

PIPES TERMS OF USE FOR AUTHORISED USERS

BACKGROUND

MERKLE UK THREE LIMITED (The "SUPPLIER") has developed a certain platform which it makes available to subscribers via the internet for the purpose of auditing and/or managing advertising accounts.

The Supplier has agreed to allow users to use this platform for the purposes of providing services to the Supplier's (and its affiliates') clients.

1. DEFINITIONS

In this agreement the following expressions shall have the following meanings:

Affiliate: means in relation to a party, a subsidiary of that party, or the holding company of that party (if any), or any other subsidiary of that holding company and for these purposes the terms "subsidiary" and "holding company" each have the meaning given to them in section 1159 of the Companies Act 2006.

Authorised Account(s): the Customer's registered account(s) with Facebook Ads, Google Ads or DV360 (and all Customer Data registered with such account(s)), which the Authorised Users have access to, to provide the Services.

Authorised Users: those employees, agents and independent contractors of either the Supplier, the Supplier's Affiliates, or the Customer, each of whom are authorised by the Customer to use the Services.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 5.

Customer: means either the Supplier's or Supplier's Affiliate's customers, which the Authorised Users provide the Services to.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Personal Data: any personal data provided by, or on behalf of, the Customer to the Supplier for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation: the General Data Protection Regulation (EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, as well as any successor legislation to the GDPR and the Data Protection Act 2018.

Controller, data subject, personal data, personal data breach, processor, process and supervisory authority: shall have the meanings given to them in the Data Protection Legislation.

Display & Video 360 (DV360): an online advertising service provided by Google.

Display & Video 360 Account(s): the Customer's registered account(s) with DV360 and all Customer Data registered with such account(s).

Facebook Ads Manager: the online advertising service provided by Facebook.

Facebook Ads Account(s): the Customer's registered account(s) with Facebook Ads and all Customer Data registered with such account(s).

Google Ads: an online advertising service provided by Google.

Google Ads Account(s): the Customer's registered account(s) with Google Ads and all Customer Data registered with such account(s).

Services: the access to the Authorised Accounts for the purposes of providing the services the Customer via pipes.merkleinc.com or any other website notified to the Customer by the Supplier from time to time.

Software: the online software applications known as "Pipes", as provided by the Supplier as part of the Services.

Supplier: Merkle UK Three Limited (incorporated and registered in England and Wales with company number 05134352 and whose registered office is at 10 Triton Street, Regents Place, London, NW1 3BF) and its Affiliates.

2. AUTHORISED USERS

- a) The Supplier hereby permits the Authorised Users to use the Services for the sole purpose of providing the Services to the Authorised Accounts of the Customers.
- b) If the Supplier ascertains that any Service provided by the Software has been used on an advertising account that is not an Authorised Account under this agreement, then without prejudice to the Supplier's other rights, the Supplier shall promptly disable the Software and the Authorised User's access to the same.
- c) In using the Software, the Authorised Users shall not access, store, distribute or transmit any material during the course of its use of the Services that are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitate illegal activity; depict sexually explicit images; promote unlawful violence; could be deemed to be discriminatory; or are done in a manner that is otherwise illegal or causes damage or injury to any person or property, and the Supplier reserves the right, , to disable the Customer's access to any material that breaches the provisions of this clause.
- d) Each of the Authorised Users shall not:
 - except to the extent expressly permitted under these terms and as may be allowed by any applicable law (which is incapable of exclusion by agreement between the parties):
 - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means (other than screenshots of reports which the Customer shall be entitled to take and share with its clients provided that the logo and other branding of the Supplier is clearly visible in such screenshot); or
 - ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - access all or any part of the Services and/or Software in order to build a product or service which competes with the Services and/or Software; or
 - license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Software available to any third party except as otherwise agreed in writing by the Supplier.

- e) Each Authorised User shall: (i) comply with the Google terms of service, which are applicable in its Google Ads Account(s); (ii) comply with the Facebook terms of service, which are applicable to its Facebook Ads Account(s); (iii) comply with the Google terms of service, which are applicable in its DV360 Account(s); and (iv) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Authorised Accounts and/or the Software and, in the event of any such unauthorised access or use, shall promptly notify the Supplier.
- f) The Authorised Users acknowledge and agree that the Supplier may track each Authorised Users' use of the Software for the purposes of determining which features of the Software are used the most.

3. CUSTOMER DATA

- a) The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Without prejudice to the generality of clause 3.2, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier, as required by the Data Protection Legislation.
- b) The Authorised Users acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor.
- c) The Data Processing Schedule sets out the scope, nature and purpose of the processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- d) The parties shall both comply with all applicable requirements of the Data Protection Legislation. This clause 3 is in addition to, and does not relieve, remove or replace, either party's obligations under the Data Protection Legislation.
- e) In respect of the Customer Personal Data, unless otherwise required by applicable laws or other regulatory requirements, the Supplier shall:
 - process the Customer Personal Data only in accordance with the Customer's lawful written instructions, in order to provide the Customer with the Services and in accordance with the Data Protection Legislation;
 - disclose the Customer Personal Data to courts, government agencies and other third parties as and to the extent required by law;
 - maintain commercially reasonable and appropriate security measures including administrative, physical and technical safeguards to protect against unauthorised or unlawful processing of any Customer Personal Data and against accidental loss or destruction of, or damage to, such Customer Personal Data;
 - at the choice of the Customer, return or delete all the Customer Personal Data upon the termination of this agreement;
 - ensure that only those personnel who need to have access to the Customer Personal Data are granted access to it and that all of the personnel authorised to process the Customer Personal Data are bound by a duty of confidentiality;

- only transfer the Customer Personal Data to a country or territory outside the European Economic Area in accordance with Data Protection Legislation;
- at the Customer's cost, allow for and contribute to audits, including inspections in respect of the same, conducted by the Customer or another auditor mandated by the Customer, provided that:
 - i. the Customer shall be permitted to conduct no more than one such audit or inspection in any calendar year; and
 - ii. the Customer shall provide reasonable written notice of such audit which shall take place at a date and time agreed by the parties.
- notify the Customer if the Supplier appoints a sub-processor (but only if the Customer given the Supplier its prior written consent, such consent not to be reasonably withheld or delayed) and ensure any agreement entered into with the relevant sub-processor includes similar terms as the terms set out in this clause 3;
- notify the Customer, without undue delay, in the event that the Supplier reasonably believes that there has been a personal data breach in respect of the Customer Personal Data; and
- assist the Customer, at the Customer's cost, in responding to any request from a relevant data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

4. PROPRIETARY RIGHTS

The Authorised Users acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Authorised Users any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

5. CONFIDENTIALITY

- a) Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that is or becomes publicly known other than through any act or omission of the receiving party; was in the other party's lawful possession before the disclosure; is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- b) Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of agreement.
- c) Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

- d) The Authorised Users acknowledges that: (i) the details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information; and (ii) the Customer Data is the Confidential Information of the Customer.
- e) This clause 5 shall survive termination of these terms, however arising.
- f) No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

6. GENERAL

- a) Both parties hereby agree to comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- b) Any notice to be given by either Party to the other shall be in writing and may be sent by recorded delivery to the address of the other and shall be deemed to be served 2 working days following the date of posting.
- c) The terms of this agreement shall supersede any terms and conditions referenced or stated in any purchase order, issued in respect of the goods or services to be supplied under this agreement.
- d) This agreement will constitute the entire understanding of the parties and supersede all prior agreements, representations (excluding fraudulent misrepresentations), proposals negotiations, communications, oral or written, express or implied between the parties regarding its subject matter.
- e) No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- f) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- g) Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any Party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- h) The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- i) Neither party may subcontract, assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement, without the prior written consent of the other party.
- j) No term of this agreement shall be enforceable by a third party.
- k) These terms are governed by the laws of England & Wales, whose courts shall have exclusive jurisdiction in relation to all matters arising out of or in connection with this agreement.