



## GENERAL TERMS AND CONDITIONS FOR MICROSTRATEGY OEM PARTNERS

August 2018

These General Terms and Conditions for MicroStrategy OEM Partners (“General Terms”) apply to an agreement executed between MicroStrategy Services Corporation and MicroStrategy Limited, on behalf of themselves and their affiliates (“we,” “us,” “our”) and an authorized MicroStrategy OEM partner (“you,” “your”) that incorporates these General Terms (collectively, the “Agreement”).

**1. Your Role as a MicroStrategy OEM Partner.** We recognize you as an authorized MicroStrategy OEM partner, and grant you a non-exclusive, non-transferable, application-restricted license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our generally available software products (each, a “Product”) on servers and workstations under your control in the country to which the Products are delivered, and grant your Named Users located anywhere in world access to the Products (including the user documentation normally distributed or made available as part of the Products (“Documentation”)) for purposes of (i) embedding those Products into the OEM solution that you develop and market under your brand, as described in this Agreement (“OEM Solution”), (ii) marketing the OEM Solution to any current or prospective customer (“Customer”), and (iii) supporting your Customers’ use of the OEM Solution; and (b) distribute Products to Customers as part of your OEM Solution and sublicense to each Customer the right to install Products on servers and workstations under the Customer’s control (or under your control in a hosted environment on the Customer’s behalf) and grant Named Users access to those Products and reports, dashboards, dossiers and other output generated by the Products for use as part of the OEM Solution, each in accordance with the Documentation and the applicable license type(s) and terms specified on an order and this Agreement. If you choose to distribute our products under the “Discount” OEM business model, your and your Customers’ license to a Product will be under a Named User or CPU license type, as specified on an order or a quarterly report that you submit to us. “Named User” means a single individual designated by you as a user of a Product on a non-temporary basis. “CPU” means a physical or virtual core to which an instance of a Product is assigned in support of an unspecified number of Named Users in the environment specified on an order. You may create derivative works of the Documentation to include in your OEM Solution user documentation. You may also sublicense any of these rights to any third party (“Sub-Distributor”) who has entered into a written agreement with you containing terms and conditions substantially similar to the terms of this Agreement. We may revoke the foregoing right to sublicense to Sub-Distributors by providing written notice to you.

**2. Reporting, Orders and Payment.** All quarterly reports that you send us will completely and accurately detail the sale of your OEM Solution. We will invoice you

for all amounts payable to us upon execution of an order or after we receive a quarterly report. All fees due to us will be payable, in full and in the currency listed on an order or quarterly report, thirty (30) days from the date of the invoice, and will be deemed overdue if they remain unpaid thereafter. All fees are net of any taxes, which will be your responsibility, except for taxes on our income. Any dispute to an invoice must be raised within thirty (30) days from the date of invoice or the invoice will be deemed correct. If any undisputed invoice governed by this Agreement remains unpaid for 30 or more days after it is due, we may, without limiting our other rights and remedies, accelerate all unpaid fee obligations under such orders so that all amounts payable by you become immediately due and payable. In addition, any amounts which remain unpaid after the due date will be subject to a late charge equal to one and one-half percent (1.5%) per month or the highest rate allowable by law, whichever is lower, from the due date until such amount is paid. Except as otherwise noted, all orders and quarterly reports are firm and not subject to cancellation, return, refund or offset by you. We may suspend your right to distribute our Products if you fail to provide us any required quarterly report in a timely manner. We may designate one or more of our affiliates to exercise our rights and fulfill our obligations, including invoicing you.

**3. Certain Obligations and Restrictions.** You are responsible for compliance with this Agreement by your and your Customers’ Named Users. You will not (a) copy, display, distribute, or otherwise use the Products in any manner or for any purpose not expressly authorized by this Agreement; or (b) create derivative works of or otherwise modify the Products; or (c) reverse engineer, decompile or disassemble the Products or the metadata created by the Products; or (d) use the Products to conduct competitive research or disclose results of any benchmarking tests without our prior consent; or (e) use the Products in a manner that violates an individual’s privacy right set forth by statute, rule, regulation or case law; or (f) develop a product that is competitive with any of our product offerings (for clarity, your OEM Solution will not be deemed to be competitive with any of our product offerings for purposes of this clause). You will delete any demonstration copies of Products installed on servers or workstations under a Customer’s control upon completion of a demonstration at a Customer’s location. You will (i) ensure that each Customer only uses our Products as part of the OEM Solution to report on data derived from the data

models you provide, and does not materially change such data models to include data elements that are not directly related to the documented, intended uses of the OEM Solution; and (ii) not sell or license MicroStrategy metadata without also including Products as part of the sale or license.

**4. Technical Support Services.** “Technical Support Services” refers to the technical support and maintenance services provided by us according to our then-current technical support policy and procedure listed at <http://www.microstrategy.com> when the services are purchased. You will provide all technical support for your OEM Solution directly to each of your Customers, and we will only provide Technical Support Services to you. For Products licensed for a perpetual term, you will purchase a one year subscription to standard Technical Support Services commencing on (a) the fifteenth (15th) day of the month in which you sell your OEM Solution that embeds those Products, if you send us quarterly reports, or (b) the date on which we deliver those Products to you, if you place orders with us. Except as otherwise specified on an order, (a) upon expiration of the initial annual subscription term, you have the option to renew standard Technical Support Services on those Product licenses for subsequent annual subscription terms, each at an annual fee equal to the prior annual subscription term fee increased by the greater of CPI and five percent (5%) and (b) you agree to renew standard Technical Support Services unless you provide written notice to us at least ninety (90) days before expiration of the then-current subscription term that you desire to have your Technical Support Services lapse on all of your Product licenses. “CPI” means the latest published percentage increase in the United States Consumer Price Index-All Urban Consumers, U.S.-All items, 1982-84=100 at the time of the renewal. Standard Technical Support Services for term licenses is included as part of the term license fee. For each Product license, we will deliver to you, at your request, a later commercial release of that Product (“Update”) at no charge as part of a Technical Support Services subscription. Updates will not include new products that we market separately. You will not provide any Updates to, or contact us for any technical support-related issues relating to, any Customer for whom you do not maintain an active subscription to standard Technical Support Services.

**5. Indemnification.** We will defend you, at our expense, against any claim, demand, suit, or proceeding (“Claim”) brought against you by a third party alleging that a Product infringes or misappropriates an intellectual property right of the third party and will indemnify you for and hold you harmless from any damages finally awarded to the third party claimant or agreed to in settlement of the Claim, provided that you (a) promptly give us written notice of the Claim; and (b) give us sole control of the defense and settlement of the Claim (provided that we may not settle any Claim that imposes liability on, or contains any admission of fault by, you without your consent); and

(c) provide to us all available information and reasonable assistance necessary for us to defend or settle the Claim; and (d) have not compromised or settled the Claim without our written approval. If your use of a Product is enjoined in connection with the Claim, we may choose to either modify the Product to be non-infringing (while substantially preserving its utility and functionality) or obtain a license to allow for continued use of the Product, or if these alternatives are not commercially reasonable, we may terminate your license to and use of the Product and refund any fees and royalties paid by you during the twelve (12) month period prior to the date on which your use of the Product was enjoined. We will have no indemnification obligation, and you will indemnify us pursuant to this Agreement, for any Claim arising from or based upon (i) the misuse or unauthorized use of a Product or the use of a Product outside the scope of use identified in the Documentation, if the Claim would not have arisen without such use; or (ii) any modification of a Product not authorized by us in writing, if the Claim would not have arisen without such modification; or (iii) use of a prior version of a Product, if use of a newer version of the Product made generally available to our customers under a Technical Support Services subscription would have avoided the Claim; or (iv) the combination of a Product with any third party products, services or business processes not provided by us as part of the Product, if the Claim would not have arisen without such combination. The provisions of this section state the sole, exclusive and entire liability of us to you, and are your sole remedy, with respect to the infringement of third party intellectual property rights.

**6. Intellectual Property Ownership.** We, our affiliates and our licensors will own all right, title and interest in and to the Products and Documentation. Each party will own and retain all rights in its trademarks, logos and other brand elements (collectively, “Trademarks”). To the extent a party grants any rights or licenses to its Trademarks to the other party in connection with this Agreement, the other party’s use of such Trademarks will be subject to the reasonable trademark guidelines provided in writing by the party that owns the Trademarks.

**7. Effects of Termination.** Upon termination of this Agreement, all Product licenses and rights granted will terminate and all fees that you are obligated to pay as of the date of termination will be immediately due and payable. When a Product license terminates, you will immediately cease using the Product.

**8. Limited Warranties and Remedies.**

We warrant that (a) for each Product, for a period of six (6) months from the full execution of this Agreement or as otherwise set forth on an order (“Warranty Period”), the Product and Updates delivered for the Product during the Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation; and (b) prior to release, we scan each

version of the Products using a nationally recognized virus scanning program and we will remove any virus detected by such virus scanning program prior to releasing such version of the Products; and (c) we will not materially decrease the level of Technical Support Services provided during an active subscription to such Technical Support Services; and (d) our employees and contractors will perform any services listed on an order in a manner conforming to generally accepted industry standards and practices. For any breach of the warranty set forth in subsection (a) above, your exclusive remedy and our entire liability will be (i) the correction of the Product errors that caused the breach of the warranty; or (ii) replacement of the Product; or (iii) if neither of the foregoing can be reasonably effected by us, termination of this Agreement and all orders and the refund of the fees and royalties paid by you during the Warranty Period, provided that the Product licenses are terminated. For any breach of the warranty set forth in subsection (d) above, your exclusive remedy and our entire liability will be re-performance of the services at no cost to you.

Each party warrants that any individual who signs this Agreement and any order governed by the Agreement on behalf of such party has the authority to enter into this Agreement or any such order on behalf of such party, and that it will comply with all applicable statutes, laws, rules and regulations in the exercise of its rights and the performance of its obligations under this Agreement.

You acknowledge that the direct or indirect transfer of Products contrary to United States law is prohibited. You warrant that (i) you are not a Restricted Party; and (ii) you are not controlled by or acting on behalf of any Restricted Party. "Restricted Party" means any person or entity that is (1) listed on any of the lists of persons or entities maintained by the United States government that prohibit such persons or entities from receiving exports or services; or (2) a national or resident of, or an entity or governmental authority in, any country or territory that is or becomes subject to United States export controls for anti-terrorism reasons or with which United States persons are generally prohibited from engaging in financial transactions. You also warrant that your Customers and your Sub-Distributors comply with the terms of this Agreement and all applicable statutes, laws, rules and regulations in connection with their use of Products.

NO OTHER WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEMS INTEGRATION, TITLE, SATISFACTORY QUALITY AND NON-INFRINGEMENT.

**9. Limitation of Liability.** EXCEPT FOR OUR OBLIGATIONS UNDER THE "INDEMNIFICATION" SECTION, THE CUMULATIVE AGGREGATE

LIABILITY OF US AND ALL OF OUR AFFILIATES AND LICENSORS TO YOU AND ALL OF YOUR AFFILIATES RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE FEES AND ROYALTIES PAID OR PAYABLE TO US IN THE TWELVE (12) MONTHS PRIOR TO THE FIRST CLAIM MADE BY YOU. IN NO EVENT WILL WE OR ANY OF OUR AFFILIATES OR LICENSORS BE LIABLE TO YOU OR ANY OF YOUR AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF WE OR ANY OF OUR AFFILIATES OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AN AGREED REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS HELD UNENFORCEABLE FOR ANY OTHER REASON.

**10. Audit.** You will keep accurate and complete records relating to your activities under this Agreement, including records related to your and your customers' installation and use of the Products and other information necessary to demonstrate your compliance with this Agreement, *e.g.*, any deployment information generated by the Products ("Records"). Within ten (10) days following our written request, you will certify to us in a writing signed by an officer of your company that your installation and use of the Products comply with the terms of this Agreement and will provide us any Records we specify in such request. In addition, within ten (10) days following our written request, we may audit your Records and your installation and use of the Products at your applicable facility during normal business hours and subject to your reasonable facility security requirements.

**11. Data Protection.** You will not transfer to us or provide us any access to any data or information that is subject to regulation under Applicable Data Protection Law ("Protected Data") in connection with this Agreement, including without limitation Personal Data, Protected Health Information and Personally Identifiable Information (as such terms are defined in Applicable Data Protection Law), except for Protected Data related to your contact persons. "Applicable Data Protection Law" means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Protected Data including, without limitation, the European Union Directives and Regulations governing general data protection and all applicable industry standards concerning privacy, data protection, confidentiality or information security. We have implemented appropriate technical, organizational, and security measures designed to safeguard and protect Protected Data provided by you to us and we may access, use and transfer such Protected Data to our affiliates and third parties (including those located outside of the

European Economic Area) only for the purposes of fulfilling our obligations and exercising our rights, providing information to you and complying with our legal and auditing requirements. You are responsible for providing any notices and obtaining any consents and approvals required to collect, process, transfer, maintain and use the data collected by you in connection with your use of the Products.

**12. Confidentiality.** Under this Agreement, Confidential Information may be accessed or disclosed between the parties. “Confidential Information” means any information identified as confidential at the time of disclosure, or that reasonably should be understood to be confidential in view of the information’s nature or circumstances around its disclosure, and will in all cases include pricing terms, the terms of this Agreement or any order governed by this Agreement, software, technology, business plans, technical specifications, product development plans, marketing plans, education materials, customer lists, and generic tools and objects related to the Products created by us during the provision of consulting services. Confidential Information will not include information that (a) is or becomes a part of the public domain through no act or omission of the receiving party; or (b) was in the receiving party’s lawful possession prior to the disclosure; or (c) is lawfully disclosed to the receiving party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving party. Security is important to us and our customers, and we strongly recommend that you share with us the results of any penetration tests that you conduct on our Products (which is considered solely our Confidential Information) so that we may utilize that information to improve our Products.

Each party agrees to hold the other party’s Confidential Information in confidence during the term of this Agreement and for a period of five (5) years after the termination of this Agreement, and to disclose such Confidential Information only to those employees or agents who have a need to know such Confidential Information and are required to protect it against unauthorized disclosure. Notwithstanding the foregoing, either party may disclose the other party’s Confidential Information to a federal or state governmental entity to the extent such disclosure is required by law, so long as the receiving party notifies the disclosing party in advance of the required disclosure as soon as reasonably practicable to allow the disclosing party to contest the disclosure.

Upon termination of this Agreement and except for electronic copies made in the course of normal network backups, the receiving party will promptly destroy or return, at the sole discretion of the disclosing party, all Confidential Information of the disclosing party in the receiving party’s possession or control.

**13. Notices.** All notices will be in writing and will be deemed to have been given when (a) personally delivered; or (b) sent by electronic mail; or (c) sent by a commercial

overnight courier. You will provide notices to: MicroStrategy Incorporated, Attention: General Counsel, 1850 Towers Crescent Plaza, Tysons Corner, Virginia, 22182, United States; email: [crequest@microstrategy.com](mailto:crequest@microstrategy.com).

**14. Assignment.** This Agreement may not be assigned or otherwise transferred in whole or in part by you, including by operation of law, without our prior written approval.

**15. FCPA and Related Matters.** You and your subcontractors will comply with all applicable anti-mafia, anti-bribery and anti-corruption statutes, rules or regulations of any national, federal, state or local jurisdiction, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the U.K. Bribery Act of 2010 (in force on July 1, 2011).

**16. Other Provisions.** We are a federal contractor. As a result, but only if applicable, the Equal Opportunity Clauses set forth in 41 C.F.R. parts 60-1.4(a), and the employee notice found at 29 C.F.R. Part 471, Appendix A to Subpart A are incorporated by reference herein. In addition, but also only if applicable, **you will abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.** This language is provided as part of our compliance with the applicable Executive Orders, statutes and regulations regulated by the Department of Labor. The terms of this Agreement and any applicable order will supersede the terms in any purchase order or other ordering document that you generate and provide to us. Any terms of trade stated or referenced in any such purchase order (except for names, quantities and addresses) will not be binding on us. As between this Agreement and an order, the latter prevails but only with respect to that order. This Agreement also supersedes the terms of a “click-wrap” license included in the Products. Neither party will be responsible for delay of performance due to causes beyond its control. This Agreement and the parties’ relationship under it will be interpreted under and governed by the laws of the Commonwealth of Virginia and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. This Agreement will not be subject to the United Nations Convention on the International Sale of Goods. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement, the parties’ relationship under it or the Products will be subject to the exclusive jurisdiction of the state and federal courts with jurisdiction over Fairfax County, Virginia. Both parties hereby irrevocably consent to the exclusive jurisdiction of and venue in such courts and waive any right to a jury trial in any such proceeding. In any dispute, the prevailing party will be entitled to recover its cost of enforcing its claim, including but not limited to reasonable attorney fees.

When you access any product, service, content or item of a third party (each, a “Third Party Solution”) with connectors included as part of the Products, you agree and acknowledge that (a) you may download content from the servers of the Third Party Solution provider; and (b) your access to the Third Party Solution with such connectors will be solely for the purpose of utilizing the Third Party Solution in conjunction with the Products; and (c) we are not responsible for interruptions of service caused by the Third Party Solution provider; and (d) our relationship with the Third Party Solution provider is subject to termination and cancellation; and (e) you may not remove or obscure any patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any output of the Products. We will collect anonymous usage data related to your use of the Products; for clarity, such data will not include Protected Data. Our security Products are not designed to manage physical or logical access to facilities or systems where delay in or failure of such access could threaten health or safety, or cause property, environmental or similar damage. Except for hiring an employee (or agent) of the other party to fill a job opening that was publicly announced and to which the applicable employee (or agent) responded, during the term of this Agreement and for one (1) year following termination of this Agreement, neither party will hire or directly or indirectly solicit any employee (or agent) of the other party who has provided services or performed obligations under this Agreement in the previous twelve (12) months. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision, with all other provisions remaining in full force and effect. No joint venture, partnership, employment or agency relationship exists between you and us as a result of this Agreement or your use of the Products. The failure of either you or us to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to in writing by the party otherwise entitled to exercise or enforce it. Any provision of this Agreement that would reasonably be expected to survive will survive the termination of this Agreement. There are no intended third party beneficiaries of this Agreement. If you have previously entered into an agreement with us or any of our affiliates that authorizes you to OEM or otherwise embed our products into your products, that agreement is replaced and superseded by this Agreement. You represent that your decision to purchase Product licenses is not based on (a) any oral or written comments made by us with respect to functionality or features not currently offered in our latest generally available version of our Products; or (b) any expectation that any additional features or functionality presented as part of a demonstration, beta evaluation or roadmap presentation of the Products may be included in a future update or release of the Products; or (c) demonstrations of any software that is not currently generally available. You

further acknowledge that the development, release and timing of any additional features or functionality for our Products remain at our sole discretion. Any products acquired with United States Federal Government funds or intended for use within or for any United States federal agency are provided in accordance with FAR 12.212, Computer Software (October 1995), 52.227-19, Commercial Computer Software Restricted Rights (June 1987), and DFARS part 227.7202, Commercial Computer Software and Commercial Computer Software Documentation (October 1998). This Agreement comprises the entire agreement between you and us and supersedes all prior or contemporaneous negotiations, discussions, agreements or statements, whether written or oral.