

## NUANCE DEVELOPER FOR MOBILE EVALUATION LICENSE AND HOSTING SERVICE AGREEMENT

THIS NUANCE DEVELOPER FOR MOBILE EVALUATION LICENSE AND HOSTING SERVICE AGREEMENT ("AGREEMENT") IS BETWEEN YOU AND NUANCE COMMUNICATIONS, INC., ("NUANCE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER ENTITY, YOU REPRESENT THAT YOU ARE THE EMPLOYEE OR AGENT OF SUCH COMPANY (OR OTHER ENTITY) AND YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH COMPANY (OR OTHER ENTITY). YOU MUST AGREE TO THE TERMS OF THIS AGREEMENT IN ORDER TO INSTALL AND USE THE SOFTWARE WITH THE SERVICE. BY CLICKING ON THE "ACCEPT" BUTTON BELOW, YOU ARE (1) ACKNOWLEDGING THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, CONSENT TO BE BOUND BY, AND ARE BECOMING A PARTY TO, THIS AGREEMENT, AND (2) REPRESENT THAT YOU ARE NOT A NUANCE COMPETITOR, AS DEFINED BELOW. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT OR IF YOU ARE A NUANCE COMPETITOR, CLICK THE "DO NOT ACCEPT" BUTTON AND DO NOT DOWNLOAD THE SOFTWARE OR USE THE SERVICE.

For purposes of this agreement, "Nuance Competitor" means any person or entity that is involved in the research or development of (1) speech recognition software, (2) voice authentication software, (3) text-to-speech software, (4) text input software, or (5) paper-to-digital imaging solutions.

If you are a Nuance Competitor, you may not download or use this Software or Documentation. You hereby represent that as of the time you accept this Agreement and thereafter continuously during the Term of this Agreement, that you are not a Nuance Competitor.

1. DESCRIPTION. The Nuance Developer for Mobile Program ("NDEV Mobile Program"), as further defined on our website located at: <http://www.ndevmobile.com>, consists of certain client software applications identified below ("Software") or NDEV Mobile Program HTTP Access ("Access Method"), that permits you to access certain server applications installed at a Nuance facility (the "Service"). In order to access the Service, you must install the Software or use the Access Method, within your product ("Product"). For the purposes of this Agreement, a "Product" shall mean a single application to be used on (as applicable): a mobile device, personal computer, server or an embedded automotive hardware platform, that permits access to the Service by one individual person or machine at a time.

Software: Nuance Mobile Developer Program SpeechKit for iOS, Nuance Mobile Developer Program SpeechKit for Windows Phone, and Nuance Mobile Developer Program SpeechKit for Android.

Service: Server-based short message dictation, freeform web-search, and text to speech applications supporting languages as stated at <http://dragonmobile.nuancemobiledeveloper.com/faq.php>

### 2. LICENSE GRANT.

2.1. Subject to the terms of this Agreement, including but not limited to the payment of fees, if any, Nuance grants you a personal, revocable, non-exclusive, non-transferable right to use the Software or Access Method to develop one or more Products and to access the Service via the Product, for development purposes only, subject to the limitations depending on the level of your subscription to the NDEV Mobile Program, which may include the following:

- (a) a number of concurrent connections;
- (b) connections from a number of unique devices per day ;
- (c) a daily volume limit of transactions per day; and
- (d) a specified term of use from your acceptance of this Agreement (the "Term");

Notwithstanding anything to the contrary, this Agreement and the license grants provided herein do not permit you to sublicense, embed or otherwise make available the Software or the Service to any third party application or product, including but not limited to any third party application or product that may be included in your Product or Device, or within a product that is subsequently embedded or otherwise included in another third party product.

2.2. In accordance with the NDEV Mobile Program and payment of the applicable fees, you may extend the number of unique devices, increase the daily transaction volume, or extend the Term of the Agreement, as provided in Section 2.1 above.

You may make a copy of the Software for internal back-up purposes only, provided that such copy bears the original copyright, patent, and other intellectual property notices and markings. You agree to provide Nuance with reasonable feedback on the results of the evaluation, including recommendations for improvements and specific reasons for commercialization decisions with respect to the Service.

### 3. LICENSEE OBLIGATIONS.

3.1. You agree to set a unique, Nuance provided, AppID and AppKey (128-byte for HTTP Access, 64-byte for SpeechKits) in the client software before connection to the system is accepted. Nuance reserves the right to deny connection attempts to the service where Licensee does not set the correct reporting identifiers.

3.2. You further agree not to reuse dictation credentials among your development end users. Every end user must be identified with a unique identifier in the connection attempt to the Service.

#### 4. RESTRICTIONS; PROPRIETARY RIGHTS.

4.1. RESTRICTIONS. To the extent permitted by applicable law, you may not: (a) submit any automated or recorded queries to the Service except through an Access Method, unless otherwise approved in writing by Nuance; (b) use the Software or Service for commercial use; (c) access the Service with software or means other than the Software or Access Method; (d) copy, reproduce, distribute, or in any other manner duplicate the Software, Access Method, or Service, in whole or in part; (e) sell, lease, license, sublicense, distribute, assign, transfer or otherwise grant any rights in the Software, Access Method, or Service, in whole or in part; (f) modify, port, translate, or create derivative works of the Software, Access Method, or Service; (g) decompile, disassemble, reverse engineer or otherwise attempt to derive, reconstruct, identify or discover any source code, underlying ideas, or algorithms, of the Software, Access Method, or Service by any means; (h) remove any proprietary notices, labels or marks from the Software, Access Method, or Service; or (j) use the Software, Access Method or Service for purposes of comparison with or benchmarking against products or services made available by third parties.

4.2. PROPRIETARY RIGHTS. Nuance and its licensors own all right, title, and interest in the Software, Access Method, and Service including, but not limited to, all patent, copyright, trade secret, trademark and other intellectual property rights associated therewith, and all title to such rights shall remain solely in Nuance and/or its licensors. Unauthorized copying of the Software, Access Method, or Service, or failure to comply with the above restrictions, will result in automatic termination of this Agreement and all licenses granted hereunder, and will make available to Nuance all legal and equitable remedies for breach thereof. Notwithstanding anything to the contrary, you acknowledge and agree that Nuance shall not be restricted from creating, or having created on its behalf, any application, or feature or function contained therein, regardless of the similarity to your application, feature or function contained therein.

4.3. THIRD PARTY SOFTWARE. The Software and Services may contain a copy of the Speex codec in executable form. You acknowledge that use of the Speex codec is subject to the conditions and disclaimers listed in revised BSD license found at <http://www.xiph.org/licenses/bsd/speex/>. © 2002-2003, Jean-Marc Valin/Xiph.Org Foundation.

#### 4.4. SPEECH DATA; PERSONAL DATA.

(a) As part of the Service, Nuance collects and uses Speech Data, as defined below, to tune, enhance and improve the speech recognition and other components of the Service, and other Nuance services and products. In accepting the terms and conditions of this Agreement, you acknowledge, consent and agree that Nuance may collect the Speech Data as part of the Service and that such information shall only be used by Nuance or third parties acting under the direction of Nuance, pursuant to confidentiality agreements, to tune, enhance and improve the speech recognition and other components of the Service, and other Nuance services and products. Nuance will not use the information elements in any Speech Data for any purpose except as set forth above. "Speech Data" means the audio files, associated transcriptions and log files provided by you hereunder or generated in connection with the Service.

(b) You further acknowledge, consent and agree that as a result of your use of the Service, the Speech Data may contain personal data, and such personal data has been collected, processed and transferred to Nuance in accordance with all applicable laws.

(c) You understand that through your use of the Service, you consent to the collection and use as set forth herein of Speech Data, including the transfer thereof to the United States and/or other countries for storage, processing and use by Nuance and its third party partners.

(d) Speech Data is subject to Nuance's applicable privacy policy. For further information see the Nuance privacy policy at <http://www.nuance.com/company/company-overview/company-policies/privacy-policies/index.htm>.

(e) You agree to hold Nuance harmless against any claim in relation to Nuance's use of the Speech Data, including but not limited to any personal data.

(f) Any and all information that you provide will remain confidential and may be disclosed by Nuance, if so required, to meet legal or regulatory requirements, such as under a court order or to a government institution if required or authorized by law, or in the event of a sale, merger or acquisition to another entity by Nuance.

5. CONFIDENTIAL INFORMATION. Neither party shall disclose or use the other party's Confidential Information (as defined below) except as provided in this Agreement while this Agreement is in effect and for three years following termination or expiration of this Agreement; provided, however, that the foregoing restriction shall be perpetual as to all software. A party may disclose Confidential Information to its agents or employees who have a need to know and who are bound in writing by confidentiality terms no less restrictive than those contained herein. Notwithstanding the foregoing, Confidential Information may be disclosed if required by law, provided, however, that the receiving party shall notify the disclosing party of such requirement immediately in writing and will reasonably cooperate in obtaining a protective or similar order. "Confidential Information" means (a) the Software, the Access Method, the Service, and

Documentation, and all related technology, algorithms, and information contained therein, including related trade secrets; and (b) any other information, including but not limited to product plans, designs, prices, non-published financial information, business opportunities, research, development, and know-how designated as confidential at the time of disclosure; or (c) any information that ought, in good faith, to be treated as confidential given its nature and/or the circumstances of its disclosure. "Confidential Information" does not include information that (i) was generally known and available in the public domain at the time it was disclosed or subsequently becomes generally known and available in the public domain through no fault of the recipient; (ii) was rightfully known to the recipient at the time of disclosure and this can be shown by reasonable evidence; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the recipient without any use of the Confidential Information of the disclosing party; or (v) becomes known to the recipient from a source other than the disclosing party without breach of this Agreement and this can be shown by reasonable evidence.

## **6. FEES AND TAXES.**

6.1. **FEES.** In consideration for the license rights granted in Section 2, you agree pay the fees for the Service, if any, as you select via the NDEV Mobile Program. You acknowledge and agree that such fees are non-refundable and that once such fees are exhausted based on your use of the Service or expiration of the Term, Nuance will have no obligation to provide the Service to you.

6.2. **TAXES.** You acknowledge and agree that you will be solely responsible for all sales, use, excise, import duty, export tax or similar tax or assessment (exclusive of taxes on Nuance's net income) arising from or measured by amounts paid to Nuance under this Agreement.

7. **SUPPORT.** To facilitate the process of evaluating and testing of the Software, Access Method, and Service, upon Nuance personnel availability, Nuance may provide reasonable support services through email, a support forum or other means to Licensee's designated personnel to provide such personnel with clarification of functions and features of the Software, Access Method, and Service, integration support, and defect support in connection therewith. Support does not include any customization or professional services, including but not limited to grammar development or tuning of applications.

8. **DISCLAIMER OF WARRANTIES.** YOU ACKNOWLEDGE AND AGREE THAT NUANCE IS PROVIDING THE SOFTWARE, ACCESS METHOD, AND SERVICE TO YOU SOLELY TO PERMIT YOU TO EVALUATE AND USE THE SOFTWARE, ACCESS METHOD, AND SERVICE. CONSEQUENTLY, YOU AGREE TO TAKE ALL PRECAUTIONS AND SAFEGUARDS NECESSARY TO PROTECT YOUR DATA AND SYSTEMS FROM LOSS OR DAMAGE. NUANCE PROVIDES THE SOFTWARE, ACCESS METHOD, AND SERVICE "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NUANCE SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

9. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NUANCE, ITS OFFICERS, DIRECTORS, AND EMPLOYEES, OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, LOSS OF USE, BUSINESS INTERRUPTION, OR COST OF COVER, ARISING FROM THE USE OF THE SOFTWARE OR SERVICE, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

10. **TERMINATION.** This Agreement begins on your acceptance of the terms and conditions of this Agreement and expires upon the expiration of the Term, unless otherwise terminated herein. Nuance may terminate this Agreement, and the license granted hereunder, at any time in its sole discretion, with or without cause, by notifying you that the Service has been terminated, provided that Nuance may not terminate without cause with respect to a Term for which you have paid fees until exhaustion of such fee, except as otherwise provided under the NDEV Mobile Program. This Agreement shall terminate automatically upon the breach of any of its terms and conditions by you. Upon termination, you shall immediately stop use of and shall delete all copies of the Software and/or Access Method, as applicable.

11. **EXPORT COMPLIANCE.** You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

12. **U.S. GOVERNMENT END USERS.** The Software is a "commercial item," as that term is defined in 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 Software with only those rights set forth herein.

13. MARKETING. During the Term, you acknowledge and agree that Nuance may use your company name in any publicity, advertising, or similar activity, with regards to your participation in the Nuance Mobile Developer Program. Upon the prior written consent of Nuance, you may use Nuance's name in any publicity, advertising, or similar activity, with regards to your participation in the Nuance Mobile Developer Program, provided you properly refer to refer to Nuance as: "Nuance Communications, Inc. (Nasdaq: NUAN)"

14. TRADEMARKS. Third-party trademarks, trade names, product names and logos (the "Trademarks") contained in or used by the Software or Service are the trademarks or registered trademarks of their respective owners, and the use of such Trademarks shall inure to the benefit of the trademark owner. The use of such Trademarks is intended to denote interoperability and does not constitute: (i) an affiliation by Nuance with such company, or (ii) an endorsement or approval of such company of Nuance and its products or services.

15. GOVERNING LAW. This agreement and any action related thereto shall be governed by the laws of the Commonwealth of Massachusetts, United States of America, without regard to its conflicts of laws principles, and you hereby submit to the exclusive jurisdiction of the federal and state courts in said Commonwealth in connection with any dispute arising out of this Agreement. This Agreement shall not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

16. TERMS SUBJECT TO CHANGE. You acknowledge and agree that Nuance may change the terms and conditions of this Agreement from time to time upon reasonable notice to the address you provided upon signup, including to your email address. If you do not agree to such changes in this Agreement, your only remedy is to cease using the Software, Access Method, and/or and Service. Your continued use of any part of the Software, Access Method, and/or Service after Nuance has provided you with reasonable notice of such change for your review will be considered your acceptance of such change.

17. GENERAL LEGAL TERMS. You may not assign or otherwise transfer any rights or obligations under this Agreement without Nuance's prior written consent. This Agreement is the entire agreement between Nuance and you and supersedes any other communications or advertising with respect to the Software, Access Method, and Service. If any provision of this Agreement is held invalid or unenforceable, such provision shall be revised to the extent necessary to cure the invalidity or unenforceability, and the remainder of this Agreement shall continue in full force and effect. The failure of Nuance to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. Sections 4, 5, 6, 8, 9, 10, 15 and 17 of this Agreement shall survive the expiration or termination of this Agreement.