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**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-89**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A CONTRACT WITH VIEWPOINT FOR SOFTWARE IN THE AMOUNT OF \$37,100, PLUS \$20,300 IN ANNUAL FEES; AUTHORIZING THE CITY MANAGER TO APPROPRIATE AND EXPEND BUDGETED FUNDS; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) has been searching for software that best meets the needs of the Building, Code and Planning Departments while remaining cost effective; and

WHEREAS, City staff determined Viewpoint software meets the current and future needs of the City staff, residents and contractors; and

WHEREAS, the City finds that entering into a contract with the Viewpoint Software is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Contract between the City and the Viewpoint, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10th DAY OF SEPTEMBER, 2019

THE CITY OF MARATHON, FLORIDA



Mayor John Bartus

AYES: Cook, Gonzalez, Senmartin, Zieg, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

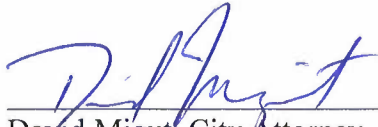
ATTEST:



Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



David Migut, City Attorney

Proposal Information

Created Date 9/9/2019 Contract Start Date 9/11/2019
 Quote Number 201909-845 Contract End Date 10/12/2020

Municipal Information

Account Name City of Marathon Name Doug Lewis
 Billing Address Florida Phone +13052894135
 Email lewisd@ci.marathon.fl.us

Investment Line Items

Product	Product Description	Product Code	Total Price
ViewPoint Cloud	<p>For Up to Three Departments to start Accept online requests, route through workflows, manage approvals, collect payments, and issue permits. Allows for public inspection requests, inspection scheduling, mobile field inspections, and inspection reporting. Also you will be able to create renewal campaigns on any record type that is currently active in ViewPoint Cloud.</p> <ul style="list-style-type: none"> • Unlimited Users • Support & Maintenance • All Hosting & Storage • All Updates & Upgrades <p>Unlimited usage annually for the Department(s) and/or record types listed.</p>	Annual Recurring	\$15,500.00
Implementation & Deployment Services	<p>ViewPoint will train administrative staff and provide implementation services for the first department of the City's choosing This service spans the duration of department deployment from beginning to go-live, during which time ViewPoint will set up your records as we collaborate on tailoring the system to suit your community. Intended for 1-3 administrators and/or your Project Manager. ViewPoint Cloud will provide professional services consulting and best practice recommendations, delivered remotely. This involves interacting with your project manager and at times department(s) staff for setting up record types for the department(s) and covers forms, fees, attachments, workflows, access rights & document outputs. Additional sample curriculum includes:</p> <ul style="list-style-type: none"> • Defining citizen service goals • Developing an online permitting strategy • How to customize forms and workflows • Testing & Training best practices 	One Time	\$7,800.00
Historical Data Migration	For one system (MIS) to start.	One Time	\$5,000.00
ESRI ArcGIS Server Integration	Integrate ViewPoint Cloud with your ArcGIS Server. This will replace all Google Maps views with your published ESRI map.	One Time	\$1,000.00
ESRI Integration Support	ArcGIS Server 10.x web service accessible outside of the community's local intranet.	Annual Recurring	\$1,200.00
Master Address Table One Time Import	<p>Import all of your location information from your Master Address Table into ViewPointCloud. This will replace the automated Google Maps Address Search. Requirements: A clean master address table including all of the community's location information and must contain the parcel properties latitude/longitude coordinates, as well as at least 1 unique ID field. ViewPoint does not take responsibility for 'dirty' data.</p>	One Time	\$2,000.00

• This quotation may be multiple pages, please ensure you have all pages to include the signature authorization section



<p>Master Address Table Annual Support</p>	<p>Integrate your Master Address Table into ViewPoint Cloud for a weekly import of all location information. This will replace the automated Google Maps Address Search. It will be the municipalities responsibility to provide ViewPoint with the file initially and ongoing for any updates. Requirements: Same as 1 time import, plus (at least) read-only any-time access to the MAT database which must contain the parcel properties latitude/longitude coordinates.</p>	<p>Annual Recurring \$2,400.00</p>
<p>Flag integration (per system)</p>	<p>Import a list of flags into ViewPoint Cloud. (per system/dataset)</p>	<p>One Time \$1,000.00</p>
<p>Flag integration (per system) Ongoing Updates</p>	<p>Import a list of flags into ViewPoint Cloud.</p>	<p>Annual Recurring \$1,200.00</p>

Total Investment from Items Above

Total Price \$37,100.00

Notes For Up to Three Departments to Start

- At any time, City may opt to upgrade to a Community-Wide license for Unlimited Department usage

ViewPoint Contact

Prepared By Tom Crosby Expiration Date 9/20/2019

By signing below, you hereby agree to the ViewPoint Cloud Terms of Service and will be billed according to the terms therein. The terms of service can be found here - <http://viewpointcloud.com/terms-of-service/>. ViewPoint's Privacy Policy may be found here - <http://viewpointcloud.com/privacy-policy/>. Annual recurring costs not to exceed 7% increase per year.

Signed 

Date 9/12/19

Printed Name CHUCK UNOSEY

Title City manager

Terms of Service

PLEASE READ THESE CUSTOMER TERMS OF SERVICE CAREFULLY.

This is a contract between you (the Customer) and us (ViewPoint). It describes the services we will provide to you, how we will work together, and other aspects of our business relationship. These terms are so important that we cannot provide these services unless you agree to them. By using the Subscription Service or receiving the Consulting Services, you are agreeing to these terms.

We periodically update these terms and we will let you know when we do through the ViewPoint portal used to access your ViewPoint subscription.

1. Definitions

“Agreement” means these Customer Terms of Service and all materials referred or linked to in here.

“Billing Period” means the period for which you agree to prepay fees under an Order Form, which will be the same as or shorter than the Subscription Term. For example, if you subscribe to the Subscription Service for a one (1) year Initial Subscription Term, with a twelve (12) month upfront payment, the Billing Period will be twelve (12) months.

“Confidential Information” means all information provided by you or us (“Discloser”) to the other (“Receiver”), whether orally or in writing that is designated as confidential. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser or (ii) was known to the Receiver before receipt from the Discloser.

“Consulting Services” means the professional services provided to you by us, which may include training services, installation, integration or other consulting services.

“Customer Data” means all information that you submit or collect via the Subscription Service.

“ViewPoint Content” means all information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags that we incorporate into the Subscription Service or Consulting Services.

“Order Form” or “Order” means the ViewPoint-approved form by which you agree to subscribe to the Subscription Service and purchase Consulting Services. The purchase form may also be referred to as a “Statement of Work”, “Quote”, or “Proposal”.

“Sensitive Information” means credit or debit card numbers; personal financial account information; Social Security numbers; passport numbers; driver’s license numbers or similar identifiers;

any information subject to regulations, laws or industry standards designed to protect data privacy and security, such as the Health Insurance Portability and Accountability Act and the Payment Card Industry Data Security Standards.

“Subscription Service” means our web-based permit management applications, tools and platform that you have subscribed to by an Order Form, and developed, operated, and maintained by us, accessible via <http://www.viewpointcloud.com> or another designated URL, and any ancillary products and services that we provide to you.

“Subscription Term” means the Initial Subscription Term and all Renewal Subscription Terms.

“Third-Party Products” means non-embedded products and professional services that are provided by third parties which interoperate with or are used in connection with the Subscription Service.

“Users” means your employees, citizens, representatives, consultants, contractors or agents who are authorized to use the Subscription Service for your benefit and have unique user identifications and passwords for the Subscription Service.

“Record” means a single record created via the Subscription Service.

“Department” means a single department created via the Subscription Service.

“Record Type” means a single Record Type created via the Subscription Service.

“We”, “us” or “our” means ViewPoint Government Solutions, Inc.

“You”, “your” or “Customer” means the person or entity using the Subscription Service or receiving the Consulting Services and identified in the applicable billing statement, Order Form or Statement of Work as the customer.

2. The Subscription Service

a. Access. During the Subscription Term, we will provide you access to use the Subscription Service as described in this Agreement.

b. Limits. Limits may apply to the number of Records created per year or Departments or Record Types created in the Subscription Service. Any limits will be specified in your Order Form and this Agreement.

c. Modifications. We modify the Subscription Service from time to time, including by adding or deleting features and functions, in an effort to improve your experience. But we will not make changes to the Subscription Service that materially reduce the functionality of the Subscription Service provided to you during the Subscription Term. We might provide some or all elements of the Subscription Service through third party service providers.

d. Additional Features. You may subscribe to additional features of the Subscription Service by agreeing to a new Order Form.

e. Free Trial. If you register for a free trial of the Subscription Service, we will make the Subscription Service available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period or (b) the start date of your subscription. If we include additional terms and conditions on the trial registration web page, those will apply as well. During the free trial period, (i) the Subscription Service is provided “as is” and without warranty of any kind, (ii) we may suspend, limit, or terminate the Subscription Service for any reason at any time without notice, and (iii) we will not be liable to you for damages of any kind related to your use of the Subscription Service. Unless you subscribe to the Subscription Service before the end of the free trial, all of your data on the Subscription Service will be permanently deleted at the end of the trial, and we will not recover it.

3. Customer Support

a. Support. Support is included in your Subscription Fee. We accept webform support questions 24 Hours per Day x 7 Days per Week from within the Subscription Service. Webform responses are provided during business hours only. We attempt to respond to webform support questions within one business day; in practice, our responses are generally even faster. We do not promise or guarantee any specific response time.

b. Availability. We try to make the Subscription Service available 24 hours a day, 7 days a week, except for planned down-time for maintenance.

4. Consulting Services

You may purchase Consulting Services through an Order Form or Statement of Work. Fees for these Consulting Services are in addition to your Subscription Fee. Unless otherwise agreed, all Consulting Services are performed remotely.

For Consulting Services performed on-site, you will reimburse us our reasonable cost for all expenses incurred in connection with the Consulting Services. Any invoices or other requests for reimbursements will be due and payable within thirty (30) days of receipt of the invoice.

Hours purchased as part of a consulting package expire as set forth in the Order Form, but in any case no later than one hundred and eighty (180) days from purchase. We might provide some or all elements of the Consulting Services through third party service providers. Consulting Services are non-cancellable and all fees for Consulting Services are non-refundable.

5. Fees and Payments

a. Subscription Fees. The Subscription Fee will remain fixed during the Subscription Term unless you (i) exceed your applicable limits (see Section 2.b. above), (ii) change products or base packages, or (iii) subscribe to additional features or products, including additional Records. Where a price change applies to you, we will charge or invoice you under the new price structure, starting with the next Billing Period in the Subscription Term, except as provided below under “Fee Ad-

justments During a Billing Period". In order to avoid additional charges, you should purchase the appropriate tier of Subscription Service for your anticipated needs. We will monitor or audit remotely the number of Records in the Subscription Service. This information is also available to you on your Settings page in your ViewPoint portal.

b. Fee Adjustments in Next Billing Period. If you exceed your applicable limits in a Billing Period, then your Subscription Fee will be adjusted at the beginning of the next Billing Period up to the current base package and tier price which corresponds with the maximum number of Records or Departments from the prior Billing Period. This process will continue for each Billing Period during the Subscription Term. Our pricing and limits will be as set forth in your Order Form. We determine the number of Records and Departments in the Subscription Service. At your request, we will provide you with the detail we used to reach our conclusion. Once increased, your Subscription Fee will not decrease, even if there is a subsequent reduction in the number of Records or Departments.

c. Fee Adjustments During a Billing Period. The Subscription Fee will increase during the course of a Billing Period if you exceed your applicable limits in a Billing Period. The Subscription Fee will be adjusted up to the tier price which corresponds with your Records or Departments processed from the current Billing Period. The Subscription Fee will also increase during a Billing Period if you change products or subscribe to additional features for use during the Billing Period.

d. Payment by credit card. If you are paying by credit card, you authorize us to charge your credit card or bank account for all fees payable at the beginning of the Initial Subscription Term and all subsequent Billing Periods, including upgrades. You further authorize us to use a third party to process payments, and consent to the disclosure of your payment information to such third party.

e. Payment against invoice. If you are paying by invoice, we will invoice you at the beginning of the Initial Subscription Term and at the beginning of each subsequent Billing Period. All amounts invoiced are due and payable within thirty (30) days from the date of the invoice, unless otherwise specified in the Order Form.

f. Payment Information. You will keep your contact information, billing information and credit card information (where applicable) up to date. All payment obligations are non-cancelable and all amounts paid are non-refundable, except as specifically provided for in this Agreement. All fees are due and payable in advance throughout the Subscription Term.

g. Sales Tax. All fees are exclusive of taxes, which we will charge as applicable. You agree to pay any taxes applicable to your use of the Subscription Service and performance of Consulting Services. You shall have no liability for any taxes based upon our gross revenues or net income. If you are required to deduct or withhold any tax, you must pay the amount deducted or withheld as required by law and pay us an additional amount so that we receive payment in full as if there were no deduction or withholding.

6. Subscription Term and Renewal

a. Initial Subscription Term. The initial subscription term shall begin on the effective date of your Subscription and expire at the end of the period selected during the subscription process ("Initial Subscription Term").

b. Renewal Subscription Term. Unless one of us gives the other written notice that it does not intend to renew the subscription, this Agreement will automatically renew for the shorter of the Initial Subscription Term or one year ("Renewal Subscription Term"). Written notice of non-renewal must be sent no more than ninety (90) days but no less than forty-five (45) days in advance of the end of the Subscription Term. The Renewal Subscription Term will be on the current terms and conditions of this Agreement, and subject to the renewal pricing provided by ViewPoint, which shall not exceed a 7% increase from the prior Subscription Term. In addition, on renewal, the product usage limits specified in your Order Form will apply to your subscription, unless otherwise agreed to by you and ViewPoint. Should you decide not to renew, you may send the notice of non-renewal by email to sales@viewpointcloud.com.

c. End of Subscription Term. The Subscription Term will end on the expiration date and cannot be canceled before its expiration.

7. ViewPoint's Proprietary Rights

This is an Agreement for access to and use of the Subscription Service, and you are not granted a license to any software by this Agreement. The Subscription Service and Consulting Services are protected by intellectual property laws. The Subscription Service and Consulting Services belong to and are the property of us or our licensors (if any). We retain all ownership rights in the Subscription Service and Consulting Services. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the ViewPoint Content, the Subscription Service, or the Consulting Services in whole or in part, by any means, except as expressly authorized in writing by us. ViewPoint, the ViewPoint logos, and other marks that we use from time to time are our trademarks and you may not use them without our prior written permission.

We encourage all customers to comment on the Subscription Service or Consulting Services, provide suggestions for improving it, and vote on suggestions they like. You agree that all such comments and suggestions will be non-confidential and that we own all rights to use and incorporate them into the Subscription Service or Consulting Services, without payment to you.

8. Customer's Proprietary Rights

As between the parties, you own and retain all rights to the Customer Materials and Customer Data. This Agreement does not grant us any ownership rights to Customer Materials or Customer Data. You grant permission to us and our licensors to use the Customer Materials and Customer Data only as necessary to provide the Subscription Service and Consulting Services to you. If you are using the Subscription Service or receiving Consulting Services on behalf of another party, then you represent and warrant that you have all sufficient and necessary rights and permissions to do so.

9. Confidentiality.

The Receiver will: (i) protect the confidentiality of the Confidential Information using the same degree of care that it uses with its own confidential information of similar nature, but with no less than reasonable care, (ii) not use any Confidential Information for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information to any third party, and (iv) limit access to Confidential Information to its employees, contractors, advisors and agents. Upon notice to the

Discloser, the Receiver may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

10. Customer Responsibilities.

To realize the full value of the Subscription Service and Consulting Services, your participation and effort are needed. Resources that are typically required from you include a Project Manager and a Technical Resource. Responsibilities that are typically required include planning of permitting processes; acting as internal liaison between permitting and other functions; providing top level internal goals for the use of the Subscription Service; and supporting the integration of the Subscription Service with other systems.

11. Publicity

You grant us the right to add your name and logo to our customer list and website.

12. Customer Data

a. Limits on ViewPoint. We will not use, or allow anyone else to use, Customer Data to contact any individual or company except as you direct. We will use Customer Data only in order to provide the Subscription Service and Consulting Services to you and only as permitted by applicable law, this Agreement, and our Privacy Policy, located at <http://www.viewpointcloud.com/privacy-policy>.

b. Aggregate Data. We may monitor use of the Subscription Service by all of our customers and use the data gathered in an aggregate and anonymous manner. You agree that we may use and publish such information, provided that such information does not incorporate any Customer Data and/or identify you.

c. Safeguards. We will maintain commercially appropriate administrative, physical, and technical safeguards to protect Customer Data. You consent to the processing of Customer Data in the United States.

d. No Sensitive Information. YOU AGREE NOT TO USE THE SUBSCRIPTION SERVICE TO COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION. WE WILL NOT HAVE ANY LIABILITY THAT MAY RESULT FROM YOUR USE OF THE SUBSCRIPTION SERVICE TO COLLECT OR MANAGE SENSITIVE INFORMATION.

13. Use and Limitations of Use

a. Prohibited and Unauthorized Use. You will not (i) use the Subscription Service in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Subscription Service; (ii) attempt to gain unauthorized access to the Subscription Service; (iii) access the Subscription Service other than through our interface; or (iv) use the Subscription Service for any purpose or in any manner that is unlawful or prohibited by this Agreement.

You will notify us right away of any unauthorized use of your Users' identifications and passwords or your account by following the instructions at <http://help.viewpointcloud.com>.

14. Third-Party Sites and Products

Third-Party Sites and Products are not under our control. Third-Party Sites and Products are provided to you only as a convenience, and the availability of any Third-Party Site or Product does not mean we endorse, support or warranty the Third-Party Site or Product.

15. Indemnification

To the extent allowable by Florida law, and subject to the provisions and limitation amounts listed in Section 768.28, Florida Statutes, you will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of (a) unauthorized or illegal use of the Subscription Service by you; (b) your noncompliance with or breach of this Agreement, (c) your use of Third-Party Products, or (d) the unauthorized use of the Subscription Service by any other person using your User information. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

16. Disclaimers; Limitations of Liability

a. Disclaimer of Warranties. WE AND OUR AFFILIATES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SUBSCRIPTION SERVICE, VIEWPOINT CONTENT, OR THE CONSULTING SERVICES FOR ANY PURPOSE. APPLICATION PROGRAMMING INTERFACES (APIs) MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE SUBSCRIPTION SERVICE AND CONSULTING SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH REGARD TO THE SUBSCRIPTION SERVICE, AND THE CONSULTING SERVICES INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

b. No Indirect Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES.

c. Limitation of Liability. EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR INDEMNITY OBLIGATIONS, AND YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY

WILL BE LIMITED TO THE LESSER OF FIVE THOUSAND DOLLARS OR THE TOTAL AMOUNTS YOU HAVE ACTUALLY PAID FOR THE SUBSCRIPTION SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM.

d. Third Party Products. WE DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.

YOU UNDERSTAND AND AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SUBSCRIPTION SERVICE TO YOU.

17. Termination, Suspension and Expiration

a. Termination for Cause. Either party may terminate this Agreement for cause: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation or assignment for the benefit of creditors. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.

b. Suspension for Prohibited Acts. We may suspend any User's access to the Subscription Service for: (i) use of the Subscription Service in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of this Agreement, or (ii) repeated instances of posting or uploading material that infringes or is alleged to infringe on the copyright or trademark rights of any person or entity.

c. Suspension for Non-Payment. We may suspend your access to all or any part of the Subscription Service upon ten (10) days' notice to you of non-payment of any amount past due. We will not suspend the Subscription Service while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If the Subscription Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Subscription Service.

d. Suspension for Present Harm. If your website on, or use of, the Subscription Service: (i) is being subjected to denial of service attacks or other disruptive activity, (ii) is being used to engage in denial of service attacks or other disruptive activity, (iii) is creating a security vulnerability for the Subscription Service or others, (iv) is consuming excessive bandwidth, or (v) is causing harm to us or others, then we may, with electronic or telephonic notice to you, suspend all or any access to the Subscription Service. We will try to limit the suspension to the affected portion of the Subscription Service and promptly resolve the issues causing the suspension of the Subscription Service.

e. Effect of Termination or Expiration. Upon termination or expiration of this Agreement, you will stop all use of the Subscription Service and ViewPoint Content. If you terminate this Agreement for cause, we will promptly refund any prepaid but unused fees covering use of the Subscription Service after termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.

f. Retrieval of Customer Data. As long as you have paid all fees owed to us, if you make a written request within thirty (30) days after termination or expiration of your Subscription, we will provide you with temporary access to the Subscription Service to retrieve, or we will provide you with copies of, all Customer Data then in our possession or control. We may withhold access to the Customer Data until you pay any fees owed to us. Thirty (30) days after termination or expiration of your Subscription, we will have no obligation to maintain or provide you the Customer Data and may, unless legally prohibited, delete all Customer Data in our systems or otherwise in our control.

18. General

a. Amendment; No Waiver. We may update and change any part or all of these Customer Terms of Service, including the fees and charges associated with the use of the Subscription Service. If we update or change these Customer Terms of Service, the updated Customer Terms of Service will be posted at <http://www.viewpointcloud.com/terms-of-service> and we will let you know through the ViewPoint portal used to access your ViewPoint subscription. The updated Customer Terms of Service will become effective and binding on the next business day after it is posted. When we change these Customer Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. We encourage you to review these Customer Terms of Service periodically.

If you do not agree with a modification to the Customer Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, your subscription will continue to be governed by the terms and conditions of the Customer Terms of Service prior to modification for the remainder of your current term. Upon renewal, the Customer Terms of Service published by us on our website will apply.

No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

b. Contracting Entity and Applicable Law. You are contracting with ViewPoint Government Solutions, Inc. and this Agreement is governed by the laws of the State of Florida, U.S.A. without reference to conflicts of law principles. For contracts with ViewPoint Government Solutions, Inc., both parties consent to the exclusive jurisdiction and venue of courts in Monroe County, Florida, U.S.A. for all disputes arising out of or relating to the use of the Subscription Service or the Consulting Services.

c. Force Majeure. Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

d. Actions Permitted. Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than four (4) years after the cause of action has accrued.

e. Relationship of the Parties. You and we agree that no joint venture, partnership, employment, or agency relationship exists between us.

f. Compliance with Laws. We will comply with all U.S. state and federal laws in our provision of the Subscription Service, the Consulting Services and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use of the Subscription Service and Consulting Services, including any applicable export laws. You will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury. You will not directly or indirectly export, re-export, or transfer the Subscription Service or Consulting Services to prohibited countries or individuals or permit use of the Subscription Service or Consulting Services by prohibited countries or individuals.

g. Severability. If any part of this Agreement or an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

h. Notices. Notice will be sent to the contact address set forth herein (as such may be changed by notice given to the other party), and will be deemed delivered as of the date of actual receipt.

To ViewPoint Government Solutions, Inc.: ViewPoint Government Solutions, Inc., 320 Congress Street, 5th Floor, Boston, MA 02210, U.S.A., Attention: General Counsel.

To you: your address as provided in our ViewPoint Subscription account information for you.

We may give electronic notices by general notice via the Subscription Service and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you or through the notifications center of the Subscription Service. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you.

i. Entire Agreement. This Agreement (including each Order Form and Statement of Work), along with our Privacy Policy and AUP, is the entire agreement between us for the Subscription Service and Consulting Services and supersedes all other proposals and agreements, whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the Subscription Service or dependent on any oral or written public comments made by us regarding future functionality or features of the Subscription Service.

j. Assignment. You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of its assets, change of control or operation of law, without our prior written consent, which will not be unreasonably withheld. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

k. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

l. Contract for Services. This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to this Agreement. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the parties under this Agreement.

m. Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.

n. Survival. The following sections shall survive the expiration or termination of this Agreement: 'Fees and Payments', 'ViewPoint's Proprietary Rights', 'Customer's Proprietary Rights', 'Publicity', 'Indemnification', 'Disclaimers; Limitations of Liability', 'Termination, Suspension and Expiration', and 'General'.

o. Precedence. In the event of a conflict between the terms of this Agreement and an Order Form or Statement of Work, the terms of the Order Form or Statement of Work shall control, but only as to that Order Form or Statement of Work.