



ADOBE – EXHIBIT FOR ONDEMAND SERVICES (2013v1)

1. OnDemand Definitions

- 1.1. **Customer Content:** means all 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(s), and supplied or made available by Customer to Adobe for delivery and/or indexing in connection with Adobe's provision of OnDemand Services or (ii) is uploaded by or on behalf of Customer in connection with Customer's use of the OnDemand Services.
- 1.2. **Customer Data:** means (i) any and all data and information collected from the Customer Site(s), or from Customer's search engine providers, via the Distributed Code or (ii) any and all data and information that the Customer chooses to import from Customer's internal data stores or other sources not supplied by Adobe into the OnDemand Services.
- 1.3. **Customer Site(s):** means the current and future website(s) and applications which are owned and operated by Customer, OR hosted or operated by a third party on Customer's behalf or by Adobe on Customer's behalf; provided that, in all cases, such websites and applications contain Customer's brand or logo AND Customer creates, maintains, controls, and is responsible for the relevant privacy policy and/or related disclosures displayed in or linked from such websites and applications.
- 1.4. **Customer Hardware:** means servers or other hardware that are 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. **Reports** means all graphical or numerical displays of Customer Data generated by the OnDemand Services which contain Adobe's proprietary design, look, and feel.

2. License

- 2.1. **License Grant from Adobe.** Subject to the terms of this Agreement and payment of the Fees, Adobe grants to Customer, during the License Term, the nontransferable, nonexclusive, worldwide limited right to (i) permit Users (as defined in the applicable PDM) to access the OnDemand Services through the applicable interface(s); (ii) install, implement, and use the Distributed Code solely on the Customer Sites; (iii) use and distribute Reports internally; and (iv) install, implement and use the Distributed Code on Customer Hardware. This license grant is provided solely in connection with OnDemand Services and for Customer's own internal business operations, and nothing in this section grants any express or implied license 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. **License Restrictions.** Customer agrees as a condition of the license not to (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 stated herein; (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 herein, (iv) use, modify, copy, link, translate, or reverse engineer the Distributed Code to enhance or enable usage of any third party product or service; (v) remove, obscure, or alter any proprietary notices associated with the OnDemand Services, Distributed Code, Reports; (vi) use the OnDemand Services, Distributed Code, or Reports in violation of applicable laws (including but not limited to use on websites that contain unlawful material such as material that violates applicable obscenity, defamation, harassment, privacy, or intellectual property laws).
- 2.3. **License Grant from Customer.** Customer grants to Adobe and its affiliates and subsidiaries, during the License Term, the non-exclusive, worldwide, royalty-free, limited right to use, copy, transmit, index, store and/or 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 set forth hereunder. Additionally, Customer grants to Adobe and its Affiliates the non-exclusive, perpetual, worldwide right to use, copy, transmit, index, model, aggregate



(including combination with similar data of other customers of Adobe and its Affiliates), publish, display, resell, and/or distribute anonymous information derived from Customer Data, or portions thereof (which information may include but is not limited to web browser, screen resolution, and mobile device type), provided that no such use(s) shall include any information that identifies Customer or its Customer Site visitors.

3. **Ownership.** Customer owns all right, title and interest in and to (i) all Customer Data; and (ii) Customer Content, subject to Adobe's underlying intellectual property rights in, and to, the OnDemand Services, Adobe Technology, and Reports.
4. **Effect of Termination.** Upon termination or expiration of this Agreement (or any particular OnDemand License Term thereunder), (i) the associated rights and licenses 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 the applicable Customer Sites and Customer Hardware, and remove all references and links to the OnDemand Services from the Customer Site(s). Any continued use of the Distributed Code and/or OnDemand Services after termination or expiration shall be deemed a breach of this Agreement and Customer will be liable for: (i) Fees for all OnDemand Services which remain active after such termination or expiration, which will be billed at the overusage rate set forth in the Sales Order for the applicable OnDemand Services, as determined by Adobe, and (ii) any reasonable associated legal fees and collection expenses incurred by Adobe in recovering amounts due.
5. **Privacy**
 - 5.1. **Privacy Policy.** For Customer Site(s) on which Customer Data is collected or Customer Content is served, Customer hereby agrees that the Customer Site(s) will feature a privacy policy or other notice, displayed conspicuously from the primary interface, that (i) discloses Customer's privacy practices, (ii) 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 uses described in Customer's license grant to Adobe contained herein); (iii) if Customer utilizes 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 (iv) 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 reserves the right to recommend to Customer that it modify its privacy disclosures to address updates or changes to applicable law, industry self-regulation, or best practices, and Customer agrees to undertake a good faith effort to address such recommendation(s).
 - 5.2. **Sensitive Personal Information.** Customer represents and warrants that it will not transmit, provide, or otherwise make available to Adobe sensitive personal information of its employees, customers, partners or site visitors, which includes but is not limited to information regarding a minor, sexual orientation, financial information, and medical or health information.
6. **Third Party Claims.** Customer agrees to defend any third party claim against Adobe, its Affiliates (and its and their directors, employees and agents) and its third party data and service providers (i) that Customer's actions in connection with the OnDemand Services violate Customer's privacy policy or any third party's rights of privacy, or violate any privacy laws; and/or (ii) arising from or relating to the Customer Data or Customer Content. Customer will, in either case, indemnify Adobe (and its directors, employees and agents) and its third party data and service providers against all damages, costs, and expenses arising out of such claim or agreed to in a written settlement agreement signed by Customer arising out of such claim. The Limitation on Damages provision and the Indemnity - Sole and Exclusive Remedies provision in the Adobe General Terms shall not apply to Customer's indemnification obligations herein.
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 Customer Site visitors are hosted by Adobe, and if Customer becomes aware of possible violations regarding content its customers upload to the service, Customer agrees to promptly notify Adobe. Customer acknowledges that, though Adobe is providing access to Customer Content hereunder, it 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 Site(s) on Customer's behalf, Customer retains complete

discretion and responsibility, including compliance with all applicable laws and regulations, for its website and all content accessible thereon. Customer acknowledges and agrees that nothing in the foregoing paragraph prevents Adobe from suspending services to comply with that applicable or court order.

8. OnDemand Services Limited Warranty; Remedies

- 8.1. **Warranty.** Adobe warrants that the OnDemand Services and the Distributed Code (as delivered to Customer) will operate in substantial conformance with the PDM's referenced in the applicable Sales Order(s).
- 8.2. **Disclaimer.** Adobe does not warrant that Customer's use of the OnDemand Services will be uninterrupted or error-free, nor does Adobe warrant that it will preserve or maintain the Customer Data without loss.
- 8.3. **Sole and Exclusive Remedies.** THE EXCLUSIVE REMEDY FOR UNCURED BREACH OF THE FOREGOING WARRANTY IS TO PROVIDE REPLACEMENT DISTRIBUTED CODE OR IF REPLACEMENT IS NOT PRACTICABLE TO TERMINATE THE APPLICABLE ONDEMAND SERVICE(S) AND REFUND ANY PRE-PAID, UNUSED FEES. IF ANY WARRANTY REMEDY IS HELD TO FAIL OF ITS ESSENTIAL PURPOSE, THE LIMITATION OF LIABILITY HEREIN SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY LAW. THE LIMITED WARRANTY SET FORTH IN THIS SECTION SHALL NOT APPLY UNLESS CUSTOMER MAKES A CLAIM WITHIN THIRTY (30) DAYS OF THE DATE ON WHICH THE CONDITION GIVING RISE TO THE CLAIM FIRST APPEARED.

9. **Compliance.** Adobe may, at its expense, verify that Customer's use of the OnDemand Services complies with the terms of this Agreement. Any such verification shall not unreasonably interfere with Customer's business activities. If such verification shows that Customer is using the OnDemand Services in any way not permitted under this Agreement and which would require additional license fees, Customer shall pay the applicable fees within thirty (30) days of invoice date, with such underpaid fees being the license fees as per Adobe's then-current, country specific, license fee list. If underpaid fees are in excess of five percent (5%) of the value of the fees paid under this Agreement, then Customer shall pay such underpaid fees and Adobe's reasonable costs of conducting the verification.

