

Appendix – Episerver Marketing Automation Agreement

This Appendix is made and entered into between Customer and Episerver as part of the Master Services Agreement.

the Parties have now therefore made and entered into this Appendix to the Agreement for Episerver Marketing Automation Software Services (“MAA”) to be considered as an integral part of the Agreement. Terms defined in the Agreement, including the Episerver End User Service Agreement (“EUSA”), which are capitalized terms, shall apply within this MAA. Terms defined in this MAA shall only apply to Episerver Marketing Automation Software Service(s).

1. Additional Definitions

- 1.1. **“Marketing Automation Accelerator Packages”** means the package providing Customer guidance for best-practices of creating marketing campaigns and dispatch methodologies for up to ten (10) working days of the Initial Subscription Term, unless otherwise stated.
- 1.2. **“Marketing Automation Email Volume per Year (“CEY”)** means the amount of emails that are sent to recipients of Customer through the Marketing Automation Software Services per Contract Year. This total includes all emails sent through the Marketing Automation Software Service, including bounces and failed deliveries.
- 1.3. **“Marketing Automation Connector”** means an optional integration connector within the Marketing Automation Software Service that enables integration to various third-party software services. Each Marketing Automation Connector is limited to a single Marketing Automation Instance.
- 1.4. **“Marketing Automation Software Service(s)”** means Episerver marketing and email automation software services, including but not limited to Episerver Marketing Automation, by which Marketing Automation Software Services identified and described in the Order and is provided by Episerver pursuant to this MAA.
- 1.5. **“Marketing Automation Instance(s)”** means a working environment within Episerver Marketing Automation Software Service(s). A Marketing Automation Instance is a segmented environment with associated access controls that serves to organize Customer mailings. For example, If Customer is managing different brands in a single Marketing Automation Instance, a User working on a particular brand has access to all mailings for other brands within the Marketing Automation Instance. If Customer is managing each brand in a different Marketing Automation Instance, then Users working on a particular brand can only see mailings for that brand. Customer may purchase additional Marketing Automation Instance(s).
- 1.6. **“Customer Success Manager (“CSM”)** means a Customer point of contact on Marketing Automation Software Services related tasks. CSM may be subject to change which will require written notice to Customer (notice which should be given as soon as practicably possible) and within reasonable circumstances.
- 1.7. **“Message”** means an electronic mail message, including any message sent in any format to a mobile telephone, containing Customer Data that is sent by Episerver on behalf of Customer during the Term of this Agreement.
- 1.8. **“Overage Marketing Automation Emails (“OCE”)** means the amount of emails sent through use of the Marketing Automation Software Service(s) after exceeding Usage Terms and Rights CEY, which shall be measured, charged and invoiced on a monthly basis.
- 1.9. **“Overage Marketing Automation SMS (“OCS”)** means the amount of SMS sent through use of the Marketing Automation Software Service(s), which shall be measured, charged and invoiced on a monthly basis.
- 1.10. **“SMS”** means Messages which are sent to telephones or mobile phones of customers of Customer.
- 1.11. **“Statement of Work (“SOW”)** shall mean a statement of work and any appended statement of work, agreement or amendment with Episerver where Marketing Automation Software Services under this Agreement are being purchased by Customer.

2. Additional Terms and Conditions

- 2.1. For additional clarity, Customer must inform and have proper, lawful consent for any individual that has access to, uses, receives information or in any way interacts with Marketing Automation Software Services, or any website, email, SMS, or communication which is associated with Marketing Automation Software Services. This includes, but is not limited to, all applicable legislation, regulations and laws regarding data privacy and protection, email, SPAM, SMS, tracking, analytics, scripts, cookies and any technological instrument used for gathering, retaining and processing an individual’s information.
- 2.2. **CSM and Marketing Automation Accelerator Package**
 - 2.2.1. Marketing Automation Software Services shall be provisioned at the start of the Initial Subscription Term for Software Services, through the setup of a Marketing Automation Instance with a standard setup.
 - 2.2.2. CSM shall be assigned to Customer within ten (10) working days of the Initial Subscription Term and for the hours defined in Order(s).
 - 2.2.3. Marketing Automation Accelerator Package shall be provisioned to Customer at the fees and for the hours defined in Order(s). All Marketing Automation Accelerator Package(s) require Customer to meet its duties to cooperate in accordance with Customer obligations in terms of setting up Marketing Automation Client Instance(s).
- 2.3. **SOW and Change requests**
 - 2.3.1. Customer may request changes and supplements to the agreed scope of Marketing Automation Software Services, through a mutually signed SOW.
 - 2.3.2. Either Party may request change request by making written request describing requirements and costs. The change request shall describe the business objective and the desired additional functionality or change in Marketing Automation

Software Services, as well as level of effort associated with implementing any changes requested and impact of changes to ongoing operations. If Parties accept the changes request, mutually agreed business terms, requirements and costs must be signed by Parties within ten (10) working days of initial request.

- 2.3.3. The latest SOW or change request will be controlling. Parties may enter into separate SOWs if preferred to change requests. If SOW or change request are not mutually agreed to, Parties shall perform the Agreement within the then current Order terms.

2.4. Technical Usage Prerequisites, Availability

2.4.1. Support Responsibilities of Customer. Episerver’s obligations to provide the Marketing Automation Software Services and meet the service levels herein are subject to the following:

- 2.4.1.1. Customer shall provide Episerver with access to end users to duplicate and resolve errors;
- 2.4.1.2. Customer shall provide supervision, control and management of the use of the Marketing Automation Software Services; and
- 2.4.1.3. Customer shall document and promptly report all errors or malfunctions in the Marketing Automation Software Services to Episerver. Customer shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Episerver.

2.5. Customer General Obligations

- 2.5.1. Customer must be active and co-operative, including but not limited to promptly providing Episerver with all information, data, and documentation that is required for the provision of Marketing Automation Software Services.
- 2.5.2. If Marketing Automation Software Services, or parts thereof, cannot be performed due to a lack of cooperation from Customer, the then current Subscription Term shall be extended accordingly, and no SLA credits shall be due to such failure.
- 2.5.3. Customer shall not violate any law, statute or advertising code or infringe or violate any third-party rights.
- 2.5.4. Customer shall not send Messages (A) unsolicited to unknown individuals in bulk; (B) to individuals who have not given appropriate consent to receive such Messages or content; or (C) to individuals who have opted out of receiving such Messages or content. Customer is obligated to monitor Customer Data and to inform Episerver without delay in case a receiver has opted out from receiving Messages or where legal prerequisites for receiving Messages are subsequently omitted. Customer must configure Messages in such a way that the receiver is informed in every Message about the right to opt out from receiving Messages. Parties agree that the Customer is solely responsible for lawful design of opt-in and opt-out options.

2.6. Contacts and Performance of the Agreement

- 2.6.1. Customer is obliged to name a technically competent contact person who is responsible for internal coordination of Marketing Automation Software Services, when necessary, with third-party service providers, and provides Episerver with the necessary information and documentation in a usable form (“Contact Person”)
- 2.6.2. Contact Person must be authorized to take Customer decisions necessary for the implementation and completion of campaigns (such as changes to scope of service, acceptances).
- 2.6.3. Replacing a Contact Person during the Subscription Term results in increased expense for Episerver. If Customer replaces Contact Person which increases expense as a result, Customer shall bear the reasonable increased expense incurred by Episerver.
- 2.6.4. Without limiting Episerver SLA obligations, Customer shall be responsible for creating regular secure back-up copies of its own data, such as historical contact lists, customized operational workflows, and other such data which is not intended to be held within Marketing Automation Software Services. Please see the SLA for more information.

2.7. Special Provisions on Sending Messages

- 2.7.1. When collecting, selecting and using recipient addresses and data, contents to be sent (texts, images, etc.) and hyperlinks used, Customer is obliged to comply with laws relating to national and international data protection, competition, criminal law, copyright, trademark, labelling, patent and name laws, as well as provisions on child protection and other third-party rights as described in the Episerver Fair-Use Policy (<https://www.episerver.com/legal/fair-use-policy>).
- 2.7.2. Customer shall ensure that for each data record it uses, Customer shall have the right and/or consent from the relevant recipient for sending advertisements or commercial communication in the communication channel chosen by Customer (e.g., e-mail, fax, SMS or push).
- 2.7.3. Customer shall undertake to meet industry codes of conduct and standards for the proper mass sending of advertising Messages, in particular, what are known as “white list programs” for sending e-mails. Compliance of these codes and

standards is to send Messages without any faults from a technical and legal point of view.

2.7.4. On Episerver's request, Customer shall provide Episerver with records of recipient consent as soon as possible, with all consent logs and methods it has for the respective recipient(s), provided that this is not expressly legally forbidden.

2.8. Restricting and blocking the Marketing Automation Software Services

2.8.1. If there are specific indications that the Customer has violated statutory provisions, third-party rights, or contractual obligations, Episerver shall be entitled to restrict the Customer's use of Marketing Automation Software Services, for example deactivate e-mail sending functions. To exercise this right, Episerver shall consider its own operational requirements, liability risks and legitimate interests of claimants and Customer (e.g., default, severity of the violation of the obligation, risks, user's opinion) appropriately. Customer can prevent the exercise of this right by submitting appropriate proof, at its own cost, of currently available evidence of such claim.

2.9. Legal consequences of sending Messages in breach of the Agreement

2.9.1. If the Customer has not obtained legal consent for sending marketing Messages and if Episerver receives complaints from a party concerned due to the unauthorized sending of marketing Messages (e.g. SPAM) Customer is obligated to pay all penalties and fines associated with such unauthorized activities.

2.10. Additional Data and Data Protection Provisions

2.10.1. Episerver is obligated to keep secret personal data that is processed on Customer's behalf, and to process it only in accordance with Customer's instructions and DPA (if applicable).

2.11. Retention of Data

2.11.1. Episerver is obliged to retain the recipient data that was provided to Customer, or that was saved on Customer's behalf, for a period of at least three (3) months after the end of the Agreement. This does not affect Customer's right to demand the deletion of the data at any time in accordance with Section 2.11.5.

2.11.2. Episerver shall notify Customer in writing about the deletion of the data two (2) weeks before the period expires. At the end of this period, Episerver is entitled to delete Customer Data.

2.11.3. Until the expiry of the period defined in Section 2.11.1, Customer shall have the right to access at all times the recipient data saved in its otherwise deactivated Marketing Automation Instance and Customer may export the recipient data to a standard data format such as .csv.

2.11.4. In case bankruptcy or insolvency proceedings are requested or initiated regarding Episerver's assets, or if the initiation of such proceedings has been rejected due to a lack of assets, the Customer shall be granted unrestricted access right to its data under Section 2.11.3.

2.11.5. If Customer issues Episerver written instructions for deletion, Episerver shall delete the data within two (2) weeks after receipt of written instructions, regardless of aforementioned retention periods.

2.11.6. Only data which Episerver is legally obliged to retain is excluded from the deletion of data.

3. Additional References

3.1. If Customer purchase these additional services for Marketing Automation Software Services, these additional reference terms shall apply -

3.1.1. Short Message Services (SMS) - <https://www.episerver.com/legal/marketing-automation/sms-general>
(Annex for SMS to Germany, Italy and Spain - <https://www.episerver.com/legal/marketing-automation/sms-DE-IT-ES>)

3.1.2. Push Services - <https://www.episerver.com/legal/marketing-automation/push>

3.1.3. Print Services - <https://www.episerver.com/legal/marketing-automation/print>

3.1.4. CRM Integrations <https://episerver/legal/marketing-automation/crm>

3.2. All other terms of the Agreement, including but not limited to the EUSA, Data Processing Agreement (if applicable) and references apply to Marketing Automation Software Services equally.