

**NUANCE TERMS OF SERVICE FOR DRAGON MEDICAL ONE
AND POWERMIC MOBILE**

**VERSION APPLICABLE TO CUSTOMERS PURCHASING HOSTED SERVICES VIA AUTHORIZED
DISTRIBUTORS**

These terms of service for Dragon Medical One and PowerMic Mobile (“**Terms of Service**”) are issued by Nuance Communications Ireland Limited with a registered address at 70 Sir John Rogerson's Quay, Dublin, D02 R296, Ireland (“**Nuance**”) and apply to the Hosted Services and Nuance Software (both as defined below) which are made available to the market by Nuance and specified in an Order (as defined below) between you (“**Customer**”) and the Authorized Distributor (as defined below) you choose to order Hosted Services and Nuance Software from. These Terms of Service become binding on Customer when Customer begins use of the Hosted Service and Nuance Software licenses after execution of an Order with an Authorized Distributor of Customer’s choice for the procurement of the Hosted Services and Nuance Software licenses. Nuance may update these Terms of Service from time to time without prior notice, available at the following URL: <https://www.nuance.com/about-us/terms-and-conditions/terms-of-service/dmo-ppm.html>. Nuance recommends printing a copy of these Terms of Service for your records.

Where Customer places an Order with an Authorized Distributor and pays the Authorized Distributor, Nuance is not the provider of the Hosted Services and Nuance Software licenses to Customer and therefore is not responsible to Customer for any procurement related obligations regarding the Hosted Services and Nuance Software licenses. Consequently, Nuance is not a party to the contract between Customer and the Authorized Distributor and not bound by its terms.

The Nuance Terms of Service do not affect Customer’s contractual rights with the Authorized Distributor of its choice or Customer’s statutory rights regarding the procurement of the Hosted Services/ Nuance Software licenses via an Order.

1. DEFINITIONS. For purposes of this Terms of Service, the following terms shall have the following meanings:

- 1.1 “**Authorized User**” means a single employee, agent or contractor who is acting solely for End Customer’s internal business purposes at a Healthcare Facility and for remote use.
- 1.2 “**Data**” means the audio, image, and/or text data input, all data elements output (e.g. interpretation of clinical contents in xml or other format), associated transcripts or medical reports, whether in draft or final form, any information received from Customer under any Order, or any other clinical information received by Nuance from Customer.
- 1.3 “**Authorized Distributor**” means Nuance’s authorized, independent distributor as identified in the Order.
- 1.4 “**Hosted Services**” means any of the following Software as a Service (“**SaaS**”) offerings owned and operated by Nuance, and specified in an Order; which SaaS offerings are made available to Customer as a service via the internet as part of a Subscription: (i) Dragon Medical One; and/or (ii) PowerMic Mobile.
- 1.5 “**Healthcare Facility**” means a hospital, physician office, outpatient center, surgical facility, or other facility delivering healthcare services, that is wholly owned or controlled by Customer. For purposes of this definition, “control” means (i) the power to elect a majority of the directors of a corporation or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a health care facility.
- 1.6 “**Nuance Software**” means the binary object code version of any Nuance proprietary thin client software or Web application that Nuance provides (via the Authorized Distributor) to Customer and its Authorized Users that provides functionality on a supported device (as identified in the documentation) for accessing and utilizing a Hosted Service. "Nuance Software" includes all corrections, modifications, enhancements, updates and upgrades to the Nuance Software, if any, that Nuance may provide to Customer (via the Authorized Distributor) under these Terms of Service, and all related documentation.
- 1.7 “**Order**” means an order that Customer executes through an Authorized Distributor, pursuant to which Customer commits to procuring the Hosted Services and Nuance Software licenses identified in the Order, subject to these Terms of Service.
- 1.8 “**Subscription**” means the use and access to Hosted Services and Nuance Software that Customer procures from the Authorized Distributor as part of an Order. Each Subscription allows Customer to permit a single Authorized User to access and use a single Hosted Service during the Subscription term pursuant to the terms of these Terms of Service and the applicable Order.

2. PROVISION OF HOSTED SERVICES.

- 2.1 Hosted Services. The Authorized Distributor will provide Customer with access to and use of the Hosted Services identified in an Order during the Subscription term, subject to the terms of these Terms of Service. Nuance will host, operate and maintain the equipment and software comprising the Hosted Services.
- 2.2 Infrastructure and Services. Customer is responsible for providing and/or modifying at its own expense all computer hardware, software, communications equipment, telecommunications services, internet connectivity, firewall functionality and related infrastructure that are necessary for Authorized Users to access and use the Hosted Services (collectively, the “**Systems**”) as recommended in the documentation. Customer will provide Systems access and information to the Authorized

Distributor and Nuance to the extent reasonably required by any of them in order to provide Hosted Services to Customer. Customer agrees to provide a reasonably skilled individual who shall serve as the Customer's contact person in connection with the provision of Hosted Services to Customer, and shall maintain a knowledgeable employee or contractor who will assist with any issues that may arise during routine operation of the Hosted Services during the Subscription term. Customer acknowledges its responsibility to adequately test use of the Nuance Software and Hosted Services in a configuration that reasonably simulates Customer's planned production environment before initial production use and before continued use following any change to such environment.

2.3 Data Back-up. Customer acknowledges that the Hosted Services do not serve as a repository for Customer's Data and it is Customer's responsibility to store and regularly back-up its Data.

3. GRANT OF RIGHTS.

3.1 Subject to the terms and conditions of these Terms of Service and any additional requirements or restrictions indicated in Customer's agreement with Authorized Distributor, Nuance grants to Customer, and Customer accepts a revocable, non-exclusive, non-transferable, limited right to allow any Authorized User:

(a) to remotely, via the Internet, access and use that Hosted Service during the Subscription term; provided such access and use is: (i) in a manner commensurate with the intended use of the Hosted Services (as prescribed by these Terms of Service, and the documentation); and (ii) solely for Customer's internal business purposes; and (iii) if the Hosted Service is PowerMic Mobile, then PowerMic Mobile may only be used in conjunction with a valid Subscription to the Dragon Medical One Hosted Service.

b) to use the Nuance Software during the Subscription term for the sole and limited purpose of accessing and using that Hosted Service in connection with the rights granted in subsection 3.1.(a) and to download and copy the Nuance Software to as many devices as reasonably necessary to exercise the right granted in subsection 3.1.(a), provided that all such use and copying is in a manner commensurate with the intended use of the Nuance Software as prescribed by these Terms of Service and the documentation.

3.2 Restrictions. Customer shall not allow any Authorized User to access and use the Hosted Services for the Authorized User's own personal use or the benefit of any third party. Customer and its Authorized Users shall not (i) allow anyone other than the Authorized Users to access or use the Hosted Services or the Nuance Software, or any components thereof, or (ii) interfere with or disrupt the integrity or performance of the Hosted Services. Without limiting the generality of this Section 3.2, Customer will not itself, directly or indirectly, and will not permit Authorized Users, employees, contractors, or any third party to do any of the following: (i) access the Hosted Services with software or means other than as described in these Terms of Service, submit any automated or recorded requests to the Hosted Services except as otherwise provided in these Terms of Service, or interfere with or disrupt the integrity or performance of the Hosted Services; (ii) subject any Hosted Service or its infrastructure to security testing including penetration testing, network discovery, port and service identification, vulnerability scanning, password cracking, or remote access testing without the written approval of Nuance; (iii) modify, port, translate, or create derivative works of the Hosted Services, Nuance Software or documentation; (iv) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Hosted Services or Nuance Software by any means (except to the extent permitted by mandatory laws); (v) sell, lease, license, sublicense, copy, assign, transfer, share, market, or distribute the Hosted Services, Nuance Software or documentation, except as expressly permitted in these Terms of Service; (vi) grant any access to, or use of, the Nuance Software or Hosted Services through a service bureau, timesharing or application service provider basis; (vii) remove any proprietary notices, labels or marks from the Hosted Services, Nuance Software, or documentation; (viii) release to a third party the results of any benchmark testing of the Hosted Services or Nuance Software; or (viii) defeat or circumvent any controls or limitations contained in or associated with the use of the Hosted Services or Nuance Software.

3.3 Proprietary Rights. All rights not expressly granted to Customer under these Terms of Service are reserved by Nuance and/or its licensors. Notwithstanding any use of the term "sale," "procure", "purchase" or other similar terms in these Terms of Service, Nuance and its licensors retain all right, title and interest in and to the Hosted Services and Nuance Software, and any derivative works thereof, including, but not limited to, all patent, copyright, trade secret, and trademark rights and other intellectual property rights associated with the Hosted Services and Nuance Software.

3.4 Compliance by Authorized Users. Customer is responsible for each Authorized User's compliance with the terms of these Terms of Service and guarantees each Authorized User's full and faithful compliance with the terms of these Terms of Service. Company shall promptly notify Nuance upon learning of any actual or suspected unauthorized possession or use of Nuance Software or Hosted Services supplied under these Terms of Service.

3.5 NMS Account Management. Customer's use and administration of the Subscription and the creation of user profiles for its Authorized Users is managed by Nuance's proprietary Nuance Management Server software ("NMS") which is hosted by Nuance. NMS constitutes part of the Hosted Services. Nuance has contracted with Authorized Distributor to administer the NMS console portion of NMS for Customer and Customer consents to having Authorized Distributor or their authorized agents provide such administrative services. Customer will provide reasonable cooperation and assistance to Authorized Distributor in connection with their administration of Customer's NMS account.

4. MEDICAL CARE RESPONSIBILITY.

CUSTOMER ACKNOWLEDGES (a) THAT THE SOFTWARE AND HOSTED SERVICES MAY EMPLOY SPEECH RECOGNITION, NATURAL LANGUAGE PROCESSING, AND MEDICAL FACT EXTRACTION WHICH ARE STATISTICAL PROCESSES AND THAT INACCURACIES ARE INHERENT IN SUCH PROCESSES AND IN THE OUTPUT FROM NUANCE PRODUCTS AND SERVICES EMPLOYING SUCH PROCESSES; AND (b) THAT ERRORS (INCLUDING HUMAN ERRORS) ARE INHERENT IN TRANSCRIPTION SERVICES. CUSTOMER FURTHER ACKNOWLEDGES THAT INACCURACIES AND ERRORS IN THE OUTPUT FROM NUANCE PRODUCTS AND SERVICES ARE INEVITABLE, AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF CUSTOMER, ITS AUTHORIZED USERS TO IDENTIFY AND CORRECT ANY INACCURACIES AND ERRORS BEFORE USING AND/OR RELYING ON THE RESULTS OF THE USE OF ANY SOFTWARE, HOSTED SERVICES PROVIDED UNDER THESE TERMS OF SERVICE. ACCORDINGLY, CUSTOMER SHALL INDEMNIFY, AND HOLD HARMLESS, NUANCE, AUTHORIZED DISTRIBUTOR, AND THEIR RESPECTIVE AFFILIATES, AND THE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS OF EACH OF THEM (EACH, AN "INDEMNIFIED PARTY") FROM AND AGAINST ALL LIABILITIES, LOSSES, COSTS, DAMAGES, CLAIMS AND EXPENSES ARISING OUT OF, OR RELATED TO, ANY CLAIMS OR SUITS BROUGHT OR MADE AGAINST ANY INDEMNIFIED PARTY ARISING FROM AN ALLEGATION THAT USE OF ANY SOFTWARE, HOSTED SERVICE BY CUSTOMER OR ANY AUTHORIZED USER, DIRECTLY OR INDIRECTLY CAUSED OR CONTRIBUTED TO THE WRONGFUL DEATH OR PERSONAL INJURY OF A THIRD PARTY TO WHOM CUSTOMER OR AN AUTHORIZED USER OFFERED OR PROVIDED MEDICAL-RELATED SERVICES.

5. SERVICE LEVEL AGREEMENT AND DISCLAIMER

5.1 GIVEN CUSTOMER HAS PLACED ITS ORDER WITH THE AUTHORIZED DISTRIBUTOR AS THE PROVIDER OF THE HOSTED SERVICES AND THE NUANCE SOFTWARE THE FOLLOWING RULES APPLY IN YOUR RELATIONSHIP WITH NUANCE. CUSTOMERS CONTRACTUAL AND STATUTORY RIGHTS AGAINST THE AUTHORIZED DISTRIBUTOR ARE UNAFFECTED BY THIS CLAUSE.

5.2 **SERVICE LEVEL AGREEMENT.** The Service Level Agreement as set out in Appendix A of these Terms of Service shall apply to the Hosted Services.

5.3 **DISCLAIMER.**

(1) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, AND NUANCE HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT AND TITLE. NUANCE DOES NOT GUARANTEE THAT THE HOSTED SERVICES WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULT, OR THAT THE HOSTED SERVICES WILL BE PERFORMED WITHOUT ERROR OR INTERRUPTION.

(2) UNDER NO CIRCUMSTANCES SHALL NUANCE BE RESPONSIBLE OR LIABLE TO CUSTOMER OR ITS AFFILIATES FOR ANY DAMAGES, DIRECT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF SERVICE OR UNDER ANY APPLICABLE LAW.

6. NUANCE SUPPORT SERVICES.

6.1 **Support.** During the Subscription Term, Nuance will provide maintenance and support services for the Hosted Services, which will include error correction and technical support. Customer's primary contact for maintenance and support services is the Authorized Distributor, but there may be arrangements in place between Authorized Distributor and Nuance which allow Customer to directly contact Nuance for maintenance and support services. In such circumstances, Customer will be provided contact information for Nuance maintenance and support services via a separate communication channel and Customer must also provide contact information to Nuance to be informed about scheduled downtime and maintenance activities.

6.2 **Service Hours.** Nuance shall provide support services from 8:30 am to 5:00 pm, Monday through Friday in Customer time zones. Nuance shall provide 24 hour 7 days per week support for emergency events when Hosted Services are not available or only partially available.

7. TERM AND TERMINATION.

Subscription Term. Subject to Nuance's right to terminate for a breach by Customer of the terms set forth in these Terms of Service, the initial Subscription term shall be as set out in the applicable Order.

8. DATA.

Upon Customer placing the Order with the Authorized Distributor (solely in the Case where the Authorized Distributor and Customer have not entered into a DPA for the provision of the Nuance Hosted Services) and any Authorized User accessing

the Hosted Services, the terms and conditions of the Data Processing Agreement located at <https://www.nuance.com/about-us/terms-andconditions.html> (“DPA”) are incorporated herein by reference and shall govern the processing of personal data under these Terms of Service which is regulated by applicable data privacy and data protection laws. Customer should note that personal contact information of its Authorized Users will be passed on to Nuance for the fulfilment of Customer’s Order. Nuance may also use this information for its legitimate interests, including marketing purposes to communicate other Nuance products and services that may be of interest to Customer. For more information Customer should read the Nuance Privacy statement <https://www.nuance.com/about-us/company-policies/privacy-policies.html>. If at any time Customer or its Authorized Users do not wish to receive communications in the future, Customer and Authorized Users have the right to manage their email preferences at <https://connect.nuance.com/Subscription-Management>.

Appendix A
Service Level Agreement (“SLA”) for Hosted Services

1. DEFINITIONS

“Base Time” means the total number of minutes in a calendar month beginning on the first day of such month and ending on the last day of such month.

“Downtime” means the time in minutes that Nuance declares the Hosted Service is unavailable due to a crash, material malfunction, or other failure, or a time period during which use of the Hosted Service is restricted because it produces erroneous results. Downtime does not include Excluded Events.

“Excluded Events” means the time in minutes that the Hosted Service is either not performing or unavailable due to: (a) Internet or Customer network downtime, (b) scheduled maintenance including software/network/hardware upgrades/releases, (c) Customer activity that prevents Nuance’s timely service delivery, (d) failure of a non-Nuance supplied modality, information system, or networking component, (e) Customer’s failure to operate/maintain the Hosted Service in accordance with its current service specifications, documentation, and intended use, (f) factors outside Nuance’s reasonable control (i.e., force majeure events, network/device failure external to Nuance data center); (g) use of services/hardware/software not provided, specified or recommended by Nuance; (h) Customer’s failure to follow prior Nuance instructions regarding use of the Hosted Service; (i) use of pre-release, beta or trial versions of the Hosted Service or feature thereof; (j) a Customer employee’s, contractor’s, or vendor’s unauthorized action or lack of action resulting in faulty input or attempts to perform operations that exceed prescribed service limits, or (k) suspension of Customer’s access to Hosted Services by Nuance in accordance with the Terms of Service.

“Incident(s)” means (i) any single event, or (ii) a set of events, that result in Downtime.

2. HOSTED SERVICES UPTIME COMMITMENT

Nuance will meet the Hosted Services Uptime Commitment set forth in the table below for Hosted Services during each Base Time period less Excluded Events (“Hosted Services Uptime Commitment”). If the Hosted Services Uptime Commitment is not met and Customer has requested an SLA Credit in accordance with section 2 b., from the Authorized Distributor, Nuance will issue a credit to its Authorized Distributor (“SLA Credit”) based on a percentage of the fees Nuance received from the Authorized Distributor regarding the Order, in accordance with the following schedule:

Uptime Commitment	SLA Credit
99.5% - 100%	0%
98.5% to less than 99.5%	5%
Less than: 98.5%	10%

- a. Uptime. Uptime is calculated as $100 * [1 - (\text{Downtime divided by (Base Time minus Excluded Events)})]$.
- b. SLA Credit. Customer must request an SLA Credit within forty-eight (48) hours from the date of the Incident by contacting the Authorized Distributor to open a service request. Nuance will evaluate all information that is passed on to Nuance by the Authorized Distributor and make a good faith determination of whether SLA Credit is owed. Nuance will use commercially reasonable efforts to process SLA Credit claims within thirty (30) calendar days of receipt of the claim from the Authorized Distributor. Customer will need to liaise with the Authorized Distributor with regard to obtaining the SLA Credit.

To be eligible for SLA Credit, Customer must be running the current or the most recent prior version of the Nuance Software for the Hosted Services that Customer has received from the Authorized Distributor or from Nuance and must be in compliance with the Terms of Service. SLA Credits are Customer’s sole and exclusive remedy for Nuance’s failure to meet a Hosted Services Uptime Commitment. SLA Credits may not be transferred or applied to any other account. Customer is not entitled to SLA Credit if Customer contributed to the performance issue.