**Tealium Subscription**

**Terms and Conditions**

1. **Scope**

These Tealium Subscription Terms and Conditions (the "Terms and Conditions") form part of the Master Services Agreement (or "MSA") by and between Tealium Inc., ("Tealium") and Customer (as identified in the Service Order referencing these Terms and Conditions). These Terms and Conditions will apply to Customer’s use of the Services (as such terms are defined below) and to all Service Orders (as such term is defined below). The specific Services that Customer is entitled to receive and the Service Term during which Customer is entitled to receive such Services are all as identified in the Service Orders. To the extent there is any conflict or inconsistency between the terms of a Service Order and other terms of this MSA, the terms of the Service Order will control solely with respect to such conflict or inconsistency.

1. **Definitions**
	1. "Additional Usage Fee" or "Overage Fee" means the fee or fees identified on the applicable Service Orders that will apply if Customer's use of the Services exceeds the Authorized Usage Level.
	2. "Attribute" means a unique characteristic of a Visitor or a particular visit to Customer’s Digital Property that collects in the Tealium customer data platform. Examples of Attributes include visit duration, favorite product, active browser, badged visitor, exit URL, and date of purchase. Attribute limitations will be specified in the applicable Service Order.
	3. "Authorized Usage Level" means the maximum number of Sessions, or Events, or Attributes or other usage units (as specified on the applicable Service Order) that can be initiated using the Services without incurring an Additional Usage Fee.
	4. "Code" means any and all HTML code, JavaScript, mobile SDK or other computer language code or instructions that Tealium provides to Customer in conjunction with the Services. The Code will be deemed part of the Tealium Technology as such Technology is defined below.
	5. "Collect Tag" means the single, specific piece of Code that enables the collection of data from Digital Properties and transmission of that data to the Services.
	6. "Confidential Information" means any information disclosed by one Party to the other in writing and marked "confidential" or disclosed orally and, within ten (10) business days of disclosure, reduced to writing and marked "confidential" and information which is not marked as "confidential" which should, under the circumstances, be understood to be confidential by a person exercising reasonable business judgment. Without limiting the foregoing, Tealium Technology will be deemed Tealium Confidential Information and Customer Data will be deemed Customer Confidential Information.
	7. "Connector" means a connection between Tealium servers and a Customer-selected vendor’s servers as implemented in connection with the Tealium AudienceStream or EventStream Service.
	8. "Connector Action" means a specific configuration in a Connector that enables a specific stream of Event or Visitor data to a specific API.
	9. "Connector Call" means Event or Visitor data transmitted from a Tealium server via a Connector Action.
	10. "Customer Data" means electronic data and information submitted by or for Customer to the Services.
	11. "Data Retention Period" means the period of time Event-related or audience-related data will be retained in a Customer-selected Tealium data storage Service. Customer Data will be retained for the Data Retention Period specified in the applicable Service order (or more in Tealium’s discretion)
	12. "Digital Property” (fka “Authorized Domain") means a domain, native app, mobile app, connected device, or digital instance owned or administered by Customer on which Services are deployed.
	13. "Documentation" means Tealium's published online help files.
	14. "Event" means any call made to Tealium's data collection servers, or any row of data uploaded to Tealium by or on behalf of Customer using Tealium's omnichannel capability, or any Connector Call, or other API call made to Tealium by or on behalf of Customer.
	15. "Highly Sensitive Data" means personally identifiable information whose unauthorized disclosure or use could reasonably entail a serious potential security or privacy risk for a data subject, including but not limited to government issued identification numbers such as national insurance numbers, passport numbers, driver’s license numbers, or similar identifier, or credit or debit card numbers, medical or financial information, and/or financial, medical or other account authentication data, such as passwords or PINs.
	16. “Personal Data” means information about an individual that can be used to identify, contact or locate a specific individual; can be combined with other information that is linked to a specific individual to identify, contact or locate a specific individual; or is defined as “personal data” or “personal information” by applicable laws or regulations relating to the collection, use, storage or disclosure of information about an identifiable individual.
	17. "Services" means any and all services, including use of the Code, purchased by Customer and provided by Tealium under this MSA.
	18. "Service Order" means a service order, including any attachments attached thereto, signed by Tealium and Customer, which sets forth the Services to be provided by Tealium, the schedule, the payment terms, and other terms relevant to the provision of the Services.
	19. "Session" means a discrete visit to a Digital Property by a Visitor where the Visitor does not leave the Digital Property and no more than thirty (30) minutes of inactivity between two (2) consecutive Visitor actions on the Digital Property occurs.
	20. "Technology" means any proprietary technology, including internet design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects, and documentation (both printed and electronic), know-how, trade secrets, and any related intellectual property rights throughout the world and any derivatives, improvements, enhancements, or extensions of such technology conceived, reduced to practice, or developed during the Term by the owner of such technology.
	21. "Visitor" means an individual who accesses Digital Properties on which the Services are implemented.
	22. "Visitor Profile Data" means Tealium provided data concerning Visitors associated with Tealium’s AudienceStream Service.
	23. "Visitor Profile Term" means the trailing period of time in which a Visitor must visit a Digital Property in order to be included in a given set of Visitor Profile Data. If a specific Visitor Profile Term is not defined on a given Service Order, the applicable Visitor Profile Term will be defined to be the thirteen (13) month period immediately preceding the time of measurement.
2. **Services and Service Levels; Customer Assistance**
	1. **Services.** During each applicable Service Term, Tealium will provide the Services to Customer. Each Service Order specifies an Authorized Usage Level. Customer will ensure that either (a) its use of the Services does not exceed its Authorized Usage Level or (b) if its use of the Services exceeds the Authorized Usage Level, it will pay the Additional Usage Fee invoiced by Tealium according to the terms of the applicable Service Order and Section 4 below. During the applicable Service Term, (a) Customer is authorized to use the Services on all Digital Properties in accordance with the MSA, and (b) Tealium grants Customer a limited, non-exclusive, non-transferable (with no right to sublicense) right and license to copy the Code only for insertion in Digital Properties for use in connection with the Services. Tealium does not grant any other rights to the Code. Tealium reserves all rights not expressly granted under this MSA, and there are no implied rights granted by Tealium hereunder, whether by estoppel or otherwise.
	2. **Service Level Agreement.** Tealium will use commercially reasonable efforts to provide the Services in accordance with the service levels set forth in the service level agreement attached hereto as Attachment A (the "SLA"). Except as otherwise provided in this MSA, the remedies set forth in the SLA will be Tealium’s sole liability, and Customer’s sole and exclusive remedy, for any failure of Tealium to provide the Services in accordance with the SLA.
	3. **Customer Assistance.** Customer will supply Tealium personnel with such information, resources, and assistance as Tealium may reasonably request. Customer acknowledges and agrees that Tealium’s ability to successfully provide the Services in a timely manner is contingent upon its timely receipt from Customer of such information, resources and assistance as may be reasonably requested by Tealium. Tealium will have no liability for failure to perform or deficiencies or delays in the Services resulting from the acts or omissions of Customer, its agents, or employees or performance of the Services in accordance with Customer’s instructions. Without limiting the foregoing, if Tealium is unable to deploy all of the Services specified in the Service Order as a result of delay attributable to Customer, then all set-up fees specified in the Service Order will be deemed earned by Tealium and payable by Customer.
3. **Payments**

Customer will pay the fees in the amounts and at the times stated in each Service Order and further agrees to pay undisputed invoice(s) in full within thirty (30) days after receipt thereof. Any payment not received when due will accrue interest on the outstanding amount at the greater of: (a) a rate of four percent (4%) per annum above the base rate of the Bank of England from time to time; or (b) the rate as prescribed from time to time by the Late Payment of Commercial Debts (Interest) Act 1998, calculated on a daily basis. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer will pay the interest together with the overdue amount.

 All sums payable under this MSA are exclusive of: (i) VAT, GST or any relevant local sales or use taxes; (ii) income taxes assessed by any governmental agencies, including, but not limited to withholdings and royalties; and (iii) other taxes and similar fees imposed on the delivery of Services, (collectively "Taxes").  Customer will be responsible for the payment of all Taxes except for taxes on Tealium’s income. Except as expressly set forth in this MSA, all fees due hereunder are non-refundable and are not contingent on any additional services or products to be provided by Tealium.

1. **Intellectual Property Ownership**

Customer acknowledges that Tealium, or its licensors, own and will, at all times, retain all right, title and interest in and to: (a) all Technology that Tealium makes, develops, conceives or reduces to practice, whether alone or jointly with others, in the course of performing the Services; and (b) all worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications and other proprietary rights related to the Tealium Technology. All suggestions, enhancement requests, feedback, recommendations or other input provided by Customer or any other party relating to the Services will be owned by Tealium. Neither this MSA nor its performance transfers from Tealium to Customer any Tealium Technology. Customer Data is owned by Customer. Tealium may use anonymized Customer Data to improve the Services, monitor usage and performance of the Services, and develop and provide additional products and services. Neither this MSA nor its performance transfers from Customer to Tealium any Customer Technology, and all right, title, and interest in and to Customer Technology remains solely with Customer.

1. **Restrictions**

Customer will not do or attempt to do, or permit any third party to do or attempt to do, any of the following: (a) make the Services, including its content or documentation, or any portion thereof available for use or access to or by any third party (other than Customer's contractors or consultants acting on behalf of Customer); (b) modify, reverse engineer, disassemble, decompile, reproduce or create derivative works from or in respect of the Services, Tealium Technology, or any component thereof; (c) use or access the Services or any part thereof in order to (i) develop a competitive or similar product or service or (ii) otherwise copy any features or functions of the Services, or the underlying software; (d) interfere with or disrupt or attempt to interfere with or disrupt the integrity or the performance of the Services; and (e) gain or provide unauthorized access to the Services or its related systems or networks. Customer will use the Services only for its own internal business operations, and only on Digital Properties owned or administered by Customer. If Customer subscribes to the Tealium iQ Collect Service, then in addition to all other applicable restrictions, Customer may deploy only the Collect Tag for use in conjunction with the Services and only for transmitting data to Tealium.

1. **Confidentiality**
	1. **Obligations.** Each Party agrees that it will (a) hold the other Party’s Confidential Information in confidence using the same standard of care it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care; (b) not disclose the Confidential Information of the other to any third party without the other’s prior written consent, except as expressly permitted under this MSA; (c) limit access to the other’s Confidential Information to those of its employees, or agents having a need to know who are bound by confidentiality obligations at least as restrictive as those set forth herein; and (d) use the other Party’s Confidential Information solely to perform its obligations or receive its benefits under this MSA. The obligations set forth in this Section 7 will apply during the Term set forth in Section 11.1 and will continue for a period that will end five (5) years after the expiration or termination of this MSA. Following termination of this MSA and upon request of the disclosing Party, all Confidential Information in any form and any copies thereof in the custody and control of the receiving Party will be deleted, destroyed or returned.
	2. **Exclusions**. The restrictions on the use and disclosure of Confidential Information will not apply to any Confidential Information, or portion thereof, which (a) is or becomes publicly known through no act or omission of the receiving Party; (b) is lawfully received from a third party without restriction on disclosure; (c) is already known by the receiving Party at the time it is disclosed by the disclosing Party, as shown by the receiving Party’s written records; or (d) is independently developed by the receiving Party without reference to the disclosing Party’s Confidential Information, as shown by the receiving Party’s written records. Notwithstanding the foregoing, either Party may make disclosures as required or requested by a court of law or any governmental entity or agency, including but not limited to disclosures required by the Securities and Exchange Commission of the United States or any similar authority in any other country, provided that, to the extent permitted under applicable law, such Party provides the other with reasonable prior notice to enable such Party to seek confidential treatment of such information; and either Party may disclose the terms and conditions of this MSA to potential investors, acquisition partners and its legal counsel and accountants in connection with a proposed financing or acquisition, provided that each such third party is bound by confidentiality obligations at least as restrictive as those set forth herein.
	3. **Injunctive Relief**. Each Party acknowledges that a breach or threatened breach of this Section 7 would cause irreparable harm to the non-breaching Party, the extent of which would be difficult to ascertain. Accordingly, each Party agrees that, in addition to any other remedies to which a Party may be legally entitled, the non-breaching Party will have the right to seek immediate injunctive or other equitable relief in the event of a breach of this Section 7 by the other Party or any of its employees or agents.
2. **Warranties**
	1. **Tealium Warranties**. Tealium warrants that the professional services will be performed in a professional and workmanlike manner in accordance with recognized industry standards and that the Services will perform substantially in accordance with the Documentation. Customer must notify Tealium of any warranty deficiencies within sixty (60) days after performance of the relevant Services in order to receive warranty remedies. Regarding any Services provided by Tealium that are advisory, no specific result is assured or warranted by Tealium.
	2. **Customer Warranties.** Customer warrants that it will use the Services only in accordance with the MSA, including Tealium’s acceptable use policy attached hereto as Attachment C, and with all applicable laws and government regulations, including the General Data Protection Regulation 2016/679 (the “GDPR”) and any subordinate legislation and regulation implementing the GDPR.
	3. **Warranty Disclaimer.** EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 8.1 ABOVE, THE SERVICES ARE PROVIDED SOLELY ON AN "AS IS," AND "AS AVAILABLE BASIS" WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, TEALIUM EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE; NONINFRINGEMENT; AND THAT THE OPERATION OR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
3. **Indemnification**

**9.1** **Tealium Indemnification of Customer**.

(a) Tealium will defend, at its expense, a third party action, suit, or proceeding (a "Claim") against Customer, its subsidiaries, and its and their directors, officers, employees and agents (the "Customer Indemnified Parties") to the extent such Claim alleges that the Services infringe a valid patent of a third party enforceable in the United States. In addition, Tealium will indemnify the Indemnified Parties for all losses, liabilities, damages, and expenses (including reasonable attorneys’ fees) finally awarded to a third party by a court of competent jurisdiction or agreed to by Tealium in a settlement that are directly attributable to a Claim. Tealium will have no defense or payment obligation or other liability for any Claim arising from: (1) use of the Services in a manner contrary to the terms of this MSA; (2) modification of the Services by anyone other than Tealium or a party authorized in writing by Tealium to modify the Services; (3) the combination of the Services with any other products, services, hardware, software, or other materials if such Services would not be infringing without such combination; or (4) any third party products, services, hardware, software, or other materials not provided by Tealium.

(b) If Customer’s use of the Services under the terms of this MSA infringes or Tealium determines that such use may infringe, then Tealium, at its sole option and expense, may either (1) procure for Customer a license to continue using the Services in accordance with the terms of this MSA; (2) replace or modify the allegedly infringing Services to avoid the infringement; or (3) terminate the Services and refund any prepaid unused amounts on a pro-rata basis. The provisions of this Section 9.1 constitute Tealium’s exclusive obligation and Customer’s exclusive remedy for third-party infringement claims.

**9.2** **Customer Indemnification of Tealium**. Customer will defend, at its expense, a Claim against Tealium, its subsidiaries, and its and their directors, officers, employees and agents (the "Tealium Indemnified Parties") to the extent such Claim arises from or is related to (a) a breach by Customer of the MSA; or (b) Customer Data or processing instructions Customer submits or uses in connection with the Services. In addition, Customer will indemnify the Tealium Indemnified Parties for all losses, liabilities, damages, and expenses (including reasonable attorneys’ fees) finally awarded to a third party by a court of competent jurisdiction or agreed to by Customer in a settlement that are directly attributable to a Claim.

**9.3** **Indemnity Procedure**. Each Party's indemnification obligations set forth in this Section are conditioned upon the indemnifying Party providing the indemnified Party with information and assistance for the defense of such Claim including any settlement; the indemnifying Party being notified promptly in writing of the Claim (provided that failure to provide such prompt notice will not relieve the indemnifying Party from its liability or obligation hereunder, except to the extent of any material prejudice as a direct result of such failure); and the indemnifying Party having sole control of the defense of such Claim and all negotiations for its settlement or compromise (provided, however, that the indemnifying Party must obtain the prior written consent of the indemnified Party before settling a Claim against the indemnified Party to the extent that said settlement fails to fully release the indemnified Party from liability for the Claim or includes an admission of guilt by the indemnified Party).

1. **Limitation of Liability**

(a) EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4, BREACH OF CUSTOMER’S RESTRICTIONS UNDER SECTION 6, AND EACH PARTY'S INDEMNITY OBLIGATIONS UNDER SECTION 9, NEITHER PARTY’S AGGREGATE LIABILITY FOR CLAIMS ARISING OUT OF THIS MSA OR ITS PERFORMANCE HEREUNDER, WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO TEALIUM UNDER THIS MSA DURING THE SIX (6) MONTHS PRECEDING THE CLAIM.

(b) NOTWITHSTANDING ANY PROVISION OF THIS MSA TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF DATA, LOSS OF BUSINESS PROFITS, DEPRECIATION OF STOCK PRICE, BUSINESS INTERRUPTION, OR OTHER SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THE SERVICES, OR OTHERWISE UNDER THIS MSA, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

(C) NOTHING IN THIS MSA EXCLUDES LIABILITY FOR: (i) DEATH OR PERSONAL INJURY CAUSED BY A PARTY’S NEGLIGENCE OR THAT OF ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS; (ii) FRAUD OR FRAUDULENT MISREPRESENTATION; (iii) BREACH OF THE OBLIGATIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979 OR SECTION 2 OF THE SUPPLY OF GOODS AND SERVICES ACT 1982; OR (iv) ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

1. **Term and Termination**
	1. **Term.** The term of this MSA (the "Term") begins on the Effective Date and continues until the expiration of all the Service Terms of all Service Orders unless earlier terminated in accordance with this MSA.
	2. **Service Terms.** Each Service Order will provide for a service term (each a “Service Term”). At the end of the Service Term of any Service Order, unless either Party gives written notice to the other Party of its intention not to renew at least ninety (90) days before the end of a service term, the term of such Service Order will automatically renew for successive twelve (12) month periods. Termination of one Service Order will not affect the term of any other Service Order.
	3. **Termination for Breach or Insolvency.** Either Party may terminate this MSA upon written notice to the other Party, for any material breach by the other Party if such breach is not cured within thirty (30) days following written notice of such breach from the non-breaching Party. Upon termination by Customer for Tealium’s breach, Tealium will refund any unearned portion of prepaid usage fees. If Customer is late in paying fees that are due, Tealium may, without terminating this MSA, deny or otherwise suspend Services until Customer makes the overdue payments.
	4. **Effect of Termination.** Upon expiration or termination of this MSA, Tealium will stop providing Services, all licenses granted by Tealium hereunder will terminate, Customer will cease all use of the Services, and Customer will remove all copies of Code from its Digital Properties. Any payment obligations of Customer, and the provisions of Sections 2, 4, 5, 6, 7, 8.2, 9, 10, 11.4, and Sections 12-25 inclusive will survive termination or expiration of this MSA.
2. **Data Protection.** As between Tealium and Customer, with regard to personal data, Tealium is the data processor and Customer is the data controller. For purposes of this Section 12, the terms “data controller”, “data processor”, “subprocessor”, “process” and “data subject” shall have the meaning given in the GDPR.
	1. **Obligations of Customer**. Customer will: (a) use the Services in accordance with all applicable data protection laws and regulations, including as of May 25, 2018, the GDPR (collectively, the "Privacy Laws"); (b) provide instruction to Tealium and determine the purposes and general means of Tealium’s processing of Personal Data on behalf of Customer under the MSA; and (c) comply with its personal data protection, security and other obligations prescribed by Privacy Laws for data controllers by, without limitation, meeting its obligations under the Privacy Laws to: (i) establish and maintain a procedure for the exercise of the rights of the data subjects whose Personal Data are processed on behalf of Customer; (ii) process only Personal Data that have been lawfully and validly collected, including consent where consent is required under the Privacy Laws, and ensure that such Personal Data will be relevant and proportionate to the respective uses; (iii) ensure compliance with the provisions of this Section 12 by its personnel and by any person accessing or using Personal Data on its behalf; (iv) not transmit to Tealium nor require Tealium to process any Highly Sensitive Data; and (v) encrypt any Personal Data before transmitting such Personal Data to Tealium using secure industry standard protocols.
	2. **Obligations of Tealium**. Tealium will process any such Personal Data only in accordance with Customer’s instructions and will not process such Personal Data for any other purpose. Tealium warrants that, having regard to the state of technological development and the cost of implementing any measures, it will: (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to: (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and (ii) the nature of the data to be protected, and (b) take reasonable steps to ensure compliance with those measures. Tealium may authorise a third party subprocessor ("Sub-Contractor") to process any Personal Data transferred by Customer to Tealium, provided that the Sub-Contractor's contract: (y) is on terms which are substantially the same as those set out in this MSA; and (z) terminates automatically on termination of this MSA for any reason, unless otherwise agreed in writing between the Parties.
3. **Notices**

All notices permitted or required under this MSA will be in writing, and will be deemed effective when: (a) delivered by personal delivery, (b) confirmed by the recipient, for notices delivered by electronic mail or facsimile transmission, or (c) three (3) days after being sent by certified or registered mail (return receipt requested) or overnight courier. Notices will be sent to the addresses set forth in this MSA or such other address as either Party may specify in writing.

1. **Publicity**

During the Term, Customer agrees that Tealium may refer to this MSA in a press release and use Customer's name and logo on its web site for the limited purpose of identifying Customer as a user of Services; provided that (a) Tealium will comply with any and all guidance Customer provides concerning such use of Customer's logo and (b) Tealium will secure Customer's prior written approval before using Customer's logo in any other manner.

1. **Law and Jurisdiction**

If Customer’s principal place of business is the same as a country set forth on Attachment B, both Parties agree to the application of the laws of that country without regard to conflict of law principles. Nothing in this MSA affects statutory rights of consumers that cannot be waived or limited by contract. Except as set forth above, this MSA and any dispute arising out of or in connection with it (including non-contractual disputes or claims) will be construed and enforced in accordance with English law. Except for any action for injunctive or other equitable relief (which may be brought at any time in any court of competent jurisdiction), the courts of England will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this MSA or its subject matter or formation (including non-contractual disputes or claims). The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this MSA.

1. **Severability; Waiver**

If any term or, provision of this MSA is held to be invalid or unenforceable by any court of competent jurisdiction, such provision will be construed to effectuate to the greatest possible extent the Parties’ expressed intent, and the remainder of this MSA will not be affected and will remain valid and enforceable. The failure of either Party to exercise or enforce any right or provision of this MSA will not constitute a waiver of such right or provision, and any waiver granted by a Party in one instance does not constitute a waiver for other instances.

1. **Independent Contractors**

The relationship between the Parties is solely that of independent contractors, and neither Party will have any authority to bind or commit the other. Nothing in this MSA will be deemed or construed to create a joint venture, partnership, employment, or agency relationship between the Parties for any purpose.

1. **Assignment**

Neither this MSA nor any of the rights or duties arising out of this MSA may be assigned by Tealium or Customer without the prior written consent of the other Party, such consent not to be unreasonably withheld; except that either Party may, without such consent, assign this MSA and its rights and duties arising out of this MSA to the transferee, or other successor in interest, in connection with the sale or transfer of all or substantially all of its assets or in connection with any reincorporation, merger, acquisition, re-organization, or consolidation. Any attempted assignment in violation of the foregoing will be void.

1. **Headings.**

The headings used for the sections of this MSA are for information purposes and convenience only and do not define, limit, construe or describe the scope or extent of the sections.

1. **Compliance With Applicable Law**

It will be a condition of this MSA that, in pre-contract negotiations and in use of the Services granted under this MSA, each Party has complied with and will at all times comply with its respective obligations under all applicable laws, enactments, orders and other governmental, statutory or regulatory requirements and guidance, including but not limited to the Privacy Laws and applicable laws regarding bribery and corruption. Customer will comply with Tealium’s acceptable use policy attached hereto as Attachment C and made a part hereof.

1. **Counterparts**

This MSA (including any attachments or exhibits attached to or incorporated into this MSA by reference) may be executed in any number of counterparts, each of which when executed will constitute a duplicate original, but all the counterparts will together constitute the one MSA.

1. **Entire Agreement**

This MSA constitutes the complete and entire agreement between the Parties with regard to the subject matter hereof, and supersedes and replaces any prior or contemporaneous agreements between the Parties regarding such subject matter. No oral or written representation that is not expressly contained in this MSA is binding on Tealium or Customer. No amendment to this MSA or any Service Order will be binding on either Party unless in writing and signed by both Parties.

1. **Term Construction**

**23.1** Unless the context otherwise requires:

(a) words in the singular will include the plural and vice versa;

(b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

(c) a reference to one gender will include a reference to the other genders; and

(d) any words following the terms including, include, in particular, for example or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase, or term preceding those terms.

**23.2** In the case of conflict or ambiguity between any provision contained in the body of this MSA and any provision contained a Service Order, the provision in the Service Order will take precedence.

**23.3** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

**23.4** References to Sections are to the Sections of this MSA.

1. **Third Party Beneficiaries**

This MSA does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties and a person who is not a party to this MSA will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this MSA.

1. **Force Majeure**

Neither Party will be liable for any breach of the MSA, other than any default in payment obligations, for any delay or failure of performance resulting from any cause beyond such Party’s reasonable control, including but not limited to the weather, unavailability of utilities or communications services (including access to the Internet), civil disturbances, acts of civil or military authorities, or acts of God.

**ATTACHMENT A**

**Service Level Agreement**

This Service Level Agreement ("SLA") applies to uptime levels of the Services.

**1. Service Commitment.** Tealium will use commercially reasonable efforts to make the Services available with a Monthly Uptime Percentage (defined below) of at least 99.9% during any month (the "Service Commitment"). In the event the Services do not meet the Service Commitment, Customer will be eligible to receive a Service Credit as described below.

**2. Definitions.**

(a) "Monthly Uptime Percentage" means the percentage of time within a given calendar month the Services are Available. "Available" or "Availability" means the Service is in an operable state, and the Service can be accessed through programmatic access (APIs, tags, HTTP requests/responses) or user interface access as applicable to the particular Service. Solely for Delivery Network performance, "Available" means Delivery Network servers are responding to requests for Libraries.

(b) "Monthly Subscription Amount" means the contracted amount for the Services for the Service Term, divided by the number of months in the Service Term (excluding fees for implementation, managed, and professional services and Additional Usage Fees).

(c) A "Service Credit" is a credit, calculated as set forth below, that Tealium may credit towards future invoices to Customer.

(d) "Delivery Network" means the content delivery network service providers used in connection with certain Services for the purpose of serving Tealium JavaScript or other Service related files ("Libraries").

**3. Service Credits.** Service Credits are calculated as a percentage of the Monthly Subscription Amount for the specific Service for the month in which the Service Commitment for a particular Service was not met in accordance with the schedule below. Tealium will apply any Service Credits only against future payments. If Customer has prepaid in full for all Services under the Agreement, in the event the MSA expires and is not renewed, Customer will be entitled to a refund of the Service Credit amount upon written request to Tealium. Customer’s sole and exclusive remedy for any failure of the Services to meet the Service Commitment is the receipt of a Service Credit in accordance with the terms of this SLA. Service Credits may not be transferred or applied to any other Customer account.

* If the Monthly Uptime Percentage is less than 99.9% but equal to or greater than 99%, then the Service Credit will equal 10% of the Monthly Subscription Amount.
* If the Monthly Uptime Percentage is less than 99%, then the Service Credit will equal 20% of the Monthly Subscription Amount.

**4. Credit Request and Payment Procedures.** To receive a Service Credit, Customer must submit a request by sending an e-mail message to services@tealium.com. To be eligible, the credit request must (a) include a reasonably detailed list of the instances of unavailability that together evidence Tealium's failure to meet Service Commitment in a given month; (b) include, in the body of the e-mail, the dates and times of each incident that Customer claims to have experienced; (c) include Customer’s server request logs that document and corroborate Customer’s claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks); and (d) be received by Tealium within ten (10) business days after the end of the month in which the errors occurred. If the Monthly Uptime Percentage applicable to the month of such request is confirmed by Tealium and is less than 99.9%, then Tealium will issue the Service Credit to Customer within ten (10) business days following the month in which the Service Commitment was not met. In order for Credit to be awarded, Tealium must be able to independently verify the instances of unavailability reported by Customer pursuant to this Section 4.

**5. SLA Exclusions.** The Service Commitment does not apply to any Service unavailability or other performance issues: (a) caused by factors outside of Tealium’s reasonable control, including any Force Majeure event or Internet access or related problems beyond the demarcation point of Tealium's network or the Delivery Network; (b) that result from any actions or inactions of Customer or any third party; (c) that result from Customer’s equipment, software or other technology or third party equipment, software or other technology (other than third party equipment within Tealium’s direct control); (d) arising from the suspension and termination of Customer’s right to use a Service in accordance with the MSA or arising while Customer is in violation of the MSA; or (e) arising from scheduled downtime for system or network maintenance.

**ATTACHMENT B**

**Country Specific Terms**

The following country specific terms amend or replace the terms they reference in the Terms and Conditions. All provisions of the Terms and Conditions that are not amended or replaced pursuant to this Attachment B remain unmodified and in effect.

**1. FRANCE**

Section 4 is replaced in its entirety with the following:

**4. Payments**

Customer will pay the fees in the amounts and at the times stated in each Service Order and further agrees to pay undisputed invoice(s) in full within thirty (30) days after receipt thereof. In the event of a late payment by Customer, an interest rate equivalent to three (3) times the French legal rate of interest will be applied, and will be due on the day following the payment date on the invoice, pursuant to Article L. 441-6 of the French Commercial Code. In addition a lump sum penalty of forty (40) euros will be applied. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer will pay the interest together with the overdue amount. All sums payable under this MSA are exclusive of: (i) VAT or any relevant local sales taxes; (ii) income taxes assessed by any governmental agencies, including, but not limited to withholdings and royalties; or (ii) other taxes and similar fees imposed on the delivery of Services, (collectively "Taxes").  Customer will be responsible for the payment of all Taxes except for taxes on Tealium’s net income. Except as expressly set forth in this MSA, all fees due hereunder are non-refundable and are not contingent on any additional services or products to be provided by Tealium.

Section 10 is replaced in its entirety with the following:

**10. Limitation of Liability**

(a) EXCEPT FOR: (1) LIABILITY ARISING FROM FAILURE TO PAY AMOUNTS DUE UNDER THIS MSA, (2) LIABILITY RESULTING FROM A PARTY’S VIOLATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, (3) LIABILITY ARISING FROM A PARTY’S WILLFUL MISCONDUCT; AND (4) EACH PARTY'S INDEMNITY OBLIGATIONS UNDER SECTION 9; NEITHER PARTY’S AGGREGATE LIABILITY FOR CLAIMS ARISING OUT OF THIS MSA OR ITS PERFORMANCE HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, OR OTHERWISE, WILL EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO TEALIUM UNDER THIS MSA DURING THE SIX (6) MONTHS PRECEDING THE CLAIM.

(b) NOTWITHSTANDING ANY PROVISION OF THIS MSA TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE FOR: (1) ANY LOSS OF DATA, (2) LOSS OF BUSINESS PROFITS, (3) DEPRECIATION OF STOCK PRICE, (4) BUSINESS INTERRUPTION, OR (5) ANY INDIRECT DAMAGES ARISING FROM OR RELATING TO THE SERVICES, OR OTHERWISE UNDER THIS MSA, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES TO THIS MSA.

(c) NOTHING IN THIS MSA EXCLUDES LIABILITY FOR: (i) DEATH OR PERSONAL INJURY CAUSED BY A PARTY’S NEGLIGENCE OR THAT OF ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS; (ii) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (iii) ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

Section 11.3 is replaced in its entirety with the following:

**11.3 Termination for Breach or Insolvency**

Each Party may terminate this MSA immediately if the other Party breaches the confidentiality obligations of Section 7. Either Party may also terminate this MSA upon written notice to the other Party, for any material breach by the other Party if such breach is not cured within thirty (30) days following written notice of such breach from the non-breaching Party. If Customer is late in paying fees that are due, Tealium may, without terminating this MSA, deny or otherwise suspend Services until Customer makes the overdue payments. Either Party may terminate this MSA immediately if: (a) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other Party; (b) the other Party ceases, or threatens to cease, to carry on business; or (c) the other Party generally takes or suffers any similar action, application or proceeding to those listed in (a) - (b) above in any jurisdiction to which it is subject. Tealium may terminate this MSA on written notice to Customer if Customer breaches Section 12 of this MSA.

Section 15 is replaced in its entirety with the following:

**15. Law and Jurisdiction**

Nothing in this MSA affects statutory rights of consumers that cannot be waived or limited by contract. Except as set forth above, this MSA and any dispute arising out of or in connection with it (including non-contractual disputes or claims) will be construed and enforced in accordance with French law. In the event of any dispute, controversy or claim between the parties hereto arising out of or relating to this agreement, the Parties shall first seek to resolve the dispute in good faith through informal discussion. If such dispute, controversy, or claim cannot be resolved informally, such disputes between the Parties with regard to this agreement shall be exclusively settled by arbitration in Paris, France, in the English language in accordance with then existing Rules of Conciliation and Arbitration of the International Chamber of Commerce by 1 (one) arbitrator to be selected in accordance with the said rules. The Parties request the ICC Court of Arbitration to attempt to appoint an arbitrator who is knowledgeable in the area of information technology; if no such arbitrator can be appointed, the normal appointment process shall apply. The award rendered therein shall be final and binding upon the parties to such arbitration proceedings. However, submission to arbitration shall not preclude the ability of either party in the first instance to seek injunctive relief pending the outcome of subsequent arbitration. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this MSA.

**2. GERMANY**

Section 1 is replaced in its entirety with the following:

**1. Overview**

These Tealium Subscription Terms and Conditions (hereinafter "Terms and Conditions") form part of the MASTER SERVICES AGREEMENT (hereinafter, "MSA") by and between Tealium Inc., (hereinafter "Tealium") and Customer (as identified in the Service Order referencing these Terms and Conditions). Customer is a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession. These Terms and Conditions will apply to Customer’s use of Tealium’s Services and Code (as such terms are defined below) and to all Service Orders that are entered into by Tealium and Customer. Any Services that Customer is eligible to receive will be identified in one or more Service Orders (as such term is defined below). The specific Services that Customer is entitled to access and the Service Term during which Customer is entitled to access such Services are all as identified in the Service Orders.

Section 3.1 is replaced in its entirety with the following:

**3.1 Services and Service Levels**

During each applicable Service Term (as such term may defined in one or more Service Orders executed by the Parties), Tealium will provide the Services to Customer as a service according to the provisions of sec. 611 et seq. of the German Civil Code ("BGB"). Each Service Order specifies an Authorized Usage Level. Customer will at all times ensure that either (a) its use of the Services does not exceed its Authorized Usage Level or (b) if its use of the Services exceeds the Authorized Usage Level, it will pay the Additional Usage Fee invoiced by Tealium according to the terms of the applicable Service Order and Section 4 below. Subject to all terms, conditions, and restrictions of the MSA, during the Service Term, Customer is authorized to implement the Services on all Digital Properties. Tealium will use commercially reasonable efforts to provide the Services in accordance with the Service Levels set forth in the service level agreement attached hereto as Attachment A (hereinafter the "SLA"). Except as otherwise provided in this MSA and subject to conflicting statutory provisions, the remedies set forth in the SLA will be Tealium’s sole liability, and Customer’s sole and exclusive remedy, for any failure of Tealium to provide the Services in accordance with the SLA.

Section 4 is replaced in its entirety with the following:

**4. Payments**

Fees are due upon the dates stated in the Service Orders. Customer will pay the fees in the amounts and at the times stated in each Service Order and further agrees to pay undisputed invoice(s) in full within thirty (30) days after receipt thereof. Any payment not received within this time limit ("Default of Payment") will accrue interest on the outstanding amount of eight (8) percentage points above the basic rate of interest according to sec. 247 of the BGB. Such interest will accrue on a daily basis from the day the time limit expires until actual payment of the overdue amount, whether before or after judgment. Customer will pay the interest together with the overdue amount. All sums payable under this MSA are exclusive of: (i) VAT or any relevant local sales taxes; (ii) income taxes assessed by any governmental agencies, including, but not limited to withholdings and royalties; or (ii) other taxes and similar fees imposed on the delivery of Services, (collectively "Taxes").  Customer will be responsible for the payment of all Taxes except for taxes on Tealium’s net income. Except as expressly set forth in this MSA, all fees due hereunder are non-refundable and are not contingent on any additional services or products to be provided by Tealium.

Section 6 is replaced in its entirety with the following:

**6. Restrictions**

Unless explicitly permitted under sec. 69d or sec. 69e of the German Copyright Act, Customer will not do or attempt to do, or permit any third party to do or attempt to do, any of the following: (a) make the Services, including its content or documentation, or any portion thereof available for use or access to or by any third party; (b) modify, reverse engineer, disassemble, decompile, reproduce or create derivative works from or in respect of the Services, Tealium Technology, or any Tealium product, or any component thereof (c) use or access the Services or any part thereof in order to (i) develop a competitive or similar product or service or (ii) otherwise copy any ideas, features, functions or graphics of the Services, or the underlying software; (d) interfere with or disrupt or attempt to interfere with or disrupt the integrity or the performance of the Services or any information or materials therein; and (e) gain or provide unauthorized access to the Services or its related systems or networks. Customer will use the Services only for its own internal business operations, and not for the operation of a service bureau or timesharing service.

Section 8.3 is replaced in its entirety with the following:

**8.3 Warranty Disclaimer**

EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 8.1 ABOVE, THE SERVICES ARE PROVIDED SOLELY ON AN "AS IS," AND "AS AVAILABLE BASIS" WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. FOR AVOIDANCE OF DOUBT: TEALIUM DOES NOT WARRANT: ( A) THAT THE OPERATION OR USE OF THE SERVICES WILL BE UNINTERRUPTED, OR ERROR-FREE; OR (B) ANY SPECIFIC RESULT OF THE SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SERVICES HAVE NOT BEEN DEVELOPED TO MEET THE INDIVIDUAL REQUIREMENTS OF CUSTOMER. EXCEPT AS MAY BE EXPRESSLY PROVIDED ELSEWHERE IN THIS MSA, CUSTOMER USES THE SERVICES AT ITS OWN RISK. TEALIUM’S OBLIGATIONS AND WARRANTIES ARE ONLY FOR CUSTOMER’S BENEFIT AND NOT FOR ANY CUSTOMER OF CUSTOMER, OR ANY PARTNER OF CUSTOMER, AND ARE CONDITIONED ON CUSTOMER’S USE OF THE MOST RECENT VERSION OF THE SERVICES MADE AVAILABLE BY TEALIUM TO CUSTOMER.

Section 10 is replaced in its entirety with the following:

**10. Limitation of Liability**

(a) IN THE FOLLOWING EVENTS THE PARTIES WILL BE LIABLE TO THE FULL SCALE OF STATUTORY PROVISIONS: (1) LIABILITY ARISING FROM FAILURE TO PAY AMOUNTS DUE UNDER THIS MSA, (2) LIABILITY RESULTING FROM A PARTY’S VIOLATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, (3) LIABILITY ARISING FROM A PARTY’S WILLFUL MISCONDUCT, (4) LIABILITY UNDER THE PRODUCT LIABILITY ACT (PRODUKTHAFTUNGSGESETZ), (5) INJURY TO LIFE, HEALTH OR BODY, AND (6) EACH PARTY'S INDEMNITY OBLIGATIONS UNDER SECTION 9: (b) NOTWITHSTANDING THE PROVISIONS IN SEC. (a) THE LIABILITY OF THE PARTIES WILL BE LIMITED AS FOLLOWS: IN THE CASE OF GROSS NEGLIGENCE THE PARTIES LIABILITY WILL BE LIMITED TO DAMAGES TYPICALLY FORESEEABLE AT THE DATE OF CONCLUSION OF THE MSA. THE AFOREMENTIONED LIMITATION WILL NOT APPLY IF DAMAGES HAVE BEEN CAUSED BY THE PARTY (I.E. LEGAL REPRESENTATIVES OF THE PARTY), BY EXECUTIVE MANAGEMENT STAFF OR PARTIES INVOLVED IN THE PERFORMANCE OF THE MSA BY THE PARTY OR RESULT FROM A SEVERE FAILURE TO SET UP OR SUPERVISE THE PARTY’S ORGANIZATION. THE LIMITATION WILL FURTHERMORE NOT APPLY IN CASE OF A GROSS NEGLIGENT BREACH OF ANY OBLIGATION UNDER THE MSA IF (i) THE FULFILLMENT OF SUCH OBLIGATION IS REQUIRED FOR THE EXECUTION AND PERFORMANCE OF THE MSA, (ii) THE VIOLATION COMPROMISES THE FULFILMENT OF THE PURPOSE OF THE MSA; AND (iii) THE CONTRACTUAL PARTNER USUALLY CAN RELY ON THE COMPLIANCE WITH SUCH OBLIGATIONS ("MATERIAL OBLIGATIONS"). IN CASE OF SLIGHT NEGLIGENCE THE PARTIES WILL ONLY BE LIABLE FOR THE VIOLATION OF MATERIAL OBLIGATIONS. IF A MATERIAL OBLIGATION IS VIOLATED THE LIABILITY IS LIMITED TO THOSE DAMAGES AND LOSSES TYPICALLY FORESEEABLE IN THE CONTEXT OF THE PROVISION OF THE SERVICES.

Section 11.3 is replaced in its entirety with the following:

**11.3 Termination for Breach**

Each Party may terminate this MSA immediately if the other Party breaches the confidentiality obligations of section 7. Either Party may also terminate this MSA upon written notice to the other Party, for any material breach by the other Party if such breach is not cured within thirty (30) days following written notice of such breach from the non-breaching Party. If Customer is in Default of Payment Tealium may, without terminating this MSA, deny or otherwise suspend Services until Customer makes the overdue payments. Either Party may terminate this MSA immediately if: (a) there is a threat of insolvency with regard to the other Party or (b) the other Party ceases, or threatens to cease, to carry on business Tealium may terminate this MSA on written notice to Customer if Customer breaches Section 12 of this MSA. The aforementioned

Section 13 is replaced in its entirety with the following:

**13. Notices**

All notices permitted or required under this MSA will be in writing, and will be deemed effective when: (a) delivered by personal delivery, (b) confirmed by the recipient, for notices delivered by electronic mail or facsimile transmission, or (c) received by certified or registered mail (return receipt requested) or overnight courier. Notices will be sent to the addresses set forth in this MSA or such other address as either Party may specify in writing.

Section 15 is replaced in its entirety with the following:

**15. Law and Jurisdiction**

Nothing in this MSA affects statutory rights of consumers that cannot be waived or limited by contract. Except as set forth above, this MSA and any dispute arising out of or in connection with it (including non-contractual disputes or claims) will be construed and enforced in accordance with German law, without recourse to its conflict of laws provisions. All disputes arising in connection with this Agreement or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Munich, Germany. The number of arbitrators is one. The language of the arbitral proceedings is English. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this MSA.

Section 24 is replaced in its entirety with the following:

**24. Third Party Beneficiaries**

This MSA does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties and a person who is not a party to this MSA will not have any rights to enforce any term of this MSA.

Section 25 is replaced in its entirety with the following:

**25. Force Majeure**

Neither Party will be liable for any breach of the MSA for any delay or failure of performance resulting from any cause beyond such Party’s reasonable control, including but not limited to the weather, unavailability of utilities or communications services (including access to the Internet), civil disturbances, acts of civil or military authorities, or acts of God.

**3. SPAIN**

Section 4 is replaced in its entirety with the following:

**4. Payments**

Customer will pay the fees in the amounts and at the times stated in each Service Order and further agrees to pay undisputed invoice(s) in full within thirty (30) days after receipt thereof. Any payment not received when due will accrue interest on the outstanding amount of eight percent (8%) per annum above the base rate applied by the European Central Bank in its main refinancing operation executed in the nearest day before the first day of the natural semester where this rule must apply. The amount of such rate will be established in accordance with the official publication by the Ministry of Economy and Finance in the State’s Official Bulletin (Boletín Oficial del Estado), as determined by article 7 of Law 3/2004 of December 28, on measures against delinquency in commercial operations. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer will pay the interest together with the overdue amount. All sums payable under this MSA are exclusive of: (i) VAT or any relevant local sales taxes; (ii) income taxes assessed by any governmental agencies, including, but not limited to withholdings and royalties; or (ii) other taxes and similar fees imposed on the delivery of Services, (collectively "Taxes").  Customer will be responsible for the payment of all Taxes except for taxes on Tealium’s net income. Except as expressly set forth in this MSA, all fees due hereunder are non-refundable and are not contingent on any additional services or products to be provided by Tealium.

Section 15 is replaced in its entirety with the following:

**15. Law and Jurisdiction**

This MSA, and any dispute arising out of or in connection with it (including non-contractual disputes or claims) will be construed and enforced in accordance with Spanish law. In the event of any dispute, controversy or claim between the parties hereto arising out of or relating to this agreement, the Parties shall first seek to resolve the dispute in good faith through informal discussion. If such dispute, controversy, or claim cannot be resolved informally, such disputes between the Parties with regard to this agreement shall be exclusively settled by arbitration in Madrid, Spain, in the English language in accordance with then existing Rules of Conciliation and Arbitration of the International Chamber of Commerce by 1 (one) arbitrator to be selected in accordance with the said rules. The Parties request the ICC Court of Arbitration to attempt to appoint an arbitrator who is knowledgeable in the area of information technology; if no such arbitrator can be appointed, the normal appointment process shall apply. The award rendered therein shall be final and binding upon the parties to such arbitration proceedings. However, submission to arbitration shall not preclude the ability of either party in the first instance to seek injunctive relief pending the outcome of subsequent arbitration. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this MSA.

Section 24 is replaced in its entirety with the following:

**24. Third Party Beneficiaries**

This MSA does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties and a person who is not a party to this MSA will not have any rights to enforce any term of this MSA.

Section 25 is replaced in its entirety with the following:

**25. Force Majeure**

Neither Party will be liable for any breach of the MSA, other than any default in payment obligations, for any delay or failure of performance resulting from any cause beyond such Party’s reasonable control, including but not limited to the weather, unavailability of utilities or communications services (including access to the Internet), civil disturbances, acts of civil or military authorities, or "fuerza mayor" (acts of God).

**ATTACHMENT C**

**Tealium Acceptable Use Policy**

Updated January 12, 2017

This Acceptable Use Policy (this "**Policy**") describes prohibited uses of the web services offered by Tealium Inc. and its affiliates (the "**Services**"). The examples described in this Policy are not exhaustive. By using the Services, you agree to this Policy. If you violate the Policy or authorize or help others to do so, we may suspend or terminate your use of the Services.

**No Illegal, Harmful, or Offensive Use or Content**

You may not use, or encourage, promote, facilitate or instruct others to use, the Services for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive. Prohibited activities or content include:

* Illegal Activities. Any illegal activities, including collecting or processing Personal Data without necessary consents, advertising, transmitting, or otherwise making available illegal gambling sites or services or disseminating, promoting or facilitating child pornography.
* Harmful or Fraudulent Activities. Activities that may be harmful to others, our operations or reputation, including offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., make-money-fast schemes, ponzi, and pyramid schemes, phishing, or pharming), or engaging in other deceptive practices.
* Infringing Content. Content that infringes or misappropriates the intellectual property or proprietary rights of others.
* Offensive Content. Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts.
* Harmful Content. Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

**No Security Violations**

You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "**System**"). Prohibited activities include:

* Unauthorized Access. Accessing or using any System without permission.
* Interception. Monitoring of data or traffic on a System without permission.

**No Network Abuse**

You may not make network connections to any users, hosts, or networks unless you have permission to communicate with them. Prohibited activities include:

* Monitoring or Crawling. Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled.
* Intentional Interference. Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
* Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

**No E-Mail or Other Message Abuse**

You will not use any System to facilitate the distribution, publishing, or sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (e.g. "spam"), in violation of any law or regulation.

**Our Monitoring and Enforcement**

We reserve the right, but do not assume the obligation, to investigate any violation of this Policy or misuse of the Services. We may:

* Investigate violations of this Policy or misuse of the Services; or
* Remove, disable access to, or modify any content or resource that violates this Policy or any other agreement we have with you for use of the Services.

We may report any activity that we suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing appropriate customer information. We also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.

**Reporting of Violations of this Policy**

If you become aware of any violation of this Policy, you will immediately notify us and provide us with assistance, as requested, to stop or remedy the violation. To report any violation of this Policy, please contact us at legal@tealium.com.