

## **PowerPlay Terms of Service**

### **1. ACCEPTANCE OF TERMS**

Please read these Terms of Service (“Terms”) carefully before using the Diamond Power Index (the “Tool”) and the related assessment platform and website (the “Website”) as well as any other related products offered by PowerPlay and Diamond Leadership (the “Products”). Tool, Website, Reports, and Products are also referred to as “Services”. These Terms take effect when you click an “I Accept” button or check box presented with these Terms or, if earlier, when you use any of the Services, Tool, or Website. You represent to us that you are lawfully able to enter into contracts. If you are agreeing to these Terms for an entity, such as the entity you work for, you represent to us that you have legal authority to bind that entity. For purposes of these Terms, “you” means you and the entity you represent and also refers to any person accessing the Services by any method on your behalf.

If a written customer contract or license agreement exists between you and PowerPlay, those terms take precedence over these Terms.

### **2. DESCRIPTION OF SERVICES**

Subject to the terms of this Agreement, PowerPlay (“we” or the “Company”) provides access to the Tool and its Website to you for the sole purpose of conducting assessments and generating Report. “Reports” means the compilation and interpretation of the results of the assessment.

Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with Company’s standard practice in effect at the time.

### **3. RESTRICTIONS AND RESPONSIBILITIES**

Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services; modify, translate, or create derivative works based on the Services (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for the benefit of a third party; or remove any proprietary notices or labels.

Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company’s standard published policies then in effect (the “Policy”) and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Services. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modern modems, computer hardware, software, operating systems, and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

#### **4. SPECIFIC COACH RESTRICTIONS AND RESPONSIBILITIES**

The license to use the Services is valid for 2 years, and will automatically renew provided one of the following conditions have been met: 10 uses of the Tool within the initial 1 year term; or attendance at one training course on the use of the assessment offered by Diamond Leadership or by an authorized agent of Diamond Leadership within a 2 year period from time license is granted.

4.1 License can be revoked for any reason at our discretion.

4.2 The Customer cannot upcharge Reports. Prices for each Report set by Company must not be exceeded. If you invoice a third party for Reports, invoice must be itemized so individual Report prices are visible to the third party.

4.3 To comply with data privacy regulations, the Company will remove data and reports from the website on a regular basis. Reports will be available on the website for a minimum time period of 6 months after the first date of availability. The Customer is responsible for downloading Reports within six months of the first date of availability.

#### **5. CONFIDENTIALITY; PROPRIETARY RIGHTS**

The Customer understands that the Company has disclosed or may disclose technical, statistical, or other information relating to the Tool and the Company's Services and business (hereinafter referred to as "Proprietary Information."). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Tool and Service. Customer understands and agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information.

Subject to your compliance with these Terms and your payment of any applicable fees, the Company grants you a non-exclusive, non-transferable, royalty-free, revocable license to use the Services for your own internal business purposes. We may make modifications to the Services at any time, as we deem appropriate, and in our sole discretion. No rights or licenses are granted except as expressly set forth herein.

Notwithstanding anything in this agreement to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to perform its obligations under these Terms, (ii) improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (iii) disclose such data solely in aggregate or other de-identified form in connection with its business.

#### **6. PAYMENT OF FEES**

Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of

additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees. . If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 30 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received before Company furnishes its services. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

## **7. TERM AND TERMINATION**

Either party can request termination by providing 30 days prior written notice.

Customer will pay in full for the Services up to and including the last day on which the Services are provided. [Upon any termination, Company will make all reports available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer reports.] The following sections of this Agreement survive termination: accrued rights to payment, confidentiality obligations, indemnity obligations, warranty disclaimers, and limitations of liability.

## **8. WARRANTY AND DISCLAIMER**

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice of any scheduled service disruption. **HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.** Customer waives any claim for consequential damages and agrees that any liability of Company will be limited to the refund of fees for the affected period.

## **9. LIMITATION OF LIABILITY**

If the Services are held by a court of competent jurisdiction to be infringing, the Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

**NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL**

Monday, May 14, 2018

NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE AMOUNT OF FEES AND CHARGES PAID BY CUSTOMER TO COMPANY DURING THE AFFECTED PERIOD.

By clicking you signify you have read, understood, and agree to the terms.

Monday, May 14, 2018