

General Terms and Conditions (PTV America)

I. General Provisions

§ 1 Performance

1.1. ALL THE PROVISIONS OF THESE TERMS AND CONDITIONS ("TERMS") SHALL APPLY BETWEEN PTV GROUP AMERICA INC. (" PTV") AND CUSTOMER ("PARTIES"), EXCEPT WHERE EXPLICITLY AGREED OTHERWISE IN WRITING BY BOTH PARTIES. THE CONDITIONS CONTAINED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS, AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON BOTH PARTIES UNLESS EXPRESSLY ACCEPTED BY BOTH PARTIES IN WRITING. IN THE EVENT OF ANY POSSIBLE CONFLICTS BETWEEN THESE TERMS AND AN AGREEMENT OR A WORK ORDER THAT IS ACCEPTED BY BOTH PARTIES IN WRITING, THE PROVISIONS SET FORTH IN THE AGREEMENT OR THE WORK ORDER SHALL PREVAIL. ANY AGREED UPON WORK ORDER, STATEMENT OF WORK OR OTHER AGREEMENT TO PROVIDE A SPECIFIC SYSTEM, SOFTWARE, OR SERVICES AS DEFINED BELOW IN THIS SECTION 1.1, TOGETHER WITH THESE TERMS, SHALL EXCLUSIVELY GOVERN THE PARTIES' OBLIGATIONS. Except for Online Services as described in Section 1.2., the following items shall be governed by these Terms:

- Delivery of Standard Software and Data;
- Customization, Installation and Adaption of Standard Software;
- Consulting Services;
- Software Maintenance and Support.
- Development of Individual Software;

1.2. These Terms shall not apply with respect to any online services such as the provision of websites and internet portals, application services providing and/or software as a service (collectively "Online Services"). Regarding any Online Services, the terms of use agreed upon registration by Customer related to such Online Services shall apply and govern such Online Services.

1.3. Furthermore, these Terms shall not apply with respect to any contractual agreements where PTV is the purchaser of goods or services. Regarding such agreements only the General Procurement Terms and Conditions of PTV or other individual contractual arrangements between PTV and the respective contractual party shall apply.

1.4. Contract modifications or amendments shall only be valid and enforceable if made in writing and signed by both parties. This provision shall also apply to any waiver of the requirement for written form.

1.5. These Terms shall not be applicable if the Customer is considered a consumer (as opposed to "business to business"). Particular sections of these TERMS expressly refer to and only apply to merchants.

1.6. Statements and/or representations contained in any test programs, product and project descriptions shall not be considered guarantees or warranties with respect to the quality of any Services or Software provided by PTV. Any guarantee or warranty shall require the express and written confirmation of PTV. Samples, descriptions, representations, and other information contained in PTV catalogues, advertisements, or other promotional materials or statements or representations made by PTV's employees or sales representatives are for general informational purposes only and are not binding upon PTV.

§ 2 Intellectual Property

2.1. Any software, documentation, data and other items delivered by PTV to the Customer (collectively "Deliverables") shall at all times remain PTV's sole property and shall be subject to copyright protection and may be protected by further intellectual property rights. Between the two parties, PTV shall be exclusively entitled to any and all rights regarding the Deliverables.

2.2. The Customer shall be provided with a non-exclusive license to utilize the Deliverables as described in the applicable End User License Agreement.

§ 3 Customer's Cooperation, Project Meetings and Minutes

3.1. The Customer shall cooperate, assist, and provide PTV with any necessary support in connection with the performance of PTV's duties and obligations hereunder. Customer shall make available the hardware, operating system and basic software and provide telecommunications facilities and the required number of staff. Customer shall also provide PTV, in a timely fashion, with any and all information required for the performance of its duties and obligations hereunder. Insofar as it is useful or necessary for the performance of PTV's duties and obligations, Customer shall grant PTV access to the Customer's business premises during normal business hours.

3.2. Customer shall establish a remote access for PTV on any of its IT Systems for which PTV is providing any services for or needs to have access to perform its duties and obligations hereunder.

3.3. Customer shall take appropriate precautions if any Deliverables fail to properly operate, in part or as a whole, by performing regular data backups, conducting constant failure diagnosis and inspection, etc. Customer shall perform a full backup of its data stock before installing any Deliverables on its IT Systems.

3.4. In case of project meetings PTV is entitled to take minutes, the content of which shall become legally binding, unless Customer does not object to them in writing within ten working days after receipt of such minutes.

§ 4 Deliveries and Delay

4.1. Any dates provided by PTV with regard to any delivery times shall be non-binding, unless expressly stipulated by PTV as "legally binding dates". Partial deliveries shall be permissible if Customer is able to make reasonable use thereof.

PTV shall not be liable for any delay in performance, or in the delivery or shipment of Deliverables, or for any damages suffered by Customer by reason of such delay. PTV may suspend or delay performance or delivery at any time pending receipt of assurances, including full or partial prepayment or payment of any outstanding amounts owed, adequate to PTV in its discretion, of Customer's ability to pay. Failure to provide such assurances shall entitle PTV to cancel this contract without further liability or obligation to Customer.

4.2. Periods of delivery shall be extended by the period in which PTV is prevented, for reasons beyond its control, from providing the contractually agreed services including, but not limited to, due to any labor disputes, any acts of God or any other unusual and unforeseeable events (collectively "Force Majeure Events") as well as an appropriate period for restarting after the end of such Force Majeure Event. If a Force Majeure Event lasts for more than three (3) months, either Party shall have the right to cancel any pending Work Order, or, if the respective contract constitutes continuing obligations, terminate the underlying contract. In such case, any prepaid compensation shall be repaid, on a pro rata basis, in accordance with applicable statutory provisions.

4.3. Periods of delivery shall be extended by the period PTV is being delayed in its performance due to, or resulting from, a lack of Customer's information or cooperation, in addition by an appropriate period for restarting after the end of Customer's delay.

4.4. Any reminders for legally binding time limits agreed upon by the Parties shall be made in writing. In the event that PTV is still in default with respect to such a delivery, Customer shall be entitled to terminate the underlying Agreement only after expiration of a cure period of 12 business days following a written reminder by Customer.

§ 5 Payment, Setoff and Assignment, Retention of Title and Rights

5.1. Unless stipulated otherwise on PTV's invoices, payments shall be due immediately without any deduction.

5.2. Customer may only withhold any payment due or make any counterclaims which are either undisputed or are based on final and non-appealable judgments. .

5.3. Customer may not assign this Agreement, in whole or in part, or claims against PTV to any third parties, unless PTV consents hereto in writing.

5.4. All late payments of invoices by Customer shall bear interest at a rate of one percent (1%) per month or partial month during which any sums under such payment invoices were owed and unpaid, or the highest rate allowed by law, whichever is lower. Following a period of seven (7) days from the date at which Customer is notified that it has late payments due that exceed the payment terms defined in Section 5.1 and for which said sums are owed and unpaid, the obligation of PTV to perform under this Agreement shall, at the sole option of PTV, be suspended, including but not limited to disabling Customer's access to the Software or System until receipt of payment in full. Upon expiration of the aforesaid seven day cure period without payment, no further notice or other obligation to Customer is required. Any failure of Customer to make payment of any payment invoice in the manner described in this Section 5 shall be deemed a material breach of this Agreement by Customer.

5.5.. Title to any of the Deliverables and any rights under Section 2 as well as under the EULA shall not pass to Customer before full payment of any fees due is made by Customer.

5.7. In case of any termination of Customer's rights pursuant to Section 2 or the EULA, PTV may require that the Customer return any Deliverables provided or, if they cannot be returned, that the Deliverables be irreversibly deleted or destroyed. In the latter case, Customer shall provide PTV with a written affidavit to that effect. .

§ 6 Intellectual Property Rights Infringements/Indemnity

6.1. Customer shall be solely responsible for proper selection, application, and use of the Deliverables, as well as the incorporation/integration of the Software and/or System into other equipment or systems. Customer shall indemnify and hold PTV harmless from and against any and all damages, liabilities, claims, or expenses (including reasonable attorneys' fees) arising out of or relating to (i) improper selection, application, installation, use or incorporation/integration of the Software and/or System; (ii) infringement of any patent, trademark, copyright or other third party interest arising out of PTV' compliance with any of Customer's designs, specifications, or instructions; or (iii) violation of any applicable laws or regulations, including but not limited to, US Export Controls laws. If PTV requests, Customer shall defend PTV, at its expense, in any such suit brought against PTV.

6.2. PTV shall indemnify and hold Customer harmless against any and all damages, costs, judgments, settlements, penalties, reasonable attorneys' fees or other costs or expenses paid or incurred in connection with claims by any party arising from (i) a claim that Customer's authorized

use of the Deliverables, Software and/or System infringe the patent or other intellectual property right of a third party. Notwithstanding the above, PTV's obligations under this Section 6 shall not apply if and to the extent the claim arises from any of or relates to Customer's intellectual property rights, or any related breach by Customer of any provision under these Terms or any underlying agreement hereunder.

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§ 7 Limited Warranty/Disclaimer/Limitation of Liability.

7.1. PTV warrants that at the time of delivery of the Deliverables or the Software to Customer they will materially conform to PTV's applicable specifications. This limited warranty shall expire upon one (1) year after delivery of the Deliverables and or the Software to Customer. Each Deliverable or the Software shall be deemed accepted after a period of fourteen (14) days following delivery of the respective Deliverable or Software (defined as "Acceptance"). As Customer's exclusive remedy, PTV will use its best efforts to either repair, replace, or refund the purchase price for any Deliverable or Software found by PTV to have been materially nonconforming at the time of delivery, if Customer, promptly (however not later than ten (10) days after Customer's discovery of the nonconformity) sets forth in writing to PTV information describing in reasonable detail the alleged defect in the Deliverable or Software, including an exact description, invoice number, shipment date, and such allegedly nonconforming Deliverable is returned and received by PTV within the abovementioned warranty period. No employee or sales representative of PTV shall have any authority whatsoever to establish, expand or otherwise modify PTV's warranty. This limited warranty does not cover normal maintenance or items consumed during normal operation, nor normal wear and tear, misuse, abuse, unauthorized repair or alteration, lack of proper maintenance or damage caused by natural causes such as fire, storm, or flood. PTV shall not be liable for transportation, labor or other charges for adjustments, repairs, replacements of parts, installation, or other work which may be done upon or in connection with the Deliverables sold or the EULA. This warranty shall not be deemed to have failed of its essential purpose so long as PTV is willing and able to repair, replace or refund the purchase price on any defective Deliverables or Software in the manner specified. No allowance will be made for repairs made by Customer. Except as herein provided, PTV shall not be liable to Customer in any manner with respect to the Deliverables or Software.:

7.2. THE ABOVE ARE LIMITED WARRANTIES AND THEY ARE THE ONLY WARRANTIES MADE BY PTV WITH RESPECT TO THE DELIVERABLES AND THE SOFTWARE, EXCEPT THAT PTV AGREES TO PASS THROUGH ANY WARRANTIES EXTENDED FOR THIRD-PARTY PRODUCTS INCORPORATED INTO THE DELIVERABLES OR SOFTWARE, IF ANY. PTV MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTY WITH RESPECT TO THE DELIVERABLES OR SOFTWARE, EXPRESS OR IMPLIED AND PTV DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE REGARDING THE RESULTS OBTAINED BY THE USE OF THE DELIVERABLES OR SOFTWARE, THAT ALL ERRORS IN THE DELIVERABLES OR SOFTWARE WILL BE CORRECTED, OR THAT THE DELIVERABLES OR SOFTWARE' FUNCTIONALITY WILL MEET CUSTOMER'S REQUIREMENTS. PTV SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THESE TERMS FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF PTV FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE DELIVERABLES OR SOFTWARE. NO ACTION OR PROCEEDINGS UNDER THESE TERMS, REGARDLESS OF FORM, MAY BE COMMENCED BY CUSTOMER MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION ACCRUES.

7.3 CUSTOMER ASSUMES ALL RESPONSIBILITIES AND OBLIGATIONS WITH RESPECT TO ANY DECISIONS MADE OR ADVICE GIVEN AS A RESULT OF THE USE OF THE DELIVERABLES OR SOFTWARE, AND FOR THE SELECTION OF THE DELIVERABLES OR SOFTWARE TO ACHIEVE CUSTOMER'S INTENDED RESULTS. CUSTOMER AGREES THAT PTV'S LIABILITY IN CONNECTION WITH THE DELIVERABLES OR SOFTWARE WHETHER ARISING IN CONTRACT, NEGLIGENCE,

STRICT LIABILITY IN TORT OR WARRANTY OR ANY OTHER LEGAL THEORY SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO PTV FOR THE NONCONFORMING DELIVERABLES OR SOFTWARE. CUSTOMER AGREES TO ASSUME THE RISK FOR: (i) ALL LIABILITIES DISCLAIMED BY PTV CONTAINED HEREIN AND (ii) ALL ALLEGED DAMAGES IN EXCESS OF THE AMOUNT OF THE REMEDY PROVIDED HEREUNDER. THE ESSENTIAL PURPOSE OF THE LIMITED REMEDY PROVIDED CUSTOMER HEREUNDER IS TO ALLOCATE THE RISKS AS PROVIDED ABOVE.

IV. Final Provisions

§ 8 Confidentiality, Non-Solicitation

8.1. All Confidential Information (as defined below in Section 8.3) of both parties is and shall remain the sole and exclusive property of the disclosing party and is to be treated by the receiving party as absolutely secret and confidential. Both parties covenant and warrant that, without limitation as to time, they shall keep in confidence, maintaining proper security therefore, and shall not (i) use or allow to be used for their own benefit or for any purposes other than the performance of this Agreement, or (ii) disclose or reveal or allow to be disclosed or revealed to any person other than either party any Confidential Information of the disclosing party. Without limiting the foregoing, (i) neither party shall negotiate with or offer or agree to sell, lease or otherwise transfer to any person or entity any Confidential Information of the disclosing party or any system, data, report, study, program or other item which incorporates or utilizes such Confidential Information, and (ii) either party's name, logo, insignia, photographs or any other publicity pertaining to this Agreement, including but not limited to the existence of this Agreement, shall not be used in any magazine, trade paper, newspaper or other medium, or otherwise disclosed to any person, without the prior written consent of both parties. Neither party shall disclose the subject matter, existence or terms and conditions of this Agreement or the granting of the license hereunder, except as may be required by law or government regulations or pursuant to a court order or in any legal proceeding, or as may be necessary to assert rights under the Agreement, or as may be authorized in writing by both parties.

8.2 If either party breaches, threatens to breach or attempts to breach its obligations under Section 8.2 herein, the aggrieved party may notwithstanding and not by way of limitation of any other remedies it may have for anticipatory or actual breach of this Agreement (including, without limitation, for damages), immediately obtain an order enjoining the party in breach from violating this Section (both during and upon final determination of any litigation).

8.3 As used herein, the term "Confidential Information" means any confidential or proprietary information of the disclosing party, including but not limited to designs, drawings, plans, formulae, instructions, processes, programs, systems, theories, specifications, techniques, tapes, disks, disk racks, models, data, flow charts, documentation, processes, procedures, know-how, new product or technology information, prototypes, software (whether in object code or source code), manufacturing, development, or marketing techniques, development or marketing timetables, business strategies and development plans, supplier information, personnel information, PTV's information, pricing policies, financial information and any other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secret or non-public business information.

8.4. PTV and Customer each agree that, for so long as PTV is rendering services for Customer and for two (2) years thereafter, neither it nor its officers, directors, employees, subsidiaries, affiliates or agencies shall, without the express prior written consent of the other, directly or indirectly employ, solicit the employment of, or (independent of the companies' relationship with one another) engage or seek to engage as a consultant or independent contractor the services of any of the other's officers, directors, employees, agents or subcontractors.

§ 9 Mediation and Litigation Rights

9.1 Except as provided in Section 9.3 below (Litigation Rights), in case the parties are unable to resolve any material dispute regarding any matter related to this Agreement or the performance hereunder, the parties shall attempt to resolve such matter by sending a written notice to the other, and each party shall cause its chief executive officer or other delegate with decision-making authority to communicate regarding the substantive (rather than procedural) matters in dispute, or meet, with the other party in order to discuss and attempt in good faith to reach agreement on the matter(s) in question. If the parties, within fourteen (14) days of their initial meeting or substantive (rather than procedural) communication, or after such other longer period as the parties may agree upon in writing, are unable to reach agreement on such matter(s) to the reasonable satisfaction of both parties, either party may request in writing that the parties initiate non-binding mediation hereunder (a "Mediation Request"). The party receiving the Mediation Request shall have twenty (20) days from the date on which the Mediation Request is received to deliver to the other party a written response indicating whether it accepts or declines the Mediation Request; provided that failure to respond to a timely Mediation Request within such 20-day period shall be deemed to be a refusal of the Mediation Request. Upon acceptance of a Mediation Request, the parties shall promptly commence the mediation proceeding in accordance with this Section 9.1. In connection with any mediation hereunder, the mediator shall be jointly appointed by the parties and the mediation shall be conducted by JAMS in the city of Portland, Oregon, USA, unless otherwise agreed by the parties. No party shall be obligated to attend mediation proceedings for more than two (2) days. The mediator shall deliver his or her non-binding settlement proposal to the parties within thirty (30) days upon his or her appointment. For the avoidance of doubt both parties expressly acknowledge that it is in the sole discretion of either party to accept or to decline a mediator's settlement proposal. The fees of the mediator shall be shared equally by the parties. All mediation pursuant to this Section 9.1 shall be treated as settlement and compromise negotiations.

9.2 If the parties, within thirty (30) days of their initial meeting or substantive (rather than procedural) communication, or after such other longer period as the parties may agree upon in writing, are unable to reach agreement, and either (i) a Mediation Request has not been timely delivered in accordance with Section 9.1 (ii) a Mediation Request has been delivered in accordance with Section 9.1, but the party receiving such Mediation Request has not accepted such Mediation Request, or (iii) a Mediation Request has been delivered and accepted, but the parties have been unable to resolve the dispute within ten (10) days of the rendering of the mediator's non-binding settlement proposal, then either party may refer the matter to jurisdiction in accordance with the procedures established in Section 9.3 below.

9.3 Either party may, without waiving any remedy under this Agreement, seek temporary or permanent injunctive relief including without limitation equitable relief from any court of competent jurisdiction to protect its confidential information, non-solicitation, and intellectual property rights, regardless of the mediation requirements. However, for any disputes not settled by mediation as set forth in Section 9.1, the exclusive venue and jurisdiction for all claims arising out of or in connection with this Agreement shall be the competent state or federal court in the city of Portland, Oregon, USA. The prevailing party shall be entitled to recover from the other party its actual costs and expenses (including allowable attorneys fees and expenses) incurred in connection with any litigation between the parties relating to or arising under this Agreement. FURTHERMORE, THE PARTIES HERETO ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE WAIVED. THE PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO THIS AGREEMENT, OR ANY OTHER AGREEMENT BETWEEN THE PARTIES.

§ 10 Governing Law

10.1. This Agreement shall be governed by, construed in accordance with, and subject to, the laws of the state of Oregon applicable to agreements made and to be performed entirely within such state, without reference to the choice of law provisions of any jurisdiction.



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§ 11 Written Form

Simple electronic form (email or fax) shall be sufficient to satisfy any requirement for written form stipulated in these Terms; however; this shall not apply to any notices of termination or cancellations which shall always require delivery of an original document signed by the respective party.