



## **GENERAL CONDITIONS**

<b>Article 1.</b>	<b>Definitions</b>	<b>1</b>
<b>Article 2.</b>	<b>The Service</b>	<b>3</b>
<b>Article 3.</b>	<b>Responsibilities of the Client</b>	<b>4</b>
<b>Article 4.</b>	<b>Guarantees and indemnities</b>	<b>4</b>
<b>Article 5.</b>	<b>Prices and payment</b>	<b>5</b>
<b>Article 6.</b>	<b>Intellectual Property Rights</b>	<b>6</b>
<b>Article 7.</b>	<b>Duration and termination</b>	<b>6</b>
<b>Article 8.</b>	<b>Liability</b>	<b>7</b>
<b>Article 9.</b>	<b>Other</b>	<b>8</b>

### **Article 1. Definitions**

<b>Account:</b>	the personal environment within the Service which is managed by the Client and to which the Client or the Dashboard User gains access after entering his/her login details;
<b>Agreement:</b>	each agreement that the Client enters into with the Supplier;
<b>App:</b>	the Client's mobile application, in which the Plot Plugin is/will be integrated;
<b>User / App User:</b>	the person who uses the App;
<b>Beacon</b>	a small wireless device owned and placed by the Client transmitting a unique bluetooth signal that can be detected by the Plot Plug.in. When a Beacon is detected by the Plot Plugin an action can be performed such as sending a Location Based Notification and/or log Information about the App User, which Information will be made available to the Client via the Plot Dashboard;
<b>Client:</b>	natural or legal entity who has entered into an Agreement with the Supplier for the use of the Service;
<b>Data</b>	all information provided to the Client in connection with the Service (whether or not automatically), including Geofences, Data Campaigns, Beacons, Location Based Notifications, information concerning App Users and (when applicable) the Database;
<b>Data Campaigns</b>	a feature in the Plot Plugin which is linked to a Geofence and will send a notification ('trigger') to the Client when an App User enters the Geofence in order to take action such as send a Location Based Notification and/or log Information about the App User, which Information will be made available to the Client via the Plot Dashboard;

<b>Database:</b>	the Client's database, with information concerning Geofences, Data Campaigns and other services, Location Based Notifications and App Users, based on which is determined whether a Location Based Notification is sent;
<b>Device:</b>	mobile phone or tablet on which the App is installed;
<b>General Conditions:</b>	these general conditions;
<b>Geofence:</b>	virtual perimeter for a geographic area, established by Client, to which a Location Based Notification is linked (for example the area around one of the Client's shops);
<b>Information:</b>	all information about the App User, which is available to the Supplier as a result of the use of the App by the App User;
<b>Intellectual Property Rights:</b>	all intellectual property rights and related rights, such as copyright, trademark, patent, design right, database right and related rights and rights to know how and one line performances;
<b>Location Based Notification:</b>	a push message that is sent from the App, of which the content is drafted by the Client. The message can be sent automatically when a App User enters or is in a Geofence, within a Client set period of time;
<b>Login details:</b>	a username and password granting the Client or the Dashboard User access to the Plot Dashboard;
<b>MAU:</b>	Monthly Active User. A Monthly Active User is counted when the App User has opened or used the app at least once during that month
<b>Plot Backend:</b>	the Supplier's servers with which the Client can connect via a API;
<b>Plot Dashboard:</b>	online content management system wherein the Client or the Dashboard User can create and manage Location Based Notifications and other services such as Data Campaigns and the Database;
<b>Plot Platform:</b>	the platform through which the Service is provided, consisting of <i>i.a.</i> the Plot Plugin, the API, the Plot Dashboard and the accompanying Plot Backend;
<b>Plot Plugin:</b>	the software library that is developed and used by the Supplier and which is integrated in the App, which makes the Service available;
<b>Service:</b>	the Service that the Supplier provides to the Client, as described in Art. 2.1 of these General Conditions;
<b>Supplier:</b>	Floating Market B.V., also trading under the name of Plot Projects, established in (1096 HM) Amsterdam at Amstelboulevard 184;
<b>Triggered Geofence:</b>	Geofences will be counted as "Triggered" if they have been triggered at least once (notification or other trigger) by a user in the relevant month.
<b>Update</b>	an altered version of the Plot Platform, in which a fault or defect is repaired or the functionality is improved;
<b>Upgrade</b>	a new release of the Plot Platform as a result of which existing features are extended and/or improved and/or new features are added;
<b>Dashboard User:</b>	a natural person, either an employee of the Client or a person designated by the Client, that is allowed to have the right to access and use (parts of) the Service;
<b>Webhook</b>	a Webhook allows the Client to have a callback to their Backend when one of their App Users triggered an event. An event can for instance be an entered or exited

Geofence, a Location Based Notification received or a Location Based Notification opened. The callback can include additional metadata.

## **Article 2. The Service**

- 2.1 The Service consists of making available and continue to make available the Plot Platform, which makes it possible for the Client to create and manage marketing campaigns. The Client will be able to create and manage these campaigns via the Plot Dashboard by establishing Geofences, and/or link Data Campaigns or Beacons (or both) thereto in order to engage the App Users of the App with highly relevant messages, for example by sending a Location Based Notification. Furthermore, Information about the App Users will be made available to the Client via the Plot Dashboard for analytic purposes and/or retargeting. The Service will be available for the Client by integrating the Plot Plug-in provided by the Supplier in the App for the communication between the Plot Backend and the App.
- 2.2 The scope of the use of the Services is determined by the Client's choice for the type of subscription. Options are available on: <https://www.plotprojects.com>.
- 2.3 The Supplier will do its best to ensure that the Service is provided with care. Unless specifically agreed to in writing, the Service by the Supplier is carried out based on a commitment to best efforts.
- 2.4 In order to use the Service the Client and the Dashboard User need an Account. The Client can create Accounts for the Dashboard Users.
- 2.5 The Client or Dashboard User is personally responsible for the confidentiality of the Login details for his/her Account. As soon as the Client or Dashboard User knows or suspects that his/her Login details have come into the hands of unauthorized persons he/she must notify the Supplier immediately, without prejudice to his/her own commitments to take immediate effective measures, such as changing the Login details. The Client accepts and agrees that the Client is at all times responsible and liable for the use of the Service by third parties via the Account. The Client indemnifies the Supplier of all damages and costs deriving from and/or related to the use of the Services, via the Account, by third parties.
- 2.6 The Client is responsible and liable for any and all use of the Service by the Dashboard Users and warrants that the Dashboard Users comply with the provisions of the Agreement.
- 2.7 The Supplier may make changes to the content or extent of the Service, including the Plot Platform, or continue the implementation of the Service and Plot Platform with an Updated and/or Upgraded version of the Plot Platform. The Supplier will inform the Client of this as quickly as possible. Unless specifically agreed to in writing the Supplier is not bound to maintain, change or add specific Client specified characteristics or functions of the Platform.
- 2.8 The Client is not obliged to install an Update of the Service and/or Plot Platform. However, the Client may then no longer be able to make full use of the Service and/or the Plot Platform. If Client is not current on release, Supplier cannot be held liable for any default, interruptions, or malfunctions and Client indemnifies and holds Supplier harmless in this matter.
- 2.9 The Supplier can fully or partially (temporarily) decommission the Service and Plot Platform and/or limit the use thereof if it believes this is necessary, for example for preventive, corrective or adaptive maintenance of the Plot Platform. The Supplier will reasonably try to inform the Client as quickly as possible in advance. In the event of an emergency first requiring the Service to be ceased or limited immediately, the Supplier will inform the Client as quickly as reasonably possible thereafter.

### **Article 3. Responsibilities of the Client**

- 3.1 The proper function of the Service and Plot Platform depends on the integration of the Plot Plugin in the App and the input of Geofences, Data Campaigns and/or Beacons as well as other services Location Based Notifications and other Data in the Plot Dashboard. The Client is Responsible for the correct integration of the Plot Plugin and managing the Data.
- 3.2 The Client can acquire Data and/or Information regarding the App Users while using the Service. The Client is responsible for the rightful processing of the personal data in accordance with applicable privacy laws and regulation, including the personal data that the Client acquires in connection with the Service.
- 3.3 The Parties agree that, as far as the Supplier processes personal data on the App Users, the Supplier is seen as the processor in accordance with The Personal Data Protection Act ("PDPA") and the Client as the controller. The Supplier will only process personal data of the App Users at the request and on behalf of the Client in order to make the Service available. For as far as is necessary and technically possible, the Supplier will cooperate with the Client in meeting its commitments in accordance with the PDPA. The expenses involved in this cooperation will be accountable to the Client.
- 3.4 The Client and Dashboard User are not allowed to:
- a. use the Service with a (mobile) device containing viruses, Trojan horses, worms, bots or other software capable of damaging, disabling or removing the Service or the Plot Platform
  - b. sell, rent out or otherwise make available the (access to the) Service to external parties or provide other third parties access to the Service, unless specifically agreed otherwise;
  - c. use the Service to send unsolicited commercial, non-profit or charitable messages in violation of the relevant regulations regarding the sending of spam;
  - d. use the Service to send messages in violation of the relevant regulations including the policies of Apple and/or Google;
  - e. use the Service in way that can harm the interests or reputation of the Supplier
  - f. make Data available and/or send Location Based Notifications or other notifications for example by e-mail that are discriminating, misleading, incorrect, or hate speech or otherwise inappropriate, or that contain viruses, Trojan horses, worms, bots or other harmful software, at the discretion of the Supplier. Supplier reserves the right, without prior notice, to abridge, alter, refuse and/or remove Data if this is necessary in Supplier's opinion, without this resulting in any liability.

### **Article 4. Guarantees and indemnities**

- 4.1 Any use of the Service, including all information or results deriving from the use of the Service is at the expense and risk of the Client, the Supplier is not responsible for any results towards the Client in respect to the use of the Service by the Client. The Client is liable for all notifications such as Location Based Notifications sent via the Service. The Supplier is not liable for any loss, damage, defect, inaccuracy and/or incompleteness of the Data, Beacons, the App or any other information.

- 4.2 Unless specifically agreed to otherwise in writing, the Supplier does not guarantee that the Service, including the Plot Platform, is always accessible without interruptions, faults or malfunctions. Malfunctions in the Service and the Plot Platform may result from, but are not limited to, internet malfunctions and/ or telephone connection malfunctions and/or DDoS attacks and/or viruses and/or defects/faults. The Supplier is under no circumstances responsible or liable to the Client for damages arising out of or resulting from the (temporary) unavailability of or (interim) failure of the Service.
- 4.3 The Client understands and accepts that the Supplier is not responsible for the App Users and their use of the App including the Plot Plug-in. The Client indemnifies the Supplier from all damages and expenses resulting from claims in this regard.
- 4.4 The Supplier is not responsible for the purchase and/or proper function of the Client's infrastructure or that of external parties, including the App Users. The Supplier cannot be held liable for damages or expenses resulting from but not limited to transmission errors, malfunctions or unavailability of computer, data or telecom facilities, including the internet.
- 4.5 The Client guarantees that it or the Dashboard Users will not use the Service, the Plot Platform and/or the Data as well as all other matters related to use of the Service in a way that:
- a. infringes the rights of the Supplier or any other third party, including, but not limited to, Intellectual Property rights and/ or rights regarding the protection of the privacy of the App Users;
  - b. is contradictory to any applicable laws and regulations
  - c. is contradictory to any provision of the General Conditions or the Agreement.
- 4.6 The Client indemnifies the Supplier against all claims and damages of third parties stating that the information requested by the Client using the Service is unlawful and/or in any way infringes the rights of third parties.

## **Article 5. Prices and payment**

- 5.1 The Service is available to the Client against payment. Supplier offers its Service according to a price plan; details of which are available on <https://www.plotprojects.com>. The use of the Service and the fees relating thereto depend on the Client's choice of the type of subscription of his or her preference. The Client can request a fee proposal by filling out the online form which is available on the website of the Supplier.
- 5.2 The Supplier is entitled to adjust the current prices in writing after a notice period of three months. If the Client does not agree with such adjustment, the Client is entitled to, within thirty (30) days after notice of the adjustment, terminate the Agreement in writing.
- 5.3 [deliberately left blank]
- 5.4 In case of credit card payments the Supplier is entitled to automatically debit the agreed fees monthly in advance from the Client's credit card. In the event the payment fails, the Supplier will send the Client a notice of nonpayment. If the Client remains in default after receiving the third and final notice of nonpayment, the Supplier is entitled to block the access to the Account and to suspend the Service until payment has been made in full, without becoming liable to the Client or any other party.
- 5.5 Payments on an invoice basis should be made within fifteen (15) days after the date of invoice issue, unless specifically agreed to otherwise in writing. If, after expiry of this period, the Supplier has not yet

received full payment, the Client is immediately in breach, without prior summons and default notice required. From the moment of default the Client owes interest equal to the statutory trade interests.

- 5.6 If the Client, after reminder of the default notice, continues to remain in default, the Supplier may hand the claim over for further action. In that case, all the costs incurred by the Supplier, such as litigation expenses and extra-judicial and legal expenses, including the expenses for legal assistance, bailiffs and collection agencies, made in connection with the late payments, are accountable to the Client. Supplier is also entitled to suspend the Service without notice until payment is made in full, including interest and other costs incurred to receive payment.
- 5.7 Complaints regarding payments and/or invoices and/or the Service do not suspend the payment obligations of the Client.

## **Article 6. Intellectual Property Rights**

- 6.1 The Intellectual Property rights relating to the Service including the Plot Platform and all specifications and manuals relating to the Service and the Plot Platform as well as the Information are held by the Supplier. Nothing in these General Conditions is intended to entail any transfer of Intellectual Property rights to the Client.
- 6.2 All Intellectual Property rights with regard to the App, Data and/or the Database provided to Supplier when using the Service remain with the Client. The Client grants the Supplier a license to use the App, Data and/or the Database for as far as necessary for the supply of the Service and for the duration of the Agreement.
- 6.3 If the Client fully complies with its obligations under the Agreement and the General Conditions, the Supplier grants the Client for the duration of the Agreement a limited, personal, revocable, non-exclusive, non-sub-licensable and non-transferrable right to (i) gain access to the Plot Platform and use the Service and Information for internal business purposes and in accordance with the purpose for which the Client received the Information and (ii) to integrate the Plot Plugin in the App, in accordance with the provisions in these General Conditions and the Agreement.
- 6.4 Save to the extent that it is allowed by mandatory statutory law, you may not reproduce or decompile the Plot Platform or apply reverse engineering to it. Furthermore, removal and/or circumvention of security measures or technical limitations (to use) of the Service and/or the Plot Platform is not allowed.
- 6.5 The Client grants the Supplier the right, for the duration of the Agreement, to use the name, trademark and/or logo of the Client, as well as provide information regarding the use of the Service by the Client on the Suppliers website and for promotion of the Service.
- 6.6 The Supplier is not obliged to provide the Client with a physical carrier in order to provide the Service and make the Plot Platform available.

## **Article 7. Duration and termination**

- 7.1 The Agreement is entered into for the period (Initial Term) mentioned in the Agreement. After expiry of the Initial Term, the Agreement is automatically renewed by subsequent periods equivalent to the Renewal Term mentioned in the Agreement, unless Supplier or the Client terminates the Agreement in writing with due observance of a period of notice as mentioned in the Agreement before the expiry of the initial or renewal term. If no Commercial Agreement is signed between the Supplier and the Client, then

the following standard terms will apply: Initial Term of 1 (one) month, Renewal Term of 1 (one) month, Notice Period 30 (thirty) days.

- 7.2 If the Supplier believes that the Client has made an infringement on the Intellectual Property rights of the Supplier or the privacy of the App Users, including but not restricted to a violation of the Articles 3 and 6 of these General Conditions, the Supplier reserves the right, without further notification and without being liable for any damages, to terminate the Agreement with immediate effect, notwithstanding the Suppliers' rights to take further measures and/or its right to claim damages.
- 7.3 The Supplier is entitled to cease the Service with immediate effect and to terminate the Agreement without being held liable for any damages in the event Supplier is restrained to provide the Service due to applicable laws and regulations.
- 7.4 Each party is entitled to rescind the Agreement entirely or partially in the event of insolvency or suspension of payment of the other party, as well as in the event a party ceases its business, or liquidates the company.
- 7.5 In case of termination of the Agreement, for whatever reason, all that Supplier already has provided and/or performed cannot be revoked. Payments that the Supplier invoiced before the termination, with regard to the use of the Service remain due and are immediately due and payable.
- 7.6 Upon termination of the Agreement, for whatever reason, the right of the Client to use the Service and the Plot Platform immediately expires and access to the Account is immediately declined. The Client is not obliged to remove the Plot Plugin from the App. The Supplier will make the Data and/or Database inactive. The Supplier is not obliged to provide and or to convert any Data or other information to the Client after termination of the Agreement.

## **Article 8. Liability**

- 8.1 The total liability of the Supplier caused by imputably failing to perform the Agreement, an unlawful act or any other act is per calendar year exclusively restricted to compensation of direct damages and with a maximum of the total negotiated fee (ex, VAT) for one year. Under no circumstances will the total, aggregate and cumulative liability of the Supplier, for direct damages, for whatever reason exceed the amount of \$ 1.000 (one thousand US Dollars).
- 8.2 Direct damage shall solely mean:
- a. property damage;
  - b. reasonable expenses that you would have to incur to make Supplier's performance conform to the Agreement, unless the Agreement is rescinded by you;
  - c. reasonable expenses incurred by you to determine the cause and scope of the damage, insofar as the determination relates to direct damages; and
  - d. reasonable expenses incurred to prevent or mitigate damages, insofar as they relate to direct damages.
- 8.3 The liability of the Supplier for any other damages, including but not limited to indirect damages, consequential loss, loss of profit, missed savings, reduced goodwill, damage resulting from stagnation, damages resulting from claims of Clients regarding the use of Client specified matters, materials or software of third parties and damages relating to the use of sub-contractors prescribed by the Client to

the Supplier. The liability of the Supplier due to mutilation, destruction or loss of data or documents is also excluded.

- 8.4 The exclusions and limitations of the liability of the Supplier, as described in the previous paragraphs of this article, leave the other exclusions and limitations of the liability of the Supplier under this Agreement unaffected.
- 8.5 The restrictions mentioned in the preceding paragraphs of this article will lapse if and in so far as the damage is the result of intentional or willful recklessness on the part of Supplier or its managers (“own actions”).
- 8.6 A precondition for the emergence of any right to compensation remains that the Client reports the damages to the Supplier in writing as soon as possible. Every claim for damages against the Supplier expires twelve months after the onset of the claim.

## **Article 9. Other**

- 9.1 The applicability of any terms and conditions of the Client are specifically excluded.
- 9.2 Deviations and additions to these General Conditions are only valid if agreed to in writing between parties.
- 9.3 The Client is not allowed to transfer any rights from an Agreement entered into with the Supplier to third parties, without the prior written consent of the Supplier. This consent will not be withheld on unreasonable grounds.
- 9.4 The Supplier is entitled to transfer the performance of the Service entirely or partially, to a third party or to involve third parties in the execution of the Agreement.
- 9.5 The Agreements between the Supplier and the Client are governed by Dutch law. The applicability of the Vienna Sales Convention 1980 is excluded.
- 9.6 To the extent that national or international rules of law do not prescribe otherwise as mandatory, any disputes that arise or are related to Agreements concluded subject to these General Conditions, or arise therefrom, will solely be submitted to the competent court in Amsterdam.

\*\*\*