

Terms and Conditions

1. Interpretation

1.1. In these Terms and Conditions the following words shall have the following meaning:

1.1.1	Agreement	Means the agreement between the Client and Virtual Viewing incorporating these Conditions, the Services Schedules (and any Specifications thereto) and any Software License.
1.1.2	Client	Means the person or company named on the Services Schedule for whom Virtual Viewing has agreed to provide the Services
1.1.3	Conditions	Means these Terms and Conditions
1.1.4	Goods	Means any products supplied by Virtual Viewing
1.1.5	Document	Includes, in addition to a document in writing, any map, computer software, plan, graph, drawing, artwork, logo or photograph, any film, negative, tape or other device embodying visual images, any disk, tape, or other device embodying any other data
1.1.6	Input Materials	Means any Documents or other materials and any data or other information provided by the Client relating to the provision of Services
1.1.7	Output Materials	Means any Documents, or software, programs, codes or scripts or other information provided by Virtual Viewing itself or created by Virtual Viewing using the Input Materials including but not limited to a Client Site
1.1.8	Services	Means those Services to be provided as indicated in the Services Schedule or on any invoice
1.1.9	Server	Means the Virtual Viewing server to which the Site will be uploaded as per the Specification
1.1.10	Services Schedule	Means the most up to date schedule to which these Conditions are attached
1.1.11	Site	Client web site
1.1.12	Specification	Means the various Specifications attached to the Services Schedule
1.1.13		Virtual Viewing Limited registered in England but where the Services Schedule includes the provision of web-hosting services that service only will be provided by Virtual Viewing Hosting Services Limited subject to the same conditions as contained herein.
1.1.14		All singular definitions include the plural.

2. Term of the Agreement

This Agreement shall continue for the Term specified in the Services Schedule unless terminated earlier in accordance with paragraph 14 below. At the end of the Term the Agreement will continue until the Notice to terminate referred to in the Services Schedule is given to Virtual Viewing in writing. Where Virtual Viewing is the Sole Provider the Client agrees not to receive the Services from a third party.

3. Scope of Agreement

- 3.1 The Conditions set out below, together with any other documentation referred to specifically shall comprise all the terms of the contract between the Client and Virtual Viewing. No other statement written or oral, including any statements in any brochure, promotional literature, quotations or tenders of Virtual Viewing nor any terms and conditions contained in a purchase order of the Client shall be incorporated into the Agreement or have legal effect.
- 3.2 The terms set out below shall prevail over any terms put forward by the Client and except as provided for in 3.3, no conduct of Virtual Viewing shall constitute acceptance of any terms put forward by the Client unless Virtual Viewing expressly agrees to them in writing signed by its duly authorised agent.
- 3.3 No employee or agent of Virtual Viewing has any authority to vary the Agreement orally or to make any representation on behalf of Virtual Viewing as to their effect. No addition or variation of the Agreement shall be binding on Virtual Viewing unless in writing signed by one of Virtual Viewing's Directors.

4. Performance of the Services

- 4.1 Virtual Viewing will provide the Services to the Client for the Term subject to these Conditions
- 4.2 Virtual Viewing shall commence performance of the Services within 14 days of the date of the Services Schedule unless otherwise agreed in writing.

5. Client obligations and responsibilities

- 5.1 The Client hereby acknowledges that any Specifications forming part of this Agreement were produced by Virtual Viewing in full consultation with the Client.
- 5.2 The Client shall at its own expense supply Virtual Viewing with all necessary Input Material relating to the Services in a format requested by Virtual Viewing (failing which Virtual Viewing is entitled to make extra reasonable charges necessary to recoup expenses in conversion to or use of other software) within sufficient time to enable Virtual Viewing to provide the services.
- 5.3 Although Virtual Viewing will use reasonable endeavours to look after any Input Material supplied, the Client must insure against accidental damage or loss while the Input Material is in Virtual Viewing's possession since Virtual Viewing will accept no liability for such damage or loss unless in its opinion there has been negligence on the part of one of its employees.
- 5.4 The Client will provide Virtual Viewing with all co-operation, information and support that may be reasonably required for the performance by Virtual Viewing of the Services.
- 5.5 The Client shall be responsible for obtaining and complying with all necessary legal permissions for the use of any Input Material and shall be responsible for compliance with all relevant laws and statutory controls relating to the display and use of the Input Material and/or a Site. In particular the Client remains responsible for compliance with any requirements under the Data Protection laws.
- 5.6 Unless otherwise agreed in writing the Client is responsible for the back up of its own files, as Virtual Viewing does not provide a recovery service to the Client.
- 5.7 Where necessary for the provision of the Services the Client shall allow Virtual Viewing full and complete access to the Client's office areas where the Services are to be performed.
- 5.8 The Client agrees not to solicit the employment of, nor offer employment to, nor use the services of any employee, or consultant of Virtual Viewing who has been engaged either directly or indirectly in the provision of the Services for a period of 6 months from the date of final payment for Services for the individual in question. In the event of the Client employing or using the services of any such employee or consultant whether directly or indirectly, in contravention of this paragraph, the Client will pay to Virtual Viewing a sum equivalent to one years salary for that employee or consultant, such sum to be payable on the date when such employee or consultant was first employed or his services used by the Client.
- 5.9 The Client shall indemnify Virtual Viewing against any loss, damages, costs or expenses or other claims arising out of Virtual Viewing's use, display or storage of Input Materials and/or a Client Site.
- 5.10 The Client hereby agrees to the display of a Virtual Viewing logo of not more than 100 x 50 pixels size on the home page on all Sites created wholly or partly by Virtual Viewing

6. Financial Provisions

- 6.1 At the commencement of Services the Client is required to pay the Advance Payment specified in the Service Schedule and Virtual Viewing is under no obligation to commence work for the Client until this is paid.
- 6.2 The Client agrees to make payments strictly in accordance with the Payment Terms in the Services Schedule.
- 6.3 Where payment of the Price (or any interim payments) are not received by the due date specified in the Services Schedule Virtual Viewing shall be entitled (without limiting any other rights it may have) to: -
 - 6.3.1 Charge interest on outstanding amounts at the rate of 5% above the base rate of Barclays Bank plc from the due date until the outstanding amount is paid in full.
 - 6.3.2 Withhold the use of, or passing of title to, the Output Materials (including the Site itself) or any goods supplied.
- 6.4 All charges quoted to the Client are exclusive of Value Added Tax for which the Client will also be liable at the applicable rate.

7. Charges for Additional Work

- 7.1 The Services Schedule and the Specification determine solely the Services to be provided by Virtual Viewing and the Price payable. Where Virtual Viewing is requested to carry out any additional work outside of the Specification the amount payable shall be in accordance with Virtual Viewing's standard time based charges payable.
- 7.2 Virtual Viewing reserves the right, by giving notice to the Client at any time to increase the Price of Goods to reflect any increase in the cost to Virtual Viewing which is due to any factor beyond its control and make any reasonable change in Delivery Dates, Price, quantities or Specifications for the Goods or Services to reflect any delay caused by any factor beyond its control, or failure of the Client to comply with its obligations hereunder.

8. Intellectual property

The intellectual property rights (including copyright) and other proprietary rights in:

8.1 Any Input Material shall belong to the Client but the Client agrees to the display of the Input Material on the Site or in the Output Material.

8.2 Any Output Material shall belong to Virtual Viewing Ltd. Subject to payment of all charges outstanding by the Client, Virtual Viewing grants an exclusive license to the Client to use the Output Material for the purpose for which it was created. Output Material created for use on a web site will be granted licence for use on the Client website only, similarly output material created for use on a presentation CD-ROM will be granted licence for use in Client CD-ROM presentations only, that which is created for print will be granted licence for print only and within the purpose intended.

Any requirement to use Output Material for any purpose other than that for which it was specifically created will require additional specific licence from Virtual Viewing Ltd.

Typical required uses of typical Output Material that will require additional specific licence include:

- Telephone system "hold" features
- Printed material e.g. adverts, promotional material, billboards, business stationery, mail shots.
- Business presentations either printed or computer based e.g. PowerPoint
- Promotional material including toys, dolls, miscellaneous items including key-rings, packaging and animations.

Additional licences are negotiated on an individual basis. The Client must request an additional specific licence before undertaking any actions that may be covered by any future additional specific licence.

8.3 The Client undertakes to treat as confidential and keep secret all Server side Programs and CGI Scripts, User names and Pass codes, Directory Structures and all information contained or embodied in the Site ("the Information") and shall not without the prior written consent of Virtual Viewing divulge any part of such Information to any person except the Client's own employees and then only to those employees who need to know the same.

9. Provisions relating to the Supply of Web-Hosting Services

Where the Client has purchased web hosting or maintenance services Virtual Viewing will upload the Site to the Server and make the Site available for public access subject to the Services Schedule and the following terms and conditions:

9.1 Virtual Viewing shall maintain and host the Site on the Server using its reasonable endeavours to ensure it performs effectively and efficiently in accordance with the Specification but Virtual Viewing gives no warranty or guarantee that the Site will be available at all times to the public without interruption or interference and in particular is not responsible for any such interruption of service caused by circumstances beyond its control.

9.2 Where the Client has purchased a Site update service Virtual Viewing shall use reasonable endeavours to update the Site within 14 working days of receipt of the update material.

9.3 Purchase of an update service does not include upgrade or technical support of a Site unless agreed to the contrary in writing.

9.4 The Client agrees to supply Virtual Viewing with a copy of any complaint directed to it regarding the Site and Virtual Viewing reserves the right to suspend availability temporarily or permanently of whole or part of a Site where it has reasonable grounds to believe that content on the Site may be found to be defamatory or otherwise objectionable.

9.5 In the event that the Client wishes to transfer a Site to a third party Server Virtual Viewing reserves the right to charge and the Client agrees to pay Virtual Viewing £300 or six month's web hosting fee (if applicable) whichever is the greatest whereby Virtual Viewing agrees to license on a non-exclusive royalty free basis that part of the Output Materials necessary to facilitate such a transfer.

10. Domain Names

Where domain name services have been purchased by the Client Virtual Viewing shall not be liable in the event that the requested domain name is not registerable or in the event that the relevant domain name registrar suspends or revokes any registration.

11. Warranties and Liability

11.1 Virtual Viewing warrants to the Client that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Specification. Where Virtual Viewing supplies in connection with the provision of the Services, any Goods supplied to Virtual Viewing by a third party Virtual Viewing does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person or company supplying the Goods to Virtual Viewing.

11.2 Virtual Viewing shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

11.3 Except in respect of death or personal injury caused by Virtual Viewing's negligence, or as expressly provided in these Conditions, Virtual Viewing shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Virtual Viewing, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or use of Goods supplied. Virtual Viewing's liability in respect of the Contract shall be limited in the following manner:-

11.3.1 Virtual Viewing's liability for breach of contract shall not exceed Virtual Viewing's charges for the supply of the Service in relation to which the claim is being made.

11.3.2 Save in respect of damages for death or personal injury; Virtual Viewing's liability for negligence and other torts shall be limited to the amount recoverable under its relevant insurance policies.

12. Exclusions to Warranties

- 12.1 Virtual Viewing does not warrant that any Goods supplied will be compatible.
- 12.2 Virtual Viewing does not warrant that back-up copies of any Input or Output Materials or Goods will be carried out unless agreed in writing to the contrary.
- 12.3 Virtual Viewing does not warrant that the operation of any Goods or Services supplied will result in uninterrupted or error free computer systems or Sites.

13. Acceptance procedure for Web Sites

For the supply of Sites the following Conditions apply:

- 13.1 Virtual Viewing shall supply the Client with the web address where the client can access a proto-type ("the Proto-type") of the Site once Virtual Viewing has completed the development in order that the Client can verify that the Site reasonably conforms to the Specification (the "Acceptance Tests")
- 13.2 Upon notification by Virtual Viewing of availability of the Proto-type the Client shall carry out the Acceptance Tests on the Proto-type and shall within one week:
 - 13.2.1 Notify Virtual Viewing in writing that the Site is satisfactory and that the Site may go live or
 - 13.2.2 Notify Virtual Viewing in writing that the Acceptance Tests have failed and describe why this is the case; or
 - 13.2.3 Notify Virtual Viewing in writing that the results of the Acceptance Tests are acceptable subject to certain minor changes being made to the Site before the Site may go live
- 13.3 If the Acceptance Tests shall fail, Virtual Viewing shall carry out any necessary modifications to the Site, redeliver the Proto-type and the Acceptance Tests shall be re-run as provided for above.
- 13.4 Where the failure to pass Acceptance Tests is attributable to Virtual Viewing, because there is a material lack of conformity between the Specification and the Site (and the Client has complied fully with its obligations contained herein), costs incurred by Virtual Viewing in making modifications to the Site and resubmitting the Site to Acceptance Testing shall be borne by Virtual Viewing. In all other cases any such additional costs incurred shall be paid by the Client on a time basis at Virtual Viewing's then prevailing hourly rate.
- 13.5 Client failure to respond in accordance with clause 13.2 will be deemed as acceptance by the Client of the Proto-type in accordance with 13.2.1.
- 13.6 If at anytime the client is required to supply further material and/or comment to allow the completion of the project and said further material is not provided to Virtual Viewing within 4 weeks of the request being made, the project will be deemed as completed and accepted without requirement for said material and/or comment to be included in the final product. This will allow Virtual Viewing to proceed with the project life cycle as if said material and/or comment had been provided to Virtual Viewing. This gives Virtual Viewing the right to raise invoices for work where it is seen that the client is withholding/not providing information that may be required for the usual completion of the project.

14. Termination

Either party may terminate this Agreement immediately by notice in writing to the other if:

- 14.1 The other commits any material breach of this Agreement which is capable of remedy and fails to remedy the same within 28 days of notice from the other party requiring the remedy; or
- 14.2 The other commits any material and irremediable breach of this Agreement or repeats any breach which has previously been the subject of a notice under sub-clause 14.1 above; or
- 14.3 A petition is presented applying for an administration order to be made in respect of the other party or a petition is presented or notice is given or an order is made or an effective resolution is passed for the winding up or dissolution (or any similar judicial process) of the other party (except voluntary liquidation for the purposes of reconstruction or amalgamation in such manner that the company resulting therefrom effectively agrees to be bound by or to assume the obligations imposed on that other party under this Agreement).

15. Effect of Termination

Termination of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law and shall not affect any accrued rights or liabilities of either party.

16. Title and Acceptance of Goods

- 16.1 Title upon the terms of this Agreement in any Goods supplied shall remain with Virtual Viewing until all payments due under the Contract are paid in full.
- 16.2 Between delivery and payment in full, the risk in any Goods supplied shall be with the Client, who shall keep the same in good condition and repair, properly stored and labelled as being Virtual Viewing's property, and comprehensively insured.
- 16.3 In the event of non-payment (in full or in part) for the Goods by due date, the Client hereby irrevocably licenses Virtual Viewing (insofar as it is able) to enter upon any premises to remove the Goods.
- 16.4 Any claim by the Client which is based on any defect in the quality or condition of the Goods or their failure to correspond with Specification shall (whether or not delivery is refused by the Client) be notified to Virtual Viewing within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Client does not notify Virtual Viewing accordingly, the Client shall not be entitled to reject the Goods and Virtual Viewing shall have no liability for such defect or failure, and the Client shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

17. OSCAR and ERIC

From time to time Virtual Viewing may use its own software to create, maintain or manage the services provided. The items of software include:

17.1 OSCAR – Online Submission of Content and Release is Virtual Viewing’s content management system and is deployed by Virtual Viewing for the purpose of allowing clients and from time to time Virtual Viewing to update websites without the need for specialist knowledge. The OSCAR content management system is Virtual Viewing’s own suite of code and modules that allows rapid deployment of self administrable web sites. OSCAR uses a number of components written by Virtual Viewing. These components and OSCAR are written to require each other and as such are not mutually exclusive. OSCAR needs to run on Virtual Viewing servers. Should the site be removed from Virtual Viewing’s servers the OSCAR functionality would need to be re-written for the new servers. At no time does ownership of any part of OSCAR ever transfer to the client. OSCAR is solely the property of Virtual Viewing. Upon payment of the necessary Licence fee, Virtual Viewing grants a 1 year licence for the client to use OSCAR for the purpose of its deployment. Should a client at any stage wish to move away from Virtual Viewing then the content within the OSCAR databases will be made available to the client. None of the code or components of OSCAR will be made available. It is possible for the OSCAR software to work in conjunction with other hosts servers should this be a viable option.

17.2 ERIC – Electronic Retail Internet Components is Virtual Viewing’s e-commerce system that is deployed by Virtual Viewing for the purpose of allowing e-commerce on clients’ websites. ERIC may, from time to time, be deployed with other third part software. The ERIC e-commerce system is Virtual Viewing’s own suite of code and modules that allows rapid deployment of e-commerce web sites. ERIC uses a number of components written by Virtual Viewing. These components and ERIC are written to require each other and as such are not mutually exclusive. ERIC needs to run on Virtual Viewing servers. Should the site be removed from Virtual Viewing’s servers the ERIC functionality would need to be re-written for the new servers. At no time does ownership of any part of ERIC ever transfer to the client. ERIC is solely the property of Virtual Viewing. Upon payment of the necessary Licence fee, Virtual Viewing grants a 1 year licence for the client to use ERIC for the purpose of its deployment. Should a client at any stage wish to move away from Virtual Viewing then the content within the ERIC databases will be made available to the client. None of the code or components of ERIC will be made available. It is possible for the ERIC software to work in conjunction with other hosts servers should this be a viable option.

18. Notices

All notices required to be sent hereunder shall be in writing and shall be mailed to the address listed within the agreement. A notice shall be deemed to have been served, if sent by first class mail, two business days after posting.

19. Severability

In the event of any provision of this Agreement being held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

20. Waiver

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

21. Law

The Law governing this Agreement shall be English law and the forum for settling disputes shall be the English Courts.

22. Force Majeure

Virtual Viewing shall not be liable for any consequences due to or resulting from any cause beyond its reasonable control.

23. Assignment

The Client shall not be entitled to assign this Agreement or their rights or obligations hereunder without the prior written consent of Virtual Viewing.