

API Terms of Use

POWERPLAN, INC. (“POWERPLAN”) MAKES ITS APPLICATION PROGRAMMING INTERFACES (“APIs”) AS WELL AS OTHER CODE THAT ALLOWS OTHER SOFTWARE PRODUCTS TO COMMUNICATE WITH OR CALL ON THE POWERPLAN SERVICES, AS UPDATED FROM TIME TO TIME AT POWERPLAN’S DISCRETION AVAILABLE TO YOU PURSUANT TO THESE API TERMS OF USE (“TOU”). BY INTERACTING IN ANY WAY WITH THE APIs, YOU OR THE ENTITY OR COMPANY THAT YOU REPRESENT (“YOU”) UNCONDITIONALLY CONSENT AND AGREE TO BE BOUND BY AND A PARTY TO THE TOU.

1. Use Rights

Subject to Your full compliance with the TOU, You may access the APIs to process, analyze, or display Hosted Data. You may not use the APIs for any other purpose without PowerPlan’s prior written consent. These use rights are limited, non-exclusive, revokable, nonsublicensable, and nontransferable. For clarity, Your access to and use of the products and services offered by PowerPlan (“PowerPlan Services”) and Hosted Data are governed by the software license or subscription agreement entered into between You and PowerPlan (“Master Contract”). “Hosted Data” means data that a user loads into the PowerPlan Services or processes or stores using the PowerPlan Services.

2. Registration

In order to access the APIs, You may be required to provide certain information (such as identification or contact details) as part of the registration process, or as part of Your continued use of the APIs. If so required, any registration information you give to PowerPlan will always be accurate and up to date and You will inform PowerPlan promptly of any updates.

3. Proprietary Rights

Your accessing of the APIs may expose You to confidential and proprietary information of PowerPlan, including but not limited to, business logic and rules, data architecture, data model, data schema, data structure, database structure, synthetic detail applied by PowerPlan to Hosted Data, or application internal data regarding usage, performance, and settings (“Content”). As between You and PowerPlan, the APIs, Content, PowerPlan Services, and all configurations, customizations, modifications, enhancements, updates, revisions, and derivatives thereof and all intellectual property rights are and shall always remain the sole and exclusive property of PowerPlan or its licensors and are protected by applicable intellectual property laws.

4. Security

Access and use of the APIs is permitted only for You, Your users, and Your computing systems. You will not misrepresent or mask Your, Your users’, or Your computing systems’ identities when using the APIs. You are responsible for maintaining the confidentiality of the access credentials for users or systems that are employed to ensure secure access management to the APIs. Your responsibility for confidentiality exists regardless of whether identity services are federated to Your identity provider system of record or PowerPlan provides identity services to You. You may not share Your credentials with others. You are fully liable for all use of the APIs, including any use by a user or system You did not authorize who accesses the APIs using Your access credentials. PowerPlan may terminate access and require new access credentials if it believes that access is being gained without authorization or contrary to the terms of the TOU. You are prohibited from bypassing or breaching any security device or protection used by the APIs. You agree to notify PowerPlan of any unauthorized use of Your access credentials or other breach of security of which You become aware within twenty-four (24) hours.

5. Restrictions and Obligations

PowerPlan expressly reserves the right to limit API access or API call responses beyond the use limit stated in the PowerPlan Services payment plan that You have subscribed to, and the number of API requests, in each case, in its sole discretion. If You would like to use the APIs beyond these limits, You must obtain PowerPlan’s express written consent (and PowerPlan may decline such request or condition acceptance on Your agreement to additional terms and/or charges for that use). Except as expressly authorized under the TOU or by PowerPlan, You may not (A) copy, rent, lease, sell, transfer, assign, sublicense, disassemble, reverse engineer or decompile (except to the limited extent expressly authorized under applicable statutory law), modify or alter any part of the APIs, Hosted Data, or Content; use the APIs on behalf of any third party; attempt or provide a means to execute any bulk operations, including without limitation by “crawling” the APIs, Hosted Data, or Content; cache or otherwise store any Content beyond the API-provided data; or modify any Hosted Data or Content beyond the APIs intended use; (B) use the APIs or any Hosted Data or Content in connection with or to promote any products, services or materials that constitute, promote or are used primarily for the purpose of dealing in: spyware, adware, spam, pornography or other offensive purposes; (C) use the APIs or any Hosted Data or Content in any manner or for any purpose that violates any applicable law or regulation, or any right of any person including, but not limited to, intellectual property rights, rights of privacy and/or rights of personality; (D) use the APIs in a manner that adversely impacts the stability of the APIs; (E) use the APIs to send fraudulent requests; or (F) use the APIs or Content to create a product or service that is substitutable with any PowerPlan Service.

6. Fees

To the extent Your use of the APIs is made available for any fee, such fees are specified in the payment plan that You have subscribed to, and You agree to pay all such fees as provided in and subject to the terms of the Master Contract. PowerPlan reserves the right to change PowerPlan’s prices. If PowerPlan does change prices, PowerPlan will provide notice of the change in email to You at least fourteen (14) days before the change is to take effect.

7. Warranty Disclaimer

THE APIS, HOSTED DATA, AND CONTENT ARE PROVIDED “AS-IS” AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, POWERPLAN, ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, AND OTHER SUPPLIERS (COLLECTIVELY, “SUPPLIERS”) DISCLAIM ALL GUARANTEES AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE APIS, HOSTED DATA, AND CONTENT, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, QUALITY, TIMELINESS, AND NON-INFRINGEMENT. POWERPLAN DOES NOT WARRANT THAT THE APIS, HOSTED DATA, OR CONTENT WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, OR OTHER PROGRAM LIMITATIONS NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE APIS, HOSTED DATA, OR CONTENT, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU FROM POWERPLAN OR THROUGH THE APIS SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOU. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO 60 DAYS FROM THE DATE OF FIRST USE OR PURCHASE, AS APPLICABLE. HOWEVER, SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.

8. Version Updates

PowerPlan may update the TOU from time to time due to business changes, legal and regulatory changes, technological advances, security updates, and customer feedback. PowerPlan will provide Client with a mechanism to obtain notice of updates. PowerPlan will make available a summary of updates (currently posted at <https://powerplan.com/legal/api-terms-of-use/api-terms-of-use-whats-changed>); however, Client is responsible for reviewing any changes to the TOU. The updated version will become effective upon the start of the next additional term under the Master Contract.

9. Support

The TOU does not entitle You to any support for the APIs unless You make separate arrangements with PowerPlan and pay all associated fees. Any such support provided by PowerPlan shall be subject to the terms of the TOU and the Master Contract.

10. Liability Limitation

NOTWITHSTANDING ANY OTHER PROVISION OF THE TOU TO THE CONTRARY, THE ENTIRE CUMULATIVE LIABILITY OF POWERPLAN AND ITS SUPPLIERS FOR ANY REASON ARISING FROM OR RELATING TO THE TOU OR YOUR USE OF THE APIS, HOSTED DATA, OR CONTENT SHALL BE LIMITED TO THE AMOUNT PAID BY YOU TO POWERPLAN FOR THE APIS IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO YOUR CLAIM OR, IF NO FEES APPLY, ONE HUNDRED U.S. DOLLARS (USD\$100).

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, POWERPLAN AND ITS SUPPLIERS ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR DAMAGES RELATING TO LOSS OF BUSINESS, TELECOMMUNICATION FAILURES, LOSS, CORRUPTION, SECURITY OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF PROFITS OR INVESTMENT, ACCOUNTING, FINANCIAL, TAX, LEGAL, OR COMPLIANCE POSITIONS TAKEN BY YOU, INABILITY TO FILE REGULATORY OR FINANCIAL FILINGS, INCORRECT OR INCOMPLETE INFORMATION PROVIDED TO POWERPLAN, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, EVEN IF POWERPLAN OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT DOES POWERPLAN ASSUME ANY LIABILITY TO ANY PARTY OTHER THAN YOU ARISING OUT OF YOUR USE OR INABILITY TO USE THE APIS, HOSTED DATA, OR CONTENT.

11. Indemnity

You shall defend, indemnify, and hold harmless PowerPlan from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, arising or resulting from Your breach of the TOU, or Your other access, contribution to, use or misuse of the APIs, Hosted Data, or Content. PowerPlan shall provide notice to You of any such claim, suit, or demand. PowerPlan reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, You agree to cooperate with any reasonable requests assisting PowerPlan's defense of such matter.

12. Term and Termination

Subject to earlier termination as provided below, PowerPlan may terminate the TOU at any time by providing thirty (30) days prior notice to the administrative email address associated with Your account. Your rights under the TOU may be terminated by PowerPlan upon fifteen (15) days' notice if You fail to comply with any term or condition of the TOU, or upon ten (10) days' notice upon failure to make the specified payments, if applicable. Upon such termination, You must immediately cease using the APIs and, unless your Master Contract is still active, destroy all copies of Hosted Data and Content in Your possession or control. Any termination of the TOU shall not affect PowerPlan's rights hereunder, including all accrued rights to payment, if any, and the terms of Sections 3-15. PowerPlan reserves the right to modify or discontinue, temporarily or permanently, the APIs (or any part thereof). You may terminate the TOU pursuant to the termination rights in the Master Contract.

13. Government Use

If You are part of an agency, department, or other entity of the United States Government ("**Government**"), the use, duplication, reproduction, release, modification, disclosure, or transfer of the APIs is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The API is a "commercial item," "commercial computer software" and "commercial computer software documentation." In accordance with such provisions, any use of the APIs by the Government shall be governed solely by the TOU.

14. Export Controls

You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and You shall not export, or allow the export or re-export of the APIs in violation of any such restrictions, laws, or regulations. By using the APIs, You agree to the foregoing and represent and warrant that You are not located in, under the control of, or a national or resident of any restricted country.

15. Miscellaneous

You may not assign the TOU without the prior written consent of PowerPlan, but PowerPlan may assign or transfer the TOU, in whole or in part, without restriction. The TOU (and any additional terms and conditions with which PowerPlan amends or supplements the TOU), together with the Master Contract, is a complete statement of the agreement between You and PowerPlan with regards to the subject matter hereof and sets forth the entire liability of PowerPlan and its Suppliers and Your exclusive remedy with respect to the APIs, Hosted Data, and Content and their use. You agree that PowerPlan is not acting as Your agent or fiduciary in connection with Your use of the APIs, Hosted Data, or Content. The Suppliers, agents, and employees of PowerPlan are not authorized to make to make any additional representations, commitments, or warranties binding on PowerPlan. Any waiver of the terms herein by PowerPlan must be in a writing signed by an authorized officer of PowerPlan and expressly referencing the applicable provisions of the TOU. PowerPlan shall not be liable for any default or delay in the performance of its obligations under the TOU to the extent its performance is delayed or prevented due to causes beyond its reasonable control, such as acts of God, natural disasters, pandemics, terrorist acts, war or other hostilities, labor disputes, civil disturbances, the actions or omissions of third parties, electrical or communication system failures, or governmental action. If any provision of the TOU is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. The TOU are governed by Georgia law as applied to agreements entered into and to be performed entirely within Georgia, without regard to its choice of law or conflicts of law principles that would require the application of law of a different jurisdiction, and applicable federal law. The parties hereby consent to the exclusive jurisdiction and venue in the state courts in Cobb County, Georgia, or the federal court for the Northern District of Georgia. Headings are included for convenience only and shall not be considered in interpreting the TOU. As used in the TOU "including" means "including but not limited to". The TOU does not limit any rights that PowerPlan may have under trade secret, copyright, patent, or other laws.