



# VIEWPOINT ANALYSIS

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## **Viewpoint Analysis Professional Services Agreement.**

BY EXECUTING AN ORDER OR SOW THAT INCORPORATES THE TERMS OF THIS VIEWPOINT ANALYSIS PROFESSIONAL SERVICES AGREEMENT BY REFERENCE, YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS. BY ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY ("CUSTOMER"), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE CUSTOMER TO THE AGREEMENT, "Viewpoint Analysis" refers to the Viewpoint Analysis legal entity set forth on Your Order or SOW. All headings are for ease of reference and are for convenience only, and do not affect interpretation.

### **Definitions:**

Professional Services means consulting or training services respectively, provided by Us either remotely via the Internet or in person.

Viewpoint Analysis may also be referred to as "We", "Us", "Ours" and Customer may be referred to as "You" and "Yours(s)".

### **1. SCOPE OF USE**

1.1. Transaction Documents. You can acquire Services identified on our order form that We may refer to as an Exhibit A ("Order") and Professional Services as specified in a Statement of Work ("SOW"). Each Order and each SOW is a separate contractual commitment. We or our Affiliates will also honour any legal Order executed by You or your Affiliates. "Affiliate" is any company or other business entity which controls, is controlled by or is under common control with a party through the ownership of more than fifty percent (50%) of the outstanding voting stock of the controlled company or more than fifty percent (50%) of the equity interests of a non-corporate entity

### **2. FEES, CHARGES, TAXES and DELIVERY**

2.1. Initial Fees. Except as otherwise provided in the applicable Statement of Work, We will send you an invoice for the initial Product and Service Fees upon execution of the SOW.

2.2. Timing. All invoices for Products and services are due and payable within thirty (30) days of receipt. If We don't receive timely payment, We reserve the right to charge a late fee equal to the lesser of one percent (1%) per month or the maximum amount allowed by law in addition to Our cost of collection

2.3. Taxes. You shall pay applicable sales, use, goods and services, value-added, or equivalent "indirect" taxes and duties unless You timely give Us documentary evidence of exemption as prescribed by the tax authorities. We shall ensure Our invoices state taxes separately and meet local statutory invoicing requirements to enable You to seek recovery of the indirect taxes collected and remitted by Us.

### **3. CONFIDENTIALITY**

3.1. For purposes of this Agreement, the party disclosing Confidential Information is referred to as the "Disclosing Party" and the party receiving Confidential Information is referred to as the "Receiving Party". "Confidential Information" means the accompanying Documentation and all

related technical and financial information (including the terms of this Agreement) and any information, technical data or know-how, including, without limitation, that which relates to computer software programs or Documentation, specifications, source code, object code, research,

- 3.2. Confidential Information shall not include information which (a) Receiving Party can demonstrate was rightfully in its possession, without confidentiality obligations, before receipt; (b) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed the Disclosing Party; (c) is disclosed to Receiving Party, without confidentiality obligations, by a third party who has the right to disclose such information; or (d) Receiving Party can demonstrate was independently developed without reliance on any Confidential Information of the Disclosing Party, provided that if only part of any Confidential Information falls within one or more of the exceptions set out in this Section 4.2, the remaining part of the Confidential Information shall continue to be subject to the restrictions set forth in this Agreement.
- 3.3. Both parties agree that: (a) Receiving Party may use Confidential Information solely for the purposes of this Agreement; (b) Receiving Party shall instruct and require all of its employees, agents, and contractors who have access to the Confidential Information of the Disclosing Party to maintain the confidentiality of the Confidential Information; (c) Receiving Party shall exercise at least the same degree of care, but not less than reasonable care, to safeguard the confidentiality of the Confidential Information as Receiving Party would exercise to safeguard the confidentiality of Receiving Party's own confidential property; (d) Receiving Party shall not disclose the Confidential Information, or any part or parts thereof, except on a "need to know" basis to those of its employees, agents, and contractors who are bound to confidentiality obligations at least as protective of the Confidential Information as those set forth in this Agreement; and (e) Receiving Party may disclose the Disclosing Party's Confidential Information to the extent required by a valid order by a court or other governmental body or by applicable law, provided, however, that Receiving Party will use all reasonable efforts to notify Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that Disclosing Party will have a reasonable opportunity to object to such disclosure and further provided the Receiving Party shall otherwise continue to treat such Confidential Information in accordance with this Agreement. The Receiving Party's obligations shall also be applicable to Confidential Information disclosed by the Disclosing Party to the Receiving Party prior to the execution of this Agreement. The Receiving Party will return any tangible materials containing Confidential Information, and any copies or reproductions thereof, to the Disclosing Party within ten (10) days after the Disclosing Party's written request. Receiving Party agrees to undertake whatever action is reasonably necessary to remedy any breach of Receiving Party's confidentiality obligations or any other unauthorized disclosure or use of the Confidential Information by Receiving Party, its employees, its agents, or contractors.

#### 4. **PROFESSIONAL SERVICES**

- 4.1. Professional Services. We can provide You with Professional Services described in a SOW
- 4.2. Compensation of Viewpoint Analysis. Each SOW shall contain the charges for the Professional Services and shall be provided on a fixed cost basis unless otherwise stated.

#### 5. **WARRANTY**

- 5.1. We warrant that Professional Services will be provided in a professional manner. For a time and materials SOW, We warrant that the Professional Services and deliverables will substantially conform to the agreed upon specifications set forth in the SOW. If You notify us

of a nonconformance within thirty (30) days after delivery of the services, then at no additional cost We will promptly re-perform any warranted Professional Services or re-deliver a non-conforming deliverable, which is Your sole remedy for breach of this warranty. A breach by either party of a SOW is not deemed to be a breach under any other SOW or this Agreement.

## 6. **TERMINATION**

## 7. **LIMITATION OF LIABILITY**

7.1. EXCEPT FOR LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED AS A MATTER OF LAW, BREACH OF, OR INDEMNITY FOR INFRINGEMENT OF, INTELLECTUAL PROPERTY RIGHTS (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) THE LIABILITY OF US TO YOU ARISING FROM THIS AGREEMENT OR THE USE OF THE PRODUCTS, OR SERVICES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, INCLUDING CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER TORT, SHALL NOT EXCEED TWELVE (12) MONTHS FEES PAID FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE APPLICABLE LIABILITY.

7.2. EACH PARTY ACKNOWLEDGES THAT THE FEES, EXCLUSIONS, DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE NEGOTIATED AND AGREED UPON ESSENTIAL COMPONENTS OF THIS AGREEMENT AND NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT SUCH WARRANTY DISCLAIMERS AND LIMITATIONS ON ITS LIABILITY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THESE DISCLAIMERS AND LIMITATIONS ARE NOT UNCONSCIONABLE AND THESE DISCLAIMERS AND LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 8. **GENERAL**

8.1. We will maintain insurance during the term of this Agreement in an amount satisfying applicable laws. Upon request, We will provide You with proof of all applicable insurance coverages.

8.2. A party is not liable for non-performance of obligations under this Agreement, if the non-performance is caused by events or conditions beyond that party's control, the party gives prompt notice and makes all reasonable efforts to perform. In no event will this provision affect a party's obligation to make payments under this Agreement.

8.3. All terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. We can assign, novate or otherwise transfer Our rights and obligations under this Agreement to an Affiliate or incorporate an Affiliate as a party to this Agreement or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Our assets or voting securities or for bona fide restructuring purposes. You can assign this Agreement with Our prior knowledge and consent

8.4. The waiver or failure of a party to exercise in any respect any rights provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid,

illegal or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

- 8.5. Each party acknowledges its obligation to comply with all applicable laws, rules, statutes and regulations. Each party warrants that, to the best of its knowledge no money or other consideration of any kind paid or payable under this Agreement or by separate agreement is, has been or will be used for unlawful purposes, including purposes violating anti-corruption laws, including making or causing to be made payments to any employee of either party or anyone acting on their behalf to assist in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage.
- 8.6. We are an independent contractor and Our personnel are not and shall not be considered employees or agents of Your company for any purpose whatsoever
- 8.7. This Agreement, the applicable Order and/or SOW and any exhibits entered into the parties constitutes the entire agreement between the parties with respect to the Products and Services, which supersedes and replaces any prior or contemporaneous understandings, oral or written, and all other communications between the parties, including provisions in a Customer Purchase Order, and which may not be amended except by a writing signed by both parties. This Agreement may be executed via electronic signature.