

TERMS AND CONDITIONS OF Use

SOFTWARE EVALUATION

**THIS TERMS AND CONDITIONS OF USE (THE "Agreement") IS A LEGALLY BINDING AGREEMENT BETWEEN THE COPYRIGHT OWNER OF THE SOFTWARE ("OWNER") AND THE LEGAL ENTITY YOU REPRESENT ("YOU" OR "YOUR"). OWNER IS WILLING TO LICENSE THIS SOFTWARE AND ASSOCIATED DOCUMENTATION (COLLECTIVELY REFERRED TO AS THE "Software") TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT AND AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT. BY COMPLETEING THE DOWNLOAD YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS, OWNER IS UNWILLING TO AND DOES NOT LICENSE THE SOFTWARE OR DOCUMENTATION TO YOU, AND YOU MUST DISCONTINUE THE DOWNLOAD AND/OR INSTALLATION PROCESS AND YOU SHALL NOT USE THE SOFTWARE OR RETAIN ANY COPIES OF THE SOFTWARE OR DOCUMENTATION. ANY USE OR POSSESSION OF THE SOFTWARE BY YOU IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.**

1. **GRANT OF LIMITED EVALUATION LICENSE.** Subject to and conditioned upon Your compliance with the terms and conditions of this Agreement, Owner grants to You a non-exclusive, non-transferable, revocable, limited royalty-and-fee-free license solely under Owner's copyrights and trade secrets in the Software to use the Software solely for internal evaluation in connection with the research paper submitted to the **ICLR, 2023** for the period indicated in Section 9 (Term and Termination) below (the "Limited Purpose"). You may make a reasonable number of copies of the Software to exercise your limited license under this Agreement. Owner is specifically not granting any patent rights either expressly, by implication, or by way of estoppel pursuant to this Agreement.

2. **LICENSE RESTRICTIONS.**

a. You shall not, without Owner's prior written authorization, (i) modify, adapt, perform, display, transfer, reproduce or distribute the Software outside of Your facilities or to any third party or (ii) use the Software for commercial production or revenue generating purposes. Except for the Limited Purpose, You shall not use the Software for any other purpose.

b. Owner has devoted significant resources to the development of the Software and the Software contains trade secret information of Owner, therefore You shall not, nor assist any third party to, take apart, reverse engineer, reverse assemble, decompile or disassemble the Software provided in object code format.

c. **Proprietary Notices.** You shall not remove or alter any copyright notices, proprietary information notices or restricted rights notices contained in or on the Software.

d. **Pre-Commercial Version.** You acknowledge that the Software may not operate correctly and may be substantially modified prior to being made available for commercial or production use or may be withdrawn completely.

e. **Open Source.** You shall not engage in any act or failure to act, that enables, causes or facilitates any use or distribution of the Software (or any third-party software) in a manner that causes any patents, copyrights or other intellectual property rights owned or controlled by Owner or any of its Affiliates (or for which Owner or any of its Affiliates has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License Terms. The rights granted by Owner in Section 1 are expressly conditioned upon Your full compliance with the foregoing sentence.

As used herein, "Open Source License Terms" means terms in any license for software that, as a condition of use, copying, modification or redistribution, require such software and/or derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be distributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser Library GPL.

For purposes of this Agreement, "Affiliate" means any person or entity which directly or indirectly Controls, is Controlled by, or is under common Control with such entity. The term "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of more than fifty percent (50%) of voting securities, by contract or otherwise.

3. **OWNERSHIP.**

a. Owner retains all of its right, title and interest in and to the Software and any modifications thereto. This is a limited license, nothing contained herein shall be construed as the sale or offer for sale of the Software, or any part thereof, to You.

b. You agree not to contend in any context that, as a result of the provision, making available, or use of the Software, either Owner or any Owner Affiliate has any obligation to extend, or that You or any other party has obtained any right to, any license, whether express or implied,

with respect to any patent of Owner or its Affiliates for any purpose.

c. You shall not use the Software for the purpose of identifying or providing evidence to support any potential patent infringement claim against Owner, its Affiliates, or any of Owner's or its Affiliates' suppliers or direct or indirect customers.

d. **No Grant of Patent or Certain Other Rights.** Except for the express copyright and trade secret license rights, granted to You in Section 1 for the Limited Purpose, no other rights under any intellectual property are granted by Owner under or as a result of this Agreement (whether expressly, impliedly, by virtue of estoppel or exhaustion, or otherwise). You acknowledge and agree, on behalf of Yourself and Your subsidiaries, that neither the delivery of the Software nor any provision of this Agreement (including, without limitation, any provision in any exhibit, etc. forming a part thereof) will be deemed or construed to grant (whether expressly, by implication or by way of estoppel or otherwise) any right, license, authority to infringe, or immunity from infringement liability under or to any patents of Owner or any of its Affiliates.

4. **COVENANT NOT TO ASSERT.** You hereby agree that neither You nor any of your Affiliates, will assert any action for the infringement of Your or any of Your Affiliates' patents against Owner or its Affiliates for making (or having made), importing, using, selling, licensing or otherwise disposing of any of the Software provided hereunder.

5. **SUGGESTIONS.** Owner may from time to time receive suggestions, feedback or other information ("Feedback") from You concerning the Software. Any Feedback provided by You is and shall be entirely voluntary on Your part. Notwithstanding any other term in this Agreement, Owner and its Affiliates shall be free to use, disclose, reproduce, modify, license or otherwise distribute, and exploit the Feedback as it sees fit, entirely without any obligations, payments, or restrictions of any kind on account of intellectual property rights, confidentiality, or otherwise.

6. **WARRANTY.** THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, OWNER AND OWNER'S LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES THAT THE SOFTWARE IS FREE FROM THE RIGHTFUL CLAIM OF ANY THIRD PARTY, BY WAY OF INFRINGEMENT OR THE LIKE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OWNER OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE OR EXTEND ANY WARRANTY.

7. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL OWNER OR ANY OF ITS AFFILIATES BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR INABILITY TO USE, OR THE DELIVERY OF OR FAILURE TO DELIVER THE SOFTWARE EVEN IF OWNER OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OWNER'S TOTAL, CUMULATIVE LIABILITY FOR DIRECT DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WILL BE LIMITED TO A TOTAL AMOUNT OF ONE HUNDRED UNITED STATES DOLLARS (US \$100). MULTIPLE CLAIMS WILL BE AGGREGATED TO DETERMINE THE SATISFACTION OF THIS LIMIT.

8. **CONFIDENTIAL INFORMATION.**

a. "Confidential Information" means any information, including, without limitation, technical information, specifications, trade secrets, confidential information and supporting documentation, which is provided by Owner or any of its Affiliates to

- You under this Agreement. For purposes of this Agreement the Software is deemed to be Confidential Information. This Agreement supersedes any non-disclosure agreement that may be in place between You and Owner with respect to disclosures made pursuant to this Agreement.
- b. **Non-Disclosure and Non-Use.** You agree not to use any Confidential Information for any purpose other than to exercise Your license rights hereunder or disclose any Confidential Information to any third party for any purpose. You shall use the same degree of care You use to protect Your own confidential information, but no less than reasonable care. Without limitation of the foregoing, You agree to (i) hold such Confidential Information in strict confidence; (ii) not to disclose it to any third parties; (iii) not allow any unauthorized person access to such Confidential Information, without the prior written consent of Owner. You will be responsible for any improper disclosure or use of the Confidential Information by You or Your agents to whom You disclose such Confidential Information and will limit the disclosure of such Confidential Information to employees with a need to know who (i) have been advised of the confidential nature thereof; and (ii) agree not to disclose or use such Confidential Information except as otherwise permitted by this Agreement.
- c. **Exceptions.** Notwithstanding anything in this Agreement to the contrary, restrictions on the use or disclosure of Confidential Information shall not apply to any Confidential Information: (i) which can be proven to be or have been independently developed by You or lawfully received free of restriction from another source having the right to so furnish such Confidential Information; or (ii) after it has become generally known to the public from a source having the right to disclose such Confidential Information; or (iii) which at the time of disclosure to You was known to You free of restriction as clearly evidenced by documentation in Your possession; or (iv) which Owner agrees in writing is free of such restrictions.
- d. **Publicity.** You agree You will not disclose to or discuss with any third party that You are engaged in a transaction relating to the Software, without the prior written consent of the Owner. You agree You will not disclose to or discuss with any third party the nature or performance of the Software, without the prior written consent of Owner.
1. **TERM AND TERMINATION.** This Agreement shall be effective upon acceptance by You and shall continue Five (5) months from the time you clicked thru this Agreement. You may terminate the Agreement at any time by deleting and destroying all copies of the Software. This Agreement terminates immediately and automatically, with or without notice, if You fail to comply with any provision hereof. Additionally, Owner may at any time terminate this Agreement, without cause, upon notice to You. Upon termination You must delete or destroy all copies of the Software and the license granted to You in this Agreement shall terminate immediately.
9. **GENERAL.**
- a. **Assignment.** You may not assign Your rights or delegate Your obligations under this Agreement, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of Owner. For purposes of this Section, an "assignment" by You shall be deemed to include, without limitation, any merger, consolidation, sale of all or substantially all of its assets, or any substantial change in the management or control of You. Any attempted assignment or delegation in contravention of this Section without such written consent shall be void ab initio.
- b. **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement and understanding between You and Owner and supersedes all previous communications, representations or agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment of any provisions of this Agreement will be effective only if in writing and signed by the duly authorized representatives of both You and Owner.
- c. **Governing Law.** This Agreement shall be governed by the laws of the State of California excluding that body of laws known as conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods. You agree to refer all disputes arising under this Agreement to the courts of San Diego County, California. You hereby consent to the exclusive jurisdiction of such courts and expressly waive any objections or defenses based upon lack of personal jurisdiction or venue. The prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred in connection with any action or proceeding between Owner and You arising related to this Agreement.
- d. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.
- e. **Waiver.** The failure by either You or Owner to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.
2. **Government End Users.** If You are acting on behalf of an agency or instrumentality of the U. S. government, the Software and Documentation, as applicable, are "commercial computer software" and "commercial computer software documentation" developed exclusively at private expense by QFT. Pursuant to FAR 12.212 or DFARS 227 7202 and their successors, as applicable, use, reproduction and disclosure of the Software is governed by the terms of this Agreement.
- f. **Export Control.** You acknowledge that all hardware, software, source code and technology (collectively, "**Products**") obtained from Owner are subject to US government export control and economic sanctions laws, including the *Export Administration Regulations* ("**EAR**"). You assure that You and Your Affiliates will not directly or indirectly export, re-export, transfer or release (collectively, "**Export**") any Products or direct product thereof to or for any destination, person, entity or end use prohibited or restricted under US laws without prior US government authorization to the extent required by applicable regulation. The US government maintains embargoes and sanctions against certain countries, currently Cuba, Iran, Libya, North Korea, Sudan and Syria, but any amendments to the countries under a US embargo or sanction shall apply. You shall not Export Products listed in Supplement 2 to part 744 of the EAR for military end-uses, as defined in part 744.21, to the People's Republic of China. You acknowledge that other countries may have trade laws pertaining to import, use, Export or distribution of Products, and that compliance with the same is the responsibility of You. This section shall survive the expiration or termination of this Agreement.
- g. **Compliance with Anti-Corruption Laws.** You represent and warrant to Owner that, in connection with the transactions contemplated by this Agreement and in connection with any other business transactions involving Owner, You, and everyone acting on Your behalf, will comply with and will not violate any anti-corruption law or international anti-corruption standards, including but not limited to the U.S. Foreign Corrupt Practices Act. You represent and warrant to Owner that You have not, and covenant and agree that You will not, in connection with the transactions contemplated by this Agreement or in connection with any other business transactions involving Owner, make, promise, or offer to make any payment or transfer anything of value, directly or indirectly, to any individual to secure an improper advantage. It is the intent of both You and Owner that no payments or transfer of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining or retaining business.
- a. **Survival.** The following Sections of this Agreement survive any expiration or termination of this Agreement: 2 (License Restrictions), 3 (Ownership), 4 (Covenant Not to Assert), 5 (Suggestions), 6 (Warranty), 7 (Limitation of Liability),

Confidential & Proprietary

8(Confidential Information), 9 (Term and Termination), and 10 (General).

**BY COMPLETING THE DOWNLOAD AND/OR INSTALLATION OF THIS SOFTWARE, YOU REPRESENT, WARRANT AND CERTIFY THAT: YOU ARE AN AUTHORIZED REPRESENTATIVE OF THE LEGAL ENTITY YOU REPRESENT; YOU HAVE READ THIS AGREEMENT AND UNDERSTAND IT; YOU HAVE THE AUTHORITY TO BIND THE LEGAL ENTITY YOU REPRESENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**