



Powerside Terms of Use for Software & Services

The following terms of use (the “**Terms of Use**”) govern your access to and use of the software and services, including data, reports, and reporting portals we make available online (“**Powerside Solutions**”). Powerside Solutions may be offered by Powerside, together with all of its affiliates, “**Powerside**”. These Terms of Use form an agreement between the Powerside entity from which you ordered the Powerside Solutions (“**Powerside**”, “**us**”, “**we**”, “**our**”) and you. The term “**you**” refers to the person or entity browsing, installing, downloading, accessing or otherwise using the Powerside Solutions (“**use**” or “**using**” in these Terms of Use will mean any of the foregoing).

You are a Permitted User of an organization or other third party that we refer to in these Terms of Use as “**Customer**” or Powerside. Customer has separately agreed to our Terms and or entered into a written agreement with us (in either case, the “**Contract**”) that permitted Customer to access, and provide its personnel with access, to the Powerside Solutions (each individual granted access to the Powerside Solutions, including you, is a “**Permitted User**”). The Contract contains our commitment to deliver the Powerside Solutions to Customer, who may then procure user accounts for each individual Permitted User.

YOU MAY NOT USE THE POWERSIDE SOLUTIONS UNLESS YOU HAVE BEEN AUTHORIZED BY THE CUSTOMER OR POWERSIDE.

BY USING THE POWERSIDE SOLUTIONS, YOU: (A) REPRESENT AND WARRANT THAT (I) YOU HAVE THE CAPACITY TO ENTER INTO BINDING OBLIGATIONS, AND (II) ALL INFORMATION SUPPLIED BY YOU TO US THROUGH THE POWERSIDE SOLUTIONS IS TRUE, ACCURATE, CURRENT, AND COMPLETE; AND (B) AGREE TO BE BOUND BY AND COMPLY WITH THESE TERMS OF USE, AS UPDATED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 1.

This Agreement does not alter in any way the terms or conditions of any other agreement you may have with us in respect of any products, services or otherwise.

1. **Changes to these Terms of Use and Powerside Solutions**

- a) Except where prohibited by applicable law, we reserve the right to change these Terms of Use at any time by posting a new version to the Powerside Solutions website or to Powerside software applications. Your continued access to or use of the Powerside Solutions after any changes to these Terms of Use indicates your acceptance of such changes. It is your responsibility to review these Terms of Use regularly.
- b) We reserve the right to change the Powerside Solutions at any time, without notice.

2. **Other Agreements**

These Terms of Use relate to the Powerside Solutions only. These Terms of Use do not alter in any way the terms or conditions of any other agreement that may apply to your use of the Powerside Solutions, including a Customer Contract (“**Other Powerside Agreements**”). If there is a conflict or inconsistency between the terms and conditions of Other Powerside Agreements and these Terms of use, then the provisions of the Other Powerside Agreements will govern to the extent of such conflict or inconsistency.

3. **Privacy**

- a) Please review our current Privacy Policy, (available upon request from Powerside, and published from time to time on Powerside’s website <https://powerside.com>, which contains important information about our practices in collecting, storing, using and disclosing information about identifiable individuals (“**Personal Information**”), and which is hereby incorporated into and forms a part of these Terms of Use.
- b) You represent and warrant to us that any data, information, records and files that you load, transmit to or enter into the Powerside Solutions will only contain Personal Information in respect of which you have provided all notices and disclosures, obtained all applicable third party consents and permissions and otherwise have all authority, in each case as required by applicable laws, to enable us to make available the Powerside Solutions.

4. **Customer Data**

- a) All rights in any information you provide to Powerside remains with you, including any files that are transmitted to or entered into the Powerside Solution (the “**Customer Data**”). You hereby grant to Powerside an irrevocable, worldwide, non-exclusive, royalty-free, transferable and sublicensable right and license to access, collect, store and use Customer Data to: (i) develop, enhance and make available the Solutions; and (ii) to produce data, information, or other materials that are not identified as relating to you or any particular individual or company (such data, information and materials, the “**Aggregated and De-identified Data**”). Powerside is free, on a perpetual and irrevocable basis, to create, use and disclose the Aggregated and De-identified Data for any purpose and without obligations of any kind.

b) In submitting content or information to the Powerside Solutions (“**Customer Data**”), Permitted Users (including you) acknowledge and agree that Customer Data is owned by Customer, and that the Contract provides Customer with many choices and control over that Customer Data.

c) You acknowledge that Customer has granted Powerside and Powerside’s Affiliates the right to access, use, process, store, collect, disclose, and transmit Customer Data to (i) perform its obligations under the Agreement including to provide services; and (ii) to produce data, information, or other materials that are not identified as relating to a particular individual or company including Customer (such data, information and materials, the “**Aggregated Data**”), and you hereby agree that Powerside is perpetually and irrevocably free to process, create, use, transmit and disclose the Aggregated Data for any purpose and without obligations of any kind

5. **Ownership of the Powerside Solutions**

All rights, title and interest, including intellectual property rights, in the Powerside Solutions and all other materials provided by us hereunder, and any update, adaptation, translation, customization or derivative work thereof, will remain with us (or our third-party suppliers, if applicable). The Powerside Solutions and all materials provided by us hereunder are made available or licensed and not “sold” to you. All rights not expressly granted to you in these Terms of Use are reserved.

6. **User Account for Powerside Solutions**

To access certain features of the Powerside Solutions, you may be required to successfully sign up for a user account using the available interfaces of the Powerside Solutions and be issued with a username and password login credentials (the “User ID”). If you are issued with a User ID, you will keep your User ID secure and will not share your User ID with anyone else. We reserve the right to disable any User ID issued to you at any time in our sole discretion. If we disable access to a User ID issued to you, you may be prevented from accessing the Powerside Solutions.

7. **Permitted User Responsibilities**

You agree to:

- a) comply with all applicable laws and regulations, including, but not limited to, all intellectual property, data, privacy and any export control laws;
- b) upload and disseminate only Customer Data to which Customer owns all required rights under law and do so only consistent with applicable law;
- c) use reasonable efforts to prevent unauthorized access to or use of the Powerside Solutions;
- d) keep User IDs and all other login information confidential;
- e) monitor and control all activity conducted through you account in connection with the Powerside Solutions; and
- f) promptly notify us and Customer if you become aware or reasonable suspect any illegal or unauthorized activity or a security breach involving your account, including any loss, theft, or unauthorized disclosure or use of a User ID or account.

8. **No Unlawful or Prohibited Use**

You will not use the Powerside Solutions in violation of these Terms of Use or of any applicable law. You will not, without our prior written permission, use the Powerside Solutions for any purpose other than to provide access to the Powerside Solutions. Without limiting the generality of the foregoing, you will not (and will not attempt to) directly or indirectly:

- a) share, transfer or otherwise provide access to an account designated for you to another person;
- b) use the Powerside Solutions to store or transmit any Customer Data that may infringe upon or misappropriate a third party’s intellectual property rights, or that may be unlawful;
- c) disable, overly burden, impair, or otherwise interfere with servers or networks connected to the Powerside Solutions (e.g., a denial of service attack);
- d) attempt to gain unauthorized access to the Powerside Solutions;
- e) use any data mining, robots, or similar data gathering or extraction methods, or copy, modify, reverse engineer, reverse assemble, disassemble, or decompile the Powerside Solutions or any part thereof or otherwise attempt to discover any source code; or
- f) use the Powerside Solutions for the purpose of building a similar or competitive product or service;

- g) use the Powerside Solutions other than for the benefit of the Customer that has entered into an agreement to access the Powerside Solutions, and who has granted you a right of access; or
- h) authorize, permit, enable, induce or encourage any third party to do the above.

9. **Third Party Content, Websites or Services**

The Powerside Solutions may provide links or access to third party content, websites, or services. Likewise, we may allow you to access the Powerside Solutions from third party systems. Powerside does not endorse any third-party content, websites, services, or systems, or guarantee their quality, accuracy, reliability, completeness, currency, timeliness, non-infringement, merchantability, or fitness for any purpose. Third party content, websites, services, or systems are not under Powerside's control, and if you choose to access any such content, websites, or services, or to access the Powerside Solutions from such systems, you do so entirely at your own risk. You acknowledge that you may be required to accept terms of use applicable to third party content, websites, services, or systems and agree to accept and comply with any such terms of use.

10. **Malicious Code and Security**

The downloading and viewing of content are done at your own risk. We do not guarantee or warrant that the Powerside Solutions are compatible with your computer system or that the Powerside Solutions, or any links from the Powerside Solutions, will be free of viruses, worms, trojan horses or disabling devices or other code that manifests contaminating or destructive properties. You are responsible for implementing safeguards to protect the security and integrity of your computer system, and you are responsible for the entire cost of any service, repairs or connections of and to your computer system that may be necessary as a result of your use of the Powerside Solutions.

You are prohibited from attempting to circumvent and from violating the security of the Powerside Solutions including without limitation: (a) accessing content that is not intended for you; (b) attempting to breach or breaching Powerside Solutions security or authentication measures; (c) restricting, disrupting or disabling service to Powerside Solutions users, hosts, servers or networks by any means, or (d) otherwise attempting to interfere with the proper working of the Powerside Solutions, including but not limited to by introducing any material that is malicious or technologically harmful.

11. **Communications Not Confidential**

We do not guarantee the confidentiality of any communications made by you through the Powerside Solutions. We do not guarantee the security of data transmitted over the Internet or public networks in connection with your use of the Powerside Solutions.

12. **Disclaimer**

THE LAWS OF CERTAIN JURISDICTIONS, INCLUDING QUEBEC, DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LEGAL WARRANTIES, CONDITIONS OR REPRESENTATIONS. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS IN THESE TERMS OF USE (INCLUDING THE FOLLOWING DISCLAIMERS) MAY NOT APPLY AND YOU MAY HAVE ADDITIONAL RIGHTS.

YOU ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT THE POWERSIDE SOLUTIONS IS PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND WITH RESPECT TO THE POWERSIDE SOLUTIONS WHETHER EXPRESS, IMPLIED, STATUTORY OR COLLATERAL, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY QUALITY, COMPATIBILITY, TITLE, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, RELIABILITY, CURRENCY, TIMELINESS, QUALITY, INTEGRATION, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, OR THAT THE POWERSIDE SOLUTIONS IS OR WILL BE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

13. **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES; OR LOST PROFITS, LOSS OF USE, LOSS OF DATA, PERSONAL INJURY, FINES, FEES, PENALTIES OR OTHER LIABILITIES, IN EACH CASE, WHETHER OR NOT WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM OR RELATED TO THE POWERSIDE SOLUTIONS OR THESE TERMS OF USE.

FOR ANY OTHER DAMAGES, OR TO THE EXTENT THAT THE FOREGOING LIMITATION IS NOT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OUR TOTAL AGGREGATE LIABILITY IN CONNECTION WITH OR UNDER THESE TERMS OF USE, OR YOUR USE OF, OR INABILITY TO MAKE USE OF, THE POWERSIDE SOLUTIONS EXCEED \$100 USD. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THESE TERMS OF USE WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT.

ANY REMEDIES AVAILABLE WITH REGARD TO THE POWERSIDE SOLUTIONS ARE AS SET OUT IN THE CONTRACT WITH THE CUSTOMER.

14. Indemnification

You will defend, indemnify and hold harmless, us, our affiliates and service providers, and each of their and our respective officers, directors, employees, agents, and any licensees, successors and assigns from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including reasonable legal and accounting fees, arising out of or in connection with:

- a) your breach of any provision of these Terms of Use or any documents referenced herein;
- b) your violation of any law or the rights of a third party (including intellectual property rights); or
- c) your use or the use by any third party using your User ID of the Powerside Solutions.

15. Term and Termination; Survival

a) These Terms of Use will commence on the day you first use the Powerside Solutions and will continue until the earlier of (i) Customer's subscription to the Powerside Solutions expires or has been terminated by Customer or Powerside; or (ii) you are no longer authorized by the Customer to use the Powerside Solutions (the "**Term**"). You may terminate these Terms of Use at any time and with immediate effect by requesting (by email or through any then-available interfaces on the Powerside Solutions) that your User ID be deleted and ceasing use of the Powerside Solutions. For greater certainty, if you continue to use any portion of the Powerside Solutions after these Terms of Use have been terminated, these Terms of Use will continue to apply to the extent of such use.

b) The following Sections, together with any other provision of these Terms of Use which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of these Terms of Use, will survive expiration or termination of these Terms of Use for any reason: Sections 3b) (Personal Information Warranty), 4 (Ownership), 9 (Third Party Content, Websites or Services) 10 (Malicious Code), 11 (Communications Not Confidential), 12 (Disclaimer), 13 (Limitation of Liability), 14 (Indemnification), 15b) (Survival), and 17 (General Provisions).

16. Geographical Restrictions

Powerside makes no representation that the Powerside Solutions is available for use in locations outside Canada or the United States. We provide this Powerside Solutions for use only by persons located in Canada and the United States. This site is not intended for use in any jurisdiction where its use is not permitted.

17. General Provisions

a) Choice of Law. Except as restricted by applicable law, these Terms of Use will be governed by the laws of the State of Delaware and the federal laws of the United States applicable therein and such laws apply to your access to or use of the Powerside Solutions, notwithstanding your domicile, residency or physical location. You will only use the Powerside Solutions in jurisdictions where the Powerside Solutions may lawfully be used. Except as restricted by applicable law, you hereby consent to the exclusive jurisdiction and venue of courts in Delaware, USA in all disputes arising out of or relating to the use of the Powerside Solutions. The U.N. Convention on Contracts for the International Sale of Goods will not apply to these Terms of Use. This choice of jurisdiction does not prevent us from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

b) Entire Agreement. These Terms of Use constitute the entire agreement between you and us pertaining to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and us with respect to the Powerside Solutions. A printed version of these Terms of Use and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

c) Waiver. Our failure to insist upon or enforce strict performance of any provision of these Terms of Use will not be construed as a waiver of any provision or right. A waiver of any provision of these Terms of Use must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.

d) Severable. If any of the provisions contained in these Terms of Use are determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision will be severed from these Terms of Use and all other provisions of these Terms of Use will remain in full force and effect.

e) Assignment. You will not assign these Terms of Use to any third party without our prior written consent. We may assign these Terms of Use or any rights under these Terms of Use to any third party without your consent. Any assignment in violation of this Section will be void. The

terms of these Terms of Use will be binding upon permitted assignees. These Terms of Use will inure to the benefit of and be binding upon the parties, their permitted successors and permitted assignees.

f) English Language. It is the express wish of the parties that these Terms of Use and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

18. Contact

If you have any questions or comments regarding these Terms of Use, please contact Powerside directly, at Powerside, 980 Atlantic Avenue #100, Alameda, California 94501, USA

19. Apple App Store Additional License Terms

If the Powerside Solutions are provided to you through the Apple Inc. (Apple Inc. together with all of its affiliates, "Apple") App Store (the "Application"), the following terms and conditions apply to you in addition to all the other terms and conditions of these Terms of Use:

- a) The parties acknowledge these Terms of Use are concluded between the parties, and not with Apple. The responsibility for the Application and content thereof is governed by these Terms of Use.
- b) Notwithstanding anything to the contrary hereunder, you may use the Application only on an iPhone or iPod touch that you own or control.
- c) You and we acknowledge that Apple has no obligation to furnish any maintenance or support services with respect to the Application.
- d) In the event of any failure of the Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Application (if any) to you. Except for the foregoing, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be governed by these Terms of Use.
- e) Any claim in connection with the Application related to product liability, a failure to conform to applicable legal or regulatory requirements, or claims under consumer protection or similar legislation is governed by these Terms of Use, and Apple is not responsible for such claim.
- f) Any third party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights will be governed by these Terms of Use, and Apple will not be responsible for the investigation, defense, settlement and discharge of such intellectual property infringement claim.
- g) You represent and warrant that you are not: (i) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; or (ii) listed on any U.S. Government list of prohibited or restricted parties.
 - i. You may contact us in writing regarding any notices, questions, complaints or claims with respect to the Application, at Powerside, 980 Atlantic Avenue #100, Alameda, California 94501, USA.
 - ii. Apple is a third party beneficiary to these Terms of Use and may enforce these Terms of Use against you.
 - iii. If any of the terms and conditions in these Terms of Use are inconsistent or in conflict with Apple's applicable instructions for Minimum Terms for Developer's End User License Agreement (the current version as of the date these Terms of Use was last updated is located at: <http://www.apple.com/legal/internet-services/itunes/appstore/dev/minterms/>) or the App Store Terms of Service (the current version as of the date these Terms of Use was last updated is located at: <http://www.apple.com/legal/internet-services/itunes/ca/terms.html>), the terms and conditions of Apple's instructions for Minimum Terms for Developer's End User License Agreement or App Store Terms of Service, as applicable, will apply to the extent of such inconsistency or conflict.

20. Google Play

If the Application is provided to you through the Google Inc. (Google Inc. together with all of its affiliates, "Google") Google Play, the following terms and conditions apply to you in addition to all the other terms and conditions of these Terms of Use:

- a) You acknowledge that Google is not responsible for providing support services for the Application.
- b) If any of the terms and conditions in these Terms of Use are inconsistent or in conflict with the Google Play Developer Distribution Agreement (the current version as of the date these Terms of Use was last updated is located at <https://play.google.com/about/developer-distribution-agreement.html>), the terms and conditions of Google's Google Play Developer Distribution Agreement will apply to the extent of such inconsistency or conflict.