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## **9. DISCLAIMER OF WARRANTIES AND REMEDIES.**

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9.3 In Australia, if the Australian Consumer Law applies to this transaction:

(a) Nuance goods and services come the guarantees that can not be excluded under the Australian Consumer Law. Nothing in this Agreement purports to modify or exclude the conditions, warranties and undertaking and any other legal rights under the Competition and Consumer Act 2010 (Cth) and any other applicable law, except as permitted by that law;

(b) If goods and services purchased are not of a kind ordinarily acquired for household use or consumption then, subject to law, Nuance limits is liability to:

(i) for goods:

(A) a replacement of the goods or the supply of equivalent goods; or

(B) the cost of replacing the goods or acquiring equivalent goods; or

(C) repair of the goods; or

(D) the cost of having the goods repaired; and

(ii) for services:

(A) supplying the services again; or

(B) payment of the cost of having this service supplied again,

unless it is unreasonable to do so;

(c) Goods presented for repair (other than software) maybe replaced by refurbished goods of the same type rather than being repaired. Refurnished parts may be used to repair the goods;

(d) Where Nuance elects to repair goods, this repair may result in loss of user-generated data; and.

(e) Nuance's Australian Consumer Law Policy applies visit the website, [australia.nuance.com](http://australia.nuance.com) for this policy.

**10. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES; LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BUT SUBJECT TO THE AUSTRALIAN CONSUMER LAW IF APPLICABLE, IN NO EVENT WILL NUANCE OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOSS OF DATA/INFORMATION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NUANCE'S AND ITS SUPPLIERS' AND LICENSORS' ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES LICENSEE PAID FOR THE SOFTWARE (IF ANY), SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES (SUCH AS

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**11. Maintenance and Support.** If you have paid for maintenance and support, the terms and conditions of such services can be found in the support area of Equitrac.com (“M&S Terms”). By accepting the terms of this EULA you are also agreeing to the M&S Terms.

**12. Termination.** Without prejudice to any other rights, Nuance may terminate this EULA and the license granted you herein if you fail to comply with the terms and conditions of this EULA.

**13. Export Regulations.** Licensee agrees to comply with all applicable export laws and restrictions and regulations of the United States of America or foreign agencies or authorities, and not to export or re-export the Software in violation of any such restrictions, laws or regulations, or without all necessary approvals.

**14. U.S. Government Contracts.** This Section applies to all acquisitions of the Software by or for the government of the United States of America (“government”) or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the government. By accepting delivery of the Software, the government hereby agrees that this software qualifies as “commercial” computer software within the meaning of the acquisition regulation(s) applicable to the procurement. The terms and conditions of this Agreement shall pertain to the government’s use and disclosure of the Software and shall supersede any conflicting contractual terms or conditions. If this Agreement fails to meet the government’s needs or is inconsistent in any respect with the federal law of the United States of America, the government agrees to return the Software, unused, to Nuance. The following additional statement applies only to acquisitions 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 and Computer Software clause at DFARS 252.227-7013 (Oct. 1988).” In the event any of the above referenced agency regulations is amended or replaced, the equivalent successor regulation shall apply instead.

**15. Injunctive Relief.** You understand and agree that in the event of a breach or threatened breach by you of any term or provision of this EULA will cause irreparable harm to Nuance and that damages or an action at law may not be an adequate remedy for any such breach. Accordingly, in the event of any such breach or threat of same, and notwithstanding any other provisions of this EULA, Nuance shall, in addition to all other remedies that may be available to it and without any requirement to post a bond, be entitled to relief in equity (including a temporary restraining order, a temporary or prohibitory injunction and a permanent mandatory or prohibitory injunction) to restrain and prohibit the continuation of any such breach, to compel compliance with the provisions of this EULA, and to restrain and prohibit any threatened breach in order to protect the proprietary rights of Nuance.

**16. Governing Law.** If you acquired this Software in the United States, this EULA is governed by the laws of the Commonwealth of Massachusetts, USA, without regard to choice of law rules, and Company hereby submits to the jurisdiction of the federal and state courts located in said Commonwealth and the applicable service of process. The official text of the Agreement and any Addendum or any notices given on accounts or statements required hereby shall be in English. In Canada, Province of Quebec for all contracts drafted in English, both Parties agree to write this document in English. Les Parties ont convenu de rédiger le présent document en langue anglaise. Notwithstanding the foregoing, if Company is not located within North America or Japan, this Agreement, is governed by the laws of the country where Company is located and its indicated jurisdiction as detailed for that country below, without regard to choice of law rules nor the United

Nations Convention on Contracts for the International Sale of Goods, and the parties irrevocably and unconditionally submit to such governing law and jurisdiction. The official text of the Agreement and any notices required shall be in English. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or by the Uniform Computer Information Transaction Act or any version thereof adopted by any state in any form ("UCITA") and such are expressly disclaimed. To the extent that UCITA is otherwise applicable, the parties agree to opt-out of the applicability of UCITA pursuant to the opt-out provisions contained therein.

Country	Governing Law	Jurisdiction
Mexico, Taiwan or Korea	Commonwealth of Massachusetts, U.S.	Federal or state courts of Massachusetts
China or Hong Kong	Hong Kong Special Administrative Region	Courts of Hong Kong Special Administrative Region
Australia or New Zealand	the State of New South Wales, Australia	Courts of New South Wales Australia
India or Singapore	Singapore	Courts of Singapore
Rest of world	Irish law	Dublin, Ireland

**17. General.** This EULA is the entire agreement between you and Nuance relating to the Software and (a) supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter; and (b) prevails over any conflicting or additional terms of any quote, order, acknowledgment, or similar communication between the parties during the term of this EULA. No modification to this EULA will be binding, unless in writing and signed by a duly authorized representative of each party. The terms and conditions of this EULA shall prevail, notwithstanding any variance with any purchase order or other written instrument submitted by you, unless Nuance expressly agrees in writing to otherwise be obligated thereto, and Nuance hereby gives notice of objection to terms and conditions on said purchase order or written instrument additional to or at variance with the terms and conditions hereof. If any provision of this EULA is deemed invalid or unenforceable by any court or agency of competent jurisdiction, that particular provision will be deemed modified to the extent necessary to make the provision valid and enforceable, and the remaining provisions will remain in full force and effect. This Agreement may not be assigned by you without Nuance's express written consent. This Agreement is freely assignable by Nuance.

**18. Third Party Software.** You acknowledge that the Software may include or incorporate software which originated with third party vendors and, without limiting the general applicability of the other provisions of this EULA, you further agree to the following: (a) title to any third party software incorporated in the Software shall remain with the third party which supplied same; (b) as to that portion of the Software which originates with third party vendors, you acknowledge that such vendors have made no representations, warranties, guarantees or indemnities to you by virtue of incorporation of the vendor's products into the Software; (c) as to that portion of the Software obtained from third party vendors, you acknowledge that you shall be responsible to such vendors for any uncured material breach by you of any of your obligations as set forth herein which are applicable to that portion of the Software originating with such vendors. With that said, the Software may include or may require the use of third party software as identified in the ReadMe file provided with the Software and third parties may have enforceable rights with respect to such third party software. In such cases, the terms of the third party licenses identified in the ReadMe file shall govern the use of such third party software. You shall be responsible to review the terms of such third party licenses prior to using the Software and to comply with such terms. Certain third party software required for use of the Software may not be provided by Nuance and you shall be responsible to obtain necessary rights under such software as may further be identified in the ReadMe file.

**19. LICENSEE OUTSIDE THE U.S.** If You are located outside the U.S., then the provisions of this Section shall apply. (a) Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise. (Translation: "The parties confirm that this Agreement and all related documentation is and will be in the English language.") (b) Licensee is responsible for complying with any local laws in its jurisdiction which might affect its right to import, export or use the Software, and Licensee represents that it has complied with any regulations or registration procedures required by applicable law to make this license enforceable.

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