

THE VIEWPOINT ORGANISATION (EUROPE) LIMITED TERMS AND CONDITIONS

Interpretation and Application

1. These terms and conditions are between The Viewpoint Organisation (Europe) Limited and the Customer (as detailed in the **Schedule**), which expression will include the Customer's successors in title, its servants or agents.
2. These terms and conditions are the complete and only terms and conditions between the parties in relation to the Viewpoint Online system and all such dealings between The Viewpoint Organisation (Europe) Ltd and the Customer will be governed by these terms and conditions. Any reference to the **Schedule** in these terms and conditions means the **Schedule** to these terms and conditions currently in force between The Viewpoint Organisation (Europe) Ltd and the Customer.

Orders and Formation of the Contract

3. Any quotations provided by The Viewpoint Organisation (Europe) Ltd are valid for 30 days and may be withdrawn by The Viewpoint Organisation (Europe) Ltd at any point prior to formation of the Contract in accordance with clause 5 below.
4. By placing an order with The Viewpoint Organisation (Europe) Ltd the Customer acknowledges that it has the requisite systems, facilities and software to access the Viewpoint Information System. For the avoidance of doubt, The Viewpoint Organisation (Europe) Ltd will not be responsible for ensuring that the Customer's systems are adequate, nor will they be under an obligation to provide the requisite systems, facilities and software.
5. When the Viewpoint Organisation provides tablet computers to the Customer under the Contract for the Customer to use to access the Viewpoint Information System, the Viewpoint Organisation will be responsible for ensuring that these tablet computers and the software are adequate. The Viewpoint Organisation will not be responsible for ensuring the availability of internet access.

Tablet computers provided to customers remain the property of the Viewpoint Organisation. The Customer is responsible for any loss or damage to the tablet computers and the Viewpoint Organisation is responsible for ensuring that the tablet computers and the installed software remains adequate to access the Viewpoint Information System.

6. A **Contract** is formed when an authorised representative of The Viewpoint Organisation (Europe) Ltd and the Customer agree the Schedule and execute these terms and conditions. These terms and conditions, together with the schedule, will form the Contract.
7. The Contract may be varied by the parties by both parties agreeing in writing to the variation of these terms and conditions or the Schedule. The Viewpoint Organisation (Europe) Ltd reserves the right to, under written notice to the Customer, unilaterally make any alterations to these terms and conditions (but not the schedule) that are necessary to comply with any applicable local statutory requirements.

Licence and Fees

8. In consideration of The Viewpoint Organisation (Europe) Ltd granting to the Customer a non-transferable licence (the **Licence**) to access and install the **Viewpoint Information System software** ¹ the Customer shall pay a fee (the **Licence Fee**) as detailed in the Schedule.

¹ The Viewpoint Information System software comprises current online software for Viewpoint ACASI, Viewpoint Management and Viewpoint Analysis and offline software for Viewpoint ACASI

9. Once the Licence fee is paid the Customer is entitled to use the software for the period specified in the Schedule (the Term) and, subject to clause 10 herein, The Viewpoint Organisation (Europe) Ltd hereby acknowledges that children and young people, their parents and carers receiving or being consulted about services provided by the Customer will be entitled to use the software on the terms and conditions herein.
10. Unless the Customer has notified The Viewpoint Organisation (Europe) Ltd in writing of its intention not to renew this licence, The Viewpoint Organisation (Europe) Ltd will notify the Customer in writing, at least four (4) weeks prior to the end of the Term specified in the Schedule, of the approaching end of the Term and inform the Customer of the renewal Licence Fee and issue a revised Schedule for the Customer's consideration.
11. If the Customer does not notify The Viewpoint Organisation (Europe) Ltd in writing of its intention not to renew this licence before the end of their current licence period, the customer will be liable to a pro rata payment to a minimum of the equivalent value of 3 months of the new licence cost to The Viewpoint Organisation (Europe) Ltd.
12. The Licence allows authorised representatives of the Customer (the **Managers**) to access Viewpoint Information System software.
13. Subject to the payment of an additional fee (the **Services Fee**) as detailed in the Schedule, some or all of the following services may be provided by The Viewpoint Organisation (Europe) Ltd:
 - a. development of bespoke content;
 - b. deployment services, including installation, training and operational support;
 - c. on-site technical support;
 - d. software developments;
 - e. analysis of data and reporting;
 - f. facilitation of questionnaires;
 - g. management and consulting services, and
 - h. administration.

Payment and invoicing

14. Unless otherwise specified, the Licence Fee and the Services Fee (together the **Total Fee**) will each be deemed to be exclusive of VAT which will be charged at the prevailing rate.
15. The Viewpoint Organisation (Europe) Ltd will invoice the Customer for the Total Fee as detailed in the Schedule when an order is placed or the Licence renewal fee is due. The Licence fee is payable before the beginning of the Term specified in the Schedule. All invoices shall be paid by the Customer within 30 days of the date of the invoice.

Viewpoint online access and parties' rights

16. Following the formation of the Contract, The Viewpoint Organisation (Europe) Ltd will notify the customer in writing of their Viewpoint Information System Licence Number and Term. Confirmation of the Licence status will be displayed to the Customer when accessing the Viewpoint Information System software at www.vptol.com.
17. With a current Viewpoint Information system Licence Number the Customer is entitled to additional **Access Information** (organisation name, login code and password) to enable the customer to access databases during the Term.
 - a. Where the content of databases is based on questionnaires in the Viewpoint Questionnaire Library, copyright in these materials is held by TVO Knowledge Ltd. Where there are minor changes to content the copyright of the revised questionnaire is held by TVO Knowledge Ltd.
 - b. When a Customer wishes to include a questionnaire in a database where the copyright is held by another body, the copyright remains with the originator of the questionnaire.

- c. When a Customer develops a bespoke questionnaire for inclusion in the database, the copyright is held by the Customer.
18. During the Term, The Viewpoint Organisation (Europe) Ltd will provide a free support service to the Customer via e-mail (helpdesk@vptorg.com). The Customer will also have access to The Viewpoint Organisation (Europe) Ltd web-site containing general advice and the HUB (www.vpthub.com), Viewpoint Learning & Development Centre.
19. The Licence does not transfer or grant to the Customer any right, title, interest or intellectual property rights in the Viewpoint Information System software. The Customer shall not copy, lease, reverse engineer, licence, sub-licence or alter in any way Viewpoint Information System software or pass on any confidential information in relation to The Viewpoint Organisation (Europe) Ltd or Viewpoint Information System software to any third party whatsoever.
20. In entering into the Contract the Customer consents to the storage and processing by The Viewpoint Organisation (Europe) Ltd of any information inputted on to Viewpoint Information System software by its 'users'. The Viewpoint Organisation (Europe) Ltd undertakes to comply with the provisions of the GDPR General Data Protection Regulation (GDPR) (EU) 2016/679 in so far as they are data processors or data controllers.
- a. Data collected by Customers remains the property of the Customer.
 - b. Customers are entitled to download data from the Viewpoint Information System into other storage formats and to retain this in perpetuity. Copyright in questionnaires downloaded and stored by Customers remains with the original copyright holder.
 - c. Questionnaires can be used with other data collection systems with the permission of the copyright holder.
 - d. Copyright in questionnaires adapted by the Customer for their specific use can be transferred by agreement with the Copyright owner for specified use.
21. In entering into a Contract the Customer agrees to establish a formal procedure for the use of the Viewpoint Information System, setting out the roles and responsibilities of staff in relation to the use of the Viewpoint Information System and level of authorisation (permissions) they have to access data stored by the Viewpoint Organisation in compliance with the GDPR General Data Protection Regulation (GDPR) (EU) 2016/679.

GDPR - Data Retention

22. The Viewpoint Organisation (Europe) Ltd will retain data on its secure servers only during the term of the customer's licence. Once the licence has expired see paragraph 27.

GDPR - Consent

23. Explicit consent is required before any Viewpoint questionnaire is started. If no consent is given the user cannot continue. Users can remove their consent at any time during the lifetime of the Viewpoint contract and any data stored relating to that user will be deleted.

Termination

24. If the Customer:
- a. being an individual becomes bankrupt or being a company enters into liquidation, administration or administrative receivership or has a receiver of any of its assets appointed or ceases or threatens to cease carrying on business;
 - a. for any reason fails to comply with the terms of the Contract (including these terms and conditions) and continues to do so after The Viewpoint Organisation (Europe) Ltd have given written notice allowing 21 days to remedy such failure;
 - b. fails to pay the Fees detailed in the Schedule by the due date; or

- c. places the Viewpoint Information System software or The Viewpoint Organisation (Europe) Ltd's title in Viewpoint Information System software at risk,

The Viewpoint Organisation (Europe) Ltd shall be entitled to terminate the Contract and block the Customer's access to Viewpoint Information Systems software without liability to the Customer.

25. If The Viewpoint Organisation (Europe) Ltd

- a. enters into liquidation, administration or administrative receivership or has a receiver of any of its assets appointed or ceases or threatens to cease carrying on business, or
- b. for any reason fails to comply with the terms of the Contract (including these terms and conditions) and continues to do so after the Customer has given written notice allowing 21 days to remedy such failure:

the Customer will be entitled (at its discretion) to immediately terminate the Contract and recover the Total Fee or part thereof for any unused service.

26. When a Contract is terminated any sums accruing up to the date of termination will become due immediately and the Customer will no longer have the right to access Viewpoint Information System software and will destroy the Viewpoint Information System Licence Number and Access Information in its possession. The Customer will have no right, title or interest to the Licence Number or Access Information following termination of the Contract.

Data Sanitisation

27. In accordance with GDPR, at the end of the contract, we (the Processor) shall be directed by the Customer (the Controller) as to whether the data held by us is to be deleted or returned to the Customer after the end of the provision of services. (GDPR Art. 28 Para 3 (h)).

The Customer agrees to pay the 'Data Sanitisation fee' for this work. This fee will be the fee current at the date of termination. (This is currently set at £500 + vat per initial database, plus £50 for any additional database(s) set up by Viewpoint for the Customer's sole use). The Customer also agrees to pay any fees that may be outstanding as at the date of termination.

In the event that at the end of the contract the customer fails to inform us how they wish to proceed, we will give written notification that after 3 months after the contract end date we, the Processor, will effectively become the Controller in respect of any data held on our servers belonging to that customer. We will then run a sanitisation process whereby any data collected by the customer is sanitised and deleted from our servers in accordance with standard recommendations.

Liability and indemnity

28. Each Party ("the Indemnifier") hereby indemnifies the other Party against all loss, damage, expense, cost or injury suffered by any person in respect of personal injury or death, property loss or damage, loss of use of the software or business loss to the extent caused by the wilful or negligent act or omission or breach of statutory duty of the Indemnifier or its officers, employees agents or otherwise arising out of or in connection with the services herein, save that The Viewpoint Organisation (Europe) Ltd will not be liable in any way for any loss caused to the Customer beyond The Viewpoint Organisation (Europe) Ltd's control (including, but not limited to, damage caused by viruses or incompatible systems operated by the Customer).

Dispute Resolution

29. If any dispute or difference whatsoever shall arise between The Viewpoint Organisation (Europe) Ltd and the Customer in connection with or arising out of the Contract the parties shall first seek to resolve the matter between themselves within a period of 14 days.

The Director, or equivalent Person of both parties, shall be the nominated officer responsible for seeking resolution to the dispute.

If agreement is not reached, either party may give the other 7 days' notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR).

If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice, or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be referred to Arbitration.

Subject to paragraph 30 below, if any dispute or difference which may arise between The Viewpoint Organisation (Europe) Ltd and the Customer in connection with or arising out of the Contract is referred to ADR mediation, but is not so settled as specified above, then either party shall give notice to the other and such dispute or difference shall be referred to Arbitration.

30. Excluded from Arbitration are any proceedings brought by one party against the other which arise out of the failure by that other party to comply with the provisions of any binding agreement setting out the terms upon which the dispute or difference was settled as a result of or following from the ADR mediation procedure referred to in paragraph 29 above.

General

31. The Customer agrees that The Viewpoint Organisation (Europe) Ltd's employees shall have access to confidential information, documents and all other matters arising out of the Service that belong to the Customer. However The Viewpoint Organisation (Europe) Ltd's employees will be made aware by The Viewpoint Organisation (Europe) Ltd that confidential information will not at any time for any reason whatsoever be disclosed or permitted to be disclosed to any third party except as permitted hereunder to enable The Viewpoint Organisation (Europe) Ltd to carry out its duties and obligations. The Viewpoint Organisation (Europe) Ltd will ensure that all its employees having access to any of the confidential information, documents or such matters shall enter into a suitable confidentiality agreement in a form approved by the Customer, or insofar as this is not reasonable practicable, The Viewpoint Organisation (Europe) Ltd will take all reasonable steps to ensure that its employees are made aware of and perform such obligations.
32. The obligations of confidence referred to in this clause will not apply to any confidential information or documents or other information which:
- a. is in the possession of and is at the free disposal of The Viewpoint Organisation (Europe) Ltd or is published or is otherwise in the public domain prior to the receipt of such confidential information or other information by The Viewpoint Organisation (Europe) Ltd;
 - b. is or becomes publicly available on a non-confidential basis through no fault of The Viewpoint Organisation (Europe) Ltd;
 - c. is received in good faith by The Viewpoint Organisation (Europe) Ltd from a third party who, on reasonable enquiry by The Viewpoint Organisation (Europe) Ltd claims to have no obligations of confidence upon The Viewpoint Organisation (Europe) Ltd.
33. The obligations of the Parties under clause 24 and 25 will survive the expiry or the termination of the Contract for whatever reason.

34. Upon termination of the Contract for whatever reason The Viewpoint Organisation (Europe) Ltd will deliver up to the Customer all of the confidential information, copyright works, documents and copies thereof in their possession.
35. For the avoidance of doubt all information, data and know-how used in connection with this Contract shall remain the property of the party introducing the same.
36. Any written notice given under these terms and conditions will be served either by registered post to the relevant party's registered office or last known address.
37. In the event that one or more of these terms and conditions becomes invalid, illegal or unenforceable, the enforceability of the remaining provisions will not be affected.