



**ADOBE PDM – ADOBE MEDIA OPTIMIZER STANDARD, ADOBE MEDIA OPTIMIZER PREMIUM,
AND ADOBE MEDIA OPTIMIZER AD SERVING AND TRACKING (2013v1)**

1. Additional Terms for Adobe Media Optimizer Standard, Adobe Media Optimizer Premium, and Adobe Media Optimizer: Ad Serving and Tracking.

1.1. Definitions.

- 1.1.1. **Account(s):** means an advertising account(s) with a Media Partner.
- 1.1.2. **Account Information:** means all information relating to an Account that is available, including the following: (i) for Search Engine Accounts: Customer account IDs, campaign structure, keywords, negative keywords, keyword bids, match types, ad copy, display URLs, landing page URLs, and data regarding historical impression, click, position, and bids and costs; (ii) for Digital Media Advertising Exchange Accounts: if applicable, Customer Exchange account and seat information, campaign structure, campaign targeting information, ad banners, ad server tags, and data regarding historical impressions, clicks, and costs; and (iii) for Social Media Site Accounts: Customer account IDs, campaign structure, application IDs, page information, ad variations, custom audiences, and data regarding historical impression, click, bid, cost, and social media site metrics. Account Information will be Customer’s Confidential Information.
- 1.1.3. **Actual Ad Spend:** means the actual amount of monthly media spend by Customer managed through Media Optimizer.
- 1.1.4. **Beta:** means a new beta feature or optimization method included in the OnDemand Services, which is either labeled as “beta” within the user interface of the OnDemand Services or is otherwise designated as “beta” in writing or orally by Adobe.
- 1.1.5. **CPM:** means the cost per thousand.
- 1.1.6. **CPMM:** means the cost per million.
- 1.1.7. **Critical Issue:** means (i) the Media Optimizer application is not accessible; (ii) primary campaign management and performance management functions within Media Optimizer are not operational; or (iii) tracking services are not functioning.
- 1.1.8. **Customer Content:** The definition in the Exhibit for OnDemand Services is deleted in its entirety and replaced with the following: “**Customer Content**” means content that is created for or generated by Customer or by visitors to the Customer Site(s), or supplied or made available by Customer to Adobe for use in connection with the OnDemand Services, including without limitation, behavioral targeting, testing, optimization, search engine functionality, and content publishing portions of the OnDemand Services.
- 1.1.9. **Customer Data:** The definition in the Exhibit for OnDemand Services is deleted in its entirety and replaced with the following: “**Customer Data**” means any and all information or data of any type that is (i) provided by Customer to Adobe; or (ii) collected by Adobe about Customer and visitors to Customer’s website, via Distributed Code or Customer Accounts, in connection with providing the OnDemand Services, including without limitation: (a) information that Customer inputs, or provides to Adobe for inputting, into the OnDemand Services, (b) sales and marketing information provided by Customer to Adobe, (c) Account Information, and (d) data obtained from Distributed Code.
- 1.1.10. **Digital Media Advertising Exchange:** means, as applicable, a display advertising exchange or publisher supported by Media Optimizer.



- 1.1.11. **Feedback:** means comprehensive and accurate feedback regarding the Beta, including but not limited to detection of any defects and flaws with the Beta encountered by Customer.
- 1.1.12. **Media Optimizer:** means, collectively, Adobe Media Optimizer Standard and Adobe Media Optimizer Premium.
- 1.1.13. **Media Partner:** means, as applicable, a Digital Media Advertising Exchange, Search Engine, Social Media Site, or website on which media may be directly purchased.
- 1.1.14. **OnDemand Services:** The definition in the General Terms is in its entirety and replaced with the following: “**OnDemand Services**” means Media Optimizer and Ad Serving and Tracking Services.
- 1.1.15. **Search Engine:** means a search engine supported by Media Optimizer.
- 1.1.16. **Social Media Site:** means a social media site supported by Media Optimizer.
- 1.1.17. **User:** means only employees of Customer who are authorized and designated by Customer to access the OnDemand Services using a unique password and login ID, as provided exclusively by Adobe.

1.2 Special Terms.

- 1.2.1. **Customer Responsibilities.** Customer is responsible for maintaining sufficient internet and telecommunication requirements in order to access and use the OnDemand Services. Customer acknowledges that Adobe’s provision of the OnDemand Services is dependent upon Customer’s maintenance of the destination pages associated with advertisements, and Customer agrees to maintain such pages during the Term. Customer will comply with all applicable terms of use and guidelines required by the Media Partners where Customer Content is displayed and Customer Data is collected. Customer is solely responsible for the accuracy, content, and legality of all Customer Data and Customer Content. Customer agrees to provide Adobe with all Customer Content necessary to provide the Services. Customer remains responsible for compliance by each User. Customer agrees to install Distributed Code, for the purpose of tracking end user actions with respect to Customer’s advertisements.
- 1.2.2. **Users.** 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 of use required of each such User upon log-in to the OnDemand Services.
- 1.2.3. **Fees and Payments.** The applicable Sales Order will specify which Party is responsible for contracting with and payment obligations to the applicable Media Partners. Notwithstanding the foregoing, Customer agrees that, as between Customer and Adobe, Customer is ultimately solely liable for all charges, fees, costs and expenses accrued with respect to all Accounts including, without limitation, the actual costs incurred for the purchase of clicks or impressions, and any other third party costs and expenses arising from actions taken by Adobe on Customer’s behalf. Customer’s failure to maintain its Accounts in good standing or a Media Partner’s termination of Customer’s access to Accounts do not relieve Customer of its payment obligations hereunder. Fees for the Media Optimizer are payable as a percentage of Customer’s monthly Actual Ad Spend. The fees will be calculated monthly based on the aggregated daily expenditure reports from the Media Partner, which Media Optimizer obtains from the Media Partner reporting APIs or from the feature within Media Optimizer that provides monthly reporting of Customer transactions. Fees for Ad Serving and Tracking Services are payable on a transactional basis. Reports generated by the OnDemand Services for the purposes of determining Customer’s fees shall be the system of record for determining all such fees, and shall control over all other records.



- 1.2.4. **Customer Accounts.** If the applicable Sales Order indicates Customer is responsible for contracting with and paying a Media Partner(s), Customer will provide Adobe with timely and complete access to Customer's Accounts, all Account Information, and all other reasonably related data and information requested by Adobe to provide the OnDemand Services. Customer represents and warrants that it has all rights necessary to authorize access to the Account and the Account Information. Customer will notify Adobe prior to any changes to Account Information and will promptly provide updated Account Information to Adobe, so that Adobe's access to Customer's Accounts will not be interrupted. Customer acknowledges that Adobe's provision of OnDemand Services is conditioned upon Adobe's receipt of correct and accurate Account Information from Customer. Customer appoints Adobe and Adobe accepts the appointment, to act as Customer's agent for the sole purpose of (i) accessing Customer's Account(s); (ii) submitting and retrieving Account Information; and (iii) taking any and all actions with respect to Customer's Account(s) as Adobe deems appropriate in its reasonable discretion in providing the OnDemand Services. If a Media Partner seeks to verify that Customer has authorized Adobe to act as Customer's agent, Adobe may provide a redacted copy of this Agreement and the related Sales Order with the financial terms obscured.
- 1.2.5. **Media Rebill.** If the applicable Sales Order indicates Adobe is responsible for contracting with and paying a Media Partner, Customer may purchase inventory from Media Partners via Adobe owned Accounts. In that case, Customer agrees: (i) Adobe will pass on to Customer the gross costs associated with those media buys and any other additional costs related to Adobe's maintenance of Accounts on behalf of Customer ("**Costs**"); (ii) Customer will reimburse Adobe for the Costs, as invoiced by Adobe to Customer; (iii) Adobe's reports regarding the Costs will be considered the system of record and will control over all other records; and (iv) Adobe will host the campaign and provide the tracking methodology.
- 1.2.6. **Indemnity.** Customer will defend Adobe from and against any and all third party claims arising from or relating to: (i) any third party costs and expenses related to any Accounts, and (ii) any use and guidelines required by the Media Partners where Customer Content is displayed, and will indemnify Adobe (and its directors, employees and agents) against all damages awarded against Adobe or agreed to in a written settlement agreement signed by Customer arising out of the claims.
- 1.2.7. **Additional Privacy Terms.** The following sections are added to Section 5 (Privacy) of the Exhibit for OnDemand Services:
- **5.3 Ad Targeting.** Customer will abide by the Digital Advertising Alliance Self-Regulatory Principles in connection with its use of the OnDemand Services. Customer is responsible for ensuring and certifying that the privacy statement rendered with cookies set by Adobe or by Customer in connection with Customer's use of the OnDemand Services accurately reflects and is consistent with Customer's data collection practices and its general privacy policy set forth on the Customer Site(s) as well as any applicable third party data collection practices and privacy policies implicated by Customer's use of OnDemand Services. Adobe will not be liable for any inconsistencies or inaccuracies within any such privacy statements.
 - **5.4 Personal Data.** Customer represents and warrants that it will not transmit, provide or make available to Adobe, information that can be used by Adobe to identify or locate a specific natural person, including without limitation telephone number, e-mail address, and social security number, unless Customer: (i) complies with all applicable terms of use and guidelines required by Media Partner for use of such information; and (ii) complies with and obtains consent as required by any applicable laws, rules, regulations and privacy statements.



- 1.2.8. **Betas.** Adobe may invite Customer to test a Beta. ANY BETA WILL BE PROVIDED TO CUSTOMER “AS-IS” WITHOUT WARRANTY OF ANY KIND. Customer will use reasonable efforts to provide Adobe with Feedback. Adobe may use all Feedback for any purpose without restriction or compensation or obligation to Customer.
- 1.2.9. **Keywords.** Customer’s Search Engine Accounts will contain total keyword counts no greater than the ratio of one million (1,000,000) keywords to, as applicable, US \$100,000, GBP 60,000, AUD 100,000, Euro 70,000, JPY 9,000,000, or RUR 300,000,000 of Monthly Aggregate Spend on Customer’s Search Engine Accounts. If Customer’s total keyword count at the end of a month exceeds the above ratio, Adobe reserves the right to apply a surcharge equal to, as applicable, US \$1000, GBP 600, AUD 1000, Euro 700, JPY 90,000, or RUR 30,000 per 1 million (1,000,000) keywords on a pro-rata basis. As an example, if Customer’s total keyword count at the end of a month is one million, two hundred thousand (1,200,000), and Monthly Aggregate Spend on Customer’s Search Engine Accounts is one hundred thousand US dollars (\$100,000), an additional charge of two hundred dollars (\$200) will be applied, based on: $1,200,000 - 1,000,000 = 200,000$ excess / $\$1000 = \200 . To mitigate excess keyword count, Adobe will automatically remove keywords from the Media Optimizer system that are: (i) in deleted status on Customer’s Search Engine Accounts for one hundred eighty (180) days and have not had any impressions, clicks, or cost associated with them; or (ii) have been in the Media Optimizer system for one hundred eighty (180) days in any status and have not had any impressions, clicks, or cost associated with them for that time.

2. MEDIA OPTIMIZER AND AD SERVING AND TRACKING PRODUCT AND SERVICE DESCRIPTIONS.

2.1 **Media Optimizer.** Media Optimizer is a subscription-based digital advertising optimization and management solution that uses Adobe’s proprietary optimization and management platform to efficiently spend marketing budget across search engines, ad exchanges, and social networks. The solution includes, as applicable, advertising campaign optimization and management services for its clients’: (i) search engine marketing efforts, (ii) display advertising campaigns, and (iii) social media advertising campaigns.

2.2 **Adobe Media Optimizer: Ad Serving and Tracking.** Adobe Media Optimizer: Ad Serving and Tracking is not included in Adobe Media Optimizer Premium or Adobe Media Optimizer Standard. It is an add-on service to Adobe Media Optimizer Premium consisting of ad impression tracking, click tracking, conversion attribution, and reporting for advertising that is (i) not purchased through an auction; or (ii) purchased in connection with a view through tracking program. Adobe Media Optimizer: Ad Serving and Tracking may only be used in conjunction with Adobe Media Optimizer Premium.

3. **Support.** Customer will have access to OnDemand Services product technical support via a customized email address and phone number during normal business hours, which are 9am – 6pm Customer’s local time. A case number will be issued in the OnDemand Services support system, and periodic updates will be provided until the problem is resolved based on the severity of the issue. If Customer experiences a Critical Issue, 24/7 emergency technical support is available via a designated phone number provided to Customer. Critical Issues reported after hours will be acknowledged within 30 minutes, and periodic updates will be provided until an estimated time is established for resolution or the Critical Issue is resolved.

Third Party Software Notices. In order to accommodate public demand for software that is interoperable with other products and platforms, Adobe, like other commercial software publishers, has designed its products to comply with public standards, and has incorporated code created and licensed by third parties, into its products. The creators of these public standards and publicly available code, as well as other third party licensors, require that certain notices and terms and conditions be passed through to the end users of the software. Such required third party



software notices and/or additional terms and conditions are located at www.adobe.com/products/eula/third_party/index.html (or a successor website thereto) and are made a part of and incorporated by reference into this Agreement. Customer acknowledges and agrees that Adobe's licensors (and/or Adobe if Licensee obtained the Software from any party other than Adobe) are third party beneficiaries of this Agreement, with the right to enforce the obligations set forth herein with respect to the respective technology of such licensors and/or Adobe.

