

QC Ware Platform Terms of Use

By registering, accessing or using the QC Ware Platform, you agree that you are subject to and will comply with the QC Ware Cloud Services Terms of Use as set forth below and as may be changed from time to time, and you acknowledge that you have read, understand, and agree to be bound by these terms and to comply with all applicable laws and regulations, including export and re-export control laws and regulations. You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. If you do not agree to these Terms of Use, you may not use the QC Ware Platform.

QC WARE CLOUD SERVICES TERMS OF USE

These Cloud Services Terms of Use (the “Terms”) set forth the terms and conditions pursuant to which QC Ware Corporation (“QC Ware”) will provide the Cloud Services to Customer.

1. The “QC Ware Platform” is a cloud-based software platform that provides access to third party quantum annealers and circuit based quantum computers (“Quantum Hardware”). The QC Ware Platform also includes libraries, tools and other software and documentation to assist Customers to create software code that will make use of the Quantum Hardware through the QC Ware Platform.

2. Cloud Services. Subject to Customer’s compliance with these Terms, QC Ware will provide Customer with access to those components of the QC Ware Platform and for the time period for which Customer has obtained a subscription (the “Cloud Services”). Customer’s access to Quantum Hardware is subject to availability and may be subject to additional terms. Customer may use the Cloud Services solely for its internal business purposes. Customer may select employees within its organization that are authorized to use the Cloud Services on its behalf but must obtain separate credentials, e.g., user IDs and passwords, for each such authorized user (each, an “Authorized User”). Use of the Cloud Services is expressly limited to Customer’s Authorized Users.

3. Service Changes. From time to time, QC Ware may change or discontinue any of the Cloud Services or change or remove any functionality of the Cloud Services, including changing what Quantum Hardware is available through the QC Ware Platform and the pricing for that Quantum Hardware. QC Ware will provide at least thirty (30) days’ prior notice, on its web site or on the QC Ware Platform, of any material change to the Cloud Services.

4. Restrictions. Customer shall not attempt to interfere with or disrupt the Cloud Services or the QC Ware Platform or attempt to gain access to any systems or networks that connect thereto, except as required to access and use the Cloud Services. Customer shall not allow access to or use of the Cloud Services by anyone other than Authorized Users. Customer shall not: (a) reverse engineer, disassemble, or decompile any part of the QC Ware Platform (except to the extent applicable law does not allow this restriction); (b) access or use the QC Ware Platform in

a way intended to avoid incurring fees or exceeding usage limits or quotas; (c) rent, lease, or provide access to the Cloud Services on a time-share or service bureau basis; or (d) transfer any of its rights under these Terms.

5. Customer Responsibilities. Customer is solely responsible for meeting QC Ware’s minimum technology requirements for use of the Cloud Services. Customer is solely responsible for the development and use of its Customer Content. Customer shall use the Cloud Services exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others. Customer is responsible for: (a) its Authorized User’s compliance with these Terms and for all other activity occurring under Customer’s account; and (b) preventing unauthorized access to or use of the Cloud Services under its account, and notifying QC Ware promptly of any such unauthorized access or use. Customer shall defend (or settle), indemnify and hold harmless QC Ware, its officers, directors and employees, from and against any liabilities, losses damages, and expenses, including court costs and reasonable attorney’s fees, arising out of or in connection with any third party claim arising from the Customer Content or Customer’s use of the Cloud Services (except to the extent caused by the gross negligence or willful misconduct of QC Ware).

6. Data Maintenance and Backup Procedures. Customer acknowledges and agrees that QC Ware does not monitor or police Customer’s communications, data or software code (“Customer Content”) used in or resulting from the Cloud Services and, except as set forth in this Section, QC Ware is not responsible for any Customer Content. QC Ware shall follow its standard archival procedures for Customer Content. In the event of any loss or corruption of Customer Content, QC Ware shall use its commercially reasonable efforts to restore the lost or corrupted Customer Content from the latest backup of such Customer Content maintained by QC Ware. QC Ware shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Content caused by any third party. QC WARE’S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER CONTENT PURSUANT TO THIS

SECTION IS QC WARE'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER CONTENT IN CONNECTION WITH THE CLOUD SERVICES.

7. Ownership. Customer expressly acknowledges that QC Ware owns all worldwide right, title and interest in and to the Cloud Services and the QC Ware Platform, including all intellectual property rights therein. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing on the Cloud Services. QC Ware expressly acknowledges that Customer owns all worldwide right, title and interest in and to the Customer Content, including all intellectual property rights therein.

8. QC Ware's "Confidential Information" includes the QC Ware Platform, and Customer's Confidential Information includes the Customer Content. Confidential Information will not include, however, any information that (i) is received by the receiving party from a third party without restriction on use or disclosure, (ii) the disclosing party gives to third parties without restriction on use or disclosure, or (iii) is previously known to the receiving party or independently developed by the receiving party. For the term of the Cloud Services and for a period of three (3) years thereafter, each party agrees to use reasonable efforts to hold the other party's Confidential Information in confidence, and not to disclose it to others or use it except for purposes of this Cloud Services.

9. Warranty. Subject to the limitations set forth below, QC Ware warrants that the Cloud Services shall operate in all material respects in accordance with their specifications. As Customer's sole and exclusive remedy and QC Ware's entire liability for any breach of the foregoing warranty, QC Ware will use commercially reasonable efforts to modify the Cloud Services so that it conforms to the foregoing warranty or refund Customer's fees paid for the non-conforming Cloud Services.

10. Warranty Disclaimer. Customer assumes sole responsibility and liability for results obtained from the use of the Cloud Services and for conclusions drawn from such use. QC Ware has no liability for any claims, losses, or damage caused by errors or omissions in any Customer Content provided to QC Ware by Customer in connection with the Cloud Services, any results produced by the Cloud Services, or any actions taken by QC Ware at Customer's direction. QC Ware shall have no liability for any claims, losses or damages arising out of or in connection with Customer's use of any third-party products, services, or links within the Cloud Services, including any Quantum Hardware.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9, QC WARE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THE QC WARE PLATFORM OR THE CLOUD SERVICES. THE CLOUD SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND QC WARE DISCLAIMS ANY WARRANTY THAT THE CLOUD SERVICES WILL BE

ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

11. Limitation of Liability. IN NO EVENT WILL QC WARE'S AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THE CLOUD SERVICES OR FROM THE USE OF OR INABILITY TO USE THE CLOUD SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER RELATING TO SUCH LIABILITY. QC WARE WILL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THE CLOUD SERVICES OR INABILITY TO USE THE CLOUD SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT QC WARE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

12. Term and Termination. These Terms shall become effective when the Cloud Services commence and shall continue until the applicable ending date for the Cloud Services, unless terminated earlier by either party in accordance with these Terms. Each party will have the right to terminate any Cloud Services purchased hereunder if the other party material breaches any of these Terms and fails to cure such breach within thirty (30) days after written notice thereof. QC Ware may suspend Customer's access to the QC Ware Platform if QC Ware believes that Customer may be breaching or about to breach these Terms. Upon expiration or termination of these Terms, Customer's right to access and use the Cloud Services shall immediately terminate, and Customer shall immediately cease all use of the Cloud Services.

13. Notice. All notices, permissions and approvals will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when establishing Customer's account (or such other address as the recipient may thereafter specify by notice given in accordance with this Section).

14. Assignment. Customer may not assign or transfer this agreement or the Cloud Services, whether by operation of law or otherwise, without the prior written consent of QC Ware. Any attempted assignment or transfer, without such consent, shall be void. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15. Governing Law and Jurisdiction. These Terms will be governed by the laws of the State of California without regard to its conflict of laws provisions. The exclusive jurisdiction and venue of any action related to the Service or these Terms will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

16. Publicity. Each party shall have the right to publicly announce the existence of the business relationship between the parties. QC Ware may use Customer's name, trademarks, and logos on QC Ware's website and marketing materials to identify Customer as QC Ware's customer.

17. General. Each party shall comply with all applicable laws and regulations with respect to its activities. The parties are independent contractors. No failure or delay by either party in exercising any right under these Terms will constitute a waiver of that right. If any provision of these Terms is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining Terms will remain in effect. QC Ware will not be liable for any delay or failure to perform under these Terms to the extent such delay or failure results from circumstances or causes beyond the reasonable control of QC Ware. These Terms and the document(s) reference these Terms constitute the entire agreement between the parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any of these Terms will be effective unless in writing and either signed or accepted electronically by a duly authorized representative of each party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's purchase order or other order documentation will be incorporated into or form any part of these Terms, and all such terms or conditions will be null.