

## Episerver Pilot Program Agreement Terms and Conditions for Project GraphQL

CAREFULLY READ THIS PILOT PROGRAM AGREEMENT (“AGREEMENT”) BEFORE USING THE PRODUCT DELIVERED TO YOU. THE AFFIRMATIVE ACT OF USING THE PRODUCT OR PARTICIPATING IN THE SPECIFIED PROJECT IN THIS AGREEMENT MEANS YOU ACCEPT THE PRODUCT IF APPLICABLE AND YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF ANOTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE PRODUCT OR PARTICIPATE IN THE SPECIFIED PROJECT. YOU MAY HAVE A WRITTEN AND SIGNED AGREEMENT DIRECTLY WITH EPISERVER THAT SUPPLEMENTS OR SUPERSEDES ALL OR PORTIONS OF THIS AGREEMENT.

### 1. DEFINITIONS

1.1 “Confidential Information” means any and all information disclosed by a party (“DISCLOSER”) to the other party (“RECIPIENT”) in confidence that is labelled or identified as “confidential” or “proprietary”; and if disclosed orally or otherwise in tangible form, is confirmed as such in writing within 30 days of such disclosure; or otherwise is of such a type or disclosed in such a way that a reasonable person would understand that the information disclosed is confidential or proprietary under the circumstances. Confidential Information includes, without limitation, business and financial information, software, source code and specifications, trade secrets, technical information, business forecasts and strategies, personnel information, and proprietary information of third parties.

1.2 “Participant Data” means any: (i) data uploaded to DXP, including but not limited to PII; and (ii) output from PARTICIPANT’s use of DXP.

1.3 “DXP” means the provision of software Product(s) by EPISERVER to PARTICIPANT as a service hosted by or on behalf of EPISERVER under this Agreement, which may include, but is not limited to, hosting/cloud, management and maintenance of the applicable software Product(s) made available in the hosted/cloud environment.

1.4 “Intellectual Property Rights” means Products and software, documentation, all copies, improvements, and derivative works thereof (regardless of form, access or distribution medium in or on which the original and other copies may exist), including all copyright, trademark, patent, trade secret, know-how and other intellectual property rights pertaining thereto.

1.5 “PII” means personal information that is, without limitation, names, phone numbers, mailing addresses, credit card information, social security numbers, and/or account or financial information of PARTICIPANT that is hosted in the DXP environment.

1.6 “PILOT PERIOD”: Pilot period is stated in Pilot Program order form

1.7 “Product” means EPISERVER’s digital experience platform product(s) (software, services and/or infrastructure) and any related updates, materials and documentation made available to PARTICIPANT by EPISERVER in connection with this Agreement and that forms part of a specified project under this Agreement

1.8 “PROJECT GRAPHQL”: A test service in the Episerver DXP platform, providing support for using a GraphQL API for Episerver CMS content.

### 2. PROJECT AND SCOPE

The purpose of the project is to enable PARTICIPANT to evaluate PROJECT GRAPHQL - with the goals that:

- 1) Episerver receives feedback and ideas from PARTICIPANT
- 2) PARTICIPANT stay abreast of developments around GraphQL API for Content

To enable these goals, Episerver will provide access to Project GraphQL test accounts. These test accounts consist of API access to a querying service to connect with Episerver CMS which is not hosted in DXP. Under this Agreement, there is no service level agreement and limited functionality due to the nature of a private beta program. It is only intended for, and allowed to be used with, non-production traffic, without PII data for the term specified below as the Trial Period and in accordance with the terms of this Agreement. Supported features and capabilities will be added continuously during the beta program, which will be communicated continuously to the beta testers via emails and documentation.

Scope of this agreement is until expiration of the PILOT PERIOD, Episerver reserves the right to change this time period scope at any point during the Pilot Period. Episerver owns all Intellectual Property Rights that come out of these goals and derivatives based of Episerver Intellectual Property Rights.

### 3. RIGHTS AND RESTRICTIONS

3.1 USE. EPISERVER authorizes the PARTICIPANT to use the Product or participate in the project solely for internal evaluation of the Product for PARTICIPANT's own business purposes. PARTICIPANT is only authorized to use the Product or participate in the project for the time period specified in this Agreement. PARTICIPANT may not use the Product for any other purpose and shall be solely liable to EPISERVER for breach of any of these terms.

3.2 SOFTWARE. For evaluation of the software Product, subject to the terms and conditions of this Agreement, EPISERVER hereby grants PARTICIPANT a non-sublicensable, non-transferable, non-exclusive license to evaluate the software Product, in object code form only, solely in accordance with documentation and materials supplied by EPISERVER, and solely for PARTICIPANT's own internal evaluation of the Products during the Pilot Period.

3.3 DXP. For projects that include the evaluation of DXP, and subject to the terms and conditions of this Agreement, EPISERVER hereby grants to PARTICIPANT a non-exclusive, non-transferable license to perform, display and access the software Product through DXP, solely in accordance with the documentation and materials supplied by EPISERVER, and solely for PARTICIPANT's own internal evaluation purpose during the Pilot Period.

3.4 RESTRICTIONS. PARTICIPANT agrees not to: (i) rent, sell, lease, pledge, encumber, allow any lien or otherwise transfer the Product or any part thereof or use either for the benefit of any third party; (ii) merge the Product with any other software; (iii) use the Product on or with any system for which it was not intended; (iv) use the Product in a way which is not expressly authorized hereunder or which may be illegal.

3.5 DATA PROTECTION. Should it arise during the pilot project that EPISERVER hosts PARTICIPANT PII, EPISERVER shall comply with the requirements and standards set forth in the Episerver Data Processing Agreement detail can be found at: <https://www.episerver.com/legal/privacy-statement/>

### 4. TERM AND TERMINATION

4.1 TERM. This Agreement shall begin on the Effective Date and terminate in accordance with this Section ("Term"). PARTICIPANT shall have a period to complete an evaluation within the PILOT PERIOD.

4.2 TERMINATION. EPISERVER may terminate this Agreement by providing written notice to PARTICIPANT. Notwithstanding anything to the contrary, EPISERVER may terminate this Agreement immediately and without notice, and will be entitled to take immediate possession of the Product, if EPISERVER believes in its sole and absolute discretion that PARTICIPANT is in breach of this Agreement or specifically that the Product; (i) is being misused or used in breach of this Agreement; (ii) is in the possession of any third party not authorized by EPISERVER; or (iii) is in danger of being seized by others. In the event this Agreement is terminated for any reason other than for the expiration of the Pilot Period, EPISERVER shall be entitled to retrieve the Product immediately from PARTICIPANT at PARTICIPANT's sole expense.

4.3 EFFECT OF TERMINATION. Upon the expiration or termination of this Agreement, all licenses and access to DXP granted hereunder shall immediately terminate and PARTICIPANT shall return or destroy all documentation and materials made available by EPISERVER in connection with this Agreement.

4.4 SURVIVAL. Sections 1 (Definitions), 3.4 (Restrictions), 5 (Payment), 4.3 (Effect of Termination), 4.4 (Survival), 6 (Feedback), 7.1 (Ownership), 8 (Risk of Loss), 9 (Disclaimer of Warranty), 10 (Limitation of Liability), 11 (Confidentiality), and 12 (General) shall survive any such termination or expiration.

### 5. FEEDBACK

PARTICIPANT agrees to meet regularly with EPISERVER to discuss and provide EPISERVER information and feedback regarding: (1) the nature and extent of PARTICIPANT's use or operation of the Product; (2) any changes or suggestions regarding the Product; (3) all errors or feature requests; and (4) the characteristic conditions and symptoms leading to the errors or suggested feature requests in sufficient detail to allow EPISERVER to recreate them itself. EPISERVER may also give PARTICIPANT access to its error tracking system, which will allow PARTICIPANT to directly input information regarding errors and feature requests, and PARTICIPANT agrees to do so. In addition, PARTICIPANT agrees to notify EPISERVER promptly by email or agreed project specific method of errors, discoveries, ideas, concepts, feature requests or suggestions relevant to the Product or EPISERVER's business, technology or Confidential Information related thereto ("Feedback"). PARTICIPANT hereby assigns to EPISERVER all right, title and interest in and to such Feedback, including all intellectual property rights therein (including moral rights; provided that any non-assignable moral rights are waived to the extent permitted by law) and will provide commercially reasonable assistance at the request of EPISERVER to perfect such assignment.

### 6. OWNERSHIP

6.1 EPISERVER. EPISERVER and its licensors retain all right, title and interest in and to the Product. This Agreement transfers none of EPISERVER's, or its vendor's, as applicable, right, title or interest in and to the Product and Confidential

Information of EPISERVER, including all intellectual property rights therein. There are no implied licenses, and all rights not expressly granted hereunder are reserved to EPISERVER and its licensors. PARTICIPANT may not under any circumstances use any of their findings, evaluation data or any derivative related to Episerver's intellectual property right for any other purposes, including commercial purpose, other than the purpose outlined in this Agreement

6.2 PARTICIPANT. As between PARTICIPANT and EPISERVER, PARTICIPANT retains all right, title and interest in and to PARTICIPANT Data. EPISERVER's use of PARTICIPANT Data shall be solely for the purpose of delivering DXP during the Pilot Period, if such is provided.

6.3 USE OF DXP. PARTICIPANT represents and warrants that they will not use the DXP environment, if such is provided, in a way that is illegal or promotes illegal activities nor authorize or permit an individual or entity to do so. Furthermore, PARTICIPANT represents and warrants that PARTICIPANT Data: (i) does not violate, misappropriate or infringe any rights of EPISERVER or any third party; (ii) does not constitute defamation, invasion of privacy or publicity; or (iii) is not designed for use in any illegal activity or promotes illegal activities. As used herein, "illegal activity or promotes illegal activities" includes, without limitation, any manner that might be libellous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age.

## 7. RISK OF LOSS

Upon delivery of the Product, PARTICIPANT bears all risk of loss until it is returned to the possession of EPISERVER. PARTICIPANT agrees to maintain the Product in an undamaged condition and operate the Product in the manner set forth in the Product documentation. PARTICIPANT will not remove or alter any legend or marks stating that the Product is the property of EPISERVER or its vendor, as applicable. The DXP environment must be returned to EPISERVER in the same condition as when the DXP was provisioned to PARTICIPANT in accordance with the boundaries articulated in the Project Scope and communicated by EPISERVER.

## 8. DISCLAIMER OF WARRANTY

NOTWITHSTANDING ANY OTHER WARRANTY THAT MAY ACCOMPANY THE PRODUCT WHEN SUCH PRODUCT IS PURCHASED, EPISERVER PROVIDES THE PRODUCT UNDER THIS AGREEMENT ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, EPISERVER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

## 9. LIMITATION OF LIABILITY

EPISERVER WILL NOT BE RESPONSIBLE OR LIABLE TO PARTICIPANT OR TO ANY THIRD PARTY WITH RESPECT TO THE PRODUCT OR ANY SUBJECT MATTER RELATED TO THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (1) FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (2) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF REVENUES AND LOSS PROFITS, EVEN IF EPISERVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (3) AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT IN AN AMOUNT GREATER THAN ONE HUNDRED DOLLARS (\$100.00).

Participant shall indemnify, defend and hold Episerver harmless (including Episerver's officers, directors, agents, representatives and employees) from any direct: claim, liability, loss, expense or demand, including reasonable legal fees and costs and including without limitation third-party claims based upon or arises out of (a) unauthorized or illegal use of the Software Service by Participant, (b) use of Non-Episerver applications, third-party products or third-party sites and (c) any data Participant uploads to the system. This indemnity requires that Participant receive notice immediately of any third-party claims and is in sole control of the defence of such claim, including but not limited to any settlement. Settlements which require Episerver consent are those that (i) impose an obligation on Episerver; or (ii) require Episerver to make an admission.

## 10. CONFIDENTIALITY

10.1 RECIPIENT agrees: (1) to hold DISCLOSER's Confidential Information in strict confidence; (2) not to disclose the DISCLOSER's Confidential Information to any third parties, except as described below; and (3) not to use any Confidential Information except to perform its obligation and exercise its rights under this Agreement. RECIPIENT may disclose DISCLOSER's Confidential Information to its officers, directors, employees or agents; (2) RECIPIENT agrees to take reasonable measures to maintain the Confidential Information in confidence; (3) RECIPIENT will disclose Confidential Information only to those of its employees and contractors as are necessary for the use expressly and unambiguously set forth in the Agreement, and only after such employees and contractors have agreed in writing to be bound by terms no less restrictive than the provisions of this Agreement; and (4) PARTICIPANT will not remove or export the Product or any Confidential Information or any direct product thereof in violation of any applicable law or regulation.

10.2 The restrictions set forth in this section shall not apply to any Confidential Information that the RECIPIENT can demonstrate (1) was known to it prior to its disclosure by the DISCLOSER; (2) is or becomes publicly known through no wrongful act of the RECIPIENT; (3) has been rightfully received from a third party authorized to make such disclosure without restriction; (4) is independently developed by the RECIPIENT; or (5) has been approved for release by the DISCLOSER's prior written authorization.

10.3 The parties agree that a breach of this section may cause immediate and irreparable harm for which monetary damages would be an inadequate remedy and therefore, the parties agree that in addition to any other remedies available at law or hereunder, the DISCLOSER shall be entitled to seek equitable relief, including injunctive relief, from any court having jurisdiction, to protect its rights and interests pursuant to this section.

**11. GENERAL**

11.1 GOVERNING LAW; INJUNCTIVE RELIEF. Governing Law shall be the respective law indicated below, based on the domicile of PARTICIPANT. Each party to the Agreement consents to personal and exclusive jurisdiction for any equitable or other action sought in the location indicated below. Each party will bear its own costs with respect to any disputes arising under this Agreement, except where such disputes arise from unpaid fees to EPISERVER, where PARTICIPANT shall bear all reasonable legal and administrative costs required to collect such unpaid fees. The United Nations Convention on Contracts for the International Sale of Goods, the Uniform Computer Information Transactions Act (as enacted in any jurisdiction), the Uniform Commercial Code (as enacted in any jurisdiction), and the conflict of law rules of any jurisdiction, is expressly excluded.

<b>If PARTICIPANT is Domiciled in:</b>	United States of America, Canada, Mexico or any country in Central or South America or the Caribbean	United Kingdom (including England, Northern Ireland, Scotland and Wales), Ireland, Australia and New Zealand	Germany, Austria and Switzerland	Rest of the World
<b>Governing Law:</b>	New Hampshire and controlling U.S. Federal Law.	Laws of England and Wales	Laws and Regulations under Berlin, Germany	Laws of Sweden
<b>Jurisdiction:</b>	U.S. District Court in New Hampshire or any court of the State of New Hampshire having subject matter jurisdiction.	Competent courts of London, England.	Berlin, Federal Republic of Germany	Competent courts of Stockholm, Sweden. English will be the language used.

EPISERVER may seek injunctive relief to protect its ownership rights and Confidential Information in any court of law or equity of competent jurisdiction. The prevailing party in any action to enforce this Agreement will be entitled to recover its reasonable attorney's fees and costs in connection with such action.

11.2 WAIVERS; AMENDMENTS; ENTIRE AGREEMENT. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. Any waivers or amendments shall be effective only if made in writing and agreed by both parties. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

11.3 SEVERABILITY. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.