

VANTIQ, INC.
END USER LICENSE AGREEMENT
(“EULA” OR “AGREEMENT”)
FOR AWS MARKETPLACE

This Agreement sets for the terms and conditions applicable to the licensing of the Vantiq Software by Vantiq, Inc. (“Vantiq”) to the individual or entity subscribing to the Vantiq Software (“Customer”). The offer of the Vantiq Software pursuant to this Agreement, and Customer’s acquisition of the corresponding Subscription, constitutes each party’s respective acceptance of this Agreement and their entry into this Agreement. This Agreement will become effective on the date Customer’s obtains the corresponding Subscription.

Unless defined elsewhere in this Agreement, terms in initial capital letters have the meanings set forth in Section entitled “Definitions.”

1. SCOPE OF VANTIQ SOFTWARE SUBSCRIPTION

Customer’s Subscription to access and use the Vantiq Software (the “Subscription”) is limited to the following parameters.

- 1.1 The Subscription is limited to a single named developer authorized to use Customer’s AWS Computing Environment (“Authorized User”).
- 1.2 The Subscription may only be used for the development and limited testing of Vantiq Software applications. Production use of Vantiq Software applications is not permitted.
- 1.3 Testing of Vantiq Software applications may only be conducted by the single Authorized User and may not directly or indirectly involve (a) any other internal or third-party individuals or entities, or (b) any automated tools that emulate, simulate or otherwise test use of an application by more than one user.
- 1.4 The Vantiq Software may only be used on a single EC2 instance type permitted by Vantiq in Customer’s AWS Computing Environment. Customer is not permitted to use the Vantiq Software in a production environment. Customer is prohibited from attempting to use or using the Vantiq Software on any computer hardware and/or software environment outside of Customer’s AWS Computing Environment.

2. DEFINITIONS

- 2.1 “AWS Marketplace” means the marketplace operated by Amazon Web Services, Inc. (“AWS”), which is currently located at <https://aws.amazon.com/marketplace/>, as it may be updated or relocated from time to time.
- 2.2 “Customer’s AWS Computing Environment” means the AWS-provided computing environment maintained under Customer’s AWS Marketplace account in which Vantiq authorizes use of the Subscription.
- 2.3 “Documentation” means the technical materials provided by Vantiq electronically within the Vantiq Software that describe the material features, functionality or operation of the Vantiq Software, located at <https://dev.vantiq.com/docs/system/index.html>
- 2.4 “Intellectual Property Rights” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.
- 2.5 “Customer Content” means any applications and other content developed by or on behalf of Customer with the Vantiq Software.
- 2.6 “Product Listing” means the description of the Vantiq Software and other product information listed on the AWS Marketplace and offered by Vantiq or its authorized reseller, including without limitation technical support details or information.
- 2.7 “Subscription Period” means the duration of Customer’s Subscription.
- 2.8 “Vantiq Software” means (a) the software delivered by Vantiq to Customer through the AWS Marketplace as described in the Documentation; and (b) all application code, scoping or implementation documents, support or training materials, reference guides, and all other materials supplied by Vantiq to Customer for use with the Vantiq Software. The Vantiq Software excludes any application code and other software which is not supplied to Customer by Vantiq.

3. VANTIQ SOFTWARE

3.1 Subscription Grant. Vantiq hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive right to access and use the Vantiq Software for the Subscription Period in accordance with the restrictions set forth above in the Section entitled “Scope of the Vantiq Software Subscription” and the other terms, conditions and limitations set forth this Agreement. Any use of the Vantiq Software following the Subscription Period or in excess of the terms, conditions and limitations set forth herein shall be deemed a material breach of this Agreement by Customer.

3.2 Access. Customer access and use of the Vantiq Software is limited to the Authorized User. Customer is responsible for all Vantiq Software activity occurring on an Authorized User account. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of,

the Vantiq Software, and will notify Vantiq promptly of any such unauthorized use known to Customer.

3.3 Support. If and to the extent Vantiq offers technical support services to AWS Marketplace subscribers and Customer registers with Vantiq for such services, Vantiq will use commercially reasonable efforts to provide Vantiq's standard support services in accordance with the then-current Vantiq Technical Support Policy.

3.4 Fees. The right to access and use the Vantiq Software as described herein is granted to Customer in consideration for Customer's timely payment to AWS of all fees incurred in connection with the Subscription, including without limitation technical support fees incurred by Customer, AWS charges for use of Customer's AWS Computing Environment, and any subscription fees incurred do to Customer exceeding any applicable vCPU limitation. If any such fees are not paid when due, Vantiq reserves the right (in addition to any other rights or remedies Vantiq may have) to suspend Customer's access to the Vantiq Software until such amounts are paid in full.

3.5 Limitations. Customer will not, and will not permit any other person or entity to: (a) reverse engineer, disassemble or decompile any component of the Vantiq Software; (b) interfere in any manner with the operation of the Vantiq Software; (c) lease, loan, rent, resell, sublicense or distribute the Vantiq Software or any of Customer's rights to use the Vantiq Software to any third party, or otherwise use the Vantiq Software for the benefit of a third party; or (i) modify, copy or make derivative works based on any part of the Vantiq Software.

3.6 Compliance. In connection with its use of the Vantiq Software, Customer shall comply with (a) all applicable domestic and international laws, ordinances and regulations, and (b) all applicable AWS Marketplace terms of use and other account requirements.

4. CUSTOMER CONTENT AND RESPONSIBILITIES

4.1 Customer Warranty. Customer represents and warrants that the Customer Content shall not (a) infringe, misappropriate or violate any Intellectual Property Rights, publicity/privacy rights, law or regulation; (b) be deceptive, defamatory, obscene, pornographic or unlawful; (c) contain any viruses, worms or other malicious computer programming codes intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (d) otherwise violate the rights of a third party.

4.2 Customer Responsibility for Customer Content. Customer and its Authorized User shall have access to the Customer Content and shall be responsible for all changes to and/or deletions of Customer Content and the security of all passwords and other protocols required in order to access the Vantiq Software. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. Customer shall have the ability to export Customer Content out of the Vantiq Software and is solely responsible for creating backup copies of any Customer Content at Customer's sole cost and expense. Vantiq is not obligated to back up any Customer Content.

5. WARRANTIES AND DISCLAIMERS

5.1 Limited Warranty. Vantiq warrants to Customer that, The Vantiq Software will operate materially in conformance with the Documentation during the Subscription Period, so long as the Vantiq Software is used in accordance with the Documentation. If Customer notifies Vantiq or an authorized Vantiq reseller in writing of any non-compliance of the Vantiq Software with the foregoing warranty, Vantiq shall use reasonable efforts to correct the non-conformity in accordance with Vantiq's then-current technical support policy. If Vantiq does not correct the Vantiq Software to conform to the foregoing warranty within a reasonable time, then as Customer's sole and exclusive remedy, Customer may terminate the Subscription and this Agreement by discontinuing use of the Vantiq Software.

5.2 Warranty Exclusions. Vantiq shall have no obligation under the foregoing limited warranty to the extent attributable to any use of the Vantiq Software by Customer (a) in violation of this Agreement or applicable law, ordinance or regulation; (b) in conflict with the Documentation; (c) in combination with other products, equipment, software or data not supplied by Vantiq or contemplated by the Documentation; or (d) following any modification of the Vantiq Software by any person other than Vantiq or its authorized agents, to the extent the Vantiq Software non-conformity would not have occurred absent such modification.

5.3 Disclaimer. THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE VANTIQ SOFTWARE IS PROVIDED "AS IS," AND VANTIQ MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE VANTIQ SOFTWARE (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY VANTIQ. VANTIQ DOES NOT WARRANT THAT ALL VANTIQ SOFTWARE ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE VANTIQ SOFTWARE WILL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

6. LIMITATION OF LIABILITY

6.1 Types of Damages. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, NEITHER VANTIQ NOR ITS SUPPLIERS SHALL BE LIABLE TO CUSTOMER FOR ANY DIRECT, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY AMOUNT, KIND OR NATURE, INCLUDING BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE,

GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH VANTIQ'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE VANTIQ SOFTWARE OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF VANTIQ HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

6.2 Basis of the Bargain. The limitations of liability set forth in this Section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that Vantiq is granting Customer the right to access and use the Vantiq Software in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between Customer and Vantiq.

7. CONFIDENTIALITY

7.1 Confidential Information. "Confidential Information" means any and all information disclosed by either Vantiq or Customer (the "Disclosing Party") to the other party (the "Recipient") before or during the Subscription Term that: (i) in any way relates or pertains to the Disclosing Party, its properties, personnel, operations or business; (ii) if disclosed in written, electronic or other tangible form is conspicuously marked as confidential, proprietary or other similar designation; and if disclosed in oral or visual form is identified as confidential at the time of disclosure; or (iii) would appear to a reasonable person, familiar with the Disclosing Party's business and the industry in which it operates, to be of a confidential or proprietary nature, the maintenance of which is important to the Disclosing Party. The Vantiq Software and all enhancements and improvements thereto will be considered Confidential Information of Vantiq.

7.2 Exceptions. Confidential Information does not include: (a) information that is in the public domain at the time of its disclosure to the Recipient; (b) information that, through no violation of the terms of this Section, enters the public domain after its disclosure to the Recipient; (c) information that the Recipient can demonstrate was known by or in the possession of the Recipient at the time of its disclosure to the Recipient and was not subject to a duty of confidentiality; (d) information that is independently developed by the Recipient without use of or reliance upon Confidential Information of the Disclosing Party; or (e) information disclosed in good faith to the Recipient by a third party legally entitled to do so.

7.3 Non-Use and Non-Disclosure. The Recipient will treat as strictly confidential and will not use any Confidential Information other than in connection with the subject matter of this Agreement, or divulge or disclose any Confidential Information to, or to permit any Confidential Information to be divulged or disclosed to or examined or copied by, any third parties, provided that Recipient may disclose Confidential Information to its employees, agents, representatives, assignees or subcontractors on a "need to know" basis (each such person, a "Permitted Disclosee"). The

Recipient will inform each Permitted Disclosee of the requirements of this Agreement and ensure that each Permitted Disclosee is under confidentiality undertakings no less onerous than those contained in this Agreement and complies with each of the Recipient's obligations as set forth in this Agreement. Recipient shall be liable for the breach of the terms of this Agreement by any Permitted Disclosee. Notwithstanding the foregoing, Recipient may disclose Confidential Information if compelled to do so by a subpoena or order issued by a court of competent jurisdiction (each, an "Order"), provided that the Recipient, insofar as legally allowed, gives the Disclosing Party prompt written notice of the Order and cooperates fully with the Disclosing Party prior to disclosure to provide the Disclosing Party with the opportunity to interpose any and all objections it may have to disclosure of the information required by the Order, and provided further that Recipient must limit the scope of Confidential Information that is disclosed to only that which is required to be disclosed by the applicable Order.

7.4 Return of Confidential Information. Upon request by the Disclosing Party or upon the termination of this Agreement, the Recipient will immediately return to the Disclosing Party all Confidential Information of the Disclosing Party, including all documents and copies of documents in its possession containing Confidential Information.

8. OWNERSHIP

8.1 Vantiq Software. Vantiq retains all right, title and interest in and to the Vantiq Software and all modifications and improvements thereto, including without limitation all Intellectual Property Rights. Other than as expressly set forth in this Agreement, no license or other rights in the Vantiq Software are granted to Customer. Customer hereby grants to Vantiq a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Vantiq Software any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

8.2 Customer Content. Customer retains all right, title and interest in and to the Customer Content and all modifications and improvements thereto, including without limitation all Intellectual Property Rights. Customer hereby grants to Vantiq a non-exclusive, worldwide, royalty-free and fully paid license to use (a) the Customer Content and (b) Customer's trademarks, service marks, and logos only to the extent necessary to provide the Vantiq Software to Customer.

9. INDEMNIFICATION

Customer will defend at its expense any claim or suit brought against Vantiq, and will pay any settlement Customer makes or approves, or any damages finally awarded in such claim or suit, to the extent such claim or suit is based on or relates to (a) Customer's use of the Vantiq Software or (b) an allegation that the Customer Content infringes, misappropriates or violates any U.S. Intellectual Property Rights of such third party. Vantiq will promptly notify Customer in writing of any threatened or actual claim or suit. Customer will have sole control of the defense or settlement of any claim or suit. Vantiq will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall commence on the Customer's first use of the Vantiq Software, and remain in effect until terminated in accordance with this Agreement.

10.2 Termination. The Subscription and this Agreement will terminate automatically upon the termination of Customer's AWS account and/or Customer's AWS Computing Environment. Vantiq may also terminate this Agreement immediately upon notice to Customer if Customer materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach from Vantiq.

10.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate, and Customer's access to the Vantiq Software may be disabled and discontinued; and (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the section titled Confidentiality. The sections and subsections titled Definitions, Limitations, Warranties and Disclaimers, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous will survive expiration or termination of this Agreement for any reason.

11. MISCELLANEOUS

11.1 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the personal jurisdiction and venue in the state and federal courts located in San Francisco, California, USA for any lawsuit filed there against Customer by Vantiq arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

11.2 Export. Customer agrees not to export, re-export, or transfer, directly or indirectly, any technical data acquired from Vantiq, or any products utilizing such data, in violation of the United States export laws or regulations.

11.3 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

11.4 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.5 Remedies. Customer acknowledges that the Vantiq Software contains valuable trade secrets and proprietary information of Vantiq, that any actual or threatened breach of the sections titled

Intellectual Property or Confidentiality or any other breach by Customer of its obligations with respect to Intellectual Property Rights of Vantiq will constitute immediate, irreparable harm to Vantiq for which monetary damages would be an inadequate remedy. In such case, Vantiq will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any software, Documentation, or any portions thereof, that Customer attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

11.6 No Assignment. Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without the consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

11.7 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

11.8 Notices. To be effective, notice under this Agreement must be given in writing. Each party consents to receiving electronic communications and notifications from the other party in connection with this Agreement. Each party agrees that it may receive notices from the other party regarding this Agreement: (a) by email to the email address designated by such party as a notice address for this Agreement; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Notice will be deemed given upon written verification of receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

11.9 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior communications between the parties with respect to such subjects, including without limitation the Product Listing. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and Vantiq. Neither AWS nor any of its affiliates are a party to this Agreement and none of them will have any liability or obligations hereunder.

[End of Agreement]