



INNOVATIONS IN
PRODUCTIVITY

NVoQ SOFTWARE SUBSCRIPTION AGREEMENT

NVOQ INCORPORATED (“**NVOQ**”), THROUGH ITS HOSTED SERVICE OR OTHERWISE, IS WILLING TO GIVE ACCESS TO THE NVOQ SAYIT SOLUTION (DEFINED BELOW) TO YOU AS AN INDIVIDUAL OR COMPANY (INCLUDING AUTHORIZED AFFILIATES AS DEFINED BELOW) (REFERENCED BELOW AS “**YOU**” OR “**YOUR**” OR “**USER**”) ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS SUBSCRIPTION AGREEMENT OR OTHER LEGALLY BINDING ALTERNATE AGREEMENT (DEFINED BELOW) (THE “**AGREEMENT**”). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, NVOQ IS UNWILLING TO PROVIDE ACCESS AND/OR USE OF THE NVOQ SAYIT SOLUTION OR COMPONENT THEREOF TO YOU, AND YOU SHOULD IMMEDIATELY DISCONTINUE THE USE OF THE NVOQ SAYIT SOLUTION AND DESTROY ANY DOCUMENTATION (DEFINED BELOW) IN YOUR POSSESSION. IF YOU ARE AN EMPLOYEE OR AGENT OF A COMPANY (THE “**COMPANY**”) AND ARE ENTERING INTO THIS AGREEMENT TO OBTAIN THE NVOQ SAYIT SOLUTION FOR USE BY YOU AND/OR THE COMPANY FOR YOURS AND ITS OWN BUSINESS PURPOSES, YOU HEREBY AGREE THAT YOU ENTER INTO THIS AGREEMENT ON BEHALF OF THE COMPANY AND THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

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

(1) THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY IT OR (2) THAT YOU HAVE READ THE ALTERNATE AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY THE TERMS OF THAT ALTERNATE AGREEMENT. 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 SAYIT SOLUTION, AND YOU SHOULD CLICK ON THE “DECLINE” BUTTON BELOW.

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, 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.

1.2 “Alternate Agreement” means a legally binding subscription or license agreement executed directly with nVoq or a similar agreement approved by nVoq that is provided in place of this Agreement by one of nVoq’s accredited resellers or original equipment manufacturer (OEM) partners that sets forth terms and conditions for Your access and use of the nVoq SayIt Solution and which supersedes and replaces some or all of the terms and conditions of this Agreement.

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

1.4 “Authorized User Profile” means a profile associated with a user that authorizes access to the nVoq SayIt 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.

1.5 “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 SayIt Solution and Documentation related thereto. Your Confidential Information includes, without limitation, your data, Payment Card Information, Nonpublic Personal Information and Protected Health Information which you entered in the nVoq SayIt Solution.

1.6 “Documentation” means the operating manuals, including a description of the functions performed by the nVoq SayIt 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 SayIt Solution.

1.7 “Evaluation Use” means use of the nVoq SayIt Solution solely for evaluation and trial purposes.

1.8 “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.

1.9 “Nonpublic Personal Information” or “**NPI**” shall have the meaning set forth in the Gramm-Leach-Bliley Act, Title V, Subtitle A, 15 U.S.C. Section 6801 et seq. (the “**Act**”), as such may be amended.

1.10 “**nVoq Saylt 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, and may include the Saylt Wireless Microphone Application as defined below 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.

1.11 “**Order**” means an order form executed by duly authorized representatives of both parties for the use of the nVoq Saylt Solution which is governed by the terms and conditions set forth in the accepted order, this Software Subscription Agreement and the Third Party Terms and Conditions (that can be viewed at <https://sayit.nvoq.com/company/legal/>) which are incorporated with and made a part hereof (collectively the “Agreement”).

1.12 “**Payment Card Information**” shall have the meaning as set forth by the PCI Security Standards Counsel.

1.13 “**Production Use**” means use of the nVoq Saylt Solution for internal business purposes only (excluding Evaluation Use). Production Use does not include the right to reproduce the nVoq Saylt Solution for sublicensing, resale, or distribution. Without limiting the generality of the foregoing, Production Use does not allow any operation of the nVoq Saylt Solution on a time sharing service or service bureau basis or distributing the nVoq Saylt Solution as part of an ASP, VAR, OEM, distributor or reseller arrangement.

1.14 “**Protected Health Information**” or “**PHI**” shall have the meaning set forth in 45 C.F.R. Section 160.103, as recognized under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“**HITECH**”), as such may be amended.

1.15 “**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 Saylt Solution.

1.16 “**Saylt Wireless Microphone Application**” means the software and development tools (in object code format only) and Documentation included therewith, that nVoq provides to You under the terms of this Agreement.

2. nVoq Service.

2.1 Subscription to the nVoq Saylt Solution. Subject to the terms of this Agreement, including, without limitation, the payment of all applicable fees, nVoq hereby grants to You a non-exclusive, non-transferable, non-sublicensable subscription to access and use the nVoq Saylt Solution in accordance with the Documentation solely for Your internal business purposes and not for resale.

2.1.1 Production Use. The terms of this Section 2.1.1 are applicable to You if You have obtained the nVoq Saylt Solution for Production Use. Subject to the terms of this Agreement (including, without limitation, the payment of all applicable fees) and the Documentation, nVoq grants to You (i) a non-exclusive, non-transferable, non-sublicensable fee-bearing subscription to access and use the nVoq Saylt Solution solely for Production Use, and (ii) the right to set up Authorized User Profiles for use in connection with the nVoq Saylt Solution; provided, however, Third Party Products supplied by nVoq as part of the nVoq Saylt Solution, if any, may be subject to Your acceptance of additional terms and conditions applicable to such Third Party Products (see Section 6 below). All rights not specifically granted to You herein are retained by nVoq and its licensors.

2.1.2 Evaluation Use. The terms of this Section 2.1.2 are applicable to You if You have obtained the nVoq Saylt Solution for Evaluation Use. Subject to the terms of this Agreement, and the Documentation, nVoq grants to You a non-exclusive, non-transferable, non-sublicensable subscription to access and use the nVoq Saylt Solution solely for Evaluation Use; provided, however, Third Party Products supplied by nVoq as part of the nVoq Saylt Solution, if any, may be subject to Your acceptance of additional terms and conditions applicable to such Third Party Products (see Section 6 below). This evaluation subscription begins upon first access to the nVoq Saylt Solution and ends on the earlier of the expiration of the subscription as specified by nVoq or if and when terminated by nVoq in accordance with this Agreement. When the subscription terminates You must stop using the nVoq Saylt Solution. All rights not specifically granted to You herein are retained by nVoq and its licensors.

2.2 Service Levels. With respect to the nVoq Saylt Solution licensed for Production Use, 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 Saylt Solution; (b) provide the support services described at <https://sayit.nvoq.com/company/legal/>; and (c) make the nVoq Saylt Solution generally available 24/7 (24 hours a day, 7 days a week) pursuant to the following Service Level Agreement:

*The monthly availability rate for Users accessing the Saylt Solution shall be at least 99.5% on a 24 hour per day, 7 day per week basis (“**Required Availability Rate**”), provided that any downtime occurring as a result of (i) scheduled maintenance whereby the Saylt Solution downtime does not exceed three hours (for the purpose of clarity, any downtime in excess of three hours will be counted toward Required Availability Rate measurements), (ii) maintenance or service interruptions requested by You, (iii) Your breach of any provision of this Agreement, (iv) incompatibility of Your equipment with the nVoq Saylt Solution, (v) any User Data, (vi) Your actions, (vii) performance of internet services, or (viii) force majeure (collectively “**Excused Delay**”) shall not be considered toward any reduction in Required Availability Rate measurements. nVoq shall use commercially reasonable efforts to provide 24 hours advance notice to You of any regularly scheduled service maintenance/outages.*

If nVoq fails to meet the Required Availability Rate during any calendar month, and such failure is not excused due to any Excused Delay, You shall promptly notify nVoq in writing of such failure, but in any event within 15 days

following the end of the applicable month, and You may choose to request a service credit to be applied against future payments that become due from You to Company under this Agreement. Such service credit shall be computed as the ratio of unavailable minutes to total potentially available minutes (net of Excused Delays) in the applicable month during which the Required Availability Rate was not met multiplied by the monthly fees due for such month; provided, however, in no event will the service credit due exceed (i) 10% of the applicable monthly fees for such month if the Required Availability Rate is less than 99.5% but greater than 98%, (ii) 20% of the applicable monthly fees for such month if the Required Availability Rate is less than 98% but greater than 97% and (i) 30% of the applicable monthly fees for such month if the Required Availability Rate is less than 97%. Notwithstanding anything to the contrary, the foregoing credit will be your sole and exclusive remedy with respect to any unscheduled downtime or any failure by nVoq to meet the Required Availability Rate. In the event You are not current in your payment obligations when an outage occurs, remedies will accrue, but service credits will not be issued until You become current in your payment obligations.

nVoq reserves the right to modify the support services in its reasonable discretion from time to time, which modifications shall become effective upon posting to the above URL. You are solely responsible for providing, at Your own expense, all network access to the nVoq Saylt Solution, including, without limitation, acquiring, installing and maintaining all telecommunications equipment, hardware, software and other equipment as may be necessary to connect to, access and use the nVoq Saylt Solution.

2.3 Purging Inactive Authorized User Profiles. Notwithstanding anything contained herein to the contrary, nVoq reserves the right, 30 days following the end of a calendar year (the "**Purge Date**"), to delete or otherwise purge any Authorized User Profile (including its corresponding data and content) that was inactive for such entire calendar year; provided, however, nVoq shall not purge those Authorized User Profiles that are identified by You in writing at least 15 days prior to the Purge Date, to be retained by nVoq.

3. Your Use of the nVoq Saylt 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 Saylt Solution. You shall be responsible for ensuring the security and confidentiality of Your User IDs. You will use commercially reasonable efforts to prevent unauthorized access to, or use of, the nVoq Saylt Solution, and notify nVoq promptly of any such unauthorized use. You will not use access to the nVoq Saylt 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 Saylt Solution or the data contained therein; or (d) harass or interfere with another user's use and enjoyment of the nVoq Saylt Solution. You will, at all times, comply with all applicable local, state, federal, and foreign laws and regulations in using the nVoq Saylt Solution, including without limitation, such laws and regulations relating to privacy, NPI, PHI and export/import controls.

3.2 Data. You shall have sole responsibility for the accuracy, quality, integrity, legality and appropriateness of Your content and data. You are solely responsible for Your content and data and will not provide, post or transmit any content, data or any other information or material 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 Your content or data violates this Section, however, nVoq is under no obligation to review such content or data for accuracy or potential liability. nVoq may access Your account(s), including without limitation Your content and data, for the sole purpose of responding to service or technical problems and for maintaining and improving nVoq's solutions.

3.3 Use Restrictions. You are responsible for all activities that occur under Your User IDs. You will not, and will not attempt to: (a) reverse engineer, disassemble or decompile any component of the nVoq Saylt Solution; (b) interfere in any manner with the operation of the nVoq Saylt Solution; (c) sublicense or transfer any of Your rights under this Agreement, except as otherwise provided in this Agreement, or otherwise use the nVoq Saylt 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 Saylt Solution; (e) create Internet "links" to or from the nVoq Saylt Solution, or "frame" or "mirror" any of nVoq's content which forms part of the nVoq Saylt Solution (other than on Your own internal intranets); or (f) otherwise use the nVoq Saylt Solution in any manner that exceeds the scope of use permitted under this Agreement.

3.4 Fees.

3.4.1 Payment and Taxes. In consideration of nVoq allowing access and use of the nVoq Saylt Solution, You agree to pay nVoq (or nVoq's accredited reseller or Original Equipment Manufacturer (OEM) partner from whom You purchased such access and use) the total applicable non-refundable and non-cancelable subscription fee(s) pursuant to the terms of the applicable Order. For sake of clarification, the entity who executes the Order shall be responsible for paying all invoices under an Order. In addition, the only sales that will be aggregated for the purpose of a volume discount will be orders placed under a single paying entity even if multiple Authorized Affiliates are purchasing the nVoq Saylt Solution; You and your Authorized Affiliates will manage the internal budgets and payments. Except as otherwise provided in an Order, nVoq reserves the right to update fees upon 30 days' advance written notice. All fees are exclusive of sales, use, VAT and other taxes and duties. If Your account is not paid within 60 days of receipt of invoice, in addition to any of its other rights or remedies, nVoq reserves the right to suspend Your access to the nVoq Saylt Solution until such amounts are paid in full.

3.4.2 Foreign Taxes. If You access and/or use the nVoq Saylt Solution from outside the United States, You agree that the amounts remitted to nVoq (or nVoq's accredited reseller or Original Equipment Manufacturer (OEM) partner

from whom You purchased access to the nVoq SayIt Solution) are to be the actual amounts due without withholding taxes or other assessments by authorities anywhere in the foreign location, which withholding taxes or assessments You agree to pay. You will promptly furnish certificates evidencing payment of such amounts.

4. TERM AND TERMINATION.

4.1 Term. The term of Your subscription to the nVoq SayIt 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.

4.2 Termination by nVoq. nVoq may terminate Your subscription and this Agreement if You are in material breach of any term or condition of this Agreement and fail to cure such breach within 10 business days of receiving written notice thereof from nVoq. With respect to the nVoq SayIt Solution provided for Evaluation Use, nVoq reserves the right, in its sole discretion, to suspend or terminate access to the nVoq SayIt Solution at any time and for any reason.

4.3 Termination by You. Except as otherwise provided in the applicable Order, You may terminate Your subscription and this Agreement for any reason or no reason whatsoever upon 30 days' prior notice to nVoq.

4.4 Effect of Termination. 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, 4.4, 5, 6, 7, 8, 9, 10 and 11, 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 SayIt 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).

5. OWNERSHIP. nVoq and its respective suppliers and licensors shall retain all right, title and interest in and to the nVoq SayIt Solution, Documentation and Third Party Products, and all portions thereof, 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 SayIt 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.

6. 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/>} and may be updated by nVoq from time to time (the "**SayIt Third Party Product Terms and Conditions**"). The SayIt 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 SayIt Third Party Product Terms and Conditions. The SayIt 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 SayIt Solution. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE SAYIT 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.

7. CONFIDENTIALITY AND PROTECTED HEALTH INFORMATION.

7.1 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 7.1 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 7, the breaching party shall notify the other party without unreasonable delay and in no case later than 24 hours after discovery 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.

7.2 PROTECTED HEALTH INFORMATION. Notwithstanding anything contained herein to the contrary, nVoq may use and disclose PHI only as required to satisfy its obligations under this Agreement and in compliance with all applicable privacy laws, including HIPAA and HITECH

If, and only if, the parties are sharing PHI, nVoq's Business Associate Agreement which is available at {<https://sayit.nvoq.com/company/legal/>} shall apply, and your acceptance of this Agreement shall be deemed to also constitute your acceptance of such Business Associate Agreement.

7.3 NONPUBLIC PERSONAL INFORMATION. nVoq acknowledges that it may receive or become aware of certain NPI in connection with Your access and use of the nVoq SayIt Solution. nVoq agrees that it will use commercially reasonable efforts to maintain all NPI in accordance with applicable laws and regulations, including, but not limited to, the Act, the Fair Credit Reporting Act, 15 U.S.C. Section 1681 *et seq.*, and all other applicable federal and state privacy laws (together, the “**Privacy Laws**”) and all implementing regulations thereof, and will not reproduce, disseminate, utilize or take any other action in connection with NPI except as specifically permitted by the Privacy Laws. nVoq further agrees to implement and maintain appropriate measures designed to: (i) ensure the security and confidentiality of NPI; (ii) protect against any anticipated threats or hazards to the security or integrity of NPI; (iii) protect against unauthorized access to or use of NPI; and (iv) ensure proper disposal of NPI in accordance with the Privacy Laws.

8. WARRANTY AND DISCLAIMER.

8.1 Warranty.

8.1.1 With respect to the nVoq SayIt Solution licensed for Production Use, nVoq represents and warrants that the nVoq SayIt 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 SayIt Solution will be uninterrupted or error-free or will operate without loss of data.

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

8.2 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 8.1, use commercially reasonable efforts to correct any material error in the nVoq SayIt Solution (“**Defect**”) that You can demonstrate and reproduce, and that You report to nVoq in writing during the term of Your subscription. If nVoq determines that it is unable to correct the error, nVoq will refund to You all fees actually paid by You for the Users impacted by the error for the period(s) during which such Defect interfered with Your access and/or use of the nVoq SayIt Solution, in which case this Agreement and Your right to use the nVoq SayIt Solution will be terminated.

8.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 8.1, 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 NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY.

9. INDEMNITY.

9.1 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 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 9.1 or otherwise with respect to any infringement claim based upon any use of the nVoq SayIt Solution not in accordance with this Agreement or for purposes not reasonable contemplated by this Agreement or by nVoq. For purposes herein, “**nVoq Technology**” shall mean the nVoq SayIt Solution, excluding any Third Party Products; provided, however, in the event any infringement claim arises out of an allegation that the nVoq Technology, in combination with any Third Party Product(s), infringes any third party Intellectual Property Right, nVoq’s obligations under this Section 9.1 shall apply to any such claim.

9.2 Indemnity by You. You shall, at Your own expense, indemnify, defend and hold nVoq (and, as applicable, nVoq’s accredited reseller or Original Equipment Manufacturer (OEM) 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 access to and/or use of the nVoq SayIt Solution 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 9.1 or otherwise arises solely out of nVoq’s breach of this Agreement.

9.3 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 Your license in and to the nVoq Technology and nVoq SayIt Solution and refund all fees associated with the nVoq SayIt Solution that have been paid by You to nVoq.

9.4 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.

9.5 Limitation on Indemnity Actions. THIS SECTION 9 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 SAYIT SOLUTION.

10. LIMITATION OF LIABILITY.

10.1 General. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY (OR THAT OF ANY OF NVOQ'S LICENSORS OR SUPPLIERS) TO THE OTHER PARTY ARISING FROM OR RELATING TO THIS AGREEMENT OR YOUR ACCESS TO AND USE OF THE NVOQ SAYIT SOLUTION EXCEED THE AMOUNT OF FEES PAID/PAYABLE BY YOU TO NVOQ FOR THE NVOQ SAYIT SOLUTION IN THE TWELVE MONTHS PRECEDING THE EVENTS THAT PROVIDE THE BASIS FOR THE CLAIM WHICH GIVES RISE TO SUCH LIABILITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE (IT BEING UNDERSTOOD THAT NVOQ'S LIABILITY, AND THE LIABILITY OF ITS LICENSORS AND SUPPLIERS TO YOU MAY BE FURTHER LIMITED BY OTHER PROVISIONS OF THIS AGREEMENT, INCLUDING THE THIRD PARTY PRODUCT TERMS AND CONDITIONS); (2) IN NO EVENT SHALL NVOQ HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO ANY THIRD PARTY PRODUCT; AND (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 CODE, DATA, INFORMATION OR MATERIALS, LOST PROFITS OR REVENUE, BUSINESS INTERRUPTION, COMPUTER OR SYSTEM DOWNTIME OR UNAVAILABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE LIMITATIONS OF LIABILITY SET FORTH ABOVE IN THIS SECTION SHALL NOT APPLY TO: (I) A PARTY'S BREACH OF ANY OBLIGATION UNDER THIS AGREEMENT WITH REGARD TO THE CONFIDENTIALITY AND USE OF THE OTHER PARTY'S CONFIDENTIAL INFORMATION; (II) YOUR BREACH OF SECTION 3.3; (III) A PARTY'S VIOLATION OF APPLICABLE LAWS OR REGULATIONS; (IV) CLAIMS BASED UPON GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD; (V) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; OR (VI) CLAIMS FOR PERSONAL INJURY, SICKNESS OR DEATH.

10.2 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.

11. GENERAL. The nVoq Sayit 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 Sayit 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 Sayit 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 County, Colorado. 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, 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. nVoq may provide certain notices with regard to this Agreement to You by email. All notices are effective when delivered. With the exception of the Sayit 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. You hereby agree that in the event (a) nVoq ceases to function as a going concern, substantially ceases to conduct its operations in the normal course of business, a receiver for nVoq is appointed or applied for, or nVoq otherwise takes advantage of any insolvency or bankruptcy law and (b) nVoq is unable to fulfill its duties under this Agreement as a result thereof, then any claim or action related to such nonperformance by nVoq will be brought by You directly against nVoq and not against any nVoq accredited reseller or Original Equipment Manufacturer (OEM) partner. nVoq's accredited resellers and Original Equipment Manufacturer (OEM) partners are intended third party beneficiaries of this Agreement.

THE NVOQ SAYIT 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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