**TEALIUM FREE TRIAL TERMS OF SERVICE**

1. **Scope**

These Tealium Free Trial Terms of Service (the "TOS") lay out both Tealium’s and Your (the “Customer”) rights and obligations relating to Customer’s use of the Services for a Free Trial (as defined below). If there is a Service Order and Attachment 1, then these TOS form part of the Master Services Agreement (or "MSA") by and between Tealium Inc. ("Tealium") and the Customer (as identified in the Service Order referencing these Terms of Service). Tealium is willing to set up an account for the Services specified on Attachment 1, or, if there is no Attachment 1, then for the Tealium iQ Services (“TiQ”), and permit Customer’s use of those Services, subject to the terms and conditions in this TOS (the “Free Trial”).

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, Events, 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 Services.
	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. “Effective Date” means the date on which Customer commences the Free Trial, either by signing up online or by executing a Service Order.
	15. "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.
	16. "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.
	17. "Services" means any and all services, including use of the Code, purchased by Customer and provided by Tealium under this TOS.
	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 delivery of the Services.
	19. “Service Term” means the length of the Free Trial.
	20. "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.
	21. "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.
	22. "Visitor" means an individual who accesses Digital Properties on which the Services are implemented.
	23. "Visitor Profile Data" means Tealium provided data concerning Visitors associated with Tealium’s AudienceStream Service.
	24. "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 the thirteen (13) month period immediately preceding the time of measurement.
2. **Services and Service Levels; Customer Assistance**
	1. **Services.** During the 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, Customer will be responsible for payment to Tealium of Overage Fees. If there is no Service Order attached, then Customer’s Authorized Usage Level for TiQ is to be reasonable during the Service Term, and Tealium may terminate the Free Trial if Tealium determines that Customer’s usage is, in its sole discretion, excessive or unreasonable. During the applicable Service Term (a) Customer is authorized to use the Services on all Digital Properties in accordance with this TOS, 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 TOS, and there are no implied rights granted by Tealium hereunder, whether by estoppel or otherwise.
	2. **Customer Assistance.** Customer will supply Tealium personnel with such information, resources, and assistance as Tealium may reasonably request in connection to making the Services available to the Customer.
3. **Payments**

Tealium is providing the Services at no cost to Customer, subject to potential Overage Fees, which will be set forth in a Service Order. However, any taxes that may be due as a result of receiving the Services will be solely borne by Customer, except for taxes on Tealium’s income.

1. **Intellectual Property Ownership**

Tealium, or its licensors, 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. 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 TOS nor its performance transfers from Tealium to Customer any Tealium Technology. Neither this TOS 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.

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 TOS; (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 TOS. 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 TOS. Following termination of this TOS 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 TOS (or the MSA, if applicable) 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. **Customer Warranties.** Customer warrants that it will use the Services only in accordance with this TOS (and the MSA, if applicable), including Tealium’s acceptable use policy attached hereto as Attachment A, and with all applicable laws and government regulations, including any applicable data security and data privacy laws.
	2. **Warranty Disclaimer.** THE SERVICES ARE PROVIDED BY TEALIUM 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**

**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 this TOS (and 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.

1. **Limitation of Liability**

(a) EXCEPT FOR CUSTOMER'S INDEMNIFICATION OBLIGATIONS OR CUSTOMER’S BREACH OF (I) CUSTOMER’S RESTRICTIONS AND WARRANTY UNDER SECTIONS 5 AND 7.1, (II) TEALIUM INTELLECTUAL PROPERTY RIGHTS, (III) THE DATA PROTECTION RESTRICTION UNDER SECTION 12, OR (IV) CONFIDENTIALITY UNDER SECTION 5, NEITHER PARTY’S AGGREGATE LIABILITY FOR CLAIMS ARISING OUT OF THIS TOS (AND THE MSA, IF APPLICABLE) OR ITS PERFORMANCE HEREUNDER, WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE SUM OF TEN THOUSAND DOLLARS ($10,000).

(b) NOTWITHSTANDING ANY PROVISION OF THIS TOS TO THE CONTRARY, EXCEPT FOR CUSTOMER'S BREACH OF (I) CUSTOMER’S RESTRICTIONS AND WARRANTY UNDER SECTIONS 6 AND 8.1, (II) TEALIUM INTELLECTUAL PROPERTY RIGHTS, (III) THE DATA PROTECTION RESTRICTION UNDER SECTION 12, OR (IV) CONFIDENTIALITY UNDER SECTION 5, 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 TOS (OR THE MSA, IF APPLICABLE), 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.

1. **Term and Termination**
	1. **Term.** The term of this TOS coincides with the Service Term and begins on the Effective Date and continues for a period of one (1) month or as specified in a Service Order. The Service Term may only be renewed or extended by a written agreement signed by the Parties, provided however if the Parties continue to provide and use the Services after such expiration then the Service Term will be deemed extended on a month to month basis so long as such provision and use of the Services continues. Tealium may terminate this TOS (and the MSA) without any reason upon one (1) days’ notice to Customer.
	2. **Termination for Breach.** Either Party may terminate this TOS upon written notice to the other Party, for any material breach by the other Party if such breach is not cured within three (3) days following written notice of such breach from the non-breaching Party. Tealium may, without terminating this TOS, deny or otherwise suspend Services.
	3. **Effect of Termination.** Upon expiration or termination of the Service Term, 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. The provisions of Sections 3-9,11.3, 12, and 14-22, inclusive will survive termination or expiration of this TOS.
2. **Data Protection**

Customer agrees that it will not transmit to Tealium nor require Tealium to process any Highly Sensitive Data. In the event that any personally identifiable information ("PII") is transferred under this TOS, each Party will comply with all applicable laws and regulations, or any equivalent, applicable legislation. Customer is responsible for encrypting any PII using secure industry standard protocols before transmitting such PII to Tealium. Customer agrees that it has obtained or will obtain the consent of any individual whose PII is to be processed pursuant to this TOS, prior to transfer to Tealium, if such consent is required by applicable regulations or law.

**13. Notices**

All notices permitted or required under this TOS 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 TOS (or the MSA) or such other address as either Party may specify in writing.

**14. Law and Venue**

This TOS (and the MSA) will be construed and enforced in accordance with the laws of the State of California without regard to its conflict of laws principles; provided, however, that the Uniform Computer Information Transactions Act will not apply even if adopted as part of the laws of the State of California. The Parties expressly disclaim the application of the United Nations Convention on the International Sale of Goods to this TOS (and the MSA). Except for any action for injunctive or other equitable relief (which may be brought at any time in any court of competent jurisdiction), exclusive venue for any dispute will be the state or federal courts in San Diego County, California, and each Party agrees to personal jurisdiction in such venue, and waives any objection thereto.

**15. Severability; Waiver**

If any term or provision of this TOS 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 TOS 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 TOS 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.

**16. 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 TOS will be deemed or construed to create a joint venture, partnership, employment, or agency relationship between the Parties for any purpose.

1. **Assignment**

Customer may not assign this TOS (or the MSA) without the prior consent of Tealium, which may be withheld in Tealium’s sole discretion.

1. **Attorneys’ Fees**

In the event legal action of any kind is instituted arising out of the TOS (or the MSA, if applicable), the substantially prevailing Party will be entitled to recover reasonable attorneys' fees, expert witness fees, and other costs of suit from the non-prevailing Party.

1. **Headings**

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

1. **Entire Agreement**

This TOS (including any attachments or exhibits attached to or incorporated into this TOS by reference) constitutes the 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 TOS (and the MSA, if applicable) is binding on Tealium or Customer. This TOS will control over any different or additional terms and conditions in any purchase order or other non-Tealium ordering document. No amendment to this TOS or any Service Order will be binding on either Party unless in writing and signed by both Parties.

1. **Third Party Beneficiaries**

This TOS does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

1. **Force Majeure**

Neither Party will be liable for any breach of this TOS (or the MSA, if applicable) for any delay or failure of performance resulting from any cause beyond such Party’s reasonable control ("Force Majeure"), 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**

**Tealium Acceptable Use Policy**

Updated January 12, 2017

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 PII 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.