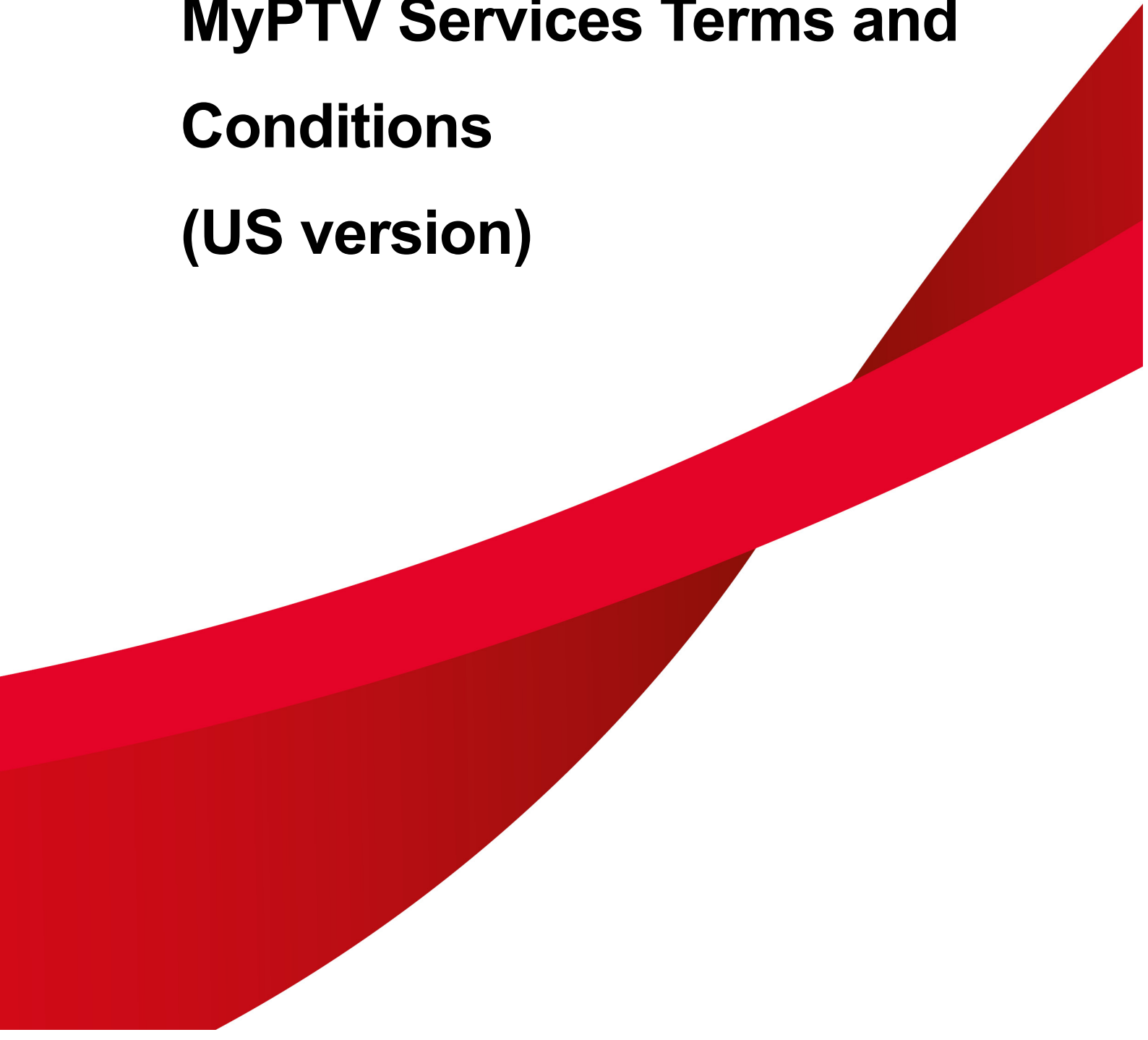


MyPTV Services Terms and Conditions (US version)

The page features a decorative graphic consisting of several overlapping diagonal stripes in shades of red and dark red, extending from the bottom left towards the top right.

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Short title	MyPTV Services Terms and Conditions US
Version of contract template:	1.1.1 from 2021-11-18

PLEASE READ THE TERMS AND CONDITIONS OF THESE TERMS AND CONDITIONS (ALSO REFERRED TO AS “AGREEMENT” OR THE “TERMS”) CAREFULLY BEFORE AGREEING TO USE THE PTV SERVICES. THIS IS A LEGAL AGREEMENT BETWEEN PTV AMERICA, INC. (“PTV”) AND THE CUSTOMER (“CUSTOMER”).

IF YOU ACCEPT THIS AGREEMENT AND THE TERMS, ALL THE PROVISIONS SHALL APPLY BETWEEN PTV AND CUSTOMER (“PARTIES”). THESE TERMS TAKE PRECEDENCE OVER ANY OTHER CONDITIONS, AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON PTV UNLESS EXPRESSLY AGREED BY BOTH PARTIES IN WRITING. IN THE EVENT OF ANY CONFLICTS BETWEEN THESE TERMS AND ANY SEPARATE AGREEMENT OR A WORK ORDER THAT IS AGREED BY BOTH PARTIES IN WRITING, THE PROVISIONS SET FORTH IN SUCH SEPARATE AGREEMENT OR THE WORK ORDER SHALL PREVAIL, EXCEPT THAT NO OTHER AGREEMENT OR ORDER MAY MODIFY THE PROVISIONS OF SECTION 8.3 OR SECTIONS 10 THROUGH 15.

1 Definitions

- 1.1 “**Authorized Users**” shall mean the owner of a registered MyPTV ID who uses the PTV Cloud Services itself as Customer or in its position as employee or representative of the Customer.
- 1.2 “**Customer Systems**” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.
- 1.3 “**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or PTV Systems as intended by this Agreement. Harmful Code does not include any PTV Disabling Device.
- 1.4 “**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.5 “**MyPTV**” means the environment used for the provision of the PTV Cloud Services.
- 1.6 “**MyPTV ID**” means identification information provided by PTV to Customer or Authorized Users for Customer's or Authorized User's access to MyPTV and use of the PTV Cloud Services.
- 1.7 “**Losses**” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance.
- 1.8 “**PTV Account**” means Customer's personalized access to MyPTV and to the PTV Cloud Services and its related content.
- 1.9 “**PTV Cloud Service(s)**” means cloud-based software and PTV Data provided by PTV to Customer via the Internet in a public cloud, e.g. by means of an API.
- 1.10 “**PTV Data**” means any data or digital content made available by PTV to Customer. PTV Data may include geographical data, traffic data, point-of-interest and geodata.

- 1.11 **“PTV Disabling Device”** means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by PTV or its designee to disable Customer’s or any Authorized User’s access to or use of the Services automatically with the passage of time or under the positive control of PTV or its designee.
- 1.12 **“PTV Materials”** means the Service Software, Specifications, Documentation and PTV Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by PTV or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or PTV Systems. For the avoidance of doubt, PTV Materials include any information, data or other content derived from PTV’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.
- 1.13 **“PTV Systems”** means the information technology infrastructure used by or on behalf of PTV in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by PTV or through the use of third-party services.
- 1.14 **“Service Description”** means the technical specifications and functionalities of the PTV Cloud Service as amended from time to time, available for each PTV Cloud Service at <https://www.ptvgroup.com/en/terms-privacy/legal-documents-myptv/service-description/>.
- 1.15 **“SLA (or Service Level Agreement)”** means an agreed specification of the criteria for the services including response times and availability for recurring services to be provided by PTV.
- 1.16 **“Subscription”** means the conclusion of a subscription for the time-limited use of a PTV Cloud Service.

2 Subscription

- 2.1 MyPTV. The offerings on MyPTV are directed exclusively at business entities (and not individuals or consumers) which are interested in PTV services and intend to use them for commercial purposes. The PTV Cloud Services may only be used for commercial purposes. PTV reserves the right to verify the status of the Customer and to request adequate evidence of said status.

2.2 Services. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, PTV shall use commercially reasonable efforts to provide to Customer and its Authorized Users the PTV Materials and the PTV Cloud Services (collectively, the "**Services**") in accordance with the specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users ("**Cloud Services**"). Customer may order one or more PTV Cloud Services on MyPTV. PTV reserves its right to either accept, or reject Customer's offer, at its sole discretion, and for any reason. PTV will use commercially reasonable efforts to process a Customer order. Customer understands and acknowledges that any Subscription for Services shall not be binding on PTV until PTV has provided Customer with a written confirmation of order via e-mail ("**Confirmation of Order**"). Any PTV Cloud Services may be offered to Customer on MyPTV. In PTV's customer center, Customer may: (i) view its PTV Cloud Service Subscriptions; (ii) create user accounts for specific Subscriptions, if available; or (iii) make changes to Customer's registration data.

Each Authorized User (who is a registered owner of a MyPTV ID) who signed up for myptv.com shall be bound by the terms and conditions of this Agreement.

2.3 Service and System Control

- a) PTV has and will retain sole control over the operation, provision, maintenance and management of the Services including the: (i) PTV Systems; (ii) where any of the Services are performed; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of Support Services, Service maintenance, upgrades, corrections and repairs; and
- b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and PTV Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or PTV; (ii) results obtained from any use of the Services or PTV Materials; and (iii) conclusions, decisions or actions based on such use. Customer shall at all times use the Services and/or PTV Materials in compliance with all relevant laws and the PTV policies. Customer shall not permit any person that is not an Authorized User of Customer to use the Services, and will not permit any Authorized Users to use the Services for any improper or unlawful purpose. Furthermore, Customer acknowledges that PTV exercises no control over, and that PTV accepts no responsibility for the content of information and communications, in whatever form, transmitted by Customer over the PTV Systems. In addition, Customer agrees that Customer shall, at all times, be solely responsible for all text, graphics, sound, video, data and any aspect of Customer's content. Customer's use of any information obtained via the PTV

Materials is at Customer's own risk. PTV specifically denies any responsibility for the accuracy or quality of information obtained through its Services. Customer is aware that applications with maps, geographical attributes, points of interest, toll information, emissions, speed limits, truck features, long postcodes and other content as well as traffic data and forecasts never provide a perfectly accurate and complete picture of the actual circumstances, in particular because of the time delay between a change in the external environment and their inclusion in the PTV Cloud Service. Such gap between the actual circumstances and its rendering, and the resulting lack of quality, do not constitute a defect of the PTV Cloud Service.

- 2.4 Changes. PTV reserves the right, in its sole discretion, to make any changes to the Services and PTV Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of PTV's services to its Customers, (ii) the competitive strength of or market for PTV's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable laws.
- 2.5 Suspension or Termination of Services. PTV may, directly or indirectly, and by use of a PTV Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or PTV Materials, without incurring any resulting obligation or liability, if: (a) PTV receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires PTV to do so; or (b) PTV believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of PTV's specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 2.5 does not limit any of PTV's other rights or remedies, whether at law, in equity or under this Agreement.

3 Authorization and Customer Restrictions

3.1 Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, PTV hereby authorizes Customer to access and use the Services and such PTV Materials as PTV may supply or make available to Customer solely for the permitted use by and through Customer or Authorized Users in accordance with PTV's specifications, and the conditions and limitations set forth in this Agreement. This authorization is non-exclusive and non-transferable. Without limiting the generality of this Section 3.1, Customer warrants, represents and undertakes that it owns or has the right to use and offer the content stored on the PTV Systems and/or transmitted by Customer over the Customer Systems; and (ii) if Customer stores or processes content that is subject to regulation or legislation that limits the transfer of such data, Customer has all required consents and rights to transfer such data to PTV. PTV shall be entitled to statistically analyze any data entered by Customer into the PTV Cloud Services which is not considered personal data ("**Input Data**") in order to further improve the PTV Cloud Services. For this purpose, Customer grants to PTV and to any of PTV's affiliates a worldwide, royalty-free, perpetual, sublicensable and non-exclusive right to publish such Input Data within the context of the PTV Cloud Services, in particular for the purpose of: (i) storing any Input Data on a PTV server or any third party commissioned by PTV for the purpose of providing the PTV Cloud Services; (ii) making such Input Data available to other users with authorized access to that specific route via internet and/or an app; (iii) processing and duplicating the Input Data, provided that this is required for the operation of the PTV Cloud Services; and (iv) using such Input Data in anonymized form for the provision of any other PTV services and/or applications.

Customer warrants that it is entitled to grant PTV the aforementioned rights to the Input Data and has obtained all required consents from all other persons (including individuals where Customer is including personal information in the Input Data) and shall indemnify PTV against all claims related to the processing or use of the Input Data or any conflicting rights of third parties to the Input Data.

- a) PTV will notify Customer of any changes to the Terms in writing, by facsimile or email. If Customer does not object to such changes within six (6) weeks from the date of receipt of the aforesaid notice, such changes are deemed to have been consented to. In the event that Customer objects in writing within the six-week period, the contractual relationship shall be continued under the previously applicable terms and conditions. If Customer does object timely, PTV shall be entitled to terminate the contractual relationship with Customer as well as any individual Subscriptions by providing one (1) month's prior written notice to Customer.
- b) The PTV Cloud Services may only be used by merchants as defined under the Commercial Code. PTV reserves its right to request verification of Customer's status.

- c) Any use of the PTV Cloud Services requires a registered MyPTV ID according to the applicable terms for registration and use of a MyPTV ID. Customer shall keep its MyPTV ID registration data up to date at all times. Customer shall ensure that only Authorized Users shall be provided with access to the PTV Cloud Service. Customer shall undertake organizational and security measures to prevent any unauthorized access to the PTV Cloud Service.
- d) PTV Cloud Services include the Customer's right to use any third-party components and geodata for which the following third-party licenses as amended from time to time are applicable. Such third-party components, are set forth in detail:
 - [MyPTV Third Party Components](#)
 - PTV Transportation Licensing Terms for Geodata, are set forth in detail: [PTV Transportation Licensing Terms for Geodata](#); and
 - PTV Mobility Licensing Terms for Geodata, are set forth in detail: [PTV Traffic Licensing Terms for Geodata](#)
 - Customer's use of maps via the Open Street Map Project ("OSM"), the Open Database License applies, and is set forth in detail: [Open Data Commons](#).

3.2 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights of PTV or its licensors in or relating to, the Services, PTV Materials or third party materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, PTV Materials and any third party materials are and shall at all times remain with PTV and the respective rights holders in the third party materials.

- 3.3 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other person to, access or use the Services or PTV Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not:
- a) copy, modify or create derivative works or improvements of the Services or PTV Materials;
 - b) publish or transfer any Services or PTV Materials;
 - c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or PTV Materials, in whole or in part;
 - d) bypass or breach any security device or protection used by the Services or PTV Materials or access or use the Services or PTV Materials other than by an Authorized User through the use of his or her own then valid access credentials;
 - e) input, upload, transmit or otherwise provide to or through the Services or PTV Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code;

- f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, PTV Systems or PTV's provision of services to any third party, in whole or in part;
- g) remove, delete, alter or obscure any trademarks, documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or PTV Materials, including any copy thereof;
- h) access or use the Services or PTV Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party or that violates any applicable laws;
- i) access or use the Services or PTV Materials for purposes of competitive analysis of the Services or PTV Materials, the development, provision or use of a competing software service or product or any other purpose that is to PTV's detriment or commercial disadvantage; or
- j) otherwise access or use the Services or PTV Materials beyond the scope of the authorization granted under Section 3.1.
- k) Customer is only permitted to carry out load tests within the framework of a fully transaction-based tariff. Such load tests consume billing-relevant transactions, i.e. transactions which are to be paid for. For all other tariffs, load tests are excluded, e.g. tariffs based on users, assets or similar, even if the tariffs are partially transaction-based.

PTV Cloud Services are subject to certain technical limitations due to the way they are provided via the Internet, in particular when sending requests and retrieving data. Within the so-called "Fair Usage" policy, access to the PTV Cloud Services should be available for all Authorized Users to the same extent. Unfair use means that individual Authorized Users make excessive use of the PTV Cloud Services to the detriment of other Authorized Users. Authorized Users shall refrain from such unfair use. To ensure optimum performance for all Authorized Users and to stop unfair use, PTV is entitled to impose restrictive measures, e.g. by imposing limitations in the use of the PTV Cloud Service. PTV is entitled to block the Authorized Users temporarily or permanently if their unfair use seriously impairs the performance of the PTV Cloud Service.

- l) In connection with the use of the PTV Cloud Services, Customer shall comply with all principles and requirements of PTV's Code of Conduct as amended from time to time, and set forth in detail: [PTV Group Code of Conduct](#). In particular, Customer understands and acknowledges that the use of the PTV Cloud Services shall be subject to geographical restrictions resulting from applicable foreign laws and regulations, in particular those restrictions set forth under the following link: [Geographical Restrictions](#).

- m) Customer shall ensure that activated Authorized Users comply with all obligations in connection with the use of the PTV Cloud Service as if the Authorized Users themselves were bound by these Terms.

Customer Obligations

- 3.4 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with PTV's specifications all Customer Systems on or through which the Services are accessed or used.
- 3.5 Effect of Customer Failure or Delay. PTV is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").
- 3.6 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.3, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and PTV Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify PTV of any such actual or threatened activity.

4 Data Backup

The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. PTV HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

5 Security

PTV Systems and Security Obligations. PTV will employ security measures in accordance with PTV's information privacy and security policies, as amended from time to time.

- 5.1 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' access credentials; and (e) all access to and use of the Services and PTV Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.
- 5.2 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer data, including the uploading or other provision of Customer data for processing by the Services. PTV may process any registration data and all other Input Data transmitted by Customer to PTV in the course of the operation of the PTV Cloud Services. Details of data processing are described in the data protection statement as amended from time to time, available at [Data Privacy Statement PTV AG](#), product-specific at https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Legal_documents_platform/data-privacy/data-privacy-statement-cloud-services.pdf, TOMS at [Data Protection: General technical and organizational measures](#). If Customer is processing any personal data while using the PTV Cloud Services, Customer shall solely be responsible for ensuring that each affected individual concerned has expressly agreed to his/her data being processed, or that applicable laws permit such processing. Customer shall always remain the sole party responsible for such personal data. Customer shall hold PTV harmless and shall indemnify PTV from all third-party claims and shall also indemnify and compensate PTV for any damages caused to PTV arising out of any violation of data protection laws. The Parties shall enter into an agreement on order data processing in accordance with the applicable template, available at [Data Processing Contract PTV Cloud Services](#).

6 Fees, Payment Terms

6.1 Fees. For a Subscription, Customer shall pay PTV the applicable fees as agreed upon by the parties herein. Customer understands and acknowledges that any fees paid by Customer shall be non-refundable. The Customer shall bear all costs and fees generated by activated ID owners as Users of the Customer's product instances. Activated ID owners shall act in compliance with the instructions given by and in representation of the Customer.

6.2 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on PTV's income.

If Customer is required by law to deduct or withhold taxes from any amount payable, the amount payable shall increase to the extent necessary for PTV to receive, after making all required deductions and withholdings, a payment equal to the amount which PTV would have received without such deductions or withholdings. PTV will support Customer in order to achieve any withholding tax reduction under an applicable double taxation agreement.

6.3 Payment. Usage fees for Subscriptions and subsequent Subscription extension periods must be paid in advance. Unless otherwise agreed, usage fees shall become due monthly on the first day of the respective Subscription Term for the current Subscription Term. Additional consumption-based fees are charged on a product-specific basis in accordance with the respective applicable conditions and shall become due after the respective Subscription Term. In the event of a Subscription extension, PTV may invoice consumption-based fees together with the usage fees for the respective current Subscription Term. PTV reserves the right to invoice usage fees for Subscriptions for periods of up to three (3) months collectively. Customer shall make all payments hereunder in US dollars to the address or account as PTV may specify in writing from time to time.

- 6.4 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:
- a) PTV may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable laws;
 - b) Customer shall reimburse PTV for all costs incurred by PTV in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and
 - c) if such failure continues for fourteen (14) days following written notice thereof, PTV may suspend performance of the Services until all past due amounts have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.
- 6.5 No Deductions or Setoffs. All amounts payable to PTV under this Agreement shall be paid by Customer to PTV in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason.
- 6.6 Payment methods. Available payment methods are identified in the respective order process. PTV reserves the right to adjust available payment methods at any time. All credit card payments are subject to validation and approval by the card issuer.
- 6.7 Pricing policy. PTV shall be entitled to change the prices within the scope of its general pricing policy by means of a declaration in text form with effect from the next possible date of termination or expiry, subject to a notice period of three (3) months. Price adjustments shall not apply to periods for which Customer has already made payments. The contract shall be deemed to have been amended accordingly.

7 Term and Termination

- 7.1 Subscription Term. Unless otherwise agreed, a Subscription comes into force upon acceptance of an order and shall remain in force for a period of one (1) month ("**Subscription Term**"). It is then extended for the duration of the respectively agreed Subscription Term, unless it is terminated with a notice period of five (5) days to the end of the Subscription Term. If the Subscription Term agreed with the Customer is of at least one (1) year, the notice period is thirty (30) days.
- 7.2 Upgrades. For upgrades (i.e. paid extensions of the scope of services, e.g. increase in volume or number of users, longer Subscription Term), the Subscription Term shall start anew from the date of the upgrade. The previous Subscription is charged pro rata temporis until the start of the extended Subscription Term.

- 7.3 Downgrades. Downgrades (i.e. reduction of the scope of services, e.g. reducing the volume, number of users or the Subscription Term) only take effect after the end of the current Subscription Term, i.e. the downgrade applies for the first time from the start of the extended Subscription Term.
- 7.4 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:
- a) PTV may terminate this Agreement, effective on written notice to Customer, if Customer (i) fails to pay any amount when due hereunder, and such failure continues more than twenty-one (21) days after PTV's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.3 (Use Limitations and Restrictions).
 - b) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and
 - c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 7.5 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:
- a) all rights, licenses, consents and authorizations granted by Customer to PTV hereunder will immediately terminate;
 - b) Customer shall immediately cease all use of any Services or PTV Materials;
 - c) PTV may disable all Customer and Authorized User access to the Cloud Services and PTV Materials;
 - d) if PTV terminates this Agreement pursuant to Section 7.4 a or Section 7.4 b., all fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such fees, together with all previously-accrued but not yet paid fees on receipt of PTV's invoice therefore.

- 7.6 Trial Period/Termination. If available for the particular PTV Cloud Service, Customer may use a PTV Cloud Service free of charge and exclusively for testing and evaluation purposes (“**Trial Period**”). Customer’s business and/ or internal operational use shall be expressly excluded. PTV may, at its own discretion, terminate the Trial Period for the specific PTV Cloud Service at any time, without notice and for whatever reason. Customer may terminate the Trial Period at any time by deleting its PTV Account if no paid Subscriptions are in effect at such time. During the Trial Period, PTV may, at any time, at its own discretion restrict, revoke or terminate Customer’s use of any PTV Cloud Service. PTV reserves its right to implement further restrictions with regards to number, scope, content and duration. PTV does not provide any warranty with regards to the functional characteristics and availability of the PTV Cloud Service during the Trial Period. Furthermore, PTV does not provide any product support for PTV Cloud Services during the Trial Period.
- 7.7 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 3.3, Section 6, Section 7, Section 8.3, Section 9, Section 10, Section 11 and Section 15.**

8 Representations and Warranties

- 8.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement.
- 8.2 Exclusions. PTV shall not be liable for: (i) the contents of any information and/or communications transmitted via the PTV Systems and/or Services or for any information or content on the internet; (ii) the contents of any information and communication, in whatever form, transmitted by Customer over the Customer Systems; (iii) the accuracy or quality of information obtained through the PTV Materials and/or Services; (iv) damage to or loss of any of Customer’s data (bases) or loss of technology, except when such damage or loss is the direct result of gross negligence or wilful misconduct on the part of PTV; (v) damage to or loss or destruction of the PTV Systems, except when such damage or loss is the direct result of any gross negligence or willful misconduct on the part of PTV; (vi) damage that is the direct or indirect result of the actions of Customer contrary to its obligations under the Agreement; (vii) damage that is the direct or indirect result of an inaccuracy, deletion, alteration, or modification of the information provided by or on behalf of Customer; (viii) damage that is the direct or indirect result of the Customer Systems and/or API being (temporarily) offline or otherwise unavailable; (ix) damage that is the direct or indirect result of the Customer’s use of the Customer Systems or the API; (x) damage that is the direct or indirect result of a Denial-of-Service (DoS) attack, or other attack that

results in a peak in data traffic, or any damage resulting from successful or unsuccessful hack attempts, regardless whether protected by an SSL certificate or (hardware) firewall provided by or through PTV; (xi) damage in case PTV has not been notified of such damage in writing within eight (8) days after Customer has knowledge, or should reasonably have known of it; or (xii) any damage in case and insofar as such damage is covered by any insurance effected by or for the benefit of Customer.

- 8.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8.1, ALL SERVICES AND PTV MATERIALS ARE PROVIDED "AS IS" AND PTV HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PTV SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PTV MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PTV MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

9 Indemnification

- 9.1 PTV Indemnification. PTV shall indemnify, defend and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors and permitted assigns (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by such Customer Indemnitee arising out of or relating to any claim, suit, action or proceeding (each, an "**Action**") by a third party (other than an affiliate of a Customer Indemnitee) alleging/to the extent that such Losses arise from any allegation in such Action that Customer's or an Authorized User's use of the Services (excluding Customer data and third party materials) in compliance with this Agreement infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- a) access to or use of the Services or PTV Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in writing by PTV;
- b) modification of the Services or PTV Materials other than: (i) by or on behalf of PTV; or (ii) with PTV's written approval in accordance with PTV's written specifications;
- c) act, omission or other matter described in Sections 9.2 (a) – (d), whether or not the same results in any Action against or Losses by any PTV Indemnitee.

9.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless PTV and its subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a “**PTV Indemnitee**”) from and against any and all Losses incurred by such PTV Indemnitee in connection with any Action by a third party (other than an affiliate of a PTV Indemnitee) that such Losses arise out of or relate to any:

- a) obtain the right for Customer to continue to use the Services and PTV Materials materially as contemplated by this Agreement; or
- b) modify or replace the Services and PTV Materials, in whole or in part, to seek to make the Services and PTV Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and PTV Materials, as applicable, under this Agreement.

THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PTV'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PTV MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

10 Limitations of Liability

10.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL PTV OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED

OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- 10.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF PTV AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FEES AND CHARGES PAYABLE TO PTV FOR SERVICES AND GIVING RISE TO LOSS OR DAMAGE. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11 Precedence and Priority

Any statement in connection with a Subscription, whether written or verbal, made outside the ordering process on MyPTV is non-binding and subject to change.

12 Audit

PTV shall be entitled to have Customer's conformity of the actual use of the PTV Cloud Services delivered examined. The examination may only be carried out by an expert who is also bound to confidentiality vis-à-vis Customer, who is not bound by Customer's instructions and who may only disclose information to PTV if and to the extent that a licensing breach is detected and that such information is necessary for the enforcement of such licensing breach. In particular, the expert shall not be entitled to disclose any information at all if the licensing breach has been admitted and corresponding claims for damages have been satisfied. Customer must be given at least two (2) weeks' notice of any such examination in text form.

13 Force Majeure

The Subscription Term shall be extended by any period in which PTV is prevented, without itself being responsible, from providing the PTV Cloud Service particularly, but not limited to, through labor disputes, 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 Force Majeure Event. If a Force Majeure Event lasts for more than three (3) months, each Party shall have the right to terminate the Subscription.

14 Transfer/Assignment

This Agreement may not be transferred or assigned by Customer to any other entity without the prior written consent of PTV, which shall not be unreasonably withheld or delayed, unless a proposed assignment by Customer is further to Customer's merger with or sale of all or substantially all of its assets to another entity that is not a direct competitor of PTV. In the event of a transfer or assignment of this Agreement as expressly permitted hereunder, the transferring or assigning party shall provide the other party with notice of such permissible transfer as soon as practicable.

15 Governing Law

The provisions and terms of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to any choice of law or conflict of law principles of this state or any other jurisdiction.

16 Counterparts

This Agreement and any amendments, waivers, consents or supplements hereto are authenticated or executed through electronic means or by the acceptance of these Terms on MyPTV.