

Professional Services Agreement



TermScout Certified Contract



Professional Services Agreement

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This Professional Services Agreement (“Agreement”) governs Client’s purchase and receipt of Professional Services and is effective as of the date listed in the SOW (“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 “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.
- 1.2 “Authorized Vendor” means any third-party entity that is engaged by Client for services that involve access to the Deliverables.
- 1.3 “Client” means the entity identified on the SOW.
- 1.4 “Client Data” means the information provided by Client or its Personnel in support or furtherance of performance of Professional Services. Client Data does not include the data that Client, or PowerPlan at Client’s direction, loads into or stores using the Software.
- 1.5 “Code of Conduct” means PowerPlan’s business code of ethics and standards of conduct in effect at the time the Professional Services are provided and currently posted at <https://www.ropertech.com/code-of-ethics/>.
- 1.6 “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and formulas, Deliverables, benchmark and performance test results, product designs, any sales, cost, and other unpublished financial information, product and business plans, projections and marketing data, and Client Data.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.
- 1.7 “Deliverable” means documents and materials, which are delivered or made accessible to Client by PowerPlan in the provision of Professional Services as set forth in the SOW.
- 1.8 “DPA” means PowerPlan’s Data Processing Addendum in effect at the time the Professional Services are provided and currently posted at <https://powerplan.com/legal>.
- 1.9 “Exhibit” means any addendum, notice, or policy incorporated to this Agreement by reference from time to time.
- 1.10 “Fees” means all amounts payable to PowerPlan under the SOW.
- 1.11 “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 secret; (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).
- 1.12 “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.
- 1.13 “Personnel” means an employee, contractor, agent, or consultant who is employed by or provides services to an entity.
- 1.14 “PowerPlan” means PowerPlan, Inc.
- 1.15 “Privacy Notice” means PowerPlan’s privacy notice in effect at the time the Professional Services are provided and currently posted at <https://powerplan.com/legal/privacy-notice>.
- 1.16 “Professional Services” means the implementation, training, consulting, and other services provided by PowerPlan in accordance with this Agreement and an applicable SOW.
- 1.17 “Software” means the object code (i.e., uncompiled) version of the PowerPlan software module(s) that Client has certain use rights to under a separate agreement. Software does not include any Deliverables.
- 1.18 “SOW” means a statement of work signed by PowerPlan and Client which describes the Professional Services.
- 1.19 “Time and Materials Rates” means PowerPlan’s standard hourly rates for time and materials when PowerPlan performs the Professional Services.

2. PROFESSIONAL SERVICES

- 2.1 Generally, PowerPlan shall provide Professional Services to Client as agreed in the SOW, subject to this Agreement. Unless explicitly noted otherwise in the applicable SOW, each party shall designate a project manager who shall be responsible for coordinating the activities of each party.
- 2.2 Changes to SOW.

- (a) Either party may propose a change order to add to, reduce, or change the work specified in the SOW (upon execution by both parties, a “Change Order”). Each proposed Change Order shall specify the changes to the Professional Services or Deliverables, and the effect, if any, on the SOW, including PowerPlan’s compensation, due to the change. Once executed by both parties, a Change Order shall become a part of the SOW.
 - (b) In the event of any delay in Client’s performance of any of the obligations set forth in this Agreement, including any SOW, or any other delays caused by Client, the milestones, Fees, and date(s) set forth in the SOW shall be adjusted as reasonably necessary to account for such delays.
- 2.3 Relationship to Software or Other PowerPlan Services. This Agreement is limited to Professional Services and does not convey any right to use Software or other PowerPlan services (e.g., SaaS, cloud services, support services, maintenance services). Any use of Software or other PowerPlan services by Client will be governed by a separate agreement. Client agrees that its purchase of Professional Services is not contingent on the delivery of any future functionality or features of Software or other PowerPlan services, or on any oral or written comments by PowerPlan regarding such future functionality or features.
- 2.4 Processing of Personal Data. Where PowerPlan acts as a processor or service provider on behalf of Client, process Personal Data only as necessary to perform the Professional Services 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.
- 2.5 Authorized Vendors Permitted Usage. Client may permit Authorized Vendors to access the Deliverables to perform Authorized Vendor’s services in furtherance of Client’s and Affiliates’ internal business operations in connection with authorized and permitted usage of the Software, provided 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 SOW.

3. ADDITIONAL CLIENT RESPONSIBILITIES

- 3.1 Procedures. Client agrees that the Professional Services shall not be construed as accounting, tax, financial, or legal advice, and Client remains responsible for ensuring the suitability of the Professional Services and any Deliverables arising out of the Professional Services for meeting its business objectives. Client recognizes that PowerPlan will be relying on information and data provided by the Client and its Personnel as part of any Professional Services engagement, including but not limited to functional designs/specifications, configurations, and strategic value assessments, and Client acknowledges that it is solely responsible for ensuring the accuracy and sufficiency of the information and data provided to PowerPlan and that PowerPlan shall not be liable for any damages caused by Client’s failure to fulfill these responsibilities.
- 3.2 Rights to Client 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 to provide, administer, and ensure the proper operation of the Professional Services 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, 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.
- 3.3 Cooperation and Access. Client shall provide PowerPlan with good faith cooperation and access, including remote access, to such information, facilities, Personnel, and equipment 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.

4. FEES AND PAYMENTS

- 4.1 Generally. Fees are stated in the SOW. Unless explicitly noted otherwise in the SOW, PowerPlan performs all Professional Services on a time and materials basis, at Time and Materials Rates, and are subject to availability of PowerPlan Personnel. PowerPlan will charge a premium of one and one half (1.5) times the relevant contracted rate for any Professional Services work that it performs on weekends or during a PowerPlan published holiday. Should Client cancel or delay previously scheduled work less than seven (7) calendar days prior to its start date, Client shall be responsible for the fees for any Personnel that PowerPlan is unable to fully redeploy as well as any non-refundable travel expenses that PowerPlan incurs. PowerPlan does not guarantee that Professional Services performed on a time and materials basis can be fully performed for any “not to exceed” or maximum price set forth in the SOW, provided that PowerPlan shall use reasonable efforts to report to Client as soon as practicable if PowerPlan discovers that the time or cost of performance of the Professional Services will exceed the estimated time or cost authorized in the SOW.
- 4.2 Increases. Unless the SOW is a fixed-fee project, PowerPlan may apply its standard, annual increase to the Time and Material Rates stated in the SOW effective January 1 of each year. PowerPlan will use commercially reasonable efforts to notify Client of such increases by December 1 of each year.
- 4.3 Invoicing. Fees for Professional Services are generally billed monthly in arrears at Time and Materials Rates, unless otherwise expressly set forth in the SOW.
- 4.4 Expenses. Client shall reimburse PowerPlan for actual, reasonable travel, living, and other incidental expenses incurred.
- 4.5 Payment Terms. Except as noted otherwise on the SOW, all Fees are due within thirty (30) days of the date of the applicable invoice.
- 4.6 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 the SOW. 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.

5. PROPRIETARY RIGHTS

5.1 Ownership.

- (a) PowerPlan. PowerPlan and its suppliers retain sole and exclusive ownership of their respective Confidential Information, Deliverables, and all Intellectual Property Rights in, to, or embodied in or associated with the Deliverables, Professional Services, and all copies thereof. Client, Affiliates, and Authorized Vendors 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, and all copies thereof. PowerPlan shall not take any action inconsistent with such title and ownership.

5.2. Feedback. Client may, but is not required to, provide PowerPlan with ideas, suggestions, requests, recommendations, or feedback about the Deliverables or Professional Services ("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.

5.3. License to Deliverables. To the extent that any Deliverables are provided to Client in connection with Professional Services performed by PowerPlan pursuant to the SOW, PowerPlan grants to Client a license to use such Deliverables while Client has an active license or subscription for the corresponding Software and in accordance with this Agreement and solely for Client's and Affiliates' internal business operations in connection with authorized and permitted usage of such Software, without the right to sell, market, sub-license, encumber, assign, loan, operate as a service bureau, reverse engineer, create derivative works of, or otherwise exploit the Deliverables commercially on the open market or on behalf of non-Affiliate third parties.

5.4. 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 Vendors, 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 performs the Professional Services. 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.

6. WARRANTIES

6.1. 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 Professional Services that were affected by the breach; or (b) re-perform the portion of the Professional Services affected by the breach.

6.2. Professional Services Warranty. PowerPlan warrants that the Professional Services will be performed in a good and workmanlike manner, consistent with generally accepted industry standards. Client shall promptly notify PowerPlan in writing if the Professional Services fail to perform in accordance with this warranty. PowerPlan shall, after receipt of Client's notice, re-perform the non-conforming Professional Services within a reasonable time. If PowerPlan is unable to re-perform such Professional Services as warranted, PowerPlan shall refund the Fees paid for the non-conforming Professional Services.

6.3. Sole Remedy. THE WARRANTIES IN SECTIONS 6.1 AND 6.2 CONSTITUTE POWERPLAN'S SOLE AND ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDIES WITH RESPECT TO SUCH WARRANTIES, RESPECTIVELY. 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) services not performed by solely PowerPlan Personnel.

6.4. Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 6, POWERPLAN DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, CONDITION, OR AGREEMENT WITH RESPECT TO THE DELIVERABLES OR PROFESSIONAL SERVICES. POWERPLAN EXPRESSLY DISCLAIMS 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 DELIVERABLES WILL BE FREE OF ERRORS OR ISSUES WITH THE PROFESSIONAL SERVICES 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.

7. INDEMNITIES

7.1. 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.

7.2. Infringement Indemnification. PowerPlan shall indemnify, defend, and hold harmless Client against any third-party claim that any Deliverable infringes any valid and active patent, copyright, or trademark, or misappropriates any trade secret. If any Deliverable 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 Deliverable; (b) replace or modify the affected Deliverable 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 license for the affected portion of the Deliverable and refund the Fees paid for the affected portion of the Deliverable.

7.3. Exceptions. Notwithstanding anything to the contrary, PowerPlan shall not be liable for nor have any obligation pursuant to Section 7.2 for any claim that: (a) an alleged infringement is based on or arises from (i) the combination or use of the Deliverable with hardware, software, or other materials not provided or approved by PowerPlan, (ii) the modification of the Deliverable by anyone other than PowerPlan or at PowerPlan's direction, or (iii) the use of the Deliverable not in accordance with this Agreement or the SOW; or (b) relates to Client's right to collect, store, process or use the Client Data, including any claim that the Client Data infringes any patent, copyright, or trademark, or misappropriates any trade secret.

7.4. Process. The indemnification provided in this Section 7 is 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 its 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 7. Client may engage legal counsel to monitor, but not control, any such claim at Client's sole cost and expense. THE INDEMNITIES IN SECTIONS 7.1 AND 7.2 STATE POWERPLAN'S SOLE OBLIGATION, AND CLIENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH INDEMNITIES.

8. RISK ALLOCATION

8.1. Limitation of Remedy. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTIONS 5 OR 7, NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE 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 THE PARTY AND REGARDLESS OF WHETHER THE PARTY HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

8.2. Limitation of Liability. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTIONS 5 OR 7, THE CUMULATIVE, AGGREGATE LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THIS AGREEMENT) OF EITHER PARTY AND ITS AFFILIATES 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 FOR THE PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM.

9. SUSPENSION, TERM, AND TERMINATION

9.1. Suspension. If Client's account is in arrears for sixty (60) days or more, PowerPlan may suspend the provision of Professional Services until such time as Client's account is brought current. This remedy is in addition to any other rights PowerPlan may have under this Agreement, at law, or in equity.

9.2. Term. The term of this Agreement shall begin on the Effective Date continue until terminated in accordance with Section 9.3. The term of the SOW shall begin on the effective date stated in the SOW and terminate when the Professional Services are completed unless terminated earlier in accordance with Section 9.3.

9.3. Termination. Either party may terminate this Agreement:

- (a) at any time for convenience upon ten (10) days' written notice to the other party. To the extent there are SOWs in effect when a party terminates this Agreement, such SOWs shall continue to be governed by this Agreement as if it had not been terminated. Client may terminate an individual SOW for convenience to the extent set forth in such SOW.
- (b) 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
- (c) 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.

9.4. 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 Deliverables, shall cease, except as follows or as otherwise noted in Section 10.20:

- (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.

10. GENERAL PROVISIONS

10.1. Insurance. PowerPlan will maintain continuously during the term of this Agreement 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 include Client as an additional insured as its interest appears. Upon written request, PowerPlan will provide Client with certificates of insurance or evidence of coverage.

10.2. 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.

10.3. 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 10.9, 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

10.4. Version Updates. PowerPlan may update this Agreement 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/professional-services-agreement/professional-services-agreement-whats-changed>); however, Client is responsible for reviewing any changes to this Agreement. The updated version will only apply to subsequently executed SOWs.

10.5. 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. Subject to Section 10.4, 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, onboarding forms, purchase order, purchase order acknowledgement, or similar documents shall in any way modify or add any additional terms or conditions to this Agreement.

- 10.6. Order of Precedence. In the event of a direct conflict between the SOW, this Agreement, or an Exhibit, such documents shall take priority in the order noted above.
- 10.7. 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.
- 10.8. 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.
- 10.9. Injunctive Relief. The parties agree that monetary damages are not an adequate remedy if Sections 2.5 or 5 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.
- 10.10. Assignment. Except in connection with a merger or sale involving a majority of the stock or assets of a party, neither this Agreement or the SOW 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.
- 10.11. 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 controlled items. Without limitation of the generality of the foregoing requirement, Client shall not allow Affiliates or Authorized Vendors to access or use any Deliverables 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 Deliverables 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.
- 10.12. Force Majeure. Neither party will be liable for failure or inability to perform its obligations under this Agreement or the SOW 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.
- 10.13. Non-solicitation. Client shall not hire or engage any Personnel or former Personnel of PowerPlan within twelve (12) months from the last date such Personnel performed Professional Services hereunder without PowerPlan's written consent. This provision shall not apply to Personnel who reply solely to a published solicitation for employment without otherwise violating the terms of this Section.
- 10.14. 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.
- 10.15. Third Party Beneficiaries. There are no express or implied third-party beneficiaries of this Agreement.
- 10.16. Non-Exclusivity. PowerPlan shall not be limited or precluded in any way from providing the Professional Services or other services of any kind to any person or entity as it, in its sole discretion, deems appropriate.
- 10.17. 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 the SOW. Client will send notices to PowerPlan at: PowerPlan, Inc., 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 account contact that Client designates. Email notice shall be deemed given when sent.
- 10.18. 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.
- 10.19. 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.
- 10.20. Survival. The provisions of Sections 1, 4 (for accrued but unpaid Fees), 5, 8, 9.4, and 10 of this Agreement shall survive any expiration or termination of this Agreement.
- 10.21. Authority. The parties and each individual executing the SOW on behalf of a party represent and warrant that such individual is duly authorized to execute on behalf of the applicable party.

10.22. Electronic Signatures; Counterparts. Electronic transmission, such as email, of a scanned document (e.g., pdf or similar format) and digital signatures meeting the requirements of the Uniform Electronic Transactions Act or the Electronic Signatures in Global and National Commerce Act, are true and valid signatures for all purposes hereunder and shall bind the parties. An SOW may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.

11. COUNTRY SPECIFIC TERMS: CANADA

- 11.1. 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.
- 11.2. 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.

12. GOVERNMENT SPECIFIC TERMS

- 12.1. Government Entities. To the extent Client is a United States federal, state, or local government entity or a Canadian federal, provincial, or local government entity ("Government"), this Section 12 applies to address statutory restrictions that apply to this Agreement.
- 12.2. Commercial Items. The Professional Services are commercial in nature and available in the open marketplace. For U.S. federal Government Clients, the Professional Services are "commercial services" as defined in 48 C.F.R. § 2.101. The Professional Services are provided to all Government Clients and Authorized Users, for use by the Government or on its behalf, subject to the terms of this Agreement, and all sales to U.S. federal Government Clients must be consistent with 48 C.F.R. §252.227-7015. For Canadian federal Government Clients, 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. The Professional Services are provided to the Government with only those rights as granted to all other Clients and Authorized Users, according to the terms and conditions contained in this Agreement.
- 12.3. Government Purpose. Government's use of Professional Services under this Agreement must only be for a governmental purpose. Any private, personal, or non-governmental purposes are not subject to this Section 12.
- 12.4. Liability; Statute of Limitations. For U.S. Government Clients, claims and liabilities arising from this Agreement will be determined under the Contract Disputes Act, the Federal Tort Claims Act, or the equivalent governing state or local legal authority and procedure. Applicable federal, state, or provincial statute of limitations provisions apply to any breach or claim.
- 12.5. Governing Law. Any terms regarding choice of law and venue in this Agreement are hereby waived. This Agreement is governed by, and interpreted and enforced in accordance with, the laws applicable to Government without reference to conflict of laws. The laws of the State of Georgia will apply in the absence of applicable law.
- 12.6. Intellectual Property Ownership. Except as expressly stated in this Agreement, no rights to any Deliverables, derivative works, inventions, products or product modifications, or documentation are conferred to Government or any other party. All such rights belong exclusively to PowerPlan.