

**ON DEMAND BOOKS DIGITAL DISTRIBUTION AGREEMENT
(Online Form)**

This Book On Demand and Digital Distribution Agreement (“Agreement”) is entered into between you (on behalf of yourself or the business you represent) (the “Content Provider”) and ON DEMAND BOOKS, LLC, a Delaware limited liability company.

BY REGISTERING FOR OR USING THE SERVICES AVAILABLE ON THE ESPRESSO BOOK MACHINE ONLINE CONTENT REGISTRATION WEBSITE AVAILABLE AT [HTTP://SELFERVE.ONDEMANDBOOKS.COM/](http://selfserve.ondemandbooks.com/) (THE “EBM CONTENT WEBSITE”) THE CONTENT PROVIDER AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE “EFFECTIVE DATE” OF THIS AGREEMENT SHALL BE THE DATE OF CONTENT PROVIDER’S FIRST ACCEPTANCE OF THE TERMS AND CONDITIONS HEREIN.

WHEREAS, ODB is in the business of manufacturing, marketing and selling proprietary equipment for on-demand book production known as the Espresso Book Machine (“EBM”).

WHEREAS, ODB has developed and integrated into the EBM certain software (the “EBM Software”) that allows users of the EBM access to ODB’s EspressoNet Network (“EspressoNet”) which provides a catalogue of books in an electronic form suitable for production on the EBM.

WHEREAS, ODB desires to make copyrighted works that are part of Content Provider’s catalog (“Titles”) available worldwide through EspressoNet in physical retail, library and other locations and online through retailer websites (together, “EBM Retailers”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Transmission of Titles.** Content Provider shall provide electronic copies of Titles to ODB in a format acceptable to ODB for production on the EBMs for storage on ODB’s servers. Such copies shall only be accessible by EBM users when such user executes a valid print request command on an EBM and shall only be used for the purpose of completing the valid print request. Content Provider shall be solely responsible for the quality, appearance and content of the Titles. Content Provider assumes the risk of damage or loss to an electronic copy of a Title during transmission from its servers to ODB’s storage location. ODB assumes the risk of damage or loss with respect to Titles stored on its servers.
2. **Title Submission / Deletion.** Content Provider shall provide to ODB metadata, including cover images, any Content Provider trademarks, title, author, publisher suggested retail price, currency, and annotations, associated with each Title (“Metadata”). Content Provider may request a deletion of, and ODB may delete, a Title from ODB’s EspressoNet inventory at any time upon giving ODB thirty (30) days written notice.
3. **Term and Termination.** This Agreement will commence on the Effective Date and remain in effect for an initial term of one (1) year (the “Initial Term”). Following the Initial Term, this Agreement will automatically renew for additional one (1) year terms (the “Renewal Terms”) unless either party provides written notice to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Term. If either party materially breaches this Agreement, the non-breaching party may immediately terminate this Agreement provided the breaching party has not cured the material breach within thirty (30) days of its receipt of notice of such material breach. Upon termination of this Agreement, ODB shall delete all copies of Titles from its servers and/or shall remove from EspressoNet all Titles and their metadata.

4. Proprietary Rights. Except as provided for herein, all rights to the Titles shall remain the property of the Content Provider. Content Provider hereby grants to ODB a limited, non-exclusive, non-transferable license to distribute through EspressoNet and/or print on EBMs the Titles, along with Metadata. Content Provider shall remain responsible for all royalty or other compensation or fees due to the authors or owners of the Titles. ODB retains all right, title and interest, including without limitation any and all rights existing from time to time under patent law, copyright law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, as well as, any and all applications, renewals, extensions, restorations and re-instatements thereof, and any derivative works, improvements to, or enhancements thereof, now or hereafter in force and effect worldwide, in and to the EBMs, EBM Software, EspressoNet, and ODB's distribution process.

5. Security. ODB warrants that it uses industry-standard cryptography to provide secure communications. All transmissions between an EBM and ODB's servers are encrypted at the base level with a standard PKI-based encryption.

6. Content Provider Fee. Content Provider shall set the retail price for each Title distributed via EspressoNet (the "Retail Price") during the Title upload process; *provided, however*, that the Retail Price must exceed the sum of (i) the minimum per page print charge (the "Print Charge") and (ii) the book fee ("Book Fee") each as determined by ODB from time to time in its sole discretion. The then-current amount of the Print Charge and Book Fee will be available on the EBM Content Website at the time each Title is uploaded to ODB. For each Title sold on an EBM, ODB shall remit 25% of the retail price (the "Content Provider Fee"), to the Content Provider in accordance with the payment terms set forth below. Within thirty (30) days of the expiration of any month in which one or more Titles were sold on an EBM, ODB shall prepare and submit to Content Provider a report of all such Titles sold during such month, identifying the location of each sale, the Title and the number of sales of each Title. EBM Retailers shall remit to ODB all Content Provider Fees, which ODB shall remit to Content Provider within sixty (60) days following the end of the month in which such sales were made. The Content Provider Fee may be changed only upon the mutual written agreement of ODB and Content Provider. Titles will be sold non-returnable.

7. Warranty. Content Provider represents and warrants that, for the purposes of the rights and authorizations under the copyright laws required hereunder, it understands how EBMs and EspressoNet function, that it is either the owner of each of the Titles and Metadata and all copyrights related thereto, or has obtained the necessary authority from the authors or owners of the Titles and Metadata to print, or have printed, and to distribute the Titles via EBMs and/or through EspressoNet in accordance with the terms of this Agreement, that it shall be solely responsible for compensation of such authors and owners based on sales of Titles hereunder, and that the Titles are not libelous, defamatory or obscene, or otherwise violate any applicable laws. Content Provider will promptly notify ODB in writing if it receives or otherwise becomes aware of a claim alleging facts which if true would be a breach of any of the foregoing representations or warranties.

8. Indemnification. Content Provider shall defend, indemnify and hold ODB, its EBM Retailers, and their directors, officers, employees and agents harmless from any and all claims asserted against them to the extent such claims result from, arise out of, or are attributable to the breach of any of Content Provider's representations or warranties. ODB shall give Content Provider prompt, written notice of all claims, provide reasonable cooperation in the investigation and defense, and permit Content Provider, at its expense, to defend the claim with legal counsel of its choice provided that such counsel is reasonably satisfactory to ODB.

9. Limitation of Liability. Except as set forth herein, neither party shall be liable to the other for indirect, consequential, punitive or special damages, including without limitation lost profits. Further,

in no event will either party be liable to the other for any damages due to delay, business interruption or systems interruption.

10. Assignment. Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder or any portion thereof without prior written approval of the other, which will not be unreasonably withheld, conditioned or delayed, except to an affiliate but only if: (a) the assignee agrees in writing to be bound by the terms of this agreement, and (b) the assigning party remains liable for obligations under the agreement. Any other attempt to assign or transfer is void. This Agreement will be binding on and inure to the benefit of ODB and Content Provider and their respective permitted successors and permitted assigns.

11. Taxes. Each party shall be responsible for any tax liability it incurs due to the performance of its duties under this Agreement. EBM Retailers shall for all purposes be the seller of record for the books, including for purposes of gross receipts, sales and use taxes and custom fees, and shall be responsible for reporting and remitting all such taxes and fees to the applicable authorities.

12. Confidentiality. The parties shall treat all information received from each other as confidential and will only use any such information or documentation for the sole purpose of performing their obligations hereunder. The terms of this Agreement shall also be treated as confidential.

13. Force Majeure. No failure or delay by a Party in the performance of any of its obligations or responsibilities under this Agreement, other than for the payment of money, shall be deemed a breach of this Agreement or create any liability, if such failure or delay arises from a general strike, labor dispute, lockout, fire, flood, severe weather, or other act of God, war, terrorism, insurrection, civil disturbance, embargoes of goods by any government or any other governmental action, or any other cause beyond the reasonable control of such Party, *provided*, that the affected Party uses commercially reasonable efforts to avoid or promptly remove such causes of nonperformance and promptly resumes performance when such causes are removed.

14. Choice of Law; Jurisdiction and Venue. This Agreement will be interpreted and enforced in accordance with the laws the State of Delaware without regard to conflict of law provisions. The Parties agree that sole and exclusive jurisdiction and venue for any action or proceeding arising out of or relating to this Agreement shall be an appropriate state or federal court located in the State of Delaware.

15. Counterparts. This Agreement may be signed in one or more counterparts that together shall form a single agreement as if the Parties had executed the same document. If this Agreement is executed in counterparts, no signatory shall be bound until both Parties have duly executed a counterpart of this Agreement.

16. Entire Agreement. This Agreement, together with all exhibits, schedules and attachments hereto, constitutes the entire agreement between the parties concerning the subject matter hereof. ODB may amend any of the terms and conditions contained in this Agreement at any time and in ODB's sole discretion. Any changes will be effective upon the posting of such changes to the EBM Content Website and Content Provider is responsible for reviewing the EBM Content Website and informing itself of all applicable changes or notices. All notices of changes to the Agreement will be posted for at least thirty (30) days. CONTENT PROVIDER'S CONTINUED USE OF THE SERVICES PROVIDED HEREUNDER AFTER ODB'S POSTING OF ANY CHANGES WILL CONSTITUTE CONTENT PROVIDER'S ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. IF CONTENT PROVIDER DOES NOT AGREE TO ANY CHANGES TO THIS AGREEMENT, CONTENT PROVIDER MUST TERMINATE THIS AGREEMENT AS PROVIDED ABOVE.