

WEB SITE ELECTRONIC SERVICES AGREEMENT

You agree with **The Pacific Financial Group, Inc.** ("we", "our", "us," as the case may be) as follows:

Our Web Site (the "Site") was designed to help our advisory clients view information regarding accounts managed by our firm, and to use information, content, messages, products, services, software and databases available through the Site. The Site is available only to advisory clients (referred to as "you") who agree to the terms and conditions in this Agreement.

If you agree with the terms and conditions of this Agreement, select "I Agree" below to acknowledge your consent and intention to be bound by these terms and conditions. By selecting "I Agree," completing the registration process, obtaining a password, and/or using the Site, (i) you represent and warrant that you have the authority to enter into this Agreement and create a binding contractual obligation, (ii) you indicate that you understand and intend this Agreement to be the legal equivalent of a signed, written contract, and equally binding, and (iii) you represent and warrant that you will use the Site in a manner consistent with applicable laws and regulations and in accordance with the terms and conditions in this Agreement, as the same may be amended by us, online or otherwise, from time to time.

If you do not agree with the terms and conditions in this Agreement, select "Cancel," and you will exit the Site. In that case you must promptly return to us all materials in your possession that are associated with the Site.

This Agreement applies to all information, content, messages, products, services, software and databases available through the Site.

1. **Electronic Services.** We will provide you with certain Web-based account services (the "Electronic Services"). In using the Electronic Services, you shall at all times comply with our Acceptable Use Policy ("AUP") set forth below, as may be revised by us from time-to-time. We will provide you with electronic notice, either by e-mail or Web posting, of the revision. Your continued use of the Electronic Services shall constitute your acceptance of the revision.

2. **License Grant.** Subject to the terms and conditions of this Agreement, we grant you a limited, nontransferable, nonexclusive license to access and use the Electronic Services.

3. **Third Party Service Providers.** We use third party service providers, vendors, and licensors to assist (including Performance Technologies, Inc.) in providing the Electronic Services (each, a "Third Party Service Provider"). You hereby consent and authorize us to delegate the authorizations you provide to us to our Third Party Service Provider(s) as we deem necessary or desirable to provide the Electronic Services to you. You agree that the terms and conditions of this Agreement, including any of the other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement, inure to the benefit of such Third Party Service Providers and such Third Party Service Providers are deemed to be third party beneficiaries of this Agreement, including any other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement. You also agree that all references to us within this Agreement and any incorporated

terms are also deemed to include, where applicable, our agents, such as the Third Party Service Providers. Your use of certain services provided by Third Party Service Providers (including, but not limited to, account aggregation services provided by Yodlee.com, Inc.) will require your agreement to certain additional terms and conditions provided by the applicable Third Party Service Providers. These additional terms and conditions will be made available to you when, and if, you access the third party services.

4. Financial Market Information; No Warranty: Financial Information. Our Electronic Services make available certain financial market data, quotes, news, research and opinions (including Research Reports, as defined below) or other financial information (collectively "Information") that has been independently obtained by certain financial market information services, financial publishers, various securities markets including stock exchanges and their affiliates, investment bankers and other providers (collectively the "Information Providers") or has been obtained by us. We do not guarantee or certify the accuracy, completeness, timeliness or correct sequencing of the Information made available through us, the Information Providers or any other third party transmitting the Information (the "Information Transmitters"). All such Information is provided "as-is" and "as-available." You agree that neither we nor any of the Information Providers or the Information Transmitters shall be liable in any way for the accuracy, completeness, timeliness or correct sequencing of the Information, or for any decision made or action taken by you relying upon the Information. You further agree that neither we nor any of the Information Providers or the Information Transmitters will be liable in any way for the interruption of any data, Information or other aspect of the Electronic Services. You understand that none of the Information (including Research Reports) available through the Electronic Services constitutes a recommendation or solicitation that you should purchase or sell any particular security or use the services of any Third-Party Service Provider, including but not limited to Information Providers and Information Transmitters.

5. Research Reports. The Electronic Services make available analyst research and opinions ("Research Reports") that may be prepared by an Information Provider or by various third party investment bankers or other entities providing analysis, research and opinions ("Third Party Research Providers"). We do not endorse or approve Research Reports prepared by Third Party Research Providers and only make such Research Reports available to you as a service and convenience. We and our Third Party Research Providers do not (1) guarantee the accuracy, timeliness, completeness or correct sequencing of the Research Reports, or (2) warrant any results from your use of the Research Reports. The Research Reports have been prepared as of the date indicated and may become unreliable for various reasons including, for example, changes in market or economic circumstances. All such Research Reports are provided on an "as-is" and "as-available" basis. We and each of our Research Providers is not obligated to update any information or opinions contained in any Research Report or to continue to offer Information or Research Reports regarding any company or security. You acknowledge that recommendations in the Research Reports to buy, sell, hold, or otherwise consider particular securities are not, and should not be construed as, recommendations or advice to you designed to meet your particular objectives or financial situation. From time to time, we and our Research Providers may be unable to provide Research Reports with respect to certain companies with which we and/or our Research Providers, or their respective affiliates have certain business relationships.

6. **Alerts.** We may, from time to time, send email notices about investment markets or particular securities that we believe will be of interest to you ("Alerts"). Alerts are subject to certain limitations and requirements that are described here and that may be described at the time you subscribe, or we subscribe for you, to a particular Alert. Your subscription or use of any Alert will serve as an acknowledgement that you have read and understood the applicable limitations and conditions. The information in Alerts may be prepared and delivered by Information Providers. The information may be delayed. Neither we nor any Information Provider guarantee the accuracy, completeness, or timeliness of information available through Alerts. Reliability of your receipt of Alerts and their timeliness will also depend on factors outside of our control, including Internet, E-mail, and pager service availability and transmission capabilities. Alerts are not investment recommendations or advice. Any investment decision you make on the basis of Alerts is your sole responsibility. Alerts are sent through unencrypted e-mail, and neither we nor any Information Provider is liable for any unauthorized use or interception. If you subscribe to Alerts, you acknowledge that you have read and understood this notification.

7. **Beta Services.** We may designate certain new functionality or services to be made available in connection with the Electronic Services as "Beta Services." Such Beta Services will not be ready for use in a production environment. Because they will be at an early stage of development, operation and use of the Beta Services may be unpredictable and lead to erroneous results. You acknowledge and agree that: (i) the Beta Services will be experimental and will not have been fully tested; (ii) the Beta Services may not meet your requirements; (iii) the use or operation of the Beta Services may not be uninterrupted or error free; (iv) your use of the Beta Services will be for purposes of evaluating and testing the new functionality and services and providing feedback to us; and (v) you shall inform your employees, staff members, and other users regarding the nature of the Beta Services. Your use of the Beta Services shall be subject to all of the terms and conditions set forth herein relating to the Electronic Services. You shall promptly report any errors, defects, or other deficiencies in the Beta Services to us. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ALL BETA SERVICES ARE PROVIDED "AS-IS" AND "AS-AVAILABLE," WITHOUT WARRANTIES OF ANY KIND. You hereby waive any and all claims, now known or later discovered, that you may have against us and our suppliers/licensors arising out of your use of the Beta Services.

8. **Disclaimer of Warranties.** THE ELECTRONIC SERVICES ARE PROVIDED "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. WE DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. USE OF THE ELECTRONIC SERVICES IS AT YOUR SOLE RISK. WE DO NOT WARRANT THAT THE ELECTRONIC SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE ELECTRONIC SERVICES ARE COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM, OR THAT THE OPERATION OF THE ELECTRONIC SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE ELECTRONIC SERVICES WILL BE CORRECTED. FURTHERMORE, WE DO NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF ELECTRONIC SERVICES IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, SECURITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, CURRENTNESS, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US OR OUR AUTHORIZED

REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF OUR OBLIGATIONS HEREUNDER.

THE ELECTRONIC SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT WE DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (e.g., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR DATA, WEBSITES, COMPUTERS, OR NETWORKS. WE SHALL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES.

9. **Agreement Not To Contact Analyst.** You agree not to contact any individual or analyst who is an author of, or who is named on, any Research Report, or any representative of any Information or Research Provider.

10. **Arbitration.** You should know the following with respect to arbitration agreements:

- (a) Arbitration is final and binding on the parties.
- (b) The parties are waiving their right to seek remedies in court, including the right to a jury trial.
- (c) Pre-arbitration discovery is generally more limited than and different from court proceedings.
- (d) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
- (e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

You hereby agree to settle by arbitration any controversy between you and us, or our affiliates, or our or their respective officers, directors, employees or agents, including, but not limited to, any Third Party Service Providers, which controversy arises out of this Agreement between you and us or any Third Party Service Providers or which relates to this Agreement, the Electronic Services, and any content or information provided thereon. Such arbitration will be conducted by, and according to the arbitration rules then in effect of, the National Association of Securities Dealers, the American Arbitration Association or Judicial Arbitration and Mediation Services (JAMS).

Any arbitration conducted pursuant to this Section will take place in San Francisco, California. Arbitration shall be initiated by filing a statement of claim with one of the organizations specified above. Any award the arbitrator makes will be final, and judgment on it may be entered in any court having jurisdiction. This arbitration agreement shall be enforced and interpreted exclusively in accordance with applicable federal law, including the Federal Arbitration Act. Any costs, fees or taxes involved in enforcing the award shall be fully assessed against and paid by the party resisting enforcement of said award. No person shall bring a putative or certified

class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:

- (a) the class certification is denied;
- (b) the class is decertified; or
- (c) the customer is excluded from the class by the court.

Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

11. Securities Professionals May Not Use Research Reports In Their Business. If you are a securities broker, dealer or investment banker, by requesting or receiving any Research Reports, you agree not to use any such Research Reports for any purpose related to your business.

12. Limitations of Liability: Limitation of Damages. WE, THE THIRD PARTY SERVICE PROVIDERS, THE INFORMATION PROVIDERS, INFORMATION TRANSMITTERS, THIRD PARTY RESEARCH PROVIDERS, AND ANY OTHER PERSON INVOLVED IN TRANSMITTING INFORMATION WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES EVEN IF YOU ADVISE THEM OF THE POSSIBILITY OF SUCH DAMAGES. THIS INCLUDES, BUT IS NOT LIMITED TO, CLAIMS FOR LOST PROFITS, TRADING LOSSES AND DAMAGES THAT MAY RESULT FROM THE USE, INCONVENIENCE, DELAY OR LOSS OF USE OF THE INFORMATION OR FOR OMISSIONS OR INACCURACIES IN THE INFORMATION. AS A CONDITION TO ACCESSING OR RECEIVING THE INFORMATION OR USING THE ELECTRONIC SERVICES, YOU EXPRESSLY AGREE TO WAIVE ANY CLAIM YOU MAY HAVE AGAINST US, ANY INFORMATION PROVIDER, RESEARCH PROVIDER, THIRD PARTY SERVICE PROVIDER, OR ANY OTHER PERSONS INVOLVED IN TRANSMITTING ANY INFORMATION WE MAKE AVAILABLE TO YOU OR IN PROVIDING THE ELECTRONIC SERVICES.

BY ACCESSING OR RECEIVING INFORMATION OR USING THE ELECTRONIC SERVICES, YOU AGREE THAT OUR LIABILITY AND THE LIABILITY OF THE THIRD PARTY SERVICE PROVIDERS, THE INFORMATION PROVIDERS, THE THIRD PARTY RESEARCH PROVIDERS, OR ANY OTHER PERSONS INVOLVED IN TRANSMITTING INFORMATION OR PROVIDING THE ELECTRONIC SERVICES ARISING OUT OF ANY CLAIM (WHETHER IN CONTRACT, TORT OR OTHERWISE) IN ANY WAY CONNECTED WITH THE ELECTRONIC SERVICES OR INFORMATION WILL NOT EXCEED THE AMOUNT YOU ORIGINALLY PAID FOR THE ELECTRONIC SERVICES RELATED TO YOUR CLAIM.

SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG IMPLIED WARRANTIES LAST, THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES OR THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THAT THESE DISCLAIMERS AND LIMITATIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

13. No Liability for Events Outside of Entities' Direct Control. We, the Information Providers, Information Transmitters, Third Party Research Providers, Third Party Service Providers, and any other person involved in transmitting Information will not be liable for any loss that results from a cause over which that entity does not have direct control. Such causes include, but are not limited to, (1) the failure of electronic or mechanical equipment or communication lines; (2) telephone or other interconnect problems; (3) bugs, errors, configuration problems or the incompatibility of computer hardware or software; (4) the failure or unavailability of Internet access; (5) problems with Internet service providers or other equipment or services relating to your computer or network; (6) problems with intermediate computer or communications networks or facilities; (7) problems with data transmission facilities or your telephone, cable or wireless service; or (8) unauthorized access, theft, operator errors, severe weather, earthquakes, other natural disasters or labor disputes. We are also not responsible for any damage to your computer, software, modem, telephone, wireless device or other property resulting in any way from your use of the Electronic Services.

14. Use of Proprietary Information. The Information and other content provided in connection with the Electronic Services are our property or the property of the Information or Third Party Research Providers or their licensors, or the Third Party Service Providers, and are protected by applicable copyright law. You agree not to reproduce, retransmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Information and other content in any manner without our express written consent or the Information or Third Party Research Providers, the Third Party Service Providers, or any other person with the authority to give such consent. You agree that you will not use the Information and other content for any unlawful purpose. You further agree to comply with all our reasonable written requests intended to protect the Information and Third Party Research Providers', the Third Party Service Providers', and our respective rights in the Information and Electronic Services. You will not remove any proprietary notices (e.g., copyright and trademark notices) from any Information or other content provided in connection with the Electronic Services.

15. Access, Passwords, and Security. You will be responsible for the confidentiality and use of your access number(s), password(s) and account number(s). You agree not to hold us or Third Party Service Providers liable for any damages of any kind resulting from your decision to disclose your access number(s), password(s), or account number(s) to any third party, including but not limited to entities that aggregate account information or Web site content, or persons who are or claim to be acting as your agent, proxy, or investment manager. You will be responsible for all activities through and under your access number(s), password(s) and account number(s), and any instructions (to the extent applicable) received by us will be deemed to have been received from you. By using the Electronic Services, you agree to take all steps necessary to prevent unauthorized access to your account. You agree immediately to notify us if you become aware of: any loss or theft of your access number(s), password(s) and/or account number(s); or Any unauthorized use of any of your access number(s), password(s) and/or account number(s), or of the Electronic Services or any Information.

16. Data Transmission. You acknowledge that data, including e-mail, electronic communications and personal financial data, may be accessed by unauthorized third parties when communicated between you and us, Information Providers or

Information Transmitters, using the Internet, other network communications facilities, telephone or any other electronic means. You agree to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by us. Until we notify you otherwise, you agree to use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by us and follow our log-on procedures for Electronic Services that support such protocols. You acknowledge that we are not responsible for notifying you of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet.

17. **Indemnification.** You agree to defend, indemnify and hold us, the Third Party Service Providers, the Information Providers and the Information Transmitters harmless from and against any and all claims, losses, liability costs and expenses (including but not limited to attorneys' fees) arising from your violation of this Agreement, state or federal securities laws or regulations, or any third party's rights, including but not limited to infringement of any copyright, violation of any proprietary right and invasion of any privacy rights. This obligation will survive the termination of this Agreement.

18. **Our Ability to Terminate Electronic Services.** We reserve the right to terminate your access to the Electronic Services or any portion of them (including without limitation, the Information (including Research Reports) in its sole discretion, without notice and without limitation, for any reason whatsoever. We may terminate your access to its Electronic Services for reasons including, but not limited to, the unauthorized use of your account access information, breach of this Agreement, discontinuance of our access to any Information or any other data from any Information Provider or Research Provider or termination of one or more agreements between us and Information Providers, Third Party Service Providers, Third Party Research Providers or Information Transmitters. We and the Third Party Service Providers, the Information Providers, the Third Party Research Providers and the Information Transmitters shall have no liability to you for terminating your access to the Electronic Services; provided, however, that if our termination is without cause, we will refund the pro rata portion of any fee you may have paid for the portion of the Information and/or Electronic Services not furnished to you as of the date of termination. If this Agreement is terminated, you will cease using the Electronic Services and all products, services, Information and content obtained through the Electronic Services.

19. **General.**

19.1 **Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, Internet delays and failures, telecommunications failures, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions.

19.2 **Entire Agreement.** This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. No other agreements, representations, or warranties have been made by either party to the other with

respect to the subject matter of this Agreement, except as referenced herein. This Agreement may be amended only by a written agreement signed by both parties.

19.3 Governing Law and Limitation of Actions. This Agreement shall be construed according to, and the rights of the parties shall be governed by, the law of the State of California, without reference to its conflict of laws rules. No action, regardless of form, arising out of this Agreement, may be brought by either party more than one (1) year after the cause of action has arisen.

19.4 Relationship of the Parties. The parties agree that we shall perform our duties under this Agreement as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by us who perform duties related to this Agreement shall remain under our supervision, management, and control.

19.5 Severability. If any of the provisions of this Agreement are found or deemed by a court to be invalid or unenforceable, they shall be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

19.6 Waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

19.7 Survival. The following provisions shall survive termination or expiration of this Agreement: Sections 3 (Third Party Service Providers), 4 (Financial Market Information; No Warranty: Financial Information), 5 (Research Reports), 8 (Disclaimer of Warranties), 10 (Arbitration), 11 (Securities Professionals May Not Use Research Reports In Their Business), 12 (Limitations of Liability: Limitation of Damages), 13 (No Liability for Events Outside of Entities' Direct Control), 14 (Use of Proprietary Information), 15 (Access, Passwords, and Security), 17 (Indemnification), and 19 (General).

Acceptable Use Policy

1. **General.** For purposes of this Acceptable Use Policy (the "Policy"), "Users" means any user of our Web-based services ("Services"). As specified below, illegal usage, abusive usage, unacceptable usage, and use of the Services to interfere with other Users' enjoyment of the Services is unacceptable. From time-to-time, we may update and/or revise this Policy. Any such updates and/or revisions shall be posted online. Continued use of the Services by Users shall indicate their acceptance of the updates and/or revisions.

2. **Prohibited Uses.** Prohibited uses of the Services include the following:

(a) posting or transmitting unlawful materials, e-mail or information;

- (b) posting or transmitting harassing, threatening or abusive materials, e-mail or information;
- (c) posting or transmitting defamatory, libelous, slanderous or scandalous materials, e-mail or information;
- (d) posting or transmitting obscene, pornographic, profane or otherwise objectionable information of any kind;
- (e) posting or transmitting materials, e-mail or information that would constitute an infringement upon the patents, copyrights, trademarks, trade secrets or other intellectual property rights of others;
- (f) posting or transmitting materials constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, state, national or international law, including without limitation, the U.S. export control laws and regulations;
- (g) posting or transmitting materials that would give rise to liability under the Computer Fraud and Abuse Act;
- (h) attempting to "hack" root or user logins on another system, machine, or network;
- (i) using the Services in such a way as to impair or otherwise interfere with another User's use of the services;
- (j) including any inappropriate third party advertising; and
- (k) using the Services to commit fraud or engage in other misleading or deceptive activities.

3. **Remedies.** Violation of this Policy may result in civil or criminal liability, and we may, in addition to any other remedy that we may have at law or in equity, terminate permission for the User to use the Services or immediately remove the offending material. In addition, we may investigate incidents that are contrary to this Policy and cooperate with law enforcement organizations, and provide requested information to third parties who have provided notice to us stating that they have been harmed by a User's failure to abide by this Policy.

Investment Advisory Representatives

The materials contained in this section are for Investment Advisory Representative ("IAR") use only. They are not to be redistributed to current or prospective clients, and are not to be used as solicitation materials.

The website, www.tpfg.com, is the exclusive property of **The Pacific Financial Group, Inc.** Users of this website and those with password access to the IAR Section are not entitled to any rights thereto by virtue of their use of or access to any parts of this website.

You have read and understand the terms and conditions of this agreement and the agreement located in the Privacy/Legal Disclosures section of this website.

You agree to be legally bound by the terms and conditions of both agreements.