 1) the amount of the expenditure,
 - 2) the time and place of the travel or business entertainment,
 - 3) the business purpose of the expenditure, and
 - 4) the names and business relationship of any persons entertained.
- The person documents the expenses with supporting receipts, paid bills, etc. within 60 days after the expense is paid or incurred, and
- Excess advances, if any, are repaid to the County within 120 days after the expense is paid or incurred.

"County" means the County of Monterey.

B. County Business

"County business" means the activity directly related to the ordinary, necessary and/or required business functions of the County of Monterey ("County"). It does not include travel or expenses related to an employee's participation in the County's Educational Assistance Program or commuting expenses (a non-reimbursable expense).

C. County Employee

"County employee" means any County officer or employee, whether elected or appointed, filling a budgeted position approved by the Board of Supervisors. Independent contractors and their employees are not County employees.

D. County Traveler

"County traveler" means any County employee, authorized non-County employee (such as a contractor) or volunteer traveling on County business. Agency temporary employees are not covered by this policy and are not reimbursable for travel.

E. County Volunteer

"County volunteer" means a person, other than a County employee, who performs volunteer work authorized by a department or the Board of Supervisors for the County, such as a department volunteer, a commissioner or a member of an interview panel. It does not include agency temps, inmates, wards or probationers working for the County.

F. Home

"Home" means the actual dwelling place of the County traveler without regard to any other legal or mailing address.

G. Main or Regular Place of Work

"Main or regular place of work" means the principal place of business for the County employee or the principal location to which the County volunteer/contractor is assigned to work for the County. This may be the place at which s/he spends the largest portion of his/her regular County workday or working time or, in the case of field workers, the assigned location/headquarters to which s/he returns upon completion of regular or special assignments.

H. Meals

Meals that are 1) directly related or associated with bona fide County business matters and 2) approved for reimbursement by a member of the Board of Supervisors or a department head (or his or her designee) will be considered a reimbursable County business expense, if incurred in connection with out-of-County business travel or while conducting in-County business. Also, reimbursement for the provision of in-kind meals to employees on the business premises of the County will only be allowed if there is a substantial non-compensatory business reason for providing such meals to employees.

1. Temporary Work Location

"Temporary work location" means the place where the County employee, volunteer or contractor is assigned on an irregular or short-term basis. If an employee is assigned to a work location for no more than 35 work days during a calendar year, then the location is considered temporary. Attending conferences, meeting or training sessions away from the main or regular place of work by County employees or volunteers, or field

workers conducting fieldwork at off-site locations, does not normally constitute assignment to another site. If the employee is assigned for more than 35 work days during the calendar year, the new location has become the main or regular place of work.

J. Vehicle

"Vehicle" means a motor vehicle, which can be legally operated on public highways. **IV.**

AUTHORIZATION TO TRAVEL

A. General Conditions

2. Travel will be authorized only when the travel is necessary and in the best interest of the County.
3. Advance authorization is required for all County travel, as specified in B & C.
4. Advance written authorization from the County Administrative Officer is required for all County travel by County volunteers, except as follows:
 - a) Travel by appointed members of County boards, commissions, or advisory committees to and from the official meetings of their respective boards.
 - b) Travel to and from the County for members of personnel interview panels, subject to authorization by the Human Resources Department.
 - c) Travel to and from meetings, conferences and training covered by the County MHSA plan, subject to authorization by the Behavioral Health Program Manager or designee.

B. In-County Travel

County employees are authorized to travel within the County when said travel is required by the department and is considered a part of the routine, day-to-day official duties of the employee as defined and authorized by the department head or his/her designee. All other in-County travel requires advance authorization by the department head or his/her designee.

C. Out-of-County Travel

1. All travel outside of the County, but within the State of California, requires advance authorization by the department head, or his/her designee. Travel by immediate staff of a member of the Board of Supervisors requires the advance authorization of the respective Board member.

2. All travel outside of the State of California requires advance written authorization by the department head, or his/her designee. Travel by immediate staff of a member of the Board of Supervisors requires the advance authorization of the respective Board member.
3. Authorization for out-of-state travel by current members of the Board of Supervisors is subject to the guidelines established by the Board.

D. Travel Requests

Travel requests that require department head authorization shall be submitted to the department head pursuant to department policy. If the traveler is requesting a travel advance, an approved "County of Monterey Travel Request" form (usually in the form of a "white claim" or "GAX"), accompanied by all documentation relative to the request, shall be forwarded to the Auditor-Controller.

V. TRAVEL EXPENSES

A. General Conditions

1. County travelers are entitled to submit a claim for actual and necessary expenses for transportation, meals, lodging, and incidentals for authorized travel, subject to the conditions set forth in this Travel and Business Expense Reimbursement Policy ("Policy"), whenever the expenses are incurred as part of his/her official duties and authorized because the County traveler is required to work, attend a school, training, meeting or convention overnight at a location sufficiently distant from main or regular place of work to qualify under this policy for meal per diem and overnight lodging.
2. Notwithstanding Section 1 above, claims shall be paid subject to the rules set forth in this Policy and statutory law. Eligibility to submit a claim does not automatically entitle the claimant to reimbursement for any and all expenses.
3. County travelers receiving reimbursement from an outside source for travel on County time shall forward said reimbursement to the County Auditor-Controller for handling and deposit if the traveler intends to submit an expense claim to the County or use County resources to travel. Said travelers shall then be entitled to submit a claim for actual and necessary expenses for transportation, meals, lodging, and incidentals, subject to the conditions set forth in this travel policy.
4. Arrangements for transportation, lodging or registration fees that have cancellation or change penalties shall be carefully monitored by the department. If cancellation/change occurs due to direction by the County traveler's department head, or his/her designee, or the County Administrative Officer, the County department will cover the penalty cost. If the cancellation/change occurs due to a traveler's personal request or obligations, the traveler will be required to pay the

penalty. Exceptions shall be made when a traveler is unable to travel because of hospitalization, serious sickness or death of self or an immediate family member or when the department head certifies that the reason for the employee's absence was legitimate and authorized.

B. Transportation Expenses

1. General Conditions

- a) Transportation expenses are the direct costs related to movement of the County traveler from authorized point of departure to destination of travel and back to the authorized point of return.

- b) All transportation expenses incurred shall be based upon the most efficient, direct, and economical mode of transportation required by the occasion.
- c) Whenever a time frame is established as criteria for eligibility for claiming, such as the requirements set forth for meals in Section V, subsection C. 1. d., estimated travel time shall be based upon legal vehicle speed limits, volume of traffic, and weather conditions in effect at the time of travel.

2. Vehicle Transportation

Vehicle use (both County-owned and private) by authorized County travelers during the conduct of official County business is subject to the County Vehicle Use Policy.

a) Private Vehicle

- (1) Travel by private vehicle will be reimbursed at the IRS rate for business use of a personal vehicle in effect in the County at the time of travel.
- (2) Authorized County travelers who travel in a vehicle other than their own may not claim mileage for business use of a private vehicle but may claim reimbursement of actual fuel expenses necessary for the trip and expended by the traveler. Receipts are required and should be claimed by the employee actually paying the expense.
- (3) Authorized County travelers may not claim mileage for business use of a private vehicle in the following instances:
 - (a) when the County traveler is riding with someone who will be claiming reimbursement for the vehicle's use from the County or another source;
 - (b) when the County traveler is traveling in a County or other government

agency vehicle;

- (c) when the County traveler is traveling in a rented vehicle (paid by County);
 - (d) when the County traveler has been assigned a County Vehicle for home retention, is receiving an allowance or lump sum for mileage, unless specifically provided for in the terms of their agreement or contract with the County or by Board resolution.
- (4) County employee mileage to the regular or main place of work from home, and back, is considered commuting and may not be claimed.
- (5) County employee mileage to the temporary work location from home, and back, is considered commuting and may not be claimed except in the following cases:
- (a) if the County employee is required to report to the regular or main place of work before reporting to the temporary work location, s/he is eligible for mileage from the regular or main place of work to the temporary work location;
 - (b) if the County employee is required to report to the regular or main place of work after working at the temporary work location and before going home, s/he is eligible for mileage from the temporary work location to the regular or main place of work.
- (6) Mileage in conjunction with authorized County travel to and from a school, training, convention or meeting shall be based on the distance to the destination from the traveler's home or the regular or main place of work, whichever is less, except in the following cases:
- (a) if the traveler is required to report to his/her work location before leaving, s/he is eligible for mileage to the school, training, convention/meeting from the work location.
 - (b) if the traveler is required to report to his/her work location before returning home, s/he is eligible for mileage based on the distance from the school, training, convention/meeting to the work location.
- (7) Appointed volunteer members of County boards, commissions, or advisory committees may claim mileage to the official meetings of their respective boards from home, and back.
- (8) Members of personnel interview panels may claim mileage to the panel location from their regular or main place of work, and back.

- (9) When two or more County travelers from the same department are traveling to the same site by vehicle, they should use only as many vehicles as are required to accommodate the number of travelers and business needs of the County. If a County traveler chooses to use a separate private vehicle because of personal preferences or obligations, h/she shall not be eligible for mileage or fuel reimbursement for the travel unless the department head determines that reimbursement is appropriate and justified.
- (10) If a County traveler chooses to use a private vehicle instead of an alternative mode of transportation chosen by the department head because of personal preferences or obligations, his/her mileage reimbursement shall not exceed the cost of using the alternative mode of transportation unless the department head determines that the additional reimbursement is appropriate and justified.

b) County Vehicle Transportation

- (1) County travelers using a County vehicle for traveling shall not be eligible for reimbursement for mileage.
- (2) County travelers required to fuel a County vehicle at their own expense should claim the actual fuel costs expended by them. Receipts must accompany the claim. Vehicle license number and the odometer reading should be written on the receipts.
- (3) If the County vehicle experiences mechanical failure, the County traveler shall follow the rules set forth in the "Mechanical Failure" section of the "Vehicle Operator's Handbook" located in the glove compartment of each County vehicle.

c) Rental Vehicle Transportation

- (1) Vehicles may be rented for transportation at the destination point when the County traveler travels to the destination via commercial common carrier and the cost of the rental will be less than the charge for shuttle or taxi service to and from the carrier termination point to the function or hotel accommodations.
- (2) Vehicles may be rented for transportation to the destination point when the cost of the rental will be less than other reasonable and available modes of transportation.
- (3) If more than one County traveler from the same department is traveling to the same function, only one rental vehicle may be claimed and then only if

it is available for use by all of the County travelers.

- (4) The County traveler shall choose the least expensive size and mileage limits appropriate to the use required. Rental expenses for luxury cars, motorcycles and recreational vehicles may not be claimed.
- (5) Rental cars shall be refueled prior to return to the rental agency to reduce cost to the County. Rental cars should be returned to the renting location and on time to avoid additional charges.
- (6) When traveling domestically the County traveler shall waive additional vehicle insurance (except for additional driver and coverage for drivers under 25 years of age), provided that the employee has his/her own vehicle insurance coverage. When traveling internationally additional insurance should be accepted if the traveler lacks other similar coverage.
- (7) An original car rental receipt showing the number of days and type of vehicle rented is required for vehicle rental claims. A copy of the receipt or a credit card receipt alone is insufficient.

d) Commercial Carrier Transportation

- (1) County travelers shall seek and attempt to use the lowest rates available for the type of commercial carrier service being utilized. Whenever possible, travelers should take advantage of flight arrangements that minimize County cost (for example, purchasing a round trip ticket may be less expensive than two one-way tickets). Reservations should be made as far in advance as possible to take advantage of available discounts and special offers. Travel agents that have added ticket handling charges should be avoided.
- (2) Claims for travel via commercial carrier shall be limited to the cost of travel at economy rates for the same day and time of travel or actual cost, whichever is less. County travelers may upgrade tickets, provided that the traveler and not the County pay for the difference in cost for such upgrade. The County will not reimburse any type of travel insurance unless the Department Head requests the traveler to purchase cancellation coverage. Reasonable baggage charges, if imposed by the airline, on the first checked bag are reimbursable.
- (3) Claims for commercial carrier tickets shall be substantiated by an original ticket document (such as an e-ticket or passenger receipt ticket copy) showing the price, date, date/time of travel and class of travel. A copy of the credit card receipt or statement from a travel agency alone is insufficient.
- (4) County business traveler may retain frequent flyer/hotel rewards and similar program benefits. However, participation in these programs must not influence flight/hotel/etc. selection, which would result in incremental cost to the County beyond the lowest available airfare/hotel cost unless the difference is paid by the traveler. Free tickets or cash allowances for volunteering to be denied timely boarding may be retained by the traveler but no additional cost to the County or interruption of County work is allowed and any additional time required to complete the trip is to be personal time.
- (5) Should a Saturday night stay reduce the cost to the County of a ticket more than the total of any additional hotel/meal/parking cost, the costs to do so are reimbursable to the traveler but should be well-documented with a clear savings to the County.

e) Private Aircraft Transportation

- (1) Traveling by private aircraft which is flown by a County employee may be authorized if it will be the most efficient means of travel and the flight is incidental to the purpose of the County travel. Said use shall require the advance written approval of the County Administrative Officer. If approved, the following must be provided to the Auditor-Controller's Office in advance of the travel:
 - (a) a copy of the pilot's Federal Aviation Administration (FAA) pilot's certificate and instrument rating for the category and class of aircraft to be flown and the type of flying to be performed;
 - (b) a copy of the pilot's current medical certificate;
 - (c) a copy of the FAA Pilot Proficiency Award Program certificate issued to the pilot within the twelve months prior to the flight;
 - (d) a copy of the pilot's flight log showing a minimum of 250 hours of flight time within the twelve months prior to the flight;
 - (e) a certificate of public liability and property damage insurance of not less than \$1,000,000 naming the County as an additional insured.
- (2) Traveling by private aircraft, which is flown by a non-County employee, except for flights conducted by members of the Sheriff's Air Squadron in the performance of their official duties, is normally prohibited.
- (3) County travelers who operate a private aircraft in connection with approved County travel may be reimbursed the actual cost paid by the

traveler for fuel used by the aircraft on the trip or the County's mileage rate for each air mile at the travelers option.

f) Other Transportation Expenses

(1) The following necessary transportation expenses may be claimed at actual cost (receipt required) when directly related to transporting the County traveler to and from the business destination point:

- (a) taxi, shuttle, or public transit fares;
- (b) parking fees (airport long-term parking is required for travel exceeding 24 hours);
- (c) bridge, road or ferry tolls;
- (d) other actual transportation expenses determined to be reasonable and necessary by the department head and the Auditor-Controller.

(2) The following transportation expenses may not be claimed:

- (a) traffic and parking violations;
- (b) emergency repairs or non-emergency repairs on non-County vehicles;
- (c) personal travel while at an out-of-County location;
- (d) other actual transportation expenses determined to be unreasonable or unnecessary by the department head or the Auditor-Controller.

C. Meal Expenses

1. Eligibility for Meals

- a) County employees, contractors and volunteers may be reimbursed for in-County meal costs that are 1) ordinary (not extravagant) and necessary, 2) directly related or associated with bona fide County business matters and 3) approved by a member of the Board of Supervisors or a department head (or his or her designee). County business discussions associated with a meal must be conducted in a "clear business setting".
- b) County travelers involved with in-County travel that does not require an overnight stay away from their home are not eligible to claim for meals taken outside the County, unless the requirements of paragraph a) above are met, or unless provided for in a Board of Supervisor-approved written County policy.

- c) County travelers on out-of-County business travel that requires an overnight stay away from their home are eligible to claim for meals taken out-of-County.
- d) County travelers are eligible to claim the meal reimbursements noted below for travel requiring overnight lodging if the total travel time (work time, plus the lunch period plus round-trip travel time) is estimated to equal or exceed 12 hours.
 - (1) Breakfast may be claimed if the County traveler must reasonably be away from home because of County business travel at or before 7:00 a.m.
 - (2) Lunch may be claimed if the County traveler must reasonably be away from home because of County business travel at or before Noon.
 - (3) Dinner may be claimed if the County traveler must reasonably be away from home because of County business travel at 7:00 p.m. or after.
- e) Snacks are a personal expense, not reimbursable.
- f) Claims for meals purchased by a County employee or volunteer on behalf of federal, state or local public officials or employees is prohibited, including any other Monterey County employees, unless provided for under other Board of Supervisor approved written County policies.
- g) County travelers are not eligible to claim meals or other expenses for those persons who are not otherwise eligible to file a claim themselves for County reimbursement.
- h) County travelers are not eligible to keep or claim per diem allowances for anyone other than themselves.

2. Meal Claims

- a) The County maximum full day meal and incidental expenses rate shall be equal to the maximum federal per diem meal and incidental expenses (M&IE) rate established by the GSA. Said maximums include taxes and gratuities.
- b) Meal expense amounts shall be calculated by the Auditor-Controller for first and last partial days of travel based on the maximum federal per diem meal rate for the appropriate meal(s).
- c) Claims for out-of-County meals taken in conjunction with travel that includes an overnight stay away from the traveler's home shall be reimbursed in the form of a "per diem allowance", which means the traveler is eligible to be reimbursed at the maximum rate allowed and receipts are not required (except for Board of

Supervisor Members). Partial days shall be reimbursed at the appropriate meal rate.

- d) Allowable meal costs may only exceed the prescribed per diem rates if the meal is being served at a conference or workshop and the costs of the speaker, conference, and/or registration are included in the price. The agenda/brochure or other documentation describing the event and the price must accompany the claim to the Auditor-Controller's Office.
- e) A County traveler may not claim a per diem allowance or reimbursement for any meal which is provided, or otherwise available, to the County traveler with the lodging or function, whether or not there is an actual charge for the meal. For example, if lunch is provided at the function or breakfast is included in the cost of lodging, the traveler may not claim a per diem allowance or request reimbursement for eating elsewhere. For purposes of this section, continental breakfast and meals provided during airline or other commercial carrier travel do not constitute provided meals and do not need to be deducted from the per diem allowance. A County traveler may not claim a per diem allowance for a meal that was paid for by someone else.
- f) If a breakfast is included in the cost of lodging, the traveler may not claim for a breakfast meal; however, s/he may apply the next day's breakfast allowance amount towards the maximum lodging amount. For example, if the maximum lodging amount is \$79.00 and the breakfast allowance is \$8.00, the employee may claim up to a maximum of \$87.00 for lodging which includes a continental breakfast. (For purposes of this section, continental breakfast does not constitute a provided breakfast meal.)
- g) Claiming for alcoholic beverage expenses are prohibited in all cases.
- h) As required by California Government Code 53232.2 Board of Supervisors members must provide receipts for all meals and will be reimbursed at the lower of the appropriate per diem amount or the actual expense.

D. Lodging Expenses

1. Eligibility for Lodging

- a) County travelers are not eligible to claim for lodging for in-County functions.
- b) For out-of-County business that is conducted on one business day, if the County traveler's actual time for the day is estimated to equal or exceed 12 hours (including work time, the lunch period and round-trip travel time), then the County traveler will have the option of securing one night's lodging at either the

front-end or back-end of the trip. Illustration: A member of the County Board of Supervisors who resides in Monterey County is required to attend a one-day business meeting in Sacramento. The Board member estimates that his total time for the day without obtaining lodging would be 14 hours (8 hours of meetings, 1 hour for lunch and 5 hours for round-trip travel). The Board member will have the option of securing one night's lodging in Sacramento, either the night before the meeting, or after conclusion of the meeting.

- c) For out-of-County business that requires multiple business days, if County travelers are eligible to claim lodging for the first and last evenings of an out-of-County trip, they are also eligible to claim lodging for any evenings that fall in between the first and last evenings of the trip.
- d) County travelers are not eligible to claim reimbursement of lodging costs when staying overnight as a guest of friends or relatives.

2. Lodging Claims

- a) Lodging expenses shall be claimed at either the actual cost of the lodging (limited to the single occupancy rate for a single room) or the County's maximum lodging rate (Federal Per Diem Rate), whichever is less. Receipts are required. Taxes are in addition to the Federal Per Diem Rate.
- b) Lodging costs may exceed the County's maximum lodging rate only when a conference, meeting or convention is being sponsored by an organization of which the County, the department or employee is a member, the lodging may be claimed at the actual cost if seminars or meetings are to be held at the particular hotel and/or events are scheduled for evening hours, and the department head has given advance written authorization.
- c) An original room folio receipt, showing the number of days and the number of occupants, is required for lodging claims. A copy of the receipt, travel agency statement or a credit card receipt alone is insufficient.
- d) When a room is shared with a fellow County traveler, the expense may either be prorated, and the prorated amount claimed by each County traveler, or one County traveler may claim the total expense at the multiple occupancy rate.
- e) When a room is shared with a person other than a County traveler and said person will also be claiming reimbursement from the County or another source, the amount shall be prorated between the two travelers.
- f) Lodging expense may not be claimed for guests of the County traveler. Where expense for a family member or friend is included in the receipt, the claim must not exceed the single occupancy rate.

- g) Special lodging, such as accommodations in apartments, RV parks, campgrounds or other semi-permanent lodgings, shall require advance written authorization of the County Administrative Officer and the Auditor-Controller.
- h) County travelers should inquire when making lodging arrangements whether the County is exempt from Transient Occupancy Taxes (TOT) in the locale where they are staying and should provide the necessary form to the lodging facility, if required to do so to obtain the waiver.
- h) Except when registering for lodging at a pre-arranged group rate in conjunction with a conference or meeting, County travelers shall request the government rate or lowest available eligible rate when making lodging arrangements.
- i) Travelers are responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Travelers will not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not canceling the room.
- j) When multiple county travelers are traveling together and the rooms are put on one invoice, one traveler may take care of the invoice but should provide the details on who stayed in each room on the invoice.

E. Registration Fees

Conference, convention and seminar registration and tuition fees may be claimed at the actual cost, provided that the agenda/brochure or other documentation describing the event, including the price, accompanies the approved claim to the Auditor-Controller's.

F. Other Travel Expenses

1. County travelers are eligible to claim a per diem incidental allowance, limited to the maximum federal per diem incidental rate established by the IRS, for each day of travel requiring an overnight stay away from the traveler's home. Said allowance covers fees and gratuities for persons who provide services, such as food servers and luggage handlers, and does not require receipts (Except for Board of Supervisors Meals). If applicable (such as a Board of Supervisor meal), gratuities are limited to not exceed 15% of the service costs unless billed by a provider's standard policy at a higher rate.
2. County travelers are eligible to claim the following expenses at actual cost, even if they also qualify for a per diem incidental allowance. Receipts are required.
 - a) County business calls (traveler must annotate purpose of call on the bill)
 - b) fax machine charges incurred to send or receive documents for County use.

- c) copy machine charges incurred to copy documents for County use.
- d) Internet access connection and/or usage fees away from home not to exceed \$15.00 per day, if Internet access is necessary for county related business.
- e) other business related expenses determined to be reasonable and necessary by the department head and the Auditor-Controller.

VI. OTHER COUNTY BUSINESS EXPENSES

A. General Guidelines

In the course of conducting County business, employees, contractors or volunteers may incur business expenses (including meal expenses pursuant to Section V.C) on behalf of the County. Such expenses will be approved for reimbursement if the disbursement meets the following requirements:

- The disbursement is for an ordinary (not extravagant) and necessary expense of conducting County business, or is an expense that is required by the County,
- The expense is approved by a member of the County Board of Supervisors, or a County department head (or his or her designee), and
- The payee accounts for the expense in accordance with the rules for a "Accountable Expense Reimbursement Plan", as set forth in the Internal Revenue Code and related regulations.

B. Taxation of Business Expense Reimbursements

If a reimbursement to an employee, contractor or volunteer meets the requirements of an "Accountable Expense Reimbursement Plan", then such reimbursement will not be reportable for federal or California income tax purposes.

VII. CLAIMING PROCEDURES FOR OUT-OF-COUNTY TRAVEL

A. Travel Advance Claims

1. Authorizations and Eligibility

- a) Travel advances are strongly discouraged and are only available to County employees. The issuance of travel advances creates double work for departmental and auditor-controller staff and should only be used if a County travel card cannot be used or the employee does not have a personal credit card. Board of Supervisors Members are not eligible for travel advances.

The first choice is for travelers to use their personal credit cards to pay for their

travel expenses and be reimbursed before their monthly statement arrives. Secondly, the County has arranged for the use of the Travel Card to pay many travel related expenses. Departments may use their Travel Cards to pay for airline tickets and conference registration expenses for all of their employees, not just the cardholder. Commercial carrier and conference registration expenses should not be considered in the advance calculation. The third choice would be a cash advance, if necessary.

b) Travel advances require the authorization of the department head or his/her designee, and the Auditor-Controller or his/her designee.

c) The net amount of the travel advance shall not exceed the following:

(1) 75% of the total estimate for the following travel expenses, exclusive of payments made payable directly to the vendor:

- (a) lodging (documentation, including at least the confirmation number and hotel name should be provided), including hotel parking
- (b) rental vehicle transportation;
- (c) per diem meal allowances;
- (d) long-term airport parking;
- (e) other out-of-pocket expenses deemed necessary and reasonable by the Auditor-Controller.

(2) 50% of the total estimate of reimbursement for mileage for business use of a private vehicle.

d) A travel advance shall not be issued for a net amount less than \$100.00 nor more than \$2,000.00.

e) A travel advance shall not be issued more than thirty (30) calendar days in advance of the commencement of travel.

f) Travelers are not eligible for an additional travel advance if they have an unsettled advance, unless the advances are for travel taken consecutively. In such case, the sum total of the travel advances shall not exceed \$2,000.00.

2. Travel Advance Requests

a) Requests for travel advances involving travel shall be submitted by the department head to the Auditor-Controller's Office on a completed and signed

"County of Monterey Travel Request" form, accompanied by all documentation relative to the request, at least ten (10) working days in advance of the commencement of travel.

- b) After a completed and approved "County of Monterey Travel Request" form is received by the Auditor-Controller's Office, a warrant payable to the County traveler for the amount requested shall be issued, up to the 100% maximum amount allowed pursuant to this County travel policy.

3. Travel Advance Settlements

- a) Within five (5) working days of completion of travel, the County traveler shall submit all receipts for allowable travel expenses to the Department and within fifteen (15) working days of completion of travel to the Auditor-Controller's Office on a completed County claim form. Credit for the travel advance shall be subtracted from the amount owed to the County traveler.
- b) In the event that allowable expenses are less than the amount of the travel advance, the County traveler shall submit the difference in the form of a check or money order made out to the "County of Monterey" with the claim form.
- c) County travelers who cannot provide a required receipt shall reimburse the County for the amount of the money advanced to them for that expense.
- d) Travelers who do not submit the required documentation by the time frames set forth above may lose their eligibility for future travel advances.
- e) Department heads are responsible for ensuring that their employees settle their travel advance claims within the time frames set forth in subsection a) above. Non-compliance may jeopardize advances for the entire department.

B. Prepaid Vendor Claims

1. Vendor Claim Requests

- a) Once travel has been authorized, claims to the vendor may be submitted for lodging and registration fees when there is sufficient time for the check to be processed before the authorized County traveler commences travel.
- b) If the travel requires a "County of Monterey Travel Request" form, the approved form shall be submitted with the claim. If the original has been submitted with a previous claim, then that shall be noted on the claim form and a copy of the form attached.
- c) Whenever possible, the County shall be named as registrant for events to allow

transfer of attendance privilege when conflicts prevent the original registrant from attending.

- d) The County will mail the warrant directly to the vendor unless the traveler requests that the warrant be returned to them to hand carry to the vendor.

2. Vendor Claim Settlements

- a) Each vendor claim must have an original receipt attached in order to settle the claim. The required receipts for vendor claims that have been prepaid shall be forwarded to the Auditor-Controller's Office within thirty (30) calendar days after completion of travel.
- b) Claims paid directly to vendors that are not substantiated by receipts within thirty (30) calendar days of the completion of travel shall be considered to be unsettled travel advances to the County traveler.
- c) Department heads are responsible for ensuring that their employees return their receipts within the time frames established by this policy. Non-compliance may jeopardize the department's ability to have travel expenses paid in advance.
- d) In the event that all or a portion of the prepaid cost to a vendor is reduced after the check has been processed, the County traveler is responsible for ensuring that the entire difference is returned to the County within the time frames established for settling the claim.

C. **Travel Reimbursement Claims**

1. After completion of travel, the County traveler shall submit a completed County claim form to the department head for authorization. After review and authorization, the department head shall submit the authorized claim, together with any required receipts, to the Auditor-Controller's Office. Said claim shall be received by the Auditor-Controller's Office within thirty (30) calendar days of the completion of travel.
2. The traveler shall not be reimbursed until s/he has signed the certification for the claim that is required by the Auditor-Controller's Office.
3. The Auditor-Controller's Office shall review the claim for compliance with applicable County policies and procedures. If approved by the Auditor-Controller's Office, the claim shall be processed and a check sent to the claimant within ten (10) working days. If denied, or denied in part, the department's contact person will be notified immediately. The Auditor-Controller has the final decision on allowable expenses.
4. No reimbursement for travel shall be paid to the employee until all required receipts

for the travel claim have been filed with the Auditor-Controller's Office.

5. Travel reimbursements are to be paid via checks and not to be paid via petty cash.

D. Mileage Claims

1. Whenever travel requires advance authorization of the department head, or his/her designee, the resulting mileage expense shall be claimed on the same claim form as the other expenses that apply to that travel. The only exception is if mileage is the only expense of the trip, in which case the traveler may claim the mileage on the monthly "Mileage Reimbursement" claim form.
2. Whenever travel does not require advance authorization of the department head, or his/her designee, the resulting mileage expense shall be claimed on the "Mileage Reimbursement" claim form.
3. Mileage claims shall be submitted monthly, unless the total for the month is less than \$50.00, in which case the claim may be held for an additional month. However, the claim must not be held over to the next month more than twice, regardless of the dollar amount.
4. All mileage claims for the last month of the fiscal year must be processed by yearend close.
5. Mileage Claims are to be paid via warrants and not to be paid via petty cash.

E. Reimbursement by Outside Source

1. County travelers receiving reimbursement from an outside source for travel on County time shall forward said reimbursement to the Auditor-Controller for handling and deposit if the traveler intends to submit an expense claim to the County or use County resources, including a County vehicle, to travel. In such cases, the traveler shall then be entitled to submit a claim for actual and necessary expenses for transportation, meals, lodging, and incidentals, subject to the claiming conditions set forth in this travel policy. Said reimbursement shall be delivered to the Auditor-Controller's Office within thirty (30) days of the receipt of the funds.
2. If a County volunteer or non-employee will be receiving a per diem or other reimbursement of travel expenses from a source outside of the County, the volunteer shall not be eligible to claim or receive any additional reimbursement from the County for the same expenses.

F. Late Claims

If a claim for reimbursement or settlement of a travel claim is submitted after the allowed time frames, the payment to the employee shall not be made until the claim has

been reviewed and approved by the Auditor-Controller or his/her designee.

G. Travel Card Use

Subject to the rules contained in the Travel Card Policy, travel expenses (airline, hotel, vehicle rental, gas, emergency repair of county vehicles and airport parking) may be charged to County of Monterey Travel Cards. Prohibited items include employee meals, room service, movies, cash advances, gift cards of any kind, liquor, tobacco and other items prohibited by the Travel Card Policy. Under no circumstances should personal items (even if reimbursed to the county) be charged to the travel card. Expenses paid on the travel card should not be included on a claim for reimbursement.

VII. INTERPRETATIONS

The Auditor-Controller, or his/her designee, shall be responsible for interpretations of this policy.

VIII. EXCEPTIONS

Exceptions to this policy require the approval of the Auditor-Controller or his/her designee.

IX. CONFLICT WITH RULES

In the event that this County Travel policy is in conflict with another County policy, the policy with the strictest application shall prevail.

Schedule #1

Nuance Management Server for Dragon Medical Enterprise Network Edition

The General Terms and Conditions and this Schedule #1 apply to the Applicable Software identified in an Order (which Order is referred to herein as the "Applicable Order").

1. **Definitions.** For purposes of this Schedule #1, the following terms shall have the following meanings:
 - "**Applicable Software**" means the *Nuance Management Server for Dragon Medical Enterprise Network Edition* (NMS for DMENE) Software, which consists of the *Nuance Management Server* (NMS) Software and the *Dragon Medical Enterprise Network Edition* (DMENE) Software.
 - "**Authorized User**" means an individual (a) Customer employee, or (b) contractor who has a need to use the Applicable Software based upon a contractual relationship with Customer.
 - "**Device**" means a personal computing device as specified in the accompanying Documentation.
 - "**Instance**". An "Instance" of the NMS component of the Applicable Software is created by installing NMS, or by duplicating an existing "Instance". References to the NMS in this Schedule #1 include "Instances" of the NMS.
 - "**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.
 - "**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.
 - "**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 General Terms and Conditions, this Schedule #1 and the Applicable Order, Nuance hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to:
 - (a) install and run, at any one time, one Instance of the NMS on one compatible Physical Operating System Environment or one Virtual Operating System Environment, whereby, to "run an Instance" means to load the NMS 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 NMS is only licensed for use with one database; and
 - (b) allow up to two Authorized Users to: (i) use the Nuance Management Console for NMS to set up Customer's licensed users of *Dragon Medical Enterprise Network Edition* Software, manage the user options, and perform maintenance tasks on the NMS; and (ii) use the *Dragon Medical Enterprise Network Edition* Software for the sole purpose of testing *Dragon Medical Enterprise Network Edition* Software - to support Customer's licensed users. For the avoidance of doubt, the *Dragon Medical Enterprise Network Edition* Software cannot be used for clinical dictation.

Schedule #2

Dragon Medical 360 | Network Edition Health System Site License

The General Terms and Conditions and this Schedule #2 for **Dragon Medical 360 | Network Edition: Health System Site License** apply to the Applicable Software 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 #2, the terms of this Schedule #2 will prevail.

1. **Definitions.** For purposes of this Schedule #2, the following capitalized terms shall have the following meanings:

- "**Actual Bed Count**" means the total number of Licensed Beds that Customer has, throughout all of its Healthcare Facilities, on the applicable anniversary of the date of the Applicable Order.
- "**Annual Report**" means a report indicating the total number of Licensed Beds that Customer has, throughout all of its Healthcare Facilities, on each annual anniversary of the date of the Applicable Order.
- "**Applicable Software**" means the following Nuance Software: **Dragon Medical 360 | Network Edition** (f.k.a. Dragon Medical Enterprise Network Edition) specified in an Order as being licensed pursuant to the "Health System Site License" License Model; and which Software requires Customer to have a valid licensed copy of NMS Software.
- "**Authorized User**" is as defined below in Section 2 of this Schedule #2.
- "**Baseline Bed Count**" means the number of Licensed Beds covered by the Health System Site License. The Baseline Bed Count is as initially specified in the Applicable Order, and as subsequently augmented pursuant to Section 4 of this Schedule #2.
- "**Device**" means a personal computing device as specified in the accompanying Documentation.
- "**Healthcare Facility**" means each hospital, physician office, outpatient center, surgical facility, and any other facility delivering healthcare services, that is wholly owned or controlled by Customer. 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.
- "**Licensed Bed**" means each of the beds that Customer has been licensed, by the State in which the applicable Healthcare Facility resides, to use for Customer's patients admitted for stays longer than 24 hours.
- "**NMS Software**" means Nuance's proprietary *Nuance Management Server* software product.
- "**Non-Physician**" means a person who is not a Physician (including, but not limited to, a nurse, physician assistant, or psychologists).
- "**Physician**" means a person who is a physician (including, but not limited to, a full-time or part-time physician, resident, attending physician, physician with privileges, M.D., or D.O.).

2. **Grant of Rights.** Subject to the terms and conditions of the General Terms and Conditions, this Schedule #2 and the Applicable Order, Nuance hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to allow all Physicians and Non-Physicians at all of its Healthcare Facilities (each such Physician and Non-Physician, an "Authorized User") to use the Applicable Software in conjunction with a valid licensed copy of the NMS Software (such license, the "Health System Site License"); provided such use is: (i) in a manner commensurate with its intended use (as prescribed by the Documentation), and (ii) solely for Customer's internal business purposes. Customer shall not allow any Authorized User to use the Applicable Software for: (a) the Authorized User's own personal use, or (b) the benefit of any third party. Customer shall not allow anyone other than the Authorized Users to use the Applicable Software. Pursuant to the rights granted under this Section 2,

Customer may reproduce and install as many copies of the Applicable Software on as many Devices as is reasonably necessary to exercise its license rights under this Section 2. All such copies must be true and complete copies (including intellectual property notices) and be made from media or files supplied by Nuance to Customer under the Agreement or from a network source if true and complete copies of such media or files supplied by Nuance are copied to the network source.

3. **Health System Site License Fee.** The license fee for the Health System Site License (the "Health System Site License Fee") is calculated based on the aggregate number of Licensed Beds located at all of Customer's Healthcare Facilities, as initially specified in the Applicable Order and as subsequently augmented pursuant to Section 4 of this Schedule #2. The Health System Site License Fee does not provide for Maintenance Services, which are charged for separately.

4. **True-up Process.**

4.1 **Annual Report.** Once per year, on the anniversary date of the date of the Applicable Order, Customer shall provide Nuance with an Annual Report using the form attached as Appendix A. Customer shall indicate within the Annual Report: (a) the applicable Actual Bed Count, (b) the then-current Baseline Bed Count, and (c) the disparity between them. Failure to comply with the reporting requirements of this Schedule #2 is a material breach of the Agreement.

4.2 **True-up.** Upon each occurrence where the Actual Bed Count reported by Customer in an Annual Report exceeds the then-current Baseline Bed Count by more than five percent (5%), Customer shall pay Nuance the applicable incremental Health System Site License Fee, and associated Maintenance Services fees, for all additional Licensed Beds that exceed the then-current Baseline Bed Count, based on the Prevailing Rate; at which time, all such additional Licensed Beds will then be added to the Baseline Bed Count to establish a revised Baseline Bed Count for each successive annual period, subject to further increase as provided in this Section 4.2. For the avoidance of doubt, Customer will not be entitled to any credit or refund as a result of the Actual Bed Count being less than the Baseline Bed Count.

4.3 **Example.** As an example, assume that the initial Baseline Bed Count is 100 Licensed Beds. If on the first anniversary of the date of the Applicable Order, Customer reported an Actual Bed Count of 120 Licensed Beds, then, since 120 Licensed Beds would exceed the Baseline Bed Count of 100 Licensed Beds by more than five percent (5%), Customer would be required to pay an incremental Health System Site License Fee, and associated Maintenance Services fees, for 20 additional Licensed Beds, and 20 Licensed Beds would then be added to the Baseline Bed Count, making the Baseline Bed Count 120 Licensed Beds. If on the second anniversary of the date of the Applicable Order, Customer reported an Actual Bed Count of 122 Licensed Beds, then, since the Actual Bed Count of 122 Licensed Beds would not exceed the then-current Baseline Bed Count of 120 Licensed Beds by more than five (5%), Customer would not be required to pay an incremental Health System Site License Fee, at that time, for the 2 additional Licensed Beds, and the Baseline Bed Count would remain at 120 Licensed Beds for the next reporting period.

Appendix A
Annual Report

Customer Name:

Date of the Applicable Order:

Licensed Software: Dragon Medical Enterprise Network Edition: Health System Site License

Bed Count: Indicate Actual Bed Count, Baseline Bed Count, and the amount the Actual Bed Count exceeds the Baseline Bed Count (if applicable):

Actual Bed Count	Baseline Bed Count	Increase in Licensed Beds

Authorized Signature

Date

Print Name and Title

Note:
This form must be used for all Annual Reports.
All Annual Reports must be submitted no later than thirty (30) days following each anniversary of the date of the Applicable Order.
Annual 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



**Order
for
Natividad Medical Center
Perpetual License Program**



NUANCE PROPRIETARY INFORMATION**

Bill To:
Name: Natividad Medical Center
Address 1: 1441 Constitution Blvd.
Address 2:
City/State/Zip: Salinas, CA 93906
E-mail: catoe@natividad.com
Phone #: 831-783-2620
Fax #: 831-787-2592

Ship To:
Name: Natividad Medical Center
Address 1: 1441 Constitution Blvd.
Address 2:
City/State/Zip: Salinas, CA 93906
E-mail: catoe@natividad.com
Phone #: 831-783-2620
Fax #: 831-787-2592
Lic. Key to: fenstermakerj@natividad.com

CRM Identifier: TBD
Quote #: 41492.4771686343Nati
Date: August 6, 2013
Terms: Net 30
F.O.B.: Origin
Salesperson: Robert Shollin
Sales Office: Burlington, MA
Quote Expiration: September 5, 2013
Tax Exempt? No

(If Tax exempt, a Tax Exempt certificate must be attached or on file with Nuance)

Part #	Product	Quantity	SRP (USD)	SRP EXT (USD)	SVP (USD)	SVP EXT (USD)
SOFTWARE AND MICROPHONES						
DMEN101S-F10D	Nuance Management Server 1.0 for DMENE, Perpetual, License <small>Discount</small>	1	\$10,000.00	\$10,000.00	\$8,500.00 <small>(\$1,500.00)</small>	\$8,500.00 <small>(\$1,500.00)</small>
DMNE10-HSSITE-1500	DMENE 10.1, Perpetual, Health System Site License (501-1,500 Beds) <small>Discount</small>	172	\$1,900.00	\$328,800.00	\$1,815.00 <small>(\$296.00)</small>	\$277,780.00 <small>(\$48,020.00)</small>
0POWM2N-D04	PowerMic II Non-Scanner Microphone: Level D (51+) <small>Discount</small>	60	\$295.00	\$17,700.00	\$250.75 <small>(\$44.25)</small>	\$15,045.00 <small>(\$2,655.00)</small>
DMNE10-HSSITE-PHY	DMENE 10.1, Perpetual, Health System Site License, Physician Count (Internal Use Only)	222	\$0.00	\$0.00	N/C	N/C
MAINTENANCE SERVICES						
OPTION 1	1 Year Maintenance Services, Option 1	3				\$181,430.00
TRAINING SERVICES						
See ISO-A	Training Services See ISO-A	1	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00
TOTAL				\$695,930.00	Net Investment-->	\$642,755.00

Quote Assumptions

Additional Terms
 The Nuance Products and Services ordered pursuant to this Order will be governed by the terms and conditions of the Master Agreement (the "Agreement") to be executed simultaneously with this Order by and between Customer and Nuance. All rights and obligations of Customer and Nuance shall be set forth in the Agreement.

Key for Product Description Abbreviations:
 DMEE - Dragon Medical Enterprise Edition
 DMENE - Dragon Medical Enterprise Network Edition

Purchase Orders should be made out to Nuance Communications, Inc. and faxed or e-mailed to:
Fax: 781.565.6001
Email: Robert.Shollin@nuance.com
Phone: 951.261.1013

Nuance Communications, Inc.
 1 Wayside Road
 Burlington, MA. 01803 USA
 TBD

PURCHASE ORDER MUST NOTE:	
> Payment Terms:	Net 30
> F.O.B. Shipping Point:	Origin
Account Manager (DNB):	Robert Shollin
Promo Codes:	
* Nuance Federal ID#:	94-5186479 *
GSA ID#:	GS-SF-0299M
CAGE:	1N998
DUNS:	79-740-7517
* Shipping charges are prepaid by Nuance and billed, unless specified differently.	
Mkrt. New \ Upgrade	191430.00
Prs. Ret'd \ Total	191430.00
Order Mgmt. Only	
NMS SO / BN	
POWM2NC-DNM4HD-GEN-01-02	222
New Order License Sale	

Authorized Signature:
Date:



ISO-A: Professional Services Order

Customer Name: Natividad Medical Center		Quote Date: 8/6/13	
Primary Contact: Natividad Medical Center		Sales Rep: Robert Sholin	
Address: 1441 Constitution Blvd.		Reference#: TBD	
City, State Zip: Salinas, CA 93906		Internal Only: r022013	
Phone: 831-783-2620		C	No WF 2
E-Mail Address: catos@natividad.com		T	596 EHR Meditech
Provider Training Services		Qty (in Days)	Unit Price
DNSM-300	Training Planning Services 8 hrs	4	\$2,000.00
DNSM-001	Standard Training Services - Individual *Onsite 1:1 Provider Training - up to 10 hours	20	\$2,500.00
Web Based Provider Training Services		Qty (in Units)	Unit Price
DNSM-004	Standard Training Services - Online *3 h Online Provider Training (Single License) Initial Training Session and Follow Up Session Basic Commands Only	4	\$750.00
Administrator/Train the Trainer Training Services		Qty (in Days)	Unit Price
DNSM-104	Support Staff (Administrator/Help Desk/IT) * Onsite/Online Training (8 hr)	2	\$2,200.00
Additional Training Services		Qty (in Days)	Unit Price
DNSM-206	Provider Training Optimization (10 h increments)	10	\$2,500.00
	Training/Implementation/Travel	14	\$2,000.00
DNSM-204	Training Preparation Services (8 h increments)	3	\$2,200.00
DNSM-205A	Custom Commands Training (up to 10 hr) *1 d Onsite Command Building (up to 8 users)	10	\$2,500.00
		67.00	
		Total Professional Services	\$150,000
Terms and Conditions			
-Unless this ISO is executed by Customer and returned to Nuance within 90 days from the Order date, the pricing expires. -One resource is equivalent to one day of service delivered -Customer agrees that all information on this ISO is Nuance proprietary information. -Training Services Locations. Customer and Nuance acknowledge that Training Services Locations will be subject to Section 3.3.2. (b) of the Agreement. -Rescheduling. Customer and Nuance acknowledge that any rescheduling of Training Services will be subject to Section 3.3.2. (d) of the Agreement. -On-Location Training Services. Customer and Nuance acknowledge that On-Location Training Services will be subject to Section 3.3.2. (e) of the Agreement.			
Customer Signature: (Required)			Date
Nuance Signature: (Required)			Date

8-6-13



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/28/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies, LLC 195 Scott Swamp Road, Suite 201 Farmington CT 06032 860-678-4000	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	The Phoenix Insurance Company	25623
INSURER B:	The Charter Oak Fire Insurance Company	25615
INSURER C:	The Travelers Indemnity Co of America	25666
INSURER D:	Travelers Property Casualty Co of America	25674
INSURER E:	Beazley Insurance Company, Inc.	37540
INSURER F:		

COVERAGES NUAC001 CERTIFICATE NUMBER: 11719891 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	N	660-4865X477	4/1/2013	4/1/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS Comp \$1,000 CoLi \$1,000	Y	N	BA-4860X746 (AOS) BA-4853X779 (MA)	4/1/2013 4/1/2013	4/1/2014 4/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	N	N	CUP-4865X477	4/1/2013	4/1/2014	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB-5092X369 (CA) UB-4871X804 (AOS)	4/1/2013 4/1/2013	4/1/2014 4/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	PROPERTY BLANKET PROF LIAB(SIR \$500k)	N	N	KTI-CMB-7699X292-13 MEDTE1300451	4/1/2013 4/1/2013	4/1/2014 4/1/2014	PERSONAL PROP \$29,116,492; BUS.INCOME \$7,000,000 \$10,000,00

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
NATIVIDAD Medical Center The County of Monterey, Its Officers, Agents and Employees are included as additional insureds on a primary and non-contributory basis with respects to the General Liability and Automobile Liability policies as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

11719891

County of Monterey
Contracts / Purchasing Department
168 W Alisal St,
3rd Floor
Salinas CA 93901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

POLICY NUMBER: H-660-4865X477-PHX-13

COMMERCIAL GENERAL LIABILITY
ISSUE DATE: 04-16-13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**OTHER INSURANCE – DESIGNATED ADDITIONAL
INSUREDS – PRIMARY AND NON-CONTRIBUTORY WITH
RESPECT TO CERTAIN OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Designated Additional Insured

NATIVIDAD MEDICAL CENTER & THE COUNTY OF MONTEREY,
ITS OFFICER, AGENTS AND EMPLOYEES
ATTN: CONTRACT/PURCHASING DEPT.
168 W ALISAL ST 3RD FLOOR
SALINAS, CA 93901

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

PROVISIONS

The following is added to Paragraph 4. a., **Primary Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The insurance afforded under this Coverage Part to an additional insured designated in the Schedule above is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that if you agree in a written contract or agreement that the insurance afforded to such additional insured under this Cover-

age Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to such other insurance only if:

- (1) The "bodily injury" or "property damage" for which coverage is sought is caused by an "occurrence" that takes place; and
- (2) The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense that is committed;

subsequent to the signing and execution of that contract or agreement by you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE

This endorsement modifies insurance provided by the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

SCHEDULED PERSONS OR ORGANIZATIONS

**NATIVIDAD MEDICAL CENTER & THE COUNTY
OF MONTEREY, ITS OFFICERS, AGENTS AND
EMPLOYEES**

**ATTN: CONTRACT/PURCHASING DEPT.
168 W ALISAL ST 3RD FLOOR
SALINAS, CA 93901**

PROVISIONS

- A. The following is added to Paragraph c. in A. 1., Who Is An Insured, of SECTION II-LIABILITY COVERAGE:**

Any person or organization shown above who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

- B. The following is added to Paragraph 5., Other Insurance, in B. General Conditions of SECTION IV – BUSINESS AUTO CONDITIONS:**

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, if the scheduled person or organization shown above has other insurance under which it is the first named insured and that insurance also applies, then this insurance is primary to and non-contributory with that other insurance when the written contract or agreement between you and that scheduled person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.