

Last Revised: March 23, 2015

THE TERMS AND CONDITIONS SET FORTH BELOW GOVERN YOUR USE OF THE CUSTOMER HOSTED SERVICE. BY SIGNING AND SUBMITTING A REGISTRATION FORM REFERENCING THESE TERMS AND CONDITIONS ("REGISTRATION FORM" AND, TOGETHER WITH THESE TERMS AND CONDITIONS, THE "AGREEMENT"), YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH BELOW. CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS AGREEMENT HAVE THE MEANINGS GIVEN TO THEM IN THE REGISTRATION FORM.

## 1. GRANT OF PRODUCT LICENSES AND IMPLEMENTATION

During the Subscription Term we grant you a non-exclusive and non-transferable license, subject to the terms and conditions of this Agreement and in accordance with applicable Law, to (i) install one instance of the Usher Security Server code and any other software listed on Exhibit B of your Registration Form that we provide to you (collectively, the "Usher Code") on servers under your or another Approved Third Party Host's (as defined below) exclusive logical control that is located in the country to which the Usher Code is delivered (the "Customer Hosted Server"), (ii) operate the Customer Hosted Server and grant Users and your Account Administrators access to the Customer Hosted Server from anywhere in the world, in each case solely for the purpose of utilizing the Customer Hosted Service and solely in support of your internal business operations, (iii) make copies of the Usher Code (a) for production purposes, not exceeding the number of copies needed to support your current use of the Customer Hosted Service, and (b) as reasonably necessary for non-production purposes, such as testing, development, archival, back-up, and disaster recovery purposes, (iv) permit your service providers to access and use the Customer Hosted Server, provided such use is to support your use of the Customer Hosted Service as permitted by this Agreement, and (v) if you are provided with a version of the Usher software development kit (a "SDK") in connection with this Agreement, and your use of the SDK is not otherwise subject to a separate production license between you and us, install, use and execute the SDK solely for the purpose of internal development, research and design of a version of the Application containing your branding (a "White Label Application"), and provision of such White Label Application to your Users as part of the Customer Hosted Service.

You may have a third party that is approved in writing by us ("Approved Third Party Host") host the Usher Code solely on the Customer Hosted Server and solely for the purpose of making the Usher Code available to you for your use in accordance with this Agreement. In order to use an Approved Third Party Host, you must enter into an agreement with such party that is at least as protective of us as this Agreement ("Hosting Agreement"), including with respect to confidentiality, reverse engineering, audit rights, liability limits, indemnification and intellectual property protection. Each Hosting Agreement must (i) expressly specify that we and our Affiliates are third party beneficiaries of such agreement and (ii) be approved by us in writing prior to its execution.

## 2. INTELLECTUAL PROPERTY OWNERSHIP

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

## 3. YOUR RESPONSIBILITIES

You are responsible for all activity occurring under your User accounts and you are responsible for your Users' use of the Customer Hosted Service and Customer Content. If you become aware of any violation of your obligations under this Agreement by a User, you will immediately terminate such User's access to the Customer Hosted Service and Customer Content. We and our Affiliates are not responsible for unauthorized access to your User accounts, except to the extent caused by our breach of this Agreement.

You and your Users shall only use the Customer Hosted Service in accordance with applicable local, state, national and foreign laws, treaties and regulations, including but not limited to all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control (collectively, "Law"). For clarity, you are solely responsible for compliance with all Laws related to your use the Customer Hosted Service, including the collection, transfer and processing of Customer Content and Usage Information, and the provision and use of Customer Content to and by Users, in all regions in which any of the foregoing occur. You acknowledge and agree that the Customer Hosted Service may contain proprietary software components provided by our third party suppliers and/or executable versions of open source software (collectively, "Third Party Software"), and that your and your Users' use of the Third Party Software is subject to this Agreement and to any terms and conditions associated with the Third Party Software that are referenced herein and/or provided or referenced on <https://go.usher.com> (or a related or successor URL) or the documentation provided with the Usher Code ("Third Party Terms").

You and your Users shall not: (a) use the Customer Hosted Service in any manner or for any purpose other than as expressly permitted by this Agreement; (b) modify, tamper with, or otherwise create derivative works of the Customer Hosted Service or any software included in the Customer Hosted Service; (c) reverse engineer or apply any other process or procedure to derive the source code of any software (including the Usher Code) included in the Customer Hosted Service; or (d) access or use the Customer Hosted Service in a way intended to avoid incurring fees or exceeding usage limits or quotas (items (a) through (d), collectively, the "Use Restrictions"). THE CUSTOMER HOSTED SERVICE IS NOT DESIGNED TO AND SHOULD NOT BE USED TO MANAGE PHYSICAL OR LOGICAL ACCESS TO FACILITIES OR SYSTEMS WHERE DELAY IN OR FAILURE OF SUCH ACCESS COULD THREATEN HEALTH OR SAFETY, OR CAUSE PROPERTY, ENVIRONMENTAL OR SIMILAR DAMAGE OR LOSS, AND YOU AGREE NOT TO USE THE CUSTOMER HOSTED SERVICE TO MANAGE SUCH ACCESS UNLESS YOU PROVIDE A FAILSAFE MECHANISM FOR LOCAL BYPASS OF THE CUSTOMER HOSTED SERVICE FOR USE IN AN EMERGENCY FOR WHICH YOU WILL BE FULLY RESPONSIBLE.

Except for our responsibilities as expressly set forth in this Agreement, you are responsible for: (1) the development, content, operation, maintenance, and use of Customer Content; and (2) the compliance of Customer Content with all Laws that may apply to Customer Content and all policies that may be established for or by the platforms (such as application stores) ("Platforms") that we or our Affiliates utilize in developing and making available the Customer Hosted Service ("Platform Policies").

#### 4. END USER TERMS

You will enter into binding and enforceable agreements with each User including terms of service and privacy policies that govern such User's access to and use of the Application and any content contained therein (the "Application Policies"). The Application Policies must be consistent with the terms of this Agreement, must comply with all applicable Platform Policies and Third Party Terms, and must at a minimum meet the following requirements (together, the "End User Minimum Terms"):

- 1) The Application Policies must (i) contain a disclaimer of all warranties and a waiver of consequential and indirect damages (including lost profits) in each case for the benefit of us and our Affiliates and licensors and enforceable by us, with respect to the Application and use of the Customer Hosted Service; (ii) disclaim all of our and our Affiliates' and licensors' liability to any User with respect to the Application and use of the Customer Hosted Service; and (iii) specify that each User may only seek remedies from you in connection with the Application and use of the Customer Hosted Service. The Application Policies must not limit your liability to Users beyond what is permitted by Law; and
- 2) Each User must (i) agree to comply with the Use Restrictions, and (ii) agree that you may of your own accord or at our direction suspend or terminate his or her account if he or she violates the Application Policies, Law, or otherwise may cause harm or liability to you or us (and you agree to so suspend or terminate an account if such circumstances occur and we so direct).

You are responsible for implementing the End User Minimum Terms in an enforceable manner, regardless of any documentation or other information we or our Affiliates may provide you. Neither the inclusion of the End User Minimum Terms in this Agreement nor any approvals, documentation or other information we or our Affiliates may provide to you constitutes legal (or other) advice. You will (i) comply with all Application Policies and (ii) promptly notify us of any complaints or requests for action by Users or others regarding the Application and promptly address such complaints in accordance with the Application Policies and Law.

#### 5. AUDIT RIGHTS

You will keep accurate and complete records relating to this Agreement, including records regarding the use, download, installation and other activities relating to the Customer Hosted Service, as well as all other records necessary to calculate the fees payable under this Agreement, in each case in accordance with generally recognized accounting principles and practices. We will have the right, on our own or through our independent auditors or advisors, to audit such records and/or your facilities upon five (5) business days' advanced notice to confirm your compliance with the terms of this Agreement. You will provide us with access to your personnel that were involved in the preparation of the documents that are being audited, and are otherwise requested by us to confirm your compliance with this Agreement. We may conduct any audit under this Section 5, and you will maintain all such records, during the Subscription Term and for two (2) years after expiration or termination of the Agreement. Any such audit will be performed during normal business hours. Upon our request, you will provide us with a report regarding User use of the Application, including the total number of Users of the Application and various Application features.

## 6. TERMINATION

This Agreement commences on the Effective Date and, except as otherwise provided in this Agreement, may only be terminated according to this Section. We may terminate this Agreement at any time by providing you at least thirty (30) days advance written notice. We may terminate this Agreement, or suspend or terminate your access to or terminate the Customer Hosted Service, at any time effective immediately if we determine that you are in breach of this Agreement.

You may terminate this Agreement upon notice to us if we breach a material provision of this Agreement and fail to cure the breach within thirty (30) days of such notice. Additionally, if we provide notice of modifications to these Terms and Conditions pursuant to Section 11 below that materially and adversely affect your rights or use of the Customer Hosted Service, you will have the right to terminate this Agreement during the period from the time we provide such notice until the time such modifications become effective pursuant to the notice.

Upon termination of this Agreement, you shall (i) promptly (and in any event within 30 calendar days) uninstall, remove or otherwise permanently delete the Usher Code and any other software provided by us in connection with the Customer Hosted Service from the Customer Hosted Server and (ii) immediately terminate all access to the Customer Hosted Service.

## 7. WARRANTIES

Each party warrants that it has the legal power and authority to enter into this Agreement.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE CUSTOMER HOSTED SERVICE IS PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WE, OUR AFFILIATES, AND OUR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE THAT THE CUSTOMER HOSTED SERVICE OR ANY CONTENT OF A THIRD PARTY MADE AVAILABLE THROUGH THE CUSTOMER HOSTED SERVICE WILL BE UNINTERRUPTED, ERROR FREE, OR FREE FROM HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT OR CONTENT OF A THIRD PARTY MADE AVAILABLE THROUGH THE CUSTOMER HOSTED SERVICE, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE, OUR AFFILIATES, AND OUR LICENSORS DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES OR COMMITMENTS, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE CUSTOMER HOSTED SERVICE OR ANY CONTENT OF A THIRD PARTY MADE AVAILABLE THROUGH THE CUSTOMER HOSTED SERVICE, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEMS INTEGRATION, TITLE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. WE, OUR AFFILIATES, AND OUR LICENSORS DISCLAIM ALL, AND YOU AGREE THAT YOU ARE NOT ENTITLED TO ANY, EQUITABLE OR IMPLIED INDEMNITIES.

## 8. INDEMNIFICATION

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

## 9. FORCE MAJEURE

NEITHER WE NOR ANY OF OUR AFFILIATES WILL BE LIABLE FOR ANY DELAY OR FAILURE TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT WHERE THE DELAY OR FAILURE RESULTS FROM ANY CAUSE BEYOND OUR REASONABLE CONTROL, INCLUDING ACTS OF GOD, LABOR DISPUTES OR OTHER INDUSTRIAL DISTURBANCES, ELECTRICAL OR POWER OUTAGE, UTILITIES OR TELECOMMUNICATIONS FAILURES, LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, EARTHQUAKE, STORMS OR OTHER ELEMENTS OF NATURE, BLOCKAGES, EMBARGOES, RIOTS, ACTS OR ORDERS OF GOVERNMENT, ACTS OF TERRORISM, OR WAR. YOU ARE RESPONSIBLE FOR THE PROPER OPERATION OF YOUR NETWORK AND YOUR EQUIPMENT USED TO HOST OR CONNECT TO THE CUSTOMER HOSTED SERVICE.

## 10. 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 THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF (I) THE FEES WE EARNED AND ACTUALLY RECEIVED FROM YOU UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INITIAL CLAIM GIVING RISE TO LIABILITY HEREUNDER AND (II) TEN THOUSAND U.S. DOLLARS (\$10,000).

IN NO EVENT SHALL WE OR ANY OF OUR AFFILIATES OR LICENSORS BE LIABLE TO YOU OR ANY OF YOUR AFFILIATES FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR YOUR OR YOUR AFFILIATES' USE OF THE CUSTOMER HOSTED SERVICE, EVEN IF WE 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.

## 11. MODIFICATIONS AND NOTICE

These Terms and Conditions may be modified by us from time to time. We will provide advance notice of any modifications that materially and adversely affect your rights or use of the Customer Hosted Service through an email to an Account Administrator, unless such modifications are in response to changes in Laws and it is not practicable for us to provide advance notice, in which case we will post such modified terms at [www.microstrategy.com/usher-customerhosted-terms](http://www.microstrategy.com/usher-customerhosted-terms). All such notices will be deemed delivered upon being posted or sent as indicated above and will become effective on the date specified in such notice or on the date posted, as applicable.

All other notices under this Agreement shall be in writing. Such other notices to be provided to you shall be delivered to the address that you provide to us in your Registration Form 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 deemed to have been given when (a) personally delivered or (b) sent by a commercial overnight courier to the following address: Usher Incorporated, Attention: General Counsel, 1850 Towers Crescent Plaza, Tysons Corner, Virginia, 22182, United States.

## 12. ASSIGNMENT

This Agreement may not be assigned or otherwise transferred by you, including by operation of law, without our prior written approval.

## 13. 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 its 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, other proprietary information 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 other party; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

Each party agrees to hold the other party's Confidential Information in confidence during the Subscription Term and for a period of five (5) years after the termination or expiration 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'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. Notwithstanding anything to the contrary in this Section 13, if your Registration Form contains a "Promotion" or similar section, the provisions of such section shall take precedence over any conflicting terms in this Section 13.

## 14. 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. We may access, use and transfer any 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.

## 15. 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. Additionally, any software and documentation that we or our Affiliates provide pursuant to this Agreement are "commercial items" as defined in FAR 2.101. Therefore, in accordance with FAR 12.211 (Technical data) and FAR 12.212 (Computer software) and, for U.S. Department of Defense Customers, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in commercial computer software or computer software documentation), all U.S. government end users acquire such software and documentation with only those rights set forth herein.

This Agreement and the parties' relationship under it shall be interpreted under and governed by the laws of the State of Delaware 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 Customer Hosted Service shall be subject to the exclusive jurisdiction of the state and federal courts with jurisdiction over Wilmington, Delaware. 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.

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 Customer Hosted Service. The failure of either you or us to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to in writing by the party otherwise entitled to exercise or enforce it. This Agreement comprises the entire agreement between you and us and supersedes all prior or contemporaneous negotiations, discussions, agreements or statements, whether written or oral. Any provision of this Agreement that would reasonably be expected to survive, shall survive the termination of this Agreement. There are no intended third party beneficiaries of this Agreement. You agree that your use of the Customer Hosted Service is not contingent upon the delivery of any future functionality or features of the Customer Hosted Service nor is such use dependent upon any oral or written comments made by us with respect to future functionality, features or compatibility of the Customer Hosted Service. You understand that we may from time to time make changes to the Customer Hosted Service in our discretion, including adding and removing features.

## 16. DEFINITIONS

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

"Customer Content" means software (including machine images and, if independently developed by you or on your behalf, the White Label Application), data, text, audio, video, images, or other content that you or any User uploads or transfers to, utilizes to access, or provides in connection with the Customer Hosted Service.

"Protected Data" means any data or information that is subject to regulation under applicable privacy and data protection legislation ("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).

"Usage Information" means information generated in connection with your and your Users' use of the Customer Hosted Service that the Customer Hosted Server and/or Application may collect about you and your Users.

"we," "us" and "our" refers to the MicroStrategy entity whose name appears on your Registration Form.

"you" and "your" refers to the entity that submitted the Registration Form.