



1. **OnDemand Definitions**

- 1.1. **Customer Content:** means any audio, video, multimedia, data, text, images, documents, computer programs, and any other information or materials that: (i) is created, generated or provided by Customer, Customer's users, or by visitors to the Customer Site, and supplied or made available to Adobe for delivery and/or indexing in connection with Adobe's provision of OnDemand Service; or (ii) is uploaded by or on behalf of Customer in connection with Customer's use of the OnDemand Service.
- 1.2. **Customer Data:** means: (i) any data and information collected from the Customer Site, or from Customer's search engine providers, via the Distributed Code; or (ii) any data or information that Customer imports from its internal data stores or other sources not supplied by Adobe into the OnDemand Service.
- 1.3. **Customer Site:** means any current or future website or application which: (i) is owned and operated by Customer, or hosted or operated by a third party or Adobe on Customer's behalf; or (ii) contains Customer's brand or logo; (iii) is created, maintained or controlled by Customer; and (iv) contains a privacy policy for which Customer is responsible for enforcing.
- 1.4. **Customer Hardware:** means any server or other hardware owned and operated by or for Customer for the purpose of receiving the OnDemand Services.
- 1.5. **Distributed Code:** means HTML tags, JavaScript code, object code, plugins, or other code provided by Adobe to Customer to enable usage of the OnDemand Services.
- 1.6. **Report:** means any graphical or numerical display of Customer Data generated by the OnDemand Service which contain Adobe's proprietary design, look, and feel.
- 1.7. **User:** means those users specified in the PDM that may access the OnDemand Service.

2. **Licence**

- 2.1. **Licence Grant from Adobe.** Subject to the terms of this Agreement and Customer's payment of the Fees, Adobe grants to Customer, during the Licence Term, a nontransferable, non-sublicensable, nonexclusive and worldwide licence to Customer to: (i) permit Users to access the OnDemand Services through the applicable interfaces; (ii) install, implement, and use the Distributed Code solely on the Customer Sites; (iii) use and distribute Reports internally within Customer's business; and (iv) install, implement and use the Distributed Code on Customer Hardware, solely in connection with Customer's use of the OnDemand Services for its own internal business operations. For clarity, and nothing in this Agreement grants Customer any express or implied licence to use, distribute, modify, copy, link, or translate the Distributed Code other than in connection with the Customer's use of the OnDemand Services.
- 2.2. **Licence Restrictions.** Customer must not (as a condition of the licence): (i) copy, use, reproduce, distribute, republish, download, display, post or transmit in any form or by any means the OnDemand Services, Distributed Code, or Reports, except as expressly permitted in this Exhibit; (ii) sell, rent, lease, host, or sublicense the OnDemand Services, the Distributed Code, or the Reports; (iii) make Customer's login ID's or passwords available to any third-party, unless expressly permitted in this Exhibit. Customer must take steps to prevent unauthorised access to its login IDs and passwords; (iv) use, modify, copy, link, translate, or reverse engineer the Distributed Code to enhance or enable usage of any third party product or service (except to the extent permitted under copyright law); (v) remove, obscure, or alter any proprietary notices associated with the OnDemand Services, Distributed Code or Reports; or (vi) use the OnDemand Services, Distributed Code, or Reports in violation of any applicable law (including to use on websites that contain unlawful material such as material that violates any obscenity, defamation, harassment, privacy, or intellectual property laws).
- 2.3. **Licence Grant from Customer.** Customer grants to the Adobe Group, during the Licence Term, a non-exclusive, worldwide, royalty-free, licence to use, copy, transmit, sub-licence, index, store and display Customer Data and Customer Content solely to the extent necessary to provide the OnDemand Services and Reports to Customer and to enforce its rights under this Agreement. Additionally, Customer grants to the Adobe Group a non-exclusive, perpetual and worldwide licence to use, sub-licence, copy, transmit, index,



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model, aggregate (including combination with similar data of other customers of the Adobe Group), publish, display, resell and distribute any non-personally identifiable information derived from Customer Data (or portions thereof), which information may include web browser, screen resolution, and mobile device type information that does not identify the Customer or Customer Site visitors.

3. **Ownership.** Customer will continue to own the Intellectual Property in the Customer Data and Customer Content, subject to Adobe's underlying Intellectual Property in the Adobe Technology and Reports.
4. **Effect of Termination.** Upon termination or expiration of this Agreement or any OnDemand Licence Term: (i) the licence and associated rights granted to Customer under this Agreement will immediately terminate; and (ii) Customer will, at its expense, remove and delete all copies of the Distributed Code from all Customer Sites and Customer Hardware, and remove all references and links to the OnDemand Services from the Customer Sites. Any continued use of the Distributed Code and/or OnDemand Services after termination or expiration will be a breach of this Agreement and Customer will be liable for: (i) any fees for any OnDemand Services which remain active after such termination or expiration, which will be invoiced to Customer at the overusage rate set out in the Sales Order for the applicable OnDemand Services, as determined by Adobe (and Customer must pay such fees to Adobe as a debt due and payable); and (ii) any reasonable associated costs and expenses incurred by Adobe in recovering any such amounts due from Customer (including legal fees and collection expenses).
5. **Privacy**
  - 5.1. **Privacy Policy.** For Customer Sites on which Customer Data is collected or Customer Content is served, Customer must ensure that each Customer Site contains a privacy policy as required under law and that: (i) is displayed conspicuously from the primary interface; (ii) discloses Customer's privacy practices; (iii) identifies the collection (via cookies, web beacons and similar technologies, where applicable) and use of information gathered in connection with third party services, such as the OnDemand Services (including the scope of Customer's licence grant to Adobe under this Agreement); (iv) if Customer utilises the OnDemand Services to serve Customer Content to individuals, offers such individuals an opportunity to opt out of (or opt-in if applicable law requires) such targeted content serving; and (v) if Customer collects or transmits (or plans to collect or transmit) information from any source (including Customer Site(s)) to Adobe, contains a statement specifically disclosing such practices (including transmission to a third party service provider) and offers individuals from whom data is collected an opportunity to opt out of (or opt-in, if applicable law requires) such use by third parties, such as Adobe. Adobe may recommend to Customer that it modifies its privacy disclosures to address updates or changes to applicable law, industry self-regulation, or best practices, and without limiting Customer's other obligations, Customer agrees to undertake a good faith effort to address such recommendations.
  - 5.2. **Sensitive Personal Information.** Customer must not transmit, provide, or otherwise make available to Adobe any sensitive personal information of its employees, customers, partners, site visitors or any third party (including information regarding a minor, sexual orientation, financial information, and medical or health information), and must ensure that no such sensitive personal information is made available to Adobe.
  - 5.3. **Consent.** In order to deliver the OnDemand Services, Customer allows Adobe to disclose personal information Adobe collects from Customer and Customer's users to third parties such as Adobe's third party service providers. In some instances this will involve collection and transfer of personal information and its storage and use outside the jurisdiction of collection. Customer consents to such transfer, storage and use. Adobe's handling of personal information of Customer and Customer's users will comply with Adobe's Privacy Policy (at <http://www.adobe.com/ap/misc/privacy.html>). Customer acknowledges and agrees that provision of such consent by Customer is for handling of personal information by Adobe and Adobe's third party service providers in accordance with Adobe's Privacy Policy and that Adobe will not be required to observe further or other legal obligations in relation to international transfer or handling or storage of personal information.
  - 5.4. **Personal information.** Adobe relies upon Customer to ensure, and Customer agrees to ensure, that Customer has taken all steps necessary under law to allow Adobe and Adobe's third party service providers to collect personal information from Customer and Customer's users and to use, disclose, store and transfer such



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personal information in accordance with the Adobe Privacy Policy (at <http://www.adobe.com/ap/misc/privacy.html>) and these additional privacy provisions at this clause 5.

- 6. Third Party Claims.** Customer agrees to defend any Claims brought against Adobe, its Related Entities or Adobe's third party service providers (Indemnified Parties) by any person, including any regulatory authority, which arise in connection with: (i) Customer's breach of any part of clauses 5 or 7; (ii) any violation of Customer's privacy policy, any third party's rights of privacy, or any privacy laws; or (iii) any Customer Data, Customer Content or any other hosted content and any data stored on Customer's behalf as part of the Products and Services. Customer will, in each case, indemnify the Indemnified Parties against any Losses suffered or incurred by the Indemnified Parties arising out of or in connection such Claim or agreed to in a written settlement agreement signed by Customer arising out of or in connection such Claim. The Limitation of Liability provision in the Adobe General Terms will not apply to Customer's liability or obligations under this clause 6.
- 7. Content Monitoring.** Customer agrees to implement a process through which infringing, abusive or otherwise unlawful content can be reported to Customer and removed in accordance with industry best practices and applicable law. If Customer Content or content from a Customer Site are hosted by Adobe, and if Customer becomes aware of a possible violation regarding any content that its customers upload to the service, Customer must promptly notify Adobe. Customer acknowledges that, though Adobe is providing access to Customer Content under this Agreement, Adobe acts only as a passive conduit. Although Adobe may be involved in modifying or editing the Customer Content to be posted and/or integrated into Customer Sites on Customer's behalf, Customer retains complete discretion and remains responsible, for its websites and all content and data accessible from such websites, including ensuring that such website, content and data comply with all applicable laws.
- 8. Suspension.** Customer acknowledges and agrees that nothing in this Agreement prevents Adobe from suspending the OnDemand Service to comply with any court order.
- 9. OnDemand Services Limited Warranty; Remedies**

  - 9.1. Warranty.** Adobe warrants that the OnDemand Services and the Distributed Code as delivered to Customer will operate in substantial conformance with the PDMs specified in the applicable Sales Order during the Licence Term, provided that Customer must notify the Adobe Customer Support Department of a claim under this warranty (along with proof of purchase) within 30 days of the date the relevant non-conformance first occurred.
  - 9.2. Disclaimer.** Adobe does not warrant that Customer's use of the OnDemand Services will be uninterrupted or error-free or that it will preserve or maintain any Customer Data without loss.
  - 9.3. Sole and Exclusive Remedies.** Customer's sole and exclusive remedy arising out of or in connection with a breach of the warranty in clause 9.1 will, to the extent permitted by law, be limited to: (i) the receipt of a replacement of the Distributed Code (as applicable); or (ii) if replacement is not practicable, to the termination of the applicable OnDemand Service and receipt of a refund of any pre-paid unused Fees for the applicable OnDemand Service.
  - 9.4. Australian consumer law.** If Customer is an Australian consumer, Adobe's goods come with guarantees that cannot be excluded under the Australian consumer law. Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. In order to make a warranty claim under clause 9.1 above, please call the Adobe Customer Support Department at 1800 614 863.
- 10. Compliance.** Adobe may, at its expense, verify that Customer's use of the OnDemand Services complies with the terms of this Agreement. Adobe will use its reasonable endeavours to minimise interference with Customer's business activities during such verification. If such verification shows that Customer is using the OnDemand Services in any way not permitted under this Agreement and which would require Customer to pay additional fees to Adobe, Customer must pay the applicable fees within 30 days of invoice date, with such fees being the licence fees as per Adobe's then-current, country specific, license fee list. If such fees are more than 5% of the value of the Fees paid or



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payable under this Agreement, then in addition to such fees, Customer must pay Adobe's reasonable costs of conducting the verification.