



INNOVATIONS IN
PRODUCTIVITY

NVOQ MASTER SOFTWARE SUBSCRIPTION AGREEMENT

THIS NVOQ MASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) IS ENTERED INTO BETWEEN NVOQ INCORPORATED (“NVOQ”) AND THE CUSTOMER (“CUSTOMER”, “YOU”, OR “YOUR”) IDENTIFIED ON THE FIRST ORDER DOCUMENT SIGNED BY BOTH PARTIES REFERENCING THIS AGREEMENT, EFFECTIVE AS OF THE EFFECTIVE DATE IDENTIFIED IN THAT ORDER FORM (“EFFECTIVE DATE”). NVOQ, THROUGH ITS HOSTED SERVICE OR OTHERWISE, IS WILLING TO GIVE ACCESS TO THE NVOQ SOLUTION (DEFINED BELOW) TO CUSTOMER (INCLUDING AUTHORIZED AFFILIATES AS DEFINED BELOW) ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS AGREEMENT. THIS AGREEMENT INCLUDES ALL ORDER FORMS AND SOWS ENTERED INTO HEREUNDER. CUSTOMER AND NVOQ MAY BE REFERRED TO IN THIS AGREEMENT INDIVIDUALLY AS A “PARTY” AND COLLECTIVELY AS THE “PARTIES.” IN THE EVENT OF ANY CONFLICTS BETWEEN THIS AGREEMENT, ANY ORDER FORM, AND/OR ANY SOW, THE FOLLOWING ORDER-OF PRECEDENCE APPLIES: SOW TAKE PRECEDENCE AND PREVAIL OVER ORDER FORMS SOLELY WITH RESPECT TO THE SUBJECT MATTER OF SOW; AND ORDER FORMS AND SOW TAKE PRECEDENCE AND PREVAIL OVER THIS AGREEMENT SOLELY WITH RESPECT TO THEIR RESPECTIVE SUBJECT MATTER. IF YOU ARE AN EMPLOYEE OR AGENT OF CUSTOMER AND ARE ENTERING INTO THIS AGREEMENT TO OBTAIN THE NVOQ SOLUTION FOR USE BY YOU AND/OR CUSTOMER FOR CUSTOMER’S OWN BUSINESS PURPOSES, YOU HEREBY AGREE THAT YOU ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

BY CLICKING THE “ACCEPT” BUTTON BELOW, YOU ACKNOWLEDGE:

THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY IT. IF YOU DO NOT AGREE TO ANY OF THE TERMS IN THIS AGREEMENT, NVOQ IS UNWILLING TO PROVIDE YOU WITH ACCESS AND/OR USE OF THE NVOQ SOLUTION, AND YOU SHOULD CLICK ON THE “DECLINE” BUTTON BELOW AND CEASE USE OF THE SOLUTION AND RELATED MATERIALS.

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

1.1 **“Affiliate”** means at any time, and with respect to any corporation, partnership, person or other entity, any other corporation, partnership, person or entity that at such time, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is managed by, such first corporation, partnership, person, or other entity. As used in this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation, partnership, person or other entity, whether through the ownership of voting securities, or by contract or otherwise. Each party is responsible for the acts and omissions of its Affiliates.

1.2 **“Authorized Affiliate”** means any of Your Affiliates that are registered with and approved by nVoq in the applicable Order (defined below) or otherwise approved by nVoq in writing.

1.3 **“Authorized User Profile”** means a profile associated with a user that authorizes access to the nVoq Solution. A user may have multiple profiles and each such profile shall be counted towards the number of Authorized User Profiles. Authorized User Profiles are unique to individual users and cannot be shared or used by more than one user. Customer shall be responsible for the acts and omissions of its Authorized User Profiles.

1.4 **“Confidential Information”** means all of the trade secrets, business and financial information, source code, machine and operator instructions, business methods, procedures, know-how and other information of every kind that relates to the business of either party and is marked or identified as confidential or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. nVoq’s Confidential Information includes, without limitation, the nVoq Solution and Documentation related thereto.

1.5 **“Documentation”** means the operating manuals, including a description of the functions performed by the nVoq Solution, user instructions, and technical literature, which may, from time to time, be supplied or otherwise made available to You by nVoq to facilitate the use and application of the nVoq Solution.

1.6 **“Enabled User”** means each user account that is enabled through the nVoq Solution’s Administrative Console.

1.7 **“Enabled Billable User”** means an Enabled User account where the Enabled checkbox is clicked on and the Non-billable box is left unchecked within the nVoq Solution Administrative Console. Enabled Billable User(s) are determined via the Monthly Subscription Management Report. There is no proration of a month based on when a user account is enabled or disabled (i.e., nVoq bills for Enabled User accounts based on the pricing set forth in the Order regardless of the number of days an account is enabled in a month).

1.8 **“Evaluation Use”** means use of the nVoq Solution solely for Your own internal evaluation and trial purposes, and not for any use in a production environment.

1.9 **“Intellectual Property Rights”** means all existing and future worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.

1.10 **“Monthly Subscription Management Report”** means the Subscription Management Report of the Enabled Billable User(s) from the nVoq Solution’s Administrative Console as generated on or after 10 PM Central Standard Time on the last day of a given month.

1.11 **“nVoq Solution”** means the software, development tools and shortcut design tools (in object code format only), including any APIs, Third-Party Products (defined below), and Documentation included therewith that nVoq provides to You through its hosting services or otherwise pursuant to one or more Orders accepted by nVoq, all under the terms of this Agreement.

1.12 **“Order”** or **“Order Form”** means an order form executed by duly authorized representatives of both parties for the use of the nVoq Solution.

1.13 **“Protected Health Information”** or **“PHI”** shall have the meaning set forth in the applicable Business Associate Agreement between the parties.

1.14 **“Third-Party Product”** means any software (in source code or object code format) or other materials of a third-party supplier or licensor that is licensed to nVoq and incorporated or integrated into or delivered with the nVoq Solution.

1.15 **“SOW”** means Statement(s) of Work under which nVoq provides its Professional Services, if any.

2. nVoq SERVICE.

2.1 **SUBSCRIPTION TO THE nVoq SOLUTION.** Subject to the terms of this Agreement, including, without limitation, the payment of all applicable fees, during the applicable term, nVoq hereby grants to You a non-exclusive, nontransferable, non-sublicensable subscription to access and use the nVoq Solution in accordance with the Documentation solely for Your internal business purposes and not for resale. Third-Party Products supplied by nVoq as part of the nVoq Solution, if any, may be subject to Your acceptance of additional terms and conditions applicable to such Third-Party Products (see Section 7 below). All rights not specifically granted to You herein are retained by nVoq and its licensors.

2.2 **EVALUATION USE.** The terms of this Section 2.2 are applicable to You if You have obtained the nVoq Solution for Evaluation Use pursuant to an Order. Subject to the terms of this Agreement, nVoq grants to You a non-exclusive, non-transferable, non-sublicensable subscription to access and use the nVoq Solution solely for Evaluation Use for the duration defined in an Order; provided, however, Third-Party Products supplied by nVoq as part of the nVoq Solution, if any, may be subject to Your acceptance of additional terms and conditions applicable to such Third-Party Products (see Section 7 below). This evaluation subscription begins upon first access to the nVoq Solution and ends on the earlier of the expiration of the subscription as specified by nVoq or if and when terminated by nVoq. When the subscription terminates You must stop using the nVoq Solution. All rights not specifically granted to You herein are retained by nVoq and its licensors.

2.3 **SERVICE LEVELS.** Subject to the terms of this Agreement, including, without limitation, the payment of all applicable fees, nVoq shall use commercially reasonable efforts to: (a) maintain the security of the nVoq Solution; and (b) provide the support services described at {<https://sayit.nvoq.com/company/legal/>}; and (c) make the nVoq Solution generally available. Notwithstanding anything contained herein to the contrary, nVoq reserves the right, at least 30 days following the end of a calendar year, to delete or otherwise purge any Authorized User Profile (including its corresponding data and content) (the “Purge Date”) that was inactive for such entire calendar year.

3. YOUR USE OF THE nVoq SOLUTION.

3.1 **ACCESS AND SECURITY GUIDELINES.** Each Authorized User Profile will be assigned a unique profile with a user identification name and password (“User ID”) for access to and use of the nVoq Solution. You shall be responsible for ensuring the security and confidentiality of Your User IDs. You are responsible for all acts or omissions occurring through the use of the User IDs. You will use diligent efforts to prevent unauthorized access to, or use of, the nVoq Solution, and notify nVoq promptly of any such unauthorized use or access.

3.2 **DATA.** You shall have sole responsibility for the accuracy, quality, integrity, legality and appropriateness of Customer Data (as defined herein). You are solely responsible for Customer Data and will not provide, post or transmit any Customer Data that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; or (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information. nVoq may take remedial action if any of Customer Data violates this section, however, nVoq is under no obligation to review such Customer Data for accuracy or potential liability. nVoq may access Your account(s), including without limitation Customer Data for the sole purpose of responding to service or technical problems and for maintaining and improving nVoq’s solutions. You should backup your Customer Data, as nVoq is not obligated to do so. nVoq is not responsible for any lost, corrupt, or deleted Customer Data, and nVoq is not obligated to provide you with a copy of your Customer Data.

3.3 USE RESTRICTIONS. You will not use or access to the nVoq Solution (and you will not permit use or access to the nVoq Solution) to: (a) harvest, collect, gather or assemble information or data regarding other users without their consent; (b) access or copy any data or information of other users without their consent; (c) knowingly interfere with or disrupt the integrity or performance of the nVoq Solution or the data contained therein; or (d) harass or interfere with another user's use and enjoyment of the nVoq Solution. You will, at all times, comply with all applicable local, state, federal, and foreign laws and regulations in using the nVoq Solution, including without limitation, such laws and regulations relating to privacy, NPI, PHI and export/import controls. You are responsible for all activities that occur under Your User IDs except for those activities of nVoq (unless you direct nVoq to perform certain activities under Your User IDs). You will not, and will not attempt to: (a) reverse engineer, disassemble or decompile any component of the nVoq Solution; (b) interfere in any manner with the operation of the nVoq Solution; (c) sublicense or transfer any of Your rights under this Agreement, except as otherwise provided in this Agreement, or otherwise use the nVoq Solution for the benefit of a third party (excluding Your Authorized Affiliates) or to operate a service bureau; (d) modify, copy or make derivative works based on any part of the nVoq Solution; (e) create Internet "links" to or from the nVoq Solution, or "frame" or "mirror" any of nVoq's content which forms part of the nVoq Solution (other than on Your own internal intranets); (f) otherwise use the nVoq Solution in any manner that exceeds the scope of use permitted under this Agreement; or (g) use the nVoq Solution for any competitive purpose. Additionally, You will not, and will not attempt to, operate the nVoq Solution on a time-sharing service or service bureau basis or distributing the nVoq Solution as part of an ASP, VAR, OEM, distributor or reseller arrangement. You may not access or use the nVoq Solution outside of the United States and, if and only to the extent expressly set forth on your Order, Canada. You may not provide to nVoq (via the nVoq Solution or otherwise) any data or information: (a) on or about any citizen of the European Union; (b) subject to the General Data Protection Regulation (the "GDPR") or any implementing legislation. You will comply with any NVoq Third-Party Product Terms and Conditions (as defined herein).

3.4 FEES AND PAYMENT. All undisputed invoices are due NET 30 from date of receipt of the invoice. You will promptly notify nVoq of any disputed invoice. In consideration of nVoq allowing access and use of the nVoq Solution, You agree to pay nVoq the total fees pursuant to the terms of the applicable Order or SOW. Except as otherwise provided in an Order, nVoq reserves the right to update fees upon 30 days' advance written notice, provided that it will not raise such fees more than once in any calendar year. All fees are non-refundable and non-cancellable, except as expressly set forth otherwise herein. For sake of clarification, the entity who executes the Order shall be responsible for paying all invoices under an Order or SOW. If payment is not made when due, nVoq reserves the right to assess a late fee at the rate of 1.5% per month of the total amount due or the highest rate permitted by applicable law, whichever is less. Customer shall reimburse nVoq for its reasonable costs of collection, including without limitation any attorney's fees. If your account is more than 45 days past due, in addition to any of its other rights or remedies, nVoq reserves the right to suspend Your access to the nVoq Solution until such amounts are paid in full. Should You continue to access and use the nVoq Solution beyond the term of the Order, this Agreement shall remain in effect and nVoq shall bill You (and You shall pay nVoq) at the then current subscription rate.

3.5 TAXES. All fees are exclusive of sales, use, VAT and other taxes and duties. Customer will promptly pay or reimburse nVoq for all Taxes arising out of the Agreement. For purposes of this Agreement, taxes mean any value added, sales, use and other taxes (other than taxes on nVoq's income), export and import fees, customs duties and similar charges applicable to the transactions contemplated by this Agreement that are imposed by any government or other authority where nVoq is required to collect and remit such Taxes. If Customer claims tax exempt status for amounts due under the Agreement, Customer will promptly provide nVoq with a valid tax exemption certificate for each taxing jurisdiction for which it claims exemption. Should a taxing authority assess nVoq for any additional sales, use, VAT, and other taxes and duties owed by the Customer, Customer agrees to reimburse nVoq for all sales, use VAT and other taxes and duties, including any penalties or interest assessed. In any event, any applicable taxes are the responsibility of the Customer.

4. TERM AND TERMINATION.

4.1 TERM. The term of Your subscription to the nVoq Solution shall be as set forth in the applicable Order(s). Such subscription, and this Agreement shall continue until such time as they are terminated by either party pursuant to this Section 4 and only after all Orders and SOW have expired or been terminated in accordance with this Agreement and You have ceased all access to and use of the nVoq Solution.

4.2 TERMINATION OF THE AGREEMENT. A party may terminate this Agreement and all Order Form(s) and SOW(s) if the other party is in material breach of any term or condition of this Agreement or any Order Form or SOW and fails to cure such breach within 30 days of receiving written notice thereof from the non-breaching party, provided that breaches related to non-payment shall only have 10 days to cure. With respect to the nVoq Solution provided for Evaluation Use, nVoq reserves the right, in its sole discretion, to suspend or terminate access to the nVoq Solution at any time and for any reason. Either Customer or nVoq may terminate any Order and/or SOW in accordance with their respective terms. If not specified in the applicable Order or SOW, then subject to the exclusive remedy provisions of this Agreement: either party may terminate any Order or SOW for cause upon written notice if the other party fails to cure a material breach thereof, or any material breach of this Agreement, within 30 days after receiving reasonable detailed written notice from the other party alleging the breach. Either Party may terminate this Agreement on written notice to the other party if all Orders and SOW have expired or been terminated in accordance with this Agreement.

4.3 **EFFECT OF TERMINATION OF THE AGREEMENT.** In the event of termination or expiration of any subscription and/or this Agreement for any reason, the following provisions shall survive: Sections 1, 3.3, 3.4, 4.3, 4.4, 5, 8, 9.4, 10, 11 and 12, along with any payment obligations hereunder and any other provision of this Agreement that by its terms would survive expiration or termination. Immediately upon any expiration or termination of this Agreement, You shall remove from Your system(s) and destroy any and all copies of the Documentation, Your subscription to the nVoq Solution and Documentation shall terminate, and You shall cease all use of the same. Except as otherwise agreed to in writing by nVoq or expressly provided in an Order, You shall remain liable for all minimum or committed fees under an Order regardless of any early termination of the applicable subscription(s).

4.4 **EFFECT OF TERMINATION OF AN ORDER OR SOW.** Subject to the exclusive remedy provisions in this Agreement: (a) if Customer terminates an Order, SOW and/or this Agreement for nVoq's uncured material breach in accordance with this Agreement, Customer will be entitled to a refund, on a prorated basis, of any Fees paid thereunder that are unused as of the termination effective date; and (b) if nVoq terminates an Order, SOW and/or this Agreement for uncured material breach in accordance with Section 4.2, all amounts owed by Customer thereunder will become immediately due and payable.

5. OWNERSHIP. nVoq and its respective suppliers and licensors shall retain all right, title and interest in and to the nVoq Solution, Documentation and Third-Party Products, and all portions thereof, including, in each case, all improvements, enhancements or derivatives thereto, and including without limitation, all Intellectual Property Rights therein and thereto. You receive no right, title or interest in or to any of the foregoing. You agree that any input or suggestions provided to nVoq, its accredited reseller or OEM partner for new features, functionality, or performance improvements of the nVoq Solution is the sole property of nVoq and You relinquish any and all ownership of any Intellectual Property Rights, exclusivity, confidentiality, or claims for compensation to any such input and/or suggestions implemented by nVoq. "Customer Data" means data and information provided by Customer to nVoq and the nVoq Solution. nVoq collects information and data on how the Services are used by customers (such as, but not limited to, demographic information, search terms used or how Customer perform searches and information about the platform and workflow) (the "Usage Data") and reserves the right to disclose, use, and or modify such Usage Data for internal use in its discretion. nVoq owns all Usage Data. In the event any Customer Data is de-identified, nVoq and its agents, subcontractors and licensors may use and share such anonymized Customer Data without restriction in accordance with local laws. You hereby grant to nVoq: (a) a non-exclusive, transferable right and license to access Your account(s) and use the Customer Data during the term of this Agreement for the purpose of performing nVoq's obligations; and (b) a perpetual, irrevocable, non-exclusive right to copy, modify, and otherwise use Customer Data for general current and future product research and development, including making improvements to the nVoq Platform hereunder unless you elect not to persist Customer Data on the nVoq Solution by setting the retention period to zero.

6. PROFESSIONAL SERVICES.

6.1 If Customer wishes to purchase any training, implementation or other professional services from nVoq relating to the nVoq Solution ("Professional Services"), the Parties will mutually execute one or more separate SOW(s) containing the relevant terms and conditions. nVoq Professional Services are separate and apart from the use of the nVoq Solution, and neither Party's obligations in connection with the nVoq Solution are dependent in any way on any Professional Services. Except to the extent expressly set forth to the contrary in any applicable SOW, the following provisions will apply to all SOW:

6.2 As between Customer and nVoq, Customer will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product and other materials created by Customer without any contribution by nVoq and provided to nVoq under the SOW. Customer grants nVoq a nonexclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, distribute, create derivative works of, and otherwise use such Customer-owned materials in connection with providing the Service during the Term of this Agreement and otherwise performing its obligations under this Agreement;

6.3 As between Customer and nVoq, nVoq will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product and other materials created by or for nVoq (either alone or jointly with Customer or others) and provided to Customer under the SOW, and any derivative works thereof, excluding any incorporated Customer Confidential Information (collectively, "nVoq PS Materials").

6.4 Subject to the terms of this Agreement, nVoq grants Customer a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, create derivative works of, and otherwise use internally the nVoq PS Materials in connection with the Service during the term of this Agreement. Nothing in this Agreement will prohibit, restrict or limit (i) nVoq from performing similar Professional Services for any third party, or (ii) Customer from hiring any third party to perform similar Professional Services (though Customer is not permitted to give any direct competitor of nVoq access to the Service or any nVoq PS Materials without nVoq's prior written consent).

7. THIRD-PARTY TERMS. Certain of the Third-Party Products made available or distributed to You under this Agreement are subject to alternative terms and conditions that may vary from those set forth in this Agreement. Such alternative terms and conditions can be viewed at {<https://sayit.nvoq.com/company/legal/>}, or as otherwise may be provided by nVoq, and may be updated by nVoq from time to time (the "nVoq Third-Party Product Terms and Conditions"). The nVoq Third-Party

Product Terms and Conditions are hereby incorporated into this Agreement by reference. Your access to the Third-Party Products shall be limited by the restrictions in this Agreement and any additional restrictions specified in the NVoq Third-Party Product Terms and Conditions. The NVoq Third-Party Product Terms and Conditions apply only to those Third-Party Products with which they are expressly identified and will have no effect on the terms and conditions of Your rights of use of any other Third-Party Products or other portions of the nVoq Solution. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE NVOQ THIRD-PARTY PRODUCT TERMS AND CONDITIONS, THE THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE DISCLAIMED.

8. CONFIDENTIALITY AND PROTECTED HEALTH INFORMATION.

8.1 CONFIDENTIAL INFORMATION. The parties shall not disclose Confidential Information of the other to any third party or use such Confidential Information for any purpose other than as expressly permitted in this Agreement. Each party agrees that it shall treat all Confidential Information of the other party with the same degree of care as it accords to its own confidential information, and in no event, less than reasonable care. The receiving party's confidentiality obligations under this Section 8.1 with respect to any portion of the disclosing party's Confidential Information shall terminate if and when the receiving party can prove by clear and convincing evidence that such information: (a) was publicly available at the time it was communicated to the receiving party by the disclosing party; (b) becomes publicly available after it was communicated to the receiving party by the disclosing party through no fault of the receiving party; (c) was in the receiving party's possession free of any obligation of confidence at the time it was communicated to the receiving party by the disclosing party; (d) was rightfully communicated to the receiving party free of any obligation of confidence subsequent to the time it was communicated to the receiving party by the disclosing party; or (e) was developed by employees or agents of the receiving party independently of and without reference to any Confidential Information of the disclosing party. Should either party become aware of a breach of this Section 8, the breaching party shall notify the other party without unreasonable delay and in no case later than 72 hours after confirmation of the breach and the breaching party also agrees to mitigate, to the extent practicable, any harmful effect that is known to said breaching party.

8.2 PROTECTED HEALTH INFORMATION. nVoq may use and disclose PHI as required to satisfy its obligations under this Agreement and in compliance with all applicable privacy laws, including HIPAA and HITECH. The parties' rights, obligations and responsibilities with respect to PHI is set forth in the Business Associate Agreement which may be executed by the parties (the "BAA").

9. WARRANTY AND DISCLAIMER.

9.1 WARRANTY. With respect to the nVoq Solution, nVoq represents and warrants that the nVoq Solution will function in accordance with the Documentation in all material respects during the term of Your subscription. nVoq does not warrant that the nVoq Solution will be uninterrupted or error-free.

9.2 Notwithstanding, with respect to the nVoq Solution licensed for Evaluation Use, You acknowledge and agree that (i) the nVoq Solution is for Evaluation Use only, (ii) Your use of the nVoq Solution is entirely at Your own risk, and (iii) the nVoq Solution IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER.

9.3 LIMITED REMEDY. nVoq will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of the warranty set forth in Section 9.1, use commercially reasonable efforts to correct any material error in the nVoq Solution ("Defect") that You can demonstrate and reproduce, and that You report to nVoq during the term of Your subscription. If nVoq determines that it is unable to correct the error or otherwise provide a work-around, nVoq will refund to You all any pre-paid fees for such defective portion and this Agreement and Your right to use the nVoq Solution will be terminated.

9.4 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 9.1, NVOQ SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND WITH REGARD TO ANY SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY.

10. INDEMNITY.

10.1 INDEMNITY BY NVOQ. nVoq shall, at its own expense, indemnify, defend and hold You harmless from and against any and all costs, fees (including reasonable attorneys' fees), damages, liabilities and expenses arising from any third-party claim, action, suit or proceeding against You to the extent such claim, action or suit arises out of: (i) an allegation that the nVoq Technology (defined below) infringes any third party Intellectual Property Right; (ii) a breach of nVoq's obligations hereunder with regard to the confidentiality and use of Your Confidential Information; or (iii) nVoq's failure to comply with applicable laws. Notwithstanding the foregoing, nVoq shall have no obligations under this Section 10.1 or otherwise with respect to any infringement claim based upon any use of the nVoq Solution not in accordance with this Agreement or for purposes not reasonably contemplated by this Agreement or by nVoq. For purposes herein, "nVoq Technology" shall mean the nVoq Solution, excluding any Third-Party Products. nVoq will have no obligation under this section or otherwise with respect to any claim based upon: (a) any use of the nVoq Solution in combination with products, equipment, software, or data not supplied or approved by nVoq Solution if such infringement would have been avoided without the combination with

such other products, equipment, software or data; or (b) any modification of the nVoq Solution by any person other than nVoq or its authorized agents or subcontractors.

10.2 INDEMNITY BY YOU. You shall, at Your own expense, indemnify, defend and hold nVoq (and, as applicable, nVoq's accredited reseller or partner) harmless from and against any and all claims, costs, fees (including reasonable attorneys' fees), damages, liabilities and expenses to the extent such arise out of Your use (and the use of anyone using the User IDs) of the nVoq Solution or and/or Your breach of this Agreement; provided, however, You shall not have any indemnity obligations hereunder to the extent any claim is covered by nVoq's indemnity obligations under Section 10.1 or otherwise arises out of nVoq's breach of this Agreement.

10.3 ACTIONS TO AVOID INFRINGEMENT. If the nVoq Technology or any portion thereof is likely to become or is the subject of any claim, action, suit or proceeding for infringement, then nVoq may, at its option and expense: (a) procure for You the right to continue using the nVoq Technology or relevant portion thereof; (b) replace or modify the nVoq Technology so as not to infringe; or (c) terminate this Agreement and all Order Form(s) and SOW and Your license in and to the nVoq Technology and nVoq Solution and refund all pre-paid fees associated with the nVoq Solution.

10.4 INDEMNIFICATION PROCEDURES. The obligation of either party to indemnify the other party hereunder is predicated upon the indemnified party: (a) providing the indemnifying party prompt written notice of any covered claim; (b) allowing the indemnifying party to control the defense and settlement of any such claim, provided that the indemnified party may, at its expense, participate in such defense and settlement negotiations with counsel of its own choosing; and (c) reasonably cooperating with the indemnifying party, at the indemnifying party's expense, in the defense and settlement of such claim. Notwithstanding the foregoing, any settlement by the indemnifying party will not, without the prior written approval of the indemnified party (not to be unreasonably withheld), obligate or impose liability on any indemnified party in any way, including, without limitation, to any determination or admission of liability on the part of the indemnified party.

10.5 LIMITATION ON INDEMNITY ACTIONS. THIS SECTION 10 STATES NVOQ'S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY, AND YOUR SOLE AND EXCLUSIVE RIGHTS AND REMEDIES, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS RELATING TO THE NVOQ TECHNOLOGY AND NVOQ SOLUTION.

11. LIMITATION OF LIABILITY.

11.1 GENERAL. EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, OR YOUR BREACH OF SECTION 3.3, NEITHER PARTY, NOR ANY OF NVOQ'S LICENSORS OR SUPPLIERS (INCLUDING THOSE OF THIRD-PARTY PRODUCTS) SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST DATA, PROFITS OR REVENUE, BUSINESS INTERRUPTION, COMPUTER OR SYSTEM DOWNTIME OR UNAVAILABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL NVOQ'S TOTAL AGGREGATE LIABILITY (OR THAT OF ANY OF NVOQ'S LICENSORS OR SUPPLIERS) TO YOU ARISING FROM OR RELATING TO THIS AGREEMENT AND ALL ORDER FORM(S) AND SOW OR YOUR ACCESS TO AND USE OF THE NVOQ SOLUTION EXCEED AN AMOUNT EQUAL TO THE FEES PAID TO NVOQ IN THE PRECEDING 12 MONTH PERIOD, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL NVOQ HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO ANY THIRD-PARTY PRODUCT.

11.2 APPLICABILITY. Some jurisdictions do not permit disclaimers of certain warranties or limitations on certain types of liability under certain circumstances; consequently, some of the foregoing disclaimers and limitations may not be applicable to You.

12. GENERAL. The nVoq Solution and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that You have the responsibility to obtain such licenses to export, re-export or import as may be required, if such activities are permitted under this Agreement. The nVoq Solution is a "commercial item" as that term is defined at 48 C.F.R. 2.101; consisting 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 nVoq Solution with only those rights set forth therein. This Agreement shall be governed by the laws of the State of Colorado, excluding its conflict of laws principles, and the parties hereby consent to the exclusive jurisdiction and venue in the state and federal courts sitting in Denver, Colorado. Except as otherwise expressly permitted under this Agreement, neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement or delegate any of its duties under this Agreement to any third party without the other party's prior written consent, not to be unreasonably withheld; provided that no consent is required for an assignment or transfer of this Agreement in connection with a sale of all or substantially all of the business or assets of a party, whether by merger, sale of assets, reorganization, or the like. Notwithstanding, in the event a party assigns or transfers this contract to a direct competitor of the non-assigning party (as reasonably determined by the non-assigning party), the non-assigning party may terminate this Agreement upon 30 days written notice. Any attempted assignment or transfer in violation of the foregoing will be void and of no force and effect. Subject to the foregoing, this Agreement will be binding upon, and will inure to the benefit of, the parties and their respective successors and permitted assigns. If any provision of this Agreement is deemed unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. This Agreement, along with each Order and SOW, is the complete and exclusive statement of the agreement between You and nVoq with regards to the subject matter herein and therein and supersedes any proposal or prior agreement, oral or written, and any other communications between You and nVoq in relation to such subject matter. Each party shall provide any legally

required notices with regard to this Agreement to the other party by Federal Express or First-Class Mail. All notices are effective when delivered. With the exception of the NVoq Third-Party Product Terms and Conditions which are updated regularly pursuant to new releases, no provision of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is made in writing and signed by both parties. Except with respect to payment obligations under this Agreement, if a party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such party's reasonable control, such failure or delay shall not be deemed to constitute a material breach of this Agreement, but such obligation shall remain in full force and effect, and shall be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay.

THE NVOQ SOLUTION IS PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

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