

Master SaaS Agreement

This Master SaaS Agreement (“Agreement”) governs Client’s use of all the products listed in an Order Form and is effective as of the date listed in the first Order Form (“Effective Date”).

1. DEFINITIONS.

In addition to any other terms set forth in this Agreement, the following terms shall have the following meanings:

- 1.1 “Acceptable Use Policy” means PowerPlan’s acceptable use policy in effect at the time the SaaS is provided and currently posted at <https://info.powerplan.com/AUP>.
- 1.2 “Additional Term” means the term for which the SaaS automatically renews upon conclusion of the Initial Term and successively thereafter. This shall be successive one-year terms unless the parties agree to a longer period in a new Order Form.
- 1.3 “Adoption Services Policy” means PowerPlan’s adoption services policy in effect at the time such adoption services are provided and currently posted at <https://info.powerplan.com/AdoptionServicesPolicy>.
- 1.4 “Affiliate” means those entities that are controlled by, controlling, or under common control with Client. “Control” as used in this definition means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.
- 1.5 “API” means PowerPlan’s application programming interfaces, as well as other PowerPlan code made available through the Software that allow other software products to communicate with or call on the Software or Platform provided under this Agreement. APIs include callable interfaces, tables, files, and database management system entry points such as tables, views, and stored procedures.
- 1.6 “API TOU” means PowerPlan’s API terms of use in effect at the time the SaaS is provided and currently posted at <https://powerplan.com/legal/api-terms-of-use>.
- 1.7 “Application Database” means the tables, designs, layouts, relationships, data formats, data architecture, data model, data schema, and data structure created and used by PowerPlan in connection with the Software, or being emitted to or from the APIs, and any scripts used to load or extract data to or from the Software.
- 1.8 “Authorized User” means a named individual authorized by Client to use the Software, who has been supplied with user credentials for the Software by Client or by PowerPlan at Client’s request (thus, counting against the maximum number of named users allotted in an applicable Order Form).
- 1.9 “Authorized Vendor” means any third party who is not an employee of Client or its Affiliates that is engaged by Client for services and needs access to the Software, Documentation, or APIs. No entity or person that is engaged in the business of developing and marketing products that are, or are intended to be, substitutable for PowerPlan’s products may be an Authorized Vendor.
- 1.10 “Client” means the entity identified on the Order Form.
- 1.11 “Client Data” means the information provided by Client or its Personnel in support or furtherance of performance of Maintenance Services or Support Services. Client Data does not include Hosted Data.
- 1.12 “Code of Conduct” means PowerPlan’s business code of ethics and standards of conduct in effect at the time the SaaS is provided and currently posted at <https://www.ropertech.com/code-of-ethics/>.
- 1.13 “Confidential Information” means any information that is of value to its owner or is required to be kept confidential by contract or otherwise. Confidential Information includes, but is not limited to, the following: trade secrets, proprietary information, technical processes and formulas, Software, Source Code, the user interface of the Software, the features and functions of the Software, Application Database, Documentation, benchmark and performance test results, product designs, any sales, cost, and other unpublished financial information, product and business plans, projections and marketing data, Client Data, and Hosted Data. Confidential Information does not include information: (a) generally known to the public through no act or omission of recipient; (b) independently developed by the recipient without use of or reference to the discloser’s Confidential Information; or (c) obtained by recipient from any third party not owing any confidentiality obligation to the discloser.
- 1.14 “DPA” means PowerPlan’s data processing addendum in effect at the time the SaaS is provided and currently posted at <https://powerplan.com/legal/data-processing-addendum>.
- 1.15 “Documentation” means the user guide(s), installation instructions, user instructions, release notes, manuals, and on-line help files in the form generally made available by PowerPlan to its customers regarding the use of the applicable SaaS, including the minimum hardware, operating system, and configuration requirements for the proper use of the SaaS, as updated from time to time.
- 1.16 “Error” means a material failure of the Software to conform to the functional specifications described in its Documentation.
- 1.17 “Exhibit” means any addendum, policy, or plan incorporated into this Agreement by reference from time to time.
- 1.18 “Fees” means all amounts payable to PowerPlan under this Agreement and any Order Forms.
- 1.19 “FMLP” means future minimum lease payments, as defined in accordance with Generally Accepted Accounting Principles (“GAAP”).
- 1.20 “FMLP Value” means the lease payments over the lease term that Client and Affiliates are or can be required to make, as defined and measured by GAAP. If Client or any Affiliate is a publicly-traded company or otherwise files or publishes publicly-available information related to FMLP, Client’s FMLP Value will be deemed to be as stated in Client’s or such Affiliate’s, as applicable, published financials or other statements (e.g., the annual financial report or quarterly/interim financial reports required by the applicable securities commission with regulatory oversight; FERC form filings; etc.) and this source information will be used to determine whether the contractually stated Maximum FMLP Value has been exceeded. If Client or any Affiliate is not a publicly-traded company or does not otherwise file or publish publicly-available information related to FMLP, Client shall provide information that demonstrates the FMLP Value to PowerPlan for its review.
- 1.21 “Hosted Data” means the data that an Authorized User loads into the Software or processes or stores using the Software.
- 1.22 “Initial Term” means the term beginning on the applicable Order Form Effective Date and ending on the Initial Term end date as set forth in such Order Form.
- 1.23 “Integration” means an individual process that moves Hosted Data in or out of the Software with a unique data criterion for extraction or loading, which is in PowerPlan’s base API catalog. Integration framework is an extract, transform, load (ETL). Inbound Integrations support the standard loading of Hosted Data into the Software. Outbound Integrations support the standard extraction of Hosted Data from the Software. Transformation of Hosted Data is a customization and not covered by PowerPlan’s Maintenance Services or Support Services.

- 1.24 "Intellectual Property Rights" means, on a world-wide basis, any and all: (a) rights associated with works of authorship, including without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (b) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (c) rights in Confidential Information and trade secrets; (d) patents and patentable rights; (e) all rights with respect to inventions, discoveries, improvements, know-how, formulas, algorithms, processes, technical information and other technology; (f) all other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (g) all international, national, foreign, state and local registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and re-examinations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).
- 1.25 "Maintenance Policy" means PowerPlan's standard maintenance policy for SaaS subscriptions to PowerPlan's classic products in effect at the time the SaaS is provided and currently posted at <https://info.powerplan.com/SaaSMaintenancePolicy>.
- 1.26 "Maintenance Services" means the maintenance and support provided by PowerPlan in accordance with the Maintenance Policy.
- 1.27 "Modification" means any enhancement, measure taken to correct an Error, derivative work, or other change to the Software.
- 1.28 "Object Code" means machine-readable computer software code generated from Source Code by a compiler, interpreter, assembler, or similar technology.
- 1.29 "Order Form" means the document executed by both Client and PowerPlan that specifies the SaaS (including the particular Software module(s) and SaaS Usage Limitations) that PowerPlan agrees to provide to Client in accordance with this Agreement.
- 1.30 "Personal Data" means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as Personal Data or personally identifiable information under applicable data protection or privacy laws and regulations), where for each (i) or (ii), such data is Client Data or Hosted Data.
- 1.31 "Personnel" means an employee, contractor, agent, or consultant who is employed by or provides services to an entity.
- 1.32 "Platform" means the information technology infrastructure, including computers, servers, hardware, databases, database management systems, networks, communications infrastructure, devices, websites, and third-party software used by PowerPlan to provide access to the Software pursuant to a subscription for SaaS.
- 1.33 "PowerPlan" means PowerPlan, Inc, a Delaware corporation.
- 1.34 "PP&E" means property, plant and equipment, as defined in accordance with GAAP.
- 1.35 "PP&E Value" means the aggregate of the net book value of all PP&E of Client and Affiliates, as defined and measured by GAAP. If Client or any Affiliate is a publicly-traded company or otherwise files or publishes publicly-available information related to PP&E, Client's PP&E Value will be deemed to be as stated in Client's or such Affiliate's, as applicable, published financials or other statements (e.g., the annual financial report or quarterly/interim financial reports required by the applicable securities commission with regulatory oversight; FERC form filings; etc.) and this source information will be used to determine whether the contractually stated Maximum PP&E Value has been exceeded. If Client or any Affiliate is not a publicly-traded company or does not otherwise file or publish publicly-available information related to PP&E, Client shall provide information that demonstrates the PP&E Value to PowerPlan for its review.
- 1.36 "Privacy Notice" means PowerPlan's privacy notice in effect at the time the SaaS is provided and currently posted at <https://powerplan.com/legal/privacy-notice>.
- 1.37 "SaaS" means Software as a Service and includes the Software, APIs, Platform, applicable Documentation, and associated Maintenance Services or Support Services, as indicated on the applicable Order Form.
- 1.38 "SaaS Usage Limitations" means the restrictions and limitations on the usage of the SaaS as designated within this Agreement and the applicable Order Form.
- 1.39 "Security Policy" means PowerPlan's security policy in effect at the time the SaaS is provided and currently posted at <https://info.powerplan.com/SecurityPolicy>.
- 1.40 "Service Level Policy" means PowerPlan's service level policy in effect at the time the SaaS is provided and currently posted at <https://info.powerplan.com/ServiceLevelPolicy>.
- 1.41 "Software" means the Object Code version of the software module(s) identified on the Order Form, including all Modifications thereto, made available remotely over the Internet as part of the SaaS.
- 1.42 "Source Code" means computer software program instructions that must be translated by a compiler, interpreter, or assembler into Object Code before execution.
- 1.43 "Support Plan" means PowerPlan's standard support plan for SaaS subscriptions to certain of PowerPlan's SaaS products in effect at the time the SaaS is provided and currently posted at <https://info.powerplan.com/SaaS-SupportPlan>.
- 1.44 "Support Services" means the support provided by PowerPlan in accordance with the Support Plan.
- 1.45 "Term" means the Initial Term and all Additional Terms.

2. POWERPLAN RESPONSIBILITIES

During the applicable Term, PowerPlan will:

- 2.1 Maintain the Platform to make the applicable Software, as described in the Order Form, available to Client through the front-end user interface.
- 2.2 Meet the service levels set forth in the Service Level Policy.
- 2.3 Implement and maintain reasonable measures designed to protect Hosted Data per the Security Policy.
- 2.4 Use the Hosted Data for the purposes as indicated in Use of Hosted Data section of the Security Policy.
- 2.5 Where PowerPlan acts as a processor or service provider on behalf of Client, process Personal Data only as necessary to provide the SaaS or as required to meet PowerPlan's obligations under this Agreement. Where PowerPlan acts as a controller of Personal Data, process such Personal Data in a manner consistent with the Privacy Notice.
- 2.6 If indicated on an applicable Order Form, provide Maintenance Services per the Maintenance Policy.
- 2.7 If indicated on an applicable Order Form, provide Support Services per the Support Plan.
- 2.8 If indicated on an applicable Order Form, provide adoption services per the Adoption Services Policy.

3. LIMITATIONS ON USAGE

Client's use of the SaaS is subject to compliance with the terms of this Agreement and the applicable Order Form, including without limitation the following requirements:

- 3.1 Permitted Uses. The SaaS shall be used by Client and its Authorized Users solely for Client's and Affiliates' internal business operations and in accordance with the Documentation, Acceptable Use Policy, and API TOU. Client shall cause all Affiliates and Authorized Users to comply with the terms and conditions of this Agreement, and any default by any Affiliates and Authorized User of the terms and conditions of this Agreement shall be a default of Client. PowerPlan's direct competitors are prohibited from accessing the SaaS, except with PowerPlan's prior written consent.
- 3.2 SaaS Usage Limitations. The SaaS is limited by the SaaS Usage Limitations noted on the applicable Order Form. Usage exceeding the SaaS Usage Limitations may result in additional Fees.
- 3.3 Restrictions. Except as expressly provided in this Agreement, Client, Affiliates, and Authorized Users shall not and shall not allow third parties to:
 - (a) Use the SaaS or any of PowerPlan's or PowerPlan's suppliers' Confidential Information to build or support any software (including software as a service) or documentation that is in any way similar to the Software.
 - (b) Encumber, transfer, rent, donate, assign, lease, or otherwise use the Software in any business process outsourcing, time-sharing or service bureau arrangement.
 - (c) Modify, copy, reproduce, market, sell, distribute, sublicense, manufacture, adapt, create derivative works of, translate, localize, port, modify, or otherwise commercially exploit the SaaS.
 - (d) Decompile, disassemble, reverse compile, reverse assemble, reverse translate, or reverse engineer the Software, including use of any similar means to discover the Source Code of the Software; discover the Confidential Information therein; create or attempt to create the Source Code from the Object Code of the Software or APIs; or circumvent any technological measures that control access to the Software, unless such action is indispensable in order to obtain information necessary to achieve interoperability of the Software with an independently created computer program and Client has not been provided such information, despite a written request, within a reasonable period of time. Information obtained through such action may not be used for purposes other than to achieve interoperability, and may not be given to third parties, unless this is necessary to establish interoperability, and in particular such information is not to be used for the development, creation, or marketing of software (including software as a service) similar to the Software. If Client wishes to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, Client must first provide written notice to PowerPlan and permit PowerPlan, at its option, to make an offer to provide information and assistance reasonably required to ensure interoperability of the Software with other products for a fee to be agreed upon (if any).
 - (e) Alter or remove any printed or on-screen copyright, trademark, patent, proprietary, or other legal notice contained on or in any component of the SaaS and shall cause all such notices to be reproduced on any copies thereof to the extent copying is permitted.
 - (f) Perform any technical security integrity review, penetration test, lead test, denial-of-service simulation or vulnerability scan or use a robot, script, or other software tool designed to automatically perform the actions of an Authorized User without PowerPlan's prior written consent.
- 3.4 Authorized Vendors Permitted Usage. Client may permit Authorized Vendors to access the Software, APIs, and Documentation solely for the purpose of providing staff augmentation services or business consulting services to Client in connection with the business of Client for which the SaaS is made available, provided: (i) these rights will continue only while Client and such Authorized Vendor have in place a written agreement that includes provisions requiring such Authorized Vendor's compliance with the terms of this Agreement and the applicable Order Form prior to such access; (ii) Client must be appropriately subscribed for all named individuals of such Authorized Vendor authorized to access the Software and APIs; (iii) such Authorized Vendor shall be permitted to use the Software, APIs, and Documentation solely to provide staff augmentation services or business consulting services, which may include configuring the Software through the front-end user interface, in accordance with the business of Client; (iv) under no circumstances may such Authorized Vendor use the Software, APIs, or Documentation to operate or provide processing services to any other person or entity, or in connection with such Authorized Vendor's own business operations; and (v) Client expressly agrees to indemnify PowerPlan from and against all claims, liabilities, losses, damages, and costs (including reasonable attorney fees) suffered by PowerPlan arising from a breach by the Authorized Vendor of the conditions of this Agreement or the applicable Order Form. Upon PowerPlan request, Client shall provide written confirmation to PowerPlan that items (i)-(iv) are fulfilled.
- 3.5 Reservation of Rights. The SaaS is made available via subscription, not sold. All rights, including all Intellectual Property Rights, not expressly granted in this Agreement or the applicable Order Form are reserved to PowerPlan. No additional rights are granted by implication.

4. ADDITIONAL CLIENT RESPONSIBILITIES

- 4.1 Procedures. Client agrees that the SaaS shall not be construed as accounting, tax, financial, or legal advice. Client is solely responsible for ensuring the proper selection, testing, deployment, use, management, and supervision of the Software and audit controls, programs, operating methods and office procedures for establishing the necessary controls over access to and use of Hosted Data and for establishing all proper checkpoints, safeguards, and procedures necessary for the proper use of the Software, any changes made by Client, Affiliates, or Authorized Users to alter the calculations, functions, or performance of the Software, and the suitability of the results obtained with the use of the Software.
- 4.2 Rights to Client Data and Hosted Data.
 - (a) Client grants to PowerPlan and its subcontractors a worldwide, royalty-free, non-exclusive right and license to host, display, transmit, and use the Client Data and Hosted Data, as applicable, to provide, administer, and ensure the proper operation of the SaaS, Platform, and related systems and to perform PowerPlan's rights and obligations under this Agreement, including as indicated in Section 2.4.
 - (b) Client represents and warrants that it has:
 - (i) Obtained and will retain all consents and rights, in accordance applicable law, to collect, store, transfer, process, and use the Client Data and Hosted Data, including the required and/or appropriate consents from third parties and individuals, if applicable.
 - (ii) All rights necessary to authorize PowerPlan to store, transfer, process and use Personal Data in accordance with this Agreement, subject to applicable laws including, without limitation, the right to transfer Personal Data outside the European Economic Area for the purposes of data processing by PowerPlan, its subsidiaries, and its affiliated companies, in accordance with this Agreement. Any transfer of Personal Data outside of the European Economic Area will be done in circumstances designed to ensure that the Personal Data is processed only in accordance with applicable data protection laws. The terms of the DPA are hereby incorporated by reference. To the extent Personal Data from the European Economic Area (EEA), the United Kingdom and Switzerland are processed by PowerPlan, the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Client is the data exporter, and Client's acceptance of this Agreement shall be treated as its execution of the Standard Contractual Clauses and Appendices.

- 4.3 Future Functionality. Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by PowerPlan regarding future functionality or features.
- 4.4 Cooperation and Access. Client shall provide PowerPlan with good faith cooperation and access, including remote access, to such information and Personnel as may be reasonably required by PowerPlan, including providing data, access, information, and software interfaces to Client's applications as may be reasonably requested by PowerPlan from time to time. Client acknowledges and agrees that PowerPlan's performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client. PowerPlan shall be entitled to rely on all decisions and approvals of Client. The parties will agree upon and coordinate all security protocols involving remote access. In the event Client desires PowerPlan to adhere to or use a specific security protocol and doing so will require PowerPlan to incur a material cost, Client shall reimburse PowerPlan for such cost.

5. FEES AND PAYMENTS

- 5.1 Generally. The applicable Fees are stated on the applicable Order Form for the Software module(s) provided as part of the SaaS.
- 5.2 Increases. PowerPlan shall notify Client at least thirty (30) days prior to any Additional Term of any increase in annual Fees.
- 5.3 Invoicing. Fees for SaaS are billed annually in advance.
- 5.4 Payment Terms. Except as noted otherwise on the applicable Order Form, all Fees are due within thirty (30) days of the date of the applicable invoice.
- 5.5 Taxes. Client agrees to pay all personal property, sales, use and other taxes (excluding taxes based upon PowerPlan's net income) and license and registration fees, and other assessments or charges levied or imposed by any governmental body or agency as a result of the execution or performance of this Agreement or Order Forms. Any amount due from Client under this Section shall be paid directly by Client, where appropriate, or shall be reimbursed to PowerPlan upon payment thereof by PowerPlan. In the event Client or the transactions contemplated by the Agreement are exempt from the foregoing taxes, fees, assessments or charges, Client agrees to provide PowerPlan as evidence of such tax-exempt status, proper exemption certificates, or other documentation acceptable to PowerPlan.

6. PROPRIETARY RIGHTS

- 6.1 Ownership.
- (a) PowerPlan. PowerPlan and its suppliers retain sole and exclusive ownership of their respective Confidential Information, the SaaS, Application Database, and all Intellectual Property Rights in, to, or embodied in or associated with the SaaS, Application Database, and all copies and Modifications thereof (whether developed by PowerPlan, Client, or a third party and whether solely or jointly developed by any such party). Client shall not take any action inconsistent with such title and ownership.
- (b) Client. Client retains sole and exclusive ownership of Client's Confidential Information, Client Data, Hosted Data, and all copies thereof. PowerPlan shall not take any action inconsistent with such title and ownership.
- 6.2 Feedback. Client may, but is not required to, provide PowerPlan with ideas, suggestions, requests, recommendations, or feedback about the SaaS ("Feedback"). If Client does so, Client grants PowerPlan a non-exclusive, worldwide, perpetual, irrevocable license to use, reproduce, incorporate, disclose, and sublicense the Feedback for any purpose.
- 6.3 Confidentiality. By virtue of this Agreement, the parties may be exposed to or provided with certain Confidential Information of the other party. Each party will protect the other's Confidential Information from unauthorized disclosure, dissemination or use with the same degree of care that each such party uses to protect its own Confidential Information, but in no event less than a reasonable amount of care. Except as required by law, neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement and as may be required to report to its Affiliates, legal and financial advisors, and regulators. Client shall cause Affiliates and Authorized Users and each party shall cause their respective Personnel to comply with obligations of confidentiality at least as restrictive as set forth in this Agreement. In the event either party is required by law or legal proceeding to disclose Confidential Information of the other party, the party being compelled to disclose Confidential Information: (a) shall provide the other party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible) so that the other party may seek a protective order or other appropriate remedy; (b) upon request of the other party, agrees to reasonably cooperate with the other party at the other party's expense to obtain such remedies, provided that this provision shall not be construed to require the party being compelled to disclose Confidential Information to undertake litigation or other legal proceedings on behalf of the other party. The responsibilities under this section shall continue for a period of five (5) years after the final date that PowerPlan provides the SaaS to Client. Notwithstanding the foregoing, the obligations under this section, including any expiration or termination thereof, shall not waive or diminish protections available to either party with respect to such information under applicable law and the parties shall continue to protect trade secrets under applicable law so long as such Confidential Information remains a trade secret.

7. WARRANTIES

- 7.1 General Warranty. PowerPlan represents and warrants that: it has the full right and power to enter into and perform its obligations under this Agreement, and there are no pending claims or lawsuits that would prevent PowerPlan from performing its obligations under this Agreement. PowerPlan will, at PowerPlan's sole option: (a) provide a refund to Client for the portion of the SaaS that were affected by the breach; or (b) provide a replacement for the portion of the SaaS affected by the breach.
- 7.2 Software Warranty. Except as explicitly noted otherwise in this Agreement, PowerPlan warrants the Software will substantially conform in all material respects to the applicable Documentation for a period of ninety (90) days after Client is first provided access to the Software, provided that Client accesses and uses the Software in accordance with this Agreement. Client shall promptly notify PowerPlan in writing if the Software fails to perform in accordance with this warranty. Upon confirming that the Software fails to comply with the foregoing warranty, PowerPlan shall either: (a) correct such Error; or (b) provide Client with a plan reasonably acceptable to Client for correcting such Error. In the event neither (a) nor (b) can be accomplished within thirty (30) days, then PowerPlan or Client may terminate the SaaS for the Software module with the uncorrected Error, and Client will be entitled to a refund of the applicable pre-paid, but unused Fees on a pro rata basis. Notwithstanding the foregoing, the warranty obligation set forth in this section shall not apply to the extent any breach of such warranty is caused by: (x) use of the Software other than in accordance with this Agreement, the applicable Order Form, and the Documentation; (y) any Error which cannot be reproduced by PowerPlan; or (z) third party hardware, software, databases, or systems. For the avoidance of doubt, expiration of the warranty above does not waive or diminish PowerPlan's obligations to address Errors in accordance with Section 2.5 or 2.6, as applicable, during the Term.
- 7.3 Sole Remedy. THE WARRANTIES IN SECTIONS 7.1 AND 7.2 CONSTITUTE POWERPLAN'S SOLE AND ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDIES WITH RESPECT TO SUCH WARRANTIES. PowerPlan shall not be obligated to correct any breach of the above warranty if Client has not promptly notified PowerPlan of the specific existence and nature of such breach during the applicable warranty period. Without limiting the foregoing, PowerPlan does not warrant and is not responsible for (i) any third-party products or (ii) Modifications or services not performed solely by PowerPlan Personnel.

7.4. Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 7, NEITHER POWERPLAN NOR ITS LICENSORS MAKES ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, CONDITION, OR AGREEMENT WITH RESPECT TO THE SAAS. POWERPLAN AND ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM USAGE, CONDUCT, OR COURSE OF TRADE. POWERPLAN DOES NOT REPRESENT THAT THE OPERATION OF THE SAAS AND THE DOCUMENTATION WILL BE UNINTERRUPTED OR FREE OF ERRORS, MALWARE, OR ISSUES OR THAT ALL ERRORS, MALWARE, OR ISSUES WILL BE CORRECTED. CLIENT ACKNOWLEDGES AND AGREES THAT TRANSFERRING INFORMATION OVER THE INTERNET INHERENTLY INVOLVES RISK TO COMPUTER SYSTEMS AND NETWORK SECURITY AND THAT POWERPLAN DOES NOT REPRESENT OR WARRANTY THAT DATA WILL NOT BE BREACHED, CORRUPTED, OR LOST.

8. INDEMNITIES

- 8.1. General Indemnification. PowerPlan shall indemnify, defend, and hold harmless Client against any third-party claim arising from or relating to: (a) any injury including personal injury, death, or property damage caused by PowerPlan; or (b) PowerPlan's gross negligence or willful misconduct.
- 8.2. Infringement Indemnification. PowerPlan shall indemnify, defend, and hold harmless Client against any third-party claim that any component of the Software infringes any valid and active patent, copyright, or trademark, or misappropriates any trade secret. If any Software becomes, or in PowerPlan's opinion is likely to become, the subject of a claim of infringement, PowerPlan may, at its sole option: (a) obtain for Client the right to continue using the Software; (b) replace or modify the affected Software so that it becomes non-infringing while providing substantially equivalent functionality; or (c) if such remedies are not available on commercially reasonable terms as determined by PowerPlan, terminate the subscription for the affected portion of the Software and refund all prepaid Fees for the affected portion of the SaaS.
- 8.3. Exceptions. Notwithstanding anything to the contrary, PowerPlan shall not be liable for nor have any obligation pursuant to Section 8.2 for any claim that: (a) an alleged infringement is based on or arises from (i) the combination or use of the SaaS with hardware, software, or other materials not provided or approved by PowerPlan, (ii) a Modification made by anyone other than PowerPlan or at PowerPlan's direction, or (iii) the use of the SaaS not in accordance with the Documentation, Acceptable Use Policy, API TOU, this Agreement, or the applicable Order Form; or (b) relates to the content or the Client's right to collect, store, process or use the Hosted Data, including any claim that the Hosted Data infringes any patent, copyright, or trademark, or misappropriates any trade secret.
- 8.4. Process. The indemnifications provided in this Section 8 are conditioned on: (a) Client giving PowerPlan prompt written notice of such claim; (b) Client providing its full cooperation in the defense of such claim, if requested by PowerPlan at PowerPlan's expense; and (c) Client granting PowerPlan the sole authority to defend or settle the claim, provided that PowerPlan shall not enter into a settlement which requires Client to admit fault or guilt or pay fees, expenses or penalties which are not otherwise covered under the obligations contained in this Section 8. Client may engage legal counsel to monitor, but not control, any such claim at Client's sole cost and expense. THE INDEMNITIES IN SECTIONS 8.1 AND 8.2 STATE POWERPLAN'S SOLE OBLIGATION, AND CLIENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH INDEMNITIES.

9. RISK ALLOCATION

- 9.1. Limitation of Remedy. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTIONS 3, 6, OR 8, NEITHER PARTY, ITS LICENSORS, AND OTHER SUPPLIERS SHALL BE LIABLE TO THE OTHER PARTY, AFFILIATES, AUTHORIZED USERS, OR ANY THIRD PARTY, FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL AMENDMENTS, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, FOR DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF DATA, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, PROGRAM, OR DATA, OR CLAIMS BY ANY THIRD PARTY REGARDLESS OF WHETHER SUCH DAMAGES OR LIABILITIES WERE COMMUNICATED TO POWERPLAN AND REGARDLESS OF WHETHER POWERPLAN HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.
- 9.2. Limitation of Liability. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTIONS 3, 6, OR 8, THE CUMULATIVE, AGGREGATE LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THIS AGREEMENT) OF EITHER PARTY, ITS LICENSORS, AND OTHER SUPPLIERS TO THE OTHER PARTY, AFFILIATES, AUTHORIZED USERS, OR ANY THIRD PARTY FOR ALL CLAIMS, LIABILITIES AND DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL AMENDMENTS THERETO, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID OR PAYABLE TO POWERPLAN DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE THAT THE CLAIM AROSE.

10. SUSPENSION, TERM, AND TERMINATION

- 10.1. Suspension of SaaS. Notwithstanding anything to the contrary, PowerPlan may suspend Client's access or use of the SaaS in the event of: (a) Client's material, uncured breach of this Agreement, including without limitation failure to pay the applicable Fees; (b) an actual or reasonably suspected security threat reasonably requiring suspension of the SaaS to protect or prevent damage to Hosted Data, the data of PowerPlan's customers, or the Platform or PowerPlan's IT infrastructure; or (c) PowerPlan's reasonable belief that Client's access or use of the SaaS violates any applicable law, rule or regulation.
- 10.2. Term. The term of this Agreement shall begin on the Effective Date and terminate once there are no active Order Forms unless terminated earlier in accordance with Section 10.3. Except to the extent terminated earlier in accordance with Section 10.3, each Order Form shall continue for the Term unless either party provides written notice to the other party at least ninety (90) days prior to the end of the then-current Initial Term or Additional Term, as applicable, of its intent to not renew the SaaS.
- 10.3. Termination. This Agreement may only be terminated by a party:
- (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) days of the receipt of written notice of such breach, except that Client shall not be entitled to a thirty (30) day cure period for any non-remediable breach of this Agreement; or
 - (b) if any assignment is made by the other party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of any or all of the other party's property, or if the other party files a voluntary petition under federal bankruptcy laws or similar state statutes or such a petition is filed against the other party and is not dismissed within sixty (60) days.
- 10.4. Effects of Expiration or Termination. Upon termination of this Agreement for any reason, all rights and obligations of the parties hereunder, including those related to the provision, access and use of the SaaS, shall cease, except as follows or as otherwise noted in Section 11.24:
- (a) Client's liability for any Fees, charges, or payments due to PowerPlan that accrued prior to the termination date shall not be extinguished by termination, and such amounts shall be immediately due and payable.

- (b) Each party shall return to the other party any Confidential Information in its possession or control.
- (c) Upon written request by Client made within ten (10) days following termination or expiration of the applicable SaaS, PowerPlan will make a copy of the Hosted Data in unstructured form available to Client for extraction or download in a comma delimited, CSV, or other standard format specified by PowerPlan. Prior to or within ten (10) days following termination or expiration of the applicable SaaS, Client may request that PowerPlan provide additional services related to the transition of data or other reasonable services related to such termination ("Termination Services"). All Termination Services shall be subject to the payment of additional fees pursuant to a separate statement of work. In no event shall PowerPlan be required to disclose PowerPlan's metadata or Application Database in connection with the provision of Hosted Data or other Termination Services.

11. GENERAL PROVISIONS

- 11.1. **Data Analytics; Product Development.** PowerPlan may collect data resulting from Authorized Users' use of the SaaS, such as metadata, performance metrics, and usage trends or volume ("Usage Data"). PowerPlan may use the Usage Data and Client Data for its legitimate business purposes, including but not limited to: product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new products and services; improving resource allocation and support; internal demand planning; training and developing machine learning algorithms; improving product performance; verification of security and data integrity; identification of industry trends and developments, creation of indices, and anonymous benchmarking; and to fulfill PowerPlan's contractual obligations. Except to provide the SaaS or as required by law, any external disclosure of Usage Data or Client Data by PowerPlan will be in an aggregated form that does not identify or otherwise permit the identification of Client, any Authorized Users, or other persons, unless Client consents otherwise or initiates the sharing of Usage Data or Client Data.
- 11.2. **Insurance.** PowerPlan will maintain continuously during the Term commercial general liability insurance with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, automobile liability insurance with limits of no less than \$1,000,000 combined single limit coverage, Professional Liability (including errors & omissions coverage and cyber liability coverage) of \$2,000,000 each claim and in the aggregate, and statutory Worker's Compensation insurance. The commercial general liability policy shall be endorsed to add Client as an additional insured as its interest appears. Upon written request, PowerPlan will provide Client with certificates of insurance or evidence of coverage.
- 11.3. **Downloadable Components.** The operation of certain Software modules may require the use of downloadable software components designed to be installed on desktop or mobile devices ("Downloadable Components"). Downloadable Components are offline or mobile components of Software. Authorized Users may need to expressly opt into the use of certain Downloadable Components; in such cases, the operation of the Software modules which require such Downloadable Components is contingent on such opt-in by Authorized Users. PowerPlan is not responsible for lack of use of the Software due to Authorized User refusal to install Downloadable Components, lack of Authorized User opt-in (where required), or Authorized User opt-out (where enabled). Conditioned upon Client's compliance with the terms and conditions of this Agreement, PowerPlan grants Client the following limited, non-exclusive, non-transferable (except as expressly provided herein), royalty-free, revocable license: Authorized Users may download, install and run on supported devices the executable form of Downloadable Components for purposes of using the Software modules that utilize Downloadable Components and for which Client has subscribed. In addition to the restrictions of this Agreement regarding the SaaS, you may not translate, disassemble, decompile, decrypt, or reverse engineer Downloadable Components, or authorize or knowingly permit a third party to do any of the foregoing, except to the extent such activities are expressly permitted by law notwithstanding this prohibition or by licensing terms governing use of open-source components included with Downloadable Components. PowerPlan may, from time to time, update Downloadable Components. Downloadable Components and all copies thereof are licensed and not sold, and are protected by applicable law, including United States and foreign copyright laws and international treaties. The licenses in this section shall terminate at the earlier of the termination or expiration of this Agreement or the termination or expiration of Client's subscription to the Software module(s) that utilize Downloadable Components. Upon license termination, Client must cease all use of Downloadable Components and promptly delete all copies, full or partial, thereof that are in Authorized Users' possession or control. The Service Level Policy shall not apply to Downloadable Components and to the operation of the Software module(s) dependent, in whole or in part, on Downloadable Components. The Security Policy shall not apply to Downloadable Components.
- 11.4. **Third-Party Components.** PowerPlan's products and services may include third-party components that are available under open source or free software licenses and distributed, embedded, or bundled with PowerPlan's products or services or recommended in connection with their use. This Agreement does not alter any rights or obligations Client may have under those open source or free software licenses. Notwithstanding anything to the contrary contained in such licenses, Sections 7.4 and 9 shall apply to such third-party components.
- 11.5. **Subcontractors.** PowerPlan may utilize subcontractors in the performance of certain obligations under this Agreement. PowerPlan shall remain responsible for the performance, acts, and omissions of subcontractors to the same extent as if performed by PowerPlan.
- 11.6. **Governing Law; Venue.** The law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Client is domiciled. Each party agrees to the applicable governing law below without regard to choice or conflicts of law rules, and, subject to Section 11.11, to the exclusive jurisdiction of the applicable courts below. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

If Client is domiciled in:	Governing law is:	Exclusive venue is:
Any country besides Canada	State of Georgia and controlling United States federal law	State and federal courts in Cobb County, Georgia, USA
Canada	Province of Ontario and controlling Canadian federal law	Provincial and federal courts in Toronto, Canada

- 11.7. **Entire Agreement.** This Agreement includes any separately executed contracts between Client and PowerPlan relating to this Agreement, each of which is incorporated by reference, and constitutes the entire agreement between the parties regarding the subject matter hereof. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. For the avoidance of doubt, nothing contained in any supplier portal terms and conditions, purchase order, purchase order acknowledgement, or similar document shall in any way modify or add any additional terms or conditions to this Agreement.
- 11.8. **Order of Precedence.** In the event of a direct conflict between an Order Form, this Agreement, or an Exhibit, such documents shall take priority in the order noted above.
- 11.9. **Waiver.** The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor, except as otherwise expressly provided otherwise in this Agreement, shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power, or privilege by such party.
- 11.10. **Severability.** If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified, or severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

- 11.11. Injunctive Relief. The parties agree that monetary damages are not an adequate remedy if Sections 3 or 6 of this Agreement are breached and that the non-breaching party will suffer irreparable damage, and therefore, either party, in addition to any other legal or equitable remedies, shall be entitled to seek an injunction or similar equitable relief against such breach or threatened breach.
- 11.12. Assignment. Except in connection with a merger or sale involving a majority of the stock or assets of a party, neither this Agreement or any Order Forms and the rights and obligations thereunder, may be assigned in whole or in part by either party without the prior written consent of the other party. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators, and assigns of the parties hereto. Any attempt at assignment without such consent shall be null and void and of no force and effect. Any applicable Fees resulting from any permitted assignment will be based on PowerPlan's current pricing, terms, and conditions.
- 11.13. Compliance with Laws; Code of Conduct. Both parties shall comply with all applicable laws and regulations in their performance under this Agreement including without limitation all applicable laws and regulations enacted to combat bribery and corruption, promote transparency in government through freedom of information, and regulate the export of software and technology. Without limitation of the generality of the foregoing requirement, Client shall not allow Authorized Users or Affiliates to access or use any SaaS in violation of applicable export controls laws and represents and warrants that it is not an individual, business, organization, or government owned, controlled by or acting on behalf of an individual, business, organization or government which is prohibited from using the SaaS per applicable export control laws. PowerPlan expects all PowerPlan Personnel to conduct PowerPlan's business in accordance with the Code of Conduct, which PowerPlan Personnel acknowledge at least annually.
- 11.14. Subscription to the Government. If any subscription for SaaS is acquired by or on behalf of a unit or agency of the United States federal government, it agrees that the Software and Documentation are "commercial computer software" and "commercial computer software documentation", respectively, and that, absent a written agreement with PowerPlan to the contrary, its rights with respect to the Software are, in the case of civilian agency use, Restricted Rights, as defined in FAR §52.227.19, and if for Department of Defense use, limited by the terms of this Agreement, pursuant to DFARS §227.7202. Use of the Software by the United States federal government constitutes acknowledgment of PowerPlan's proprietary rights therein, and of the exclusive applicability of this Agreement. Notwithstanding the foregoing, the parties acknowledge that all Software is provided "as a service" and no license is granted by virtue of this Agreement.
- 11.15. Force Majeure. Neither party will be liable for failure or inability to perform its obligations under this Agreement or an Order Form due to any cause beyond its reasonable control, including, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, malware attacks or hackers, failure of third party services (including ecommerce services, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment. This provision shall not apply to payment obligations.
- 11.16. No Agency; Independent Contractors. Nothing contained in this Agreement shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.
- 11.17. Third Party Beneficiaries. There are no express or implied third-party beneficiaries of this Agreement.
- 11.18. Non-Exclusivity. PowerPlan shall not be limited or precluded in any way from providing the SaaS or other services of any kind to any person or entity as it, in its sole discretion, deems appropriate.
- 11.19. Usage Compliance. PowerPlan may, but is not required to, monitor or audit Client's usage of the SaaS to ensure compliance with this Agreement and the applicable Order Form, including without limitation Client's compliance with the SaaS Usage Restrictions. Additionally, upon written notice PowerPlan may require Client to attest to its compliance with the SaaS Usage Restrictions. If such verification or attestation process reveals any noncompliance with this Agreement or the applicable Order Form by Client or its Affiliates or Authorized Users, Client shall pay the applicable Fees, and Client shall promptly cure, and shall cause Client's Affiliates and Authorized Users to promptly cure, any such noncompliance; provided, however, that the obligations under this Section are not a waiver of PowerPlan's other rights under this Agreement, at law, in equity, or otherwise.
- 11.20. Publicity. Client agrees that PowerPlan has the right to use Client's name and logo for the purposes of identifying Client as a PowerPlan customer and describing Client's use of the SaaS. Without limiting the foregoing, Client also agrees that PowerPlan may: (i) inform other prospective customers that Client is a user of the SaaS; and (ii) identify Client as a customer in other forms of publicity. PowerPlan will follow branding guidelines provided by Client.
- 11.21. Notices. Except for billing, administrative, and other account-related notices, all notices under this Agreement shall be in writing and delivered by transportation company, with tracking. PowerPlan will send notices to Client at the address listed in an Order Form. Client will send notices to PowerPlan at: 300 Galleria Parkway, Suite 2100, Atlanta, GA 30339, United States of America, Attention: Legal Department. Each party will provide written notice to the other party in the event of a change in the contact information. Notice shall be deemed given when the tracking identifier issued by the transportation company indicates delivery has been made. Client shall send a courtesy copy of notices to PowerPlan via email to contracts@powerplan.com. PowerPlan will email billing-related notices to the billing contact that Client designates. PowerPlan will email administrative and account-related notices to the system administrator that Client designates. Email notice shall be deemed given when sent.
- 11.22. Dispute Resolution. The parties agree that any dispute arising in connection with the interpretation of this Agreement or the performance of any party under this Agreement or otherwise relating to this Agreement will be treated in accordance with the following procedures. The dispute will be referred for resolution first to the President or Chief Executive Officer of PowerPlan and their counterpart at Client. Such procedure will be invoked by either party presenting to the other a "Notice of Request for Resolution of Dispute" (a "Notice") identifying the issues in dispute sought to be addressed hereunder. A telephone or personal conference of those executives will be held within ten (10) days after the delivery of the Notice. If the telephone or personal conference between these executives, for any reason, does not take place or does not resolve the dispute, either party may proceed with litigation. Notwithstanding the foregoing, either party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in: (i) any Intellectual Property Rights; or (ii) Confidential Information as described in this Agreement. The parties agree that any Confidential Information of either party shall be disclosed during litigation only upon the issuance of appropriate protective orders limiting the disclosure or discoverability of such information outside of the litigation of this Agreement.
- 11.23. Construction. In the interpretation of this Agreement, words importing the singular or plural number shall include the plural and singular number respectively, words denoting gender shall include all genders and references to persons shall include corporations or other entities and vice versa. The word "including" and its derivatives, (such as "include" and "includes") means including, without limitation, whether capitalized and whether "without limitation" or words of similar meaning are included in other provisions of this Agreement. Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another, because the parties participated equally in preparing this Agreement. Unless the context otherwise specifically requires, all references to sections of this Agreement shall refer to all subsections thereof.

11.24. Survival. The provisions of Sections 1, 5 (for accrued but unpaid Fees), 6, 9, 10, and 11 of this Agreement shall survive any expiration or termination of this Agreement.

11.25. Authority. The parties and each individual executing an Order Form on behalf of a party represent and warrant that such individual is duly authorized to execute on behalf of the applicable party.

12. COUNTRY SPECIFIC TERMS: CANADA

12.1. PIPEDA. To the extent applicable, each party shall comply with the Personal Information Protection and Electronic Documents Act (PIPEDA) in connection with their performance under this Agreement.

12.2. IFRS. FMLP and PP&E shall be as defined by International Financial Reporting Standards ("IFRS"), not GAAP. FMLP Value and PP&E Value shall be as defined and measured by IFRS, not GAAP.

12.3. Subscription to the Canadian Government. If any subscription for SaaS is acquired by or on behalf of a unit or agency of the federal government of Canada, the provisions of the Standard Acquisition Clauses and Conditions ("SACC") Sections 4006 01 (2008-05-12) through 4006 10 (2008-05-12) shall govern if such provisions are mandatory under applicable law.

12.4. English Language. It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.