

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
NUANCE COMMUNICATIONS, INC.**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014,  
by and between the COUNTY OF SAN MATEO, hereinafter called "County," and  
Nuance Communications, Inc., hereinafter called "Contractor";

**W I T N E S S E I H:**

WHEREAS, pursuant to Government Code Section 31000, County may  
contract with independent contractors for the furnishing of such services to or for  
County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the  
purpose of transcription services.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO  
AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and  
incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Exhibit E—Corporate Compliance SMMC Code of Conduct (Third Parties)

Attachment H—HIPAA Business Associate Requirements

Attachment I—§ 504 Compliance

**2. Services to be performed by Contractor**

In consideration of the payments set forth herein and in Exhibit B, Contractor shall  
perform services for County in accordance with the terms, conditions, and  
specifications set forth herein and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms,  
conditions, and specifications set forth herein and in Exhibit A, County shall make  
payment to Contractor based on the rates and in the manner specified in Exhibit B.  
In no event shall County's total fiscal obligation under this Agreement exceed FOUR  
HUNDRED FIFTY THOUSAND DOLLARS (\$450,000).

**4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from September 1, 2013, through August 31, 2015.

The County or Contractor may terminate the Agreement by written notice if (i) the other party commits a material breach of the Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach; or (ii) the other party shall be or becomes insolvent.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such materials. Neither the expiration nor termination of this Agreement shall affect the parties' respective payment obligations for Transcription Services previously provided. County shall have no further rights to access and/or use the Transcription Services and any Programs, and within ten (10) days of such termination County shall return or destroy all copies of the Programs and Documentation in its possession.

#### **5. Availability of Funds**

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding. Notwithstanding the foregoing, in no event shall County's availability of funds affect the County's payment obligations for Transcription Services previously provided by Contractor.

#### **6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

#### **7. Indemnity**

7.1 General Indemnity. Contractor shall defend and indemnify County and its officers, agents, employees, and servants against any and all claims of bodily injury, including death, and/or tangible personal property damage resulting from grossly negligent or intentionally wrongful actions of Contractor or a person employed by Contractor (i.e., as an employee or independent contractor) while performing services on County's premises, if such actions were not proximately caused by the action or omission of the County or any third party; provided however, that (a) County notifies Contractor within thirty (30) days of the County's receipt of a lawsuit asserting a claim; (b) Contractor has sole control of the defense and all related settlement negotiations; and (c) County provides Contractor with the assistance, information and authority reasonably necessary to perform the above. As used in this Section, the term "tangible personal property" shall not include software,

documentation, data or data files. Contractor shall have no liability for any claim of bodily injury and/or tangible personal property damage arising from use of the Software. This Section 7.1 states the parties' entire liability and exclusive remedy for bodily injury and property damage.

Without limiting the provisions of this Section 7.1, the duty of Contractor to indemnify as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

## 7.2 Intellectual Property Indemnification.

a. Contractor, at its expense, will defend County from any claim or suit made or brought against County by an unaffiliated third party alleging that County's use of the Programs within the scope of this Agreement infringes such third party's United States patent, trademark, trade secret, or copyright (each, a "Claim"), and indemnify County from any resulting judgment of the Claim finally awarded against County by a court of competent jurisdiction, or settlement of the Claim agreed to by Contractor. Contractor's obligation under this Section 7.2 shall be subject to County's providing Contractor with prompt notice of any Claim, cooperation with Contractor in the defense and settlement of the Claim, and granting Contractor sole control over the defense or settlement of the Claim.

b. In the event a court of competent jurisdiction makes a determination that any Program infringes, or if Contractor determines that the Program likely infringes, Contractor, at its option and expense, shall: (i) modify the infringing portion of the Program so as to make it non-infringing; (ii) replace the infringing Program with a non-infringing program having substantially similar functionality; (iii) obtain the right to continue using the infringing portion of the Program; or (iv) refund County the Fees paid for the affected Program prorated over a five-year period from the delivery date.

c. Contractor's obligations under this section shall not apply to the extent of any Claim or infringement resulting from (i) County's continued use of the infringing Program after receipt of notice from Contractor of a claim or after receipt of the remedy required of Contractor under this section; (ii) modifications to the Programs by any party other than Contractor; (iii) modifications to the Programs made pursuant to County's express instructions; (iv) combination or use of the Programs with other products, processes or materials not provided by Contractor or specified by the applicable Documentation; or (v) County's use of the Programs other than in accordance with the terms of this Agreement.

d. Contractor's indemnity obligations set forth in this Section 7.2 shall constitute the sole liability of Contractor, and the sole remedy of County, with regard to claims, actions, suits or proceedings made or brought against County by a third party alleging that County's use of the Programs infringe such third party's United States patent, trade secret, copyright or other intellectual property right.

Without limiting the provisions of this Section 7.2, the duty of Contractor to indemnify as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Provided, however, either party may assign this Agreement to an entity that acquires all or substantially all of a party's assets (by merger, asset acquisition, or otherwise) upon written notice to the other party. Provided, however, Contractor retains the right to prohibit any assignment to a direct competitor of Contractor.

**9. Insurance**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Contractor shall give County thirty (30) days' notice in writing of any pending change in the limits of liability or of any cancellation or modification of the policy that would materially impact coverage under the policy.

- (1) **Workers' Compensation and Employer's Liability Insurance.** Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, (a) that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
- (2) **Liability Insurance.** Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability . . . . . \$1,000,000
- (b) Professional Liability. . . . . \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**10. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

The parties agree that, pursuant to Section 70713 of Title 22 of the California Code of Regulations ("Title 22"), the facility retains all professional and administrative responsibility for services rendered under this Agreement to the extent that such services are subject to Title 22 and are rendered by a "qualified professional person" as used in Section 70713, and the parties further agree in that instance that this Agreement is otherwise subject to any applicable requirements of Title 22.

Further, Contractor certifies that Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**11. Non-Discrimination and Other Requirements**

- A. *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- B. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.
- C. *Section 504 of the Rehabilitation Act of 1973.* Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- D. *Compliance with County's Equal Benefits Ordinance.* With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:
- ☒ Contractor complies with Chapter 2.84 by:
    - ☒ offering the same benefits to its employees with spouses and its employees with domestic partners.
    - ☐ offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
  - ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.

- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

E. *Discrimination Against Individuals with Disabilities.* The Contractor shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.

F. *History of Discrimination.* Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

G. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject to the following:

- i) termination of this Agreement; and/or
- ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years.

## **12. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service

ordinance, Contractor certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code."

**13. Retention of Records, Right to Monitor and Audit**

(a) Contractor shall maintain all required records for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit of County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**14. Merger Clause & Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**16. Notices**

Any notice, request, demand, or other communication required or permitted



under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

**In the case of County, to:**

San Mateo Medical Center  
222 W. 39<sup>th</sup> Avenue  
San Mateo, CA 94403  
Attn: Director of Medical Records  
Telephone: (650) 573-2333  
Facsimile: (650) 573-3772

**In the case of Contractor, to:**

Nuance Communication, Inc.  
One Wayside Road  
Burlington, MA 01803  
Telephone: (858) 776-8098  
Facsimile: (781) 565-5001

**17. Software License**

Contractor grants to County a non-exclusive, non-transferable, non-sub-licensable limited license to access and use the Software (as described in Exhibit "A") through Contractor's Internet Website. The license granted shall not be deemed to authorize County to change or modify the software in any way. Nothing herein grants any rights to County to resell, remarket, or to sublicense the Software or access to Contractor's Website to any third party.

**18. Ownership**

County acknowledges that the structure, organization, and code (both source code and object code) of the Software are proprietary to Contractor and that Contractor retains exclusive ownership of the Software, documentation, trademarks, and any other intellectual Property Rights relating to the Software, including all modifications, enhancements, derivatives, and other software and materials developed hereunder by Contractor, and all copies thereof. County shall not sell, transfer, publish, disclose, display or otherwise make available the Software including any modifications, enhancements, derivatives and other software and materials developed hereunder by Contractor, or copies thereof to others in violation of this Agreement. Further, Software will be deemed to be Confidential Information, and any such confidentiality restrictions shall apply accordingly. Except as otherwise expressly permitted hereunder, County agrees not to copy or otherwise reproduce the Software including any modifications, enhancements, derivatives, and other software and materials developed hereunder by Contractor in whole or in part. County shall not remove any proprietary, copyright, trademark, or service mark legend from any Software.

Contractor represents that it has title to and the unrestricted right to license its proprietary software and will indemnify County and hold it harmless against any infringements claims.

“Nuance Communications, Inc.” and any other trademarks and service marks adopted by Contractor, to identify the Software and other Contractor products and services belong to Contractor. County has no rights in such marks except as specified in writing between the parties. County agrees not to use the “Nuance Communications Inc.” trademark or any other mark likely to cause confusion with such trademarks as any portion of County’s trade name, trademark for County’s services, trademark for any other products of County, or trademark for any portion of County’s Internet addresses or domain names.

County agrees not to decompile, disassemble, reverse engineer, transfer electronically, modify, enhance, or create any derivative works with the Software or any Contractor proprietary or confidential information.

County agrees not to rent, electronically distribute, or timeshare the Software or market the Software by Interactive cable, internet or remote processing services or otherwise distribute the Software other than as specified in this Agreement. Contractor agrees that County’s patient data shall be and remain County’s Proprietary Information. Contractor understands and agrees that County’s patient data is subject to applicable state and federal laws and regulations pertaining to confidentiality of patient data and information and prohibiting disclosure of it.

## **19. Electronic Signature**

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☐ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☐ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

## **20. Limitation of Liability**

UNDER NO CIRCUMSTANCES WILL EITHER PARTY HAVE ANY OBLIGATION OR LIABILITY TO THE OTHER HEREUNDER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, COLLATERAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES INCURRED BY THE OTHER PARTY (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS, COSTS OF COVER, COSTS OF DELAY, DAMAGES TO BUSINESS REPUTATION, OR LOSS OR DESTRUCTION OF DATA), REGARDLESS OF HOW SUCH DAMAGES ARISE, WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE, OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

EXCEPT FOR COUNTY'S BREACH OF THE LICENSE GRANT AND ITS RESTRICTIONS, CONTRACTOR'S BREACH OF ITS BUSINESS ASSOCIATE OBLIGATIONS, NUANCE'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7, AND EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS, THE MAXIMUM LIABILITY FOR EITHER PARTY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES COUNTY PAID CONTRACTOR UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM COUNTY'S USE OF PROGRAMS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES COUNTY PAID CONTRACTOR FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY. NOTWITHSTANDING THE FOREGOING, CONTRACTOR'S AGGREGATE OBLIGATION AND/OR LIABILITY TO COUNTY FOR ITS INDEMNIFICATION OBLIGATIONS SHALL IN NO EVENT EXCEED THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000).

## **21. Speech Recognition**

COUNTY ACKNOWLEDGES THAT SPEECH RECOGNITION IS A STATISTICAL PROCESS, ERRORS ARE INHERENT IN SUCH PROCESS, AND APPLICATIONS EMPLOYING SUCH PROCESS ARE DESIGNED TO ALLOW FOR SUCH ERRORS. CUSTOMER ACKNOWLEDGES THAT SUCH ERRORS ARE INEVITABLE AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF COUNTY TO IDENTIFY AND CORRECT ANY SUCH ERRORS BEFORE USING AND/OR RELYING ON THE RESULTS OF THE USE OF ANY SPEECH RECOGNITION SOFTWARE PROGRAM LICENSED OR SERVICES PROCURED HEREUNDER. COUNTY ACKNOWLEDGES AND AGREES THAT CONTRACTOR DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, AND THAT COUNTY'S USE OF THE SOFTWARE AND SERVICES DOES NOT ABSOLVE COUNTY OF ITS OBLIGATION TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS. COUNTY ACKNOWLEDGES THAT THE PROFESSIONAL DUTY TO THE PATIENT IN PROVIDING HEALTHCARE SERVICES LIES SOLELY WITH COUNTY. COUNTY AGREES THAT ANY RELIANCE UPON THE SOFTWARE AND SERVICES SHALL NOT DIMINISH COUNTY'S RESPONSIBILITY FOR PATIENT CARE.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo  
County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

Nuance Communication, Inc.

Daniel Carpenter  
Daniel Carpenter (Jan 31, 2014)

\_\_\_\_\_  
Contractor's Signature

Date: Jan 31, 2014 \_\_\_\_\_

Daniel Carpenter  
VP WW Sales Ops

(Revised 7/1/13)

## **Exhibit A**

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

1. **Definitions.** As used in this Exhibit, the following defined terms have the meanings indicated below.

**“Authorized User(s)”** are those employees and contractors of County who are permitted to access the Platform subject to the terms and restrictions contained in this Exhibit.

**“Contract Month”** means a calendar month or the period beginning on the same calendar day of the month as the Go-Live Date and ending at the end of the calendar month.

**“Contracting Period”** shall be from September 1, 2013, through August 31, 2015.

**“Draft Text”** means text created from Voice Files utilizing speech recognition software.

**“Editing Services”** means the minor formatting and editing of Draft Text for mistakes in translation, punctuation, or grammar consistency and any other possible errors.

**“Go-Live Date”** means the date upon which Transcription Services are first provided by Contractor to the County.

**“Hosted Software”** means Contractor (or an Affiliate’s) proprietary software product or Third Party Software loaded on a Contractor or Contractor controlled server by Contractor and accessed by County under a license granted in this Exhibit or, for Third Party Software, licensed under a separate license if provided to County.

**“Medical Report”** means an electronic report dictated by County, transcribed or edited (as applicable) by Contractor, and delivered to County.

**“Platform”** means Contractor software (licensed by Contractor or by a third party) and the servers on which the software is loaded, used to implement the services procured by County.

**“Provider”** means Contractor and/or a third party medical transcription provider.

**“Transcribing Services”** means the recording and typing of Draft Text.

**“Transcription Services”** means the comprehensive set of Contractor services available from Contractor that can accomplish the complete transcription of Voice Files, including the transcription and formatting of medical records dictated by medical providers, into data. County may purchase the entire comprehensive set of services from Contractor, or a subset, as mutually agreed. Contractor may as necessary and at its discretion utilize various hardware, Programs and labor to implement the Transcription Services procured by County.

**“Voice Files”** means electronic copies of voice dictation.

**“Work Type(s)”** means the type of Medical Report.

## 2. Scope of Exhibit.

a. *Scope.* Subject to the terms and conditions of this Exhibit and the Agreement, Contractor agrees to provide to the County Transcription Services and/or Professional Services. County shall dictate the Medical Report into the Platform, make Voice Files and Draft Text available for transcription and/or editing and Contractor shall supply Medical Reports to County in accordance with this Exhibit and the Agreement.

- i. Contractor will provide corrections to Reports where errors in transcription are made by Contractor's transcriptionists at no charge to the County.
- ii. Amendments and addenda to Reports ("Report Modifications") can be made by providers from time to time. Report Modifications will be charged at the same rate as the original report. SMMC will only be charged for the lines modified.

## 3. Contractor Obligations.

a. *Transcription Equipment.* Contractor shall maintain the transcription hardware and Programs necessary for Contractor to fulfill its obligations and duties under this Exhibit and the Agreement.

b. *Emergency Support.* During the Contracting Period, Contractor agrees to provide support for the Transcription Services twenty four (24) hours per day, seven (7) days per week and three hundred and sixty five (365) days per year. Contractor shall provide County with a listing of contact personnel and a manager assigned to County to facilitate County's access to support for resolution of Contractor Transcription Services issues.

## 4. County Obligations

a. *Facilities.* County at its sole cost and expense shall procure and maintain the Internet connections and other telecommunications facilities County requires in the performance of this Exhibit, including without limitation, all data circuits and/or telephone lines required to transmit dictation to Contractor.

b. *Location.* County understands and agrees that the Transcription Services may be provided from (i) North America (onshore), (ii) Canada or (iii) either or both United States and outside of the United States (multishore).

c. *User Administration.* County shall make available to Contractor the ability to create and manage users and security groups for the purposes of transcription, quality control (both pre-delivery and retrospective), statistical reporting, payroll, invoicing and management of services provided to County.

d. *Workflow.* Contractor will not agree to any Authorized Users (i.e. physicians, radiologists) request for a Provider's employee or agent to copy from a historical patient document into a current Medical Report while delivering the Transcription Services.

e. *Work Types.* All work types shall follow standard workflow. The physician is responsible for entering the Work Type during dictation that will be used by the

medical transcriptionist for transcription/editing services. All Work Types shall be dedicated to Contractor and shall not be shared with the County's in-house medical transcriptionists or a third party provider.

f. *Platform Updates.* The implementation of the Transcription Services requires that the County be on the then-current version of the Hosted Software prior to the Go-Live Date. Additionally, County agrees that updates and/or upgrades for Contractor provided software Platform will be implemented within three (3) months of the release date.

5. County Site Equipment. Contractor may sell/license certain hardware to County under Contractor's standard terms and conditions of sale under a contract separate from this Exhibit. Under certain circumstances, Contractor may provide County with hardware to be located on County's premises on a no charge lease basis to facilitate the Transcription Services ("County Site Equipment"). This County Site Equipment shall be furnished under the terms of this Exhibit, remain the property of Contractor, and be returned to Contractor at the termination or expiration of this Exhibit in the same condition as it was received, normal wear and tear excepted.

6. License Grant – Programs.

a. Any Programs ordered by County and/or provided by Contractor is provided under the terms of the Limited License and the License Restrictions below.

b. *Limited License.* Subject to the terms and conditions of this Exhibit and the Agreement, Contractor hereby grants County a revocable, non-exclusive, non-transferable, non-sublicensable limited license to allow County, during the Contracting Period, to use the Programs provided by Contractor in a manner commensurate with its intended use, as prescribed herein and in the Documentation, and solely for County's internal business purposes.

7. License Grant – Hosted Software.

a. Any Hosted Software accessed and or utilized by County will be accessed or utilized under the terms of the Limited License below and the Agreement.

b. *Limited License.* Subject to the terms and conditions of this Exhibit, Contractor hereby grants County, a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to allow County to access the Hosted Software, during the Contracting Period, for the sole and limited purpose of using the Hosted Software as part of the Transcription Services in a manner commensurate with the intended use of the Hosted Software as prescribed herein and solely for County's internal business purposes. County may only access and use the Hosted Software to translate and edit documents internally if such process is expressly permitted.

8. Transcription Service License. Subject to the terms of this Exhibit and the Agreement, Contractor grants County a limited, non- transferrable non-exclusive license to use the Transcription Services as purchased by County during the Contracting Period. County is granted no rights to the Transcription Services except those rights specified in this Exhibit and/or the Agreement. County agrees that Contractor or other third parties own all legal right, title and interest in and to the Transcription Services, including any Intellectual Property Rights therein. "Intellectual



Property Rights" means any and all rights under patent law, copyright law, trade secret law, trademark law, and any other proprietary rights. Contractor reserves all rights not expressly granted to County. Except as expressly permitted in this Exhibit, County shall not attempt to disable or circumvent any security mechanisms used by the Transcription Services or any applications running on the Transcription Services, nor re-sell, re-distribute or re-package the Transcription Services to a third-party.

## **Exhibit B**

In consideration of the services provided by Contractor in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

### **A. Dictation and Transcription Service Pricing**

County will pay Contractor, at the rate of \$0.00285 per Black Character. Also, when practical in terms of efficiency and productivity, Contractor will employ its Automated Speech Recognition (ASR) technology on select dictations, for which it will charge at the rate of \$0.0026 per Black Character. When deployed, ASR will have no impact or additional requirements on County.

A Black Character is defined as the counting of any letter, number, symbol, and/or punctuation mark excluding and/all formatting (e.g. bold, underline, italics, table structure, and formatting codes). Each Black Character is counted once, even if formatted. Black characters for headers, footers and formatting on all pages, consistent with the sample reports included with the County's Request for Proposal, are also included.

Contractor will submit invoices to County on the 1<sup>st</sup> and the 16<sup>th</sup> of each month. The invoice shall cover the preceding two-week period for services rendered. Each billing period starts on Monday at 12:00 midnight and ends on the Sunday two weeks following at 11:59 p.m. The invoice will give detailed information of usage of each individual type category and dollar amount of each individual work type category. For any undisputed amounts which remain unpaid by the 30<sup>th</sup> day following the invoice date, County shall be assessed a late payment charge of one and one-half percentage (1 ½%) of the unpaid amount for each succeeding thirty (30) day period or portion thereof in which the invoice remains unpaid. Amounts disputed in good faith shall not be subject to late charges and shall not be considered a breach by County. Contractor reserves the right to discontinue services to County if any invoice has not been paid within sixty (60) days following the invoice date. Contractor agrees to expend reasonable and customary effort to notify County if compensation for services rendered is owed but not paid within the terms and conditions of this Agreement.

### **B. Professional Fees**

County will also pay Contractor for the following Professional Services:

1. Software Upgrades and New Versions – no additional cost.
2. On-site Hardware – no additional cost to County. Other than workstations, on-site hardware will be the property of Contractor.

3. 800 Telephone Line for emergency backup dictation in the event the primary on-site dictation service is unavailable, and Solutions Center support – no additional cost to County.

**C. Expected Volumes, Turnaround Times and Penalties**

County could provide, and Contractor will have the capacity to transcribe 2,000,000 lines per year with the expected turnaround times (“TAT”) for all reports:

1. STAT Reports – 3 hours
2. H & P, Pre-op, and ED Reports – 12 hours
3. All other reports except clinic notes – 24 hours

Turnaround time for work dictated into the Contractor’s dictation system will be defined as the time between the completion of the dictation process by the caregiver and the time of the availability of a transcribed document to County. Turnaround time for work dictated into a dictation system other than Contractor’s will be defined as the time between the receipt of the dictation file into the Contractor’s transcription system and the time of the availability of the transcribed document to County.

Reports not received within the above turnaround times will be subject to a price reduction as follows:

<b>Work type</b>	<b>Expected TAT</b>	<b>If greater than</b>	<b>% credit</b>
STAT *	3 hours	3 hours	2%
		4 hours	4%
		6 hours	6%
H & P, Pre-op, ED	12 hours	12 hours	2%
		18 hours	4%
		24 hours	6%
All other	24 hours	24 hours	2%
		48 hours	4%
		72 hours	6%

\* if STAT Reports exceed 2% of the total volume of reports in a given billing period, no credit will be applied to the related invoice.

## **EXHIBIT E**

### **CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)**

The person/entity listed below (the "Undersigned") recognizes and is fully dedicated to advancing SMMC's commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

The Undersigned will comply with all Federal, State or other governmental health care program requirements and with SMMC's policies and procedures relating to SMMC's Corporate Compliance Program, including the requirements set forth in the Corporate Integrity Agreement (CIA) to which SMMC is a party (available online at [http://oig.hhs.gov/fraud/cia/agreements/the\\_county\\_of\\_san\\_mateo\\_03062009.pdf](http://oig.hhs.gov/fraud/cia/agreements/the_county_of_san_mateo_03062009.pdf)).

The Undersigned, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

The Undersigned will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements or of SMMC's Compliance Program policies and procedures.

The Undersigned has the right to use the SMMC Disclosure Program by calling the Compliance Hotline or reporting incidents to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

The Undersigned understands that non-compliance with Federal health care program requirements and SMMC's Compliance Program policies and procedures, and failing to report such violations, could result in termination of the Agreement and/or any other penalties permitted by law.

The Undersigned is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

The Undersigned will not offer, give or accept any bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). The Undersigned will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

The Undersigned will not engage in any financial, business, or other activity which competes with SMMC/County business which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources, except to the extent consistent with the SMMC/County Incompatible Activities and Outside Employment policy and the Agreement.

The Undersigned will cooperate fully and honestly with internal audits and monitoring programs to help assure that SMMC's compliance is maintained with all applicable federal/state regulations, the Joint Commission standards, and hospital system-wide policies.

**TO REPORT VIOLATIONS, CALL THE  
COMPLIANCE HOT LINE: (800) 965-9775**

The Undersigned hereby certifies by signing below that an authorized representative has received this Code of Conduct, understands it, has authority to commit the Undersigned to this Code of Conduct, and hereby commits the Undersigned to comply with this Code of Conduct.

Daniel Carpenter

\_\_\_\_\_  
Name of Person/Entity (the "Undersigned")

Daniel Carpenter  
Daniel Carpenter (Feb 7, 2014)

Feb 7, 2014

\_\_\_\_\_  
Signature and Printed Name

\_\_\_\_\_  
Date

Daniel Carpenter

VP WW Sales Ops

## Attachment H

### Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

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#### **DEFINITIONS**

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- b. **Electronic Protected Health Information.** "Electronic Protected Health Information" ("EPHI") means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. **Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by Contractor from or on behalf of County.
- f. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.
- g. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. **Security Rule.** "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

#### **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR**

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.

- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County, or at the request of the County to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

## **PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

## **OBLIGATIONS OF COUNTY**

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

## **PERMISSABLE REQUESTS BY COUNTY**

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

## **DUTIES UPON TERMINATION OF AGREEMENT**

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

## **MISCELLANEOUS**

- a. Regulatory References. A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. Survival. The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- d. Interpretation. Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. Reservation of Right to Monitor Activities. County reserves the right to monitor the security policies and procedures of Contractor



## ATTACHMENT I

### Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

☐ a. Employs fewer than 15 persons.

☒ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

General Counsel

Name of Contractor(s):

Nuance Communications, Inc.

Street Address or P.O. Box:

One Wayside Road

City, State, Zip Code:

Burlington, MA 01803

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Daniel Carpenter  
Daniel Carpenter (Feb 7, 2014)

Title of Authorized Official:

VP WW Sales Ops

Date:

Feb 7, 2014

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."