

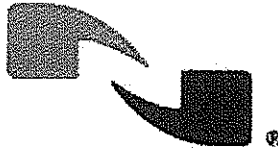


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**PROPOSAL FOR**

**State of West Virginia  
Department of Administration  
Purchasing**

**PREPARED BY**



**NUANCE**

One Wayside Road  
Burlington, MA 01803

RECEIVED

2011 AUG 17 A 9:54

PROCUREMENT DIVISION  
STATE OF WV

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**Please note that any future product or service information is intended to outline our general product direction and it should not be relied upon in making a purchasing decision. The development, release and timing of any features or functionality described remains at our sole discretion, and the terms of any purchase will be limited to those documented in the contract.**

***CONFIDENTIAL***



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## NON-DISCLOSURE AGREEMENT

### NUANCE COMMUNICATIONS, INC., CONFIDENTIAL INFORMATION

Nuance Communications, Inc. ("Nuance") and the party receiving confidential information from Nuance ("Receiving Party") both have as their purpose an interest in exploring a possible business relationship relating to certain of Nuance's proprietary information and/or technology. In order for the parties to explore this relationship, it will be necessary for Nuance to disclose certain of its Confidential Information (as hereinafter defined) to the Receiving Party.

"Confidential Information" includes, but is not limited to, the following: (a) products, product plans and strategies, inventions, unpublished patents or patentable ideas, and copyrightable materials and designs; (b) financial statements or other related documentation regarding financial performance and projections; (c) proprietary information received or developed under agreements, contracts, or other arrangements between Nuance and third parties; such third parties may permit Nuance to disclose this proprietary information to the Receiving Party subject to the same provisions as Nuance's own proprietary information; (d) materials describing trade secrets or company-private information including, but not limited to, customer lists and information; (e) technical information including, but not limited to, software, algorithms, technical drawings, product schematics/specifications, test results, methods, practices and their attendant documentation; (f) such other information as Nuance may deem or designate as confidential information; and (g) the terms of this Agreement and information contained in Nuance's response to Receiving Party's Request for Proposal..

1. **Non-Disclosure and Non-Use Obligation.** Any of the Confidential Information received or acquired by the Receiving Party from Nuance hereunder: (a) shall be held in confidence by the Receiving Party; and (b) shall not be used by the Receiving Party for any purpose other than as set forth in the first paragraph of this Agreement.
2. **Exclusions.** The obligation of the above paragraph shall not apply to any information which: (a) is already public or becomes available to the public through no breach of this Agreement by the Receiving Party; or (b) was in the Receiving Party's possession prior to the receipt from Nuance; or (c) is lawfully received independently from a third party who is free to disclose such information to the Receiving Party; or (d) is independently developed by or on behalf of the Receiving Party without benefit of the disclosed Confidential Information.
3. **Required Disclosure.** The Receiving Party can disclose the Confidential Information it has received if it is required to do so by a governmental agency or a court of law having proper jurisdiction. If such a requirement is made, the Receiving Party required to make such a disclosure shall give Nuance reasonable notice to enable Nuance to try to protect the confidentiality of the Confidential Information.
4. **Ownership and Return of Confidential Information.** All Confidential Information including, without limitation, plans, drawings, operations, specifications, models, or data disclosed by Nuance to the Receiving Party in connection with this Agreement shall remain the property of Nuance at all times and shall be returned or delivered to Nuance upon request of Nuance together with all copies made thereof.
5. **Disclosure Within Organization.** The Receiving Party agrees that the Confidential Information shall be disclosed to only those people within its organization who have a need to know the information including representatives or advisors of parent or affiliated corporations of the Receiving Party who may be assisting the Receiving Party in evaluating the Confidential Information and who shall have agreed to be bound by the terms hereof.
6. **No License.** Disclosure of the Confidential Information under this Agreement shall not be construed as granting, directly or by implication, any license under any United States or foreign patent, patent application or copyright, or any other intellectual proprietary rights nor shall this Agreement be construed as creating any agency or partnership relationship between the parties.
7. **No Warranty.** It is understood by the Receiving Party that the Confidential Information disclosed hereunder may relate to products that are under development or planned for development. NUANCE DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY OF THE CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER. Nuance accepts no responsibility as a result of any expenses, losses, damages or actions incurred or undertaken by the Receiving Party as a result of the Receiving Party's receipt or use of any Confidential Information.
8. **Indemnification.** The Receiving Party hereto agrees that it will indemnify and hold Nuance harmless from all losses, damages, causes of action, and attorneys' fees incurred arising from the breach of this Agreement by the Receiving Party.
9. **Injunctive Relief.** A breach by the Receiving Party of any promises or agreements contained herein will result in irreparable and continuing damage to Nuance for which there will be no adequate remedy at law, and such other party shall be entitled to injunctive relief and/or decree for the specific performance, and such other relief as may be proper (including monetary damages if appropriate).
10. **No Export.** Both parties hereto shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data to any proscribed country listed in the U.S. Export Administration Regulations unless properly authorized by the U.S. Government.

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### Exceptions to Assumptions and Agreements in Request for Proposal

With respect to Vendor's response(s) to the Request for Proposal ("RFP"), please note that Vendor expressly reserves the right to 1) modify and/or negotiate in good faith those Assumptions, Agreements, terms and conditions in the RFP and/or the standard terms and conditions provided by Customer that do not conform in material respects to Vendor's standard business practices and/or are not applicable to Vendor; and/or 2) negotiate in good faith the inclusion of additional terms and conditions as may be applicable and as Vendor may reasonably require Attached hereto as Attachment G, Vendor has provided its standard license and/or maintenance agreement (and corresponding Exhibits. The standard license agreement, maintenance agreement, and exhibits hereinafter collectively referred to as "License Agreement") which contains Vendor' standard software licensing terms and conditions and Vendor's payment terms, acceptance requirements, limited warranty, infringement indemnification, maintenance/support, and other provisions applicable to Vendor's products and services. Vendor and Customer acknowledge that neither party will be bound by any terms and conditions unless the parties mutually agree to an applicable license agreement and/or maintenance agreement subsequent to award by Customer. To the extent any of Vendor's terms and conditions conflict or are inconsistent with the terms provided by Customer in or with its RFP, Vendor agrees to negotiate such terms in good faith with Customer.

In the event that Customer selects Vendor at the conclusion of the RFP process, the parties shall immediately negotiate in good faith and acknowledge that a mutually acceptable License Agreement, as evidenced by both parties signature shall be the governing instrument with respect to the parties relationship. In the event that the parties cannot mutually agree to the applicable terms of the License Agreement, then neither party shall be bound and/or under any obligation with respect to this RFP and/or its related matters. In any event, each party shall be responsible for and will bear its own costs.

### TRADEMARK DISCLAIMERS

Dictaphone, , Dragon, PowerScribe, PowerScribe for Radiology, EXSpeech, Enterprise Express, Enterprise Express VoiceSystem, Enterprise Express TextSystem, Boomerang, Walkabout, Walkabout Express, Connexions, Enterprise Workstation, ichart, GoMD, GoMD Dictate, EE Text, EE Speech, EE Voice, RadCube, RadPort, RadWhere, Veriphy, REX, REX Explorer, REX Creator, REX Security, REX Import Export Utility, REX Connection Manager, Digital Job Transfer, Job Lister, Voice Dashboard, Target Time, Pools, Text Client, and Explorer Module are either trademarks, service marks or registered trademarks owned by Nuance Communications, Inc. or its affiliates. .

#### Third Party Trademarks

Microsoft, Windows, , Windows XP, Windows Server, , SQL Server, Internet Explorer, Microsoft Word and MS-WORD are either trademarks or registered trademarks owned by Microsoft Corporation.

Stedman's and Stedman's Electronic Medical Dictionary are either trademarks or registered trademarks owned by Waverly, Inc.

Quick Look Drug Book and Quick Look Electronic Drug Reference are either trademarks or registered trademarks owned by Lippincott Williams & Wilkins, inc. Corporation

Creative Labs Sound Blaster



## **Section 1.0 – Executive Summary**



Nuance Communications, Inc., is pleased to submit the enclosed proposal for implementing Enterprise Express solutions at your institution. We appreciate your interest in our products and services and regard our association with your facility as a significant opportunity.

Nuance's Healthcare Solutions is revolutionizing dictation/transcription management in the healthcare field with its growing family of products designed to give providers new levels of productivity in voice and data management. With a variety of solutions to enable healthcare facilities to maintain their current practice patterns, Nuance offers a flexible, easy-to-use system that will improve productivity, workflow visibility and is completely scalable to meet customer needs and to grow with each facility.

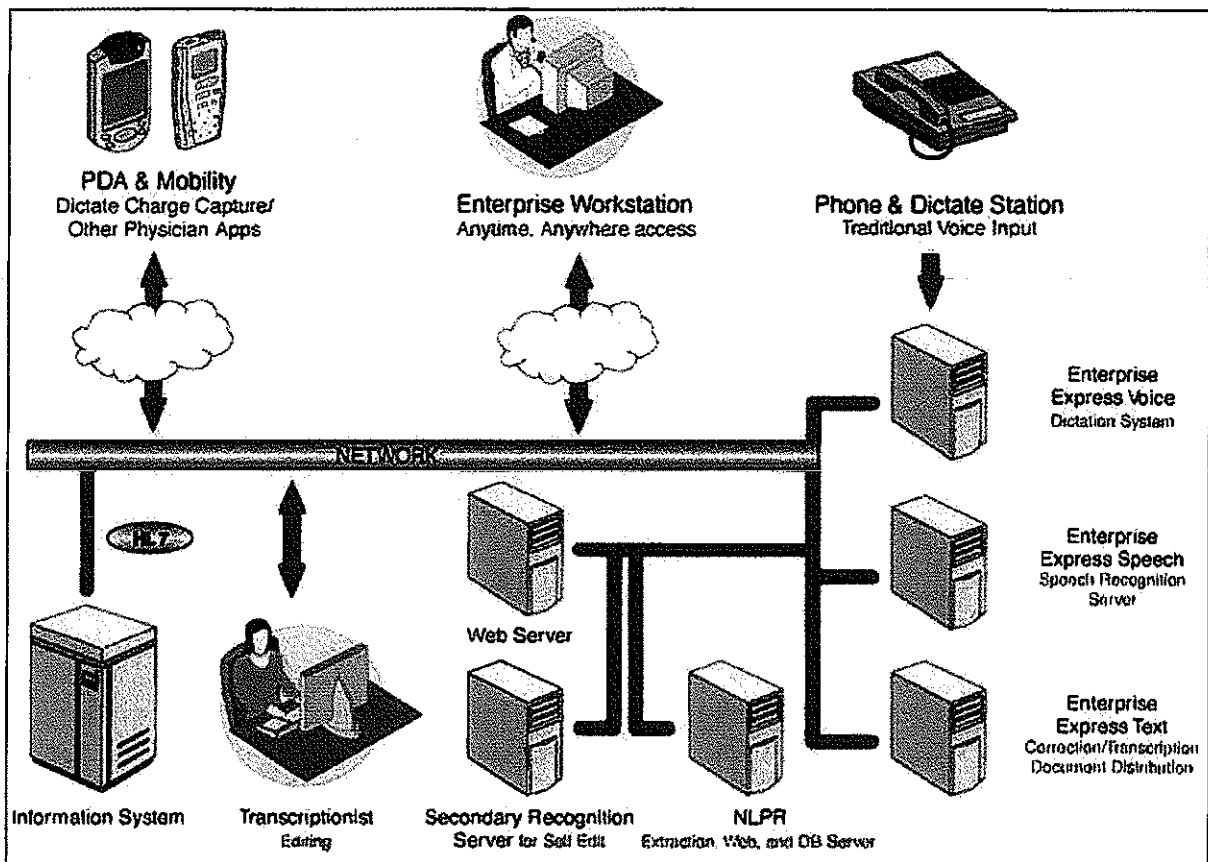
The foundation of the Dictaphone product line is the Enterprise Express System, a family of integrated digital dictation, transcription, and report management solutions built on a proven Microsoft Windows Server and SQL Server platform. Enterprise Express allows healthcare organizations to manage dictated voice input, report transcription, and distribution across multiple departments and facilities, while centrally managing system supervisory functions and workflow on an enterprise-wide level. The Enterprise Express Voice and Text software is designed exclusively for the management of patient information workflow, allowing rapid implementation, integration, and productivity gain, without causing changes in a facility's procedures or physician practice patterns.

## Product Suite

Enterprise Express is a proven workflow management system built on powerful Microsoft Windows and SQL Server technology, providing a familiar user-friendly interface and a true open architecture platform. Offering network-based architecture and a flexible voice-input environment, organizations can choose among traditional telephony-based dictate stations or a variety of input alternatives.

These solutions are focused on improving, accelerating and reducing the cost of documenting patient care at more than 3,000 hospitals and healthcare facilities through the following components:

- **Enterprise Express VoiceSystem** -- an open architecture, Windows Server based, digital dictation and transcription software suite presented in easy-to-use Windows format.
- **Enterprise Express TextSystem** -- a powerful, Windows Server based document management system utilizing Microsoft Word that works well in both centralized and multi-site environments.
- **Enterprise Editor** -- designed to enhance productivity and reduce costs of supporting remote and home-based transcriptionists, this software application offers the ability to download voice files to the PC, receive work automatically from the system's pooling assignments and maintain maximum workflow productivity.



## Implementation, Service and Support

Nuance is dedicated to providing the highest level of customer support – from definition to delivery to ongoing use of our products. We believe that the implementation phase of the Enterprise Express system is critical to your success. As such, we have an implementation policy that is driven and coordinated by local staff using national and corporate resources where necessary.

We know there is much more to a successful integration than a connection at the software level. To ensure customer satisfaction, we have made substantial investment of resources to support the on-going productivity of your users. We meet these goals through our best resource: people. We believe that our solutions can only be successful if backed by a strong services and support organization.

We are confident that Nuance's Service Organization is one of the largest and most professional found anywhere within the voice industry. We offer our customer support from a network of strategically placed offices; Nuance provides rapid response to the customer regardless of their location. Nuance guarantees the highest level of support in the industry

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with telephone software support on Enterprise Express 24 hours a day, 365 days a year by trained technicians.

## Summary

Nuance's focal point is to reduce costs associated with medical documentation incurred by healthcare clients. In addition to reducing costs, the quality of care is increased by improving the turnaround time of reports and information available to healthcare providers. This impacts the continuity of care for your physician's patients by providing timely information that will help in the decision making process of their medical encounter.

For over a century, Nuance Corporation has been synonymous with recorded voice. Dictaphone Corporation is the world leader in digital recording and document management for the transcription and healthcare industry. With the ability to systematically manage the creation, production and distribution of patient information on an enterprise-wide level, Enterprise Express has the dramatic effect of improving information flow critical to timely patient care, enhanced physician satisfaction, and accurate and efficient provider reimbursement. No other vendor has products with the same reliability, flexibility and functionality. Nuance is confident that you will find Enterprise Express Systems have not only met your specifications, but also provide the greatest efficiency and highest level of service to your employees and customers, for both current and future needs.

At Nuance, our continuing strategy has been to bring to the healthcare marketplace a family of workflow solutions based on our Voice – to Text – to Data – to Knowledge, intelligent processing model. The advanced technologies that we have brought to our Enterprise Express solution include: speech recognition, mobile and wireless technology, and clinical language understanding, the technology which reads and understands text reports. To this we have added the Internet for the architecture and delivery options you want. With installations worldwide, no other product can match the reliability, flexibility and functionality of Enterprise Express. Today, Nuance is a revitalized, energized, and an unstoppable technology force.

The following points highlight just a few of the reasons why Enterprise Express is the clear choice:

- **Superior Workflow Management** - The Enterprise Express System offers unparalleled flexibility and management control.
- **Flexible Input Options** - Enterprise Express offers providers the ability to use a system with minimal impact on their current practice patterns. Input options include the telephone, PC dictation, and mobile dictation using a Compaq iPAQ. Speech recognition is available in both background and real-time methods, contributing to provider satisfaction levels.
- **Ease-Of-Use** - Enterprise Express utilizes industry standard Microsoft Windows user interfaces to increase user acceptance and reduce training costs.
- **Productivity Enhancements** - The system provides a variety of tools designed to improve productivity, including voice-enabled normals for providers to speed documentation, automatic completion of document information to ensure accuracy, and creation of work type templates to reduce document set-up time.





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- **Scalability** - The Enterprise Express system is designed to be easily scalable and is designed to grow as your facility grows. The system can be divided into separate sites with each site having the full benefits of the system, allowing multiple sites to coexist in a common database environment.
  - **Accessibility** - transcriptionist, supervisors, and providers can access Enterprise Express applications remotely.
  - **Performance/Reliability** - Built on industry standard components that are easy to maintain and support, the Enterprise Express System is designed for maximum performance. The Enterprise Express software is virtually hardware independent, running on any Intel-based platform, with sufficient resources. Enterprise Express through its unique design and integration into the Microsoft Windows operating system offers an extensive array of fault tolerant capabilities, including UPS power supply, disk mirroring and RAID 5 support.
  - **Security** - Enterprise Express allows department supervisor and managers to control access down to individual features in all the software modules. With Enterprise Express, users can only modify, view or delete information if they have the appropriate rights. Detailed audit trails provide records of all actions on the system.
  - **Service And Support** - Dictaphone Corporation's Worldwide Services organization is comprised of highly skilled, certified professionals in three primary functional groups: Field Services, Professional Services, and Technical Services. The team members of these groups are responsible for the implementation, service and support of your Dictaphone solution.
  - **Professional Implementation Services** - Our Professional Services include Service Installation, Project Management, and ATS consulting and Training to ensure a successful implementation. The team approach to implementation allows us to be more effective and efficient, thereby reducing the installation cycle time.



## **Section 2.0 – Corporate Overview**



Nuance Communications, Inc. is a leading provider of voice and language solutions for businesses and consumers around the world. Our technologies, applications and services make the user experience more compelling by transforming the way people interact with devices and systems. Our solutions are used every day by millions of people and thousands of businesses for tasks and services such as requesting information from a phone-based self-service solution, dictating medical records, searching the mobile Web by voice, entering a destination into a navigation system, or working with PDF documents, making these interactions, tasks and experiences more productive, compelling and efficient. Our global contingent of more than 6,100 employees comprises an extraordinary group of talented, creative and motivated people. In 2010, Nuance eclipsed the \$1 Billion mark in revenues, making us one of the top 15 Healthcare software companies in the world.

Since acquiring Dictaphone Corporation in 2006, Nuance Communications has continued to expand its healthcare presence, which currently provides 40% of its annual revenue. In 2007, Nuance made several strategic acquisitions to complement its healthcare industry offerings. These include Focus Infomatics, a healthcare transcription service organization, Commissure, Inc., a medical imaging software company that provides speech-enabled radiology workflow optimization and data analysis solutions and Vocada, Inc., a leading provider of critical test result management (CTRM) solutions. In 2008, Nuance purchased eScription, whose products are deployed in a hosted (ASP) environment, at healthcare organizations throughout North America, helping streamline processes, speed turnaround time, and save costs of medical transcription, without interfering with clinician workflow. In 2009, Nuance continued its growth in the healthcare space with the acquisition of the SpeechMagic engine from Philips. In 2010, Nuance Healthcare strategically acquired Language & Computing, the industry leader in Clinical Language Understanding (CLU), Encompass Medical Transcription Inc. and formed a partnership with IBM that will result in the spending of \$125 Million in R&D in the CLU space. We also completed the acquisition of OSI transcription – making Nuance the second largest provider of outsourced medical transcription services in the world. In July, 2011 Nuance acquired Webmedx, the #1 KLAS-ranked transcription services provider. In addition to complementary transcription leadership and scale, Webmedx's natural language processing (NLP) driven Quality Analytics application enhances Nuance's clinical language understanding (CLU) innovations, where actionable information improves business and clinical decisions.

Our healthcare solutions provide the most comprehensive family of speech-driven clinical documentation and communications systems available across hospitals, health systems, and physician practices, covering all specialties of care. Nuance Healthcare products are used in more than 5,000 health care facilities, by more than 400,000 clinicians and support all clinical documentation methods and workflows. These state-of-the-art solutions dramatically reduce transcription expense, improve patient care via complete documentation and guaranteed results delivery, and raise clinician satisfaction by making EMR systems faster and easier to use.

Designed to meet the business realities of today's healthcare environment, our solutions reduce report turnaround time and significantly reduce transcription costs, automating and integrating critical elements in the creation and management of health information, helping healthcare organizations improve productivity and the quality of patient care.

Our specialists are trained to systematically analyze the needs of each customer. Each implementation requires the active involvement of certified service representatives and local

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service management. Each service representative meets product competency requirements at the Technical Education Center in Melbourne, FL. Our approach and implementation is further solidified with Application Training Specialists. These talented individuals coordinate system implementation and training. The experience and expertise of our employees are the most valuable assets that we can offer to the healthcare community.

Nuance maintains the world's most comprehensive and pervasive portfolio of speech and imaging products that are backed by the expertise of our professional services organization and a global partner network. Nuance speech solutions make the user experience more compelling and expand business potential. Through its dictation, embedded and network speech solutions, Nuance offers the world's premier portfolio of speech technologies, expertise and solutions that transform the way people interact with businesses, information and devices. Today, thousands of companies and millions of users around the world depend on Nuance speech solutions to deliver vital information, increase productivity and conduct business.

## Investment and Resources

- Publicly traded (NASDAQ: NUAN)
- \$1.1B in Revenues FY11
- \$6+B market cap
- \$200M+ annual R&D investment
- \$1B+ invested in speech recognition to date
- More than 1,000 issued patents and 680 patent applications
- 6,100 employees
- 450 speech scientists
- 600+ professional services team

## Corporate Offices

- World Headquarters 1 Wayside Rd, Burlington, MA, 01803
- Canadian Headquarters 1500 University St, Suite 935, Montreal, QC, H3A 3S7

## Solutions at a Glance:

Nuance Healthcare solutions include:

- **eScriptio**n – is an innovative, on-demand, enterprise-wide computer aided medical transcription (CAMT) background speech recognition solution designed to fully integrate with the EHR and streamline clinical documentation. When medical transcriptionists – whether working in-house or for an outsourced Medical Transcription Service Organization (MTSO) – use eScriptio's software for computer-aided medical transcription instead of manual typing, their productivity levels rise

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significantly. The enterprise-wide software, first marketed in 1999, enables healthcare organizations to shorten turnaround time, improve processes, and achieve substantial cost savings in medical transcription. eScription recently received the Best-in-KLAS ranking for the 7th year in a row for speech recognition solutions.

- **Nuance Transcription Services** — Our **Global Speech-Certified Transcription Network** of outsourced services has been successfully serving medical facilities since 1999 with Traditional Transcription and Speech Recognition. Our services have provided significant cost savings, reduced TATs as well as continuous reliability and quality improvement.
- **Enterprise Speech System®** — Is the gold standard for onsite dictation, transcription and backend (MT assisted) speech recognition – used by 3,000+ organizations to reduce transcription and turnaround time via powerful editing, workflow and management tools. **Enterprise Express Speech®** can double productivity and reduce costs by up to 50% via “speech-enabled” transcription. **Enterprise Workstation™** is a browser-based solution for physicians who prefer “once and done” self-editing.
- **Dragon Medical** — Used by more than 100,000 clinicians to make EMR systems such as Allscripts, Epic, GE, Eclipsys, Misys, NextGen, Meditech and McKesson faster and easier to use. Widely being deployed to Pathology departments as well, to take advantage of the complex workflow solutions addressed by Laboratory Information Systems.
- **PowerScribe 360 ® for Radiology** — The leading speech-driven dictation solution for radiology – used by one in three North American radiologists – offers instant, transcription-free reporting that dramatically improves the level of service to patients and referring physicians. Nuance celebrated its 1,000th PowerScribe for Radiology customer organization in 2007.
- **RadPort™ for Radiology** – A secure, web-based decision support application for appropriate diagnostic image order entry that satisfies pre-certification requirements. RadPort was designed in conjunction with the Massachusetts General Hospital; its recommendations are accepted by most payors.
- **RadCube™ for Radiology** – A flexible yet powerful multidimensional analysis application for hospital-based departments and freestanding imaging centers that provides multidimensional radiology clinical and practice analysis and multifaceted data modeling.
- **Veriphy™** - A patented Critical Test Results Management solution which ensures the communication of critical test results from diagnostic clinician to ordering clinician. Veriphy enhances patient care, increases productivity, improves risk management and automates compliance. The Veriphy solution, delivered through a software-as-a service (SaaS) model, helps diagnostic departments in hospitals achieve greater patient safety, better patient outcomes and higher staff productivity by bringing efficiency and verification to the communication process surrounding critical test results. Veriphy solutions are found at more than 120 hospitals in North America including leading healthcare centers such as Baylor Healthcare System, University of Pennsylvania Healthcare System and Cedar Sinai Medical Center.



## **Section 3.0 – RFQ Response**



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NO. MB. FR.	PAGE
BHS12005	1
ADDRESS FOR CORRESPONDENCE, WITH ATTENTION OF:	
ROBERTA WAGNER 04-558-0067	

RFQ COPY  
 TYPE NAME/ADDRESS HERE  
 Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VA	FREIGHT TERMS		
07/20/2011					
BID OPENING DATE: 08 18 2011		BID OPENING TIME 01.30PM			
LINE	QUANTITY	UOP	ITEM NUMBER	UNIT. PRICE	AMOUNT
001	1	CB	961-72	\$203,566.80	
<p>*****            MAND. PRE-BID MEETING ON 8/2/2011 AT 11:00 AM IN CONF. ROOM # 354 OF BHHR, AT 350 CAPITOL STREET, CHARLESTON, WV 25301-3702            *****</p> <p>SOFTWARE COST, INCLUDING LICENSES FOR DICTATION/            Also hardware, third party software, professional services, installation, training and three years of maintenance.</p> <p>TO PROVIDE DICTATION/TRANSCRIPTION EQUIPMENT FOR MILDRED MITCHEL-BATEMAY HOSPITAL AND WILLIAM R. SHARPE, JR. HOSPITAL, WITHIN THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR BEHAVIORAL HEALTH AND HEALTH FACILITIES, PER THE ATTACHED SPECIFICATIONS.</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON AWARD..... AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p>					
SEE REVERSE SIDE FOR TERMS AND CONDITIONS					
SIGNATURE <i>[Signature]</i>					781-565-5000 TELEPHONE
TITLE <i>WEVP Worldwide Sales</i> FEIN 94-3156479				ADDRESS CHANGES TO BE NOTED ABOVE	

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS  
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
  2. The State may accept or reject in part, or in whole, any bid.
  3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
  4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
  5. Payment may only be made after the delivery and acceptance of goods or services.
  6. Interest may be paid for late payment in accordance with the **West Virginia Code**.
  7. Vendor preference will be granted upon written request in accordance with the **West Virginia Code**.
  8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
  9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
  10. The laws of the State of West Virginia and the **Legislative Rules** of the Purchasing Division shall govern the purchasing process.
  11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
  12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
  13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at [www.state.wv.us/admin/purchase/vrcihipaa.htm](http://www.state.wv.us/admin/purchase/vrcihipaa.htm) and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
  14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
  15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
  16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.
- I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or Fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).





State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

AKINOMBER:	
BHS12005	2
ROBERTA WAGNER 304-558-0067	

RFQ COPY  
 TYPE NAME/ADDRESS HERE  
 Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 P. VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE •	SHIP VIA	FREIGHTTERMS . .
07/20/2011			
BID OPENING DATE: 08 18 2011		BID OPENING TIME 01:30PM	

LINE	QUANTITY	UOP	CAT. No.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS			
SIGNATURE	TELEPHONE	DATE	
<i>[Signature]</i>	781-565-5000	8-16-200	
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE	
EVP Worldwide Sales	94-3156479		

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER	PAGE
BHS12005	3
- ADDRESS CORRESPONDENCE TO ATTENTION	
ROBERTA WAGNER 304-558-0067	

RFQ COPY

TYPE NAME/ADDRESS HERE

Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VIA	REVISIONS		
07/20/2011					
BID OPENING DATE: 08/18/2011		BID OPENING TIME 01:30PM			
LINE	QUANTITY	UOP 1:	ITEM NUMBER	UNIT	AMOUNT
<p>SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 04/11/2)01</p> <p>INQUIRIES:          WRITTEN QUESTIONS SHALL, BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 8/3/2011. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR E-MAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED.          ADDRESS INQUIRIES TO:</p> <p>ROBERTA WAGNER          DEPARTMENT OF ADMINISTRATION          PURCHASING DIVISION          2019 WASHINGTON STREET, EAST          CHARLESTON, WV 25311</p> <p>FAX: 304-558-4115          E-MAIL: ROBERTA.A.WAGNER@WV.GOV</p> <p>EXHIBIT 4</p> <p>LOCAL GOVERNMENT BODIES: UNLESS THE VENDOR INDICATES IN THE BID HIS REFUSAL TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO COUNTY, SCHOOL, MUNICIPAL AND OTHER LOCAL GOVERNMENT BODIES, THE BID SHALL EXTEND TO POLITICAL SUBDIVISIONS OF THE STATE OF WEST</p>					
SEE REVERSE SIDE FOR TERMS AND CONDITIONS					
SIGNATURE		TELEPHONE 781-565-5000	DATE 8-16-2011		
TITLE <b>EVP Worldwide Sales</b>	FEIN 94-3156479	ADDRESS CHANGES TO BE NOTED ABOVE			

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED VENDOR



State of West Virginia  
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**Request for Quotation**

BHS12005	4
ROBERTA WAGNER 304-558-0067	

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 TYPE NAME/ADDRESS HERE  
 Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

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BID OPENING DATE: 08 18 2011 BID OP

LINE	QUANTITY	UOP	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>VIRGINIA. IF THE VENDOR DOES NOT WISH TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO ALL POLITICAL SUBDIVISIONS OF THE STATE, THE VENDOR MUST CLEARLY INDICATE SUCH REFUSAL IN HIS BID. SUCH REFUSAL SHALL NOT PREJUDICE THE AWARD OF THIS CONTRACT IN ANY MANNER. Nuance Communications does not wish to extend the prices, terms, and conditions of the bid to all political subdivisions of the State of West Virginia.</p> <p>REV. 3/88</p> <p>MANDATORY PRE-BID</p> <p>A MANDATORY PRE-BID WILL BE HELD ON 8/16/2011 AT 11:00 AM IN CONF. RM. 4 354 350 CAPITOL ST., ALL INTERESTED PARTIES ARE REQUIRED TO ATTEND THIS MEETING FAILURE TO ATTEND THE MANDATORY PRE-BID SHALL RESULT IN DISQUALIFICATION OF THE BID. NO ONE PERSON MAY REPRESENT MORE THAN ONE BIDDER.</p> <p>AN ATTENDANCE SHEET WILL BE MADE AVAILABLE FOR ALL POTENTIAL BIDDERS TO COMPLETE. THIS WILL SERVE AS THE OFFICIAL DOCUMENT VERIFYING ATTENDANCE AT THE MANDATORY PRE-BID. FAILURE TO PROVIDE YOUR COMPANY NAME AND REPRESENTATIVE NAME ON THE ATTENDANCE SHEET WILL RESULT IN DISQUALIFICATION OF THE BID. THE STATE WILL NOT ACCEPT ANY OTHER DOCUMENTATION TO VERIFY ATTENDANCE. THE BIDDER IS RESPONSIBLE FOR ENSURING THEY HAVE COMPLETED THE INFORMATION REQUIRED ON THE ATTENDANCE SHEET. THE PURCHASING DIVISION AND THE STATE AGENCY WILL NOT ASSUME ANY RESPONSIBILITY FOR A BIDDER'S FAILURE TO COMPLETE THE PRE-BID ATTENDANCE SHEET. IN ADDITION, WE REQUEST THAT ALL POTENTIAL BIDDERS INCLUDE THEIR E-MAIL ADDRESS AND FAX NUMBER.</p> <p>ALL POTENTIAL BIDDERS ARE REQUESTED TO ARRIVE PRIOR TO THE STARTING TIME FOR THE PRE-BID. BIDDERS WHO ARRIVE LATE, BUT PRIOR TO THE DISMISSAL OF THE TECHNICAL PORTION OF THE PRE-BID WILL BE PERMITTED TO SIGN IN. BIDDERS WHO ARRIVE AFTER CONCLUSION OF THE TECHNICAL</p>					

SEE REVERSE SIDE FOR TERMS AND CONDITIONS					
SIGNATURE				TELEPHONE 781-565-5000	DATE 8-16-2011
TITLE	EVP Worldwide Sales		FEIN 94-3156479	ADDRESS CHANGES TO BE NOTED ABOVE	

WREN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia  
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**Request for  
 Quotation**

		PAGE
BHS12005		5
ADDRESS CORRESPONDENCE TO ATTENTION OF		
ROBERTA WAGNER		
304-558-0067		

RFQ COPY  
 TYPE NAME/ADDRESS HERE

E:  
 N: Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

Nuance Communications	TERMS OF SALE I.	FOB:
Worldwide Headquarters		
Bid opens on road	08 18 2011	BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	No	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>PORTION OF THE PRE-BID, BUT DURING ANY SUBSEQUENT PART OF THE PRE-BED WILL NOT BE PERMITTED TO SIGN THE ATTENDANCE SHEET.</p> <p>PLEASE NOTE THAT THE RENEWAL LANGUAGE IS ONLY APPLICABLE TO THE SUPPORT AND MAINTENANCE.</p> <p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL (:) QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATIONS IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p>PURCHASING CARD ACCEPTANCE: THE STATE OF WEST VIRGINIA CURRENTLY UTILIZES A VISA PURCHASING CARD PROGRAM WHICH IS ISSUED THROUGH A BANK. THE SUCCESSFUL VENDOR MUST ACCEPT THE STATE OF WEST VIRGINIA VISA PURCHASING CARD FOR PAYMENT OF ALL ORDERS PLACED BY ANY STATE AGENCY AS A CONDITION OF AWARD.</p> <p>REV 07/16/2007</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>THIS TEAM EXHIBIT HAS BEEN REPLACED BY THE ONLINE VERSION WHICH IS AVAILABLE HERE:  <a href="http://www.state.wv.us/admin/purchase/vrc/venpref.pdf">HTTP://WWW.STATE.WV.US/ADMIN/PURCHASE/VRC/VENPREF.PDF</a></p> <p>NOTICE</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS		
SIGNATURE	TELEPHONE 781-565-5000	DATE 8-16-2011
TITLE EVP Worldwide Sales	FEIN 94-3156479	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED VENDOR



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 Department of Administration  
 Purchasing Division  
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### Request for Quotation

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BHS12005		6
ADDRESS-CORRESPONDENCE TO ATTENTION		
ROBERTA WAGNER		
804-558-0067		

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 TYPE NAME/ADDRESS HERE

Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	Sp IP VIA :	F.O.B. . . .	FREIGHT TERMS
07/20/2011				
BID OPENING DATE: 08/18/2011		BID OPENING TIME 01:30PM		
LINE	QUANTITY:	ITEM NUMBERS:	UNIT PRICE	AMOUNT
<p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION          PURCHASING DIVISION          BUILDING 15          2019 WASHINGTON STREET, EAST          CHARLESTON, WV 23305-0130</p> <p>PLEASE NOTE: A CONVENIENCE COPY WOULD BE APPRECIATED.</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: - - - - - RW/FILE 22 - - - - -</p> <p>RFQ. NO.: - - - - - BHS12005 - - - - -</p> <p>BID OPENING DATE: - - - - - 08/18/2011 - - - - -</p> <p>BID OPENING TIME: - - - - - 1:30 PM - - - - -</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p>- - - - - 866-535-1394 - - - - -</p> <p>CONTACT PERSON (PLEASE PRINT CLEARLY):</p> <p>- - - - - Ron Hinkle - - - - -</p>				

SIGNATURE <i>[Signature]</i>		TELEPHONE 781-565-5000	DATE 8-16-2011
TITLE <b>EVP Worldwide Sales</b>	FEIN 94-3156479	ADDRESS CHANGES TO BE NOTED ABOVE	

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED VENDOR



State of West Virginia  
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 Charleston, WV 25305-0130

### Request for Quotation

RFO NUMBER	
BHS12005	7
ADDRESS CORRESPONDENCE TO ATTENTION OF...	
ROBERTA WAGNER	
304-558-0067	

RFQ COPY  
 TYPE NAME/ADDRESS HERE

Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
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 VARIOUS LOCALES AS INDICATED  
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DATE PRINTED: 07/20/2011	TERMS OF SALE:	SHIP VIA:	F.O.B.:	FREIGHT TERMS:
BID OPENING DATE: 08/18/2011		BID OPENING TIME: 01:30PM		

LINE	QUANTITY	UOP	NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0002	1	EA		61-72		\$15,400.00
HARDWARE/EQUIPMENT - DEDICATED SERVER						
0003	5	3A		61-72		\$49,716.00
TRANSCRIPTION/DICTATION EQUIPMENT - BATEMAN HOSPITAL						
0004	3	3A		961-72		\$33,144.00
TRANSCRIPTION/DICTATION EQUIPMENT - SHARPE HOSPITAL						
0005	1	JB		961-72		\$4,716.48
INSTALLATION COSTS AT BATEMAN HOSPITAL						
0006	1	JB		961-72		\$3,144.32
INSTALLATION COSTS AT SHARPE HOSPITAL						

SEE REVERSE; \$105 F.O.B. NO P.O. NOT IN ITS.....

SIGNATURE: *[Signature]* TELEPHONE: 781-565-2011 DATE: 8-16-2011

TITLE: EVP Worldwide Sales REIN 94-3156479 ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED VENDOR



State of West Virginia  
 Department of Administration  
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# Request for Quotation

BHS12005

PAGE : .  
8

ADDRESS: CORRESPONDENCE TO: ATTENTION :  
 ROBERTA WAGNER  
 304-558-0067

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 TYPE NAME/ADDRESS HERE  
 Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
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 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED ... : 07/20/2011	TERMS OF SALE .....	SHIP VIA - ... P	... F.O.B. II	FREIGHT TERMS
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BID OPENING DATE: 08 18 2011 BID OPENING TIME 01:30PM

	QUANTITY	OOP	CAT.... NO....		XMQUNT
3007	1	JB	961-72	TRAINING FEE - 20 STAFF PERSONS AT BATEMAN HOSPITAL	\$27,720.00
3008	1	JB	961-72	TRAINING FEE - 30 STAFF PERSONS AT SHARPE HOSPITAL	\$18,480.00
3009	1	EA	961-72	MAINTENANCE COST - SECNDND YEAR - ENTIRE SYSTEM	\$17,082.00
0010	1	EA	961-72	MAINTENANCE COST - THIRD YEAR - ENTIRE SYSTEM	\$17,082.00
011	1	EA	961-72	SOFTWARE SUP?ORT - 2ND. YEAR INCLUDING UPDATES.	Included in line 009

SIGNATURE *[Signature]* TELEPHONE 781-565-5000 DATE 8-16-2011  
 TITLE *EVP Worldwide Sales* FEIN 94-3156479 ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED VENDOR'



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**Request for  
 Quotation**

BHS12005		PAGE: 9
ADDRESS CORRESPONDENCE TO ATTENTION OF: ROBERTA WAGNER 804-558-0067		

RFQ COPY  
 TYPE NAME/ADDRESS HERE  
 Nuance Communications  
 Worldwide Headquarters  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	HH 841P VIA		
07/20/2011				
BID OPENING DATE:	08/18/2011	BID OPENING TIME 01:30PM		
LINE	QUANTITY	NO.	ITEMNUMBER-	AMOUNT
0012	1	EA	61-72	Included in line 0010
			SOFTWARE SUPPORT - 3RD YEAR INCLUDING UPDATES.	\$203,566.80 This total includes first year maintenance \$17,082.00
***** THIS IS THE END OF RFQ BHS12 05 ***** TOTAL:				

SIGNATURE <i>[Signature]</i>	TELEPHONE 781-565-5000	DATE 8-16-2011
TITLE <i>EVP Worldwide Sales</i> FEIN 94-3156479	ADDRESS CHANGES TO BE NOTED ABOVE	

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED VENDOR



**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BUREAU FOR BEHAVIORAL HEALTH AND HEALTH FACILITIES OFFICE 350  
CAPITAL STREET, ROOM 350, CHARLESTON, WEST VIRGINIA 25301-3701**

**Request for Quotation  
BHS12005**

**ADMINISTRATIVE AND CONTRACTUAL TERMS**

**Purpose:**

The purpose of this Request for Quotation (RFQ) is to secure a vendor to provide us a digital dictation and transcription system to serve the two psychiatric hospitals of the Department of Health and Human Resources (DHHR), Bureau of Behavioral Health and Health Facilities (BHBF) of the state government of West Virginia. Vendor is to provide a dedicated computer server and other equipment as needed for eight (8) transcriptionists, together with the dictation and transcription systems operational and management software licenses, to allow each facility's transcription staff to perform their own transcription work on their hospital owned personal computers using the vendor's software through the hospital's telephones lines. Price is to be all inclusive for hardware, software, installation, travel costs, training, support, maintenance, and vendor's profit on the product.

**Delivery Locations:**

The two BHBF hospitals are: Mildred Mitchell Bateman Hospital (MMBH), an acute care psychiatric hospital with 110 beds located at 1530 Norway Avenue, Huntington, WV 25705 with five (5) transcriptionists, and William R. Sharpe, Jr. Hospital (WRSH), an acute care psychiatric hospital with 150 beds located at 936 Hospital Drive, Weston, WV 26452, with three (3) transcriptionists. The dedicated server is to be located at MMBH.

**SPECIFICATIONS**

**1. VENDOR REQUIREMENTS:**

- A. Vendor must have three years experience in providing medical transcription software solutions.

Comply.

- B. All interested vendors must attend the pre-bid conference with BHBF in their Conference Room (#354) at the Diamond Building located at 350 Capitol Street, Charleston, WV, August, 2 2011. At 11: 00 a.m.

Nuance Communications attended the pre-bid conference.

**2. GENERAL SCOPE OF SYSTEM**

- A. The system must allow for continuous 24-hour operation, 365 days a year.

Comply.

- B. The system must allow voice files and data files to be transferred to any of the hospital's personal computers (PC).

Comply.

- C. The system must be able to locate reports by work type, date transcribed, dictator and Medical Record identification number (ID).

Comply.

- D. The system shall allow dictators to prioritize their work by the type of report they are working on, i.e., History and Physical, Psych Evaluation, Notes, etc.

Comply.

### 3. GENERAL REQUIREMENTS OF SYSTEM

- A. The vendor system must have back end speech recognition software; back end is the ability to listen to the audio and compare it to the transcribed text.

Comply.

- B. System must provide secure encryption of Microsoft Word 2007 and Microsoft Windows 7 documents to the facilities equipment. Equipment and software shall be HL7 compliant (see definitions in appendix) for patient data download.

Not Applicable. Per RFQ BHS12005, Addendum No. 1. No longer a mandatory requirement.

- C. Software must not impose character or line limitation.

Comply.

- D. System must have spell checker with medical, pharmaceutical, and surgical technologies.

Comply.

- E. The software must be able to report patient demographic data for the purpose of report auto-fill and transcription inquiry on the facilities personal computers.

Comply.

- F. Software must have the search ability to locate reports either by work type, date transcribed, dictator, or Medical Record ID number.

Comply.

- G. Must have the ability for the routing of completed dictations by type of report, assignment of supervisor, age of report and priority of report.

Comply.

- H. Must contain transcription management workflow software to support the facilities management of their transcription staff.

Comply.

- I. Must allow the dictator the ability to insert and delete dictation.

Comply.

- J. Must allow the ability for an individual to listen to voice header information regarding a dictation such as: type of report, dictated by, date and subject.

Comply.

- K. Must allow the ability to leave reports "open" to be completed at a later time.

Comply.

L. Must allow the ability to skip, interrupt and access jobs signed off or completed in error.

Comply.

M. Must allow the ability for transcriptionist to highlight dictation anomalies in the document.

Comply.

N. Must allow the ability for HIM Directors or their designee to produce executable production reports in regards to transcriptionist's productivity such as line counts and down time when playback is interrupted.

Comply.

#### **4. VOICE PROCESSING SYSTEM EQUIPMENT REQUIREMENTS**

A. The vendor's system must be a digital recording system that can service thirty (30) system users at the same time.

Comply.

B. The primary function of the system will be for dictation input and transcription output of the dictated words; however, listening access of the dictation system through security levels will be required.

Comply.

#### **5. VOICE DICTATION ACCESS REQUIREMENTS**

A. The vendor's system must have a unique dictator profile database.

Comply.

B. The dictator database (dictation profile) must manage the way the system responds to each user.

Comply.

C. The vendor's unique dictator database must control the following dictation activities for each user:

a. User logon (Valid ID and Password) Comply.

b. Prompt language Comply.

c. User priority level Comply.

d. Open jobs Comply.

e. Access workstations Comply.

f. Inactivity logoff Comply.

g. Message delivery/listening

h. Message auto-play Comply.

i. Initial activity (dictation, listen) Comply.

j. VOX recording (voice activated) Not Applicable. Per RFQ BHS12005, Addendum No. 1. No longer a mandatory requirement.

k. Prompts (short or brief) Comply.

l. Rewind increment Comply.

m. Feature conformation tones Comply.

n. Listen access (enable/disable) Comply.

o. Listen mode accessible work types Comply.

p. Listener messaging Not Applicable. Per RFQ BHS12005, Addendum No. 1. No

- longer a mandatory requirement.
  - q. Job voice information header Comply.
  - r. Listen review order (FIFO/LIFO) (first-in-first-out/last-in-first-out) Comply.
  - s. Listen query default (patients, physicians and subject) Comply.
- D. The system's prompts must be interruptible for users bypass once system proficiency is obtained.  
Comply.
- E. The system's prompts must be concatenated (connected).  
Comply.
- F. The system's dictation prompts must match departmental and user operation requirement by prompting the following users in appropriate manner. GENERAL STAFF "Please enter Physician I.D. and Work Type, and Patient Number."  
Comply.
- G. The systems must allow the users the ability to control the speed when rewinding and listening to dictation while in dictation mode.  
Comply. Pre-set in user profile by administrator.
- H. The system shall allow the original dictator the ability to insert and delete specific sections of dictation.  
Comply.

## 6. SYSTEM ACCESS REQUIREMENTS

- A. The system must have a unique voice requirement for Transcription database (transcription profile). The transcription database must manage the way the system responds to each transcriptionist's work patterns.  
Comply.
- B. The system's unique transcription database must control the following transcription activities for each transcriptionist:
- a. User logon (Valid ID and Password) Comply.
  - b. Prompt language Comply.
  - c. Self-assignment (enable/disable). The system must allow the transcriptionists to perform job inquiries, from their transcription station Comply.
  - d. Skip jobs Comply.
  - e. Flag job Comply.
  - f. Job interrupt Comply.
  - g. Intercom reception Not Applicable. Per RFQ BHS12005, Addendum No. 1. No longer a mandatory requirement.
  - h. Transcription Messaging Not Applicable. Per RFQ BHS12005, Addendum No. 1. No longer a mandatory requirement.
  - i. Accessible work types Comply.
  - j. Job voice information header Comply.
  - k. Listen review order (FIFO/LIFO) Comply.
  - l. I. Listen query default (patient, physician, subject) Comply.
  - m. Rewind increment Comply.
  - n. Inactivity logoff Comply.
  - o. Prompts (shorts or briefs) Comply.

- p. Backspace increment Comply.
  - q. Feature conformation tones Comply.
  - r. Transcriptionist hang-up (return/interrupt) Comply.
  - s. Job voice information header Comply.
- C. The system must automatically replay instruction prompts after defined time settings for the aid of first time users.  
Comply.
- D. The system's prompts must be interruptible for user bypass once system proficiency is obtained.  
Comply.
- E. The system must allow certain transcriptionists to self-assign jobs by:
  - a. Physicians (author) Comply.
  - b. Patient Comply.
  - c. Work type Comply.
  - d. Job number Comply.
  - e. Priority level Comply.
- F. The system must allow all transcriptionists to perform job inquiries, from the vendor's transcriptionist station via system voice terminal.  
Not Applicable.
- G. The system must have help prompts that are activated by users.  
Comply.
- H. The system must allow each transcriptionist to access his or her productivity statistics from the transcription voice terminal.  
Not Applicable.
- I. The system must allow transcriptionist to control the speed of dictation, without distorting the voice.  
Comply.
- J. The system must also have a unique listening requirement for transcription database (transcription profile). The transcription database must manage the way the system responds to each Transcriptionist.  
Comply.
- K. The system must automatically replay instruction prompts after a user defined time setting for the aid of first time users.  
Comply.
- L. The system's prompt must be interruptible for user bypass once system proficiency is obtained.  
Comply.
- M. The system's prompts must be concatenated/linked.  
Comply.
- N. The system must automatically move to the next voice file upon completing the delivery of a voice file, unless the user desires to review the current file once again.  
Comply.

- O. The system must have help prompts that are activated by the user.  
Comply.

## **7. DATA REPORT MANAGEMENT AND INQUIRIES REQUIREMENTS**

- A. The system must have a report database.  
Comply.
- B. The system must allow reports to be queued for output.  
Comply.
- C. The system must allow users to define their management reports.  
Comply.
- D. The system must allow all generated reports.  
Comply.
- E. The system must allow users to define the data management headers of all user defined reports.  
Do Not Comply.
- F. The system must log the following data about each job:  
Comply.
  - a. Job number
  - b. Author number
  - c. Author name
  - d. Department number
  - e. Department name
  - f. Work type number
  - g. Work type name
  - h. Status
  - i. Dictation station
  - j. Dictation time
  - k. Transcription date
  - l. Lengths in pages
- G. The system must be able to automatically print reports based on user defined data and time settings.  
Comply.

## **8. INFORMATION SYSTEM INTERGRATION REQUIREMENTS**

- A. The system must be HL7 compliant (see definition attached) for patient data download and transcribed report upload.  
Comply.
- B. The system must be capable of receiving patient demographic information from the facility's information system (VISTA) which is a version of the Veterans Administration software, provided by Medsphere Systems Corporation.  
Comply.
- C. The system must be able to store patient demographic, encounter and order data for the purpose of report auto-fill and transcriptionist inquiry.

Comply.

- D. The system must support voice recognition, to indicate the patient's name and identifying information for the system to interface with VISTA.

Comply.

- E. The system must provide a single keystroke capability to switch to and from transcription mode to patient lookup mode.

Comply.

## 9. COMPUTER EQUIPMENT AND HARDWARE

- A. Both hospital's currently use the following configuration for their computers:

a. Hewlett Packard Compac Computer System with CD-RW drive, Intel ®, Corel TM 2 Duo CPU, E7400 @ 2.80GHz, 2.79 GHz, 1.98 GB RAM.

Comply.

b. Operating System: Microsoft Windows 7, Enterprise, 32 and 64 bit Version. Comply.

- B. Vendor is responsible for providing all other hardware needed for the installation of the dictation/transcription system, including a properly sized dedicated server for both hospitals volumes with the server to be located at Mildred Mitchell-Bateman Hospital.

Comply.

- C. Specific server model and type may be chosen by vendor but the following specifications of the server are required by owner:

a. Server must be an HP Proliant ML300 Series server, or equal. Comply.

b. Server must have redundant power supplies and redundant fans. Comply.

c. Server must have HP Integrated Lights Out Advanced Functionality, or equal. Do Not Comply. We do not sell this but it can be purchased via HP, and is compatible with our software.

d. Server storage must be RAID 5. Comply.

e. Server must come with an on-site 4-hour 13x5 warranty. Comply.

f. Server Operating System must be Windows Server 2008, or equal. Comply.

## 10. WARRANTY AND SERVICE TO BE INCLUDE

- A. Vendor is responsible for installation of their system in each of the two facilities.

- B. Vendor is to include in their bid the cost of all hardware, software and software licenses, installation, training, support and maintenance costs and profit.

- C. Installation of the systems hardware and software is to be made at both Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital, with the main server being located at Mildred Mitchell-Bateman Hospital. Installation is to be made by technicians certified in the use and installation of the vendor's systems, or be software manufacturer approved service representatives for a minimum of one year. The cost of maintenance for years 1, 2 and 3 must be in the bid price.

- D. Vendor must include in their bid all the costs of post install software updates, operation and technical support, including telephone support to resolve problems, and software maintenance. The price of software upgrades during years 1, 2 and 3 must be included

- in the bid price.
- E. Vendor is responsible for training of each hospital's staff, twenty (20) at Mildred Mitchell-Bateman Hospital and thirty (30) at William R. Sharpe Jr. Hospital and the training must be performed by technicians certified in the use of the vendor's systems, or be software manufacturer approved service representatives for a minimum of one year and be included in the lease price bid. All training must be completed within thirty (30) after the system installation is completed.
  - F. Vendor must provide a technical and operational support response within two (2) hours of the time service is requested. The price of this support must be included for years 1, 2 and 3.
  - G. The Vendor shall warrant to the facilities that all materials and equipment will be new and be of the current year production of manufacturer and manufactured for commercial usage, and that all work will be of good quality and free from faults.

## 11. CONTRACT RENEWAL

### Terms and Conditions

#### **Cancellation:**

The Director of Purchasing reserves the right to cancel this contract immediately upon written notice to the vendor if the commodities and/or services supplied are of an inferior quality or do not conform to the specifications of the bid and contract herein.

#### **Vendor Registration:**

Vendors participating in this process should complete and file a Vendor Registration and Disclosure Statement (Form WV-1) and remit the registration fee. Vendor is not required to be a registered vendor in order to submit a Quotation, but the successful vendor must register and pay the fee prior to the award of an actual purchase order/contract.

#### **"Purchasing Affidavit":**

West Virginia State Code 5A-3-1-a-(3) (d) requires that all vendors submit an affidavit of debt, which certifies that there are no outstanding obligations or debts owing the State of West Virginia. If bidding a joint Quotation, a Debt Affidavit shall be completed for each vendor.

#### **Subcontracts Prohibited:**

The Successful vendor will be solely responsible for all work performed under the contract. The vendor shall not enter into written subcontracts for performance or work under the contract without written permission of the Agency.

#### **Evaluation of Bids:**

The award of this contract will be based upon the lowest bid meeting the attached specifications.



# COST SHEET

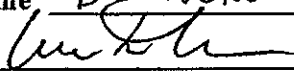
## RFQ BHS12005

### VENDOR NAME Nuance Communications

The award of this contract will be based upon the vendor's cost of the equipment, software, installation cost, training, software costs, and 2<sup>nd</sup> and 3<sup>rd</sup> years of support and maintenance

For a breakdown of the following pricing please see Section 4 - Pricing.

Item	Description	Price/Each	Quantity	Amount
1	Software Cost Brand Name/Model:			\$82,860.00
2	Hardware/Equipment Brand Name/Model:			\$15,400.00
3	Installation Cost			\$7,860.80
4	Training Fee			\$46,200.00
5	Maintenance — 2 <sup>nd</sup> Year			\$17,082.00
6	Maintenance — 3 <sup>rd</sup> Year			\$17,082.00
7	Software Support — 2 <sup>nd</sup> Year with, including updates			Included in line 5
8	Software Support — 3 <sup>rd</sup> Year with, including updates			Included in line 6
			<b>Total</b>	<b>\$203,566.80</b> <b>Includes 1<sup>st</sup> year of maintenance</b>

Agent's name Bill Nelson  
 Signature  Date 8-16-2011  
 Contact Phone Number 781-565-5000

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application\* is hereby made for Preference in accordance with West Virginia Code, §5A-3-37. (Does not apply to construction contracts). West Virginia Code, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

Application is made for 2.5% resident vendor preference for the reason checked:

Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,

2. Application is made for 2.5% resident vendor preference for the reason checked:

Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

3. Application is made for 2.5% resident vendor preference for the reason checked:

Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

Application is made for 5% resident vendor preference for the reason checked:

Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,

Application is made for 3.5% resident vendor preference who is a veteran for the reason

checked:

Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,

Application is made for 3.5% resident vendor preference who is a veteran for the reason

checked:

Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: NOT APPLICABLE Signed: \_\_\_\_\_

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

\*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

This agreement, with all Addenda, Supplements, Clarifications and references herein, constitutes the entire agreement between the parties, and there are no other terms and conditions applicable to the licenses granted hereunder.

Agreed

\_\_\_\_\_  
Signature Date 8-16-2011



Title  
EUP Worldwide Sales

Company Name Nuance Communications

\_\_\_\_\_  
Signature Date

Title  
\_\_\_\_\_

Agency/Division

WV.96  
Rev. 10/07

**AGREEMENT ADDENDUM**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. DISPUTES - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims. --
2. HOLD HARMLESS - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. GOVERNING LAW - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. TAXES - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. PAYMENT - Any references to prepayment are deleted. Payment will be in arrears.
6. INTEREST - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. RECOUPMENT - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. FISCAL YEAR FUNDING - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. STATUTE OF LIMITATION - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. SIMILAR SERVICES - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. ATTORNEY FEES - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. ASSIGNMENT - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. LIMITATION OF LIABILITY - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. RIGHT TO TERMINATE - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. TERMINATION CHARGES - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. RENEWAL - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. INSURANCE - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. RIGHT TO NOTICE - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. ACCELERATION - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. CONFIDENTIALITY - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. AMENDMENTS - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA \_\_\_\_\_ VENDOR

Spending Unit: \_\_\_\_\_ Company Name: Nuance Communications

Signed: \_\_\_\_\_ Signed: 

Title: \_\_\_\_\_ Title: EVP Worldwide Sales

Date: \_\_\_\_\_ Date: 8-16-2011



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

**Request for  
 Quotation**

RFQ NUMBER  
 BHS12005

PAGE  
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF  
 ROBERTA WAGNER  
 304-558-0067

RFQ COPY  
 TYPE NAME/ADDRESS HERE  
 Nuance Communications  
 1 Wayside Road  
 Burlington, MA 01803

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
08/05/2011				

BID OPENING DATE: 08/18/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
				ADDENDUM NO. 1		
				1. QUESTIONS AND ANSWERS ARE ATTACHED.		
				2. ADDENDUM ACKNOWLEDGEMENT IS ATTACHED. THIS DOCUMENT SHOULD BE SIGNED AND RETURNED WITH YOUR BID. FAILURE TO SIGN AND RETURN MAY RESULT IN DISQUALIFICATION OF YOUR BID.		
				EXHIBIT 10		
				REQUISITION NO.: BHS12005		
				ADDENDUM ACKNOWLEDGEMENT		
				I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.		
				ADDENDUM NO. S:		
				NO. 1 .. X .. .		
				NO. 2 .. . . . .		
				NO. 3 .. . . . .		
				NO. 4 .. . . . .		
				NO. 5 .. . . . .		
				I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF BIDS.		
				VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES		

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE *[Signature]* TELEPHONE 781-565-5000 DATE 8-16-2011

TITLE EUP Worldwide Sales FEIN 94-3156479 ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ. INSERT NAME AND ADDRESS IN SPACE ABOVE I ARFI FD 'VENDOR'

## GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** in the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at [www.state.wv.us/admin/purchase/urc/hipaa.htm](http://www.state.wv.us/admin/purchase/urc/hipaa.htm) and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

### INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications; Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER  
**BHS12005**

PAGE  
**2**

ADDRESS CORRESPONDENCE TO ATTENTION OF  
**ROBERTA WAGNER**  
**304-558-0067**

RFQ COPY

TYPE NAME/ADDRESS HERE

Nuance Communications  
 1 Wayside Road  
 Burlington, MA 01803

SHIP TO

HEALTH AND HUMAN RESOURCES  
 BBH/HF  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED <b>08/05/2011</b>	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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BID OPENING DATE: **08/18/2011** BID OPENING TIME: **01:30PM**

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE INFORMATION ISSUED IN WRITING AND ADDED TO THE SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.</p> <p style="text-align: center;">           .....            SIGNATURE            Nuance Communications            .....            COMPANY            8-16-2011            .....            DATE         </p> <p>NOTE: THIS ADDENDUM ACKNOWLEDGEMENT SHOULD BE SUBMITTED WITH THE BID.</p> <p>REV. 09/21/2009</p> <p style="text-align: center;">END OF ADDENDUM NO. 1</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE 	TELEPHONE 781-565-2011	DATE 8-16-2011
TITLE EVP Worldwide Sales	FEIN 94-3156479	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



**Section 4.0 – Pricing Quote  
(Order/Implementation Services Order)**





# ORDER

This Order is entered into on 10 day of August, 2011  
 and is governed by the terms and conditions of Nuance's standard Terms of Sale or the Healthcare Master Agreement,  
 dated as of \_\_\_\_\_ 2011 by and between Customer and Nuance. Until executed by the Customer, this Order shall be  
 considered a quote for the items set forth below.

**CONFIDENTIAL\*\***

### Customer Information

Customer Acct 96357  
 Name West Virginia Dept. of Health  
 Address 350 Capitol Street  
 Room 730  
 City: CHARLESTON, WV 25305  
 Attn:  
 Contact Phone:

### Nuance Contact Information

Quoted: 10-AUG-2011  
 Contact: Hammond, Christina  
 Contact Phone: 781-565-5000  
 Fax Number: 866-402-6375

Nuance Quote Number: 84153. 2  
 Expires: 07-NOV-2011

Nuance Internal Use: 15134.AMGA-GM8AY

Qty	Model	Product	Promo	Unit List (USD)	Ext List (USD)
<b>Software</b>					
8	3300099-S0001	EXSpeech Editor Client V8.1 per User License Qty. 1-9 (A)		1,395.00	11,160.00
1	NTC001S-002	ADMINISTRATION SUITE CONCURRENT LICENSE (A)		1,300.00	1,300.00
1	EXT100S-M83	Full EXText Build 8.3 Software Package, SQL2008 64-bit Single Processor, Factory Install (A)		7,700.00	7,700.00
1	NTM010S-003	TRANSCRIPTION PROCESSING,STD 6-15 TRANS (A)		17,000.00	17,000.00
1	INTDNL2-STF	TCP-IP Sockets Integration Standard Download Software Field Installation - SQL2008 (A)		5,000.00	5,000.00
1	INTUPL3-ENF	TCP-IP Sockets Integration Enhanced Upload Software Field Installation - SQL2008 (A)		10,000.00	10,000.00
1	ICH0041	ichart Reporting Service for Enterprise Express		0.00	0.00
<b>Hardware</b>					
2	TL012AE-M02	Dialogic 12-port PCI-e (Peripheral Component Interconnect Express) Analog Voice Card Kit - Factory Installation (B)		2,925.00	5,850.00
1	ECS400R-235	ECS Small System Hardware Win 2008 64-bit ML350 G6 Rack (A)		9,550.00	9,550.00
<b>Systems</b>					
1	EXV258R-235	EX250 Build 8.3 24-port Turnkey Voice System, Win2008/SQL2008 64 bit- ML350 G6 Rack (A)		23,700.00	23,700.00
<b>ThirdParty</b>					
8	0139074-210	Trancription Kit, Spellchecker, Med Dictionary, Quicklook, Word2007, NAV, Hardware, Dictaphone Foot Control		875.00	7,000.00
<b>Products Total</b>					<b>98,260.00</b>

(A) Maintenance as specified on Quote (B) 1st yr Maintenance included at no charge, additional years charged at market rates.  
 Any other item is not covered under the Nuance Maintenance Contract.



SERVICES			
1	PROFESSIONAL SERVICES	Professional Services	46,200.00 46,200.00
1	INSTALLATION	Installation	7,860.80 7,860.80
3	OPTION2	24x7 Remote w/ 8x5 On Site Maintenance or Depot Repair	17,082.00 51,246.00
Services Total			105,306.80

Subtotal			
	<u>Products</u>	Net Price	98,260.00
	<u>Services</u>	Net Price	105,306.80
	<u>Charges</u>		0.00
Total (USD ) (Exclusive of Taxes and Delivery)			203,566.80

**Ship-To Information**

Name West Virginia Dept. of Health  
 Address 350 Capitol Street  
 Room 730  
 City: CHARLESTON, KANAWHA, WV 25305

**Project Information:**

Name West Virginia Dept. of Health  
 Strategic:

**Shipping Priority:**

Regular/Ground  
 Second Day Air  
 Priority Air / Next Day

**Third Party Software**

Model	Software Description
EXV258R-235	SW, WINDOWS SERVER 2008 STANDARD R2 SP1 64-BIT OEM
EXV258R-235	LIC RUNTIME SQL2008 R2 SE,ISV,1-PRO 64BIT
EXV258R-235	KIT SW DIALOGIC SR6.0 SU243 CD
EXV258R-235	KIT,SW,PCANYWHERE HOST,V12.5,C
EXV258R-235	KIT SW NORTN ANTIVRUS BUSIN ED
TL012AE-M02	KIT,SW,DIALOGIC SR6.0 SU27,CD,
0139074-210	SW QUICKLOOK E-DRUG REF 2011
0139074-210	SW E-MEDICAL DICTIONARY V7.0
0139074-210	SW MS OFFICE WORD 2007
0139074-210	SW STEDMAN'S PLUS SPELLCHKR 2010
0139074-210	SW NORTON ANTIVIRUS 2010 1-USER



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NTC001S-002	SW QUICKLOOK E-DRUG REF 2011
NTC001S-002	SW E-MEDICAL DICTIONARY V7.0
NTC001S-002	SW STEDMAN'S PLUS SPELLCHKR 2010
EXT100S-M83	LIC RUNTIME SQL2008 R2 SE,ISV,1-PRO 64BIT
EXT100S-M83	SW MS OFFICE WORD 2007
EXT100S-M83	KIT SW NORTN ANTIVRUS BUSIN ED
EXT100S-M83	KIT,SW,PCANYWHR HOST-REM,V12.5
EXT100S-M83	LIC,RUNTIME,SQL2008 SE,ISV,1-PRO 32BIT
INTDNL2-STF	LIC,RUNTIME,SQL2008 SE,ISV,1-CAL 32BIT
INTUPL3-ENF	LIC,RUNTIME,SQL2008 SE,ISV,1-CAL 32BIT
INTUPL3-ENF	SW MS OFFICE WORD 2007
ECS400R-235	SW, MICROSOFT WINDOWS SERVER 2008 STANDARD R2 64-BIT

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Customer Name	West Virginia Dept. of Health		
Primary Contact			
Address			
City, State Zip			
Phone	Email:		
Sales Rep			
Oracle Quote ID			
Strategic Account	N/A		
Order Type	New Installation		
Quote Expiry Date	November 8, 2011		
	<b>Qty</b>	<b>Implementation Services Detail</b>	<b>Total</b>
	1	Project Scope: Deployment Sites Quantity reflects # of Deployment Sites	\$0.00
	2	Project Scope: Interface Services *3 h Remote Project Management Services per service	\$1,500.00
	1	Implementing New Enterprise Express System - 2 systems *69 h Remote Project Management Services	\$17,250.00
	1	EXVoice Application Training Services *16 h Remote Administrative Application Training (up to 4 users per day) *16 h Onsite Application Training Go-Live Support *5 h remote discovery and configuration	\$9,250.00
	1	EXText Application Training Services *24 h Remote Administrative Training (up to 4 users per day) *16 h Onsite or remote MT training (up to 5 MTs per day) *8 h Onsite Application Training Go-Live Support *8 h remote discovery and configuration	\$14,000.00
	3	EXText Editor (EXE) MT Application Training *8 h Onsite or remote MT Application Training (up to 5 users) Quantity reflects # of MTs that Nuance will train	\$2,000.00
	1	Interface Processing -- HIS, RIS, ORDERS, Auto Importer Recommend 8 hr per interface *Online class(es) *8 h remote Application Interface Support	\$2,200.00
<b>Grand Total</b>			<b>\$46,200.00</b>
PM Hours	75	Total PM Services	\$18,750.00
Training Hours	109	Total Field Training	\$27,250.00
AfterCare Hrs	0	Total AfterCare Consulting Services	\$0.00
		Total Melbourne-Based Training	\$0.00
		Total Online Training	\$200.00
		Estimated Travel Expense	\$6,200.00
Comments:			
<b>Terms and Conditions</b>			
-Unless this ISO is executed by Customer and returned to Nuance within 90 days from the Contract date, the pricing expires.			
-Training and Project Management Services must be used within 6 months.			
-Training Services are performed Monday through Friday within normal business hours.			



- Travel Expenses: Notwithstanding anything to the contrary in the Master Agreement or Terms of Sale (the "Agreement"), Customer agrees to reimburse Nuance at Nuance's cost for its direct out-of-pocket expenses incurred on behalf of Customer by Nuance in connection with Nuance's performance of its Services under the Agreement including but not limited to cost of travel, meals, lodging, telecommunications and other out-of-pocket expenses.

- Melbourne Classes (if applicable): The price of your training package includes classes and training material, including Nuance training manuals, lunches at the Melbourne training facility, snacks and beverages during class. If you stay at the preferred hotels, daily transportation is provided to and from the hotels and the training facility. The customer is responsible for making and purchasing air transportation, hotel accommodations and hotel expenses incurred during their stay, morning and evening meals and transportation to and from the airports.

<b>Customer Signature:</b> <b>(Required)</b>	<b>Date</b>
<b>Nuance Signature:</b> <b>(Required)</b>	<b>Date</b>



## Project Management

**Planning:** The project planner is responsible for planning the project from the order entry point to the release of product for shipment to your site including, ensuring all deliverables required for shipment are obtained. The project planner works with the customer project manager and the customer technical team to review products entered on the order, obtain a high level scope of the project, coordinate interface planning meetings, as well as coordinate technical discussions prior to project manager engagement. The project planner assigns the project to the PM once the order is able to be shipped.

**Project Management:** The project manager is responsible for managing the project through the project life cycle. The project manager works with the customer project manager to develop the strategy for system implementation and deployment to the production environment. The project manager serves as a single point of contact to the customer and is responsible for ensuring other project team members are engaged as needed. The project manager will evaluate the necessary commitment levels needed for successful project completion. The project manager is responsible for keeping all project team members updated through the use of project documents. Dictaphone project managers use a standard methodology and set of project documents following an implementation model that allows for maximum customer success.

**Technical Implementation Liason:** Technical Implementation Liaison (TIL): The technical implementation liaison assists with the planning and coordination of technical activities of assigned projects to ensure that the technical goals and objectives of the project are accomplished within a prescribed time frame. The technical implementation liaison provides in-depth technical consultation services on our products with the best practices of deployment and use of our products with specialization in speech recognition technology. The technical implementation liaison acts as a technical liaison within Dictaphone

## Engineering

**Interface Planning:** Interface Planner (IP): The interface planner is responsible for working with the customer to document the interface specifications required for purchased interfaces between Dictaphone and the customer's information systems (RIS, HIS, EMR, Chart Tracking/Deficiency). The interface planner works with the customer's interface resource to ensure the specification documents the requirements of all purchased interfaces. The specification provides the roadmap for both the customer's information system vendor(s) and the Dictaphone interface engineer in the development and implementation phase of the interface delivery. The deliverable for the interface planner is an interface specification signed by the customer.



**Interface Engineering:** Interface Engineer (IE): The responsibility of the interface engineer is to develop and install the interface(s) according to the signed specification provided by the interface planner. The interface engineer works closely with the customer's interface resource to ensure that interface is installed, mapped and data is flowing as outlined in the interface specification. The interface engineer will work with the customer's interface resource as the customer tests the interface. The deliverable for the interface engineer is a fully functional interface(s) as purchased by the customer.

**Product Installation:** Performed by a skilled field service engineer and scheduled once all hardware and software are on site. This includes loading of all servers, workstations and the setup of remote access.

### Training

**Application Training Specialists** The Application Training Specialist (ATS) is responsible for configuration and end-user training on the Dictaphone products. The application training specialist is the expert in system design, configuration and implementation in production. An application training specialist will be assigned to the specific implementation activities that match their skillset.



**Additional Terms:**

If the Customer does not have a valid Master Agreement with Nuance, then Customer acknowledges that it has reviewed the terms of sale published at <http://www.nuance.com/company/po/Terms-of-Sale.pdf> (for Canadian Customer's <http://www.nuance.com/company/po/Can/Terms-of-Sale.pdf>) (the "Terms of Sale") and, as a material inducement for Nuance to accept this Order, agrees that the Terms of Sale will govern the transaction contemplated by this Order in all respects, and that the Terms of Sale shall not be varied or supplemented by any terms or conditions inserted into, printed on the reverse of, or otherwise accompanying a Purchase Order or any acknowledgement or other form provided by Customer to Nuance.

Terms Of Sale (US)

Terms Of Sale (CAN)

**\*\*By its receipt of this quote, Customer acknowledges and agrees that the pricing and product configuration contained herein are Confidential in nature, and, as such cannot be shared with any other party, including, but not limited to, any affiliate of Customer, without Nuance's prior written consent. In addition to Nuance pursuing any other remedies available to it in law or equity, in the event Customer violates the terms of this provision, this quote shall immediately terminate or, if Customer has entered into an Agreement with Nuance for the purchase of the above Products and/or Services, the foregoing pricing shall be null and void and Customer shall immediately pay an amount equal to the list price of the Products and/or Services less any amounts paid (or currently owed) to Nuance for such Products and/or Services.**

West Virginia Dept. of Health  
Customer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email Address





## **Section 5.0 – Supplemental Conditions and Clarifications to other Terms**



## SUPPLEMENTAL ADDENDUM

This Supplemental Addendum supplements the General Terms and Conditions and the Agreement Addendum and is made part of the bid of Nuance Communications, Inc., a Delaware corporation with its principal office at 1 Wayside Road, Burlington, MA 01803 ("Nuance") to the State of West Virginia Department of Administration, Request for Quotation Number BHS12005 ("RFQ") for the Mildred Mitchel-Bateman Hospital and the William R Sharpe Jr. Hospital ("Bid"). If Nuance is the successful bidder, this Supplemental Addendum will be made part of any Agreement (as that term is defined below.) Hereafter, the Mildred Mitchel-Bateman Hospital and the William R Sharpe Jr. Hospital are referred to as the "Agency".

### Agreement

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

**"Agreement"**. Agreement means the legally binding contract, as signed by both parties, between Nuance and Agency under which Nuance will provide the Products and Services described therein in furtherance of the Bid.

**"Authorized User(s)"** are those employees and contractors of Agency who are permitted to access the Programs subject to the terms and restrictions contained in the Agreement.

**"Documentation"** means the administrative guide and user's guide provided to Agency in the performance of the Agreement.

**"Equipment"** means hardware manufactured by Nuance and supplied to Agency pursuant to the Agreement. Except as expressly provided by this Agreement, "Equipment" does not include Third Party Equipment.

**"First Productive Use"** means the date Nuance has completed the Professional Services set forth in the Agreement related to the installation of the Product(s) and, therefore, capable of processing data in Agency's environment.

**"Implementation Services Order" or "ISO"** means the ordering document setting forth the Professional Services and Training Services related to the implementation of Products, Third Party Equipment, and/or Third Party Software.

**"Maintenance Services"** are those services Nuance provides with respect to the maintenance and support of the Products pursuant to this Agreement and the "Hardware and Software Maintenance Options Terms and Conditions" set forth at <http://support.nuance.com/healthcare>.

**"Products"** means the Programs (or licenses thereto) and Equipment, individually or collectively.

**"Professional Services"** shall mean those services, other than Maintenance Services and Training Services to be provided by Nuance pursuant to Section 6 of this Agreement.

**"Programs"** means (i) the object code version of any Nuance proprietary software product specified in the Agreement, (ii) all Updates and Upgrades thereto, (iii) any customized features and functions provided by Nuance pursuant to this Agreement, and (iv) all related Documentation. Except as expressly stated to the contrary, "Program" does not include Third Party Software.

**"Services"** means Professional Services, Training Services and/or Maintenance Services, as applicable.

**"Third Party Equipment"** means hardware that is not manufactured by Nuance.

**"Third Party Software"** means software proprietary to a third party.

**"Training Services"** means the training services set forth in the Agreement and provided by Nuance.

**"Update"** means a release of a Program that Nuance generally releases to its customers as part of its Maintenance Services which may include minor feature enhancements, and/or bug fixes and/or fixes of minor errors and/or corrections, and typically is identified by an increase in a release or version number to the right of the first decimal (for example, an increase from Version 5.1 to 5.2 or from Version 5.1.1 to 5.1.2). "Update" shall not be construed to include Upgrades.

**"Upgrade"** means a release of a Program that Nuance generally releases to its customers as part of its Maintenance Services which may include some feature enhancements and/or additional capabilities (functionality) over versions of the Programs previously supplied to Agency, and typically is identified by an increase in the release or version number to the left of the decimal (for example, an increase from Version 5.2 to Version 6.0). Upgrades do not include new software and/or products that Nuance, in its sole discretion, designates and markets as being independent from the Program.

### 2 Grant of License; Limitations; Other Restrictions.

a. *License Grant.* Nuance hereby grants Agency a perpetual, non-exclusive, non-transferable license to allow the Authorized Users to utilize the Programs specified in the Bid in a manner commensurate with their intended use, as prescribed by the Agreement, and solely for Agency's internal purposes.

b. *Limitations and Restrictions.* Agency agrees that it shall not, and shall not permit the Authorized Users, other employees, contractors, or any third party to (i) duplicate the Programs for any purpose other than for archival and disaster recovery purposes; (ii) reverse engineer, disassemble, decompile or translate the Programs; (iii) change, modify or otherwise alter the Programs, (iv) assign, transfer, pledge, rent, share or sublicense any of the Programs without Nuance's prior written consent; (v) grant any third party access to or use of the Programs on a service bureau, timesharing or application service provider basis or otherwise; or (vi) defeat or circumvent any controls or limitations the Program places on its use.

c. *Notice of Unauthorized Use.* Agency shall notify Nuance of the unauthorized possession or use of any Program, by any third party not authorized to have such possession, immediately upon its obtaining any knowledge or notice thereof.

3. **Third Party Software.** Subject to the terms and conditions of this Agreement, Agency shall purchase the Third Party Software as designated in the Agreement in the quantity and at the price set forth therein. Notwithstanding the forgoing, such Third Party Software shall be governed in all respects only by the license, maintenance terms and other terms and conditions specified by the applicable third party vendor, unless otherwise specified in this Agreement.

4. **Equipment.** Subject to the terms and conditions of this Agreement, Agency shall purchase Equipment and/or Third Party Equipment from Nuance in the quantity and at the price set forth in this Agreement. Notwithstanding the forgoing, the Third Party Equipment shall be governed in all respects only by terms and conditions specified by the applicable third party vendor of such Third Party Equipment, unless otherwise specified in this Agreement.

5. **Shipping.**

a. *Delivery.* Nuance shall bear all shipping, freight and transportation charges from Nuance's facility.

b. *Title; Risk of Loss.* Title to the Equipment shall pass to Agency upon Nuance's receipt of payment. Risk of loss or damage to the Products shall pass to Agency upon delivery to the carrier.

6. **Professional Services: Training Services.**

a. *Provision of Professional Services and Training Services.*

Subject to the terms and conditions set forth in this Supplemental Addendum, Nuance will provide such Professional Services and Training Services as may be specified by the Agreement.

b. *Professional Services.*

(i) Nuance shall perform Professional Services related to installation of Products, Third Party Software, and Third Party Equipment pursuant to its project delivery methodology set forth at:

[ftp://ftp.scansoft.com/nuance/dictaphone/whitepapers/wp\\_prof\\_ServicesMethodology.pdf](ftp://ftp.scansoft.com/nuance/dictaphone/whitepapers/wp_prof_ServicesMethodology.pdf).

(ii) Within forty five (45) days of the Effective Date of this Agreement, Nuance shall develop a final detailed implementation plan based on the applicable RFQ and Bid and ISO ("Implementation Plan"). The Implementation Plan shall include an allocation of responsibility for each task to Nuance or Agency, any technical or physical requirements necessary for Nuance to complete the installation of the purchased Products, and any assumptions and/or critical events, the occurrence or non-occurrence of which serves as condition upon which the installation services occur. The Fees for the Professional Services are subject to Agency's fulfillment of its responsibilities, and/or the occurrence or non-occurrence of any assumptions and/or critical events. Failure of Agency to fulfill a responsibility, the nonoccurrence of an assumption and/or critical event, or any other modification to Implementation Plan may result in an extended timeline for Nuance to complete the applicable Professional Services.

(iii) Nuance will send an email notification to the Agency indicating when the Professional Services related to installation have been completed. Said email will be sent to the email address provided by the Agency in the applicable ISO, and the date of completion of the Professional Services contain therein shall be deemed the date of First Productive Use. The parties acknowledge that First Productive Use may occur prior to Nuance completing those Services set forth in this Agreement that are intended by the parties to be performed post-installation (e.g., training services).

c. *Training Services.*

(i) Unless otherwise agreed to by the parties hereto, all training sessions scheduled hereunder will be held at a designated Nuance location during Nuance's standard business hours, excluding Nuance recognized holidays. In the event the parties agree to hold training sessions at Agency's site, all such sessions (including travel time) will occur during the hours of 8:00 a.m. to 5:00 p.m. local Agency site time, Monday through Friday, excluding Nuance recognized holidays.

(ii) Agency shall ensure that (a) all training session attendees are Authorized Users and (b) said Authorized Users have the necessary skill and experience to participate in the training sessions. Nuance shall have the right to request that any attendee who, in Nuance's reasonable judgment, is found not to have the requisite skill and experience (i.e., does not have a working knowledge of the applicable operating system) be removed from training sessions.

d. *Rescheduling of Professional Services or Training Services.* Agency agrees to reimburse Nuance for any actual

incurred costs (e.g., airline ticket deposits, etc.) as a result of any rescheduling or cancellation of Professional Services or Training Services less than five (5) business days prior to the scheduled start of such Services provided the cancellation is not due to a breach by Nuance.

e. *On-Location Professional Services or Training Services* Any Services to be performed by Nuance at any location other than Nuance's facilities, Agency shall provide or arrange for the necessary equipment, information, and facilities.

## **7. Maintenance Services.**

a. *Scope.* For an initial term of one (1) year following (i) First Productive Use (in the case of Products that, pursuant to the Agreement, are to be installed by Nuance) or (ii) initial delivery if no Professional Services are involved (the "Initial Service Term"), Nuance shall provide the Maintenance Services selected by Agency as specified in the Agreement. Thereafter, Maintenance Services may be renewed for two (2) consecutive one-year terms (each, a "Renewal Service Term"). Unless otherwise agreed, Maintenance Services with respect to any Program shall apply to all copies of the Program licensed to Agency. All Maintenance Services shall be provided subject to Nuance's Hardware and Software Maintenance Options, Terms and Conditions in effect as of the provision of such Maintenance Service.

b. *Exclusions from Maintenance Services.* Unless otherwise agreed, Nuance shall not be obligated to provide Maintenance Services for, or required as result of (i) any Product modified by anyone other than Nuance; (ii) any Product used for other than its intended purpose; (iii) any Product used with any Third Party Equipment not specified as compatible with said Product in the Product's Documentation; (iv) any Product being used with Third Party Software not supplied or specified by Nuance; (v) any Product (including any associated equipment, software or firmware) which Agency failed to properly install or maintain; (vi) any willful or negligent action or omission of Agency, (vii) any computer malfunction not attributable to the Products; or (viii) damage to Products from any external source, including computer viruses unattributable to Nuance, computer hackers, or force majeure events.

8. **Agency's Obligations.** Agency shall timely perform the obligations imposed on it by this Agreement. In addition, Agency agrees as follows:

a. *Data Preservation.* Agency will create and preserve reasonable backup copies of its data and other business information and records, perform accuracy checks on a routine basis, and take such other precautions as may reasonably be required to detect and guard against possible malfunctions, loss of data, or unauthorized access to Agency's computer systems.

b. *Speech Recognition.*

Agency acknowledges that speech recognition and medical fact extraction are statistical processes, errors are inherent in

such processes, and applications employing such processes are designed to allow for such errors. Agency further acknowledges that such errors are inevitable and agrees that it is the sole responsibility of Agency to identify and correct any such errors before using and/or relying on the results of the use of any speech recognition or medical fact extraction software program licensed hereunder. Accordingly, Agency agrees to release Nuance, its affiliates, licensors and suppliers, and their respective officers, agents, and employees (collectively, the "Released Parties") from and against all liabilities, losses, costs, damages, claims or expenses (including reasonable attorneys fees) arising out of, or related to any speech recognition or medical fact extraction software program licensed hereunder directly or indirectly caused or contributed to the wrongful death or personal injury of a third party to whom Agency offered or provided medical-related services.

9. **Payments.** In consideration for the Products, Third Party Software, Third Party Equipment, and/or Services provided by Nuance under this Agreement, Agency agrees to pay, as applicable, all of the fees and other charges (including, but not limited to, all taxes, shipping, freight, handling and similar costs) specified in the Agreement (collectively, the "Fees") as follows:

a. *Fees for Product, Third Party Equipment, Third Party Software, Professional Services, Training Services, and Maintenance Services provided during the Initial Service Term (as applicable).*

(1) Nuance shall invoice Agency thirty-three percent (33%) of the Fees related to the Product, Third Party Equipment, Third Party Software, Professional Services, Training Services and/or Maintenance Services related to the Initial Service Term upon execution of the applicable Order, and Agency shall pay said invoice within thirty (30) days of the date thereof.

(2) Nuance shall invoice Agency thirty three percent (33%) of the Fees related to the Product, Third Party Equipment, Third Party Software, Professional Services, Training Services and Maintenance Services related to the Initial Service Term upon shipment of the Products, Third Party Equipment and/or Third Party Software, and Agency shall pay said invoice within thirty (30) days of the date thereof.

(3) Nuance shall invoice Agency the remaining Fees related to the Product, Third Party Equipment, Third Party Software, Professional Services, Training Services and/or Maintenance Services related to the Initial Service Term upon First Productive Use, or one hundred and eighty (180) days after the execution of the Agreement if the Professional Services related to installation was delayed through no fault of Nuance (whichever shall first occur), and Agency shall pay said invoice within thirty (30) days of the date thereof.

(4) Unless Agency waives in writing the right to review as specified herein, Agency shall have fourteen (14) days from the date of First Productive Use (a "Review Period") to provide Nuance written request ("Corrections Request")

reasonably detailing how the Product, Third Party Equipment, and/or Third Party Software failed to materially comply with the specifications, tests and other criteria set forth in the Documentation ("Completion Criteria"). Any Corrections Request should be sent to the applicable project manager, with a copy e-mailed to [corrections.request@nuance.com](mailto:corrections.request@nuance.com). Nuance shall use commercially reasonable efforts to correct any material failure(s) of the Product, Third Party Equipment, and/or Third Party Software documented in the Corrections Request to conform to the Completion Criteria. Nuance shall deliver the revised Product, Third Party Equipment, and/or Third Party Software to Agency within fifteen (15) business days of receiving such Corrections Request and Agency shall have an additional Review Period of fourteen (14) days from the date of receipt of such revised Products, Third Party Equipment, and/or Third Party Software in which it may provide Nuance another Corrections Request pursuant to the above. The foregoing review/correction process shall be repeated until such time a Review Period concludes without Nuance receiving a Corrections Request; provided that, if Nuance is unable to correct material failure(s) in a particular Product, Third Party Equipment, and/or Third Party Software to satisfy the Completion Criteria after three (3) attempts, Nuance may terminate the Agreement and refund (i) Fees received for the Product, Third Party Equipment, and Third Party Software and (ii) Fees received for Training Services and Maintenance Services unperformed by Nuance due to the termination. Upon such termination, Agency shall return the Product, Third Party Equipment, and/or Third Party Software, including any copies thereof and related documentation, to Nuance.

(5) Upon conclusion of any Review Period in which Nuance does not receive a Corrections Request, or Nuance's receipt of Agency's waiver of review specified in Section 9. (4) (whichever shall first occur), Nuance's obligations set forth in the Agreement shall be deemed fulfilled and the applicable Product, Third Party Equipment, and/or Third Party Software accepted by Agency.

b. *Fees for Maintenance Services for Renewal Service Terms.* Nuance will invoice Agency for Maintenance Service Fees in respect of each Renewal Service Term at Nuance's list price for such Maintenance Services, then in effect when initially contracted in the Agreement, at least thirty (30) days prior to the first day of such Renewal Service Term, and Agency will pay such Maintenance Service Fees within thirty (30) days of the invoice date. If the Agreement does not specify a Maintenance Service Fee for a given unit of Product, the applicable Maintenance Service Fee will equal then-current rates as of the first day of the Initial Service Term or Renewal Service Term, as applicable.

c. *Expenses.* All prices are net to Nuance and are exclusive of any duties, travel, telecommunication, meals, boarding, lodging, and other out-of-pocket expenses that may be incurred. Agency shall pay all such expenses within thirty (30) days of Nuance's invoice.

d. *Taxes.* All amounts described herein are exclusive of any applicable sales, use, excise or withholding taxes or any other

taxes, fees, customs duties and charges now in force or enacted in the future. Accordingly, all payments are subject to an increase equal to any charges Nuance may be required to collect or pay, other than the tax due on the net income of Nuance. If Agency claims tax-exempt status, Agency shall provide a valid exemption certificate to Nuance upon the execution of this Agreement and/or upon the execution of each Order. If Agency fails to provide a valid exemption certificate, it will be responsible for any and all sales taxes.

e. *Late Fees.* If Agency fails to pay any Fees when due, Nuance shall be entitled to assess a late fee equal to one and one-half percent (1.5%) of the past due balance for each month or part thereof that the balance remains outstanding or, if lower, the maximum rate permitted by applicable law.

f. *Leasing Arrangements.* If Agency has entered into a lease arrangement with Fleetwood Financial ("Lessor") to finance the Order, then Nuance shall submit its invoice for the Order to and accept payment for the Order from, the Lessor. Acceptance of a purchase order from the Lessor is for administrative convenience only. Upon delivery of the Products by Nuance to Agency if Lessor fails to pay Nuance the amounts owing in accordance with the lease arrangement then Agency remains fully liable to Nuance for all amounts due and owing under the Order and shall pay all amounts immediately upon receipt of Nuance's invoice, in accordance with the payment schedule outlined below.

#### 10. Termination.

a. *Termination for Cause.* Either party may terminate this Agreement by written notice if (i) the other party commits a material breach of this 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. Notwithstanding the foregoing, Nuance may immediately terminate any license granted pursuant to this Agreement without notice if the Agency commits a material breach of Section 2 and/or 11 herein. For the avoidance of doubt, this Section 10 a. replaces Section 11 of the 'Administrative and Contractual Terms - Contract Renewal' of Request for Quotation Number BHS12005.

b. *Suspension.* Nuance reserves the right to suspend Services to Agency if Agency's account is more than thirty (30) days past due.

c. *Effect of Termination or Expiration.* Upon the termination or expiration of Agreement by either party, all licenses granted to Agency under the Agreement shall terminate and Agency shall cease using the applicable Programs and shall return same to Nuance. Neither the expiration nor termination of this Agreement, or any license shall affect the parties' respective payment obligations or their rights and obligations under Sections 8 - 17 herein.

11. Ownership and Proprietary Rights. Except for the limited licenses granted pursuant to this Agreement, no ownership or other rights of any kind are conveyed to Agency in or to the Programs. Nuance, as between Nuance and Agency, shall own all right, title and interest in and to all

Programs (including, without limitation, all Updates, Upgrades, improvements, enhancements, and/or custom features and functions) and all patents, copyrights and other intellectual property rights therein. Effective on delivery of each Update or Upgrade to Agency, Nuance shall be deemed to have granted Agency a license to use such Update or Upgrade in conjunction with the Program to which such Update or Upgrade relates, subject to the terms of this Supplemental Addendum.

## 12. Confidentiality.

a. "*Confidential Information*" for the purposes of this Agreement shall mean all tangible and intangible confidential and proprietary information and trade secrets (whether or not patentable or copyrightable) owned or possessed by either party ("Disclosing Party") prior to the expiration or termination of this Agreement, including without limitation, each party's and its affiliates' and subsidiaries' business/customer information, business practices, data processes, computer or software products or programs and all related documentation, cost and pricing data, know-how, marketing or business plans, analytical methods and procedures, hardware design, technology, financial information, personnel or customer data, in each case that is disclosed to the other party ("Receiving Party") or to which the Receiving Party gains access in connection with this Agreement, Confidential Information shall not include Protected Health Information or PHI, the protection of which is governed by the HIPAA Business Associate Addendum..

### b. *Nondisclosure*.

(i) The Receiving Party agrees (1) to hold the Disclosing Party's Confidential Information in strict confidence, and apply at least the standard of care used by the Receiving Party in protecting its own Confidential Information, and not to disclose such Confidential Information to any third party, and (2) without the written permission of the Disclosing Party, not to use any Confidential Information of the Disclosing Party except as reasonably required to exercise its rights or perform its obligations under this Agreement.

(ii) The Receiving Party agrees to limit disclosure of the Disclosing Party's Confidential Information to those employees who need to know the same to accomplish the purposes of this Agreement, and who have executed a written agreement with terms substantially similar to those contained herein.

c. *Exclusions*. The obligations to preserve the confidential nature of any of the Confidential Information described herein shall not apply to information that (i) was previously known to the Receiving Party free of any obligation to keep it confidential; (ii) is or becomes generally known to the public or is obtainable from public sources other than as a result of an act or omission of the Receiving Party; (iii) is independently developed by or on behalf of the Receiving Party without use of or reference to the Disclosing Party's confidential information; (iv) the Receiving Party is compelled to disclose the Confidential Information by a governmental agency or a court of law having proper jurisdiction or (v) is the terms and

conditions of the agreement. If disclosure is compelled pursuant to subsection (iv) of this section, the Receiving Party shall give the Disclosing Party reasonable notice to enable such party to try to protect the confidentiality of the Confidential Information.

## 13. Limited Warranties.

a. *Title Warranties*. Nuance warrants that it has sufficient right, title and interest in the Programs to grant the licenses contemplated by this Agreement, and that the Equipment will be free and clear of all liens and encumbrances when and as delivered.

b. *Program Warranty*. Nuance warrants that, upon First Productive Use (in the case of Programs that are to be installed by Nuance) or initial delivery (in all other cases) and for a period of ninety (90) days thereafter, the Programs shall conform in all material respects to the applicable Documentation.

c. *Equipment Warranty*. Nuance warrants that, upon First Productive Use (in the case of Equipment that is to be installed by Nuance) or initial delivery (in all other cases) and for a period of ninety (90) days thereafter, the Equipment shall conform in all material respects to the applicable Documentation.

d. *Services Warranty*. Nuance warrants that the Services provided by Nuance pursuant to this Agreement shall be of a competent and professional quality and performed in a competent and professional manner.

e. *Limitation of Warranties*. The aforementioned warranties of Sections 13.a – 13.d shall not apply, and Nuance shall have no warranty obligation or liability with respect to (i) any Product that is damaged through no fault of Nuance; (ii) any Product that is modified by anyone other than Nuance; (iii) any Product that is used for any purpose other than its intended purpose; (iv) any Product that is used with Third Party Equipment not specified as compatible with said Product in the Product's Documentation; (v) any Product that is used with Third Party Software not specified as compatible with said Product in the Product's Documentation; (vi) any Product that Agency fails to properly install or maintain; (vii) any Product that is misused by any party other than Nuance; (viii) any computer malfunction not attributable to the Products or Nuance; (ix) any incorrect use of the Products by any party other than Nuance; or (x) any willful or negligent action or omission of Agency. THE EQUIPMENT MAY CONTAIN RECYCLED, REMANUFACTURED OR RECONDITIONED COMPONENTS, WHICH COMPONENTS ARE WARRANTED AS NEW. As Agency's exclusive remedy in the event of any warranty claim hereunder, Nuance, during the foregoing respective warranty periods and at its sole option, will make reasonable efforts to correct or cure such nonconformity, defect, contaminant or breach; or replace such Products in lieu of curing such nonconformity, defect, contaminant or breach.

f. *Disclaimer*. WITH THE SOLE EXCEPTION OF THE WARRANTIES EXPRESSLY SET FORTH IN THIS

AGREEMENT, NUANCE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. NUANCE MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR THIRD PARTY EQUIPMENT. Nuance's sole obligation with respect to such Third Party Software and Third Party Equipment shall be to make commercially reasonable efforts to assist Agency to enforce the warranties extended by the producer of the applicable Third Party Software or Third Party Equipment, if any.

14. **Limitation of Liability.** EXCEPT FOR AGENCY'S BREACH OF SECTION 2 AND AGENCY'S OBLIGATIONS SET FORTH IN SECTION 8.b ABOVE, 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, 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. IN NO EVENT SHALL NUANCE HAVE ANY OBLIGATION, OR BE LIABLE FOR ANY DAMAGES, DIRECT OR OTHERWISE, IN EXCESS OF THE AMOUNTS PAID BY AGENCY TO NUANCE PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) CALENDAR MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. THIS LIMITATION IS CUMULATIVE; THE SUM OF MULTIPLE CLAIMS MAY NOT EXCEED THIS LIMIT. UNDER NO CIRCUMSTANCE SHALL NUANCE'S THIRD PARTY SUPPLIERS BE RESPONSIBLE OR LIABLE TO AGENCY OR ANY THIRD PARTY FOR ANY DAMAGES, DIRECT OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO AGENCY.

15. **Intellectual Property Indemnification.**

a. Nuance, at its expense, will defend Agency from any claim, or suit made or brought against Agency by an unaffiliated third party alleging that Agency's use of the Programs within the scope of this Agreement infringes such third party's United States patent, trademark or copyright (each, a "Claim"), and indemnify Agency from any resulting judgment of the Claim finally awarded against Agency by a court of competent jurisdiction, or settlement of the Claim agreed to by Nuance. Nuance's obligation under this Section 15 shall be subject to Agency's providing Nuance with prompt notice of any Claim, cooperation with Nuance in the defense and settlement of the Claim, and granting Nuance 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 Nuance determines that the Program likely infringes, Nuance, 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 Agency the Fees paid for the affected Program prorated over a five-year period from the delivery date.

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

d. Nuance's indemnity obligations set forth in this Section 15 shall constitute the sole liability of Nuance, and the sole remedy of Agency, with regard to claims, actions, suits or proceedings made or brought against Agency by a third party alleging that Agency's use of the Programs infringe such third party's United States patent, trade secret, copyright or other intellectual property right.

16. **US Government End Users.** This section applies to all acquisitions of Programs (collectively or individually for the purposes of this section, the "Government Acquired Products") by or for the government of the United States of America (the "Federal Government"), or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal Government. By accepting delivery of the Government Acquired Products, the Federal Government hereby agrees that this software qualifies as "commercial" computer software within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Federal Government's use and disclosure of the Government Acquired Products, and shall supersede any conflicting contractual terms or conditions. If this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with United States law, the Federal Government agrees to return the Government Acquired Products unused. The following additional statement applies only to acquisitions by the Federal Government that are governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights - Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data - Noncommercial Items clause at DFARS 252.227-7013 (1995)."

17. **Miscellaneous Provisions.**

a. *Audit.* Nuance, or a third party appointed by Nuance, shall have the right, not more than once a year and upon reasonable notice, to conduct an audit of Agency's records to confirm compliance with the terms of this Agreement. Any audit shall be performed during Agency's normal business hours.

b. *Export.* Where applicable, each party agrees to comply with all export laws and restrictions and regulations that the Department of Commerce or other United States or foreign agency or authority issues, and not to knowingly export, or allow the export or re-export in violation of any such restrictions, laws or regulations, or without all required licenses and authorizations.

c. *Independent Status of Parties.* Nothing contained in this Agreement, nor in the relationship created thereby, shall be interpreted to evidence a joint venture, partnership or principal-agent relationship between Nuance and Agency. Neither party shall have any right or authority to act on behalf of, or incur any obligation for, the other party.

e. *Publicity.* Following the execution of this Agreement, Nuance may include Agency's name in Nuance's customer list, may identify Agency as its customer in its sales presentations, marketing materials, advertising, promotion and similar public disclosures.

d. *No Third Party Beneficiaries.* Except as set forth in Section 8.b, nothing in this Agreement is intended to create any rights in, or confer any benefits upon, any person or entity other than the parties to this Agreement.

e. *Assignment.* Except as otherwise provided in the Agreement Addendum, in no event may Agency assign its rights or obligations hereunder or subcontract any portion of its performance hereunder without Nuance's prior written consent.

f. *Force Majeure.* Neither party shall be responsible for delays or failure in performance resulting from acts beyond

the control of such party, including without limitation, acts of God, strikes, lockouts, riots, acts of war, acts of terrorism, epidemics, fire, communication line failures, power surges or failures, earthquakes or other disasters. Nuance shall not be liable for delays or for failure to manufacture and/or deliver due to causes beyond its reasonable control.

g. *Notices.* All notices hereunder shall be sent to the parties at their respective addresses first set forth above, or at such other addresses as they may designate by written notice. Agency shall also send a copy of all notices it sends to Nuance to Nuance's General Counsel at 1 Wayside Road, Burlington, MA 01803. All notices shall be deemed to have been given when (i) delivered personally, (ii) sent via certified mail (return receipt requested), (iii) sent fax (all with confirmation of receipt), or (iv) sent via recognized air courier service.

h. *Entire Agreement, Amendments, Waiver, Severability.* This Agreement (i) is being entered into among competent and experienced persons and the terms and provisions of this Agreement shall not be construed in favor of or against either party and (ii) constitutes the sole and complete agreement between the parties with regard to its subject matter, and may not be modified or amended except by a writing signed by both parties hereto. Any failure to insist on the exact performance of any provision shall not constitute a waiver of any rights by either party, all of which are hereby expressly reserved. If any of the provisions of this Agreement shall be or become invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the remaining provisions of this Agreement. The Section headings used herein are for references and convenience only, and shall not enter into the interpretation hereof. If any conflict arises between this Supplemental Addendum and any other part of the Agreement, the terms of this Supplemental Agreement shall prevail.

□



CLARIFICATIONS TO  
GENERAL TERMS AND CONDITIONS  
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL

THE FOLLOWING ARE CLARIFICATIONS TO THE GENERAL TERMS AND CONDITIONS  
("General Terms") AND WILL BE MADE PART OF ANY AGREEMENT AS THAT TERM IS DEFINED  
IN THE SUPPLEMENTAL ADDENDUM

1. It is agreed that Section 5 of the General Terms is consistent with Section 9 of the Supplemental Addendum.
2. Section 9 of the General Terms shall mean that the Director of Purchasing may only cancel the Agreement only in accordance with Section 12 of these General Terms, Sections 8 of the Agreement Addendum made part of the RFQ, and the Termination provisions of the Supplemental Addendum. The Director of Purchasing may not terminate the Agreement or any Purchase Order/Contract for convenience, i.e. without specific cause.

**CLARIFICATIONS TO THE  
AGREEMENT ADDENDUM**

**THE FOLLOWING ARE CLARIFICATIONS TO THE AGREEMENT ADDENDUM  
("AGREEMENT ADDEDUM") AND WILL BE MADE PART OF ANY AGREEMENT AS THAT TERM IS  
DEFINED IN THE SUPPLEMENTAL ADDENDUM**

1. Section 5 of the Agreement Addendum is subject to Section 9 of the Supplemental Addendum.
2. Section 13 of the Agreement Addendum is subject to Section 14 of the Supplemental Addendum.
3. Section 14 and Section 15 of the Agreement Addendum shall mean that the Agency may only cancel the Agreement only in accordance with Section 12 of the General Terms, Sections 8 of the Agreement Addendum made part of the RFQ, and the Termination provisions of the Supplemental Addendum.
4. Section 20 of the Agreement Addendum is subject to Section 12 of the Supplemental Addendum except for the requirements of the West Virginia Freedom of Information Act.

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**West Virginia Code §5A-3-10a states:** No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

**DEFINITIONS:**

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**EXCEPTION:** The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code §61-5-3*), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

**WITNESS THE FOLLOWING SIGNATURE**

Vendor's Name: Nuance Communications \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: 8-16-2011

State of Massachusetts

County of Middlesex, to-wit:

Taken, subscribed, and sworn to before me this 16 day of August, 2011

My Commission expires May 9, 2014

**AFFIX SEAL HERE**

**NOTARY PUBLIC** Johanna Emswiler

