

# END USER LICENSE AGREEMENT

PTV America Inc.

Short title	End User License Agreement - PTV America Inc.
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PLEASE READ THIS END USER LICENSE AGREEMENT BEFORE PURCHASING OR USING PTV AMERICA, INC. ("PTV") SOFTWARE, DATA, DOCUMENTATION, OR OTHER INFORMATION (THE "LICENSED MATERIALS" AS FURTHER DEFINED IN SECTION 1.3 BELOW), EITHER BY CLICKING AN ACCEPTANCE OR BY EXECUTING AN ORDER FORM OR STATEMENT OF WORK THAT REFERENCES TO THIS AGREEMENT. CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH GOVERN CUSTOMER'S PURCHASE AND USE OF THE LICENSED MATERIALS. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE NOR USE THE LICENSED MATERIALS.

## 1 Parties, Scope

- 1.1 This End User License Agreement (this "Agreement") is made by and between PTV and such entity (the "Customer") that receives and/or uses the Licensed Materials (as defined below) from PTV, and/or has entered into an agreement upon the delivery and use of such Licensed Materials with PTV or an affiliate, reseller or other contractual partner of PTV (a "Third Party Distributor"). The contractual parties of this Agreement shall be PTV and the Customer, even if the Customer received the Licensed Materials from a Third-Party Distributor. Both PTV and the Customer are being referred to individually as "Party" and jointly as "Parties". The Parties of this Agreement shall be PTV and the Customer, even if the Customer received the PTV Software or the PTV Data from a Third-Party Distributor.
- 1.2 All third-party providers and suppliers of PTV that are involved in the provision of services are included in the protection provided by these terms. The Customer or partner of PTV shall indemnify these third-party providers and suppliers against claims by third parties resulting from a breach of these terms.
- 1.3 This Agreement shall cover any software including updates and patches ("Software"), data and other information of PTV delivered to the Customer in a tangible (e.g., on a data carrier) or intangible (e.g., via download or other electronic transfer) form, whether protected by copyright or not, in any format (source code, object code, etc.) (collectively, the "Licensed Materials"). The Licensed Materials shall also include without limitation, all user documentation regarding the use of the Software, such as user guides, technical documentation, translation and/or other material (the "Documentation").
- 1.4 All rights granted to the Customer under this Agreement are limited to:
  - a) the version of the Licensed Materials initially delivered to the Customer; and
  - b) service packs to the Licensed Materials delivered to the Customer in the course of the fulfillment of warranty obligations (if any).

Updates and updated versions of the Licensed Materials may only be used if such updates or updated versions were delivered to the Customer under a maintenance agreement and the Customer has paid any and all maintenance fees owed pursuant to such maintenance agreement.
- 1.5 The Customer is responsible for the purchase or licensing of all additional equipment and software necessary to install and operate the Licensed Material as detailed by PTV, if applicable. Updated versions of the Licensed Material may require additional equipment and/or software, as well as updated versions of the

equipment and software. Purchase or licensing of these items, if required, is solely the Customer's responsibility.

## 2 Intellectual Property Rights, License

- 2.1 All right, title, interest and intellectual property rights in the Licensed Materials (including but not limited to, copyrights, trademarks, service marks, patents, trade secrets, and ancillary rights) shall solely vest in PTV or its licensors.
- 2.2 PTV reserves the right to technically protect the Licensed Materials against illegitimate copying, use or distribution with security devices such as dongles, passwords or similar protections.
- 2.3 PTV hereby grants the Customer a revocable, non-exclusive and non-transferable (except as otherwise expressly provided herein) license and right to use the Licensed Materials solely for Customer's internal purposes (the "License"). The Customer agrees to uphold any contractual provisions and restrictions regarding the use of the Licensed Materials (e.g., limitation of the number of users, installations, term, territory area, scope, etc.) and agrees to use adequate technical measures to ensure compliance with such provisions and restrictions. The License granted to the Customer may be granted for a limited period of time ("Time-Limited License") or for an unlimited period of time ("Lifetime License"). The Customer's Time-Limited License is non-exclusive, limited in time, non-transferable, revocable and non-sublicensable and may only be used during the contract term exclusively for Customer's internal business operations as an end user. The Customer's Lifetime License is non-exclusive, perpetual, irrevocable, non-sublicensable and may be used exclusively for Customer's internal business operations as an end user. The Parties may agree on further restrictions regarding the duration, territory, and scope of the License. The Customer shall be responsible and liable for any and all obligations hereunder and any acts and/or omissions of any users of the License.
- 2.4 The Customer's right to use the Software is limited to the object code version only and shall not include the source code. PTV shall not be under the obligation to provide the Customer with any source code.
- 2.5 PTV reserves all rights not expressly granted to the Customer hereunder, and any use of the Licensed Materials not explicitly allowed in this License Agreement is subject to the prior written consent of PTV, which PTV may give in its sole discretion.

## 3 Usage and Copy Restrictions

- 3.1 The Customer has the right to make one copy of the Licensed Materials solely for its own security backup purposes. Any backup copy must be stored safely and must be labeled with a correct copyright notice, which may not be removed, altered or inhibited. The Documentation may only be copied for the Customer's internal purposes as necessary for use of the Licensed Materials.
- 3.2 The Customer or any third party on Customer's behalf may not decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, translate or create derivative works of the Licensed Materials, or any updates or new versions, or any part thereof. Any attempt to do so is a violation of the rights of PTV and/or of its licensors. The Customer may not rent, lease, lend, redistribute, sublicense, or outsource the Licensed Materials, or offer them as a software-as-a-service, or make the Licensed Materials available on a public network.

- 3.3 The Customer may not disclose, transfer, dispose of, resell or distribute any personal security information or security items related to the Licensed Materials such as passwords, user accounts, security tags, etc. (collectively, "Security Devices"), unless such Security Devices are necessary to properly operate the Licensed Materials. The Customer may not combine or mix data provided by the PTV Software or the results of the PTV Software with third-party applications or third-party data.

## 4 Transfer of Licensed Materials

- 4.1 The Licensed Materials and any accompanying dongles are valid for use solely within North America and may not be transferred to locations outside of North America without PTV's prior written consent.
- 4.2 Except upon PTV's written consent and except as expressly set forth herein, the Customer may not transfer the Licensed Materials. Any permitted transfer is subject to the following provisions:
- a) The Customer may only transfer the whole License and installation of the Licensed Materials, and may not transfer any portion of such License, such as particular usage rights for a contractually agreed number of users, transactions, or items, etc. If the Licensed Materials are to be installed on a server and run on a designated number of Customer computers, the Customer may not transfer usage rights for a number of Customer computers without transferring the server installation.
  - b) Dongles may only be sold or imparted along with the associated Licensed Materials.
  - c) Any transfer must be of permanent nature, i.e., without any option or claim of the Customer to receive the Licensed Materials back after a fixed or variable period of time.
  - d) The transferee of the Licensed Materials must agree in writing to uphold all of the terms and conditions of this Agreement.
  - e) The Customer must notify PTV in writing of any such requested transfer and provide PTV with the details regarding the transferee.

## 5 Commencement and Termination

- 5.1 The License granted to the Customer pursuant to Paragraph 2 shall become effective as of the date identified in the Customer's order document (an "Order Form") that has been accepted by PTV, and the full payment of the license fees. If Customer is permitted to have temporary use of the Licensed Materials prior to payment, the license is revocable until payment is made and usage will be revoked through an automatic program lock if payment is not made within thirty (30) days.
- 5.2 For accounting and control purposes, the PTV Software may be equipped with licensing technology. At regular intervals, the applicable license information is retrieved automatically or with Customer's cooperation from back-end systems of PTV and its contractors and is stored in the software. The license information retrieved includes data of licensed program versions, software maintenance and update options, functionality and size, licensed number of users, license type and License Period of the PTV Software. For any changes and renewals, the license

information is updated, if necessary, via automatic processes. In certain cases, Customer may be required to cooperate for replacing licensing containers. PTV is entitled to irrevocably deactivate licenses reported as being no longer usable (for example if a dongle or computer is lost or defective) by Customer, if Customer attempts to use them again. The licensing technology may require an online access such that the PTV Software can only be used if online access is available and the license data is successfully matched via the Internet. This automatic matching via the Internet may be subject to certain restrictions in terms of availability, so that only an availability of 99,9% can be guaranteed for the automated matching of the license information. In the event of non-availability, the Customer shall contact PTV's first-level support for maintenance of the PTV Software.

- 5.3 If there is an identified license term in the Order Form, this Agreement will terminate automatically upon the expiration of such license term. PTV may terminate this Agreement upon written notice to the Customer for a breach hereof, or if any third party restricts, prevents or ceases to authorize the installation or use of the Licensed Materials. In addition, the License shall terminate immediately and automatically upon any termination or expiration of this Agreement, or any breach by the Customer of the restrictions included herein, or any unauthorized use of the Licensed Materials.
- 5.4 Upon any such termination or expiration, the Customer shall no longer be permitted to use the Licensed Materials. The Customer must return to PTV all data carriers, all dongles and all other devices received from PTV and shall delete or destroy any and all copies of the Licensed Materials in its possession. An officer of the Customer shall promptly confirm in writing to PTV that such return, deletion and/or destruction was completed successfully.
- 5.5 Termination of this License or the Agreement shall not entitle the Customer to any refund, credit, or other compensation from PTV or from any third party. The License granted to the Customer pursuant to Paragraph 2 shall become effective as of the date identified in the Customer's order document (an "Order Form") that has been accepted by PTV.
- 5.6 If there is an identified license term in the Order Form, this Agreement will terminate upon the expiration of such license term. PTV may terminate this Agreement upon written notice to the Customer for a breach hereof, or if any third party restricts, prevents or ceases to authorize the installation or use of the Licensed Materials. In addition, the License shall terminate immediately and automatically upon any termination or expiration of this Agreement, or any breach by the Customer of the restrictions included herein, or any unauthorized use of the Licensed Materials.
- 5.7 Upon any such termination or expiration, the Customer shall no longer be permitted to use the Licensed Materials. The Customer must return to PTV all data carriers all dongles and all other devices received from PTV and shall delete or destroy any and all copies of the Licensed Materials in its possession. An officer of the Customer shall promptly confirm in writing to PTV that such return, deletion and/or destruction was completed successfully.
- 5.8 Termination of this License or the Agreement shall not entitle the Customer to any refund, credit, or other compensation from PTV or from any third party.

## 6 Confidentiality

For purposes herein, "Confidential Information" shall be all confidential or proprietary information or materials which have been or made available by PTV to the Customer in connection with this Agreement, whether provided orally or in writing, and in any form or media. The Customer shall hold the Confidential Information of PTV in trust and confidence and avoid the unauthorized disclosure or release thereof to any other person or entity by using the same degree of care as the Customer uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information, and in no event less than a reasonable degree of care. The Licensed Materials are the confidential information of PTV. The Customer must inform and instruct its employees of this confidentiality obligation. Upon the written request of PTV, the Customer shall promptly return or destroy the Confidential Information, including all copies thereof.

## 7 Trial License and Academic License

- 7.1 PTV may provide the Customer with a version of the Licensed Material for testing purposes ("Trial License"). Any rights to use such Trial License shall end, at the latest, ninety (90) days after its installation, unless otherwise agreed. Any commercial use of the Trial License is excluded. In particular, Trial Licenses may not be used for the following purposes:
- Use of Trial Licenses to bridge project implementation work;
  - Operational or semi-operational use in a time-limited test or evaluation project.
- 7.2 PTV may provide specific users such as students or academic institutions with specific versions of the Licensed Material for research, teaching or training purposes ("Academic License"). Any commercial use of the Academic License is excluded.
- 7.3 PTV may collect usage data to verify and monitor the compliance with sec. 7.1 and 7.2. Any such collection shall be compliant with the terms available at [https://www.ptvgroup.com/fileadmin/user\\_upload/Legal\\_Documents/Framework-Agreement/Annex6-Data\\_Privacy/Annex\\_6\\_1\\_Product\\_Specific\\_Data\\_Privacy\\_Statement/Data\\_Privacy\\_Statement\\_PTVVision.pdf](https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Framework-Agreement/Annex6-Data_Privacy/Annex_6_1_Product_Specific_Data_Privacy_Statement/Data_Privacy_Statement_PTVVision.pdf).
- 7.4 Notwithstanding the provision in sec. 4, the Customer may not transfer a Trial License or an Academic License to a third party.

## 8 Payment; Audit Rights

- 8.1 During the term of this Agreement, the Customer agrees to pay PTV for all fees associated with the Customer's License of the Licensed Materials in accordance with the terms of PTV's invoices.
- 8.2 During the term of this Agreement and for a period of two (2) years thereafter (the "Audit Period"), the Customer agrees to keep and maintain complete and accurate records sufficient to verify Customer's compliance with the terms of this Agreement, including without limitation, payment of applicable fees ("Records"). During the Audit Period, PTV (or a designated representative of PTV) may perform an inspection and audit of the Records, upon ten (10) days prior written notice to the Customer, regarding whether the Customer's use of the Licensed Materials is



consistent with the terms of this Agreement. Any such audit will be performed during Customer's normal business hours and in a manner that does not unreasonably interfere with the Customer's normal business operations. The Customer agrees to cooperate with PTV (or its designated representative) during the conduct of any such audit.

- 8.3 If the audit shows that the use of Licensed Materials is inconsistent with the terms hereof or reveals underpayment by the Customer, the Customer shall promptly cure such inconsistency and/or pay any such underpaid amounts. PTV will bear the costs of the audit; provided, however, that if the audit reveals an underpayment by the Customer by more than five percent (5%), the Customer will reimburse PTV for the cost of the audit. Any other claims and remedies of PTV shall remain unaffected. Further, Customer shall pay to PTV for each instance of a breach of the obligations pursuant to this Agreement reasonable damages to be determined by PTV. In the event of a disagreement as to the reasonableness of the damages, the dispute will be resolved as otherwise provided for in this Agreement.

## 9 Limited Warranties

- 9.1 PTV and the Customer each represent and warrant that it has the right, power and authority to enter into, and perform its obligations under, this Agreement, and each order form or statement of work related hereto.
- 9.2 PTV warrants that the Licensed Material shall conform to the functional specifications and will be free of errors during the warranty period, which commences on the effective date of this Agreement and expires 90 days later. Beyond the warranty period, the obligations of PTV are as set forth any support or maintenance agreement between Customer and PTV. The following provisions apply only during the warranty period.
- 9.3 The Customer shall be obliged to immediately and thoroughly inspect the Licensed Material upon delivery and immediately report defects in writing. A defect may only be claimed if the Licensed Material materially deviates from the documentation for the Licensed Materials (a "Defect"). Any Defect shall be specifically described to PTV to the extent that is reasonable ("Error Report"). The Error Report shall include the following information:
- a) Error message as shown, if any;
  - b) Screenshot of error state;
  - c) Steps for reproduction of error state, if available;
  - d) Application logs, if available;
  - e) System environment data (including O/S version, browser used, application server, database, etc.).

Upon request by PTV, the Customer shall provide additional information for the error analysis.

- 9.4 Error Reports shall be communicated to PTV promptly. Delayed reporting shall relieve PTV from any warranty obligations for the respective Defect.
- 9.5 PTV shall rectify Defects at its choice through subsequent improvements or through delivery of a replacement within a reasonable period of time. Such rectification may also include the implementation of a workaround solution.

- 9.6 If PTV does not successfully rectify material Defects within a reasonable period of time, the Customer shall grant two (2) reasonable extensions of at least two (2) weeks ("Extension") to PTV in order to successfully rectify the Defects.
- 9.7 If PTV does not successfully rectify material Defects during the Extension (except where the Defect is only of insignificant nature), the Parties may agree on changes to the license fees or Customer may terminate this Agreement.
- 9.8 The Customer is not entitled to rectify Defects itself and claim compensation for costs accrued for such rectification.
- 9.9 Claims concerning Defects in quality and Defects in title must be made within twelve (12) months after (i) delivery of the Licensed Material if the Licensed Material is provided on a data carrier; or (ii) activation of the access data to the Licensed Material if the Licensed Material is provided by download from the Internet; or (iii) acceptance if the Licensed Material is subject to acceptance which shall not be unreasonably delayed.
- 9.10 EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 10 OF THIS AGREEMENT, PTV DISCLAIMS AND CUSTOMER WAIVES ALL WARRANTIES ON THE SOFTWARE FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND LICENSES THE SOFTWARE "AS IS" AND "WITH ALL FAULTS."

## 10 Indemnification

- 10.1 PTV will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the Software or the Customer's use of the Licensed Materials consistent with this Agreement infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for any amounts paid by Customer under a court-approved settlement of, a Claim, provided Customer (a) promptly gives PTV written notice of the Claim, (b) gives PTV sole control of the defense and settlement of the Claim (except that the PTV may not settle any Claim unless it unconditionally releases Customer of all liability), and (c) gives PTV all reasonable assistance, at PTV's expense.
- 10.2 In the event that a claim is made or PTV reasonably believes that a claim may be made that the Licensed Materials infringe the intellectual property rights of a third party, PTV will, at its option, either (a) obtain a license sufficient for the Customer to be able to continue to use the Licensed Materials under the terms of this Agreement, (b) modify or replace the Licensed Materials that are claimed to infringe, or (c) terminate this Agreement and refund to Customer any pre-paid fees that have been paid prior to the date of the termination.
- 10.3 The obligations of PTV under this Section 10 are the sole and exclusive remedy of Customer against PTV related to a claim of infringement.
- 10.4 The Customer will defend PTV against any claim, demand, suit or proceeding made or brought against PTV by a third party alleging that any of the data that the Customer uploads into the Software, or the Customer's use of the Licensed Materials in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights, violates the Third-Party License terms stated in Section 12 below, or violates applicable law (a "Claim"), and will indemnify PTV

from any damages, attorney fees and costs finally awarded against PTV as a result of, or for any amounts paid by PTV under a court-approved settlement of, a Claim, provided PTV (a) promptly gives the Customer written notice of the Claim, (b) gives the Customer sole control of the defense and settlement of the Claim (except that the Customer may not settle any Claim unless it unconditionally releases PTV of all liability), and (c) gives the Customer all reasonable assistance, at the Customer's expense.

## 11 Product-specific provisions; General Terms and Conditions

- 11.1 The PTV Software includes the use of third-party components and geodata for which the following Third-Party Licenses apply, and which may be amended from time to time:

Third-party components available under  
<https://www.ptvgroup.com/index.php?id=1264&L=0>

Geodata

PTV Mobility Licensing Terms for Geodata, available under  
[https://www.ptvgroup.com/fileadmin/user\\_upload/Legal\\_Documents/Framework-Agreement/Third\\_Party\\_Data/PTV\\_Traffic\\_Licensing\\_Terms\\_Geodata\\_en.pdf](https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Framework-Agreement/Third_Party_Data/PTV_Traffic_Licensing_Terms_Geodata_en.pdf).

Maps

When using maps from the Open Street Map ("OSM") project, the Open Database License <https://opendatacommons.org/licenses/odbl/1.0/> applies.

- 11.2 PTV makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of any such software under Third-Party Licenses.

## 12 LIMITATION OF LIABILITY

IN NO EVENT SHALL PTV'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO PTV DURING THE SIX (6) MONTH PERIOD PRIOR TO THE ACCRUAL OF THE CLAIM.

## 13 LIMITATION ON DAMAGES

PTV SHALL NOT BE LIABLE IN ANY EVENT FOR DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF PROFITS, AND/OR LOSS OF USE OF PRODUCT, OR FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF PTV'S LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE.

## 14 Allocation of Risks

CUSTOMER UNDERSTANDS AND AGREES THAT THE FEES CHARGED BY PTV SPECIFICALLY REFLECT THE ALLOCATION OF RISKS AND EXCLUSION OF DAMAGES PROVIDED FOR IN THIS AGREEMENT.

## 15 Miscellaneous

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, United States of America, without reference to its conflicts of law provisions. The U.N. Convention on the International Sale of Goods (CISG) will not apply to transactions between PTV and the Customer. Any dispute regarding this contract will be subject to the jurisdiction of the state and federal courts in and for the State of Delaware, and the Parties hereby irrevocably agree to submit to the personal and jurisdiction and venue of such courts. The prevailing party in any such dispute and/or proceeding shall be entitled to recover its costs and expenses incurred (including reasonable attorneys' fees and expenses) in any such dispute or proceeding.
- 15.2 PTV shall notify the Customer of any changes to this Agreement in writing, by facsimile or email. Where the Customer does not object to such changes within six (6) weeks from the date of receipt of the notice, the changes are deemed to have been consented to. In the event of any amendment to these terms, the Customer's attention is specially drawn to its right of objection and to the legal consequences of silence. In the event that the Customer objects within the six-week period, the contractual relationship shall be continued under the previously applicable conditions. If an objection is raised, PTV shall be entitled to terminate the contractual relationship existing with the Customer with one (1) months' notice. Except as provided in this section, no amendment to, or any waiver of any provision in, this Agreement will be effective unless it is in writing and signed by the Customer and PTV.
- 15.3 The Customer agrees to comply with all applicable laws, rules, regulations and orders with respect to this Agreement and the Licensed Materials, including laws and regulations related to data privacy and security.
- 15.4 The Licensed Materials provided hereunder are "Commercial Items" and "Commercial computer software" as those terms are defined in the Federal Acquisition Regulations (FAR) 2.101. If Customer is a unit or agency of the United States Government, the following applies: The Licensed Materials are provided with Restricted Rights in accordance with FAR 12.212, as these terms are customarily provided by PTV to its other Customers and are consistent with federal law. Use, duplication or disclosure by the Government is subject to the restrictions set forth herein.
- 15.5 The Parties are aware that PTV Software may be subject to export and import restrictions. In particular, obtaining an approval may be required, or the use of the software or related technologies may be subject to restrictions abroad. The Customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant regulations. Fulfilment of the Agreement is subject to national and international regulations of export and import law or other statutory provisions. It is the Customer's sole responsibility to acknowledge

applicable foreign laws and regulations and ensure to comply with them during the duration of the license term.

- 15.6 Periods for performance or of delivery shall be extended by the period in which PTV is prevented, without itself being responsible, from providing the contractually agreed services, particularly, but not limited to, labor disputes, telecommunications outages, acts of God or any other unusual and unforeseeable events (collectively "Force Majeure Event") as well as an appropriate period for restarting after the end of the disturbance. If a Force Majeure Event lasts for more than three (3) months, each Party shall have the right to terminate the contractual agreement.
- 15.7 Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be deemed replaced by a valid one which closely approximates the commercial purpose of the invalid provision. The same shall apply in the case of any unintended omission.

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