

# Heuristic Management,© Terms of Use

These Terms of Use were updated on January 1, 2021. Your continued use of the Services constitutes your acceptance of these Terms and the terms of the applicable Services Addendum governing the particular Services provided to you by Heuristic Management, Corporation pursuant to that Services Addendum. The Services are owned and operated by Heuristic Management, Corporation, a technology-powered real estate investment fund headquartered at 3595 Balboa Street, San Francisco, CA 94121

## TERMS OF USE

Welcome! These Terms constitute part of the Agreement regarding the Services between you and the applicable Heuristic Management, Corporation. These Terms provide important information to you, including information about your obligations when using the Services, about content you access through the Services, about content you contribute to the Services, and about the limits of our liability to you. By accessing, downloading, or using any portion of the Services, you signify that you accept the terms of the Agreement.

The Services are, in whole or in part, accessible through the Sites. Your use of and access to each Service is subject to these Terms and the terms of the applicable Services Addendum. Please review each applicable Services Addendum because your use of the corresponding Site and Service constitutes your agreement to the terms of the Services Addendum.

**PLEASE NOTE: WHERE PERMITTED BY APPLICABLE LAW, WHEN YOU AGREE TO THIS AGREEMENT AND THESE TERMS YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY CLAIM BETWEEN YOU AND A HEURISTIC MANAGEMENT, CORPORATION THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 2.13.9 BELOW FOR DETAILS REGARDING ARBITRATION (INCLUDING THE PROCEDURE TO OPT OUT OF ARBITRATION). THIS AGREEMENT ALSO CONTAINS A CLASS ACTION WAIVER.**

**BY ENTERING INTO THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU UNDERSTAND THIS AGREEMENT AND AGREE TO ALL OF ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE SERVICES.**

1. Definitions.

1.1. "AAA" means the American Arbitration Association.

1.2. "AAA Rules" means the Consumer Arbitration Rules of the AAA.

1.3. "**Agreement**" means, collectively and as applicable to you, these Terms, the applicable Services Addendum, and all other applicable terms, conditions, and policies, including [Privacy Notice](#), that we make available to you in connection with your use of the Services.

1.4. "**Claim**" means any dispute, controversy or claim arising between you and a Heuristic Management, Corporation.

1.5. "**Class Action Waiver**" has the meaning set forth in Section 2.13.9.2 of these Terms.

1.6. "**Feedback**" means feedback, comments, and suggestions for improvements in connection with the Sites and Services.

1.7. "**Heuristic Management, Corporation**" or "**Heuristic Management, Corporation**" or "**our**" or "**we**" means, collectively or as applicable to you, the specific entity, and/or the affiliates of such entity, providing the Services as identified in the applicable Services Addendum.

1.8. "**Services Addendum**" means any applicable addendum incorporated by reference into this Agreement that contains additional terms and provisions concerning the respective Services.

1.9. "**Services**" means, collectively or as applicable to you, the Sites and services provided by the Heuristic Management, Corporation pursuant to this Agreement and any applicable Services Addendum.

1.10. "**Sites**" means the websites and mobile applications maintained by or on behalf of the Heuristic Management, Corporation through which the Heuristic Management, Corporation may offer services.

1.11. "**Terms**" means these Terms of Use.

1.12. "**Testing**" has the meaning set forth in Section 2.13.6 of these Terms

1.13. "**Third Party Content**" means Your Content and any data, content, information, or other materials provided by a third party, including, without limitation (i) such content and information other users of the Services provide to us or upload to the Services, excluding any personally identifiable information, the collection, processing, or any other use of which is governed by the Heuristic Management, Corporation' [Privacy Notice](#); and (ii) content and information posted or provided by our service providers, or any third party multiple listing service, broker, or agent.

1.14. "**Third Party Sites**" means third party websites.

1.15. "**Your Content**" means your Feedback and any data, content, information, ideas, comments, property information, listing information, photos, or other materials that you provide to us or upload to the Services, excluding any personally identifiable information, the collection, processing, or any other use of which is governed by the Heuristic Management, Corporation' [Privacy Notice](#).

All other capitalized terms will have the meaning as provided elsewhere in this Agreement.

## 2. GENERAL TERMS

2.1. **Who May Use the Services.** To access and use the Services, you must be at least the age of majority in the state, province, or territory where you live or at least 18 years of age. If you are under the age of 13, you may not use the Services and you should not be visiting the Sites or using the Services. For additional user requirements, if any, please see the applicable Services Addendum.

2.2. **Third Party Sites and Linked Materials.** The Services may include links to Third Party Sites. You should review any applicable terms or [Privacy Notice](#) of a Third Party Site before using it or sharing any information with it, because you may give the third party permission to use your information in ways we would not. The Heuristic Management, Corporation are not responsible for and do not endorse any features, content, advertising, products or other materials on or available through Third Party Sites, even if originally accessed via a link on the Sites.

2.3. **Intellectual Property Rights, License and Ownership.**

2.3.1. *Heuristic Management, Corporation Intellectual Property.* Except as otherwise provided in this Agreement, the Heuristic Management, Corporation and their licensors own all right, title, and interest in and to the Services and all materials and information (including source code, data, text, images, and other content) contained on or in the Services, and you acknowledge that all such content is protected by copyright, trademark, and other laws of the United States and foreign countries.

2.3.2. *License Granted to You.* Each Heuristic Management, Corporation, as applicable, grants you a limited, personal, non-exclusive, non-transferable, non-sublicensable, revocable license to access, view, and use the Services so long as your use complies with this Agreement, the applicable Services Addendum and any other applicable policies. Unless you are otherwise explicitly granted permission, this Agreement does not grant you any right or license with respect to any trademarks, service marks, graphics, or logos.

2.3.3. *Restrictions.* You may not modify, decompile, disassemble, reverse-engineer, reproduce, redistribute, create derivative works based upon, or attempt to commercially gain from your use or misuse of the Services, or any of their components, except as permitted by the Services. You may not use any meta-tags or other hidden text using any Heuristic Management, Corporation name, trademark, service mark, graphic or logo without the respective Heuristic Management, Corporation's specific written permission. You may not remove, obscure, or modify any copyright or other intellectual property notices that appear on or in the Services. You may not use the Services in any way that violates any law or regulation, this Agreement, any of the Heuristic Management, Corporation' policies, or any third party policy, that applies to you. You may not use the Services in any manner that harms the Heuristic Management, Corporation, our service providers, our suppliers, other users of the Services, or any other person. We may revoke your permission to access and use the Services or terminate your access to and use of the Services, and we may block or prevent you from accessing the Services, in our discretion. If you

violate these Terms or the Agreement, your permission to access and use the Services is automatically revoked.

2.3.4. *No Right to Reproduce.* These Terms do not provide you a license to use, reproduce, distribute, display or provide access to any portion of the Services on Third Party Sites or otherwise.

2.3.5. *No Scrubbing or Scraping.* You may not automatically crawl or query the Services for any purpose or by any means (including, without limitation, screen and database scraping, spiders, robots, crawlers and any other automated activity with the purpose of obtaining information from the Services) unless you have received prior express written permission from the applicable Heuristic Management, Corporation.

2.3.6. *Feedback.* You may give a Heuristic Management, Corporation Feedback. You hereby assign to the applicable Heuristic Management, Corporation all of your right, title, and interest in and to the Feedback. To the extent applicable law does not permit assignment of the Feedback, you hereby grant the Heuristic Management, Corporation a perpetual, irrevocable, worldwide, exclusive, transferable, sublicensable, fully paid-up, royalty-free license to use the Feedback in any manner in which the Heuristic Management, Corporation see fit. You hereby irrevocably waive, to the fullest extent permitted by applicable law, any claims and assertions of moral rights or attribution with respect to your Feedback.

2.3.7. *Reservation of Rights.* Except for the limited licenses granted in this Agreement, we reserve all of our rights, interests, and title in and to the Services.

2.4. *Your Content.* You grant to the Heuristic Management, Corporation a worldwide, non-exclusive, transferable, sublicensable, fully paid-up, royalty-free license to use, reproduce, modify (for formatting purposes only), distribute, and perform and display publicly Your Content (excluding Feedback) in connection with provision of the Services to you or otherwise in connection with your permitted use of the Services. In addition to any of Your Content that is made available through the Services, we may share Your Content with our affiliates, service providers and/or subcontractors in order to deliver, develop, or improve the Services. You hereby irrevocably waive, to the fullest extent permitted by applicable law, any claims and assertions of moral rights or attribution with respect to Your Content. Notwithstanding anything in the Agreement to the contrary, no Heuristic Management, Corporation has any obligation to store or display Your Content. The Heuristic Management, Corporation may, but are not obligated to, monitor, modify, or remove Your Content at any time in their sole discretion. You agree that the Heuristic Management, Corporation may promote and market Your Content in connection with the Services.

2.5. *Provision of Services and Communications with You.* To access or use certain Services or features of the Services, you may need to register and create an account with the applicable Heuristic Management, Corporation. See the applicable Services Addendum for additional terms and conditions in connection with any such registration. For purposes of responding to you and providing you with information and notices about your account or the Services, you agree that we may communicate with you through the contact information associated with your account.

We have no liability arising from your failure to maintain accurate contact or other information, including, without limitation, your failure to receive critical information about the Services. When you request information from us, you are extending an express invitation for us to contact you.

2.6. Forums. The Heuristic Management, Corporation may offer forums where you can post your observations and comments on designated topics or on public boards. For certain Services, account holders can create forum topic threads. The Heuristic Management, Corporation, in their sole discretion, may close or transfer threads, or modify or remove content from them. Please note that everything you share in a forum may be seen and used by other users of the applicable Services. No Heuristic Management, Corporation is responsible or liable for anything posted by non-Heuristic Management, Corporation persons on the forums nor is any Heuristic Management, Corporation responsible or liable for monitoring the content or activities associated with the forums.

2.7. Your Representations. You represent and warrant that (i) you have the ability to enter into this Agreement and grant all assignments, licenses, and permissions contemplated or contained herein; (ii) your use of the Services will be in compliance with all laws, regulations, this Agreement, any Heuristic Management, Corporation's policies, and third party policies, if and as applicable to you; (iii) Your Content and any Feedback are original to you and do not infringe, misappropriate, or otherwise violate the rights, including any intellectual property rights or rights of publicity or privacy, of any person; (iv) Your Content and any Feedback do not contain any obscene, libelous, defamatory, abusive, or inappropriate content; and (v) our use of Your Content and any Feedback you provide will not infringe, misappropriate, or otherwise violate the rights, including any intellectual property rights or rights of publicity or privacy, of any person.

2.8. Termination. If you have created an account to access the Services, you may deactivate your account at any time by visiting your Account Settings or you may contact the applicable Heuristic Management, Corporation's Customer Service. You hereby acknowledge and agree that we reserve the right at any time to modify or discontinue the Services, in whole or in part, with or without notice, and that we will not be responsible or liable, directly or indirectly, to you or any other person or entity for any loss or damage of any kind incurred as a result of any such modifications or discontinuance.

2.9. Indemnification. You agree to defend, indemnify, and hold each Heuristic Management, Corporation, and its respective agents, employees, directors, officers and representatives harmless from and against all claims and expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of (a) your failure to comply with applicable laws, regulations, this Agreement, any Heuristic Management, Corporation's policies, and third party policies, if and as applicable to you; (b) Your Content and Feedback; (c) the Heuristic Management, Corporation' use of Your Content and Feedback as contemplated or permitted under this Agreement; or (d) any activity in which you engage on or in the Services.

2.10. Disclaimers. EACH HEURISTIC MANAGEMENT, CORPORATION PROVIDES THE SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE HEURISTIC MANAGEMENT, CORPORATION DO NOT CONTROL OR VET THIRD-PARTY

CONTENT FOR ACCURACY. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE HEURISTIC MANAGEMENT, CORPORATION DO NOT PROVIDE ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS REGARDING THE SERVICES AND EACH HEURISTIC MANAGEMENT, CORPORATION AND ITS SERVICE PROVIDERS AND LICENSORS DISCLAIM ANY AND ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OF DATA, AND NONINFRINGEMENT.

No Heuristic Management, Corporation is responsible for any errors in displayed information or delays in displaying information ON THE SITES, including without limitation any THIRD PARTY CONTENT. No HEURISTIC MANAGEMENT, CORPORATION TAKES RESPONSIBILITY OR ASSUMES ANY LIABILITY FOR ANY THIRD PARTY CONTENT. ANY USE OR RELIANCE ON ANY THIRD PARTY CONTENT OR OTHER INFORMATION ON THE SERVICES OR OBTAINED BY YOU THROUGH THE SERVICES IS AT YOUR OWN RISK, INCLUDING INFORMATION PROVIDED BY OR FOR A HEURISTIC MANAGEMENT, CORPORATION. NO HEURISTIC MANAGEMENT, CORPORATION IS RESPONSIBLE FOR THE ACTS OR OMISSIONS OF, OR ANY CONTENT OR INFORMATION PROVIDED BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, A MULTIPLE LISTING SERVICE OR AN AGENT PARTICIPATING IN THE HEURISTIC MANAGEMENT, CORPORATION PARTNER PROGRAM.

NO HEURISTIC MANAGEMENT, CORPORATION IS RESPONSIBLE FOR, AND NO HEURISTIC MANAGEMENT, CORPORATION MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING, THE DELIVERY OF ANY MESSAGES (SUCH AS POSTING OF ANSWERS OR TRANSMISSION OF ANY CONTENT) SENT THROUGH THE SERVICES. NO HEURISTIC MANAGEMENT, CORPORATION HAS ANY OBLIGATION TO VERIFY THE IDENTITY OF THE PERSONS USING ITS SERVICES, NOR DOES ANY HEURISTIC MANAGEMENT, CORPORATION HAVE ANY OBLIGATION TO MONITOR THE USE OF ITS SERVICES. EACH HEURISTIC MANAGEMENT, CORPORATION DISCLAIMS ALL LIABILITY FOR IDENTITY THEFT OR ANY OTHER MISUSE OF YOUR IDENTITY OR INFORMATION BY OTHERS.

NO HEURISTIC MANAGEMENT, CORPORATION MAKES ANY GUARANTEE THAT THE SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS AND EACH HEURISTIC MANAGEMENT, CORPORATION DISCLAIMS ALL LIABILITY FOR DAMAGES CAUSED BY ANY SUCH INTERRUPTION OR ERRORS.

THE INFORMATION ON THE SERVICES IS NOT AN OFFER OR SOLICITATION BY ANYONE IN ANY JURISDICTION IN WHICH AN OFFER OR SOLICITATION CANNOT LEGALLY BE MADE, OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE A SOLICITATION.

THE VIEWS EXPRESSED ON THE SERVICES IN THIRD PARTY CONTENT, INCLUDING, WITHOUT LIMITATION, POSTS TO FORUMS, DO NOT NECESSARILY REPRESENT OR REFLECT THE VIEWS OF THE HEURISTIC MANAGEMENT, CORPORATION. NO HEURISTIC MANAGEMENT, CORPORATION IS RESPONSIBLE FOR, AND DISCLAIMS ANY AND ALL LIABILITY IN RELATION TO THIRD PARTY CONTENT.

2.11. *Limitations of Liability.* IN NO EVENT WILL ANY HEURISTIC MANAGEMENT, CORPORATION OR ANY OF THEIR AGENTS, EMPLOYEES, DIRECTORS, OFFICERS OR REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM THESE TERMS, THE AGREEMENT, OR YOUR USE OF THE SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (A) BREACH OF CONTRACT, (B) BREACH OF WARRANTY, (C) NEGLIGENCE, OR (D) ANY OTHER CAUSE OF ACTION, TO THE EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW. IF YOU DO NOT AGREE WITH ANY PART OF THIS AGREEMENT, OR YOU HAVE ANY DISPUTE OR CLAIM AGAINST A HEURISTIC MANAGEMENT, CORPORATION, ITS AGENTS, EMPLOYEES, DIRECTORS, OFFICERS OR REPRESENTATIVES WITH RESPECT TO THIS AGREEMENT OR THE SERVICES, THEN EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR WHERE THE LAW REQUIRES A DIFFERENT STANDARD, YOUR SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE YOUR ACCOUNT FOR SUCH SERVICES, IF APPLICABLE, AND/OR DISCONTINUE USING THE SERVICES.

2.12. *Copyright and Intellectual Property Policy.* The Heuristic Management, Corporation respect the intellectual property rights of others and expect our users to do the same. It is the Heuristic Management, Corporation' policy to terminate, in appropriate circumstances, account holders who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright holders. If you believe your copyright or other intellectual property right is being infringed, misappropriated, or otherwise violated by a user of the Services, or you believe such a claim has been unfairly made against your account, please see the Heuristic Management, Corporation' Copyright & Intellectual Property Policy.

2.13. *General Terms.*

2.13.1. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction or arbitrator to be illegal, void, or unenforceable, the unenforceable provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to effect the intention of the provision.

2.13.2. *Notices.* Heuristic Management, Corporation is located at 3595 Balboa Street, San Francisco, CA 94121. You may contact the Heuristic Management, Corporation by sending correspondence to that address or emailing [info@eurekainvfund.com](mailto:info@eurekainvfund.com).

2.13.3. *Amendments to The Agreement.* We may update the Agreement, including these Terms, at any time, in our sole discretion. If we do so, we will let you know either by posting the updated Agreement on the Sites or through other communications. It is important that you review the Agreement, including these Terms, whenever we update it or you use the Services. If you continue to use the Services after we have posted an updated Agreement, you are agreeing to be bound by the updated Agreement. If you do not agree to be bound by the updated Agreement, then, except as otherwise provided in Section 2.13.9, you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

2.13.4. *No Waiver.* Our failure to act with respect to a breach of this Agreement or any term or condition herein by you or others does not waive our right to act with respect to that breach or subsequent similar or other breaches.

2.13.5. *Assignment and Delegation.* You may not assign or delegate any rights or obligations under this Agreement. Any purported assignment or delegation by you shall be ineffective. We may freely assign or delegate all rights and obligations under this Agreement, fully or partially, without notice to you. We may also substitute, by way of unilateral novation, effective upon notice to you, a Company for any third party that assumes our rights and obligations under this Agreement.

2.13.6. *Alpha and Beta Testing.* The Services include any alpha or beta testing or other evaluation or use of products and services, features, functionality, and all components thereof (whether in final or pre-release form) that we may conduct ("**Testing**"). Except to the extent otherwise provided in another agreement between you and the applicable Heuristic Management, Corporation, your participation in any Testing and use of any data, content, information, or other materials in connection with such Testing shall be subject to this Agreement.

2.13.7. *International Matters.* Unless otherwise stated in the applicable Services Addendum, each Heuristic Management, Corporation is controlled and operated from United States offices. We make no representation that the Services are appropriate or available for use in any particular country or location. If you choose to access, view, or use the Services, you do so on your own initiative and you are responsible for compliance with local laws, if and to the extent local laws are applicable. No Services, including software, may be downloaded or otherwise exported or re-exported in violation of any applicable law, rule, regulation, or export or import control.

2.13.8. *Governing Law.* Except as otherwise provided in Section 2.13.9, you hereby accept and submit to the personal jurisdiction of the applicable courts in accordance with this Section 2.13.8 with respect to any legal actions, suits or proceedings, and waive any jurisdictional or venue defenses otherwise available. The International Sale of Goods Act (British Columbia) and the United Nations Convention on Contracts for the International Sale of Goods, will not apply in any way to this Agreement or to the transactions contemplated by this Agreement.

2.13.8.1. *For Users Who Are Residents of the United States.* This Agreement, any related matters, and any Claims arising under or related thereto (whether for breach of contract, tortious conduct or otherwise) will be governed by the Federal Arbitration Act, federal arbitration law, and the



laws of the State of Washington, without reference to its conflicts of law principles. The exclusive jurisdiction for all Claims that you and the Heuristic Management, Corporation are not required to arbitrate will be the state and federal courts of King County, Washington.

2.13.8.2. *For Users Who Are Residents of Canada.* This Agreement, any related matters, and any Claims arising under or related thereto (whether for breach of contract, tortious conduct or otherwise) will be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein, without reference to its conflicts of law principles. The exclusive jurisdiction for all such Claims will be the courts of the City of Vancouver in the Province of British Columbia.

2.13.9. *Dispute Resolution.* **THIS SECTION 2.13.9 APPLIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND IS VOID WHERE PROHIBITED BY LAW.** This arbitration provision shall survive termination of the Agreement.

2.13.9.1. *Informal Negotiations*\*\*.\*\* To expedite resolution and reduce the cost of a Claim, you and the applicable Heuristic Management, Corporation agree to first attempt to negotiate any Claim (except those Claims expressly excluded below) informally for at least thirty (30) days before initiating any arbitration or court proceeding. Such informal negotiations will commence upon written notice. Your address for such notices is your personal home address, if provided by you, with an email copy to the email address you may have provided to such Heuristic Management, Corporation. If necessary to preserve a Claim under any applicable statute of limitations, you or the applicable Heuristic Management, Corporation may initiate arbitration while engaging in the informal negotiations.

2.13.9.2. *Binding Arbitration and Class Action Waiver*\*\*.\* **Subject to Section 2.13.9.3, you and the Heuristic Management, Corporation agree that any Claim between you and any Heuristic Management, Corporation or Heuristic Management, Corporation will be resolved** solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding.\*\* This Section 2.13.9 is governed, in all respects, both procedurally and substantively, by the United States Federal Arbitration Act. You and the applicable Heuristic Management, Corporation agree that you are each waiving the right to a trial by jury or to participate in a class action.

YOU AND EACH HEURISTIC MANAGEMENT, CORPORATION AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties' Claim is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding (the two foregoing sentences shall constitute the "**Class Action Waiver**"). If this Class Action Waiver is found to be unenforceable, then the entirety of this Section 2.13.9 shall be null and void.

SUBJECT TO THE ABOVE THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO CLAIMS COVERED BY THIS AGREEMENT.

If any other provision of this Section 2.13.9 requiring that Claims be brought only on an individual basis and not on a class, collective, or representative basis, is determined to be invalid or unenforceable with respect to any particular Claim, then that Claim shall not proceed in arbitration but rather will be resolved in a court of competent jurisdiction subject to Section 2.13.8. If that happens, however, the arbitration provisions in this Section 2.13.9 will still be fully enforceable as to all other Claims, which must be resolved in arbitration on an individual basis. Any arbitrable Claims will be resolved before non-arbitrable Claims, which the parties will jointly request to be stayed pending the conclusion of arbitration.

2.13.9.3. *Exceptions and Opt-Out.* Nothing in this Section 2.13.9 precludes any party from filing or participating in administrative proceedings before state, provincial/territorial, or federal agencies to address alleged violations of law enforced by those agencies. Further, to the extent a party would have to file a timely administrative charge or complaint as a prerequisite to filing a Claim in court, the party must do the same before submitting a Claim to arbitration under this Agreement. Upon receipt of a right-to-sue letter or similar administrative determination, however, the Claim can only be resolved in individual arbitration pursuant to the terms of this Agreement.

This Section 2.13.9 also does not prevent any party from applying to a court of competent jurisdiction for any interim or provisional relief available under the law that is necessary to protect the rights of that party, pending the establishment of the arbitral tribunal. This Section 2.13.9 further does not prevent any party from filing any Claim that otherwise qualifies in small claims court on an individual basis.

In addition, **you will retain the right to opt out of arbitration entirely and litigate any Claim** if you provide the Heuristic Management, Corporation with whom you are entering into this Agreement with written notice of your desire to do so by email at [info@eurekainvfund.com](mailto:info@eurekainvfund.com) or by regular mail at 3595 Balboa Street, San Francisco, CA 94121, within thirty (30) days following the date you first agree to this Agreement.

2.13.9.4. *Equitable Remedies\*\*.\*\** Except for individual Claims brought in small claims court, the arbitrator shall determine all issues of liability on the merits of any Claim asserted by you or the Heuristic Management, Corporation, and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual Claim. To the extent that you or the Heuristic Management, Corporation prevail on a Claim in arbitration and seek injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public, the entitlement and extent of such relief must be litigated in a civil court of competent jurisdiction, subject to Section 2.13.8 and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual Claims in arbitration.

2.13.9.5. *Rules and Logistics Governing Arbitration.* The arbitration will be conducted by the AAA under its AAA Rules then in effect, except as modified by these Terms. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other

party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at [www.adr.org](http://www.adr.org).

If your claim is for U.S. \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video-conference hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds U.S. \$10,000, the right to a hearing will be determined by the AAA Rules. Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

2.13.9.6. *Arbitration Costs.* Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. The applicable Heuristic Management, Corporation will pay for all filing, administration and arbitrator fees and expenses if your Claim is for less than \$10,000, unless the arbitrator finds your Claim frivolous. If a Heuristic Management, Corporation prevails in arbitration, such Heuristic Management, Corporation will pay all of its own attorneys' fees and costs and will not seek to recover them from you. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law.

2.13.9.7. *Delivery of Demand for Arbitration.* A demand for arbitration must be in writing and delivered by hand or first-class mail to the other party within the applicable statute of limitations period. Any demand for arbitration shall be provided to the applicable Heuristic Management, Corporation pursuant to Section 2.13.2. Any demand for arbitration made by a Heuristic Management, Corporation shall be provided to the last address on file with the Heuristic Management, Corporation. The arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration.

2.13.9.8. *Effect of Changes on Arbitration.* Notwithstanding Section 2.13.3 above, if we change any of the terms of this Section 2.13.9 after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to [legal@eurekainvfund.com](mailto:legal@eurekainvfund.com) within thirty (30) days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of our email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Claim between you and a Heuristic Management, Corporation in accordance with the terms of this Section 2.13.9 as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

2.13.10. *No Injunctive Relief.* In no event shall you seek or be entitled to rescission, injunctive or other equitable relief, or to enjoin or restrain the operation of the Services.

2.13.11. *Entire Agreement.* You agree that this Agreement constitutes the entire, complete, and exclusive agreement between you and each Company regarding the Services and supersedes all prior agreements and understandings, whether written or oral, or whether established by custom, practice, policy or precedent, with respect to the subject matter of this Agreement. You also may be subject to additional terms and conditions that may apply when you use or receive certain

Services, which are reflected in the applicable Services Addendum or otherwise communicated to you by the applicable Heuristic Management, Corporation.

## **HEURISTIC MANAGEMENT, CORPORATION**

### **COPYRIGHT POLICY**

Notification of Copyright Infringement:

The Heuristic Management, Corporation, as such term is defined in the Terms of Use, ("**Heuristic Management, Corporation**") respects the intellectual property rights of others and expects its users to do the same.

It is Heuristic Management, Corporation's policy, in appropriate circumstances and at its discretion, to disable and/or terminate the accounts of users who repeatedly infringe or are repeatedly charged with infringing the copyrights or other intellectual property rights of others.

In accordance with the Digital Millennium Copyright Act of 1998, the text of which may be found on the U.S. Copyright Office website at <http://www.copyright.gov/legislation/dmca.pdf>, Heuristic Management, Corporation will respond expeditiously to claims of copyright infringement committed using the Heuristic Management, Corporation' websites and mobile applications (the "**Sites**") that are reported to Heuristic Management, Corporation's Designated Copyright Agent, identified in the sample notice below.

If you are a copyright owner, or are authorized to act on behalf of one, or authorized to act under any exclusive right under copyright, please report alleged copyright infringements taking place on or through the Sites by completing the following DMCA Notice of Alleged Infringement and delivering it to Heuristic Management, Corporation's Designated Copyright Agent. Upon receipt of the Notice as described below, Heuristic Management, Corporation will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged material from the Sites.

### **DMCA Notice of Alleged Infringement ("Notice")**

1. Identify the copyrighted work that you claim has been infringed, or - if multiple copyrighted works are covered by this Notice - you may provide a representative list of the copyrighted works that you claim have been infringed.
2. Identify the material that you claim is infringing (or to be the subject of infringing activity) and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material, including at a minimum, if applicable, the URL of the link shown on the Site(s) where such material may be found.
3. Provide your mailing address, telephone number, and, if available, email address.
4. Include both of the following statements in the body of the Notice:

- "I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use)."
- "I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed."

5. Provide your full legal name and your electronic or physical signature.

Deliver this Notice, with all items completed, to Heuristic Management, Corporation's Designated Copyright Agent:

Copyright Agent

Eureka Investment Fund Legal Department

3595 Balboa Street

San Francisco, CA 94121

Email: [info@eurekainvfund.com](mailto:info@eurekainvfund.com)

(415) 212-8859