



## SECURE CLOUD™ MASTER SUBSCRIPTION AGREEMENT

October 2015

THE TERMS AND CONDITIONS SET FORTH BELOW (THE “AGREEMENT”) GOVERN YOUR USE OF THE HOSTED SERVICE. DEFINED TERMS ARE SET FORTH IN SECTION 17 BELOW.

### 1. ACCESS GRANT

During each Subscription Term, we grant you and your Affiliates a non-exclusive, non-transferable right, subject to the terms and conditions of this Agreement and the applicable Order(s) and in accordance with applicable law, to grant Named Users access to the Hosted Service from anywhere in the world, solely in support of your internal business operations.

### 2. TECHNICAL SUPPORT SERVICES

We will provide you the level of Technical Support Services specified on an Order during each Subscription Term.

### 3. YOUR RESPONSIBILITIES

You are solely responsible for all activity occurring under your Named User accounts and you and your Named Users' use of the Hosted Service and Customer Content. You will ensure that all Named Users comply with your obligations and that the terms of your agreement with each Named User, if any, are consistent with this Agreement. You shall promptly notify us of any unauthorized use of any password or account or any other known or suspected breach of security of the Hosted Service. If you become aware of any violation of your obligations by a Named User, you will immediately terminate such Named User's access to the Hosted Service and Customer Content. We and our Affiliates are not responsible for unauthorized access to your Named User accounts, except to the extent caused by our breach of this Agreement.

Your Named Users shall only use the Hosted Service in accordance with applicable local, state, national and foreign laws, treaties and regulations, including but not limited to all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance with all laws related to your use of the Hosted Service, including the collection, transfer and processing of Customer Content and Usage Information, and the provision and use of Customer Content to and by Named Users, in all regions in which any of the foregoing occur. You acknowledge and agree that use of the Usher Service by your Named Users will be subject to the Terms of Use applicable to the Usher Service as found at [www.microstrategy.com/us/usher-identity/terms-of-use](http://www.microstrategy.com/us/usher-identity/terms-of-use) (or a related or successor URL), as modified by us from time to time in accordance with the terms thereof.

You and your Named Users shall not: (a) use the Hosted Service in any manner or for any purpose not expressly permitted by this Agreement; (b) modify, tamper with, repair, or otherwise create derivative works of the Hosted Service or any software included in the Hosted Service; (c) reverse engineer or apply any other process or procedure to derive the source code of any software included in the Hosted Service; (d) interfere with or disrupt the integrity or performance of the Hosted Service; (e) attempt to gain unauthorized access to the Hosted Service or its related systems or networks; (f) use the Hosted Service to store or transmit (i) material in violation of third-party privacy rights; (ii) libelous, or otherwise unlawful or tortious material; (iii) material that infringes any copyright, trademark, patent, trade secret or other proprietary right of any entity or individual; or (iv) viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs; or (g) access or use the Hosted Service in a way intended to avoid incurring fees or exceeding usage limits or quotas. THE USHER SERVICE IS NOT DESIGNED TO AND SHOULD NOT BE USED 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 OR LOSS, AND YOU AGREE NOT TO USE THEM TO MANAGE SUCH ACCESS UNLESS YOU PROVIDE A FAILSAFE MECHANISM FOR LOCAL BYPASS OF THE USHER SERVICE FOR USE IN AN EMERGENCY FOR WHICH YOU WILL BE FULLY RESPONSIBLE.

Except for our responsibilities as expressly set forth in this Agreement, you are responsible for the development, content, operation, maintenance, and use of Customer Content and compliance with all Hosted Service Policies.

### 4. INTELLECTUAL PROPERTY OWNERSHIP

We, our Affiliates and our licensors shall own all right, title and interest in and to the Hosted Service. You will be and remain the owner of all rights, title and interest in and to Customer Content.

### 5. SUSPENSION OF ACCESS; REMOVAL OF CONTENT

We reserve the right to suspend your access to the Hosted Service if you or any of your Named Users breach the “Your Responsibilities” Section or the “Data Protection” Section of this Agreement, and to remove any improper Customer Content uploaded or transferred to the Hosted Service in violation of this Agreement.

## 6. TERM AND TERMINATION

This Agreement and each Order governed by this Agreement commences on its respective Effective Date and may only be terminated according to this Section.

You may terminate this Agreement or any Order at any time by providing written notice to us. We may terminate this Agreement or any Order upon written notice to you (a) if you breach a material provision of this Agreement and fail to cure the breach within thirty (30) days following such notice; or (b) under the "Third Party Infringement" and "Limited Warranties and Remedies" Sections.

Upon termination of this Agreement, (a) we will make all Customer Content available for your download in the format in which it was stored as part of the Hosted Service for 30 days after termination, after which time it shall be deleted; and (b) all fees that you are obligated to pay as of the date of termination shall be immediately due and payable.

## 7. THIRD PARTY INFRINGEMENT

We shall defend you, at our expense, against any claim, demand, suit, or proceeding ("Claim") brought against you by a third party alleging that the Hosted Service infringes or misappropriates an intellectual property right of the third party and shall 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 such 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 the Hosted Service is enjoined in connection with the Claim, we may choose to either modify the Hosted Service to be non-infringing (while substantially preserving its utility and functionality) or obtain a license to allow for continued use of such Hosted Service, or if these alternatives are not commercially reasonable, we may terminate your subscription to and use of such Hosted Service and refund any unused, prepaid fees paid for such Hosted Service.

We shall have no indemnification obligation for any Claim to the extent the Claim arises from or is based upon (i) the use of Customer Content or a Third Party Solution; or (ii) the use of the Hosted Service in an unlawful or unauthorized manner; or (iii) the combination of the Hosted Service with any third party products, services or business processes not provided by us as part of the Hosted Service, if the Claim would not have arisen without such combination.

You shall defend us, at your expense, against any Claim brought against us by a third party (a) alleging that the use of Customer Content infringes or misappropriates an intellectual property right of the third party or (b) arising from a breach of the "Your Responsibilities" Section or the "Data Protection" Section of this Agreement by you or your Named Users, and shall indemnify us for and hold us harmless from any damages finally awarded to the third party claimant or agreed to by you in settlement of the Claim, *provided* that we: (1) promptly give you written notice of the Claim; and (2) give you sole control of the defense and settlement of the Claim (*provided* that you may not settle any such Claim that imposes liability on, or contains any admission of fault by, us, or affects our operation of the Hosted Service, without our consent); and (3) provide to you all available information and reasonable assistance necessary for you to defend or settle the Claim; and (4) have not compromised or settled the Claim without your written approval.

The provisions of this Section state the sole, exclusive and entire liability of the indemnifying party to the indemnified party, and are the indemnified party's sole remedy, with respect to each type of Claim described in this Section.

## 8. LIMITED WARRANTIES AND REMEDIES

We warrant that: (a) the Hosted Service will perform in substantial conformance with the technical specifications set forth in the Documentation during a Subscription Term; and (b) the functionality of the Hosted Service will not decrease during a Subscription Term. For any breach of the foregoing warranties, your exclusive remedy, and our entire liability, shall be (1) the correction of the Hosted Service errors that caused the breach of the warranty; or (2) if neither of the foregoing can be reasonably effected by us, the termination of this Agreement and all Orders and the refund of any unused, prepaid fees paid for the Hosted Service.

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.

You acknowledge that diversion of the Hosted Service 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; and (iii) neither you nor any of your employees, agents or contractors will transfer or allow any Product to be transferred to 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.

NO OTHER WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE HOSTED SERVICE 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 "THIRD PARTY INFRINGEMENT" 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 SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE TO US IN THE TWELVE (12) MONTHS PRIOR TO THE FIRST CLAIM MADE BY YOU. SUBJECT TO THE FOREGOING, OUR MAXIMUM LIABILITY FOR EACH CLAIM MADE BY YOU, TO THE EXTENT THE CLAIM ARISES FROM OR IS BASED UPON THE USE OF A THIRD PARTY SOLUTION, SHALL NOT EXCEED THE AMOUNT OF THE APPLICABLE THIRD PARTY SOLUTION PROVIDER'S LIABILITY TO US RELATED TO THE CLAIM. IN NO EVENT SHALL 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. ORDERS AND PAYMENT

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.

You will be invoiced upon execution of and according to the terms of an Order. All fees due to us 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 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 shall 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 shall 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. If your usage of a Third Party Solution exceeds the allowable usage of the Third Party Solution as set forth on an Order, you will pay us for any additional fees our Third Party Solution provider charges us for that excess usage.

## 11. CONFIDENTIALITY

Under this Agreement, Confidential Information may be disclosed between the parties. Each party agrees to disclose only information that is required for the performance of obligations. "Confidential Information" means any information marked "confidential" or disclosed or provided under circumstances that would lead a reasonable person to conclude that the information was confidential, and shall in all cases include pricing terms, the terms of this Agreement, software, technology and business plans. Confidential Information shall 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.

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 its possession or control.

## 12. AUDIT

You shall keep accurate and complete records relating to your activities under this Agreement. At our request but not more than once annually, we may audit such records and your use of the Hosted Service.

## 13. DATA PROTECTION

You will not transfer to us or provide us any access to any Protected Data in connection with this Agreement, except for Protected Data related to your contact persons or uploaded or transferred to the Hosted Service.

As between you and us, for purposes of this Agreement and Applicable Data Protection Law, you are the "data controller" and we are acting on your behalf as a "data processor" with respect to Protected Data that you or your Named Users upload or transfer to the Hosted Service. 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 from Named Users required to collect, process, transfer, maintain and use the data collected by you and/or the Hosted Service from Named Users in connection with the Hosted Service, including to allow us to perform in accordance with this Agreement. If you upload or transfer Protected Data to the Hosted Service, you will enable encryption of report caches and intelligent cubes which are saved to disk.

We and our Third Party Solution providers may access and use Customer Content, Usage Information and any other data collected in connection with the Hosted Service solely in accordance with the relevant Hosted Service Policy.

**14. NOTICE**

We may give notices regarding the Hosted Service to you by means of a general notice posted on the log-in page of the Hosted Service. Such notices shall be deemed to have been given the first time you (or any of your Named Users) log in to the Hosted Service after the notice has been posted. Notices under a Hosted Service Policy will be given in accordance with the terms of the policy.

All other notices shall be in writing and shall be deemed to have been given when (a) personally delivered; or (b) sent by electronic mail; or (c) sent by a commercial overnight courier. All such notices to be provided to you shall be delivered to the address that you provide to us in writing in accordance with this Section or, if you do not provide such address, to the most current address for you that we have on file. All such notices to be provided to us shall be delivered to the following address: MicroStrategy Incorporated, Attention: General Counsel, 1850 Towers Crescent Plaza, Tysons Corner, Virginia, 22182, United States; email: [crequest@microstrategy.com](mailto:crequest@microstrategy.com).

**15. ASSIGNMENT**

This Agreement, and each right, license and obligation under this Agreement, may not be assigned or otherwise transferred by you, including by operation of law, without our prior written approval.

**16. GENERAL**

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 shall 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.

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 prohibition for a party to hire an employee (or agent) responding to publicly advertised job opening announcements.

The terms of this Agreement and any applicable Order shall 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) shall not be binding on us. As between this Agreement and an Order, the latter prevails but only with respect to that Order.

We will not be liable for any delay or failure to perform any obligation where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outage, utilities or telecommunications failures, limitations, delays and other problems inherent in the use of the internet and electronic communications, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war. You are responsible for the proper operation of your network and your equipment used to connect to the Hosted Service. This Agreement and the parties' relationship under it shall 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 shall 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 Hosted Service shall 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 shall be entitled to recover its cost of enforcing its claim, including but not limited to reasonable attorney fees.

When you access any Third Party Solution with connectors included as part of the Hosted Service, you agree and acknowledge that (a) you may download content from the servers of the Third Party Solution provider; (b) your access to the Third Party Solution with such connectors shall be solely for the purpose of utilizing the Third Party Solution in conjunction with the Hosted Service; (c) we are not responsible for interruptions of service caused by the Third Party Solution provider; (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 Hosted Service. If a Third Party Solution provider materially changes any Third Party Solution included with the Hosted Service or terminates its agreement with us, we will replace that Third Party Solution or terminate all applicable Orders and provide a refund of prepaid, unused fees.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), 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 Hosted Service. The failure of either you or us to enforce any right or provision in this Agreement shall 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. 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. Any provision of this Agreement that would reasonably be expected to survive, shall survive the termination of this Agreement. There are no intended third party beneficiaries of this Agreement. You represent that your decision to purchase a subscription to the Hosted Service 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 the Hosted Service; or (b) any expectation that any additional features or functionality presented as part of a demonstration, beta evaluation or roadmap presentation of the Hosted Service may be included in a future update or release of the Hosted Service; 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 the Hosted Service remain at our sole discretion.

If you deploy the Usher Service as part of an extranet application, you agree to display "Powered by Usher" or certain other similar trademarks designated by us.

## 17. DEFINITIONS

"Affiliate" means any other entity that a party directly or indirectly controls, is controlled by or is under common control with.

"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 governing general data protection and all applicable industry standards concerning privacy, data protection, confidentiality or information security.

"CPU" means a physical or virtual core to which a single or clustered instance of one of our generally available software products made available as part of a Hosted Service is assigned in support of an unspecified number of Named Users in the environment specified on an Order.

"Customer Content" means software (including machine images), data, text, audio, video, images, or other content that you or any Named User uploads or transfers to the Hosted Service.

"Documentation" means the user manual(s) on the use of the Hosted Service that are made available as part of the Hosted Service.

"Effective Date" means (a) with respect to this Agreement, the date on which this Agreement is signed by both parties or, if applicable, the Effective Date of the first Order; and (b) with respect to an Order, the date on which the Order is signed by both parties or, for Orders in other than dual-signature format, the date of our acceptance.

"Hosted Service" means any of our generally available hosted services (including our hosted service branded as "Usher" (the "Usher Service"), operated on servers controlled by us or our Third Party Solution provider(s); the Documentation; and tools included with the hosted services, including software development kits.

"Hosted Service Policy" means any policy established by us or our Third Party Solution provider(s) for the Hosted Service.

"Named User" means a single individual designated by you who you authorize to access the Hosted Service on a non-temporary basis.

"Order" means the document(s) by which you order a subscription to the Hosted Service.

"Protected Data" means any data or information that is subject to regulation under Applicable Data Protection Law, including without limitation Personal Data, Protected Health Information and Personally Identifiable Information (as such terms are defined in Applicable Data Protection Law).

"Server" means a single installed instance of one of our generally available software products made available as part of a Hosted Service.

"Subscription Term" means the period during which Named Users are granted access to use the Hosted Service pursuant to an Order.

"Technical Support Services" means technical support and maintenance provided by us according to our then-current technical support policy and procedure listed at <http://www.microstrategy.com> when the services are purchased.

"Term" means, with respect to this Agreement, the period that begins on the Effective Date and ends on the date on which this Agreement expires or is terminated, whichever occurs first.

"Third Party Solution" means any product, service, content or item of a third party.

"Usage Information" means information generated in connection with your use of the Usher Service that we may collect about you and your Named Users, as further described in the Hosted Service Policy applicable to the Usher Service. For the avoidance of doubt, in no instance shall Usage Information be deemed to include Customer Content.

"we," "us" and "our" refers to MicroStrategy Incorporated or an Affiliate of MicroStrategy Incorporated identified on an Order.

"you" and "your" refers to the entity identified on an Order that orders subscriptions(s) to the Hosted Service.