

## M1 TERMS AND CONDITIONS

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### 1. General

**1.1.** These Merkury for Media (formerly known as M1) Platform Terms and Conditions (these “**Platform Terms**”) are entered into between Merkle Inc. (“**Merkle**”) and the entity utilizing Merkury for Media (or on whose behalf Merkury for Media is utilized) (“**Client**”). Client’s use of the Merkury for Media Platform or use of the Merkury for Media Platform on Client’s behalf shall signify Client’s understanding and agreement that it is and shall be bound by these Platform Terms with regard to any such use of the Merkury for Media Platform.

**1.2.** These Platform Terms govern the provision of bidding, media planning, and audience development and delivery via Merkle’s platform, including all tools incorporated therein such as Activate, Bidder, and Planner (“**Merkury for Media Platform**”) in support of separate audience insights and media targeting by or on behalf of Client.

**1.3.** Client shall be responsible for the action or inaction of its permitted affiliates and its or their respective service providers, including Client’s advertising agency (“**Agency**”) or Ad Delivery Platforms which access the Merkury for Media Platform or Merkury for Media Platform Audiences on Client’s behalf as if such action or inaction was taken by Client.

**1.4.** By authorizing the use of the Merkury for Media Platform, Client authorizes Merkle through the Merkury for Media Platform to (the “**Merkury for Media Platform Functions**”)

1. utilize third-party data to form, expand, or refine audiences;
2. to the extent available within the Merkury for Media Platform, size audiences relative to integrated Ad Delivery Platforms;
3. format and deliver Merkury for Media Platform Audiences to applicable Ad Delivery Platforms, as directed by Client; and/or
4. evaluate utilization of Merkury for Media Platform Audiences as reasonably necessary to assess usage fees and fulfill applicable obligations to data suppliers.

### 2. Definitions

**2.1. “Ad Delivery Platform”** means a media company, publisher, platform, network, or other party that sells or attempts to sell ad inventory or facilitates Audience delivery for purposes of displaying targeted advertisements (e.g., demand-side platforms (“**DSP**”), sell-side (or supply-side) platforms (“**SSP**”), or data management platforms (“**DMP**”).

**2.2. “Applicable Law”** means all laws, regulations, and requirements (including subpoena, judicial order, and administrative or regulatory body ruling) imposed by a governmental body which apply to Client, Merkle, the Mercurry for Media Platform, and the Mercurry for Media Platform Functions.

**2.3. “Client Audience Data”** means any audience data that Client directly or indirectly provides for use within the Mercurry for Media Platform.

**2.4. “Data Onboarding Provider”** means a third-party provider of data integration and delivery services to support Mercurry for Media Platform Audience delivery to Ad Delivery Platforms.

**2.5. “Improved Audience”** means an Mercurry for Media Platform Audience that is formed, expanded, refined, or otherwise informed by Merkle-supplied data in conjunction with the Mercurry for Media Platform Functions.

**2.6. “Mercurry for Media Platform Audience”** means an audience developed and/or delivered in conjunction with the Mercurry for Media Platform Functions.

**2.7. “Personal Information”** means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, or as otherwise defined by Applicable Law.

**2.8. “Premium Data”** means data from data suppliers to the Mercurry for Media Platform that are subject to additional terms and incremental fees.

**2.9. “Pseudonymous Personal Information”** means Personal Information that has been processed in a manner that renders the Personal Information no longer attributable to a specific individual or household without the use of additional information

**2.10. “Rules”** means Applicable Law and applicable industry guidelines and self-regulatory codes of conduct, including but not limited to the Digital Advertising Alliance (the “DAA”) Self-Regulatory Principles (currently available at <http://digitaladvertisingalliance.org/principles/>), and further includes (a) for Merkle, Merkle’s Data Product Privacy Notice is <https://www.merkle.com/getting-know-your-privacy-rights/privacy-notice>; and (b) for Client, Client’s privacy policy.

**2.11. “Sensitive Data”** means: (a) Personal Information related to a data subject under the age of sixteen (16); (b) person’s name in conjunction with any government issued identification or card numbers including, but not limited to, driver’s license numbers and social security numbers; (c) person’s name with mother’s maiden name; (d) telephone numbers identified as unlisted or unpublished; (e) credit card, debit card, or financial account numbers with the associated name or any required PIN or access code; (f) medical or health information pertaining to an identified individual; (g) information containing payroll or financial information with associated employee identifiers; (h) data regarding sexual orientation; (i) data regarding religious affiliation; (j) precise location

data (other than consumer residential address); or (k) any other data as described by Applicable Law.

**2.12. “Specialized Data”** means customized third-party data provided in connection with Merkury for Media Platform Functions, including but not limited to, data from custom sources, custom curated, or otherwise provided for Client. Specialized Data will be subject to additional fees and may require Client’s acceptance of specific terms and conditions before use or delivery.

**2.13. “Standard Data”** means Merkle DataSource™ data, Merkury for Media Panel segments, and other data available in the Merkury for Media Platform for use in digital targeting that is not classified as Premium Data or Specialized Data.

**2.14. “Unimproved Audience”** means an Merkury for Media Platform Audience which is formed exclusively of Client Audience Data without expansion, filtering, suppression, or other modification informed by Merkle-supplied data.

## 3. Data Use Permissions and Limitations

### 3.1. Use of Client Audience Data

In support of the use of the Merkury for Media Platform by or on behalf of Client, Client may, at its discretion, provide Client Audience Data. To the extent Client provides Client Audience Data, Client expressly permits processing by Merkle, its agents, employees, vendors, or representatives, as necessary, to provide **“Identity Resolution Services”**, which includes, without limitation:

1. to perform data hygiene and standardization of Personal Information;
2. to assign pseudonymized record identifiers;
3. to onboard Client Audience Data for creation and delivery of Merkury for Media Platform Audiences, including via sublicense to the applicable Data Onboarding Providers;
4. to perform analysis describing the characteristics of audiences in the Client Audience Data and the size of potential audience reach among intended audience destination(s);
5. to create and deliver Merkury for Media Platform Audiences to Ad Delivery Platform(s); and/or
6. to maintain listing of Client-specific suppressions of individuals and/or households as specified by Client.

#### 3.1.1 Identity Resolution of Client Audience Data

1. Client will only use any data provided as part of the Identity Resolution Services (**“Resolution Data”**) as permitted by the terms and conditions of these Platform Terms, and not for any other use.
2. Client represents and warrants that (i) it is not a reseller or distributor of data; (ii) that it will not, and will not permit any third-party to, use or attempt to use the Identity Resolution Services or Resolution Data for consumer credit purposes,

consumer insurance underwriting, employment purposes, tenant screening purposes, or for any other purpose(s) covered by the federal Fair Credit Reporting Act (15 U.S.C Sec. 1681 et seq.) or similar statute, rules, or regulations; (iii) it will abide by such legislation, rules, regulations as may be enacted or adopted after the date of the applicable SOW, by any federal, state or local government body; and (iv) will not copy or otherwise reproduce, retransmit, republish or transfer for any purpose any Resolution Data except as necessary to comply with applicable law or as required to comply with Client's standard security and system back-up protocols, provided that such copies are not used or disclosed to any third party and are destroyed in the ordinary course of business.

3. To the extent that Merkle notifies Client of a need to remove certain Resolution Data, Client shall immediately cease use of such Resolution Data and promptly purge such Resolution Data as directed by Merkle. Merkle will attempt to provide written notice as far in advance of such event as is reasonably possible under the circumstances; however, Client acknowledges that Merkle is not contractually entitled to receive advance notice of such events from its third-party data suppliers or legal and/or regulatory processes.
4. Client's access to Resolution Data and provision of Identity Resolution Services may be suspended at Merkle's sole discretion if it reasonably believes Client's use of the Resolution Data or Identity Resolution Services is not in accordance with these Platform Terms.
5. From time to time, at the reasonable prior written request of Merkle, Client shall provide Merkle with reasonably necessary information and a certification to demonstrate that Client is in compliance with these Platform Terms.

### **3.2. Use of Merkury for Media Platform Audience Data**

1. Client will adhere to all applicable terms and conditions of any Ad Delivery Platform receiving Merkury for Media Platform Audiences.
2. Client will only use Merkury for Media Platform Audiences for its (and, as agreed between Client and Agency, its affiliates') own marketing.
3. Client acknowledges that the provision of Merkury for Media Platform Audiences may constitute a sale under Applicable Law. Client acknowledges and understands that it is restricted from selling or disclosing (whether for monetary or other valuable nonmonetary consideration) Merkury for Media Platform Audiences or the Merkury for Media Platform Functions, and from providing access to Merkury for Media Platform Audiences to third parties (excluding Agency and Ad Delivery Platforms).
4. Client will not, and will not permit any third-party to, use or attempt to use data derived from the Merkury for Media Platform Functions, to: (a) reverse engineer or otherwise discern the user base of a publisher or Ad Delivery Platform; (b) to target Merkury for Media Platform Audiences developed for a particular Ad Delivery Platform on any other Ad Delivery Platform; (c) create derivative audiences from Merkury for Media Platform Audiences outside of the Merkury for Media Platform or to create derivative works of the Merkury for Media Platform; (d) deanonymize or re-identify individuals (except where the individual-level

Personal Information is Client's original proprietary data, and performed independent of Merkury for Media Platform Audiences); or (e) surface or expose individual-level detail of Merkury for Media Platform Audiences, or otherwise reverse engineer any data from or any of the features or functionality of the Merkury for Media Platform.

5. Client will not (a) attempt to target based on restricted data classes including, but not limited to, Sensitive Data; (b) use the Merkury for Media Platform to identify specific individuals, households, or groups smaller than twenty-five (25); or (c) use the Merkury for Media Platform to sell or advertise adult entertainment, tobacco, illegal gambling, firearms, or other illegal activity.
6. Client will ensure that its (and as agreed between Client and Agency, its affiliates) employees, representatives, vendors, and agents accessing the Merkury for Media Platform or Merkury for Media Platform Audiences adhere to the applicable provisions of these Platform Terms and will be responsible for the action or inaction of such affiliates, employees, representatives, vendors, and agents.

### **3.3. Audience-Enabled Data Use**

Client will provide or ensure the provision to Merkle of sufficient access to all Ad Delivery Platforms to whom Merkury for Media Platform Audiences are provided as reasonably necessary to deliver, monitor, and measure use of Merkury for Media Platform Audiences. Such access must include, at least, access to or provision of campaign and audience usage detail which may include Pseudonymous Personal Information (the "**Audience Usage Data**"). Client will or will ensure the provision of such Audience Usage Data to Merkle within ten (10) business days following ad delivery. For clarity, Audience Usage Data minimally includes: (a) applicable Client brand(s) and/or affiliates; (b) channel or media (e.g., digital, addressable television, linear television, out-of-home etc.); (c) marketing platform vendor name (e.g., DV360, Facebook, television network name, etc.); (d) unique identifier and/or descriptive name of campaign; (e) applicable dates (e.g., media flight dates, etc.); (f) applicable platform specific information, such as placement name/identifier, ad set name/identifier, Ad Delivery Platform account identifier, Ad Delivery Platform audience identifier; and (g) Targetable Audience(s) used; and (h) applicable usage volumetrics for applicable usage reporting period (e.g., impressions served). Notwithstanding anything to the contrary herein, Merkle may retain Audience Usage Data for the duration of Client's utilization of the Merkury for Media Platform and up to one (1) year thereafter, as reasonably necessary to assess usage fees and fulfill applicable obligations to data suppliers.

## **4. Ownership; Rights on Termination**

**4.1.** Client retains all right, title, and interest in and to any and all Client Audience Data. No right, title, or interest in the Merkury for Media Platform, Identity Resolution Services, or Merkury for Media Platform Audiences is transferred to Client other than as expressly set forth in these Platform Terms. Any rights granted to Client hereunder will be limited to the term of the applicable license to Merkury for Media and may be used only for the purposes described herein. Merkury for Media Platform Audiences are not

works for hire. Client will safeguard Merkury for Media Platform Audiences and all data and documentation related to the Merkury for Media Platform as proprietary and confidential to Merkle. For avoidance of doubt, Client does not acquire rights to data and technical components furnished through, developed by, or generated by the Merkury for Media Platform.

**4.2.** Upon the earlier of the expiration or effective date of termination of Client's license to the Merkury for Media Platform:

1. Client will immediately cease the use of the Merkury for Media Platform and all Improved Audiences. Client will itself, and will ensure all Client's permitted affiliates and its and their respective employees, representatives, vendors, and agents, including Agency, within ten (10) business days following end of Client's license for the use of the Merkury for Media Platform, permanently delete (or, to the extent third party platforms do not support deletions, permanently disable) Improved Audiences and all data related to Improved Merkury for Media Audiences in its or its affiliates' employees, representatives, vendors, and agents' care, custody, or control.
2. Merkle will no longer use the Merkury for Media Platform or Merkury for Media Platform Audiences for the benefit of Client. Merkle will promptly delete all Client Audience Data in its care, custody, or control.

## **5. Responsibilities of the Parties**

### **5.1. Mutual Responsibilities**

1. Each party will provide appropriate notices and opt-out opportunities to applicable consumers with the understanding that any such notice and/or opt-out opportunity will be separate from any notice or opt-out opportunity originally provided to such consumers by the other party.
2. Each party will implement procedures designed to protect against claims of non-compliance with respect to Rules.
3. Neither party will process or request the processing of Personal Information for individuals or households outside of the United States or other data that would require compliance with laws outside of the United States (e.g., the EU's GDPR).

### **5.2. Client Responsibilities**

1. Client will ensure that any Client Audience Data it provides is complete and conforms to the Merkury for Media Platform's specifications and accepts responsibility for any actions required to conform to the Merkury for Media Platform's specifications.
2. To the extent that Merkle notifies Client to discontinue use of a given Merkury for Media Platform Audience or to selectively remove records from Merkury for Media Platform Audiences (such as in the event of a consumer's exercise of rights as provided under Rules), Client will itself and will cause any third-party possessing such Merkury for Media Platform Audience to (a) immediately



discontinue any use of such Merkury for Media Platform Audiences and Merkury for Media Platform Audience records and (b) promptly permanently delete such Merkury for Media Audience or applicable Merkury for Media Platform Audience records. Merkle will attempt to provide written notice as far in advance of such event as is reasonably possible under the circumstances; however, Client acknowledges that Merkle is not contractually entitled to receive advance notice of such events from its third-party data suppliers or legal and/or regulatory processes.

3. Client will be responsible for the action or inaction of its representatives, employees, and agents within and in connection with the Merkury for Media Platform.

## **6. Representations and Warranties**

Each party represents and warrants that it:

1. will not intentionally transmit Sensitive Data to the other party unless mutually agreed to do so in writing;
2. has procured and will maintain the necessary rights to all data it furnishes, and no additional permissions are required from third parties for use of such data as permitted hereunder;
3. will not provide data of individuals or households located outside the United States or that would subject the other party to laws outside of the United States (e.g., the EU's GDPR);
4. will not deliver or use Merkury for Media Platform Audiences (or derivatives thereof) on media properties or otherwise for serving advertisements outside the United States;
5. will adhere to applicable Rules; and
6. will constrain use of Merkury for Media Platform Audiences to only those uses expressly permitted in these Platform Terms.

## **7. Fees**

Merkury for Media Platform use shall be at the rates prevailing when the Merkury for Media Platform Audience is activated.

## **8. Confidentiality**

### **8.1. Confidential Information**

Each party will have access to Confidential Information of the other. For the purposes of these Platform Terms, "Confidential Information" shall mean any written or oral information, whether or not created by or for the other party, disclosed by either party during performance under these Platform Terms.

### **8.2. Exclusions**

Confidential Information shall not include information which (a) was in or enters the public domain through no breach of these Platform Terms by the receiving party; (b) was lawfully in the receiving party's possession prior to such disclosure and without obligation of confidentiality; (c) was received by the receiving party from a third party not known by the receiving party to be under an obligation of confidentiality; (d) was independently developed by the receiving party without any use of the disclosing party's Confidential Information; or (e) the disclosing party has pre-approved the right to disclose in writing.

### **8.3. Non-Use and Non-Disclosure**

Neither party shall use or disclose the other party's Confidential Information except as required by Applicable Law or to perform its obligations under these Platform Terms. Each party will employ the same measures that it uses to protect its own Confidential Information, which shall not be less than reasonable care, to protect the Confidential Information of the other party from unauthorized or inadvertent use or disclosure. In the event that the receiving party receives a request from a third party requiring the production of information pertaining to the disclosing party, the receiving party will give the disclosing party prompt notice, to the extent permitted by law. The disclosing party will hold the receiving party harmless from, and also assumes responsibility for, any expenses (including without limitation attorney's fees, court costs, data retention costs, e-discovery costs, costs incurred by outside advisors and any other cost imposed whether by way of penalty or otherwise) incurred by the receiving party as a result of such request.

## **9. Disclaimer**

TO THE FULLEST EXTENT PERMITTED BY LAW, MERKLE ON BEHALF OF ITSELF AND ITS AFFILIATES EXCLUDES ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, FOR SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR ANY PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE MERKURY FOR MEDIA PLATFORM AND MERKLE, ITS AFFILIATES, AND PARTNER DATA ARE PROVIDED "AS IS" AND AT CLIENT'S OPTION AND RISK AND NONE OF MERKLE, ITS AFFILIATES OR MERKLE'S PARTNERS MAKE ANY GUARANTEE OR REPRESENTATION IN CONNECTION WITH RESULTS OF CLIENT'S USE OF MERKURY FOR MEDIA PLATFORM FUNCTIONS. MERKLE DOES NOT GUARANTEE SERVICES WILL BE UNINTERRUPTED, THAT AD DELIVERY PLATFORMS WILL PROCESS MERKURY FOR MEDIA-DEVELOPED AUDIENCES, OR THAT ANY PORTION OF INTENDED AUDIENCES WILL BE REACHED WITHIN AD DELIVERY PLATFORMS. OTHER THAN AS PROVIDED IN THESE TERMS, MERKLE DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF IDENTITY RESOLUTION SERVICES OR THE RESULTS THEREOF (INCLUDING RESOLUTION DATA), AND DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT THERETO, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND MERKLE WILL NOT BE LIABLE FOR ANY CLAIMS, LOSSES, COSTS, DAMAGES, OR EXPENSES ARISING OUT OF



USE OF THE IDENTITY RESOLUTION SERVICES. MERKLE DOES NOT WARRANT THAT THE IDENTITY RESOLUTION SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

## 10. Indemnification and Limitation of Liability

**10.1.** Each party (as the “*Indemnifying Party*”) will indemnify, defend, and hold harmless the other party and its affiliates, including it and their respective executives, directors, and employees (each an “*Indemnified Person*”) from and against all costs, losses, damages, liabilities and expenses (including reasonable outside attorneys' fees), caused by any third-party claim (“*Claims*”) arising hereunder out of (a) such Indemnifying Party’s (i) breach of their respective representations and warranties under these Platform Terms or (ii) gross negligence or willful misconduct and (b) where Client is Indemnifying Party, the acts or omissions of itself, its affiliates, vendors, or its service providers. Partners of Merkle and its affiliates supporting the Merkury for Media Platform Functions, including, without limitation, Data Onboarding Providers, are intended third-party beneficiaries of this section.

**10.2.** EXCEPT IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATIONS, EACH PARTY’S TOTAL LIABILITY FOR ANY OR ALL OF THEIR RESPECTIVE LOSSES FROM THEIR RESPECTIVE ACTS OR OMISSIONS UNDER THESE TERMS, REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, SHALL NOT EXCEED THE TOTAL MERKURY FOR MEDIA PLATFORM FEES INCURRED DURING THE 12 MONTHS PRIOR TO THE ACT OR OMISSION GIVING RISE TO SUCH CLAIM. FURTHER, WITH REGARD TO ANY PERFORMANCE CONCERNS, TO THE EXTENT THAT APPLICABLE LAWS PERMIT MERKLE TO LIMIT ITS OBLIGATIONS, MERKLE’S LIABILITY UNDER SUCH APPLICABLE LAWS WILL BE LIMITED TO REPERFORMING THE ACTION IN QUESTION WITHIN MERKURY FOR MEDIA AGAIN.

**10.3.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHETHER FORESEEABLE OR NOT AND HOWEVER CAUSED, EVEN IF IT IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT ARISE.

## 11. Assignment

Neither party may assign these Platform Terms without the written consent of the other party; provided, however, a party may assign these Platform Terms to an affiliate or successor of such party or pursuant to a merger, consolidation, reorganization, or sale of all or substantially all of the assets of the business to which these Platform Terms relate if such successor or affiliate agrees in writing to be bound by all of the terms and provisions of these Platform Terms. Any purported assignment in contravention of this section shall be null and void.

## 12. Notices

Any notice required or permitted by these Platform Terms shall be in writing and addressed to the other party's primary contact with a copy to the other party's legal department. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable). These notice requirements do not apply to legal service of process, which is instead governed by Applicable Law.

## **13. Miscellaneous**

**13.1.** These Platform Terms are governed by and construed in accordance with the laws of State of New York, without giving effect to conflict of law rules. Each party irrevocably consents and submits to the exclusive personal jurisdiction of the state and federal courts located in New York, New York for any matter arising out of or relating to these Platform Terms, except that in actions seeking to enforce any order or any judgment of such federal or state courts, such personal jurisdiction shall be nonexclusive.

**13.2.** These Platform Terms constitute the entire agreement between the parties relating to the Merkury for Media Platform and the subject matter thereof, represent the complete understanding of the Parties, either oral or written, and supersede any prior or future written or oral agreements, representations, and discussions between the Parties related thereto. The only way in which the terms in these Platform Terms can be modified is by a direct written agreement, executed by both parties, that expressly states its intent to modify or override anything contained within these Platform Terms. If for any reason a court of competent jurisdiction finds any provision of these Platform Terms to be unenforceable, that provision will be enforced to the maximum extent permissible so as to impact the intent of the parties, and the remainder of these Platform Terms will continue in full force and effect. The waiver by either party of any right hereunder, the failure to perform, or a breach by the other party shall not be deemed a waiver of any other right hereunder, failure to perform, or breach by said other party whether of a similar nature or otherwise.

**13.3.** The Merkury for Media Platform and the use thereof are not subject to any audit or review which would cause Merkle, its affiliates, or its service providers to disclose their costs or profits associated with use of the Merkury for Media Platform. Notwithstanding the foregoing, Merkle will submit to reasonable review of its fees for Merkury for Media Platform use relative to applicable volumetric charges.

**13.4.** Client's access to and benefits from the Merkury for Media Platform may be suspended at Merkle's sole discretion if it reasonably believes the Client's or its representatives or agents use of the Merkury for Media Platform would violate the rights of Merkle, its affiliates, its partners, Ad Delivery Platforms, other service providers, or clients.

**13.5.** From time to time, at the reasonable prior written request of Merkle, Client shall provide Merkle with reasonably necessary information and a certification to demonstrate that Client is in compliance with these Platform Terms.

**13.6** Client acknowledges and agrees that Agency, Merkle, and their affiliates employees may be utilized within the use of the Merkury for Media Platform on Client's behalf.