



LEAP™ CLOUD SUBSCRIPTION AGREEMENT

THIS LEAP CLOUD SUBSCRIPTION AGREEMENT (THIS “**AGREEMENT**”) IS ENTERED INTO BETWEEN THE APPLICABLE D-WAVE CONTRACTING PARTY SPECIFIED IN SECTION 12.6 BELOW (“**D-WAVE**” OR “**WE**”) AND YOU OR THE COMPANY OR ENTITY YOU REPRESENT (“**CUSTOMER**” OR “**YOU**”, AND EACH OF D-WAVE AND CUSTOMER ARE A “**PARTY**”) AND GOVERNS YOUR ACQUISITION AND USE OF THE SERVICES FROM THE DATE YOU INDICATE YOUR ACCEPTANCE, SUCH AS BY CLICKING A CHECKBOX OR BY EXECUTING AN ORDER (THE “**EFFECTIVE DATE**”).

WHEN THE AGREEMENT IS CONCLUDED ONLINE, WE WILL DISPLAY THE INFORMATION YOU ENTERED BEFORE YOU CONFIRM ACCEPTANCE TO GIVE YOU THE OPPORTUNITY TO SPOT AND CORRECT ANY MISTAKES IN YOUR INFORMATION, AND WE WILL CONFIRM THE RECEIPT OF YOUR CONTRACTUAL DECLARATION WITHOUT UNDUE DELAY. WE DO NOT STORE A COPY OF THE AGREEMENT FOR YOU.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THIS AGREEMENT OR USE THE SERVICES.

YOU MUST BE OF THE AGE OF MAJORITY UNDER THE LAWS OF THE JURISDICTION WHERE YOU ARE DOMICILED AND AT LEAST 18 YEARS OLD TO EXECUTE AN ORDER AND TO USE THE SERVICES. SERVICES UNDER THIS AGREEMENT ARE NOT OFFERED TO CONSUMERS (I.E. NATURAL PERSONS ENTERING INTO A LEGAL TRANSACTION FOR PURPOSES THAT PREDOMINANTLY ARE OUTSIDE THEIR TRADE, BUSINESS OR PROFESSION). IF YOU ARE A CONSUMER, PLEASE USE THE CONSUMER VERSION OF THE SERVICES, WHICH ARE GOVERNED BY THE STANDARD LEAP TERMS AT https://cloud.dwavesys.com/leap/legal/standard_terms_and_conditions.

SOME TERMS OF THIS AGREEMENT MAY BE VARIED IN YOUR COUNTRY. SEE APPENDIX A FOR COUNTRY-SPECIFIC TERMS. IF YOU ARE IN EUROPE, BOTH EUROPEAN AND NATIONAL TERMS MAY APPLY TO YOU. PLEASE READ BOTH.

THIS AGREEMENT WAS LAST UPDATED ON FEBRUARY 3, 2023.

Capitalized words or phrases used in this Agreement will have the meaning given to them in Section 12 or elsewhere in this Agreement.

1. SERVICES

1.1 Services. Subject to the Terms of this Agreement and the applicable Orders, D-Wave will provide to Customer the Services ordered by Customer in an Order. Customer may access and use such Services subject to the Terms of this Agreement and the applicable Orders.

1.2 Changes to Services. D-Wave may at any time modify, discontinue or deprecate any Services, or change or remove features or functionality of any Services. D-Wave will provide Customer with a thirty (30) day prior notice before discontinuing or deprecating any Services, or before discontinuing, deprecating or making a material change to an existing feature or functionality of the Services. This notice will not be required if the thirty (30) day notice period (a) is likely to pose a security or intellectual property issue to D-Wave or the Services, (b) is economically or technically burdensome, or (c) would cause D-Wave to violate any of its legal obligations or requirements (by contract or by law), or (d) if the discontinued or deprecated Services or the discontinued, deprecated or changed existing features or functionality are replaced by similar services, features or functionality (for clarity, a discontinuation, deprecation or change to a solver is permitted without notice provided that following such discontinuation, deprecation or change at least one solver continues to be available to Customer).

1.3 Restrictions of Availability due to Nature of Services. Customer further agrees and acknowledges that except to the extent agreed otherwise in an Order or Service description, D-Wave does not owe the availability of specific hardware or specific hardware configurations, and does not owe uninterrupted or real-time availability of the Services. Customer agrees and acknowledges that this in particular means all computing tasks submitted to the Services will be queued and processed in priority sequence, and that therefore, wait times can occur. In the event that a computing task cannot be completed due to unavailability, Customer will be notified and offered an opportunity to re-submit.

2. CUSTOMER RESPONSIBILITIES

2.1 Customer's Account. Customer must: (a) provide to D-Wave complete and accurate information for the creation of Customer's account and keep such information up to date, (b) not impersonate another person or provide false information to gain access to or use the Services, and (c) not create multiple accounts.

2.2 Customer Responsibilities. Customer will: (a) be responsible for Authorized Persons' and Users' compliance with this Agreement, Documentation and Orders; (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer Data was acquired and Customer's use of Customer Data with the Services (including that all necessary consents have been obtained); (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services through Customer's account, and notify D-Wave promptly of any such unauthorized access or use; and (d) use Services only in accordance with this Agreement, the Documentation, the applicable Orders and applicable laws and government regulations including ensuring that the use of and provision to the Services by Customer, Authorized Persons and Users are in compliance with all applicable Export Controls (as defined in Section 3.11), data localisation laws and privacy laws of the Account Country and the location(s) from which Authorized Persons and Users access the Services.

2.3 Responsibility for Account and Token. Except to the extent caused by D-Wave's breach of this Agreement: (a) Customer is responsible for all activities that occur under Customer's account or using Customer's access token; and (b) D-Wave is not responsible for unauthorized access to Customer's account or use of Customer's access token.

2.4 Security and Customer Equipment; Data Backup. Customer is responsible for obtaining and maintaining all equipment, network connections and other systems required to access and use the Services. Customer is responsible for implementing security measures and taking all appropriate action to secure and protect Customer's account, access tokens and use of the Services in a manner that will provide appropriate security and protection. Customer acknowledges that D-Wave is not a data backup service and that Customer is responsible for separately backing up any data or information uploaded or used with the Services.

2.5 Responsibility for Customer Data. Except as specifically requested by D-Wave as part of the account set-up process, Customer will not submit or make available to D-Wave any information or data that is subject to regulation under any law, including personal information, personal data, personally identifiable information, health information, or banking information.

3. SERVICE OFFERINGS AND TERMS

3.1 Service Offerings. D-Wave will provide those Services that are expressly included in a completed Order or identified by D-Wave as being included in the Services provided to Customer under this Agreement at the time Customer accepts this Agreement. Customer may access and use only such Services, except that D-Wave may allow Customer to access other Services if requested by Customer, provided that such access is at D-Wave's sole discretion and may be withdrawn at any time and for any reason. Such Services may include one or more of the following:

- a. Computing Services: Access and use of D-Wave computing resources, including the use of D-Wave Software, in the amount, and subject to the additional Terms as set out in the applicable Order (the "**Computing Services**"). Unless expressly specified otherwise in the applicable Order, the type of computing resource (e.g., traditional, quantum or hybrid) as well as the characteristics of the computing resource (e.g. number of qubits, topology, connectivity, features) used to perform the Computing Services for Customer may be changed by D-Wave in its sole discretion. Customer will only have access to those computing resources that are then generally commercially available to all D-Wave customers for Computing Services in the Account Country. Customer will not have access to any other computing resource, including solvers or features in development and testing and custom solvers or features.
- b. Advisory Services: Access to D-Wave Personnel to assist Customer with Customer's use of the Services.
- c. Training: Training for Users on use of the Services.
The Services will include the level of customer support and will include the features and services set out in the applicable Order.

3.2 Community Forum. Subject to the Bundle purchased by Customer, D-Wave may make available in its sole discretion a community forum (the "**Community Forum**"), which may be subject to Additional Terms (defined in Section 3.3 below) or guidelines disclosed during sign-up/registration for the Community Forum and any associated code of conduct. The Community Forum is made available in D-Wave's sole discretion and may be suspended or discontinued at any time. Without limiting the foregoing, a User's access to the Community Forum can be revoked, limited or terminated by D-Wave if the User fails to comply with this Agreement and/or the applicable Additional Terms, guidelines and/or codes of conduct.

3.3 Additional Services. D-Wave and Customer may also agree to additional services (including professional services) which are mutually agreed to and expressly set out in an executed Order. Any such additional services are deemed to be Services

under this Agreement and are subject to the Terms of this Agreement and any additional Terms (“**Additional Terms**”) specific to such additional services set out in the applicable Order or in the Documentation with respect to such additional services. In the event of any inconsistency between this Agreement and the Additional Terms, the Additional Terms will control.

3.4 Subscription Services. Subject to the Terms of this Agreement, D-Wave will provide Customer with subscription-based access to the Services in accordance with the Bundle purchased by Customer and as set out in the applicable Order and/or in the Documentation (the “**Subscription Services**”).

3.5 Advisory Services. Unless otherwise set out in the applicable Order, any unused portion of the Advisory Services as set out in an executed Order may not be carried over from one month to another, has no cash value, and is not refundable.

3.6 Rates for New Service or Feature/Changes to Existing Rates. Rates for any new Service or new feature of a Service will be effective as soon as D Wave posts updated rates on the Leap website or otherwise provides notice of such Service’s rates to Customer. D Wave may increase rates for any existing Services set out in an Order by giving Customer at least thirty (30) days’ prior notice, provided that any increase will not take effect until the Commitment Period (as defined in Section 8.2) has ended.

3.7 Usage. Some of D-Wave’s Services are offered or described as being “unlimited” in nature, subject to certain usage restrictions as set out in the Order and/or the Documentation. These Services are also subject, at all times, to certain limits as set forth in the Orders and/or Documentation (e.g. number of API calls, number of results, number of computing systems or computing equipment, maximum usage cap, rates or fees for use). Customer acknowledges that D-Wave may monitor Customer’s usage of the Services and if Customer exceeds the applicable usage limits, then (a) Customer may be required to purchase additional resources or services; or (b) if the necessary additional resources or services are not purchased by Customer then D Wave may suspend Customer’s access to the Services. For the purpose of any applicable maximum usage cap, D-Wave monitors usage of these Services on a “per second” basis or, if it benefits Customer, on such other more-precise basis as D-Wave may determine from time to time in its sole discretion. Any unused portion of the maximum usage cap set out in an Order may not be carried over from one month to another, has no cash value, and is not refundable.

3.8 Seats. Certain Services, such as the Computing Services, are available for purchase on a “per seat” basis, entitling one named User or production application to be assigned to a Seat to use the Services as per the Order and/or Documentation. Customer may reassign a User Seat or an Observer Seat to another User, or a Service Account Seat to another production application, at any time but Seats cannot be shared or used simultaneously by multiple Users or production applications. Unless otherwise agreed upon with D-Wave, User Seats and Observer Seats may only be reassigned if the named User is assigned to a different project or is no longer an employee or student of Customer or of an Authorized Person, and a Service Account Seat may only be reassigned if the applicable production application is no longer being used.

3.9 Prohibited Uses. Except with D-Wave’s prior written consent, which may be withheld by D-Wave in its sole discretion, Customer will not, and will ensure that all Authorized Persons and Users will not, engage, directly or indirectly, in any of the following acts (the “**Prohibited Uses**”):

- a. decompile, extract, translate, decrypt, disassemble, or otherwise reverse engineer, create improvements, modifications or derivative works of, any portion of the D-Wave Software or any other D-Wave IP, or attempt to do any of the foregoing, except to the extent that such activity is expressly permitted by applicable law despite this contractual prohibition on such activity, in which case Customer will give D-Wave a detailed, written notice at least thirty (30) days prior to engaging in such activity that describes the nature and extent of the contemplated activity. Notwithstanding Section 3.9(a), to the extent that the D-Wave Software made available to Customer contains any Jupyter notebooks (the “**Notebooks**”), during the Subscription Period, Customer, Authorized Persons and Users may, solely for their internal use and in connection with their use of the Services and not for distribution to any third party, create improvements, modifications or derivative works of any software code, equations, visualizations and narrative text contained within the Notebooks;
- b. permit any lien, security interest or other encumbrance to attach to Customer’s rights under this Agreement;
- c. remove, alter, add, or obscure any intellectual property or other proprietary notice or other notice included in any D-Wave IP or otherwise displayed in connection with the Services;
- d. use any portion of the Services or any other D-Wave IP for the benefit of any third party other than Customer or an Authorized Person; and notwithstanding any benefit to Customer or any Authorized Person, neither Customer nor any Authorized Person nor any User may:
 - a. sell, rent, lease, distribute, sublicense, time share, provide service bureau services based on, or similarly exploit the Services or any other D-Wave IP;
 - b. use any portion of the Services or any other D-Wave IP to provide, as a purpose of the Customer Software, Customer’s services or otherwise, the same or similar functions as the Services or use the Customer Software to

- compete with the products or businesses of D-Wave, including by providing wrapper access for any part of the Services to third parties;
- c. grant access to the Services, such as by sharing an access token, to anyone other than an Authorized Person or a User; or
 - d. unless expressly permitted under any Additional Terms applicable to purchased Services, use the Services or any other D-Wave IP in the course of performing any service for third parties, other than Authorized Persons; for greater clarity, services prohibited under this Section 3.9(d)(4) include any service which may require the use of the Services or any other D-Wave IP (directly or indirectly, by any person) at any point from the time the third party makes a request for the service to the time the performance of the service concludes.
 - e. use any data mining, robots or similar data gathering or extraction methods in association with or to access the Services or use any portion of the Services or any other D-Wave IP for any unlawful, fraudulent, illegal or inappropriate purpose (including in connection with gambling, obscenity, pornography, violence, misappropriation, unauthorized access or interference, viruses or harmful code, harassment, unsolicited or deceptive messages, or evading filters) or to disrupt, damage, interfere with or access in an unauthorized manner any server, network or other property or service of any person or entity;
 - f. circumvent any restrictions placed on the Services, including using any means to mask or modify the actual physical location from which the Services are being accessed, or accessing the Services from a country other than a Leap Country;
 - g. use the Services in any way beyond the scope of the usage limits or restrictions (e.g. types of use by Customer including internal or commercial use, project specified in an Order, etc.) as permitted and detailed in an applicable Order and/or Documentation;
 - h. use the Services or any other D-Wave IP to send commercial, fraudulent, obscene, defamatory, or illegal communications to any third party; or
 - i. use any portion of the Services or any other D-Wave IP in connection with any inherently dangerous application, including any application that could result in death, personal injury, catastrophic damage or mass destruction.

D-Wave may immediately suspend access to the Services in the event of any breach by Customer, an Authorized Person or a User of this Section 3.9.

3.10 Notice of Grant of Access. Customer must provide D-Wave with advance notice of any grant of access to the Services to an Authorized Person, except where the Authorized Person has been authorized specifically by name by D-Wave.

3.11 Export Compliance. Customer acknowledges that the Services and D-Wave Software, the Documentation and/or technical data (a) originate in Canada or the United States, and are subject to the export control laws, rules, regulations, and restrictions thereof, including the Export Administration Regulations of the U.S. Department of Commerce, (b) may have been transferred to Customer from another country that has additional export regulations (together (a) and (b) are the “**Export Controls**”). Customer agrees to use the Services and/or D-Wave Software, Documentation and/or related technical data in accordance with the Export Controls, and will not export, re-export, or transfer in any manner said items in part or in whole in violation of the Export Controls. Customer understands and agrees that it is solely responsible for obtaining any required permission for the Customer Data to be exported by D-Wave from the Account Country to any Leap Country in order to provide the Services and for obtaining all necessary licenses or authorizations relating to exporting the Services and other items described in this Agreement, and will not export said items to, use the Services in, or access, or permit Authorized Persons or Users to access, the Services from, any country other than a Leap Country, without D-Wave’s express written permission and in compliance with this article. Customer will not export said items to (a) any country subject to a United States or Canadian embargo, (b) a national or resident of any country subject to a United States or Canadian embargo, (c) any person or entity to which export is prohibited by the country from which the Customer received the Services, D-Wave Software, Documentation and/or related technical data, or (d) anyone who is engaged in activities that may be prohibited by the Export Controls. Customer represents that it is not named on any U.S. or Canadian government denied-party list.

4. CONFIDENTIALITY, PRIVACY, AND COLLECTED DATA

4.1 Confidentiality and Use of Customer Data. D-Wave will only use or disclose Customer Data as necessary to provide the Services (including for support, troubleshooting, security and authentication purposes). Customer understands and agrees that some Customer Data is not confidential due to the nature of the Services, including Customer Data provided to the Community Forum. D-Wave may collect Customer Data and other information arising from Customer’s access or use of the Services, including usage statistics, unique identifiers, associated IP addresses, version numbers of relevant software, and information on which tools and services are being used in connection with the Services (the “**Collected Data**”). Such collection may involve various means, including cookies and other tracking technologies. Notwithstanding the foregoing, Customer understands and agrees that D-Wave may (a) use the Collected Data to perform performance testing of the Services provided that any non-

public Collected Data is not disclosed to any third party (other than D-Wave's affiliates, agents or subcontractors with an obligation to keep it confidential), and (b) anonymize the Collected Data, excluding Customer Data ("**Anonymized Collected Data**"), and use, retain and disclose the Anonymized Collected Data for any purpose including to further develop and improve D-Wave's products and services.

4.2 Confidentiality and Use of D-Wave Information. Customer will: (a) hold all Confidential Information in confidence; (b) not use or copy such Confidential Information except for purposes of and as permitted by this Agreement; (c) not disclose such Confidential Information except to its directors, officers, employees or agents who have a need to know such information for purposes of and as permitted by this Agreement. Customer agrees to use the same means it uses to protect its own confidential information of a like nature, but in any event, not less than reasonable means, taking into consideration the sensitivity and nature of the Confidential Information in question, to prevent the disclosure of the Confidential Information to third parties. Notwithstanding any other Term of this Agreement, regardless of whether they contain restrictive markings indicating the confidential nature thereof or have been identified as Confidential Information prior to disclosure, all of the following will constitute Confidential Information: (a) the D-Wave Software; and (b) passwords, access codes, tokens or any other credentials for accessing any D-Wave site, server, software or service.

4.3 Exceptions. A Party will be relieved from its obligations under this Section 4: (i) to the extent the Party gives its prior written consent; or (ii) to the extent necessary to comply with applicable laws or regulations, or judicial or governmental order, provided that the Party uses commercially reasonable efforts to provide prior written notice of such disclosure (to the extent such disclosure is permitted by law and is not required to be made immediately) to the other Party to afford the other Party (at the other Party's expense) the opportunity to seek a protective order. The Party will promptly notify the other Party in writing of any unpermitted disclosure or unpermitted use of any Confidential Information of the other Party of which the Party becomes aware.

4.4 Return of Confidential Information. Upon the written request of the other Party, a Party will return all Confidential Information in its possession or confirm in writing that it has destroyed such Confidential Information save and except such Confidential Information required by law to be kept.

4.5 Privacy. Any personal information provided by Customer (and its Users, as applicable) to D-Wave or its third-party processors is collected, used, and disclosed in accordance with D-Wave's privacy policy which can be accessed at https://cloud.dwavesys.com/leap/legal/privacy_policy (the "**D-Wave Privacy Policy**"). If Customer's use of the Services involves processing personal data pursuant to Regulation 2016/679 (the "**GDPR**") and/or transferring personal data outside the European Economic Area or Switzerland, the Terms of the data processing addendum attached to this Agreement as Appendix B ("**DPA**") are incorporated by reference into this Agreement upon the acceptance of this Agreement by Customer. For the purposes of the Standard Contractual Clauses, Customer, the Authorized Persons and the Users are each the data exporter, and Customer's acceptance of this Agreement will be treated as its execution of the Standard Contractual Clauses and appendices. If Customer is outside the European Union or the State of Israel, to the extent that the D-Wave Privacy Policy bases such collection, use, or disclosure on Customer's consent (or its Users', as applicable), Customer hereby provides its consent.

4.6 Remedies. Customer and D-Wave each agree that the other Party may be irreparably injured by a breach of this Section 4 and that the other Party may be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court to prevent breaches of this Section 4 and to enforce specifically the Terms of this Agreement in any action instituted in any court having subject matter jurisdiction, in addition to any other remedy to which the other party may be entitled at law or in equity in the event of any breach of this Section 4. Such remedies will not be deemed to be the exclusive remedies for a breach of Section 4 but will be in addition to all other remedies available at law or in equity.

4.7 Security. D-Wave will implement reasonable and appropriate measures designed to help Customer secure Customer Data against accidental or unlawful loss, access or disclosure. This Section 4.7 does not limit Section 9 or any of Customer's obligations under this Agreement.

5. BETA ACCESS

5.1 Scope; Availability of Beta Services. D-Wave may, in its sole discretion, make available to Customer, Authorized Persons or Users certain Services that are not yet generally available, including any products, services, or features labeled "beta", "preview", "pre-release", or "experimental" (each, a "**Beta Service**"). Customer, Authorized Persons and Users may choose to access such Beta Services, in which case this Section 5 applies, but only to such Beta Services.

5.2 Restrictions on Use. If D-Wave makes available to Customer, an Authorized Person or a User a Beta Service and Customer, the Authorized Person or the User, as applicable, chooses to access it, Customer, the Authorized Person or the User, as applicable may: (a) access and use the Beta Service solely for internal evaluation purposes; (b) install and use any related D-

Wave Software and/or any other D-Wave IP that may be provided by D-Wave in connection with the Beta Service (“**Beta Materials**”) solely as necessary to access and use the Beta Service; and (c) use the Beta Services and Beta Materials only in compliance with all policies and guidelines related to any Beta Service as posted on the Leap website or otherwise made available by D-Wave, including any additional Terms for a specific Beta Service.

5.3 Confidentiality. Customer’s or the Authorized Person’s access to the Beta Service, the existence and contents of the Beta Service and Beta Materials, Feedback (as defined in Section 6.3) concerning the Beta Services or Beta Materials, and any Test Observations (as defined in Section 5.5) are Confidential Information regardless of whether they contain restrictive markings indicating the confidential nature thereof or have been identified as Confidential Information prior to disclosure. Customer agrees not to allow access to or use of any Beta Service or Beta Materials by any third party other than Customer’s employees or an Authorized Person’s employees who (i) have a need to use or access the Beta Service or Beta Materials in connection with Customer’s or the Authorized Person’s internal evaluation activities, and (ii) have executed written non-disclosure agreements obligating them to protect the confidentiality of non-public information regarding the Beta Service and Beta Materials

5.4 No Access Guarantees; No SLA. D-Wave may vary usage limits, suspend or terminate Customer’s or the Authorized Person’s access, or otherwise add or modify restrictions relating to access to or use of any Beta Service at any time. Service level agreements do not apply to Beta Services. Beta Services may be unavailable and/or their performance may be negatively affected by scheduled and unscheduled maintenance or other events, and D-Wave has no obligation to provide advance notice of such maintenance or other events.

5.5 Feedback. In consideration of being allowed to access and use a Beta Service, Customer agrees and, as applicable, Customer will ensure that the Authorized Person agree to provide D-Wave with information relating to Customer’s and the Authorized Person’s access, use, testing, or evaluation of the Beta Service or any related Beta Materials, including observations or information regarding the performance, features and functionality of the Beta Service or any related Beta Materials as applicable, when and in the form reasonably requested by D-Wave (“Test Observations”). D-Wave will own and may use and evaluate all Test Observations for its own purposes. Customer and the Authorized Person will not use any Test Observations except for Customer’s and, as applicable, the Authorized Person’s internal evaluation purposes of the Beta Service.

5.6 Termination of Participation. Either Customer or D-Wave may terminate Customer’s, any Authorized Person’s or any User’s participation in a Beta Service at any time for any reason upon notice to the other Party. Either an Authorized Person or D-Wave may terminate the Authorized Person’s or any Authorized Person’s User’s participation in a Beta Service at any time for any reason upon notice to the other. After the conclusion of Customer’s, the Authorized Person’s or any User’s participation in a Beta Service, (a) Customer’s, Authorized Persons’ (as applicable) or Users’ content used in the applicable Beta Service may be deleted or inaccessible; and (b) Customer’s, the Authorized Persons’ (as applicable) and the Users’ obligations under Sections 5.3 and 5.5 will survive.

5.7 ADDITIONAL WARRANTY DISCLAIMERS. WITHOUT LIMITING ANY OTHER DISCLAIMERS SET FORTH IN THIS AGREEMENT, THE BETA SERVICES AND BETA MATERIALS ARE NOT READY FOR GENERAL RELEASE AND MAY CONTAIN BUGS, ERRORS, DEFECTS OR HARMFUL COMPONENTS. ACCORDINGLY, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, D-WAVE IS PROVIDING THE BETA SERVICES AND BETA MATERIALS TO CUSTOMER THE AUTHORIZED PERSONS AND THEIR RESPECTIVE USERS “AS IS.” D-WAVE AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE BETA SERVICES AND BETA MATERIALS, INCLUDING ANY WARRANTY THAT THE BETA SERVICES AND BETA MATERIALS WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING THE CUSTOMER’S, THE AUTHORIZED PERSONS’ OR THEIR RESPECTIVE USERS’ CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. D-WAVE AND ITS AFFILIATES DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE UNLESS SUCH DISCLAIMER IS PROHIBITED BY APPLICABLE LAW, IN WHICH CASE D-WAVE AND ITS AFFILIATES’ AGGREGATE LIABILITY FOR ANY BETA SERVICES WILL NOT EXCEED \$1,000.

6. INTELLECTUAL PROPERTY

6.1 Customer IP. Except as expressly set out in this Agreement, D-Wave obtains no rights from Customer under this Agreement to Customer’s intellectual property (“Customer IP”), including any Customer Data. Customer consents to the use of the Customer IP by D-Wave and D-Wave’s suppliers and affiliates performing or supporting the Services under this Agreement during the Subscription Period to use Customer IP to provide the Services. Customer represents, warrants and covenants that it or its licensors have the necessary consents, rights, title and interest in the Customer IP to grant the rights set out in this Agreement.

6.2 D-Wave IP. Customer acknowledges and agrees that this is a contract for services and not for goods or products or a work for hire and, except as expressly set out in this Agreement, D-Wave retains all ownership rights, title and interests in the D-Wave IP. Subject to the Terms of this Agreement, D-Wave grants to Customer a limited, revocable, non-exclusive, non-sublicensable and non-transferable license during the Agreement Term (as defined in Section 8.1): (a) to use the D-Wave Software and the Documentation solely for the purpose of using the Services (but only to the extent such use is permitted by Section 3.9), subject to the Terms of any end-user license agreement distributed with such D-Wave Software or Documentation; and (b) to access and use any other D-Wave IP made available to Customer as part of the Services; solely in accordance with this Agreement and solely in connection with Customer's permitted use of the Services.

6.3 Feedback. If Customer provides any feedback, suggestions or recommendations for improvements, additions or changes to the Services to D-Wave ("**Feedback**") then D-Wave will be entitled to use the Feedback without restriction and Customer grants to D-Wave an unlimited, irrevocable, non-exclusive, perpetual, royalty-free, sublicensable, transferrable and worldwide license to use the Feedback for any purpose.

6.4 Third Party Software. The Services may include third-party software which is free to use but to which a third-party license applies (generally Open Source Licenses as defined in Section 12.13 and/or similar types of licenses) and, if applicable, Customer will be provided with and must agree to such license prior to use.

7. FEES

7.1 Fees. The fees payable by Customer for the Services (the "**Fees**") are set out in the applicable Order. Unless otherwise expressly specified, all amounts are in US dollars.

7.2 Taxes. The Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including value added, sales, use, or withholding taxes, assessable by any jurisdiction whatsoever ("**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases under this Agreement. If D-Wave has a legal obligation to pay or collect Taxes for which Customer is responsible under this Section 7.2, D-Wave will invoice Customer and Customer will pay that amount unless Customer provides D-Wave with a valid tax exemption certificate authorized by the appropriate taxing authority.

7.3 Invoicing and Payment. Unless otherwise expressly specified in the applicable Order, Customer will pay all Fees to D-Wave in advance at the frequency specified in the applicable Order. Customer is responsible for providing complete and accurate billing and payment information to D-Wave along with each Order, and for notifying D-Wave of any changes to such information. Fees or service charges related to invoice processing, account administration or vendor management charged to D-Wave by Customer or its service providers will be reimbursed to D-Wave by Customer upon request by D-Wave.

7.4 Overdue Charges. If any amount due is not received by D-Wave by the applicable due date, then, without limiting D-Wave's rights or remedies, whether statutory, contractual, legal, equitable, or otherwise: (a) the overdue charges accrue late interest at the rate of 1.5% of the outstanding balance per month (or the maximum rate permitted by law, whichever is lower); and (b) D-Wave may suspend the provision of Services until the overdue amount is paid in full.

8. SUBSCRIPTION PERIOD AND TERMINATION

8.1 Subscription Period and Automatic Renewal. This Agreement will commence on the Effective Date and will terminate on the end date set forth on the Order (the "**Initial Subscription Period**"). Unless specified otherwise on the Order, this Agreement, along with the applicable Bundle(s) purchased by Customer, will automatically renew at the expiration of the Initial Subscription Period or the expiration of any renewed subscription period for successive period(s) as set out in the Order Form, until terminated under this Section 8 (together, the Initial Subscription Period and any renewed subscription period(s) are the "**Agreement Term**").

8.2 Commitment Period. An executed Order may set out an initial commitment period ("**Commitment Period**") which commences on the Effective Date and continues for the period set out in the Order. During the Commitment Period, Customer may not terminate the Agreement or the Order except in accordance with Section 8.4.

8.3 Termination for Convenience. Subject to Section 8.2, either Party may terminate this Agreement (including all Orders) at any time by giving thirty (30) days' prior written notice to the other Party, except to the extent an Order provides for a longer notice period.

8.4 Termination for Cause by Either Party. Either Party may terminate this Agreement (including all Orders) for cause if the other Party is in material breach of this Agreement and the material breach remains uncured for a period of thirty (30) days from receipt of notice by the other party.

8.5 Termination for Cause by D-Wave. D-Wave may terminate this Agreement (including all Orders) immediately upon written notice to Customer if D-Wave has the right to suspend the Services under this Agreement, including under Section 3.7, 3.9 or 7.4.

8.6 Payment on Termination. If D-Wave terminates this Agreement in accordance with Sections 8.4 or 8.5, then Customer will pay to D-Wave all unpaid Fees covering the remainder of the Subscription Period of all outstanding Orders. In no event will termination relieve Customer of Customer's obligation to pay any Fees payable to D-Wave for the period prior to the effective date of termination.

8.7 Automatic Termination. This Agreement will automatically be terminated as of the date of the applicable event if (a) any proceedings relating to Customer under any reorganization, arrangement, adjustment of debt, bankruptcy, insolvency, dissolution or liquidation law of any jurisdiction are commenced, (b) Customer is adjudged bankrupt or becomes insolvent, or (c) Customer makes an assignment for the benefit of, or proposes an arrangement with, its creditors, or a receiver or a manager or a like person is appointed, in respect of all or any part of its assets.

8.8 Obligations on Termination. Immediately upon any termination of this Agreement Customer will cease all access to and use of the Services (including the D-Wave Software), Confidential Information and any other D-Wave IP, and either return to D-Wave or destroy all materials constituting or including the same, and any and all copies and portions of the foregoing (and certify in writing any such destruction to D-Wave, upon request).

8.9 Survival. Sections 4, 5.3, 5.5, 5.7, 6, 8.6, 8.8, 9, 10 and 11 of this Agreement will survive the termination of this Agreement.

9. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

9.1 Notice of Local Terms. For residents of some jurisdictions, such as the European Union, Sections 9.2, 9.3 and/or 9.4 are replaced by the applicable Terms of Appendix A (as defined in Section 11.15).

9.2 WARRANTY DISCLAIMER. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE APPLICABLE ORDER, D-WAVE MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND REGARDING THE SERVICES (INCLUDING THE D-WAVE SOFTWARE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, D-WAVE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS (INCLUDING REGARDING MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OR TRADE, OR THAT THE SERVICES ARE COMPLIANT WITH THE USERS' LOCAL LAW). EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE APPLICABLE ORDER, THE SERVICES (INCLUDING THE D-WAVE SOFTWARE) ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND (INCLUDING REGARDING PERFORMANCE, AVAILABILITY, NON-INFRINGEMENT AND THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS).

9.3 CONSEQUENTIAL DAMAGES. TO THE EXTENT PERMITTED BY LAW, D-WAVE AND ITS AFFILIATES, SUPPLIERS AND LICENSORS WILL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING LIABILITY FOR NEGLIGENCE, DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER D-WAVE NOR ANY OF ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICES, (II) D-WAVE'S DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, (III) ANY DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY CUSTOMER DATA, ACCOUNT INFORMATION OR OTHER DATA.

9.4 LIMITATION OF LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EACH PARTY, TOGETHER WITH ALL OF ITS AFFILIATES, SUPPLIERS AND LICENSORS, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING UNDER THE DPA IF APPLICABLE, EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO D-WAVE UNDER THIS AGREEMENT FOR THE SERVICES GIVING RISE TO THE LIABILITY OR CLAIM DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST INCIDENT OUT OF WHICH LIABILITY ARISE. THESE LIMITATIONS WILL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

10. INDEMNIFICATION

10.1 **Definitions.** In this Section:

(a) "**Claim**" means a claim, action, complaint, or legal regulatory body, administrative or judicial proceeding filed against or made to an Indemnified Party (as defined in this Section 10.1) during the Subscription Period;

(b) "**Indemnified Party**" means Customer when D-Wave is the Indemnifying Party (as defined in this Section 10.1) and D-Wave when Customer is the Indemnifying Party, and includes the Indemnified Party's affiliates, officers, employees and agents; and

(c) "**Indemnifying Party**" means D-Wave with respect to Claims arising under Section 10.2; and Customer with respect to Claims arising under Section 10.3.

10.2 Indemnity by D-Wave. D-Wave will defend, at its expense, any third-party Claim against Customer to the extent the Claim alleges that the Computing Services directly infringe the third party's patent, copyright, or trademark in a Leap Country ("Indemnified Claim"). D-Wave will pay any damages finally awarded against Customer in relation to the Indemnified Claim by a court of competent jurisdiction (or settlement amounts agreed to in writing by D-Wave). If D-Wave receives information about a potential Indemnified Claim, D-Wave may in its discretion and at no cost to Customer (a) modify the Computing Services so that they are no longer claimed to infringe, (b) obtain a license for Customer's continued use of the Computing Services in accordance with this Agreement, or (c) terminate Customer's access to the Computing Services upon thirty (30) days' written notice and refund Customer a pro-rated portion of any prepaid Fees covering the remainder of the Agreement Term with respect to the Computing Services. D-Wave will have no liability for any Indemnified Claim that that arises, directly or indirectly from any (a) use of the Computing Services in violation of this Agreement, (b) modification of the Computing Services by Customer, any Authorized Person, any User or any third party acting on Customer or any Authorized Person's behalf (Customer, the Authorized Persons, the Users and such third parties are the "**Customer Representatives**"), (c) any products, services, hardware, software, processes or other materials not provided by D-Wave, or combination of any of these with the Computing Services (including any means of using, accessing or interacting with the Computing Services by a Customer Representative), if the Computing Services would not be infringing without this combination, (d) any Computing Services for which there is no charge for the Computing Services (including any Beta Services), (e) the Claim relates to a breach of this Agreement by a Customer Representative, (f) the Claim relates to the Customer IP or a Customer Representative's use of the Computing Services in combination with the Customer IP or any product, service, software, data, content or method that infringes, violates or misappropriates the rights (including intellectual property or privacy rights) of any person.

10.3 Indemnity by Customer. Customer will defend, at its expense, any third-party Claim against D-Wave to the extent the Claim relates to: (a) a breach of this Agreement by a Customer Representative; or (b) the Customer IP or the Customer Representative's use of the Computing Services in combination with the Customer IP or any product, service, software, data, content or method, infringes, violates or misappropriates the rights (including intellectual property or privacy rights) of any person.

10.4 Conditions. The Indemnifying Party, as applicable, will have no liability under Section 10.2 or 10.3 if the Indemnified Party fails to: (a) notify the Indemnifying Party in writing of any Claim or potential Claim promptly upon the earlier of learning of or receiving a notice of it, (b) provide the Indemnifying Party with reasonable assistance requested by the Indemnifying Party, at the Indemnifying Party's cost, for the defense or settlement (as applicable) of the Claim, (c) provide the Indemnifying Party with the exclusive right to control and the authority to settle the Claim, or (d) refrain from making admissions or statements about the Claim without the Indemnifying Party's prior written consent. The remedies in this Section 10 are, in addition to any termination or suspension remedies expressly set forth in this Agreement. To the extent the procedural law applicable to the dispute does not allow the Indemnifying Party to fully control the defense, the Parties will collaborate to give the Indemnifying Party the broadest possible control of the defense to best implement the spirit of this Section 10.

11. GENERAL PROVISIONS

11.1 Languages. The English version of this Agreement is the original version. In the event of any inconsistency between the English version and any translation of this Agreement, the English version will prevail and be the binding version on the Parties.

11.2 Entire Agreement. This Agreement and any associated Orders, and the Additional Terms it and/or an Order refers to (as applicable) contain the entire agreement of the Parties relating to the subject matter of this Agreement and supersedes and replaces all prior and contemporaneous agreements. There are no representations, covenants or other agreements relating to the subject matter of this Agreement except as stated or referred to in this Agreement. No Term contained in, referenced in or associated with any Excluded Form (defined in Section 12.10) will have any effect on the obligations of the Parties under or otherwise modify, supersede, or supplement this Agreement and D-Wave expressly rejects all Terms contained in, referenced in or associated with any Excluded Form and no such Term forms part of this Agreement or constitutes an obligation of D-Wave.

Any reference to or acceptance of (whether by signature of, completion of, electronic acceptance of or confirmation of receipt of any Excluded Form, provision of the Services or otherwise) an Excluded Form is solely for Customer's convenience in record keeping. No act by D-Wave (including signature of, completion of, electronic acceptance of any, confirmation of receipt of any Excluded Form, provision of the Services or otherwise, including any Excluded Form where language such as "accepts", "agrees" or "acknowledges" is used) will be deemed to be an acknowledgement or acceptance of any Term contained in, referenced or associated with any Excluded Form, and any reference or other aforementioned act relating to an Excluded Form is provided solely for Customer's record-keeping convenience unless this Agreement is specifically referenced by name and Effective Date and Section 11.8, this Section 11.2 and the specific paragraph number(s) containing the Term(s) in this Agreement being modified is specifically listed.

11.3 Relationship. The Parties are independent contractors. This Agreement does not create a partnership, joint venture, franchise, fiduciary or other employment relationship between the Parties. No Party will have any authority to bind the other Party in any manner without the express written permission of the other Party.

11.4 Force Majeure. D-Wave will not be liable to Customer for a failure or delay in the performance of any obligation under this Agreement if such failure or delay is caused, wholly or in part, directly or indirectly, to Force Majeure. "**Force Majeure**" means an unforeseeable and unavoidable event, beyond D-Wave's reasonable control, including any act of God, labour dispute or strike, acts of foreign or domestic governmental bodies or agencies, terrorism, sabotage, epidemic, civil unrest, travel restrictions, quarantine restriction, power failure, fire, flood, earthquake, hurricane, tornado, cyclone, typhoon, blizzard, tidal wave, tsunami, explosion or other unusually severe weather (a "**Force Majeure Event**"), provided that D-Wave gives prompt written notice of the Force Majeure Event to Customer and resumes performance of its obligations as soon as possible.

11.5 Mutual Representations. Each Party represents, warrants and covenants to the other Party that: (a) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it under this Agreement; and (b) this Agreement constitutes the legal, valid and binding obligation of such Party when executed and delivered.

11.6 Assignment and Subcontracting. This Agreement is not assignable by Customer in whole or in part without the prior written consent of D-Wave, which may be withheld in D-Wave's sole discretion. Any consent will be conditional on the assignee agreeing in writing to be bound by this Agreement. D-Wave may assign all or any portion of this Agreement in D-Wave's sole discretion. D-Wave may engage one or more D-Wave affiliate(s) or third party subcontractors to provide some or all of the Services to Customer, provided, however, that D-Wave remains responsible for performance of its obligations set out in this Agreement that are performed any D-Wave affiliate or third party subcontractor.

11.7 No Waiver. The failure by D-Wave to enforce any Term of this Agreement will not constitute a waiver of such Term nor limit D-Wave's right to enforce such Term at a later time. All waivers by D-Wave must be in writing to be effective.

11.8 Amendments to this Agreement. For residents of some jurisdictions, such as the European Union, D-Wave may amend the Agreement as set out in the part of Appendix A (as defined in Section 11.15) relating to the Account Country. If Appendix A does not specifically provide for an amendment formula for the Account Country, then D-Wave may unilaterally amend the Agreement and any other Terms pertaining to the Services, such as Additional Terms (but not an Order). If D-Wave makes a material change to the Agreement, D-Wave will provide Customer with reasonable notice prior to the change taking effect. Customer can review the most current version of the Agreement at any time by visiting https://cloud.dwavesys.com/leap/legal/cloud_subscription_agreement/. The materially-revised Agreement will become effective on the date set forth in D-Wave's notice, and all other changes will become effective upon posting of the change (the "Amendment Effective Date"). If Customer accesses or uses the Services after the Amendment Effective Date, that use will constitute Customer's acceptance of any revised Terms.

11.9 Governing Law and Venue. Unless Appendix A (as defined in Section 11.15) provides for different governing law and/or venue in the Account Country, this Agreement will be governed by and construed in accordance with the laws specified in Section 12.6, without regard to the conflict of law rules. The Parties hereby disclaim and exclude the application of any other laws or legislation whatsoever, including the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The Parties hereby submit to the exclusive jurisdiction of the courts located in the venue specified in Section 12.6 and the Parties consent to the personal and exclusive jurisdiction of such courts for all matters.

11.10 Third Party Beneficiaries. Except as set out in this section and in Sections 9 and 10, there are no third party beneficiaries under this Agreement. Any D-Wave affiliate(s) engaged by D-Wave to provide the Services will be entitled to enforce all rights under this Agreement against Customer. Notwithstanding the foregoing, no D-Wave affiliate will have any obligation to Customer under this Agreement and all obligations of D-Wave to Customer will be binding solely on D-Wave and not on any D-Wave affiliate, even if engaged by D-Wave for such purpose.

11.11 Benefit of Agreement. This Agreement will enure to the benefit of, and be binding upon, the Parties and their representatives, including their permitted successors and assigns.

11.12 Severability. If any Term of this Agreement is held to be invalid or unenforceable, that Term will be deemed severed from this Agreement and will not affect the validity and enforceability by any court of competent jurisdiction of the remaining Terms.

11.13 Further Assurances. Each of the Parties will, from time to time, execute and deliver all such further documents and instruments and do all acts and things as the other Party may reasonably require to give effect to this Agreement.

11.14 Notices. Any notice required or permitted to be given pursuant to this Agreement must be in writing and: (a) if to D-Wave, sent to notices@dwavesys.com or to such other address as may be specified from time to time by notice to Customer, such as by update to this Agreement; or (b) if to Customer, sent to the address provided to D-Wave in connection with the creation of Customer's account. All notices will be deemed to have been given when delivered by hand or by email to the other Party or three days after the deposit thereof at a post office with proper postage for ordinary mail prepaid.

11.15 Local Terms. Appendix A - Local Terms ("**Appendix A**") forms a part of this Agreement. If the Account Country is a jurisdiction named in Appendix A, the Terms of Appendix A for that jurisdiction will apply and will control in the event of a conflict with any other Term of this Agreement.

12. DEFINITIONS

12.1 "Account Information" means information about Customer, Authorized Person or a User that such person provides to D-Wave, or that D-Wave otherwise collects, in connection with the creation or administration of Customer's account with D-Wave or in connection with support Services (including names, usernames, phone numbers, email addresses and billing information associated with Customer's account with D-Wave).

12.2 "Authorized Persons" means any person(s) expressly identified as such by D-Wave in an Order. D-Wave may identify such persons by name or by class; if identified by class, the class is limited to non-commercial entities unless the authorization of the class expressly indicates that commercial entities are included.

12.3 "Bundle" means bundle(s) for the Services as set forth in the Order and the specific features of each type of plan detailed in the Order and/or in the Documentation.

12.4 "Confidential Information" means any information of D-Wave or an affiliate of D-Wave: (i) that is marked as "Confidential" or "Proprietary", or that, if disclosed orally, visually, or by demonstration, is identified at the time of initial disclosure as confidential; or (ii) which is otherwise deemed to be confidential by the Terms of this Agreement. Notwithstanding the foregoing, Confidential Information will exclude information that Customer can demonstrate: (i) was independently developed by Customer without any use of Confidential Information or by Customer's employees or agents who have not been exposed to Confidential Information; (ii) becomes known to Customer, without restriction, from a source other than D-Wave that had no duty of confidentiality to D-Wave; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of Customer; or (iv) was rightfully known to Customer, without restriction, at the time of disclosure.

12.5 "Customer Data" means electronic data and information submitted by on behalf of Customer, and Authorized Person or any User to D-Wave for processing, storage or hosting by the Services in connection with Customer's account and any computational results that Customer, and Authorized Person or any User derive from the foregoing through their use of the Services, excluding Account Information.

12.6 "Customer Software" means a software program or software code submitted by Customer to the Services or created by or on behalf of Customer using, or with reference to, the Services (including the D-Wave Software) which software interoperates or exchanges or shares data (bidirectionally or unidirectionally) with any D-Wave Software.

12.7 "D-Wave Contracting Party" means the D-Wave entity specifically identified as such in an Order or, if the Order does not so specify, the D-Wave entity identified in the table below, based on the country of the billing address of Customer's account (the "**Account Country**").

Account Country	D-Wave Contracting Party	Mailing Address	Governing Law	Venue (Courts With Exclusive Jurisdiction)
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United States of America	D-Wave Commercial Inc.	2650 East Bayshore Road, Palo Alto, California, 94303, USA	State of California	Palo Alto, California
Any member state of the European Union or European Economic Area, or Switzerland	D-Wave Quantum Services Europe Limited	SK House, Sinnottstown Business Park, Sinnottstown Lane, Drinagh Wexford Y35 AH68, Ireland	Republic of Ireland	Dublin, Ireland
United Kingdom	D-Wave UK Ltd.	10 John Street, London, WC1N 2EB, United Kingdom	England and Wales	London, England
Japan	D-Wave Japan Co., Ltd.	Yamauchi Building 3F, 24-8 Nishi Shimbashi 3-chome, Minato-ku, Tokyo 105-0003, Japan	Japan	Tokyo, Japan
Canada	D-Wave Systems Inc.	3033 Beta Avenue, Burnaby, BC V5G 4M9, Canada	British Columbia	Vancouver, British Columbia
Any other country	D-Wave International Inc.	3033 Beta Avenue, Burnaby, BC V5G 4M9, Canada	British Columbia	Vancouver, British Columbia

12.8 “D-Wave IP” includes the Services (and all parts thereof, including the D-Wave Software), Documentation, Confidential Information, Anonymized Collected Data, and any other materials and technology developed or provided by or on behalf of D-Wave, any D-Wave affiliate, or their respective officers, employees, agents, consultants, representatives or other personnel in the course of performing the Services, and any other Intellectual Property Rights such persons have a right or license thereto.

12.9 “D-Wave Software” means any D-Wave (and/or D-Wave affiliate) software with which Customer interacts via the Services, including all versions thereof and updates and enhancements thereto, and any software development kit downloaded by Customer from a D-Wave interface, such as from D-Wave’s Leap™ and/or D-Wave’s Qubist™ services, or otherwise made available by D-Wave from time to time during the Subscription Period. For greater certainty, D-Wave Software includes any Notebooks made accessible by D-Wave via the Services as well as any sample code provided by D-Wave to Customer, any Authorized Person or any User. Notwithstanding the foregoing, D-Wave Software does not include software licensed by D-Wave under an Open Source License.

12.10 “Documentation” means the documentation, user guides and policies applicable to the Services (including the D-Wave Software), in the English language, as updated from time to time by D-Wave, which are accessible via the Services, including documentation available at <https://docs.dwavesys.com/docs/latest/index.html> and <https://docs.ocean.dwavesys.com/en/stable/>.

12.11 “Excluded Form” means any purchase order, form, e-mail, URL, portal, vendor or invoice administration system, or any other document or material, provided by Customer to D-Wave or presented by Customer to D-Wave by any means before or after the signature or express or deemed acceptance of this Agreement.

12.12 “Intellectual Property Rights” means all current and future worldwide common law and statutory rights, whether registered or not, and whether arising under the laws of Canada or the United States or any other state, country, jurisdiction, government, or public legal authority, in, to, or associated with (a) patents, patent applications, and invention disclosures; (b) copyrights, copyright registrations and applications therefor, moral rights, and mask work rights; (c) the protection of trade or industrial secrets or confidential information; (d) trademarks, service marks, and other designations of source or origin; (e) know-how and all other intellectual property rights and proprietary rights whatsoever, including rights in software and data, and any other intangible rights or privileges of a nature similar to any of the foregoing; (f) divisions, continuations, renewals, reissues, and extensions of the foregoing (as applicable); and (g) rights to apply for, file for, certify, register, record, or perfect any of the foregoing, including the right or entitlement to claim priority thereto.

12.13 “Leap Country” means a country listed at <https://support.dwavesys.com/hc/en-us/articles/360051869733-From-What-Countries-Can-I-Access-Leap->

12.14 “Observer Seat” means a single license that may be assigned to one (1) User, allowing such User to access and use the Computing Services (as defined in Section 3) purchased under the applicable Order.

12.15 “Open Source License” means any of the following licenses:

- a. Apache License version 2.0, as published by the Apache Software Foundation at <https://apache.org/licenses/LICENSE-2.0>;
- b. 3-Clause BSD License, as published by the Open Source Initiative at <https://opensource.org/licenses/BSD-3-Clause>;
- c. 2-Clause BSD License, as published by the Open Source Initiative at <https://opensource.org/licenses/BSD-2-Clause>;
- d. MIT License, as published by the Open Source Initiative at <https://opensource.org/licenses/MIT>.

For greater certainty, each of the above licenses will continue to be considered an Open Source License if subsequently published at a different location and/or by a successor not named above.

12.16 “Order” means an online order, a statement of work or other ordering document provided by D-Wave (and for clarity, excludes any Excluded Form) specifying the Services and/or Bundle(s) to be provided under this Agreement that is entered into between D-Wave and Customer and governed by and subject to the Terms of this Agreement.

12.17 “Seat” means a User Seat, Observer Seat or Service Account Seat assigned to a User or a production application, as applicable, as set forth in the Order.

12.18 “Service Account Seat” means a single license that may be assigned to one (1) production application allowing such production application to access and use the Computing Services (as defined in Section 3) purchased under the applicable Order.

12.19 “Services” means the products and services that are ordered by Customer under an Order, including any products and services that may be provided to Customer by D-Wave free of charge.

12.20 “Subscription Period” means the Initial Subscription Period (as defined in Section 8.1) and includes any renewal subscription period.

12.21 “Term” means a term, provision, condition, specification, requirement, stipulation, certification, obligation, right, representation, warranty or any similar item.

12.22 “User” means Customer and any employee or student of Customer or of an Authorized Person to whom Customer has supplied its user identification, password or token or has otherwise permitted to use the Services or access Customer’s account.

12.23 “User Seat” means a single license that may be assigned to one (1) User allowing such User to access and use the Computing Services (as defined in Section 3) purchased under the applicable Order.

APPENDIX A - LOCAL TERMS

If the Account Country is one of the below jurisdictions, its associated Terms apply. In the event of a conflict between this Appendix and the main body of the Agreement, the Terms of this Appendix A applicable in the Account Country will control.

1. UNITED STATES

1.1 Applicability of Terms. This Section 1 applies only when Customer is the United States government or an agency thereof.

1.2 US Federal Government License. The D-Wave Software and any other D-Wave IP licensed under this Agreement were developed at private expense and constitute and/or embody trade secrets or published copyrighted software. By accepting delivery of the software, the government hereby agrees that the D-Wave Software and the Documentation are “Commercial Items”, as that Term is defined at 48 C.F.R. 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such Terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227- 7202-1 through 227-7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users: (a) only as Commercial Items; and (b) with only those rights as are granted to all other end users pursuant to the Terms of this Agreement, as provided in DFARS 227-7202-1(a) and 227-7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (Oct. 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14 (Alt III), as applicable. The Terms of this Agreement will pertain to the government’s use and disclosure of the software, and will supersede any conflicting contractual Terms. If this Agreement fails to meet the government’s minimum needs or is inconsistent in any respect with federal procurement law, the government agrees to make no use of the Services, the D-Wave Software or any other D-Wave IP. This Section 1.2 will be deemed updated as necessary to reference successor legislation.

2. EUROPE

2.1 Applicability of Terms. This Section 2 applies only if Customer is a resident in a member state of the European Union, European Economic Area or Switzerland. In the event of a conflict between any section of this Section 2 and a local Term for the Account Country, the local Term for the Account Country will control.

2.2 Changes to Services. This Section 2.2 replaces Section 1.2 of the Agreement. Customer agrees and acknowledges that the Services are provided using cutting edge computing technology that is subject to on-going research and development and that as such,

- a. D-Wave may modify the functionality of any or all of the Services at any time to an extent that is reasonable for Customer, taking into account the character of the Services. A change is in particular reasonable if it is required for an important reason – e.g. for security reasons or because of technological advances and developments – and the characteristics owed under an Order, as well as the major obligations of D-Wave, remain substantially unaffected. If changes are not limited to features not listed in the Order, D-Wave will inform Customer by e-mail at least one month in advance; and
- b. in the event D-Wave modifies the functionality of the Services for other reasons and/or to a larger extent than as set out in Section 14.2(a) above, D-Wave will inform the Customer accordingly in advance by e-mail and grant Customer a time period of at least one month to object to such changes. Section 11.8 applies accordingly. If the Customer objects to the changes, D-Wave may terminate the Agreement effective on the date on which the changes come into effect. This Section 14.2(b) applies only to the extent that D-Wave’s main performance obligations remain unaffected by the changes.

2.3 Statutory Rights - Warranties. WARRANTY OR REPRESENTATION OF ANY KIND REGARDING THE SERVICES (INCLUDING THE D-WAVE SOFTWARE). CUSTOMER’S STATUTORY WARRANTY CLAIMS ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW. CUSTOMER MAY RETAIN CERTAIN NON-EXCLUDABLE STATUTORY WARRANTY CLAIMS IN ACCORDANCE WITH LOCAL LAW. SECTION 2.4 OF THIS APPENDIX REMAINS UNAFFECTED.

2.4 Statutory Rights - Limitation of Liability. THIS SECTION 2.4 REPLACES SECTION 9.4 OF THE AGREEMENT. D-WAVE IS LIABLE ONLY FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND ANY ACTS FOR WHICH LIABILITY IS REQUIRED AND NOT WAIVABLE UNDER LOCAL LAW. CUSTOMER’S LOCAL LAW MAY ALLOW BROADER WAIVERS OF LIABILITY FOR FREE SERVICES, IN WHICH CASE D-WAVE’S LIABILITY FOR ANY SERVICES PROVIDED FREE OF CHARGE IS WAIVED TO THE EXTENT PERMITTED BY LOCAL LAW. IN THE EVENT THAT D-WAVE IS GENERALLY LIABLE FOR ANY LOSS OF DATA PURSUANT TO THE FOREGOING, SUCH LIABILITY IS LIMITED TO THE RECOVERY COSTS WHICH WOULD HAVE ARISEN IF BACKUP COPIES HAD BEEN REGULARLY MADE IN APPROPRIATE RELATION TO THE RISK OF SUCH LOSS. THE FOREGOING LIMITATIONS OF LIABILITY WILL ALSO APPLY FOR THE BENEFIT OF ANY OFFICERS, DIRECTORS, EMPLOYEES, SUB-CONTRACTORS AND AGENTS OF D-WAVE. DOWNTIME OF QUANTUM SERVICES IS SOMETIMES REQUIRED DUE TO THEIR UNIQUE PHYSICS AND ENGINEERING REQUIREMENTS; D-WAVE IS THEREFORE NOT LIABLE FOR SUCH DOWNTIME OF THE SERVICES AND CUSTOMER AGREES NOT TO RELY ON CONTINUED UPTIME OF THE SERVICES.

2.5 Amendments. D-Wave may amend this Agreement as follows provided such modification (i) is necessary because of a change in laws or their application by courts, regulators and/or other authorities, or similarly cogent reasons, and (ii) does not modify the Parties’ main performance obligations in a way that is detrimental to Customer: D-Wave will communicate the intended changes before intended entry into force and grant Customer a reasonable period of at least thirty (30) days to either accept or object to the amended Terms. If D-Wave does not receive any objection from Customer within this period, which begins with Customer’s receipt of the aforementioned notice in text form, the amended Terms are considered accepted. In the notice, D-Wave will inform Customer separately about the beginning and duration of the objection period, the right to object, and the legal consequences of remaining silent.

2.6 Governing Law and Venue. This Agreement will be governed by and construed in accordance with Irish law, excluding the United Nations Convention on Contracts for the International Sale of Goods. The Parties hereby submit to the personal and exclusive jurisdiction and venue of the courts located in Dublin, Ireland for all matters, except where statutory rules require alternative jurisdiction or venue, in which case court jurisdiction will be determined according to such statutory rules.

3. FRANCE

3.1 Statutory Rights - Warranties. NOTWITHSTANDING ANYTHING IN SECTION 14.3 OF THIS APPENDIX, ALL WARRANTIES, GUARANTEES OR CONDITIONS CONCERNING THIS AGREEMENT ARE SUBJECT TO THE FOLLOWING LIMITATIONS:

- a. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the warranty;
- b. any warranties, guarantees or conditions do not cover problems caused by accident, abuse or use of the Services in a manner inconsistent with this Agreement or the associated Documentation, or resulting from events beyond D-Wave’s reasonable control;
- c. any warranties, guarantees or conditions do not apply to problems caused by a failure to meet minimum system requirements; and

- d. any warranties, guarantees or conditions do not apply to any beta or pre-release Services which may be offered to Customer, Authorized Persons or Users from time to time.

3.2 Amendments to this Agreement. The Parties acknowledge that this Agreement has no fixed duration. D-Wave may unilaterally modify the Terms of this Agreement as described in this Agreement. D-Wave will, to the extent it is commercially reasonable, avoid modification to the core characteristics of the Services without Customer's consent.

4. GERMANY

4.1 Additional Services. Any additional services identified under Section 3.3 of the Agreement are services ("**Dienste**") in the sense of Sec. 611 et seq. of the German Civil Code unless expressly agreed otherwise in the applicable Additional Terms.

4.2 Statutory Rights - Termination. The statutory right of extraordinary termination without notice for cause remains unaffected by Sections 8.3 and 8.4 of the Agreement.

4.3 Statutory Rights - WARRANTIES. NOTWITHSTANDING ANYTHING IN SECTION 14.3 OF THIS APPENDIX, TO THE EXTENT ANY SERVICES ARE PROVIDED FREE OF CHARGE (INCLUDING BETA SERVICES) OR ARE SERVICES PURSUANT TO SEC. 611 ET SEQ. OF THE GERMAN CIVIL CODE, NO STATUTORY WARRANTY RIGHTS APPLY AND THIS SECTION 16.3 DOES NOT CREATE ADDITIONAL WARRANTY RIGHTS. OTHERWISE, ANY STATUTORY WARRANTY FOR DEFECTS OF QUALITY OR DEFICIENCY OF TITLE RELATING TO THE SERVICES APPLIES SUBJECT TO THE FOLLOWING MODIFICATIONS:

- a. Defects are substantial deviations from the contractually agreed scope of functions of the Services.
- b. If the Services have any Defect, D-Wave will rectify or re-provide the Services upon written complaint by Customer within a reasonable period. Rectification may also be made by providing instructions with which Customer is able to work around defects in a reasonable way in order to use the Services as agreed upon.
- c. If provision of Services without Defects is not possible even within the reasonable period of time set by Customer due to reasons D-Wave is responsible for, Customer may reduce the agreed remuneration for the concerned month by a reasonable amount. The right of reduction is limited to the amount of the monthly fee for the defective portion(s) of the Service(s).
- d. If any reduction according to Section 16.3(c) of this Appendix reaches the maximum amount established in that Section in two consecutive months or in two months of a quarter, Customer may terminate this Agreement without prior notice and claim damages pursuant to Section 16.4 of this Appendix.
- e. Customer will inform D-Wave about potentially appearing Defects immediately in written form or by e-mail. Additionally, Customer will support D-Wave with repair of Defects free of charge and will provide all available information and documents necessary for analysis and remedy of defects (such as detailed descriptions of the defect).
- f. In the event of a deficiency in title, D-Wave may either retroactively license the concerned components of the Service or substitute them for equivalent components, to the extent this does not, or not materially, impair the functionalities of the Service. To the extent this is not possible, the warranty described in this Section 16.3 applies accordingly.

4.4 Statutory Rights - Limitation of Liability. NOTWITHSTANDING ANYTHING IN SECTION 14.4 OF THIS APPENDIX, TO THE EXTENT ANY SERVICES ARE PROVIDED FREE OF CHARGE (INCLUDING BETA SERVICES), D-WAVE IS LIABLE ONLY FOR GROSS NEGLIGENCE AND WILLFUL MISCONDUCT PURSUANT TO STATUTORY LAW. FOR SERVICES PROVIDED FOR A FEE, D-WAVE IS LIABLE EXCLUSIVELY ACCORDING TO THE FOLLOWING TERMS:

- a. D-Wave's liability in case of personal injury or death, for willful intent, gross negligence, in the event of breach of a guarantee (which must be expressly designated as such in order to be a guarantee in the legal sense), and under the German Product Liability Act is not limited by this Agreement.
- b. In cases other than those described in Section 4.4(a) of this Appendix, D-Wave is liable for slight negligence only in cases of a breach of a duty essential to the purposes of this Agreement ("*wesentliche Vertragspflicht*"). Duties are considered essential if their fulfillment is necessary to achieve the purpose of this Agreement, so that Customer may regularly rely on their fulfillment.
- c. In the case described in Section 4.4(b) of this Appendix, D-Wave's liability is limited to typical and foreseeable damages at the time of conclusion of Agreement.
- d. The Parties agree that such typical and foreseeable damages are limited on annual aggregate to 50% of the amount actually paid by Customer in the respective contract year.
- e. Any further liability of D-Wave, in particular the no-fault liability for defects already present in the Services upon conclusion of this Agreement (Sec. 536a para. 1 of the German Civil Code), is excluded.

5. UNITED KINGDOM

5.1 Statutory Rights - Warranties. NOTWITHSTANDING ANYTHING IN SECTION 2.3 OF THIS APPENDIX, CUSTOMER RETAINS ITS WARRANTY CLAIMS ON THE BASIS OF THE SERVICE NOT BEING OF SATISFACTORY QUALITY OR FIT FOR PURPOSE.

5.2 Statutory Rights - Limitation of Liability. NOTWITHSTANDING ANYTHING IN SECTION 2.4 OF THIS APPENDIX, D-WAVE IS NOT LIABLE FOR (A) LOSSES THAT WERE NOT FORESEEABLE TO BOTH PARTIES WHEN THE CONTRACT WAS FORMED; (B) LOSSES THAT WERE NOT CAUSED BY ANY BREACH BY D-WAVE; AND (C) BUSINESS LOSSES AND LOSSES TO NON-CONSUMERS.

6. INDIA

6.1 Prohibited Uses: In addition to the Prohibited Uses listed in Section 3.9 of the Agreement, neither Customer nor any Authorized Person, nor any User can use the Services or any D-Wave IP to engage in the following acts:

- a. harm minors in any way;
- b. send messages which belong to another person and to which the Customer, Authorized Person or User does not have any right to;
- c. threaten the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation;
- d. impersonate another person;
- e. send messages which contain software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;
- f. deceive or mislead the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature; or
- g. send messages which are grossly harmful, blasphemous, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or otherwise unlawful in any manner whatever.

6.2 Intellectual Property: Notwithstanding Section 30A of the (Indian) Copyright Act, 1957, any copyrightable material in the Feedback or the Customer IP licensed under Sections 6.1 and 6.3 of the Agreement will not lapse nor will the rights licensed therein revert to the Customer, even if D-Wave does not exercise the rights under the license within a period of one year from the date of such license.

6.3 Amendments to this Agreement. D-Wave may unilaterally amend the Agreement and any other Terms pertaining to the Services, such as Additional Terms (but not an Order). If D-Wave makes a material change to the Agreement, D-Wave will provide Customer with reasonable notice prior to the change taking effect. Customer can review the most current version of the Agreement at any time by visiting https://cloud.dwavesys.com/leap/legal/cloud_subscription_agreement/. The materially-revised Agreement will become effective on the date set forth in D-Wave's notice, and all other changes will become effective upon posting of the change (the "**Amendment Effective Date**"). Customer's acceptance of the revised Terms can be implied by a positive conduct evidencing the Customer's intention to accept the revised Terms.

7. SINGAPORE

7.1 Applicability of Terms. The following sections will apply in the following situations:

- a. Section 7.2 of this Appendix will apply only strictly to the extent that the Unfair Contract Terms Act (Cap 396) applies to the Agreement; and
- b. Section 7.3 of this Appendix will apply only strictly to the extent that the Personal Data Protection Act 2012 (No. 26 of 2012) applies to the Agreement.

7.2 Limitation of Liability. THIS SECTION 7.2 MODIFIES SECTIONS 9.2 AND 9.4 OF THE AGREEMENT. NOTWITHSTANDING ANYTHING IN SECTIONS 9.2 OR 9.4 OF THE AGREEMENT:

- a. LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF A PARTY AND ITS AFFILIATES WILL NOT BE EXCLUDED OR RESTRICTED; AND
- b. D-WAVE AND ITS AFFILIATES' AGGREGATE LIABILITY FOR ANY SERVICES WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO D-WAVE UNDER THIS AGREEMENT FOR THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

7.3 Personal data. For the purposes of Section 2.5 of the Agreement, “personal data” will have the same meaning as the Personal Data Protection Act 2012 (No. 26 of 2012).

8. AUSTRALIA

8.1 Applicability of Terms. This Section 8 applies only if Customer is a resident or citizen of Australia or the Services are provided in Australia.

8.2 Statutory Rights - Warranties. Where legislation implies in this Agreement any condition or warranty, that condition or warranty is excluded or, if incapable of exclusion, limited to the extent permitted by that legislation. Where legislation provides for a consumer guarantee to be incorporated into this Agreement, and that legislation avoids or prohibits Terms in a contract excluding or modifying the application of or exercise of or liability under such guarantee, this Agreement will not be read as excluding that guarantee. However, the liability of D-Wave for any breach of such guarantee will be limited, at the option of D-Wave, to one or more of the following:

- a. the supplying of the Services again; or
- b. the payment of the cost of having the Services supplied again.

8.3 Limitation on liability. The limitation on the aggregate liability under this Agreement of D-Wave and its affiliates, suppliers and licensors specified in Section 9.3 or 9.4 of the Agreement applies only to the extent permitted by law.

8.4 Amendment. D-Wave may unilaterally amend this Agreement and any other Terms pertaining to the Services, such as Additional Terms (but not an Order). If D-Wave makes a material change to the Agreement, D-Wave will provide Customer with reasonable notice prior to the change taking effect. Customer can review the most current version of the Agreement at any time by visiting https://cloud.dwavesys.com/leap/legal/cloud_subscription_agreement/. The materially-revised Agreement will become effective on the later of:

- a. the end of the Commitment Period; or
- b. on the date set forth in D-Wave’s notice (the “**Amendment Effective Date**”).

If Customer accesses or uses the Services after the Amendment Effective Date, that use will constitute Customer’s acceptance of any revised Terms.

9. ISRAEL

9.1 Personal Data. For the purposes of section 2.5 of the Agreement, “personal data” shall have the same meaning as the Privacy Protection Law – 1981.

9.2 Statutory Rights - Warranties. Where legislation implies in this Agreement any condition or warranty, that condition or warranty is excluded or, if incapable of exclusion, limited to the extent permitted by that legislation. Where legislation provides for a Customer guarantee to be incorporated into this Agreement, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such guarantee, this Agreement will not be read as excluding that guarantee. However, the liability of D-Wave for any breach of such guarantee will be limited, at the option of D-Wave, to one or more of the following:

- a. provide the Customer with the Computing Services for the remainder of the Term; or
- b. refund Customer a pro-rated portion of any prepaid Fees covering the remainder of the Term with respect to the Computing Services.

LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF D-WAVE AND ITS AFFILIATES SHALL NOT BE EXCLUDED OR RESTRICTED; AND D-WAVE AND ITS AFFILIATES’ AGGREGATE LIABILITY FOR ANY SERVICES WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO D-WAVE UNDER THIS AGREEMENT FOR THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

9.3 Consumer Protection Law. To the extent that the Consumer Protection Law – 1981 applies to this Agreement, the prior notice to termination shall be three (3) days from delivery of notice thereof.

APPENDIX B - DATA PROCESSING ADDENDUM

This Data Processing Addendum (the “**DPA**”) governs the processing of Customer Personal Data carried (as defined below) in connection with and for the duration of the Leap Cloud Subscription Agreement (the “**Leap Agreement**”) entered into and agreed between the Customer and D-Wave.

1. DEFINITIONS AND INTERPRETATION

1.1 In this DPA, unless the context otherwise requires, the following definitions will apply:

- a. **“Customer Personal Data”** means Personal Data which is processed by D-Wave pursuant to this DPA, as more particularly described in Schedule 1 (Details of Customer Personal Data Processed).
- b. **“D-Wave Personnel”** means D-Wave’s officers, employees, agents, consultants, representatives and other personnel of D-Wave and each of its Sub-Processors.
- c. **“Data Protection Legislation”** means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) GDPR (EU Regulation 2016/679); (ii) GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the “UK GDPR”); (iii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR; (iv) in the UK, the Data Protection Act 2018; (v) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC); (vi) in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (vii) in Israel, the Israeli Protection of Privacy Law 5741-1981 and its regulation; in each case, as updated, amended or replaced from time to time; and the terms **“Data Subject”**, **“Personal Data”**, **“processing”**, **“processor”** and **“controller”** will have the meanings set out in the GDPR or UK GDPR (as applicable).
- d. **“DP Regulator”** means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Legislation.
- e. **“DPA”** means this Data Processing Addendum (including any schedule to it and any document in agreed form).
- f. **“Permitted Region”** means the European Economic Area and the United Kingdom.
- g. **“Request”** means a request from a Data Subject to exercise any of their rights under the Data Protection Legislation in respect of the Customer Personal Data.
- h. **“Security Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data, transmitted, stored or otherwise processed.
- i. **“Standard Contractual Clauses”** means the standard contractual clauses approved by either the European Commission or the Secretary of State for the United Kingdom for transfers of Personal Data to countries outside the Permitted Region or not otherwise recognised as providing an adequate level of protection (by either the European Commission or Secretary of State for the United Kingdom as appropriate).
- j. **“Sub-Processor”** will have the meaning given in Section 4.1 below.

1.2 In this DPA, unless the context otherwise requires:

- a. headings are for convenience only and do not affect the interpretation of this DPA;
- b. references to a person includes its legal personal representatives, successors and assigns;
- c. a reference to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended, extended or re-enacted from time to time; and
- d. any phrase introduced by the terms “include”, “including”, “particularly” or “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

2. DATA PROCESSING OBLIGATIONS

2.1 Customer will:

- a. comply with its obligations under the Data Protection Legislation as they apply to it as a controller of the Customer Personal Data and ensure that any instructions it issues to D-Wave will comply with the Data Protection Legislation;
- b. have sole responsibility for the accuracy, quality and legality of Customer Personal Data, the means by which Customer acquired Customer Personal Data, and will establish the legal basis for processing under Data Protection Legislation, including providing all notices and obtaining all consents as may be required under Data Protection Legislation in order for D-Wave to process Customer Personal Data as otherwise contemplated by this DPA; and
- c. maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Legislation, and will make such information available to any DP Regulator on request.

2.2 D-Wave will:

- a. process the Customer Personal Data solely in accordance with the Data Protection Legislation (to the extent it applies to processing under this DPA), the terms of this DPA and any other written instructions of Customer that are agreed between the Parties from time to time;
- b. only process the type(s) of Personal Data, and only in respect of the categories of Data Subjects and types of processing, set out in Schedule 1 (Details of Customer Personal Data Processed);

- c. take reasonable steps to ensure it does not do, cause or permit anything to be done which may result in a breach by Customer of the Data Protection Legislation in connection with the processing of Customer Personal Data;
- d. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing, implement technical and organisational measures to ensure a level of security for such Customer Personal Data appropriate to the risk, including the risks of unauthorised or unlawful processing of Customer Personal Data and accidental loss or destruction of, or damage to, Customer Personal Data;
- e. notify Customer without undue delay after discovering any Security Breach, provide full details of the Security Breach and the consequences of the Security Breach and not make any notifications to any regulatory, supervisory or government body, or to any Data Subjects about the Security Breach without Customer's prior written consent (not to be unreasonably withheld or delayed);
- f. ensure that only D-Wave Personnel who are required to process Customer Personal Data have access to it;
- g. take reasonable steps to ensure that D-Wave Personnel who are authorised to have access to Customer Personal Data are subject to written (or under appropriate statutory) obligations to maintain the confidentiality of Customer Personal Data;
- h. make available to Customer all information necessary to demonstrate compliance with its obligations under this DPA, and allow Customer to conduct an audit of D-Wave's compliance with its obligations under this DPA, subject to the following requirements:
 - a. Customer may perform such audits once per year, or more frequently if required by the Data Protection Legislation applicable to Customer;
 - b. Customer may use a third party to perform the audit on its behalf, provided that such third party executes a confidentiality agreement acceptable to D-Wave before the audit;
 - c. audits must be conducted during regular business hours, subject to D-Wave's policies, and may not unreasonably interfere with D-Wave's business activities;
 - d. Customer must provide D-Wave with any audit reports generated in connection with any audit at no charge unless prohibited by law. Customer may use the audit reports only for the purposes of meeting its audit requirements under the Data Protection Legislation and/or confirming compliance with the requirements of this DPA. The audit reports will be confidential;
 - e. to request an audit, Customer must first submit a detailed audit plan to D-Wave at least 6 weeks in advance of the proposed audit date. The audit must describe the proposed scope, duration and start date of the audit. D-Wave will review the audit plan and inform Customer of any concerns or questions (for example, any request for information that could compromise D-Wave's confidentiality obligations or its security, privacy, employment or other relevant policies). D-Wave will work cooperatively with Customer to agree on a final audit plan;
 - f. nothing in this Section 2.2(h) will require D-Wave to breach any duties of confidentiality owed to any of its clients or employees; and
 - g. all audits are at Customer's sole cost and expense;
- i. notify Customer as soon as reasonably practicable upon receiving any notice, complaint or communication from any regulatory, supervisory or government body which relates to the processing of the Customer Personal Data and co-operate with and provide commercially reasonable assistance to Customer in connection with such notice, complaint or communication;
- j. notify Customer as soon as reasonably practicable if it receives a Request, and provide commercially reasonable assistance to Customer in connection with such Request and Customer will be responsible for any reasonable costs arising from D-Wave's provision of such assistance;
- k. not disclose the Customer Personal Data to any Data Subject, or to a third party other than at the request of Customer or as expressly provided for in this DPA;
- l. provide such other information and commercially reasonable assistance as Customer may reasonably require to enable Customer to comply with Customer's obligations under the Data Protection Legislation (including Articles 32 to 36 of the GDPR or UK GDPR respectively) in respect of Customer Personal Data.

3. TRANSFER OF CUSTOMER PERSONAL DATA

3.1 D-Wave will not process any Customer Personal Data, or otherwise transfer or access any Customer Personal Data, outside of the Permitted Region without the Customer's consent.

3.2 The Customer's consent under Section 3.1 will be conditional upon D-Wave ensuring that there is adequate protection and appropriate safeguards for such Customer Personal Data in accordance with Data Protection Legislation when it is transferred or accessed outside of the Permitted Region including in respect of any onward transfers to D-Wave's affiliates or Sub-Processors. Such adequate protection and appropriate safeguards may include ensuring that transfer is based on an "adequacy decision", "subject to appropriate safeguards" or that a "derogation for specific situations" applies, each within the meanings given to them in Articles 45, 46 and 49 of the GDPR or UK GDPR respectively.

3.3 If the Customer authorises D-Wave to transfer Customer Personal Data outside the Permitted Region pursuant to Section 3.1 and either (a) the means by which adequate protection for the transfer is achieved ceases to be valid, or (b) any DP Regulator (or other supervisory or regulatory authority) requires transfers of Personal Data to be suspended, then the Customer may (at its discretion) require D-Wave immediately to cease transfers of Customer Personal Data and delete or return all Customer Personal Data previously transferred within a reasonable period.

3.4 If any transfer of Customer Personal Data between the Customer and any D-Wave affiliate requires execution of Standard Contractual Clauses in order to comply with the Data Protection Legislation (where the Customer is the entity exporting Personal Data to a D-Wave affiliate outside the Permitted Region), D-Wave will enter into the Standard Contractual Clauses on behalf of its affiliate and the Parties will complete all relevant details in, and execute, the applicable Standard Contractual Clauses, and take all other actions required to legitimise the transfer.

4. APPOINTMENT OF SUBCONTRACTORS

4.1 Customer agrees that D-Wave may disclose Customer Personal Data to its advisors, auditors or other third parties as reasonably required in connection with the performance of its obligations under this DPA and the Leap Agreement. In addition, D-Wave may engage third parties to process Customer Personal Data on behalf of the Customer ("Sub-Processors"). The current list of Sub-Processors as of the Effective Date is set out in Schedule 1.

4.2 D-Wave will ensure that its contract with each Sub-Processor will impose obligations on the Sub-Processor that are materially equivalent to the obligations to which D-Wave is subject to under this DPA.

4.3 Any sub-contracting or transfer of Customer Personal Data pursuant to this Section 4 will not relieve D-Wave of any of its liabilities, responsibilities and obligations to Customer under this DPA and D-Wave will remain fully liable for the acts and omissions of its Sub-Processors.

5. CONSEQUENCES OF TERMINATION

5.1 On termination of this DPA, D-Wave will, at Customer's request, promptly return to Customer or destroy all Customer Personal Data securely (regardless of form, and whether computerised or physical) except as required by law or as required in order to defend any actual or possible legal claims.

6. GENERAL

6.1 This DPA constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this DPA and supersedes any prior agreements, representations, understandings or arrangements between the Parties (oral or written) in relation to such subject matter. Each Party acknowledges that:

- a. upon entering into this DPA, it does not rely, and has not relied, upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person (whether a Party or not) except those expressly set out in this DPA; and
- b. the only remedy available in respect of any misrepresentation or untrue statement made to it will be a claim for breach of contract under this DPA.

6.2 This DPA and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation will be governed by and construed in accordance with the same jurisdiction as that which applies in the Leap Agreement.

6.3 The jurisdiction for the settlement of any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this DPA, its subject matter or formation will be the same jurisdiction as that which applies to the Leap Agreement.

6.4 The terms of this DPA will survive the termination of the Leap Agreement to the extent that D-Wave continues to process Customer Personal Data on behalf of Customer.

SCHEDULE 1 TO APPENDIX B - DETAILS OF THE CUSTOMER PERSONAL DATA PROCESSED

1. Nature and Purpose of Processing

D-Wave will process Customer Personal Data as necessary to perform the Services pursuant to the Leap Agreement and as further instructed by Customer in its use of the Services.

2. Categories of Customer Personal Data

The categories of Personal Data which are processed pursuant to this DPA will include, but will not be limited to:

- a. email address
- b. first and last name
- c. affiliated organization name
- d. job title
- e. civic address
- f. phone number
- g. billing information, including invoice information, billing tax information, credit card information, credit card transaction and payment history

3. Categories of Data Subjects

The categories of Data Subjects whose Personal Data is processed pursuant to this DPA will include, but will not be limited to:

- a. Employees or students of the Customer or of an Authorized Person

4. Sub-Processors

- a. Amazon Web Services
- b. ZenDesk
- c. SalesForce
- d. Marketo
- e. Google Cloud Platform
- f. NetSuite
- g. Worldpay
- h. Avalara