



Business Associate Agreement

This **Business Associate Agreement** (this “BAA”) is entered into as of the date the parties entered into this BAA (by agreeing to an Order incorporating this BAA or otherwise) (the “**BAA Effective Date**”) and is by and between [Customer, partner, or relevant Covered Entity name] (“**Covered Entity**”) and nVoq Incorporated (“**Business Associate**”). Covered Entity has entered an underlying services agreement with Business Associate or its partner (the “**Agreement**”), whereby Business Associate has agreed to provide services to Covered Entity (the “**Services**”).

Background: Covered Entity is subject to the Applicable Law and is required to safeguard PHI in accordance with the requirements of Applicable Law. The parties anticipate that they will need or want to disclose certain information, some of which may constitute PHI, to each other and to third-parties pursuant to this BAA and to the Agreement. The parties intend to comply with Applicable Law, to protect the privacy of PHI disclosed to the other pursuant to this BAA and to the Agreement, and to provide for the security of such PHI. In consideration of the mutual promises below, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in Applicable Law.
 - 1.1. “**Applicable Law**” shall mean any of the following items, including any amendments to any such item as such may become effective (a) The Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“**HIPAA**”); (b) The Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“**HITECH**”); (c) The federal regulations regarding privacy, promulgated under HIPAA and/or HITECH, and found at Title 45 CFR Parts 160 and 164 (the “**Privacy Rule**”); (d) The federal regulations regarding electronic data interchange, promulgated under HIPAA and/or HITECH, and found at Title 45 CFR Parts 160 and 162 (the “**Transaction Rule**”); (e) The federal regulations regarding security, promulgated under HIPAA and/or HITECH, and found at Title 45 CFR Parts 160 and 164 (the “**Security Rule**”); and (f) The federal regulations regarding breach notification, promulgated under HIPAA and/or HITECH, and found at Title 45 CFR Part 164 (the “**Breach Notification Rule**”).
 - 1.2. “**HIPAA Breach**” means a “breach” of “unsecured protected health information,” as those terms are defined in 45 CFR § 164.402 except that “unsecured protected health information” shall be limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
 - 1.3. “**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
2. **Rights and Obligations of Covered Entity.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate’s permitted or required uses and disclosures. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. If Covered Entity requests PHI from Business Associate, Covered Entity will limit its request to the minimum necessary PHI required to fulfill the purpose of Covered Entity’s use or further disclosure of such PHI. Covered Entity agrees to use its user accounts in accordance with applicable laws



and provisions of the Security Rule. If applicable, Covered Entity shall encrypt all PHI transmitted to Business Associate in accordance with the Secretary's Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, as it may be updated from time to time. Covered Entity will not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause Business Associate to violate this BAA or Applicable Law. Covered Entity will not request or cause Business Associate to make a use or disclosure of PHI in a manner that does not comply with this BAA or Applicable Law.

3. **Rights and Obligations of Business Associate.**

3.1. **Uses and Disclosures by Business Associate.** Except as otherwise limited in this BAA or by Applicable Law, Business Associate may:

- (a) use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity, as specified in the Agreement between the parties and in this BAA;
- (b) use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
- (c) disclose PHI for the proper management and administration of Business Associate, provided that (i) Business Associate obtains reasonable assurances from the entity 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 entity, and the entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached or (ii) the disclosures are required by law; and
- (d) use PHI to: provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B) and de-identify the information consistent with 45 C.F.R. 164.51(a)-(c).

3.2. **Subcontractors and Agents.** Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI agrees to similar restrictions and conditions to appropriately safeguard PHI that apply to Business Associate with respect to such.

3.3. **Access to Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use, disclosure, and security of PHI available to the governing authorities for purposes of determining Covered Entity's compliance with HIPAA.

3.4. **Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (a) use or disclosure of PHI by Business Associate in violation of the requirements of this BAA, or (b) a HIPAA Breach.

3.5. **Sale of PHI.** Business Associate shall not receive remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by 45 CFR § 164.502(a)(5) and § 164.508(a)(4).

3.6. **Compliance with Privacy Rule.** Business Associate shall not use or further disclose PHI other than as permitted or required by HIPAA and by this BAA. Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BAA. Business Associate shall report to Covered Entity any use or disclosure of PHI, known to Business Associate, that is not permitted by this BAA. Business Associate shall comply with the Privacy Rule to the extent required by HITECH.



- 3.7. Compliance with Transaction Rule. To the extent that Business Associate, on behalf of Covered Entity, conducts transactions that are subject to the Transaction Rule, Business Associate shall comply with the Transaction Rule. Covered Entity agrees that it shall not require Business Associate (or the members of its workforce) to communicate using the specifications set forth in the Transaction Rule unless required by law.
- 3.8. Compliance with Security Rule. Business Associate shall implement administrative, physical, and technical safeguards that are designed to reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI. Business Associate shall report to Covered Entity Security Incidents and HIPAA Breaches of which Business Associate becomes aware, and Business Associate shall comply with the Security Rule to the extent required by HITECH.
- 3.9. Compliance with Breach Notification Rule. If Business Associate discovers that there has been a HIPAA Breach, Business Associate shall notify Covered Entity without unreasonable delay and in no event more than 10 business days after the discovery. Such notice shall include, to the extent available to Business Associate, identification of each individual whose PHI Business Associate reasonably believes to have been accessed, acquired, or disclosed during such HIPAA Breach. As soon as possible thereafter, and to the extent known, Business Associate shall also provide Covered Entity with a description of (a) what happened, including the date of the HIPAA Breach and the date of the discovery, (b) the types of unsecured PHI involved in the HIPAA Breach, (c) any steps individuals should take to protect themselves from potential harm from the HIPAA Breach, and (d) what Business Associate is doing to investigate the HIPAA Breach, to mitigate harm to individuals, and to protect against any further HIPAA Breaches. Notwithstanding the foregoing, this Section 3.9 constitutes notice by Business Associate of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents, for which no additional notice shall be required, including but not limited to, pings and other broadcast attacks on Business Associate's network security groups, port scans, unsuccessful log-in attempts, denial-of-service attacks that do not materially impact availability of PHI, malware (e.g. worms, viruses) that is detected and neutralized by defensive software and tools intended for such purposes, interception of encrypted information where the key is not compromised and any combination of the above, so long as no such incident results in unauthorized access, Use, Disclosure, modification, or destruction of Unsecured PHI. Communications by or on behalf of Business Associate in connection with this Section 3.9 shall not be construed as an acknowledgment by Business Associate of any fault or liability with respect to the incident.
- 3.10. Obligations of Business Associate Regarding Individual Rights.
- 3.10.1. Restrictions on Disclosures. Upon request by an individual, Covered Entity shall determine whether an individual is entitled to a restriction on disclosure of the PHI pursuant to 45 CFR § 164.522. If Covered Entity determines that an individual is entitled to such a restriction, Covered Entity will communicate the decision to Business Associate. If applicable, Business Associate will restrict its disclosures of the individual's PHI in the same manner as would be required for Covered Entity to the extent available. If Business Associate receives an individual's request for restrictions, Business Associate shall forward such request to Covered Entity within 5 business days.
- 3.10.2. Access to PHI. Upon request by an individual, Covered Entity shall determine whether an individual is entitled to access his or her PHI pursuant to 45 CFR § 164.524. If Covered Entity determines that an individual is entitled to such access, and that such PHI is under the control of



Business Associate, Covered Entity will communicate the decision to Business Associate. To the extent available, Business Associate shall provide access to the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an individual's request to access his or her PHI, Business Associate shall forward such request to Covered Entity within 5 business days.

3.10.3. Amendment of PHI. Upon request by an individual, Covered Entity shall determine whether any individual is entitled to amend his or her PHI pursuant to 45 CFR § 164.526. If Covered Entity determines that an individual is entitled to such an amendment, and that such PHI is both in a designated record set and under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. To the extent available, Business Associate shall provide an opportunity to amend the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an individual's request to amend his or her PHI, Business Associate shall forward such request to Covered Entity within 5 business days.

3.10.4. Accounting of Disclosures. Upon request by an individual, Covered Entity shall determine whether any individual is entitled to an accounting pursuant to 45 CFR § 164.528. If Covered Entity determines that an individual is entitled to an accounting, Covered Entity will communicate the decision to Business Associate. Business Associate will provide information to Covered Entity (to the extent available) that will enable Covered Entity to meet its accounting obligations. If Business Associate receives an individual's request for an accounting, Business Associate shall forward such request to Covered Entity within 5 business days.

4. Term and Termination.

4.1. Term. The term of this BAA shall begin on the BAA Effective Date, and shall end upon the termination of the Agreement, or upon termination for cause as set forth in the following paragraph, whichever is earlier.

4.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation, or if Business Associate fails to cure the breach or end the violation, Covered Entity may terminate this BAA and the Agreement.

4.3. Effect of Termination.

4.3.1. Except as provided in the following paragraph, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI within its possession or control. If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

4.3.2. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI, shall:

- a. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;



- b. Return to Covered Entity or permanently delete the remaining PHI that Business Associate still maintains in any form to the extent possible;
- c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- d. Not use or disclose the PHI other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section 3 which applied prior to termination; and
- e. Return to Covered Entity or permanently delete the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, to the extent possible.

5. Miscellaneous

- 5.1. Electronic Health Record. Business Associate shall not maintain any “electronic health record” or “personal health record,” as those terms are defined under HITECH, for or on behalf of Covered Entity.
- 5.2. Regulatory References. A reference in this BAA to a section in any Applicable Law means the section in effect or as amended, and for which compliance is required.
- 5.3. Amendment. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of Applicable Law. All amendments to this BAA, except those occurring by operation of law, shall be in writing and signed by both parties.
- 5.4. Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity to comply with Applicable Law.
- 5.5. No Third-Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer upon any person, other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 5.6. Effect on Agreement. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the underlying Agreement shall remain in force and effect.
- 5.7. Counterparts. This BAA may be signed in one or more counterparts including via facsimile or email, or by electronic signature in accordance with applicable law, all of which shall be considered one and the same agreement, binding on all parties hereto, notwithstanding that both parties are not signatories to the same counterpart. A signed facsimile or photocopy of this agreement shall be binding on the parties to this BAA.

IN WITNESS WHEREOF, the parties have executed this BAA as of the BAA Effective Date.



For Covered Entity: customer, partner, or relevant Covered Entity name

By: _____

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date: _____

For Business Associate: nVoq Incorporated

By: _____

Name: Deborah J. Gillotti

Title: President and Chief Operating Officer

Date: _____