**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, 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. "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. "Services" means any and all services, including use of the Code, purchased by Customer and provided by Tealium under this MSA.
	17. "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.
	18. "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.
	19. "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.
	20. "Visitor" means an individual who accesses Digital Properties on which the Services are implemented.
	21. "Visitor Profile Data" means Tealium provided data concerning Visitors associated with Tealium’s AudienceStream Service.
	22. "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 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 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 a rate of one percent (1%) per month or the highest rate allowed by applicable law, whichever is lower. Customer will pay to Tealium all expenses incurred by Tealium in exercising its rights to payments under this MSA, including, but not limited to, reasonable attorneys’ fees and the fees of any collection agency retained by Tealium. All sums payable under this MSA are exclusive of: (a) VAT, GST or any relevant local sales or use taxes; (b) income taxes assessed by any governmental agencies, including, but not limited to withholdings and royalties; and (c) 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**

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 MSA nor its performance transfers from Tealium to Customer any Tealium Technology. 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 B, and with all applicable laws and government regulations.
	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 Customer 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.

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.** 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 12-23 inclusive will survive termination or expiration of this MSA.
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 MSA, 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 MSA, prior to transfer to Tealium, if such consent is required by applicable regulations or law.

1. **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 the 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 Venue**

This 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 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.

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. **Attorneys’ Fees**

In the event legal action of any kind is instituted arising out of the MSA, 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 MSA 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 MSA (including any attachments or exhibits attached to or incorporated into this MSA 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 MSA is binding on Tealium or Customer. This MSA will control over any different or additional terms and conditions in any purchase order or other non-Tealium ordering document. No amendment to this MSA or any Service Order will be binding on either Party unless in writing and signed by both Parties.

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.

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 ("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**

**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 MSA, 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 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**

**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.