

思博伦通信公司 软件许可协议
SPIRENT COMMUNICATIONS
SOFTWARE LICENSE AGREEMENT

本软件许可协议（本“协议”）由(i)思博伦通信公司(Spirent Communications, Inc.)及其关联公司（统称为“思博伦”）和(ii)您（即用户，下称“客户”）签订，双方同意依法受本协议约束，基于正当及有效对价，双方特此确认并约定如下：如果您代表某一实体接受本协议的条款，则您和该实体陈述并保证，您有权约束该实体遵守本协议，在这种情况下，“客户”指该实体。

This Software License Agreement (“Agreement”) is made by and between (i) Spirent Communications, Inc. and its affiliates (collectively “Spirent”), and (ii) you, the user (“Customer”), who, intending to be legally bound and for good and valuable consideration hereby acknowledge and agree as follows. If you are accepting the terms of this Agreement on behalf of an entity, you and such entity represent and warrant that you have the authority to bind such entity to this Agreement, and, in such event, “Customer” will refer to such entity.

本协议适用于客户对思博伦软件的使用，包括思博伦硬件中的嵌入式或预安装软件（“软件”）。除非思博伦和客户另行签署了协议，否则客户点击“我接受”或运行、下载、安装、注册或以其他方式使用软件，即表示客户明确确认并同意本协议具有约束力，且客户特此同意本协议的条款。如果客户不接受本协议所载所有条款和条件，则客户不得运行、下载、安装、注册或以其他方式使用软件。

THIS AGREEMENT GOVERNS CUSTOMER’S USE OF SPIRENT SOFTWARE, INCLUDING EMBEDDED OR PRE-INSTALLED SOFTWARE IN SPIRENT HARDWARE, (THE “SOFTWARE”), UNLESS SPIRENT AND CUSTOMER HAVE EXECUTED A SEPARATE AGREEMENT THEREFORE BY CLICKING “I ACCEPT” OR OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE SOFTWARE, CUSTOMER IS EXPRESSLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, CUSTOMER MAY NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THE SOFTWARE.

1. 软件许可
1. SOFTWARE LICENSE

1.1 **许可权。**根据本协议的条款和条件，思博伦向客户授予有限、非排他性、不可转让的

1.1 **Licensed Rights.** Subject to the terms and conditions of this Agreement, Spirent grants to Customer a limited, nonexclusive, nontransferable 许可（除第1.4条规定的情况外，不授予分许可权），允许客户仅出于内部业务目以目标代码形式使用软件，且客户对软件的使用必须符合(a)思博伦通常向其客户提供的有关软件的技术规范文档（“文档”），(b)本协议，以及(c)相关思博伦报价单（“报价单”）中规定的任何条款、用户、许可证数量或其他限制，或者，如果此类报价单中未作明确规定，则为截至报价日期，思博伦价目表中所列部件编号的许可证数量、用户人数和/或测试会话次数。被指定为“订阅许可证”的许可证的期限为十二(12)个月（报价单中另行指定的除外），并应按照当时的价格自动续订相同的期限，除非任何一方在当时期限到期前三十(30)天或更早向另一方发出取消订阅通知。软件还包括根据本协议向客户提供的软件产品的任何文档以及任何维护和支持版本、改进、增强和其他更新。对于软件的每个许可证，报价单可以指定以下许可类型或其缩写：

license, without right of sublicense except as set out in Section 1.4, to use, solely for Customer’s internal business purposes, the Software, in object code form only and only in accordance with (a) the technical specification documentation generally made available by Spirent to its customers with regard to the Software (“Documentation”), (b) this Agreement and (c) any term, user, number of licenses or other restrictions set forth in the applicable Spirent quotation (“Quote”) or, if not expressly specified in such Quote, the number of licenses, users and/or test sessions for the part numbers listed in Spirent’s price list as of the date of such Quote. Licenses designated as “subscription” licenses are for a twelve (12) month period only (unless otherwise designated in the Quote) and shall automatically renew for subsequent periods of the same length at the then-current price unless either party provides the other party with notice of cancellation thirty (30) days or more prior to the expiration of the then-current term. Software shall also include any Documentation and any maintenance and support releases, improvements, enhancements, and other updates of the same Software product provided to Customer under this Agreement. The Quote may specify the following license type for each license of the Software, or abbreviation thereof:

全球浮动型：客户可在任何数量的内部系统上安装软件，且客户的任何员工、顾问或代理人可代表客户使用软件，但在任何时候，同时执行的实例不得超过规定的最大数量。

Global Floating: Customer may install the Software on any number of internal systems and any of Customer’s employees, consultants or agents may use the Software on behalf of Customer, provided however, no more than the specified maximum number of simultaneous instances may be executed at any one time.

浮动型：客户可在任何数量的内部系统上安装软件，且客户的任何员工、顾问或代理人可代表客户使用软件，但前提是(i)在任何时候，同时执行的实例不得超过规定的最大数量，以及(ii)不得将软件安装在指定司法管辖区以外的任何系统上或供指定司法管辖区以外的任何用户使用。

Floating: Customer may install the Software on any number of internal systems and any of Customer’s employees, consultants or agents may use the Software on behalf of Customer, provided however, that (i) no more than the specified maximum number of simultaneous instances may be executed at any one time, and (ii) the Software may not be installed on any system or used by any user outside of the specified jurisdiction(s).

指定型：客户只能允许完成注册的唯一指定个人使用软件的每个许可实例，且只能将软件安装在此等个人使用的合理数量的系统上。指定型许可证必须以个人实际姓名注册，不得由多人共享或分配给某一工作岗位。在许可证与个人关联后，未经思博伦事先明确书面同意，不得将该许可转让给其他个人。

Named: Customer may only permit one registered, unique named individual to use each licensed instance of the Software and may only be installed on a reasonable number of systems utilized by such individuals. Named licenses must be registered with the individual’s actual name and may not be shared by individuals or allocated to a job function. Once a license is associated with an individual, the license may not be transferred to another individual without the express prior written consent of Spirent.

第 1 页，共 7 页

受限-专有文件

RESTRICTED-PROPRIETARY

本文所含信息是思博伦专有信息，除非达成书面协议，否则不得在思博伦之外使用和披露。

Version: 0822.2

The information contained herein is the proprietary information of Spirent and is not for use or disclosure outside Spirent except under written Agreement.

节点锁定型: 客户可在特定系统上安装软件的每个许可证，而该系统是唯一可以访问该软件实例的系统。在许可证与特定系统关联后，未经思博伦事先书面同意，不得将该许可证转移至其他系统。

Node Locked: Customer may install each license of the Software on one specific system and that system is the only one which may access that instance of the Software. Once a license is associated with a specific system, the license may not be transferred to another system without Spirent's prior written consent.

预安装软件。如果客户购买的思博伦硬件上预安装了软件，则客户可根据本协议的条款，按照软件安装在该思博伦硬件上的原样、在该思博伦硬件的正常预期用途所需的范围内使用软件。此外，客户仅可将软件与搭配软件的硬件配合使用。

Pre-installed Software. To the extent that the Software is pre-installed on Spirent hardware acquired by Customer, Customer may use such Software solely as installed on and to the extent necessary for the normal and intended uses of, such Spirent hardware, subject to the terms of this Agreement. Further, Customer may only use the Software in conjunction with the hardware with which it was supplied.

托管服务。由思博伦作为服务托管并以订阅方式提供的软件，除非适用的订单附表中另有规定。

Hosted Services. Software that is hosted as a service by Spirent and is provided on a subscription basis, unless otherwise stated in the applicable Order Schedule.

思博伦和客户可以商定报价单中列出的其他许可证类型。如果报价单中未指定许可证类型，则软件的许可形式可以是一年订阅期的单一指定型许可证。

Spirent and Customer may agree on alternate types of licenses as set forth in a Quote. If no license type is specified in a Quote, the Software may be licensed as a one-year subscription of a single Named license.

1.2 对许可权的限制。客户确认，软件的组件受思博伦或其许可方拥有的版权约束，软件是许可给客户，而非出售给客户。客户不得修改或允许任何其他人修改软件或其任何模块或其他部分。除非行使本协议明确授予的权利有需要，否则客户不得复制或拷贝软件或其任何模块或其他部分，也不得允许其他任何人这样做，但为了替换旧版本或创建存档副本的情况除外。任何此类副本应载有与思博伦在本协议下向客户提供的软件副本相同的版权声明和专有标记。除了本协议中的其他限制以及适用法律或第三方许可可能要求或不允许的情况以外，客户不得，也不得允许他人：(i) 直接或通过第三方创建软件的衍生品、分发、传输、许可或以其他方式转让本软件；(ii) 对软件或软件的任何组件进行逆向工程、反汇编、反编译或以其他方式企图获得软件的源代码；(iii) 在服务局环境中使用软件，也不得将软件用于处理客户内部数据以外的任何数据；或(iv) 出于任何非法或恶意目的使用软件，或访问非客户所有或客户未获得明确许可的任何信息；(v) 篡改或企图规避或禁用任何许可证密匙；

1.2 **Restrictions on Licensed Rights.** Customer acknowledges that the components of the Software are subject to copyrights owned by Spirent or its licensors and the Software is licensed, and not sold, to Customer. Customer is prohibited from modifying or permitting anyone else to modify the Software or any module or other portion thereof. Except as necessary to exercise the rights expressly granted in this Agreement, Customer is prohibited from copying or duplicating, or permitting anyone else to copy or duplicate the Software or any module or other portion thereof, other than for purposes of replacing a worn copy or creating an archive copy. Any such copy shall contain the same copyright notice and proprietary markings as the copy of the Software furnished by Spirent to Customer hereunder. In addition to the other restrictions in this Agreement, and other than as may be required or impermissible by applicable law or third-party licenses, Customer shall not, and shall not permit others to: (i) create derivative works, distribute, transmit, license or otherwise transfer the Software directly or through third parties; (ii) reverse engineer, disassemble, decompile the Software or any component of the Software or otherwise attempt to obtain the source code of the Software; (iii) use the Software in a service bureau environment nor use the Software to process any data other than Customer's own internal data; or (iv) use the Software for any illegal or malicious purpose or to access any information not owned by Customer or for which it does not have express permission to access; (v) tamper with, or attempt to circumvent or disable, any license key;

(vi) 将软件用于非客户所有或控制的任何网络、设备或应用程序；或(vii)发布任何关于测试场景的信息或详情，或将测试场景作为免费软件/免费下载并在网上提供。软件可能包含某些方法或机制，在客户违反软件许可或软件许可终止时，思博伦可使用这些方法或机制来禁止或终止客户对软件的访问或使用。本协议概不限制或约束根据适用于本协议下提供的开源或其他第三方软件的许可条款授予客户的权利。

(vi) use the Software on any networks, devices or applications not owned or controlled by the Customer; or (vii) publish information or details of any test scenarios or make test scenarios available online as freeware/free downloads. The Software may contain certain devices or mechanisms that Spirent may use to disable or terminate Customer's access to or use of the Software upon the breach or termination of Customer's license thereto. Nothing in this Agreement limits or restricts the rights granted to Customer under the license terms applicable to the open source or other third-party software provided hereunder.

1.3. **美国政府用户。**本软件属于相关采购法规定义范围内的商业计算机软件和商业计算机软件文档。如果由美国政府的民事机构或其代表采购，则软件将作为“通常向公众提供的许可”受本协议条款的约束，如美国《联邦采购条例》第48篇第1章第12.212部分及其后续条款所述。如果由美国国防部的机构或其代表采购，则软件将作为“通常向公众提供的许可”受本协议条款的约束，如美国《联邦采购条例》第48篇第1章第227.7202部分、《国防联邦购置条例补充》及其后续条款所述。如果思博伦收到美国政府任何机构客户的请求，要求思博伦就软件提供上述权利以外的权利，思博伦将立即自行决定接受或拒绝此类请求。

1.3. **U.S. Government Users.** The Software is commercial computer software and commercial computer software documentation within the meaning of the applicable acquisition regulations. If acquired by or on behalf of a civilian agency of the United States government, the Software will be subject to terms of this Agreement as a "license customarily provided to the public" as specified in 48 C.F.R. Ch. 1 Part 12.212 of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of units of the Department of Defense, it will be subject to the terms of this Agreement as a "license customarily provided to the public" as specified in 48 C.F.R. Ch. 1 Part 227.7202, DFAR Supplement and its successors. If Spirent receives a request from any Customer agency of the U.S. Government to provide Software with rights beyond those stated above, Spirent will promptly, in its sole discretion, accept or reject such request.

1.4 **分许可。**第 1.1 条中授予的许可未授予分许可权，但客户可以向系统集成商或其他第三方顾问或承包商授予使用软件的分许可，但仅
第 2 页，共 7 页

受限-专有文件

RESTRICTED-PROPRIETARY

本文所含信息是思博伦专有信息，除非达成书面协议，否则不得在思博伦之外使用和披露。

Version: 0822.2

The information contained herein is the proprietary information of Spirent and is not for use or disclosure outside Spirent except under written Agreement.

限于该等系统集成商、第三方顾问或承包商向客户提供服务的目的，并且前提是 (a) 相关第三方以及此类使用范围已获得思博伦的书面批准（在报价单中或后续文档中），(b) 相关第三方未超出思博伦批准的使用范围，(c) 相关第三方无权授予使用软件的分许可，及 (d) 该第三方使用软件（就许可证的数量限制而言，应视为客户使用）不会导致客户超出就许可使用设定的任何数量限制。客户承诺确保任何此等第三方全面遵守本许可的所有条款，如同其是客户本身一样，但第三方不得将软件用于其内部业务目的或向客户以外的任何人提供服务。

1.4 Sublicensing. The licenses granted in Section 1.1 are granted without right of sublicense, save that the Customer may grant sublicenses to systems integrators or other third party consultants or contractors to use the Software solely for the purposes of providing services to the Customer and PROVIDED (a) the relevant third party and the scope of such use have been approved in writing by Spirent (either in the Quote or in subsequent documentation), (b) the relevant third party does not exceed the scope of use approved by Spirent, (c) the relevant third party has no power to sublicense the use of the Software, and (d) the use by the third party (which shall be counted as use by the Customer for the purposes of any numerical restrictions on the license) does not cause the Customer to exceed any numerical limits on permitted use. The Customer undertakes to ensure that any such third party complies with all the terms of this license in all respects as if it were the Customer itself, save that the third party must not use the Software either for its own internal business purposes or to provide services to any person other than the Customer.

2. **发票/付款** 2. **INVOICING/PAYMENTS**

2.1 本条的适用。您（作为客户）理解并同意，如果由于您与经销商的业务关系而有权使用软件，您应向经销商支付使用软件的费用（定义见下文）和任何其他应付款项。所有应向经销商或思博伦（视情况而定）支付的费用均按报价单中规定的条款到期应付。

2.1 Application of this Section. You, the Customer understand and agree that, if and to the extent use of the Software is made available as a result of your business relationship with a reseller, you shall pay the reseller the Fees(defined below) and any other amounts owing for use of the Software. All Fees payable to the reseller or Spirent, as the case may be are due and payable pursuant to the terms stipulated in the Quote.

2.2. 付款后取得许可证。对于本协议下授予的软件许可证，客户须支付思博伦当时对软件的标价或报价单中规定的其他金额（“费用”）。

2.2. License subject to Payment. The license of the Software granted under this Agreement is subject to the payment of Spirent's then-current list price for the Software or such other amount as set out in the Quote ("Fees").

2.3. 支付费用。客户应在思博伦开具发票之日起三十(30)天内向思博伦支付软件和任何相关软件或服务的费用。思博伦保留根据客户的付款记录和财务状况制定或更改信用条款的权利。如果客户希望扩大其许可证范围，则应在客户许可证范围扩大生效日期之前向思博伦支付商定的额外许可证费用。此类发票应根据报价单开具，或者，如果无报价单，则在软件交付或下载（以较早者为准）后开具。任何未在上述三十(30)天内支付的款项应按客户所在国家或地区允许的最高利率或每月百分之二(2%)（以较低者为准）计息。客户支付逾期付款的利息不得妨碍思博伦行使本协议或适用法律规定的任何其他权利。除适用法律要求或第5.2.1条中规定的情况外，所有费用均不可退款和取消，并将以美元（或报价单中列明的货币）支付。

2.3. Payment of Fees. Customer shall pay Spirent the Fees for the Software and any associated software or services net thirty (30) days from the date of Spirent's invoice for the same. Spirent reserves the right to establish or change credit terms based on Customer's payment history and financial condition. If Customer wishes to expand the scope of its license, additional agreed-upon license fees shall become due and payable to Spirent prior to the effective date of any expansion of the scope of the Customer's license. Such invoice shall be issued in accordance with the Quote or absent such a Quote upon the delivery or download of the Software whichever is the earlier. Any amounts not paid within such thirty (30) day period shall bear interest at the lesser of the maximum rate allowable in the Customer's state or two percent (2%) per month. Customer's payment of such interest on late payments shall not prevent Spirent from exercising any other rights under this Agreement or applicable law. Except as required by applicable law or as set forth in Section 5.2.1., all Fees are non-refundable and non-cancelable and will be paid in US dollars (or in the currency stated in the Quote).

2.4. 税款。本协议所述的所有金额均不包括所有联邦、州、市或其他政府消费税、销售税、增值税、使用税、个人财产税和开业许可税、预扣税以及现在或将来生效的其他税项，因此，除对思博伦的净收入征收的任何税款外，客户需支付额外费用，其金额等于思博伦可能按要求收取或缴纳的任何软件相关税款的金额。

2.4. Taxes. All amounts described herein are exclusive of all federal, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding obligations and other levies now in force or enacted in the future and accordingly, all Fees are subject to an increase equal to the amount of any tax Spirent may be required to collect or pay in connection with the Software, other than any tax on the net income of the Spirent.

3. **所有权；机密信息**

3. **PROPRIETARY RIGHTS; CONFIDENTIAL INFORMATION**

3.1. 软件的所有权。除本协议规定的有限许可外，软件的任何和所有权利、所有权和权益以及软件的知识产权和专有权，均不得转移至客户，仍为思博伦或其许可方的专有财产。

3.1. Ownership of Software. Other than the limited licenses set forth in this Agreement, any and all rights, title, and interest in and to the Software, and the intellectual property and proprietary rights to the Software, shall not pass to Customer, but shall remain the exclusive property of Spirent or its licensors.

3.2. 思博伦机密信息。客户确认，以下类别的信息构成思博伦机密信息：(a) 软件的所有组件；(b) 本协议的条款和条件；以及 (c) 思博伦披露的可被合理理解为机密或专有的其他信息。但是，思博伦机密信息不包括：(a) 并因非客户作为或不作为而成为公共领域一部分的信息；(b) 在披露之前客户已经合法掌握的信息，并且并非是由客户直接或间接从思博伦或软件获得的；(c) 不受披露限制的第三方合法披露给客户的信息；或 (d) 客户独立开发的信息。客户同意，在向其披露思博伦机密信息后的十(10)年内，对所有此类思博伦机密信息严格保密，不向他人披露（或允许他人披露）此类信息，也不以商业或其他任何方式使用此类信息，但根据本协议行使其权利的情况除外。客户不得向未经思博伦书面授权的接收人披露任何思博伦机密信息，或将机密信息用于本协议未明确授权的任何目的。客户只能在本协议明确允许的情况下，在“按需知密”的基础上，向其员工、顾问或代理人披露思博伦机密信息，且前提是此等第三方接受与所披露信息相关的条款和条件，而该等条款和条件规定的限制至少与本协议中规定的限制相同。如果法律或有管辖权的法院强制要求客户披露思博伦机密信息，则客户应立即书面通知思博伦，并配合思博伦寻求保护令或其他适当救济，相关费用由思博伦承担。如果最终需要披露，客户只应披露法律要求的部分思博伦机密信息，并尽合理努力确保该部分信息得到保密处理。

3.2. **Spirent Confidential Information**. Customer acknowledges that the following categories of information constitute Spirent Confidential Information: (a) all components of the Software; and (b) the terms and conditions of this Agreement; and (c) other information disclosed by Spirent that would reasonably be understood to be confidential or proprietary. Spirent Confidential Information will not include, however, any information which: (a) is or becomes part of the public domain through no act or omission of Customer; (b) was in the Customer's lawful possession prior to the disclosure and had not been obtained by Customer either directly or indirectly from Spirent or the Software; (c) is lawfully disclosed to Customer by a third party without restriction on disclosure; or (d) is independently developed by the Customer. For a period of ten (10) years from and after disclosure of Spirent Confidential Information to Customer, Customer agrees to hold all such Spirent Confidential Information in strict confidence and agrees not to disclose (or permit others to disclose) it to others or use it in any way, commercially or otherwise, except in exercising its rights pursuant to this Agreement. Customer shall not disclose any Spirent Confidential Information to a recipient not authorized in writing by Spirent or use the Confidential Information for any purpose not expressly authorized by this Agreement. Any disclosures by Customer of Spirent Confidential Information shall only be to Customer's employees, consultants, or agents as expressly permitted hereunder on a "need to know" basis for the purposes of this Agreement and subject to such third parties' acceptance of terms and conditions with respect to the disclosed information at least as restrictive as those set forth in this Agreement. If Customer is compelled by law or a court of competent jurisdiction to disclose Spirent Confidential Information, Customer will promptly notify Spirent in writing and will cooperate at Spirent's expense in seeking a protective order or other appropriate remedy. If disclosure is ultimately required, Customer will furnish only that portion of Spirent Confidential Information that is legally required and will exercise reasonable efforts to obtain assurance that it will receive confidential treatment.

3.3. **衡平救济**。被许可方确认，任何违反其与思博伦或其许可方的专有权或机密信息相关的义务的行为，均可能导致思博伦及其许可方遭受无法弥补的损害，而法律救济对此类损害来说可能并不充分，并且除了其他可以获得的救济外，思博伦及其许可方还有权获得衡平救济，而无需支付任何保证金。

3.3. **Equitable Relief**. Licensee acknowledges that any breach of its obligations with respect to the proprietary rights or confidential information of Spirent or its licensors may cause Spirent and its licensors irreparable injury for which there would be inadequate remedies at law, and Spirent and its licensors will be entitled to equitable relief, in addition to all other remedies available to it, without the payment of any bond.

4. **终止**

4.1. **TERMINATION**

4.1. **终止**。在以下情况下，思博伦可立即终止本协议：(a) 客户资不抵债，提交或已被提交破产申请，或停止经营；或 (b) 客户违反本协议的条款。

4.1. **Termination**. This Agreement may be immediately terminated by Spirent in the event: (a) Customer becomes insolvent, files or has filed against it a petition in bankruptcy, or ceases doing business; or (b) the Customer breaches the terms this Agreement.

4.2. **终止后的客户义务**。本协议因任何原因终止后，(a) 本协议下授予客户的所有许可证应立即终止，并且思博伦可禁止客户访问软件，(b) 客户应停止使用软件和其他思博伦机密信息及其任何部分，并将软件以及其持有的任何其他思博伦机密信息归还给思博伦，或由思博伦自行选择销毁软件和此类其他思博伦机密信息，包括所有副本或部分副本，并且客户应向思博伦书面证明其未保留任何思博伦机密信息，及 (c) 所有未偿费用应立即到期应付。以下条款在本协议到期或终止后继续有效：第 1.2、2、3、4.2、5、8 和 9 条。

4.2. **Customer Obligations Upon Termination**. Upon termination of this Agreement for any reason, (a) all licenses granted to Customer hereunder shall immediately terminate and Spirent may disable access to the Software, (b) Customer shall discontinue use of the Software and the other Spirent Confidential Information, and any portion thereof, and return the Software and any and all other Spirent Confidential Information in its possession to Spirent, or, at Spirent's option, destroy the Software and such other Spirent Confidential Information, including all copies or partial copies thereof, and shall certify to Spirent in writing that Customer has retained none of the Spirent Confidential Information, and (c) all outstanding Fees shall become due and payable immediately. The following Sections will survive the expiration or termination of this Agreement: 1.2, 2, 3, 4.2, 5, 8, and 9.

5. **有限保证和赔偿；唯一救济**

5.1. **LIMITED WARRANTIES AND INDEMNIFICATION; EXCLUSIVE REMEDIES**

5.1. **软件**。思博伦向客户保证，在将软件交付给客户之日起九十 (90) 天内，或报价单中列明的其他期限内，如果客户按照本协议使用软件，则软件的运行将实质上符合思博伦可能发布的软件规范。本协议列明的保证不适用于以下原因导致的任何与随附文档或规范的实质性偏差：(a) 除思博伦以外的任何人修改软件或根据客户指示修改软件，(b) 将软件用于预期目的以外的任何目的，(c) 将软件与任何其他软件或设备结合使用，且如果没有此类结合使用，本可以避免该索赔，(d) 对软件的滥用或不当使用，(e) 客户未使用思博伦提供的最新版本软件，或 (f) 任何硬件故障。客户明确确认，由于计算机软件的复杂性，思博伦不能也不保证软件中包含的功能将满足特定要求，或者软件的运行不会中断或不会出现错误。在上述保证期内，对于任何违背上述保证的情况，如果客户在发现不合格情况后十 (10) 天内以书面形式通知思博伦，并且思博伦能够核实该情况，则思博伦将自行承担费用采取以下措施（作为思博伦的全部责任以及客户的唯一救济）：(i) 纠正不合格情况，或 (ii) 将不合格的软件更换为符合思博伦当时公布的规格的软件。

5.1. **Software**. For a period of ninety (90) days from the date of delivery of the Software to Customer, or such other period as stated in the Quote, Spirent warrants to Customer that the Software, if used in accordance with this Agreement, will operate in material conformity with the specifications for the Software which Spirent may publish. The warranties set forth herein do not apply to any material deviation from the accompanying documentation or specifications which results from (a) modification of the Software by anyone other than Spirent or in accordance with Customer's instructions, (b) use of the Software for any purpose other than intended, (c) use of Software in combination with any other software or devices, if such claim would have been avoided but for such combination, (d) any misuse or incorrect use of the Software, (e) Customer's failure to use the latest release of the Software provided by Spirent, or (f) any hardware malfunction. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, SPIRENT CANNOT AND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET A SPECIFIC REQUIREMENT OR THAT THE OPERATION OF THE SOFTWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE. During the aforementioned warranty period, Spirent will, at Spirent's expense and as its entire liability (and Customer's exclusive remedy) for any breach of the warranty and provided Customer has notified Spirent in writing of the nature of the non-conformity within ten (10) days of Customer's discovery of the non-conformity and provided Spirent is able to verify such non-conformity: (i) correct the non-conformity or (ii) replace the non-conforming Software with Software meeting Spirent's then-current published specifications.

硬件。如果思博伦向客户提供任何硬件，则思博伦保证该硬件将符合订单上的说明，将转让有效的所有权，并且在交付时不存在任何法定担保权益、其他留置权或产权负担。此外，思博伦保证，除非另行说明，否则自交付之日起十二 (12) 个月内，在正常使用和正常条件下，其提供的硬件不会出现重大材料和工艺缺陷（“硬件保证期”）。在保证期内，思博伦将自行决定维修或更换任何有缺陷的硬件或软件，或者向客户的账户发放金额等于所付价格的抵免额度，但前提是客户遵循思博伦的标准保证程序。除非在保证期内向思博伦发出书面通知，否则任何对材料缺陷的索赔视为放弃。思博伦保留在合理通知后随时更改其保证和服务政策的权利，且无需因此承担责任。

Hardware. To the extent that Spirent is supplying Customer with any hardware Spirent warrants that the hardware will conform to the description on the face of the order, that it will convey good title thereto, and that it will be delivered free from any lawful security interest or other lien or encumbrance. Further Spirent warrants that the hardware it supplies will be free from significant defects in materials and workmanship for a period

of twelve (12) months, except as otherwise noted, from the date of the delivery ("Hardware Warranty Period") under normal use and conditions. Any defective hardware or software under warranty shall be at Spirent's discretion, repaired or replaced or a credit issued to Customer's account for an amount equal to the price paid provided that Customer follows Spirent's standard warranty procedure. Any claim for defective materials shall be deemed waived unless written notice is given to Spirent within the warranty period. Spirent reserves the right to change the warranty and service policy at any time, after reasonable notice and without liability.

5.2. 侵权。

5.2.1. 补救。

如果确定软件侵犯或可能侵犯任何第三方的所有权，则思博伦可自费：(a) 为客户获得继续使用软件的实际或潜在侵权组件的权利，或 (b) 更换软件的实际或潜在侵权组件或修改此组件以使其不侵权，或 (c) 终止本协议项下授予的许可权利，并向客户退还许可费，减去根据使用情况确定的合理贬值，在任何情况下均不得低于基于五 (5) 年使用寿命确定的直线贬值计算结果。

5.2.1. Cure. In the event of a determination that the Software infringes, or is likely to infringe, any proprietary right of any third party, Spirent shall have the option, at its own discretion and expense, to (a) obtain for Customer the right to continue using the actual or potential infringing component of the Software or (b) replace the actual or potential infringing component of the Software or modify such component so that it becomes non-infringing, or (c) terminate the licensed rights granted herein and grant Customer a refund of the license fee, less reasonable depreciation based on usage, which shall in no event be less than the result of a straight-line computation based upon a five (5) year usable life.

5.2.2. 赔偿。思博伦应赔偿、保护并且使客户免于承担由于任何声称因软件而侵犯版权、美国注册专利或任何第三方的商标的任何第三方提起任何索赔、要求、诉讼或程序而产生的任何及所有责任、损害、损失或费用（包括合理的律师费）；但作为这项赔偿义务的前提条件，客户应及时 (a) 将赔偿义务可能适用的任何索赔、要求、诉讼或程序的任何威胁或提起告知思博伦，(b) 协助思博伦进行辩护或和解，并 (c) 由思博伦全权负责相关事宜的辩护与和解。

5.2.2. Indemnification. Spirent shall indemnify, defend and hold Customer harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys) arising from any claim, demand, action or proceeding initiated by any third party alleging the Software infringes the copyright, US registered patent or trademark of any third party; provided, however, that as a condition to this indemnification obligation, Customer shall promptly (a) notify Spirent of any threat or initiation of any claim, demand, action or proceeding to which the indemnification obligation may apply, (b) assist Spirent in the defense or settlement of the matter, and (c) provide Spirent sole control over the defense and settlement of such matter.

5.2.3. 除外条款。根据第 5.2 条规定，思博伦对以下任何涉嫌侵权行为不承担任何义务：(a) 思博伦以外的任何人对软件进行修改，(b) 将软件与其他软件或任何其他设备结合使用，而非此种结合使用方式则可避免索赔，(c) 客户在收到侵权索赔通知后或在根据本协议收到思博伦的救济后继续使用侵权软件，(d) 客户未根据本协议的条款或文档使用软件，或 (e) 根据客户的明确指示对软件进行的修改。

5.2.3. Exclusions. Spirent shall have no obligations under Section 5.2 for any alleged infringement based upon: (a) modification of the Software by anyone other than Spirent, (b) use of the Software in combination with other software or any other Software or devices if such claim would have been avoided but for such combination, (c) Customer's continued use of the infringing Software after receipt of notice of an infringement claim or after receipt of a remedy from Spirent under this Agreement, (d) Customer's use of the Software other than in accordance with the terms of this Agreement or Documentation, or (e) modifications to the Software made pursuant to Customer's express instruction.

对于任何侵犯第三方知识产权的行为，第 5.2 条规定了思博伦的全部责任，以及客户的唯一救济。

THIS SECTION 5.2 STATES SPIRENT'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

5.3. 免责声明。本协议规定的有限保证和知识产权赔偿是排他性的，取代所有其他明示或暗示的陈述、担保和保证（且客户明确放弃此类陈述、担保和保证），包括但不限于对适销性、软件特定用途适用性或不侵权的任何暗示保证，以及因法规或其他法律规定或交易过程、履行过程或商业惯例而产生的任何保证。

5.3. Disclaimers. THE LIMITED WARRANTIES AND INTELLECTUAL PROPERTY INDEMNIFICATION SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SOFTWARE FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

5.4. 赔偿。客户同意赔偿、保护、辩护并使思博伦及其供应商、许可方、经销商、董事、员工、专业顾问、代理人和代表免于承担以下原因引发的任何及所有索赔、损失、损害（包括但不限于合理的律师费和专家费，以及垫付款）：(I) 任何一方可能在任何时候因以下原因对思博伦提出的任何及所有下列指控：(a) 客户未能履行本协议中的任何约定事项、协议、条款、义务、规定或条件；(b) 客户对思博伦所提供软件或文档的使用或不当使用；或 (c) 客户未能遵守本协议中的任何条款、条件或限制；(d) 客户数据被指称侵犯或盗取任何知识产权；或 (e) 客户未能遵守任何法律或法规，包括但不限于任何非法内容，以及 (II) 由思博伦根据第 1.4 条批准的分被许可方做出的与软件或思博伦机密信息有关的任何行为，以及该分被许可方未能遵守本协议中的任何条款、条件或限制，而如果该违约情况是由客户所为，则将构成对本协议的违反。客户应有权对任何索赔的抗辩和/或和解拥有唯一管控权，但前提是思博伦可自付费用聘请其自行选择的律师参与其中。如果此类和解包括对思博伦或思博伦受偿方的任何义务或限制，客户不得和解任何此类索赔。

5.5. Indemnification. Customer agrees to indemnify, protect, defend and hold Spirent and its suppliers, licensors, distributors, directors, employees, professional advisors, agents and representatives harmless from and against any and all claims, losses, damages (including without limitation reasonable attorneys' and experts' fees and disbursements) (I) arising from any and all of the following which may at any time be asserted against Spirent: (a) by any party for Customer's failure to perform any of the covenants, agreements, terms, obligations, provisions or conditions contained in this Agreement; (b) by any party for reason of Customer's use or misuse of the software or documentation supplied by Spirent; (c) resulting from any failure by Customer to comply with any term, condition or restriction in this Agreement; (d) alleging customer data infringes or misappropriates any intellectual property rights; or (e) arising from Customer failing to comply with any law or regulation including but not limited to any illegal content, and (II) arising from anything done in relation to the Software or Spirent Confidential Information by a sublicensee approved by Spirent under Section 1.4, and from any failure by such sublicensee to comply with any term, condition or restriction in this Agreement if such failure would have amounted to a breach of this Agreement if it had been done by the Customer. Customer shall be entitled to have sole control over the defense and/or settlement of any claim, provided however that Spirent may participate with counsel of its own choosing and at its own expense. Customer shall not settle any claim to the extent that such settlement includes any obligation or restriction on Spirent, or Spirent Indemnified Party.

6. 陈述和保证

6. REPRESENTATIONS AND WARRANTIES

6.1 **客户的责任。**软件不适用于任何高风险活动，包括但不限于航空旅行、太空旅行、消防、警方行动、发电厂运行、军事行动、救援行动、医院或医疗行动、核设施或设备等等。客户同意不将软件用于或允许将其用于任何此类高风险活动，或与任何此类高风险活动相关的任何活动。

6.1. **Responsibilities of customer.** The software is not intended for use in connection with any high-risk activity, including, without limitation, air travel, space travel, firefighting, police operations, power plant operation, military operations, rescue operations, hospital or medical operations, nuclear facilities or equipment, or the like. Customer agrees not to use or allow the use of the software for or in connection with any such high-risk activity.

客户负责全权依照说明和规范妥善安装和运行软件。依照保证或者其他声明，对于软件的不当安装或运行，思博伦对客户或任何第三方概不承担任何责任或义务。依照保证，因不当安装或运行软件而导致的任何输出或执行错误不得被视为“缺陷”。客户应负责 (a) 使用思博伦产品和/或服务接受测试的任何设备、应用程序、网络和信息技术系统（各称为“测试目标”）的安全、配置和运行，(b) 获得并维护对测试目标执行测试所需的授权，以及 (c) 使用测试目标的任何测试结果。

Customer is solely responsible for the proper installation and operation of the software in accordance with the instructions and specifications. Spirent shall have no responsibility or liability to Customer or any third party under the warranty or otherwise, for improper installation or operation of the software. Any output or execution errors resulting from improper installation or operation of the software shall not be deemed “defects” under the warranty. Customer shall be responsible for (a) the security, configuration and operation of any devices, applications, networks, and information technology systems that are subject to testing using Spirent products and/or services (each a “test target”), (b) obtaining and maintaining authorization to perform tests on the test target, and (c) the use of results of any test of a test target.

7. 责任限制

7.1 LIMITATION OF LIABILITY

7.1 **限制和排除。**在任何情况下，思博伦或其供应商对客户发生的任何间接、特殊、附带或后果性损害（包括但不限于与服务中断、替代软件采购成本、利润损失或数据丢失相关的任何损害或责任）概不负责，无论此损害是出于何种原因或责任理论如何，也无论思博伦或其他供应商是否被告知可能发生此类损害。

7.1. **Limitations and Exclusions.** IN NO EVENT SHALL SPIRENT OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION ANY DAMAGES OR LIABILITY RELATING TO INTERRUPTION OF SERVICE, COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, LOST PROFITS, OR LOSS OF DATA), INCURRED BY THE CUSTOMER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY AND REGARDLESS OF WHETHER OR NOT SPIRENT OR ITS SUPPLIERS WERE ADVISED SUCH DAMAGES MIGHT ARISE.

7.2. **最大责任。**思博伦及其供应商在本协议下的责任，无论是因违反合同（包括但不限于违反保证）或侵权（包括但不限于过失和严格责任）还是任何其他原因引起，在任何情况下均不得超出客户在任何此类索赔前十二 (12) 个月内就该责任相关的软件向思博伦支付的总费用（如果是固定，则为客户为相关硬件支付的总费用）。

7.2. **Maximum Liability.** THE LIABILITY OF SPIRENT AND ITS SUPPLIERS UNDER THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER REASON, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO SPIRENT BY CUSTOMER FOR THE SOFTWARE TO WHICH SUCH LIABILITY RELATES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM (OR IN THE CASE OF FIRMWARE, TOTAL FEES PAID BY CUSTOMER FOR THE APPLICABLE HARDWARE).

8. 争议解决和法律及法院选择

8.1 DISPUTE RESOLUTION & CHOICE OF LAW AND FORUM

8.1 **管辖法律。**本协议以及由本协议或其标的事项引起或与之相关的任何争议应根据美国加利福尼亚州法律管辖、解决和纠正，但法律冲突原则不适用。双方同意，《联合国国际货物销售合同公约》不适用于本协议。

8.1. **Governing Law.** This Agreement and any disputes arising from or related to it, or its subject matters, shall be governed, resolved and remedied in accordance with the laws of the State of California, USA, without resort to conflict of law principles. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

8.2. **法院。**任何因行使本协议任何条款或以任何方式与之相关的诉讼均应在加利福尼亚州联邦和州法院提起和进行，且双方同意接受上述法院的管辖。

8.2. **Forum.** Any action to enforce, arising out of, or relating in any way to, any of the provisions of this Agreement shall be brought and prosecuted in the Federal and State courts of California and the parties consent to the jurisdiction of said courts.

8.3. **遵守法律；出口管制法律。**客户应自行负责遵守并同意遵守所有与软件使用相关的适用法律。客户确认，软件可能受

8.3. **Compliance with Laws; Export Control Laws.** Customer shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Software. Customer acknowledges that the Software may be subject to export controls imposed by the 《美国出口管理条例》(EAR) 规定的出口管制。在美国法律适用的范围内，客户不得在违反《美国出口管理条例》的情况下（直接或间接）出口或再出口软件或软件的任何衍生品。客户同意根据与从美国出口技术相关的所有适用法律以及所有适用的英国法律，进行（直接或间接）出口或再出口。

U.S. Export Administration Regulations (the "EAR"). To the extent applicable by U.S. law, Customer will not export or reexport (directly or indirectly) the Software, or any derivatives of the Software without complying with the EAR. Customer agrees to export or reexport (directly or indirectly) in accordance with all applicable laws with respect to the export of technology from the United States and in accordance with all applicable United Kingdom laws.

9. 通用条款

9.1 GENERAL TERMS

9.1 **修订；弃权。**除非以书面形式规定并由寻求执行修订、修改、解除或放弃的一方正式签署，否则对本协议的任何修订、修改或解除，以及本协议下的任何弃权，均无效或不具有约束力。任何一方未能坚持严格履行本协议项下的任何条款和条件，或延迟行使任何救济，均不构成放弃这些条款和条件或放弃任何违约责任或救济。

9.1 **Amendment; Waiver.** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Failure of either party to insist upon strict performance of any of the terms and conditions hereunder, or the delay in exercising any of its remedies shall not constitute a waiver of such terms and conditions or a waiver of any default or remedy.

9.2 **审计。**客户应在相关订阅期限（如适用，或本协议期限）内以及此后 2 年内保持对其软件使用情况的完整、准确记录。在收到思博伦提前 10 天发出的书面通知后，并且每个日历年不超过一次，客户应向思博伦提供在正常营业时间内合理进入客户场所的权限，对客户的记录和系统进行审计，从而核实客户对本协议的遵守情况，包括费用计算。思博伦应承担任何此类审计的费用，但发现客户违反本协议条款的情况下，除了思博伦在法律或衡平法上可以获得的任何及所有救济之外，客户还应向思博伦偿还所有合理的审计费用。

9.2 **Audit.** Customer shall maintain complete and accurate records of its use of the Software during the applicable subscription term (if applicable, or otherwise the term of the Agreement) and for 2 years thereafter. Upon 10 days' written notice from Spirent, and no more than once per calendar year, Customer shall provide Spirent with reasonable access to Customer's premises during normal business hours to conduct an audit of Customer's records and systems to verify compliance with this Agreement, including calculation of Fees. Spirent shall bear the costs of any such audit, except that if Customer is found to have violated the terms of this Agreement, in addition to any and all remedies available to Spirent in law or equity, Customer shall reimburse Spirent for all reasonable audit expenses.

9.3 **转让。**未经思博伦事先书面同意，客户不得直接或间接转让本协议及根据本协议授予的任何权利，包括但不限于通过合并、出售资产或股票、变更控制权或运用法律等方式。思博伦可以转让本协议的任何或所有内容，以及本协议下的权利和义务。客户在未获得上述同意的情况下试图转让任何权利、责任或义务的行为均属无效，不具有任何效力。

9.3 **Assignment.** This Agreement and any rights granted hereby may not be assigned by Customer, directly or indirectly, including without limitation by merger, sale of assets or stock, change of control, or operation of law, without the prior written consent of Spirent. Spirent may assign any or all of this Agreement and its rights and obligations hereunder. Any attempt by Customer to assign any rights, duties or obligations without such consent shall be void and without force or effect.

9.4 **不可抗力。**对于因超出其合理控制范围的任何因素而延迟履行或未能履行本协议下的任何义务而造成的任何损害或处罚，思博伦概不负责。

9.4 **Force Majeure.** Spirent shall not be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder due to any elements beyond its reasonable control.

9.5 **律师费。**如果为了行使本协议条款而需要提起任何诉讼，除了其本应享有的任何其他救济之外，思博伦将有权获得合理的律师费、成本和费用。

9.5 **Attorneys' fees.** If any action is necessary to enforce the terms of this Agreement, Spirent will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which it otherwise may be entitled.

9.6 **可分割性。**如果法院或其他有管辖权的法庭认定本协议的任何条款不可执行，本协议的剩余部分应保持完全有效。

9.6 **Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

9.7 **完整协议。**本协议连同报价单构成双方就本协议标的事项达成的全部谅解和协议，并取代与此类标的事项有关的所有先前或同期口头和书面协议。

9.7 **Entire Agreement.** This Agreement, together with the Quotes, embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all oral and written prior or contemporaneous agreements related to such subject matter.

9.8 **标题。**本协议条款标题仅为方便引用而设，就任何而言均不得视为本协议的一部分，也不得以任何方式定义或影响本协议任何条款的意义、解释或范围。

9.8 **Headings.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purposes, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

9.9 **双方的关系。**思博伦和客户均作为独立承包商行事，任何一方均无权出于任何目的作为另一方的代理人、合伙人或合资企业。任何一方均无权根据本协议代表另一方行事或设立任何明示或暗示义务、权力和权限。

9.9 **Relationship of the Parties.** Spirent and Customer will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

9.10 **第三方组件。**客户确认，软件包含第三方供应商向思博伦供应的组件，并且客户同意，所有此等供应商均为本协议的第三方受益人，有权就其提供的各个组件强制要求客户履行在本协议下的义务。

9.10 **Third-Party Components.** Customer acknowledges that the Software contains components made available to Spirent by third-party suppliers, and Customer agrees that each such supplier is a third-party beneficiary of this Agreement with the right to enforce Customer's obligations hereunder with respect to the individual components such supplier has supplied.

9.11 **文件的优先顺序：**除非双方另有书面约定，否则本协议中与软件许可权利相关的条款和条件的效力优先于任何报价单或思博伦发票中包含的任何冲突或不一致的条款。客户提供的任何报价单、采购报价单、确认书或其他表格中的任何条款均不得修改本协议，无论思博伦是否反对这些条款；任何此类附加或冲突的条款均予以明确拒绝。尽管有第 9.7 条的规定，对于本协议中涉及软件许可权利以外的其他事项的条款和条件，仅在思博伦与客户之间的主购买协议（如有（“主协议”）与本协议的条款和条件存在明确冲突的情况下，才以主协议条款和条件为准。

9.11 **Precedence of Documents:** The terms and conditions of this Agreement, insofar as they relate to the rights licensed to the Software will control over any conflicting or inconsistent terms contained in any Quote, or Spirent invoice unless otherwise mutually agreed to in writing. No terms in any quotation, purchase quote, acknowledgment or other form provided by Customer will modify this Agreement, regardless of whether Spirent objects to such terms, and any such additional or conflicting terms are expressly rejected. Notwithstanding Section 9.7, the terms and conditions of this Agreement insofar as they relate to matters other than the rights licensed to the Software shall be subject to the terms and conditions of the master purchase agreement between Spirent and Customer (if any) (the "Master Agreement") only to the extent that such Master Agreement expressly contradicts the terms and conditions of this Agreement.