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## MicroStrategy OEM Terms and Conditions

These MicroStrategy OEM Terms and Conditions (“OEM T&C’s”) specify the terms and conditions under which we will provide MicroStrategy Products to you, solely for you to develop, market and sell your OEM Solution that embeds such Products, as further described in the Order Form between MicroStrategy Incorporated or its Affiliate (“MicroStrategy” or “we,” “us,” “our”) and the entity or person ordering MicroStrategy Products (“you,” “your”). Unless otherwise specified, capitalized terms will have the meanings set forth in Section 10 (Definitions) of these OEM T&C’s. .

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#### 1. ACCESS AND USE OF MICROSTRATEGY PRODUCTS

- a. **Your Role as a MicroStrategy OEM. Access to Products and Services.** You are an authorized MicroStrategy OEM partner and we grant you a non-exclusive, non-transferable, application-restricted license, subject to the terms and conditions of the Agreement and the Documentation to (i) access and use the MicroStrategy Products specified in your Order Form(s) during its applicable Order Term, solely for purposes of (1) embedding those MicroStrategy Products into the OEM Solution, (2) marketing the OEM Solution to any current or prospective Customer, and (3) supporting your Customers’ use of the OEM Solution; and (ii) in accordance with your Order Form, distribute MicroStrategy Products to Customers as part of your OEM Solution and (1) sublicense to each Customer the right to install MicroStrategy Products on servers and workstations under the Customer’s control (or under your control in a hosted environment on the Customer’s behalf) and grant Named Users access to such products and Reports for use as part of the OEM Solution or (2) grant Named Users access to the Services as part of the OEM Solution. You may create derivative works of the Documentation to include in your OEM Solution user documentation. You may also sublicense any of these rights to any Sub-Distributor. We may revoke the foregoing right to sublicense to Sub-Distributors by providing written notice to you.
- b. **Deployment Environment.** If a specific operating or cloud environment is specified in the Order Form, the applicable MicroStrategy Software may only be accessed, installed, or executed from or in such specified environment, except for any MicroStrategy Software which technically requires deployment in a different operating or cloud environment.
- c. **Restrictions on Access and Use.** You agree to not: (i) access, use, copy, display, distribute, transfer, lease, sell, resell, license, sublicense, or otherwise make available the MicroStrategy Products in any manner or for any purpose not authorized by the Agreement, including in a manner that exceeds your authorized access and use rights or that is intended to avoid incurring fees or exceed usage limits or quotas, or in a manner contrary to applicable law; (ii) modify, reverse engineer, decompile or create derivative works of any portion of the MicroStrategy Products, except as provided Section 1(a) above, in the Documentation, or to the extent permitted by applicable law; (iii) interfere with or disrupt the integrity or performance of MicroStrategy Products or attempt to gain unauthorized access to a MicroStrategy Product or its related systems or networks; (iv) use the MicroStrategy Products to develop or train any product or service that is competitive with our business or offerings (for clarity, your OEM Solution will not be deemed to be competitive with any of our product offerings for purposes of this clause); (v) make available to any third-party any analysis of the operation or benchmarking of the MicroStrategy Products or any Reports, without our prior written consent; (vi) use any MicroStrategy

Product to provide services to third parties other than the provision of the OEM Solution to your Customers or (vii) use the MicroStrategy Products to store or transmit material in violation of third-party privacy rights or that is infringing or otherwise unlawful or tortious or that constitutes Malicious Code. You will delete any demonstration copies of the MicroStrategy Products installed on servers or workstations under a Customer's control upon completion of a demonstration at a Customer's location. You will (i) ensure that each Customer only uses our Services as part of the OEM Solution to report on data derived from the data models you provide, and does not materially change such data models to include data elements that are not directly related to the documented, intended uses of the OEM Solution; and (ii) not sell or license MicroStrategy metadata without also including our Services as part of the sale or license.

- d. **OEM Responsibility.** You are responsible for compliance with the Agreement by your representatives and applicable Affiliates permitted hereunder that use or access the MicroStrategy Products under your account and for the proper operation of your network and your systems used to connect to the MicroStrategy Products.
  - e. **Provision of Other Services.** If applicable, we will perform the Technical Support Services, and Consulting Services for you as set forth in each applicable Order Form in accordance with the then-current Technical Support Services Policy & Procedures, MCE Service Guide, CMC Service Guide, and Service-Specific Addenda, as applicable, subject to the terms and conditions of the Agreement (including any applicable Product-Specific Addenda).
  - e. **Product-Specific Addenda.** Certain MicroStrategy Products may be subject to Product-Specific Addenda that provide additional terms and conditions for the use of such MicroStrategy Product. Each party shall comply with all applicable Product-Specific Addenda.
  - f. **Effects of Termination.** Upon termination of the Agreement, all MicroStrategy Product licenses and rights granted 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 MicroStrategy Product.
  - g. **Additional Technical Support Services Terms.** You will provide all technical support for your OEM Solution directly to each of your Customers, and we will only provide Technical Support Services to you. For MicroStrategy Software licensed for a perpetual term, you will purchase a one year subscription to standard Technical Support Services commencing on (a) the fifteenth (15th) day of the month in which you sell your OEM Solution that embeds such MicroStrategy Software, if you send us quarterly reports, or (b) the date on which we deliver such Software to you. Standard Technical Support Services for term MicroStrategy Software licenses is included as part of the term license fee. For each MicroStrategy Product license, we will deliver Updates. Updates will not include new products that we market separately. You will not provide any Updates to, or contact us for any technical support-related issues relating to, any Customer for whom you do not maintain an active subscription to standard Technical Support Services.
2. **ORDERING, FEES, AND AUDIT RIGHTS.**
- a. **Reporting. Invoicing.** Unless otherwise specified in an Order Form, you will provide to us complete and accurate quarterly reports detailing all sales of your OEM Solution during the reporting period at issue. We will invoice you for all amounts payable to us in accordance with the payment schedule specified in an Order Form or after we receive a quarterly report. Except as set forth in the Agreement and to the extent permitted by law, all payment obligations are non-cancelable and fees are non-refundable and not subject to offset. We may suspend your right to distribute MicroStrategy Products if you fail to provide us with any required quarterly report in a timely manner. If you exceed the scope of your rights to our MicroStrategy Products, we may invoice you for such excess and any related Technical Support Services fees, calculated at our standard list prices from the date you exceeded the scope of your rights. You agree to pay such invoices as set forth herein. You further agree that if we no longer offer a MicroStrategy Product for which you exceeded the scope of your rights, then the amounts owed will be calculated using the higher of the last available standard list price for such MicroStrategy Product or the current standard list price of its successor. The parties agree that this sum is agreed upon as payment for the excess use of the MicroStrategy Products, and not as a penalty.
  - b. **Payment.** All fees due to us will be payable, in full and in the currency listed on an Order Form or quarterly report, thirty (30) days from the date of the invoice, and will be deemed overdue if they remain unpaid thereafter. Any dispute to an invoice must be raised within thirty (30) days from the date of invoice or the invoice will be deemed correct. The parties agree to negotiate in good faith a prompt resolution of any disputed invoiced amounts.
  - c. **Late Payments.** If any undisputed invoice remains unpaid for thirty (30) or more days after it is due, we may charge a late fee equal to the lower of one and one-half percent (1.5%) per month or the highest rate allowable by law from the due date until such amount is paid in full. Except for fees subject to a reasonable and good faith

fee dispute that the parties are working to resolve, if a payment is more than thirty (30) days past due and we have provided at least thirty (30) days written notice to you, we may do either or both of the following (i) suspend your (and your Customers') right to use the MicroStrategy Product until such amounts are paid in full, and (ii) accelerate all unpaid fee obligations under all Order Forms so that all amounts payable by you become immediately due and payable.

- d. **Taxes.** Fees payable hereunder do not include Taxes. You are responsible for paying all Taxes associated with your purchases hereunder, including without limitation all use or access of the MicroStrategy Products by you. If we have a legal obligation to pay or collect Taxes for which you are responsible hereunder, we will invoice you that amount and you will pay that amount unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. You may not deduct taxes from payments to us, except as required by applicable law, in which case you must increase the amount payable as necessary so that, after making all required deductions and withholdings, we receive and retain (free from any liability for Taxes) an amount equal to the amount we would have received had no such deductions or withholdings been made. Upon our request, you will provide us with proof of withholding tax remittance to the respective tax authority.
- e. **Audit Rights.** You will keep accurate and complete records relating to your activities under the Agreement, including records related to your and your Customer's installation and use of the MicroStrategy Products and other information necessary to demonstrate your compliance with the Agreement, e.g., any deployment information generated by the MicroStrategy Products ("Records"). Within ten (10) days following our written request, you will certify to us in a writing signed by an officer of your company that your installation and/or use of the MicroStrategy Products comply with the terms of the Agreement and will provide us any Records we specify in such request. In addition, within ten (10) days following our written request, we may, at our sole discretion, audit your Records and your installation and/or use of the MicroStrategy Products (i) at your applicable facility during normal business hours and subject to your reasonable facility security requirements and/or (ii) by remote or electronic means. You may redact resale pricing information in the Records.

### 3. INTELLECTUAL PROPERTY RIGHTS & RESTRICTIONS

- a. **MicroStrategy Intellectual Property Rights.** You agree that we or our licensors retain all right, title and interest in and to all MicroStrategy Products (including any related Updates). Except for the limited rights set forth in the Agreement, no right, title or interest in or to any MicroStrategy Products is granted to you.
- b. **Customer Data & Use to Improve Services.** You own all right, title, and interest in and to your Customer Data. You grant us a non-exclusive, worldwide, irrevocable license to use the Customer Data for the purpose of operating, supporting or improving the MicroStrategy Products, including in the manner provided to you. Further, we may collect usage and diagnostic data, but not Protected Data, related to your use of the MicroStrategy Products to help us provide, support and improve our MicroStrategy Products.

### 4. CONFIDENTIALITY

- a. **Confidentiality.** Each party (as "Receiving Party") may receive Confidential Information of the other party or its customers in the course of the Agreement. Accordingly, each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care), and further agrees to: (i) not use any Confidential Information of the other party (the "Disclosing Party") for any purpose outside the scope of the Agreement; and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with the Agreement and who are bound by obligations of confidentiality to the Receiving Party not materially less protective of the Confidential Information than those herein. Each party agrees to hold the other party's Confidential Information in confidence during the term of the Agreement and for a period of five (5) years after the termination or expiration of the Agreement (except that with respect to Confidential Information that qualifies as a trade secret under applicable law, the confidentiality obligations shall be perpetual).
- b. **Permitted Disclosures.** If a Receiving Party is required by law, regulation or court order to disclose Confidential Information of the other party, then the Receiving Party shall, to the extent legally permitted, provide the Disclosing Party with advance written notice and cooperate in any effort of the Disclosing Party to obtain confidential treatment of the Confidential Information including the opportunity to seek appropriate administrative or judicial relief.
- c. **Injunctive Relief.** The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

- d. **Return of Confidential Information.** Upon written request of the Disclosing Party, except for electronic copies made in the course of normal network backups or as otherwise set forth in this Agreement, the Receiving Party will promptly return to the Disclosing Party or destroy (and provide written certification of such destruction) all materials containing or reflecting any of the Disclosing Party's Confidential Information. If either party disclosed our Confidential Information to a Customer as part of, or in anticipation of, an actual or potential transaction pursuant to the Agreement, you will obligate that Customer to promptly destroy or return, at our sole discretion, all such Confidential Information in the Customer's possession or control.
- e. **Data Protection.** You will not transfer to us or provide us (or allow your Customers to transfer to us or provide us) access to any Protected Data in connection with the Agreement, except for Protected Data related to your contact persons and/or basic contact data related to your Customer prospects or opportunities for which you have a basis to share such Protected Data with us, and Protected Data uploaded or transferred to the MCE 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. If you upload or transfer Protected Data to the MCE Service, you will enable encryption of report caches and intelligent cubes which are saved to disk.

## 5. TERMINATION

- a. **Right to Terminate.** Either party may terminate the Agreement (including all related Order Forms) if the other party: (i) materially breaches the Agreement (and for clarity, a failure to pay fees by you is a material breach of the Agreement), and fails to cure such material breach within thirty (30) days after receiving written notice from the terminating party; (ii) ceases operation without a successor; or (iii) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within sixty (60) days (to the extent such termination is not prohibited by law).
- b. **Effect of Termination.** In the event the Agreement is terminated by you due to our material breach of the Agreement or is terminated pursuant to Sections 6.b or 9.a, we will refund you any prepaid fees that have not accrued prior to the date of termination. In the event the Agreement is terminated by us due to your material breach of the Agreement or you terminate for convenience, you will pay all remaining amounts that would have been due under the Agreement had it not been terminated early. Upon your written request within thirty (30) days of the expiration or termination of the Agreement, we will provide you with all Customer Data in our standard database export format at no additional cost to you. Upon termination of the Agreement or all related Order Forms, the Agreement, all MicroStrategy Product licenses and your right to access or receive the Services (and our obligations to provide Services) will terminate. When a MicroStrategy Product license expires or terminates, you will immediately cease using the MicroStrategy Product.
- c. **Survival.** Any provisions in Sections 2, 3.a, 3.b, 4, 5, 6, 7, 8, 9, and 10 of this Agreement which, by their nature are intended to survive the termination of the Agreement shall survive the termination of the Agreement.

## 6. WARRANTY

- a. **Mutual Warranty.** Each party represents and warrants to the other party that it has validly entered into the Agreement and has the legal power to do so and, in connection with its performance of the Agreement, shall comply with all laws applicable to it.
- b. **Product Warranty.** With respect to any MicroStrategy Products and any Updates you procure under an Order Form (other than Consulting Services or Technical Support Service, for which the sole warranty is set forth in Section 6.c), we warrant and covenant during the applicable Order Term (or for perpetually licensed MicroStrategy Software, for a period of six (6) months from the effective date of an Order Form), that (i) such MicroStrategy Products will perform in substantial conformance with the technical specifications in the Documentation, (ii) the functionality of each such MicroStrategy Product will not be materially reduced by us, and (iii) we will scan such MicroStrategy Products using a recognized virus scanning program and we will use commercially reasonable efforts to remove any detected Malicious Code prior to release. Your exclusive remedy and our sole liability for any breach of the foregoing warranty will be (x) the correction of the MicroStrategy Product errors that caused the breach of such warranty, (y) replacement of such MicroStrategy Product with materially functionally equivalent software, or (z) if we cannot accomplish either (x) or (y) despite using our reasonable efforts after sixty (60) days, then either party may terminate the Order Form for the affected MicroStrategy Product, and we will refund you any prepaid fees paid for the terminated MicroStrategy Product for periods after the effective date of termination.

- c. **Consulting, Technical Support Services Warranty.** During the applicable Order Term, we warrant that any Consulting Services or Technical Support Services provided by us as part of the Services will be performed (i) in a competent and workmanlike manner in accordance with accepted industry standards and practices, and (ii) in accordance with all material requirements set forth in the applicable statement of work. Your exclusive remedy and our entire liability for any breach of the foregoing warranty will be (x) that we will use commercially reasonable efforts to re-perform such Services in conformance with the foregoing warranty requirements or (y) if we cannot accomplish (x) despite using our reasonable efforts after sixty (60) days, then either party may terminate the affected Service and we will refund you any prepaid fees paid for such Service for periods after the effective date of termination.
- d. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT THE MICROSTRATEGY PRODUCTS WILL BE ERROR FREE OR UNINTERRUPTED. THE LIMITED WARRANTIES PROVIDED IN THE AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO YOU.

## 7. INDEMNIFICATION.

- a. **Indemnification by Us.** We will defend you (and your Affiliates, directors, officers, employees and agents), at our expense, from Claims and will indemnify and hold you (and your Affiliates, directors, officers, employees and agents) harmless against Losses incurred by you in connection with such third party Claims, but solely to the extent such third party Claims arise from an allegation that the use of the MicroStrategy Products as contemplated hereunder infringes a third party's intellectual property rights, or death, bodily harm, or damage to tangible personal property due to our personnel's gross negligence or willful misconduct in providing Services on your premises to you. However, we will have no indemnification obligations to you if the Claim or Loss arises from (i) any access, use, reproduction, distribution or modification of any MicroStrategy Product in a manner not authorized under the Agreement or in violation of law; (ii) our use of materials or data (including Customer Data) provided by you or a third party in the manner permitted under the Agreement; (iii) the use of the MicroStrategy Products in combination with any other product or service not provided by us; and (iv) the use of a prior version of the MicroStrategy Products.
- b. **Indemnification Remedy.** If we reasonably believe the use of the MicroStrategy Products under the Agreement could result in an indemnification Claim under Section 7.a, then we will have the right, at our option and expense to: (i) replace or modify such MicroStrategy Product to make it non-infringing and of substantially equivalent functionality, (ii) procure the right to continue using such MicroStrategy Product under the terms of the Agreement, or (iii) if we are unable to accomplish either (i) or (ii) despite using our reasonable efforts after sixty (60) days, then either party may terminate the Agreement, in which case our sole liability, in addition to the indemnification obligations in this section, shall be to refund you any prepaid fees for the terminated MicroStrategy Product that was to be provided after the effective date of termination.
- c. **Indemnification by You.** You will defend us (and our Affiliates, directors, officers, employees and agents) at your expense for Claims, and indemnify and hold us (and our Affiliates, directors, officers, employees and agents) harmless against any Losses incurred by us in connection with such third party Claims, to the extent such third party Claims arise from (i) your, or your Customers', use of any MicroStrategy Products in violation of the Agreement, (ii) our use of the Customer Data in a manner permitted under the Agreement, and (iii) our following any instructions provided by you in our performance of any Services or creation of any deliverables for you hereunder, if such Claims would not have arisen but for such instructions.
- d. **Indemnification Procedures; Control of Litigation.** The indemnifying party's obligations hereunder only arise if the indemnified party: (i) promptly gives written notice of the Claim to the indemnifying party (although a delay of notice will not relieve the indemnifying party of its obligations under this section except to the extent that the indemnifying party is prejudiced by such delay); (ii) gives the indemnifying party sole control of the defense and settlement of such Claim (provided that the indemnifying party may not settle such Claim that imposes liability on, or contains any admission of fault by, the indemnified party, without its consent); and (iii) provides to the indemnifying party, at the indemnifying party's cost, all reasonable information assistance to defend or settle such Claim. This Section 7 states the indemnified party's exclusive remedies and the indemnifying party's sole obligations related to the subject matter of these sections.

## 8. LIMITATION OF LIABILITY

THE CUMULATIVE AGGREGATE LIABILITY OF US AND ALL OF OUR AFFILIATES AND LICENSORS TO YOU AND ALL OF YOUR AFFILIATES RELATED TO THE AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE 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.

9. **GENERAL TERMS**

- a. **Right to Assign Agreement.** The Agreement will bind and inure to the benefit of each party and their permitted successors and assigns. You may not assign the Agreement without our written consent, except that you may, upon prompt written notice to us, assign the Agreement in connection with a merger, reorganization, or sale of your assets or equity, to your successor. If you assign or transfer the Agreement to a competitor of ours, we may terminate the Agreement upon written notice. Any attempt to transfer or assign the Agreement in violation of this Agreement will be null and void.
- b. **OEM's Name & Logo.** Each party has the right to issue mutually-agreed upon press releases that includes a quotation from one of the other party's senior executives. You grant us the right to use your name and logo for the sole purpose of identifying you as an authorized MicroStrategy OEM partner.
- c. **Governing Law & Venue.** 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, 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. 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.
- d. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under the Agreement (except for a failure to pay fees) if the delay or failure results from any cause beyond such party's reasonable control, including acts of God, labor disputes or other industrial disturbances, actions of third-parties beyond either party's control, network intrusions or denial of service attacks, systemic electrical, telecommunications, or other computer, Internet, Internet service provider, hosting facility, hardware, software, power systems or utility failures beyond such party's control, earthquake, storms or other elements of nature, embargoes, riots, public health emergencies (including pandemics and epidemics), acts or orders of government, acts of terrorism, or war.
- e. **Notice.** Unless our Documentation specifies otherwise for certain notices provided by us, any notice, approval or other communication required or otherwise provided for under the Agreement will be in writing and deemed to have been given when (i) personally delivered; or (ii) sent by electronic mail; or (iii) sent by a commercial overnight courier. You will provide such notices to:  
MicroStrategy Services Corporation  
Attention: General Counsel  
1850 Towers Crescent Plaza, Tysons Corner  
Virginia, 22182, United States  
email: [cwrequests@microstrategy.com](mailto:cwrequests@microstrategy.com)  
Such notices to you will be sent to the address listed in the Order Form. Each party may modify its recipient of such notices by providing notice to the other party.
- f. **FCPA and Related Matters.** You and your Sub-Distributors will comply with all applicable anti-mafia, anti-bribery and anti-corruption statutes, rules, or regulations of any national, federal, state, or local jurisdiction, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the U.K. Bribery Act of 2010 (in force on July 1, 2011) ("Anti-Bribery Laws"). You warrant and represent that you are not a government owned or controlled entity and that none of your directors or officers (or any individuals holding functionally equivalent positions) are a Government Official (as defined in applicable Anti-Bribery Laws). You will, at your own expense, cooperate with any investigation conducted by us in connection with your compliance with this paragraph; such cooperation will include participating in interviews conducted by us and/or our designees and providing any information requested by us and/or our designees. You will ensure the compliance of your employees, directors, officers, Sub-Distributors, subcontractors, and business associates with the terms and conditions of this paragraph, and will promptly notify us, in writing, of any known or suspected breach of any provisions of this paragraph by you, your employees, directors, officers, Sub-Distributors, subcontractors, or business associates. We may, on

reasonable advance written notice, examine your corporate books and records that relate to your interactions with Government Officials (as defined in applicable Anti- Bribery Laws) in connection with transactions and other activities relating to the sale, distribution or provision of MicroStrategy Products or Services. Notwithstanding anything to the contrary in the Agreement, we will have the right, in our reasonable judgment, to determine whether you have breached the terms and conditions of this paragraph and may immediately terminate the Agreement by providing you written notice of any such breach.

- g. **Entire Agreement & Order of Precedence.** Notwithstanding anything to the contrary, the Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. In the event of a conflict, the provisions of an Order Form (excluding conflicting or additional provisions of a Customer proposal, purchase order or other documents, which shall be null and void) will take precedence over provisions of this MSA and over any other addenda or attachment, but solely with respect to your use of the applicable MicroStrategy Products governed by such Order Form. In the event of a conflict between the Service-Specific Addenda and this MSA, the Service-Specific Addenda will control but only with respect to the applicable Services being provided to you that are subject to such Service-Specific Addenda. The Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter and is entered into without reliance on any promise or representation other than those contained in the Agreement.
- h. **Cumulative Remedies.** Except as otherwise provided in the Agreement, none of the rights, powers or remedies conferred upon any party under the Agreement will be mutually exclusive. Each such right, power or remedy will be cumulative and in addition to every other right, power or remedy available to such party, whether available at law, in equity or otherwise.
- i. **Relationship of the Parties.** The parties are independent contractors. The Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Unless stated in the Agreement, nothing in the Agreement confers or is intended to confer any rights to any person not a party to the Agreement. There are no intended third-party beneficiaries of the Agreement.
- j. **Export Control.** Each party shall comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations (EAR) and the economic sanctions programs implemented by the Office of Foreign Assets Control (OFAC). You acknowledge that (i) the direct or indirect transfer of a MicroStrategy Product contrary to United States law or any other applicable law is prohibited; (ii) you are not a Restricted Party or located in a Restricted Country; (iii) you are not controlled by or acting on behalf of any Restricted Party or anyone headquartered or located in a Restricted Country; and (iv) neither you nor any of your employees, agents or contractors will transfer or allow any MicroStrategy Product to be transferred to a Restricted Party or Restricted Country. You shall not sell, export, re-export, transfer, divert, or make available any MicroStrategy Products to an end user or end use specified in 15 C.F.R. Part 744 of the EAR, including but not limited to the design, production, or use of nuclear, missile, or chemical and biological weapons activities or systems.
- k. **Non-Solicitation.** Except for hiring an employee (or agent) of the other party to fill a job opening that was publicly announced and to which the applicable employee (or agent) responded, during the term of the Agreement and for one (1) year following termination of the Agreement, neither party will hire or directly or indirectly solicit any employee (or agent) of the other party who has provided services or performed obligations under the Agreement in the previous twelve (12) months.
- l. **Miscellaneous.** 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. No joint venture, partnership, employment, or agency relationship exists between you and us as a result of the Agreement or the use of the MicroStrategy Products. If you have previously entered into an agreement with us or any of our Affiliates that authorizes you to OEM or otherwise embed our products into your products, that agreement is replaced and superseded by the Agreement. The parties may execute the Agreement and any documents hereunder in counterparts, each of which will be deemed an original and considered one and the same agreement. The parties will be bound by signatures made by hand or electronic means. Section headings are inserted for convenience only and shall not affect interpretation of the Agreement. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law,

the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement will remain in effect. A waiver of any right under the Agreement is only effective if it is in writing and only against the party who signed such writing. Any amendment, variation or modification of the Agreement must be in writing and signed by both parties. Unless stated otherwise in this Agreement, all references to “dollars” or “\$” or “US\$” in this Agreement refer to United States dollars.

## 10. Definitions

Unless otherwise specified in the rest of the Agreement, the following capitalized terms will have the meanings specified below.

- a. **“Affiliates”** shall mean any person or entity directly or indirectly Controlling, Controlled by or under common Control with a party to the Agreement, where **“Control”** means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity.
- b. **“Agreement”** means these OEM T&C’s and its exhibits or addenda (including any Territory-Specific Addenda), any applicable Service-Specific Addenda and Product-Specific Addenda, and any Order Forms that reference these OEM T&C’s.
- c. **“Claims”** means claims, demands, suits, or proceedings made or brought by a third party.
- d. **“CMC Service”** means the customer managed cloud service that empowers organizations to deploy and manage MicroStrategy ONE analytics solutions within their own cloud infrastructure, as further described in the CMC Service Guide.
- e. **“CMC Service Guide”** means the CMC Service Guide made available at [microstrategy.com](http://microstrategy.com), as modified from time to time by us.
- f. **“Confidential Information”** means all information that is identified as confidential at the time of disclosure by the Disclosing Party or reasonably should be known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. All Customer Data will be deemed your Confidential Information without any marking or further designation. All MicroStrategy Software, Services, the terms and conditions of the Agreement will be deemed our Confidential Information without any marking or further designation. Confidential Information shall not, however, include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party.
- g. **“Consulting Services”** means the consulting services provided by us according to our then-current Service-Specific Addenda when such services are purchased.
- h. **“Customer”** means a person or entity purchasing your OEM Solution.
- i. **“Customer Data”** means software (including machine images), data, text, audio, video, images, or other content of yours or a third-party that you or your representatives, or your customers, and their representatives utilize with the MicroStrategy Software or upload or transfer to the MCE Service.
- j. **“Documentation”** means the technical documentation or user manuals normally distributed or made available by us in connection with a MicroStrategy Product, including the MCE Service Guide and the CMC Service Guide.
- k. **“Losses”** means any loss, damage or costs finally awarded or entered into in an approved settlement hereunder (including, without limitation, reasonable attorneys' fees).
- l. **“Malicious Code”** means any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs.
- m. **“MCE Service”** means the MicroStrategy cloud environment service, a platform-as-a-service offering that we manage on your behalf in an Amazon Web Services, Microsoft Azure or Google Cloud environment that includes access to, collectively: (i) the cloud platform version of MicroStrategy Software licensed by you; (ii) Cloud Support (as defined in the MCE Service Guide); and (iii) the Additional PaaS Components (as defined in the MCE Service Guide) for the use with such MicroStrategy Software.
- n. **“MCE Service Guide”** means the MCE Service Guide made available at [microstrategy.com](http://microstrategy.com), as modified from time to time by us.
- o. **“MicroStrategy Software”** means a generally available MicroStrategy software product identified on an Order Form that is licensed or made available to you pursuant to the terms of the Agreement.
- p. **“MicroStrategy Products”** means the MicroStrategy Software and any other Services. A list of MicroStrategy Products is set forth at [products.microstrategy.com](http://products.microstrategy.com).
- q. **“Named User”** means (i) a single identifiable individual with unique login credentials enabling use of or access to



MicroStrategy Products; (ii) individuals, collectively deemed one Named User, non-concurrently using a generic login credential enabling use of or access to MicroStrategy Products; or (iii) a single individual without login credentials who receives Reports directly from the MicroStrategy Products.

- r. **"OEM Solution"** means the solution that you develop and market under your brand which embeds MicroStrategy Products, as described in the Order Form.
- s. **"Order Form"** means an order form entered into between you and MicroStrategy for MicroStrategy Products.
- t. **"Order Term"** means the term of the license or service set forth in an Order Form for the provision of the relevant MicroStrategy Products, including all renewals in accordance with the Agreement.
- u. **"Product-Specific Addenda"** means the Product-Specific Addenda made available at microstrategy.com, as may be modified from time to time by us.
- v. **"Protected Data"** means any data or information that is considered "Personal Data," "Protected Health Information," "Personally Identifiable Information" or similar terms under applicable law.
- w. **"Reports"** means reports, analyses, dashboards, dossiers and other similar output generated by your use of MicroStrategy Products.
- x. **"Restricted Country"** means any country or territory that is or becomes subject to comprehensive OFAC sanctions by the United States or another applicable country or prohibited from receiving MicroStrategy Products under applicable export controls (including, but not limited to, Belarus, Cuba, Iran, North Korea, Russia, Syria, and the Crimea, Luhansk People's Republic ("LNR"), and Donetsk People's Republic ("DNR") regions of Ukraine).
- y. **"Restricted Party"** means any person or entity that is (i) listed on any of the lists of persons or entities maintained by the United States government or any other applicable government that prohibit such persons or entities from receiving exports or services; (ii) owned 50% or more by one or more parties on an OFAC list; or (iii) a national or resident of, or an entity or governmental authority in a Restricted Country.
- z. **"Services"** means the cloud-hosted version of the MicroStrategy Software, as well as the MCE Service, CMC Service, Technical Support Services, Consulting Services, and any other services identified in an Order Form.
- aa. **"Service-Specific Addenda"** means the Service-Specific Addenda made available at microstrategy.com, as modified from time to time by us.
- bb. **"Sub-Distributor"** means a third party who has entered into a written agreement with you for the distribution of the OEM Solution containing terms and conditions substantially similar to the terms of the Agreement.
- cc. **"Taxes"** means taxes, levies, duties, or similar governmental assessments of any nature, including, for example, any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction, but excluding any taxes based on net income, property, or employees of MicroStrategy.
- dd. **"Technical Support Services"** means the technical support and maintenance services provided by us when such services are purchased according to our then-current Technical Support Services Policy & Procedures made available at microstrategy.com, as modified from time to time by us.
- ee. **"Update"** means a later commercial release of a MicroStrategy Product made available after you access or use the MicroStrategy Product.