

**Document:** General Terms of Use for Quadient Inspire Flex Cloud Services APAC  
**Valid from:** 09.06.2022  
**Classification:** Public



# General Terms of Use

for

## Quadient Inspire Cloud Services APAC (Inspire Flex and/or Inspire Journey)

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Valid from: 09.06.2022

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These General Terms of Use for Quadient Cloud Services (as defined herein) (the “Terms”) are made between QUADIENT AUSTRALIA PTY LTD., St Martins Tower<sup>1</sup> Suite 303B Level 3, 31 Market Street, SYDNEY NSW 2000 , Licensor of the QUADIENT software products and Inspire Cloud Services (“QUADIENT” or “Licensor”) and You, the User or Licensee, as defined in the Customer Contract (“You” or “Licensee”).

These Terms cover the use of the Quadient Inspire Cloud Services available via web-portal at [quadientcloud.com.au](http://quadientcloud.com.au) ) that is hosted on Microsoft Azure’s primary data centers in Australia.

Please note, that on premise QUADIENT Software is covered by the Quadient Inspire End User License Agreement and other Quadient Cloud Services are covered by other Quadient terms of use, either as updated from time to time and made available at [www.quadient.com/eula](http://www.quadient.com/eula). Please contact a QUADIENT representative in case of doubt.

If You are the Licensee of the Quadient Inspire Cloud Services, You represent and warrant that you and all End Users who you authorize to use the Quadient Inspire Cloud Services that you subscribed to, shall comply with these Terms.

If You are a User who has not entered into the Customer Agreement You accept and agree to be bound by these Terms, by accessing, installing, copying, downloading, or using the Programs or Services.

If You are accepting these Terms on behalf of another person or an organization or a company or other legal entity, You represent and warrant that You have full authority to bind that person, organization, company, or other legal entity to these Terms, and that You will make these Terms available to the Licensee and the respective authorized End Users.

You also acknowledge that the Services are or may be subject to export control laws and regulations, and You represent that You and your End Users are over 18 years of age and not a citizen of an embargoed country or prohibited users under applicable export and anti-terrorism laws, regulations and lists.

**If You or any of your End Users do not agree to comply with these Terms,**

- (1) You or they are **not entitled to use, download, install, copy, or access** the Services and/or Software; and
- (2) You or they shall **promptly uninstall and delete all copies** of the components for the Software or Service, as the case may be, from your or their systems.



# 1 Subscription Service

## 1.1 Intellectual Property Rights

The Services, their structure, organization and code are valuable trade secrets of QUADIENT, and are protected by intellectual property and copyright law and international treaty provisions. Furthermore, the Third-Party Software and Third-Party Services used, are protected by intellectual property and copyright law and international treaty provisions, and may be subject to additional terms and conditions.

All intellectual property rights to the Services, and Third-Party Software and Third-Party Services used (e.g. Adobe PDF Library, Microsoft Azure and Mailjet products and services), including the rights pertaining to know-how and the relevant Documentation, remain in the ownership of the respective owner(s) who retain title and full ownership rights thereto.

Please note, that some Services also make use of Open Source Software, and may be subject to additional license terms that are hereby fully incorporated in this Agreement by reference. You can download a document listing all of the open source software and related license terms from the following website: <http://www.quadient.com/resources/open-source-licenses>.

Except as the license use rights expressly stated in this Agreement, this Agreement does not grant You any intellectual property rights in the Services or in any parts thereof.

Neither QUADIENT, its Affiliates, resellers or distributors are obligated to provide, nor are You acquiring any right of any kind with respect to the source code for the Services or any part thereof. You acknowledge QUADIENT's ownership and intellectual property rights in the source code and Services and will not take any action to jeopardize, limit or interfere in any manner with QUADIENT's ownership of or rights with respect to the Services.

Furthermore, You agree not to limit or interfere in any manner with the ownership and intellectual property rights related to integrated Third-Party Software or Third-Party Services. The Licensee also covenants not to use the Adobe viewing function (meaning a function allowing the copying of a PDF document into memory for display) contained in the Adobe PDF library technology in order to violate or bypass PDF file security measures which prevent copying or editing PDF documents.

All rights not expressly granted to the Licensee are reserved by QUADIENT and its licensors.

## 1.2 Subscription

The Services are owned or licensed by QUADIENT, and are copyright-protected. You acquire an End User Subscription and do not own the Services in any way.

QUADIENT grants You a non-exclusive and non-transferable Subscription to use the Service, to the extent You lawfully acquire it according to a valid Customer Contract; provided that You have paid the agreed Fee and adhere to this Agreement.

You may access and use the Service up to the level of use specified in Your Customer Contract, and for the sole purpose of supporting such agreed use. These Terms, together with any applicable Specific Service Conditions, apply to each and every access to and use of the Service.

In case of a Trial Version or Early Access Versions / Features of the Service, You may use the specified Service only, and restricted to the timeframe in which You were explicitly authorized to evaluate, use or test such Service.



You shall ensure that anyone who uses the Service under your Subscription, be it an authorized End User or an authorized third party you contracted, does so only for Your authorized use and complies with the terms of your Customer Contract and applicable general terms of use and specific service conditions for the applicable Service(s).

## 1.3 Restrictions

You may not:

- use, copy, modify, or distribute the Service except as provided in this Agreement;
- reverse assemble, reverse compile, or otherwise translate the Service;
- modify or create any derivative works of any Service or Documentation;
- decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for any part of the Service; or
- redistribute, encumber, sell, rent, lease, sublicense the Service.
- encumber, abuse or use the Service inappropriately or for any purpose not agreed; and
- engage, directly or indirectly, any other third-party business organization for the purpose of inspecting, installing, using or changing the Service or software in a manner that endangers Quadiant's trade secrets or is substantially and directly competitive with QUADIANT.

## 2 End User Management

According to the Service You have signed up to, as set forth in the Customer Contract, QUADIANT will provide You with the adequate access log-ins to Your Quadiant Cloud Service account. Once Your account has been created, You may invite the users for Your account to pass the approval process and become End Users. Please make sure You explain to Your authorized End Users that they all have the same rights and may change or delete the information. If an accidental deletion happens on Your side, QUADIANT cannot guarantee a back-up.

Please make sure You back-up and archive Your Customer Data and content in your own systems regularly.

Upon the establishment of a Subscription, one or more End User names and passwords may be generated in connection with this Subscription ("Credentials"). The Credentials are used to authenticate the End User and thereby allow access to the Services, including any of your data stored as part of the Services. You are solely responsible for maintaining the confidentiality of the Credentials and may not transfer or share the Credentials with any third parties. You acknowledge and agree that QUADIANT and its licensors and suppliers may rely on the Credentials as the sole test to control whether End Users accessing and using the Services on your behalf are authorized to do so. You are fully liable for any act or omission of any End Users that access or use the Services with the Credentials or otherwise through your account. You will: (a) notify QUADIANT immediately of any unauthorized use of any Credentials or account or any other known or suspected breach of security; (b) not impersonate another End User or provide false identity information to gain access to or use the Service; and (c) be solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership and right to use all data submitted by you in the course of receiving the Services.



End Users may include but are not limited to the Licensee's employees, third party contractors, consultants, accordingly, You are responsible for the authorized End Users Yourself as well as for any non-authorized End User within Your organization, agent or supplier obtaining Credentials to access the Software.

## 3 Subscription Model

The Quadient Cloud Services subscription model is a recurring annual subscription based on the terms of the Agreement, as defined in the applicable Customer Contract, depending upon which Quadient Cloud Services You have acquired a Subscription for.

The overall annual Fee is made up of the following items: (i) the annual Service fee per line of business of the Licensee; (ii) the annual volume pack, (iii) any additional add-on End Users (Named or Concurrent Users) if applicable.

### (i) Annual Service Fee

The annual Service Fee is the portion of the annual Fee that covers access to Quadient Cloud Services per line of business in the Licensee organization. It may include a certain defined number of End Users in the chosen Environment as defined in the Service Schedule of the Customer Contract.

### (ii) Annual Volume Pack

Quadient offers two kinds of Volume Packs, a Volume Pack for communications (email) and a Volume Pack for transactions (SMS and WhatsApp).

Volume Packs for transactions are time limited to twelve (12) months after purchase and will expire and reset to zero on the anniversary date accordingly. Volume Packs for communications (emails) will expire within two years after purchase.

### (iii) Add-On End User Fee

The Licensee shall be authorized to have a defined number of Concurrent User or Named User access and use the Service as set forth in the applicable Service Schedule or Customer Contract.

Licensee shall have the right to change the single user IDs for the Named User subscriptions, provided that no individual Named User subscription shall be changed more than once per calendar month and that access to the Software is restricted to those individuals that are named by the Customer and for whom subscriptions have been validly acquired.



## 4 Service Conditions, Payment and Compliance

### 4.1 General Service Conditions

#### a) Hosting

The Licensee acknowledges that the Quadient Cloud Services are hosted on the Microsoft Azure Platform and are governed by the terms and conditions of Microsoft for the Third-Party Services, found at: [azure.microsoft.com/en-us/support/legal/](https://azure.microsoft.com/en-us/support/legal/)

[For iOS / Mac \(by Apple\) End Users, the Services are hosted on dedicated servers from the Green Mini host B.V. company, located in Amsterdam and registered with the Chamber of Commerce with file number 61482005.](#)

Quadient Cloud Services are available in three separate Regional instances of the Microsoft Azure platform services: US (Iowa as the primary location and Illinois as the backup location), Europe (The Netherlands as the primary location and Ireland as the backup location) or Australia (New South Wales as the primary location and Victoria as the backup location). Please note that each instance is subject to its own General Terms of Use for Quadient Inspire Cloud Services and subject to a Regional jurisdiction and data protection regime accordingly. These Terms are applicable to the Australian instance only.

Quadient Cloud Services is offered as a multi-tenant software-based solution that is delivered and consumed as a service through a one-to-many model and hosted on the Microsoft Azure Platform.

A Licensee may define various tenants for the Quadient Cloud Services as agreed in the Customer Contract (i.e. as set out in the relevant Service Schedule). Where the Licensee opts for a multi-tenancy model that involves multiple legal entities (either internal to the Licensee, e.g. individual companies under a holding company) or external (e.g. a third-party service provider with multiple customers), the Customer Contract shall remain with the "parent" customer (Licensee) and not the individual tenants.

#### b) Service Parameters

While the web-portal is accessible globally, this does not mean that all Services or Service features are available in Your country, or that End User-generated content available via the Services is legally permitted in Your country. Services are not available in all languages.

We may block access to or suspend certain Services (or certain Service features or content) in certain countries, e.g. in embargoed countries or where we suspect misuse. It is Your responsibility to make sure Your use of the Services is legally permitted in the geographical region where You are using them. You shall not send to addresses obtained from purchased or rented digital message lists, unless you have confirmed the data was obtained lawfully and with the appropriate consent of the data subjects.

Links to the respective detailed technical specifications and parameters can be found in the applicable Specific Service Conditions for each Service.

QUADIENT reserves the right to momentarily interrupt, suspend or degrade the Service for testing, maintenance, traffic performance enhancement or other important purposes. QUADIENT's goal is to schedule planned maintenance of its technical platform during non-peak usage hours, but cannot warrant that this is always the case.



c) Service Availability

QUADIENT provides for a service availability of ninety-nine and a half percent (99.50%) monthly average uptime, excluding maintenance or intentional interruptions such as: temporarily suspending or interrupting the Services for security reasons; or if we or our Third-Party Providers reasonably believe this is needed to protect You, other customers or the integrity of the Services. The Service uptime availability is measured in five-minute (5-minute) intervals and reported by our monitoring system.

Complex maintenance operations requiring more than five-minute (5-minute) downtime will be carried out preferably on low level activity periods (night hours or weekends), and information on the planned date and the predicted duration of the operation will be emailed to Licensee at least five (5) days before commencement of the operation, wherever reasonably possible.

d) Data

As between the Parties, the Customer Data used, issued, processed, hosted, safeguarded or stored by us and/or the respective third-party provider/s on Your behalf and at Your request, are and shall remain Your sole property. QUADIENT or its third-party provider is nonetheless authorized to access the Customer Data in order to: allow use of the Service; internally monitor and enhance the Service; analyze the Licensee's use of the Service, in terms of volume and history; analyze and communicate statistics to its various customers about overall use of the Service, provided the information disclosed (i) is aggregated with QUADIENT's other customers' data and (ii) is made anonymous so that no Licensee's end customer may be directly or indirectly identified.

You agree to comply with the laws and regulations applicable to the processing of personal data in the country where they are collected. To this end, You shall be responsible for carrying out all mandatory reporting and/or consent requirements and ensure that you are entitled to transfer and process the data using our Services.

You agree, unless agreed differently by the parties in a separate data processing addendum (cf. clause 6), that the Service shall not be used to process sensitive or special categories of personal data, especially personal data of a medical nature or pertaining to health conditions. You also agree that You will not include credit card information, bank account numbers, social security numbers or national insurance numbers in plain text.

You are hereby also informed that the Customer Data, including personal data, that You transfer to Quadient when using the Service may, depending on the geographical location of End Users, cross borders as they are routed to the servers that host the Service and store the Data. You undertake to inform the relevant personal data owners and data subjects of these possible transfers and the processing undertaken, and to obtain any required prior consent or legal justification before uploading/transferring personal data to our Service.

e) Content

You shall be solely liable (i) for any Customer Data, information or content, in particular the content of emails, notices, communications, surveys and newsletters sent by You through the Service, including if such content is provided by a third party or by QUADIENT as part of a template, such as an SMTP relay or via the routing of an entire infrastructure (hereinafter collectively referred to as "Content"), and (ii) for the Content's compliance with the applicable laws and regulations.

You acknowledge and warrant that the Content, whether in whole or in part, shall in no event: (a) infringe, misappropriate or violate any right, especially any intellectual property right, of any third party whatsoever; (b) contain any virus or program designed to cause damage, intercept or misappropriate any system, data or personal data in a fraudulent manner; (c) contain any unlawful, bullying, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature or any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any



applicable law or regulation; (d) contain any content which may be subject to any rules and regulations promulgated under the U.S. Export Administration Act of 1979 (as amended from time to time) or the U.S. Arms Export Administration Act of 1976 (as amended from time to time); (e) be false, misleading or inaccurate or (f) use the Services in violation of any law, including without limitation, the U.S. CAN-SPAM Act or any other similar law or regulation enacted in any applicable jurisdiction.

You undertake not to use the Service in a manner that may lead to any civil or criminal action whatsoever, and shall indemnify and hold us harmless from any action on such grounds.

You acknowledge that we have the right, but not the obligation, to monitor the Service and any data submitted to the Service. To comply with legal obligations in this respect, we may take any actions (including suspending or deleting accounts, removing content or denying routing of certain data and emails) we reasonably believe are necessary for security reasons or to prevent unlawful activity in connection with the Service.

You expressly acknowledge and agree that neither QUADIENT nor any of its third-party provider shall be liable for any loss or destruction of the Content, including the Customer Data, and that You shall be responsible for ensuring that You have proper backups thereof.

#### f) Anti-Spam

You undertake to comply (i) with all applicable laws (federal, regional, national or otherwise) that govern marketing communications or email, including without limitation, the US CAN-SPAM Act of 2003 and all other applicable unsolicited communication and anti-spam laws and regulations. You acknowledge that You have been informed that in the event of breach of the provisions of the anti-spam stipulations therein, in particular if emails are sent to recipients who did not specifically ask to receive such emails or if we receive an unusual number of complaints, we shall be entitled to suspend Your account(s), in which case You shall not be entitled to claim any refund or compensation. Some internet service providers (“ISP”) may suspend the routing of emails from certain addresses if they detect or suspect any dishonest or illegal behavior (“blacklisting”). If Your account is blacklisted by an ISP, We shall use commercially reasonable efforts to attempt to reestablish communication with that ISP as soon as possible. You agree to pay for services we may be required to perform for this purpose, if so agreed upon prior in writing.

## 4.2 Specific Service Conditions

In addition to the General Service Conditions stated above, Services are governed by the following Specific Service Conditions, which can be found at [www.quadient.com/eula](http://www.quadient.com/eula). Those Specific Service Conditions shall prevail in case of any doubts or inconsistencies for the respective Service:

Quadient Inspire Flex:

- Messenger Service (see Specific Service Conditions for Inspire Messenger)
- Digital Services (see Specific Service Conditions for Digital Services)
- Omnichannel Coordination (see Specific Service Conditions for Omnichannel Coordination)
- Omnichannel Orchestration (see Specific Service Conditions for Omnichannel Orchestration)

Quadient Inspire Journey:

- Customer Journey Mapping (see Specific Service Conditions for Customer Journey Map)





## 4.3 Payment Terms

If you intend to subscribe to Quadiant Cloud Services, please contact a sales representative near you. The Licensee can then order the Service from QUADIANT, a Quadiant Affiliate or authorized reseller, and will then be provided with an invoice for the Services subscribed to (e.g. the annual subscription fee, any user fees and the desired Volume Packs).

The Licensee agrees to provide QUADIANT, its Affiliates or authorized resellers with accurate billing and contact information, including the Licensee's legal company name, street address, email address, and name and telephone number of an authorized billing contact and Administrator. If the contact information the Licensee has provided is false or fraudulent, QUADIANT reserves the right to terminate the Licensee's access to the Service in addition to any other legal remedies.

## 4.4 Compliance

### (a) Export Rules

The Licensee will cooperate with Quadiant as reasonably necessary to ensure compliance with the laws and regulations of the United Nations, United States, United Kingdom, and the European Union, if applicable, and all other relevant countries, relating to exports (including "deemed" exports and "deemed" re-exports as defined by the Export Regulations) and re-exports ("Export Laws").

The Licensee may not import, export, re-export, or transfer, directly or indirectly, including via remote access, the Service or any part thereof, or any other Quadiant information or technology in violation of any such laws and regulations, or without any written governmental authorization required under applicable laws.

In particular, but without limitation, neither the Service or the underlying information or technology may be downloaded or otherwise exported or re-exported, directly or indirectly, (i) into (or to a national or resident of) any country to which trade sanctions denying the export of any products or embargoes are imposed by the United Nations, United States of America, the United Kingdom and/or by the European Union; (ii) to anyone on the Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered; or (iii) to or for any weapon proliferation-related (nuclear weapons, missile technology, or chemical/biological weapons) end use.

All rights to use the Software or Service are granted on condition that such rights are forfeited if the Licensee fails to comply with the terms of this Agreement. If the Licensee is found or reasonably suspected to be in breach of any part of this clause 4.4(a) (Export Rules), Quadiant shall have the right to terminate this Agreement immediately, unconditionally and without penalty, upon serving the Licensee a written notice of termination.

### (b) Compliance with all laws

Each Party declares that it strictly complies and ensures compliance with all applicable laws, regulations, rules, and orders including United Nations, World Trade Organization, and other international organizations' resolutions with respect to business conditions, trade, competition, and business ethics, and with all applicable laws, regulations, rules, and orders applicable to each Party's performance under this Agreement. However, Quadiant is not responsible for determining the requirements of laws applicable to the Licensee's business and either party may refuse the fulfillment of its obligations under this Agreement if and for as long as such fulfillment violates any laws applicable to that party.



(c) Anticorruption Compliance

Each party represents and warrants to the other party that neither party (nor any of its officers, directors, employees, agents, contractors, sub-contractors, or other authorized representatives) has, at any time including prior to entering into this Agreement, performed or will perform (or has any knowledge of) any of the following acts (either in connection with this Agreement or any sale made or to be made hereunder, any compensations paid or to be paid hereunder, or any other transactions involving the business interests of either party):(a) pay, offer or promise to pay, authorize the payment of, any money, or (b) give or promise to give, or authorize the giving of, any services or anything else of value; either directly or through a third party, to any person or entity (whether public, private or governmental) for the purpose of (i) improperly influencing any act or decision of that person in his or her official capacity, including a decision to fail to perform his official functions, (ii) inducing such person to use his or her influence to improperly affect or influence any act or decision thereof or (iii) securing improper advantage (all of the foregoing defined as “Prohibited Acts”).

Each party will comply with all legislation and common law anywhere in the world creating offense in respect of bribery or fraudulent or corrupt acts. These laws may include (but are not limited to): the U.S. Foreign Corrupt Practices Act; the UK Bribery Act; the Inter-American Convention Against Corruption; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Council of Europe Criminal Law Convention on Corruption; the Council of Europe Civil Law Convention on Corruption; the United Nations Convention Against Corruption; the Anti-corruption Action Plan for Asia and the Pacific; the United Nations Convention against Transnational Organized Crime; the African Union Convention on Preventing and Combating Corruption.

Both parties shall have in place adequate procedures and policies designed to prevent any of the Prohibited Acts.

(d) Appropriate Use

The Licensee shall not use any Service to knowingly: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send, use or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third-party rights; (iii) send, use or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (v) commit any act that is detrimental to the good name and standing of QUADIENT; or (vi) attempt to gain unauthorized access to a Service or its related systems or networks.

The Licensee shall indemnify and hold QUADIENT, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors and employees harmless from and against any and all third-party claims, costs, damages, losses, liabilities and expenses (including any reasonable fees and costs of attorneys) to the extent arising out of or in connection with a claim resulting from a breach of the appropriate use described herein or a claim alleging that the Customer Data infringes a copyright, U.S or European Member patent, or a trademark of, or has caused harm to the rights of a third party provided in any such case that QUADIENT (a) promptly gives notice of the claim to the Licensee; (b) gives the Licensee sole control of the defense and settlement of the claim (provided that the Licensee may not settle such a claim unless such a settlement unconditionally releases QUADIENT of all liability and does not adversely affect QUADIENT's business or Service).

Quadient has included an End User Privacy Notice in the End User interface of the Services for the information of the End Users. Nevertheless, the Licensee remains responsible for all activity of any End User that occurs via the Licensee's Service account.

The Licensee shall notify Customer Support immediately if any End User becomes aware of any unauthorized use of the Licensee's account. End Users may not (a) share their account information (except with an authorized account administrator) or (b) use another person's account. The account administrator may use End User account information to manage appropriate use and access to the Services.



e) Effect of Non-Compliance

If either party breaches any of the covenants set forth in this compliance clause 4.4, such breach shall be deemed a material breach and the other party may, at its sole discretion, terminate this Agreement with immediate effect.

## 5 Warranty, IP Indemnification and Liability

### 5.1 Limited Warranty

a) Provided that the Licensee has paid the applicable Fee, QUADIENT warrants during the Subscription period or Initial term, that (i) the Service will perform substantially in accordance with the relevant Documentation as found at [quadiantcloud.au](https://quadiantcloud.au) and [university.quadiant.com](https://university.quadiant.com) under normal use and circumstances (and that there will be no material diminishment of the Service as it exists on the Effective Date of the Customer Contract for such Services); and (ii) it will use industry best practices to ensure that the Services provided to the Licensee do not contain any disabling devices, viruses, Trojan horses, trap doors, back doors, Easter eggs, time bombs, cancelbots, or other computer programming routines designed to damage, detrimentally interfere with, surreptitiously intercept or expropriate any other software or data.

QUADIENT's sole obligations under the warranty set forth in this clause 5.1 shall be for QUADIENT to correct or by-pass the non-conformity or, if QUADIENT is unable to correct or by-pass the non-conformity within ninety (90) days after the Licensee's written notice, for the Licensee to terminate the applicable Subscription and receive a refund of prepaid unused Fees.

b) QUADIENT and its suppliers provide no remedies or warranties, whether expressed or implied, for any Trial Versions or Early Access Versions / Features. Any Trial or Early Access Version / Features is provided "as is" with express disclaimer of any warranty.

Furthermore, QUADIENT provides no remedies or warranties, whether expressed or implied, for any content packages, content samples or workflow samples. QUADIENT provides those content packages, content samples, workflow samples "as is" and You use those content packages, content samples, workflow samples at your own risk.

c) No oral or written information or advice given by QUADIENT, its suppliers and resellers or employees shall create a warranty for QUADIENT or in any way increase the scope of any warranty provided herein.

d) QUADIENT reserves the right to make changes, modifications and enhancements to the Services from time to time. In the event the change or modification is to documented functionality, and is material to the function or operation of the Services (a "Material Change"), QUADIENT shall use reasonable commercial efforts to provide the Licensee with prior prompt written notice of any Material Change prior to implementation of such Material Change (unless such is required to rectify an urgent system issue) which shall be communicated directly to the Licensee by email or otherwise through QUADIENT normal communication channels such as via QUADIENT's release information portal. If You do not agree with any changes made to the Service by QUADIENT, you may terminate the Service.

e) Except as set forth in this clause 5 of this Agreement QUADIENT disclaims all other warranties and representations, whether expressed, implied or otherwise, including the warranties of merchantability or fitness for a particular purpose.



f) Where some jurisdictions do not allow the exclusion of certain implied warranties, the exclusion of QUADIENT's warranty in this limited warranty clause shall apply to the fullest extent permitted by applicable law.

g) QUADIENT's Services may be subject to limitations, delays, and other problems external to QUADIENT and inherent in the use of the internet and electronic communications. Notwithstanding the foregoing, QUADIENT shall use reasonable and industry best practices standard technical means to reduce and limit the impacts of such problems, but QUADIENT disclaims any and all responsibility for delays, delivery failures, or other damage resulting from such problems.

## 5.2 Sole and Exclusive Remedy

To the extent permitted under mandatory applicable law, the Licensee's exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund according to clause 5.1 a) or 5.3 elected by QUADIENT, the Licensee shall not be entitled to any damages including but not limited to consequential damages if the Service does not meet this Limited Warranty, and to the maximum extent allowed by applicable law, even if any remedy fails in its essential purpose.

QUADIENT shall have no responsibility if failure of the Service has resulted from failure in the networking service, misconfiguration, accident, abuse, misapplication, abnormal use, a virus or if the failure arises out of use of the Service with a hardware or software configuration other than that which is recommended. Any such misuse of the Service will void the warranty.

Please note that this remedy is the sole and exclusive remedy available to the Licensee for breach of express or implied warranties with respect to the Service and related Documentation.

## 5.3 Intellectual Property Indemnification

Subject to the agreed liability cap, QUADIENT will defend, at its own expense, and hold the Licensee harmless against any legal action brought against the Licensee based on a claim that the Service infringes an Intellectual Property Right of a third party, and QUADIENT will pay any final judgment against the Licensee in any such action attributable to any such claim or incurred by the Licensee through settlement of such claim.

ANY AND ALL CLAIMS WITH RESPECT TO ANY OF THE OPEN SOURCE SOFTWARE AND/OR THIRD-PARTY SOFTWARE COMPONENTS EMBEDDED IN THE PROGRAMS OR USED IN THE SERVICES SHALL BE SUBJECT TO THEIR RESPECTIVE LICENSE AGREEMENTS, AND QUADIENT DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT WITH RESPECT TO THOSE COMPONENTS OR SOFTWARE.

Should the Service or any part thereof become, or in QUADIENT's opinion be likely to become, the subject of any such infringement claim, the Licensee shall permit QUADIENT, at QUADIENT's option and expense, to (i) procure for the Licensee the right to continue using the Service, or (ii) replace or modify the Service so that it becomes non-infringing and maintains the same functionality or (iii) terminate the right to use the Service, upon which termination the Licensee agrees to promptly destroy all copies of the Service and certify the same to QUADIENT, whereupon QUADIENT will refund the Licensee's Fees for the Service pro-rata up to 100% of the total amount of the Licensee's paid Fees for the Services in the prior twelve (12) months.

However, all such defense and payments of final judgment are subject to the conditions that the Licensee must: (i) notify QUADIENT promptly in writing of such a claim, (ii) permit QUADIENT to have sole control of the defense, compromise or settlement of a such claim, including any appeals, and (iii) reasonably cooperate with QUADIENT in the defense or settlement of such a claim. QUADIENT will pay those costs, damages or reasonable attorney's



fees incurred by the Licensee in connection with such action or claim but shall only pay the Licensee's legal fees which were incurred by the Licensee after the Licensee gave QUADIENT notice of the claim and before QUADIENT assumed control of the defense.

QUADIENT shall have no obligation or liability for any claim pursuant to this clause to the extent arising from: (i) the combinations, operation, or use of the Service supplied under this Agreement with any product, device, or software not supplied by QUADIENT to the extent the combination creates the infringement; (ii) the unauthorized alteration or modification by the Licensee of the Service, or (iii) QUADIENT's compliance with the Licensee's designs, specifications, requests, or instructions pursuant to an engagement with QUADIENT relating to the Service to the extent the claim of infringement is based on the foregoing.

THE FOREGOING IS QUADIENT'S SOLE OBLIGATION AND THE LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

## 5.4 Limitation of Liability

IN ANY CASE, THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, QUADIENT'S ENTIRE LIABILITY AND INDEMNITY UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY CLAIM OR LEGAL ACTION IRRESPECTIVE OF ITS NATURE, SHALL NOT EXCEED IN AGGREGATE THE SUM OF THE FEES PAID TO LICENSOR FOR THE RESPECTIVE SERVICE GIVING RISE TO SUCH CLAIMS OR DAMAGES IN THE LAST TWELVE (12) MONTHS, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF QUADIENT AND TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL QUADIENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF OR THE INABILITY TO USE THE SERVICE 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.

## 5.5 Rights under the Australian Consumer Law

This clause 5.5 applies only to Australian Licensees who acquire the Services as a consumer as defined under the Australian Consumer Law. Notwithstanding any other term of this Agreement, the Services are subject to non-excludable consumer guarantees under the Australian Consumer Law. Where we are permitted to limit our liability for a breach of a consumer guarantee, then, unless you are able to establish that it is not fair and reasonable for us to do so, our liability to you is limited to resupplying the Services or payment of the cost of having the Services resupplied.



## 6 Data Protection and Security

QUADIENT does not own any Customer Data. The Licensee, not QUADIENT, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Customer Data, and QUADIENT shall not be responsible or liable for the deletion, correction, destruction, damage, or loss of Customer Data. QUADIENT's use and processing of Customer Data shall be limited to the purpose of providing the Service to the Licensee and for QUADIENT to meet its contractual obligations hereunder.

After termination of this Agreement, the Licensee shall ensure extraction or backup of all Customer Data. QUADIENT shall have no obligation to retain Customer Data, and may fully delete Customer Data after ninety (90) days after termination of this Agreement.

The Licensee acknowledges that any Customer Data, including Documents and personal data of End Users of the Services may be stored on servers set up in the EU, United States of America and Australia in order to prevent a platform failure. These servers are operated by Microsoft under the terms and conditions of the Azure platform found at: [azure.microsoft.com/en-us/support/legal/](https://azure.microsoft.com/en-us/support/legal/)

All of Quadient's Third-Party Providers have confirmed adherence to the EU Privacy legislation and where required for onward transfer, also the EU Model Clauses.

Please note that Microsoft publicly commits to adherence to the GDPR and the EU Model Clauses for their online service. You can access their privacy policies at: [privacy.microsoft.com/en-us/privacystatement](https://privacy.microsoft.com/en-us/privacystatement)

Delivery of Your Email in the Quadient Cloud Services is undertaken as a Third-Party Service by the following service provider: MessageMedia (AUS), Mailjet (FR).

All of Quadient's third-party providers have confirmed adherence to the EU Privacy legislation and where required for onward transfer, also the EU Model Clauses. You can access their privacy policies at:

Microsoft: [privacy.microsoft.com/en-us/privacystatement](https://privacy.microsoft.com/en-us/privacystatement)

Mailjet: [eu.mailjet.com/privacy-policy](https://eu.mailjet.com/privacy-policy)

MessageMedia: [messagemedia.com/au/legal/privacy-policy/](https://messagemedia.com/au/legal/privacy-policy/) or  
[messagemedia.com/au/legal/gdpr/](https://messagemedia.com/au/legal/gdpr/)

Quadient will not access, view, or listen to any of Your Customer Data or content, except as reasonably necessary to perform the Services. Actions reasonably necessary to perform the Services may include (but are not limited to) (a) responding to support requests and ensuring encryption or other appropriate technical measures; (b) detecting, preventing, or otherwise addressing fraud, security, unlawful, or technical issues; (c) when it is required by law (such as when we receive a valid subpoena or search warrant); (d) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public and (e) for enforcing our contractual rights and obligations.

You can set the retention period of the content created in your End User account yourself, up to a period of ten (10) years upon upload or any shorter period you require. If you are an Australian End User of the Service, you acknowledge and agree that:

(a) Your Licensee Data (including any personal information contained in that Licensee Data) may be held



and dealt with by Microsoft and the service providers referred to above.

(b) Microsoft and the service providers referred to above may not be subject to Australian privacy law but may instead be subject to the privacy laws of another jurisdiction, and the protections under the laws of the other jurisdictions may not be the same as under Australian privacy law.

(c) QUADIANT has not taken any steps to require Microsoft and the service providers referred to above to deal with your Licensee Data as if they were bound by Australian privacy law.

(d) Your use of the Services indicates that you consent to QUADIANT not taking any steps to require Microsoft and the third-party providers to deal with your Licensee Data as if they were bound by Australian privacy law.

## 7 Mutual Confidentiality

Each party acknowledges and agrees that any and all proprietary information labelled as "confidential" or which a reasonable person would know constitutes proprietary information, including but not limited to, business plans, financial reports, customer lists and other Customer Data or customer information, descriptions of manufacturing processes, and product development and marketing plans emanating from the other party's business in any form shall be "Confidential Information", and each party agrees that it will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to any person (other than an employee, agent or representative of the other party who must have such information for the performance of its obligations hereunder or in the execution of the duties of his or her employment), unless such duplication, use or disclosure is specifically authorized by the other party in writing. The Licensee agrees that the Licensor shall expressly be entitled to disclose Confidential Information provided by the Licensee to QUADIANT, QUADIANT's employees, agents or representatives as well as to its parent companies and QUADIANT Affiliates. Such aforesaid disclosure shall always be confined to the extent that it is reasonably required in order to fulfil Licensor's obligations under this Agreement.

Neither party shall be in breach of this Agreement by reason only of disclosing Confidential Information or Customer Data which the party is required to disclose by laws or regulations or upon lawful request of any Authority. A party that is required to disclose Confidential Information in these circumstances shall give the other party as much prior written notice of the disclosure as possible (provided that the disclosing party is not prohibited from doing so) to allow the other party an opportunity to take such steps as are available to it to control or prevent the disclosure.

Each party shall be entitled to disclose Confidential Information or Customer Data to an Authority without notifying the other party where the Authority has requested or directed that the other party is not notified or informed of the disclosure.

## 8 Term and Termination

- (a) These Terms, as amended and updated from time to time, shall be effective in its then current form of use during the term of the subscription and as set out in the Customer Contract. If you sign up via web-portal, it shall be effective upon Your acceptance of the Agreement via click.



- (b) Either party may terminate this Agreement (and any Volume Pack then in effect) with ninety (90) days prior written notice, unless otherwise agreed in the Customer Contract.
- (c) Either party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within ten (10) days after delivery of notice of such breach.
- (d) In addition to any other rights granted to QUADIENT herein, QUADIENT reserves the right to suspend any User Account immediately, and/or terminate this Agreement and Customer's access to the Service if Customer's account becomes delinquent and this status is uncured for a period of forty-eight (48) hours.
- (e) Upon termination of a subscription, Customer must immediately uninstall and delete any component or access to the Service, and destroy all accompanying Documentation and all copies thereof (including copies stored in computer memory).

## 9 Force Majeure

Quadient shall not be liable for any delays or failures in performance resulting from a Force Majeure to the extent and duration of the event(s) causing the failure or delay in performance. Notice of Quadient's failure or delay in performance due to a Force Majeure must be given to the Licensee promptly, but no later than five (5) days after the event's occurrence, and such notice shall describe the Force Majeure event and the actions taken to minimize the impact thereof. All delivery dates under this Agreement that have been affected by a Force Majeure shall be tolled at least for the duration of such a Force Majeure unless extended by an agreement between the Parties. Notwithstanding the foregoing, should the Force Majeure event(s) and its effect upon Quadient extend beyond a four-month period, the Licensee may then terminate this Agreement by written notice to Quadient, with the consequences of such termination being the same as if this Agreement had expired.

## 10 Miscellaneous

- 10.1 Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- 10.2 In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- 10.3 You agree to comply with all applicable export and import laws and regulations, including the US Export Regulations.
- 10.4 You may not assign this Agreement to any third-party except upon QUADIENT's prior written consent, which shall not be withheld unreasonably. Any purported assignment in violation of this clause shall be void.

## 11 Governing Law and Legal Venue

This Agreement is construed under the laws of New South Wales, Australia. The U.N. Convention of Contracts for the Sale of International Goods is expressly excluded from this Agreement and shall not apply. Each party irrevocably submits to the non-exclusive jurisdiction of courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party





irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 12 Definitions

The following terms used in this Agreement shall have the following meaning:

- **“Affiliate”** means an entity owned by, owning to or under common ownership with either party, whereby ownership shall be defined as holding a financial interest of at least 51% of shares or capital.
- **“Australian Consumer Law”** means Schedule 2 of the Competition and Consumer Act 2010.
- **“Authorities”** means any official public authorities including regulatory and data protection authorities in any affected jurisdiction.
- **“Cluster”** means a group of Virtual Machines that house the Quadiant Cloud Services within a Region. There are two types of Cluster, both of which will be present in each Region: (a) primary Cluster for the group of Virtual Machines that will run all production and non-production Quadiant Cloud Services and (b) failover Cluster for the group of Virtual Machines that will be available to run all production and non-production Quadiant Cloud Services in the event of a failure of the primary Cluster.
- **“Concurrent Users”** means a specific number of individuals authorized to use the Service through the assignment of Credentials (as defined above in clause 2 (End User Management) at the same time. A non-human operated device shall also be counted as Concurrent User in addition to all authorized individual End Users, if such device can access the Service. The Licensee shall have the right to change the Credentials for the Concurrent Users Subscriptions, provided that no individual End User Subscription shall be changed more than once per calendar month and that access to the Software is restricted to those authorized End Users and for whom Credentials have been validly acquired.
- **“Customer Contract”** means this individually agreed and duly signed commercial agreement between the Licensee and QUADIANT for the purchase of one or more Services that expressly references the appropriate terms of use.
- **“Customer Data”** means any data, information or material, including personal data and the Licensee content that the Licensee or the Licensee’s End Users, employees, subscribers or partners may disclose or submit to QUADIANT or upload to the Service in the course of using the Service.
- **“Document”** means any incoming and outgoing document (e.g. letter, fax, invoice or sales order) submitted to QUADIANT via a secure Internet connection for processing, delivery to a recipient and/or electronic archiving.
- **“Documentation”** means any published documentation provided by QUADIANT in any form, related to the Service including any specification, End User manuals, systems manuals, operating manuals, programming manuals, physical planning guides and set up or installation guides, if available.
- **“End User”** means any person, program, process, product, or hardware which uses any functionality of the Software or Service; it shall also mean the Licensee’s employees, representatives, consultants, contractors or agents who are authorized to use the Software or Service under a valid Subscription and have been supplied user identifications and passwords by the Licensee (or by QUADIANT at the Licensee’s request).



- **“EU Model Clauses”** means the standard contractual clauses annexed to the EU Commission Decision 2010/87/EU dated February 5, 2010 for the Transfer of Personal Data to Processors established in Third Countries under the EU Directive 95/46/EC, or as shall be amended in the future under the GDPR.
- **“Environment”** is a deployment of a Service for a Tenant for a specific phase within the project lifecycle. There are two types of Environment: (a) non-production for development and tests; and (b) production Environment used by the Licensee for their customer-facing communication generation, processing, and/or delivery.
- **“Fees”** means the Fees and charges specified in the applicable Service Schedule and/or Customer Contract, payable by the Licensee to QUADIENT or the respective Affiliate in respect of the License and/or the respective Subscription.
- **“Force Majeure”** means non-foreseeable, unavoidable extraordinary events beyond Quadient' control, including but not limited to, acts of God or nature, acts of war or terrorism, shortage of supply, civil unrest, including any inability of Quadient's employees and/or independent contractors and/or staff of implementing partners (“Consultants”) to perform the Services according to the Agreement as a result of a global pandemic or a public health emergency or a policy issued in response thereof affecting the Consultants.
- **“GDPR”** means Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons (data subjects) with regard to the processing of personal data, the free movement of such data, and the repealing of Directive 95/46/EC. The terms, ‘**personal data**’, ‘**processing**’, ‘**supervisory authority**’, ‘**data subject**’, ‘**Processor**’, ‘**Controller**’ and ‘**transfer**’ shall have the same meaning as defined in the GDPR.
- **“Instance”** is an Quadient Cloud Service software deployment into a Virtual Machine as part of an Environment. Each Environment is made of a minimum of two Instances to form the Service within that Environment.
- **“Intellectual Property Rights”** means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- **“Licensee”** or **“Customer”** means the organization entering into the Customer Contract, thus the Licensee or End User authorized to use the Service under a valid and paid License for the Licensee's internal business use and not for distribution or resale. The Customer may have multiple Tenants/sub-Tenants.
- **“Named User”** shall mean a specific individual who is authorized to use the Service through the assignment of a single user ID, regardless of whether or not that individual is using the Service at any given time. A non-human operated device shall also be counted as a Named User in addition to all individuals authorized to use the Service, if such device can access the Service.
- **“Service Schedule”** or **“License Schedule”** means the document in which the commercial details of the Software or Service Subscriptions are agreed between the Parties. The License or Service Schedule may be a Customer Contract in itself or an integrated part thereof.
- **“Open Source License Terms”** means the license terms applicable to Open Source Software components included in the Programs or used by the Services as listed at: <http://www.quadient.com/resources/open-source-licenses>
- **“Open Source Software”** means Third-Party Software Programs available without charge for use, modification or distribution as licensed under a separate open source software license.



- **“Quadient Cloud Service(s)”** means, for the purposes of these Terms, QUADIENT's online services Quadient Inspire Flex and/or Quadient Inspire Journey (as applicable under the License Schedule) as described in the relevant product or service descriptions and as found at: [quadientcloud.au](https://quadientcloud.au)
- **“Quadient Inspire Flex Service(s)”, “Quadient Inspire Journey Service(s)” or “Service(s)”** means QUADIENT’s Software as a Service (SaaS) as described in these Terms and further in the relevant Specific Conditions for each of the services available at: [quadientcloud.au](https://quadientcloud.au)
- **“Region”** (and Regional accordingly) means the geographical location of the Microsoft Azure datacentre/s that houses the Quadient Cloud Services for the Customer.
- **“Software”** means the software as set forth in the applicable Service Schedule as supplied by QUADIENT, and printed materials, and corresponding online or electronic Documentation.
- **“Subscription”** means the use rights for the Services granted to the Licensee under this Agreement.
- **“Tenant”** (or sub-Tenant, depending on the position within the hierarchy) is a specific department, sector, line of business, or other portion defined by the Licensee that has access to a unique set of Quadient Cloud Services which are linked together by the Licensee in a hierarchy of their choosing. As an example, a large insurance customer may have a claims department, a policies department, and a renewals department. If each of these departments had their own set of Quadient Cloud Services, they would be considered tenants within the Licensee’s Service account.
- **“Third-Party Software” or “Third-Party Services”** means in the Quadient Cloud Services any third-party software or service components used in connection with the Software or the delivery of Quadient Cloud Services (such as Adobe PDF Library technology, and Microsoft Azure) and related Documentation, including any upgrades, modified versions, updates, additions, and copies thereof.
- **“Trial Version” or “Test Version” or “Early Access Versions / Features”** means a version and/or feature of the Quadient Cloud Service to be used only to review and evaluate the Service for a specific period of time as determined by QUADIENT without any warranty and irrespective of whether such Software or Service will be continued or included in a GA-Release.
- **“Virtual Machine”** is a logical server within a Cluster, that houses and runs the Quadient Cloud Services. Virtual Machines can either be: (a) shared Virtual Machine(s) for a Virtual Machine that can house Services for more than one customer account, e.g. the Virtual Machine may contain a Service for an insurance Customer, a Service for a healthcare Customer, and a Service for a financial services Customer; or (b) dedicated Virtual Machine/s for a Virtual Machine that will only house Services for one Customers account, though it may house multiple Tenants or sub-Tenants within a Customer’s account.