



## Adobe PDM - Adobe Media Optimizer Standard, Adobe Media Optimizer Premium, and Adobe Media Optimizer: Ad Serving and Tracking (2013v3)

Products and Services described in this PDM are OnDemand Services and are governed by the terms of this PDM, the Sales Order, the General Terms, and the exhibit for OnDemand Services.

Adobe Media Optimizer Standard and Adobe Media Optimizer Premium are subscription-based digital advertising optimization and management solutions that use Adobe's proprietary optimization and management platform to efficiently spend marketing budget across search engines, ad exchanges, and social networks. The solutions include, as applicable, advertising campaign optimization and management services for Customer's search engine marketing efforts, display advertising campaigns, and social media advertising campaigns.

Adobe Media Optimizer: Ad Serving and Tracking consists of ad impression tracking, click tracking, conversion attribution, and reporting for advertising that is:

- (A) not purchased through an auction; or
- (B) purchased in connection with a view-through tracking program.

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### Additional Terms

- 1. Product Limitations and Use Restrictions.** 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 and may only be used in conjunction with Adobe Media Optimizer Premium.
- 2. Customer Responsibilities.** 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 License 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 OnDemand Services. Customer agrees to install Distributed Code for the purpose of tracking end user actions with respect to Customer's advertisements.
- 3. Fees and Payments.** Customer agrees that, as between Customer and Adobe, Customer is ultimately and 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 Media Optimizer are payable as a percentage of Customer's monthly Spend Under Management. 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 Adobe Media Optimizer: Ad Serving and Tracking are payable on a transactional basis. Reports generated by the OnDemand Services for the purposes of determining Fees are the system of record for determining all Fees and will control over all other records.
- 4. Customer Accounts.** This section 4 applies 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. Account Information will be Customer's Confidential Information.

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. 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 accessing Customer's Account(s), submitting and retrieving Account Information, and 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.

**5. Media Rebill.** This section 5 applies 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:

5.1 Adobe will pass on to Customer the gross costs associated with media buys and any other additional costs related to Adobe's maintenance of Accounts on behalf of Customer ("**Costs**"), which such Costs will be treated as fees subject to section 2 (Payment of Fees) of the General Terms;

5.2 Customer will reimburse Adobe for the Costs as invoiced by Adobe to Customer, and notwithstanding anything set forth in the General Terms or Sales Order regarding the payment terms for fees, all payments of Costs are due upon the date of invoice;

5.3 Adobe's reports regarding the Costs will be considered the system of record and will control over all other records; and

5.4 Adobe will host campaigns and provide tracking methodology.

**6. Additional Claims.** Customer's defense and indemnification obligations set forth in section 6 (Claims) of the exhibit for OnDemand Services will also apply to Claims that arise from:

6.1 any third party costs and expenses related to any Accounts;

6.2 any use and guidelines required by the Media Partners where Customer Content is displayed; and

6.3 any keyword selected by Customer.

**7. Additional Privacy Terms.** The following sections are added to section 5 (Privacy) of the exhibit for OnDemand Services:

7.1 **5.4 Ad Targeting.** If Customer is either located in the US or uses OnDemand Services on Sites directed towards visitors that are located within the US, Customer must abide by the DAA Self-Regulatory Principles in connection with its use of the OnDemand Services.

7.2 **5.5 Personal Data.** Customer must not transmit, provide, or make available to Adobe, Personal Data, unless Customer:

(A) complies with all applicable terms of use and guidelines required by a Media Partner for use of such information; and

(B) complies with and obtains consent as required by any applicable laws, guidelines, regulations, codes, rules, privacy statements, and third-party rights.

**8. Beta.** 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.

**9. Keywords.** Customer's Search Engine Accounts will contain total keyword counts no greater than the ratio of 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 Spend Under Management 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 1,000,000 keywords on a pro-rata basis. Adobe will automatically remove keywords from the Media Optimizer system that are on Customer's Search Engine Accounts or have been in the Media Optimizer system for 180 days in any status and have not had any impressions, clicks, or cost associated with them for that time.

**10. 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.

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## **11. Additional Definitions.**

11.1 **"Account(s)"** means an advertising account(s) with a Media Partner.

11.2 **"Account Information"** means all information relating to an Account that is available, including without limitation the following:

(A) 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;

(B) 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

(C) 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.

11.3 **"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" by Adobe orally or in writing.

11.4 **"Critical Issue"** means:

(A) the Media Optimizer application is not accessible;

(B) primary campaign management and performance management functions within Media Optimizer are not operational; or

(C) tracking services are not functioning.

11.5 **"Customer Data"** has the meaning stated in this section 11 and applies in place of the definition of "Customer Data" in the exhibit for OnDemand Services. "Customer Data" means any and all information or data of any type that is:

(A) provided by Customer to Adobe; or

(B) 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:

(1) information that Customer inputs, or provides to Adobe for inputting, into the OnDemand Services;

(2) sales and marketing information provided by Customer to Adobe;

(3) Account Information; and

(4) data obtained from Distributed Code.

11.6 **"Digital Media Advertising Exchange"** means, as applicable, a display advertising exchange or publisher supported by Media Optimizer.

- 11.7 **“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.
  - 11.8 **“Media Optimizer”** means, collectively, Adobe Media Optimizer Standard and Adobe Media Optimizer Premium.
  - 11.9 **“Media Partner”** means, as applicable, a Digital Media Advertising Exchange, Search Engine, Social Media Site, or website on which media may be directly purchased.
  - 11.10 **“Search Engine”** means a search engine supported by Media Optimizer.
  - 11.11 **“Social Media Site”** means a social media site supported by Media Optimizer.
  - 11.12 **“Spend Under Management”** means the actual amount of media spend by Customer managed through Media Optimizer.
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