

Episerver Expert/Education Services General Terms and Conditions (Online)

PLEASE READ THROUGH THE TERMS AND CONDITIONS FOR EPISERVER PROFESSIONAL SERVICES (EXPERT AND/OR EDUCATION) CONTAINED HEREIN BEFORE CUSTOMER AGREES AND/OR USES SUCH PROFESSIONAL SERVICES. BY ACCEPTING, SIGNING (DIGITALLY OR OTHERWISE), OR IN ANY WAY AFFIRMING ENTITLEMENTS, SOW(S), CHANGE ORDER(S), OR BY INTERACTING OR IN ANY OTHER WAY USING PROFESSIONAL SERVICE(S) OR ANY COMPONENT OFFERED BY EPISERVER, CUSTOMER ACCEPTS THE TERMS AND CONDITIONS BELOW, THAT THE AGREEMENT, INCLUDING ALL ENTITLEMENTS, SOW(S), AND/OR CHANGE ORDER(S) BECOMES A BINDING OBLIGATION ON THE CUSTOMER AND THAT CUSTOMER HAS AGREED THAT THESE TERMS AND CONDITIONS (COLLECTIVELY REFERRED TO AS THE "AGREEMENT").

All definitions and defined terms in the Entitlement(s), SOW(s), and/or Change Order(s) shall apply to the Agreement. Episerver and Customer are individually referred to as a "Party" and collectively as the "Parties". Entitlements, including all SOWs, Change Order(s), appendices and references, serves as the terms and conditions for the Agreement between the Parties' understanding regarding EES and shall take precedence over any different or additional terms of any P.O. or other non-Episerver ordering document, and no terms included in any such P.O. or other non-Episerver ordering document shall except with respect to price, quantity and location. In the event of a conflict between these General Terms and Conditions and an SOW and/or Change Order(s), the terms of the SOW and/or Change Order(s) shall control.

1. Defined Terms

- 1.1. "Confidential Information" shall mean any proprietary and confidential information provided to either Party under this Agreement.
- 1.2. "Change Order(s)" shall mean a written agreement that changes the scope, requirements, pricing, timing and/or deliverables of an existing SOW.
- 1.3. "Entitlement" means the collective set of applicable documents, including, but not limited to, all (including digital) agreement(s), exhibit(s), attachment(s), addendum(s), schedule(s), and/or invoice(s) authorized and provided by Episerver evidencing Customer's obligations within this Agreement.
- 1.4. "Episerver" means either Episerver AB, a Swedish corporation located at Torsgatan 11; Box 7007; 103 86 Stockholm, Sweden or Episerver Inc. (formerly known as Ektron, Inc.), a Delaware corporation located at 542A Amherst Street, Nashua, NH 03063, USA, based on the entity defined in the Entitlement.
- 1.5. "Description of EES" shall mean a detailed description of professional services being provided for in the relevant SOW(s) and/or Change Order(s), which Customer is paying fees to Episerver to deliver.
- 1.6. "EES" shall mean the professional services (expert and education) being provided by Episerver to Customer, as described in SOW(s) and/or Change Order(s) attached to any Entitlement
- 1.7. "Effective Date" shall mean the date this Agreement or supporting SOW is signed by Episerver shall be deemed the effective date ("Effective Date").
- 1.8. "Fixed Price" shall mean a price independent of work hours or Work Day(s) required to complete deliverables within the Description of EES by Episerver.

- 1.9. "SOW" shall mean the initial statement of work and any appended statement of work, agreement or amendment with Episerver where EES under this Agreement are being purchased by a Customer.
- 1.10. "Time and Materials" shall mean the dedicated time with Episerver resources working with or without a client's resources towards the defined EES completion. Time and Materials are sold in units of Work Days and can be scheduled in no less than half Work Day increments. Time and Materials engagements have no expectations of specific "timed" deliverables.
- 1.11. "Work Day" shall mean, in all countries in Europe, Middle East, Africa and/or Asia, no more than seven and one-half (7.5) hours, in the rest of the world no more than eight (8) working hours, and regardless of location including Episerver's approved time for a lunch break.

2. Independent Consultant Relationship

- 2.1. Independent Consultant Relationship. Episerver's relationship with Customer is that of an independent consultant, and nothing in this Agreement is intended to, or should be construed to create a partnership, agency, joint venture or employment relationship. Episerver is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any applicable tax authority with respect to the performance of EES and receipt of fees under this Agreement. Under no circumstances and in no event shall Episerver have any authority to bind or obligate Customer on any matter.

3. Confidential Information

- 3.1. All information provided by either Party to the other Party, which the disclosing Party identifies as being proprietary and/or confidential or which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential shall constitute "Confidential Information" under this Agreement. Episerver and Customer shall each retain in confidence all Confidential Information of the other, and will make no use of such Confidential Information except as necessary to fulfill their respective obligations under the terms and during the Term of this Agreement. Episerver and Customer shall treat the terms and conditions of this Agreement as confidential; however, either Party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that Party's business. The receiving Party's obligations under this Section 3.1 shall extend for the earlier of (i) five years following the disclosure of the Confidential Information, or (ii) the time when the information is no longer confidential.
- 3.2. Exclusions - Confidential Information shall not include information that the receiving Party can establish: (i) has entered the public domain without the receiving Party's breach of any obligation owed to the disclosing Party; (ii) is rightfully received by the receiving Party from a third party without confidentiality restrictions; (iii) is known to the receiving Party without any restriction as to use or disclosure prior to first receipt by the receiving Party from the disclosing Party hereunder; or (iv) is independently developed by the receiving Party.
- 3.3. Disclosure Required By Law - If any applicable law, regulation or judicial or administrative order requires the receiving Party to disclose any of the disclosing Party's Confidential Information (a "Disclosure Order") then, unless otherwise required by the Disclosure Order, the receiving Party shall promptly notify the

disclosing Party in writing prior to making any such disclosure, in order to facilitate the disclosing Party's efforts to protect its Confidential Information. Following such notification, the receiving Party shall cooperate with the disclosing Party, at the disclosing Party's reasonable expense, in seeking and obtaining protection for the disclosing Party's Confidential Information.

- 3.4. Post Termination Obligations - Following termination of this Agreement howsoever arising, each Party shall, within twenty (20) days of such termination, (i) immediately cease use of any Confidential Information of the other communicated for the purposes of this Agreement and (ii) return or destroy all copies of any Confidential Information of the other (including without limitation, the Software License(s) disclosed under this Agreement.
- 3.5. Independent Development - The terms of confidentiality under this Agreement shall not limit either Party's right to independently develop or acquire products or services without use of the other Party's Confidential Information.

4. Warranty, Limitations of Liability and Non-Solicitation

- 4.1. WARRANTY OF EES - Episerver warrants that all EES shall be performed in a professional and workmanlike manner, consistent with then-current industry standards ("Professional Services Warranty"). Customer's exclusive remedy for a breach of the Professional Services Warranty shall be, at Episerver's option, either to (i) re-perform such EES; or (ii) to provide Customer a refund for the allegedly defective EES. Such remedy shall only be available if Customer notifies Episerver in writing within ninety (90) calendar days of the completion of such EES. However, Customer also acknowledges that Episerver is relying upon information and assistance furnished by Customer's representatives. As a result, the accuracy and results of said EES will be dependent upon the accuracy and completeness of the information and assistance furnished by Customer's employees. Customer understands and accepts that an error may exist or occur during the processing due to inaccurate data in Customer's existing files. Customer agrees that Episerver's sole responsibility is the transfer of existing data and that Episerver is not responsible for any errors that result from the transfer of inaccurate or incorrect data. EES IS PROVIDED WITHOUT ANY OTHER EXPRESS OR IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 4.2. LIMITATION OF LIABILITY - NEITHER PARTY SHALL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE, INACCURACY OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY OR LOSS OF BUSINESS, PROFITS OR REVENUE; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND IT'S REASONABLE CONTROL (including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce)), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER FOR EES IN THE LAST TWELVE (12) MONTHS.
- 4.3. NON-SOLICITATION - Customer acknowledges that Episerver's success in the software industry is largely dependent upon the performance of its personnel and that Episerver expends substantial resources in connection with employment and training.

In the event that Customer hires or contracts with, either as an employee or an independent contractor (either directly or through another independent contractor), any person who provided EES to Customer on behalf of Episerver within six (6) months after such person's last contact with Customer on behalf of Episerver, then Customer shall promptly pay Episerver a fee after such hiring. Such fee shall be an amount equal to the total compensation (salary, commission and bonus) paid to such person by Episerver during his or her last twelve (12) months of employment, annualized if such person was employed less than twelve (12) months. Customer's failure to honor this obligation, regardless of cause, shall give Episerver the right to terminate this Agreement.

5. Governing Law and Jurisdiction

- 5.1. Governing Law and Jurisdiction depend on where Customer is principally domiciled. In all cases, the Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 5.2. Alternative Dispute Resolution. The Parties agree that any and all disputes, claims or controversies arising out of or related to this Agreement, including any claims under any statute or regulation ("Disputes"), shall be submitted first to non-binding mediation. If the Disputes are not resolved through mediation within sixty (60) days, then, upon the election of either Party, the Disputes shall be submitted for binding arbitration.
- 5.3. Unresolved Disputes. Any unresolved controversy or claim arising out of or relating to the Agreement, except for any such controversies or claims arising out of Episerver's intellectual property rights for which a provisional remedy or equitable relief is sought or any such controversies or claims that exceeds, or potentially could exceed \$10,000 USD, shall be submitted to arbitration in accordance with rules based on the Domicile of Customer, indicated below. The arbitration shall take place based on the Domicile of Customer, indicated above, in accordance with the rules indicated below, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. Each Party will bear its own costs with respect to any disputes arising under this Agreement. Each of the Parties to the Agreement consents to personal jurisdiction for any equitable or other action sought in the location indicated above, based on the domicile of Customer.

If Customer is Domiciled in:	Governing Law:	Jurisdiction:
United States of America, Canada, Mexico or any country in Central or South America or the Caribbean	New Hampshire and controlling U.S. Federal Law.	Arbitration according to the rules of the American Arbitration Association (the "AAA"). Arbitration shall occur in the State of New Hampshire. English will be the language used. Each of the Parties to the Agreement consents to personal jurisdiction for any equitable or other action sought with respect to claims arising out of EPIServer's intellectual property rights in a U.S. District Court in New Hampshire or any court of the State of New Hampshire having subject matter jurisdiction.



United Kingdom (including England, Northern Ireland, Scotland and Wales), Ireland, Australia and New Zealand	United Kingdom (including England and/or Wales) laws.	London Court of International Arbitration Rules. The arbitral tribunal shall be composed of a three (3) arbitrators, to be appointed by agreement between the Parties or, in default of agreement by the President of the Law Society of England and Wales. Arbitration shall occur in London, England. English will be the language used.
Rest of the World	Laws of Sweden	Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. Arbitration shall occur in Stockholm, Sweden. English will be the language used.

6. General Terms

- 6.1. Changes of Terms and Conditions – These General Terms and Conditions are in force until further notice. Customer will be notified at least ninety (90) days before any significant changes of these General Terms and Conditions as well as any price adjustment comes into force, via Customer indicated contact person's email, fax or in any other way that Episerver finds suitable.
- 6.2. Prerequisite requirements. Episerver reserves the right to refuse or limit any EES if a Customer fails to satisfy the requirements in the relevant SOW, Change Order, and/or education-based EES prerequisite published or provided to Customer by Episerver prior to the start of such EES. In such cases, no refund will be paid.
- 6.3. Good conduct for education-based EES. Episerver reserves the right to refuse, limit or cancel any education-based EES if Customer, in the opinion of Episerver, has displayed unreasonable behavior or is deemed to be violent, abusive or disruptive. In such cases no refund will be paid.
- 6.4. On-Site education-based EES. When education-based EES are to be performed on-site at or on behalf of Customer, Customer has responsibility to inform Episerver of location details at least ten (10) working days prior to the start of the education-based EES. Customer is responsible for ensuring that each participant has access to a computer that complies with the system and installation requirements provided by Episerver, preparing the classroom with a projector and booking lunch for the participants and the instructor. Customer is responsible for providing Episerver with names and e-mail addresses of all the participants at least five (5) working days prior to the start of the education-based EES.
- 6.5. Pre-paid fees. Unless otherwise stated explicitly in the Agreement, all pre-paid fees are non-refundable and non-cancellable.
- 6.6. Manner of Giving Notice. Except as otherwise specified in the Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the relevant EES system administrator designated by Customer.

- 6.7. Third Party Beneficiaries - The Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein express or implied shall give or be construed to give any person other than the Parties hereto any legal or equitable rights hereunder.
- 6.8. No joint venture, partnership, employment, or agency relationship exists between Episerver and Customer as a result of the Agreement or use of EES. Customer may not assign the Agreement without the prior written approval of Episerver, such approval not to be unreasonably withheld or delayed, provided that such approval shall not be required in connection with a merger or acquisition of all or substantially all of the assets of the assigning company. Any purported assignment in violation of this Section shall be void.
- 6.9. Modification – No modifications or additions to this Agreement shall be binding on either Party unless in writing and signed by the Party against whom enforcement is sought.
- 6.10. Waiver – No waiver of any provision of this Agreement shall be effective unless made in writing. In addition, no waiver by either Party of any breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach or as a continuing waiver of such breach of this Agreement. In addition, no failure to enforce any contract term shall be deemed a waiver of future enforcement of that or any other term.
- 6.11. Excuse of Performance – Episerver shall not be liable to Customer for any costs or damages due to nonperformance under this Agreement arising out of any cause or event not within the reasonable control of Episerver and without its fault or negligence including, but not limited to: riots, wars or hostilities between any nations; Acts of God, fires, storms, floods or earthquakes; strikes, labor disputes; shortages or curtailments of raw materials; labor, power or other utility services; or governmental restrictions.
- 6.12. Cumulative Remedies – No remedy or election of remedy under this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or equity. No action relating in any way to performance or nonconformance of the EES provided hereunder may be brought by Customer more than one (1) year after the provision of EES under this Agreement.
- 6.13. Assignment – Customer shall not assign, sell, sublicense, pledge or otherwise transfer any of its rights or obligations under this Agreement, in whole or in part, without Episerver's prior written consent. Any assignment in violation of this Section shall be void.
- 6.14. CANCELLATION / RESCHEDULING EES - Notwithstanding the foregoing, Customer may cancel or reschedule EES with thirty (30) days written notice. Expert-based EES incurred prior to Episerver receiving such written notice and expert-based EES incurred after the notice has been received, but which are necessary to close out the work, will be due and payable by Customer. Education-based EES cancellations occurring within thirty (30) days prior to execution of such education-based EES, shall still be subject for full payment and any incurred expense prior to such cancellation, will be due and payment by Customer.