

MATTERPORT 3D SERVICES AGREEMENT

Updated November 8, 2018

Please read this Matterport 3D Service Agreement (“Terms”) carefully before using SAMIAmedia 3D Services and Products.

BY USING SAMIAMEDIA'S 3D SERVICES AND PRODUCTS YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU. IF YOU DO NOT AGREE TO THE FOREGOING MATTERPORT 3D SERVICE AGREEMENT, YOU MAY NOT USE THE PRODUCTS AND SERVICES DESCRIBED IN THIS AGREEMENT.

SAMIAmedia reserves the right to revise the Matterport 3D Service Agreement (“Terms”) in our sole discretion at any time and without prior notice to Customer; by updating the Matterport 3D Service Agreement (“Terms”), such changes to be effective prospectively. Thus, Customer should visit the <http://samiamedia.com> periodically for changes. If you disagree with any changes to any of the Matterport 3D Service Agreement (“Terms”), your sole remedy is to discontinue your use of the Service(s). Your continued use of or request for the Service(s) after a change has been updated or posted constitutes your acceptance of the change(s) thereafter.

MATTERPORT 3D SERVICES AGREEMENT

This Matterport 3D Services Agreement (the “**Agreement**”), effective as of REQUESTED OR SCHEDULED SERVICE DATE (the “**Effective Date**”), is entered by and between **SAMIAmedia**, a Matterport Service Provider located in PUYALLUP, Washington (“**Service Provider**”), and you the **Customer** located in the State of Washington, (“**Customer**”, “**You**”, “**Your**”).

1. DESCRIPTION OF SERVICES

- 1.1. **Overview of Services:** Service Provider will provide to Customer the following services (collectively, the “**3D Services**”, “**Services**” or “**Capture Services**”). (a) A “Matterport Space” is a 3D model hosted on the platform of Matterport, Inc. (“Matterport”) that includes the following features: Inside mode, Dollhouse mode, Floor Plan mode, Property Description, Address, and Contact Information. It can be shared using a URL or embed code. (b) Matterport Space quantities are as requested and/or scheduled by Customer. (c) Service Provider will travel to the location(s) provided by Customer to preform 3D Services using a Matterport 3D Camera for the purpose of creating a Matterport Space for use by Customer. (d) Customer’s purpose for the Service Provider services is to: Sell or promote real estate, promote Customer’s business or to be used in Customer’s marketing campaign(s). (e) Additional Services: Additional Services are, as described on SAMIAmedia’s website at: <http://samiamedia.com> (f) Capture Service Date(s) and Service Location(s) are as requested and provided by Customer and accepted or rejected by Service Provider.
- 1.2. **Delivery:** (a) Service Provider will provide a minimum of one URL and one embed code for the completed Matterport Space which (if ordered), will include access to Guided Tours and CoreVR Experience. (b) Customer understands and agrees that all Matterport Spaces including associated Guided Tours and CoreVR Experience (if ordered), are hosted solely on Matterport’s platform and **Customer will not receive any digital assets for Matterport Spaces.** (c) Matterport 2D Schematic Floor Plans, Matterport Snapshots and 360° View Snapshots (if ordered), will be provided by email or a third-party digital repository. (d) Service Provider will make all the foregoing 3D Services available to Customer within five business days after the date of the Capture Services, or receipt of payment.
- 1.3. **Unbranded Matterport Space(s):** Customer can request that Matterport Space(s) contain hidden “presented by”, “contact details” and “external links”, for use by Customer in the Northwest Multiple Listing Service (“MLS”).
- 1.4. **Hosting Term:** Service Provider agrees to process and host the created Matterport Space(s) on the Matterport platform for a period **up to 1 year OR until the Matterport Space, Service Location or Real Estate Listing status has changed from “Active” to Sold, Canceled, Expired, Rented, Sale Fail Release, Leased** within the Northwest MLS or a third party real estate website(s) following the completion of Capture Services (**Space “Created Date”**). A longer Hosting Term can be purchased but must be requested in writing or by email BEFORE the end of the initial Hosting Term.
- 1.5. **After Completion of Hosting Term:** After the completion of the Hosting Term, Service Provider will toggle created Matterport Space(s) within Service Provider’s Matterport Cloud Account(s) to “**Private**” rendering it

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un-accessible and unviewable by the Customer and public. Without notice to Customer, the Created Matterport Space(s) will be subject to permanent deletion from Service Provider's Matterport Inc. Cloud Account or repurposed by Service Provider for and not limited to marketing and promotional purposes. (see section 3)

- 1.6. **Service Location(s) Preparation:** Customer is required to prepare the Service Location(s) in advance of Capture Services, including without limitation: **(a)** Removing confidential or unwanted items. **(b)** Adjusting furniture and decor to desired positions. **(c)** Turn on all interior lighting, lamps, counter top, cook top, accent and art illumination. **(d)** Informing the Service Provider of any rooms or areas that should be excluded from Capture Service. **(e)** Ensuring the Service Location(s) is free of contractors, subcontractors, real estate brokers, photographers, persons, pets, or moving objects. **(f)** Ensure the service location is in a "Clean" and "Safe" condition. **(g)** Customer shall further ensure that Service Location(s) is accessible upon the day of Capture Service for up to six hours. Customer or Customer's representative shall be present at the Service Location(s) at the time of the Capture Services to approve Service Provider's interpretation of the Captures Services to be provided.
- 1.7. **Non-prepared Service Location(s):** Unless otherwise arranged, a Service Location(s) that has not been properly prepared in Service Provider's sole discretion (See 1.5), will be considered not ready for Capture Services and the date of Captures Service must be rescheduled. Service Provider shall not be responsible for the untidiness of or a non-prepared Service Location(s). (See 2.4)
- 1.8. **Cooperation:** Customer will cooperate in a reasonable and timely manner in connection with Service Provider's performance of the Capture Services and provision of the 3D Services.
- 1.9. **Outdoor 360° View Positions:** Outdoor 360° View Positions ARE NOT GUARANTEED UNDER THIS AGREEMENT and may not be included in the final Matterport Space(s). Capturing Outdoor 360° View Positions will be at the sole discretion of the Service Provider at time of and during the scheduled service appointment.
- 1.10. **Authority:** Customer acting on behalf of the property Owner(s) affirms that Customer has the full authority granted by the Owner(s) of the property or space, to secure and use the 3D Services provided by the Service Provider.
- 1.11. **Service Location Access and Security:** Customer is solely responsible for unlocking the property or space prior to Capture Service and locking and/or securing the property during Capture Service and after the Capture Service has been completed.
- 1.12. **Non-Service:** At the sole discretion of the Service Provider at time of and during the scheduled Capture Service appointment, for any reason, terminate the Capture Service appointment and refuse Capture Services.
- 1.13. **Matterport Snapshots:** Delivery to Customer of Matterport Snapshots ARE NOT GUARANTEED UNDER THIS AGREEMENT AND HAVE NO WARRANTY. **(a)** Any Matterport Snapshots provided to Customer are without crop or edits. **(b)** Any Matterport Snapshots provided to Customer may contain slight image panel alignment anomalies, artifacts, white balance, color and exposure inconsistencies. **(c)** Matterport Snapshots are composed by Service Provider or Matterport machine learned process and processed for delivery by Matterport Inc.
- 1.14. **Enhanced Showcase(s):** Defined as a Matterport Space that has been overlaid with features provided to Service Provider by 3 party Matterport SDK developer(s) and are part of the 3D Services. Enhanced Showcase(s) ARE NOT GUARANTEED UNDER THIS AGREEMENT AND HAVE NO WARRANTY.
- 1.15. **Reflective Surfaces:** Service Provider will make a reasonable effort to shield the camera and equipment from reflective surfaces. Service Provider shall not be responsible for the quantity and locations of reflective surfaces at the Service Location, therefor Customer may see the camera and equipment in reflective surfaces within the Matterport Space and Matterport Snapshots if provided.
- 1.16. **Customer Provided Media:** Defined as and not limited to; all media, logos, photos, video, music, audio, documents, .pdf or other digital files provided to Service Provider by Customer, and requested by Customer to be embed or incorporate within a Matterport Space(s) or Enhanced Showcase(s). Customer affirms they

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have acquired all rights and licenses for Customer Provided Media to issue Service Provider any and all rights and licenses for Service Provider to embed or incorporate Customer Provided Media in a Matterport Space(s) or Enhanced Showcase(s). (See 6. Indemnification)

- 1.17. **Customer Branded Materials:** It is the Customers responsibility to hide or remove any Customer branded signage, materials or other branded items at the Service Location that Customer does not want included in the final Matterport Space and Matterport Snapshots if provided.

2. FEES AND PAYMENT; CANCELLATION AND RESCHEDULING POLICY

- 2.1. **Fees:** Customer agrees to pay Service Provider total fees of; **as invoiced to Customer**, for the 3D Services and Capture Services requested or scheduled. Such fees will be itemized in a separate invoice or order document provided to Customer.
- 2.2. **Deposit:** Not required.
- 2.3. **Invoice and Payment of Balance Due:** Following completion of the Capture Services, Customer shall pay Service Provider, via credit card or check, the remaining fees owed **upon receipt of invoice**. Customer shall make all payments in the following currency: United States Dollar. In the event that Customer fails to pay any amount when due, without limiting any other remedies available to Service Provider: **(a)** Customer will pay interest on the overdue amount at the lesser of 1% percent per month or the highest rate permitted under applicable law; and **(b)** Service Provider will have the right to suspend providing the 3D Services to Customer until such overdue amount is received.
- 2.4. **Cancellation and Rescheduling Policy:** Except as otherwise expressly provided in this Agreement, all deposits are non-refundable. A minimum of **24-hour** prior written, email or text notice will be required for Customer's cancellation of this Agreement or rescheduling of the Capture Service date. If Customer cancels this Agreement with less than **24-hour** notice prior to the agreed upon Capture Service date, Customer will be responsible for **\$50.00 cancellation fee**. If Customer reschedules the Capture Service date with less than **24-hour** notice prior to the agreed upon Capture Service date, Customer shall pay Service Provider a **rescheduling fee of \$50.00**. The \$50.00 rescheduling fee shall also apply if the Service Provider determines the Service Property is not adequately prepared in accordance with Sections 1.5 and 1.6. Service Provider shall provide any refund owed hereunder within thirty (30) days from the cancellation date.
- 2.5. **Taxes:** All amounts payable by Customer to Service Provider under this Agreement are exclusive of any sales, use, excise, import or export, value-added, or withholding tax, levy or similar governmental charge that may be legally assessed by any jurisdiction, whether based on the provision of Capture Services or 3D Services, or the payment of fees; provided, however, that Customer shall have no liability for income or franchise taxes of Service Provider.

3. PROPRIETARY RIGHTS AND LICENSES

- 3.1. **Ownership:** Service Provider and its licensors own all right, title and interest (including all associated intellectual property rights) in and to: **(a)** all 3D Services and any technology embodied therein; and **(b)** any and all look and feel, improvements, updates, modifications, translations, copies, compilations and derivative works related to any of the foregoing. All rights in the foregoing not expressly granted to Customer are reserved by Service Provider and Service Provider's licensors, and Customer shall make no use of the foregoing except as expressly provided herein. Customer acknowledges that, subject to Section 3.4, Service Provider will have the right to use and distribute any 3D services in Service Provider's sole discretion.
- 3.2. **License to Customer:** Service Provider hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license, during the Term, to: (a) use and distribute URLs and embed codes linking to the Matterport Space(s) (including any associated Guided Tours and CoreVR Experience, if ordered) hosted on the Matterport Platform; and (b) to use and distribute Matterport Snapshots and Matterport 2D Schematic Floor Plans (if ordered).
- 3.3. **Restrictions:** Upon any expiration or termination of this Agreement, Customer shall immediately cease all use of the 3D Services and delete all copies of the 3D Services (and content or data derived from the 3D Services) in Customer's possession or under Customer's control. Customer shall not: **(a)** disable or modify

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any hyperlinks contained in any 3D Services; **(b)** alter, remove or destroy any attribution, proprietary markings (e.g., copyright and trademark markings) or confidential legends placed upon or contained within the 3D Services; **(c)** decompile, disassemble, decrypt, extract, reverse engineer or otherwise attempt to derive the source code of any software underlying the 3D Services; **(d)** distribute, in conjunction with any 3D Services, any content that contains or promotes fraudulent, deceptive or illegal activities, pornography, excessive violence, malicious code or deceptive advertising; **(e)** access or use any API provided by Matterport without the prior written authorization of Matterport, or otherwise access Matterport Spaces (and any portion thereof) through any means other than available end-user functionality; or **(f)** modify or create any derivative work based on the 3D Services (or any component thereof).

3.4. **Takedown Service:** During the "Term", Customer can request at any time that Service Provider designate any Matterport Space and other hosted 3D Services from "public" to "private" through written or email request. Any Matterport Space or other hosted 3D Service designated as "private" will be un-accessible and unviewable by the public thus ending the "Term". Service Provider will comply with such request within 48 hours.

4. **NO AFFILIATION WITH MATTERPORT INC.** Customer acknowledges that: **(a)** Service Provider is an independent provider of the Capture Services and is not a contractor, employee or agent of Matterport Inc.; and **(b)** Service Provider is making the 3D Services available to Customer under a license between Matterport Inc. and Service Provider.

5. **WARRANTY; DISCLAIMER.** Service Provider represents that it shall perform its obligations under this Agreement in a timely and workmanlike manner, consistent with generally acceptable industry standards. In the event of any breach of the foregoing warranty, as Customer's sole and exclusive remedy, Service Provider shall use commercially reasonable efforts to re-perform its obligations promptly in a manner that cures such breach. EXCEPT FOR THE FOREGOING WARRANTY, THE 3D SERVICES AND CAPTURE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED. SERVICE PROVIDER DISCLAIMS, ON BEHALF OF ITSELF AND ITS AFFILIATES AND LICENSORS, ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE 3D SERVICES AND CAPTURE SERVICES. SERVICE PROVIDER DOES NOT REPRESENT OR WARRANT THAT 3D SERVICES OR CAPTURE SERVICES WILL MEET CUSTOMER'S NEEDS OR REQUIREMENTS, THAT THE 3D SERVICES AND CAPTURE SERVICES WILL BE ACCURATE OR RELIABLE, THAT USE OF THE 3D SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, OR THAT ANY DEFECTS IN THE 3D SERVICES WILL BE CORRECTED. IN ADDITION, SERVICE PROVIDER MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE REGARDING: (A) THE APPROPRIATENESS OF THE 3D SERVICES FOR USE IN FOREIGN JURISDICTIONS; OR (B) THE TIMING OF 3D SERVICES PROVIDED TO CUSTOMER. Nothing in this Agreement disclaims any implied warranty that cannot be disclaimed under applicable law.

6. **INDEMNIFICATION.** Customer agrees to indemnify and hold Service Provider harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against Service Provider that result from the acts or omissions of Customer or its agents or employees. CUSTOMER AGREES TO INDEMNIFY AND HOLD SERVICE PROVIDER HARMLESS FROM ALL CLAIMS, LOSSES, EXPENSES, FEES INCLUDING ATTORNEY FEES, COSTS, AND JUDGMENTS THAT MAY BE ASSERTED AGAINST SERVICE PROVIDER THAT RESULT FROM ALL CLAIMS FOR ANY USE OR DISTRIBUTION OF ANY KIND, OF SERVICE PROVIDER CREATED MATTERPORT SPACES, ASSOCIATED CONTENT NOT LIMITED TO PHOTO SNAPSHOTS, SCHEMATIC 2D FLOOR PLANS, EXPORTABLE FILES, CUSTOMER PROVIDED MEDIA. ANY CONTENT, DATA AND CONTACT INFORMATION DISTRIBUTED OR USED BY MATTERPORT INC. AND ITS ASSOCIATED ECOSYSTEM.

7. **LIMITATION OF LIABILITY.** EXCEPT IN CONNECTION WITH EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, CUSTOMER'S BREACH OF SECTION 3, OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT: **(a)** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY, ITS AFFILIATES OR LICENSORS SHALL BE LIABLE, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES; AND **(b)** IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY, ITS AFFILIATES OR ITS LICENSORS UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID OR PAYABLE TO SERVICE PROVIDER HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. NEITHER SERVICE PROVIDER NOR MATTERPORT SHALL BE RESPONSIBLE OR LIABLE FOR ANY PERSONAL OR CONFIDENTIAL INFORMATION CAPTURED

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OR DISPLAYED IN ANY 3D SERVICE. CUSTOMER IS RESPONSIBLE FOR PREPARATION OF EACH SERVICE LOCATION, AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY OBJECTS OR PEOPLE DISPLAYED IN ANY 3D SERVICES. Nothing in this Agreement excludes or limits any liability that cannot be excluded or limited under applicable law.

8. TERM, TERMINATION AND EFFECT OF TERMINATION

- 8.1. **Term:** This Agreement will take effect on the Effective Date and, unless earlier terminated in accordance with this Agreement, will remain in effect the time period designated in Section 1.3 expires. ("Term").
- 8.2. **Termination for Breach or Bankruptcy:** Either Party may terminate this Agreement immediately by written notice to the other Party upon the occurrence of any of the following events: **(a)** the other Party commits a material breach of this Agreement and such breach remains uncured for thirty (30) days following written notice of breach by the terminating Party; or **(b)** the other Party experiences an insolvency or bankruptcy or its property becomes subject to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
- 8.3. **Effect of Termination:** Upon the expiration or termination of this Agreement for any reason: **(a)** Customer will immediately cease all access to and use of all 3D Services, and the license granted to Customer with respect to the 3D Services shall immediately terminate; **(b)** unless Customer is terminating the Agreement for cause pursuant to Section 8.2, Customer shall, within thirty (30) days of expiration or termination, pay to Service Provider all amounts then accrued and payable under this Agreement; **(c)** unless Service Provider is terminating the Agreement for cause pursuant to Section 8.2, Service Provider shall, within thirty (30) days of expiration or termination, refund to Customer the amount of any unused fees prepaid by Customer; and **(d)** Sections 3.1, 3.3, 4, 5, 6, 7, 8.3 and 10 shall survive. Neither party will be liable for exercising any termination right in accordance with this Agreement. Except as expressly provided, expiration or termination of this Agreement shall not release either party from any liability or obligation that had already accrued as of the effective date of expiration or termination, and the expiration or termination shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages, injunctive relief, or otherwise, which a party may have hereunder at law, in equity or otherwise or which may arise out of or in connection with such termination. Termination or expiration of this Agreement hereunder by either party shall not limit either party from pursuing any other remedies available to it, including injunctive relief. In the event of a claim of infringement or violation of third-party proprietary rights relating to the 3D Services or Capture Services, the Parties may mutually agree to terminate certain rights granted hereunder.

9. **FORCE MAJEURE.** Neither party shall be liable to the other for any default or delay in the performance of any of its obligations under this Agreement (other than a failure to pay fees when due) if such default or delay is caused, directly or indirectly, by any cause beyond such party's reasonable control (each, a "Force Majeure Event"); provided, however, that the party affected by the Force Majeure Event shall provide the other party with prompt written notice of the Force Majeure Event and use commercially reasonable efforts to minimize the effect of the Force Majeure Event upon such party's performance; provided, further, that should the performance by either party of its obligations under this Agreement be prevented by a Force Majeure Event for more than thirty (30) days, the other party shall have the right to terminate this Agreement without liability to the non-performing party and receive a refund of any unused fees prepaid by such terminating party, if any.

10. **APPLICABLE LAWS.** This Agreement shall be governed by the laws of the State of Washington, without regard to its conflict of law rules. Customer shall comply with all applicable laws and regulations relating to Customer's use, display and distribution of the 3D Services.

11. **VENUE.** Any claims or litigation arising under this Agreement will be brought by the parties solely in the Superior Court of Pierce County, State of Washington.

12. **ASSIGNMENT OF RIGHTS.** Neither party shall assign this Agreement without the prior written consent of the other party, which consent the other party shall not withhold unreasonably; provided, however, that either party shall have the right to assign this Agreement and the obligations hereunder to any company affiliate or to any successor of such party by way of merger, consolidation, reorganization or in connection with the acquisition of at

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least a majority of the business and assets of the assigning party relating to the Agreement. Any attempt by either party to assign other than in accordance with this provision shall be null and void.

13. NOTICE IN WRITING. Unless otherwise specified herein, all any notices, invoices and other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by email or by overnight courier to the intended recipient thereof at such address of a party set out herein or otherwise provided by a party; provided, however, that any notices regarding breach or termination of this Agreement shall only be given by overnight courier.

14. PARTIES ARE INDEPENDENT CONTRACTORS. The parties acknowledge that the relationship of the parties is that of independent contractors and that nothing contained in this Agreement shall be construed to place the parties in the relationship of principal and agent, partners or joint ventures.

15. AMENDMENTS. No amendment of any provision of this Agreement shall be effective unless set forth in a writing signed by a representative of Service Provider and Customer, and then only to the extent specifically set forth therein.

16. WAIVER. No waiver by either party of any condition or the breach of any provision of this Agreement in any one or more instances shall be deemed a further or continuing waiver of the same or any other condition or provision.

17. ATTORNEY'S FEES AND COSTS. If any action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reimbursement from the other party for its expenses and reasonable attorneys' fees associated with the action, in addition to any other relief to which such prevailing party may be entitled.

18. SEVERABILITY. If any term of this Agreement or part hereof not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid or unenforceable, it is the intention of the parties that the remaining terms hereof or part hereof shall constitute their agreement with respect to the subject matter hereof and thereof and all such remaining terms, or parts thereof, shall remain in full force and effect.

19. MARKETING RIGHTS. Service Provider will have the right to refer to Customer's name in lists of Service Provider's customers.

20. ELECTRONIC SIGNATURES. A signature received via facsimile, electronically via email or by marking "Yes" in a checkbox located in a booking request form located on a SAMIAmedia website(s) which states: "I have read and accept the Matterport 3D Services Agreement "Terms" available for review at: <http://samiamedia.com/terms>" shall be as legally binding for all purposes as an original signature.

21. ENTIRE AGREEMENT. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and thereof, and supersedes all prior negotiations, discussions, agreements and understandings between the parties relating to the subject matter hereof and thereof.

By scheduling, purchasing and using the Service(s) provided by SAMIAmedia the "Service Provider", you the "Customer" acknowledge and agree to the Matterport 3D Services Agreement "TERMS", and by doing so, each party has caused this Agreement to be executed by its duly authorized agent as of the Effective Date.

SAMIAmedia (Les Baker, Owner) and you the **Customer** (You).