



## HEALTHCARE MASTER AGREEMENT

THIS HEALTHCARE MASTER AGREEMENT (the “**Agreement**”) is effective as of July 1, 2021 (the “**Effective Date**”) by and between Nuance Communications, Inc., having a place of business at 1 Wayside Road, Burlington, MA, 01803, USA (“**Nuance**”), and the County of Monterey on behalf of Natividad Medical Center, having a place of business at 1441 Constitution Boulevard, Salinas, CA, 93906, USA (“**Company**” or “**Natividad**” or “**Customer**”). This Agreement consists of the General Terms and Conditions, and all Schedules and exhibits hereto and Orders hereunder. Nuance and Company are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

### General Terms and Conditions

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

0. **Termination of Prior Order.** Company and Nuance previously entered into the Healthcare Master Agreement dated October 15, 2013, as amended (the “**Prior Agreement**”). Pursuant to the Prior Agreement Nuance and Company entered into the Order(s) as further described below (collectively, the “**Affected Order**”):

Affected Order:

71343267, 208 PowerShare, effective date 2/25/2020

Company and Nuance wish to mutually terminate the Affected Order, amendments, addenda and statements of work thereto, effective as of the end of the day prior to the Order Effective Date of the new Order, attached hereto as Exhibit E (“**Termination Effective Date**”). Notwithstanding the foregoing, such termination of the Affected Order shall not affect Company’s payment obligations incurred under the Affected Order(s), and all amendments, addendums and statements of work thereto, if any, up to and including the Termination Effective Date. For the avoidance of doubt, Company may access and use the Nuance Products that are in use by Company under the Prior Agreement and included in Exhibit E on a continuous basis and the Parties do not intend for Company’s access to or use of Nuance Products to be suspended as a result of transitioning from the Prior Agreement to this Agreement.

### 1. DEFINITIONS.

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

- 1.1. “**Affiliates**” means any entity that is directly or indirectly controlled by, under common control with, or in control of a Party. For these purposes, an entity shall be treated as being controlled by another if that other entity (i) has fifty percent (50%) or more of the votes in such entity, or (ii) is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.
- 1.2. “**Authorized User(s)**” are those individuals who are authorized, subject to the terms and conditions of this Agreement, to access and use the Nuance Software and/or Hosted Services, which individuals are limited to those authorized under the applicable Schedule or Order.
- 1.3. “**Company PO**” means a Company-generated purchase order for Software, Equipment and/or Services, that (i) references the quote number and date of the applicable Nuance Quote against which the purchase order is issued, or (ii) sets forth, in detail, the Software licenses, Equipment, and/or Services that Company seeks to purchase (including number of license units and license type), the price associated with each item, and includes a cross-reference to this Agreement.
- 1.4. “**Data**” means the audio, image, and/or text data input, all data elements output (e.g. interpretation of clinical contents in xml or other format), associated transcripts or medical reports, whether in draft or final form, any information received from Company under any Order under this Agreement, or any other clinical information received by Nuance from Company under this Agreement.
- 1.5. “**Documentation**” means the administrative guide and user’s guide provided by Nuance to Company to facilitate the use of the Nuance Products and Hosted Services. The terms of this Agreement do not materially conflict with the Documentation.
- 1.6. “**Equipment**” means Nuance Equipment and Third Party Equipment, collectively.

1.7. **"Hosted Service"** means a Nuance proprietary subscription-based software as a service (SaaS) offering specified in an Order, as more particularly described in the applicable Schedule. Any software provided by Nuance which is sited at Company (for example client software to access the Hosted Services) is considered Software and subject to the terms governing Software.

1.8. **"Maintenance Services"** means (i) the services that Nuance provides, pursuant to an Order, to maintain Software and Equipment (as applicable), as more fully described in attached Exhibit C, "Healthcare Hardware and Software Maintenance Options" ("**Web Maintenance Services Terms**") or (ii) as otherwise provided in an applicable Schedule. Maintenance Services does not mean or include Hosted Service support.

1.9. **"Nuance Equipment"** means Nuance manufactured hardware specified in an Order.

1.10. **"Nuance Products"** means the Nuance Software and Nuance Equipment, collectively.

1.11. **"Nuance Quote"** means a Nuance-generated quotation for Software, Equipment and/or Services, that lists the Software licenses, Equipment and/or Services that Company seeks to purchase (including number of license units and license type), and the price associated with each item.

1.12. **"Nuance Software"** means the object code version of any Nuance proprietary software product specified in an Order, including all corrections, modifications, enhancements, Updates and Upgrades (if any) thereto that Nuance may provide to Company under this Agreement, and all related Documentation.

1.13. **"Order"** means an order for Software licenses, Equipment and/or Services that is (a) issued by Company in the form of a Nuance Quote or Company PO signed by Company (physically or electronically), and (b) accepted by Nuance. An Order includes any applicable Statement of Work attached to the Order.

1.14. **"Professional Services"** means any installation, project management and/or consulting services provided by Nuance pursuant to an Order, as specified in an Order, and which may be more fully described in a Statement of Work.

1.15. **"Schedule"** means each of the schedules set forth in **Exhibit B** of this Agreement or as added to Exhibit B by amendment. Schedules are a part of this Agreement and define the specific terms that apply to the applicable Nuance Products and Services.

1.16. **"Services"** means Maintenance Services, Training Services, Professional Services, Hosted Services and/or Transcription Services, as applicable, and any deliverables provided to Company by Nuance in connection with the foregoing.

1.17. **"Software"** means Nuance Software and Third Party Software, collectively.

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

1.19. **"Term"** is defined in Section 7.1 of these General Terms and Conditions.

1.20. **"Third Party Equipment"** means any third party manufactured hardware specified in an Order.

1.21. **"Third Party Software"** means any third party proprietary software specified in an Order.

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

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

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

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

**2. SCOPE OF AGREEMENT.** Company agrees to purchase from Nuance, and Nuance agrees, subject to the terms and conditions of this Agreement, to supply to Company the Software licenses, Equipment and Services, as specified in each Order. Nuance may accept an Order by fulfilling it, provided, however, that the Parties acknowledge and agree that only Order No. 1 attached hereto as Exhibit E is authorized under this Agreement and any subsequent Order during the Term requires a signed amendment to this Agreement pursuant to Section 14.9.

### **3. GRANT OF RIGHTS.**

#### **3.1. Software.**

3.1.1. **License Grant.** Subject to the terms and conditions of this Agreement, Nuance grants to Company, and Company accepts, a limited, non-exclusive, non-transferable (except as provided in Section 14.1 of this Agreement), non-sub-licensable license to permit its Authorized Users to access and use the Nuance Software and / or Hosted Services listed in the applicable Order, strictly in accordance with the license grant specified in the applicable Schedule, provided such use is (i) commensurate with the intended use of the Nuance Software (as prescribed in this Agreement and the applicable Documentation), and (ii) solely for Company's internal business purposes.

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

3.1.3. **Updates and Upgrades.** Upon installing any Update or Upgrade to Nuance Software, Company shall discontinue use of the previous version of such Nuance Software and Company will be licensed to use only the updated or upgraded version of the Nuance Software, in accordance with the license granted by Nuance hereunder.

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

3.3. **Third Party Components.** All Third Party Software and Third Party Equipment (collectively, "**Third Party Components**") shall be identified in the applicable Schedule and Nuance agrees that (i) it has the right to license or provide, as applicable, any Third Party Components provided to Company by Nuance under this Agreement; (ii) to the best of Nuance's knowledge, as of the Effective Date, the Third Party Components do not, and the use of the Third Party Components by Company as contemplated by this Agreement will not, infringe any intellectual property rights of any third party; and (iii) unless specifically provided in the relevant Order, Company shall have no obligation to pay any third party fees, royalties, or other payments for Company's use of any Third Party Components in accordance with the terms of this Agreement. Maintenance and support for Third Party Components shall be as specified in the applicable Schedule.

3.4. **Proprietary Rights; Restrictions.** Notwithstanding any use of the term "sale," "purchase" or other similar terms in this Agreement, Nuance and its licensors retain all right, title and interest in and to the Software, Services and Documentation, and any derivative works thereof, including, but not limited to, all patent, copyright, trade secret, trademark and other intellectual property rights associated therewith. Without limiting the generality of the foregoing, Company will not itself, directly or indirectly, and will not permit Authorized Users, other employees or contractors, or any third party to (i) access the Hosted Services with software or means other than as described in this Agreement, (ii) submit any automated or recorded requests to the Hosted Services except as otherwise provided in this Agreement, (iii) modify, port, translate, or create derivative works of the Software, Services, or Documentation, (iv) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Software or Services by any means, (v) sell, lease, license, sublicense, copy, assign, transfer, share, market, or distribute the Software, Services or Documentation, except as expressly permitted in this Agreement, (vi) grant any access to, or use of, the Nuance Software or Services on a service bureau, timesharing or application service provider basis, (vii) remove any proprietary notices, labels or marks from the Software, Services or Documentation, (viii) release to a third party the results of any benchmark testing of the Software or Services, or (ix) defeat or circumvent any controls or limitations contained in or associated with the use of the Software. In no event shall anything in this Agreement or in Nuance's conduct or course of dealing convey any license, by implication, estoppel or otherwise, under any patent, copyright, trademark or other intellectual property right not explicitly licensed. All rights not expressly granted to Company under this Agreement are reserved by Nuance and/or its licensors.

3.5. **Authorized Users.** Company is responsible for each Authorized User's compliance with the terms of this Agreement and shall ensure each Authorized User's compliance with the terms of this Agreement. Company will be liable for any act or omission by an Authorized User that, if performed or omitted by Company, would be a breach of this Agreement. Company shall promptly notify Nuance upon learning of any actual or suspected unauthorized possession or use of any Software or Hosted Services supplied under this Agreement.

4. **SERVICES.** Subject to the terms and conditions of this Agreement, Nuance will provide the Services as may be specified in an Order. If any service, function, or responsibility not specifically described in this Agreement or an Order and not expressly identified as a retained Company responsibility but is reasonably understood by the parties to be required for the proper performance, provision, delivery, or receipt of the Services, such service, function, or responsibility shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if it was specifically described in this Agreement.

4.1 **Fixed Term Licenses.** Unless otherwise provided in an applicable Schedule or Order, Maintenance Services are provided as part of the license fees for fixed term licenses to Software.

4.2 **All Other Licenses.** Unless otherwise agreed by Nuance, Company is required to purchase first year Maintenance Services for all other licenses of Nuance Software. Nuance will provide the first year Maintenance Services indicated in the Order. If Nuance offers Maintenance Services for the applicable Software and/or Equipment for renewal periods, Nuance will, at least thirty (30) days prior to the end of the then-current Maintenance Service term, invoice Company for a subsequent one-year renewal term of Maintenance Services at the rates in effect on the renewal date. Company shall, if it wishes to renew annual Maintenance Services for the applicable Software and/or Equipment, pay the invoice for renewal Maintenance Services in full within thirty (30) days from an invoice certified

for payment received by the Monterey County Auditor-Controller, but in no case later than forty-five (45) days later than the date of such invoice, provided Nuance agrees to electronically transmit all invoices to Company on the date reflected on the invoice.

#### 4.3 **Maintenance Services Terms.**

4.3.1 Company acknowledges that failure to pay its invoice for Maintenance Services in accordance with the terms of this Agreement will result in Maintenance Services expiring with respect to such Software and/or Equipment. If permitted by Nuance, Company may reinstate Maintenance Services that have expired, provided that Company first pays all Maintenance Services fees that would have been due for the period following the expiration of the previous Maintenance Service period, and, if necessary, orders all Professional Services (at mutually agreed upon rates) necessary to implement the then-current version of the applicable Software, provided any such orders must be authorized by a signed amendment to this Agreement.

4.3.2 The annual Maintenance Services Term shall commence as described in the applicable Schedule and Order, and each subsequent annual Maintenance Services Service Term will commence on the anniversary thereof. Company must purchase the same Maintenance Service level for all Software licenses and Equipment units for a given Nuance Product.

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

4.4 **Training Services.** Unless otherwise agreed by the Parties, Training Services will be held at a designated Nuance location during Nuance's standard business hours, excluding Nuance recognized holidays, or may be delivered remotely by Nuance, by mutual agreement of the parties, and at no additional charge. If the Parties agree to hold any Training Services at Company's site, all such Training Services (including associated travel time) will be conducted between the hours of 8:00 a.m. to 5:00 p.m. local Company site time, Monday through Friday, excluding Nuance recognized holidays. Company shall ensure that all Training Services attendees are or will be Authorized Users and have the skills and experience to participate in the training sessions.

4.5 **Professional Services.** Unless otherwise agreed by the Parties, all Professional Services (including associated travel) will be conducted between the hours of 8:00 a.m. to 5:00 p.m. local Company site time, Monday through Friday, excluding Nuance recognized holidays. Nuance reserves the right to deliver Professional Services directly or via third party subcontractors. Nuance's subcontractor list is available at <https://www.nuance.com/about-us/terms-and-conditions/data-processing-terms/sub-processors.html>. Nuance shall be responsible for the acts and omissions of its subcontractors.

4.6 **Hosted Services.** Hosted Services will be as further described in, and will be provided by Nuance in accordance with, the applicable Order and Schedule.

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

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

**5. MEDICAL CARE RESPONSIBILITY.** COMPANY ACKNOWLEDGES THAT SOFTWARE AND SERVICES ARE NOT ERROR FREE. FURTHERMORE, SPEECH RECOGNITION, NATURAL LANGUAGE PROCESSING, AND MEDICAL FACT EXTRACTION (SUCH AS PERFORMED IN MEDICAL TRANSCRIPTION SERVICES) ARE STATISTICAL PROCESSES THAT ARE INHERENTLY INACCURATE AND THAT ERRORS OCCUR IN THE CONTENT, OUTPUT AND RESULTS OF SUCH PROCESSES THAT NUANCE IS NOT RESPONSIBLE FOR. COMPANY AGREES THAT IT IS THE SOLE RESPONSIBILITY OF COMPANY AND EACH AUTHORIZED USER TO IDENTIFY AND CORRECT ANY SUCH ERRORS AND INACCURACIES BEFORE USING AND/OR RELYING ON THE CONTENT, RESULTS OR OUTPUT OF ANY SOFTWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT, FOR ANY MEDICAL-PRACTICE-RELATED PURPOSES. COMPANY AGREES THAT NUANCE IS NOT PROVIDING MEDICAL PRACTICE ADVICE, AND THAT COMPANY AND EACH AUTHORIZED USER WILL CONSULT WITH AND RELY EXCLUSIVELY ON ITS OWN PHYSICIANS OR OTHER MEDICAL DIRECTION FOR REVIEW, NECESSARY REVISIONS AND APPROVAL OF ANY AND ALL SUCH MEDICAL-PRACTICE-RELATED CONTENT, RESULTS OR OUTPUT. NUANCE ASSUMES NO RESPONSIBILITY FOR ANY OF THE FOREGOING.

#### **6. PAYMENT AND DELIVERY.**

6.1 **Fees.** Company shall pay to Nuance all fees and other charges specified in each Order. Except as otherwise provided in this Agreement, all fees due under the Agreement are non-cancelable, provided, however, that the foregoing shall not limit any of Company's remedies or claims against Nuance under this Agreement or applicable law. Notwithstanding anything to the contrary in this Agreement,

except as set forth in Exhibit E (Order No. 1), or as otherwise agreed pursuant to a valid amendment to this Agreement, there are no other fees, to be paid by Company under this Agreement. The making of any payment or payments by Company, or the receipt thereof by Nuance, shall in no way affect the responsibilities and obligations of Nuance under the applicable Schedule.

6.2. **Expenses.** Prices do not include travel expenses that may be incurred in the course of providing Services, including, but not limited to, transportation, meals, lodging and other living expenses. Company shall pay or reimburse Nuance for all such charges and expenses reasonably incurred per the County of Monterey travel reimbursement policy (Exhibit D). In connection with the signing of a new Order that includes Services, and upon Company's request prior to the execution of such Order, Nuance will include a not-to-exceed estimate of expenses that may be incurred in the course of providing Services in connection with an Order.

6.3. **Taxes.** Company shall pay all taxes, duties, import and export fees, and any other charges or assessments, except taxes based on Nuance's real property, personal property, income, or personnel, which are applicable to Company's receipt of Nuance's products and services under this Agreement, and shall reimburse Nuance for any encumbrance, fine, penalty, or other expense which Nuance may incur as a result of Company's failure to pay any such taxes, duties, fees, charges, or assessments upon Nuance's substantiation of such payments with documentation to Company for reimbursement. For purposes of this Agreement, the term "taxes" shall include, but is not limited to any and all assessments and other governmental charges, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use, value added, ad valorem, consumption, transfer, franchise and withholding taxes, except taxes imposed on the net income of Nuance or as otherwise specified above, together with all interest, penalties and additions imposed with respect to such amounts. If any applicable law requires Company to withhold an amount from any payment to Nuance hereunder, Company shall effect such withholding, remit such amount to the appropriate taxing authority, and supply Nuance with the tax receipt evidencing the payment of such amount to the government within sixty (60) days of its receipt by Company. To the extent that an income tax convention between the country of Nuance and the country of Company permits, upon the filing of a proper application, for a reduction or elimination of such withholding tax, the Parties shall cooperate in the completion and filing of such application. Company shall provide to Nuance, and Nuance shall complete and return to Company, all applicable forms required by the governing tax authority in order to secure the reduction or elimination of withholding tax as authorized by the convention.

6.4. **Payment.** Except as otherwise set forth in the applicable Order or Schedule, Company shall pay all invoices issued in U.S. dollars, either by mail or wire transfer, within thirty (30) days from receipt of an invoice certified for payment by the Monterey County Auditor-Controller, but in no case later than forty-five (45) days later than the date of such invoice, provided Nuance agrees to electronically transmit all invoices to Company on the date reflected on the invoice. Interest shall accrue at the rate of one and one half percent (1.5%) per month on any amounts past due. Company shall reimburse Nuance for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts from Company. If Company fails to pay undisputed amounts for any Equipment, Nuance reserves the right to repossess such Equipment after providing Company with notice of its breach of this Agreement and an opportunity to cure in accordance with Section 7.2 (Termination for Cause). Nuance reserves the right to suspend Services to Company in the event any invoice is past due after providing Company with notice of its breach of this Agreement and an opportunity to cure in accordance with Section 7.2 (Termination for Cause). Company will notify Nuance within forty-five (45) days of the date of invoice if it disputes any amount contained in an invoice. Notwithstanding the foregoing, if Company entered into an Order for Maintenance Services for which there is an additional fee pursuant to a signed amendment to this Agreement and elects not to renew Maintenance Services, Company shall not be required to pay the invoice for subsequent annual renewals, provided any requirements in the applicable Schedule or Order for prior written notice of non-renewal are met.

6.5. **Company Purchase Orders.** Company agrees to pay Nuance's invoices without a purchase order reference. Company acknowledges and agrees that if it is Company's standard practice to issue unsigned purchase orders, such purchase orders are valid and binding. Neither Party shall be subject to provisions of any pre-printed terms on or attached to purchase orders generated by Company or invoices generated by Nuance, or any Company policies, regulations, rules, or the like, including those set forth in any Company-sponsored registration system, regardless if such requires affirmative acknowledgement from a Nuance representative.

6.6. **Leasing Arrangements.** If Company has entered into a lease arrangement with a third-party financing/leasing company ("**Lessor**") to finance an applicable Order, then subject to prior mutual written agreement between Nuance and Company, which shall not be unreasonably withheld by Nuance, and subject to the existence of a suitable arrangement between Nuance and the Lessor, Nuance shall, at Company's request, submit the invoice(s) for the Order to, and accept payment for the Order from, the Lessor. Notwithstanding the foregoing, Company 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, Company shall pay such amounts to Nuance immediately upon receipt of Nuance's invoice.

6.7. **Audit.** Company shall keep full, true and accurate records and accounts to support its use of the Software and Hosted Services, as applicable, under this Agreement. Nuance, or a third party appointed by Nuance, will have the right, not more than once a year and upon at least thirty (30) days prior written notice, to conduct an audit of Company's systems and generally available records, to confirm compliance with the scope of the licenses granted under this Agreement. For the avoidance of doubt, Company shall be under no obligation to create or compile information that is not readily available in the ordinary course of its business. The foregoing review right shall not afford Nuance or any auditor any right to directly access and manipulate Company's systems. All such access and use will be done by Company personnel at Nuance's direction and under Nuance's supervision. Any audit will be performed during Company's normal business hours, shall not unreasonably interfere with Company operations, and shall be completed within seven (7) business days. If an audit reveals that Company's Software or Hosted Services usage exceeds its usage rights, as granted by Nuance,

Company shall pay Nuance for all such excess usage, and the parties shall execute an amendment to this Agreement to include such excess usage, based on the pricing in effect under the relevant Order at the time of the audit. Any review under this Section shall be performed at Nuance's sole expense, unless Company's excess usage exceeds ten percent (10%) of the authorized usage, in which case Company shall also pay Nuance's reasonable third-party costs of conducting the audit. All information obtained during the course of a review under this Section shall be deemed Company Confidential Information. Nothing in this Section 6.7 will limit any other remedy available to Nuance.

6.8. **Shipment.** For Orders with Software and/or Equipment requiring delivery within the United States, such Software and/or Equipment will be shipped "FCA Shipping Point." For Orders with Software and/or Equipment requiring delivery outside the United States, unless otherwise specified in the applicable Schedule or Order, such Software and/or Equipment will be shipped "CPT Destination," or, at Nuance's option, "EX WORKS" with carrier arranged by Company. Company shall bear all shipping, freight and transportation charges from Nuance's warehouse facility.

## 7. TERM; TERMINATION.

7.1. **Term.** This Agreement commences on the Effective Date and shall continue in effect for five (5) years from the first day of the month following the Effective Date, unless terminated earlier in accordance with the terms hereof ("**Term**"). Each Party's rights and obligations related to Nuance Software licenses and/or Services delivered pursuant to an Order shall be limited to the duration or term of such Nuance Software license or Service as specified in the applicable Schedule or Order.

7.2. **Termination for Cause.** Either Party may terminate this Agreement or any Order upon written notice if the other Party commits a material breach of this Agreement or such Order and fails to cure such breach within thirty (30) days of receipt of written notice describing such breach. Notwithstanding the foregoing, either Party may terminate this Agreement and/or any Order immediately upon written notice to the other Party if the notified Party (a) infringes the other party's intellectual property rights, (b) commits, or permits any third party to commit, any breach of confidentiality obligations under Section 9 ("**Confidentiality**"), or (c) has a receiver appointed to handle its assets or affairs, admits that it is insolvent, or is otherwise unable to pay its debts as they mature, or ceases to do business in the ordinary course.

7.3. **Termination for Lack of Government Funding.** Company payments to Nuance under this Agreement are funded by local, state and federal governments. Financial obligations of Company are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an ongoing basis. If such funds from local, state and federal sources are not appropriated and continued during the Term of this Agreement at a level sufficient to allow for Company's purchase of any Nuance Products or Services under an applicable Order, then Company may give written notice of this fact to Nuance, and the obligations of the Parties under this Agreement shall terminate on such date thereafter, as the County may specify in its notice, unless in the meanwhile the Parties enter into a written amendment modifying this Agreement. Company shall provide Nuance with advanced notice of termination under this Section promptly and without undue delay upon becoming aware of conditions that make such termination necessary. Notwithstanding the foregoing, such termination of this Agreement for lack of government funding shall not affect Company's payment obligations incurred under any applicable Order(s), and all amendments, addendums and statements of work thereto, if any, up to and including the effective date of such termination.

7.4. **Effect of Termination.** Upon termination of this Agreement, all Orders issued under this Agreement will immediately terminate. Upon the termination of an Order, all Nuance Software licenses and Services under such Order shall immediately terminate, and Company shall (a) immediately cease use of the applicable Nuance Software (in any form, including partial copies in its possession or under its control) and/or Services, (b) return to Nuance or destroy all copies of the Nuance Software and certify in writing to Nuance that no copies have been retained by Company within ten (10) days of any expiration or termination, and (c) pay any outstanding undisputed amounts due to and invoiced by Nuance in accordance with the terms herein. Upon termination of this Agreement, Nuance shall refund to Company all pre-paid, unused fees paid by Company under the relevant Order. For the avoidance of doubt, termination of this Agreement shall not affect Company's payment obligations incurred hereunder, including any Order(s), and all amendments, addendums and statements of work thereto, if any, up to and including the effective date of such termination.

7.5. **Survival.** Notwithstanding anything to the contrary in this Section 7, the provisions of Sections 1, 3.3, 3.4, 5, 6, 7.3, 7.4, 8, 9, 10, 11, 12, 13 and 14 of these General Terms and Conditions shall survive expiration or termination of this Agreement.

8. **HIPAA.** The Parties agree to the HIPAA Business Associate Agreement, attached hereto as **Exhibit A** and made a part of this Agreement (the "**BAA**"), wherein Nuance may be referred to as "Business Associate" and Company may be referred to as "Covered Entity," and which shall govern the protection, use and disclosure of protected health information hereunder and, with respect to the treatment of any PHI (as defined by the BAA), in the event of any conflict or inconsistency between the General Terms and Conditions of this Agreement or any other Exhibits hereto, and the BAA, the terms of the BAA shall govern.

## 9. CONFIDENTIALITY.

9.1. **Definition.** Subject to the exceptions contained in this Section 9.1, "**Confidential Information**" shall mean (a) all information disclosed by a Party or its Affiliates (the "Disclosing Party"), in whatever tangible form or otherwise, to the other Party or its Affiliates (the "Receiving Party") that is clearly marked "confidential" or with some other proprietary notice, (b) all information disclosed orally or otherwise in intangible form by the Disclosing Party and designated as confidential or proprietary at the time of the disclosure, (c)

the Nuance Software, Documentation, and information provided as part of any Services, and (d) information, disclosed to or access by the Receiving Party in any form which the Receiving Party knows or reasonably should know is considered to be confidential information of the Disclosing Party. Notwithstanding the above, information shall not be deemed Confidential Information to the extent that it (i) was generally known and available in the public domain at the time it was disclosed or subsequently becomes generally known and available in the public domain through no fault or breach of confidentiality of the Receiving Party, (ii) was rightfully known to the Receiving Party at the time of disclosure without any obligation of confidentiality, (iii) is disclosed with the prior written approval of the Disclosing Party, (iv) was independently developed by the Receiving Party without any use of the Confidential Information of the Disclosing Party, or (v) is protected health information or any other personally identifiable information, the protection of which is governed by the Business Associate Terms and Conditions identified in Exhibit A. The obligation not to use or disclose Confidential Information will remain in effect until one of these exceptions occurs. Notwithstanding the foregoing or anything to the contrary in this Agreement, the Parties acknowledge and agree that disclosure of the existence of this Agreement and the terms and conditions of this Agreement, including without limitation the terms and conditions of any Amendment, Order, Schedule, or Exhibit hereto, to the Board of Supervisors of the County of Monterey is required and, as a result, members of the public may access and view this Agreement, and that the foregoing such disclosure shall not be considered a breach of this Section 9.

9.2. **Permitted Disclosure.** Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure (a) is in response to a valid order of a court or other governmental body, provided, however, that the responding Party shall first have given notice to the other Party hereto and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued, (b) is otherwise required by law, or (c) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

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

9.4. **Return of Confidential Information.** The Receiving Party shall return to the Disclosing Party, or destroy, all Confidential Information of the Disclosing Party in tangible form (i) upon the written request of the Disclosing Party, or (ii) upon the expiration or termination of this Agreement, whichever comes first. In both cases, the Receiving Party shall, upon request, promptly certify in writing that it has complied with the obligations of this Section 9.4. Notwithstanding the foregoing, each Party may retain a copy of the Confidential Information in electronic format in accordance with its corporate security and/or disaster recovery procedures, provided however, that all such Confidential Information shall remain subject to the confidentiality obligations under this Agreement, including after termination or expiration of this Agreement for any reason.

10. **DATA.** Company is solely responsible for obtaining all necessary consents under applicable laws and regulations in order to allow Nuance to use the Data as permitted in this Agreement and the Business Associate Agreement between the parties, including to (i) provide the Software and the Services, and (ii) de-identify the Data, in accordance with and to the extent permitted by this Section 10 and the Business Associate Agreement. Company gives Nuance the right, and Nuance has permission to use, the Data only in accordance with this Section 10 and the Business Associate Agreement. Nuance and third parties acting under the direction of Nuance may use, compile (including creating statistical and other models), annotate and otherwise analyze the Data to (a) provide Company the Nuance Software and Services set forth in the applicable Orders and (b) develop, train, tune, enhance and improve the speech recognition, natural language understanding and other components of the Nuance Software and Services set forth in the applicable Orders. Nuance and third parties acting under the direction of Nuance may use, compile (including creating statistical and other models), annotate and otherwise analyze the de-identified Data, provided that Data put to such use by Nuance is de-identified in accordance with 45 C.F.R. §164.514(a)-(c) to (y) provide Company the Nuance Products Software and Services set forth in the applicable Orders and (z) develop, train, tune, enhance and improve the speech recognition, natural language understanding and other components of the Nuance's product and services. For the avoidance of doubt, Nuance is not permitted to use Data to create de-identified Data, and use such de-identified Data for any purpose other than as expressly set forth in this Section, or disclose de-identified Data, other than to third parties acting under the direction of Nuance for the purposes set forth in this Section, without Company's prior written approval. Except for Company's obligation to obtain all necessary consents as required under this Section 10, Nuance acknowledges and agrees that the Data is provided by the Company is as-is, without warranties of any kind. Except for Company's obligation to obtain all necessary consents as required under this Section 10, Company hereby disclaims all warranties, express and implied, including the implied warranties of merchantability, fitness for a particular purpose, title/non-infringement, and quality of information with regard to the Data. Nuance shall comply with all applicable privacy, security and other laws applicable to Nuance's use of Data, including de-identified Data. Nuance shall own all intellectual property rights in all enhancements and improvements to its software and services

that result from its authorized use of the Data. Any and all information that Company provides will remain confidential, and Nuance may only provide access to Data (including de-identified Data) to third parties acting under the direction of Nuance in order to fulfill the foregoing use of the Data, pursuant to confidentiality agreements, or to meet legal or regulatory requirements, such as under a court order or to a government institution if required or authorized by law. Nuance will not use the names of individuals and companies to contact anyone for any reason. Nuance receives, uses and/or maintains only copies of official medical records or portions thereof, the originals of which must continue to be maintained by Company or its contractors. Accordingly, the foregoing Data shall not be deemed an official medical record or health record for any patient. Notwithstanding anything herein to the contrary, for Data which has been de-identified as provided above, Nuance will be permitted to retain and use such de-identified data during and after termination of this Agreement, subject to the provisions of and for the purposes permitted in, this Section 10 and the Business Associate Agreement.

## **11. LIMITED WARRANTIES AND ATTESTATIONS.**

**11.1. Nuance Software Warranty.** Nuance warrants that upon initial installation of the Nuance Software (in the case of Nuance Software that, pursuant to the applicable Order, is to be installed by Nuance) or initial delivery of the Nuance Software to Company (in all other cases), and for a period of ninety (90) days thereafter (the "Software Warranty Period"), the Nuance Software will operate in all material respects in conformity with its Documentation. Company's sole and exclusive remedy and Nuance's sole obligation for any breach of the warranty set forth in this Section 11.1 will be for Nuance, at Nuance's option, to undertake reasonable efforts to correct or replace the nonconforming Nuance Software reported by Company during the Software Warranty Period, or to accept a return of and refund to Company, the fees paid by Company to Nuance for such non-conforming Nuance Software (including all related license, equipment, services, and support and maintenance fees), and terminate the license to any such non-conforming Nuance Software.

**11.2. Nuance Equipment Warranty.** Nuance warrants that upon initial installation of the Nuance Equipment (in the case of Nuance Equipment that, pursuant to the applicable Order, is to be installed by Nuance) or initial delivery of the Nuance Equipment to Company (in all other cases), and for a period of ninety (90) days thereafter (the "Equipment Warranty Period"), the Nuance Equipment will operate in all material respects in conformity with its Documentation. Company's sole and exclusive remedy and Nuance's sole obligation for any breach of the warranties set forth in this Section 11.2 will be for Nuance, at Nuance's option, to undertake reasonable efforts to correct or replace the nonconforming Nuance Equipment reported by Company during the Equipment Warranty Period, or to accept a return of and refund to Company, the fees paid by Company to Nuance for such non-conforming Nuance Equipment (including all related license, equipment, services, and support and maintenance fees).

**11.3. Services Warranty.** Nuance warrants that the Maintenance Services, Training Services and Professional Services provided by Nuance pursuant to this Agreement shall be performed in a professional manner by trained and skilled personnel. Company must notify Nuance of any breach of such warranty within ninety (90) days following performance of the non-conforming Services giving rise to the breach of warranty claim. Company's sole and exclusive remedy and Nuance's entire liability for any breach of the warranty set forth in this Section 11.3 will be for Nuance to re-perform such non-conforming Services that Company notified Nuance of in accordance herewith.

**11.4 Mutual Attestations.** Each Party agrees that, as of the Effective Date of this Agreement (a) it has the full power, capacity, and authority to enter into and perform this Agreement and to make the grant of rights contained herein; (b) its performance of this Agreement does not violate or conflict with any agreement to which it is a party; (c) its performance under this Agreement complies with all applicable federal, state and local laws and regulations; and (d) there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement. The parties shall use commercially reasonable efforts to notify each other in the event the foregoing statements are no longer true during the Term of this Agreement to the extent the same impacts their performance under this Agreement.

**11.5 Limitation of Warranties.** The warranties set forth in this Section 11 ("Limited Warranties") shall not apply, and Nuance shall have no warranty obligation or liability with respect to, (a) any Nuance Product that (i) is damaged after it has been shipped to Company through no fault of Nuance, (ii) is modified by anyone other than Nuance or other party acting at Nuance's direction or instruction, (iii) is used for any purpose other than its intended purpose (as specified in the Documentation), (iv) is used with equipment not specified as compatible with the Nuance Product in such Nuance Product's Documentation, (v) is used with software not specified as compatible with said Nuance Product in the Nuance Product's Documentation, (vi) Company fails to properly install or maintain, (b) any computer malfunction not attributable to the Nuance Products or Nuance, provided that Nuance complies with the requirements set forth in Sections 11.5.1 and 11.5.2, (c) any incorrect use of the Nuance Products not attributable to Nuance or a party working at Nuance's direction, or (d) any willful misconduct or negligent action or omission of Company.

**11.5.1 Malware.** Nuance will make commercially reasonable engineering efforts to ensure that, at the initial point of delivery to Company of any Nuance Products and Services, such Nuance Products and Services will not include or transmit any viruses, Trojan Horses, worms, spyware, or other similarly destructive or malicious code that has been created with malicious intent by a third party ("Malicious Code"). Company's sole and exclusive remedy for a breach of the foregoing obligation is that Nuance will remove the Malicious Code and redeliver the Nuance Products and Services absent the Malicious Code; provided, that, Company notifies Nuance of the presence of the Malicious Code within ninety (90) days of initial delivery of the Nuance Products and Services.

**11.5.2 Security.** Nuance will maintain and enforce information and data privacy and security procedures with respect to its access, use, and storage of all Natividad Data that (a) are at least equal to reasonable industry standards taking into consideration the



sensitivity of the relevant Data, and the nature and scope of the Nuance Products and Services to be provided, (b) comply with all applicable international, foreign, federal, state and local laws, statutes, rules, orders and regulations that are applicable to Nuance in the ordinary course of performing the Services, and (c) provide reasonably appropriate administrative, technical, and physical safeguards to protect against accidental or unlawful destruction, loss, alteration, or unauthorized disclosure, access or use of Data. Nuance will take all commercially reasonable measures to secure and defend its location and equipment against “hackers” and others who may seek, without authorization, to modify or access Nuance systems or the information found therein. Nuance will periodically test its systems for potential areas where security could be breached. Nuance will report to Natividad promptly, but in no case more than ten (10) days following Nuance’s discovery of any breaches of security or unauthorized access to Nuance systems that results in a breach of Natividad data or the or the Natividad data that Nuance detects or becomes aware of. Nuance will use commercially reasonable efforts to remedy such breach of security or unauthorized access in a timely manner and deliver to Natividad a root cause assessment and future incident mitigation plan with regard to any breach of security involving Natividad data or unauthorized access affecting Natividad data. The requirements of this Section shall apply regardless of whether Nuance hosts the Data itself or through a third party hosting or cloud services provider

11.4. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 11 (“LIMITED WARRANTIES”) ARE EXCLUSIVE AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED MADE BY EITHER PARTY, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT AND TITLE. NUANCE DOES NOT GUARANTEE THAT THE SOFTWARE, EQUIPMENT OR SERVICES WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULT, OR THAT THE SERVICES WILL BE PERFORMED WITHOUT ERROR OR INTERRUPTION. NUANCE MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR ANY THIRD PARTY EQUIPMENT. UNDER NO CIRCUMSTANCES SHALL NUANCE'S THIRD PARTY SUPPLIERS OF ANY COMPONENT OF THE NUANCE SOFTWARE, HOSTED SERVICES OR NUANCE EQUIPMENT BE RESPONSIBLE OR LIABLE TO COMPANY OR ITS AFFILIATES FOR ANY DAMAGES, DIRECT OR OTHERWISE, ARISING UNDER THIS AGREEMENT OR OTHERWISE ARISING FROM THE TRANSACTIONS CONTEMPLATED HEREIN. SUCH THIRD PARTY SUPPLIERS ARE THIRD PARTY BENEFICIARIES OF THE FOREGOING SENTENCE.

11.5. Company acknowledges its responsibility to regularly back-up data and to adequately test prior to deployment each production version of the Software in a configuration that reasonably simulates Company’s planned production environment. For Hosted Services, Nuance shall be under no obligation to maintain Data for Company beyond the data retention periods specified in the Documentation.

**12. LIMITATION OF LIABILITY.**

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

12.2. Nothing in this Agreement shall be taken to exclude or limit either Party’s liability (a) for fraud or fraudulent misrepresentation; (b) for gross negligence, intentional, willful, or criminal misconduct; (c) for death, personal injury or tangible property damage caused by its negligence; (d) for breach of confidentiality; or (e) to the extent that such exclusion or limitation is not otherwise permitted by law. Nothing in this Agreement shall be taken to exclude or limit Company’s liability for a breach of any license grant described in this Agreement, including any Schedule, or any misappropriation of Nuance’s intellectual property rights, provided, however, that if Company’s Software or Hosted Services usage exceeds its usage rights, as granted by Nuance, Company shall pay Nuance for all such excess usage based on the pricing in effect under the relevant Order at the time and reimburse any audit costs in accordance with Section 6.7 (Audit) hereunder, and the Parties agree that the foregoing shall be Nuance’s sole and exclusive remedy with respect to such excess use (as outlined in Section 6.7 (Audit)) by Company of the Software or Hosted Services under this Agreement.

12.3. Subject to the foregoing provisions of this Section, neither Party shall be liable for loss of profits or revenues, loss of anticipated savings, loss of customers, or loss of use of any software or data, nor for any special, consequential or indirect loss or damage, costs, expenses or other claims for consequential compensation, howsoever caused, which arise out of or in connection with this Agreement or the Services.

12.4 Except for either Party’s liability under the subsection 12.2 of this Section 12 (“**Limitation of Liability**”), which shall not be excluded or limited under this Agreement, the Parties, having assessed the risks, agree that each Party’s total liability shall not exceed the greater of (a) one million dollars or (b) the annual fees paid or to be paid under the Agreement. Notwithstanding the foregoing, the total aggregate liability of Nuance to Company with respect to claims made under Section 13 below is limited to two million dollars (\$2,000,000) and the existence of more than one claim shall not enlarge or extend the limit of two million dollars (\$2,000,000).

**13. INDEMNIFICATION.**

13.1. Nuance shall, at its own expense, defend or, at its option, settle, any action claim, or proceeding brought against Company or the County of Monterey, and its and their respective directors, officers, agents, employees, and successors in interest by a third party, to the extent it is based on a claim that the Nuance Software and/or Hosted Services, validly granted by Nuance in accordance with the

terms of this Agreement and paid for by Company prior to the termination or expiration of the Agreement, infringe(s) any patent, copyright or trademark, or other intellectual property or proprietary right, that are enforceable in the United States or misappropriates a trade secret of such third party. Nuance will indemnify and hold harmless Company from and against any damages, losses, costs, and expenses including, without limitation, attorneys' fees, experts' fees and court costs, that are attributable to such claim or action and are assessed against or incurred by Company in a final judgment. Nuance's obligation to indemnify shall survive the expiration or termination of this Agreement, provided however, that the event giving rise to the claim occurs during the Term of the Agreement.

13.2. Nuance shall have the foregoing obligations only if Company provides Nuance with (a) a prompt written request to undertake the defense in such claim or action, (b) sole control and authority over the defense and settlement thereof, and (c) all reasonably available information and assistance necessary to settle and/or defend any such claim or action. Nuance shall not enter into any stipulated judgment or settlement that purports to bind Company without Company's express written authorization, which shall not be unreasonably withheld or delayed; provided Nuance shall not be obligated to obtain Company's authorization to any such settlement if (a) the settlement is a full settlement of the claim and (b) does not require the admission of fault or liability by Company or impose any monetary obligation on Company. If the Nuance Software and/or Hosted Services becomes, or in the opinion of Nuance, is likely to become, the subject of an infringement claim or action, Nuance may, at its option, (a) procure, at no cost to Company, the right to continue using the Nuance Software and/or Hosted Services, (b) replace or modify the Nuance Software and/or Hosted Services to render it non-infringing, provided there is no material loss of functionality, or (c) if, in Nuance's reasonable opinion, neither (a) nor (b) above are commercially feasible, terminate Company's right to use such Nuance Software and/or Hosted Services and (i) with respect to perpetual Nuance Software licenses, refunding the license fees Company paid for such Nuance Software, depreciated on a straight-line sixty (60) month basis from the delivery date, and (ii) with respect to Hosted Services, or term licenses or maintenance and support fees for Nuance Software, refund any prepaid and unused fees paid by the Company for the infringing Nuance Software and/or Hosted Services.

13.3. Nuance will have no obligation or liability under this Section for any claim or action to the extent resulting from any of the following: (a) any claim or action that would have arisen due to Company's business activities without use of the particular technology employed by the Nuance Software and/or Hosted Services, or (b) any claim or action resulting from any of the following: (i) modifications to the Nuance Software and/or Hosted Services by a party other than Nuance, (ii) the combination of the Nuance Software and/or Hosted Services with other products, processes, or materials not provided by Nuance if the Nuance Software and/or Hosted Services itself would not infringe, (iii) specifications or requirements supplied by Company that were used for the configuration of the Nuance Software and/or Hosted Services, or (iv) where Company continues allegedly infringing activities after being provided with modifications that would have avoided the alleged infringement and notice to implement the modifications to avoid infringement from Nuance. This Section states the sole obligation and exclusive liability of Nuance (express, implied, statutory or otherwise), and the sole remedy of Company, for any third-party claims or actions of infringement of any intellectual property or other proprietary right.

#### 14. MISCELLANEOUS.

14.1. **Assignment.** Neither Party shall assign or otherwise transfer its rights, obligations or remedies under this Agreement, in whole or in part, to a third party unless such assignment is approved in writing by the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign its rights and obligations hereunder to a third party in connection with (i) a merger with, (ii) the sale of substantially all of its assets to, (iii) a consolidation with, or (iv) the sale or intercompany assignment of a substantial part or all of its business utilizing this Agreement, provided (a) the assigning Party provides the other Party with prompt written notice of such sale, merger or consolidation, and (b) the assignee agrees to be bound by all terms and conditions set forth by this Agreement. Any such assignment by Company shall not increase the scope of any license or Service without the prior written consent of Nuance.

14.2. **Force Majeure.** Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, acts of God, governmental acts or orders or restrictions, acts of terrorism, war, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party and not due to its fault or negligence. For purposes of this Agreement, the "Coronavirus" (also referred to as COVID-19) does not constitute a force majeure event as contemplated by this Section. This Agreement is being affirmed by the Parties after the onset of the Coronavirus outbreak and event, and Nuance has entered into its commitments with knowledge of the impacts and potential impacts of this event and has agreed to deliver the Nuance Products and Services in the manner and time, and for the price agreed to herein. Should a force majeure event arise, the Party impacted by same shall make commercially reasonable efforts to notify the other Party.

14.3. **Notices.** All notices hereunder shall be sent by the notifying Party, in writing, to the other Party (Attention: General Counsel) at its address set forth above (or such other address as it may communicate to the notifying Party in writing). Notice shall be deemed delivered and effective (i) when delivered personally, (ii) five (5) days after posting when sent by certified United States mail (return receipt requested), or (iii) one (1) day after posting when sent by reputable private overnight courier (e.g., DHL, Federal Express, etc.).

14.4. **Relationship between the Parties.** In all matters relating to this Agreement, Company and Nuance shall act as independent contractors. Except as may be otherwise expressly permitted hereunder, neither Party will represent that it has any authority to assume or create any obligation, expressed or implied, on behalf of the other Party, or to represent the other Party as agent, employee, or in any other capacity. Nuance shall at all times have the sole right and obligation to supervise, manage, contract, direct, procure, perform, or

cause to be performed all work to be performed by Nuance hereunder unless otherwise provided herein. Nuance shall, at all times, be responsible for the compliance of its third parties involved in the delivery of the Services in accordance with the terms and conditions of this Agreement. Nothing in this Agreement shall be construed to create any contractual relationship between Company and any such third parties, nor any obligation on the part of Company, to pay or to ensure the payment of any money due any such third party.

**14.5. Governing Law.** This Agreement shall be governed by the laws of the State of California, USA, without regard to choice of law rules, and each Party hereby submits to the jurisdiction of the federal and state courts located in the State of California and the applicable service of process. The official text of the Agreement and any Addendum or any notices given on accounts or statements required hereby shall be in English. In Canada, Province of Quebec for all contracts drafted in English, both Parties agree to write this document in English. Les Parties ont convenu de rédiger le présent document en langue anglaise.

**14.6. Injunctive Relief.** Each Party acknowledges that any use or disclosure of Confidential Information by a Receiving Party in breach of this Agreement or any violation of either Party's, its Affiliates' or their respective licensors' intellectual property rights may cause irreparable damage to the non-breaching Party, for which remedies other than injunctive relief may be inadequate, and the breaching Party agrees that it shall not object to the non-breaching Party seeking injunctive or other equitable relief to restrain the alleged breach or violation. The Parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.

**14.7. Partial Invalidity; Waiver.** If any provision of this Agreement or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event the Parties shall use reasonable efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any deviation by a Party from the terms and conditions required under applicable laws, rules and regulations shall not be considered a breach of this Agreement. Neither a failure of a Party to exercise any power or right given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the other Party at variance with the terms hereof, shall constitute a waiver of a Party's right to demand exact compliance with the terms of this Agreement.

**14.8. Publicity.** Omitted.

**14.9. Entire Agreement; Headings; Counterparts.** This Agreement, its Schedules, Exhibits, Amendments, and all Orders issued hereunder constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersede all prior agreements, arrangements and undertakings between the Parties. No addition to or modification of any provision of this Agreement shall be binding upon the Parties unless made by a written amendment signed by a duly authorized representative of each of the Parties. Company represents that only its Chief Executive Officer or his or her designee, with authorization by the County of Monterey Board of Supervisors, may enter into agreements on Company's behalf and that no other personnel may bind Company. In particular, no shrink-wrap, click-wrap, click-through, click-accept, online terms, privacy policies or website terms ("Additional Terms") provided with any products or software hereunder shall be binding on Company, even if use of such products and software requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms are specifically rejected and do not, and shall not, modify or form any part of this Agreement and shall be of no force or effect and shall be deemed rejected by Company in their entirety. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument.

**14.10. Order of Precedence.** In the event of a conflict between or among the provisions in this Agreement, the order of precedence shall be as follows: (i) the BAA, with respect to the privacy and security of PHI, (ii) these General Terms and Conditions, (iii) Schedules, (iv) Maintenance Service Terms, and (v) each Order (except any invoicing or delivery terms explicitly stated on an applicable Order as amending the specific terms of this Agreement for the purposes of that Order).

**14.11. No Third Party Beneficiaries.** Except as expressly stated otherwise in this Agreement, nothing in this Agreement is intended to create any rights in, or confer any benefits upon, any person or entity other than the Parties to this Agreement.

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

**14.13. Foreign Corrupt Practices Act.** Company shall comply with all applicable laws or regulations in all countries in which Company conducts business. The fact that in some countries certain laws prohibiting particular conduct are not enforced in practice or that violation is not subject to public criticism or censure, will not excuse noncompliance with those laws. Furthermore, Company confirms by way of signature of this Agreement that Company has knowledge and understanding of the Foreign Corrupt Practices Act of the United States of America ("FCPA") and shall comply with the FCPA at all times.

14.14. **HHS Audit Right.** Until the expiration of four (4) years after the furnishing of Services under this Agreement, Nuance shall make available, upon written request of the Secretary of the Department of Health and Human Services ("Secretary"), or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Nuance that are necessary to certify the nature and extent of the costs for which Company seeks reimbursement. Nuance further agrees that if Nuance carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after furnishing services pursuant to such subcontract, the related organization shall make available to the Secretary or the Comptroller General, as the case may be, or any of their duly authorized representatives, the subcontract, and such books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

14.15. **Discount Reporting Obligations.** Any discount or rebate, including a single discounted item or bundled discounts, received by Company hereunder is a "discount or other reduction in price," as such terms are defined under (i) the discount exception of the Medicare/Medicaid Anti Kickback Statute (42 U.S.C. § 1320a 7b(b)(3)(A)) ("Discount Exception") and (ii) the "safe harbor" regulations regarding discounts or other reductions in price set forth in 42 C.F.R. § 1001.952(h) ("Discount Safe Harbor"), on the products or services purchased by Company under the terms of this Agreement. Under the Discount Exception or Discount Safe Harbor, Company may have an obligation to accurately report the net cost actually paid by Company, under any state or federal program which provides cost- or charge-based reimbursement for the products or services covered by this Agreement, or as otherwise requested or required by any governmental agency.

14.16 **GPO.** Nuance and Company agree that this Agreement (inclusive of any Schedules and Orders) is not connected in any way to any General Purchasing Organization ("GPO"), and is not made part of or subject to the provisions of any GPO contract. No administrative fees (or similar fees) will be paid to any GPO as a result of the revenue hereunder.

## 15. INSURANCE

### 15.1 Evidence of Coverage:

Prior to commencement of this Agreement or at Company's written request, 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.

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

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 Company's Contracts/Purchasing Director.

15.2 Insurance Coverage Requirements: Without limiting Nuance's duty to indemnify, as the same is further or more particularly described in this Agreement, 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 limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

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

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).

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).

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 annual aggregate, to cover liability for 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, 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 two years following the expiration or earlier termination of this Agreement.

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

15.3 Other Requirements:

All insurance required by this Agreement shall be 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.

Each policy shall provide coverage for Nuance and additional insured as available by contract language and as required by written contract with respect to claims arising from each subcontractor, if any, performing work under this Agreement.

**Commercial general liability policy shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds** 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 Nuance'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) or equivalent carrier specific language. The required endorsement form for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99 or equivalent carrier specific language.

Prior to the execution of this Agreement by Company, Nuance shall file certificates of insurance with Company's Contracts/Purchasing Department, showing that Nuance has in effect the insurance required by this Agreement. 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 reduce the coverages detailed above. 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.

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 Company's written request, annual certificates to Company's Contracts/Purchasing Department. If the certificate is not received by the expiration date, Company shall notify Nuance and Nuance shall have ten (10) business days to send in the certificate from the date of Company's written notice, evidencing no lapse in coverage during the interim. Failure by Nuance to maintain such insurance is a default of this Agreement, which entitles Company to terminate the Agreement in accordance with Section 7.2.

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the date first set forth above.


<b>Company</b>	<b>Nuance Communications, Inc.</b>
By: _____	By: <u>Jeanne E Nauman</u> Jeanne E Nauman (Jun 10, 2021 14:10 CDT)
Name: _____	Name: Jeanne E Nauman
Title: _____	Title: VP, Healthcare Global Deal Optimization
Date: _____	Date: Jun 10, 2021

Reviewed and approved as to form.

  
Deputy County Counsel  
6/10/2021

HMA v.1mAY2019

Reviewed and approved as to fiscal terms

  
Property Tax Manager  
6/11/2021

**Exhibit A**

**HIPAA Business Associate Agreement**

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (“Agreement”), effective the date of last signature set forth below (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and Nuance Communications, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

WHEREAS, Covered Entity and Business Associate (or their direct or indirect subsidiaries or predecessors in interest) have entered into, or are entering into between each other one or more agreements, amendments, orders, or other ordering forms (each, a “Services Agreement”), under which Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”); and

WHEREAS, the Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“E PHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

NOW, THEREFORE, the Parties agree to incorporate and make a part of and thereby amend each Services Agreement under which Business Associate receives PHI from, or creates or receives PHI on behalf of Covered Entity while performing services for Covered Entity, the following additional terms and conditions, which terms and conditions shall govern the use and/or disclosure of such PHI received or create by Business Associate as a result of Services performed. References to the “Services Agreement” are understood to mean each Services Agreement as applicable.

**DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

**PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law , or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

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

de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is necessary to perform the Services for Covered Entity, or such use or disclosure of de-identified data is expressly permitted by the Services Agreement or is otherwise agreed to by Covered Entity in writing.

## **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

Responsibilities of Business Associate. Business Associate shall:

use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by 45 C.F.R. Part 164, subpart D within ten (10) days of Business Associate's discovery of such unauthorized use, disclosure or Breach. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use, disclosure, or Breach. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach and all other information required by 45 C.F.R. § 164.410(c), to the extent such information is available to Business Associate. The Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and other persons required by law to be notified. Business Associate shall reimburse the Covered Entity for its reasonable costs and expenses in providing notification to affected individuals, appropriate government agencies, and any other persons required by law to be notified (e.g., without limitation, the media or consumer reporting agencies), including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs,

attorney fees, and the costs of obtaining up to one (1) year of credit monitoring services and identity theft insurance for affected individuals whose PHI has or may have been compromised as a result of the Breach. The foregoing costs and expenses constitute Reasonable Indemnification Amounts, as defined in Section 5.7 of this Agreement (Indemnification), and shall be reimbursed in accordance with the terms therein.

use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule. Business Associate shall promptly notify Covered Entity of any such requests by the Secretary related to Covered Entity's compliance with the Privacy Rule;

document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

if all or any portion of the PHI is maintained in a Designated Record Set:

upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services;

subject to attorney-client and any other applicable legal privileges and if permitted by law, notify the Covered Entity within five (5) business days of the Business Associate's receipt of any request from a governmental agency or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall reasonably cooperate with the Covered



Entity in such challenge. Business Associate shall make itself, subject to attorney-client privilege and any other applicable legal privileges and if permitted by law, and any employees assisting in the performance of its obligations under this Agreement, reasonably available to the Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against the Covered Entity, based upon claimed violation of HIPAA or other laws relating to security and privacy in connection with the this Agreement and the Services Agreement;

maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security;

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity. Notwithstanding the foregoing, the retention of ownership in the PHI by Covered Entity will not result in Covered Entity having any rights in any Business Associate software and/or services; and

(n) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

report to the privacy officer of Covered Entity, in writing, any successful Security Incident involving EPHI of which Business Associate becomes aware within ten (10) days of Business Associate's discovery of such successful Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The Parties acknowledge and agree that this Section 3.2(c) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.

Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use; the current Notice of Privacy Practices can be retrieved online at: <https://www.natividad.com/about/quality-and-safety/privacy-practices/>;

notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

notify Business Associate of any changes in, or withdrawal of, the authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## **TERMS AND TERMINATION**

Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach, unless the non-breaching Party reasonably determines that cure is not possible or appropriate given the nature of the breach.

Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents, or require its subcontractors or agents to destroy any PHI in their possession. Business Associate shall certify in writing that all PHI has been returned or destroyed, and no copies retained, within thirty (30) days of Covered Entity's request. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents and an explanation of the condition that makes return or destruction infeasible. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

## **MISCELLANEOUS**

Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Sections 2.1 and 3 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA or HITECH Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities,

the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. No amendment shall be effective unless in writing and signed by duly authorized representatives of both Parties. Either Party may terminate this Agreement upon thirty (30) days' written notice in the event that the Parties fail to enter into an amendment that each Party deems sufficient to comply with such laws and regulations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Nuance Communications, Inc.

Attn.: Healthcare Legal

One Wayside Road

Burlington, MA 01803

If to Covered Entity, to:

Natividad Medical Center

Attn: Contracts Division

1441 Constitution Blvd.

Salinas, CA 93906

Fax: 831-757-2592

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows the Parties to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

Indemnification. Business Associate shall indemnify, reimburse, and hold harmless the Covered Entity its officers, agents, and employees for all Reasonable Indemnification Amounts (as defined in this paragraph) to the extent resulting from (i) the negligence, act, or omission of the Business Associate and/or its agents, members, employees, or subcontractors that results in, or causes in whole or in part, a Breach; or (ii) a violation of this Agreement, HIPAA, or the CMIA by Business Associate and/or its agents, members, employees, or subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the Covered Entity. "Reasonable Indemnification Amounts" means: fines or settlement amounts owed to a state or federal government agency; the cost of any notifications to individuals, government agencies, or other persons required by law to be notified; credit monitoring for affected individuals; damages or settlement amounts payable to affected individuals; and reasonable attorneys' fees paid by Covered

Entity. Notwithstanding the foregoing or any contrary provisions set forth in any Underlying Agreement, in no event shall Business Associate's obligations for Reasonable Indemnification Amounts exceed an aggregate amount of five million dollars (\$5,000,000.00).

Severability. If a court of competent jurisdiction finds any term of this Agreement invalid, illegal, or unenforceable, that term shall be curtailed, limited, or deleted, but only to the extent necessary to remove the invalidity, illegality, or unenforceability, and without in any way affecting or impairing the remaining terms.

Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA and applicable State laws.

5.10 Entirety. The terms and conditions of this Agreement supersede and replace, any prior business associate agreements and any existing terms and conditions between the Parties (including any such terms and conditions in any Services Agreement) pertaining to the privacy and security of PHI, except to the extent that any terms in a Services Agreement are more stringent than a term in this Agreement with regard to privacy and/or security. This Agreement is made a part of and subject to the terms of each Services Agreement. In the event of any conflict between this Agreement and a Services Agreement, this Agreement shall control with respect to such conflict.

5.11 Relationship of Parties. Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this Agreement. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this Agreement.

5.12 Offshore Locations. Covered Entity data will be stored in data centers that are located in the United States of America ("U.S."). Notwithstanding the foregoing, Covered Entity acknowledges that Business Associate has operations as well as support and product improvement teams located outside of the U.S. (collectively, the "Offshore Locations") and that such resources may require access and use of the Covered Entity data for purposes of providing, monitoring, support and maintenance, and further development of the products. All access by Business Associate that is outside the U.S. shall be performed by Business Associate employees, agents and subcontractors under Business Associate's control ("Business Associate Personnel"). Business Associate will ensure that the permitted uses conducted from an Offshore Location by Business Associate Personnel, if any, will only be conducted in accordance with the terms of the Services Agreement and this Agreement. Business Associate is responsible for any acts or omissions of Business Associate Personnel in violation of this Agreement, the Services Agreement, HIPAA, or other applicable law.

5.13 Assistance in Litigation or Administrative Proceedings. Each Party shall make itself, subject to attorney-client privilege and any other applicable legal privileges and if permitted by law, and any employees assisting the other Party in the performance of its obligations under this Agreement reasonably available to the other Party to testify in the event of litigation or administrative proceedings against the other Party based upon claimed violation of HIPAA or other applicable laws relating to security and privacy in connection with this Agreement and the Services Agreement, except where the other Party or its employee is a named adverse party.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**NUANCE COMMUNICATIONS, INC.**

**COUNTY OF MONTEREY, ON BEHALF  
OF NATIVIDAD MEDICAL CENTER**

By: *Jeanne E Nauman*  
Jeanne E Nauman (Jun 10, 2021 14:10 CDT)

By: \_\_\_\_\_

Print Name: Jeanne E Nauman

Print Name: \_\_\_\_\_

Print Title: VP, Healthcare Global Deal Optimization

Print Title: \_\_\_\_\_

Date: Jun 10, 2021

Date: \_\_\_\_\_

**Exhibit B**

**Schedules**

**Schedule for  
Choice for Clinical Documentation – Encounter Based Model**

The terms of this Schedule for Choice for Clinical Documentation – Encounter Based Model (“Schedule”) apply to the Applicable Software Suite (defined below) specified in an Order as licensed on a Choice basis with no encounters-based annual adjustment, and to any additional licenses for User-Based Products and Services identified in the same Order. This Schedule forms part of the Healthcare Master Agreement between Nuance and Company (the “Agreement”) and becomes binding when Company executes an applicable Order. In the event of a conflict between the General Terms and Conditions of the Agreement and the terms of this Schedule, the General Terms and Conditions of the Agreement shall prevail. All capitalized terms not otherwise defined in this Schedule shall have the meanings ascribed to them by the Agreement.

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

1.1. **“Applicable Software Suite”** means Nuance’s proprietary Choice for Clinical Documentation software and services offering, which is a customized bundled suite of Nuance Software and Hosted Services consisting of the components indicated on the Order. The Applicable Software Suite also includes Hosted NMS as described in Section 2.5. The Applicable Software Suite does not include transcription labor services that may be purchased separately for use in conjunction with Nuance’s eScription platforms.

1.2. **“Application”** means a software application or hosted service developed and made available to Company by a third-party vendor that includes a proprietary interface or access method that enables the Application to access and utilize a particular Embedded Hosted Service to the extent integrated by the third party vendor. The Application for Dragon Medical embedded in MEDITECH Expanse is the MEDITECH Expanse EHR application (including Web Ambulatory, Web Acute, and Web ED) developed by Medical Information Technology, Inc. dba MEDITECH. The Application for Dragon Medical embedded in athenaClinicals EMR is the athenaClinicals application for athenaNet developed by athenahealth, Inc. The Applications for Dragon Medical embedded in Epic Haiku and/or Canto, are the Epic Haiku and Canto applications, respectively, developed by Epic Systems Corporation. The Applications for Dragon Medical embedded in Epic Rover and Dragon Medical embedded in Epic Cadence are the Epic Rover and Epic Cadence applications, respectively, developed by Epic Systems Corporation.

1.3. **“Authorized User”** means a Clinician working on behalf of Company as an employee, independent contractor or medical staff member with admitting privileges. “Clinician” means a person qualified in the clinical practice of healthcare who is eligible for a National Provider Identifier (NPI), which enables eligibility to bill to Medicare/Medicaid. Authorized User shall also include any employee of Company who is performing transcription services for the benefit of the Company.

1.4. **“Client Software”** means the Nuance Software, if any, provided to Company by Nuance for use in accessing a Hosted Service. Client Software also means the such components (provided to Company for use in its access to a Hosted Service), of the Nuance Software included as part of the Applicable Software Suite, if any.

1.5. **“Embedded Hosted Services”** means any of the following Hosted Services made available via integration within an Application: Dragon Medical embedded in MEDITECH Expanse, Dragon Medical embedded in athenaClinicals EMR, Dragon Medical embedded in Epic Haiku and/or Canto, Dragon Medical embedded in Epic Rover, Dragon Medical embedded in Epic Cadence. Embedded Hosted Services do not include the applicable third-party Application which Company will need to obtain separately from a source other than Nuance. Dragon Medical embedded in Epic Haiku includes optional Virtual Assistant functionality that requires separate activation for

an additional fee and is included in the license for Dragon Medical embedded in Epic Haiku granted under this Schedule only if Virtual Assistant for Epic Haiku is identified in an Order.

1.6. **“Hosted Services”** has the meaning set forth in the General Terms and Conditions, including but not limited to the following Hosted Services: Dragon Medical One, PowerMic Mobile, Dragon Medical eScripton (any platform), PowerPack for Dragon Medical One and any of the Embedded Hosted Services.

1.7. **“Hosted Solution”** means the collective offering of the Hosted Services and the associated Client Software (if any). Hosted Solutions do not include labor-based transcription services.

1.8. **“Initial Order Term”** means the period of time beginning on the Order Effective Date and continuing for the duration of the Order Term specified in the applicable Order (which may be designated in the Order as the Order Term, Service Term or by other indication of duration), but which shall not exceed the end date of the Agreement.

1.9. **“Named Location”** means each healthcare facility delivering healthcare services listed on the applicable Order as of the Order Effective Date (including healthcare facilities added as Named Locations by a subsequent Order or Order amendment) that is wholly owned or controlled by Company, excluding Outpatient Locations. 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.

1.10. **“Nuance Software”** has the meaning set forth in the General Terms and Conditions and includes any of the following software products specified in an Order: Dragon Medical Network Edition (DMNE) and Dragon Medical PowerPack for DMNE. Unless priced separately or otherwise specified in the Order, any Nuance Software listed on the Order is a part of the Applicable Software Suite.

1.11. **“Order Effective Date”** means the date the last Party signed or otherwise validly accepted the Order, unless otherwise specified in the Order.

1.12. **“Order Term”** means collectively, the Initial Order Term and, if applicable, the Renewal Term(s) set forth in Section 8.1 below. Order Term is the period of time that Company commits to paying for the Applicable Software Suite and the User-based Products or Services, as applicable.

1.13. **“Outpatient Location”** means a physician’s office, ambulatory clinic, outpatient center, surgical facility, and any other non-acute care facility of Company delivering medical treatment on an outpatient basis that is wholly owned or controlled by Company. For purposes of this definition, “control” means (i) the power to elect a majority of the directors of a corporation or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a healthcare facility.

1.14. **“User-based Products and Services”** means Nuance Software and Hosted Services licensed on a per-user basis as indicated in the applicable Order.

## 2. GRANT OF RIGHTS.

2.1. **Grant of Rights to the Applicable Software Suite.** Subject to the restrictions in Section 2.3, the additional Product Specific Terms in Section 3 and the other terms and conditions of the Agreement (including this Schedule), Nuance hereby grants Company, and Company accepts, a limited, revocable (solely in accordance with this Agreement) non-exclusive, non-transferable (except as set forth Section 14.1 of the Agreement) and non-sublicensable license right, solely during the Order Term, to allow its Authorized Users at the Named Locations and Outpatient Locations to access and use the Applicable Software Suite, to access and use the Hosted Services remotely via the Internet, and to use the Client Software for the sole and limited purpose of accessing the applicable Hosted Services, provided all such use and access is in a manner commensurate with the intended use of the Applicable Software Suite (as prescribed by the Agreement and the applicable Documentation) and solely for the internal business purposes of such Named Locations and Outpatient Locations.

2.2. **Grant of Rights to User-Based Products and Services.** Subject to the restrictions in Section 2.3 and the other terms and conditions of the Agreement (including this Schedule), if the Order for the Applicable Software Suite also includes User-Based Products and Services licenses then for each such user license for a particular User-based Product or Service indicated in the Order, Nuance hereby grants Company, and Company accepts, a limited, revocable (solely in accordance with this Agreement), non-exclusive, non-transferable (except as set forth Section 14.1 of the Agreement) right, solely during the Order Term, to allow a single Authorized User at the Named Locations and/or Outpatient Locations to use that User-based Product or Service, provided such use is in a manner commensurate with the intended use of that User-based Product or Service (as prescribed by the Agreement and the applicable Documentation), and solely for the internal business purposes of such Named Locations and/or Outpatient Locations.

2.3. **Restrictions.** The Applicable Software Suite may only be used for purposes of clinical documentation, and not for generating imaging reports. Company shall not allow any Authorized User to use the Applicable Software Suite or any User-based Products or Services (i) for the Authorized User’s own personal use; or (ii) for the benefit of any third party healthcare facility (other than for the benefit of Unaffiliated Entities if authorized in connection with Company’s purchase of Multisite Rights as described in Section 3.5). Company shall not allow anyone other than the Authorized Users to use the Applicable Software Suite, or any components thereof and shall not allow anyone to interfere with or disrupt the integrity or performance of the Hosted Services.

2.4. **Client Software.** Company may reproduce and install copies of such Client Software on as many supported personal computing devices of a type specified in the accompanying Documentation as is reasonably necessary to exercise its license rights under 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 Company 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. From time to time Nuance may provide Company with Updates and Upgrades to the Client Software. Company will need to implement and deploy such Updates and Upgrades (as defined in the Agreement) to Authorized Users within twelve (12) months from Nuance’s release date. Nuance will support all versions of the Client Software (with ‘version’ defined as a release with an increment of 0.1 or higher) for a minimum of 12 months as follows: Nuance will support the current version and the immediately preceding version of the Client Software; in addition, at any point in time Nuance will also support any version with a general release date within the preceding 12 months.

2.5. **Hosted NMS.** Use of the Nuance Software and Hosted Services licensed hereunder requires Company to use Hosted NMS which is included in Company’s purchase of the Applicable Software Suite. Hosted NMS is a cloud version of Nuance’s proprietary Nuance Management Server software (“NMS”). Hosted NMS provides administrative functionality that is necessary to support Company’s use of the other components of the Applicable Software Suite. If Company has a pre-existing on-premise server installation of NMS, Company agrees to transition to use of Hosted NMS.

3. **PRODUCT SPECIFIC TERMS.**

3.1. **Dragon Medical One License Required.** PowerMic Mobile and PowerPack for Dragon Medical One may only be used in conjunction with a valid subscription of Dragon Medical One (licensed separately). PowerPack for DMNE may only be used in conjunction with a valid license of Dragon Medical Network Edition (licensed separately).

3.2. **PowerPack.** If the Order specifies that the Applicable Software Suite includes PowerPack for DMNE or PowerPack for Dragon Medical One, then Company’s rights under Section 2 shall include allowing up to two (2) Company employees, agents, or contractors to use the PowerPack Administrator licenses to manage the user options and perform maintenance tasks on PowerPack for DMNE or on PowerPack for Dragon Medical One, as the case may be. For the avoidance of doubt, the PowerPack Administrator licenses cannot be used for clinical documentation.

3.3. **Dragon Medical Advisor.** Reserved.

3.4. **Embedded Hosted Services.** Company is responsible for maintaining a valid license to use the Application associated with each Embedded Hosted Service indicated on an Order for the duration of the Order Term. Nuance does not sell, license or support any of the Applications that provide access to the Embedded Hosted Services. Company shall ensure that Authorized Users access and use the Embedded Hosted Service(s) via the Application(s) operating in a personal computing environment designated as a supported platform in the Application’s documentation. Company shall set a unique series of letters and digits (a global unique identifier or ‘GUID’) provided by Nuance in the Application to activate Authorized Users before connection to the Embedded Hosted Service(s) is accepted. Use of the Virtual Assistant functionality associated with Dragon Medical embedded in Epic Haiku requires a separate license GUID for activation. Nuance reserves the right to deny connection attempts to the Embedded Hosted Service(s) if Company does not set the correct reporting identifiers.

3.5. **Multisite Rights.**

3.5.1. **Grant of Rights.** If the Order specifies that the license for the Applicable Software Suite or any Dragon Medical One user-based license includes a Multisite Rights license, then Company’s rights under Section 2 further include allowing the number of Authorized Users for whom Multisite Rights licenses are indicated in the Order to use Dragon Medical One for the internal business purposes of an Authorized User’s clinical practice at an Unaffiliated Entity (such use rights hereinafter referred to as “Multisite Rights”). “Unaffiliated Entity” means a healthcare facility identified in the Unaffiliated Entity Exhibit (defined below) at which an Authorized User maintains a clinical practice that is not owned or controlled by Company. For purposes of this definition, “control” means (i) the power to elect a majority of the directors of a corporation or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a health care facility. Company is required to have and maintain in good standing a subscription license to Dragon Medical One for each Authorized User of a Multisite Rights license.

3.5.2 **Requirements.** Company shall deliver to Nuance a complete list of Unaffiliated Entities in the below format when placing its Order (“Unaffiliated Entity Exhibit”), and such Unaffiliated Entity Exhibit shall form part of this Schedule and the Order. Company shall immediately notify Nuance upon any changes to such Unaffiliated Entity Exhibit. An Authorized User’s failure to pay Company any amount charged by Company for the Multisite Right(s) shall not excuse Company’s payment obligations for the Multisite Right(s).

**Appendix A – Unaffiliated Entity Exhibit**

Name	Address(es)



#### 4. NUANCE RESPONSIBILITIES.

4.1. **Hosted Services.** Subject to the terms and conditions of the Agreement, Nuance agrees to host, operate and maintain the equipment and software comprising its Hosted Services (directly or via third party service providers) and to allow Company to access and use the Hosted Services during the Order Term in accordance with the terms of the Agreement. Company acknowledges that Nuance cannot prevent the actions or inactions of third parties from impairing or disrupting Company's connections to the internet and/or Company's telecommunications networks which in turn may impair or disrupt Company's access to the Hosted Services. Accordingly, Nuance disclaims any and all responsibility for such events and liability related to such events.

4.2. **Exclusions.** Nuance shall not provide the Authorized Users' personal computers or equipment located at Company's site, unless otherwise specified in an Order. Nuance makes no warranties whatsoever and is not liable in any way in connection with any Third Party Software, third party hosted service or the performance or operation of any product or service provided by a third party with whom Company enters into contractual arrangements, regardless of whether such arrangements are required for Company to enjoy the full benefit of its rights to the Hosted Services under the Agreement.

4.3. **Support for Hosted Services (excluding the Embedded Hosted Service(s)).** During the applicable Order Term, Nuance will provide Company with maintenance and support services for the Hosted Services as described in this Section 4.3, except for the Embedded Hosted Service(s) which Nuance will support as described in Section 4.4.

4.3.1. **Error Correction.** Nuance shall promptly repair any errors which are reported either in writing or verbally. An error is defined as any operation of the Hosted Solution that is different than described in the Documentation. An error also includes a "bug" or "crash" in which the Hosted Solution or portions of the Hosted Solution cease to function.

4.3.2. **Company Contact; Question and Answer Support.** Company must identify an administrative contact, a technical contact and an executive contact. These individuals must communicate to Nuance about the services rendered hereunder and then will be responsible for communicating, as needed, with Company staff. Nuance will provide question and answer support only to the administrative contact, the technical contact, and the executive contact or their designee. Nuance is not responsible for providing support services directly to transcriptionists or to clinicians. Nuance does not designate a specific limit on the Question/Answer support that it provides, but rather assumes that the existing staff will be adequately trained. However, if over a period of two consecutive weeks, a Company contact persistently calls Nuance for question/answer support, and such Company contact has not attended the appropriate Nuance training classes, then Company agrees to either send the contact(s) to Nuance University classes at Nuance's mutually agreed upon rates, or, alternatively, meet with Nuance to review the situation. For the purposes of this Section, the term "persistently" shall mean multiple telephone calls with questions every day.

4.3.3. **Service Hours.** Nuance shall provide service/support from 8:30 am to 5:00 pm, Monday through Friday in Company time zones, excluding the following holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day. Nuance shall provide seven days a week, 24-hour per day support for Emergency Events. An Emergency Event is defined as a problem that (a) prevents Clinicians from dictating reports; (b) prevents Authorized Users from accessing the Hosted Solution; (c) prevents multiple transcriptionists from transcribing or editing documents; (d) prevents the printing of documents or (e) prevents interface transactions (i.e., the transmission from or receipt of data by Company's computer systems).

4.3.4. **Third Party Supplied Software interoperability.** Third-party software residing on Company's work stations is not covered by this Schedule. Upgrades and new releases of all such third-party software are not provided or maintained by Nuance and must be obtained separately by Company. In a Microsoft environment, it is possible that programs provided by other vendors (e.g. an email program) may conflict with the Hosted Services. Nuance disclaims responsibility for any such conflicts.

4.3.5. **Version Support.** From time to time Nuance may provide Company with Updates and Upgrades to the Client Software. Company will need to implement and deploy such Updates and Upgrades (as defined in the Agreement) to Authorized Users within 12 (twelve) months from Nuance's release date. Nuance will support all versions of the Client Software (with 'version' defined as a release with an increment of 0.1 or higher) for a minimum of 12 (twelve) months as follows: Nuance will support the current version and the immediately preceding version of the Client Software; in addition, at any point in time Nuance will also support any version with a general release date within the preceding 12 (twelve) months.

4.4. **Support for the Embedded Hosted Service(s).** During the applicable Order Term, Nuance will provide Company with hosted service support for the Embedded Hosted Services indicated in an Order. Nuance will provide the support terms for the Embedded Hosted Service(s) upon Company's request. Company must install each new version of the Application that contains an Update or Upgrade to the Nuance client run-time components within six months of the date it is made available to Company by the third party vendor of the Application.

4.5. **Maintenance Services for the Nuance Software.** During the applicable Order Term, Nuance will provide Maintenance Services for the Nuance Software as part of the License Fees.

#### 5. COMPANY RESPONSIBILITIES.

5.1. **Implementation Schedule.** Company acknowledges and agrees that all implementation of all components of the Applicable Software Suite or any User-based Products or Services identified on the initial Order must be completed within twelve (12) months from the Order Effective Date; failure of Company to do so may result in additional Professional Services fees.

5.2. **Project Manager.** During installation and operation of any part of the Applicable Software Suite or User-based Products or Services that consists of a Hosted Solution, Company shall provide a qualified individual who will manage and monitor the installation and assist with any issues that may arise during routine operation of the Hosted Solution.

5.3. **Equipment and Internet Connectivity.** The communications and network interoperability requirements for Internet access to the Hosted Services are as described in the Documentation. Company shall provide, at its own expense, the telecommunications (including Internet connectivity), firewalls, and all equipment and operating system software necessary for Authorized Users to access and use the Hosted Solution, as recommended in the Documentation. Nuance shall have no responsibility for any costs incurred in connection with modifications or enhancements to Company's system necessary for implementing Company's interface with the Hosted Services or in connection with Company's use of the Hosted Services. Company acknowledges and agrees that the Hosted Services may use Company's wireless network to send and receive data, and that Company's mobile operator may bill Company for the airtime, data and/or usage fees. In no event is Nuance responsible for any of the fees billed by Company's mobile operator.

5.4. **Canadian Customer Consent.** The Hosted Services covered by this Schedule are provided from data centers in the United States except that the following Hosted Services are provided to Canadian customers from data centers in Canada: Dragon Medical One, PowerMic Mobile, eScripture One, and Dragon Medical embedded in third-party Applications, excluding Dragon Medical embedded in browser-based third-party Applications which is provided from United States-based data centers. Hosted Services covered by this Schedule that are provided from United States data centers are not available for sale, access or use by public health entities in Nova Scotia and British Columbia. If Company is located in Canada, by placing an Order for the Hosted Services covered under this Schedule: 1) Company hereby acknowledges that support for any Hosted Service may be provided from Nuance's United States and global support centers and consents to transfer of Company Data outside of Canada for support purposes, and 2) with respect to Orders for Hosted Services provided from United States data centers, Company hereby consents to the transfer, processing, use and storage of Company Data into and within the United States.

5.5. **Compliance.** Company is responsible for each Authorized User's and Unaffiliated Entity's compliance with the terms of the Agreement, including this Schedule, and guarantees each Authorized User's and Unaffiliated Entity's compliance with such terms. Company will be liable for any act or omission by an Authorized User or Unaffiliated Entity that, if performed or omitted by Company, would be a breach of the Agreement or this Schedule. Company shall promptly notify Nuance upon learning of any actual or suspected unauthorized possession or use of any Nuance Software or Hosted Solution supplied under this Schedule.

5.6. **Data Use and Cooperation.** Reserved.

6. **SERVICES.** Other than the Hosted Services Support and Maintenance Services that Nuance will provide as part of the License Fees as described in Section 4, Company is required to separately purchase additional Services for the Applicable Software Suite at the mutually agreed upon rates as set forth in the Order.

## 7. FEES.

### 7.1. Fees and Payments.

7.1.1. **License Fees.** Company shall pay license fees for use of the Applicable Software Suite and User-based Products and Services as follows (collectively, the "**License Fees**"): (i) Company will pay the monthly fee specified in the Order for the license rights granted herein to the Applicable Software Suite specified in the Order, which includes Nuance's delivery of the Professional Services specifically identified in the Order as being provided as part of the monthly fee for the Applicable Software Suite (for which no separate additional fee is indicated in the Order), and (ii) Company will separately pay License Fees indicated in the Order for the license rights granted herein to the User-based Products and Services indicated in the Order. Except as otherwise provided in this Agreement, all License Fees due under the Order are non-cancelable, provided, however, that the foregoing shall not limit any of Company's remedies or claims against Nuance under this Agreement or applicable law. Nuance will begin invoicing Company for the License Fees on the Order Effective Date and Company shall pay the License Fees in accordance with the payment schedule specified in the Order and the payment terms in the Agreement.

7.1.2. **Fees excluded from the License Fees.** License Fees do not include, and Company shall separately purchase and pay for the cost of Equipment, Nuance Transcription Services and any other Services or Software, other than the Services and Software specifically identified in the Order as being provided as part of the License Fees for the Applicable Software Suite or for User-based Products and Services. Fees for other Services, Software and Equipment will be mutually agreed upon in the Order and billed as Up-Front Fees as described in section 7.1.3. License Fees also do not include, and Company shall separately owe and pay Nuance any taxes, shipping costs, and/or travel expenses due in connection with the applicable Orders, and Nuance shall invoice and Company shall pay such costs in accordance with the Agreement. Fees not included in this Agreement or any of its counterparts may be added to this Agreement only by way of an amendment signed by both Parties.

7.1.3. **Upfront Fees.** "Upfront Fees" means the specific Professional Services, Program Management Services, Third Party Software and/or Third Party Equipment fees set forth on the Order (including, but not limited to, all taxes, shipping, freight, handling

and similar costs). Unless otherwise specified on the Order, Nuance shall invoice Company fifty percent (50%) of the Upfront Fees upon the Order Effective Date and fifty percent (50%) of the Upfront Fees sixty (60) calendar days after the Order Effective Date.

7.2. **Added Location Fees.** The licenses granted in this Schedule extend only to the Named Locations, the Outpatient Locations, and any Unaffiliated Entity listed on the Unaffiliated Entity Exhibit (as defined in Section 3.5.2) if Multisite Rights are purchased. Company shall notify Nuance within sixty (60) days of creating or acquiring a healthcare facility (an "Added Location"). Subject to the terms of this Schedule, Company may add an Added Location as a Named Location by entering into a new or amended Order for the Added Location for the additional License Fees mutually agreed in that Order. If the Added Location is already a Nuance customer for any of the Hosted Services, then Company and Nuance may mutually agree to add such Added Location as a Named Location in the foregoing manner, if appropriate, only after the initial term of the Added Location's agreement with Nuance expires or terminates.

7.3. **Annual Fee Adjustments.** Each consecutive 12-month period during the applicable Order Term beginning on the Order Effective Date constitutes a contract year. At the beginning of the second contract year and each contract year thereafter, Nuance will adjust the License Fees due for the current contract year, as described in Sections 7.1.1. and 7.2. and as specified in the applicable Order, to equal a three percent (3%) increase over the License Fees due for the prior contract year (i.e., to equal 103% of the License Fees due for the prior contract year, as previously adjusted by this Annual Fee Adjustments section, if applicable). However, if the then-current contract year's License Fees as stated in the Order are different from the License Fees stated in the Order for the prior contract year, then the License Fees for the current contract year will be increased instead by three percent (3%) of the current contract year's License Fees (i.e., to equal 103% of the License Fees due for the current contract year as stated in the Order). As reasonably requested by Company, the Parties will enter into an amendment to add authorized funds to this Agreement to account for the annual fee adjustment described in this Section.

## 8. **ORDER TERM AND TERMINATION.**

8.1. **Order Term.** An Order shall be effective for the Initial Order Term, and thereafter may subsequently renew for one-year periods (each a "Renewal Term") only in the event of mutual written agreement of the Parties by way of an Amendment to the Agreement, extending the Term of the Agreement to accommodate such Renewal Term. Company must give Nuance written notice of ninety (90) days prior to the expiration of the Initial Term or any Renewal Term of its intent to renew or terminate the Order. To the extent the Initial Order Term of an Order extends beyond the Term of the Agreement, the parties agree to extend the Term of the Agreement by way of an Amendment to the Agreement to accommodate such Initial Order Term.

8.2. **Effect of Termination.** Upon expiration of the Order(s) (which shall expire at the end of the Order Term) or termination of the Agreement by either Party, all rights granted to Company with respect to the Applicable Software Suite and any User-based Products or Services shall terminate and Company shall immediately cease using the Applicable Software Suite and any User-based Products or Services and return all copies of the same to Nuance. The rights and obligations under this Section shall survive expiration or termination of the Order and/or the Agreement.

9. **SERVICE LEVEL AGREEMENT.** The Service Level Agreement (SLA) for Nuance Hosted Services – Dragon Medical One is attached hereto as Attachment 1 and made a part hereof.

**Service Level Agreement (SLA) for Nuance Hosted Services – Dragon Medical One**

This SLA forms part of any Schedule for a Covered Hosted Service (defined below) which incorporates this SLA by reference and which in turn forms part of Company's Healthcare Master Agreement (the "Agreement") with Nuance.

**1. DEFINITIONS**

**"Base Time"** means the total number of minutes in a billing month beginning on the first day of such month and ending on the last day of such month. A billing month is by default a calendar month, unless explicitly stated otherwise in the applicable Schedule or Order.

**"Downtime"** means the time in minutes that Nuance declares a Covered Hosted Service to be unavailable due to a crash, material malfunction, or other failure, or a time period during which use of a Covered Hosted Service is materially and substantially restricted because it produces erroneous results. Downtime does not include Excluded Events.

**"Enhanced Uptime Commitment Products"** are defined as Dragon Medical One Hosted Services.

**"Excluded Events"** means the time in minutes that a Covered Hosted Service is either not performing or unavailable due to: (a) Internet or Company network downtime, (b) scheduled maintenance including software/network/hardware upgrades/releases, (c) Company activity that prevents Nuance's timely service delivery, (d) failure of a non-Nuance-supplied modality, information system, or networking component, (e) Company's failure to operate/maintain a Covered Hosted Service (or relevant Client Software) in accordance with its current service specifications, Documentation, and intended use, or if Company contributed to the performance issue, (f) factors outside Nuance's reasonable control (i.e., force majeure events, or network/device failure external to Nuance data center); (g) use of services/hardware/software not provided, specified or recommended by Nuance; (h) Company's failure to follow prior Nuance instructions regarding use of a Covered Hosted Service; (i) use of pre-release, beta or trial versions of a Covered Hosted Service or feature thereof; (j) a Company employee's, contractor's or vendor's unauthorized action or lack of action resulting in faulty input or attempts to perform operations that exceed prescribed service limits, or (k) suspension of Company's access to Covered Hosted Service by Nuance in accordance with the Agreement.

**"Incident(s)"** means (i) any single event, or (ii) a set of events, that result in Downtime.

**"Covered Hosted Service"** means the following Hosted Services as covered in the applicable Schedules:

Dragon Medical One

**"Product Downtime"** and **"Product Uptime"**, respectively, mean the Downtime and Uptime for the specific Covered Hosted Services Product.

**"Uptime"** is defined / calculated as  $100 * [1 - (\text{Downtime divided by (Base Time minus Excluded Events)})]$ .

**"Service Fee"** means the monthly fees under an Order for the applicable Covered Hosted Services.

**"SLA Credits"** are defined below in Section 3.

**2. UPTIME COMMITMENT**

2.1. **General.** Nuance will meet the Uptime Commitment set forth in the applicable table below for the Covered Hosted Services during each Base Time period less Excluded Events ("**Covered Hosted Service Uptime Commitment**"). If the Covered Hosted Service Uptime Commitment for a Covered Hosted Service is not met, Nuance will issue a credit to Company's account in accordance with Section 3 below ("**SLA Credit**").

2.2. **Uptime Commitment Table for Enhanced Uptime Commitment Products.**

The table below applies to Orders containing Enhanced Uptime Commitment Products, provided the Prerequisites in Section 2.2.1 below are met. If any of the Prerequisites are not met, for the billing month for which an SLA Credit is requested, this SLA will still apply, however the credit shall be calculated using the General Applicability Table in Section 2.3 below.

Enhanced Uptime Commitment	SLA Credit
99.9% - 100%	0%
98.5% to less than 99.9%	5%
Less than: 98.5%	10%

**2.2.1. Prerequisites for applicability of the above SLA Credit Table.**

The applicable Order must include the applicable Enhanced Uptime Commitment Product provided on a primary paid basis (not as an adjunct as part of another Hosted Services);

For Dragon Medical One Hosted Services, the locations covered under the applicable Order must all be using the Client Software version of at least DMO 5.0; and

If the Enhanced Uptime Commitment Product includes Client Software, then, as of the beginning of the applicable billing month under the applicable Order, either (i) Company must be on the then-current Client Software version, or (ii) less than 90 days must have elapsed since Nuance made such then-current Client Software version available to Company.

**2.3. Uptime Commitment Table for all Covered Hosted Services other than the Enhanced Uptime Commitment Products (“General Applicability Table”).** The table below applies to all Covered Hosted Services other than the Enhanced Uptime Commitment Products.

Uptime Commitment	SLA Credit
99.5% - 100%	0%
98.5% to less than 99.5%	5%
Less than: 98.5%	10%

**3. SLA CREDITS.**

**3.1. Calculation.** The SLA Credits shall be calculated based on the applicable monthly Service Fee on the applicable Order. SLA credits are calculated at the Order level (multiple Orders are treated separately). The applicable Service Fee shall be Company’s monthly Hosted Services Subscription Fee, or the regular recurring monthly fee which includes the applicable Covered Hosted Service.

**3.2. Combined Monthly Fees.** If multiple Covered Hosted Services provided under a single Order experience Downtime during an applicable billing month, where they are included as part of a single applicable Service Fee, only the single Covered Product Downtime yielding the largest monthly SLA Credit for that billing month, shall apply.

**3.3. Separate Monthly Fees Under a single Order.** If multiple Covered Hosted Services are covered under separate Service Fees under within a single Order, then the Downtime for each respective Covered Hosted Service will be treated and calculated as part of its own respective Service Fee, for purposes of the SLA Credit calculation.

**3.4. Process and Terms.**

**3.4.1.** Company must request an SLA Credit within ten (10) business days of conclusion of the applicable Incident by contacting Nuance Technical Support to open a service request. Nuance will evaluate all information reasonably available and make a good faith determination of whether SLA Credit is owed. Nuance will use commercially reasonable efforts to process SLA Credit claims within thirty (30) calendar days of receipt of the claim. If Nuance issues an SLA Credit, the Credit will appear on the second scheduled invoice following the Base Time period for which SLA Credit applies.

**3.4.2.** To be eligible for SLA Credit, in addition to the meeting the Prerequisites in Section 2.2 for Enhanced Uptime Commitment Products SLA credits above (if applicable), Company must be running the current or the most recent prior version of the HMA v.1mAY2019

Client Software (if any) for the Covered Hosted Service and must be in compliance with all terms and conditions of the Agreement including all payments due to Nuance. SLA Credits are Company's sole and exclusive remedy for Nuance's failure to meet an Uptime Commitment for a Covered Hosted Service. SLA Credits may not be transferred or applied to any other account. SLA Credits may not be applied to other unpaid balances or future purchases of Nuance products or service(s).

## PowerShare Schedule

This Schedule for PowerShare (“**Schedule**”) forms part of and is subject to the Nuance Healthcare Master Agreement (“**Agreement**”) between Company and Nuance and applies to the Hosted Services defined below and as specified in the attached or any subsequent Order for PowerShare Service (“**Applicable Order**”). In the event of a conflict between the Agreement and the terms of this Schedule, the terms of the Agreement shall prevail.

### 1. DEFINITIONS

- 1.1 “**Accelerator**” means a Nuance software tool that Company, its Affiliates, and Spokes may download to access and use the Hosted Services.
- 1.2 “**Annual Baseline Volume**” means the aggregate number of Uploaded Studies uploaded to Company’s Image Repository by Authorized Users during each Annual Period. “**Uploaded Studies**” include shared exams and images copied or otherwise uploaded to Company’s Image Repository by Authorized Users.
- 1.3 “**Annual Period**” means each successive one year period during the term of an Applicable Order commencing on the Go-Live Date as defined in Section 5.2.1 below.
- 1.4 “**Archiving Service**” is the long-term cloud storage of Clinical Images/Shared Studies.
- 1.5 “**Authorized User**” is as defined in the Agreement and includes those below in Section 2.1 of this Schedule.
- 1.6 “**Hosted Services**” means Nuance PowerShare service for medical image exchange including an Image Repository, Accelerator and related services subject to the terms of this Schedule and the Applicable Order.
- 1.7 “**Image Repository**” is the cloud storage location for Company’s Studies. The Image Repository retains a Study for a period of 45 days.
- 1.8 “**Required Consents**” means all consents, licenses or approvals that give Nuance the right and/or license to access, use, copy, distribute, grant access, adapt, display, and perform the Hosted Services with Company’s or a third party’s products, data, services and other materials without infringing on the rights of providers, licensors, or owners of such products, data, services or materials.
- 1.9 “**Spoke**” means an entity that Company authorizes to access and use its Image Repository to send or receive a Clinical Image/Shared Study. A Spoke must create its own Hosted Services account with Nuance subject to the terms of use for the account. A Study uploaded to the Image Repository by a Spoke will contribute to Company’s Annual Baseline Volume.
- 1.10 “**Study**” or “**Clinical Image/Shared Study**” means a medical study performed on a patient as defined in the Digital Imaging and Communications in Medicine (DICOM) Standard section PS3.3-2011. A Study may also be a non-DICOM image wrapped in a DICOM header. A Study consists of a collection of one or more series of medical images, presentation states, and/or structure reporting documents that are logically related for the purpose of diagnosing a patient. Each Study is associated with a single patient. A Study may include composite instances that are created by a single modality, multiple modalities or by multiple devices of the same modality. A Study will pertain to a single study instance Unique Identifier (“**UID**”) and “**Studies**” means one or more Study.

### 2. GRANT OF RIGHTS

- 2.1 **Hosted Services.** Subject to the terms and conditions of this Schedule, Nuance hereby grants Company a revocable (solely in accordance with this Agreement), non-exclusive, non-transferable (except as provided in Section 14.1 of the Agreement), limited right to allow its employees, contractors and Spokes (each such employee, contractor and Spoke, included in the definition of an Authorized User) to (i) access and use the Hosted Services during the Service Term provided that such access and use is in a manner commensurate with the intended use of the Hosted Services as set forth in the Documentation and (ii) download the Accelerator and applicable connectivity software for use solely with the Hosted Services. Company, on behalf of itself and its Authorized Users, acknowledges and agrees that under no circumstances shall Nuance’s Hosted Services be used as an Image Repository for the original version of a Study or any of the contents of a Study.
- 2.2 **Restrictions.** Company will not allow any Authorized User to access or use the Hosted Services for personal use or for the benefit of any unauthorized third party. Company shall not (i) allow anyone other than an Authorized User to access or use the Hosted Services, or any component thereof, or (ii) interfere with or disrupt the integrity or performance of the Hosted Services. Company shall not permit anyone to subject the Hosted Services or its infrastructure to security testing including penetration testing, network discovery, port and service identification, vulnerability scanning, password cracking, or remote access testing without the written approval of Nuance’s VP for Hosted Infrastructure Services.

### 3. NUANCE RESPONSIBILITIES

Nuance agrees to host the Image Repository in the United States and retain each Study for a period of 45 days. Communications and network interoperability requirements for the Hosted Services are described in the PowerShare Specifications which shall be provided to Company upon request. Hosted Services and PowerShare Specifications are subject to change at Nuance's discretion, but such changes will not result in a material reduction in the level of performance, or service availability during the Service Term.

### 4. COMPANY RESPONSIBILITIES

- 4.1 **Infrastructure and Services.** Company is responsible for all computer hardware, software and communications equipment required to access and use the Hosted Services including paying all ISP, telecommunications, etc. access charges incurred, and agrees to: (i) supply Nuance reasonable information, data, access to premises, management decisions, approvals and acceptances necessary to facilitate Nuance's obligations hereunder; (ii) provide Nuance secure, remote access to its networks and/or computing technology as necessary; and (iii) provide telecommunications including Internet connectivity, firewall, and all equipment and operating system software necessary for Authorized Users to access and use Hosted Services. Nuance has no responsibility for any modification/enhancement costs incurred to implement Company's or an Authorized User's interface or connection to the Hosted Services.
- 4.2 **Onsite Assistance.** If Company orders Nuance's on-site implementation and/or training services, Company agrees to provide a point of contact for such services and provide a safe and reasonable workspace to accommodate the performance of the services. Nuance may require Company's technical assistance and cooperation with its vendors in connection with the performance of its obligations. Company agrees to provide, at no charge to Nuance, such technical assistance and cooperation as Nuance may from time to time reasonably request during the Service Term.
- 4.3 **Required Consents.** Company and its Authorized Users, as appropriate, shall promptly obtain and supply Nuance all Required Consents reasonably necessary to provide the Hosted Services. Company, on behalf of itself and its Authorized Users grants Nuance a limited, non-exclusive, worldwide right and license to use, copy, distribute, grant access, adapt, display, and perform related services with its Studies so that Nuance may fully perform the Hosted Services for Company and its Authorized Users' benefit.
- 4.1 **Authorized Users.** Company represents it has the authority to compel each Authorized User to comply with the terms and conditions of this Schedule and guarantees each Authorized User's full and faithful compliance with the terms of the Schedule. Company will be liable for any act or omission by any Authorized User to the same extent as if Company itself had taken such action or made such omission.

### 5. PAYMENTS AND RELATED TERMS

- 5.1 **Invoices.** Professional Services fees for implementation and training services, if any, are subject to the terms of the Agreement shall be invoiced upon Company's execution of the Applicable Order. Any travel and out-of-pocket expenses are invoiced separately. Invoices for the Hosted Services subscription fees commence on the Go Live Date and are issued monthly in arrears. Any additional or conflicting Company purchase order terms and related forms shall have no effect. Notwithstanding the foregoing, the Parties acknowledge and agree that this Section 5.1 (Invoices) does not apply to the Professional Services fees set forth in Exhibit E (Order No. 1) and that any fees must be expressly set forth on the Applicable Order in order to be payable by Company under this Agreement.
- 5.2 **Payment.** Company agrees to pay all undisputed invoiced Fees and expenses in accordance with the terms of the Agreement. The following additional payment terms apply:
  - 5.2.1 **Service Commencement.** Hosted Services shall be accepted and Hosted Services Monthly Fees commence on the earlier of: (i) the date Company uses the Hosted Services in a live capacity; (ii) three months from the Effective Date of the Applicable or (iii) another date agreed upon in writing by the Parties ("Go-Live Date").
  - 5.2.2 **Annual True Up.** If Company does not exceed its Annual Baseline Volume of Studies by five percent (5.00%) during an Annual Period there is no additional charge for the excess Studies and no change in the Annual Baseline Volume for the subsequent Annual Period. If Company's (including its Authorized Users) actual number of Uploaded Studies during an Annual Period exceeds its Annual Baseline Volume by five percent (5.00%) or if Company indicates in writing its desire to increase the Annual Baseline Volume for the subsequent Annual Period (in each case, "Add-on Studies"), Company and Nuance agree to promptly sign and accept an amendment to this Agreement and Nuance Order for the revised Annual Baseline Volume and Monthly Fees ("Revised Order") and Nuance will add the Add-on Studies to the previous year's Annual Baseline Volume to establish a revised Annual Baseline Volume and Hosted Services Monthly Fees for the subsequent and succeeding Annual Periods. If Company does not sign and accept the Revised Order Nuance may restrict Company's usage of the Application Services to the preexisting Annual Baseline Volume during the subsequent and succeeding Annual Periods. If Company accrues Add-on Studies during the final year of the Hosted Services, Nuance will promptly calculate and invoice Company for the excess usage and Company agrees to pay the invoice in accordance with the terms of the Agreement following the Parties' execution of an amendment to this Agreement authorizing the payment.

### 6. ADDITIONAL WARRANTY

Nuance warrants that the Hosted Services shall be made available in substantial conformity with its Documentation. Company's sole remedy and Nuance's sole liability for any breach of this warranty shall be for Nuance to repair or replace any reported nonconformity in the Hosted Services, or, alternatively, to return the pro-rata fees paid for such nonconformity.

### 7. TERM AND TERMINATION

- 7.1 **Service Term.** The Service Term shall commence upon the Effective Date and shall remain in full force and effect for the period set forth in the Applicable Order ("Service Term"). The Service Term may renew for successive one (1) year periods (each a "Renewal Service Term"), only



in the event of mutual written agreement of the Parties by way of an Amendment to the Agreement, extending the Term of the Agreement to accommodate such Renewal Service Term must give Nuance written notice of ninety (90) days prior to the expiration of the Service Term or any Renewal Service Term of the Order.

- 7.2 **Termination.** Upon expiration or termination of the Applicable Order by either Party in accordance with the Agreement (“Termination Date”) all rights granted to Company under the Applicable Order shall terminate, and Company its Authorized Users shall immediately cease using the Hosted Services. In the event Company terminates the Applicable Order prior to the expiration of the Service Term for any reason, other than for cause or lack of government funding as described in Section 7.3 of the Agreement, Company agrees to pay Nuance a fee equal to the total amount of all unpaid Professional Service and Hosted Services Monthly Fees that otherwise would have come due over the remainder of the Service Term but for the early termination (“Early Termination Fee”). Nuance shall invoice Company, in full, for the Early Termination Fee on or about the Termination Date of the Applicable Order, and Company shall pay such invoice in accordance with the terms of the Agreement.
- 7.3 **Data Migration for Archiving Service.** For up to ninety (90) days from the Termination Date (“Migration Period”), if Company that has purchased Archiving Service will be entitled to receive a reasonable amount of Nuance support to enable Company to migrate its Clinical Images/Shared Studies from the Archiving Services to itself or another vendor at Nuance’s then current service rates. Except for such Migration Period support service, provided Nuance has complied with Section 7.4 (Effect of Termination) of the Agreement, Nuance shall have no further obligation or responsibility for Company’s Clinical Images/Shared Studies after the Termination Date.

## 8. MEDICAL CARE RESPONSIBILITY

Company and its Authorized Users have all responsibility to identify and correct any inaccuracies and errors in the Studies before using and/or relying on the content, results or other Hosted Services output. Company acknowledges Nuance does not provide medical practice advice. Company will consult with and rely exclusively on its own physicians or other medical direction to review and conduct necessary revisions and approval of any and all medical practice-related content, results or output provided by the Hosted Services. Nuance assumes no responsibility for any of the foregoing, and Company agrees to indemnify and hold Nuance harmless from and against any damages, claims or other liabilities for the wrongful death or personal injury of a third party directly or indirectly caused or arising out of (i) Company’s use or non-use of the Hosted Services, (ii) any content, results or output from the Hosted Services, (iii) all medical practice-related recommendations provided by Nuance, and (iv) Company’s failure to identify and correct any inaccuracies and errors in the content, results or output of the Hosted Services.

## 9. SUPPORT SERVICES

Nuance shall provide Support Services, as defined in this Section 9, to Company’s designated PowerShare administrator via telephone with Nuance’s help desk. Hosted Services for PowerShare are configured to handle most support issues on a remote basis. Support services are not intended for catastrophic failure conditions that are typically the result of hardware, telecommunications or third party equipment failure and Company acknowledges that Nuance is not obligated to provide onsite services under such conditions to support hardware or software not manufactured by Nuance. Nuance provides second and third level telephone support services, i.e. these services are provided to Company’s designated administrator who is responsible to take all first calls from Company’s Authorized Users. Nuance’s help desk is available 24x7x365 to report critical support issues and is available during normal business hours (8:00 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday excluding holidays) for all other support issues.

Critical issues: Production problems have occurred where one or more processes or programs have experienced abnormal termination and these problems must be resolved before Company can continue with normal business operations. Nuance will use commercially reasonable efforts to respond to critical issues within thirty (30) minutes on business days.

Serious issues: Production problems have occurred that (1) do not inhibit operations but impede its regular flow; or (2) have temporary solutions available while permanent solutions are found and implemented. Nuance will use commercially reasonable efforts to respond to serious issues within two (2) business hours on business days.

Moderate issues: Production problems have occurred where: (1) specific functions do not conform to Documentation; (2) specific transaction scenarios give invalid or unexpected results; or (3) configuration does not conform to the defined environment. Nuance will use commercially reasonable efforts to respond to moderate issues within six (6) business hours on business days.

Minor issues: Cosmetic production system problems. Nuance will use commercially reasonable efforts to respond to minor issues within two (2) business days.

10. **UPTIME AGREEMENT.** The PowerShare Schedule – Uptime Agreement is attached hereto as Attachment 1 and made a part hereof.

**POWERSHARE SCHEDULE -  
UPTIME AGREEMENT**

1. Commitment. Throughout the warranty period set forth in the Agreement, and during the Service Term of the Applicable Order for PowerShare pursuant to the Schedule for PowerShare to which this is attached, the PowerShare Hosted Service (the “Product”) will maintain an average minimum Uptime (as defined herein) of 99.8% as measured on an annual basis.
  
2. Uptime Calculation.
  - a. “Downtime” means the number of hours during the period being calculated when any of the following conditions exist or remain uncured: A crash, material malfunction, failure of a Product (material or otherwise), and any time period during which use of a Product is restricted to the point where it produces erroneous results or cannot be accessed or used. “Base Time” is defined for the Product as the total number of hours for the period being calculated (24 hours per day, seven days per week). “Uptime” is the Base Time less Downtime, the product of which is divided by Base Time and taken as a percentage.
  
  - b. Downtime starts when a request for service is logged with the Nuance call center (either by phone or other communication to the Nuance call center), and ends when Downtime has been remedied and ended. Measurement of Downtime will be calculated on an annual basis and be tracked by Customer.
  
  - c. Notwithstanding Section 2.a, the following shall not be considered “Downtime”: Scheduled downtime for preventative maintenance downtime related to any action by the Customer that would prevent Nuance from servicing the Product in a timely manner; hospital network downtime; downtime related to failure of a non-Nuance supplied modality, information system, or networking component; time agreed upon by the parties to conduct regularly-scheduled Program/hardware upgrades and releases that are not provided in order to correct Downtime; force majeure events; and failure of Customer to maintain and operate the Product in accordance with the Documentation.
  
3. Credits for Excessive Downtime: Provided the procedures set forth in Section 4 below are met, Customer shall receive the applicable credit (“SLA Credits”) for excessive Downtime. Credits shall be granted pursuant to the following credit schedule:

Uptime Percentage	Prior Year’s Aggregated Monthly Fee Credit
less than 99.8%	0%
less than 97%	1.2%
less than 96%	2.4%
less than 90%	3.6%

4. SLA Provisions
  - a. SLA Credits will only be applied in accordance with 4.c below upon written request which must be received within fifteen (15) days of the end of the applicable annual measurement period.
  
  - b. No entity shall be entitled to a SLA Credit to the extent Nuance determines Customer actions were a contributing factor to the alleged Downtime.
  
  - c. SLA Credits shall be applied to Customer’s Monthly Fees for the next succeeding year, prorated on a 12 month basis. For clarification purposes, no SLA Credits will be applied to (i) a previous term’s Fees (i.e., no refunds will be made), (ii) the Customer’s unpaid balance for, or future purchase of, any other Nuance product and/or

Service(s) and/or (iii) any Affiliates unpaid balance for, or future purchase of, any other Nuance products and/or service.

d. SLA Credits are not applied to taxes, surcharges and similar additional charges.

e. In no event will SLA Credits for the previous annual term exceed 3.6% of the total Annual Fees payable by the Customer to Nuance for Monthly Fees and shall not carry over to a subsequent year.

f. Customer shall not be entitled to any SLA Credit to the extent Customer is in default of its obligations under any Order.

g. SLA Credits provided for herein are Customer's exclusive remedy with respect to the uptime promises contained herein.

**Exhibit D**

**County of Monterey Travel Reimbursement Policy**



Nuance Power PDF  
Document

Exhibit E

Order No. 1

Exhibit E

Order No. 1

This Order is entered into the first of the month following the date signed (“Order Effective Date”) and is governed by the terms and conditions of the Healthcare Master Agreement, the Schedule for Choice for Clinical Documentation – Encounter Based Model, and the Schedule for PowerShare by and between Company and Nuance. Capitalized terms not otherwise defined in this Order shall have the meanings given them in the Agreement and the referenced Schedules

*The purpose of this order is to establish a new 60 month term for PowerShare, and Upgrade from DMNE to DMO*

Quote expires: September 1, 2021

Billing/Shipping Information

<b>Company Name:</b>	Natividad Medical Center
<b>Contact Name &amp; Title:</b>	Tim Fitzgerald
<b>Address:</b>	1441 Constitution Boulevard
<b>City:</b>	Salinas
<b>State:</b>	CA
<b>Zip:</b>	93906
<b>Phone and/or Email:</b>	fitzgeraldtr@natividad.com

<b>SUMMARY – PURCHASE ORDER AND INVOICE DESCRIPTION</b>
Powershare and Site License and Professional Services for Dragon Medical One

<b>POWERSHARE APPLICABLE SOFTWARE SUITE AND ASSOCIATED PROFESSIONAL SERVICES</b>	
<b>Pricing Model</b>	Fixed
<b>Billing Basis</b>	Monthly
<b>Order Term</b>	60 Months

PowerShare Monthly Program Subscription Fees

Committed Annual Baseline Volume	2,500 Annual Studies
Minimum Usage Fee	\$521/mo
Subscription Fee	\$0.00/mo
<b>Monthly PowerShare Fee</b>	<b>\$521.00</b>
<b>Annual PowerShare Fee</b>	<b>\$6,252.00</b>

DESCRIPTION	QTY	SKU	Fee
PowerShare IS – ELITE Package – In and Out-bound sharing of Images & Report & HUB integration to PS360 <b>***Do not ship- already in production</b>	208	PSRSH-ELTE-TRM	Included in Fees Above

<b>DMO APPLICABLE SOFTWARE SUITE AND ASSOCIATED PROFESSIONAL SERVICES</b>
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**Pricing** Fixed  
**Billing** Monthly  
**Order** 60 Months

**DMO Monthly Program Subscription Fees**

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Annual DMO Fee	\$103,911.60	\$103,911.60	\$103,911.60	\$103,911.60	\$103,911.60	\$519,558.0
Monthly DMO Fee	\$8,659.30	\$8,659.30	\$8,659.30	\$8,659.30	\$8,659.30	

DESCRIPTION	QTY	SKU	Fee
Dragon Medical One , HS, Term, IP Admissions License	8,395	DMOIP-TERM	Included in Fees Above
Dragon Medical One , HS, Term, Emergency Visits License	53,968	DMOED-TERM	
Dragon Medical One , HS, Term, Outpatient Visits License	109,061	DMOOP-TERM	
Dragon Med One, Term, Site License - Fulfillment (new)	1	DMO-N-STE-FUL	

PROFESSIONAL SERVICES & TRAINING SERVICES FOR DMO IMPLEMENTATION		
Description	SKU	Total Upfront Fees
Professional Services to include Project Management, Technical Installation Services and Training/Consulting Services pursuant to Attachment 1 (Professional Services Statement of Work) attached to this Order.	PROSVC-BNDL	\$37,450.00

See Attachment 1 for Professional Services Statement of Work.

NAMED LOCATION INFORMATION				
Named Location	Street Address	City	State	Zip
Natividad Medical Center	1441 Constitution Blvd	Salinas	CA	93906

**OTHER TERMS**

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- ▮ Fees above are subject to the Annual Fee Adjustments as outlined in the Schedule
- ▮ Nuance shall not incur any, nor shall Company be responsible for, any travel or other reimbursable expenses in the course of its performance under this Order
- ▮ Fees for Maintenance Services as set forth in Exhibit C (Healthcare Hardware and Software Maintenance Options) are included in the fees set forth herein. Company and Nuance mutually agree that the following existing Maintenance Service orders are affected by this Order. If any of the maintenance service orders are Nuance Maintenance Services orders, then such orders will not be renewed upon the expiration of the then-current term. Company is responsible for all contractual obligations and agreements between Company and any third parties. Nuance will work with its business partners where Nuance and business partners have contracts related to Company. Company represents and warrants that it has the authority to bind its Affiliates, if applicable, specifically identified herein, to the terms set forth herein and to effectuate the changes to the affected orders as described herein.

Description of Previous Arrangement	Nuance Identifier
DMNE Maintenance and Service	11197217

**IN WITNESS WHEREOF:** The undersigned have executed this Order as of the date signed by the last party.

Nuance Communications, Inc.

Signature: *Jeanne E Nauman*  
Jeanne E Nauman (Jun 10, 2021 14:10 CDT)

Company

Signature: \_\_\_\_\_

Name: Jeanne E Nauman

Name: \_\_\_\_\_

Title: VP, Healthcare Global Deal Optimization

Title: \_\_\_\_\_

Date: Jun 10, 2021

Date: \_\_\_\_\_

## ♦ HEALTHCARE PROFESSIONAL SERVICES

This Professional Services Statement of Work (this "Statement of Work") is effective as of Order Effective Date, is a part of and incorporated into the Agreement. Capitalized terms not defined in this SOW are as defined in the Agreement. In the event of any conflict between the body of the Agreement and this SOW, the terms of the body of the Agreement shall govern.

### ♦ Overview

#### Natividad Medical Center Expected Outcomes / Objectives

Nuance shall perform the Services, so as to:

- Enable EMR adoption/utilization by providing clinicians solutions organization-wide that fit within their workflow
- Provide flexible mobility options for clinicians to meet their workflow needs exactly where they are (office, hospital, academia location)
- Reduce Physician Burnout (Dragon Medical One)
- Reduce Transcription costs (Dragon Medical One)

#### Implement of Dragon Medical One (DMO)

#### DMNE to DMO Migration

#### DMNE product de-activation

For the avoidance of doubt, the Services to be provided by Nuance hereunder shall include any service that is inherent, necessary, or customary for the successful performance of the Services or delivery of the deliverables and implementation of the Nuance Products and Services described in the Order to which this SOW is attached. Within 45 days of Order Effective Date, Nuance and Natividad Medical Center will have created a mutually agreed upon project schedule that includes a timeline, dependencies, resource requirements, key milestones. The anticipated duration of the project is 60 days from commencement, following completion of the project schedule.

The total fees to be paid by Company to Nuance for the Services provided pursuant to this SOW shall be the total Upfront Fees specified for "Professional Services & Training Services For DMO Implementation" set forth in the Order to which this SOW is attached (the "Fixed Fee"). The Parties agree that this is a fixed fee arrangement in which Nuance, subject to the other terms and Company requirements in this SOW, will provide those Services identified in this SOW, in accordance with the requirements identified in this SOW and under the Agreement, for the Fixed Fee, regardless of the actual number of hours required to perform such Services.

#### Assumptions

Natividad and Nuance have mutually to determine the following, which shall be the basis of the above project schedule:

- EHR's in use: Meditech
- Total providers (clinicians) for Named Locations covered in contract: 131
- New Customer for: Dragon Medical One
- Existing Customer for: Dragon Medical Network Edition; eScription One/Nuance Transcription Services

Any modifications to the determinations above shall be incorporated and considered in the adjustment of the project timeline.

#### General Nuance Provided Services



Nuance Professional Services (excluding Nuance CSO Services) includes standard activities listed below (unless noted differently in the specific product sections). Other specific activities are described individually under each specific product section.

- ☒ Establishment of environment
  - ☒ Project Management
  - ☒ Scope Management with Customer Project Manager (PM)
  - ☒ Regular project status calls, and when there are issues, foreseeable issues, or upcoming milestones, additional calls as appropriate, with Customer PM / Team
  - ☒ Issue list management with Customer PM
    - Project schedule development and maintenance with Customer PM
    - Project Charter development and maintenance with Customer PM, if applicable
- ☒ Best Practices consulting
  - ☒ Training scheduling consulting
  - ☒ Testing planning consulting, including UAT scripts
  - ☒ Testing support
  - ☒ HelpDesk Enablement
  - ☒ Go Live and post Go Live support

☒ Company Tasks:

General tasks to be provided by Natividad Medical Center includes the standard activities listed below. Nuance acknowledges and agrees that Company is not a service provider and will be relying on Nuance's expertise, experience, and performance. In the event Nuance requires input, data, specific actions, such as review or confirmation of materials, Nuance shall identify what is being requested from Nuance with reasonable advance notice:

- ☒ General Activities
  - ☒ Technical support in establishing the environment
  - ☒ Support for Nuance's Project Management
  - ☒ Scope Management with Nuance Project Manager (PM)
  - ☒ Regular project status calls with Nuance PM
  - ☒ Support for Nuance's Issue list management with Nuance PM
  - ☒ Project schedule development and maintenance with Nuance PM
- ☒ Support for Nuance's Project Charter development and maintenance with Nuance PM
- ☒ Training schedule development
- ☒ Testing plan development
- ☒ Testing
- ☒ Testing support
- ☒ Go Live and post Go Live support

## ☒ Training Activities

Training Activities to be provided by Natividad Medical Center for education includes:

- ☒ Identification of the attendees for each class / session
- ☒ Schedule training session resources as needed
- ☒ Drive full attendance for all training sessions
- ☒ Participation in training sessions as required
- ☒ Engage Physician Champions and other leadership as requested/needed for project requirements
- ☒ If the training Services outlined includes train-the-trainer session(s), ensure all trainers attending the sessions are Natividad Medical Center personnel.

## ☒ Technical Activities

Technical Activities to be provided by Natividad Medical Center for technical project elements are as follows:

- ☒ Responses to the Technical Assessment Ownership of the mutually agreed upon technical tasks
- ☒ Technical Services resources assigned and mutually agreed upon at time of project
- ☒ Participation in all necessary technical training
- ☒ Expert help with the Natividad Medical Center side of integration / interface tasks
- ☒ Installation and testing of identified hardware on Natividad Medical Center side

## • Nuance General Escalation Path

For problems and escalations, the general path is to start with the assigned Nuance Project Manager. Should the need arise to not use the PM, the following people should be the primary contacts:

<b>James Iaquinto</b>	+1-321-255-8552	James.Iaquinto@nuance.com	Regional VP, Account Management
<b>Toni McManus</b>	+1-321-412-7349	Toni.McManus@nuance.com	VP, Account Management

## ☒ Natividad Medical Center General Escalation Path / Initial Contacts

For problems and escalations, the general path is to start with the Natividad Medical Center Project Manager. Should the need arise to not use the PM, the following people should be the primary contacts:

<b>Tim Fitzgerald</b>	831-783-2716	fitzgeraldtr@natividad.com	IT (Initial Contact)
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## **DRAGON MEDICAL ONE (DMO)**

### ☒ Nuance Provided Services

Nuance Professional Services includes standard activities listed in the overview section and specific activities as described individually under the sections below.

### ☒ Training

In addition to the items listed in the General Nuance Provided Services section, Training services for DMO does include (as appropriate based on current adoption levels) the items below for up to 27 people unless noted differently:

- ☒ Train the Trainer, including DMNE to DMO conversion, training for up to 2 Trainers (up to four attendees per class)
- ☒ Gap Train the Trainer training for up to 2 Trainers with experience on previous versions of Dragon (four attendees per class)
- ☒ Gap Training for users with high adoption rates on previous versions of Dragon for up to 12 providers.
- ☒ Web based Foundational training with (up to 27 Providers) including complimentary live Question & Answer Session (on request).
  - eLearning for Dragon Medical One
- ☒ Group Instructor Led Training (ILT) for Providers. (up to four providers per class).
- ☒ One on One Instructor Led Training (ILT) for Providers.
- ☒ With the aid of customer Physician Champions, design and build optimized specialty-based provider workflow in Dragon Medical One for up to 1 department

☒ PowerMic training (embedded in the web foundational and ILT training)

☒ Technical Services

In addition to the items listed in the General Nuance Provided Services section, additional specific technical services for DMO does include:

- ☒ Technical Assessment
- ☒ Delivery of NMS (Admin) training
- ☒ Technical Services to assist with moving DMNE to DMO
- ☒ SSO Integration
- ☒ Citrix Integration
- ☒ PowerMic Integration
- ☒ Natividad Medical Center Tasks

Natividad Medical Center tasks includes standard activities listed in the overview section and specific activities as described individually below.

- ☒ Natividad Medical Center, with Nuance, will collaborate to jointly identify the Target Physician Group for the Named Locations utilizing input from Natividad Medical Center (key physicians, specific areas for improving clinical documentation, data from Natividad Medical Center's existing transcription environment, etc.).
- ☒ Natividad Medical Center will provide Nuance access to the Target Physician Group for training.
- ☒ Natividad Medical Center will appoint a Physician Champion. The Physician Champion will be actively engaged in planning and will assist in a leadership role with providers usage of Nuance solutions.
- ☒ Natividad Medical Center should comply with all minimum technical requirements provided by Nuance in advance for optimal performance.
- ☒ Nuance recommends that Natividad Medical Center adhere to Nuance best practice approach for Nuance solutions as it pertains to workflow recommendations and training approach for end users.
- ☒ Natividad Medical Center will establish goals and objectives in support of Nuance solutions and will communicate such objectives to clinicians creating clinical documentation related to the delivery of patient care.

☒ Natividad Medical Center Commitments

Natividad Medical Center tasks includes standard activities listed in the overview section and specific activities as described individually below.

Natividad Medical Center, with Nuance, will collaborate to schedule Surgeons for training during the time period Nuance trainer(s) are on-site.

Natividad Medical Center will provide Nuance access to the Surgeons for training and post training support during the time

the Nuance trainer(s) are on-site.

Natividad Medical Center should comply with all minimum technical requirements for optimal performance.

Natividad Medical Center will establish goals and objectives in support of Nuance solutions and will communicate such objectives to Surgeons creating clinical documentation.

## NATIVIDAD MEDICAL CENTER ROLES

This section is a listing of roles for multiple Nuance products. Please see your order for the products that you purchased that apply here. Inclusion of a product in this listing is not an indication of ownership of said product. The Parties acknowledge and agree that only the roles under DMO below apply to the project described herein. The roles below represent Nuance's best practice recommendations for Company resources and any responsibility described below shall not diminish or replace Nuance's obligations to provide the Services described in this SOW.

Role	Role Description	DMO
Executive Sponsor	Provide leadership and governance over the implementation, while also enabling resources, communicating priorities and defining success metrics. Protects the project from outside influences. Communicates how the project relates to overall vision, strategy, and mission.	✓
Steering Committee Member	Provide decisions upon project objectives, metrics, and expected outcomes. Oversees and approves change requests, project schedule, project scope and project closure. Build consensus and support across departments. Escalation Point. Recommend meeting once or twice per month depending on project length and scope.	✓
Physician Champion	Participate in Workflow discussions. Provide insight into how providers use the EHR in their clinical environment. Actively advocate for the project and support the team in integrating new changes. Work with others at each location to drive change and provide a consistent approach	✓
Project Manager	The project manager is responsible for facilitating a successful implementation on the customer side. Primary point of contact and escalation point throughout the product implementation. Responsible for all project management activities and communication while serving as an advocate for each product. Facilitates resource assignments, ensures participation of Company resources and on time completion of project tasks and deliverables.	✓
Clinical Application Specialists (Clinical Informatics)	Attend training session(s) to gain knowledge and understanding of NMC and Dragon Medical to support Dragon Medical, understand how it relates to their EHR, and build building workflows	✓
Trainer(s)	Participate in Administrator Training and/or Support Training, Train-the-Trainer, optimization sessions and workflow enhancements. Learn effective system and process training, as well as optimization tools and techniques to be prepared to deliver high quality standardized training, as needed.	✓

Role	Role Description	DMO
Nuance Management Console (NMC) Administrator	Attend training session(s) to gain knowledge and understanding of NMC and Dragon Medical. Setup initial provider profiles and assign licenses. Nuance recommends two NMC Administrators to ensure proper coverage for this ongoing role	✓
Integration/ Interface Administrator	The integration administrator is responsible for the development of the integration specification with the Nuance installation programmer. They know and understand the information system(s) to be integrated with the Nuance system(s). They facilitate integration testing in the required information system(s) vendor(s) to identify the integration requirements. Additionally, they are responsible for testing and administering the integration on an ongoing basis.	✓
Desktop Technical Support	Responsible for installing Dragon Medical on physical and virtual desktops. Participate in testing and hardware validation sessions as needed. Ensure provider workstations meet Dragon Medical requirements.	✓
Help Desk	Attend training to gain knowledge of how the product work, participate in issues resolution during any testing to get experience in troubleshooting the product and understand the use of the products in Company's environment.	✓

When more than one product is being implemented, similar roles can be combined for efficiency gains. Please discuss with your services team as part of the planning process. Other technical resources to be considered that may need to be engaged depending on Natividad Medical Center's environment, size and topology includes: Network Architect; Security Administrators; Security/Network Infrastructure Engineers; DBAs; Single-Sign-On Administrator; and Citrix Server Administrator.

### NUANCE COMMON ACRONYMS

ADT	Admission, Discharge, Transfer	EHR	Electronic Health Record	NPA	Nuance Performance Analytics
CAPD	Computer Assisted Physician Documentation	EMR	Electronic Medical Record	NTS	Nuance Transcription Services
CDE	Clinical Document Excellence	FTE	Full-Time Equivalent	ORM	Object-Relational Mapping
CDI	Clinical Documentation Improvement	HCC	Hierarchical Condition Categories	ORU	Observation Result
CDS	Clinical Documentation Specialist	ILT	Instructor Led Training	PMM	PowerMic Mobile
CE	Continuing Education	IMO	Intelligent Medical Objects	PM	Project Manager
CLU	Clinical Language Understanding	IVR	Interactive Voice Response	SIU	Scheduling Information Unsolicited
CSD	Clinical Service Desk	MDM	Medical Document Management	SOW	Statement of Work
DMA	Dragon Medical Advisor	MFN	Master File Notification	SSO	Single Sign On

DME	Dragon Medical Embedded	MLS	Medical Language Specialist	TAT	Turnaround Time
DMNE	Dragon Medical Network Edition	NLP	Natural Language Processing	UAT	User Acceptance Testing
DMO	Dragon Medical One	NMC	Nuance Management Console	VPN	Virtual Private Network
DRG	Diagnostic Related Grouping	NMS	Nuance Management Server		

## Nuance Customer Engagement

Nuance Healthcare provides a variety of channels for customers to engage with Nuance executives and other industry leaders on key issues and priorities, as well as avenues to provide product, support, and general feedback. The following programs are available to all Nuance Healthcare customers:

### **The Reference and Advocacy Connection (TRAC)**

The Reference and Advocacy Connection (TRAC) is a growing community of Nuance Healthcare customers who are dedicated to delivering compassionate care and superior patient outcomes. TRAC provides benefits and resources designed to educate and showcase our customers' expertise and successes. As a TRAC member, customers can:

- ¶ Gain visibility and recognition within the healthcare industry as a thought leader
- ¶ Build a network with peers, other industry leaders, and Nuance Healthcare experts
- ¶ Expand healthcare industry and product knowledge through educational opportunities, research, industry best practices, and training

TRAC is designed to reward our most valuable assets—our reference customers—by connecting them to other clients and prospects through a personalized reference program designed to make referencing a rewarding experience. For more information, please contact TRAC@nuance.com.

### **Net Promoter Score® Surveys**

Nuance shall provide Company with the opportunity to periodically participate in brief Net Promoter Score® (NPS) surveys, giving our customers a voice to share feedback and insights. This feedback allows Nuance to address key customer issues and concerns, including product development, technology roadmaps, and individual customer experiences. NPS has been the hallmark of measuring customer experience journeys for 20 years. For more information, please contact clientloyalty@nuance.com.

## Nuance Executive Team

The Healthcare Executive Team would like to take this opportunity to say thank you for choosing to partner with Nuance Communications, Inc. We are pleased that you have chosen our company and for showing such confidence in our abilities. Your success and satisfaction are important to us. Everyone at Nuance is excited about the prospect of working with you on this project and to help you drive better clinical and financial outcomes.

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