



INNOVATIONS IN
PRODUCTIVITY

SAYIT DICTATION KEYBOARD FOR ANDROID SOFTWARE SUBSCRIPTION AGREEMENT

NVOQ INCORPORATED (“**NVOQ**”), THROUGH ITS HOSTED SERVICE OR OTHERWISE, IS WILLING TO GIVE ACCESS TO THE SAYIT DICTATION KEYBOARD FOR ANDROID (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 (THE “**AGREEMENT**”). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, NVOQ IS UNWILLING TO PROVIDE ACCESS AND/OR USE OF THE SAYIT DICTATION KEYBOARD FOR ANDROID OR COMPONENT THEREOF TO YOU, AND YOU SHOULD IMMEDIATELY DISCONTINUE THE USE OF THE SAYIT DICTATION KEYBOARD FOR ANDROID 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 SAYIT DICTATION KEYBOARD FOR ANDROID 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. 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 SAYIT DICTATION KEYBOARD FOR ANDROID, 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 “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.

1.3 “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 SayIt Dictation Keyboard for Android 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 SayIt Dictation Keyboard for Android.

1.4 “Documentation” means the operating manuals, including a description of the functions performed by the SayIt Dictation Keyboard for Android, 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 SayIt Dictation Keyboard for Android.

1.5 “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.

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

1.7 “SayIt Dictation Keyboard for Android” means the software, (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.

1.8 “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 SayIt Dictation Keyboard for Android.

2. nVoq Service.

Subscription to the SayIt Dictation Keyboard for Android. Subject to the terms of this Agreement, nVoq hereby grants to You a non-exclusive, non-transferable, non-sublicensable subscription to access and use the SayIt Dictation Keyboard for Android in accordance with the Documentation solely for Your internal business purposes and not for resale. However, Third-Party Products supplied by nVoq as part of the SayIt Dictation Keyboard for Android, 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.

3. Your Use of the SayIt Dictation Keyboard for Android.

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 SayIt Dictation Keyboard for Android; (b) interfere in any manner with the operation of the SayIt Dictation Keyboard for Android; (c) sublicense or transfer any of Your rights under this Agreement, except as otherwise provided in this Agreement, or otherwise use the SayIt Dictation Keyboard for Android for the benefit of a Third-Party (excluding Your Authorized Affiliates); (d) modify, copy or make derivative works based on any part of the SayIt Dictation Keyboard for Android; or (e) otherwise use the SayIt Dictation Keyboard for Android in any manner that exceeds the scope of use permitted under this Agreement.

4. TERM AND TERMINATION.

4.1 Term. The term of Your subscription to the SayIt Dictation Keyboard for Android 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.

4.3 Termination by You. You may terminate Your subscription and this Agreement for any reason or no reason by deleting the SayIt Dictation Keyboard for Android application and all Documentation related to the SayIt Dictation Keyboard for Android along with any copies thereof from your device.

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, 4.4, 5, 6, 7, 8, 9, 10 and 11 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 SayIt Dictation Keyboard for Android 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 SayIt Dictation Keyboard for Android, 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 SayIt Dictation Keyboard for Android 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/about/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 SayIt Dictation Keyboard for Android. **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.

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.

8. WARRANTY AND DISCLAIMER.

8.1 Warranty.

Your use of the SayIt Dictation Keyboard for Android is entirely at Your own risk, and (iii) the SayIt Dictation Keyboard for Android IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. nVoq does not warrant that the SayIt Dictation Keyboard for Android will be uninterrupted or error-free or will operate without loss of data.

8.2 Disclaimer. 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 SayIt Dictation Keyboard for Android 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 SayIt Dictation Keyboard for Android, 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 SayIt Dictation Keyboard for Android 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 SayIt Dictation Keyboard for Android.

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 SAYIT DICTATION KEYBOARD FOR ANDROID.

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 SAYIT DICTATION KEYBOARD FOR ANDROID EXCEED 100.00, 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; (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 SayIt Dictation Keyboard for Android 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 SayIt Dictation Keyboard for Android 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 SayIt Dictation Keyboard for Android 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 SAYIT DICTATION KEYBOARD FOR ANDROID 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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