



ADOBE – EXHIBIT FOR ONDEMAND SERVICES (2013v2)

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, and (ii) any and all data and information that 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, (a) such websites and applications contain Customer's brand or logo; (b) Customer creates, maintains, controls, and is responsible for the relevant privacy policy and/or related disclosures in or linked from such websites and applications; and (c) such websites and applications are not subject to the Children's Online Privacy Protection Act.
- 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. **Reports:** means all graphical or numerical displays of Customer Data generated by the OnDemand Services which contain Adobe's proprietary design, look, and feel.
- 1.6. **User:** unless otherwise described in the applicable PDM or Sales Order(s), means only employees of Customer and third party contractors allowed under the General Terms who are authorized and designated by Customer to access the OnDemand Services using a unique password and login ID, as provided exclusively by Adobe. Use of the same login ID simultaneously by two or more users is prohibited. Unless otherwise specifically limited in the Sales Order, User passwords and log-in ID's for the OnDemand Services will be provided to Customer in an amount mutually agreed upon by Customer and Adobe. Customer acknowledges that each of its Users that access the OnDemand Services will be bound by the terms and conditions governing Customer's use of the OnDemand Services.

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 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 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, Distributed Code, or 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, or 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, 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, royalty-free 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.** As between Adobe and Customer, 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; (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); and (iii) Customer Data stored within the OnDemand Services will be available to Customer for a period of ten (10) days after such termination or expiration in the form and format then available within the reporting interface(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 over usage 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 collecting 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); and (iii) offers individuals an opportunity to opt out of (or opt-in if applicable law requires) the collection or use of information gathered in connection with third party services, such as the OnDemand Services. 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 use the OnDemand Services to collect, process, or store sensitive personal information related to its employees, customers, partners, site visitors or other third parties, which includes but is not limited to personal information of children under the age of 13 (including any personal information as defined by the Children's Online Privacy Protection Act), financial information (including financial account information), sexual orientation, 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, its Affiliates (and its and their 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 an applicable 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 PDMs 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 COMMERCIALY REASONABLE 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. **Upgrades, Support, and Data Retention.** Unless otherwise described in the applicable PDM or Sales Order(s), the following policies shall apply:
- 9.1. **Support.** Adobe provides 24x7x365 unlimited access to Adobe Client Care for a maximum of five (5) named Customer technical support contacts. Support includes: Live Phone, Chat, and Email Support from Adobe Client Care; access to the Online Interface for Support Issue Management; access to the Searchable Knowledge Base; and access to On Demand Training Modules.
- 9.2. **Upgrades.** Adobe will provide Customer with access to upgrades and enhancements to the enabled OnDemand Services that are generally provided to Adobe customers of the enabled OnDemand Services at no additional charge.