



## Visit2day Terms & Conditions

### 1. Definitions

The definitions and rules of interpretation in this clause 1 shall apply throughout these Terms and Conditions:

- 1.1 "Agreement(s)" means these Terms and Conditions and any quotation agreed and accepted by the Customer and VISIT2DAY in accordance with 3.2 below.
- 1.2 "Application" means the online software toolkit of VISIT2DAY, including all versions and upgrades.
- 1.3 "Application Manager" means the (actual) person who, on behalf of the Customer, is responsible for managing the Application and has administrative rights to configure the Application for the Customer's users.
- 1.4 "Connectivity" means the ability to access the Application.
- 1.5 "Correspondence"/ "Writing" means properly signed and dated letters on paper medium including email and all other electronic communications.
- 1.6 "Customer" means the person, firm or company who purchases or intends to purchase VISIT2DAY services.
- 1.7 "End user" means the actual individual who uses the VISIT2DAY toolkit and is logged in as a user of the Application.
- 1.8 "VISIT2DAY" means VISIT2DAY registered under the Dutch Chamber of Commerce (Kamer van Koophandel) in Den Haag, Netherlands, under registration, Consultancy Factory Groep B.V., KVK number 27296867.
- 1.9 "Helpdesk" means the support services or assistance to the Customer relating to the support services offered by VISIT2DAY.
- 1.10 "ISP" means the Internet Service Provider, which offers services or products on behalf of VISIT2DAY and provides access to the System.
- 1.11 "Non-Business Days" means Saturdays, Sundays and national public holidays when banks in the respective European country are closed for business.
- 1.12 "Parties" means VISIT2DAY and the Customer.
- 1.13 "Software as a Service"/ "SaaS" means the hosting of the VISIT2DAY toolkit by VISIT2DAY as a generic solution or service for more than one Customer. The service is never maintained specifically for one Customer.
- 1.14 "System" means the interconnected network of telecommunication and computer infrastructure which provides computers, software, applications and data files, with access to the Internet.
- 1.15 "Terms and Conditions" means these general sales, supply and payment conditions.
- 1.16 "User Name" means the identification code of the individual user.
- 1.17 "User Password" means the private key of the Customer, required for access to the Application.
- 1.18 "User Subscription" means a license charge for the use of the VISIT2DAY toolkit, such charge payable in advance.
- 1.19 "Webapp" means a mobile webapp designed and developed by the Customer on the VISIT2DAY system.
- 1.20 "Webapp Fee" means a hosting charge per Webapp on the VISIT2DAY system, such charge payable in advance.

### 2. Applicability

- 2.1 These Terms and Conditions are applicable to all agreements with VISIT2DAY, for the purchase of SaaS and support services.
- 2.2 These Terms and Conditions shall prevail over any inconsistent terms and conditions contained or referred to in the Customer's purchase order, confirmation of order acceptance of a quotation or specification or any other document implied by law, trade custom or practice. Any other terms and agreements are only legally valid if they have been agreed in Writing with VISIT2DAY.
- 2.3 Any of the Customer's own conditions or any other conditions, offers or quotations whatsoever are applicable only inasmuch as they do not conflict with these Terms and Conditions. In case of conflict, these Terms and Conditions will have priority, even where stipulated otherwise.



### 3. Offers and quotations

3.1 Any verbal offers and quotations or other oral representations made by any of VISIT2DAY's employees, whether together with price lists, printed material, brochures or otherwise shall not be binding upon VISIT2DAY.

3.2 Actual and valid pricing of the VISIT2DAY services are displayed on the pricing page on the VISIT2DAY website. All offers or quotations supplied by VISIT2DAY outside of the standard pricing models shall be valid for 30 days or any other period agreed in writing between the parties, and can be withdrawn at any time provided that once such an offer or quotation has been accepted, VISIT2DAY can only withdraw such offer or quotation within 48 hours of receipt.

3.3 Unless otherwise stated, VISIT2DAY's prices are given in Euro's and exclusive of local taxes and other possible charges arising from lawful regulation.

3.4 VISIT2DAY reserves the right to alter its rates. This will be in accordance with any relevant existing legal requirements. VISIT2DAY will inform the Customer at least a month in advance of any changes to rates, with the understanding that if VISIT2DAY is aware in advance of any future price increases VISIT2DAY will inform the Customer of such increase upon confirmation of an order.

### 4. Prices

4.1 Unless otherwise specified, the price of VISIT2DAY is expressed in euros, excluding VAT and any other fees resulting from legal regulations.

4.2 VISIT2DAY is entitled to raise fees, taking into account any relevant existing legal requirements. VISIT2DAY will notify the Customer at least one month in advance of price changes, provided that previously known price increases are reported upon order confirmation.

### 5. Agreements

5.1 VISIT2DAY provides licenses to access SaaS and all Agreements govern SaaS-related services.

5.2 The Customer can choose from various types of licenses according to the license product page on the VISIT2DAY website.

5.3 Should the Customer wish to downgrade the license type and/or license fee, this can be done online at the end of the chosen license period. Upgrading is possible at any time during the chosen license period. Changes are to be made online in the Application.

5.4 The User Subscription license comes into force only when the Customer makes payment through an electronic payment system offered on the VISIT2DAY website or in the Application. In so doing, the Customer at the same time indicates acceptance of these Terms and Conditions. It is only possible for the Customer to make use of the SaaS after payment.

5.5 The Webapp Fee comes into force when the Customer purchases a self-developed webapp in the Application within 30 days of development start. Only when the Customers makes the Webapp Fee payment through an electronic payment system offered through the Application will the webapp be hosted for a period of one year.

5.6 Regarding the renewal of the license: users will be automatically notified and requested to renew their Subscription license or Webapp Fee before the current licensing period ends.

5.7 The User Subscription License described in in 5.4 is entered into for a minimum period of 1 month ("Minimum Term"). After the initial term, licenses are extended under the same conditions for a period that is chosen by the Customer on the order page of the VISIT2DAY electronic payment system ("Successive Term"), unless a cancellation has occurred in accordance with 5.8 below.

5.8 The Customer is subject to a notice period for cancellation of one week to expire no earlier than the end of the Minimum Term or any Successive Term. Cancellation of the Agreement can be in Writing of by sending an email to [info@Visit2day.com](mailto:info@Visit2day.com).

5.9 If the Agreement is terminated before it has expired in accordance with clause

5.8, the Customer is obliged to pay the full fee to VISIT2DAY for the remainder of the Minimum or Successive Term (as the case may be). The total fee may be reduced at the discretion of VISIT2DAY due to any savings or benefits for VISIT2DAY arising from the premature termination.

5.10 Each Agreement with a Customer is entered into by VISIT2DAY subject to the overriding condition that the Customer appears to be able to pay all fees due hereunder.

5.11 VISIT2DAY may terminate this Agreement with immediate effect and without notice on the occurrence of any one of the circumstances specified below and upon such termination all sums payable to VISIT2DAY under this Agreement shall become immediately due in full to VISIT2DAY, without prejudice to any other rights VISIT2DAY may have to claim for costs, damages or interest.



(a) proceedings are initiated against the Customer under any applicable insolvency or similar law for the purpose of bankruptcy, winding up or liquidation, the Customer, the Customer calls in receivers or a receiver or trustee in bankruptcy is appointed with respect to the business property or other assets of the Customer, the Customer requests suspension of payment, or seizure of all or part of the Customer's assets takes place;

(b) the Customer dies or is placed under legal care;

(c) the Customer does not fulfil any of the obligations on him arising from law or this Agreement;

(d) the Customer fails to pay any amount specified in an invoice or part thereof within the appointed time or payment is cancelled / withdrawn;

(e) the Customer moves to wind up or transfer all or a substantial part of his business, including but not limited to the transfer of his business into a company, whether already existing or to be established.

5.12 In case VISIT2DAY terminates this Agreement for reasons mentioned under

5.13 Above, VISIT2DAY has the right to immediately block Customer access to the Application.

## **6. Invoices, payments and reminders**

6.1 Through its online payment provider, who acts as a sales agent for VISIT2DAY, an invoice report will be made available to The Customer following each payment transaction which shall contain the invoice total and any VAT total (if applicable).

6.2 These invoices are prepared on the basis of the previously supplied quotation which the Customer can view prior to completion of the electronic payment.

6.3 The invoice made available by the online payment provider of VISIT2DAY for the Customer on the website of the online payment provider applies to a Customer not contracting as a consumer as satisfactory proof of obligation, interest and the date on which the interest calculation begins.

6.4 Complaints relating to invoices must be made in Writing, with a precise statement of the nature and grounds of the complaint. Such complaints will only be considered if they reach VISIT2DAY within 5 working days following the invoice date. After the expiry of this date complaints shall not be considered, unless the Customer is contracting as a consumer.

6.5 VISIT2DAY will report back to the Customer in Writing, within 18 working days of receipt of the complaint, of its conclusion as to the validity or otherwise of the complaint.

6.6 Payment in advance through the electronic payment system shall be made without discount or set off in the unit of currency in which the price has been quoted; in accordance with any relevant existing legal requirements. Payments shall be made to the online payment provider of VISIT2DAY

6.7 Extension of the duration of the Agreement in respect of a User Subscription license shall take place automatically. The Customer shall receive an email at least 7 days in advance which will request settlement in advance for the following period using the electronic payment system. Should the Customer not have paid by the day on which the license Agreement expires, then VISIT2DAY is authorized to suspend the Customer's use of the Application taking into account a grace period of 5 days. VISIT2DAY shall not be held liable for any loss that the Customer incurs as a result.

6.8 Extension of the duration of the Agreement of a Webapp Fee shall take place automatically. The Customer shall receive an email at least 3 days in advance which will request settlement in advance for the following annual period using the electronic payment system. Should the Customer not have paid the Webapp by the day on which the Agreement expires, VISIT2DAY is authorized to take the Webapp it concerns offline until the Webapp Fee is paid. VISIT2DAY shall not be held liable for any loss that the Customer incurs as a result.

6.9 Subject to clause 6.10 below, the Customer shall compensate VISIT2DAY for all costs and expenses incurred by VISIT2DAY in respect of the collection of monies owed hereunder by the Customer including costs relating to legal advice and assistance, whether in or out of court.

6.10 Compensation relating to non-court costs is fixed at 20% of the total sum owed, subject to a minimum amount of Euro 150, if the total sum owed is less than Euro 1,500. If the total sum owed amounts to more than Euro 1,500, but less than Euro 3,500, then a percentage of 15% applies. For sums of Euro 3,500 and higher, a percentage of 10% is required. This compensation shall apply whenever legal advice or assistance is obtained by VISIT2DAY, or where the claim is passed to a collection agency, and shall become immediately due and payable by the Customer without further proof.

6.11 All payments made by the Customer go first of all towards meeting any interest and costs of recovery made by VISIT2DAY and then successively towards meeting the oldest outstanding invoices.



## **7. Access to databases**

7.1 The parties are, except in the case of any legal obligation to reveal specific data, bound to maintain the confidentiality of information supplied by the other party and of results of a confidential nature obtained from its processing.

7.2 Due to the confidential nature of the relationship between the parties and the manner in which the Customer may make use of the system, it follows that VISIT2DAY shall only under limited circumstances access or allow a third party to access the user behaviour of the Customer and any confidential data records maintained by VISIT2DAY hereunder.

7.3 VISIT2DAY shall, as a responsible holder of the information, only provide a third party with access to the information if:

- the Customer has given consent in Writing, or
- it is necessary as part of an official investigation into criminal activity.

7.4 Any access specified in clause 7.3 will be limited to the provision of specifically relevant information. VISIT2DAY will in no case freely give control over such access, Connectivity or other confidential information.

7.5 VISIT2DAY is authorized to access the data records of the Customer, if and so far as this is necessary for the investigation and acceptance of a Helpdesk request, as well as for good management and development of the Application.

## **8. Use of the Application**

8.1 VISIT2DAY will provide the Customer with access to the SaaS for the duration of this Agreement.

8.2 VISIT2DAY shall be obliged to provide assistance necessary for network security, security of user access and security of confidential information in general. However, the Customer shall bear full responsibility for prevention of misuse of the combination of user name and password provided. VISIT2DAY shall not be held liable for the loss, theft or misuse of username and/or password.

8.3 The Customer is always responsible for the actual content (including texts and images) with which he configures the Application.

8.4 VISIT2DAY is authorized to modify the SaaS system, add functionality and fix bugs from time to time. The Customer permits VISIT2DAY to alter or replace any part of the SaaS system without prior consent where such alteration or replacement provides a comparable or better version of the existing functionality. VISIT2DAY may also introduce alterations to the login procedure and user access and username. Costs which the Customer may incur as a result of these alterations shall be at his own expense and shall not be recovered from VISIT2DAY. VISIT2DAY will endeavor to fix all bugs in the Application, but cannot guarantee that the Application will ever be completely bug free.

8.5 The Customer is not permitted to use the SaaS system for illegal and criminal behaviour including but not limited to the following:

- the illegal distribution of copyright-protected material;
- the illegal or criminal distribution of private data;
- the distribution of illegal texts and image or audio material;
- the distribution of pornographic texts and image or audio material;
- computer misuse (also known as "hacking") through the Internet or otherwise through the system;
- destruction, damage or rendering unusable of systems or automatic processes and software of others.
- the use of the application for criminal, discriminatory, exploitative, degrading or human oppressive acts and services. Examples include booking appointments for prostitution, escort, sex sessions via telephone, web or chat, agreements relating to drug trafficking, scheduling meetings with a criminal character or terrorist intentions and the like.

8.6 The Customer is not permitted to launch or continue running processes which he may or ought reasonably to suspect will hinder other users of the Internet or affect the use by others of the SaaS system.

8.7 Information which the Customer distributes for commercial purposes must comply with all applicable laws and regulations.

## **9. Limiting and blocking access**

9.1 VISIT2DAY is authorized to limit or block the Customer's access to the Application if the Customer does not adequately or fully fulfil his contractual obligations. Limiting and blocking of access can take place without warning but shall not affect the Customer's payment obligations hereunder.

9.2 In the event that VISIT2DAY, acting reasonably, suspects that a Customer is carrying on any of the activities specified in 8.5 and/or 8.6 above, VISIT2DAY shall, without liability therefore, be entitled to suspend a Customer's access to the Application and



the Customer shall have no claim for reimbursement of pre-paid fees. Any reasonable suspicion that a Customer is carrying on any of the activities specified in 8.5 or 8.6 shall constitute grounds for VISIT2DAY to block access to the Application as well as for the immediate termination of this Agreement.

## 10. Support

10.1 The VISIT2DAY SaaS is hosted by the ISP in a professional manner in keeping with industry standards. This includes the physical protection of the centre and blocking of all unauthorized access, 24-hour hardware support, fire protection, power outage and Internet failure protection, a firewall, data security measures, and a daily data backup.

10.2 VISIT2DAY shall ensure that the SaaS is highly available in accordance with general industry standards. VISIT2DAY guarantees a 99.5% uptime average per month, outside the exclusions set out in Section 10.3. By 'availability' is meant that the SaaS is accessible from the Internet at the URL provided to the Customer. By 'availability' is not meant the existence of a working point-to-point connection between the systems of the Customer and the SaaS.

10.3 Exceptions to high availability may apply in the following circumstances:

- During system maintenance of the VISIT2DAY SaaS for upgrades and bug fixes;
- In case of incidents of force majeure (defined in Section 11);
- During service activities or upgrades of the ISP;
- Any problem or malfunction caused by the action of the End User;
- The unavailability of the SaaS at the request of the Customer.

10.4 The Customer has the right to support in using the Application. This support is provided by an online or personal (depending on the chosen license type) Helpdesk, to which the Customer can submit a question or follow training sessions. This question will be answered as well as possible within 24 hours, excluding Non-Business Days. Only the Application Manager can put questions to the online helpdesk. End users must put their questions to the Application Manager.

10.5 The Customer shall not obtain any rights to the information supplied by the employees of the online Helpdesk. As the online Helpdesk depends upon the reliability and accuracy of the information provided by the Customer, the online Helpdesk shall not be liable for any failure caused by inaccurate information provided by the Customer.

10.6 The employees of the online Helpdesk shall be permitted to have access to confidential data records of the Customer, in so far as such access is required for the provision of support.

10.7 A request made by the Customer for service or assistance is regarded as:

- consent by the Customer to the online Helpdesk staff to access his data records;
- an undertaking by the Customer to provide all reasonable assistance to the online Helpdesk staff in the performance of their duties.

## 11. Force majeure

11.1 VISIT2DAY shall exercise all due care with regard to ensuring the availability of the Application and shall expend considerable effort in ensuring that access to the Application is without interruption. However, VISIT2DAY shall not be held liable for any interruption to the availability of the Application as a result of unforeseen circumstances or circumstances outside VISIT2DAY's control which shall be at the Customer's risk.

11.2 Such circumstances noted in 11.1 shall include but not be limited to interruptions in connections to the Internet, interruptions to the applicable telephone network, interruptions to electricity supply and other interruptions outside the control of VISIT2DAY. Interruptions to the availability of the SaaS system as a result of reasonably required maintenance shall also be deemed as circumstances falling within 11.1 above.

11.3 The consequences of shortcoming in the performance of VISIT2DAY towards third parties, which were caused by the Customer or as a result of his behaviour, are always to be considered as at the Customer's risk.

## 12. Exclusion of Warranties

12.1 The SAAS will be offered in its current state ("as is") and VISIT2DAY gives the Customer no warranty with respect to the SAAS.

12.2 VISIT2DAY gives customers no guarantee that: a) the use of the SAAS will meet your requirements, b) the use of the SAAS will be uninterrupted, timely, secure or free from errors at all times, c) all information acquired by the Customer as a result of the use of the SAAS will be accurate or reliable, and d) that defects in the operation or functionality of any



Software provided to Customer as part of the SAAS provider, will be restored.

### **13. Liability**

13.1 VISIT2DAY shall not be held liable for the way in which, or the purpose for which, the Customer or any third party using the username and password of a Customer, makes use of access to the Application and the Customer shall indemnify VISIT2DAY for any claims, expenses or costs including legal expenses which VISIT2DAY suffers or incurs as a result.

13.2 The Customer is aware of the risks which digital or electromagnetic storage and transfer of data carry with them with regard to integrity and security of data.

13.3 VISIT2DAY shall not be held liable for:

- loss or corruption of the data stored or transferred by means of the System;
- corruption, loss or disclosure of confidential and valuable information;
- situations in which security may have reasonably been considered to be satisfactory at the time of implementation, or in which VISIT2DAY could not reasonably have been expected to implement the requested security.

13.4 If, in the performance of this Agreement, VISIT2DAY is directly responsible for any loss or damage to the Customer's business, VISIT2DAY shall compensate the Customer to a maximum amount per event equal to the sum owed by the Customer in the invoice immediately preceding the event.

13.5 Liability for direct damage, caused by and attributable to VISIT2DAY, shall be limited to Euro 2,500 per event. In no circumstances shall VISIT2DAY be liable for consequential loss or other indirect damage, including loss of use, loss of profits and any special or pure economic loss, costs, damages, charges or expenses.

13.6 If as a result of an event relating to clause 13.2, more than one claim arises and the combined claims exceed the appointed maximum per event, the claims will be met proportionately.

13.7 Loss as described in clause 13.4, incurred by a Customer contracting as a consumer, must be reported in Writing to VISIT2DAY forthwith, but in any event no later than 15 days after such loss arises.

13.8 Loss which is not brought to the attention of VISIT2DAY within the period specified in 13.7 above will not be considered for reimbursement, unless the Customer shows plausibly that he could not have reported the loss earlier.

### **14. Copyright/intellectual property/exclusivity**

14.1 The Customer shall not modify, reproduce (other than as necessary for intended use), lend out, or otherwise provide to a third party the Application or any part thereof, except insofar as this is necessary for the use expressly permitted in the contract.

14.2 All intellectual property rights, in particular but not limited to the Application, websites, databases, equipment or other materials such as analyses, designs, documentation, reports, offers, as well as preparatory materials thereof made available to the Customer and to third parties via the Customer are exclusively vested in VISIT2DAY. The Customer and third parties contracted by or via the Customer are only granted the right of use allocated under this Agreement and the applicable law. This right of use is non-exclusive, cannot be sub-licensed, is valid for a limited period and may be transferred only under the conditions in this Agreement and/or conditions to be agreed on by the parties later.

### **15. Usage Rights**

15.1 The services, programs and written information made available by VISIT2DAY are provided to the Customer on the basis of a license.

15.2 This license is a non-exclusive and non-transferable license exclusively for the agreed use of the named services within the Customer's own organization. This Agreement does not cover any other usage.

15.3 VISIT2DAY retains the right to sell or publish the work or service elsewhere.

### **16. Expiry**

All rights of the Customer to make a claim against VISIT2DAY pursuant to this Agreement shall (save as otherwise provided by law), expire one year from the date on which the cause of action arose.

### **17. Governing Law and Jurisdiction**

17.1 These Terms and Conditions and any dispute or claim arising out of or in connection with it or its subject matter or



formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Netherlands under applicable European legislation.

17.2 The Parties irrevocably agree that the courts of the Netherlands or any court chosen by VISIT2DAY shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

#### **18. Validity of stipulations**

If any provision or part of a provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

#### **19. Final stipulations**

19.1 This Agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

19.2 The Customer hereby permits VISIT2DAY to use of the name of the Customer in press releases or product brochures to state that the Customer is a Customer of VISIT2DAY.

19.3 VISIT2DAY has the right to alter these Terms and Conditions. Alterations apply even to existing agreements provided that any alterations shall be made known in a timely and appropriate manner. Such alterations shall come into effect at least 30 days after the notification as stated in the notification.

#### **Mededelingen en contact opnemen met ons**

Als u vragen hebt over de Terms&Conditions, neem dan contact met ons op via:

Consultancy Factory Groep B.V.  
Taag 87  
2491 CS Den Haag, Telefoonnummer: +31 (0)70 320 5009 [visit@Visit2day.nl](mailto:visit@Visit2day.nl)

Dit document is voor het laatst bijgewerkt in februari 2017