

## Appendix – Fair Use Policy (“FUP”) for DACH Region

### 1. Purpose and Background

This Fair Use Policy (“FUP”) applies to the use of any product, service or website provided by Episerver, whether provided directly or another party to provides it to Customer (“Software Services”). For Episerver to warrant compliance with the laws and regulations that apply to Software Services, and for Episerver to meet its SLA, the FUP is required. The FUP also protects the interests of all Episerver customers and their customers, as well as goodwill and reputation. The FUP are an integral part of the Agreement. By signing the Master Services Agreement, Customer agrees to the FUP.

The FUP applies to all Users and Customer is solely responsible for any violations of the FUP by the Customer’s Users. Customer may not assist or engage others in a way that would violate the FUP. Episerver will enforce and warrant compliance with the FUP by using all appropriate methods, such as notice complaint and email failure monitoring.

Episerver periodically updates the FUP to meet changing laws and regulations. Customer and Users will be notified either through the Software Service, Episerver customer/partner portal, email or by posting a revised copy on <http://www.episerver.com/legal/fair-use-policy> and giving notice to Customer. Customer must review the FUP on a regular basis and always remain in compliance.

### 2. Equipment and Reporting

- 2.1 The Software Services are provided by Episerver from data center facilities to which Users have remote access via the Internet in conjunction with certain online and offline components provided by Episerver hereunder. Customer shall be responsible for obtaining and maintaining appropriate equipment and ancillary services needed to connect to, access or otherwise use the Software Services, including, without limitation, computers, computer operating system and web browsers (collectively, “Equipment”). Customer shall ensure that the Equipment complies with all configurations and specifications set forth in Episerver published documentation.
- 2.2 Customer shall report any defects with the Software Service to Episerver as soon as possible after such defect is discovered. If Customer knows of or suspects a violation of this FUP, Customer will promptly notify Episerver in writing of the known or suspected violation of this FUP.
- 2.3 Customer should encourage Users to report suspected violations of this FUP to Episerver by forwarding a copy of the received email with headers to [abuse@episerver.com](mailto:abuse@episerver.com). Episerver has a policy to investigate all of these reports and to respond in an appropriate way.

### 3. Fair Use of Software Services

- 3.1 Lawful use of Software Services - Customer may not use the Software Service if Customer or Users are legally prohibited from receiving or using the Software Service under the laws of the country in which Customer or Users are resident or from which Customer and/or Users access or use the Software Service. The Software Service is not provisioned to comply with industry-specific regulations such as the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach-Bliley Act (GLBA), or the Federal Information Security Management Act (FISMA), if Customer uses the Software Service where communications would be subject to such laws, then it is the full and sole responsibility of Customer for compliance and lawful use.
- 3.2 No Disruption - Customer agrees not to use the Software Service in a way that impacts the normal operation, privacy, integrity or security of another’s property. Another’s property includes another’s accounts, domain names, URLs, websites, networks, systems, facilities, equipment, data, other information, or business operations. Customer also agrees not to use the Software Service to gain unauthorized access to, use, monitor, make an unauthorized reference to, another’s property, unless you have the appropriate express prior consent to do so. Examples of prohibited actions include (without limitation): hacking, spoofing, denial of service, mailbombing and/or sending any email that contains or transmits any virus or propagating worms, or any malware, whether spyware, adware or other such file or program. These restrictions apply regardless of Customer’s intent and whether Customer acts intentionally or unintentionally.
- 3.3 Customer Data, content, information and other data used within Software Services - Customer is fully responsible for all the Customer Data, content, information or other data that has been transferred or in any other way handled, including but not limited to any data and information Users insert, upload, download, generate, capture, relay or in any way transmit or store, on, through use or as a result of the Software Services, does not constitute an infringement of the right of a third-party or in any other way is in conflict with applicable legislation. Customer shall hold Episerver free from loss for any demands directed at Episerver by a third-party as a consequence of the information that Customer is responsible for. This continues to apply even if Episerver has terminated the Agreement with Customer due to a breach of this provision. Further, Customer may not use Software Services with Customer Data, content, information, and/or data in a manner that –
  - 3.3.1 is threatening, abusive, harassing, stalking, defamatory, deceptive, false, misleading or fraudulent;
  - 3.3.2 is invasive of another’s privacy or otherwise violates another’s legal rights (such as rights of privacy and publicity);
  - 3.3.3 contains vulgar, obscene, indecent or unlawful material;
  - 3.3.4 publishes, posts, uploads, or otherwise distributes any software, music, videos, or other material protected by intellectual property laws (or by rights of privacy or publicity) unless Customer has all necessary rights and consents to do so;
  - 3.3.5 uploads files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another person’s computer;
  - 3.3.6 downloads any file that Customer knows, or reasonably should know, cannot be legally distributed in that way;

- 3.3.7 falsifies or deletes any author attributions, legal or proprietary designations, labels of the origin or source of software, or other material contained in a file that is uploaded;
  - 3.3.8 restricts or inhibits any other user of the Software Service from using and enjoying their Episerver software or services;
  - 3.3.9 harvests or otherwise collects information about others, including e-mail addresses, without their lawfully received consent;
  - 3.3.10 violates the usage standards or rules of an entity affected by Customer use, including ISP, ESP, or news or user group;
  - 3.3.11 is legally actionable between private parties; and/or
  - 3.3.12 is in violation of any applicable local, state, national or international law or regulation, including but not limited to Sec. 7 of the German Act against Unfair Practices (*UWG*).
- 3.4 Customer alterations of Software Services - Customer is responsible for User alterations made in the Software Services (including the Customer's customizations of Software and/or Software Services).
- 3.5 Customer Contact Information - Customer is responsible for keeping its contact information up to date with Episerver. Any changes shall require written notice given to Episerver.
4. **General Terms**
- 4.1 Customer will use the Software Services in adherence with the applicable Order, Master Services Agreement, EUSA and further applicable Appendices, and will not: (i) willfully tamper with the security of the Software Service or tamper with other Episerver customer accounts; (ii) access data on the Software Service not intended for Customer; (iii) log into a server or account on the Software Services that Customer is not authorized to access; (iv) attempt to probe, scan or test the vulnerability of any Software Service or to breach the security or authentication measures without proper authorization; (v) willfully render any part of the Software Service unusable; (vi) lease, distribute, license, sell or otherwise commercially exploit the Software Service or make the Software Service available to a third party other than as contemplated in the Agreement for Software Service; (vii) use the Software Service for timesharing or service bureau purposes or otherwise for the benefit of a third party; or (viii) provide to third parties any evaluation version of the Software Service or Episerver Software without Episerver's prior written consent.
- 4.2 Breach of this FUP qualifies for actions under Section 7.1 (Termination for Cause), 7.4 (Suspension for Prohibited Acts) and 7.6 (Suspension for Present Harm) of the Master Services Agreement.