

## PEF Services LLC – Terms of Use

Your use of PEF Services LLC's web applications (Application) through Investor Library Portal and PEF Online are subject to this statement of Terms of Use that you accepted when you first accessed the Service. Capitalized terms used in this Terms of Use statement are used as defined in Section 13 of this Terms of Use statement.

### 1. No reproduction or reverse engineering

You are not permitted to copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Application. Neither you nor any person who derives access to the Service under your authority shall reverse-engineer, reverse-assemble, reverse-compile or otherwise modify the Service or any related software, or any portion of it, or copy any such software, or any part thereof, except as permitted by these terms.

### 2. Confidential Information; Proprietary Intellectual Property

2.1 To protect the rights of PEF Services, its licensors and the Fund regarding their respective Confidential Information, you, PEF Services and the Fund agree to take all reasonable steps and the same protective precautions to protect the Confidential Information from disclosure to third parties as with your own or its own proprietary and Confidential Information. No party shall, without the other parties' prior written consent, disclose, provide, or make available any of the Confidential Information of any other party in any form to any person, except to its bona fide employees, officers, directors, or third parties whose access is necessary to enable such party to exercise its rights hereunder. Each party agrees that, prior to disclosing any Confidential Information of the other party to any third party, including identifiable business third parties, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 2.1: Reference source not found with respect to the Confidential Information and naming PEF Services or the Fund, as the case may be, as a third-party beneficiary.

2.2 All rights and title in and to the Service (including any user accounts, titles, computer code, themes, objects, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, any related documentation, "applets" incorporated into the Application, transcripts of the chat rooms, logs and records, and the Application and server software) are owned by PEF Services or its licensors. The Application and the Service are protected by United States and international laws, and may contain certain licensed materials in which PEF Services' licensors may enforce their rights in the event of any violation of this Terms of Use statement.

2.3 As part of the Service, PEF Services' personnel, contractors and subcontractors may have access to or utilize Client Proprietary Intellectual Property. PEF Services agrees that the Fund (or its licensor) will at all times retain sole and exclusive title to or ownership thereof. Nothing contained in this Terms of Use statement or otherwise shall be construed to grant to PEF Services any right, title, license or other interest in, to or under any Client Proprietary Intellectual Property (whether by estoppel, implication or otherwise), except the right to duplicate, display and create images of, load and otherwise use the Client Proprietary Intellectual Property in conjunction with the performance of the Service.

2.4 As part of the Service, you or your contractors and subcontractors may have access to or utilize PEF Proprietary Intellectual Property. You agree that PEF Proprietary Intellectual Property is the sole property of PEF Services (or licensor) and that PEF Services (or its licensor) will at all times retain sole and exclusive title to or ownership thereof. Nothing contained in this Terms of Use statement or otherwise shall be construed to grant to you any right, title, license or other interest in, to or under any PEF Proprietary Intellectual Property (whether by estoppel, implication or otherwise), except the right to duplicate, display and create images of, load and otherwise use PEF Proprietary Intellectual Property in conjunction with the Service.

2.5 The entire right, title and interest, including copyright and other proprietary rights, in all original works of authorship fixed in any tangible medium of expression heretofore or hereafter authored, originated or developed by or on behalf of PEF Services, its employees, agents, contractors or subcontractors and their employees, agents and contractors, as part of or in connection with the Application or the Service are vested in PEF Services.

2.6 Any PEF Enhancements shall be the sole property of, and ownership shall vest in, PEF Services (or its licensor). You agree to take all reasonably necessary actions that PEF Services determines to be necessary or appropriate to assure conveyance of all right, title and interest in, to and under any PEF Enhancement, including copyright, to PEF Services (or its licensor). The cost of conveying such rights shall be at PEF Services' expense.

2.7 If any invention, discovery or improvement is conceived, first reduced to practice, made or developed, in the course of, or as a result of, or in the preparation for, performance of the Service by any of you or your employees, contractors, agents and subcontractors and their employees, contractors and agents under this Terms of Use statement, you hereby assign and will assign to PEF Services all right, title and interest in and to any such invention, discovery or improvement and any patent, copyright or other form of legal protection that may be granted thereon in any country.

2.8 At PEF Services' expense, but without any further charge, you will sign and cause to be signed all papers and do and cause to be done all acts that may be necessary, desirable or convenient to enable PEF Services at its expense to file and prosecute applications for patents on any such invention, discovery or improvement, and to maintain any patent granted thereon with regard to the Application or Service. You shall have and acquire from any subcontractor, employee, agent and contractor who have access to the Service, such assignment and right as to assure that PEF Services shall receive all of the rights provided for in this Terms of Use statement. You shall provide a copy of all documents to show that all intellectual property developed by you or any of your subcontractors, employees, agents and contractors have been transferred to you.

2.9 During the term of when you have had access to the Service pursuant to this Terms of Use statement and for a period of two (2) years after termination of such access to the Service, you shall hold in strictest confidence Confidential Information of the Fund or PEF Services. You shall not disclose or make Confidential Information available, in any form, to any third party or use Confidential Information for any purpose other than as specified in this Terms of Use statement. You shall take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by employees or agents (who have access to same because of and only on a need-to-know basis) in violation of any provision of this Terms of Use statement, but in no event less than reasonable means.

2.10 The foregoing shall not prevent you from disclosing Confidential Information that:

2.10.1 is or becomes a part of the public domain through no act or omission of you;

2.10.2 was in your lawful possession prior to such access to or the disclosure of same and had not been obtained by you either directly or indirectly from the party hereto granting such access or making such disclosure, all of which is so documented by you;

2.10.3 is lawfully disclosed to you by a third party without restriction on such disclosure;

2.10.4 is required to be disclosed pursuant to subpoena or other legal process, provided, however, that the party responding to such request first provides written notice to the owner of such Confidential Information of the request;

2.10.5 is lawfully approved by the Fund and PEF for disclosure; or

2.10.6 with respect to information that is the same as or substantially identical to the Confidential

Information, is independently developed and is so documented by you.

2.11 You, PEF Services and the Fund acknowledge that the other would suffer irreparable damage if any material breach of the foregoing provisions of this Section 2.10 were to occur. Accordingly, in such event, a party would be entitled to seek preliminary and final injunctive relief, as well as any other applicable remedies at law or in equity against the party who has breached or threatened to breach this Section 2.10 and that party hereby waives the defense that money damages would be adequate.

2.12 PEF Services disclaims any ownership interest in any of the copyrights, trademarks or trade names of the Fund whose works, names and logos may appear in connection with the Service. Such works, names and logos are used with permission of the owners.

### **3 Copyright and Trademark protection**

**3.1 Notwithstanding anything to the contrary herein, you acknowledge and agree that you shall have no ownership or other property interest in the access to the service or in the application, and you further acknowledge and agree that all rights in and to the access to the service or in the application are and shall forever be owned by and inure to the benefit of PEF services.**

3.2 Except as provided otherwise in this Terms of Use statement, no license, express or implied, under any patent, trademark or copyright shall be deemed to have been granted by PEF Services to you pursuant to this Terms of Use statement. This Terms of Use statement does not grant to you any right in connection with any trademark or service mark owned by PEF Services, other than the right to use the Service and the Application.

### **4. Only for specified use**

Your use of the Service is governed by certain rules. These rules, maintained and enforced exclusively by PEF Services, must be adhered to by all users. It is your responsibility to know, understand and abide by these rules. The license or sublicense granted to you by the Agreement is subject to the limitations set forth in this Terms of Use statement. Any use of the Service or the Application in violation of this Terms of Use statement will be regarded as an infringement of PEF Services' copyrights in and to the Application. You agree that you will not, under any circumstances:

4.1 Use any unauthorized third-party software designed to modify the Application or the Service.

4.2 Exploit the Service or the Application or any of its parts for any commercial purpose other than its designated use; your access to and use of the Service or the Application is limited by the Agreement.

4.3 Use any unauthorized third-party software that intercepts, "mines", or otherwise collects information from or through the Application or the Service, including without limitation any software that gathers information about person other than yourself or the information posted by means of the Application.

4.4 Modify or cause to be modified any file that is a part of the Application or the Service in any way not expressly authorized by PEF Services.

4.5 Host, provide or develop matchmaking services for the Application or the Service, or intercept, emulate or redirect the communication protocols used by PEF Services in any way, for any purpose, including as part of content aggregation networks.

4.6 Facilitate, create or maintain any unauthorized connection to the Application or the Service, including without limitation any connection using programs or tools not expressly approved by PEF Services.

4.7 Disrupt or assist in disruption of (i) any computer used to support the Service (each a "Server"); or

(ii) any other user's experience with the Application or the Service . **Any Attempt By You To Disrupt The Service Or Undermine The Legitimate Operation Of The Application May Be A Violation Of Criminal And Civil Laws.** You agree that you will not violate any applicable law or regulation in connection with your use of the Application or the Service.

4.8 Neither you nor the Fund shall knowingly use or permit the Service to be used (a) in violation of any applicable export law or regulation (including any U.S. export law or regulation); (b) in violation of any applicable national, state, or local law or regulation, including any law governing import of the Service or governing the content that the Fund may make available via the Service; (c) in violation of this Terms of Use statement; or (d) in ways that infringe the rights of others, or interfere with other users of PEF Services' network or other networks. For example, you shall not distribute any chain letter or unsolicited bulk electronic mail ("spamming"); convey any element that contains any Self-Help Code or Unauthorized Code or other harmful component or propagate computer worms or viruses; use a false identity; attempt to gain unauthorized entry to any site or network; distribute child pornography, obscenity or defamatory material over the Internet; or infringe copyrights, trademarks or other intellectual property rights. PEF Services reserves the right to suspend the Service (or any portion thereof) without notice in the event that PEF Services believes that a person's use of the Service is in violation of this Section 4.8. PEF Services reserves the right to terminate the Service on ten (10) days written notice in the event of chronic or uncured violations of this Section.

## 5. Your Access

**5.1 PEF Services May Suspend, Terminate, Modify, Or Delete The Access To The Service Or In The Application At Any Time For Any Reason Or For No Reason, With Or Without Notice To You.** For purposes of explanation and not limitation, most account suspensions, terminations and/or deletions are the result of violations of this Terms of Use.

5.2 You represent that you are an adult in your country of residence. You agree to these Terms of Use on behalf of yourself and any organization whom you represent in connection with the Service.

5.3 The Fund in which you are an investor, manager, member or partner has established on your behalf an account, and PEF Services has established for you password-protected access to the Service. In connection with this access, you may be required to provide PEF Services with certain personal information. You agree that you will supply accurate information to PEF Services when requested, and that you will update that information promptly after it changes.

5.4 In connection with this access, PEF Services has assigned to you a unique username and a password (collectively referred to hereunder as "Login Information"). You may not share the access or the Login Information with anyone other than as expressly set forth herein.

5.5 You are responsible for maintaining the confidentiality of the Login Information, and you will be responsible for all uses of the Login Information, whether or not authorized by you. If you become aware of or reasonably suspect any breach of security, including without limitation any loss, theft, or unauthorized disclosure of the Login Information, you must immediately notify PEF Services by emailing [librarysupport@pefservices.com](mailto:librarysupport@pefservices.com). You shall make reasonable efforts to protect the Service from unauthorized access or intrusion by a person operating under any password or other method or device under your control. You shall use the Service only as authorized herein, and shall instruct employees and independent contractors having access to the Service to act in conformity with such person's obligations under this Terms of Use statement. PEF Services shall have no liability for any misuse of the username and password after delivery of such username and password in accordance with the instructions of PEF Services.

5.6 PEF Services does not recognize the transfer of Login Information or access to the Service. You may not purchase, sell, gift or trade access to the Service, or offer to purchase, sell, gift or trade access to the Service, and any such attempt shall be null and void. PEF Services owns, has licensed, or otherwise has rights to the Application, and the Fund in which you are an investor or partner owns or otherwise has right to control all of the documents and other content that appears by means of the Service. You agree that

you have no right or title in or to the Application or any such content, including any attribute associated with the Service or stored on the Service.

**5.7** PEF Services shall monitor electronic mail at [librarysupport@pefservices.com](mailto:librarysupport@pefservices.com) during normal business hours to permit you to report problems and seek assistance in use of the Service. PEF Services shall maintain a trained staff capable of rendering the Service.

## **6. Availability of site**

6.1 PEF Services has contracted with its server provider for “24×7” uptime for the servers used in the Service. PEF Services has used reasonable efforts to ensure reliable uptime for the Service and the Application. PEF Services is available by electronic mail at [librarysupport@pefservices.com](mailto:librarysupport@pefservices.com) for support services during PEF Services’ normal business hours.

6.2 PEF Services may subcontract or outsource the management of the Internet access, web-hosting or server management; and data regarding you or the Fund may be hosted on a server or at a location that belongs to or is under the control of a contractor.

6.3 In case of an interruption or failure of any of the Service, including but not limited to power or Internet services, PEF Services shall use commercially reasonable efforts to restore service as soon as possible.

6.4 If PEF Services elects, it may substitute a reasonably equivalent service provider.

## **7. Site security**

The following rules are not meant to be exhaustive, and PEF Services reserves the right to determine which conduct it considers to be outside the spirit of the Service and to take such disciplinary measures as it sees fit up to and including termination and deletion of access to the Service. If PEF Services finds such conduct to be offensive or improper, PEF Services may, in its sole and absolute discretion, suspend or terminate your use of the Service. PEF Services reserves the right to modify these rules at any time.

7.1 You must abide by rules of common decency. In particular, you may not use:

7.1.1 Vulgar language or language that is otherwise offensive, defamatory, obscene, hateful, or racially, ethnically or otherwise objectionable; or

7.1.2 Language that is subject to the rights (such as copyright rights or trademark rights, whether registered or not) of any other person or entity without written authorization from that person or entity; or

7.1.3 Language that belongs to a popular culture figure, celebrity, or media personality; or

7.1.4 Language belonging to any religious figure or deity; or

7.1.5 Language related to drugs, sex, alcohol, or criminal activity.

7.2 Communicating with other users or PEF Services representatives, whether by text, voice or any other method, is integral to the Service, and you may not:

7.2.1 Transmit or post any content or language that, in the sole and absolute discretion of PEF Services, is deemed to be offensive, including without limitation content or language that is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, sexually explicit, or racially, ethnically or otherwise objectionable, nor may you use a misspelling or an alternative spelling to circumvent the content and language restrictions listed above; or

7.2.2 Carry out any action with a disruptive effect; or

7.2.3 Disrupt the normal flow of any such communication or otherwise act in a manner that negatively affects other users including without limitation posting commercial solicitations and/or advertisements for goods and services available outside the Service; or

7.2.4 Send repeated unsolicited or unwelcome messages to a single user or repeatedly posting similar messages, including without limitation continuous advertisements to sell goods or services; or

7.2.5 Communicate or post any user's personal information within the Service or on websites or forums related to the Service, except that a user may communicate his or her own personal information in a private message directed to a single user; or

7.2.6 Harass, threaten, stalk, embarrass or cause distress, unwanted attention or discomfort to any user of the Service; or

7.2.7 Participate in any action that, in the sole and absolute opinion of PEF Services, results or may result in an authorized user of the Service being "scammed" or defrauded in any manner; or

7.2.8 Impersonate any other person, including without limitation any PEF Services agent or employee, nor may you communicate in any way designed to make others believe that your message constitutes a server message or was otherwise posted by any PEF Services agent or employee.

7.3 You hereby acknowledge and agree that:

**7.3.1 When the service is running, PEF services may obtain certain identification information about your computer and its operating system, including your hard drives, central processing unit, IP address(es) browser versions, and operating system(s), and various communication parameters and other information, such as a user's "bookmark"/ favorites for purposes of improving the service, and to police and enforce the provisions of this terms of use statement.**

7.3.2 PEF Services may, with or without notice to you, disclose your Internet Protocol (IP) address(es), personal information, chat logs, and other information about you and your activities: (a) in response to a request by law enforcement, a court order or other legal process; or (b) if PEF Services believes that doing so may protect your safety or the safety of others.

**7.3.3 PEF services may monitor, record, review, modify and/or disclose your sessions, whether voice or text, without notice to you, and you hereby consent to such monitoring, recording, review, modification and/or disclosure.**

7.3.4 PEF Services may, with or without notice to you, gather information and usage patterns related to your use of the Service, to better understand how the Service's users use the Service and its features, as well as to help PEF Services and the Fund provide offerings to you.

7.3.5 PEF Services may, with or without notice to you, use cookies to save certain information about you, such as a password or preferences, to facilitate your future activities. Cookies are pieces of information that are placed on an individual user's hard drive to enable the user to more easily communicate and interact with the Service.

7.3.6 You are wholly responsible for the cost of all wireless, telephone and Internet access charges along with all necessary equipment, servicing, repair or connection incurred in maintaining connectivity to PEF Services' servers.

7.3.7 Data and information on the Service may be subject to eavesdropping, sniffing, spoofing, forgery, spamming, tampering, breaking passwords, harassment, fraud, electronic trespassing, hacking, nuking, and system contamination, including viruses, worms, and Trojan horses, causing unauthorized, damaging or harmful access and/or retrieval of information or data on your computer or other security or privacy hazards or may not reach its destination or reach an erroneous address or recipient. By using the

Service, you may be subject to various risks, including objectionable material and contaminated files. You have been advised that if you do not wish to be subjected to these and other risks, you are advised not to use the Service.

7.4 You acknowledge that title and copyright and patent laws, and international copyright treaties, as well as other intellectual property laws and treaties protect PEF Services' rights in the Application. You agree not to extract information from the Service, or from its directories, database, or any other portion of the Service, except as authorized. You agree not to copy, alter, duplicate, distribute or provide others with the Service including PEF Services' communications protocols or any Flash, sounds, tone images, photographs, animations, video, audio, music, text, icons, designs, or "applets" or other objects or routines incorporated into the Service.

## 8. Termination

8.1 This Terms of Use statement is effective until terminated. You may cease to access the Service at any time. If you terminate or breach this Terms of Use statement, you will forfeit your right to access to the Service. PEF Services may terminate your access to the Service or this Terms of Use statement with or without notice by terminating the access as set forth in this Terms of Use Statement. You will remain subject to this Terms of Use statement in respect of any access to the Service that may have been available to you, regardless of your actual use of the Service.

## 9. Information and site subject to change

9.1 PEF Services reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement or delete the Application or any of the terms and conditions of the Service or this Terms of Use statement at any time, including access policies, availability of any feature of the Service, hours of availability, content, data, software or equipment needed to access the Service, effective with or without prior notice. PEF Services may, from time to time, at PEF Services' option, install new Releases of the Application, containing Error Corrections and/or Enhancements. If PEF Services elects, it may substitute a reasonably equivalent service. Changes that are material (as determined in PEF Services' sole and absolute discretion) will be disclosed as follows: PEF Services will provide you with notification of any such changes through any means that PEF Services deems reasonable, including without limitation by email, postal mail, website posting, pop-up screen, or in-Service notice. If any change to this Terms of Use statement is unacceptable to you or cause you to no longer be in compliance with this Terms of Use statement, you must terminate, and immediately stop using, the Service. Your continued use of the Service following any revision to this Terms of Use statement constitutes your complete and irrevocable acceptance of any and all such changes. PEF Services may change, modify, suspend, or discontinue any aspect of the Service at any time. PEF Services may also impose limits on certain features or restrict your access to parts or all of the Service without notice or liability.

9.2 The Fund chooses the documents to display by means of the Application, and the Fund may change any of such documents at any time or from time to time in its sole and unfettered discretion without notice.

## 10. Warranty Disclaimer.

**10.1** PEF Services shall perform the Service in a workmanlike manner. Notwithstanding the addition of any Error Correction, Enhancement, or Release to the Application, PEF Services' obligation to correct Errors in such additions shall be limited to the maintenance terms of this Terms of Use statement. **The service is provided "as is," and PEF services does not warrant that the service will be uninterrupted or error-free, that defects will be corrected, or that the service is free of viruses or other harmful components. Except as expressly set forth in this paragraph, PEF services shall have no liability for the application or any service provided, including any liability for negligence; PEF services does not make, and neither the fund nor you receives, any warranty, express, implied, statutory, or in any other provision of this terms of use statement or any other communication; and PEF services specifically disclaims any warranty of non-infringement, merchantability or fitness for a particular purpose in connection with the service, the application and any content, information or data that may be accessible from time to time by means of the**

**service.**

10.2 No action, whether based in contract, strict liability or tort, including any action based on negligence, arising out of the performance of the Service under this Terms of Use statement, may be brought by either party more than twelve (12) months after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

10.3 If the Application or the Service fails to conform to the foregoing warranty in any material respect, your initial sole and exclusive remedy, and PEF Services' initial liability, as a result thereof will be for PEF Services, at its expense, to use its commercially reasonable efforts to cure or correct such failure as soon as reasonably practical. If, after repeated attempts, PEF Services is unable to cure or correct such failure, your remedies, and PEF Services' entire liability, as a result of such failure, shall be subject to the limitations set forth in this Section 10 and Section 11. The foregoing warranty is expressly conditioned upon (A) your providing to PEF Services prompt written notice of any claim thereunder prior to the expiration thereof, which notice must identify with particularity the non-conformity; and (B) your full cooperation with PEF Services in all reasonable respects relating thereto, including, in the case of modified software, assisting PEF Services to locate and reproduce the non-conformity.

10.4 In case of an interruption or failure of the Service, including power or Internet services, PEF Services shall use commercially reasonable efforts to restore service as soon as possible.

**11. Limitation of Liability.**

**11.1** PEF Services' cumulative liability to you and the Fund for all claims relating to the Application and any services rendered hereunder, in contract, tort, or otherwise, shall not exceed the total amount of all service fees paid to PEF Services in respect of the Service within the prior year. **In no event shall PEF services be liable to you or the fund for any consequential, indirect, exemplary, special or incidental damages, even if PEF services has been advised of the possibility of such potential loss or damage.**

**11.2** None of PEF services or its subsidiaries, licensors or affiliates shall be liable in any way for damage or loss of any kind resulting from (a) the use of or inability to use the service including without limitation loss of goodwill, work stoppage, computer failure or malfunction; (b) the loss or damage to accounts, statistics, documents or information; or (c) interruptions of service including without limitation ISP disruptions, software or hardware failures or any other event that may result in a loss of data or disruption of service. **In no event will PEF services be liable to you or anyone else for any indirect, incidental, special, exemplary or consequential damages. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.**

11.3 PEF Services disclaims any liability for any problem resulting from the misuse, improper use, alteration, or damage of the Service or the Application or any document, information or data accessible by you or any of PEF Services' other clients or their designees by means of the Service.



## **12. Force Majeure.**

PEF Services shall not be liable for any delay or failure to perform resulting from causes outside the reasonable control of PEF Services, including without limitation any failure to perform hereunder due to unforeseen circumstances or cause beyond PEF Services' control such as acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

## **13. Certain Definitions.**

As used in this Terms of Use statement, the following capitalized terms are used as follows:

"Agreement" means, collectively, the agreement or agreements between you and PEF Services in connection with the Service, regardless of whether you entered into the agreement electronically or on paper.

"Application" means the "Investor Library Application" software or the "PEF Online Application" software, as the case may be.

"Client Proprietary Intellectual Property" means, collectively, the Fund's proprietary data, records, knowledge and methodologies that have been originated or developed by the Fund's personnel or affiliates or by third parties under contract to the Fund to develop same, or that have been purchased by, or licensed to, the Fund.

"Confidential Information" means information that is confidential and/or proprietary to the Fund or to PEF Services and not generally known in the relevant trade or industry.

"Enhancement" means any modification or addition that, when made or added to the Application, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. PEF Services may designate Enhancements as minor or major, depending on its assessment of their value and of the function added to the Application.

"Error" means any failure of the Application to conform in any material respect to its published user guide.

"Error Correction" means either a modification or addition that, when made or added to the Application, brings the Application into material conformity with its published user guide, or a procedure or routine that, when observed in the regular operation of the Application, avoids the practical adverse effect of such nonconformity.

"Fund" means the one or more funds or investment vehicles with which you are associated or evaluating and that authorized you to have access to the Service.

"PEF Enhancements" means, collectively, any addition, Enhancement, improvement or other modification to the Application or any related property developed, acquired or first conceived or reduced to practice by or on behalf of PEF Services personnel or any third party on behalf of PEF Services, whether in conjunction with the Service or otherwise.

"PEF Services" means PEF Services LLC

"PEF Proprietary Intellectual Property" means, collectively, PEF Services' proprietary code, data, records, knowledge and methodologies that have been originated or developed by PEF Services' personnel or affiliates or by third parties under contract to PEF Services to develop same, or that have been purchased by, or licensed to, PEF Services

"Release" means a new version of the Application, which may include Error Corrections and/or Enhancements.

"Self-Help Code" means any back door, "time bomb", drop dead device, or other software routine

designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the program. Self-Help Code does not include software routines in a computer program, if any, designed to permit the licensor of the computer program (or other person acting by authority of the licensor) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) for purposes of maintenance or technical support.

"Service" means the service offered by PEF Services for your on-line access to the Application.

"Unauthorized Code" means any virus, Trojan horse, worm, or any other software routines or hardware components designed to permit unauthorized access to disable, erase, or otherwise harm software, hardware, or data or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

#### **14. Equitable Remedies.**

If you breach your agreement with PEF Services, you hereby agree that PEF Services would be irreparably damaged if your Agreement with PEF Services were not specifically enforced, and therefore you agree that PEF Services shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of your Agreement, in addition to such other remedies as PEF Services may otherwise have available to it under applicable laws. If any litigation is brought by either party in connection with your Agreement with PEF Services and consistent with this Section 14, the prevailing party in such litigation shall be entitled to recover from the other party all the costs, attorneys' fees and other expenses incurred by such prevailing party in the litigation.

#### **15. Dispute Resolution and Governing Law.**

15.1 Informal Negotiations. To expedite resolution and control the cost of any dispute, controversy or claim related to the Service or the Application ("Dispute"), you and PEF Services agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other. PEF Services will send its notice via first class mail to your address and email you a copy to the email address you have provided to us. You will send your notice via first class mail to PEF Services, LLC. 155 Pompton Avenue, Verona, NJ 07044 ATTN: Legal Department.

15.2 Binding Arbitration. If you and PEF Services are unable to resolve a Dispute through informal negotiations, either you or PEF Services may elect to have the Dispute (except those Disputes expressly excluded below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other. **You Understand That Absent This Provision, You Would Have The Right To Sue In Court And Have A Jury Trial.**

15.3 AAA. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), available at the AAA website [www.adr.org](http://www.adr.org). Determination of whether a Dispute is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA commercial rules. The arbitrator may award fees as part of any award. The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Except as otherwise provided in this Terms of Use statement, you and PEF Services may litigate in court to compel arbitration, stay proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

15.4 Restrictions. You and PEF Services agree that any arbitration shall be limited to the Dispute between PEF Services and you. To the full extent permitted by law, (1) no arbitration shall be joined with any other; (2) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (3) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

15.5 Exceptions to Informal Negotiations and Arbitration. You and PEF Services agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (1) any Dispute seeking to enforce or protect, or concerning the validity of, any of your or PEF Services' intellectual property rights; (2) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (3) any claim for injunctive relief.

15.6 Location. If you are a resident of the United States, any arbitration will take place in Bergen County or Essex County, New Jersey. For residents outside the United States, any arbitration shall be initiated in the County of New York, State of New York, United States of America. Any Dispute not subject to arbitration (other than claims proceeding in any small claims court), or where no election to arbitrate has been made, shall be decided by a court of competent jurisdiction within the County of New York, State of New York, United States of America, and you and PEF Services agree to submit to the personal jurisdiction of that court.

15.7 Governing Law. This Terms of Use statement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

15.8 Severability. If any provision of your Agreement with PEF Services regarding the Service or the Application shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from such Agreement and shall not affect the validity and enforceability of any remaining provisions. Without limiting the generality of the foregoing, you and PEF Services agree that if any portion of this Section 15 is found illegal or unenforceable (except any portion of Section 15.4), that portion shall be severed and the remainder of the Section shall be given full force and effect. If Section 15.4 is found to be illegal or unenforceable then neither you nor PEF Services will elect to arbitrate any Dispute falling within that portion of Section 15.4 found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the County of Essex, State of New Jersey, United States of America, and you and PEF Services agree to submit to the personal jurisdiction of that court.

## **16. Assignment**

16.1 Neither you nor the Fund may assign, transfer or amend your rights under this Terms of Use statement. Notwithstanding the foregoing, the Fund is entitled to nominate you for access to the Service subject to this Terms of Use statement and the Agreement.

16.2 PEF Services, upon five (5) days prior written notice to the Fund, may assign all its rights, duties and obligations under the Agreement to an affiliate or affiliates of PEF Services.

## **17. Advertising**

17.1 You shall submit to PEF Services all advertising, sales promotion, press releases and other publicity matters relating to the Service or the Application wherein any PEF Services' name or mark or the name or mark of any affiliate of PEF Services is mentioned or language from which the connection of any said name or mark may be inferred or implied. You shall not publish or use such advertising, sales promotion, press releases, or publicity matters without PEF Services' prior written approval.

17.2 Subject to any applicable requirements of applicable federal, state or local laws or regulations of the United States, including the Federal Bankruptcy Code, you will not make or cause to be made, whether orally, in writing or otherwise, any public announcement or statement to the news media or the investment or business communities with respect to the transactions contemplated by the Service without the prior written consent of PEF Services.

## **18. Miscellaneous.**

18.1 Captions used herein are inserted for convenience only and shall not affect the interpretation or construction of this Terms of Use statement. All terms and words in this statement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Terms of Use statement or any paragraph or clause herein may require, as if such terms and words had been fully and properly written in the appropriate number and gender. The use of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific statement, item or matter set forth immediately following such word or to similar statements, items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other statements, items and matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. Unless otherwise expressly provided herein or unless the context clearly indicates otherwise, all references to Sections in this Terms of Use statement are references to the Sections of this Terms of Use statement. If any ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of such party, or such party's legal counsel, having authored any or all of the provisions of this Terms of Use statement.

18.2 This Terms of Use statement (including terms written on paper, electronically communicated or posted on-line) supersedes any prior or contemporaneous Terms of Use statement. Your Agreement with PEF Services may only be modified as set forth herein.

**You hereby acknowledge that you have read and understand the foregoing terms of use, and you agree that your use of the service and the application is an acknowledgment of your agreement to be bound by the terms and conditions of these terms.**