

Software Maintenance Agreement

Terms and Conditions

This Agreement is made between PTV America, Portland, Oregon (“Contractor”) and Lake County, Illinois (“County”) for the maintenance and improvement of the Lake County Cars Software Application and related documentation comprised of the following:

1. FEE

The annual maintenance fee for Lake County Cars Software Application is \$5,000.

2. COVERAGE

This Agreement covers all ongoing support which include, but are not limited to, phone conversation, site visits (when possible), and periodic updates to the software, with accompanying updates to the user manual, and version upgrades, with accompanying updates to the user manual.

During the term of this Agreement, the Contractor will correct or replace software and/or provide services necessary to remedy any programming error that is attributed to the Contractor and which significantly affects use of this software. Such corrections, replacement or services will be promptly accomplished after the County has identified and notified the Contractor of such error. Support for corrections, replacement or services identified by the County is limited to forty (40) hours of total programming time during the term of this agreement. If additional time is required it will be billed at a rate of \$150 per hour based on a mutually agreed statement of work between County and Contractor. No work will proceed by Contractor in excess of 40 hours without written notice to proceed from the County.

The County shall inform the Contractor in writing of any modifications made by the County to the software. The Contractor shall not be responsible for maintaining County-modified portions of the software.

Corrections for difficulties or defects traceable to County errors or system changes will be billed at the Contractor’s standard rates.

One copy of any corrections, alterations or updates to, or new versions or upgrades of, the software that the Contractor may develop during the Agreement period shall be delivered with documentation to the County.

Any changes, additions, and enhancements in the form of new or partial software or documentation as may be provided under this Agreement, shall remain the proprietary property of the Contractor. The software programs specified above will include, under its proprietary restrictions, any such additional programming and documentation provided under this Agreement.

Contractor agrees to provide unlimited telephone and email support services to the County during Contractor's normal business hours. These services include answering questions, providing technical guidance with regard to the Programs, receiving trouble reports, troubleshooting system problems and other investigative services relative to the Programs.

3. TRAVEL EXPENSE

If the services performed in accordance with this Agreement require travel to the County's location, the County agrees to pay Contractor's associated travel and per diem expenses. Contractor agrees to obtain the County's prior approval before making any trips to the County's location.

4. THIRD PARTY SOFTWARE MAINTENANCE

Charges for Third Party Software Systems Maintenance which are approved in writing by the County shall be billed by Contractor as incurred and shall be paid by the County within thirty (30) days of the invoice date.

5. TERMS

This Agreement includes automatic renewal on an annual basis with annual fees. Services under this Agreement shall commence on August 1, 2012.

6. TERMINATION

In the event of termination of the Software License Agreement, through default by the County, the Contractor's obligations under this Software Maintenance Agreement shall immediately end. The Contractor may terminate this Agreement in the event of default by the County. Default by the County includes County's failure to pay the annual maintenance within 30 days notice that the same is thirty days or more delinquent. The County has the right to continue to use the application software if the County terminates the Software Agreement.

This Agreement shall continue in effect until terminated by Contractor or the County in the manner specified herein.

- a. Either the County or Contractor may terminate this Agreement only by giving written notice to the other that this Agreement will terminate on the next succeeding anniversary date. Such notice shall be given on or before the anniversary date.
- b. In the event of termination of this Agreement, Contractor will provide County with any enhancements to the Programs which are released within the ninety (90) day period before the effective date of termination, and Contractor will complete corrective services which have not been completed on the effective date of termination and the County shall pay for such corrective services in the same manner as if termination of this Agreement had not occurred.

7. LIMITATION OF WARRANTY

Contractor warrants that it will maintain the software so that it will be free from defects in workmanship and materials and shall conform to the performance capabilities, specifications, functions and other descriptions and standards applicable thereto as set forth in the License Agreement and so that the software will operate in conformity with all improvements, additions, or modifications of the software installed at the County's site. The services will be performed in a timely and professional manner by qualified maintenance technicians familiar with the software and its operation, and the services shall conform to the standards generally observed in the industry for similar services.

The performance of the services by the Contractor will not in any way constitute infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information or nondisclosure rights of any third party.

Services provided by the Contractor will be in compliance with all applicable laws, rules and regulations.

In no event will the Contractor be liable for the County's lost profits, lost savings or other consequential damages, even if Licensor has been advised of the possibility of such damages. However, the provisions of this section shall not apply to the Contractor's obligation to indemnify the County.

8. ENHANCEMENT LICENSE AND CONDITIONS

County's license to use enhancements provided by Contractor under this Agreement, Contractor's right, title and interest in and to all enhancements, whether provided by Contractor, the County, the County's employees, or any third party, and County's duty to safeguard enhancements shall be controlled by all and each of the terms and conditions set forth in the applicable Software License Agreement made and executed by Contractor and the County and in effect on the date of execution of this Agreement, which terms and conditions are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

9. GENERAL CONDITIONS

- a) This Agreement is binding when accepted by the Contractor and the County, indicated by the authorized signatures below.
- b) The heading of any paragraph contained in this Agreement is for convenience only and shall not be deemed a part of this Agreement nor a representation as to the contents thereof.
- c) This Agreement may not be modified or changed orally, but only by a writing signed by both parties.
- d) Charges specified herein do not include taxes.
- e) Contractor shall not be liable for failure or delay in providing any enhancement or service specified herein due to fire, riot, war, labor disputes, acts of God, or causes or conditions beyond its reasonable control. In no event is Contractor liable for any consequential damages.

f) This Agreement will be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, Contractor's and the County's authorized representatives execute this Agreement as follows:

Contractor

County

Lake County
18 N County St
Waukegan IL 60085-4350

By _____

By _____

Name Printed _____

Name Printed _____

Title _____

Title _____

Date _____

Date _____

