

DRAFT
CERTIFICATE OF INCORPORATION
OF
PRIVATE EQUITY FUND CONSORTIUM (PEFC)

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, natural persons of the age of 18 years or over, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York, hereby state:

FIRST: The name of the Corporation is PEFC, hereinafter sometimes called "the Corporation."

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The Corporation is a Type_____corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The purposes for which the Corporation is formed are:

- a) To seek out and receive grant money for the purposes of investing such money (as well as any returns-on-investments of such money) in new technology companies that are headquartered in and principally operated from locations in St. Lawrence County, New York.
- b) To conduct its activities so as to create economic development benefits for St. Lawrence County, New York.
- c) To receive \$10 million in grant funds from the New York Power Authority (the "Authority") for the purposes of investing that money as described herein.
- d) To require third-party investment of \$2 for every \$1 that the Corporation invests.
- e) To allow a priority return-on-investment to third-party investors for the purposes of attracting third-party investments to St. Lawrence County, New York
- f) To make at least two-thirds of its investments in companies based on new energy and environmental technologies.
- g) To initially commit no less than \$9.75 million to invest in companies created and managed by Golden Technology Management, LLC ("Golden") provided that Golden agrees to certain obligations as described in Capital Commitment Agreements between it and the Corporation which shall (at a minimum) be consistent with the purposes for which the Corporation is formed as described herein.
- h) To set aside \$250,000 to spend on Corporation legal, accounting and administrative costs to establish corporate structures, contracts, contract templates, policies and procedures consistent with the investment and operating activities contemplated herein. Such spending shall be undertaken in cooperation with Golden so as to create a framework that will allow for the smooth execution of business with Golden as contemplated herein. The remaining balance of such \$250,000 shall be set aside for future nominal expenses of the Corporation.

- i) To terminate its capital commitments with Golden if Golden fails to perform according to Capital Commitment Agreements with the Corporation. Such commitments shall include the ability to draw down \$1 million in capital commitments in two years and \$8 million in capital commitments in eight years.
 - a. In the event of terminating its Capital Commitment Agreement with Golden, the Corporation will seek out a similar arrangement with an alternative firm that is similarly qualified subject to approval by the Authority, which approval the Authority shall not unreasonably withhold.
 - b. In the event of not being able to establish a similar arrangement with an alternative firm that is similarly qualified, the Corporation will dispose of any of its cash and/or stock and/or other assets as described in the EIGHTH section below.
- j) To conduct its affairs as follows:
 - (i) In a manner consistent with all applicable laws and regulations.
 - (ii) To deal openly, honestly and in good faith (internally and externally) and to deploy funds originating from public sources in a manner that is transparent to the public and consistent with the purposes for which the Corporation is formed as described herein.
 - (iii) To maintain a Board of Directors that agrees in writing to conduct themselves according to a written code of conduct.
 - (iv) To continually conduct its activities in a manner that meets or exceeds common best practices for public benefit corporations to include at least one annual review of policies and procedures and a commitment from Board members to honor the same.
- k) To manage any returns on investment, grant monies received or uncalled funds in a manner consistent with the purposes for which the Corporation is formed as described herein.

FIFTH: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

SIXTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, trustees, directors, officers or other private persons, except that the corporation shall be authorized to pay reasonable compensation to its officers for services rendered and to make payments and distribution in furtherance of its purposes as set forth in this certificate of incorporation.

SEVENTH: No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Internal Revenue Code Section 501(h)), and the corporation shall not participate in, or intervening in (including the publication or distributions of statements) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to another organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent

federal tax laws, or to the federal government, or state or local government for a public purpose upon approval of a Justice of the Supreme Court of the State of New York.

- a) In the event of such dissolution, the Corporation shall first seek to distribute its assets to a restricted account held by the St. Lawrence County Industrial Development Agency (“IDA”) which the IDA shall manage under terms agreed upon with the Authority and the New York State Economic Development Corporation (“EDC”).
- b) At the time of any dissolution, if the IDA, the Authority and the EDC do not exist or cannot agree on a management plan for assets distributed by the Corporation, then such assets shall be distributed to the Northern New York Community Foundation (“Foundation”) which shall use the assets at its discretion on scholarships for students to attend schools or universities that are located in St. Lawrence County, New York and/or on the educational and medical needs of disadvantaged children living in St. Lawrence County, New York.
- c) In the event the Corporation seeks to distribute assets to the Foundation and such entity does not exist or cannot receive the assets, the Corporation shall distribute its assets as directed by the office of the New York State Attorney General.

NINTH: In any taxable year in which the corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code of 1954, the corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Section 4942 of the Code; and the corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent federal tax laws.

TENTH: The office of the Corporation is to be located in the County of _____, State of New York.

ELEVENTH: The Corporation shall be operated by a Board of Directors, the number of which is to be no less than five and all of whom shall agree in writing to abide by the Corporation’s written code of conduct.

TWELFTH: The names and post office addresses of the three initial directors until its organizational meeting are as follows:

| <u>NAME</u> | <u>ADDRESS</u> |
|-------------|----------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

THIRTEENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him/her is: (addressee's name, address, zip code).