

## Terms and Conditions

Last update (29-03-2016)

Please read these Terms and Conditions carefully before using the <http://www.kiteseeing.com> website and the Kiteseeing App mobile application operated by Kiteseeing.

Your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who access or use the Service.

**By accessing or using the Service you agree to be bound by these Terms. If you disagree with any part of the terms then you may not access the Service.**

### Content

Our Service allows you to post, link, store, share and otherwise make available certain information, text, graphics, videos and activities. You are responsible for what you believe, post, information you read/interpret. We just try to make everybody's daily living more spontaneous and give everybody the opportunity to discover and play with their environment.

### Links To Other Web Sites

Our Service may contain links to third party web sites or services that are not owned or controlled by Kiteseeing.

Kiteseeing has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party web sites or services. You further acknowledge and agree that Kiteseeing shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such web sites or services.

### Changes

We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material we will try to provide at least 30 days notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

## **Website and application disclaimer - Kiteseeing**

The information contained in this website and application is for general information purposes only. The information is provided by Kiteseeing and while we endeavour to keep the information up to date and correct, we make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the website or the information, products, services, or related graphics contained on the website for any purpose. Any reliance you place on such information is therefore strictly at your own risk.

In no event will we be liable for any loss or damage including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising from loss of data or profits arising out of, or in connection with, the use of this website.

Through this website you are able to link to other websites which are not under the control of Kiteseeing. We have no control over the nature, content and availability of those sites. The inclusion of any links does not necessarily imply a recommendation or endorse the views expressed within them. Also any information users are placing, any activities and other information, it's the users responsibility to be careful with it, and interpret it right.

Every effort is made to keep the website and application up and running smoothly. However, Kiteseeing takes no responsibility for, and will not be liable for, the website being temporarily unavailable due to technical issues beyond our control.

### **Contact Us**

If you have any questions about these Terms, please contact us.

Our terms and conditions are as easy and straightforward as our product. If you still have questions though, please contact us at [Kiteseeing.com](http://Kiteseeing.com). Following mostly for partner parties.

## Article 1. Definitions and some general affairs

### 1. Who is who? Who am I?

1.1 Kiteseeing: that's us, the eventcreator /informative application located in the eastern part of the Netherlands, Enschede.

1.2 Partner: that's you, the business owner who wants solutions oriented towards reaching their target group and informing them.

1.3 Parties: that's us together.

1.4 User: every single person who will be using our Kiteseeing application. Whether it is the mobile application or the web-application.

1.5 Kiteseeing software: our unique and specially programmed software that offers you a platform to promote your business/events.

2. Deviating from our terms and condition is possible, but only if we have a written agreement.

3. If there is ever a legal dispute and, as a result, one of these articles is nullified, all other articles will still be valid and in effect.

4. Our terms and conditions are applicable to any third party who we might work together with in the future so we can offer even a better application.

## Article 2. Offers

1. All our offers are always non-binding.

2. If we accidentally make a huge mistake in an offer, we cannot be bound to the offer or be obliged to uphold it. We hope for your understanding in this matter.

3. In order to make you a good offer, we'll need some information from you.

4. The prices on our offers are without added taxes or fees.

5. After the contract has been renewed for the first time the contract will then be renewed automatically for each month following. Early termination is possible only with one month's notice, at the end of the term of the contract and at the end of the month.

### **Article 3. Execution of contract**

1. We want to do our very best to execute the contract to the best of our abilities and knowledge, and we want to make you as satisfied as possible.
2. All our contracts are based on the obligation to make an active commitment, unless we have specified a goal or result in our contract. This result would have to be determined sufficiently in writing.
3. In all cases Kiteseeing deems useful or necessary, we have the right to have certain work done by third parties or to be assisted by third parties.
4. It is possible that we will work with third parties in the future to optimize our product and make it even better.
5. To offer our solution in the most efficient way possible, we'll need certain information from you. If you fail to provide us this information, we can delay the execution of this contract until the necessary information is made available to us.
6. All agreed upon deadlines in the contract are not fixed deadlines.
7. If the contract consists of several parts, we can suspend the implementation of new parts until you have approved one or more of the foregoing components in writing.
8. We will do our absolute best to keep the Kiteseeing's software constantly available.

### **Article 4. Amendments to the contract**

1. If it appears that we need an interim to modify the contract to offer better product solutions, it is important that we consult you about this.
2. Following the contract modification we will clearly indicate in advance what consequences this will have in respect to the costs.
3. If we, because we have a duty of care stated in the Dutch law, still have to perform extra work for you while we have agreed on this in writing, then you are obliged to pay us for this.

### **Article 5. Complaints**

1. We do our utmost best to make our product as perfect as possible. Should you still have a complaint our product or invoice anyway, let us know as soon as possible, within 14 days, via e-mail.
2. Even if you have a complaint, and we're sorry if you do, you still need to pay the invoice within the agreed upon term.

## **Article 6. Cost and payment**

1. We have a payment term of 14 days
2. The costs consist of a fixed amount per month.
3. It will not happen often, but if we consider it necessary, we can require a (full) payment of the agreed price in advance. We may also execute the contract in parts and bill you in instalments.
4. If you are unable to (partially) pay the invoice within 14 days, we may suspend the execution of the contract until the moment you have paid.
5. When you do not pay during the period specified in paragraph 1, you will automatically be in fault and we may charge you a lot of legal interest, or at least in accordance to the latest laws and regulations.
6. We may also charge you all costs, including the extra-judicial collection costs, if you fail to fulfill one or more obligations under the contract.
7. The client is not entitled to suspend and / or settle its obligations towards Kiteseeing

## **Article. 7 Intellectual Property Rights and user rights**

1. We are the owners of the delivered Kiteseeing software. After all, we made it all ourselves. Of course you can, as long as the contract lasts, use our software/service, but you need to do this according to the terms of the contract. If you want to fool around and make adjustments etc. in the software, you should just do this with you own developed software.
3. You (organisation/business/company) are yourself responsible for the information you place in the Kiteseeing application.
2. This license explicitly excludes the right to: (further) disclose the Kiteseeing software publicly, duplication of Kiteseeing software, making alterations to (or having someone make alteration to) the Kiteseeing software, giving others access to the Kiteseeing software, copying the Kiteseeing software, exploiting the Kiteseeing software commercially yourself, (partially) imitating the Kiteseeing software or remove (or let someone remove) any mention of intellectual property. With software we also mean the source code of the Kiteseeing software.
3. We have the contract drawn up specifically with and for you. So everything, absolutely everything you do with our Kiteseeing software in regards to third parties is unacceptable! If you do this, then our chief of legal matters will take action against it accordingly.
4. The contract explicitly does not extend to the transfer of any intellectual property right of the Kiteseeing software.
5. If you nevertheless decide to ignore the rules in this article, you will be fined € 2500, – for every offense per day the violation continues. This penalty is not subject to judicial mitigation.
6. The Client is not permitted to use the Kiteseeing software to commit any unlawful act, in particular to breach the Data Protection Act.

## **Article 8. Liability**

1. Only when there is direct damage (this is only material damage as the direct result of a shortcoming on our part caused by intent or gross negligence, we are liable. So for indirect damage (think, for example, of consequential damage, business interruption, lost profits, lost savings, loss due to business interruption and loss arising or relating to the material supplied by us), we are not liable.
2. If we do seem to be liable for damages, the amount of damages is limited to the extent of which this is covered by our liability insurance,
3. Finally, a small list for which we also are not liable: reduced performance of the Kiteseeing software, loss of data or unlawful access by third parties as a result of willfully disrupting (this includes; DDoS attacks , hacker attacks and viruses) the Kiteseeing software by third party, damage which is caused by improper, careless handling by the Client, or not acting in accordance with the instructions provided by us or on our behalf.

## **Article 9. Suspension and dissolution**

1. We have the right to suspend the obligations under our contract if you fail to fulfill your obligations under the contract or if we suspect that you will fail to fulfill the obligations. We reserve this right to suspend without requiring a notice of default and / or that we are required to pay compensation. Based on the aforementioned, we may even or partially or completely dissolve the contract.
2. Of course, the suspension / termination must justify your obligation under the contract. If we have to suspend / dissolve, you still have to fulfill your (payment) obligations as stated in the contract.
3. Furthermore, Kiteseeing is entitled to terminate the contract (or let it be terminated) if circumstances arise that make it impossible to fulfill the obligations of the contract, or if reasonableness and fairness can no be required or if there are other circumstances which make in unreasonable to expect an unaltered execution of contract.
4. Kiteseeing is also authorized to demand compensation from the client for the costs of damages, other costs and interests caused by default of the Client and the termination of the contract, including loss of income for Kiteseeing.

## **Article 10. Force Majeure**

1. What is force majeure? By force majeure we mean each circumstance independent from the will of Kiteseeing which temporarily or permanently prevented fulfilment of the contract, and which cannot under the law, or under the standards of reasonableness and fairness, be our risk. And, to the extent not already included: obstructions caused by measures, laws or decisions of relevant international or national (government) agencies, strikes, sit-ins, blockades, embargoes, war, unrest and equivalent conditions, power failure, malfunction, breakdowns in connection with the internet, and faults in networks, fire, explosion, flood, lightning and other natural disasters and emergencies, as well as extensive disease of epidemiological nature among staff and any failure of our assistants and / or suppliers.
2. We may suspend our obligations under the contract as long as the force majeure lasts. This does not allow you to fail to fulfill your obligations. We do our best to, if it is reasonably possible, notify of the circumstances as soon as possible.
3. If we are able to partially fulfill obligations under the contract, we may send you partial invoices for that.
4. But we must be reasonable, so if the force majeure lasts longer than two months, we may both terminate the contract prematurely in writing without notice periods.

## **Article 11. Confidential information**

1. Let's treat each other with respect. We treat all (confidential) information we exchange with respect and care.
2. For completeness' sake, we are bound by our confidentiality and must consider all data and all information provided by you as strictly confidential and do everything that is feasible and necessary to ensure confidentiality.
3. Information will be deemed confidential if it is noted as such by the other party or if this follows from the nature of the information.
4. The aforementioned confidentiality does not apply when legal or professional rules require us to disclosure information.

## **Article 12. Security and Privacy**

1. In regards to confidentiality, we are on the same page, but in regard to privacy, we adhere to the legal framework as set out in the Personal Data Protection Act (hereafter: PDPA) and the resulting regulations. We hereby declare that the Client is the 'person responsible' and we are the 'processor' within the meaning of the Act. We assume, without further notice, that the execution of the contract does not entail the processing of personal data outside the European Union.
2. You must notify us in writing about how he fulfills his obligations under the Data Protection Act, to the extent relevant for the execution of the contract. You must warrant the requirements for the lawful processing of personal data entered by you or the user in the Kiteseeing software.

3. Kiteseeing will only process personal data, as they are known to him in the context of the contract, for the execution of contract and will take security precautions.
4. We will ensure that technical and organizational measures will be taken in order to achieve an appropriate level of security.
5. You may have obligations to the stakeholders under the PDPA, including with respect to the provision of information, allowing inspection, correction and removal of personal data. The responsibility for compliance with these obligations rests with you. We will, where necessary, cooperate with the obligations that you have.

### **13. Dotting the i's**

1. These terms and conditions shall remain in force if Kiteseeing would change of name, legal status or ownership.
2. We can always make amendments to these conditions. Of course we will give you a timely notice of these changes.
3. All legal relations between us to which these conditions apply, shall be governed by Dutch law.
4. No refunds
5. There is a dispute as soon as one of us states it as such.
6. These conditions come into force on November 8, 2016.