



ADOBE PDM – ADOBE MEDIA OPTIMIZER: AUDIENCE TARGETED CREATIVE (2013v1)

1. Additional Terms for Adobe Media Optimizer: Audience Targeted Creative

- 1.1. **Definitions.** Unless otherwise defined in this PDM, capitalized terms will have the meanings included in the corresponding Adobe General Terms.
- 1.1.1. **Ad:** means any advertisement delivered by Customer, including without limitation advertisements with dynamic (*i.e.*, changing) Advertising Materials.
- 1.1.2. **Ad Campaigns:** means a display advertising program defined by the advertiser (*i.e.*, Customer) or its designated agency, for which Impressions are purchased and delivered, in order to notify consumers of the advertiser's offer(s). The campaign will have a specific start and end date and a defined budget.
- 1.1.3. **Ad Site(s):** means third-party website(s) for which Customer has provided explicit authorization for Network Partners to display Ads on behalf of Customer.
- 1.1.4. **Advertising Materials:** means artwork, copy, active URLs or other content for advertisements, including all such content inserted into advertisements.
- 1.1.5. **CPM:** means the cost per thousand.
- 1.1.6. **CPMM:** means the cost per million.
- 1.1.7. **Customer Content:** has the meaning set forth in the Exhibit for OnDemand Services, but also includes Advertising Materials.
- 1.1.8. **Customer Data:** The definition set forth in the Exhibit for OnDemand Services, is deleted in its entirety and replaced with the following: "**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; (ii) any and all data and information Customer chooses to import from Customer's internal data stores or other sources not supplied by Adobe (including offline sources) into the OnDemand Services; and (iii) Ad Site visitor data gathered in connection with the delivery of Ads within the Ad Site(s).
- 1.1.9. **DAA:** means Digital Advertising Alliance.
- 1.1.10. **Distributed Code:** the definition set forth in the Exhibit for OnDemand Services, is deleted in its entirety and replaced with the following: "**Distributed Code**" means HTML tags, JavaScript code, object code, Visitor Identifying Code, or other code provided by Adobe to Customer, subject to the terms of this Agreement, to enable Customer to: (i) use the OnDemand Services; and (ii) tag the Customer Site(s) or Ad Site(s) for use solely in connection with the OnDemand Services.
- 1.1.11. **Flashbox Request:** means each call made to Adobe's servers in connection with Customer's use of the OnDemand Services on the Ad Sites in connection with a specific Ad Campaign.
- 1.1.12. **Impressions:** means the metric or count of an Ad delivered to Ad Site via a Flashbox Request tied to Distributed Code deployed for a particular Ad Campaign.
- 1.1.13. **Network Partners:** means ad network/publisher and/or ad serving partners of Customer and with whom Customer has contracted (either directly or through its ad agency) for provision of Customer's Ad content and/or placement on the Ad Sites.



- 1.1.14. **OnDemand Service:** The definition in the General Terms is deleted in its entirety and replaced with the following: “**OnDemand Services**” means Adobe Media Optimizer: Audience Targeted Creative.
- 1.1.15. **Personal Data:** means 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.
- 1.1.16. **Reports:** The definition in the Exhibit for OnDemand Services, is deleted and replaced in its entirety as follows: “**Reports**” means all graphical or numerical displays of Customer Data or Transmitted Data, as applicable, generated by the OnDemand Service that contain Adobe’s proprietary design, look and feel.
- 1.1.17. **Second-Party Data:** means data either collected from Strategic Partner Site(s) via the Distributed Code or transferred/made available to Adobe directly by a Strategic Partner.
- 1.1.18. **Strategic Partner:** means any third party entity that has entered into an agreement with Customer that: (i) authorizes the collection of data from such third party and/or the transfer of such data to Adobe; (ii) authorizes Customer to access and utilize data from such third party in conjunction with the OnDemand Services, including the right to transmit such data to a Targeting Platform in conjunction with the Customer Data; and (iii) incorporates Adobe’s required terms and conditions applicable to Customer’s Strategic Partners, as set forth below.
- 1.1.19. **Strategic Partner Site(s):** means the current and future website(s) and applications owned and operated by Strategic Partner, including any and all applications and web and mobile pages that may be hosted or operated by a third party on Strategic Partner’s behalf that contain Strategic Partner’s brand or logo, provided that Strategic Partner creates, maintains, and controls the relevant privacy policy and/or related disclosures displayed or linked from such sites or applications hosted or operated by third parties. Strategic Partner Site(s) will also include any other applications or hardware that are owned and operated by Strategic Partner and that contain the Distributed Code.
- 1.1.20. **Targeting Platform:** means any third party entity (e.g., demand-side platform, ad server or content management platform) that has either: (i) entered into an agreement with Customer authorizing Targeting Platform to access and use Customer Data, Second-Party Data and Third-Party Data (as applicable); or (ii) entered into a data access agreement with Adobe to access and use Customer Data, Second-Party Data and Third-Party Data (as applicable).
- 1.1.21. **Third-Party Data:** means data provided by a Third-Party Data Provider.
- 1.1.22. **Third-Party Data Provider:** means any third party entity that has: (i) entered into a data provider agreement with Adobe authorizing Adobe to access and utilize the third party’s data on behalf of Adobe’s customers, or (ii) entered into an agreement with Customer authorizing Customer to access and utilize such third party’s data in conjunction with the OnDemand Services, including the right to transmit such third party’s data to a Targeting Platform in conjunction with the Customer Data, and in either (i) or (ii), such third party’s data is transferred directly (e.g., through an API integration) from the Third Party Data Provider to Adobe.
- 1.1.23. **Transmitted Data:** means any Customer Data, Second-Party Data and Third-Party Data that Adobe receives, displays, transmits or otherwise uses in connection with Customer’s use of the OnDemand Services.
- 1.1.24. **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.



- 1.1.25. **Visitor Identifying Code:** means pixels provided by Adobe or third party service providers of Adobe that set, read and modify cookies to the browsers and machines of visitors to the Customer Site(s) and Ad Site(s), as applicable, in order to enable Adobe or such third party service providers to identify Ad Site visitors, and is required for Customer's use of the OnDemand Services for Ad targeting.

1.2. Special Terms.

- 1.2.1. **Targeting Platform.** Where Customer has entered into an agreement with a third party, Adobe may confirm Customer's agreement either through email or other acknowledgement of Customer (e.g., Customer's designation or request to designate a "destination" for Customer Data) or by confirming with the third party directly. Where Adobe has entered into the agreement with the third party entity, Customer authorizes Adobe to provide the access to third parties to the Customer Data, Second-Party Data and Third-Party Data (as applicable) provided that the third parties are acting on Customer's behalf and have obligations to limit the use and disclosure of such data in connection with the services of such Targeting Platform. In addition, Customer may choose to purchase licenses to other products of Adobe, in connection with Customer's use of the OnDemand Service, that function as a Targeting Platform (e.g., Adobe AdLens). In such cases, those services of Adobe will be considered a Targeting Platform.
- 1.2.2. **Users.** Unless otherwise specifically limited in the Sales Order, Adobe will provide User Passwords and Log-in ID's for the OnDemand Services 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. **License Grant.** Section 2.1(ii) (License Grant from Adobe) of the Exhibit for OnDemand Services is deleted and replaced in its entirety as follows: "...(ii) install, implement, and use (or have installed, implemented and used) the Distributed Code solely: (a) on the Customer Sites; and (b) on the Strategic Partner Sites for the purposes of tracking and analyzing traffic on the Strategic Partner Sites;..."
- 1.2.4. **Additional License Restrictions.** A subpart "(vii)" is added to the restrictions in Section 2.2 (License Restrictions) of the Exhibit for OnDemand Services, as follows: "...(vii) the Ad targeting functionality of the OnDemand Service may only be used in connection with a particular Ad containing the Distributed Code and Customer is only entitled to use the site-side content-serving capabilities of the OnDemand Service in connection with Ad targeting." In connection with using the Ad targeting capabilities of the OnDemand Service, Customer is only entitled to use the content serving capabilities for the purpose of matching the experience on the Customer Site (the "site side experience") with incoming visitors from the targeted Ad Campaign.
- 1.2.5. **Counting Impressions.** If Customer also has separately licensed Adobe® Test & Target, Adobe® Test & Target 1:1 functionality, Adobe Target, or any bundle of Adobe products containing such Test & Target functionality, the Impressions associated with site-side requests for the OnDemand Service will be counted and billed separately from calculation of the requests or server calls made in connection with Customer's usage of the Test & Target functionality. In connection with Customer's use of the OnDemand Service, an Impression that functions as an Ad call will be counted as requested even if the related Ad is not displayed on the Ad Site as a result of blocking by any form or method used by any security software or by any other mechanism designed to prevent unwanted material from being displayed on such Ad Site or to the visitor of the Ad Site.
- 1.2.6. **Additional License Grant from Customer.** All references to "Customer Data" in Section 2.3 (License Grant from Customer) of the Exhibit for OnDemand Services will also refer to "Transmitted Data."



- 1.2.7. **Effect of Termination.** Section 4(ii) (Effect of Termination) of the Exhibit for OnDemand Services is deleted and replaced with the following: “...(ii) Customer will, at its expense, remove and delete all copies of the Distributed Code from the applicable Customer Sites (including any handheld or offline applications), delete all copies of the Distributed Code from the applicable Ads and/or Ad Sites, and remove all references and links to the OnDemand Services from the Customer Site(s) or Ads.”
- 1.2.8. **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 DAA Self-Regulatory Principles in connection with its use of the OnDemand Services.
 - **5.4 Strategic Partners and Network Partners.** As it relates to Customer’s use of OnDemand Services, Customer will ensure that all Strategic Partners and Network Partners are bound by obligations to comply at all times with applicable laws, rules, and regulations, and the DAA Self-Regulatory Principles, including, without limitation, establishing and maintaining a functioning process for visitors, including Ad Site visitors, to opt out from receiving ads based on their likely interests (or opt-in to receiving such ads, if applicable law requires). Customer will be solely responsible for obtaining the consents from Strategic Partners and Network Partners to set third party cookies (or use similar technologies) on the browsers and machines of visitors, including Ad Site visitors, where ads based on their likely interests are provided, and for enabling the setting of cookies (or similar technologies), and/or any other method to set cookies (or similar technologies) agreed upon by Customer and the Strategic Partners and Network Partners. Customer agrees that Adobe will have no liability for failure to obtain any consents. Customer is responsible for ensuring and certifying that the privacy statement rendered with cookies (or similar technologies) set by Adobe, by Customer, or by Strategic Partner or Network Partner 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 the privacy statements. Customer will require each Strategic Partner to: (i) defend any claim or lawsuit by a third party against Adobe and its third party service providers (a) that Strategic Partner’s actions in connection with the Distributed Code violate the Strategic Partner’s privacy policy or any third party’s rights of privacy, or violate any privacy laws, and/or (b) arising from or relating to Second Party Data, and (ii) indemnify Adobe (and its directors, employees and agents) against all damages awarded against Adobe or agreed to in a written settlement agreement signed by the Strategic Partner arising out of such claim.
 - **5.5 Personal Data.** Customer represents and warrants that both Customer and Customer’s Strategic Partners will not transmit, provide or otherwise make available to Adobe, Personal Data. Customer further represents that Strategic Partners do not derive Personal Data by, for example, any linking of, or cross-comparison of, the Transmitted Data with other data that the Targeting Platform may possess or acquire from third party sources. Customer acknowledges that it will not modify, or cause to be modified, the characterization or categorization of the Transmitted Data in any manner that would result in the transfer of Personal Data.”
- 1.2.9. **Transferring Transmitted Data.** Upon Customer’s request, Adobe agrees to transmit specified Transmitted Data to a Targeting Platform on behalf of Customer. Customer agrees that it is solely responsible for ensuring that any usage or combination of the Transmitted Data (by



Customer, the Targeting Platform, or other third parties) complies with Customer's obligations under the Agreement, all applicable laws and government regulations, and established industry best practices for data usage and privacy, such as the DAA Self-Regulatory Principles. Adobe's transfer of Transmitted Data to a Targeting Platform will not be construed as a grant to the third party Targeting Platform of the right to access Adobe's online reporting interface or tools, or to receive reports generated by Customer within Adobe's online reporting interface or tools. In addition, if the Transmitted Data is modified or combined with other data, and subsequently transferred back to Adobe for use in connection with Adobe's products and services, Customer expressly authorizes this transfer, and this data will be deemed Customer Data under the Agreement (except to the extent it contains data supplied by third party data suppliers under Section (i) of the definition of Third Party Data Provider). Customer acknowledges that Adobe does not control, or have responsibility for, either the usage of the Transmitted Data by the Targeting Platform or for the Targeting Platform's combination of the Transmitted Data with any other data or modification thereof.

- 1.2.10. **Indemnity.** Customer will defend and indemnify Adobe (and its directors, employees, and agents) against all claims, lawsuits, liabilities, damages, and costs (including reasonable attorney's fees) awarded against Adobe or agreed to in a written settlement agreement signed by Customer, arising out of a claim that Customer's actions, a Strategic Partner's actions, a Third-Party Data Provider's actions or a Targeting Platform's action, arising from or related to the use, display, exchange or transfer of Transmitted Data between and among Strategic Partners, Third-Party Data Providers or Targeting Platforms and Adobe, violate Customer's privacy policy, any third party's rights in confidential information, trade secret or other intellectual property right, or rights of privacy, or violate any privacy or other laws.

2. Adobe Media Optimizer: Audience Targeted Creative Product and Service Descriptions.

2.1. Adobe Media Optimizer: Audience Targeted Creative. Adobe Media Optimizer: Audience Targeted Creative is not included in Adobe Media Optimizer Premium or Adobe Media Optimizer Standard. It is an add-on service to Adobe Media Optimizer Premium that allows Customer to define audience segments based on a variety of data sources. For each segment, Customer can create and align dynamic display ad templates in order to deliver targeted ad units to the specific audience segments. The display ads are served to the audience targets as they browse the web on third party web sites. The OnDemand Services facilitate A/B/n split and multivariate tests to determine the most effective ad creative. Adobe Media Optimizer: Audience Targeted Creative may only be used in conjunction with Adobe Media Optimizer Premium.

3. Support. Any valid User or network operations personnel of Customer will have access to product technical support for the OnDemand Services by contacting Customer's account manager via email address or phone during normal business hours, which are 9am – 6pm Customer's local time.

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.

