



STANDARD USHER TERMS AND CONDITIONS

January 2015

THE TERMS AND CONDITIONS SET FORTH BELOW GOVERN YOUR USE OF THE USHER SERVICE. BY ELECTRONICALLY ACCEPTING SUCH TERMS AND CONDITIONS, YOU AGREE TO ENTER INTO AN AGREEMENT ("AGREEMENT") WITH US UNDER THE TERMS AND CONDITIONS SET FORTH BELOW. DEFINED TERMS ARE SET FORTH IN SECTION 14 BELOW.

1. ACCESS GRANT

During the Subscription Term, we grant you a non-exclusive and non-transferable right, subject to the terms and conditions of this Agreement and in accordance with applicable law, to grant Users access to the Usher Service from anywhere in the world at no charge, solely for the purpose of utilizing the Usher Service. We will make basic technical support available to your Account Administrators during normal business hours for the Usher Service during the Subscription Term.

2. YOUR RESPONSIBILITIES

You are responsible for all activity occurring under your User accounts and you are responsible for Users' use of the Usher Service and Customer Content. You will ensure that all Users comply with your obligations under this Agreement and that the terms of your agreement with each User, if any, are consistent with this Agreement. You shall promptly notify us of any unauthorized use of any password or account or any other known or suspected breach of security of the Usher Service. 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 Usher 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.

Your Users shall only use the Usher 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. For clarity, you are solely responsible for compliance with all laws related to your use the Usher 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 use of the Usher Service by your Users will be subject to the Terms of Use applicable to the Usher Service as found at www.microstrategy.com/us/usher-identity/terms-of-use (or a related or successor URL), as modified by us from time to time in accordance with the terms thereof.

You and your Users shall not: (a) use the Usher Service in any manner or for any purpose other than as expressly permitted by this Agreement; (b) modify, tamper with, repair, or otherwise create derivative works of the Usher Service or any software included in the Usher Service; (c) reverse engineer or apply any other process or procedure to derive the source code of any software included in the Usher Service; (d) interfere with or disrupt the integrity or performance of the Usher Service; (e) attempt to gain unauthorized access to the Usher Service or its related systems or networks; (f) use the Usher Service to store or transmit (i) material in violation of third-party privacy rights; (ii) libelous, or otherwise unlawful or tortious material; (iii) material that infringes any copyright, trademark, patent, trade secret or other proprietary right of any entity or individual; or (iv) viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs; or (g) access or use the Usher Service in a way intended to avoid incurring fees or exceeding usage limits or quotas. THE USHER 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 THEM TO MANAGE SUCH ACCESS UNLESS YOU PROVIDE A FAILSAFE MECHANISM FOR LOCAL BYPASS OF THE USHER 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 policies established by us for the Usher Service and all laws that may apply to Customer Content.

3. INTELLECTUAL PROPERTY OWNERSHIP

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

4. SUSPENSION OF ACCESS; REMOVAL OF CONTENT

We reserve the right to suspend your access to the Usher Service if you or any of your Users breach the “Your Responsibilities” Section or the “Data Protection” Section of this Agreement, and to remove any improper Customer Content uploaded or transferred to the Usher Service in violation of this Agreement.

5. TERMINATION

This Agreement commences on the Effective Date and, except as otherwise provided in this Agreement, may only be terminated according to this Section. Either party may terminate this Agreement upon notice to the other party at any time.

Upon termination of this Agreement, we will make all Customer Content available for your download in the format in which it was stored as part of the Usher Service for 30 days after termination, after which time it shall be deleted.

6. 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 USHER 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 USHER SERVICE OR ANY CONTENT OF A THIRD PARTY MADE AVAILABLE THROUGH THE USHER 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 USHER 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 USHER SERVICE OR ANY CONTENT OF A THIRD PARTY MADE AVAILABLE THROUGH THE USHER 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.

7. INDEMNIFICATION

You shall defend us, at your expense, against any 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 the “Your Responsibilities” Section or the “Data Protection” Section 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 Usher 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.

The provisions of this Section state the sole, exclusive and entire liability of the indemnifying party to the indemnified party, and are the indemnified party’s sole remedy, with respect to each type of Claim described in this Section.

8. FORCE MAJEURE

WE WILL NOT 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 CONNECT TO THE USHER SERVICE.

9. 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 ONE HUNDRED DOLLARS (\$100).

IN NO EVENT SHALL WE OR ANY OF OUR AFFILIATES OR LICENSORS BE LIABLE TO YOU 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 USE OF THE USHER 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.

10. DATA PROTECTION

As between you and us, for purposes of this Agreement and Applicable Data Protection Law, you are the “data controller” and we are acting on your behalf as a “data processor” with respect to Protected Data that you or your Users upload or transfer to the Usher Service. We have implemented reasonable technical, organizational, and security measures designed to safeguard and protect Protected Data provided by you to us under this Agreement and we may access, use and transfer such Protected Data to our Affiliates and third parties (including those located outside of the European Economic Area) only for the purposes of fulfilling our obligations and exercising our rights under this Agreement, providing information to you and complying with our legal and auditing requirements.

You are responsible for providing any notices and obtaining any consents and approvals from Users required to collect, process, transfer, maintain and use the data collected by you and/or the Usher Service from Users in connection with the Usher Service, including to allow us to perform in accordance with this Agreement.

We may access and use Customer Content, Usage Information and any other data collected in connection with the Usher Service] solely in accordance with the Usher Service privacy policy located at <https://go.usher.com> (or a related or successor URL) (“Usher Service Privacy Policy”), as such policy may be amended by us from time to time in accordance with its terms.

11. NOTICE AND MODIFICATION

We may give notices regarding the Usher Service to you by means of a general notice posted on <https://go.usher.com> (or a related or successor URL). Such notices shall be deemed to have been given the first time you (or any of your Users) log in to the Usher Service after the notice has been posted. Notices under the Usher Service Privacy Policy will be given in accordance with the terms of the policy.

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 writing in accordance with this Section or, if you do not provide such address, to the most current address for you that we have on file. All such notices to be provided to us shall be 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.

We may modify the terms of this Agreement at any time. Your continued use of the Usher Service after we have modified the terms of this Agreement confirms your acceptance of such modifications.

12. ASSIGNMENT

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

13. 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.

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 Usher 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.

The parties acknowledge that the terms of this Agreement as well as any software, technology, business plans or other proprietary information that we provide to you in connection with this Agreement are our confidential information and shall not be disclosed by you to any third party without our prior written consent.

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 Usher 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 Usher Service is not contingent upon the delivery of any future functionality or features of the Usher Service nor is such use dependent upon any oral or written public comments made by us with respect to future functionality or features of the Usher Service.

14. DEFINITIONS

"Account Administrator" means an individual designated by you to whom we will make available access to the Usher Service's administration interface to register Users and to view reports regarding your Users' use of the Usher Service. You may designate up to five (5) Account Administrators under this Agreement.

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

"Applicable Data Protection Law" means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Protected Data including, without limitation, the European Union Directives governing general data protection and all applicable industry standards concerning privacy, data protection, confidentiality or information security.

"Customer Content" means software (including machine images), data, text, audio, video, images, or other content that you or any User uploads or transfers to the Usher Service.

"Effective Date" means the date on which you electronically accept the terms of this Agreement.

"Protected Data" means any data or information that is subject to regulation under Applicable Data Protection Law, including without limitation Personal Data, Protected Health Information and Personally Identifiable Information (as such terms are defined in Applicable Data Protection Law).

"Subscription Term" means the period beginning on the Effective Date and ending on the earliest of (a) the date that is forty-five (45) days later (b) the date on which we no longer offer the Usher Service as a generally available product, or (c) the date on which we terminate this Agreement.

"Usage Information" means information generated in connection with your use of the Usher Service that we may collect about you and your Users, as further described in the Usher Service Privacy Policy. For the avoidance of doubt, in no instance shall Usage Information be deemed to include Customer Content.

"User" means an individual who you authorize to access the Usher Service.

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

"Usher Service" means our proprietary, standard Usher mobile identity platform that enables organizations to manage and validate the credentials of their Users by creating digital credentials for use on Users' smartphones in our Usher Application, including related tools, software and documentation, as may be modified or updated by us from time to time.

"we," "us" and "our" refers to Usher Incorporated or an Affiliate of Usher Incorporated located in the country where your company headquarters are located.

"you" and "your" refers to the entity that uses or accesses the Usher Service under the terms and conditions of this Agreement.