

## **Learning Portal Terms of Use and Training Policy**

### **1. USE OF THE POWERPLAN LEARNING PORTAL AND TRAINING MATERIALS**

- 1.1. Use of the PowerPlan Learning Portal. Subject to this PowerPlan Learning Portal Terms of Use and Training Policy ("Terms of Use") and the order form signed between PowerPlan and the Client or its affiliate, PowerPlan grants to Client a limited, non-exclusive, non-transferable right while registered to use the PowerPlan Learning Portal for internal business purposes. PowerPlan will provide Client's Plan Administrator, as reflected in an applicable order form, with a promo code for online access to the Learning Portal. When a registered user is no longer employed by Client, Client shall notify PowerPlan immediately so that PowerPlan may decommission such user's access.
- 1.2. Learning Portal Plan Type. Client may choose either an Enterprise or Standard Plan Type, as stated in the applicable order form. The Enterprise Plan provides access to the full PowerPlan learning content library. The Standard Plan provides access to a limited set of PowerPlan learning content.
- 1.3. Use of the Training Materials. Subject to these Terms of Use and the applicable order form signed between PowerPlan and the Client or its affiliate, PowerPlan grants to Client a limited, worldwide, non-exclusive, non-transferable license, without right of sublicense, during the duration of the training class to use the training materials provided, if any, for internal business purposes solely in connection with use of the PowerPlan Learning Portal and/or registered training class(es).
- 1.4. Use Restrictions. Except as otherwise explicitly provided in these Terms of Use or as may be expressly permitted by applicable law, Client will not, and will not permit or authorize third parties to: (a) rent, lease, or otherwise permit third parties to use the PowerPlan Learning Portal or training materials; (b) use the PowerPlan Learning Portal to provide services to third parties (e.g., as a service bureau); nor (c) circumvent or disable any security or other technological features or measures of the PowerPlan Learning Portal.
- 1.5. Compliance with Laws. Client will use, and PowerPlan will provide, the PowerPlan Learning Portal and training materials in compliance with all applicable laws and regulations.
- 1.6. Protection against Unauthorized Use. Client will use reasonable efforts to prevent any unauthorized use of the PowerPlan Learning Portal and training materials and promptly notify PowerPlan in writing of any unauthorized use that comes to Client's attention. If there is unauthorized use by anyone who obtained access to the PowerPlan Learning Portal directly or indirectly through Client, Client will take all steps reasonably necessary to terminate the unauthorized use. Client will cooperate and assist with any actions taken by PowerPlan to prevent or terminate unauthorized use of the PowerPlan Learning Portal or training materials.
- 1.7. Reservation of Rights. The PowerPlan Learning Portal and training materials are owned or licensed by PowerPlan. The PowerPlan Learning Portal and training materials are protected by United States copyright, trade dress, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. Except as expressly authorized by PowerPlan, Client agrees not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the PowerPlan Learning Portal or training materials. PowerPlan grants to Client a limited right to use the PowerPlan Learning Portal and training materials under these Terms of Use. Client will not have any rights to the PowerPlan Learning Portal or training materials except as expressly granted in these Terms of Use. PowerPlan reserves to itself all rights to the PowerPlan Learning Portal and training materials not expressly granted to Client in accordance with these Terms of Use.
- 1.8. Feedback. If Client provides any feedback to PowerPlan concerning the functionality and performance of the PowerPlan Learning Portal (including identifying potential errors and improvements), or training materials, Client hereby assigns to PowerPlan all right, title, and interest in and to the feedback, and PowerPlan is free to use the feedback without payment or restriction.
- 1.9. Term and Termination. Upon the Initial Learning Portal Subscription Term end date, access to the Learning Portal shall automatically renew for additional one (1) year terms (each, a "Learning Portal Renewal Term"; the Initial Learning Portal Subscription Term and all Learning Portal Renewal Terms are collectively referred to as the "Learning Portal Subscription Term"), unless either party provides written notice to the other party at least ninety (90) days prior to the end of the Initial Learning Portal Subscription Term or the then-current Learning Portal Renewal Term of its intent to not renew access to the Learning Portal.

### **2. INSTRUCTOR-LED TRAININGS**

- 2.1. Enrollment & Payment Information. PowerPlan adheres to standard published pricing for all scheduled training classes. All Clients receive the same price for the same class. Enrollment for each PowerPlan training class is limited and requires advanced registration. Registrations are accepted on a first-come, first-served basis and Clients will receive a confirmation of their registration. Fees for each class include instructional materials and meals as referenced below. Payment for each class must be received at least 2 weeks prior to commencement of the training class or your seat will be forfeited and offered to participants on the waiting list. Client shall reimburse PowerPlan for actual, reasonable travel, living, and other incidental expenses incurred for trainings conducted at Client facilities.
- 2.2. Wait List. Training class size is limited to the facility space and to best practices in training. If a training class reaches maximum capacity, PowerPlan will take all subsequent registrations in order of receipt and place the individuals on a wait list. If seats become available for a particular class due to cancellations or non-payment, wait list members will be notified in order of registration receipt. Additionally, anyone added to the wait list will be notified of their status at least 2 weeks prior to the commencement of training classes.
- 2.3. Substitutions. Clients may substitute delegates at any time; however, substitutions requests must be sent to the training team in advance of the class. To make a substitution request please contact [training@pwrplan.com](mailto:training@pwrplan.com).
- 2.4. Scheduling. Classes must be scheduled at least thirty (30) days in advance of the training event. Each class will be limited to ten (10) participants. Training will be conducted virtually unless noted otherwise in the statement of work.
- 2.5. Course content. Unless expressly noted in a statement of work, training will be delivered using PowerPlan's standard training materials and will not be customized based on Client's particular business processes, implementation processes, or particular instance of the PowerPlan software. PowerPlan will provide Client with the associated presentation materials prior to the commencement of the training class. Training classes will not exceed six (6) hours of classroom training per day. Each class will be taught by one (1) PowerPlan trainer.
- 2.6. Additional Client Responsibilities. Client will provide a non-production database environment with the applicable PowerPlan Software. Client will provide PowerPlan with access to its training database at least five (5) business days prior to the scheduled training class. Client will provide each participant with a laptop or PC with access to the training database environment. If classes are on-site at Client's facility, Client will provide adequate classroom space.
- 2.7. Cancellations.
  - 2.7.1. All training registration changes, cancellations, or substitutions must be emailed to the PowerPlan Training Department at [training@pwrplan.com](mailto:training@pwrplan.com).

- 2.7.2. Registration cancellations are considered official on the date they are received in writing.
- 2.7.3. For cancellations made 30 days prior to the commencement of a training class, PowerPlan will refund the entire registration fee; however, refunds will not be processed until after the scheduled classes. For cancellations received less than 30 days prior to the training class commencement date, no refund will be provided, however substitutions are welcome. Refunds will NOT be made for no shows to any class.
- 2.7.4. Training dates and registration will be confirmed fourteen (14) days prior to the commencement of the training class.
- 2.7.5. Should Client cancel or delay a previously scheduled training class without at least fourteen (14) days' written notice, Client shall pay to PowerPlan as liquidated damages, and not as a penalty, \$250 (USD) per day for each day of training that has been canceled, which will be invoiced at the end of the calendar month on which Client's request to cancel or delay is received by PowerPlan.
- 2.7.6. PowerPlan reserves the right to cancel any instructor-led training class due to insufficient enrollment at least 30 calendar days in advance of the scheduled class date. PowerPlan will provide the option to reschedule for a future class date or to receive a full refund of registration fees.
- 2.7.7. PowerPlan is not responsible for any expenses incurred if a training class is cancelled.
- 2.7.8. If an instructor-led training class is cancelled due to any unforeseen circumstances such as weather or natural disaster, the Client is entitled to reschedule for a future training class.
- 2.8. Classroom Facilities.
  - 2.8.1. Dress Code. The dress code for all PowerPlan classes is casual to business casual. As a reminder, meeting room temperatures and personal comfort ranges vary widely. Since meeting rooms always seem cool, please bring a sweater or jacket.
  - 2.8.2. Equipment and Materials. Class participants must bring their own PC, notepads, and pens. Applicable handouts are provided to class participants electronically.
  - 2.8.3. Virtual Classroom. PowerPlan will furnish a cloud environment to be used during the training class. A link to access the environment will be provided to registrants 1 week ahead of the training class. Attendees will be responsible for their own access (computer, internet and clearing all firewall issues prior to the start of the training class). Applicable digital handouts and materials will be provided.
  - 2.8.4. Special Access Requirements. If you require special access during your education event, please notify the PowerPlan Training Department via email at [training@pwrplan.com](mailto:training@pwrplan.com) at least two weeks in advance of your scheduled event to allow us to assess your specific requirements.
  - 2.8.5. Recording. PowerPlan prohibits the taping or digital recording and rebroadcast of our education events unless approved in writing by the Training department head and Legal department.
  - 2.8.6. Participant Responsibilities. PowerPlan reserves the right to exclude participant from attending any class due to disorderly conduct, failure to observe any of PowerPlan's rules of participation or failure to attend prerequisite class or classes. No refund of fees shall be paid to participant in such circumstances.
  - 2.8.7. Meals & Parking. Registration fee includes specified meals during Atlanta PowerPlan training. Lunch will be provided for full day classes or for classes that start prior to 1 p.m. Dinner is not included for any PowerPlan training. Meals or meal reimbursements will not be included for virtual training classes. Free parking is available on site.
  - 2.8.8. Hotel Reservations. Class participants must make their own arrangements for accommodation. A list of hotels will be provided. This information is provided for your convenience. Please be advised that PowerPlan does not control, promote, endorse, or assume any liability of any kind for or relating to any aspect of the services provided by these hotels.

### 3. PAYMENT

PowerPlan offers the following payment options: credit card (Visa, MasterCard or American Express) via our online registration (for instructor-led training only), and prepayment via cleared bank check, money order, or wire transfer. Wire transfer instructions will be provided upon request. Learning Portal Fees are due annually in advance and are non-refundable.

### 4. CONFIDENTIALITY

- 4.1. Restrictions on Use. Client agrees to hold PowerPlan's Confidential Information in strict confidence and not to disclose such Confidential Information to any third party. "Confidential Information" means all nonpublic information, data or knowledge, in any form, disclosed by PowerPlan, its affiliates, or its agents ("Disclosing Party") to Client, its affiliates, or its agents ("Receiving Party") that is designated as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. Confidential Information includes without limitation all proprietary information; technical, customer, marketing or financial information of Disclosing Party or its customers; business plans or projections; information that was observed or learned by Receiving Party in connection with its use of the PowerPlan Learning Portal or training materials; and any other information pertaining to the past, present, or future business operations or financial condition of Disclosing Party. Receiving Party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law. All Confidential Information furnished by Disclosing Party is the sole and exclusive property of Disclosing Party.

The provisions of this section relating to use and disclosure shall not apply to any information that: (a) is rightfully known to Receiving Party prior to disclosure by Disclosing Party, (b) is rightfully obtained by Receiving Party from any third party without restrictions on disclosure, or (c) is or becomes available to the public without restrictions. The obligations set forth in this section shall survive any expiration or termination of these Terms of Use and, if applicable, the written agreement signed between PowerPlan and the Client or partner company for five (5) years thereafter for Confidential Information that is not a trade secret under applicable law and for trade secrets shall continue for so long as such Confidential Information remains a trade secret. Upon Disclosing Party's request, Receiving Party will promptly (x) return to Disclosing Party or, if directed by Disclosing Party, destroy all tangible embodiments of the Confidential Information (in every form and medium), (y) permanently erase all electronic files containing or summarizing any Confidential Information, and (z) certify to Disclosing Party in writing that Receiving Party has fully complied with the foregoing obligations.
- 4.2. Injunctive Relief. The parties agree that monetary damages are not an adequate remedy if this section is breached and that PowerPlan will suffer irreparable damage, and therefore, PowerPlan, 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.

### 5. DISCLAIMER

POWERPLAN MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. POWERPLAN EXPRESSLY DISCLAIMS ALL IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, AND ACCURACY. POWERPLAN DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE POWERPLAN LEARNING PORTAL. POWERPLAN DOES NOT WARRANT THAT THE POWERPLAN LEARNING PORTAL IS ERROR-FREE OR THAT OPERATION OF THE POWERPLAN LEARNING PORTAL WILL BE UNINTERRUPTED. POWERPLAN DOES NOT WARRANT THAT ANY INFORMATION PROVIDED THROUGH THE POWERPLAN LEARNING PORTAL IS ACCURATE OR COMPLETE OR THAT ANY INFORMATION PROVIDED THROUGH THE POWERPLAN LEARNING PORTAL WILL ALWAYS BE AVAILABLE. POWERPLAN EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF CLIENT'S USE OF THE POWERPLAN LEARNING PORTAL.

## **6. INDEMNIFICATION**

- 6.1. Defense. Client agrees to defend, indemnify and hold harmless PowerPlan and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the "PowerPlan Entities") from and against any and all Claims arising out of or in any way connected with: (i) Client's unauthorized access to, prohibited use of or alleged prohibited use of the PowerPlan Learning Portal; or (ii) Client's violation of any applicable law or regulation, provided that: (a) PowerPlan gives Client prompt written notice of the claim, proceeding, or suit ("Claim") (provided that failure to so notify Client will not relieve Client of its indemnification obligations, except to the extent that the failure or delay is prejudicial); (b) PowerPlan grants Client full and complete control over the defense and settlement of the Claim; (c) PowerPlan provides assistance in connection with the defense and settlement of the Claim as Client may reasonably request; and (d) PowerPlan complies with any settlement or court order made in connection with the Claim. Client will not agree to any settlement which results in an admission of liability by PowerPlan without PowerPlan's prior written consent and will include PowerPlan on any settlement release. PowerPlan will not defend or settle any Claim without Client's prior written consent. PowerPlan will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Client will have sole control over the defense and settlement of the Claim.
- 6.2. Indemnification. Client will indemnify PowerPlan from and pay (a) all damages, costs, and attorneys' fees finally awarded against PowerPlan in any Claim; and (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by PowerPlan in connection with the defense of a Claim (other than attorneys' fees and costs incurred without Client's consent after Client has accepted defense of the Claim).

## **7. GENERAL**

- 7.1. Assignability. Client may not assign its right, duties, and obligations under these Terms of Use without PowerPlan's prior written consent, except that Client may assign its rights, duties, and obligations under these Terms of Use without PowerPlan's consent to a successor by way of merger, acquisition, sale of assets, or operation of law if the successor agrees to assume and fulfill all of Client's obligations under these Terms of Use.
- 7.2. Governing Law. These Terms of Use will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Georgia, U.S.A., without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in Cobb County, Georgia in connection with any action arising out of or in connection with these Terms of Use.
- 7.3. Waiver. The waiver by either party of any breach of any provision of these Terms of Use does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with these Terms of Use will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of these Terms of Use.
- 7.4. Severability. If any part of these Terms of Use is found to be illegal, unenforceable, or invalid, the remaining portions of these Terms of Use will remain in full force and effect. If any material limitation or restriction on the use of the PowerPlan Learning Portal or training materials under these Terms of Use is found to be illegal, unenforceable, or invalid, Client's right to use the PowerPlan Learning Portal or training materials, respectively, will immediately terminate upon written notice to Client.
- 7.5. Version Updates. PowerPlan may update these Terms of Use from time to time due to business changes, legal and regulatory changes, technological advances, security updates, and Client 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/learning-portal-terms-of-use-and-training-policy/learning-portal-terms-of-use-and-training-policy-whats-changed>); however, Client is responsible for reviewing any changes to these Terms of Use. For Learning Portal subscriptions, the updated version will become effective upon the start of the next renewal period. For instructor-led trainings, the updated version will only apply to subsequently held training classes.
- 7.6. Entire Agreement. These Terms of Use is the final and complete expression of the agreement between these parties regarding Client's use of the PowerPlan Learning Portal and training classes. These Terms of Use supersedes, and the terms of these Terms of Use govern, all previous oral and written communications regarding these matters, all of which are merged into these Terms of Use, except that these Terms of Use does not supersede any written software license or SaaS agreement between PowerPlan and the Client or partner company executed prior to these Terms of Use coming into force. No employee, agent, or other representative of PowerPlan has any authority to bind PowerPlan with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in these Terms of Use. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of these Terms of Use. Nothing contained in any Client portal terms and conditions, Client onboarding forms, access agreements, or similar documents shall in any way modify or add any additional terms or conditions to these Terms of Use or any order form or statement of work governed by these Terms of Use. Client understands and agrees that any Client onboarding forms, access agreements, or similar documents are rejected and are not part of the agreement between PowerPlan and Client.