

## MICROSTRATEGY CLICKWRAP SOFTWARE LICENSE

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### IMPORTANT - READ CAREFULLY

BY ELECTRONICALLY ACCEPTING THE TERMS OF THIS LICENSE AGREEMENT YOU ("LICENSEE") AGREE TO ENTER INTO A SOFTWARE LICENSING AGREEMENT ("AGREEMENT") WITH MICROSTRATEGY SERVICES CORPORATION OR A MICROSTRATEGY AFFILIATE UNDER THE TERMS AND CONDITIONS SET FORTH BELOW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, CLICK THE "CANCEL" BUTTON AND RETURN THE SOFTWARE.

IF YOU HAVE PREVIOUSLY ENTERED INTO A MASTER SOFTWARE LICENSING AGREEMENT WITH MICROSTRATEGY THAT IS STILL IN EFFECT, PLEASE CLICK THE "I ACCEPT" BUTTON TO CONTINUE. EXCEPT FOR EVALUATION LICENSES, THAT AGREEMENT TAKES PRECEDENCE OVER THIS DOCUMENT.

MicroStrategy wants you to be satisfied with the Products and understand the manner in which you are permitted to use them. If you have any questions about this Agreement, please contact Contracts, MicroStrategy Services Corporation, 1850 Towers Crescent Plaza, Tysons Corner, Virginia 22182, United States of America, telephone number: (703) 848-8600 or [crequest@MicroStrategy.com](mailto:crequest@MicroStrategy.com).

### PERPETUAL LICENSE

If you have ordered a Product License with a perpetual software license grant, the terms and conditions in this Perpetual License part (Clauses 1 through 5) shall apply.

#### 1 RIGHTS AND RESTRICTIONS

1.1 MicroStrategy grants Licensee and its Affiliates a perpetual (except as otherwise set forth in this Agreement or an Order), non-exclusive and non-transferable (except as set forth in this Agreement) license to (a) install the Products listed on an Order on servers and workstations under the control of Licensee in the Territory, and (b) to grant Named Users access to the Product Licenses in support solely of Licensee's internal business operations according to the terms and conditions of this Agreement. These rights are granted only for the Products listed on an Order, even if the Products are delivered on media containing other software. Affiliate usage of Product Licenses is subject to the terms and conditions of this Agreement and such Affiliates shall be deemed to be a Licensee when placing an Order or using Product Licenses.

1.2 MicroStrategy shall supply one copy of each Product licensed under this Agreement to Licensee by shipment FCA, point of shipment or by making it available to Licensee via an electronic download. Licensee may make copies of licensed Products (1) for production purposes, not exceeding total licensed capacity; or (2) for archival purposes, as reasonably necessary.

1.3 Licensee shall 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. disclose results of any benchmarking tests without MicroStrategy's prior consent; or
- e. use a Product License for outsourcing or provide any access to the Products through a service bureau, time-sharing or ASP arrangement.

1.4 Licensee acquires no ownership rights in or title to the Products. The Products are licensed and not sold. MicroStrategy and its licensors retain all ownership rights in and title to the Products.

1.5 Subject to the restrictions set forth in this Agreement or an Order, Licensee may allow its contractors or agents under a written agreement with Licensee to use a Product License for the sole benefit of Licensee. Licensee shall be fully responsible for any failure of such parties to comply with the terms of this Agreement and any Order.

1.6 Licensee acknowledges that installation of the Products involves a CD key that may restrict installation of the Products to the Products licensed. MicroStrategy also embeds algorithms in the Products that periodically compare the Product Licenses enabled against the Products licensed. Such algorithms shall not transmit any information outside of Licensee's networks without Licensee's prior written consent. Licensee further acknowledges that the Products require activation on initial installation of the Products and from time to time based on events that include Updates and changes to Licensee hardware on which the Products are installed. Failure to activate the Products within 30 days after installation will cause the Products to cease working, but Licensee may initiate and complete the activation process at any time by

accessing the license manager feature in the Products, which will remain functional, in order to activate the Products. Licensee acknowledges that the CD key and internal controls in the Products may not restrict usage to the licensed amounts and do not ensure compliance with this Agreement.

## **2 TECHNICAL SUPPORT SERVICES**

2.1 Subject to receipt by MicroStrategy of all fees owed by Licensee, MicroStrategy shall provide Licensee the level of Technical Support Services specified on an Order.

2.2 On each Order, MicroStrategy will state the price of Standard Technical Support Services for a period of one year commencing on the date of delivery of the Products.

2.3 Except as otherwise specified on an Order, upon expiration of the initial year of service, second year Standard Technical Support Services will renew at the stated amount on the Order.

2.4 Thereafter, Licensee agrees to renew existing Technical Support Services for its Integrated Configuration unless Licensee provides written notice to MicroStrategy ninety (90) days before expiration of the then current term that it desires to have its Technical Support Services lapse.

## **3 TERM AND TERMINATION**

3.1 This Agreement and each Product License granted under it shall become effective on its respective Effective Date.

3.2 Licensee may terminate any Product License or this Agreement at any time by providing written notice to MicroStrategy.

3.3 MicroStrategy may terminate this Agreement and/or any Product License upon written notice to Licensee if Licensee breaches a material provision of this Agreement and fails to cure the breach within thirty (30) days following such notice.

3.4 Termination of this Agreement or any Product License shall not prevent either party from pursuing all available legal remedies, nor shall such termination relieve Licensee's obligation to pay all fees that are owed. The parties' rights and obligations under Clauses 1.3, 1.4, 8.3, 9.1, 10, 11 and 12 shall survive termination of this Agreement.

3.5 If a Product License granted under this Agreement terminates, Licensee shall: (a) immediately cease using the applicable Product, and (b) certify to MicroStrategy within thirty (30) days after expiration or termination that Licensee has destroyed or has returned to MicroStrategy all copies of the Products and any MicroStrategy Confidential Information.

## **4 THIRD PARTY INFRINGEMENT**

4.1 MicroStrategy shall indemnify and defend Licensee in connection with any claim brought by a third party that the Products infringe its intellectual property rights identified in a patent or copyright that is enforceable in the United States or European Union, *provided* that Licensee: (i) promptly notifies MicroStrategy in writing of any such claim; (ii) allows MicroStrategy to have sole control of the defense and all related settlement negotiations; and (iii) provides MicroStrategy with the information, authority and assistance necessary for MicroStrategy to defend or settle the claim. Notwithstanding the foregoing, MicroStrategy shall not be liable and shall have no obligation to Licensee for any claim arising from or based upon (a) the use of any Product outside the scope of use identified in the Documentation, if the claim would not have arisen without such use; or (b) any modification of a Product, if the claim would not have arisen without such modification; or (c) use of a prior version of any Product, if use of a newer version of the Product would have avoided such claim; or (d) Licensee's actions against the third party intellectual property holder.

4.2 In the event that it is determined or MicroStrategy believes that a Product has violated the third party's intellectual property rights, MicroStrategy shall: (1) obtain for Licensee a license to continue using the Product, (2) replace or modify the Product so that it becomes non-infringing while retaining substantially similar functionality; or (3) if neither of the foregoing remedies can be reasonably effected by MicroStrategy, refund to Licensee the license fees paid for the Product and any unused, prepaid Technical Support Services fees paid for the Product, *provided* that such Product is returned to MicroStrategy.

4.3 Notwithstanding Section 9.1, MicroStrategy shall pay all defense costs incurred by MicroStrategy, all damages due the third party intellectual property holder arising from a final adjudication by a court of competent jurisdiction, and all amounts payable under a settlement with the third party intellectual property holder in connection with its defense of a third party infringement claim under Section 4.1.

4.4 The provisions of this Section 4 state the sole, exclusive and entire liability of MicroStrategy to Licensee, and are Licensee's sole remedy, with respect to the infringement of third party intellectual property rights.

## 5 LIMITED WARRANTIES AND REMEDIES

5.1 MicroStrategy warrants that:

- a. for a period of six (6) months from the Effective Date of an Order ("Warranty Period"), the Software listed on such Order and Updates delivered for such Software during the Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation.
- b. prior to release, MicroStrategy scans each version of the Software using a nationally recognized virus scanning program;
- c. MicroStrategy will not materially decrease the level of Technical Support Services provided during an active subscription to such Technical Support Services.
- d. its employees and subcontractors shall perform the Services listed on an Order in a manner conforming to generally accepted industry standards and practices.

5.2 Both parties warrant to each other 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.

5.3 Licensee warrants that:

- a. it will not use the Products in a manner that violates an individual's privacy right set forth by statute, rule, regulation or case law;
- b. it will not export the Products to embargoed countries and those countries designated as supporting terrorist activities by the United States government; and
- c. it and all of its employees, agents and contractors are not on the list of entities or individuals maintained by the United States government that prohibit it from receiving exports.

5.4 No other warranties, express or implied, are made with respect to the Products, Technical Support Services or Services supplied by MicroStrategy hereunder, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, systems integration, title, satisfactory quality and non-infringement..

5.5 MICROSTRATEGY AND ITS AFFILIATES DO NOT WARRANT THAT USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE PRODUCTS WILL MEET ANY NEED OR REQUIREMENT OF LICENSEE.

5.6 For any breach of the warranties listed below, Licensee's exclusive remedy, and MicroStrategy's entire liability, shall be:

- a. Section 5.1 (a): (1) the correction of Software errors that caused the breach of the warranty, (2) replacement of the Software, or (3) if neither of the foregoing can be reasonably effected by MicroStrategy, return of the fees paid to MicroStrategy for the license of such Software, *provided* that such Software is returned to MicroStrategy;
- b. Section 5.1 (d): re-performance of the Services by MicroStrategy at no cost to Licensee.

## EVALUATION LICENSE

If you have ordered an evaluation or proof of concept license, the terms and conditions in the Evaluation License Grant part (Clauses 6 and 7) shall apply, and the terms and conditions in the Perpetual License Grant part shall not apply.

## 6 RIGHTS AND RESTRICTIONS

6.1 MicroStrategy grants Licensee a non-exclusive, non-transferable license to use the Products enabled by the CD key ("Evaluation Software") in a non-production environment, for the sole purpose of internally evaluating the Software, for a period of thirty days from the Effective Date of the applicable Order or the period specified in the CD key and any extensions thereto ("Trial Period").

6.2 MicroStrategy shall provide Licensee with Technical Support Services, in accordance with MicroStrategy's then-current technical support policies and procedures posted at [www.microstrategy.com](http://www.microstrategy.com). These services are available beginning on the Effective Date of the applicable Order and shall last the duration of the Trial Period.

6.3 Upon expiration of the Trial Period, the rights of Licensee to use the Evaluation Software shall terminate and Licensee shall uninstall and cease use of the Evaluation Software. MicroStrategy may also include a "time bomb" within the Evaluation Software that shall prevent use of the Evaluation Software after the Trial Period has expired. Notwithstanding the Trial Period, this Agreement will terminate immediately upon notice from MicroStrategy if Licensee fails to comply with any provision of this Agreement.

## 7 EXCLUSION OF WARRANTIES AND LIABILITIES

7.1 ALL EVALUATION SOFTWARE, TECHNICAL SUPPORT SERVICES AND OTHER SERVICES THAT ARE PROVIDED BY MICROSTRATEGY OR ANY OF ITS AFFILIATES ARE PROVIDED "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, MICROSTRATEGY AND ALL ITS AFFILIATES DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ALL EVALUATION SOFTWARE, TECHNICAL

SUPPORT SERVICES AND OTHER SERVICES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEMS INTEGRATION, TITLE, AND NON-INFRINGEMENT. MICROSTRATEGY AND ITS AFFILIATES DO NOT WARRANT THAT USE OF THE EVALUATION SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE EVALUATION SOFTWARE WILL MEET ANY NEED OR REQUIREMENT OF LICENSEE.

7.2 THE SOLE REMEDY OF LICENSEE FOR ANY ASSERTED DEFECT, ERROR, OR OTHER SHORTCOMING IN THE EVALUATION SOFTWARE IS THAT LICENSEE MAY REQUEST TECHNICAL SUPPORT SERVICES FOR EVALUATION SOFTWARE UNDER A TECHNICAL SUPPORT SERVICES SUBSCRIPTION EVEN IF THIS REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS HELD UNENFORCEABLE FOR ANY OTHER REASON.

## **GENERAL TERMS AND DEFINITIONS**

### **8 ORDERS, ACCEPTANCE AND PAYMENT**

8.1 Except as provided herein, all Orders governed by this Agreement are firm and not subject to cancellation, return, refund or offset unless the parties specifically agree otherwise in writing.

8.2 Except for Consulting Services, Licensee will be invoiced upon execution of an Order. For Consulting Services, Licensee will be invoiced on a time and materials basis on or around the 15<sup>th</sup> and 30<sup>th</sup> of each month.

8.3 All fees due MicroStrategy shall be payable, in full and in the currency listed on an Order thirty (30) days from the date of the invoice, and shall be deemed overdue if they remain unpaid thereafter. All fees are net of any taxes, which shall be the responsibility of Licensee, except for taxes on MicroStrategy's income. Any dispute to an invoice must be raised within thirty (30) days from the date of invoice or the invoice shall be deemed correct. If any undisputed invoice governed by this Agreement remains unpaid for 30 or more days after it is due, MicroStrategy may, without limiting its other rights and remedies, accelerate all unpaid fee obligations under such Orders so that all amounts payable by Licensee become immediately due and payable, and suspend delivery of Technical Support Services until such amounts are paid in full.

### **9 LIMITATION OF LIABILITY**

9.1 THE CUMULATIVE AGGREGATE LIABILITY OF MICROSTRATEGY AND ALL OF ITS AFFILIATES TO LICENSEE AND ALL OF ITS AFFILIATES RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID TO MICROSTRATEGY FOR THE PRODUCTS, TECHNICAL SUPPORT SERVICES OR SERVICES THAT ARE THE SUBJECT OF THE DISPUTE. IN NO EVENT SHALL MICROSTRATEGY OR ANY OF ITS AFFILIATES BE LIABLE TO LICENSEE OR ANY OF ITS AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF MICROSTRATEGY OR ANY OF ITS AFFILIATES HAS 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 CONFIDENTIALITY**

10.1 Recipient shall hold all Confidential Information received during the Term of this Agreement in confidence during the Term of this Agreement and for four (4) years thereafter ("Confidentiality Period"), and Recipient shall protect all such Confidential Information with the utmost care to prevent unauthorized use or disclosure. During the Confidentiality Period, Recipient shall not use any Confidential Information except as expressly authorized in this Agreement. Recipient shall not disclose, orally or in writing, any Confidential Information to any person, other than an employee, consultant or agent of Recipient bound by terms at least as restrictive as those set forth herein with a need to know such Confidential Information, Recipient shall immediately report in writing to Discloser, and shall cooperate with Discloser in the investigation of any unauthorized copying, use, or disclosure of the Provided Items, or any other Confidential Information, that is known to or reasonably suspected by Recipient.

10.2 The obligations in this section shall not apply to any information which:

- a. is already in the public domain or becomes available to the public through no breach of this Agreement by Recipient;
- b. was in the Recipient's possession prior to receipt from Discloser, as proven by Recipient's written records;
- c. is received by the Recipient from a third party free to disclose such information to Recipient; or
- d. is required to be disclosed by applicable statute or regulation or by judicial or administrative process, provided that Recipient shall notify Discloser of such.

10.3 Without limiting the foregoing and upon Licensee's written request, MicroStrategy shall maintain appropriate administrative, physical, and technical safeguards for protection of the security and confidentiality of personally identifiable information protected by statute, rule or regulation and provided under this Agreement. Upon such request, MicroStrategy shall not (a) disclose such data except as compelled by law or as expressly permitted in writing by Licensee, or (b) access such data except to provide Technical Support Services or Consulting Services.

## **11 AUDIT**

11.1 Upon request by MicroStrategy but not more than once annually, Licensee shall conduct a self-audit of its deployment of Products and within ten (10) business days after receipt of such notice, submit a written statement to MicroStrategy by e-mail to [crequest@microstrategy.com](mailto:crequest@microstrategy.com) or by fax to 703-832-1313 (or such other e-mail address or fax number designated in writing by MicroStrategy), verifying that Licensee has performed a self-audit of Products deployed and the number and type of Product Licenses deployed for each Product. In the event MicroStrategy does not receive a timely response under this section, MicroStrategy shall have the right to conduct an on-premises audit of Licensee's deployment of the Products. MicroStrategy shall conduct any such audit during regular business hours at Licensee's facilities.

## **12 GENERAL TERMS**

12.1 Unless otherwise defined in this Agreement, capitalized terms in this Agreement shall have the same meaning as ascribed at <http://www.microstrategy.com/licensing/> on the Effective Date of the Agreement.

12.2 Licensee grants MicroStrategy the right to use Licensee's name and logo as a MicroStrategy customer. Upon execution of this Agreement and with the prior written consent of Licensee (not to be unreasonably withheld or delayed), Licensee grants MicroStrategy the right to issue a press release within 30 days after execution of this Agreement announcing that Licensee has selected MicroStrategy as its business intelligence software platform.

12.3 During the Term of this Agreement and for one (1) year following the termination of this Agreement, neither party shall, directly or indirectly, solicit any employee (or agent) of the other party to terminate or modify the employee's relationship with a party in any way and neither party shall hire any employee (or agent) of the other party. Notwithstanding the foregoing, it shall not be considered a breach of this Section for a party to hire an employee (or agent) responding to publicly advertised job opening announcements.

12.4 MicroStrategy and Licensee are acting as independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

12.5 The laws of the Commonwealth of Virginia, excluding its conflicts of laws, shall govern this Agreement, and all matters arising out of or relating to this Agreement. The UN Convention for the International Sale of Goods shall not apply to this Agreement in whole or in part.

12.6 MicroStrategy and Licensee agree to submit to the exclusive jurisdiction of, and agree that venue is only proper in, state or federal courts with jurisdiction over Fairfax County, Virginia in any legal action or proceeding relating to this Agreement.

12.7 All notices under this Agreement shall be in writing and shall be deemed to have been given when a) personally delivered; (b) sent by electronic facsimile transmission or other direct written electronic means with confirmed receipt; or (c) (i) sent by registered mail, postage prepaid (which notice shall be deemed to have been received on the third (3<sup>rd</sup>) Business Day following the date on which it is mailed) or (ii) sent overnight by a commercial overnight courier that provides a receipt (which notice shall be deemed to be received on the next business day after mailing), both to the address set forth on the title page hereto (or such other designee/address a Party may provide by giving notice to the other Party in compliance with this Agreement).

12.8 No failure or delay by any party in exercising any right under this Agreement shall operate as a waiver of any such right. No waiver of any default or breach on any one occasion shall constitute a waiver of any subsequent or other default or breach. No single or partial exercise of any such right shall preclude the further or full exercise of such right. No provision of this Agreement may be waived unless such waiver is in writing and signed by the party against which the waiver is to be effective.

12.9 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).

12.10 If Licensee deploys the Products as part of an extranet application, Licensee agrees to display "Powered by MicroStrategy" or certain other similar MicroStrategy trademarks designated by MicroStrategy.

12.11 Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. Licensee agrees that such export control laws govern Licensee's use of the Products and any services deliverables provided under this Agreement, and Licensee agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Licensee agrees that no data, information, program and/or deliverables provided as part of services will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

12.12 Neither party shall assign or transfer this Agreement or any right, license or obligation under this Agreement without the prior written consent of the other party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either party may assign or transfer this Agreement and/or any right, license or obligation under this Agreement to an Affiliate of such party without the other party's prior written consent upon thirty (30) days prior written notice to the other party,

12.13 The terms of this Agreement and any applicable Order shall supersede the terms in any Licensee purchase order or other ordering document. Any Licensee terms of trade stated or referenced in the Licensee purchase order (except for names, quantities and addresses) shall not be binding on MicroStrategy. As between this Agreement and an Order, the latter prevails but only with respect to that Order.

12.14 In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force.

12.15 In any dispute under this Agreement, the prevailing party shall be entitled to recover its cost of enforcing its claim, including but not limited to reasonable attorney fees.

12.16 Neither party will be responsible for delay of performance due to causes beyond its control, including, without limitation, acts of God or nature, labor disputes, civil commotion, terrorism, sovereign acts of any federal, state or foreign governments, or shortage of materials.

12.17 This product is patented. One or more of the following patents may apply to the product sold herein: U.S. Patent Nos. 6,154,766, 6,173,310, 6,260,050, 6,263,051, 6,269,393, 6,279,033, 6,567,796, 6,587,547, 6,606,596, 6,658,093, 6,658,432, 6,662,195, 6,671,715, 6,691,100, 6,694,316, 6,697,808, 6,704,723, 6,741,980, 6,765,997, 6,768,788, 6,772,137, 6,788,768, 6,798,867, 6,801,910, 6,820,073, 6,829,334, 6,836,537, 6,850,603, 6,859,798, 6,873,693, 6,885,734, 6,940,953, 6,964,012, 6,977,992, 6,996,568, 6,996,569, 7,003,512, 7,010,518, 7,016,480, 7,020,251, 7,039,165, 7,082,422, 7,113,993, 7,181,417, 7,127,403, 7,174,349, 7,194,457, 7,197,461, 7,228,303, 7,260,577, 7,266,181, 7,272,212, 7,302,639, 7,324,942, 7,330,847, 7,340,040, 7,356,758, 7,356,840, 7,415,438, 7,428,302, 7,430,562, 7,440,898, 7,486,780, 7,509,671, 7,516,181, 7,559,048, 7,574,376, 7,617,201, 7,725,811, 7,801,967, 7,836,178, 7,861,161, 7,861,253 and 7,881,443. Other patent applications are pending.

12.18 This Agreement constitutes the complete agreement between the parties and supersedes all prior agreements and representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement. Licensee represents that it has not relied on the availability of any future version of the Products when purchasing Product Licenses under this Agreement.