

Terms of Purchase

These Terms of Purchase (these “**Terms**”) govern a Customer’s acquisition and use of Services provided by Visiting Media LLC, a Delaware limited liability company with an address of 245 W Main Street #1 Carlton, OR 97111 (“**Visiting Media**”). By executing an Order Form that references these Terms or by using or accessing any free Services, Customer agrees to these Terms. Each of Visiting Media and Customer may be referred to in these Terms as a “**Party**” and collectively as the “**Parties**.”

1. Definitions. Unless otherwise defined in these Terms or in an applicable Order Form, capitalized terms used below shall have the meanings set forth in Section 13.
2. Purchase of Services.
 - a. Customer desires to purchase, access and use and, as applicable, permit its Administrative Users to access, and have use of, Services as specified in an applicable Order Form entered into by and between Customer and Visiting Media.
 - b. Subject to and conditioned on Customer’s and its Administrative Users’ compliance with the (i) the applicable Order Form and (ii) these Terms (collectively, the “**Agreement**”), Visiting Media shall provide Customer with the Services set forth in an applicable Order Form.
3. Services.
 - a. *Digital Asset Production*. Certain Services are offered to Customer as an individual or packaged purchase, including the capture and production of 3D Models, 360° Photos, Aerial 360° Photos, Computer Generated Imagery, and Video via Visiting Media’s proprietary 360° production and photorealistic digital media (collectively, “**Digital Asset Production**”). The output of Digital Asset Production is referred to as Digital Assets.
 - b. *Subscription Services*. Certain Services are offered as a subscription to software-as-a-service (“**Subscription Services**”) during the period of time that begins on the date in the Order Form where the Subscription Services begin (the “**Contract Start Date**”) through the date in the Order Form where the Subscription Services end (the “**Contract End Date**”) (each, a “**Subscription**”). Unless otherwise set forth in an applicable Order Form, on each anniversary of the Contract End Date for each Subscription, the Services associated with each such Subscription shall automatically renew on an annual basis (each, a “**Renewal Subscription**”), unless the Order Form is terminated pursuant to the provisions of the Agreement.
4. Fees and Payment Terms.
 - a. *Fees*. Customer agrees to pay all fees for any Services, including any associated Direct Costs, as set forth in an applicable Order Form or herein with respect to Site Visit Fees (collectively, the “**Fees**”). Unless otherwise specified in an Order Form, Fees are quoted and payable in U.S. dollars.
 - b. *Site Visit Fees*. Certain Digital Asset Production Services may require Visiting Media personnel to visit a Property (each, a “**Site Visit**”). The following provisions shall apply to any Site Visit:
 - i. Customer shall be charged the following fixed fees with respect to travel for a Site Visit:

Site Visit Fees by Location	
Region or Location	Site Visit Fees per each Site Visit
North America & Hawaii	\$500
Islands (any other than Hawaii)	\$1,500
EMEA	\$1,000
Asia Pacific	\$1,000
Central America	\$1,000
South America	\$1,000

- ii. Customer or each Property, as applicable, shall provide up to two (2) standard hotel rooms free of charge at the applicable Property for the duration of the Site Visit; and
 - iii. Customer or each Property, as applicable, is responsible for promptly scheduling any needed Site Visit. If a Site Visit is scheduled for particular date(s) and Customer or Property, as applicable, requests a change to a new date(s), such request must be provided to Visiting Media in writing at least ten (10) calendar days prior to the originally scheduled date. If such notice is not provided, the original Site Visit Fees will be charged to Customer, as well as Site Visit Fees associated with the new date(s).
- c. *Payment Terms.*
- i. Fees are due and payable according to the payment terms set forth in the applicable Order Form. If payment terms are not specified in the applicable Order Form, Fees shall be billed in full at the Order Form Effective Date and are payable net thirty (30) days from date of invoice. Site Visit Fees shall be invoiced as soon as possible following the scheduling of a Site Visit and are due net thirty (30) days from the date of the invoice.
 - ii. Any amounts associated with Fees not received within thirty (30) days from the applicable date due shall bear interest from the date due at the rate of one percent (1%) per month (prorated for partial periods) or the maximum rate permitted by applicable law, whichever is less. If Fees are paid via credit card, an additional charge equal to three percent (3%) of the invoiced amount shall apply.
- d. *Renewal Subscriptions.* With respect to each new Renewal Subscription, Fees shall automatically increase by five percent (5%) over the Fees for the prior year (the “**Renewal Fee**”).
- e. *Taxes.* Fees do not include any applicable sales, value added, or goods and services taxes, or any country specific withholding taxes applicable to foreign suppliers, or any other use taxes (collectively, “**Taxes**”), regardless of whether such Taxes are included on an invoice or required by law to be included in the Fees. If Visiting Media has a legal obligation to pay or collect Taxes for which Customer is responsible, Taxes

will be invoiced to and paid by Customer, unless a valid tax exemption certificate authorized by the appropriate taxing authority is provided annually to Visiting Media. Visiting Media is solely responsible for taxes assessed based on Visiting Media's income, property, and employees.

f. *Fees Based on Purchase, Not Use.* All Fees are based on Services purchased, and not actual usage.

5. Intellectual Property Rights, Permitted Use and Restrictions.

a. *Intellectual Property Rights.*

i. Visiting Media, its Affiliates, and its third-party licensors, as applicable, shall retain all right, title, and interest in and to its respective Confidential Information (as defined below), the Digital Assets and to the Services (or any output or component thereof) worldwide including, without limitation, ownership of all copyrights, trademarks, patents, look and feel, trade secret rights and any other intellectual property rights recognized under any applicable law therein (collectively, "**Intellectual Property Rights**").

ii. Customer, its Affiliates, and its third-party licensors, as applicable, shall retain all right, title, and interest in and to its respective Confidential Information and any photos, videos, data, documentation, records, listings, offers, statements, or other information relating specifically to the Customer or a Property that is provided to Visiting Media to post on or make accessible through the Services (collectively, "**Property Information**") including, without limitation, all Intellectual Property Rights in any of the foregoing.

iii. Notwithstanding anything to the contrary in this Agreement, during and after the Term of this Agreement, Customer hereby grants to Visiting Media a perpetual, irrevocable, paid-up, royalty-free, limited, nonexclusive, non-sublicensable worldwide right and license to copy, create derivative works of, modify and otherwise use any Property Information or other data provided to Visiting Media or that is generated through the use of the Services hereunder. All other Intellectual Property Rights in Property Information are expressly reserved by Customer.

b. *Access and Use of Digital Assets and Subscription Services.* During the Subscription set forth in an applicable Order Form, Visiting Media grants Customer, and Customer accepts, a non-exclusive, non-transferable right to access and use the Subscription Services (and to permit Customer's Administrative Users to access and use the applicable Subscription Services). Further, during the Subscription set forth in an applicable Order Form, Visiting Media grants to Customer and Customer accepts, a non-exclusive, non-transferable right to access and use any Digital Assets as the same may be presented within the Subscription Services. The rights set forth in this paragraph terminate when the applicable Subscription terminates.

c. *Terms of Use.* Prior to access and use of the Subscription Services, each Administrative User shall indicate its acceptance of, and agreement to, the Terms of Use that are posted within the user interface for the Subscription Services. Further, the Administrative User's use of the Services shall be deemed to indicate the agreement of that Administrative User to the Terms of Use. The Terms of Use contain standard provisions with respect to an individual's access to and use of the Subscription Services.

d. *Permitted Use.* Services may be used only in connection with the marketing, maintenance, management, operation and use of the applicable Property.

e. *Restrictions.*

- i. Customer agrees not to sublicense, rent, sell, loan, give or otherwise make available all or any part of the Services to any party other than Customer and its Administrative Users and not to sell, rent or otherwise exploit access to the Services for any commercial purpose other than as set forth in the Agreement. Customer specifically agrees not to (A) rent, lease, sell, lend or encumber the Services; (B) modify, copy, decompile, make derivative works of or reverse engineer any source code, digital assets or any other part of the Services by any means whatsoever or any attempt to do the same; (C) access or use the Services for purposes of competitive analysis, or for the development, provision, or use of a competing service or product; or (D) act or permit action that would in any way impair the rights of Visiting Media in the Services or otherwise under the Agreement.
- ii. Customer acknowledges and agrees that Visiting Media will not be responsible for, and does not control, the quality, truth, accuracy, or legality of any Property Information, and that Visiting Media will have no obligation to review any Property Information, whether posted by Customer, any Administrative User, or any other party.
- iii. Customer covenants that it will not upload or transmit, nor will it authorize or knowingly enable any Administrative User, to upload, post, transmit or otherwise publish through the Services any materials or information:
 - A. which are unlawful, threatening, abusive, libelous, slanderous, defamatory, harassing, tortuous, racially, ethnically, or otherwise objectionable, sexually explicit, or indecent;
 - B. which violate, plagiarize, or infringe the rights of third parties including, without limitation, third-party Intellectual Property Rights, rights of privacy or publicity or any other proprietary rights; and
 - C. which to Customer's knowledge contain a virus or other harmful component designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment.
- iv. Notwithstanding anything to the contrary in the Agreement, Customer agrees that Visiting Media will be entitled to suspend or terminate Services if in its reasonable discretion the terms of this Section 5 continue to be violated for a period of seven (7) calendar days after providing notice to Customer of such violation. Notwithstanding anything to the contrary in the Agreement, Visiting Media will have the right (but not the obligation) to review and to remove immediately any materials or information that Visiting Media determines, in the exercise of its sole discretion, constitutes material or information described in any of Section 5(c)(iii); provided, however, that in the event of any such removal, Visiting Media will notify Customer, as promptly as practicable, of such removal.
- f. *Feedback.* If Customer or any of its employees, contractors or Administrative Users sends or transmits any communications or materials to Visiting Media suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“**Feedback**”), Visiting Media is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Visiting Media on Customer's behalf, and on behalf of its employees, contractors, agents and/or Administrative Users, all right, title, and interest in, and Visiting Media is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other Intellectual Property Rights contained in the Feedback, for any purpose whatsoever, although Visiting Media is not required to use any Feedback.

6. Data Protection.

- a. *Privacy Policy.* During the course of providing the Services, Visiting Media and its Affiliates may collect, use, and share information, as described in Visiting Media's Privacy Policy available at <https://visitingmedia.com/>. The Privacy Policy is not incorporated into this Agreement but provides important information.
- b. *Data Collected.* Visiting Media collects only a limited amount of information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, to or with a particular individual ("**Personal Data**"). Such Personal Data is generally limited to an Administrative User's username, password and business contact information and only a few Administrative Users exist for each Customer. Visiting Media may collect and use information derived from the use of the Services by Customer or an Administrative User where the individual identity of an Administrative User may readily be derived from such information but such information is limited to IP address, statistics regarding use of the Services and/or generated by use of the Services (collectively, "**Identifying Information**").
- c. *Third Parties.* Visiting Media may disclose Personal Data or Identifying Information to third parties only if Visiting Media or its Affiliate: (A) is party to a merger, acquisition, or divestiture; (B) contracts with a third-party to provide certain services on behalf of Visiting Media or its Affiliate; or (C) is required to disclose Personal Data or Identifying Information to comply with any legal obligation. Under (A) and (B) above, Visiting Media or its applicable Affiliate shall contractually require such third-party to provide the same level of protection for Personal Data and Identifying Information required under these Terms and any applicable data protection laws.
- d. *Data Breach.* Visiting Media shall: (A) notify Customer of any unauthorized access to Personal Data or Identifying Information that could reasonably be expected to lead to or cause misuse of that Personal Data or Identifying Information (a "**Data Breach**") within seventy-two (72) hours after discovery of the Data Breach; and (B) not notify any third parties of the involvement of Customer in the Data Breach without Customer's prior permission, not to be unreasonably withheld. Visiting Media shall immediately investigate and take appropriate remedial actions to mitigate the effects of the Data Breach in accordance with applicable laws, regulations, and industry standards. Upon request, Visiting Media shall provide Customer with a summary report of its investigation and remediation activities.
- e. *Aggregated Research Data.* Customer authorizes Visiting Media to collect and compile data, insights, and information to develop, improve, operate, and support its products and services, as well as create benchmarks ("**Aggregated Research Data**"). As between Customer and Visiting Media, all right, title, and interest in Aggregated Research Data, and all Intellectual Property Rights therein, belong to and are retained solely by Visiting Media. Aggregated Research Data will not identify Customer or Customer Confidential Information or contain any Personal Data, whether directly or indirectly.

7. Term and Termination.

- a. *Term.* The term of the Agreement shall extend through the date of termination of the Agreement pursuant to these Terms (the "**Term**"). An applicable Order Form shall commence as of the last date of signature by both Visiting Media and the Customer ("**Order Form Effective Date**") and will continue in effect through the last Contract End Date of any Subscription or Renewal Subscription unless the applicable Order Form is terminated as provided in these Terms or in the Order Form.
- b. *Termination for Convenience.* Without limiting Visiting Media's termination rights under Section 5(c)(iv), either Party may terminate the Agreement or any applicable Order Form for convenience by giving the other Party written notice of termination in which case termination shall take effect on the thirtieth (30th)

calendar day following receipt of such written notice unless a later date has been specified by the terminating Party. Notwithstanding the foregoing, all Fees are non-cancellable and non-refundable and are due with respect to any Order Form that is effective prior to the effective date of termination.

- c. *Termination for Cause.* Either Party may terminate the Agreement or any applicable Order Form upon written notice if the other Party: (i) materially breaches the Agreement and such breach is either incapable of cure or is not cured within thirty (30) calendar days after receipt of written notice of such breach or five (5) calendar days following written notice of breach for non-payment of Fees; (ii) becomes insolvent; or (iii) makes an assignment for the benefit of creditors. If Visiting Media terminates due to Customer's breach, there shall be no refund of any portion of any Fees paid in advance by Customer. If Customer terminates due to Visiting Media's breach, all prepaid Fees under any Order Forms then in effect will be refunded on a pro-rata basis up to the termination date. Any termination will be without prejudice to any rights or remedies of either Party which may have accrued up to the date of termination.
- d. *Effect of Termination.* Upon the termination or expiration of any Order Form(s), in whole or in part for any reason:
 - i. all applicable Services and any access or use rights granted thereto will immediately terminate and all Administrative Users will immediately cease all use of the terminated Services; and
 - ii. For a period of thirty (30) calendar days following the date of termination, Visiting Media shall make all Property Information available to Customer during normal business hours for downloading in a form reasonably useful to Customer or for reproduction and printing.

8. Indemnification and Limitation of Liability.

- a. *Visiting Media's Indemnification of Customer from Infringement Claims.* Visiting Media will indemnify, and hold Customer and, as applicable, its shareholders, directors, members, managers, employees and representatives, harmless from, any damages, liabilities, costs or expenses resulting from any third-party claim that the Services infringe or violate any Intellectual Property Rights of any third-party, provided that Customer promptly notifies Visiting Media of the matter, cooperates with Visiting Media as reasonably requested (at Visiting Media's expense), and permits Visiting Media to control the investigation, defense and disposition of the same.
- b. *Indemnification for Third Party Claims.* Each Party agrees to the fullest extent permitted by law to indemnify and hold the other Party, and its shareholders, directors, members, managers, employees and representatives harmless from any losses, damages, costs and expenses resulting from any claim, demand, suit or proceeding made or brought by any third-party in connection with, or resulting from, any act or omission by the indemnifying Party constituting a violation of the terms of the Agreement, provided, that the Party subject to the claim or suit promptly notifies the indemnifying Party of the matter, cooperates with the indemnifying Party as reasonably requested (at the indemnifying Party's expense) and permits the indemnifying Party to control the investigation, defense and disposition of the same. The indemnifying Party is not permitted to enter into any settlement with respect to a claim other than one for purely money paid by indemnifying Party with a full release of liability with respect to the indemnified Party without the indemnified Party's prior written consent, which will not be unreasonably withheld.
- c. *Limitations.*
 - i. In no event (including, but not limited to, negligence) will either Party be liable to the other Party for lost profits or revenues, loss or interruption of use, lost or damaged data, reports or documentation, unauthorized access to or alteration of transmissions of data, or similar economic

loss, or for any indirect, special, incidental, consequential or similar damages, arising out of or in connection with the Services.

- ii. Visiting Media's total aggregate liability arising out of or in connection with the performance or contemplated performance under an applicable Order Form shall in no event exceed the price paid by Customer to Visiting Media or its Affiliates under such Order Form within the twelve (12) month period immediately before the date of the event giving rise to the applicable claim. In all such cases, Visiting Media's liability shall be limited to the greatest extent permitted by applicable law. Other than subparagraph 7(c)(i), nothing shall exclude or limit Visiting Media's liability for: (A) death or personal injury caused by its or its Affiliate's negligence; (B) fraud or fraudulent misrepresentation; or (C) any other matter for which it would be prohibited by applicable law to limit or exclude or attempt to limit or exclude liability.
- iii. Access to the Services depends on third parties such as internet service providers. Visiting Media will have no liability to Customer for any loss suffered resulting directly or indirectly from: (A) failures of performance on the part of a third-party internet service provider or Customer or Administrative User's technical or computer equipment; (B) scheduled systems upgrades or maintenance; or (C) any security breach of the Services other than solely due to Visiting Media's negligence.

9. Confidential Information.

- a. *Protection.* During the Parties relationship with each other, each Party will have access to certain nonpublic information relating to a Party, that should reasonably be understood by the circumstances of disclosure, or by the nature of the information itself, to be proprietary and/or confidential including, but not limited to any information regarding the configuration or operation of the Services, including any user interface, templates, software, business plans and strategies; financial, pricing, product, or services information; technologies and software; and information concerning current, former or prospective employees, customers, vendors, licensees, licensors and relationships with each (collectively, "**Confidential Information**"). Each Party agrees: (i) not to disclose the Confidential Information of the other Party except to its employees, advisors, Affiliates, or licensors (and as to Visiting Media, to the parties set forth in Section 6(a)(iii)) on a need to know basis and only if each is bound by confidentiality obligations at least as restrictive as those contained in the Agreement; (ii) to use the Confidential Information strictly to receive or perform the Services; and (iii) to use the greater of (A) commercially reasonable endeavors to protect the confidentiality of the other Party's Confidential Information or (B) the same degree of care it employs in maintaining its own Confidential information. The confidentiality obligations of each Party shall continue in force and survive the termination or expiration of the Agreement for a period of five (5) years after the expiration or earlier termination of the Agreement.
- b. *Exclusions.* Confidential Information does not include information which: (i) was already known by the receiving Party at the time of the disclosure by the disclosing Party; (ii) has otherwise become publicly available other than as a result of disclosure by the receiving Party in breach of the Agreement; (iii) was disclosed to the receiving Party on a non-confidential basis from a third party source other than the disclosing Party, which the receiving Party reasonably believes is not prohibited from disclosing such information; or (iv) is developed by the receiving Party independently of any disclosure as evidenced by written records. Notwithstanding the foregoing, a Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by order of a court of competent jurisdiction, or by subpoena, summons or any other legal process; provided that, the receiving Party shall (A) so long as legally permissible, promptly notify the disclosing Party of such order and (B) at the written request of the disclosing Party, diligently contest such order at the sole expense of the disclosing Party.

- c. *No License.* The Party disclosing its Confidential Information grants no license under any Intellectual Property Rights by the disclosure of its Confidential Information. The Parties understand and acknowledge that Confidential Information is being provided by the disclosing Party without any representation or warranty, express or implied, as to the accuracy or completeness of such Confidential Information.

10. Representations and Disclaimer of Warranties.

- a. *Visiting Media Representations.* Visiting Media represents that the Services will materially conform to the specifications described in the applicable Order Form and that Visiting Media will perform the Services in good faith and in a professional manner.
- b. *Customer Representations.* Customer represents that Customer: (i) owns or has the right to provide to Visiting Media the Property Information, information with respect to Administrative Users and any and all other materials or information Customer provides to Visiting Media; (ii) will not store, upload into, or transmit through the Services any financial information, Personal Data or Identifying Information other than the minimum necessary to perform the Services purchased by Customer; (iii) is responsible for the conduct of Customer's Administrative Users and their compliance with the Agreement; (iv) will not copy, reproduce, modify or adapt, translate, disassemble or reverse engineer, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute any portion of the Services in any form or media, or by any means, except as permitted under the Agreement; (v) will not cause confusion, deception or false associations with the Services; and (vi) shall comply with all applicable laws.
- c. **DISCLAIMER OF WARRANTIES. THE SERVICES ARE PROVIDED "AS IS" AND VISITING MEDIA DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. VISITING MEDIA DOES NOT WARRANT OR GUARANTEE THAT: (A) CUSTOMER WILL REALIZE ANY RESULTS BY VIRTUE OF ITS USE OF THE SERVICES; (B) THE SERVICES, PROPERTY INFORMATION OR INTEGRATED PARTNERSHIPS WILL BE ACCURATE, OR COMPLETE STATEMENTS OF FACT OR RELIABLE OR THAT ANY ERRORS WILL BE CORRECTED; OR (C) THE SERVICES OR INTEGRATED PARTNERSHIPS OR THEIR USE BY CUSTOMER OR ITS ADMINISTRATIVE USERS WILL BE IN COMPLIANCE WITH ANY APPLICABLE LAWS. VISITING MEDIA FURTHER DOES NOT WARRANT OR GUARANTEE CUSTOMER'S USE OF OR ITS ADMINISTRATIVE USERS' USE OF ANY OF THE SERVICES OR INTEGRATED PARTNERSHIPS OR ANY FEATURE THEREOF WILL BE FREE FROM ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION, TECHNICAL INACCURACIES, VIRUSES, OR OTHER HARMFUL CODE. THIS DISCLAIMER IS INTEGRAL TO ESTABLISHING PRICING AND CONSTITUTES AN ESSENTIAL PART OF THESE TERMS. NOTWITHSTANDING ANYTHING IN THESE TERMS OR ANY ORDER FORM TO THE CONTRARY, VISITING MEDIA SHALL NOT BE LIABLE FOR ANY DAMAGES INCURRED BY OR ARISING AS A RESULT OF RELIANCE BY CUSTOMER OR ITS ADMINISTRATIVE USERS UPON THE SERVICES, INTEGRATED PARTNERSHIPS OR ANY FEATURES THEREOF.**
- d. *Acknowledgment Of Risk Allocation by Parties.* Each Party acknowledges that the limitations of liability set forth in these Terms, as well as the provisions contained in this Section 10, reflect an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with the Agreement and the Services.

11. **Integrated Partnerships.** Customer acknowledges that any third-party cloud, mobile or desktop application, service, or program or any other service or program whatsoever which is integrated into the Services, linked within the Services or offered to Customer within the Services (each a "**Integrated Partnership**") is not part of

the Services. The Customer assumes all risks from the use of the Integrated Partnerships, understanding that these are not Visiting Media products, services, programs, services and/or systems.

12. Miscellaneous.

- a. *Marketing.* Customer permits Visiting Media and its Affiliates to use Customer's name and logo for their internal and external customer lists and other marketing materials.
- b. *Entire Agreement.* The Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and conditions of these Terms and the applicable Order Form, the terms and conditions of the applicable Order Form shall govern. No amendment to or modification of the Agreement or any portion thereof, or action, or delay, will be binding unless in writing and signed by both Parties.
- c. *Force Majeure.* No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement (except for any obligations to make payments to the other Party hereunder), to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including: (i) government ordered quarantine that results in a full business closure; (ii) acts of God; (iii) flood, fire, earthquake, or explosion; (iv) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (v) government order or law; and (vii) national or regional emergency (each, a "**Force Majeure Event**"). The Party suffering a Force Majeure Event shall give written notice within ten (10) calendar days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. If the Force Majeure Event continues for thirty (30) days after the date of such notice, either Party shall be entitled to terminate the Agreement.
- d. *Notices.* All notices and other communications under the Agreement must be in writing and will be deemed to have been given (i) one (1) business day after being sent by reputable overnight courier (such as Federal Express) or certified mail to the receiving Party at its address stated on the applicable Order Form or at such other address as such receiving Party may in the future designate to the other Party in writing, or (ii) upon the first business day after delivery by electronically-confirmed email transmission to the email of the receiving Party set forth on the applicable Order Form, if such email is a regular method of communication between the Parties. Invoices, however, shall be sent to Customer in accordance with Visiting Media's standard procedures.
- e. *Waiver.* Except as otherwise provided in the Agreement, no failure or delay of either Party to exercise any right or remedy under the Agreement will operate as a waiver of such right or remedy. No single or partial exercise of any right or remedy will preclude any further or other exercise of the same or any other right or remedy, nor will any waiver of any right or remedy with respect to any circumstances be construed as a waiver of such right or remedy with respect to any other circumstances.
- f. *Severability.* If any term or provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify the Agreement so as to affect the original intent of the

parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

- g. *Third Party Beneficiaries.* The Agreement does not confer any rights or remedies upon any third-party. Nothing in the Agreement will create or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties.
- h. *Governing Law; Dispute Resolution.* The Agreement is governed by, and will be construed and enforced in accordance with, the laws of the State of Oregon, excluding its principles of conflicts of law. The Party asserting any dispute arising under or in connection with this Agreement or the Services shall provide written notice to the other Party prior to commencing any formal proceeding or claim. The Parties each agree to work diligently, reasonably, and in good faith to resolve all disputes following receipt of such written notice prior to commencing any formal proceeding or claim.
- i. *Equitable Relief.* Each Party agrees that a breach of its obligations with respect to Confidential Information and intellectual property may result in irreparable harm to the other Party for which monetary damages would be an inadequate remedy. Consequently, in the event of a breach, or threatened breach, of any such obligations, the non-breaching Party shall be entitled, without the requirement of posting a bond or other security, to seek equitable relief (including injunctive relief and specific performance) in addition to any and all other rights and remedies that may be available to it in respect of such breach.
- j. *Assignment.* Except as otherwise provided in this paragraph, neither Party may assign the Agreement or any portion thereof, or its rights or obligations thereunder, without the prior written consent of the other Party. Visiting Media may without consent of the Customer, assign or otherwise transfer (by operation of law, change of control, or otherwise) this Agreement and its rights and obligations hereunder at any time to a purchaser of or successor to all, or substantially all, of its business, securities, or assets, whether by sale, assignment, merger, stock sale, or otherwise. Customer may by written notice to Visiting Media, assign this agreement to any person or entity which acquires the Property from Customer by purchase or foreclosure, or otherwise assumes Customer's managerial or financial responsibility for the Property. Notwithstanding the foregoing, Customer shall remain responsible for all obligations under the Agreement (including payment obligations) unless or until Customer delivers a written agreement of the assignee, in form reasonably satisfactory to Visiting Media, pursuant to which the assignee agrees to assume all of Customer's rights and obligations under the Agreement.
- k. *Survival.* The provisions contained in the Agreement that by their sense and context are intended to survive the expiration or termination of the Agreement will survive such cancellation and termination.
- l. *Attorney's Fees.* In the event that a Party institutes any legal suit, action, or proceeding, including arbitration, against the other Party to enforce the covenants contained in this Agreement (or obtain any other remedy in respect of any breach of this Agreement), the prevailing Party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.
- m. *Counterparts.* To the extent this Agreement or any portion thereof requires a signature, this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of the Agreement or any portion thereof delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

13. **Definitions.**

“Administrative Users” means any employee or contractor associated with Customer or an Affiliate of Customer, who is authorized by Customer to register for an administrative user account to access and have use of the Services purchased by Customer from Visiting Media. With respect to certain Services, Administrative Users may configure the presentation options for certain Digital Assets and Property Information.

“Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” means the power, directly or indirectly, to direct the management and policies of the subject entity, whether through the ownership of voting securities, by contract, or otherwise.

“Customer” means in the case of an individual agreeing to these Terms on behalf of a legal entity, the legal entity for which such individual is agreeing to this Agreement. If any Administrative Users are associated with an Affiliate of Customer, the term **“Customer”** shall include the applicable Customer Affiliate and the provisions of the Agreement shall also apply to Customer’s Affiliate. In Order Forms entered into prior to the date hereof, the term **“Company”** may have been used to refer to Customer in that Order Form. For any Order Form where that is the case, the term **“Company”** shall mean **“Customer”** within these Terms.

“Digital Assets” means any output from Digital Asset Production Services and may include photos, videos, 3D models and 360 degree renderings of the Property and its components or features.

“Direct Costs” means reasonable costs associated with travel, transportation and/or accommodations if the Services include travel to perform the Services. Direct Costs will always be disclosed to Customer on the applicable Order Form and all amounts associated with Direct Costs shall be charged to Customer in addition to any Fees.

“Order Form” means a written agreement between Visiting Media and Customer (or with an Affiliate of either Party, as applicable) specifying the Services purchased and referencing these Terms. If mutually agreed to in writing by the Parties, an Order Form may take the form of a statement of work, addendum, purchase order, a change request, or other similar written instrument.

“Property” means the real property-based community, hotel, resort or other property for which Customer purchases Services from Visiting Media to assist with the marketing, maintenance, management, operation and use of such properties.

“Services” means Digital Asset Production, Subscription Services, and any websites or any mobile applications related to any of the foregoing, and all materials, digital assets, websites, platforms, software, hardware, user interfaces, templates, products, applications, tools, services, and features included therein.