

THESE GENERAL TERMS AND CONDITIONS (THE ‘GTC’) APPLY TO THE CUSTOMER’S PURCHASE AND USE OF PF’S SERVICES AND TO THE PROVISION OF PF’S SERVICES, INCLUDING THE DELIVERY OF ANY GOODS THAT MAY RELATE TO THE AFOREMENTIONED SERVICES.

THE GTC ARE CONSIDERED TO BE ACCEPTED BY THE PARTIES BY EXECUTING A MASTER SERVICES AGREEMENT THAT REFERS TO THE GTC. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING IT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT HAS THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS.

(GTC’s last update: December 5, 2025).

## 1. DEFINITIONS

Capitalized terms shall have the meanings stated below, and references to the singular shall include the plural and vice versa.

“**Access Credential**” means a unique access credential allowing access to Services.

“**Agreement**” means the set of documents (including the Master Services Agreement agreed and executed between the Parties, its Schedules, these GTC and any Order Forms agreed between the Parties based upon this Agreement) that outline the contractual relationship between the Parties, formed by the documents mentioned in Section 1 of the Master Services Agreement.

“**Affiliate**” means any business entity controlled by, in control of or under common control with a Party hereto, where “control” means the ownership, legally or beneficially, directly or indirectly, of 50% (fifty percent) or more of the voting equity of any business entity.

“**Billing Period**” means the first 12-month period beginning on the Effective Date and each successive 12-month period thereafter.

“**Communications Links**” means – if applicable – third-party, public, or private communications and networking links to or from any Project or Project Equipment, or to or from Customer, including Customer’s equipment (such as modems and routers), the telecommunications network itself (such as public and private telephone lines, dedicated leased lines and circuits, cable or satellite links), internet access and services provided by Customer’s chosen internet service providers, any related firewall and other security software, and any associated electrical power supply.

“**Confidential Information**” means (i) with respect to Customer, any Data, along with any of Customer’s proprietary information, including without limitation any

Customer’s specifications, processes, know-how, materials, (ii) with respect to PF, any information provided, the PF Materials and the features and functionality of the Services, and (iii) any other non-public information, and which all above (under i, ii, iii) are disclosed in whatever form (either in writing, orally or electronically) by such Party to the other Party. The term “Confidential Information” shall not include information that: (i) the receiving party independently develops without use of the disclosing party’s Confidential Information; (ii) was, at the time of disclosure, already known to Recipient without restriction on use or disclosure and was not obtained from Discloser; (iii) is lawfully disclosed to Recipient without restriction on use or disclosure by a third party who is not required to maintain its confidentiality; or (iv) is publicly available through no fault of the Recipient.

“**Customer**” means the legal entity which enters into the Agreement as customer, as defined in the preamble of the Master Services Agreement.

“**Customer Deliverables**” means the deliverables – if any – required by PF to be delivered by Customer.

“**Data**” means information stored on the PF Platform that has been collected automatically from Project Equipment, entered manually, calculated by a software application, or collected from a Third-Party Provider, as applicable.

“**Deployment Date**” means the date a Project is made available in the PF Platform.

“**Fees**” as defined in Section 5.1.

“**Fee Schedule**” means the fee schedule set forth in Schedule 5 of the Master Services Agreement or (if applicable) in the Order Form.

“**Force Majeure Event**” has the meaning given to it in Section 10.7.

“**Goods**” are the materials, machinery, parts, spare parts, elements, objects (including the PF Documentation), which may be agreed by the Parties to be provided by PF to the Customer and the provision of the Services that will be delivered to the Customer as specified in Schedules 3 and 4 of the Master Services Agreement.

“**Indemnitees**” with respect to any entity, means such entity and the entity’s directors, officers, employees, and agents.

“**Insolvent**” means, with respect to a Party, that such Party (i) is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent, or admits thereto in writing, (ii) begins any bankruptcy proceeding under the United States Bankruptcy Code, or any other applicable to such Party bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions

	generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief, or (iii) any proceeding as described in the foregoing clause (ii) has begun against such Party and is not dismissed or stayed within 60 days.		
<b>“Losses”</b>	means any and all losses, damages, liabilities, awards, costs, and expenses (including reasonable attorneys’ fees).	<b>“Project Equipment”</b>	means – if applicable – with respect to a Project, any and all of the following used in connection with such Project: (i) computers, databases, control systems, digital measuring instruments, (ii) other systems, devices, or equipment, virtual or not, used to generate, store, or collect data from such Project, (iii) other equipment located on such Project site, (iv) networking and communication hardware or software including any gateways, and (v) any associated electrical power supply.
<b>“Order Form”</b>	means an ordering document regarding the addition of Services and/or Goods to be provided under the Agreement. Order Forms shall not be binding on the Parties until signed by both Parties. Neither Party shall be obligated to enter into any Order Form.	<b>“Protected IP”</b>	any intellectual property (including any copyrights, patents, trademarks, trade secrets, algorithms, or formulas) used, developed, or produced by PF in the provision of the Services, including any such intellectual property underlying the PF Materials, the PF Platform, and/or any documentation relating thereto, and any reports generated by, or graphics or other design elements used in, the Services.
<b>“Order Form Effective Date”</b>	means the effective date of each Order Form.	<b>“Services”</b>	means the services to be provided by PF to the Customer as set forth in Schedules 3 and 4 of the Master Services Agreement.
<b>“Other Agreements”</b>	means the agreements pursuant to which PF provides services for Other Projects.	<b>“Stub Period”</b>	means – if applicable – for any Order Form, the period starting on the Deployment Date of a Project and ending on the last day of the then-current Billing Period.
<b>“Other Projects”</b>	means the Projects directly or indirectly owned by Customer (other than the Projects hereunder) or its Affiliates for which PF provides services pursuant to Other Agreements.	<b>“Third-Party Data”</b>	Data collected from a Customer’s Third-Party Provider.
<b>“PF”</b>	means the Power Factors company entering into the Agreement as defined in the preamble of the Master Services Agreement.	<b>“Third-Party Provider”</b>	means a Customer’s third-party providing data services for any Project.
<b>“PF Deliverables”</b>	means the products and services as set forth in Schedules 3 and 4 of the Master Services Agreement.	<b>“User”</b>	means an employee of Customer or its respective Affiliates, authorized by Customer to access the Services and -if applicable- any Limited Access Users (as defined in Section 7.3 below).
<b>“PF Documentation”</b>	refers to all documentation that PF shall provide – if applicable – as part of the Services, as specified in Schedule 4.		
<b>“PF Platform”</b>	means the cloud-based platform used by PF for the provision of the Services, including any third-party software programs, proprietary software programs, operating systems, firewall, security, or other administrative software.		
<b>“PF Materials”</b>	means the Services, Goods, PF Documentation, and PF’s systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by PF or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or the Goods or PF’s systems, and including all intellectual property rights therein.		
<b>“Project(s)”</b>	is, where applicable, the place(s) where the Customer’s site(s)/renewable energy power plant(s) is/are located, which shall be defined in Schedule 11 and/or in Order Form(s) and where, if specified therein, the PF Deliverables may be provided.		
		<b>2. PF Deliverables</b>	
		<b>2.1. Deliverables.</b>	PF shall provide Customer with access to use the PF Deliverables as set forth in Schedules 3 and 4 of the Master Services Agreement as per the standard description of each such product for the specific Projects.
			Subject to Customer’s compliance with the terms and conditions of the Agreement, PF grants Customer the right to access and use the PF Deliverables for the specific Projects during the applicable Initial or Renewal Term or the applicable Order Form Initial Term or Order Form Renewal Term as the case may be, for the internal business purposes of Customer, only as provided herein and only in accordance with PF Documentation.
			PF may from time to time at its sole discretion update the Services and their description (as well as each product’s description) providing notice to the Customer of such update.

During the term of this Agreement, Customer may request additional Services and/or additional Project(s) to be included in this Agreement by executing a new Order Form, which PF may accept or reject in its absolute reasonable discretion. Upon execution by both Parties, each Order Form shall be incorporated into and form part of this Agreement. A Customer Affiliate may also request Services under this Agreement. An Order Form shall be deemed to have been rejected if PF has not accepted it in writing within ten (10) business days of PF’s receipt of such Order Form. If a Customer Affiliate enters into an Order Form under this Agreement, the Customer Affiliate agrees to be bound by the terms and the GTC of this Agreement with regard to such Order Form. Alternatively, if the Customer Affiliate requires a separate agreement, then the parties may enter into an agreement in the same form and substance as this Agreement for the engagement, and thereafter such agreement shall constitute an “**Other Agreement**” and such projects shall constitute “**Other Projects**” hereunder.

**2.2. SLA.** The Services will be available in accordance with the service level commitments which are specific and applicable for each relevant Service/product described and attached as a Schedule 6 in the Master Services Agreement.

**2.3.** The timely completion of the Services for any Project will be subject to the complete, accurate and on-time delivery by Customer to PF of the applicable Customer Deliverables. PF shall not be liable for any delays in completing the Services for any Project if such delay is due to any delay in Customer completing and/or delivering any applicable Customer Deliverable.

**2.4. Uptime Commitment.** The Services will be available for 99.0% per month excluding any Permitted Downtime and Exempt Downtime as per Schedule 7 of the Master Services Agreement and also excluding any Permitted Suspension(s) as per Section 4.2.”

**2.5. Archiving.** Unless otherwise provided herein, PF shall store, and provide Customer with secure and timely access to Data under the data retention policies set forth in Schedule 3 for each purchased product, during the term of this Agreement and for 30 days after the termination of this Agreement and/or any given project. At Customer’s request from time to time during such period, so long as no undisputed Fees are unpaid at the time of such request, Data will be made available to Customer for transfer in a mutually agreed format and media. PF will not be required to store or provide Customer with access to any Data after it has complied with any transfer instructions provided by Customer following the termination of this Agreement. Customer agrees and acknowledges that Data may be irretrievably deleted if Customer’s account is ninety (90) days or more delinquent.

### **3. CUSTOMER RESPONSIBILITIES**

**3.1.** Customer must in a timely manner supply the Customer Deliverables, data, information, tools, facilities and instructions, which PF reasonably requires by Customer in order to perform the Services and proceed with its obligations under this Agreement. Customer is responsible for the accuracy and completeness of all data and information it supplies. PF shall not be liable for any delays or failure in providing Services to the extent such delay or failure is due

to Customer’s failure to comply with its obligations under this Agreement.

**3.2.** Customer shall provide PF with access to all Project sites and Project Equipment as required by PF in order to implement and provide Services. Customer shall be responsible for all Project Equipment. PF shall not be liable in any way for Customer’s use of, or the performance of, any Project Equipment.

**3.3.** Customer agrees that PF will present Data (whether collected from Project Equipment or from a Third-Party Provider) on an as-is basis as received, and PF shall not be liable in any way for the quality, accuracy, or completeness of such Data, or for the performance of any Third-Party Provider.

**3.4. Customer Third-Party Services.** In connection with any Project for which PF uses Customer Third-Party Data in providing the Services, (i) Customer shall be responsible for any fees (including any one-time or recurring fees) charged by such Third-Party Provider, (ii) Customer shall provide reasonable notice to PF in writing of any changes to the data services that materially impact PF’s ability to provide Services, and within ten (10) days of PF’s receipt of such notice from Customer, PF shall inform Customer of all documentation necessary for updating Services, (iii) Customer shall be responsible for coordinating with any Third-Party Provider and promptly providing PF all necessary documentation in writing to update Services, (iv) Customer shall provide PF at least thirty (30) days to update Services after PF has received all necessary documentation from Customer to perform such update, and (v) Customer agrees that PF may charge Customer for major updates necessary to maintain Services.

**3.5. Data.** Customer is responsible for all Data provided through the Services (whether collected from Project Equipment or from a Third-Party Provider), and PF shall not be liable in any way for the quality, accuracy, or completeness of any such Data, or for the performance of any third-party providing data, regardless of whether such third party is engaged by Customer or PF. Similarly, Customer is responsible for ensuring such Data is free from any kind of malicious code, viruses, Trojans, worms.

**3.6. Communications Links.** Customer shall be responsible for all Communications Links. PF shall not be liable in any way for Customer’s use of, or the performance of, any Communications Links. Customer agrees to (i) work with PF to identify any changes to or faults with any Project Equipment or any Communications Link that may have contributed to failure of such Communications Links with any Project and (ii) use commercially reasonable efforts to assist PF in restoring Services as soon as practicable.

### **4. TERM AND TERMINATION**

#### **4.1. Term and Renewal.**

**(a)** The initial term of this Agreement (i) begins on the Effective Date and ends on the date that is three (3) years from the Effective Date (“**Initial Term**”), and (ii) thereafter, the term of this Agreement shall automatically renew for successive one-year terms (each, a “**Renewal Term**”), unless (x) PF or Customer provides the other Party with written notice of termination at least 90 days prior to the end of the Initial Term or the applicable Renewal Term, in which

case this Agreement shall terminate at the end of the Initial Term or such Renewal Term, as applicable, or (y) this Agreement is earlier terminated in accordance with this Agreement.

(b) The term of each Order Form shall begin on the Order Form Effective Date and continue until the end of the Initial Term of this Agreement (“**Order Form Initial Term**”). Thereafter the applicable Order Form shall automatically renew concurrently and for an equal renewal period with this Agreement (each, an “**Order Form Renewal Term**”), unless (x) PF or Customer provides the other Party with written notice of non-renewal of the Order Form at least 90 days prior to the end of the Order Form Initial Term or the applicable Order Form Renewal Term, in which case that Order Form shall expire at the end of such Order Form Initial or Renewal Term, as applicable, or (y) the Order Form is earlier terminated in accordance with this Agreement or the applicable Order Form. All Order Forms shall terminate upon any termination of this Agreement, but the termination or expiration of any Order Form shall not affect or terminate any other outstanding Order Forms.

#### **4.2. Suspension of Services.**

PF shall be entitled, with immediate effect, to suspend and disable access to the Services (“**Permitted Suspensions**”), without relieving Customer of its payment obligations and without giving Customer cause for termination, under the following circumstances and upon notice to Customer (unless, with respect to clauses (b) or (d) below, notice is not practicable under the circumstances):

- (a) If unauthorized use of Services occurs that is not remedied within five (5) days after PF has provided written notice of such unauthorized use to Customer;
- (b) If PF’s access to Data is interrupted (including due to failure of any Project Equipment or Communications Links, or by any act or omission of Customer), for so long as such interruption continues; or
- (c) For non-payment by Customer, as provided in Section 5.4(b); or
- (d) During the existence of a Force Majeure Event; or
- (e) If any “Permitted Suspension” due to non-payment occurs under any Other Agreement between PF and Customer or a Customer Affiliate.

During Permitted Suspensions, all other terms of this Agreement shall apply as if Services were not being suspended. PF may charge a re-activation fee reflecting the actual and reasonable work, equipment and software required for re-starting Services following a Permitted Suspension.

#### **4.3. Termination for Cause**

(a) Customer may terminate this Agreement for cause if PF has: (i) become Insolvent; or (ii) breached any of its material obligations under this Agreement and failed to cure such breach within thirty (30) days of receipt of written notice from Customer specifying the breach in reasonable detail. In no event will termination relieve Customer of any accrued obligation to pay any Fees payable for the period prior to the effective date of termination.

(b) PF may terminate this Agreement for cause if: (i) Customer or Customer’s parent entity has become Insolvent; or (ii) pursuant to

Section 4.2 (a) or (b), PF has suspended Services due to unauthorized use of Services or interrupted access to Data, as applicable, for a period of more than ninety (90) days; or (iii) pursuant to Section 4.2 (c), PF has suspended Services due to non-payment by Customer for the period set forth in Section 5.4(b); or (iv) PF has terminated any Other Agreement between PF and Customer or a Customer Affiliate; or (v) Customer breached any of its material obligations under this Agreement and failed to cure such breach within thirty (30) days of receipt of written notice sent by PF specifying the breach; or (vi) it is a requirement by US law or the law of the jurisdiction of this Agreement or any other laws affecting PF and its Affiliates (*e.g. excluded countries/embargo list*). In no event will termination relieve Customer of any accrued obligation to pay any Fees payable for the period prior to the effective date of termination. If PF terminates this Agreement for cause, all accrued and unpaid Customer obligations shall remain due and payable to PF, and Customer shall owe Fees for the full term of this Agreement.

#### **4.4. Permitted Termination**

Customer may terminate individual Projects with a 90-day prior written notice sent to PF, if the Customer either loses the service contract for this Project or disposes of the Project. For avoidance of doubt, Customer may not otherwise terminate individual Projects.

### **5. FEES, INVOICING, AND PAYMENT TERMS**

**5.1. Fees.** Customer shall pay PF the service/license fees, implementation fees, professional services fees and any expenses and fees for hardware or for other services and materials (“**Fees**”), calculated in accordance with the Fee Schedule as set forth in Schedule 5 of the Master Services Agreement. The Parties agree that PF will increase all Fees set forth in the Fee Schedule in Schedule 5 of the Master Services Agreement, on an annual basis by the highest of 7% (seven percent) or the annual increase in the US Consumer Price Index for All Urban Consumers for all items.

**5.2. Invoicing Units.** PF will use the most updated units available to prepare invoices. Customer acknowledges that these units might defer non-significantly from the Order Form. For instance, if the invoicing is based on MWp and the Order Form shows a number that is different from the actual MWp identified during the implementation, the latter will be used. Should this difference be larger than five (5) percents, Customer will be notified prior to invoices being issued.

**5.3. Billing and Payment Services.** One-time Fees (such as implementation fees, professional services fees, re-activation fees etc) shall be billed in advance as of the Effective Date of this Agreement or as of the applicable Order Form Effective Date.

Recurring Fees (such as service/license fees, support fees etc) shall be billed annually in advance as of the first day of each Billing Period, provided that Fees for the Stub Period for any Order Forms shall be billed in advance as of the applicable Deployment Date, and thereafter shall be billed annually in advance as of the first day of the next Billing Period.

All Fees payable by Customer to PF under this Agreement shall be due within thirty (30) days after invoice date. Invoices shall be issued by

PF in accordance with PF’s local accounting regulations and legislation.

All amounts paid by Customer to PF under this Agreement are non-refundable and are not subject to set-off.

#### **5.4. Late Payment.**

**(a)** All Fees not paid when due are subject to 2% (two percent) interest per month or the maximum rate allowed by law, whichever is the lower. Payments by Customer will thereafter be applied first to accrued interest and then to the principal unpaid balance. Any reasonable attorney’s fees, court costs, or other out-of-pocket costs incurred in collection of delinquent accounts shall be paid by Customer.

**(b)** PF has the right to suspend Services and disable access to the Services if Fees under this Agreement and/or any Other Agreement are not timely paid. PF shall provide fifteen (15) days’ notice of suspension to Customer under this Section 5.4(b), setting forth the amount outstanding and the relevant invoice information. Such notice may be given through the display of a warning banner on the Customer screen or by email to any of the email addresses mentioned in the Notices section or in the Customer Billing Information in Schedule 10 of the Master Services Agreement. If Customer does not cure the non-payment prior to expiration of such fifteen-day period, Services may be suspended and access to the Services shall be disabled. If Customer does not cure the non-payment within thirty (30) days following above notice, PF may terminate with immediate effect this Agreement for cause in accordance with clause 4.3.(b) hereinabove.

**5.5. Taxes.** All prices quoted are exclusive of any taxes. Customer shall be responsible for, and PF shall have the right to collect from Customer, any applicable taxes, customs duties, and tariffs of any nature and kind now, or hereafter imposed or assessed, by any national, federal, state, provincial, county or local governmental authorities, however designated, on the Services or the Fees (all of which shall be referred to as “**Taxes**”), other than taxes on the income of PF. PF shall add all such Taxes at the time of invoicing to the extent identified at that time.

Tax Exemption Certificate. If Customer is tax exempted, Customer shall be responsible for providing duly completed and valid tax exemption certificate as well as any other required documentation to PF at least ten (10) days before the date of invoicing by PF. If the tax exemption certificate is submitted after this deadline, then Customer shall be billed for all applicable Taxes and shall be liable for the payment of the invoiced Taxes. PF is not liable for refunding the amount of Taxes paid by Customer. Customer is responsible for seeking refunds for such Taxes from the appropriate taxing authorities. In no event shall PF be liable for any Taxes due by Customer and Customer hereby undertakes to indemnify PF against any such claims for Taxes.

**5.6. Invoice dispute.** If Customer, acting in good faith, disputes one or more items in an invoice, Customer shall notify PF in writing of the items under dispute and the reasons therefor within five (5) business days of invoice receipt. Customer shall have the right to withhold payment of the disputed items only. Customer shall timely pay the undisputed amounts per section 5.3. and the Parties agree to enter

into good faith negotiations (“Invoice Dispute Consultation”) to attempt to resolve such dispute in a mutually acceptable manner. Such Invoice Dispute Consultation shall begin within ten (10) days after the afore-mentioned Customer’s notification to PF of the items under dispute. Upon resolution of any dispute by the Parties, any previously unpaid amount agreed by Customer to be owed to PF will be promptly paid by Customer with interest as per Sections 5.3 and 5.4, or in the event of overpayment by Customer, PF shall reimburse Customer for the amount overpaid or, at its option, Customer may offset amounts subsequently owed to PF by the amount previously overpaid. If the Parties do not reach a mutually agreed resolution for the disputed amount(s) within 60 days from the date of the afore-mentioned Customer’s notification to PF of the items under dispute, then PF shall be entitled to suspend the Services and terminate the Agreement in accordance with Section 5.4.(b).

**5.7. Customer’s Purchase Orders.** If required for invoice payment, Customer shall provide a purchase order matching the details of the Order Form within five (5) business days of the start of each billing period, as necessary. The Order Form will be deemed no longer requiring a Purchase Order past this period and Customer acknowledges invoices will duly be payable as is per Sections 5.2 and 5.3.

**5.8. Regulatory, Policy and Environmental Changes.** In the event of any regulatory, policy, or environmental changes that materially impact the cost structure of PF’s business or the supply of parts necessary for the provision of Services, PF reserves the right to adjust the Fees accordingly. PF shall provide the Customer with written notice of any such changes and the corresponding adjustments to the Fees. The Customer shall have the right to review and discuss the proposed adjustments with PF. If the Parties cannot agree on the adjustments within thirty (30) days of the notice, either Party may terminate the Agreement with ninety (90) days’ prior written notice. For the avoidance of doubt, “regulatory, policy, and environmental changes” refer to changes in law, industry regulations, environmental mandates, or government-imposed costs that directly impact PF’s ability to provide Services. This does not include tax changes affecting the Customer’s payment obligations or withholding tax responsibilities, and Section 5.5.

#### **6. CONFIDENTIALITY & OWNERSHIP**

**6.1.** PF agrees not to disclose Confidential Information received from Customer to any third party for the duration of this Agreement and for five (5) years following its termination, except that PF may (i) disclose such Confidential Information to third parties as required to provide the Services provided that such third parties are subject to substantially similar confidentiality obligations as set forth in this Agreement and (ii) use such Confidential Information as set forth in Section 6.3. Customer agrees not to disclose Confidential Information received by PF (other than Data provided by Customer) for the duration of this Agreement and for five (5) years following its termination. The foregoing confidentiality obligations shall lapse if Confidential Information (i) becomes a part of the public



domain without breach of this Agreement by either Party; or (ii) is legitimately obtained by the receiving Party without a commitment of confidentiality from a third party; or (iii) is required to do so by applicable law, by court judgment or by any competent regulatory authority, provided that the Party required to disclose Confidential Information shall promptly notify in advance the other Party in writing (if legally permitted), who may seek to obtain suitable protective orders to maintain the confidentiality of Confidential Information.

**6.2.** Except as provided in Section 6.3, PF acknowledges and agrees that it makes no claims herein to ownership of Data collected from Customer or Confidential Information provided by Customer, all of which shall be the sole and exclusive property of Customer or its Affiliates, as applicable.

**6.3.** Customer acknowledges and agrees that PF shall have, and hereby grants to PF, a non-exclusive, royalty-free, sublicensable, worldwide, perpetual license to use (i) any feedback on, or modifications, alterations, improvements, customizations, or any other changes to the Services developed by or with Customer in connection with this Agreement (collectively, “Service Modifications”) in services provided to any other customers of PF or for any other purpose at any time, so long as such Service Modifications do not contain any registered intellectual property owned by Customer or its Affiliates and (ii) any Data or other Confidential Information of Customer for the development of databases, reporting purposes, market and product analysis, or other similar purposes, at any time, for PF’s own use, in the provision of services, or other commercial purposes, so long as such Data or other Confidential Information is aggregated and anonymized prior to distribution. The provisions of this Section 6.3 shall survive termination of this Agreement.

**6.4.** Each Party agrees to promptly notify the other Party in writing of any security or confidentiality breaches affecting the Data or Confidential Information which the notifying Party knows or reasonably suspects has resulted in access to Data or Confidential Information by unauthorized third parties.

## **7. INTELLECTUAL PROPERTY; USERS**

**7.1.** Nothing in this Agreement grants any right, title, or interest in or to any Protected IP and/or to any intellectual property rights in or relating to, the PF Materials, the PF Deliverables and the PF Platform, whether expressly, by implication, estoppel or otherwise. PF (and its licensors) retains all right, title, interest, ownership rights and other intellectual property and moral rights in and to all the PF Materials, the PF Deliverables and the PF Platform and reserves all rights not expressly granted to Customer in this Agreement. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement.

**7.2.** Customer agrees that it shall not, and shall not permit any User or any other third party to, access or use the PF Materials or the PF Platform except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer, Customer’s User(s) and any third party shall not, except as this Agreement expressly permits:

(a) attempt to copy, reverse engineer, decompile, or disassemble in any way any of the PF Materials, either in whole or in part;

(b) build any product or service that is similar to or competitive with the Services, the PF Platform and/or any of the PF Materials, or that uses any ideas, features, functions, or graphics, derived from the Services, the PF Platform, the PF Materials and/or any other Protected IP;

(c) use any ideas, features, functions, or graphics, derived from any of the PF Materials, the PF Platform, the Services and/or any other Protected IP, as elements in any other product or service, and/or access any of the PF Materials and/or the PF Platform for purposes of building a competitive product or service;

(d) decrypt, circumvent, bypass, breach, or disable any security or data protection or other technological features or measures of any of the PF Materials, the PF Platform and/or the Services;

(e) copy, publish, release, rent, lease, loan, sell, distribute, transfer, frame and/or mirror, any of the PF Materials, the PF Platform and/or any other Protected IP;

(f) use or permit the use of any of the PF Materials and/or of any Protected IP, for commercial time-sharing arrangements, for providing service bureau, data processing, rental, or other services to any third-party;

(g) alter, modify, adapt, translate and/or create derivative works based upon any of the PF Materials, the Services and/or any Protected IP, either in whole or in part;

(h) remove any copyright notice or other proprietary rights notices that may appear in or on the PF Materials, the Services, the PF Platform and/or any other Protected IP;

(i) perform any security or penetration testing of the PF Materials and/or the PF Platform;

(j) input, upload, transmit or otherwise provide to or through the Services and/or the PF Platform, any information or materials that are unlawful or injurious;

(k) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner, any of the PF Materials, the PF Platform, PF’s systems, and/or PF’s provision of services to any third party, in whole or in part, and/or use any of the PF Materials and/or the PF Platform in any manner that does not comply with applicable law;

(l) upload, post, email, transmit or otherwise make available within the PF Deliverables and/or the PF Platform, any material that contains software viruses and/or any other computer code, file or program designed to interrupt, destroy or limit, in any way, the functionality of the PF Deliverables and/or of the PF Platform.

**7.3.** Certain Services may include the ability, as set forth in the relevant Description of Services as per Schedule 3 of the Agreement, for Customer to extend certain limited services (“Limited Services”) to third party entities contracted by Customer in order to perform services for the Projects (“Limited Access Users”) upon PF’s written approval. Customer may not permit competitors of PF to access Limited Services. As a condition to a Limited Access User receiving access to Limited Services, the Limited Access User will be required to execute a Limited Access Agreement as per Schedule 8 of the Agreement and pay to PF the relevant fees. Customer shall not permit

any third party, including but not limited to O&M providers or other suppliers, to access the Services or Limited Services without full compliance with this Section 7.3. Customer shall not permit Limited Access Users to access any Services other than the Limited Services.

**7.4.** Upon PF’s request, and subject to any restrictions under any applicable data protection laws, Customer shall provide to PF individually identifiable personal information about Users as a means of validating usage of the Services, including a User’s full name, email address, phone number, title, and reporting manager. To the extent PF processes any Personal Data (as defined in the Data Processing Addendum attached in Schedule 9 of the Master Services Agreement), PF and Customer will comply with the Data Processing Addendum.

**7.5.** Customer agrees that PF is not responsible for, or liable for, any notices, messages or other communications from PF to Customer or any User that are lost due to inaccurate or out-of-date information conveyed to PF about Customer or any User.

**7.6.** Customer shall, and shall cause all Users to, (i) keep all Access Credentials confidential and (ii) prevent unauthorized parties from using any Access Credential or otherwise obtaining access to Services or Data.

**7.7.** Customer shall notify PF within twenty-four (24) hours of any actual or suspected unauthorized use of any Access Credential, unauthorized access to Services or Data, or any other breach of security.

**7.8.** Customer agrees that (i) it shall not, and shall not permit any User or any third party to make any use of the Services or Data that is not intended by this Agreement, (ii) it shall not, and shall not permit any User, any Limited Access User or any third party to create and/or share internal emails, credentials, or logins with any third parties, (iii) it shall disclose to PF on a quarterly basis all Limited Access Users, and (iv) it shall ensure that any User or third party (including any Limited Access User) shall not interfere with any Project Equipment, the PF Materials or with the provision of the Services or act in any manner in violation of this Agreement (including the covenants set forth in Section 7.2), and Customer shall be solely responsible for any such interference or actions.

## **8. INDEMNIFICATION**

**8.1. Indemnification by PF.** PF agrees to indemnify and hold harmless Customer and its Indemnitees from and against any and all Losses resulting from, arising out of, or which are based on a third-party claim, law-suit or proceedings made or brought against Customer alleging that the Services as provided by PF infringe any third party intellectual property right (including any copyright, trade secret, or patent), and which have been finally awarded against the Customer by virtue of a court judgment or settlement entered into in accordance with Section 8.4, and PF shall defend and settle, at its expense, all law-suits, claims or proceedings arising therefrom. THIS INDEMNITY SHALL BE CUSTOMER’S AND ALL INDEMNITEES’ SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF INFRINGEMENT. In the event an injunction is sought or obtained that prevents Customer’s use of all or any portion of the Services, PF may, at its option and expense, either (i) procure for Customer and its Indemnitees, as applicable, the right to continue to use the Services, or (ii) replace or modify all or any

portion of the Services to make its use non-infringing while being capable of performing substantially the same function without material degradation of performance, or (iii) terminate this Agreement and refund to Customer any unearned Fees previously paid for the remainder of the then-current Billing Period.

**8.2. Exclusions.** PF will have no obligation under Section 8.1 with respect to any claim of infringement arising out of or based upon: (i) Data, (ii) use of the Services in any manner other than as expressly authorized and contemplated in this Agreement and the PF Documentation, (iii) the combination of the Services with any other software, hardware, material, or processes, (iv) Customer otherwise causing the Services to become infringing, or (v) Customer’s breach of the Agreement.

**8.3. Indemnification by Customer.** Customer agrees to indemnify and hold harmless PF and its Indemnitees from and against any and all Losses resulting from, arising out of, or which are based on a third-party claim, law-suit or proceedings made or brought against PF and which relate to or arise out of the Data, or a Project or Project Equipment, or Customer’s software systems, or any use of the Services in violation of this Agreement, or the combination of the Services with any other software, hardware, material or processes, or Customer otherwise causing the Services to become infringing, or any Customer’s breach of this Agreement, and Customer shall pay any court judgment, penalty of any type or settlement entered into in accordance with Section 8.4, resulting from any such claim, law-suit or proceedings, and Customer shall defend and settle, at its expense, all law-suits, claims or proceedings arising therefrom.

**8.4. Procedure.** If an Indemnitee receives any notice of a claim or other allegation with respect to which the other Party (the “Indemnitor”) has an obligation of indemnity hereunder, then the Indemnitee will promptly, and in any case no later than within five (5) business days after receipt of such notice, give the Indemnitor written notice of such claim or allegation. The Indemnitee will not make any admission of liability or take any other action that limits the ability of the Indemnitor to defend the claim and will grant the Indemnitor sole control of the defense or settlement of such claim or allegation, and shall pay all authorized costs and expenses of such defense. The Indemnitee will fully cooperate, at the expense of the Indemnitor, in the defense or settlement of the claim. The Indemnitee shall have the right, at its own expense, to employ separate counsel and participate in the defense or settlement of the claim in an advisory capacity.

## **9. WARRANTIES, LIABILITY AND INDEMNITIES**

**9.1.** Customer shall be solely responsible for any liabilities associated with any use of the Services or Data by Customer or any User, and PF shall not be liable in any way to any third-party in connection with any use of the Services or Data by Customer or any User.

**9.2.** Each Party warrants that it is authorized to enter into this Agreement and its performance of its obligations as described herein is not in conflict with any obligation it owes to any third party. Customer further warrants that no provision of this Agreement conflicts with any provision of any agreement between Customer and any third party in a manner that would prevent Customer from performing its obligations under this Agreement, and Customer has

obtained all necessary consent from any relevant third parties to perform its obligations under this Agreement.

**9.3.** All goods and services (including Data) acquired by PF from third parties and provided to Customer hereunder carry only the warranty given by the original manufacturer or provider and PF shall have no liability for them beyond making a reasonable commercial effort to arrange procurement and provision of the goods or services.

**9.4.** Customer agrees to indemnify and hold PF and its Affiliates and their respective Indemnitees harmless from and against any and all Losses resulting from or arising out of Customer’s or any User’s gross negligence, willful misconduct, fraud, or breach of this Agreement.

**9.5.** PF agrees to indemnify and hold Customer and its Affiliates and its Indemnitees harmless from and against any and all Losses resulting from or arising out of PF’s gross negligence, willful misconduct, fraud, or breach of this Agreement.

**9.6.** CUSTOMER EXPRESSLY AGREES THAT CUSTOMER’S USE OF THE SERVICES, INCLUDING RECEIVING ANY COMMUNICATIONS SENT TO CUSTOMER THROUGH THE SERVICES, IS AT CUSTOMER’S SOLE RISK (EXCEPT AS PROVIDED OR INDEMNIFIED HEREIN). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PF EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND GUARANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY INCLUDED IN THIS AGREEMENT. SPECIFICALLY, PF MAKES NO WARRANTY THAT THE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, COMPLETELY SECURE, OR ERROR FREE, FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, EXCEPT AS DESCRIBED HEREIN, NOR DOES PF MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES. CUSTOMER UNDERSTANDS AND AGREES THAT ANY COMMUNICATIONS, MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES BY CUSTOMER, EXCEPT AS PROVIDED HEREIN, IS DONE AT CUSTOMER’S OWN DISCRETION AND RISK, AND THAT EXCEPT AS PROVIDED HEREIN CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER’S COMPUTER SYSTEMS OR LOSS OF DATA OR MESSAGES THAT RESULTS FROM THE DOWNLOAD OR OTHER FORM OF RETRIEVAL OF SUCH MATERIAL, COMMUNICATIONS AND/OR DATA. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM PF OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

**Tax Calculation Module Disclaimer.** The Parties acknowledge that PF utilizes third-party software and/or services for the purposes of calculating tax rates, amounts, and related tax data on invoices generated by PF’s Services (the “Tax Module”). PF makes no representations or warranties, express or implied, regarding the accuracy, correctness, completeness, or fitness for any particular purpose of any information, data, or calculations produced by the Tax Module. CUSTOMER AGREES THAT PF SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS, OMISSIONS, OR INACCURACIES IN TAX CALCULATIONS, TAX ASSUMPTIONS, OR RESULTING DATA PROVIDED BY THE TAX MODULE, AND PF EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY CLAIMS, DAMAGES, FINES, PENALTIES, INTEREST,

OR OTHER AMOUNTS ARISING FROM THE USE OF, OR RELIANCE UPON, SUCH TAX CALCULATIONS OR DATA. Customer shall defend, indemnify, and hold harmless PF and its Indemnitees against any and all Losses, fines, penalties and/or interest, arising from any claims, audits, or assessments against PF, Customer, or User by any taxing authority or any third party in connection with the tax data or tax calculations provided via the Services. In any event, PF’s liability for any error or alleged error relating to the Tax Module or tax calculation shall be limited as set forth in Section 9.7.

PF does not provide tax advice, and nothing in this Agreement, the PF Platform, or any communications from PF should be construed as tax advice. All information and calculations with respect to taxes are provided on an “as-is” basis. Customer is solely responsible for determining the appropriateness, accuracy, and sufficiency of any tax calculations or data provided, and for complying with all applicable tax laws, rules and regulations. Customer acknowledges and agrees that it is Customer’s obligation, and not PF’s, to review and confirm tax rates, categories, and results for all invoices and to obtain independent advice from qualified tax professionals as needed.

**9.7. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL PF BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, FROM ANY CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION THOSE CLAIMS ARISING FROM THE USE OR THE INABILITY TO USE THE SERVICES OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES OR COMMUNICATIONS RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICES OR RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF SUCH PARTY’S COMMUNICATIONS, TRANSMISSIONS, MESSAGES OR DATA, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLES.

EXCEPT WITH RESPECT TO (I) A BREACH OF CONFIDENTIALITY AS DESCRIBED IN SECTION 6.1, (II) A BREACH OF ANY COVENANT IN SECTIONS 7.2, 7.6, 7.7, OR 7.8, (III) CUSTOMER’S OBLIGATION TO PAY FEES HEREUNDER, OR (IV) ANY INDEMNIFICATION OBLIGATIONS REQUIRED BY SECTION 8, IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY HEREUNDER, REGARDLESS OF THE CLAIMS, EXCEED IN THE AGGREGATE AN AMOUNT EQUAL TO THE FEES FOR A PERIOD OF ONE BILLING PERIOD.

THE LIMITATIONS OF LIABILITY IN THIS SECTION 9.7 SHALL APPLY REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UNDER WHICH THE CLAIM ARISES, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, STRICT LIABILITY, OR OTHERWISE AND REGARDLESS OF WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. TO THE EXTENT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE UNENFORCEABLE UNDER APPLICABLE LAW THE PARTY’S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED UNDER APPLICABLE LAW. The term “Services” as used in this Section 9 (Warranties and Liability) shall include all of the PF Materials.

**9.8. Anti-Corruption.** Customer acknowledges and understands that PF is subject to certain anti-corruption and anti-bribery laws and regulations, including the U.S. Foreign Corrupt Practices Act. These



anti-corruption obligations extend to the contractual relationship under this Agreement. Therefore, Customer agrees that neither Customer nor any of its Affiliates has, or will, offer, promise, pay, or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any foreign official (including but not limited to any government official, any political party official, any candidate for political office, any official of a public international organization, or any employees of companies that are owned or controlled by a government) or relative of any foreign official to influence the decision of such foreign official in his or her official capacity to: (a) induce a foreign official to do or not to do any act in violation of his or her lawful duty; (b) induce a foreign official to use his or her influence with a foreign government or instrumentality to affect or influence any act or decision of such government or instrumentality; or (c) gain any other improper advantage.

It is the intent of the Parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

In the event of breach of this clause or any infringement by the Customer or any of its Affiliates or their employees under any anti-corruption or anti-bribery laws in any applicable jurisdiction, the Customer shall be deemed to be in material breach of this Agreement and PF will be entitled to terminate it immediately.

**9.9. Export.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, Customer represents and warrants that (a) it will not use the Services in or from, nor is it under the control of the government of, Cuba, Iran, North Korea, Syria, and certain disputed regions of Ukraine (i.e., Crimea and the so-called Donetsk and Luhansk People’s Republics) or any country to which the United States has prohibited export; (b) it will not download or otherwise export or reexport or associated documentation, directly or indirectly, to any country to which the United States has prohibited export or to citizens, nationals or residents of those countries; (c) it and/or any of its shareholder(s)/member(s) and/or any of its ultimate beneficiary(ies) and/or any of its Director(s) is not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, or the United States Department of Commerce Table of Denial Orders, nor will it permit any other individual or entity appearing on such lists to access or use the Services; (d) it will not allow the Services to be used for any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.

For the avoidance of doubt, Customer shall not transfer, either directly or indirectly, any product (or part thereof), process or service to any nation, or its nationals, listed in the United States Export Administration Regulations, 15 C.F.R. Parts 730-799 (including all amendments), without the prior written authorization of the U.S. Office of Export Licensing.

## **10. MISCELLANEOUS PROVISIONS**

**10.1. Enforceability.** If any provision of this Agreement is held invalid or unenforceable, for any reason, by any arbitrator, court or governmental agency, department, body or tribunal, the remaining provisions will remain in effect.

**10.2. Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to any conflicts of law provisions contained therein. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY DISCLAIMED. ANY ACTION, SUIT, OR OTHER LEGAL PROCEEDING THAT IS COMMENCED TO RESOLVE ANY MATTER ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE COMMENCED AND MAINTAINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN DOVER, DELAWARE. CUSTOMER CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS AND HEREBY WAIVES ANY OBJECTION TO VENUE OF SUCH COURTS.

**10.3. Assignment.** Neither Party to this Agreement may assign or transfer the whole or any part of this Agreement or any benefit, interest, obligation or liability in or under this Agreement without the prior written agreement of the other Party, except that either Party:

- (a) may assign or transfer the whole or any part without the prior written notice to the other party, to an Affiliate or as part of an internal corporate re-organization, except in case the Customer’s Affiliate is a competitor of PF in which case the prior written approval of PF is required; and
- (b) may, as security in favor of a bank, financial institution or other party providing financing, pledge or assign its right to any moneys due, or to become due, under this Agreement.

Any attempt by a Party to effect an assignment in breach of this Section 10.3 shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

**10.4. Waiver.** The delay, omission, or failure of either Party to exercise any right or remedy provided for in this Agreement shall not be deemed to be a waiver of such right or remedy. The Parties agree that any cause of action arising out of this Agreement must commence within the time permitted under Delaware law, otherwise such cause of action is permanently barred.

**10.5.** The provisions of this Agreement that should due to their nature or by law survive the termination, cancellation and/or expiry of this Agreement including, without limitation, any Customer’s payment obligations as of the date termination, cancellation or expiry of this Agreement, and Sections 6, 7.1, 7.2, 7.8, 8, 9 and 10, shall survive the cancellation, termination or expiry of this Agreement in accordance with their terms.

**10.6. Press release.** Each Party agrees that the other Party may, following the prior written consent of the other Party, issue a press release announcing the execution of this Agreement, which press release may include descriptions of this Agreement, the Services, the Parties, and the Projects (collectively, the “Deal Information”). Each Party agrees to provide the other Party with an advance copy of any press release so that such other Party has an opportunity to review

and comment on such press release. Customer agrees that PF may disclose and discuss any Deal Information at any relevant industry conference or in any written or audiovisual materials used by PF for marketing purposes.

**10.7. Force Majeure.** PF shall not be responsible for delays or failures (including any delay or failure in the delivery of Services) if such delay or failure arises out of events beyond its reasonable control (“Force Majeure Event”). Such Force Majeure Event may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, wide-spread electrical outages, severe weather, war, and failure of any Communications Links.

**10.8.** Nothing herein expressed or implied is intended to confer upon any person, other than the Parties hereto and their permitted successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**10.9.** Each Party shall comply with all applicable laws and regulations in providing or using the Services, as well as in relation to legislation on employment, social security, taxation, environment, health and safety at work, import/export restrictions, trade sanctions in any applicable jurisdiction.

**10.10.** The section headings herein are inserted for convenience of reference only and shall not affect the meaning or interpretation hereof.

**10.11.** Each Party and its signatory(-ies) represents that it has validly entered into the Agreement and that it has the legal power to do so.

**10.12.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be signed electronically and delivered electronically, by facsimile or PDF and such electronic signatures of executed signature pages shall be binding as originals.

**10.13.** This Agreement may only be amended in writing signed by all Parties.