

MICROSTRATEGY CLICKWRAP SOFTWARE LICENSE  
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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, 1861 International Drive, McLean, Virginia 22102, United States of America, telephone number: (703) 848-8600 or 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 6) shall apply.

**1 RIGHTS AND RESTRICTIONS**

1.1 Subject to receipt by MicroStrategy of all fees owed by Licensee, MicroStrategy grants Licensee a non-exclusive and non-transferable license to use the Documentation and Software in executable form, solely for Licensee's Internal Business Use by Named Users in the Territory according to the terms and conditions of this Agreement. The right of use is granted only for the licensed Software, even if the licensed Software is delivered on media containing other Software.

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, directly or indirectly:

- 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 adapt, modify, or translate the Products or the metadata created by the Products; or
- c. reverse engineer, decompile, translate or disassemble the Products or the metadata created by the Products; or
- d. rent, lend or transfer a Product or a Product license to an Affiliate of Licensee; or
- e. rent or lend the Products or a Product license, use a Product license or the metadata created by the Products; for outsourcing, or provide any access to the Products or the metadata created by 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. Licensee shall not at any time during or after the term of this Agreement assert or claim any interest in, or assert or do anything that may adversely affect MicroStrategy's ownership of, or the validity of, the intellectual property and proprietary rights of MicroStrategy in or relating to the Products.

1.5 Subject to the restrictions in this Clause 1, 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.

1.6 Licensee acknowledges that installation of the Products involves a CD key that may restrict installation of the Products to equipment with only the number and clock speed of CPUs licensed and use of the Product Licenses to the number of Named Users licensed, as applicable. However, the CD key does not ensure compliance with this Agreement. 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.

## **2 TECHNICAL SUPPORT SERVICES**

2.1 Subject to receipt by MicroStrategy of all fees owed by Licensee, MicroStrategy shall provide Licensee Technical Support Services.

2.2 On each Order, MicroStrategy will state the price of Technical Support Services for a period of one year commencing on the date of delivery of the Products. Upon expiration of the initial year of service, second year Technical Support Services for the Products listed on the Order will renew at the stated amount on the Order. If Products are licensed through a MicroStrategy distributor, second year Technical Support Services will renew with MicroStrategy at an amount calculated as the aggregate of the Standard List Price for each Product at the time the Product was purchased times the number of units ordered times the Standard Maintenance Rate at the time the Product was purchased. 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 for its Integrated Configuration.

2.3 Licensee acknowledges that all of the Products licensed under this Agreement constitute an Integrated Configuration. Consequently, Licensee agrees not to allow Technical Support Services on a portion of the Integrated Configuration to 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. Notwithstanding the above, MicroStrategy may terminate this Agreement or any Product license of Licensee or Licensee's Affiliates immediately after providing written notice to Licensee if Licensee breaches an uncurable provision of this agreement such as the provisions regarding reverse engineering, disassembly or decompilation contained in Clause 1.3(c) the license grant specified in Clause 1.1, the confidentiality provisions set forth in Clauses 10.1 and 10.2. or the assignments provision in Clause 12.11

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, 4.3, 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 INDEMNITY**

4.1 MicroStrategy shall indemnify, defend, and hold harmless Licensee from and against any third party claim that the Products infringe a United States patent issued as of the Effective Date of this Agreement or a United States copyright, provided that Licensee: (a) promptly notifies MicroStrategy in writing of any such claim, (b) allows MicroStrategy to have sole control of the defense and all related settlement negotiations, and (c) provides MicroStrategy with the information, authority, and assistance necessary to perform MicroStrategy's obligations under this clause. If a Product is held or believed by MicroStrategy likely to be held to infringe, MicroStrategy may, at its sole option: (i) obtain for Licensee a license to continue using the Product or (ii) replace or modify the Product so that it becomes non-infringing. After attempting the foregoing using commercially reasonable efforts, MicroStrategy shall have the right to terminate the licenses granted herein and return to Licensee all fees paid to MicroStrategy for the infringing Product. This clause sets forth MicroStrategy's entire liability and Licensee's sole remedy relating to infringement or any other claims relating to intellectual property or proprietary rights.

4.2 Notwithstanding Clause 4.1, MicroStrategy shall have no indemnification or other obligation to Licensee for any claim arising from, based on, or resulting from (a) the combination, operation, or use of any Product with software not supplied by MicroStrategy, (b) any use of any Product not described in the Documentation, or (c) any alteration or modification of any Product, if the claim would not have arisen without such alteration or modification.

4.3 Licensee shall indemnify, defend, and hold harmless MicroStrategy against any claim, excluding a claim described in Clause 4.1, brought by a third-party regarding Licensee's use of the Products, including but not limited to a claim that Licensee's use violates any applicable federal, state or local law, rule, regulation or order. In the event of such a claim, MicroStrategy (a) shall promptly notify Licensee in writing of the claim, (b) shall allow Licensee to have control of the defense and all related settlement negotiations, and (c) shall provide Licensee with the information, authority and assistance necessary to enable Licensee to perform Licensee's obligations under this Clause 4.3.

#### **5 LIMITED WARRANTIES AND REMEDIES**

5.1 MicroStrategy warrants for a period of six (6) months from the Effective Date of this Agreement that the unmodified Software will perform in substantial conformance with the technical specifications set forth in the Documentation.

5.2 MicroStrategy warrants the DVD, CD-ROM or other media on which the Software is provided to Licensee to be free of defects in materials and workmanship under normal use for thirty (30) days from the Effective Date of this Agreement.

5.3 EXCEPT FOR THE LIMITED WARRANTIES GRANTED IN CLAUSES 5.1 AND 5.2, (A) ALL PROVIDED ITEMS THAT ARE SHIPPED, OR OTHERWISE PROVIDED BY MICROSTRATEGY OR ANY OF ITS AFFILIATES TO LICENSEE, ARE PROVIDED "AS IS" AND (B) TO THE MAXIMUM EXTENT PERMITTED BY LAW, MICROSTRATEGY AND ALL ITS AFFILIATES DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ALL PROVIDED ITEMS, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEMS INTEGRATION, TITLE, SATISFACTORY QUALITY AND NON-INFRINGEMENT. MICROSTRATEGY AND ITS AFFILIATES DO NOT WARRANT THAT USE OF THE PROVIDED ITEMS OR ANY PORTION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE PROVIDED ITEMS OR ANY PORTION THEREOF WILL MEET ANY NEED OR REQUIREMENT OF LICENSEE. THE ENTIRE RISK AS TO DATA QUALITY AND RESPONSE TIME OF ALL PROVIDED ITEMS SHALL BE WITH LICENSEE.

5.4 For any breach of the warranties contained in Clauses 5.1 and 5.2, Licensee's exclusive remedy, and MicroStrategy's entire liability, shall be:

- a. for Software, at MicroStrategy's sole discretion, (1) the correction of Software errors that caused the breach of the warranty, (2) replacement of the Software, or (3) return of the fees paid to MicroStrategy for the license of such Software;
- b. for media, the replacement of defective media.

## **6 ORDERS, ACCEPTANCE AND PAYMENT**

6.1 Licensee may purchase Product licenses or Services under this Agreement by submitting an Order to MicroStrategy.

6.2 All Orders shall be subject to MicroStrategy's acceptance. MicroStrategy shall manifest its acceptance 1) by signing the applicable Order, 2) by shipment 3) performing the Services or 4) by setting up an FTP account for Licensee. Except as provided herein, all Orders under this Agreement are firm and not subject to cancellation, return, refund or offset unless the parties specifically agree otherwise in writing.

6.3 MicroStrategy shall invoice Licensee for Orders upon acceptance of the Order by MicroStrategy.

6.4 All fees due MicroStrategy shall be payable, in full and in United States Dollars thirty (30) days from the date of 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.

## **EVALUATION LICENSE**

If you have ordered an evaluation or proof of concept license, the terms and conditions in the Evaluation License Grant part (Clauses 7 and 8) shall apply, and the terms and conditions in the Perpetual License Grant part shall not apply.

## **7 RIGHTS AND RESTRICTIONS**

7.1 Licensor 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").

7.2 Licensor shall provide Licensee with Technical Support Services, in accordance with Licensor'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.

7.3 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. Licensor 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 Licensor if Licensee fails to comply with any provision of this Agreement.

## **8 EXCLUSION OF WARRANTIES AND LIABILITIES**

8.1 ALL EVALUATION PRODUCTS, TECHNICAL SUPPORT AND MAINTENANCE 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 PROVIDED ITEMS, 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 PROVIDED ITEMS WILL BE UNINTERRUPTED

OR ERROR-FREE, OR THAT THE PROVIDED ITEMS WILL MEET ANY NEED OR REQUIREMENT OF LICENSEE.

8.2 THE SOLE REMEDY OF LICENSEE FOR ANY ASSERTED DEFECT, ERROR, OR OTHER SHORTCOMING IN THE PROVIDED ITEMS IS THAT LICENSEE MAY REQUEST TECHNICAL SUPPORT AND MAINTENANCE FOR EVALUATION PRODUCTS UNDER A TECHNICAL SUPPORT AND MAINTENANCE SUBSCRIPTION EVEN IF THIS REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS HELD UNENFORCEABLE FOR ANY OTHER REASON

## GENERAL TERMS AND DEFINITIONS

The following Clauses 9 through 12 shall apply to all Software licensed under this Agreement, including Software licensed under a perpetual grant and Evaluation Software.

## 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 OR SERVICE THAT ARE THE SUBJECT OF THE DISPUTE. IN NO EVENT SHALL MICROSTRATEGY OR ANY OF ITS AFFILIATES BE LIABLE TO LICENSEE AND ALL OF ITS AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING ANY DAMAGES FOR LOSS OF DATA, LOSS OF PROFITS, LOSS OF USE, OR INTERRUPTION OF BUSINESS), AND 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 of Recipient 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 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.

## 11 AUDIT

11.1 By August 1 of each calendar year, Licensee shall conduct a self-audit of its deployment of Products and submit a written statement to MicroStrategy by e-mail to 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 that such self-audit reveals unlicensed deployment of Products by September 1 of such calendar year, Licensee shall order directly from MicroStrategy sufficient Product

licenses plus Technical Support Services from the date of deployment at MicroStrategy's then current Standard List Prices.

11.2 MicroStrategy shall have the right to conduct on-premises audit of Licensee's deployment of the Products on ten (10) days' advance written notice. Licensee shall cooperate with MicroStrategy with respect to any such audit. MicroStrategy shall conduct any such audit during regular business hours at Licensee's facilities and, to the extent feasible, in a manner that does not unreasonably interfere with Licensee's business activities. MicroStrategy shall also have the right to embed technological audit mechanisms in its Products and to conduct audits by use of such mechanisms with or without further notice. If any MicroStrategy initiated audit reveals unauthorized deployment or deployment in excess of licensed capacity, within 30 days from receipt of notice by MicroStrategy stating the unlicensed use of Products, Licensee shall pay MicroStrategy: (1) for deployment of the unlicensed Products and Technical Support Services at MicroStrategy's then current Standard List Prices, (2) technical support and maintenance for the period of unlicensed deployment calculated by multiplying the aggregate of the Standard List Price times the number of unlicensed products used times 0.001 times the number of days of unlicensed deployment

## **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 of the Effective Date of the Agreement.

12.2 A breach by Licensee of any of the material terms of this Agreement or any agreement executed by Licensee and MicroStrategy may be considered a breach of all such agreements. If the breach remains uncured for thirty calendar days after written notice to Licensee, MicroStrategy shall have the right to decline to deliver Technical Support Services until such breach is cured.

12.3 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.

12.4 Licensee shall be solely responsible for ensuring Licensee's compliance with the terms and conditions of this Agreement.

12.5 The laws of the jurisdiction where MicroStrategy entity selling the Product licenses is located shall control. The UN Convention for the International Sale of Goods shall not apply to this Agreement in whole or in part.

12.6 All notices under this Agreement shall be in writing and shall be deemed to have been given when mailed by first class mail to the address listed in the preamble of this Agreement.

12.7 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.

12.8 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).

12.9 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.

12.10 Licensee acknowledges that all MicroStrategy Products and other technical data may be subject to export controls imposed by the U.S. Export Administration Act of 1979, as amended (the "Act"), and the

applicable regulations. When explicitly permitted under this Agreement, Licensee shall only export or re-export the Products in compliance with the Act and its regulations.

12.11 Licensee shall not assign, transfer or share this Agreement or any right, license or obligation under this Agreement without the prior written consent of MicroStrategy. Any merger, consolidation, reorganization, transfer of substantially all assets of Licensee or other change in control or ownership of Licensee shall be considered an assignment for the purpose of this Agreement.

12.12 It is expressly agreed that, unless there is a mutual agreement in writing to the contrary, 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, or any terms to which MicroStrategy has not specifically agreed in writing (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. This Agreement shall also supersede all terms of any "shrink-wrap" or "click-wrap" license included in any package, media or electronic version of the Products.

12.13 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.

12.14 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.

12.15 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.

12.16 MicroStrategy Products are 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, 6,501,832, 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, 6,707,889, 6,741,980, 6,765,997, 6,768,788, 6,772,137, 6,788,768, 6,792,086, 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, 6,888,929, 6,895,084, 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, 7,127,403 and 7,174,349. Other patent applications are pending.

12.17 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.