

SaaS Standard Terms and Conditions



TermScout Certified Contract

SaaS Agreement



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These SaaS Standard Terms and Conditions (“Standard Terms”) governs Client’s use of all the products listed in an Order Form and is effective as of the date listed in the applicable Order Form (“Effective Date”).

1. DEFINITIONS.

In addition to any other defined terms set forth in these Standard Terms, the following defined terms shall have the following meanings:

- 1.1 “Acceptable Use Policy” means PowerPlan’s Acceptable Use Policy currently posted at <https://powerplan.com/legal>.
- 1.2 “Additional NXT Managed Services Term” means the period for which the NXT Managed Services automatically renews upon conclusion of the Initial NXT Managed Services Term and successively thereafter. This shall be successive one-year periods unless the parties agree to a longer period in a new Order Form.
- 1.3 “Additional SaaS Term” means the period for which the SaaS automatically renews upon conclusion of the Initial SaaS Term and successively thereafter. This shall be successive one-year periods unless the parties agree to a longer period in a new Order Form.
- 1.4 “Affiliate” means those entities that are controlled by, controlling, or under common control with a party. “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 “AI Addendum” means PowerPlan’s AI Addendum currently posted at <https://powerplan.com/legal>.
- 1.6 “AI Features” means the features and functionality of the SaaS that use Artificial Intelligence in their operation.
- 1.7 “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 these Standard Terms. APIs include callable interfaces, tables, files, and database management system entry points such as tables, views, and stored procedures.
- 1.8 “API TOU” means PowerPlan’s API Terms of Use currently posted at <https://powerplan.com/legal>.
- 1.9 “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.
- 1.10 “Artificial Intelligence” means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. This includes machine learning, pattern recognition systems, natural language processing, and generative models.
- 1.11 “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).
- 1.12 “Authorized Vendor” means any third-party entity that is engaged by Client for services that involve access to the Software, Documentation, or APIs.
- 1.13 “Client” means the entity identified on the Order Form.
- 1.14 “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.
- 1.15 “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/>.
- 1.16 “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.
- 1.17 “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.
- 1.18 “DPA” means PowerPlan’s Data Processing Addendum currently posted at <https://powerplan.com/legal>.
- 1.19 “Error” means a material failure of the Software to conform to the functional specifications described in its Documentation.
- 1.20 “Exhibit” means any addendum, policy, or plan incorporated into these Standard Terms by reference from time to time.
- 1.21 “Fees” means NXT Managed Services Fees, SaaS Fees, and all other amounts payable to PowerPlan under these Standard Terms and any Order Forms.
- 1.22 “FMLP” means future minimum lease payments, as defined in accordance with Generally Accepted Accounting Principles (“GAAP”) or International Financial Reporting Standards (“IFRS”), as applicable.
- 1.23 “FMLP Value” means the lease payments over the lease term that Client and its Affiliates are or can be required to make, as defined and measured by GAAP or IFRS, as applicable. If Client or any of its Affiliates 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 of its Affiliates 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.

- 1.24 "Hosted Data" means the data that an Authorized User loads into the Software or processes or stores using the Software.
- 1.25 "Initial NXT Managed Services Term" means the NXT Managed Services period beginning on the applicable Order Form Effective Date and ending on the Initial NXT Managed Services Term end date as set forth in such Order Form.
- 1.26 "Initial SaaS Term" means the SaaS period beginning on the applicable Order Form Effective Date and ending on the Initial SaaS Term end date as set forth in such Order Form.
- 1.27 "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.
- 1.28 "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).
- 1.29 "Malicious Code" means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- 1.30 "Modification" means any enhancement, measure taken to correct an Error, derivative work, or other change to the Software.
- 1.31 "NXT Managed Services" means the managed services for NXT products provided by PowerPlan in accordance with the NXT Managed Services Policy. Only Software with an active SaaS subscription is eligible for NXT Managed Services.
- 1.32 "NXT Managed Services Fees" means the fees payable by Client for NXT Managed Services.
- 1.33 "NXT Managed Services Policy" means PowerPlan's NXT Managed Services Policy currently posted at <https://powerplan.com/legal>.
- 1.34 "NXT Managed Services Term" means the Initial NXT Managed Services Term and all Additional NXT Managed Services Terms.
- 1.35 "Object Code" means machine-readable computer software code generated from Source Code by a compiler, interpreter, assembler, or similar technology.
- 1.36 "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 these Standard Terms.
- 1.37 "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.
- 1.38 "Personnel" means an employee, contractor, agent, or consultant who is employed by or provides services to an entity. Personnel does not include any Authorized Vendors.
- 1.39 "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.
- 1.40 "PowerPlan" means PowerPlan, Inc, a Delaware corporation.
- 1.41 "PP&E" means property, plant and equipment, as defined in accordance with GAAP or IFRS, as applicable.
- 1.42 "PP&E Value" means the aggregate of the net book value of all PP&E of Client and its Affiliates, as defined and measured by GAAP or IFRS, as applicable. If Client or any of its Affiliates 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 of its Affiliates 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.
- 1.43 "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.
- 1.44 "SaaS Fees" means the fees payable by Client for SaaS.
- 1.45 "SaaS Term" means the Initial SaaS Term and all Additional SaaS Terms.
- 1.46 "SaaS Usage Limitations" means the restrictions and limitations on the usage of the SaaS as designated within these Standard Terms and the applicable Order Form.
- 1.47 "Security Policy" means PowerPlan's Security Policy currently posted at <https://powerplan.com/legal>.
- 1.48 "Service Level Policy" means PowerPlan's Service Level Policy currently posted at <https://powerplan.com/legal>.
- 1.49 "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.
- 1.50 "Source Code" means computer software program instructions that must be translated by a compiler, interpreter, or assembler into Object Code before execution.

1.51 "Support Plan" means PowerPlan's Standard Support Plan for SaaS, which is applicable to PowerPlan's next generation SaaS products, currently posted at <https://powerplan.com/legal>.

1.52 "Support Services" means the support provided by PowerPlan in accordance with the Support Plan.

1.53 "Usage Data" means data resulting from Authorized Users' use of the SaaS, such as metadata, performance metrics, and usage trends or volume.

2. POWERPLAN RESPONSIBILITIES

During the SaaS 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 Hosted Data, Client Data, and Usage Data for the purposes set forth in Section 11.1.
- 2.5 Act as a processor or service provider on behalf of Client to process Personal Data in accordance with the DPA.
- 2.6 Provide Support Services per the Support Plan.
- 2.7 Comply with the AI Addendum.
- 2.8 If NXT Managed Services are ordered, during the NXT Managed Services Term, and so long as Client is not in default, provide NXT Managed Services per the NXT Managed Services Policy. PowerPlan shall have no obligation to provide Client with the NXT Managed Services if Client exercises any permitted termination of the SaaS.

3. LIMITATIONS ON USAGE

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

- 3.1 Permitted Uses. Client, Client Affiliates, Authorized Users, and Authorized Vendors shall use the SaaS solely for Client's and its Affiliates' internal business operations and in accordance with the Documentation, Acceptable Use Policy, and API TOU. Client shall cause all its Affiliates, Authorized Users, and Authorized Vendors to comply with these Standard Terms, and any default by any Client Affiliate, Authorized User, or Authorized Vendor of these Standard Terms shall be a default of Client.
- 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 these Standard Terms, Client, Client Affiliates, Authorized Users, and Authorized Vendors shall not, nor shall they direct 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) Use the SaaS, Application Database, or other PowerPlan Confidential Information to develop, train, re-train, fine-tune, test, improve, or enhance Client or third-party Artificial Intelligence models.
 - (c) Encumber, transfer, rent, donate, assign, lease, or otherwise use the Software in any business process outsourcing, time-sharing or service bureau arrangement.
 - (d) Modify, copy, reproduce, market, sell, distribute, sublicense, manufacture, adapt, create derivative works of, translate, localize, port, modify, or otherwise commercially exploit the SaaS.
 - (e) Decompile, disassemble, reverse compile, reverse translate, or reverse engineer the Software or APIs, 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 or APIs, 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).
 - (f) 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.
 - (g) 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 in accordance with the provisions of Sections 3.1 and 3.3, provided Client and such Authorized Vendor have in place a written agreement that includes provisions requiring such Authorized Vendor's compliance with these Standard Terms and the applicable Order Form.
- 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 these Standard Terms 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 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, 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. Client represents and warrants that it has:
 - (a) 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.

- (b) All rights necessary to authorize PowerPlan to store, transfer, process and use Personal Data in accordance with these Standard Terms, 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 and its Affiliates, in accordance with these Standard Terms. 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. 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 these Standard Terms shall be treated as its execution of the Standard Contractual Clauses and Appendices.
- 4.3 AI Features Enablement. To enable AI Features, Client must request in writing, with such request to be processed pursuant to PowerPlan's standard operating procedures. Client's use of AI Features, where available, will be solely at Client's discretion. The SaaS may be used without enabling the AI Features except as may otherwise be specified in the Documentation. If Client elects to enable AI Features, Client will comply with the AI Addendum.
- 4.4 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.
- 4.5 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 SaaS Term or Additional NXT Managed Services Term of any increase in annual Fees, except for increases resulting from exceeding SaaS Usage Limitations pursuant to Section 3.2.
- 5.3 Invoicing. Fees are billed annually in advance for Additional SaaS Terms and Additional NXT Managed Services Terms.
- 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 these Standard Terms 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, Usage Data, 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, Client Affiliates, Authorized Users, 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, 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. 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 an Order Form and as may be required to report to its Affiliates, legal and financial advisors, and regulators. Client shall cause Authorized Users and Authorized Vendors, and each party shall cause its respective Affiliates and Personnel, to comply with obligations of confidentiality at least as restrictive as set forth in these Standard Terms. 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 an Order Form and perform its obligations, and there are no pending claims or lawsuits that would prevent PowerPlan from performing its obligations. 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 SaaS Warranty. Except as explicitly noted otherwise in these Standard Terms, PowerPlan warrants that: (a) during the SaaS Term, the SaaS will substantially conform in all material respects to the applicable Documentation, provided that Client accesses and uses the SaaS in accordance with

these Standard Terms; and (b) PowerPlan will use industry standard measures designed to prevent Malicious Code from being released in the SaaS. Client shall promptly notify PowerPlan in writing if the SaaS fails to conform in accordance with this warranty. Upon confirming that the SaaS fails to comply with the foregoing warranty, PowerPlan shall either: (a) correct such nonconformity; or (b) provide Client with a plan reasonably acceptable to Client for correcting such nonconformity. In the event neither (a) nor (b) can be accomplished, then PowerPlan or Client may terminate the SaaS for the Software module with the uncorrected nonconformity, and Client will be entitled to a refund of the applicable pre-paid, but unused SaaS 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 SaaS other than in accordance with these Standard Terms, 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.

- 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 (a) any third-party products or (b) 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, MALICIOUS CODE, OR ISSUES OR THAT ALL ERRORS, MALICIOUS CODE, 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, willful misconduct, or fraud.
- 8.2. Infringement Indemnification. PowerPlan shall indemnify, defend, and hold harmless Client against any third-party claim that any portion of the SaaS infringes any valid and active patent, copyright, or trademark, or misappropriates any trade secret. If any portion of the SaaS 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 affected portion of the SaaS; (b) replace or modify the affected SaaS 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 SaaS and refund all prepaid SaaS 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, these Standard Terms, 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. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY NOR ITS 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 THE APPLICABLE ORDER FORM AND THESE STANDARD TERMS, 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.
- 9.2. General Limitation of Liability. SUBJECT TO SECTIONS 9.3 AND 9.4, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CUMULATIVE, AGGREGATE LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THE APPLICABLE ORDER FORM AND THESE STANDARD TERMS) OF EITHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS, LIABILITIES AND DAMAGES ARISING OUT OF OR RELATING TO THE APPLICABLE ORDER FORM AND THESE STANDARD TERMS, INCLUDING ALL AMENDMENTS THERETO, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE SAAS FEES PAID OR PAYABLE TO POWERPLAN UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE THAT THE CLAIM AROSE (THE "GENERAL CAP").
- 9.3. Elevated Limitation of Liability. SUBJECT TO SECTION 9.4, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CUMULATIVE, AGGREGATE LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THE APPLICABLE ORDER FORM AND THESE STANDARD TERMS) OF POWERPLAN AND ITS AFFILIATES FOR POWERPLAN'S BREACH OF SECTION 2.5 OR THE DPA WHERE SUCH BREACH RESULTS IN UNAUTHORIZED ACCESS TO PERSONAL DATA, SHALL NOT EXCEED TWO TIMES (2X) THE SAAS FEES PAID TO POWERPLAN UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE THAT THE CLAIM AROSE (THE "ELEVATED CAP").
- 9.4. Exceptions. The limitations in Sections 9.1, 9.2, and 9.3 do not apply to (a) claims arising under Sections 3, 6, or 8; (b) liability for gross negligence, willful misconduct, or fraud; and (c) Client's payment obligations.

9.5. IN NO EVENT SHALL POWERPLAN BE LIABLE FOR THE SAME CLAIM UNDER BOTH THE GENERAL CAP AND THE ELEVATED CAP. IF THERE ARE ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE ELEVATED CAP.

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 these Standard Terms, 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. PowerPlan will lift any such suspension when the circumstances giving rise to the suspension have been resolved.

10.2. Term. The term of an Order Form shall begin on the Effective Date. Except to the extent terminated earlier in accordance with Section 10.3, each Order Form shall continue for the SaaS Term and/or NXT Managed Services 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 SaaS Term and/or Initial NXT Managed Services Term or Additional SaaS Term and/or Additional NXT Managed Services Term, respectively, as applicable, of its intent to not renew.

10.3. Termination. A party may only terminate an Order Form:

- (a) if the other party materially breaches a provision of these Standard Terms 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 these Standard Terms; 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 an Order Form 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 11.23:

- (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 Use. 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, ensure the proper operation of, and improve the SaaS for Client and to perform PowerPlan's rights and obligations under these Standard Terms. PowerPlan may use Usage Data for its legitimate business purposes in accordance with applicable laws.

11.2. Insurance. PowerPlan will maintain continuously during the SaaS 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 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.

11.3. Offline Components. The operation of certain Software modules may require the use of offline software components designed to be installed on Client's network ("Offline Components"). Client may need to expressly opt into the use of certain Offline Components; in such cases, the operation of the Software modules which require such Offline Components is contingent on such opt-in by Client. PowerPlan is not responsible for lack of use of the Software due to Client's refusal to install offline Components, lack of Client opt-in (where required), or Client opt-out (where enabled). Conditioned upon Client's compliance with these Standard Terms, PowerPlan grants Client the following limited, non-exclusive, non-transferable (except as expressly provided herein), royalty-free, revocable license: Client may download, install and run on its network the executable form of Offline Components for purposes of using the Software modules that utilize Offline Components and for which Client has subscribed. In addition to the restrictions of these Standard Terms regarding the SaaS, Client may not translate, disassemble, decompile, decrypt, or reverse engineer Offline 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 Offline Components. PowerPlan may, from time to time, update Offline Components. Offline 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 the applicable Order Form or the termination or expiration of Client's subscription to the Software module(s) that utilize Offline Components. Upon license termination, Client must cease all use of Offline Components and promptly delete all copies, full or partial, thereof that are in Client's possession or control. The Service Level Policy shall not apply to Offline Components and to the operation of the Software module(s) dependent, in whole or in part, on Offline Components. The Security Policy shall not apply to Offline 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; provided that, such components' licenses do not require Client to disclose Client's Confidential Information, Client Data, or Hosted Data or impose licensing obligations on Client's Confidential Information, Client Data, or Hosted Data. These Standard Terms do 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 these Standard Terms. 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 an Order Form and these Standard Terms, 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 11.12, 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. Version Updates. PowerPlan may update these Standard Terms 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/saas-standard-terms/saas-standard-terms-whats-changed>); however, Client is responsible for reviewing any changes to these Standard Terms. The updated version will become effective upon the start of the next Additional SaaS Term and/or Additional NXT Managed Services Term unless agreed otherwise in writing.

11.8. Entire Agreement. These Standard Terms and any separately executed contracts between Client and PowerPlan relating to these Standard Terms, each of which is incorporated by reference, constitute the entire agreement between the parties regarding the subject matter hereof. Subject to Section 11.7, no waiver, consent, modification, or change of terms of these Standard Terms 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 these Standard Terms.

11.9. Order of Precedence. In the event of a direct conflict between an Order Form, these Standard Terms, or an Exhibit, such documents shall take priority in the order noted above.

11.10. Waiver. The waiver by either party of a breach or a default of any provision of these Standard Terms 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 these Standard Terms, 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.

11.11. Severability. If any provision in these Standard Terms 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 these Standard Terms shall remain in full force and effect.

11.12. Injunctive Relief. The parties agree that monetary damages are not an adequate remedy if Sections 3 or 6 of these Standard Terms 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.

11.13. Assignment. Except in connection with a merger or sale involving a majority of the stock or assets of a party, neither these Standard Terms 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 these Standard Terms or any Order Forms, these Standard Terms 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.

11.14. Compliance with Laws; Code of Conduct. Both parties shall comply with all applicable laws and regulations in their performance under these Standard Terms including without limitation all applicable laws and regulations enacted to protect equal opportunity in employment, 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 its Affiliates, Authorized Users, or Authorized Vendors 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.

11.15. Force Majeure. Neither party will be liable for failure or inability to perform its obligations under these Standard Terms 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 these Standard Terms 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 these Standard Terms.

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, Client Affiliates', Authorized Users', and Authorized Vendors' usage of the SaaS to ensure compliance with these Standard Terms and the applicable Order Form, including without limitation Client's, Client Affiliates', Authorized Users', and Authorized Vendors' compliance with the SaaS Usage Limitation. Additionally, upon written notice PowerPlan may require Client to attest to Client's, Client Affiliates', Authorized Users', and Authorized Vendors' compliance with the SaaS Usage Limitations. If such verification or attestation process reveals any noncompliance with these Standard Terms or the applicable Order Form by Client, Client Affiliates, Authorized Users, or Authorized Vendors, Client shall pay the applicable Fees, and Client shall promptly cure, and shall cause its Affiliates, Authorized Users, and Authorized Vendors to promptly cure, any such noncompliance; provided, however, that the obligations under this Section are not a waiver of PowerPlan's other rights under these Standard Terms, at law, in equity, or otherwise.

11.20. Notices. Except for billing, administrative, and other account-related notices, all notices under an Order Form or these Standard Terms 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.

- 11.21. **Dispute Resolution.** The parties agree that any dispute arising in connection with the interpretation of an Order Form or these Standard Terms or the performance of any party under an Order Form or these Standard Terms or otherwise relating to an Order Form or these Standard Terms 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 these Standard Terms. 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 an Order Form or these Standard Terms.
- 11.22. **Construction.** In the interpretation of these Standard Terms, 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 these Standard Terms. Captions and headings contained in these Standard Terms have been included for ease of reference and convenience and shall not be considered in interpreting or construing these Standard Terms. Should any provision of these Standard Terms require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that these Standard Terms shall be more strictly construed against one party than against another, because the parties participated equally in preparing these Standard Terms. Unless the context otherwise specifically requires, all references to sections of these Standard Terms shall refer to all subsections thereof.
- 11.23. **Survival.** The provisions of Sections 1, 5 (for accrued but unpaid Fees), 6, 7.4, 9, 10.4, and 11 of these Standard Terms shall survive any expiration or termination of an Order Form.
- 11.24. **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.
- 11.25. **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 Order Form 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.

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 these Standard Terms.
- 12.2. **English Language.** It is the express wish of the parties that these Standard Terms 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.

13. GOVERNMENT SPECIFIC TERMS

- 13.1. **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 13 applies to address statutory restrictions that apply to these Standard Terms.
- 13.2. **Commercial Items.** The Software, Documentation, and related Support Services and Maintenance Services are commercial in nature and available in the open marketplace. For U.S. federal Government Clients, the Software is "commercial computer software" as defined at 48 C.F.R. §§ 2.101 and 252.227-7014(a)(1) and as the term is used in 48 C.F.R §§ 12.212 and 227.7202; the related Support Services and Maintenance Services are "commercial services" as defined in 48 C.F.R. § 2.101; and the Documentation is commercial "computer software documentation" as defined in 48 C.F.R. §§ 2.101 and 252.227-7014(a)(5) and as used in 48 C.F.R. §§ 12.212 and 227.7202. The Software, Documentation, and related Support Services and Maintenance Services are provided to all Government Clients and Authorized Users, for use by the Government or on its behalf, subject to these Standard Terms, and all sales to U.S. federal Government Clients must be consistent with 48 C.F.R. §§12.212, 227.7202, and 252.227-7015, as applicable. 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 Software, Documentation, and related Support Services and Maintenance Services are made available to the Government with only those rights as granted to all other Clients and Authorized Users, according to these Standard Terms. Government acknowledges that all Software is provided "as a service" and no license is granted by virtue of these Standard Terms.
- 13.3. **Government Purpose.** Government's use of Software, Documentation, and related Support Services and Maintenance Services under these Standard Terms must only be for a governmental purpose. Any private, personal, or non-governmental purposes are not subject to this Section 13.
- 13.4. **Liability; Statute of Limitations.** For U.S. Government Clients, claims and liabilities arising from these Standard Terms 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.
- 13.5. **Governing Law.** Any terms regarding choice of law and venue in these Standard Terms are hereby waived. These Standard Terms are 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.
- 13.6. **Intellectual Property Ownership.** Except as expressly stated in these Standard Terms, no rights to any Software, Source Code, derivative works, inventions, products, Modifications, or Documentation are conferred to Government or any other party. All such rights belong exclusively to PowerPlan.