



nVoq AI:
*Transforming Clinical
Documentation*

NVOQ SOFTWARE SUBSCRIPTION AGREEMENT

This **SOFTWARE SUBSCRIPTION AGREEMENT** is effective as of the date set forth in the Order referencing this Agreement (“**Effective Date**”) and entered into between nVoq Incorporated, a Delaware corporation (“**nVoq**”), and the entity identified in the Order (“**Customer**”). Customer desires to use nVoq’s proprietary speech recognition software, pursuant to the terms and conditions of this Agreement. The parties agree as follows:

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

1.1 “**Administrative Console**” means the online portal on the nVoq Solution used to create and monitor user accounts and adjust data retention settings for Customer Data.

1.2 “**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.

1.3 “**Agreement**” means the Order and this Software Subscription Agreement.

1.4 “**Authorized User**” means Customer’s employees, independent contractors, and other individuals who are authorized by Customer to use the nVoq Solution on behalf of Customer.

1.5 “**Authorized User Account**” means an account associated with a user that is authorized to access to the nVoq Solution. An Authorized User Account cannot be shared or used by more than one user. Customer shall be responsible for the acts and omissions of its Authorized Users.

1.6 “**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.

1.7 “**Customer Data**” means the electronic data and information input into the nVoq Solution by or on behalf of Customer. Customer Data does not include Usage Data or Aggregated Data.

1.8 “**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 Customer by nVoq to facilitate the use and application of the nVoq Solution.

1.9 **“Enabled User”** means each Authorized User that is enabled through the nVoq Solution’s Administrative Console.

1.10 **“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.

1.11 **“nVoq Solution”** means the software, development tools and shortcut design tools (in object code format only), including any APIs, and Documentation included therewith that nVoq provides to Customer through its hosting services or otherwise pursuant to the Order.

1.12 **“Professional Services”** means the professional services, including but not limited to implementation and training services, provided by nVoq as set forth in the Order.

1.13 **“Order”** means the ordering document that references this Agreement.

1.14 **“Usage Data”** means any content, data, or information that is collected or produced by the nVoq Solution in connection with Customer’s usage of the nVoq Solution that does not identify Customer or its Enabled Users, and may include, but is not limited to, usage patterns, traffic logs, and user conduct associated with the nVoq Solution.

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 Customer and its Enabled Users a non-exclusive, nontransferable, non-sublicensable subscription to access and use the nVoq Solution in accordance with the Documentation solely for Customer’s internal business purposes and not for resale. All rights not specifically granted to Customer herein are retained by nVoq and its licensors.

2.2 **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 provide the support services described at <https://www.nvoq.com/nvoq-support-services-for-direct-agency-customers/>.

3. USE OF THE NVOQ SOLUTION.

3.1 **USERS.** Under the rights granted to Customer under this Agreement, Customer may permit its and its Affiliates’, its independent contractors, and its employees to become Enabled Users in order to access and use the nVoq Solution in accordance with this Agreement; provided that Customer will be liable for the acts and omissions of all Customer Affiliates and Enabled Users to the extent any of such acts or omissions, if performed by Customer, would constitute a breach of, or otherwise give rise to liability to Customer under, this Agreement. Customer shall not, and shall not permit any Enabled User to, use the nVoq Solution except as expressly permitted under this Agreement. Customer is responsible for Enabled Users’ compliance with this Agreement.

3.2 **ACCESS AND SECURITY GUIDELINES.** Each Authorized User will be assigned a unique profile with a user identification name and password (**“User ID”**) for access to and use of the nVoq Solution. Customer shall be responsible for ensuring the security and confidentiality of Customer’s User IDs. Customer is responsible for all acts or omissions occurring through the use of the User IDs. Customer 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.

3.3 DATA. Customer shall have sole responsibility for the accuracy, quality, integrity, legality and appropriateness of Customer Data. Customer is solely responsible for all Customer Data, and Customer 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 Customer Data violates this section, however, nVoq is under no obligation to review such Customer Data for accuracy or potential liability. nVoq may access Customer's account(s), including without limitation Customer Data, for the purposes of responding to service or technical problems unless Customer elects to not persist Customer Data on the nVoq Solution by changing the data retention settings to "never" in the Administrative Console. Customer shall have sole responsibility for determining and maintaining the data retention settings in the Administrative Console. nVoq reserves the right, at least 30 days following the end of a calendar year, to delete or otherwise purge any Authorized User (including its corresponding data and content) (the "**Purge Date**") that was inactive for such entire calendar year.

3.4 USE RESTRICTIONS. Customer will, at all times, comply with all applicable local, state, federal, and foreign laws and regulations in using the nVoq Solution, including without limitation, HIPAA and HITECH. Customer will not, and will not attempt to: (a) knowingly interfere with or disrupt the integrity or performance of the nVoq Solution or the data contained therein; (b) reverse engineer, disassemble or decompile any component of the nVoq Solution; (c) sublicense or transfer any of Customer's 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 Customer's Affiliates); (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 Customer's own internal intranets); (f) 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 or to operate a service bureau. Customer may not access or use the nVoq Solution outside of the United States and, if and only to the extent expressly set forth on an Order, Canada.

3.5 CLINICAL DECISIONS. Medical professionals must review, verify, and sign off on all information and medical decisions made in the course of using the nVoq Solution. nVoq does not accept any liability for clinical decisions or actions taken by medical professionals based upon information provided by the nVoq Solution. By using the nVoq Solution, Customer and each Enabled User acknowledges and agrees that Customer and each Enabled User, and not nVoq, is responsible for any and all medical judgments and decisions. If Customer or its Enabled Users use the documentation accuracy and completeness check features of the nVoq Solution as set forth in an Order ("**Note Assist**"), Customer and each Enabled User understands and agrees that Note Assist utilizes AI to assist medical professionals in organizing and summarizing information, and is not intended to make clinical judgments or decisions. All clinical judgments and decisions are the sole responsibility of the medical professional using Note Assist. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE OUTPUT OR INFORMATION GENERATED THROUGH NOTE ASSIST MAY BE COMPUTER-GENERATED AND NOT HUMAN GENERATED, AND THAT SUCH INFORMATION MAY BE INACCURATE OR INCOMPLETE.

4. FEES AND PAYMENT.

4.1 PAYMENT TERMS. Customer shall pay nVoq the fees set forth in the Order. All undisputed invoices are due net 30 from date of receipt of the invoice. Customer will notify nVoq of any disputed invoice within 30 days of receipt. Except as otherwise provided in an Order, nVoq agrees that it will not revise the fees during the Initial Term. Thereafter, the fees are subject to an annual increase upon 45 days' advanced written notice, provided, that the fee increase shall not go into effect until the expiration of the then-current Order term. All fees are non-refundable and non-cancellable, except as expressly set forth otherwise herein. Undisputed fees that are not timely paid shall accrue interest at the rate of

1.5% per month of the total amount due, or the highest rate permitted by applicable law, whichever is less, beginning the due date until paid. Customer shall reimburse nVoq for its reasonable costs of collection, including without limitation any attorney's fees. If Customer's account is more than 45 days past due, in addition to any of its other rights or remedies, nVoq reserves the right to suspend Customer's access to the nVoq Solution until such amounts are paid in full.

4.2 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.

5. TERM AND TERMINATION.

5.1 TERM. This Agreement commences on the Effective Date and, unless terminated earlier in accordance with this Agreement, continues until the Order has terminated ("**Term**").

5.2 ORDER TERM. The term of Customer's subscription to the nVoq Solution shall be as set forth in the Order ("**Initial Term**"). Except as otherwise provided in the Order, the Order Term will automatically renew for additional one-year periods (each, a "**Renewal Term**," and together with the Initial Term, the "**Order Term**") unless a party gives written notice to the other party of its intent to not renew at least thirty (30) days prior of the end of the Initial Term or then-current Renewal Term.

5.3 TERMINATION OF THE AGREEMENT. A party may terminate this Agreement and the Order if the other party is in material breach of any term or condition of this Agreement or the Order 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 be subject to a 10 day cure period.

5.4 EFFECT OF TERMINATION OF THE AGREEMENT. Upon any expiration or termination of this Agreement, (a) all amounts owed to nVoq under this Agreement will be due and payable in accordance with Section 4, (b) Customer's rights granted in this Agreement will immediately cease, (c) Customer shall promptly discontinue all access and use of the nVoq Solution and return or erase, all copies of the Documentation in Customer's possession or control, and (d) nVoq shall promptly return or erase all Customer Data, except that nVoq may retain Customer Data in nVoq's archived backup files. Except as otherwise agreed to in writing by nVoq or expressly provided in the Order, Customer shall remain liable for all minimum or committed fees under the Order regardless of any early termination of the Order Term. Sections 1, 4, 5.3, 5.4, 7, 8, 9, 10, 11, and 13 survive expiration or termination of this Agreement.

6. OWNERSHIP.

6.1 NVOQ SOLUTION. nVoq and its respective suppliers and licensors shall retain all right, title and interest in and to the nVoq Solution, Documentation 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. nVoq reserves the right to disclose, use, and or modify such Usage Data for internal use in its discretion. nVoq owns all Usage Data.

6.2 CUSTOMER DATA. Customer hereby grants to nVoq: (a) a non-exclusive, transferable right and license to access and use the Customer Data during the Term 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, development, and product improvement purposes, including but not limited to creating new features and optimizing performance, unless Customer elects to restrict use of Customer Data by changing the "Allow Use of Audio" and "Allow Use of Text" controls to "Off" in the Administrative Console. Customer shall have sole responsibility for determining and maintaining the use of audio and text settings in the Administrative Console.

6.3 AGGREGATED DATA. Notwithstanding anything in this Agreement to the contrary, nVoq may analyze Customer Data to create a de-identified and aggregated data set that does not identify Customer or its Enabled Users (collectively, "**Aggregated Data**"). All Customer Data used for purposes of creating Aggregated Data shall be de-identified as required by and in accordance with 45 CFR § 164.514. nVoq retains ownership of all right, title, and interest in and to Aggregated Data. nVoq may use Aggregated Data for any lawful purpose, including, but not limited to, to improve, market, and provide the nVoq Solution.

6.4 USAGE DATA. nVoq retains ownership of all right, title, and interest in and to the Usage Data. nVoq may use Usage Data in connection with its performance of its obligations in this Agreement and for any other lawful business purpose, including, but not limited to, benchmarking, data analysis, and to improve nVoq's services, systems, and algorithms.

6.5 FEEDBACK. Any information provided by Customer, or its Authorized Users to nVoq, including, but not limited to, suggestions or recommendations for changes or improvements to the nVoq Solution, or for new features or functionality, shall be deemed customer feedback (collectively, "**Feedback**"); provided, that Feedback shall not include any Customer Data or the Confidential Information or intellectual property of Customer. Customer acknowledges that nVoq is free to use such Feedback for any business purpose, and Customer hereby grants an irrevocable, fully paid-up, royalty-free license to nVoq to use such Feedback without any attribution or compensation to any party whatsoever.

7. PROFESSIONAL SERVICES. Subject to the terms of this Agreement and as applicable, nVoq shall provide the Professional Services to Customer as follows:

7.1 nVoq shall perform the Professional Services for Customer as described in the Order in a competent and professional manner. If any Professional Services are requested, the Order will contain descriptions of the Professional Services and a description of any Deliverables (as defined below) to be provided by nVoq, the fees for the Professional Services, and any additional terms and conditions the parties deem appropriate. Customer acknowledges that any schedules or timelines for Professional Services set forth in the applicable SOW are not firm or fixed performance dates, and are only to be regarded as estimated beginning and completion dates for the Professional Services. All Professional Services and Deliverables will be deemed accepted upon delivery. "**Deliverables**" are any works expressly identified as a "deliverable" under the Order.

7.2 Customer acknowledges that in order to perform the Professional Services, nVoq requires access to certain intellectual property, content, data, information, and materials of Customer or Customer's suppliers (collectively, "**Customer Materials**"). Customer shall provide nVoq with the Customer Materials, along with any assistance, access, and personnel resources that nVoq requests in order for nVoq to perform the Professional Services. 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 Materials in connection with providing the Service.

7.3 Other than nVoq PS Materials (defined below), all Deliverables and all copyrights, trade secrets or other proprietary rights in or to the Deliverables, are and will be Customer's sole and exclusive property, and nVoq hereby assigns ownership of such Deliverables, and all intellectual property rights therein, to Customer. 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 Order, and any derivative works thereof, excluding any incorporated Customer Confidential Information (collectively, "**nVoq PS Materials**").

7.4 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 solely to the extent necessary to exploit the Deliverables.

8. CONFIDENTIALITY. Each party agrees that it shall not use the other party's Confidential Information for any purpose other than to complete its obligations or enforce its rights under this Agreement. Each party 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. Each party shall permit access to the Confidential Information of the other party only to its employees, contractors, and advisors who have a need to know the information and who are aware of its confidential nature. The receiving party's confidentiality obligations under this Section 8 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.

9. WARRANTY AND DISCLAIMER.

9.1 **nVOQ SOLUTION 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 Order Term. nVoq does not warrant that the nVoq Solution will be uninterrupted or error-free. nVoq will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of the warranty set forth in this Section 9.1, use commercially reasonable efforts to correct a material error in the nVoq Solution that Customer can demonstrate and reproduce ("**Defect**"), and that Customer reports to nVoq within 30 days of discovering the same. If nVoq determines that it is unable to correct the error or otherwise provide a work-around for the Defect, nVoq will refund to Customer any pre-paid fees for such defective portion and this Agreement and Customer's right to use the nVoq Solution will be terminated.

9.2 **RIGHT TO CUSTOMER DATA.** Customer represents and warrants that it has the right to: (a) use the Customer Data as contemplated by this Agreement; and (b) grant nVoq the license in Section 6.2. Customer further covenants that it will make all disclaimers and obtain all consents necessary for nVoq to use and share the Customer Data as contemplated herein.

9.3 **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, AND FOR ANY PARTICULAR OUTCOME FOR CUSTOMER, OR ANY THIRD PARTY, INCLUDING PATIENTS, AS A RESULT OF THIS AGREEMENT OR THE PERFORMANCE OF ANY SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY. CUSTOMER UNDERSTANDS AND AGREES THAT NVOQ DOES NOT PROVIDE MEDICAL ADVICE AND DOES NOT MAKE DIAGNOSTIC, TREATMENT, OR OTHER CLINICAL DECISIONS OR JUDGMENTS. NVOQ DOES NOT WARRANT OR GUARANTEE THAT INFORMATION OR ANY RESULTS OBTAINED THROUGH THE NVOQ SOLUTION WILL BE ACCURATE, RELEVANT, COMPLETE, OR UP TO DATE. CUSTOMER AND EACH ENABLED USER, AND NOT NVOQ, IS SOLELY RESPONSIBLE FOR VERIFYING THE ACCURACY OF ALL INFORMATION GENERATED THROUGH THE NVOQ SOLUTION, FOR MAKING DIAGNOSTIC AND CLINICAL DECISIONS, AND FOR COMPLYING WITH ALL APPLICABLE LAWS, REGULATIONS, LICENSING REQUIREMENTS, AND THE APPLICABLE STANDARD OF CARE AND SCOPE OF PRACTICE IN DELIVERING HEALTH CARE SERVICES. NVOQ IS NOT RESPONSIBLE OR LIABLE FOR ANY ADVICE, COURSE OF TREATMENT, DIAGNOSIS, OR ANY OTHER INFORMATION OR SERVICES THAT ANY PATIENT MAY OBTAIN OR RECEIVE. NVOQ IS NOT RESPONSIBLE OR LIABLE FOR ANY BILLING, CODING, OR CLAIMS ACTIVITIES CONDUCTED BY CUSTOMER OR ANY ENABLED USER. BY ACCESSING OR USING THE NVOQ SOLUTION, CUSTOMER ASSUMES FULL RESPONSIBILITY FOR THE USE OF ANY INFORMATION OBTAINED THROUGH THE NVOQ SOLUTION.

10. INDEMNITY.

10.1 INDEMNITY BY NVOQ. nVoq shall, at its own expense, defend Customer from and against any third-party claim, action, or proceeding against Customer to the extent such claim, action or proceeding arises out of an allegation that (i) the nVoq Solution infringes any third party Intellectual Property Right, or (ii) nVoq has breached the BAA (each a "Customer Claim"), and nVoq shall indemnify and hold Customer harmless, from and against damages, losses, liabilities, and expenses (including reasonable attorneys' fees and other legal expenses) (collectively, "Losses") that are specifically attributable to such Customer Claim or those costs and damages agreed to in a settlement of such Customer Claim. Notwithstanding the foregoing, nVoq shall have no obligations under this Section 10.1 or otherwise with respect to any infringement claim based upon: (a) any use of the nVoq Solution not in accordance with this Agreement or for purposes not reasonably contemplated by this Agreement or by nVoq; (b) 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 (c) any modification of the nVoq Solution by any person other than nVoq or its authorized agents or subcontractors.

10.2 INDEMNITY BY CUSTOMER. Customer shall, at Customer's own expense, indemnify, defend and hold nVoq harmless from and against any and all Losses arising out of a third party claim against nVoq relating to: (a) Customer's use of the nVoq Solution or Customer Data; or (b) nVoq's use of the Customer Data in accordance with this Agreement; provided, however, Customer 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 Solution 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 Customer the right to continue using the nVoq Solution or relevant portion thereof; (b) replace or modify the nVoq Solution so as not to infringe; or (c) terminate this Agreement and the Order and Customer's license in and to the nVoq Solution and refund all pre-paid fees for the period during which Customer could not use 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 CUSTOMER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS RELATING TO THE NVOQ SOLUTION.

11. LIMITATION OF LIABILITY.

11.1 GENERAL. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, FOR LOST DATA, PROFITS OR REVENUE, BUSINESS INTERRUPTION, COMPUTER OR SYSTEM DOWNTIME OR UNAVAILABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NVOQ'S TOTAL AGGREGATE LIABILITY TO CUSTOMER ARISING FROM OR RELATING TO THIS AGREEMENT OR CUSTOMER'S ACCESS TO AND USE OF THE NVOQ SOLUTION EXCEED AN AMOUNT EQUAL TO THE FEES PAID TO NVOQ IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE.

11.2 THE EXCLUSIONS AND LIMITATIONS OF LIABILITIES SET FORTH IN THIS SECTION 11 DO NOT APPLY TO A PARTY'S OBLIGATIONS UNDER SECTION 10.1(i) OR SECTION 10.2 (INDEMNITY), TO LIABILITY ARISING FROM A PARTY'S BREACH OF SECTION 8 (CONFIDENTIALITY), OR TO LIABILITY ARISING FROM CUSTOMER'S BREACH OF SECTION 3.4.

11.3 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 Customer.

12. BUSINESS ASSOCIATE AGREEMENT. In connection with this Agreement, the parties shall comply with the terms and conditions of the Business Associate Agreement found at <https://www.nvoq.com/business-associate-agreement/> ("**BAA**"). To the extent that any of the terms of the BAA expressly contradict or conflict with any of the terms or conditions contained in this Agreement, it is understood and agreed by the parties that the terms of the BAA shall take precedence and supersede the terms of this Agreement, but solely with respect to the subject matter therein, and solely to the extent of any such express contradiction or conflict. If the parties agree to a different form of business associate agreement in the Order, the terms of that business associate agreement shall control and the parties will not be subject to the nVoq BAA.

13. GENERAL.

13.1 COMPLIANCE WITH LAWS. Each party agrees to comply with all applicable laws, rules, and regulations relating to the provision and use of the nVoq Solution.

13.2 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Delaware, 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 Wilmington, Delaware.

13.3 ASSIGNMENT. 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.

13.4 REMEDIES. Each party acknowledges that any actual or threatened breach of Sections 3.4 or 8 will constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy, that injunctive relief is an appropriate remedy for such breach, and that if granted, the breaching party agrees to waive any bond that would otherwise be required. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other legal expenses, in addition to any other relief it may receive from the non-prevailing party.

13.5 SEVERABILITY. 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.

13.6 INDEPENDENT CONTRACTOR. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

13.7 ENTIRE AGREEMENT. This Agreement, along with the Order, is the complete and exclusive statement of the agreement between Customer 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 Customer and nVoq in relation to such subject matter.

13.8 NOTICES. 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.

13.9 AMENDMENT AND WAIVER. 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.

13.10 FORCE MAJEURE. 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.