General Services Administration
Federal Supply Service
Authorized Federal Supply Schedule Price List

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA-Advantage® a menu-driven database system. The Internet address for GSA-Advantage® is: GSAAdvantage.gov

MULTIPLE AWARD SCHEDULE (MAS)

FSC GROUP: MAS
PSC CLASS: D304

Contract Number: 47QTCA20D008G
Contract Period: April 2, 2020 – April 1, 2025

SigOpt, Inc.
100 Bush Street, Suite 1100
San Francisco, CA 94104
Telephone: 562-774-4678
https://sigopt.com
Business Size/Status: Small

Contract Administration:
Scott Clark
Telephone: 562-774-4678
Email: scott@sigopt.com

For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at fss.gsa.gov.
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GENERAL CONTRACT INFORMATION

1a. Table of Awarded Special Item Numbers (SINs):
Please refer to page #3 and GSA eLibrary (www.gsaelibrary.gsa.gov) for detailed SIN descriptions

SIN 54151ECOM/154151ECOM-STLOC/54151ECOM-RC  Electronic Commerce and Subscription Services
SIN OLM / OLMSTLOC / OLM-RC  Order Level Materials

1b. Lowest Priced Model Number and Lowest Price: Please refer to our prices on page #9

1c. Labor Category Descriptions: Not applicable

2. Maximum Order: $500,000.00

3. Minimum Order: $100.00

4. Geographic Coverage: Domestic and Overseas

5. Point(s) of Production: Same as Company Address

6. Discount from List Price: Government net prices (discounts already deducted)

7. Quantity Discounts: None

8. Prompt Payment Terms: 0%, Net 30 days. Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.

9a. Government Purchase Card is accepted at or below the micro – purchase threshold.

9b. Government Purchase Card is not accepted above the micro – purchase threshold.

10. Foreign Items: None

11a. Time of Delivery: 30 Days

11b. Expedited Delivery: To Be Negotiated with Ordering Agency

11c. Overnight and 2-Day Delivery: To Be Negotiated with Ordering Agency

11d. Urgent Requirement: To Be Negotiated with Ordering Agency

12. F.O.B. Point(s): Destination

13a. Ordering Address: SigOpt, Inc.
100 Bush Street, Suite 1100
San Francisco, CA 94104
Phone: 562-774-4678
Email: sales@sigopt.com

13b. Ordering Procedures: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPAs), are found in Federal Acquisition Regulation (FAR) 8.405-3.

Attention: Accounting
100 Bush Street, Suite 1100
San Francisco, CA 94104
15. Warranty Provision: Contractor’s standard commercial warranty

16. Export Packing Charges: Not Applicable

17. Terms & Conditions of Government Purchase Card Acceptance (any thresholds above the micro-purchase level): Contact Contractor

18. Terms and conditions of rental, maintenance, and repair: Not Applicable

19. Terms and conditions of installation (if applicable): Not Applicable

20. Terms and conditions of repair parts indicating date of parts, price lists and any discounts from list prices: Not Applicable

20a. Terms and conditions for any other services (if applicable): Not Applicable

21. List of service and distribution points (if applicable): Not Applicable

22. List of participating dealers (if applicable): Not Applicable

23. Preventative maintenance (if applicable) Not Applicable

24a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants): Not Applicable

24b. Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g., contractor’s website or other location.) The EIT standards can be found at: www.Section508.gov: Contact Contractor for more information.

25. Data Universal Number System (DUNS) Number: 027911141

26. SigOpt, Inc. is registered in the System for Award Management (SAM).
CONTRACT OVERVIEW
GSA awarded SigOpt, Inc. a GSA Federal Supply Schedule contract for Multiple Award Schedule (MAS), Contract No. 47QTCA20D008G. The current contract period is April 2, 2020 – April 1, 2025. GSA may exercise a total of up to three additional 5 year option periods. The contract allows for the placement of Firm Fixed Price or Time and Materials task orders using the products and ceiling rates defined in the contract.

CONTRACT ADMINISTRATOR
Scott Clark
CEO
SigOpt, Inc.
100 Bush Street, Suite 1100
San Francisco, CA 94104
Telephone: 562-774-4678
Email: scott@sigopt.com

MARKETING POINT OF CONTACT
Nick Payton
Head of Marketing
SigOpt, Inc.
100 Bush Street, Suite 1100
San Francisco, CA 94104
Telephone: 562-774-4678
Email: nick@sigopt.com

BRIEF COMPANY OVERVIEW
SigOpt was founded to empower the world’s experts by building software solutions that accelerate and amplify the impact of their machine learning, deep learning, and simulation models. SigOpt’s Optimization Solution is specifically designed to automate a task that typically requires significant expert time and does not benefit from their expertise: hyperparameter optimization (HPO). This solution combines Experiment Insights and a black-box Optimization Engine with an Enterprise Platform that scales with the volume, variety, and complexity of experiments over time.

CONTRACT USE
This contract is available for use by all Federal Government agencies, as a source for Electronic Commerce and Subscription Services for worldwide use. Executive agencies, other Federal agencies, mixed-ownership Government corporations, and the District of Columbia; government contractors authorized in writing by a Federal agency pursuant to 48 CFR 51.1; and other activities and organizations authorized by statute or regulation to use GSA as a source of supply may use this contract.

SPECIAL ITEM NUMBER (SIN) DESCRIPTIONS
The Special Item Numbers (SINs) available under this contract provide services across the full life cycle of a project. When task orders are placed, they must identify the SIN or SINs under which the task is being executed. SigOpt, Inc. has been awarded a contract by GSA to provide services under the following SINs:

- SIN 54151ECOM/154151ECOM-STLOC/54151ECOM-RC Electronic Commerce and Subscription Services
- SIN OLM / OLMSTLOC / OLM-RC Order Level Materials

Please refer to GSA eLibrary for complete Special Item Number (SIN) descriptions.
INSTRUCTIONS FOR PLACING ORDERS FOR SERVICES BASED ON GSA SCHEDULE
HOURLY RATES

GSA provides a streamlined, efficient process for ordering the services you need. GSA has already determined that SigOpt, Inc. meets the technical requirements and that our prices offered are fair and reasonable. Agencies may use written orders; facsimile orders, credit card orders, blanket purchase agreement orders or individual purchase orders under this contract.

If it is determined that your agency needs an outside source to provide professional services, follow these simple steps:

**Orders under the Micro-Purchase Threshold**
- Select the contractor best suited for your needs and place the order.

**Orders in-between the Micro-Purchase Threshold and the Simplified Acquisition Threshold**
- Prepare a SOW or Performance Work Statement (PWS) in accordance with FAR 8.405-2(b).
- Prepare and send the RFQ (including SOW and evaluation criteria) to at least three GSA Schedule contractors.
- Evaluate, then make a "Best Value" determination.
  
  **Note:** The ordering activity should request GSA Schedule contractors to submit firm-fixed prices to perform the services identified in the SOW.

**Orders over the Simplified Acquisition Threshold**
- Prepare the RFQ (including the SOW and evaluation criteria) and post on eBuy to afford all Schedule contractors the opportunity to respond, or provide the RFQ to as many Schedule contractors as practicable, consistent with market research, to reasonably ensure that quotes are received from at least three contractors.
- Seek price reductions.
- Evaluate all responses and place the order, or establish the BPA with the GSA Schedule contractor that represents the best value (refer to FAR 8.405-2(d)).
  
  **Note:** The ordering activity should request GSA Schedule contractors to submit firm-fixed prices to perform the services identified in the SOW.

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**Developing a Statement of Work (SOW)**

In the SOW, include the following information:
- Work to be performed,
- Location of work,
- Period of performance;
- Deliverable schedule, and
- Special standards and any special requirements, where applicable.

**Preparing a Request for Quote (RFQ)**

- Include the SOW and evaluation criteria;
- Request fixed price, ceiling price, or, if not possible, labor hour or time and materials order;
- If preferred, request a performance plan from contractors and information on past experience; and include information on the basis for selection.
- May be posted on GSA’s electronic RFQ system, e-Buy

For more information related to ordering services, go to [http://www.gsa.gov/schedules-ordering](http://www.gsa.gov/schedules-ordering) and client “Ordering Information”. Also see summary guidelines in the [Multiple Award Schedule (MAS) Desk Reference Guide, Ordering Procedures](http://www.gsa.gov/schedules-ordering).
BLANKET PURCHASE AGREEMENT

Ordering activities may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to establish, consider:

- The scope and complexity of the requirement(s);
- The need to periodically compare multiple technical approaches or prices;
- The administrative costs of BPAs; and
- The technical qualifications of the schedule contractor(s).

Establishment of a single BPA, or multiple BPAs, shall be made using the same procedures outlined in 8.405-3. BPAs shall address the frequency of ordering, invoicing, discounts, requirements (e.g. estimated quantities, work to be performed), delivery locations, and time.

When establishing multiple BPAs, the ordering activity shall specify the procedures for placing orders under the BPAs.

Establishment of a multi-agency BPA against a Federal Supply Schedule contract is permitted if the multi-agency BPA identifies the participating agencies and their estimated requirements at the time the BPA is established.

Ordering from BPAs:

Single BPA. If the ordering activity establishes one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

Multiple BPAs. If the ordering activity establishes multiple BPAs, before placing an order exceeding the micro-purchase threshold, the ordering activity shall:

- Forward the requirement, or statement of work and the evaluation criteria, to an appropriate number of BPA holders, as established in the BPA ordering procedures; and
- Evaluate the responses received, make a best value determination (see 8.404(d)), and place the order with the BPA holder that represents the best value.

BPAs for hourly rate services. If the BPA is for hourly rate services, the ordering activity shall develop a statement of work for requirements covered by the BPA. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

Duration of BPAs. BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA’s period of performance.

Review of BPAs:

The ordering activity that established the BPA shall review it at least once a year to determine whether:

- The schedule contract, upon which the BPA was established, is still in effect;
- The BPA still represents the best value (see 8.404(d)); and
- Estimated quantities/amounts have been exceeded and additional price reductions can be obtained.

The ordering activity shall document the results of its review.
1. SCOPE
The prices, terms and conditions stated under Special Item Number 54151ECOM Electronic Commerce and Subscription Services apply exclusively to Electronic Commerce and Subscription Services within the scope of this MAS Schedule, Information Technology Category.

2. ELECTRONIC COMMERCE CAPACITY AND COVERAGE
The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.

3. INFORMATION ASSURANCE
a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA)

b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, “Standards for Security Categorization of Federal Information and Information Systems”) (FIPS 200, “Minimum Security Requirements for Federal Information and Information Systems”) prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN 132-52 is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).

c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the ordering activity.

4. DELIVERY SCHEDULE.
The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in Information for Ordering Activities Applicable to All Special Item Numbers, paragraph 6. Delivery Schedule.

5. INTEROPERABILITY
When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

6. ORDER
a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all electronic services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.
7. PERFORMANCE OF ELECTRONIC SERVICES

The Contractor shall provide electronic services on the date agreed to by the Contractor and the ordering activity.

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

9. RIGHTS IN DATA

The Contractor shall comply FAR 52.227-14 RIGHTS IN DATA – GENERAL and with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

10. ACCEPTANCE TESTING

If requested by the ordering activity the Contractor shall provide acceptance test plans and procedures for ordering activity approval. The Contractor shall perform acceptance testing of the systems for ordering activity approval in accordance with the approved test procedures.

11. WARRANTY

The Contractor shall provide a warranty covering each Contractor-provided electronic commerce service. The minimum duration of the warranty shall be the duration of the manufacturer’s commercial warranty for the item listed below:

See On-Premises Software Subscription License Agreement for warranty information.

The warranty shall commence upon the later of the following:

a. Activation of the user’s service
b. Installation/delivery of the equipment

The Contractor, by repair or replacement of the defective item, shall complete all warranty services within five working days of notification of the defect. Warranty service shall be deemed complete when the user has possession of the repaired or replaced item. If the Contractor renders warranty service by replacement, the user shall return the defective item(s) to the Contractor as soon as possible but not later than ten (10) working days after notification.

12. MANAGEMENT AND OPERATIONS PRICING

The Contractor shall provide management and operations pricing on a uniform basis. All management and operations requirements for which pricing elements are not specified shall be provided as part of the basic service.

13. TRAINING

The Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. If there is a separate charge, indicate below: None

14. MONTHLY REPORTS

In accordance with commercial practices, the Contractor may furnish the ordering activity/user with a monthly summary ordering activity report.
15. ELECTRONIC COMMERCE SERVICE PLAN

a. Describe the electronic service plan and eligibility requirements. N/A

b. Describe charges, if any, for additional usage guidelines. N/A

c. Describe corporate volume discounts and eligibility requirements, if any. N/A
<table>
<thead>
<tr>
<th>SIN</th>
<th>PART NUMBER</th>
<th>PRODUCT</th>
<th>PRODUCT DESCRIPTION</th>
<th>UOI</th>
<th>GSA PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>54151ECOM</td>
<td>O1</td>
<td>SigOpt On-Premises Experimentation Platform - 1 License - 250 Experiments</td>
<td>One on-premise installation of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 250 experiments per month.</td>
<td>1</td>
<td>$234,256.93</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O2</td>
<td>SigOpt On-Premises Experimentation Platform - 1 License - 500 Experiments</td>
<td>One on-premise installation of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 500 experiments per month.</td>
<td>1</td>
<td>$374,811.08</td>
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<tr>
<td>54151ECOM</td>
<td>O3</td>
<td>SigOpt On-Premises Experimentation Platform - 1 License - 1000 Experiments</td>
<td>One on-premise installation of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 1000 experiments per month.</td>
<td>1</td>
<td>$468,513.65</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O4</td>
<td>SigOpt On-Premises Experimentation Platform - 2 License - 250 Experiments</td>
<td>Two on-premise installations of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 250 experiments per month.</td>
<td>1</td>
<td>$351,385.39</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O5</td>
<td>SigOpt On-Premises Experimentation Platform - 2 License - 500 Experiments</td>
<td>Two on-premise installations of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 500 experiments per month.</td>
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<td>PRODUCT DESCRIPTION</td>
<td>UOI</td>
<td>GSA PRICE</td>
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<tr>
<td>54151ECOM</td>
<td>O6</td>
<td>SigOpt On-Premises Experimentation Platform - 2 License - 1000 Experiments</td>
<td>Two on-premise installations of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 1000 experiments per month.</td>
<td>1</td>
<td>$702,770.78</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O7</td>
<td>SigOpt On-Premises Experimentation Platform - 3 License - 250 Experiments</td>
<td>Three on-premise installations of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 250 experiments per month.</td>
<td>1</td>
<td>$468,513.85</td>
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<tr>
<td>54151ECOM</td>
<td>O8</td>
<td>SigOpt On-Premises Experimentation Platform - 3 License - 500 Experiments</td>
<td>Three on-premise installations of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 500 experiments per month.</td>
<td>1</td>
<td>$749,622.17</td>
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<tr>
<td>54151ECOM</td>
<td>O9</td>
<td>SigOpt On-Premises Experimentation Platform - 3 License - 1000 Experiments</td>
<td>Three on-premise installations of our cloud hosted, experimentation platform. This includes access to our core optimization algorithm, web dashboard, and API in a Docker image that can be installed in any environment. This would also include 1000 experiments per month.</td>
<td>1</td>
<td>$937,027.71</td>
</tr>
</tbody>
</table>
ON-PREMISES SOFTWARE SUBSCRIPTION LICENSE AGREEMENT

This On-Premises Software Subscription License Agreement (this “Agreement”), is made and entered as of the date set forth in the Purchase Order, Statement of Work, or similar document (the “Effective Date”) by and between the GSA Multiple Award Schedule Contractor acting on behalf of SigOpt, Inc., a Delaware corporation with offices at 100 Bush St, 11th Floor, San Francisco, CA, 94104 (“SigOpt”) and the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Licensee” or “Ordering Activity”) (each a “Party” and together, the “Parties”).

RECITALS

WHEREAS, SigOpt desires to grant Licensee a subscription license to the SigOpt software described on Exhibit A of this Agreement (the “SigOpt Software”), such license having the duration, scope and fees as set forth on one or more order forms that expressly reference this Agreement (each, an “Order Form”); and

WHEREAS, Licensee wishes to receive such a license to the SigOpt Software from SigOpt.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

Section 1 License Grant and Scope.

(a) Subject to and conditioned upon Licensee’s payment of the Fees (as defined herein) and Licensee’s strict compliance with all terms and conditions set forth in Section 1(b) and Section 2, SigOpt hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited license during the “Subscription” period indicated on the applicable Order Form to use and copy the SigOpt Software solely by and through Licensee’s Authorized Users (as defined herein) in the computer network environment owned, leased or controlled by Licensee and physically located at Licensee’s premises, as set forth on the applicable Order Form. The foregoing license shall be limited in time and scope as set forth on the applicable Order Form, including with respect to the number of experiments permitted per month and other metrics. SigOpt will deliver to Licensee one copy of the SigOpt Software and one copy of the Documentation (as defined below) promptly following the Effective Date in the format mutually agreed by the Parties.

(b) Licensee may only exercise the license granted to in Section 1(a) (i) for Licensee’s internal business purposes and (ii) in accordance with the Documentation (as defined herein). Licensee shall be responsible for obtaining and maintaining any equipment and ancillary services needed in order to operate the SigOpt Software, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers, and the like.

(c) Notwithstanding the license grant in Section 1(a), Licensee acknowledges that certain components of the SigOpt Software may be covered by so-called “open source” software licenses, which means any software licenses approved as open source licenses by the Open Source Initiative or any substantially similar licenses, including, without limitation, any license that, as a condition of distribution of the software licensed under such license, requires that the distributor make the software available in source code format (such components, “Open Source Components”). SigOpt shall provide a list of Open Source Components for a particular version of the SigOpt Software upon Licensee’s request. To the extent required by the licenses covering Open Source Components, the terms of such licenses will apply to such Open Source Components in lieu of the terms of this Agreement. To the extent the terms of the licenses applicable to Open Source Components prohibit any of the restrictions in this Agreement with respect to such Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of the licenses applicable to Open Source Components require SigOpt to make an offer to
provide source code or related information in connection with the Open Source Components, such offer is hereby made. Any request for source code or related information should be directed only to support@sigopt.com. Licensee acknowledges receipt of notices for the Open Source Components for the initial delivery of the SigOpt Software.

(d) Licensee may have the opportunity to present to SigOpt recommendations or feedback for new features, functionality, or other improvements to the SigOpt Software ("Feedback"), which SigOpt will consider, at its sole discretion, implementing in future updates to the SigOpt Software. The Parties agree that all Feedback is and shall be given voluntarily. Feedback, even if designated as confidential by Licensee, shall not, absent a separate written agreement, create any confidentiality obligation for SigOpt. Licensee will not provide SigOpt with any Feedback that Licensee is not authorized or permitted to provide to SigOpt. SigOpt shall be free to use, disclose, reproduce, license, or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise. SigOpt acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

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Section 2 Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

(a) use (including make any copies of) the SigOpt Software or Documentation beyond the scope of the license granted under Section 1, in whole or in part;

(b) provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Licensee, with access to or use of the SigOpt Software or Documentation;

(c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the SigOpt Software or Documentation or any part thereof;

(d) combine the SigOpt Software or any part thereof with, or incorporate the SigOpt Software or any part thereof in, any other programs;

(e) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the SigOpt Software or any part thereof;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the SigOpt Software or Documentation, including any copy thereof;

(g) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the SigOpt Software, or any features or functionality of the SigOpt Software, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(h) use the SigOpt Software or Documentation in violation of any law, regulation or rule; or
Section 3  Responsibility for Use of SigOpt Software.

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Section 4  Compliance Measures.

(a) The SigOpt Software may contain technological copy protection or other security features designed to prevent unauthorized use of the SigOpt Software, including features to protect against any use of the SigOpt Software that is prohibited under Section 2. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to any such copy protection or security features.

(b) On an annual basis, and otherwise on SigOpt’s written request, Licensee shall conduct a review of its and its Authorized Users use of the SigOpt Software and certify to SigOpt in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance: (i) Licensee shall immediately remedy such noncompliance and provide SigOpt with written notice thereof. Licensee shall provide SigOpt with all access and assistance as SigOpt requests to further evaluate and remedy such noncompliance, subject to the Government’s reasonable security requirements. If Licensee’s use of the SigOpt Software exceeds the number of copies or Authorized Users permitted under the license, SigOpt shall have the remedies set forth in Section 4(d) in addition to all other remedies SigOpt may have at law.

(c) During the Term, SigOpt may, in SigOpt’s sole discretion, subject to the Government’s reasonable security requirements, audit Licensee’s use of the SigOpt Software to ensure Licensee’s compliance with this Agreement, provided that (i) any such audit shall be conducted on not less than 30 days’ prior notice to Licensee, and (ii) no more than one audit may be conducted in any 12 month period except for good cause shown. SigOpt also may, in its sole discretion, audit Licensee’s systems within six months after the end of the Term to ensure Licensee has ceased use of the SigOpt Software and removed all copies of the SigOpt Software from such systems as required hereunder. Licensee shall fully cooperate with SigOpt’s personnel conducting such audits and provide all reasonable access requested by SigOpt to records, systems, equipment, information and personnel, including machine IDs, serial numbers and related information. SigOpt shall only examine information directly related to Licensee’s use of the SigOpt Software. SigOpt may conduct audits only during Licensee’s normal business hours and in a manner that does not unreasonably interfere with Licensee’s business operations.

(d) If the audit or any of the measures taken or implemented under this Section 4 determines that Licensee’s use of the SigOpt Software exceeds or exceeded the use permitted by this Agreement then:

(i) Licensee shall, within 30 days following the date of such determination by Licensee or SigOpt’s written notification thereof, pay to SigOpt the retroactive Fees for such excess use and, unless SigOpt terminates this Agreement pursuant to Section 4(d)(iii), obtain and pay for a valid license to bring Licensee’s use into compliance with this Agreement.
If the use exceeds or exceeded the use permitted by this Agreement by more than 10%, SigOpt shall also have the right to bring a claim to the Contracting Officer to terminate this Agreement and the license granted hereunder, provided that SigOpt complies with the procedure set forth in FAR 52.233-1.

SigOpt’s remedies set forth in this Section 4(d) are cumulative and are in addition to, and not in lieu of, all other remedies SigOpt may have at law, whether under this Agreement or otherwise.

Section 5  Maintenance and Support.

(a) Subject to Section 5(c) and Licensee’s payment of the Fees, SigOpt will use commercially reasonable efforts to provide Licensee with e-mail-based technical support in accordance with the response times set forth on Exhibit B during the Term.

(b) Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches and other error corrections (collectively, “Updates”) as SigOpt makes generally available free of charge to all licensees of the SigOpt Software then-entitled to maintenance and support services. SigOpt may develop and provide Updates in its sole discretion, and Licensee agrees that SigOpt has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed SigOpt Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that SigOpt may provide some or all Updates via download from a website designated by SigOpt and that Licensee’s receipt thereof will require an internet connection, which connection is Licensee’s sole responsibility. SigOpt has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the SigOpt Software that SigOpt may issue as a separate or new product, and SigOpt may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.

(c) SigOpt reserves the right to condition the provision of maintenance and support services, including all or any Updates, on Licensee’s registration of the copy of SigOpt Software for which support is requested. SigOpt has no obligation to provide maintenance and support services, including Updates:

(i) for any but the most current version or release of the SigOpt Software;

(ii) for any copy of SigOpt Software for which all previously issued Updates have not been installed;

(iii) if Licensee is in breach under this Agreement; or

(iv) for any SigOpt Software that has been modified other than by SigOpt, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation or expressly authorized by SigOpt in writing.

Section 6  Collection and Use of Information.

(a) The term “Confidential Information” means any information disclosed by one Party (“Disclosing Party”) to the other Party (“Receiving Party”), whether before or after the Effective Date, that: (i) is in written, graphic, machine-readable, or other tangible form and is marked “Confidential”, “Proprietary,” or in some other manner to indicate its confidential nature; (ii) should be reasonably understood by Receiving Party to be the confidential or proprietary information of Disclosing Party; or (iii) that is oral information disclosed by Disclosing Party to Receiving Party, provided that such information is designated as confidential at the time of disclosure and is reduced to writing by Disclosing Party within a
reasonable time after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to Receiving Party.

(b) Receiving Party shall treat as confidential all Confidential Information of Disclosing Party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement herein, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, Receiving Party shall use at least the same degree of care it uses to prevent the disclosure of its own confidential information of like importance, to prevent the disclosure of Confidential Information of Disclosing Party. Receiving Party shall promptly notify Disclosing Party of any actual or suspected misuse or unauthorized disclosure of Disclosing Party’s Confidential Information.

(c) The obligations set forth in Section 6(b) above shall not apply to information that Receiving Party can show: (i) was in the public domain at the time it was disclosed or has become in the public domain through no act or omission of Receiving Party; (ii) was known to Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) was independently developed by Receiving Party without any use of Disclosing Party’s Confidential Information; or (iv) becomes known to Receiving Party, without restriction, from a source other than Disclosing Party without breach of an obligation to keep such information in confidence.

(d) If the Confidential Information of Disclosing Party must be disclosed by Receiving Party pursuant to the order or requirement of a court, administrative agency, or other governmental body, Receiving Party shall: (i) provide prompt notice thereof to Disclosing Party; (ii) use its commercially reasonable efforts to cooperate with Disclosing Party to obtain a protective order or otherwise prevent public disclosure of such information; and (iii) limit the disclosure to the exact Confidential Information (or portion thereof) required to be disclosed. SigOpt recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552 ("FOIA"), which may require that certain information be released, despite being characterized as “confidential” by the vendor, provided that Licensee will coordinate with SigOpt on any FOIA request and provide SigOpt an opportunity to object to the disclosure of Confidential Information.

(e) Upon expiration or termination of this Agreement for any reason, Receiving Party shall deliver to Disclosing Party all of Disclosing Party’s Confidential Information that Receiving Party may have in its possession or control or, at Disclosing Party’s option, shall destroy all such Confidential Information and certify such destruction in a writing signed by an authorized officer of Receiving Party.

(f) Licensee acknowledges that SigOpt may, directly or indirectly, collect and store information regarding use of the SigOpt Software and about equipment on which the SigOpt Software is installed or through which it otherwise is accessed and used. Licensee agrees that SigOpt may use such information for any purpose, including, but not limited to (i) improving the performance of the SigOpt Software or developing Updates and (ii) verifying Licensee’s compliance with the terms of this Agreement and enforcing SigOpt’s rights, including all intellectual property rights in and to the SigOpt Software.

Section 7 Intellectual Property Rights.

Licensee acknowledges and agrees that the SigOpt Software and Documentation are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the SigOpt Software or Documentation under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. SigOpt and its licensors and service providers reserve and shall retain their entire right, title and interest in and to the SigOpt Software and all intellectual property rights arising out of or relating to the SigOpt Software, except as expressly granted to Licensee in this Agreement. Licensee shall safeguard
all SigOpt Software (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access. Licensee shall promptly notify SigOpt if Licensee becomes aware of any infringement of SigOpt’s intellectual property rights in the SigOpt Software and fully cooperate with SigOpt, at SigOpt’s sole expense, in any legal action taken by SigOpt to enforce its intellectual property rights.

Section 8 Payment.

Licensee shall pay to SigOpt the fees set forth on the applicable Order Form in accordance with the GSA Schedule Pricelist in the manner set forth thereon (the “Fees”). SigOpt shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Unpaid amounts are subject to a finance charge as indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

Section 9 Term and Termination.

(a) This Agreement will begin on the Effective Date and shall remain in effect for the longest term set forth on any Order Form or until earlier terminated as set forth herein (the “Term”).

(b) When the Licensee is an instrumentality of the United States recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act) to the extent the Disputes Clause applies. During any dispute under the Disputes Clause, SigOpt shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

(c) Reserved.

(d) Upon expiration or earlier termination of this Agreement, all licenses granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the SigOpt Software and Documentation. No expiration or termination shall affect Licensee’s obligation to pay all Fees that may have become due before such expiration or termination, in each case except as set forth in Section 10(c)(ii).

(e) Upon expiration or earlier termination of this Agreement, the following Sections of the Agreement shall survive such expiration or termination: 1(d), 2, 3, 4, 6, 7, 8, 9(d), 9(e), 10, 11, 12, 14, and 15.

Section 10 Limited Warranties, Exclusive Remedy and Disclaimer/Warranty Disclaimer.

(a) SigOpt warrants that during the Term, the SigOpt Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith. THE FOREGOING WARRANTY DOES NOT APPLY, AND SIGOPT STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY SOFTWARE.

(b) The warranties set forth in Section 10(a) will not apply and will become null and void if Licensee materially breaches any provision of this Agreement, or if Licensee, any Authorized User, or any other Person provided access to the SigOpt Software by Licensee or any Authorized User, whether or not in violation of this Agreement:
(i) installs or uses the SigOpt Software on, or in connection with any hardware or software not specified in the Documentation, or expressly authorized by SigOpt in writing;

(ii) modifies or damages the SigOpt Software, or the media on which it is provided, including abnormal physical or electrical stress; or

(iii) misuses the SigOpt Software, including any use of the SigOpt Software other than as specified in the Documentation or expressly authorized by SigOpt in writing.

(c) If, during the Term, any SigOpt Software covered by the warranty set forth in Section 10(a) fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to Section 10(b), SigOpt will, subject to Licensee’s promptly notifying SigOpt in writing of such failure, at its sole option, either:

(i) repair or replace the SigOpt Software, provided that Licensee provides SigOpt with all information SigOpt requests to resolve the reported failure, including sufficient information to enable SigOpt to recreate such failure; or

(ii) refund the Fees paid for such SigOpt Software, subject to Licensee’s ceasing all use of, and, if requested by SigOpt, returning to SigOpt all copies of the SigOpt Software.

The remedies set forth in this Section 10(c) and SigOpt’s indemnification obligations in Section 11 are Licensee’s sole remedies and SigOpt’s sole liability under the limited warranty set forth in Section 10(a).

(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 10(A), THE SIGOPT SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SIGOPT, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SIGOPT SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, SIGOPT PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SIGOPT SOFTWARE WILL MEET LICENSEE’S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

Section 11 Indemnity.

(a) SigOpt agrees to defend Licensee from (or at SigOpt’s option, settle) any third-party claims, actions, suits, or proceedings alleging that Licensee’s use of the SigOpt Software as authorized hereunder infringes any intellectual property right of a third party (a “Claim Against Licensee”). Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Subject to Section 12 below, SigOpt shall pay any final award entered into against Licensee, or the amounts set forth in any final settlement entered into on Licensee’s behalf, in each case, arising from a Claim Against
Licensee. SigOpt’s obligations under this Section are conditioned on Licensee’s: (i) promptly notifying SigOpt of a Claim Against Licensee; (ii) giving SigOpt all reasonable assistance in connection with the defense of a Claim Against Licensee; (iii) permitting SigOpt to have control over the defense or settlement of a Claim Against Licensee; and (iv) being in compliance with the terms and conditions of this Agreement. SigOpt will not be responsible for any settlement of a Claim Against Licensee that SigOpt does not approve in writing.

(b) SigOpt’s obligations under this Section do not apply with respect to any Claim Against Licensee arising out of or based on: (i) materials, equipment, software, or technology not supplied by SigOpt; (ii) SigOpt’s compliance with the written instructions provided by Licensee; (iii) modification of the SigOpt Software by any third party; (iv) combination of the SigOpt Software with any materials, equipment, software, or technology where the alleged infringement would not have arisen in the absence of such combination; (v) where Licensee continues the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (vi) open source software supplied or used with the SigOpt Software. Subject to Section 12 below, if the SigOpt Software is held by a court of competent jurisdiction to be infringing or is believed by SigOpt to be infringing, SigOpt may, at its option and expense (a) replace or modify the SigOpt Software to be non-infringing, provided that such modification or replacement contains substantially similar features and functionality; (b) obtain for Licensee the right to continue using the SigOpt Software; or (c) terminate this Agreement and Licensee’s rights hereunder and provide Licensee a refund of any prepaid fees for the SigOpt Software. This Section sets forth SigOpt’s sole and exclusive liability, and Licensee’s sole and exclusive remedy, for claims related to infringement, violation, or misappropriation of third-party intellectual property rights.

Section 12 Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL SIGOPT OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY, OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, OR BREACHES IN SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, BREACH OF CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SIGOPT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM SIGOPT’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

(b) IN NO EVENT WILL SIGOPT’S AND ITS AFFILIATES’, INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS’ AND SERVICE PROVIDERS’, COLLECTIVE AGGREGATE LIABILITY WITH RESPECT TO ANY LICENSEE OR ORDERING ACTIVITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY AND
OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO SIGOPT BY SUCH LICENSEE OR ORDERING ACTIVITY PURSUANT TO THIS AGREEMENT.

THE DISCLAIMERS IN SECTION 10(d) AND SECTION 12 AND THE LIMITATIONS IN SECTION 10(a) AND 10(b) SHALL APPLY (i) IN EACH CASE WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES AND (ii) NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM SIGOPT’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

(c)

Section 13 Export Regulation.

The SigOpt Software and Documentation may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Licensee shall not, directly or indirectly, export, re-export, or release the SigOpt Software or Documentation to, or make the SigOpt Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule or regulation. Licensee shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the SigOpt Software or Documentation available outside the US.

Section 14 US Government Rights.

The SigOpt Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if Licensee is the US Government or any contractor therefor, Licensee shall receive only those rights with respect to the SigOpt Software and Documentation as are granted to all other end users under license, in accordance with 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

Section 15 Miscellaneous.

(a) This Agreement is governed by, and construed in accordance with, the internal Federal laws of the United States.

(b) Excusable delays shall be governed by FAR 52.212-4(f).

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by or e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth on the first page of this Agreement (or to such other address as may be designated by a Party from time to time in accordance with this Section 15(c)).
(d) This Agreement, together with all schedules and exhibits attached hereto, the underlying [GSA Schedule Contract], Schedule Pricelist, Purchase Order(s), and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and SigOpt with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without SigOpt’s prior written consent, which consent SigOpt may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which SigOpt’s prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 15(e) is void. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government’s prior approval, except for assignments permitted under 41 U.S.C. 6305(b). Procedures for securing such approval are set forth in FAR 42.1204. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(g) This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(h) If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will, nevertheless, remain in full force and effect, and such provision will be reformed in a manner to effectuate the original intent of the Parties as closely as possible and remain enforceable. If such reformation is not possible in a manner that is enforceable, then such term will be severed from the remaining terms, and the remaining terms will remain in effect.

(i) For purposes of this Agreement, (i) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (ii) the word “or” is not exclusive; and (iii) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (a) to Sections and Exhibits refer to the Sections of, and Exhibits attached to, this Agreement; (b) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (c) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits
referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) No agency, partnership, joint venture, or employment is created as a result of this Agreement and Licensee does not have any authority of any kind to bind SigOpt in any respect whatsoever.

(k) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. This Agreement may be executed in two counterparts, each of which will be deemed an original and which together will constitute one instrument.

[Signature page follows.]
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first stated above.

“SigOpt”

SigOpt, Inc.

By: ____________________________

Name: __________________________

Title: __________________________

“Licensee”

[______________________________]

By: ____________________________

Name: __________________________

Title: __________________________
EXHIBIT A

Description of SigOpt Software

SigOpt’s Experimentation and Optimization Solution includes three capabilities:

- Experiment Insights: Track, analyze and share insights on experiments through an intuitive web dashboard that includes permission-based access for organizations
- Optimization Engine: Optimize any parameterizable model using proprietary algorithms with advanced features that help teams select the best configuration of any model
- Enterprise Platform: Integrate SigOpt into any modeling workflow and scale its use with your needs through either API-enabled or on-premise implementations of our solution

Users typically rely on our solution for tuning parameters or hyperparameters of models, and using insights from this process to inform future model development efforts.
# EXHIBIT B

## MAINTENANCE AND SUPPORT RESPONSE TIMES

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
<th>Initial Response</th>
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</table>
| **Level 1**    | Critical business impact  
Customer's production use of our products on a primary business service, major application or mission-critical system is stopped or so severely impacted that the customer cannot reasonably continue work.  
For Severity Level 1 problems, we will begin work on the problem within one business hour of notification and handle as the highest priority until the customer is given a fix or workaround. Customer resources must be made available in Severity Level 1 situations and reasonably cooperate to help resolve the issue.  
Severity Level 1 problems could have the following characteristics:  
- System hangs or crash situations  
- Data loss or data corruption  
- Critical functionality not available  
Note: Severity Level 1 service requests cannot be logged through our portal and must be reported via telephone. | Within 1 business hour |
| **Level 2**    | Significant Business Impact:  
Important product features are unavailable with no acceptable workaround. Customer's implementation or production use of licensed products in a primary business service, major applications or mission critical systems are functioning with limited capabilities or are unstable with periodic interruptions. The software may be operating but is severely restricted.  
Severity Level 2 problems could have the following characteristics:  
- Product error or failure forcing a restart or recovery  
- Severely degraded performance  
- Functionality unavailable but the system is able to operate in a restricted fashion. | Within 2 business hours |
| **Level 3**    | Minimal Business Impact:  
Product features are unavailable but a workaround exists and the majority of software functions are still useable. Minor function/feature failure that the customer can easily circumvent or avoid. Customer's work has minor loss of operational functionality.  
Severity Level 3 problems could have the following characteristics:  
- Error message with workaround  
- Minimal performance degradation | Within 4 business hours |
<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
<th>Initial Response</th>
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<tbody>
<tr>
<td></td>
<td>• Incorrect product behavior with minor impact</td>
<td></td>
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<td></td>
<td>• Questions on product functionality or configuration during implementation</td>
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<tr>
<td>Level 4</td>
<td><strong>Nominal Business Impact:</strong></td>
<td>Within 1 Business Day</td>
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<tr>
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<td>Minor problem or question that does not affect the software function such as</td>
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<td>How To's, documentation, general questions, or enhancement requests. There</td>
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<td></td>
<td>is no impact to product usage or customer's operations.</td>
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<td>Severity Level 4 problems could have the following characteristics:</td>
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<td></td>
<td>• General requests for advice on product usage</td>
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<td></td>
<td>• Clarification on product documentation or release notes</td>
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<tr>
<td></td>
<td>• Product enhancement request</td>
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