

# Marfeel General Terms Of Service

*Last update: January 22<sup>th</sup>, 2018*

## I.- OBJECT

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1.1. This document (hereinafter GENERAL TERMS OF SERVICE or the “Agreement”) and the ORDER FORM (separate document sent by email to the CLIENT, hereinafter ORDER FORM) are intended to regulate the conditions under which MARFEEL SOLUTIONS, S.L. (hereinafter MARFEEL) shall provide its services to its CLIENTS (hereinafter, jointly referred to as the PARTIES or, individually, as the PARTY), and the terms and conditions of the license on the platform developed and supported by MARFEEL (hereinafter the PLATFORM) granted to the CLIENT. The PLATFORM adapts and publishes web content to be optimally displayed on mobile devices (in particular, but not exclusively, on web browsers) running different operating systems (hereinafter the MOBILE VERSION).

1.2. The CLIENT may choose among the following business models: SaaS model (hereinafter PAYMENT PLAN); advertising revenue share model (hereinafter ENTERPRISE PLAN); or one advertisement per page model (hereinafter ONE AD PER PAGE PLAN). Selecting either option will determine the application of the corresponding terms of this document.

1.3. In the PAYMENT PLAN, the CLIENT will pay the applicable fee according to the number of monthly visits to the MOBILE VERSION. In the PAYMENT PLAN, the CLIENT may choose between their own advertising or no advertising at all. If the CLIENT decides to include their advertising, the MOBILE VERSION shall only publish the advertising units contracted by the CLIENT through their own adserver provided they are supported by MARFEEL.

1.4. In the ENTERPRISE PLAN, MARFEEL shall pay the CLIENT a percentage of the GROSS REVENUE earned by the placement of ads in the MOBILE VERSION (hereinafter NET REVENUE). Such ads will be provided by the partners and providers with whom MARFEEL may have agreements at each time (hereinafter the ADEXCHANGES).

1.5. For the purposes of these GENERAL TERMS OF SERVICE, GROSS REVENUE is the amount of money MARFEEL receives from ADEXCHANGES for placing ad impressions through the CLIENT’s MOBILE VERSION. This is the amount before deducting MARFEEL’s revenue share.

1.6. With regard to the ONE AD PER PAGE PLAN, MARFEEL shall control and monetize one ad impression per viewed page using their selection of premium AD EXCHANGES, and receive the corresponding revenue generated by this ad impression. This impression will be placed on the second position, as the first impression and all other placements per viewed page are controlled and monetized by the publisher. MARFEEL will optimize the CLIENT’s MOBILE VERSION free of charge, notwithstanding the foregoing.

1.7. This service is aimed at professional CLIENTS, so the current regulations on consumers and users shall not be applicable.

## II.- TERM

2.1. The initial term of these GENERAL TERMS OF SERVICE is described in the ORDER FORM, to be computed as of the date of signature of such document. After the initial period, the GENERAL TERMS OF SERVICE will be renewed indefinitely until such time that either PARTY decides to terminate it with a prior notice of at least three (3) months. If the CLIENT does not respect the three (3) month notice, MARFEEL will keep any remaining payment as a penalty.

2.2. In any event of termination, the PARTIES will be released from their duties, except those concerning confidentiality, Intellectual Property, applicable law and jurisdiction, duties of payment associated to the services provided by MARFEEL under this Agreement and any other obligations whose enforcement go beyond the termination of the GENERAL TERMS OF SERVICE. Additionally, upon termination of the GENERAL TERMS OF SERVICE, all rights and licenses granted to the CLIENT shall immediately terminate.

2.3. If the CLIENT chooses the annual payment option in the PAYMENT PLAN, the termination of the use of the service or the unilateral termination of the GENERAL TERMS OF SERVICE by the CLIENT shall not entail the return of any amount.

2.4. The 30 calendar days following the activation date will be considered a trial period. Hence, during this period, the CLIENT will be entitled to terminate this agreement without either PARTY having anything to claim from the other.

In turn, MARFEEL will be entitled to terminate this agreement at any time and for any reason, such as a lack of profitability or any other market or technical grounds (e.g. if MARFEEL's personnel detect a reason that prevents MARFEEL from developing the MOBILE VERSION as initially expected). It is expressly agreed that under no circumstances will either PARTY have the right to receive compensation or indemnification of any kind from the other PARTY as a consequence of this agreement being terminated in these circumstances. Hence, they irrevocably waive all claims they have against each other. The PARTIES acknowledge and agree that this is an essential condition for MARFEEL to execute this agreement. If it decides to terminate, MARFEEL shall notify its decision to the CLIENT in writing (courier, email, facsimile, etc.).

2.5. The CLIENT is required to update his ad.txt file according to the specifications of MARFEEL. Being under the model of ENTERPRISE PLAN, if the client does not comply with this update within 15 days of receiving the notification through the CLIENT email, MARFEEL may block the pending payments to the CLIENT. On the other hand, being under the model of ONE AD PER PAGE, MARFEEL may interrupt its services to the CLIENT. Furthermore, MARFEEL reserves the right to cancel the contract with the CLIENT, whatever its model may be.

2.6. Clauses 2.1., 2.2., 2.3., 2.4. and 2.5. from these GENERAL TERMS OF SERVICE apply to each tenant individually and do not apply to the media group as a whole entity.

### **III.- PRICE AND PAYMENT**

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3.1. In the PAYMENT PLAN, the CLIENT will pay the applicable fee according to the number of monthly visits to the MOBILE VERSION in exchange for the implementation and the maintenance of the MOBILE VERSION. Each fee may have different technical specifications and features. The CLIENT will choose the payment method (annual / monthly payment).

3.2. In the PAYMENT PLAN, the CLIENT will choose between *wire transfer* or *standing order* as payment method. If the CLIENT chooses to pay through *wire transfer*, the CLIENT will pay the amount to the corresponding bank account indicated by MARFEEL in its invoice; but if the CLIENT chooses *standing order*, MARFEEL will charge the amount through standing order to the corresponding bank account indicated by the CLIENT during the first ten (10) days of each month.

3.3. If the PAYMENT PLAN has been chosen, MARFEEL will automatically change from PAYMENT PLAN to ONE AD PER PAGE PLAN in the case of delay or nonfulfillment of the payment by the CLIENT for more than THIRTY (30) days from the due date. The automatic switch to ONE AD PER PAGE will not constitute a breach of these GENERAL TERMS OF SERVICE for the purposes of penalty and/or termination.

3.4. In the ENTERPRISE PLAN, MARFEEL shall pay the CLIENT a percentage of the GROSS REVENUE earned by the placement of ads in the MOBILE VERSION within SIXTY (60) days.

3.5. MARFEEL will periodically monitor the obtained GROSS REVENUE, in accordance with the abovementioned provisions, and will pay the CLIENT the corresponding percentage.

3.6. MARFEEL shall send an invoice for each amount paid to the CLIENT (*Invoices issued by the recipient*), which will be provided to the CLIENT for the proper accounting upon request through their dashboard. If the CLIENT wishes to issue their own invoice (only available if the CLIENT's NET REVENUE is above €1.000 per month –or the equivalent amount in USD), the CLIENT shall request it by email to MARFEEL's Finance Department ([finance@marfeel.com](mailto:finance@marfeel.com)); every month, MARFEEL shall send a Pro-Forma invoice and will pay it within SIXTY (60) days from the date of receipt of the invoice issued by the CLIENT at MARFEEL's address: Marfeel Solutions SL, Avenida Josep Tarradellas 20-30, 6ª planta, 08029 Barcelona (Spain).

3.7. If the CLIENT's NET REVENUE is below €1.000 per month (or the equivalent amount in USD) payment will be made through PAYPAL in EUROS to the email account specified by the CLIENT. If the CLIENT's NET REVENUE is above €1.000 per month (or the equivalent amount in USD) payment will be made through wire transfer to the bank account specified by the CLIENT and in the currency chosen by him: EUROS or USD. Monthly amounts cannot be rolled over to facilitate wire transfer payment.

## **IV.- INTELLECTUAL PROPERTY RIGHTS**

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### **4.1. License of use**

MARFEEL grants the CLIENT a non-exclusive, non-assignable license to access and use its technology PLATFORM, for the term of these GENERAL TERMS OF SERVICE and limited to the necessary rights to set up and maintain the MOBILE VERSION of the WEBSITE.

4.1.1. In order for the MOBILE VERSION to be accessed by the users of the WEBSITE, the CLIENT must introduce a code provided by MARFEEL. The WEBSITE will automatically redirect all users who access the WEBSITE from compatible mobile devices with MARFEEL's PLATFORM, to the MOBILE VERSION.

4.1.2. The PLATFORM functionalities and technical features available to the CLIENT will vary according to his number of visits.

### **4.2. Acknowledgement of rights**

4.2.1. MARFEEL is the owner of all the Intellectual Property rights over the PLATFORM, the trademarks, distinctive signs and contents associated to it, which have not been generated by clients, partners or MARFEEL collaborators.

4.2.2. The CLIENT warrants that it owns all the contents offered through its WEBSITE, which will be hosted in MARFEEL's PLATFORM in order to be published on the MOBILE VERSION. The CLIENT undertakes to indemnify and hold MARFEEL harmless from and against any and all damages, expenses, losses, liabilities and costs arising out of or in connection with any claims, demands or administrative proceedings opened, initiated or addressed against MARFEEL as a result of any infringement of rights caused by the contents published in the WEBSITE by the CLIENT, and will reimburse MARFEEL for all necessary or convenient expenditure in connection with such claims.

4.2.3. In order to allow the processing and publishing of the contents of the WEBSITE in the MOBILE VERSION, the CLIENT specifically agrees such processing and publishing and grants to MARFEEL a non-exclusive and free license of use over all the contents published in the WEBSITE, with no geographic limitation and for the term of these GENERAL TERMS OF SERVICE. This license will be extended as it is necessary to permit the fulfillment of MARFEEL's duties, including the publishing of the trademark and/or the logo of the CLIENT in MARFEEL's documents as case of use or example of client.

4.2.4. MARFEEL reserves the right to insert its logo or distinctive sign in the MOBILE VERSION, with a link to its home page.

## **V.- NON DISCLOSURE**

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5.1. Confidential Information means any information that has been disclosed to any of the PARTIES as a result of the performance of the rights and duties described hereto, which is not available for the public domain as, for example, any information related to business, customers, operations, facilities, procedures, methods, transactions, knowhow or any other aspect of the activity of the PARTIES.

5.2. The PARTIES agree and undertake to maintain the Confidential Information in the strictest secrecy. No PARTY shall disclose the Confidential Information for any purpose different to the purposes associated to the present GENERAL TERMS OF SERVICE.

5.3. Upon termination of the present GENERAL TERMS OF SERVICE, each PARTY, upon request of the other, will return or destroy all copies of all of the other's Confidential Information in its possession or control (unless impracticable), except to the extent such Confidential Information must be retained pursuant to applicable law or a PARTY's document retention policy.

## **VI.- PRIVACY**

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6.1. MARFEEL shall process all the data obtained as a result of the service provided to the CLIENT, following the CLIENT's instructions, as data processor, according to the article 12 of the Spanish Data Protection act.

6.2. MARFEEL shall not process or use such data for any purpose different to the purposes described in these conditions; neither shall disclose data to third parties. When personal data are requested by security or police forces to clarify the assignment of a crime, MARFEEL will inform the CLIENT, who will be responsible for delivering the information in a timely manner.

6.3. MARFEEL shall process the personal data with the security measures set forth for basic level files, unless otherwise instructed by the CLIENT.

6.4. After the delivery of the services, MARFEEL will destroy the data or restore them to the CLIENT; at his choice.

6.5. Both PARTIES undertake to hold the other PARTY harmless against any claim that may receive as a result of the infringement of the legislation on Personal Data protection, Intellectual Property or any other applicable law. Therefore, the infringing PARTY must settle any compensation, penalty or fine that may be imposed to the other PARTY for the abovementioned reasons.

6.6. The CLIENT will grant MARFEEL a permanent access to the data concerning traffic, visits, unique users and, in general terms, to the main analytic data of the WEBSITE and the MOBILE VERSION for the previous THREE (3) months, segregated, at least, by origin, browser, operating system and URL.

## **VII.-LIABILITIES AND SERVICES**

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7.1. MARFEEL will propose the CLIENT a prototype of the final display of the MOBILE VERSION before placing it into production. The prototype will include spaces designated for the publication of advertisements. The publication of the code provided by MARFEEL to the CLIENT in the WEBSITE shall be equivalent to accepting the prototype proposed by MARFEEL.

7.2. MARFEEL will provide its services with the utmost care, in accordance with industry standards. The PLATFORM and the services will be provided "AS IS" without any further warranty of any kind (express or implied) including, without limitation, the implied warranties of merchantability and fitness for a particular purpose, which warranties are hereby expressly disclaimed.

7.3. CDN services and limitation on non-html caching: As part of MARFEEL services to PREMIUM CLIENTS, MARFEEL may offer the CLIENT usage of MARFEEL CDN Services. The CLIENT acknowledges that MARFEEL's service is offered as a platform to cache and serve web pages and websites and is not offered for other purposes, such as remote storage. Accordingly, the CLIENT understands and agrees to use the service solely for the purpose of hosting and serving web pages as viewed through a web browser or other application and the Hypertext Markup Language (HTML) protocol or other equivalent technology. MARFEEL's service is also a shared web caching service, which means a number of customers' websites are cached from the same server. To ensure that MARFEEL's service is reliable and available for the greatest number of users, a CLIENT's usage cannot adversely affect the performance of other CLIENTS' sites. Additionally, the purpose of MARFEEL's service is to proxy web content, not store data. Using an account primarily as an online storage space, including the storage or caching of a disproportionate percentage of pictures, movies, audio files, or another non-HTML content, is prohibited. The CLIENT further agrees that if, at MARFEEL's sole discretion, the CLIENT is deemed to have violated this section, or if MARFEEL, in its sole discretion, deems it necessary due to excessive burden or potential adverse impact on MARFEEL's systems, potential adverse impact on other CLIENTS, server processing power, server memory, abuse controls, or other reasons, MARFEEL may suspend or terminate the CLIENT account without notice to or liability to him.

7.4. MARFEEL will hire the services associated to its PLATFORM, such as the hosting, to the suppliers that it deems appropriate. Upon request by the CLIENT, MARFEEL will provide the name of the contracted providers.

7.5. MARFEEL will make its best efforts to ensure the availability, integrity and security of the PLATFORM and all the contents hosted on it. Without limiting the foregoing, MARFEEL cannot assume any responsibility for the damages (whether direct or indirect, including without limitation loss of profits, interruption of business or loss of information) arising from or related to the use, misuse or inability to use the MOBILE VERSION by the CLIENT or third parties, or because of the publication of the advertising content in the MOBILE VERSION by advertisers, ADEXCHANGES or any other provider, selected by MARFEEL or by the CLIENT. At the request of the CLIENT, MARFEEL will communicate the name of the collaborator or provider responsible for the advertising content published through the MOBILE VERSION, so that the CLIENT may require the relevant responsibilities.

7.6. The PARTIES agree that their maximum liabilities will be limited to the amount paid by either the CLIENT or MARFEEL (depending on the business model as defined in clause 1.2) during the THREE (3) months prior to the date of the claim.

## **VIII.- FINAL CLAUSES**

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8.1. Neither PARTY may assign, in whole or in part, its rights or duties under these terms to a third PARTY without the prior written consent of the other PARTY, with the exception of a merger, acquisition or sale of all or substantially all of the PARTY's assets, stock or business or any other corporate transaction.

8.2. The CLIENT shall direct all communications related to these conditions to MARFEEL's address: Marfeel Solutions SL, Avenida Josep Tarradellas 20-30, 6ª planta, 08029 Barcelona (Spain); TAX ID: ESB65651259.

8.3. MARFEEL shall direct all communications aimed to the CLIENT to the address appointed by the CLIENT in the ORDER FORM.

8.4. Notifications conducted this way will take effect as of the date of receipt or, alternatively, from the tenth day following shipment.

8.5. The relationship between the PARTIES shall be governed by the terms and conditions set forth in these GENERAL TERMS OF SERVICE approved by the PARTIES, the ORDER FORM, and any other agreed document, which must be jointly and uniquely interpreted. All terms and conditions specified under the "Observations" section in the ORDER FORM will prevail over the present document (GENERAL TERMS OF SERVICE).

8.6. This document will be periodically updated by MARFEEL, in order to adapt it to its new products and services and to the price and any other associated conditions. The current applicable version of these general conditions of use can be found at [www.marfeel.com/gtos.html](http://www.marfeel.com/gtos.html). When a unilateral novation of the conditions may constitute a relevant and substantial change regarding the previous conditions, the CLIENT shall be entitled to ask for the termination of the service during the THIRTY (30) days after receiving the novation, unless it has contracted the annual plan and the amendment does not involve the payment of an additional amount in the same period.

8.7. After the termination of these GENERAL TERMS OF SERVICE, for any reason, MARFEEL will delete from its PLATFORM the MOBILE VERSION and the contents from the WEBSITE, owned by the CLIENT. The CLIENT shall delete the link to the MOBILE VERSION.

8.8. These conditions shall be governed by and construed in accordance with the Spanish laws, excluding any other national, regional or local law. Waiving any other jurisdiction, the PARTIES agree to submit any dispute or discrepancy originated by these conditions to the exclusive jurisdiction of the Courts of the city of Barcelona.

8.9. In the event that any provisions of these GENERAL TERMS OF SERVICE are held invalid, unlawful or unenforceable by a Court of competent jurisdiction or by any future legislative act, such act shall not limit or preclude the validity or enforceability of any other provisions of these GENERAL TERMS OF SERVICE. Any such provision held invalid shall be substituted by a provision of similar effect reflecting the original intent.