



## MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

May 2015

This Master Software License and Services Agreement ("Agreement") is entered into by and between the Affiliate(s) of MicroStrategy Incorporated identified in the signature block below ("we," "us," "our," or "MicroStrategy") and the entity identified as "You" in the signature block below ("you," "your," or "Licensee").

### 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 Products 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 solely in support of your internal business operations, each in a manner consistent with the License Type(s) and terms specified on an Order. Affiliate usage of Product licenses is subject to the terms and conditions of this Agreement and such Affiliates shall be deemed to be you when placing an Order or using Product licenses.

If you receive access to Usher functionality as part of a delivery of our analytics enterprise software Products, you may use such Usher functionality solely for the purpose of authentication in conjunction with our analytics enterprise software Products.

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

We will provide you the level of Technical Support Services specified on an Order.

Each applicable Order for Product licenses will state the price of Standard Technical Support Services for a period of one year commencing on the date of delivery of such Products. Except as otherwise specified on any such 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 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.

### 3. SERVICES

Education Services shall be governed by the MicroStrategy education terms of use posted at [www.microstrategy.com/licensing](http://www.microstrategy.com/licensing).

When we provide Consulting Services, we grant you a perpetual, non-exclusive, sublicensable, royalty free license to anything we develop. You will be billed for actual hours worked on a time and materials basis at the rate specified on an Order. The final price may vary from the estimated price. You shall reimburse us for reasonable travel and out-of-pocket expenses incurred in connection with the provision of Consulting Services.

### 4. YOUR RESPONSIBILITIES

You 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 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.

You are solely responsible for (i) all activity occurring under your Named User accounts and you and your Named Users' use of the Products; and (ii) configuring the Usher security server software provided as part of the Products to integrate with the implementation of Usher functionality on your network and the Usher Applications; and (iii) creating and making available to your Named Users terms of use and a privacy policy for the Usher Applications that is consistent with the terms of use and privacy policy we include as part of the Usher Applications on each platform where the Usher Applications are available (e.g., the Apple App Store for iOS devices and the Google Play Store for Android devices).

### 5. INTELLECTUAL PROPERTY OWNERSHIP

We, our Affiliates and our licensors shall own all right, title and interest in and to the Products. The Products are licensed and not sold.

### 6. TERM AND TERMINATION

This Agreement and each Product license granted under this Agreement and any Order commences on its respective Effective Date and may only be terminated according to this Section. Each Product license granted under this Agreement and any Order on a term license basis shall terminate upon the expiration of its License Term, unless terminated earlier in accordance with this Section.

You may terminate this Agreement or any Product license at any time by providing written notice to us. We may terminate this Agreement or any 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 "Third Party Infringement" and "Limited Warranties and Remedies" Sections.

Upon termination of this Agreement, all Product licenses granted under this Agreement shall terminate and all committed fees owed by you as of the date of termination shall be immediately due and payable. If a Product license granted under this Agreement terminates,

you shall (i) immediately cease using the Product; and (ii) certify to us within thirty (30) days after expiration or termination that you have destroyed or have returned to us all copies of the Product and any of our Confidential Information.

#### 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 a Product or any work product delivered under Consulting Services ("Work Product") 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 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 or Work Product is enjoined in connection with the Claim, we may choose to either modify the Product or Work 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 Work Product, or if these alternatives are not commercially reasonable, we may terminate your license to and use of the Product or Work Product and (1) with respect to the Product, refund the license fees paid for the Product and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated and such Product is returned to us; or (2) with respect to the Work Product, refund the fees paid for the Work Product.

We shall have no indemnification obligation, and you shall indemnify us pursuant to this Agreement, for any Claim arising from or based upon (i) the misuse or unauthorized use of a Product or Work 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 or Work 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"), 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; and (b) prior to release, we scan each version of the Software 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 Software; 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 shall perform the 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, shall be (1) the correction of the Software errors that caused the breach of the warranty; or (2) replacement of the Software; or (3) if neither of the foregoing can be reasonably effected by us, the refund of the license fees paid for the Software and any unused, prepaid Technical Support Services fees paid for the Software, *provided* that the Software licenses are terminated and such Software is returned to us. For any breach of the warranty set forth in subsection (d) above, your exclusive remedy and our entire liability shall be re-performance of the Services at no cost to you.

Each party warrants that (i) 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 (ii) 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 diversion 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; 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 any 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 Named Users 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 "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 UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE FIRST CLAIM MADE BY YOU UNDER THIS AGREEMENT. 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, and suspend delivery of Technical Support Services until such amounts are paid in full. 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.

## 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 under this Agreement. "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. Nothing shall prevent either party from disclosing the terms of this Agreement in any legal proceeding arising from or in connection with this Agreement or disclosing the other party's Confidential Information to a federal or state governmental entity as required by law. Upon termination of this Agreement and except for electronic copies made in the course of normal network backups, the receiving party shall 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 Products.

## 13. DATA PROTECTION

You shall not transfer to us or provide us access to any Protected Data in connection with this Agreement, except for (a) Protected Data related to your contact persons; or (b) Protected Data provided to us in connection with a Technical Support Services case; or (c) Protected Data provided to us as part of a Consulting Services engagement solely via a folder located on your systems, so long as you provide us with all hardware, software and equipment for Consulting Services performed for or on behalf of you or any of your Affiliates, configured to prevent the use of flash drives, USB drives, thumb drives or any other external drives and to prevent access to any email systems.

We have implemented appropriate technical, organizational, and security measures to safeguard and protect Protected Data provided by you to us under this Agreement 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 under this Agreement, providing information to you and complying with our legal and auditing requirements.

## 14. NOTICE

All notices under this Agreement 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. 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, 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.

If you access software of a third party or any of our Affiliates (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 shall 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.

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).

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 Software; or (b) any expectation that any additional features or functionality presented as part of a demonstration, beta evaluation or roadmap presentation of the Software may be included in an Update; 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 Software remains at our sole discretion.

This Agreement may be executed in two (2) or more counterparts, each of which is deemed an original, but which together constitute one contract or document. Signed digitized copies of this Agreement and other associated documents, including attachments, Orders and amendments shall legally bind the parties to the same extent as original documents.

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 Products 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 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.

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 Products. 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. 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.

## 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.

"Consulting Services" means any consulting services provided by us or one of our certified partners, as described at [www.microstrategy.com](http://www.microstrategy.com).

"CPU" means a physical or virtual core to which a single or clustered instance of a Product is assigned in support of an unspecified number of Named Users in the environment specified on an Order.

“Designated System” or “DSI” means the name of the MicroStrategy metadata that will be accessed by the Products specified in the Order.

“Documentation” means the user manual(s) on installation and use of the Products that are normally distributed with or made available as part of the Products.

“Education Services” means any of our education offerings as described at [www.microstrategy.com](http://www.microstrategy.com).

“Effective Date” means (a) with respect to this Agreement, the date on which this Agreement is signed by both parties; 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.

“License Term” means, for each Product license granted on a term license basis, the period during which you hold a license to such Product under this Agreement, as designated on an Order.

“License Type” means the type of license designated (by “SKU Type” or a similar designation) or otherwise described on an Order.

“MicroStrategy Mobile Per App Bundle” means a Product bundle consisting of MicroStrategy Server and MicroStrategy Mobile which permits access by Named Users to up to three (3) MicroStrategy projects via a single application icon on a supported mobile device and such application may combine up to twenty-five (25) screens, if the mobile device is a tablet, or fifty (50) screens, if the mobile device is a phone, of MicroStrategy project data and reports interconnected via static and dynamic links.

“Named User” means a single individual designated by you as a user of a Product on a non-temporary basis.

“Order” means the document(s) by which you order Product licenses and/or Technical Support Services.

“Product” means any of our generally available software products, operated on servers or workstations controlled by you or your third party service provider(s) (“Software”); the Documentation; tools included with the Software, including software development kits; and any Updates to the Software delivered to you.

“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 a Product.

“Services” means Consulting Services or Education Services.

“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.

“Update” means any subsequent generally available commercial release of a Product provided as part of Technical Support Services. Updates shall not include new products that we market separately.

“Use” means to (a) grant Named Users located anywhere in the world access to the Products; and (b) enable the Products to email reports and dashboards to Named Users located anywhere in the world; and (c) enable the Products to deliver reports to a file server or printer to be accessed by Named Users located anywhere in the world.

“Usher Application” means the iOS and Android versions of any of our proprietary, standard mobile security software applications branded as “Usher” that Named Users can download onto their smartphones, as may be modified by us from time to time.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the dates written below.

**MicroStrategy** [ \_\_\_\_\_ ]

**You:** [ \_\_\_\_\_ ]

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Signature

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Signature

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