

Quadiant End User License Agreement (EULA) 终端用户许可协议 (EULA)

Valid from / 生效期: 01.04.2020

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2 Licensing Options

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 - Instance (according to section 2.4); or
 - Volume Based (according to section 2.5)
- 指定用户 (根据 2.2 节) ; 或
 - 并行用户 (根据第 2.3 节) ; 或
 - 实例 (根据 2.4 节) ; 或
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2.1 License Management

2.1 许可管理

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QUADIANT reserves the right to make changes, modifications and enhancements to the online service from time to time. In the event the change is material to the function, operation or terms of the agreed Entitlement Management service (a "Material Change"), and if Licensee does not agree with any changes made by QUADIANT, the Licensee may terminate the online Entitlement Management upon thirty (30) days written notice to QUADIANT and use the on-premise Inspire License Manager instead.

QUADIANT does not own any Licensee Data. Licensee, not QUADIANT, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Licensee Data, and QUADIANT shall not be responsible or liable for the deletion, correction, destruction, damage, or loss of Licensee Data. QUADIANT's use of Licensee Data shall be limited to the purpose of providing the Entitlement Management Service to the Licensee and for QUADIANT to meet its contractual obligations hereunder. After termination of this Agreement, Licensee shall ensure extraction or backup of all Licensee Data. QUADIANT shall have no obligation

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<https://azure.microsoft.com/en-us/support/legal/>

微软公开承诺遵守 GDPR 和欧盟在线服务示范条款。

被许可方可以设置在终端用户帐户中创建的内容的保留期,最长可保留至上传后十(10)年,或根据需要设置任何较短的时间。然而,QUADIANT 并不需要备份或存档服务。被许可方完全负责被许可方自己系统中被许可方的数据和内容的定期备份和存档。

QUADIANT 保留不时对在线服务进行更改、修改和增强的权利。如果更改对商定的《授权管理》服务的功能、操作或条款是实质性的(“实质性变更”),如果被许可方不同意 QUADIANT 所做的任何更改,被许可方可以在三十(30)天书面通知 QUADIANT 后终止在线《授权管理》,并使用 Inspire License Manager 来代替。

QUADIANT 不拥有任何被许可方数据。被许可方,而不是 QUADIANT,应对所有被许可方数据的准确性、质量、完整性、合法性、可靠性、适当性和知识产权所有权或使用权承担全部责任,QUADIANT 对被许可方数据的删除、更正、销毁、损坏或丢失不负责任或责任。

QUADIANT 对被许可方数据的使用应限于向被许可方提供《授权管理》服务和 QUADIANT 履行其合同义务的目的。本协议终止后,被许可方应确保提取或备份所有被许可方数据。QUADIANT 没有保留被许可方数据的义务,并且可以在本协议终止后九十(90)天内完全删除被许可方数据。



to retain Licensee Data, and may fully delete Licensee Data after ninety (90) days after termination of this Agreement.

For free accounts, QUADIANT retains the right to delete the full company account (including End User accounts and Licensee Data) after ninety (90) calendar days of being unused or upon expiration of any free trial period.

If Licensee requires an Art. 28 Processor Agreement under the European GDPR, Licensee shall download the Data Processing Addendum for EMEA Cloud Services (from www.quadiant.com/eula) and send the completed form for final review and signature to QUADIANT CXM AG, Oberer Gansbach 1, CH-9050 Appenzell, Switzerland.

If Licensee and QUADIANT have signed such a separate Processor Agreement according to Art. 28 GDPR, such agreement shall prevail over this EULA in case of any doubt or discrepancies.

2.1.2 Inspire License Manager

As an option, the Licensee may use the on-premise Inspire License Manager as a tool implemented into the Software to help Licensee control and meter License use and consumption for License Management and compliance. It can generate automated License usage reports for the modules and environments configured and send these to the End Users designated by the Licensee.

Detailed functions and settings of the Inspire License Manager are further described in the published Documentation.

2.2 Named User License

Licensee shall be authorized to make the Software available to a mutually agreed number of Named Users, as set forth in the applicable License Schedule.

Licensee shall have the right to change the single user IDs for the Named User Licenses, provided

对于免费帐户, QUADIANT 保留在未使用的九十 (90) 个日历日后或任何免费试用期到期后删除整个公司帐户 (包括终端用户帐户和被许可方数据) 的权利。

如果被许可方要求根据欧洲 GDPR 实施 Art. 28 《处理协议》, 则被许可方应下载 EMEA 云服务的数据处理附录 (下载网站: www.quadiant.com/eula), 并将完整的表格发送给 QUADIANT CXM AG (Oberer Gansbach 1, CH-9050 Appenzell, 瑞士) 进行最终审查和签名。

如果被许可方和 QUADIANT 根据 GDPR 签署了这样的单独的 Art. 28 《处理协议》, 则在有任何疑问或差异时, 该协议应优先于本 EULA。

2.1.2 激励许可管理器

作为一种选择, 被许可人可以使用本地激励许可管理器作为在软件中实用的工具, 以帮助被许可人控制和计量许可的使用和消耗, 以实现许可管理和合规性。它可以为配置的模块和环境生成自动许可证使用报告, 并将这些报告发送给被许可方指定的终端用户。

激励许可管理器的详细功能和设置的进一步描述在已发布的文档中。

2.2 指定用户许可证

被许可方应根据适用的许可时间表所规定, 授权向双方商定的指定用户提供该软件。

被许可方有权更改指定用户许可证的单一用户 ID, 但指定用户许可证每个日历月不得更改超过一次, 并且对软



that no Named User License shall be changed more than once per calendar month and that access to the Software is restricted to those End Users that are named by the Licensee and for whom Named User Licenses have been validly acquired.

2.3 Concurrent User License

Licensee shall be authorized to make the Software available to a mutually agreed number of Concurrent Users as set forth in the applicable License Schedule with QUADIENT.

If Concurrent Users are monitored via server settings, Licensee agrees to maintain the server settings in such a way that the number of Licenses in concurrent use do not exceed the licensed user number (i.e. the number set for the server shall always be equal to or less than the number of licensed End Users).

2.4 Per Instance License

Licensee shall be authorized to have the Software run on any Computer per Instance, as set forth in the applicable License Schedule.

License controls meter usage and may not allow launch or usage of any Software if such usage would exceed the license user count set forth in the applicable License Schedule. Licensee agrees to maintain the server's settings in such a way that the number of Licenses in concurrent use do not exceed the licensed user number (i.e. the number set for the server will always be equal to or less than the number of licensed users) for the respective instance.

2.5 Volume Based License

If not agreed differently in the License Schedule, Licensee shall be entitled to use the licensed Software within the mutually agreed volume band

件的访问仅限于被许可方指定并已有效获得指定用户许可证的终端用户。

2.3 并行用户许可

被许可方应被授权将该软件提供给与 QUADIENT 适用许可计划中规定的相互商定数量的并行用户。

如果通过服务器设置监视并行用户，则被许可方同意以下方式维护服务器设置：并行使用的许可数量不超过许可的用户数量（即，为服务器设置的数量应始终等于或小于许可的终端用户数量）。

2.4 按实例许可

如适用的许可时间表所规定，被许可方应被授权按实例在任何计算机上运行软件。

许可证控制仪表的使用，如果用量超出适用许可证表中规定的许可证用户数，则许可证可能不允许启动或使用任何软件。被许可方同意以这样的方式维护服务器的设置，即同时使用的许可数量不超过相应实例的许可用户数量（即，为服务器设置的数量将始终等于或小于许可用户的数量）。

2.5 基于数量的许可



for transactions or output counted during a twelve (12) month period.

Output production volume counting is based on the production of viewable communication pieces, such as a DIN A4, US Letter/Legal image and per rendered e-communication such as e-mail/website or message block processed for any type of channel, including paper, electronic output archive etc.

Any Licensee subject to a Volume Based License model must commit and agree to provide regular (quarterly, if not agreed otherwise) production volume reports to QUADIENT (an automated report may be created via the integrated tools, e.g. the Inspire License Manager or the Entitlement Management service), as further described in section 3.1 below.

If the volume in any year exceeds the declared annual volume, then the actual volume consumed will become the new declared annual volume on the anniversary of the License. If a Volume Based License is declared as “unlimited”, this shall mean the output volume is unlimited in quantity for a certain amount of time, as agreed in the Customer Contract.

Applicable base Fees for Volume Based Production Licenses shall be paid in advance, before Licensee starts using the Software. To the extent Licensee exceeds the agreed volume band for which the annual base Fee has been paid, any additional Fees will be payable to Licensor in arrears, as set forth in the applicable License Schedule.

如果未在许可时间表中另行约定，则被许可方有权在双方同意的交易量范围内使用被许可的软件进行十二 (12) 个月内计算的交易或输出。

输出生产量计数是基于可查看的通信件的生产，如 DINA4、美国信函/法律图像，以及每个呈现的电子通信，如电子邮件/网站或为任何类型的信道处理的消息块，包括纸张、电子输出存档等。

受基于数量的许可模型约束的任何被许可方，必须遵守并同意向 QUADIENT 定期提供（如果没有另行商定，按季度计算）的生产量报告（可以通过集成工具创建自动报告，例如激励许可管理器或《授权管理》服务），如下文第 3.1 节所进一步说明。

如果任何一年的数量超过申报的年度数量，那么实际消耗的数量将成为许可周年时新申报的年度数量。如果基于数量的许可被声明为“无限”，这意味着输出量在一定数量的时间内是无限的，如《客户合同》中所商定的。

批量生产许可证的基本费用应在被许可方开始使用软件之前预先支付。如果被许可方超过已支付年度基本费用的商定数量范围，任何额外费用将按照适用的许可时间表支付给许可方。

3 Compliance

3.1 License Reports and Audit

Irrespective of the licensing option chosen, during the term of this Agreement and for one (1) year after its expiration or termination, Licensee shall maintain reasonably complete records of Licensee’s installation and use of the Software as

3 履约

3.1 许可证报告和审计



necessary to verify compliance with this Agreement. In case that Licensee's actual use exceeds the number of Licenses acquired, the additional Fees shall be due and payable to QUADIENT accordingly.

An automated usage report can be produced by either of the available management mechanisms. In the event that Licensee installed the on-premise Inspire License Manager, Licensee shall provide QUADIENT within no later than fifteen (15) business days after the end of each calendar quarter with the respective usage report. In the event that Licensee elects to use the online Entitlement Management service, Licensee shall permit QUADIENT or its authorized business partners to review these records to verify compliance with this Agreement.

If Licensee does not provide the usage reports as requested and QUADIENT has reason to doubt compliant use of the Software, QUADIENT may conduct License audits to verify such compliance. Licensee agrees to provide QUADIENT with all records reasonably related to its use of the respective Software or service. The audit will strictly be confined to verification of Licensee's compliance with the terms of the EULA and/or the Customer Contract.

All audits shall be conducted at QUADIENT's expense, unless the result establishes that the Licensee has underpaid QUADIENT by more than 5% of the amount actually due, in which case Licensee shall not only pay all amounts due, but also bear the expense of the audit. Any such audit shall be conducted: (i) upon reasonable prior notice to Licensee at a date and time to be agreed between the Parties in advance, (ii) during business hours of Licensee; (iii) shall not interrupt the normal business operations of Licensee; and (vi) in accordance with the relevant security and premises policies of Licensee.

3.2 Export Rules

不论选择哪种许可方式, 在本协议有效期内以及终止或终止后的一 (1) 年内, 被许可方均应保留必要的合理完整的记录, 以验证被许可方是否遵守本协议。如果被许可方的实际使用超过了获得的许可证的数量, 额外的费用应相应地支付给 QUADIENT。

可以通过任何一种可用的管理机制来生成自动使用情况报告。如果被许可方安装了本地激励许可管理器, 则被许可方应在每个日历季度结束后的十五 (15) 个工作日内向 QUADIENT 提供相应的使用情况报告。如果被许可方选择使用在线《授权管理》服务, 被许可方应允许 QUADIENT 或其授权的业务伙伴检查这些记录, 以验证是否符合本协议。

如果被许可方未按要求提供使用报告, 并且 QUADIENT 有理由怀疑软件的合规性使用, 则 QUADIENT 可能会进行许可审核以验证此类合规性。被许可方同意向 QUADIENT 提供与其使用各自软件或服务合理相关的所有记录。审核将严格限于验证被许可方是否遵守 EULA 和/或《客户合同》的条款。

所有审核均应由 QUADIENT 承担, 除非结果表明被许可方向 QUADIENT 少付了实际应付款的 5% 以上, 在这种情况下, 被许可方不仅应支付所有应付款, 还应承担审计费用。任何此类审计均应如下进行: (一) 在双方事先商定的日期和时间向被许可方发出合理的事先通知; (二)



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3.3 Software Transfer

To the extent permitted by applicable mandatory law, Licensee may transfer the Software and all of Licensee's license rights and obligations to another party only with prior written consent of QUADIENT. Such consent shall not be unreasonably withheld.

Whenever Licensee transfers the Software, Licensee must uninstall and delete the Software from Licensee's system, destroy any and all copies and may not continue to use the Software or any copy of it accordingly.

If Licensee transfers the Software, Licensee shall ensure that the acquiring party agrees to the terms of this EULA and notify QUADIENT of the Software transfer in writing.

Licensee's notice shall include the following documents:

1. Confirmation of transfer and acceptance of the EULA by the acquiring party,
2. Licensee's respective Customer Contract or License Schedule to verify Licensee's valid License,
3. Exact information to which extent Licensee's license count is cancelled by the transfer respectively, and

在被许可方的营业时间内; (三)不得中断被许可方的正常业务; (六) 根据被许可方的相关安全和场所政策。

3.2 出口规则

被许可方同意, 不会将本软件运送, 转让或出口到任何国家或以美国出口管理法或任何其他适用的出口法律, 限制或规定(统称为“出口法”)禁止的方式使用。此外, 如果根据《出口法》该软件识别为出口管制商品, 被许可方声明并保证(根据美国出口管理条例网站)其身份不是被禁运国家的公民, 也不是被禁运国家内的其他人, 并且不因出口法律的限制, 而禁止接收软件。向被许可方授予所有使用软件的权利, 但前提是如果被许可方不遵守本协议的条款, 则这些权利将被没收。

3.3 软件转让

在适用的强制性法律允许的范围内, 只有在 QUADIENT 的事先书面同意下, 被许可方才能将软件和被许可方的所有许可权利和义务转让给另一方。这种同意不得无理拒绝。

每当被许可方转移软件时, 被许可方必须从被许可方的系统中卸载和删除软件, 销毁任何和所有副本, 不得继续使用软件或其任何副本。

如果被许可方转让软件, 被许可方应确保获取方同意本 EULA 的条款, 并书面通知 QUADIENT 软件转让。



被许可方的通知应包括以下文件:

4. Confirmation that Licensee has de-installed and deleted the Software respectively according to Licensee's transfer.

1. 获取方对 EULA 的转移和接受的确认,
2. 被许可方各自的《客户合同》或许可时间表, 以验证被许可方的有效许可,
3. 分别在转让中取消被许可人的许可数量的确切信息, 以及
4. 根据被许可方的转让确认被许可方已分别卸载和删除该软件。

3.4 Appropriate Use

Licensee shall not use any Software 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 tortuous 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 Software or the data contained therein; (v) commit any act that is detrimental to the good name and standing of QUADIANT; or (vi) attempt to gain unauthorized access to a Software or its related systems or networks.

3.4 适当使用

被许可方不得故意利用任何软件: (一)违反适用法律发送垃圾邮件或其他重复或未经请求的信息; (二)发送、使用或存储侵权、淫秽、威胁、诽谤或其他非法或曲折的材料, 包括有害儿童或违反第三方权利的材料; (三)发送、使用或存储含有软件病毒、蠕虫、木马或其他有害计算机代码、文件、脚本、代理或程序的材料; (四)干扰或破坏软件或其中所载数据的完整性或性能; (五)实施任何有损 QUADIANT 良好声誉和地位的行为; 或 (六)企图未经授权访问软件或其相关系统或网络。

4 Warranty, IP Indemnification and Liability

4.1 Limited Warranty

a) Provided that Licensee has paid the applicable license Fee, QUADIANT warrants that for a period of 90 days from the date of delivery from QUADIANT ("Warranty Period"), that the Software substantially conforms to its published specifications. QUADIANT does not warrant that the software or Software is error-free or will operate without interruption. If mandatory applicable law requires certain mandatory warranties that would exceed this limited warranty

4 保修、IP 认证和责任



with respect to the Software, all such warranties are limited to the maximum extent possible under such mandatory applicable law.

b) QUADIANT and its suppliers provide no remedies or warranties, whether express or implied for any sample application code, alpha code or trial version of the Software. Any Trial Versions or Test Versions, non-GA releases or sample application code of the Software are provided “as is”, if not expressly agreed otherwise.

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

d) Except as set forth in this section 4 of this Agreement QUADIANT disclaims all other warranties and representations, whether expressed, implied or otherwise, including the warranties of merchantability or fitness for a particular purpose. Also, to the extent permitted by applicable law, there is no warranty of non-infringement of third-party intellectual property rights and title for the Third-Party and Open Source components of the Software.

e) Where some jurisdictions do not allow the exclusion of certain implied warranties, the exclusion of QUADIANT’s warranty in this limited warranty section shall apply to the fullest extent permitted by applicable law.

f) The Software or Third-Party Services may be subject to limitations, delays, and other problems external to QUADIANT and inherent in the use of the internet and electronic communications. Notwithstanding the foregoing, QUADIANT shall use industry best practices and standard technical means to reduce and limit the impacts of such problems, but QUADIANT disclaims any and all responsibility for delays, delivery failures, or other damage resulting from such problems outside of QUADIANT’s sole control.

4.1 有限保证

a) 如果被许可方已经支付了适用的许可费，QUADIANT 保证，从 QUADIANT 交付之日起 90 天内（“保修期”），该软件实质上符合其发布的规范。QUADIANT 不保证该软件或“软件”没有错误，也不会中断运行。如果强制性适用法律要求某些强制性担保超出软件的原担保范围，则所有此类担保均受到此类强制性适用法律的最大限制。

b) 无论该软件的任何示例应用程序代码，alpha 代码或试用版是否明示或暗示，QUADIANT 及其供应商不提供任何补救或保证。如果没有另行明确商定，任何试用版本或测试版本，非 GA 版本或软件的示例应用程序代码都是“原样”提供的。

c) QUADIANT、其供应商、经销商或员工在书面协议之外提供的口头或书面信息或建议，不得为 QUADIANT 创建保修、或以任何方式增加本合同提供的任何保修范围。

d) 除非本协议第 4 节中有规定，否则 QUADIANT 不作任何其他担保和陈述，无论是明示，暗示或其他方式，包括适销性或针对特定目的的适用性的担保。同样，在适用法律允许的范围内，也不保证不侵犯软件的第三方和开放源代码组件的第三方知识产权和所有权。

e) 如果某些司法管辖区不允许排除某些隐含担保，则在此有限担保部分中将 QUADIANT 的担保排除在适用法律允许的最大范围内。



4.2 Sole and exclusive Remedy

To the extent permitted under mandatory applicable law, Licensee's exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund according to this section as elected by QUADIANT, Licensee shall not be entitled to any damages including, but not limited to, consequential damages if the Software does not meet this Limited Warranty, even if any remedy fails of its essential purpose. Provided that the Licensee makes a timely written Warranty claim to QUADIANT within the Warranty Period, QUADIANT will, at its sole discretion, supply Licensee with a copy of the Software that substantially conforms to the published Documentation, provide a replacement for the defective media, or refund the fees for the Software paid in the last 12 months to QUADIANT to Licensee.

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4.3 Intellectual Property Indemnification

QUADIANT will defend, at its own expense, and hold Licensee harmless against any legal action brought against Licensee based on a claim that the Software infringes an Intellectual Property Right of a third party, and QUADIANT will pay any final judgment against Licensee in any such action

f) 软件或第三方服务可能受到 QUADIANT 外部使用和互联网和电子通信固有的限制、延迟和其他问题的约束。尽管有上述规定, QUADIANT 仍将使用行业最佳实践和标准技术手段来减少和限制此类问题的影响, 但 QUADIANT 对由于 QUADIANT 不能完全控制的此类问题而导致的延迟、交付失败或其他损坏不承担任何责任

4.2 单一和独家的补救措施

在强制性适用法律允许的范围内, 被许可方对任何违反本有限保证的独家补救措施如下所示。除了由 QUADIANT 选择的根据本节进行的任何退款外, 如果软件不符合本有限保修的规定, 即使任何补救措施无法达到其基本目的, 被许可方也无权获得包括但不限于间接损失在内的任何损害赔偿。如果被许可方在保修期内及时向 QUADIANT 提出书面保证索赔, QUADIANT 将自行决定向被许可方提供一份基本符合已发布文件的软件副本, 为有缺陷的媒体提供替换, 或退还过去 12 个月向 QUADIANT 支付的软件费用。

如果由于错误的配置、事故、滥用、错误的应用、异常使用、病毒导致软件故障, 或者由于非推荐的硬件配置使用软件导致故障, 则 QUADIANT 不承担任何责任。对软件的任何此类滥用将使上述保修无效。



attributable to any such claim or incurred by Licensee through settlement of such claim.

Any and all claims with respect to any of the Open Source Software, Third-Party Software or Service components shall be subject to their respective license agreements, and QUADIANT disclaims any and all liability with respect to those software programs or components, including but not limited to, any claims of Intellectual Property Right infringement.

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

However, all such defense and payments of final judgment are subject to the conditions that Licensee must: (i) notify QUADIANT promptly in writing of such claim, (ii) permit QUADIANT to have sole control of the defense, compromise or settlement of such claim, including any appeals, and (iii) reasonably cooperate with QUADIANT in the defense or settlement of such claim. QUADIANT will pay those costs, damages or reasonable attorney's fees incurred by Licensee in connection with such action or claim, but shall only pay Licensee's legal fees which were incurred by Licensee after Licensee gave QUADIANT notice of the claim and before QUADIANT assumed control of the defense up to the agreed liability and infringement cap.

QUADIANT shall have no obligation or liability for any claim pursuant to this Section to the extent arising from: (i) the combinations, operation, or

被许可方承认, 这种补救措施是被许可方违反有关软件和相关文档的明示或默示保证的唯一和排他性补救措施。

4.3 知识产权认证

QUADIANT 将自费为被许可方进行辩护, 并使被许可方不会因软件侵犯第三方的知识产权而受到任何法律诉讼, 并且 QUADIANT 将通过解决被许可方的任何诉讼向被许可方支付最终判决。

对任何开源软件、第三方软件或服务组件的任何和所有索赔均应遵守各自的许可协议, QUADIANT 免除对这些软件程序或组件的任何和所有责任, 包括但不限于任何侵犯知识产权的索赔。

如果本软件或其任何部分成为任何此类侵权索赔的标的, 或者 QUADIANT 认为有可能成为任何此类侵权索赔的标的, 被许可方应允许 QUADIANT, 由 QUADIANT 自行选择并承担费用, (一)为被许可方采购继续使用软件的权利, 或(二)更换或修改软件, 使其不侵权并保持相同的功能, 或(三) 终止使用该软件的权利, 在此终止时, 被许可方同意立即销毁该软件的所有副本, 并向 QUADIANT 证明, 随后 QUADIANT 将退还被许可方的软件许可费用, 最高为被许可方在过去十二 (12) 个月内已支付的软件许可费用总费用的 100% 。

然而, 所有此类抗辩和最后判决的支付均须遵守以下条件: (一) 立即以书面形式通知 QUADIANT, (二) 允



use of the Software supplied under this Agreement with any product, device, or software not supplied by QUADIANT to the extent the combination creates the infringement; (ii) the unauthorized alteration or modification by Licensee of the Software, or (iii) QUADIANT's compliance with Licensee's designs, specifications, requests, or instructions pursuant to an engagement with QUADIANT relating to the Software to the extent the claim of infringement is based on the foregoing.

The foregoing is quadiant's sole obligation and licensee's exclusive remedy with respect to intellectual property indemnification.

4.4 Limitation of Liability

In any case, the parties agree that to the extent permitted by applicable law, quadiant'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 license fees paid by licensee for the respective software to which the claim relates in the prior twelve (12) months to the claim being made, notwithstanding any failure of essential purpose of any limited remedy. This limitation of liability shall not apply to death or bodily harm caused by the negligence of quadiant and to the extent applicable law prohibits the limitation of certain liabilities.

To the maximum extent permitted by applicable law, in no event will quadiant or its affiliates or distributors 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 software 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.

许 QUADIANT 独家控制该主张的抗辩, 折衷或解决, 包括任何上诉, 以及 (三) 与 QUADIANT 合理合作以抗辩或解决此类索赔。QUADIANT 将支付被许可人因此类诉讼或索赔而产生的这些费用, 损害赔偿或合理的律师费, 但仅应支付被许可人在被许可人向 QUADIANT 发出索赔通知后以及 QUADIANT 承担对辩护的控制权之前所产生的被许可人的法律费用。直至商定的赔偿责任和侵权上限。

在以下情况下, QUADIANT 对根据本节提出的任何索赔不承担任何义务或责任: (一) 根据本协议提供的软件与非由 QUADIANT 提供的任何产品, 设备或软件的组合, 操作或使用, 在组合造成侵权的范围内; (二) 软件被许可方未经授权擅自更改或修改, 或 (三) 在与侵权有关的索赔基于上述方面的前提下, QUADIANT 遵守与 QUADIANT 有关软件的约定, 遵守被许可方的设计、规格、要求或指示。

这种形式是 QUADIANT 的团结义务和被许可方的例外补救措施, 以符合知识产权的个人资格。前述行为是对客户的唯一义务, 而被许可方在知识产权保护方面具有专有权。

4.4 对赔偿责任的限制

在任何情况下, 双方均同意, 在适用法律允许的范围内, Quadiant 根据本协议的任何规定对任何索赔或法律诉讼的全部责任和赔偿, 无论其性质如何, 均不得超过已付许可费用的总和。尽管在任何有限补救措施的主要目的上均未实现, 但与前十 (十二) 个月内所主张的权利要求相关的软件均由被许可方许可。此责任限制不适用于因 Quadiant 疏忽造



5 Professional Services, Maintenance and Support

Supplementing the License, Licensee can obtain professional services or maintenance and support services under a separate agreement from either one of QUADIANT's worldwide Affiliates or from an authorized QUADIANT business partner company.

成的死亡或人身伤害，并且在适用法律禁止对某些责任进行限制的范围内。

在适用法律允许的最大范围内，Quadiant 或其附属公司或分销商在任何情况下均不对任何间接、特殊、偶然、结果性或惩罚性导致的，无论由于何种原因引起的赔偿责任或由于无法使用该软件而引起的赔偿责任造成的损害负责，即使被告知该类事件发生的可能，也不论索赔所依据的法律或公平理论（合同，侵权或其他）。

6 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 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. Licensee agrees that QUADIANT shall expressly be entitled to disclose Confidential Information provided by Licensee to its own employees, agents or representatives as well as to its parent companies

5 专业服务，维修和支助

作为许可证的补充，被许可方可以根据 QUADIANT 的全球关联公司之一或 QUADIANT 授权的业务合作伙伴公司的单独协议获得专业服务或维护及支持服务。

6 相互保密

各方承认并同意标记为“机密”或理性人会知道的任何专有信息均构成专有信息，包括但不限于商业计划书、财务报告、客户清单和其他客户信息、制造过程描述，并且来自另一方业务的任何形式的产品开发和营销计划均应为“机密信息”，并且双方均同意，在本协议有效



and QUADIENT Affiliates. Such aforesaid disclosure shall always be confined to the extent that it is reasonably required in order to fulfil QUADIENT's obligations under this Agreement.

7 Term and Termination

This Agreement shall be effective for the term of the License grant according to the licensing scheme chosen and as set out in the applicable License Schedule or Customer Contract as the applicable "License Term", unless prior terminated by either Party.

For any subscription License, unless otherwise specified in the Customer Contract, the License Term shall continue for a minimum period of two (2) years ("Initial Term"). The License Term will automatically renew for additional terms of one (1) year following the Initial Term (each, a "Renewal Term") unless either Party declines renewal by notice in writing to that effect delivered to the other Party at least ninety (90) days prior to the expiration of the then current License Term.

Upon termination of a License, Licensee must immediately uninstall and delete the Software, and destroy all accompanying Documentation and all copies thereof (including copies stored in computer memory).

8 Miscellaneous

8.1 Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

8.2 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.

期内或之后，不得重复，使用或披露给任何人的任何此类机密信息（另一方的雇员、代理人或代表除外，他们必须具有该信息以履行其在本协议项下的义务或在执行其职务时的职责），除非重复，使用或披露是由另一方特别书面授权。被许可方同意 QUADIENT 明确有权向其自己的员工、代理商或代表以及其母公司和 QUADIENT 关联公司披露被许可方提供的机密信息。为了履行 QUADIENT 在本协议下的义务，上述披露应始终限于合理要求的范围内。

7 期限和终止

本协议应根据所选择的许可方案，并根据适用的许可时间表或《客户合同》中规定的适用“许可期限”，在许可授予期限内生效，除非任何一方事先终止。

对于任何订阅许可，除非《客户合同》中另有规定，否则许可期限应持续至少两（2）年（“初始期限”）。许可条款将自动续签初始期限后一（1）年的附加期限（每个“续订期限”）除非任一方通过书面通知拒绝延



8.3 Unless expressly stated otherwise in a Customer Contract, Licensee agrees to allow QUADIANT and its Affiliates to store and use Licensee's contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to Affiliates, contractors and authorized business partners of QUADIANT for uses consistent with their collective business activities, including communicating with Licensee (for example, for processing orders, for promotions, and for market research).

期, 而该通知应在当时的当前许可期限届满前至少九十 (90) 天交付给另一方。

许可证终止后, 被许可方必须立即卸载和删除软件, 并销毁所有附带的文档及其所有副本 (包括存储在计算机内存中的副本)。

9 Governing Law and Legal Venue

This Agreement is construed under the Laws of Switzerland, excluding provisions on conflict of laws and also expressly excluding the U.N. Convention of Contracts for the Sale of International Goods. In the event there is a dispute arising out of or in relation with this Agreement or the Software, the legal venue shall be the Commercial Courts of Zurich, Switzerland. Each party hereby waives opposition to jurisdiction in this court and shall allow assignment of the claims to an Affiliate if this is necessary to ensure jurisdiction by this court.

8.1 本协议的任何内容均不影响不能由合同放弃或限制的消费者的任何法定权利。

8.2 如果本协议的任何规定被认为无效或不可执行, 则本协议的其余规定仍然完全有效。

8.3 除非《客户合同》另有明确说明, 否则被许可方同意允许 QUADIANT 及其附属公司存储和使用被许可方的联系信息, 包括姓名、电话号码和电子邮件地址, 无论他们在哪里经营事务。 这些信息将在我们的业务关系中处理和使用, 并可提供给 QUADIANT 的附属公司、承包商和授权业务伙伴, 用于与其集体业务活动相一致的用途, 包括与被许可方沟通 (例如, 处理订单、促销和市场研究)。

10 Definitions

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

- **"Affiliate"** means a legal entity owned by, owning to or under common ownership of either party (in QUADIANT case, including the group entities of Neopost SA), whereby ownership shall be defined as holding a financial interest of at least 51% of shares or capital;

9 管理法律及法律场地



- **“Computer”** means one central processing unit (CPU) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions - for license counting, a virtual machine (computer operating system (guest) running in emulated hardware within a host operating system) is considered to be the equivalent of a physical machine;
- **“Concurrent Users”**, shall mean a defined number of End Users that may access or use the Software at the same time;
- **“Customer Contract”** means an individually agreed and duly signed commercial agreement between Licensee and a QUADIANT Affiliate, or authorized business partner company, that refers to the applicable EULA and contains some sort of License Schedule;
- **“Documentation”** means any published documentation related to the Software as provided by QUADIANT in any form, including any specifications, user manuals, system 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; it shall also mean Licensee’s employees, representatives, consultants, contractors or agents who are authorized to use the Software under a valid License and have been supplied user identifications and passwords by Licensee (or by QUADIANT at Licensee’s request);
- **“Entitlement Management”** means the QUADIANT online license management service hosted on MS Azure public cloud that Licensee may opt in to use via subscription, which measures Licensee’s Use of the Software as configured by the Licensee;

本协议是根据瑞士法律解释的，不包括关于法律冲突的规定，也明确不包括《联合国国际货物销售合同公约》。如果本协议或软件引起或与本协议或软件有关的争议，法律地点应为瑞士苏黎世商业法院。双方特此放弃对本法院管辖权的反对，并在必要时允许将主张移交给关联公司以确保本法院的管辖权。

10 定义

本协议使用的下列术语具有以下含义：

- “附属公司”是指任何一方拥有、被拥有或共同拥有的法律实体(在 QUADIANT 案中，包括 Neopost SA 的集团实体)，根据该案，所有权应被定义为持有至少 51%的股份或资本的财务利益；
- “计算机”是指一个中央处理单元(CPU)，它接受数字或类似形式的信息，并根据一系列指令对特定结果进行操作-对于许可证计数，在主机操作系统内模拟硬件中运行的虚拟机（计算机操作系统(客人)）被认为相当于物理机器；
- “并行用户”是指可同时访问或使用该软件的终端用户的定义数目；
- “《客户合同》”是指被许可方与 QUADIANT 附属公司或授权的商业伙伴公司之间单独商定和正式签署的商业协议，指适用的 EULA，并包含某种许可时间表；



- **“Fees”** means the Fees and charges payable by Licensee in respect of the License as specified in the applicable License Schedule and/or Customer Contract;
- **“GA Release”** means any generally available and publicly released version of QUADIANT Software;
- **“Inspire License Manager”** or **“ILM”** means the QUADIANT license management software licensed by QUADIANT to Licensee and installed on-premise or on Licensee’s hosted environment;
- **“Intellectual Property Rights”** means any 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, as well as all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;
- **“Instance”** shall mean one loaded code of the Software to run, no matter whether running on a single or multiprocessor Computer;
- **“License”** means the use rights for the Software granted to the Licensee for its End Users under this Agreement;
- **“Licensee”** means the person, organization, company or other legal entity entering into the Customer Contract with QUADIANT, who acquires the Software for use, and not for distribution or resale to third parties;
- **“Licensee Data”** means any data, information or material, including personal data and content that Licensee or Licensee’s Users, employees, subscribers or partners may disclose or submit to QUADIANT or upload in the course of using a service;
- **“文档”** 是指 QUADIANT 以任何形式提供的与软件有关的任何已发表的文档, 包括任何规格、用户手册、系统手册、操作手册、编程手册、物理规划指南以及设置或安装指南, 如果有的话;
- **“终端用户”** 是指使用软件任何功能的任何人、程序、过程、产品或硬件; 它还指被许可方的雇员、代表、顾问、承包商或代理人, 他们被授权在有效许可证下使用软件, 并已由被许可方提供用户标识和密码(或应被许可方的要求由 QUADIANT 提供);
- **“《授权管理》”** 是指在微软 Azure 公有云上托管的 QUADIANT 在线许可管理服务, 被许可方可以通过订阅选择使用, 它衡量被许可方使用被许可方配置的软件的情况;
- **“费用”** 是指被许可方按照适用的许可时间表和/或《客户合同》的规定, 就许可证支付的费用;
- **“GA Release”** 是指 QUADIANT 软件的任何通用版本和公开版本;
- **“激励许可管理器”** 或 **“ILM”** 是指由 QUADIANT 授权给被许可方的 QUADIANT 许可证管理软件, 并安装在前提或被许可方的托管环境上;
- **“知识产权”** 是指任何未经许可的发明、专利申请、专利、外观设计权、版权、商标、服务标志、商品名称、域名权、屏蔽工作权、专有技术和其他商业秘密权, 以及所有其他知识产



- **“License Schedule”** means the document in which the commercial details of the Licenses are agreed between the Parties. The License Schedule may be a Customer Contract in itself, or an integrated part thereof;
 - **“Named User”**, which also may be referred to as Seats or SEA, shall mean a specific individual End User authorized to use the Software through the assignment of a single user ID, regardless of whether or not the individual is using the Software at any given time. A non-human End User shall be counted as a Named User in addition to all other End Users, if such non-human End User can access or use any functionality of the Software;
 - **“Open Source License Terms”** means the license terms applicable to Open Source Software components included or used by the QUADIANT Software as listed at: <http://www.quadiant.com/resources/open-sources-licenses>;
 - **“Open Source Software”** means Third-Party Software available without charge for use, modification or distribution as licensed under a separate open source software license;
 - **“Perpetual License”** means a License to use a released Software version under the applicable EULA as agreed in the Customer Contract for an unlimited time;
 - **“Quadiant Cloud Service(s)”** means QUADIANT's online Services as described in the relevant product data sheet(s) and as available at <https://quadiantcloud.com> for the American instance, <https://quadiantcloud.com.au> for the Australian instance, or <https://quadiantcloud.eu> for the European instance;
 - **“Seat”** means a workstation or terminal that can be operated by one End User at a time;
- 权、其衍生产品和世界任何地方类似性质的保护形式;
- “实例”指的是要运行的软件的一个加载代码, 无论是运行在单个或多个处理器计算机上;
 - “许可”是指根据本协议授予被许可方的终端用户的软件使用权;
 - “被许可方”是指与 QUADIANT 签订《客户合同》的人、组织、公司或其他法律实体, 他们获取软件以供使用, 而不是分发或转售给第三方;
 - “被许可方数据”是指被许可方或被许可方的用户、雇员、订户或合作伙伴在使用服务过程中可能披露或提交或上传的任何数据、信息或材料, 包括个人数据和内容;
 - “许可证附表”是指双方就许可证的商业细节达成协议的文件。许可证附表可以是《客户合同》本身, 也可以是其综合部分;
 - “指定用户”也可称为 Seats 或 SEA, 指通过分配单个用户 ID 而授权使用软件的特定个人终端用户, 而不论该个人是否在任何特定时间使用软件。如果非人类终端用户能够访问或使用软件的任何功能, 则除所有其他终端用户外, 非人类终端用户应被视为指定用户;
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 - 「Seat」指一次可由一个终端用户操作的工作站或终端;
 - “站点”是指被许可方在包中安装应用程序的物理位置。约定的地点可以是连续的建筑物、单个建筑物或生产场地。距离不超过 5 公里/3 英里的远程建筑物应被接受为各自站点的一部分, 条件是被许可方对软件的管理和现场控制通过中心站点的一个许可服务器通过现场通信来维护。每个地点最多有两个终端用户的其他偏远地点(如当地机构、家庭办事处)应被视为一个网站的一部分, 条件是它们不在偏远地点经营任何生产, 并且必须通过中央网站的一个许可证服务器通过现场通信维持对软件的控制;



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