

Terms of Use for PTV Cloud Services (US version)

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Short title	Terms of Use PTV Cloud Services US
Version of contract template:	2.0.0 dated 2022-08-30

1 General Provisions

- 1.1 These terms of use for cloud services ("**Terms of Use**") apply to PTV Cloud Services and are made by and between PTV America, Inc., 1530 Wilson Boulevard, Suite 710, Arlington, VA 22209 ("**PTV**") and such entity ("**Customer**") that received and/or uses PTV Cloud Services and/or data provided by PTV and that entered into an agreement on the delivery and use of such PTV Cloud Services with PTV or an affiliate, reseller or other contractual partner (each a "**Third-Party Distributor**") of PTV. These Terms of Use are expressly incorporated into and are made part of the contract between PTV and Customer.
- 1.2 PTV will notify the Customer of any changes to the Terms of Use in writing, by facsimile or email. If the 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 of any amendment to these Terms of Service, 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 in writing within the six-week period, the contractual relationship shall be continued under the previously applicable terms and conditions. If the Customer does object timely, PTV shall be entitled to terminate the contractual relationship existing with the Customer by providing one (1) month's prior written notice to the Customer. If the Customer has acquired access to the PTV Cloud Service from a Third-Party Distributor, the Third-Party Distributor is obliged to inform the Customer about the changes to these Terms of Use.
- 1.3 Not all contractual documents can be provided in the respective national languages. The Customer agrees to contractual documents in English language.
- 1.4 All third-party providers and suppliers of PTV that are involved in the provision of services are included in the protection provided by this contract as third-party beneficiaries. The Customer or partner of PTV shall indemnify these third-party providers and suppliers against claims by third parties resulting from a breach by Customer of this contract, in particular these Terms of Service.

2 Definitions

- 2.1 "**Customer**" is a company who wishes to purchase or has purchased access to the PTV Cloud Service and uses it for its own business purposes. The Customer is an end user.
- 2.2 "**PTV Data**" means any data or digital content made available by PTV to the Customer. PTV Data may include geographical data, traffic data, point-of-interest and geodata.
- 2.3 "**PTV Cloud Service(s)**" means cloud-based software and PTV Data provided by PTV to the Customer via the Internet in a public cloud, usually by means of an API.

- 2.4 “**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/framework-agreement/annex-3-service-description/>.
- 2.5 “**Subscription**” means the valid and current subscription for the time-limited use of a PTV Cloud Service.
- 2.6 “**Third-Party Licenses**” means the licenses included in the PTV Cloud Service, which PTV has legally acquired from third parties and which include specific terms and conditions to PTV and to the Customer, as set forth in these Terms of Use, and which may be amended by the third parties from time to time, and any such amendments thus becoming part of these Terms of Use.
- 2.7 “**Authorized Users**” are individuals who use the PTV Cloud Service in their position as employee or representative of the Customer.

3 Object of the Agreement

- 3.1 PTV operates the PTV Cloud Service as defined under Section 2 and makes it available to the Customer via the Internet, usually by means of an API. Access to the PTV Cloud Service is provided by PTV through a browser and/or various cloud interfaces or protocols defined by PTV.
- 3.2 These Terms of Use define the terms and conditions under which the Customer can access and use the PTV Cloud Service.
- 3.3 The use of the PTV Cloud Service is only permitted for Customers as defined under Section 2. PTV reserves the right to verify the status of the Customer and to request adequate evidence of said status.

4 Registration and Activation

- 4.1 Use of the PTV Cloud Service requires preliminary registration by the Customer on a website designated by PTV. In the course of registration, the Customer opens a PTV account with username and password.
- 4.2 The registration data that PTV requests at the point of registration must be entered correctly and in full. The Customer must treat the password as confidential and protect it against unauthorized access. The password may only be disclosed to those Users who are entitled to use the PTV Cloud Service as part of their assigned tasks.
- 4.3 The Customer is obliged to keep the registration data up to date.

- 4.4 The Customer agrees that it will ensure that only authorized Users shall be provided with access to the PTV Cloud Service. The Customer shall take the necessary organizational and security measures to prevent access to the PTV Cloud Service by unauthorized Users and will be responsible for any access by unauthorized Users.
- 4.5 If PTV has reasonable grounds to believe that an unauthorized User or a third party makes use of the access to or of the PTV Cloud Service, PTV shall be entitled to block the Customer's access to the PTV Cloud Service until access by the unauthorized User or third party is prevented.
- 4.6 PTV reserves the right to restrict the Customer's access to certain areas of the PTV account or to delete the PTV account if there is reason to assume that the Customer has violated the Terms of Use.

5 Services provided by PTV, Rights to Software and Data

- 5.1 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. If PTV Cloud Services are discontinued, PTV is entitled to terminate the contract with a notice period of one (1) month to the end of the month. Third-Party Distributors shall ensure by means of appropriate contractual arrangements that the aforementioned right to make amendments also applies in relation to the Customers.
- 5.2 All components of the PTV Cloud Service, including the software and the PTV Data, are protected by copyright. All rights to the software and PTV Data are held solely by PTV and its suppliers. Except as expressly stated herein, these Terms of Use do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the PTV Cloud Service or the Service Description. Use of the software and PTV Data for a purpose other than for the intended use of the PTV Cloud Service, in particular the attempted editing, transfer, resale or export of PTV Data, are not permitted. Copyright notices and trademarks may not be edited or removed.
- 5.3 PTV hereby grants the Customer a non-exclusive, time-limited, non-transferable, revocable, non-sublicensable right to use the PTV Cloud Service during the contract term solely for the Customer's internal business operations as an end user.
- 5.4 The Customer shall comply with all applicable conditions, pertaining in particular to the contractually agreed use cases, the number of transactions and volumes, the number of Authorized Users, accesses or assets and territorial restrictions.

- 5.5 The Customer shall comply with the technical requirements and other technical specifications as set out in the Service Description for PTV Cloud Services.
- 5.6 The PTV Cloud Service shall be provided to the Customer in its respective standard version without any adaptation or service being necessary or owed.

6 Third-Party Licenses

- 6.1 The PTV Cloud Service includes the use of third-party components and geodata for which the following Third-Party Licenses as amended from time to time are applicable:
- 6.1.1 Third-party components
- ▶ **Logistics**, available at <https://www.ptvgroup.com/en/terms-privacy/framework-agreement/third-party-licences/>;
 - and
 - ▶ **Mobility**, available at <https://www.ptvgroup.com/index.php?id=1264&L=0>.
- 6.1.2 Geodata
- ▶ **PTV Logistics Licensing Terms for Geodata**, available at https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Framewor k-Agreement/Third_Party_Data/PTV_Logistics_Licensing_Terms_Geodata_en.pdf;
 - and
 - ▶ **PTV Mobility Licensing Terms for Geodata**, available at https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Framewor k-Agreement/Third_Party_Data/PTV_Traffic_Licensing_Terms_Geodata_en.pdf.
 - ▶ When using maps from the Open Street Map Project (“OSM”), the Open Database License applies, available at <https://opendatacommons.org/licenses/odbl/1.0/>.
- 6.2 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.

7 Customer's Obligations

- 7.1 The Customer shall use the PTV Cloud Services in accordance with the product specific Service Description and the SLA applicable to paid PTV Cloud Services. The Customer shall bear the sole responsibility and liability that its solution is functional for the use case, especially with regard to the integration of the PTV Cloud Service into its own software or services or the upload/editing of own data. PTV does not warrant the successful functional integration of the PTV Cloud Service into the Customer's solution and functionality of the Customer's solution.
- 7.2 The 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 test are excluded, e.g. tariffs based on Users, assets or similar, even of the tariffs are partially transaction-based.
- 7.3 The Customer may only use the PTV Cloud Service in compliance with the Terms of Use and the statutory provisions. In particular, the Customer shall not use the PTV Cloud Services in connection with or for activities that are improper, unethical, infringing the personal rights of third parties or otherwise inappropriate.
- 7.4 The Customer may not use any software or other technical devices that alter, expand or jeopardize the functioning of the PTV Cloud Service.
- 7.5 Except as may be allowed by any applicable law, the Customer shall not
- ▶ attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, translate, transmit, or distribute all or any portion of the PTV Cloud Service in any form or media or by any means; or
 - ▶ attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the PTV Cloud Service; or
 - ▶ license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the PTV Cloud Service available to any third party other than to the Users.
- 7.6 In the performance of its obligations under these Terms of Service, the Customer undertakes to comply with all principles and requirements of PTV's Code of Conduct as amended from time to time, available at https://www.ptvgroup.com/fileadmin/user_upload/Footer/Terms_Privacy/Code_of_conduct_EN.pdf.

- 7.7 PTV Cloud Services are subject to certain technical limitations due to the way they are provided via the Internet, especially when posting requests and retrieving data. Within the framework of fair usage, access to the PTV Cloud Services should be available for all Users to the same extent. Unfair use means that individual Users make excessive use of the PTV Cloud Services to the detriment of other Users. The User shall refrain from such unfair use. In order to ensure optimal performance for all Users and to prevent unfair use, PTV is entitled to take restrictive measures, e.g., by limiting the use of the PTV Cloud Service. PTV is entitled temporarily or permanently to block the PTV Cloud Service from the Authorized User if their unfair use seriously impairs the performance of the PTV Cloud Service.

8 Rights to Input and Upload Data

- 8.1 PTV is entitled to statistically analyze the data entered by the Customer into the PTV Cloud Service which is not personal data (“**Input Data**”) in order to further improve the PTV Cloud Services.
Transport models are not Input Data.
- 8.2 For this purpose, the Customer grants to PTV a worldwide, royalty-free, perpetual, sublicensable and non-exclusive right to publish such Input Data within the context of the PTV Cloud Service, in particular to:
- a) store this Input Data on a PTV server or with a third party commissioned by PTV for the purpose of providing the PTV Cloud Service;
 - b) make the Input Data available to other users with authorized access to that specific route via internet and/or an app;
 - c) process and duplicate the Input Data, provided that this is required for the operation of the PTV Cloud Service;
 - d) use this Input Data in anonymized form for the provision of other services and applications.
- 8.3 The Customer warrants that it is entitled to grant PTV the aforementioned rights to the Input Data and shall indemnify PTV against all conflicting rights of third parties to the Input Data.
- 8.4 For selected PTV Cloud Services, the Customer can actively upload data bases, in particular transport models, to the PTV Cloud Service (“**Upload Data**”). The Customer shall ensure that it is authorized to use the Upload Data, i.e., the way in which the Customer uses the Upload Data including data input by the Customer or third parties. The Customer represents and warrants that it has obtained all authorizations and consents with regard to the Upload Data and shall indemnify PTV against all conflicting rights of third parties in connection with the Upload Data.

9 Limitations on Rights of Customer for Defects

- 9.1 If the PTV Cloud Service has a defect or deviates functionally from the Service Description, the Customer shall immediately inform PTV with an exact description of the problem in text form, including all information useful for resolving the error, in accordance with the process related to the PTV Cloud Service availability described in the Service Level Agreement for PTV Cloud Services. PTV will rectify correctly reported defects within a reasonable time period. If attempts to rectify the defects fail and this represents good cause for the Customer, the Customer is entitled to terminate the Subscription without adhering to a notice period. The Customer is not entitled to reduce the service fee because of defects. The right of the Customer to a partial or total refund of the fee on the principles of unjust enrichment in case of defects, is not affected by this.
- 9.2 The 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.
- 9.3 If an alleged defect does not qualify for remediation by PTV (“**Apparent Defect**”), the Customer may be charged with the services rendered by PTV for verification and rectification of defects at PTV’s corresponding remuneration rates and expenses incurred, unless the Customer could not have recognized the Apparent Defect even if it had exercised due care.

10 Indemnification for Infringement Claims

- 10.1 Indemnification of Intellectual Property Infringement Claims. In the event of any actual or threatened claims by a third party that the PTV Cloud Service infringes upon any intellectual property of such third party, PTV will indemnify the Customer with respect to such claims. The Customer shall immediately notify PTV of any such claim. The foregoing indemnity shall be ineffective if any of the PTV Cloud Service has been modified, altered, or otherwise changed by the Customer (or on behalf of the Customer by any person other than PTV) other than as permitted by these Terms of Use. PTV will have no liability or obligation under this Section 10 if any claim of infringement is based upon: (i) the combination, operation, or use of the PTV Cloud Service with any component other than PTV products or services, if such claim would have been avoided but for such combination, operation, or use; and/or, (ii) any derivative of any PTV intellectual property created by any person other than PTV. PTV shall have sole control over the selection of counsel and the defense and settlement of any legal

proceeding or other claim and the Customer shall provide PTV with all reasonable assistance in the defense of the same.

- 10.2 **Remedy.** In the event of a third party claim that the PTV Cloud Service infringes the intellectual property rights of a third party, PTV shall have the right, as the Customer's sole and exclusive remedy against PTV, at PTV's sole election, to: (i) modify the allegedly infringing PTV Cloud Service to be non-infringing, provided that such modification does not adversely impact the functionality of the PTV Cloud Service in any material respect; (ii) obtain a license or other rights to enable the Customer to continue to use the applicable PTV Cloud Service as contemplated in the contract, or (iii) to terminate the contract and return to the Customer any unearned fees paid by the Customer to PTV.

11 Limitation of Liability regarding Amount

NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, AND TO THE FULLEST EXTENT ALLOWED BY LAW, PTV'S AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR CLAIMS RELATING TO THIS CONTRACT, WHETHER FOR BREACH, NEGLIGENCE, INFRINGEMENT, IN TORT OR OTHERWISE, WILL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNTS PAID BY CUSTOMER TO PTV UNDER THE CONTRACT FOR THE PARTICULAR PRODUCTS THAT CAUSED THE LIABILITY, UP TO A MAXIMUM OF SIX (6) MONTHS' FEES PAID BY CUSTOMER TO PTV. PTV WILL HAVE NO OTHER LIABILITY TO CUSTOMER.

12 Limitation of Liability regarding Types of Damages

IN NO EVENT WILL PTV BE LIABLE TO CUSTOMER OR ANY THIRD PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS OR USE INCURRED BY CUSTOMER OR ANY THIRD PARTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13 Transfer and Assignment, Subcontractors, Set-off

- 13.1 The Customer may not assign these Terms of Use or delegate any responsibility under these Terms of Use without the written consent of PTV. PTV may transfer the contractual relationship existing with the Customer to a third party, unless the change of the contractual partner adversely affects justified interests of the Customer.
- 13.2 PTV reserves the right to involve subcontractors for the provision of the services.

- 13.3 The Customer shall not be entitled to exercise a right of set-off or retention with respect to its payment obligations pursuant to these Terms of Use, except for claims which have not been contested by PTV or which have been assessed by a final and binding decision of a court or arbitrator.

14 Data Security and Data Protection

- 14.1 PTV shall process the registration data and all other data that the Customer transmits to PTV in the course of the initialization and operation of the PTV Cloud Service. Further processing of personal data (e.g., for the transmission of information through PTV products and services) shall be carried out only if the Customer has agreed to such processing. Details of data processing are described in the Data Privacy Statement as amended from time to time, available at https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Legal_documents_platform/data-privacy/PTV_Data_Privacy_Statement_US.pdf, product-specific available at <https://www.ptvgroup.com/en/terms-privacy/framework-agreement/annex-6-data-privacy/data-privacy-statement/>, TOMS at https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Framework-Agreement/Annex6-Data_Privacy/Annex_6_3_General_Technical_and_Organisational_Measures/GDPR_TOMs_en.pdf.
- 14.2 If the Customer processes personal data while using the PTV Cloud Service, the Customer alone shall be responsible for ensuring that each individual person concerned has agreed to his/her data being processed, or that there is statutory authorization to this effect. The Customer shall always remain the sole party responsible for such personal data. The Customer shall exempt PTV from all claims of the person concerned and shall compensate PTV for any damage caused to PTV arising out of a violation of data protection laws, unless the Customer can prove that it is not responsible for this violation.
- 14.3 The Parties shall enter into an agreement on order data processing according to Art. 28 GDPR in accordance with the respectively applicable template, available at https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Framework-Agreement/Annex6-Data_Privacy/Annex_6_2_Contract_Regarding_Data_Processing/20220223_DataProcessingAgreementPTV_V.1.0.1.pdf.

15 Relationship, Entire Contract

- 15.1 These Terms of Use will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the Parties, and the Parties will at all times be and remain independent contractors. The relationship between the Parties established by the contract will be solely that of vendor and vendee and all rights and powers not expressly granted to the Customer are expressly reserved to PTV. The Customer will have no right, power or authority to bind PTV to the fulfillment of any condition not herein contained, or to any contract or obligation, expressed or implied.
- 15.2 The entire agreement between PTV and the Customer covering the use of the PTV Cloud Service is set forth in these Terms of Use and the contract and any amendment or modification to the contract must be in writing and be executed by duly authorized representatives in the same manner as the contract.
- 15.3 The provisions of the contract are severable, and if any one or more such provisions are determined to be illegal or otherwise unenforceable, in whole or in part, under the laws of any jurisdiction, the remaining provisions or portions of the contract will, nevertheless, be binding on and enforceable by and between the parties hereto. Any waiver, modification or amendment of any provision of the contract will be effective only if in writing and signed by the authorized representatives of both Parties.

16 Final Provisions

- 16.1 PTV shall be entitled to have the Customer's conformity of the actual use of the PTV Cloud Service examined. The examination may only be carried out by an individual who is also bound to confidentiality vis-à-vis the Customer. PTV will use commercially reasonable efforts to provide the Customer with at least two (2) week's written notice of any such examination.
- 16.2 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.

- 16.3 The Parties are aware that PTV Cloud Services may be subject to export and import restrictions. In particular, obtaining an approval may be required, or the use of the PTV Cloud Service 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 Subscription is subject to national and international regulations of export and import law or other statutory provisions.
- 16.4 In particular, the Customer acknowledges that the use of the PTV Cloud Services may be subject to geographical restrictions resulting from applicable foreign laws and regulations, in particular those restrictions set forth under the following link: https://www.ptvgroup.com/fileadmin/user_upload/Legal_Documents/Framework-Agreement/Geographical_Restrictions/Geographical_Restrictions_EN.pdf.
- 16.5 Should individual provisions of these Terms of Use be invalid, this shall not affect the validity of the remaining provisions. The Parties will endeavor to find a provision in place of the invalid provision which is legally and economically most appropriate to the objective of the contract.
- 16.6 These Terms of Use will be governed by the laws of the State of Delaware, U.S.A., 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 Customer, or between Customer and its customers. 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.