



## SOFTWARE LICENSE TERMS AND CONDITIONS

March 2016

These Software License Terms and Conditions (“Agreement”) apply to an order that incorporates these terms and conditions entered into between an affiliate of MicroStrategy Incorporated (“we,” “us,” “our”) and the entity ordering Products or services identified on the order (“you,” “your”).

**1. License Grant.** We grant you and your affiliates a non-exclusive, non-transferable license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our software products (each, a “Product”) on servers and workstations under your control or under the control of your third party service provider in the country to which the Products are delivered; and (b) Use Products (including the user documentation normally distributed or made available as part of the Products (“Documentation”)) in support of your internal business operations, each in a manner consistent with the license type(s) and terms specified on an order. “Use” means to (i) grant Named Users located anywhere in the world access to the Products; and (ii) enable the Products to email reports and dashboards to Named Users located anywhere in the world; and (iii) enable the Products to deliver reports to a file server or printer to be accessed by Named Users located anywhere in the world. Your Use of a Product will be under a Named User or CPU license type, as specified on an order. “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. We will supply each Product to you by making it available to you via an electronic download. You may make additional copies of the download files containing the Products for archival purposes.

**2. 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. We will provide you the level of Technical Support Services specified on an order. Each applicable order for perpetual Product licenses will state the price of standard Technical Support Services for a period of one year commencing on the date of delivery of those Products. Except as otherwise specified on an order, (a) upon expiration of the initial year of service, you have the option to renew second year standard Technical Support Services at the stated amount on the order; 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 term that you desire to have your Technical Support Services lapse on all of your Product licenses. Standard Technical Support Services for annual 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.

**3. Certain Obligations and Restrictions.** You are responsible for your Named Users’ compliance with this Agreement. 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) 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.

**4. Security Products.** When you receive access to our security Products as part of a delivery of our analytics and mobility Products, you may only use those security Products to authenticate access to analytics reports. You are responsible for (a) configuring the security Products to integrate with your network and the Security Applications; and (b) making available to your Named Users terms of use and a privacy policy for the Security Applications that is consistent with the terms of use and privacy policy we include as part of the Security Applications on each platform where the Security Applications are available (e.g., the Apple App Store for iOS devices and the Google Play Store for Android devices). “Security Application” means the iOS and Android versions of any of our proprietary, standard mobile security software applications that users can download onto their smartphones, as may be modified by us from time to time. OUR SECURITY PRODUCTS ARE NOT DESIGNED TO AND WILL 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 SECURITY PRODUCTS FOR USE IN AN EMERGENCY FOR WHICH YOU WILL BE FULLY RESPONSIBLE.

**5. Intellectual Property Ownership.** We, our affiliates and our licensors will own all right, title and interest in and to the Products. The Products are licensed and not sold. 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.

**6. Term and Termination.** Orders and Product licenses may only be terminated according to this section. You may terminate any order or Product license at any time by providing written notice to us. We may terminate any order or Product license 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 “Indemnification” and “Limited Warranties and Remedies” sections. Upon termination of all orders, this Agreement and all Product licenses 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.

**7. 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 the license fees and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated. 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 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.

**8. Limited Warranties and Remedies.**

We warrant that (a) for a period of six (6) months from the effective date of an order (“Warranty Period”), each Product listed on the order 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, the refund of the license fees and any unused, prepaid Technical Support Services fees paid for the Product, 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, or any other applicable 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 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 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. Orders and Payment.** You will be invoiced upon execution of and according to the terms of an order. All fees due to us will be payable, in full and in the currency listed on an order, 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 are firm and not subject to cancellation, return, refund or offset by you.

**11. Audit.** You will 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 Products.

**12. 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 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.

**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. Other Provisions.** Each party will treat the other party’s confidential information with the same care as it treats its own confidential information and, upon termination of this Agreement, will return to the other party any of its confidential information under its control. The latest version of this Agreement incorporated into an order governs all of your prior orders. 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, or if the Order was signed with an affiliate of MicroStrategy Inc, by the laws of that country having jurisdiction over that affiliate, 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 or if the Order was signed with an affiliate of MicroStrategy Inc, by the courts of that country having jurisdiction over that affiliate. 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 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. During the term of this Agreement and for one (1) year following the termination of this Agreement, neither party

will, 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 will hire any employee (or agent) of the other party; notwithstanding the foregoing, it will not be considered a breach of this prohibition for a party to hire an employee (or agent) responding to publicly advertised job opening announcements. 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. 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. If you deploy the Products as part of an extranet application, you agree to display “Powered by MicroStrategy” or certain other similar trademarks designated by us. 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.