



INNOVATIONS IN  
PRODUCTIVITY

## SAYIT DICTATION CLIENT SOFTWARE SUBSCRIPTION AGREEMENT

NVOQ INCORPORATED (“NVOQ”), THROUGH ITS HOSTED SERVICE OR OTHERWISE, IS WILLING TO GIVE ACCESS TO THE SAYIT DICTATION CLIENT (ALSO KNOWN AS “NVOQ.VOICE DICTATION CLIENT”) (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**”). THIS AGREEMENT AND ALL ORDER FORMS GOVERN CUSTOMER’S ACCESS TO AND USE OF THE SAYIT DICTATION CLIENT, AND IF ANY STATEMENTS OF WORK (“SOW”) ARE ENTERED INTO THEN SUCH SOW SHALL GOVERN ANY PROFESSIONAL SERVICES NVOQ PROVIDES TO CUSTOMER. CUSTOMER AND NVOQ MAY BE REFERRED TO IN THIS AGREEMENT INDIVIDUALLY AS A “PARTY” AND COLLECTIVELY AS THE “PARTIES.” IN THE EVENT OF ANY CONFLICTS BETWEEN THIS AGREEMENT, ANY ORDER FORM, AND/OR ANY SOW, THE FOLLOWING ORDER-OF-PRECEDENCE APPLIES: SOW TAKE PRECEDENCE AND PREVAIL OVER ORDER FORMS SOLELY WITH RESPECT TO THE SUBJECT MATTER OF THE SOW; AND ORDER FORMS AND SOW TAKE PRECEDENCE AND PREVAIL OVER THIS AGREEMENT SOLELY WITH RESPECT TO THEIR RESPECTIVE SUBJECT MATTER. IF YOU. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, NVOQ IS UNWILLING TO PROVIDE ACCESS AND/OR USE OF THE SAYIT DICTATION CLIENT OR COMPONENT THEREOF TO YOU, AND YOU SHOULD IMMEDIATELY DISCONTINUE THE USE OF THE SAYIT DICTATION CLIENT AND DESTROY ANY DOCUMENTATION (DEFINED BELOW) IN YOUR POSSESSION. IF YOU ARE AN EMPLOYEE OR AGENT OF CUSTOMER AND ARE ENTERING INTO THIS AGREEMENT TO OBTAIN THE SAYIT DICTATION CLIENT FOR USE BY YOU AND/OR CUSTOMER FOR YOURS AND ITS OWN BUSINESS PURPOSES, YOU HEREBY AGREE THAT YOU ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

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

**(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 SAYIT DICTATION CLIENT, AND YOU SHOULD CLICK ON THE “DECLINE” BUTTON BELOW.**

**1. DEFINITIONS.** For the purposes of this Agreement and all Order Form(s) and SOW, 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 SayIt Dictation Client 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 SayIt Dictation Client. 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 SayIt Dictation Client 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 Client.

**1.6 “Documentation”** means the operating manuals, including a description of the functions performed by the SayIt Dictation Client, 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 Client.

**1.7 “Evaluation Use”** means use of the SayIt Dictation Client 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 “Order”** means an order form executed by duly authorized representatives of both parties for the use of the SayIt Dictation Client 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”).

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

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

**1.13 “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.

**1.14 “SayIt Dictation Client” or “nVoq.Voice Dictation Client”** 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 SayIt 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. The SayIt Dictation Client may also be referred to as nVoq.Voice in some documentation and marketing materials.

**1.15 “SayIt 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 and all Order Form(s) and SOW.

**1.16 “SOW”** means Statement(s) of Work, Change Order(s) or other contract(s) under which nVoq provides its Professional Services, if any.

**1.17 “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 Client.

## **2. nVoq Service.**

**2.1 Subscription to the SayIt Dictation Client.** Subject to the terms of this Agreement and all Order Form(s) and SOW, 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 SayIt Dictation Client 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 SayIt Dictation Client for Production Use. Subject to the terms of this Agreement and all Order Form(s) and SOW (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 SayIt Dictation Client solely for Production Use, and (ii) the right to set up Authorized User Profiles for use in connection with the nVoq SayIt Solution; provided, however, Third-Party Products supplied by nVoq as part of the SayIt Dictation Client, if any, may be subject to Your acceptance of additional terms and conditions applicable to such Third Party Products (see Section 7 below). All rights not specifically granted to You herein are retained by nVoq and its licensors.

**2.1.2 Evaluation Use.** The terms of this Section 2.1.2 are applicable to You if You have obtained the SayIt Dictation Client for Evaluation Use. Subject to the terms of this Agreement and all Order Form(s) and SOW, and the Documentation, nVoq grants to You a non-exclusive, non-transferable, non-sublicensable subscription to access and use the SayIt Dictation Client solely for Evaluation Use; provided, however, Third-Party Products supplied by nVoq as part of the SayIt Dictation Client, if any, may be subject to Your acceptance of additional terms and conditions applicable to such Third Party Products (see Section 7 below). This evaluation subscription begins upon first access to the SayIt Dictation Client 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 and all Order Form(s) and SOW. When the subscription terminates You must stop using the SayIt Dictation Client. All rights not specifically granted to You herein are retained by nVoq and its licensors.

**2.2 Service Levels.** With respect to the SayIt Dictation Client licensed for Production Use, subject to the terms of this Agreement and all Order Form(s) and SOW, including, without limitation, the payment of all applicable fees, nVoq shall use commercially reasonable efforts to (a) maintain the security of the nVoq SayIt Solution; (b) provide the support services described at <https://sayit.nvoq.com/company/legal/> and (c) make the SayIt Dictation Client 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 SayIt 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 and all Order Form(s) and SOW, (iv) incompatibility of Your equipment with the Saylt Dictation Client, (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 and all Order Form(s) and SOW. 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 Saylt Dictation Client, 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 Saylt Dictation Client.

**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 Saylt Dictation Client.**

**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 Saylt Dictation Client. 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 Saylt Dictation Client, and notify nVoq promptly of any such unauthorized use. You will not use access to the Saylt Dictation Client 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 Saylt Dictation Client or the data contained therein; or (d) harass or interfere with another user's use and enjoyment of the Saylt Dictation Client. You will, at all times, comply with all applicable local, state, federal, and foreign laws and regulations in using the Saylt Dictation Client, 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 and all Order Form(s) and SOW, except as otherwise provided in this Agreement and all Order Form(s) and SOW, or otherwise use the Saylt Dictation Client 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 Saylt Dictation Client, or "frame" or "mirror" any of nVoq's content which forms part of the Saylt Dictation Client (other than on Your own internal intranets); or (f) otherwise use the Saylt Dictation Client in any manner that exceeds the scope of use permitted under this Agreement and all Order Form(s) and SOW.

### **3.4 Fees.**

**3.4.1 Payment and Taxes.** In consideration of nVoq allowing access and use of the Saylt Dictation Client, 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 professional service fees and/or 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 SayIt 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 45 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 SayIt Dictation Client until such amounts are paid in full. Should You continue to access and use the SayIt Dictation Client beyond the term of the Order, this Agreement shall remain in effect and nVoq shall bill You at the then current subscription rate.

**3.4.2 Foreign Taxes.** If You access and/or use the SayIt Dictation Client 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 SayIt Dictation Client shall be as set forth in the applicable Order(s). Such subscription, and this Agreement shall continue until such time as they are terminated by either party pursuant to this Section 4 and only after all Orders and SOW have expired or been terminated in accordance with this Agreement and You have ceased all access to and use of the SayIt Dictation Client.

**4.2 Termination of the Agreement.** nVoq may terminate Your subscription and this Agreement and all Order Form(s) and SOW if You are in material breach of any term or condition of this Agreement and all Order Form(s) and SOW and fail to cure such breach within 10 business days of receiving written notice thereof from nVoq. With respect to the SayIt Dictation Client provided for Evaluation Use, nVoq reserves the right, in its sole discretion, to suspend or terminate access to the SayIt Dictation Client at any time and for any reason. Either Customer or nVoq may terminate any Order and/or SOW in accordance with their respective terms. If not specified in the applicable Order or SOW, then subject to the exclusive remedy provisions of this Agreement: either party may terminate any Order or SOW for cause upon written notice if the other party fails to cure a material breach thereof, or any material breach of this Agreement, within 30 days after receiving reasonable detailed written notice from the other party alleging the breach. Either Party may terminate this Agreement, but only by providing written notice to the other party, and only after all Orders and SOW have expired or been terminated in accordance with this Agreement or concurrently therewith.

**4.3 Effect of Termination of the Agreement.** In the event of termination or expiration of any subscription and/or this Agreement for any reason, the following provisions shall survive: Sections 1, 3.3, 3.4, 4.4, 5, 6, 7, 8, 9, 10, 11 and 12, along with any payment obligations hereunder and any other provision of this Agreement that by its terms would survive expiration or termination. Immediately upon any expiration or termination of this Agreement, You shall remove from Your system(s) and destroy any and all copies of the Documentation, Your subscription to the SayIt Dictation Client and Documentation shall terminate, and You shall cease all use of the same. Except as otherwise agreed to in writing by nVoq or expressly provided in an Order, You shall remain liable for all minimum or committed fees under an Order regardless of any early termination of the applicable subscription(s).

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

**5. OWNERSHIP.** nVoq and its respective suppliers and licensors shall retain all right, title and interest in and to the SayIt Dictation Client, 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 Client 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. PROFESSIONAL SERVICES.** If Customer wishes to purchase any training, implementation or other professional services from nVoq relating to the SayIt Dictation Client ("**Professional Services**"), the Parties will mutually execute one or more separate SOW containing the relevant terms and conditions. nVoq Professional Services are separate and apart from the use of the SayIt Dictation Client, and neither Party's obligations in connection with the SayIt Dictation Client are dependent in any way on any Professional Services. Except to the extent expressly set forth to the contrary in any applicable SOW, the following provisions will apply to all SOW:

**6.1** As between Customer and nVoq, Customer will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product and other materials created by or for Customer without any contribution by nVoq and provided to nVoq under the SOW. Customer grants nVoq a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, distribute, create derivative works

of, and otherwise use such Customer-owned materials in connection with providing the Service during the Term of this Agreement and otherwise performing its obligations under this Agreement;

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

**6.3** Subject to the terms of this Agreement, NVoq grants Customer a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, create derivative works of, and otherwise use internally the NVoq PS Materials in connection with the Service during the Term of this Agreement.

Nothing in this Agreement will prohibit, restrict or limit (i) NVoq from performing similar Professional Services for any third party, or (ii) Customer from hiring any third party to perform similar Professional Services (though Customer is not permitted to give any direct competitor of NVoq access to the Service or any NVoq PS Materials without NVoq’s prior written consent).

**7. THIRD-PARTY TERMS.** Certain of the Third-Party Products made available or distributed to You under this Agreement are subject to alternative terms and conditions that may vary from those set forth in this Agreement. Such alternative terms and conditions can be viewed at <https://sayit.nvoq.com/company/legal/> 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 Client. 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.

## **8. CONFIDENTIALITY AND PROTECTED HEALTH INFORMATION.**

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

**8.2 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.

**8.3 NONPUBLIC PERSONAL INFORMATION.** nVoq acknowledges that it may receive or become aware of certain NPI in connection with Your access and use of the SayIt Dictation Client. 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.

## **9. WARRANTY AND DISCLAIMER.**

### **9.1 Warranty.**

**9.1.1** With respect to the SayIt Dictation Client licensed for Production Use, nVoq represents and warrants that the SayIt Dictation Client will function in accordance with the Documentation in all material respects during the term of Your subscription. nVoq does not warrant that the SayIt Dictation Client will be uninterrupted or error-free or will operate without loss of data.

**9.1.2** With respect to the SayIt Dictation Client licensed for Evaluation Use, You acknowledge and agree that (i) the SayIt Dictation Client is for Evaluation Use only, (ii) Your use of the SayIt Dictation Client is entirely at Your own risk, and (iii) the SayIt Dictation Client IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER.

**9.2 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 9.1, use commercially reasonable efforts to correct any material error in the SayIt Dictation Client ("**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 SayIt Dictation Client, in which case this Agreement and Your right to use the SayIt Dictation Client will be terminated.

**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 NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY.

## **10. INDEMNITY.**

**10.1 Indemnity by nVoq.** nVoq shall, at its own expense, indemnify, defend and hold You harmless from and against any and all costs, fees (including reasonable attorneys' fees), damages, liabilities and expenses arising from any third-party claim, action, suit or proceeding to the extent such claim, action or suit arises out of: (i) an allegation that the nVoq Technology (defined below) infringes any Third-Party Intellectual Property Right; (ii) a breach of nVoq's obligations hereunder with regard to the confidentiality and use of Your Confidential Information; or (iii) nVoq's failure to comply with applicable laws. Notwithstanding the foregoing, nVoq shall have no obligations under this Section 10.1 or otherwise with respect to any infringement claim based upon any use of the SayIt Dictation Client 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 Client, 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 10.1 shall apply to any such claim.

**10.2 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 Client and/or Your breach of this Agreement; provided, however, You shall not have any indemnity obligations hereunder to the extent any claim is covered by nVoq's indemnity obligations under Section 10.1 or otherwise arises solely out of nVoq's breach of this Agreement.

**10.3 Actions to Avoid Infringement.** If the nVoq Technology or any portion thereof is likely to become or is the subject of any claim, action, suit or proceeding for infringement, then nVoq may, at its option and expense: (a) procure for You the right to continue using the nVoq Technology or relevant portion thereof; (b) replace or modify the nVoq Technology so as not to infringe; or (c) terminate this Agreement and all Order Form(s) and SOW and Your license in and to the nVoq Technology and SayIt Dictation Client and refund all fees associated with the SayIt Dictation Client that have been paid by You to nVoq.

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

**10.5 Limitation on Indemnity Actions.** THIS SECTION 10 STATES NVOQ'S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY, AND YOUR SOLE AND EXCLUSIVE RIGHTS AND REMEDIES, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS RELATING TO THE NVOQ TECHNOLOGY AND SAYIT DICTATION CLIENT.

## 11. LIMITATION OF LIABILITY.

**11.1 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 AND ALL ORDER FORM(S) AND SOW OR YOUR ACCESS TO AND USE OF THE SAYIT DICTATION CLIENT EXCEED THE AMOUNT OF FEES PAID/PAYABLE BY YOU TO NVOQ FOR THE SAYIT DICTATION CLIENT 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.

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

**12. GENERAL.** The SayIt Dictation Client 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 Client 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 Client with only those rights set forth therein. This Agreement and all Order Form(s) and SOW 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. 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, so long as such assignee is not a direct competitor of the other party. Any attempted assignment or transfer in violation of the foregoing will be void and of no force and effect. Subject to the foregoing, this Agreement will be binding upon, and will inure to the benefit of, the parties and their respective successors and permitted assigns. If any provision of this Agreement and all Order Form(s) and SOW. If any provision of this Agreement is deemed unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. This Agreement, along with each Order and SOW, is the complete and exclusive statement of the agreement between You and nVoq with regards to the subject matter herein and therein and supersedes any proposal or prior agreement, oral or written, and any other communications between You and nVoq in relation to such subject matter. nVoq may provide certain notices with regard to this Agreement and all Order Form(s) and SOW 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 and all Order Form(s) and SOW as a result thereof, then any claim or action related to such nonperformance by nVoq will be brought by You directly against nVoq. Force Majeure: Except with respect to payment obligations under this Agreement (provided any failure to make payments due hereunder shall be excluded if the cause for such force majeure directly impacts the applicable party's financial institution's ability to process the applicable payment), if a party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such party's reasonable control, such failure or delay shall not be deemed to constitute a material breach of this Agreement, but such obligation shall remain in full force and effect, and shall be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay 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 CLIENT 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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