

**Document:** General Terms of Use for Quadient Inspire Evolve Services APAC  
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**Classification:** Public



# General Terms of Use for Quadient Inspire Evolve Services

These General Terms of Use (the “Terms” or the “Agreement”) are made between Quadient Australia Pty. Ltd, Level 3, 31 Market Street, Sydney, NSW 2000, Licensor of the QUADIENT Inspire Evolve Services (“QUADIENT” or “Licensor”) and the Licensee as defined in the Customer Contract (“You” or “Licensee”).

These Terms cover the use of the Quadient Inspire Evolve Services on the Quadient Australian cloud instance that is hosted on Microsoft Azure’s primary data centers in Australia.

Please note, that on premise QUADIENT Software and Quadient Cloud Services are covered by separate terms of use, the Quadient Inspire End User License Agreement (“Quadient EULA”) and the Quadient Terms of Use for Quadient Cloud Services, respectively, 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.

As the Licensee of the Quadient Inspire Evolve Services, You represent and warrant that you and all End Users you authorize to use the Quadient Inspire Evolve Services that you subscribed to, shall accept and comply with 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 not a citizen of an embargoed country or prohibited users under applicable export and anti-terrorism laws, regulations and lists.

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

- (1) they are not entitled to **use, download, install, copy, or access** the Services and/or Software; and
- (2) 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.

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 the terms of 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 General Terms of Use, 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 Quadient's trade secrets or is substantially and directly competitive with QUADIENT.

## 2 End User Management

According to the Service You have signed up to, as set forth in the Customer Contract, QUADIENT will provide You with the adequate access log-ins to Your Quadient Inspire Evolve 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, QUADIENT 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 QUADIENT 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 QUADIENT 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 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 Inspire Evolve 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 Inspire Evolve 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 minimum volume commitment, (iii) any additional add-on End Users if applicable, and (iv) platinum support option, if applicable.

## **(i) Annual Service Fee**

The Service Fee is the portion of the annual Fee that covers access to Quadient Inspire Evolve Services per line of business in the Licensee organization. It includes the defined number of environments and base End Users as defined in the Service Schedule of the Customer Contract.

## **(ii) Annual Minimum Volume Commitment (AMVC)**

The Licensee agrees to an annual minimum volume commitment with Quadient as set forth in the Service Schedule based on one of the following two volume models, either (a) a blended rate (a single price for all communication types regardless of output channel, i.e. one volume that covers PDF, SMS, and email together) or (b) a channel-specific rate and volumes for each communication type by output type purchased. In either case, the AMVC is agreed irrespective of actual consumption, and any remaining volume is lost at the end of the year. The original AMVC level resets for the following year, unless a higher AMVC is agreed upon with the Licensee in writing (e.g. via amendment agreement, change request or purchase order).

For clarity:

Where the Licensee exceeds the AMVC within a year, Quadient will not stop the Service, but automatically provide this additional volume for the Licensee and charge the respective Fee for the next volume tier. This tier will be the next tranche of volume available under the Agreement (e.g. 500,000 communications) at the Fee defined in the Service Schedule.

Where the Licensee has exceeded the AMVC and one or more additional tranches of volume have been automatically purchased as a one-time event, Licensee AMVC resets to the original contractually agreed amount for the following year.

The AMVC is only adjusted to the new tranche of volume rate for the following year, if the Licensee contractually commits to the higher tranche of volume for the following year.

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

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

The add-on End User Fee only occurs where the Licensee requests additional End Users above the pre-determined base number of Concurrent Users that is included in each annual Service Fee.

## **(iv) Platinum Support Option**

The platinum support option occurs where the Licensee requests additional support as described in the Quadient Inspire Evolve Platinum Support Services document, which can be found at [www.quadient.com/eula](http://www.quadient.com/eula)

The platinum support Fee is calculated against the overall Fee.



## 4 Service Conditions, Payment and Compliance

### 4.1 General Service Conditions

#### a) Hosting

The Licensee acknowledges that the Quadient Inspire Evolve 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 Inspire Evolve 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 Quadient Inspire Evolve Services Terms of Use and subject to a Regional jurisdiction and data protection regime accordingly. The Terms of Use mentioned here are applicable to the Australian instance only.

Quadient Inspire Evolve 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 Inspire Evolve 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.

Technical specifications and parameters can be found in the applicable Specific Service Conditions for each Service.

QUADIENT reserves the right to momentarily interrupt the Service for planned maintenance and/or security related fixes as described in section (d) Maintenance and Release Schedule.

#### c) Service Availability

QUADIENT provides for a service availability of 99.90% 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 intervals and reported by our monitoring system, as further described in the Customer Contract.

d) Continuous Improvement

Quadient is continually working on further developing and improving the Services. Cloud Production Ready (CPR) releases deliver improvements or new functionality to all customers and are deployed regularly according to the release plan, typically once every two (2) months. Quadient will inform the Licensee of the start and end of the migration period one week in advance, where reasonably possible and as chosen in the End User notification center (e.g. by email to registered email addresses for each End User), detailing the release description, changes and other relevant release notes. Generally, a migration period of up to one (1) month is made available for the Licensee to test the latest CPR release and then migrate to it. After the migration period, the Services will automatically be migrated to the latest CPR release version.

e) Maintenance Hotfixes

Maintenance hotfixes generally fall into one of the following categories:

(i) Hotfixes

Hotfixes are a part of the regular maintenance and are generally announced one week before their installation. Hotfixes do not have any exact plan or cadence regarding how they are installed. However, Quadient follows a continuous improvement approach for the operated Cloud solution and regularly installs hotfixes, typically once a month.

(ii) Urgent Hotfixes

Urgent Hotfixes apply to the current CPR version and typically fix a specific urgent issue that impacts the Licensee use or is security related. An urgent hotfix is installed immediately after it is released and tested by the Quadient development department and is not announced to the Licensee prior to its rollout.

f) 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 a separate data processing agreement has been signed by the Licensee and submitted to Quadient as set forth in 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.

g) 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.

h) 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.

i) Business Continuity and Disaster Recovery

In respect of the provision of the Services, Quadient shall maintain, regularly update and test Business Continuity (BC) and Disaster Recovery (DR) plans. These plans will cover assets and processes which are identified as critical to the provision of the Services by Risk Assessment (RA) and Business Impact Analysis (BIA). Quadient shall keep these BC/DR plans up to date by reviewing and testing them at least once each year, in order to ensure that they remain adequate. Quadient shall make all of their BC/DR plans available upon request.

## 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:

- Generate On Demand (see Specific Service Conditions for Generate On Demand)
- Content Author (see Specific Service Conditions for Content Author)
- Front Office (see Specific Service Conditions for Front Office)

## 4.3 Payment Terms

You can pay the applicable Service Fee via invoice from QUADIENT or its local Affiliates, or Quadient authorized resellers.

The Licensee agrees to provide QUADIENT, 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, QUADIENT 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 agrees that the Service or any part thereof will not be accessed from, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other applicable export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Service or any part thereof is identified as an export-controlled item under the Export Laws, the Licensee represents and warrants, not to be a citizen, or otherwise located within, an embargoed nation (please always check the actual US Export Administration Regulation Website) and not otherwise to be prohibited under the Export Laws from accessing the Service or receiving the Software. 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), Quadient 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





Quadient will comply with all laws and regulations applicable to Quadient generally as a supplier of the Services, including, but not limited to: anti-bribery and corruption laws; competition laws; and data privacy laws. However, Quadient 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) 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 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 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 the End User Terms and 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 Inspire Evolve 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.

## 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 [university.quadient.com](https://university.quadient.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 Section 4.1 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) QUADIANT 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, QUADIANT provides no remedies or warranties, whether expressed or implied, for any content packages, content samples or workflow samples. QUADIANT 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 QUADIANT, its suppliers and resellers or employees shall create a warranty for QUADIANT or in any way increase the scope of any warranty provided herein.

d) QUADIANT 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"), QUADIANT 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 QUADIANT normal communication channels such as via QUADIANT's release information portal. If You do not agree with any changes made to the Service by QUADIANT, you may terminate the Service.

e) 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.

f) 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.

g) QUADIANT's 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 reasonable and industry best practices 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.

## 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 4.1 a) or 4.3 elected by QUADIANT, 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.

QUADIANT 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

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.

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 Section 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 Service as a consumer as defined under the Australian Consumer Law. Notwithstanding any other term of this Agreement, the Service is subject to non-excludable consumer guarantees under the Australian Consumer Law. Where QUADIENT is permitted to limit its liability for a breach of a consumer guarantee, then, unless the Licensee is able to establish that it is not fair and reasonable for QUADIENT to do so, QUADIENT liability to the Licensee is limited to resupplying the Service or payment of the cost of having the Service 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)

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 these terms and our contractual rights and obligations.

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) QUADIENT 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 Service 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.

Please note that Quadiant requires a Data Processing Agreement for Quadiant Inspire Evolve Services. As for this Service, Quadiant will process the personal data as a Processor on behalf of, and under the instruction of, the Licensee (Controller). In case you have not received the document from Your Quadiant Sales Representative, please download the Data Processing Addendum for Quadiant Inspire Evolve Services from [www.quadiant.com/eula](http://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 the Licensee and QUADIANT have signed such a separate Data Processing Agreement (cf. Art. 28 GDPR), such agreement shall prevail over these Terms or the published End User Privacy Notice in case of any doubt or discrepancies.

## 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 Force Majeure

Quadiant shall not be liable for any delays or failures in performance resulting from Force Majeure to the extent and duration of the event(s) causing the failure or delay in performance. Notice of Quadiant's failure or delay in performance due to 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 Force Majeure shall be tolled at least for the duration of such Force Majeure unless extended by 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 as if this Agreement had expired.

## 9 Miscellaneous

- 9.1 Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- 9.2 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.
- 9.3 You agree to comply with all applicable export and import laws and regulations, including the US Export Regulations.
- 9.4 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 section shall be void.

## 10 Governing Law and Legal Venue

This Agreement is construed under the laws of New South Wales, Australia excluding provisions on conflict of laws and also expressly excluding the U.N. Convention of Contracts for the Sale of International Goods. 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.

## 11 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 Inspire Evolve 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 Inspire Evolve Services and (b) failover Cluster for the group of Virtual Machines that will be available to run all production and non-production Inspire Evolve Services in the event of a failure of the primary Cluster.
- **"Concurrent Users"** shall mean a specific number of individuals authorized to use the Service through the assignment of Credentials (as defined above in clause 2. 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 QUADIENT 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 Licensee content that the Licensee or the Licensee’s End Users, employees, subscribers or partners may disclose or submit to QUADIENT 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 QUADIENT via a secure Internet connection for processing, delivery to a recipient and/or electronic archiving.
- **“Documentation”** means any published documentation provided by QUADIENT 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 QUADIENT 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.
- **“Instance”** is an Inspire Evolve 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 organisation 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.
- **“Service Schedule”** means the document in which the commercial details of the Software or Service Subscriptions are agreed between the Parties. The Service Schedule may be a Customer Contract in itself or an integrated part thereof.
- **“Quadient Cloud Service(s)”** means QUADIENT's online services as described in the relevant product or service descriptions and as found at: [quadientcloud.eu](https://quadientcloud.eu)
- **“Quadient Inspire Evolve Service(s)”** or **“Service(s)”** means QUADIENT’s Software as a Service (SaaS) as described in the relevant Specific Conditions for each of the services available at: [quadientcloud.eu](https://quadientcloud.eu)
- **“Region”** (and Regional accordingly) means the geographical location of the Microsoft Azure datacentre/s that houses the Inspire Evolve 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 Inspire Evolve Services that 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 Inspire Evolve Services, they would be considered tenants within the Licensee’s Service account.
- **“Third-Party Software”** or **“Third-Party Services”** means in the Quadient Inspire Evolve Services any third-party software or service components used in connection with the Software or the delivery of Quadient Inspire Evolve Services (such as Microsoft Azure and Mailjet) 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 Inspire Evolve 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.
- The terms, **‘personal data’**, **‘processing’**, **‘supervisory authority’**, **‘data subject’**, **‘Processor’**, **‘Controller’** and **‘transfer’** shall have the same meaning as defined in the GDPR.
- **“Virtual Machine”** is a logical server within a Cluster, that houses and runs the Quadient Inspire Evolve Services. Virtual Machines can either be: (a) shared Virtual Machine(s) for 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 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.