

Qlytics End-User Licensing Agreement (EULA)

This End-User Licensing Agreement, effective as of _____ (the "Effective Date"), is made by and between Qlytics, a Delaware company and the End-User of the Qlytics software ("Licensee").

As used herein: (a) the term "Order Form" means a document agreed to and executed by each of Qlytics and Licensee that references this End-User License Agreement and identifies the Subscription Service ("Service") that is licensed to Licensee hereunder, in substantially the form set forth in Exhibit A attached hereto; and (b) the term "Statement of Work" means a document agreed to and executed by each of Qlytics and Licensee that references this End-User License Agreement and identifies any Professional Services to be provided by Qlytics to Licensee, in substantially the form set forth in Exhibit B attached hereto; and (c) the term "Support Policy" means a document agreed to and executed by each of Qlytics and Licensee that references this End-User License Agreement and identifies the support policy and service levels that will be provided by Qlytics to Licensee, in substantially the form set forth in Exhibit C attached hereto. All Order Forms, Statements of Work and Support Policies shall be deemed part of and subject to this End-User License Agreement. In the event of inconsistencies or conflicts between this End-User License Agreement, and any Order Form, Statement of Work, or Support Policy, the terms of this End-User License Agreement will control, unless the Order Form, Statement of Work or Support Policy expressly states that it supersedes a specifically identified provision in this End-User License Agreement. The term "Agreement" means this End-User License Agreement, together with all Order Forms, Statements of Work and Support Policy issued hereunder.

In consideration of the mutual promises contained herein, the parties hereby agree to the following:

1. LICENSE AND SUPPORT. Subject to the terms, conditions and restrictions set forth in this Agreement, including payment of the Subscription Fees set forth in the Order Form, Qlytics hereby grants, and Licensee hereby accepts, a non-exclusive, non-transferable, right and license, to access and use, solely for its internal business purposes, (i) the Subscription Service identified on the Order Form (the "Service"), on a hosted basis, in accordance with the user documentation provided with the Service ("Documentation"), and (ii) the Documentation, each for the Subscription Term set forth in the applicable Order Form. Use of the Service is restricted and subject to the number of users and other limitations set forth in the Order Form. If Licensee has purchased a derivative use license, the license rights are subject to the additional terms set forth in Section 4 below. During the Subscription Term Qlytics will support the Service in accordance with the Support Policy attached as Exhibit C

2. TERM; RENEWAL; TERMINATION

2.1 Term of Agreement. This Agreement is effective as of the Effective Date and will continue until the services as described in the Order Form and any Statements of Work ("SOW(s)") have been completed, expired or terminated.

2.2 Term and Renewal of Orders. The Subscription Term described in each Order Form will commence upon the Order Form Effective Date and continue as set forth therein ("Initial Term") and will automatically renew for additional one (1) year terms ("Renewal Term") unless either party has given the other party written notice of non-renewal at least ninety (90) days prior to the end of an Initial Term or Renewal Term. Rates for any Renewal Term will not exceed the previous year's rates by more than the rate of inflation under the Consumer Price Index (All Urban Index, latest year for which statistics are available) plus five percent (5%), unless the parties agree otherwise in writing.

2.3 Termination. This Agreement and any Service may be terminated only if one party materially breaches this Agreement and fails to cure such breach within thirty (30) days or receipt of notice of the breach from the non-breaching party.

3. FEES; PAYMENT TERMS. Subscription Fees and any other fees for professional services are specified on the Order Form. Licensee agrees to pay any pre-approved reasonable travel and living expenses incurred in connection with the provision of services under a SOW. Unless otherwise set forth on the Order Form or a SOW, all fees will be invoiced upon the Effective Date of the Order Form. Payment terms are Net 30 days from the date of receipt of invoice. Licensee shall be responsible for all taxes on the fees, except for taxes on Qlytics's income.

4. RESTRICTIONS; PROPRIETARY RIGHTS. Licensee shall not: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, user interface techniques or algorithms of the Service or disclose any of the foregoing; (ii) encumber, transfer, manufacture, distribute, sell, sublicense, assign, provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use (except as expressly provided herein) the Service or Documentation; (iii) copy, modify, adapt, translate, incorporate into or with other software, or create a derivative work of any part of the Service or Documentation; (iv) attempt to circumvent any user limits, timing or use restrictions that are built into the Service; or (v) use the product in any harmful or unlawful ways. The Service is the proprietary intellectual property of Qlytics that contains trade secrets and is protected by copyright law. Subject to any license granted hereunder, Qlytics retains sole and exclusive ownership of all right, title, and interest in and to the Service and any other technology used to provide it. Any and all enhancements, modifications, corrections and derivative works that are made to the Service will be considered part of the Service for the purposes of this Agreement and will be owned by Qlytics. Qlytics shall own all rights, title and interest in any deliverables created by Qlytics under a SOW, but all such deliverables shall be licensed to Licensee for use in connection with Licensee's use of the Service hereunder. Notwithstanding the foregoing, Licensee retains all rights,

title and interest in and to Licensee's own information and data, including Licensee's ideas, processes, standards, practices, and management policies and procedures, that is input by Licensee into the Service or supplied to Qlytics ("Licensee Data").

5. PUBLICITY. Licensee agrees to allow the use of its name and logo, without endorsement, in a general list of Qlytics Licensees and consents to receiving communications regarding product updates, Licensee support, and marketing initiatives from Qlytics.

6. CONFIDENTIALITY. Each party shall maintain as confidential and shall not disclose (except to its employees, accountants, attorneys, advisors, affiliates, outsourcers and third party service providers of recipient with a need to know in connection with recipient's performance under this Agreement, and who have been advised of the obligation of confidentiality hereunder), copy or use for purposes other than the performance of this Agreement, any information which relates to the other party's business affairs, trade secrets, technology, research, development, pricing or terms of this Agreement ("Confidential Information") and each party agrees to protect all received Confidential Information with the same degree of care that it would use with its own Confidential Information and to prevent unauthorized, negligent or inadvertent use, disclosure or publication thereof. Breach of this Section may cause irreparable harm and damage. Thus, in addition to all other remedies available at law or in equity, the disclosing party shall have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use. The recipient shall be liable to the disclosing party for any use or disclosure in violation of this Section by recipient or its affiliates, employees, third party service providers or any other related party. Confidential Information shall not include information that (a) is already known prior to the disclosure by the owning party; (b) is or becomes publicly known through no breach of this Agreement; (c) is independently developed without the use of the other party's Confidential Information and evidence exists to substantiate such independent development; (d) information that is obtained from a third party, and that third party is not, in good faith belief to the recipient, under any legal obligation of confidentiality; or (e) the recipient receives written permission from the disclosing party for the right to disclose any Confidential Information.

7. LIMITED WARRANTY. Qlytics represents and warrants that the Service will substantially conform to the Documentation during the Warranty Period, which shall mean the Initial Term and any Renewal Term. If Licensee notifies Qlytics in writing of a nonconformity of Service during the Warranty Period, Qlytics will, at its option and expense, (a) correct any nonconformities in the Service that cause the Service to fail to conform to the Documentation, or (b) provide to Licensee a pro rata refund of any prepaid but unutilized Subscription Fees applicable to the non-conforming Service. The limited warranty set forth in this Section shall be void if the Service nonconformity is caused by (i) the use or operation of the Service with an application or in an environment other than that recommended in writing by Qlytics, (ii) modifications to or customizations of the Service without the express written authorization of Qlytics, (iii) accident, disaster or event of force majeure, (iv) misuse, fault or negligence of or by Licensee, (v) use of the Service in a manner for which it was not designed, (vi) causes external to the Service such as, but not limited to, power failure or electrical power surges. THE WARRANTY AND REMEDIES SET FORTH IN THIS SECTION 7 REPRESENT QLYTICS'S SOLE WARRANTY AND LICENSEE'S SOLE REMEDY IN THE EVENT OF BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, QLYTICS MAKES NO AND DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

8. LIMITATION OF LIABILITY. THE CUMULATIVE LIABILITY OF QLYTICS TO LICENSEE FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO QLYTICS UNDER THE APPLICABLE ORDER FORM WITHIN THE YEAR PRECEDING THE CLAIM. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL QLYTICS OR ITS SUPPLIERS BE LIABLE TO LICENSEE OR ANY OTHER PARTY FOR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF QLYTICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT.

9. INDEMNIFICATION. If a third party claims that the Subscription Service infringes any U.S. patent, copyright, or trade secret, Qlytics will defend Licensee against such claim at Qlytics's expense and pay all damages finally awarded through judgment or settlement, provided that Licensee promptly notifies Qlytics in writing of the claim, allows Qlytics sole control of the defense and/or settlement, and cooperates with Qlytics in, the defense or settlement of such action. If such a claim is made or appears possible, Qlytics may, at its option, secure for Licensee the right to continue to use the Subscription Service, modify or replace the Subscription Service so that it is non-infringing, or, if neither of the foregoing options is available in Qlytics's reasonable opinion, terminate this Agreement and refund to Licensee any unamortized pre-paid fees for use of the Subscription Service. Qlytics shall have no liability or obligation hereunder with respect to any infringement claim if such infringement is caused by (i) compliance with Licensee's instructions, designs, guidelines, plans or specifications; (ii) Licensee's use of the Subscription Service other than as specified in the applicable Documentation; (iii) modification of the Subscription Service by any person other than as authorized in writing by Qlytics; or (iv) the combination, operation or use of the Subscription Service with other product(s) or services not supplied by Qlytics, where the Subscription Service would not by itself be infringing. THIS PARAGRAPH STATES QLYTICS'S ENTIRE OBLIGATION TO LICENSEE WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

10. Insurance. During the Term of this Agreement, Qlytics shall, at its expense, at a minimum, maintain the following insurance coverage on a primary basis with the limits of liability indicated:

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Workers' Compensation	Statutory
Employers' Liability	\$500,000
Commercial / General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit

Umbrella Liability	\$1,000,000 per occurrence/aggregate
Errors & Omissions Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate

All such insurance shall be with insurers who are rated "A- VII" or better by the A.M. Best Company. Upon Licensee's request, certificates of insurance for the above will be submitted to Licensee. Licensee will be named as an additional insured on the General, Automobile and Umbrella Liability Policies and be granted a waiver of subrogation. Qlytics will be responsible for deductibles on any insurance policies referenced as part of this Agreement. Qlytics will provide at least thirty (30) days prior notice to Licensee of any termination or material modification of such coverage.

11. GENERAL.

11.1 Entire Agreement. This Agreement is the complete and exclusive statement of the parties' agreement and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. If these Terms and Conditions conflict with any of the terms or conditions of any Order Form or Statement of Work, then, unless otherwise provided herein, the terms and conditions of such Order Form or Statement of Work will control solely with respect to the Services covered by such Order Form or Statement of Work. Any purchase orders issued by Licensee shall be deemed to be for Licensee's convenience only and, notwithstanding acceptance of such orders by Qlytics, shall in no way change, override, or supplement this Agreement.

11.2 Waiver. Any waiver or modification of the provisions of this Agreement will be effective only if in writing and signed by the party against whom it is to be enforced. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A waiver of any provision, breach or default by either party or a party's delay exercising its rights shall not constitute a waiver of any other provision, breach or default.

11.3 Independent Contractor. Qlytics is an independent contractor and not an employee of Licensee. At no time shall either party make any commitments or incur any charges or expenses for or in the name of the other party, or be considered the agent, partner, joint venturer, employer or employee of the other party.

11.4 Notices. All notices or other communications required to be given hereunder shall be in writing and delivered either by U.S. mail, certified, return receipt requested, postage prepaid; by overnight courier; or as otherwise requested by the receiving party, to the address first listed above. Notices shall be effective upon their receipt by the party to whom they are addressed.

11.5 Assignment. This Agreement may not be assigned by Licensee without Qlytics's prior written consent.

11.6 Compliance with Laws. Each party will be responsible for compliance with all legal requirements related to its performance under this Agreement, including all applicable U.S. export laws and those laws related to the protection of data privacy, and proper use of financial and personally identifiable information.

11.7 Force Majeure. Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war, riot, embargoes, fire, floods, earthquakes, or strikes (each a "Force Majeure Event") provided that such party gives prompt written notice to the other party of the Force Majeure Event. The time for performance will be extended for a period equal to the duration of the Force Majeure Event.

11.8 Governing Law and Disputes. This Agreement and any dispute arising hereunder shall be governed by and interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles, and shall be subject to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts, and each party consents to the exclusive personal jurisdiction and venue of such courts.

11.9 Non-Solicitation. Neither party shall directly or indirectly solicit, employ or engage any employee of the other party with whom the non-employing party came into contact through the performance of this Agreement during the period such employee was engaged in the performance of this Agreement and for one (1) year after such engagement. If any court or other adjudicatory body determines that the foregoing provision is unenforceable because of its duration or scope, the court or adjudicatory body has the power to reduce the duration or scope of the provision, as the case may be, so that in its reduced form the provision is enforceable. Such power includes the authority to reform the provision by rewriting it, if required, so that it conforms to applicable law and carries out the parties' intentions under this Agreement.

11.10 Survival. The following provisions of this Agreement shall survive any termination or expiration hereof: Sections 3, 4 and 6 through 11.

AGREED AND ACCEPTED BY THE PARTIES' AUTHORIZED REPRESENTATIVES:

Qlytics	Licensee
Signature	Signature
Name:	Name:
Title:	Title:
Date:	Date:

Exhibit A

Order Form

This Order Form is entered into by and between Qlytics, and the Licensee identified below and is subject to the End-User License Agreement entered into between Qlytics and Licensee, dated

Licensee Information	
Licensee Name:	
Contact Person:	
Address	
Telephone	
Email:	
Billing contact (if different from above)	

Order Information	
Description of Subscription Service(s) ("the Service")	
Subscription Fee	
Subscription Term	
Minimum Transaction Volume per annum (if any)	
Payment Terms	30 days from receipt of monthly invoice
Pre-Payment Term	
Effective Date	

AGREED AND ACCEPTED BY THE PARTIES' AUTHORIZED REPRESENTATIVES:

Qlytics	Licensee
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Exhibit B

Statement of Work

Exhibit C

Support Policy

1. DEFINITIONS.

1.1 Defect. "Defect" means any error, omission, or deviation within the Qlytics Service (the "Service") that prevents its successful operation in substantial conformance with the Qlytics published user documentation (the "Documentation") (except for nonconformity caused by (a) the use or operation of the Service with an application or in an environment other than that recommended in writing by Qlytics, (b) modifications to or customizations of the Service without the express written authorization of Qlytics, (c) accident, disaster or events beyond Qlytics' reasonable control ("Force Majeure Event"), (d) misuse, fault or negligence of or by Licensee, (e) use of the Service in a manner for which it was not designed, or (f) causes external to the Service such as, but not limited to, power failure or electrical power surges).

1.2 Critical Error. "Critical Error" means a Defect that causes the Service to be unusable.

1.3 Significant Error. "Significant Error" means a Defect that has a material impact on Licensee's ability to use the Service.

1.4 Other Error or Support Question. "Other Error" means a Defect that is not a Critical Error or a Significant Error. Support Question means request for information on how to effectively use the Service.

2. SUPPORT COVERAGE.

2.1 Support Contact: qsupport@qlytics.com

2.2 Support Hours. 9 (Nine) Hours a Day, 5 (Five) Days a Week

3. PREVENTITIVE SUPPORT. Qlytics will undertake reasonable efforts to prevent Defects. These efforts include, as appropriate: (i) advising Licensee of all pertinent problems encountered by other Service users; (ii) performing the remedial work required to prevent problems encountered by other Service users from affecting Licensee's Service use; (iii) proactively remedying any security flaws; and (iv) reviewing data provided by Licensee on the Service operation to ascertain potential problems.

4. ERROR CORRECTION. Qlytics will undertake efforts necessary to promptly correct any Defect. Licensee may report a Defect via Phone, In-Product or Email Support. Company will make reasonable efforts to correct the Defect or provide an acceptable work-around or action plan within the following time frames, depending on Licensee's classification of the Defect (subject to Qlytics' reasonable agreement with such classification):

Priority	Response Time	Target Maximum Resolution Time	Type of Resolution
Critical Error	Max 24 Business Hours	The objective will be to provide relief to the Licensee within twenty-four (24) business hours and provide a Fix within seven (7) business days	Fix
Significant Error	Max 24 Business Hours	Max 7 Business Days	Delivered in next update
Other Error / Support Question	Max 2 Business Days	Max 7 Business Days	Description of current best practice for Service usage.

5. GENERAL SERVICE PERFORMANCE CRITERIA. The Service will be made available to Licensee a minimum of ninety-nine and five tenths percent (99.5%) of the time within any thirty (30) day period. "Availability" is defined as the user's ability to access and use the Service's functionality. "Unavailability" consists of the number of minutes that the Service was not Available to Licensee, but will not include Unavailability: (a) to the extent that Licensee does not promptly notify Qlytics of such Unavailability; (b) resulting from (i) scheduled maintenance by Qlytics, where Licensee has received advance notice of such scheduled maintenance; or (ii) reasons outside of Qlytics' control, including, but not limited to, acts or omissions of Licensee or anyone gaining access through Licensee's passwords



or equipment; the flow of data to or from Qlytics' network and other portions of the Internet which depends on the performance of Internet services provided or controlled by third parties other than the Qlytics or its or its hosting provider's data center facility; a service interruption caused by a security threat until such time as the security threat has been eliminated; reasons of force majeure; and emergency maintenance, of which Qlytics will notify Licensee as soon in advance as is practicable but will first endeavor to remedy the emergency.