

**GUROBI OPTIMIZATION, INC.**  
**GUROBI CLOUD END-USER LICENSE AGREEMENT**  
**("Agreement")**

Please read the terms and conditions of this license agreement carefully. By installing and using the Gurobi Product(s) on the Amazon Cloud you are accepting the terms of this agreement. The Effective Date of this Agreement is the date and time on which the Gurobi Product(s) is installed and enabled. The Gurobi Product(s) is copyrighted and licensed (not sold) to you by Gurobi Optimization, Inc., a corporation with its principal place of business in Houston, Texas. This Agreement shall apply to all Gurobi Products, unless replaced by Gurobi. It consists of 1) the accompanying Terms and Conditions; and 2) the Gurobi Cloud Support addendum ("**Exhibit A**").

**TERMS AND CONDITIONS**

**1. DEFINITIONS**

**1.1. "Error"** means any reported and reproducible failure of the Product(s) to perform substantially in accordance with its end-user documentation. **"Error Correction"** means either a modification or addition that, when made or added to the Product(s), brings the Product(s) into material conformity with its published documentation, or a procedure or routine that, when observed in the regular operation of the Product(s), avoids the practical adverse effect of such nonconformity. **"Material Error"** means any reported and verifiable failure of the Product(s) to perform substantially in accordance with its published documentation where this Error prevents use of the Product(s), or which seriously impacts use of the Product(s). **"Product(s)"** is the Gurobi Optimizer, which is software for linear, quadratic, and mixed-integer programming, in the form of object code libraries. **"You"** or **"your"** means the single end-user customer organization accepting this Agreement.

**2. SCOPE OF RIGHTS**

**2.1. Grant of License.** Gurobi grants you a non-exclusive right to use the Product(s) in object-code form with a pre-built virtual machine for the Amazon Elastic Compute Cloud (EC2) platform. You are allowed an unlimited number of simultaneous uses and users on the machine. Hosting is strictly prohibited.

**2.2. Limitations on Use.** You may not use, copy, modify, or distribute the Product(s), or make any copy, adaptation, transcription, or merge any portion thereof, except as expressly authorized by Gurobi in a separate written agreement signed by Gurobi. You may not reverse assemble, reverse compile, or otherwise translate the Product(s). Your license may not be transferred, leased, assigned, or sub-licensed without Gurobi's prior written consent. In no event may you lend or give access to the Product(s) to any third party who is not part of your organization. Breach of these limitations will result in your license being automatically terminated.

**3. SUPPORT**

**3.1. Support.** Gurobi offers a Support program as set forth in Exhibit A.

**4. LICENSE FEES**

**4.1. Payment Terms for Use of Software.** You will pay for the use of the Product(s) as set forth in the Billing Services Agreement from Amazon Payments that is provided immediately before you place your order.

**4.2 Payment Terms for Gurobi Cloud Support.** Invoices are due and payable within thirty (30) days of the date of each invoice. Except as provided in Paragraph 8.2 (Right to Cure), the fees are not refundable. If any fees are not paid when due, Gurobi may, at its option, charge interest at a rate of one and one-half percent (1½%) per month or, if less, the highest rate allowed by applicable law from the date such fee or charge first became due.

**5. WARRANTIES**

**5.1. Warranty.** The Product(s) is provided without warranty "as is".

**5.2. Limitation on Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, GUROBI SHALL HAVE NO LIABILITY FOR THE PRODUCT(S), FOR NEGLIGENCE; GUROBI MAKES AND YOU RECEIVE NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND GUROBI SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**5.3. Limitation of Liability; Exclusion of Consequential Damages.** The cumulative liability of Gurobi to you for any and all claims relating to the Product(s) and any services rendered under this Agreement shall not exceed the total amount of all License Fees paid to Gurobi for the Product(s) within the prior year. This limitation shall not apply

to the indemnification provided in Section 8 ("**Indemnification**"). In no event shall Gurobi be liable to you for any consequential, indirect, special, or incidental damages, even if Gurobi has been advised of the possibility of such potential loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

## **6. OWNERSHIP**

**6.1. Ownership.** Gurobi shall have sole right, title, and interest in and to the Product(s) and all documentation relating to the Product(s) (including its development or its operation, testing or use, and all reports and copies created), and all intellectual property rights associated the Product(s) (including, without limitation, rights to copyrights, patents, trade secrets, and know-how). This Agreement does not provide you with title or ownership of the Product(s), but only a right of limited use under this license.

## **7. CONFIDENTIAL INFORMATION**

**7.1. Confidential Information.** "Confidential Information" means any data or information, oral or written, treated as confidential that relates to either party's past, present, or future research, development or business activities, including any unannounced products and service(s), and including any information relating to services, developments, inventions, processes, plans, financial information, customer lists, forecasts, and projections. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information that: 1) is publicly available or in the public domain at the time disclosed; 2) is or becomes publicly available or enters the public domain through no fault of the party receiving such information; 3) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; 4) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; 5) is independently developed by the recipient; or 6) is approved for release or disclosure by the disclosing party without restriction.

## **8. INDEMNIFICATION**

**8.1. Indemnification.** If a third party claims that the Product(s) infringes any U.S. patent, copyright, or trade secret, Gurobi will (as long as you are not in default under this Agreement or any other agreement with Gurobi) defend you against such claim at Gurobi's expense and pay all damages that a court finally awards, including reasonable attorneys' fees, provided that you promptly notify Gurobi in writing of the claim, allow Gurobi to control the defense of such claim, and cooperate with Gurobi in the defense or any related settlement negotiations.

**8.2. Disclaimer of Indemnification.** The indemnification set forth in Section 8.1 only applies to Gurobi Product(s). Gurobi expressly disclaims any right of indemnification relating the Amazon EC2 Platform or the Linux operating system or any other third party software products.

**8.3. Right to Cure.** If such a claim is made or appears possible, Gurobi may, at its option, secure for you the right to continue to use the Product(s), or modify or replace the Product(s) so it is non-infringing, or, if neither of the foregoing options is available in Gurobi's judgment, return to you any associated fees paid for the use of the Product(s) during the applicable period.

**8.4. No Obligation.** Gurobi has no obligation for any claim based on a modified version of the Product(s), or its combination, operation, or use with any product, data, or apparatus not provided by Gurobi, or for the data provided by you. **THIS PARAGRAPH STATES GUROBI'S ENTIRE OBLIGATION TO YOU WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.**

## **9. TERM AND TERMINATION**

**9.1. Term.** The term of your license is from the Effective Date above and shall continue thereafter, unless terminated sooner according to the terms of this Agreement.

**9.2. Material Breach.** This Agreement may be terminated: 1) by either party upon a material breach by the other party of the terms of this Agreement, which breach has not been cured within thirty (30) days after the breaching party has received written notice thereof; 2) by Gurobi, upon fifteen (15) days written notice, in the event of any delinquency of your payment of amounts due hereunder; or 3) by the non-breaching party upon three (3) days written notice in the event of breach of Section 7 (Confidential Information).

**9.3. Survival.** Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 4 (License Fees), 6 (Ownership), 7 (Confidential Information), and 8 (Indemnification) shall survive such termination and remain in full force and effect.

## **10. GENERAL**

**10.1. Assignment.** This Agreement shall not be assignable by you without the prior written consent of Gurobi.

**10.2. Waiver of Construction against the Drafter.** This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against either of the parties to this Agreement.

**10.3. Severability.** In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL OTHER LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

**10.4. Notices.** All notices or other communications required to be given under this Agreement shall be in writing and delivered either personally or by U.S. mail, certified, return receipt requested, postage prepaid, and addressed as provided in this Agreement or as otherwise requested by the receiving party. Notices delivered personally shall be effective upon delivery and notices delivered by mail shall be effective upon their receipt by the party to whom they are addressed.

**10.5. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Texas as they apply to a contract made and performed in such state. Venue for any dispute under this Agreement shall be San Francisco, California.

**10.6. Modifications and Waivers.** This Agreement may not be modified except by a writing signed by authorized representatives of both parties. A waiver by either party of its rights hereunder shall not be binding unless contained in a writing signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision on one (1) occasion shall not constitute a waiver of such provision on any other occasions unless expressly so agreed in writing. It is agreed that no use of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

**10.7. Force Majeure.** Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the parties' reasonable control, including but not limited to acts of God, war, riot, embargoes, or acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor, or materials. In the event of any such delay, either party may defer any delivery dates for a period equal to the time of such delay. Notwithstanding the foregoing, if either party is in default under this Section for more than forty five (45) days, the non-defaulting party may terminate this Agreement.

**10.8. No Set Off.** Notwithstanding anything to the contrary in this Agreement, you waive your right to suspend or set off any payment obligation to Gurobi on any basis whatsoever.

**10.9. Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof that fails to settle by mediation, shall be settled by binding arbitration in the County of Santa Clara, California, administered by JAMS in accordance with its then current Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator may award monetary damages, punitive damages, injunctive relief, rescission, restitution, costs and attorneys' fees. The arbitration award shall be final and binding regardless of whether one of the parties fails or refuses to participate in the arbitration. The arbitrator shall not have the power to amend this Agreement in any respect. Notwithstanding the foregoing, the parties agree that this Section does not apply to the breach of provisions pertaining to confidentiality and proprietary rights, and that either party may petition a court of law for injunctive relief and such other rights and remedies as it may have at law or equity against such breaches.

**10.10. Attorneys' Fees.** In the event of any dispute with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs and expenses incurred in resolving such dispute.

## **EXHIBIT A GUROBI CLOUD SUPPORT**

**Support Term.** If you have Maintenance and Support contract for a purchased Gurobi commercial license, then Gurobi Cloud support is automatically included. Otherwise, if you purchase a Gurobi Cloud support contract, the Term of that contract shall commence on the Effective Date of the Agreement and shall continue for one year. If you do not have a Maintenance and Support contract for a commercial product and do not purchase a Gurobi Cloud support contract, then general support may be found through the Gurobi Optimization online discussion group.

**A Gurobi Cloud Support Contract includes the following benefits:**

(1) During the Support Term Gurobi warrants that the Product(s) will perform substantially in accordance with the documentation published by Gurobi. Gurobi does not warrant that the Product(s) will be Error-free in all circumstances.

(2) During the Support Term, Gurobi shall make reasonable commercial efforts to correct, or devise workarounds for any Errors in the Product(s) reported by you, and to provide such corrections or workarounds to you in a timely manner. Some Errors will be corrected in the next release of the Product(s) only. Further, upon discovery of an Error,

you agree, if requested by Gurobi, to submit to Gurobi a listing of output and any other data that Gurobi may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.  
(3) Support will be provided remotely by electronic communication during normal business hours.

**Maintenance Exceptions.** Maintenance and support does not cover the following:

- (1) Any problem caused by modifications to any version of the Product(s) not made or authorized by Gurobi;
- (2) Any problem resulting from computer programs other than the Product(s);
- (3) Errors in any version of the Product(s) other than the most recent two major releases (for example, release 3.b.c will no longer be supported subsequent to the release of 5.0.0);
- (4) Any problem or Error in custom modifications; or
- (5) General support on Amazon EC2 or Linux.

Gurobi will not be responsible for delays caused by events or circumstances beyond its reasonable control.

**Use and Restrictions.** Your rights and obligations concerning the use of any Error Corrections (or any other programming provided by Gurobi, regardless of its form or purpose) shall be governed by the License Agreement. Gurobi shall have sole and exclusive ownership of all right, title, and interest in and to such works (including ownership of all copyrights, patent rights, trade secret rights and other intellectual property rights pertaining thereto), subject only to the License Agreement. Unless otherwise agreed, you are entitled to make and use the Product(s) only as you are authorized to use the Product(s) under the License Agreement.