

SigOpt, Inc. Terms of Service Agreement

December 10, 2020

This Terms of Service Agreement (this “Agreement”) constitutes a legally binding contract between SigOpt, Inc., a Delaware corporation (“SigOpt,” “we,” “us,” “our”) and you with respect to your use of our services, APIs, websites, and software (collectively the “Service”). It is important that you carefully read and understand the terms and conditions of this Agreement. BY ACCESSING OR USING THE SERVICE OR BY CLICKING ON THE CHECKBOX TO INDICATE YOUR AGREEMENT TO THESE TERMS AND CONDITIONS, YOU ARE CONSENTING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICE AND DO NOT CLICK THE CHECKBOX TO INDICATE YOUR AGREEMENT TO THESE TERMS AND CONDITIONS. YOU MAY NOT ACCESS OR USE THE SERVICE IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. If you access or use the Service on behalf of a company, principal, or other entity, you represent that you have authority to bind such entity and its affiliates to this Agreement and that it is fully binding on them. In such case, the term “you” will refer to such entity and its affiliates. If you do not have authority, you may not access or use the Service. Be advised that this Agreement contains disclaimers of warranties and limitations on liability that may be applicable to you.

Notice Regarding Dispute Resolution: This Agreement contains provisions that govern how claims you and SigOpt have against each other are resolved (see Section 12 (Limitation of Liability), Section 16 (Dispute Resolution), and Section 17 (Choice of Law and Forum) below). It also contains an agreement to arbitrate, which will, with limited exception, require you to submit claims you have against us to binding and final arbitration, unless you opt-out of the agreement to arbitrate in accordance with Section 16(D). Unless you opt-out: (A) you will only be permitted to pursue claims against SigOpt on an individual basis, not as part of any class or representative action or proceeding and (B) you will only be permitted to seek relief (including monetary, injunctive, and declaratory relief) on an individual basis.

1. Changes to this Agreement

We reserve the right to, at any time, with or without cause:

- change the terms and conditions of this Agreement;
- change the Service, including eliminating or discontinuing any service or other feature of the Service; or
- deny or terminate your use of and/or access to the Service.

Any changes we make will be effective immediately upon our making such changes available on the Service or otherwise providing notice thereof. You agree that your continued use of the Service after such changes constitutes your acceptance of such changes. Be sure to return to this page periodically to ensure familiarity with the most current version of this Agreement.

2. Use of the Service

Before using the Service, you need to register with SigOpt and create an account. We reserve the right to decline to provide the Service to any person for any or no reason. If and when you register with or provide information to SigOpt, you agree to (a) provide accurate, current, and complete information as prompted

(including your e-mail address) and (b) maintain and update your information (including your e-mail address) to keep it accurate, current, and complete. You agree to keep your account registration information up to date at all times. You acknowledge that, if any information provided by you is untrue, inaccurate, not current, or incomplete, we reserve the right to terminate this Agreement and your use of the Service. By providing SigOpt with your email address or other contact information, you consent to our use of this information to send you Service-related notices and other administrative notices, including any notices required by law.

You are solely responsible for the activity that occurs on your account. You must keep your account credentials (including username and password) secure at all times. You may not share your account with any third parties without SigOpt's prior written consent unless such third party has separately entered an agreement with SigOpt permitting it to access your account. You must notify SigOpt immediately of any breach or suspected breach of security or unauthorized use of your account. SigOpt will not be liable for any losses caused by any unauthorized use of your account.

You represent and warrant that you have the full right, power, and authority to enter into and perform this Agreement without the consent or approval of any third party.

3. Rules Governing Your Use of the Service

You may not use the Service, or assist or encourage any other party, to engage in any of the following prohibited activities:

- Copying, framing, or mirroring any part of the Service;
- Accessing the Service for purposes of monitoring its availability, performance, or functionality;
- Permitting any third party to access the Service,
- Using, copying, modifying, creating a derivative work of, reverse engineering, decompiling, or otherwise attempting to extract the source code of the software underlying the Service or any part thereof, unless expressly permitted or required by law, and in any case, without providing prior written notice to SigOpt;
- Publishing, transmitting, distributing, or storing content, material, information, or data that (a) is illegal, obscene, defamatory, libelous, threatening, harassing, abusive, or hateful or that advocates violence or threatens the health of others; (b) is harmful to or interferes with the Service or any third party's networks, equipment, applications, services, or websites (e.g., viruses, worms, Trojan horses, etc.); (c) infringes, dilutes, misappropriates, or otherwise violates any privacy, intellectual property, publicity, or other personal rights including, without limitation, copyrights, patents, trademarks, trade secrets, or other proprietary information (including unauthorized use of domain names); or (d) is fraudulent or contains false, deceptive, or misleading statements, claims, or representations (such as "phishing").
- Attempting to disrupt, degrade, impair, or violate the integrity or security of the Service or the computers, services, accounts, or networks of any other party (including, without limitation, "hacking," "denial of service" attacks, etc.), including any activity that typically precedes attempts to breach security such as scanning, probing, or other testing or vulnerability assessment activity, or engaging in or permitting any network or hosting activity that results in the blacklisting or other blockage of SigOpt internet protocol space;
- Avoiding incurring charges or otherwise being required to pay for the Service;
- Copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping";
- Using any automated system, including, without limitation, "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to SigOpt than a human can reasonably produce in the same period of time by using a conventional on-line web browser;

- Taking any action that imposes, or may impose, at our sole discretion, an unreasonable or disproportionately large load on our infrastructure;
- Collecting or harvesting any personally identifiable information, including account names, from the Service;
- Using the Service for any commercial solicitation purposes;
- Impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity;
- Accessing any content on the Service through any technology or means other than those provided or authorized by the Service;
- Submitting to the Service or to SigOpt any personally identifiable information, except as necessary for the establishment of your account;
- Submitting to the Service or to SigOpt any information that may be protected under HIPAA (“HIPAA” means the Health Insurance Portability and Accountability Act, as amended and supplemented) or any other information that may be protected from disclosure by applicable law;
- Bypassing the measures we may use to prevent or restrict access to the Service, including, without limitation, features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein;
- Violating any applicable law, statute, ordinance, or regulation, or encourage any conduct that could constitute a criminal offense or give rise to civil liability;
- Transmitting any trade secret or other material, non-public information about any person, company, or entity without the authorization to do so;
- Removing any copyright, trademark, or other proprietary rights notices contained in or on the Service;
- Sublicensing selling, renting, leasing, transferring, assigning, or conveying any rights under this Agreement to any third party, except as expressly permitted herein;
- Executing any form of network monitoring or running a network analyzer or packet sniffer or other technology to intercept, decode, mine, or display any packets used to communicate between the Service’s servers or any data not intended for you; and/or
- Harvesting or collect information about any Service visitors or members without their express consent.

Improper use of the Service may result in termination of your access to and use of the Service, and/or civil or criminal liabilities. You agree to use the Service in accordance with all applicable laws.

4. SigOpt Does Not Provide Context-Specific Advice

Reliance on any information provided by SigOpt or the Service is solely at your own risk. You agree that you, and not SigOpt, are solely responsible for any claims, damages, losses, costs (including reasonable attorneys’ fees), and other expenses that arise directly or indirectly out of or from your use of the Service or this Agreement.

5. Intellectual Property

A. Your Rights. Subject to the terms and conditions of this Agreement (including any restrictions on any applicable authorization or order form), you are hereby granted a non-exclusive, non-transferable, non-sublicensable, and revocable license to access and use the Service solely for your internal business purposes. SigOpt reserves all rights not expressly granted herein in the Service.

B. SigOpt Rights.

- **Customer Data.** You expressly grant, and you represent and warrant that you have all rights necessary to grant, to SigOpt, a royalty-free, fully paid-up, sublicensable (through multiple tiers of sublicensees), transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, distribute, modify, reproduce, publicly display, publicly perform, and create derivative works of any information, data, materials, or content you provide to SigOpt (“Customer Data”) for the purposes of (a) providing the Service, or (b) developing, maintaining, supporting, or improving the Service. You agree that SigOpt may store Customer Data in order to provide the Service. SigOpt aggregates Customer Data with other data and also collects technical information and data about your use of the Service. You expressly agree that SigOpt may use any aggregated and anonymized data for any business purpose during or after the term of this Agreement, including, without limitation, to develop and improve the Service or other SigOpt services and products.
- **Name and Logo.** You expressly grant, and represent and warrant that you have all rights necessary to grant, to SigOpt, a royalty-free, fully paid-up, sublicensable (through multiple tiers of sublicensees), transferable, perpetual, irrevocable and non-exclusive worldwide license to use, distribute, modify, reproduce, publicly display, publicly perform your name, logo, or any other identifying words or marks used by and/or associated with you to identify you (“Your Marks”), in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Service, to identify you as a customer of SigOpt or for marketing and publicity purposes.
- **Feedback.** If you provide suggestions, feedback, or other input to SigOpt concerning the functionality and performance of the Services, including, without limitation, identifying potential errors and improvements (“Feedback”), then you hereby grant SigOpt a worldwide, non-exclusive, royalty-free, fully paid-up, perpetual, irrevocable, right and license to perform, display, disclose, reproduce, distribute, create derivative works of, make, have made, use, sell (directly or indirectly), offer for sale or disposition, import, dispose, and otherwise exploit such Feedback for any purpose without restriction, provided that SigOpt shall not attribute such Feedback to you, or otherwise refer to or identify you in connection with such activities. The foregoing license shall be fully transferable and sublicensable (through one or more tiers of sublicensees). You shall not provide or disclose any Feedback to SigOpt that you do not have the right to provide or disclose.
- **Resultant Data.** Notwithstanding anything to the contrary, SigOpt may collect and analyze data and other information relating to the provision, use, and performance of various aspects of the Services and related systems and technologies (collectively, “Resultant Data”), and SigOpt will be free (during and after the term of this Agreement) to (i) use such Resultant Data to improve and enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services and other SigOpt offerings, and (ii) disclose such Resultant Data solely in aggregate or other de-identified form in connection with its business.

C. **Proprietary Rights.** The Service is owned and operated by SigOpt and its licensors, and the Service (and any intellectual property and other rights relating thereto) is and will remain the property of SigOpt and its licensors and suppliers. The Service is protected by U.S. and international copyright, trademark, and other laws, and you acknowledge that these rights are valid and enforceable. Except as set forth in this Agreement, you may not copy, reproduce, modify, adapt, translate, republish, upload, post, transmit, distribute, sublicense, sell, reverse engineer, decompile, or disassemble any part of the Service without our prior written permission. The Service may be used solely (a) to the extent permitted in this Agreement or (b) as expressly authorized in writing by SigOpt or, if so indicated in writing by SigOpt, its licensors or suppliers. Use of the Service for any other purpose is strictly prohibited. You acknowledge that you do not acquire any ownership rights by using the Service. The trademarks, logos, and service marks displayed on the Service (collectively, the “SigOpt Trademarks”) are the registered and unregistered trademarks of SigOpt, SigOpt licensors and suppliers, and/or others. Nothing contained in this Agreement or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any SigOpt Trademark(s) without the express written permission of SigOpt, SigOpt’s licensors or suppliers, or the

third-party owner of any such SigOpt Trademark. Subject to the rights granted to SigOpt in this Agreement, as between you and SigOpt, you retain all right, title, and interest in and to your Customer Data.

6. Paid Services.

You acknowledge and agree that you shall be responsible for paying all fees due for the paid version of the Service, as set forth on the applicable order between you and SigOpt (each, an “Order”). The terms and conditions of each Order are incorporated by reference herein and you agree to comply with the terms and conditions of an Order. In the event of any conflict between the terms and conditions of this Agreement and an Order, the terms and conditions of this Agreement shall control. SigOpt reserves the right to immediately suspend your access to the paid version of the Service if you exceed your monthly usage allocations.

7. Free Services

If you receive a free or unsubscribed access subscription (“Free Access Subscription”) to the Service or a beta release product (“Beta Release”), then you may use the Service or Beta Release in accordance with the terms and conditions of this Agreement for the period designated in the Free Access Subscription order form or the Beta Release order form. SigOpt may terminate or immediately suspend your Free Access Subscription or Beta Release access at any time for any reason without liability to you and does not guarantee that future versions of a Beta Release or Free Access Subscription will be made available under the same commercial or other terms. You acknowledge your Free Access Subscription or Beta Release may not be complete or fully functional and may contain bugs, errors, omissions and other problems. SigOpt will have no warranty, indemnity, support, or maintenance obligations with respect to Free Access Subscriptions or Beta Releases.

8. Third-Party Links

The Service may contain links to other websites for your convenience. We do not control the linked websites or the content provided through such websites, and we have not reviewed, in their entirety, such websites. Your use of linked websites is subject to the privacy practices and terms of use established by the specific linked website, and we disclaim all liability for such use. The fact that we offer such links does not indicate any approval or endorsement by us of any linked website or any material contained on any linked website, and we disclaim any such approval or endorsement.

9. No Use by Children Under 18

You hereby affirm that you are over the age of eighteen (18), as the Service is not intended for children under 18. If you are under 18 years of age, then you may not use the Service. You further affirm that you are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement.

10. Term & Termination

This Agreement is effective from the date on which you first access the Service or submit any Customer Data to SigOpt, whichever is earlier, and shall remain effective until terminated in accordance with its terms. SigOpt may immediately terminate this Agreement, and/or your access to and use of the Service, or any portion thereof, at any time and for any reason, with or without cause, without prior notice. SigOpt may also terminate this Agreement immediately if you fail to comply with any term or provision of this Agreement. Upon termination of this Agreement by either party, your right to use the Service shall immediately cease. Upon termination or expiration of this Agreement for any reason, Sections 1, 2, 3, 4, 5(B), 5(C), and 6–19 shall survive.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service, or any part or portion thereof, with or without notice to you. You agree that we shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Service, or any part or portion thereof. Nothing in this Agreement shall be construed to obligate SigOpt to maintain and support the Service, or any part or portion thereof, during the term of this Agreement.

11. Disclaimers

THE SERVICE IS PROVIDED “AS IS” AND “WITH ALL FAULTS” AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, AND ANY WARRANTIES THAT THE SERVICE IS CURRENT AND/OR UP-TO-DATE ARE HEREBY EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

THERE IS NO WARRANTY, REPRESENTATION, OR GUARANTEE THAT THE SERVICE, OR YOUR USE OF THE SERVICE, WILL BE UNINTERRUPTED, COMPLETE, ACCURATE, CURRENT, RELIABLE, ERROR-FREE, SECURE, OR THAT ANY PROBLEMS WILL BE CORRECTED, OR THAT THE SERVICE, OR ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE FROM THE SERVICE, IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATION REGARDING THE USE OF, OR THE RESULTS OF THE USE OF, THE SERVICE AND YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICE, AND YOUR RELIANCE THEREON.

12. Limitation of Liability

NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OF ANY KIND, NEITHER SIGOPT NOR ANY OF ITS LICENSORS, SPONSORS, AGENTS, SUCCESSORS, OR ASSIGNS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES, ARE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, LOST SAVINGS, OR LOSS OF DATA) OR LIABILITIES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY MANNER TO THE SERVICE, AND/OR ANY LINKED WEBSITE, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES. SIGOPT’S MAXIMUM AGGREGATE LIABILITY SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100). NEITHER SIGOPT NOR ANY OF ITS LICENSORS, SPONSORS, AGENTS, SUCCESSORS, OR ASSIGNS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES WILL HAVE ANY LIABILITY TO YOU FOR ANY DAMAGES, EXPENSES, OR OTHER LIABILITY INCURRED BY YOU AS A RESULT OF ANY INACCURACY, INCOMPLETENESS, OR MISREPRESENTATION OF ANY INFORMATION, CONTENT, POSTINGS, OR SUBMISSIONS PROVIDED OR POSTED ON THE SERVICE BY THIRD PARTIES.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES AND/OR LIABILITIES, SO CERTAIN OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

13. Indemnification

You (and also any third party for whom you operate an account or experiment on the Service) agree to fully indemnify, defend (at SigOpt's request), and hold SigOpt, our licensors, suppliers, agents, successors, and assigns, and our and their directors, officers, employees, consultants, and other representatives ("SigOpt Parties") harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees), and other expenses that arise directly or indirectly out of or from: (a) your breach of this Agreement; (b) any allegation that any Customer Data or other materials you submit to us or transmit to the Service infringe, misappropriate, or otherwise violate the copyright, patent, trademark, trade secret, or other intellectual property or other rights of any third party; (c) your activities in connection with the Service or other websites to which the Service is linked; (d) your negligence or willful misconduct; (e) your use of the results, content, data, or information provided via the Service; (f) any service or product offered by you in connection with or related to your use of the Service; and/or (g) your violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities.

14. Jurisdictional Issues

SigOpt makes no representation that the Service operates (or is legally permitted to operate) in all geographic areas, or that the Service is appropriate or available for use in other locations. Accessing the Service from territories where the Service or any content or functionality of the Service or portion thereof is illegal is expressly prohibited. If you choose to access the Service, you agree and acknowledge that you do so on your own initiative and at your own risk, and that you are solely responsible for compliance with all applicable laws. The Service is operated from the United States. If you are located outside of the United States and choose to use the Service or provide your Customer Data to us, your Customer Data will be transferred, processed, and stored in the United States. U.S. privacy laws may not be as protective as those in your jurisdiction. Your agreement to the terms of this Agreement followed by your submission of your Customer Data in connection with the Service represents your agreement to this practice. If you do not want your Customer Data transferred to or processed or stored in the United States, you should not use the Service. Use of the Service by users outside of the United States is at your own risk.

15. Notice for California Users

Under California Civil Code Section 1789.3, California Service users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N 112, Sacramento, California 95834, or by telephone at (800) 952-5210.

16. Dispute Resolution

A. Arbitration. The parties shall use their best efforts to settle any dispute, claim, question, or disagreement directly through good-faith negotiations, which shall be a precondition to either party initiating a lawsuit or arbitration. Except for disputes relating to SigOpt's intellectual property (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents) or if you opt out of this agreement to arbitrate, all claims arising out of or relating to this Agreement and your use of the Service shall be finally settled by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with the provisions of its Commercial Arbitration Rules and of its supplementary procedures for consumer-related disputes, excluding any rules or procedures governing or permitting class actions. The arbitrator, and not any court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to this Agreement, including, but not limited to, any claim that all or any part of this Agreement is void or voidable. The arbitrator shall be empowered to grant whatever relief would be available in a court; provided, however,

that the arbitrator will not have authority to award damages, remedies, or awards that conflict with this Agreement. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. To the extent the filing fee for the arbitration exceeds the cost of filing a lawsuit, SigOpt will pay the additional cost. You and SigOpt hereby expressly waive trial by jury. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if SigOpt is a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act.

The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and that the right to discovery may be more limited in arbitration than in court.

B. Class-Action Waiver. The parties further agree that any arbitration shall be conducted in their individual capacities only, and not as a class action or other representative action. If any court or arbitrator determines that the class-action waiver set forth in this section is void or unenforceable for any reason, or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

C. Exception—Litigation of Small-Claims-Court Claims. Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

D. Thirty-Day Right to Opt Out. You have the right to opt out and not be bound by the arbitration- and class-action-waiver provisions set forth in this section by sending written notice of your decision to opt out to the following address: SigOpt, Inc., 100 Bush St, Suite 510. San Francisco, CA 94104. The notice must be sent within 30 days of registering to use the Service; otherwise, you shall be bound to arbitrate disputes in accordance with this Agreement. If you opt out of these arbitration provisions, SigOpt also will not be bound by them. In addition, if you elect to opt out of these arbitration provisions, SigOpt may terminate your use of the Service.

E. Time Limitation on Claims. You agree that any claim you may have arising out of or related to your relationship with SigOpt and this Agreement must be filed within one year after such claim arose; otherwise, your claim is permanently barred.

17. Choice of Law and Forum

All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will in all respects be governed by, and construed and interpreted under, the choice of law set forth in your Master Services Agreement with SigOpt; or, under the laws of the State of Delaware if you do not have a Master Services Agreement with SigOpt. **The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from and will not apply to this Agreement.** All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will be subject to the exclusive jurisdiction and venue set forth in your Master Services Agreement with SigOpt; or, subject to the exclusive jurisdiction and venue of the federal or state courts located in the State of Delaware if you do not have a Master Services Agreement with SigOpt.

18. U.S. Government Restricted Rights

The Service shall be deemed "commercial computer software" pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or

disclosure of the Service by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

19. Export Control Compliance

You acknowledge that the Service and all related information made available to you through the Service are subject to export controls and you agree to comply with all laws and regulations of the United States and other applicable governments governing export, re-export, import, transfer, distribution, and use of the Service and such related information. In particular, but without limitation, the Service may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to any person or entity listed on a denial order published by the U.S. government or any other applicable governments. By using the Service, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Service for, or sell or transfer them to a third party who is known or suspected to be involved in, any purposes prohibited by the U.S. government or other applicable governments, including, without limitation, the development, design, manufacture, or production of nuclear, missile, chemical or biological weapons.

20. Miscellaneous

If any provision of this Agreement is found to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. This is the entire Agreement between you and us relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral agreements between you and us with respect to such subject matter. This Agreement may not be changed, waived, or modified except by SigOpt as provided herein or otherwise by written instrument signed by SigOpt. Employees of SigOpt are not authorized to modify the terms of this Agreement, either orally or in writing. If any employee of SigOpt offers to modify this Agreement, he or she is not acting as an agent for SigOpt or speaking on SigOpt's behalf. You may not rely, and should not act in reliance on, any statement or communication from an employee of SigOpt or anyone else purporting to act on SigOpt's behalf. This Agreement is between you and SigOpt; there are no third-party beneficiaries. You are responsible for compliance with all applicable laws and regulations. No agency, partnership, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement. Neither this Agreement nor any right, obligation, or remedy hereunder is assignable, transferable, delegable, or sublicensable by you except with SigOpt's prior written consent, and any attempted assignment, transfer, delegation, or sublicense shall be null and void. SigOpt may assign, transfer, or delegate this Agreement or any right or obligation or remedy hereunder in its sole discretion. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Except as explicitly stated otherwise, legal notices shall be served on SigOpt at legal@sigopt.com (in the case of SigOpt) or to the e-mail address you have designated on your account (in your case). Notice to you shall be deemed given 24 hours after the e-mail is sent. Any heading, caption, or section title contained in this Agreement is inserted only as a matter of convenience, and in no way defines or explains any section or provision hereof.

21. Privacy Notice

SigOpt is committed to respecting your privacy. To learn more about SigOpt's privacy practices, please visit <https://app.sigopt.com/privacy>.

The Service is Operated By

SigOpt, Inc.

Effective December 10, 2020