

1 Interpretation

For the purposes of interpretation and construction of this Agreement:

- 1.1 Words importing the singular or plural number include the plural and singular number respectively;
- 1.2 A "person" includes any individual, corporation, unincorporated association, government department or municipal authority;
- 1.3 References to a Party to this Agreement include that Party's successors and permitted assignees;
- 1.4 This Agreement shall be governed by New Zealand law;
- 1.5 A statute includes that statute as amended from time to time and any legislation passed in substitution therefore.

2 Scope of Services

ViewBuild will provide the products and services, as identified in the attached order form, by the due date unless the Agreement is terminated or otherwise altered as agreed by both parties.

Support, Maintenance or Enhancement to any other products, applications or any other services, not included in the agreement herein, is not in scope for this agreement.

3 Requirements

The specific requirements for the solution delivered under this agreement shall be detailed in a separate requirements document or order form and attached to this agreement. The requirements shall explicitly describe the scope, timeframes, technical requirements, user requirements, deliverables and any other information necessary by either party to complete the project and deliver the desired outcomes on time and on budget.

The requirements must be signed and dated by both parties to this agreement to be deemed effective.

4 Service Conditions

- a) Work will only commence upon the acceptance by ViewBuild of full project specifications detailing all products and services required and documented in an order or project services schedule. ViewBuild reserves the right not to accept such order or project services schedule at its discretion.
- b) Changes and additions to design specifications may be made prior to customer's acceptance of the goods and services ordered but ViewBuild reserves the right to charge the Customer for any work undertaken until the time at which changed and/or new design specifications are provided to it.
- c) Should the Customer cancel a an order or project services schedule after acceptance by ViewBuild then the Customer will be charged for all work undertaken up until the time notice of cancellation is received by ViewBuild.

5 Delivery of Products and Services

- a) ViewBuild commits to keeping its customers informed of any delivery delays arising from circumstances beyond it's control. In no event will ViewBuild be held responsible for losses incurred by the Customer for delivery delays caused by circumstances outside it's control.
- b) ViewBuild will deliver the exact products and services outlined on the order acceptance. Unless otherwise agreed, the Customer is responsible for arranging access to the location at which the products and services are to be delivered and/or installed.
- c) A project is deemed delivered by ViewBuild when a CD-Rom, DVD or similar media containing all 3D models, panoramic images, still photography imagery, and (if required) associated web pages and other associated marketing collateral which constitute the products and services as specified by the Customer for the specified project, have been physically received by the Customer or by any party nominated to take delivery in the Customer order and agreed to in ViewBuild' order acceptance or if all files which constitute the completed project have been electronically received by the Customer or by any party nominated to take delivery on behalf of the Customer as mutually agreed by ViewBuild and the Customer.
- d) ViewBuild takes no responsibility for the deliverable products and services once they have been delivered and accepted by the Customer.
- e) the Customer is deemed to have accepted the products and services delivered when the Customer provides signed confirmation of acceptance to ViewBuild, or five (5) working days after their delivery in accordance with the delivery definitions above, whichever occurs first.

6 the Customer's Obligations and Responsibilities

- (a) the Customer undertakes to:
 - (i) properly supervise, control and manage the use of the products and services provided by ViewBuild to the Customer under the provisions of this Agreement.
 - (ii) participate in good faith in any change control process where the customer requests a change to the products or the service deliverables or the manner in which they are supplied..
- (b) The parties agree that the Customer has independently determined that the services ordered under this agreement meet its requirements.

7 ViewBuild's Obligations and Responsibilities

- (a) ViewBuild is responsible for finding and allocating resources for the Services to be performed by ViewBuild under this Agreement. ViewBuild shall advise the Customer as soon as possible about the availability of resources for the provision of additional services. If ViewBuild staff are unavailable to complete the work then, subject to clause 12, ViewBuild is obliged to find third party resources to complete the work.
- (b) ViewBuild is obliged to keep a master copy of this Agreement, all Schedules, Statements of Work, the Operations Manual and all Change Requests. These master copies are to be made available to the Customer on request.
- (c) ViewBuild shall participate in good faith in any Change Management Process where the customer requests a change to the Services or the deliverables or the manner in which they are supplied

8 Copyright and Intellectual Property

All copyright and intellectual property (IP) of all technology, models, websites, images and other collateral supplied to the Customer will reside with ViewBuild at all times. ViewBuild holds all rights to the idea, to the intellectual property, to the techniques employed to produce the deliverables, and to any other technical information. ViewBuild reserves the right to seek compensation for any financial losses incurred due to any breach by the Customer of the above stated rights. Unauthorised use or copying of ViewBuild technology and processes is not allowed under any circumstances. ViewBuild reserves the right to use any deliverables produced by it for promotional reasons in the media, in printed publications, on the world wide web, or as links on its own web sites, without prior permission from the Customer.

All copyright for still photos remains with ViewBuild. The Customer may use the finished images in any manner providing the intended use is not inappropriate, offensive or insulting to ViewBuild or any other persons.

All copyright of models, images, text and animations which constitute a finished project will reside with the Customer upon receipt of full payment. ViewBuild reserves the right to reference and link to any customer web site for any promotional reasons.

9 Charges and Payment

ViewBuild will charge the Customer a fixed fee for the products and services agreed within this agreement and supporting schedules for the term of this agreement.

Any services delivered in addition to the contracted services will be charged to the Customer at the time of successful completion of the service. For ongoing services, the Customer will be charged at the end of each calendar month, in which the service was delivered. The charges for additional services will be detailed in an appendix to this agreement.

If the Customer fails to pay any of the above charges by the due date, ViewBuild reserves the right to instruct a third party debt collection agency to recover outstanding amounts. The Customer will be liable for any and all costs incurred to recover outstanding payments.

Failure to pay by the due date may result in the debt collection action. Any debt collection costs incurred will be charged to the customer.

Overdue payments may incur interest charges of 2% per month, or part thereof for every month that payments remain outstanding.

All charges are in New Zealand dollars and are exclusive of GST.

10 Change Control

- 10.1. If either party wishes to alter any Contract, Services Agreement, Services Schedule, Appendix, or any related documentation, including the addition or deletion of Products or Services under this or any related or accompanying documentation, a Change Control Process, will be applied.
- 10.2. The Change Control Process will be mutually agreed and documented in an appendix to this agreement.

11 Sub-Contractors

- (a) ViewBuild may sub-contract for the performance of this Agreement or any part of this Agreement to the extent specified in clause 8.
- (b) ViewBuild may, without the consent of the Customer, engage individuals on a sub-contract or consultancy basis to assist in the provision of Products and Services pursuant to this Agreement.

12 Liability

12.1 Limitation of Liability

Subject to clauses 12.2 and 12.3, each party's total liability to the other in respect of a single claim or series of related claims in contract and tort (including but not limited to negligence) for direct loss suffered by the non-defaulting party arising out of or in connection with defaulting party's performance of its obligations under this Agreement shall not exceed the greater of:

- 12.1.1 the liability amount specified in the relevant schedules or appendices to this agreement; or
- 12.1.2 an amount equal to the total amount the Customer has paid to ViewBuild in the 30 days immediately prior to the event giving rise to the claim or series of related claims.

12.2 Extent of Limitation

No term of this Agreement shall limit the defaulting party's liability to the non-defaulting party for:

- 12.2.1 Any damage to physical property;
- 12.2.2 the death of any person;
- 12.2.3 any injury to any person,

caused by the negligence of the defaulting party or its officers, employees, contractors or agents.

12.3 No Liability for Indirect Loss

Subject to clause 12.2, under no circumstances will either party or their respective officers, employees, contractors or agents be liable to the other or any person claiming through the other in contract, tort (including but not limited to negligence), in equity, for breach of statutory duty or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatsoever notwithstanding that the other party or its officers, employees, contractors or agents have been advised of or are otherwise aware of the likelihood of such losses.

12.4 Termination

If this agreement is terminated by the customer prior to completion the customer forfeits any deposit made. The customer shall be liable to pay ViewBuild for the value of all unpaid work carried out prior to the termination taking effect.

12.5 Force Majeure

No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or [telephone service], and no other Party will have a right to terminate this Agreement in such circumstances.

Any Party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

13 General

13.1 Assignment

- 13.1.1 ViewBuild shall not assign transfer or subcontract its rights or obligations under this Agreement without the prior written consent of the Customer which consent the Customer shall not unreasonably withhold. For the purposes of this Agreement, the Customer approves ViewBuild Pty Limited (Australia) as a sub-contractor in respect of the provision of Products and Services under this agreement.
- 13.1.2 For the purposes of this clause the transfer of any shares in ViewBuild which directly results in a change of control of ViewBuild shall be deemed an assignment.

13.2 Dispute Resolution

Any disputes between the parties will be referred to the parties' Chief Executive Officers (CEOs), or their equivalent. The CEOs will endeavour to resolve the dispute within ten (10) Working Days. If the CEOs do not resolve the dispute within this time, the dispute will be referred to arbitration in accordance with paragraph (b) of this clause. Subject to paragraph (a) of this clause, any dispute arising in connection with this Agreement will be referred to the arbitration of an independent arbitrator appointed by the President for the time being of the New Zealand Law Society. Such arbitration shall be conducted under the Arbitration Act 1996. The decision of the arbitrator shall be final.

13.3 Applicability of Conditions

All sections, clauses, terms and conditions under this agreement shall apply jointly and severally for the duration of the agreement.

13.4 Amendments

Any modification to or variation of this Agreement shall be in writing and signed by authorised representatives of ViewBuild and the Customer.

14 Personal Property Securities ACT 1999 ("PPSA")

14.1. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that::

- 14.1.1. these terms and conditions constitute a security agreement for the purpose of the PPSA; and
- 14.1.2. a security interest is taken in all Goods and Services previously supplied by tViewBuild to the Customer (if any) and all Goods and Services that will be supplied in the future by ViewBuild to the Consumer.

- 14.2. The Customer undertakes to:
- 14.2.1. sign any further documents an/or provide any further information (such information to be complete, accurate and up to date in all respects) which ViewBuild may be reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - 14.2.2. indemnify, and upon demand reimburse, ViewBuild for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods or Services charged thereby;
 - 14.2.3. not register a financing change statement or a change demand without the prior written consent of ViewBuild; and
 - 14.2.4. immediately advise ViewBuild of any material change in its business practices of selling the Goods or Service which would result in a change in the nature of proceeds derived from such sales.
- 14.3. ViewBuild and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5. Unless otherwise agreed to in writing by ViewBuild, the Customer waives its rights to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6. The Customer shall unconditionally ratify any actions taken by ViewBuild under clause 14.1 to 14.5.
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SIGNED for and on behalf of

SIGNED for and on behalf of

ViewBuild Limited

by its authorised signatory:

by its authorised signatory:

Signature:

Signature:

Name:

Name: David Moore

Title:

Title: Director

Date:

Date: