



Last revised: March 19, 2019

TERMS AND CONDITIONS
FOR
POGIL ACTIVITY CLEARINGHOUSE

PLEASE READ THE FOLLOWING CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AS A USER OF THE POGIL ACTIVITY CLEARINGHOUSE (“USER” OR “YOU”) AND THE POGIL PROJECT (“THE POGIL PROJECT” OR “WE”). THESE TERMS AND CONDITIONS, TOGETHER WITH ALL AMENDMENTS, AND COLLECTIVELY WITH ALL POGIL RULES AND POLICIES, INCLUDING THE POGIL [PRIVACY POLICY](#), THE [POGIL ACTIVITY PATHWAY POLICY](#), AND THE [PAC ACTIVITY USER LICENSE](#), CONSTITUTE THE “AGREEMENT” BETWEEN YOU AND THE POGIL PROJECT REGARDING YOUR ACCESS TO AND USE OF THE POGIL ACTIVITY CLEARINGHOUSE, INCLUDING THE POGIL ACTIVITY CLEARINGHOUSE WEBSITE, AND ATTENDANT SERVICES PROVIDED BY THE POGIL PROJECT (COLLECTIVELY, “POGIL ACTIVITY CLEARINGHOUSE” OR “PAC”).

IF YOU ACCESS OR USE ANY PART OF THE PAC, YOU INDICATE YOUR ACCEPTANCE OF THE AGREEMENT. IF YOU HAVE NOT READ THE AGREEMENT, DO NOT UNDERSTAND OR AGREE TO BE BOUND BY THE AGREEMENT, OR ARE NOT ABLE TO CONSENT TO BE BOUND BY THE AGREEMENT (E.G., IF YOU ARE NOT OLD ENOUGH TO ENTER INTO A BINDING LEGAL CONTRACT), DO NOT USE THE PAC.

1. Scope and Acceptance

The Agreement sets forth your rights and obligations as a User with respect to your access to and use of the PAC, your submission of materials to the PAC, and your use of any and all information or data of any kind arising from access to or use of the PAC, including, without limitation, any text, graphics, images, art work, sound recordings, audio, video, and software.

We reserve the right, in our sole discretion, to change this Agreement (including the Privacy Policy and the POGIL Activity Pathway Policy) from time to time. We will use commercially reasonable efforts to publish to you any revised portion of the Agreement, for example, by publishing the latest version of these terms and conditions at the PAC website. Should you deem any change to the Agreement unacceptable, you shall stop accessing and using the PAC. All changes to the Agreement shall be effective immediately. You are responsible for reviewing the Agreement regularly. Your access to any part of the PAC is deemed to be your acceptance of this Agreement, and any changes thereto, existing at the time of your access to the PAC.

If you are accessing or using any part of the PAC on behalf of any business, organization, institution, or other entity of any kind, you represent and warrant that you are authorized (a) to

accept these terms on its behalf and (b) to bind such business, organization, or entity to the Agreement.

2. Privacy Policy

Please see our [Privacy Policy](#) for a detailed description of how we collect, use, and disclose information about our Users.

3. Description of the PAC

The PAC is intended to be an online space for materials or activities that are designed for use in a learning environment where the Process Oriented Guided Inquiry Learning (POGIL) methodology is used (“**Activities**”). Generally, the objectives of the PAC are:

- To provide Users with access to and use of quality Activities that do not belong to a larger group of Activities that are commercially available;
- To provide Users who author Activities with a forum and process for presenting their Activities for review by the POGIL Project and other Users;
- To provide Users with a forum for sharing ideas and feedback about Activities that are in the POGIL Activity Pathway Policy approval process; and
- To provide Users with a mechanism for developing full collections of Activities that are not otherwise available.

4. Registration

To use the PAC, you must register and create an account by providing your first and last name, email address, organizational or institutional affiliation (e.g., school name), and a password. You agree, represent, and warrant that you shall at all times provide accurate information when registering as a User and when using the PAC and that you shall update and maintain as accurate all such information during your use of the PAC.

5. The POGIL Activity Pathway Approval Process

The POGIL Activity Pathway approval process is the process by which Activities are submitted to the PAC for development, review, approval, endorsement, and community validation. The POGIL Activity Pathway approval process is detailed in the POGIL Activity Pathway Policy. This policy is maintained, implemented, and may be revised from time to time, by the POGIL Project in its sole discretion. PLEASE READ THE POGIL ACTIVITY PATHWAY POLICY BEFORE SUBMITTING ANY MATERIALS TO THE PAC.

6. Submission of Activity-Related Materials to the PAC

The following terms and conditions apply to your submission of Activity-related materials to the PAC and, along with the PAC Activity User License, provide what the POGIL Project and other Users of the PAC may do with the materials you submit. PLEASE READ THE FOLLOWING TERMS AND CONDITIONS BEFORE SUBMITTING ANY MATERIALS TO THE PAC.

6.1 Representations and Warranties Upon Submission

When you submit Activity-related materials (including ideas for, drafts of, or any materials related to an Activity) to the PAC, you represent and warrant that you are the sole author or owner of such materials, or that you have all necessary rights from all authors and owners of the materials to submit the materials to the PAC for all purposes contemplated by this Agreement, including the POGIL Activity Pathway Policy and the PAC Activity User License. You agree that you—and not the POGIL Project—are and shall remain responsible for the accuracy, legality (including ownership and copyright compliance), and all other aspects of such submitted materials.

6.2 License to the POGIL Project

When you submit Activity-related materials to the PAC, you grant to the POGIL Project a royalty-free, world-wide, and sublicensable (as provided herein) right and license to use, copy, modify, adapt, publish, distribute, perform, display, translate, and create derivative works of such materials (including any Activities developed from such materials) for all reasonable purposes that are consistent with the POGIL Activity Pathway Policy up to, and exclusive of, the designation by the POGIL Project of a digital object identifier (DOI) for an Activity. More specifically, for example, you permit the POGIL Project to maintain the materials within the PAC, to distribute and sublicense (as necessary) the materials to other Users of the PAC according to the PAC Activity User License, and to advance the materials through each pre-approval stage of the POGIL Activity Pathway Policy.

6.3 Reasonable Efforts and Good-Faith Intention to Publish through the PAC and the POGIL Project

By submitting Activity-related materials to the PAC, you agree to make reasonable efforts to advance the materials along the POGIL Activity Pathway with a good-faith intention of seeking approval of a final Activity. You agree that you will not submit materials to the PAC and solicit the resources of the PAC User community and the POGIL Project to advance the materials along the POGIL Activity Pathway in order to develop an Activity that you do not intend ultimately to publish through the PAC or the POGIL Project. You agree that, without the POGIL Project's prior written consent, you will not submit the same or substantially similar materials to any development, review, certification, distribution, or publishing process or arrangement that is or could be competitive with the PAC or the POGIL Project.

6.4 Transfer of Copyright on Approval and Commercial Publication

If you submit an Activity that is developed according to the POGIL Activity Pathway Policy for final approval and designation of a DOI, you acknowledge and agree that a condition of the POGIL Project's approval of the Activity and the designation of a DOI is that you transfer and assign the copyright in the Activity to the POGIL Project.

If you elect to transfer and assign the copyright in the Activity to the POGIL Project, the POGIL Project will designate a DOI for the Activity, maintain the final Activity in the PAC to distribute the Activity to other Users of the PAC according to the PAC Activity User License, and continue

to advance the materials through each post-approval stage of the POGIL Activity Pathway Policy. In its discretion (and typically after the Activity is formally endorsed by the POGIL Project), the POGIL Project may publish the Activity—whether alone, in combination with other of your Activities, or in combination with other Activities created by other Users—through a commercial publishing arrangement by which the POGIL Project generates revenue. If the POGIL Project publishes your Activity through a commercial publishing arrangement and generates revenue from such an arrangement, the POGIL Project will pay you a reasonable royalty based on such revenue according to the specific terms and conditions applicable to your transfer and assignment of the copyright in the Activity to the POGIL Project at the approval stage. If the POGIL Project publishes your Activity through a commercial publishing arrangement, in the POGIL Project’s discretion, the Activity will be removed from the PAC and Users will be encouraged to obtain the Activity from the commercial publication; provided that Users who have obtained the Activity, or prior materials related to the Activity, through the PAC prior to the removal of the Activity from the PAC may continue perpetually to use the Activity and such materials under the terms and conditions of the PAC Activity User License.

If you do not elect to transfer and assign the copyright in the Activity to the POGIL Project, you agree that, in its discretion, the POGIL Project may continue, perpetually, to make the Activity available to other Users through the PAC in accordance with the license granted by you to the POGIL Project above and the PAC Activity User License, or the POGIL Project may remove the Activity from the PAC.

7. PAC Activity User License

Users who submit Activity-related materials to the PAC hereby agree that other Users of the PAC may obtain and use such materials (including any Activities developed from such materials) in accordance with the PAC Activity User License and that the POGIL Project may sublicense (as necessary) such materials to other Users of the PAC according to the PAC Activity User License.

Users who obtain Activity-related materials from the PAC that were submitted by other Users hereby agree that they shall use such materials (including any Activities developed from such materials) in accordance with the PAC Activity User License.

PLEASE READ THE PAC ACTIVITY USER LICENSE BEFORE SUBMITTING ANY ACTIVITY-RELATED MATERIALS TO, OR USING ANY ACTIVITY-RELATED MATERIALS OBTAINED FROM, THE PAC.

8. Operation

The specific features and functionality of the PAC are dynamic and may change from time to time. We reserve complete discretion with respect to the operation of the PAC. We also reserve the right to withdraw, suspend, or discontinue any functionality or feature of the PAC at any time.

9. Inaccuracies

We disclaim—and you release us from any liability regarding—errors, inaccuracies, and omissions you may encounter when using the PAC, specifically regarding (though not in any way limited to) Activities and other materials submitted to the PAC by Users. The POGIL Project makes no guarantees whatsoever as to the completeness, timeliness, correctness, or accuracy of the Activities and other materials made available through the PAC. If you believe any portion of the PAC includes an error or inaccuracy, please notify us.

10. Permitted Use of the PAC

Materials made available through the PAC may be protected by intellectual property laws, including but not limited to U.S. copyright laws. You expressly acknowledge and agree that the content accessible through the PAC that is not designated as a User-submitted Activity or otherwise expressly designated as being provided by a User is the property of the POGIL Project and its content providers, and the POGIL Project and its content providers retain all right, title, and interest in the content.

Subject to the terms of this Agreement and subordinate to the PAC Activity User License that applies specifically to Activity-related materials, you are granted a limited, non-exclusive, non-sublicensable, non-assignable, non-transferable, and revocable license to access and use the PAC in a manner and for purposes consistent with this Agreement and applicable rules and policies of the POGIL Project. Except as expressly provided, all rights are reserved.

Except with respect to Activities or other materials in which you have a legal interest equal or superior to that of the POGIL Project (such as, e.g., ownership of an Activity or rights validly granted to you separately by an owner of an Activity) or as permitted by any separate licenses or other terms and conditions applicable to Activities, in connection with your use of the PAC you may not:

- (a) alter or modify the PAC, or make any electronic reproduction, adaptation, distribution, performance, or display of the PAC, or any portion thereof, except to the extent required for the limited purpose of reviewing material on the PAC; or
- (b) sell, rent, lease, transfer, distribute, broadcast, display, provide, or otherwise assign to any third party any rights to the PAC, or related materials; or
- (c) remove or modify any proprietary notice or labels on the PAC, or related materials, including author attribution and copyright notices, or use any of our trademarks as meta-tags on any other website; or
- (d) use the PAC for any non-authorized purpose or any illegal purpose; or
- (e) copy, modify, erase, or damage any information contained on computer servers used or controlled by the POGIL Project or any third party; or

- (f) use the PAC to violate any legal right of any third party, including any publicity or privacy right, copyright, or other intellectual property right, or to take any action that is harassing, libelous, defamatory, abusive, tortious, threatening, harmful, or otherwise objectionable; or
- (g) access or use any password-protected, secure, or non-public areas of the PAC, or access data on the PAC not intended for you, except as specifically authorized by the POGIL Project; or
- (h) impersonate or misrepresent your affiliation with any person or entity; or
- (i) use any automated means to access or use the PAC, including scripts, bots, scrapers, data miners, or similar software, or display the PAC, or portions thereof, in things (e.g., framing, scraping, etc.), without our express written permission; or
- (j) attempt to or actually disrupt, impair, interfere with, alter, or modify the PAC, or any information, data, or materials posted and/or displayed by the POGIL Project; or
- (k) attempt to probe, scan, or test the vulnerability of the PAC or breach any implemented security or authentication measures, regardless of your motives or intent; or
- (l) attempt to interfere with or disrupt access to or use of the PAC by any User, processor, host, or network, including, without limitation, by submitting a virus, worm, Trojan horse, or other malicious code; or
- (m) submit content to the PAC that: (i) includes unlicensed proprietary content of a third party, including, e.g., third-party content protected by copyright or trademark for which you do not have a license; (ii) breaches any duty of confidentiality you may have to a third party (e.g., discloses private information about a third party without consent); or (iii) is contrary to the Agreement or any applicable rules and policies of the POGIL Project.

The POGIL Project may suspend or terminate your account and your access to and use of the PAC at any time in its sole discretion and for any reason, including any breach of the Agreement.

11. Third Party Properties

The PAC may refer you to websites on the Internet and/or materials, content, products, or services that are owned, under the control of, or maintained by a third party (including, for example, another User) ("Third Party Properties"). Unless expressly stated to the contrary, such references do not constitute an affiliation with or endorsement by the POGIL Project of any such Third Party Properties. You acknowledge that the POGIL Project is providing any references to such Third Party Properties to you solely as a convenience to you, and you agree that the POGIL Project is not responsible for any injury, harm, damages, or negative experience you may

encounter by accessing or using such Third Party Properties. If you access or use any Third Party Properties referred to through the PAC, you do so at your own risk.

12. Availability of the PAC

It is not possible to operate the PAC with 100% guaranteed uptime. The POGIL Project will make reasonable efforts to keep the PAC operational. However, certain technical difficulties, routine site and software maintenance and upgrades, and other events may, from time to time, result in interruptions to or outages of the PAC. In addition, the POGIL Project reserves the right at any time, and from time to time, to modify or discontinue (on a temporary or permanent basis) certain functions of the PAC, with or without notice.

You agree that the POGIL Project shall not be liable to you or to any third party for any direct or indirect consequence of any modification, suspension, discontinuance of, or interruption to the PAC.

13. Disclaimer of Warranties

YOU EXPRESSLY AGREE THAT ACCESS TO AND USE OF THE PAC ARE AT YOUR SOLE RISK. THE PAC IS PROVIDED ON AN “AS IS” AND AN “AS AVAILABLE” BASIS. EXCEPT FOR THOSE WARRANTIES MADE AND EXPRESSLY IDENTIFIED AS WARRANTIES BY THE POGIL PROJECT, THE POGIL PROJECT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING (A) THE PAC; (B) ANY MATERIALS, CONTENT, PRODUCTS OR SERVICES (INCLUDING ACTIVITIES) OFFERED THROUGH THE PAC, OR ANY PORTION THEREOF; AND (C) THE ACTS OR OMISSIONS OF USERS OF THE PAC, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. THE POGIL PROJECT MAKES NO REPRESENTATION OR WARRANTY THAT ANY MATERIAL, CONTENT, PRODUCTS, OR SERVICES (INCLUDING ACTIVITIES) DISPLAYED ON OR OFFERED THROUGH THE PAC ARE ACCURATE, COMPLETE, APPROPRIATE, RELIABLE, OR TIMELY. THE POGIL PROJECT ALSO MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE PAC WILL MEET YOUR REQUIREMENTS, OR THAT YOUR ACCESS TO AND USE OF THE PAC WILL BE UNINTERRUPTED OR ERROR-FREE, FREE OF VIRUSES, MALICIOUS CODE, OR OTHER HARMFUL COMPONENTS, OR OTHERWISE WILL BE SECURE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

14. Release and Limitation of Liability

IN THE EVENT THAT YOU HAVE A DISPUTE WITH ONE OR MORE OTHER USERS, YOU RELEASE THE POGIL PROJECT (AND OUR OFFICERS, DIRECTORS, AGENTS, INVESTORS, SUBSIDIARIES, AND EMPLOYEES) FROM ANY AND ALL CLAIMS,

DEMANDS, OR DAMAGES (ACTUAL OR CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL THE POGIL PROJECT OR ANY OF ITS AFFILIATES OR SUPPLIERS (INCLUDING ANY OF ITS OR THEIR PARTNERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS, OR ASSIGNEES) BE LIABLE TO YOU (INCLUDING ANY OF YOUR PARTNERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS, OR ASSIGNEES) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, EQUITY, TORT, OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, AND STRICT LIABILITY IN TORT), NOR FOR ANY DAMAGES ARISING FROM DELAY, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, INTERRUPTION IN USE OR AVAILABILITY OF DATA, LOSS OF USE OF MONEY OR USE OF PRODUCTS, LOST PROFITS, REVENUE OR SAVINGS (ACTUAL OR ANTICIPATED), OR OTHER ECONOMIC LOSS ENSUING FROM OR IN CONNECTION WITH (A) THE PAC; (B) ANY MATERIALS, CONTENT, PRODUCTS OR SERVICES (INCLUDING ACTIVITIES) OFFERED THROUGH THE PAC, OR ANY PORTION THEREOF; OR (C) ANY ACTS OR OMISSIONS OF USERS OF THE PAC, EVEN IF THE POGIL PROJECT OR ANY OF ITS AFFILIATES OR SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

YOU EXPRESSLY WAIVE AND RELEASE ANY AND ALL RIGHTS AND BENEFITS UNDER SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA (OR ANY ANALOGOUS LAW OF ANY OTHER STATE), WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE POGIL PROJECT AND ITS AFFILIATES AND SUPPLIERS (INCLUDING ANY OF ITS OR THEIR PARTNERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS, AND ASSIGNEES) TO YOU EXCEED THE GREATER OF (A) THE AMOUNT OF FEES PAID OR PAYABLE TO THE POGIL PROJECT BY YOU UNDER THIS AGREEMENT (IF ANY), AND (B) ONE HUNDRED U.S. DOLLARS (\$100). THIS LIMITATION ON THE AMOUNT OF LIABILITY SHALL APPLY WHETHER A CLAIM OR LIABILITY ARISES IN CONTRACT, EQUITY, TORT, OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, AND STRICT LIABILITY IN TORT), AND EVEN IF THE POGIL PROJECT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR LIABILITY. THIS

LIMITATION SHALL SPECIFICALLY SURVIVE A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES THAT MAY BE PROVIDED IN THIS AGREEMENT.

15. Indemnity

YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE POGIL PROJECT, ITS PARENTS, SUBSIDIARIES, AND AFFILIATES, AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ALL CLAIMS, DEMANDS, LAWSUITS, DAMAGES, LIABILITIES, LOSSES, COSTS, OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE FEES AND DISBURSEMENTS OF COUNSEL AND COURT COSTS), JUDGMENTS, SETTLEMENTS, AND PENALTIES OF EVERY KIND ARISING FROM OR RELATING TO ANY VIOLATION OF THIS AGREEMENT BY YOU AND ANY ACT OR OMISSION BY YOU RELATING TO YOUR USE OF THE PAC.

16. Termination

You agree that the POGIL Project may, in its sole discretion and without prior notice, terminate your access to or use of the PAC or any part of the PAC at any time and for any reason, with or without cause. You also agree that any violation by you of the Agreement will constitute an unlawful and unfair business practice that will cause irreparable harm to the POGIL Project for which monetary damages would be inadequate. You consent to the POGIL Project's obtaining any injunctive or equitable relief that the POGIL Project deems necessary or appropriate in such circumstances, without the need for a bond. These remedies are in addition to any other remedies the POGIL Project may have at law or in equity.

17. Intellectual Property Infringement by Users

We expect Users to respect the intellectual property rights of others. We may remove material that appears in our sole discretion to infringe upon the intellectual property rights of others. If you believe a work protected by a U.S. copyright you own has been posted on the PAC without authorization, you may notify our copyright agent, and provide the following information:

- (a) a physical or electronic signature of the person authorized to act on behalf of the copyright owner;
- (b) identification of the copyrighted work or works claimed to have been infringed;
- (c) a detailed description of the material you claim is infringing, together with information sufficient to enable us to locate it, including the URL or other description of where the infringing material appears;
- (d) your name, mailing address, telephone number and e-mail address;

- (e) a statement by you that you believe in good faith that the copyrighted material identified is being used in a manner that is not authorized by the copyright owner, its agent or the law; and
- (f) a statement by you that the above information is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of the copyright allegedly infringed.

To notify the POGIL Project of a claimed copyright infringement, please contact: Marcy Dubroff, mdubroff@fandm.edu.

18. General

18.1 Access and Use Where Prohibited

Access to and use of the PAC are unauthorized in any jurisdiction that does not give effect to all provisions of the Agreement, including without limitation this Section.

18.2 Operation of the PAC from the United States of America

By accessing and using the PAC, you acknowledge and agree that the POGIL Project controls and operates all parts of the PAC from its offices in the United States of America and that the PAC is intended for use by Users located in the United States of America. Unless expressly stated to the contrary, the POGIL Project makes no representation that the PAC is appropriate or will be available for use in other locations. Unless otherwise explicitly stated, all marketing or promotional materials found on or accessible through the PAC are solely directed to individuals, companies, or other entities located in the United States of America. The POGIL Project reserves the right to limit, in its sole discretion, the provision and quantity of any material, content, product, or service to any person or geographic area. Any offer for any material, content, product, or service made on or through the PAC is void where prohibited. If you access or use the PAC from outside the United States of America, you are entirely responsible for compliance with applicable local laws and other applicable laws. You may not use any portion of the PAC in violation of applicable export laws and regulations.

If you access the PAC from outside the United States, you acknowledge and agree that your information may be transferred to and maintained on computers and servers located outside of your state, province, country, or other governmental jurisdiction where the privacy laws may not be as protective as those in your jurisdiction. Your consent to the Agreement followed by your submission of such information represents your agreement to the transfer of such information to the United States and the collection, use, and disclosure of your information in accordance with United States law and our Privacy Policy.

18.3 Applicable Law and Venue

Any action related to the Agreement will be governed by the law of the Commonwealth of Pennsylvania, without regard to the choice or conflicts of law provisions of any jurisdiction.

18.4 Dispute Resolution

The POGIL Project intends to resolve any and all disputes that may arise among it and its Users in a cost-effective and non-disruptive manner.

You agree to the following dispute resolution procedure for disputes arising between you and the POGIL Project. If you are unable to resolve any dispute in the ordinary course of business, you shall send a written notice to the POGIL Project in which you expressly cite invocation of this dispute resolution procedure, outline the issues in dispute, enclose any relevant documents, and state the requested relief. The POGIL Project shall respond within ten (10) business days with identical information from its perspective. You and a representative of the POGIL Project shall meet or communicate electronically within ten (10) business days of the delivery of the response, and as often as you and the POGIL Project mutually deem necessary or desirable thereafter, in an attempt to resolve the matter. If, within sixty (60) days of the first communication, you and the POGIL Project fail to resolve the matter, the parties' obligations under this dispute resolution procedure shall be considered fulfilled. YOU AGREE THAT YOU WILL NOT BRING OR BE A PARTY TO ANY CLASS-ACTION OR COLLECTIVE ACTION LAWSUIT AGAINST THE POGIL PROJECT.

18.5 Force Majeure

In the event the POGIL Project's performance of this Agreement, or any obligation hereunder, is prevented, restricted, or interfered with by reason of acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemic, strikes, picketing or boycotts, or any other circumstances caused by natural occurrences or third party actions beyond the reasonable control and without the fault or negligence of the POGIL Project, the POGIL Project shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference.

18.6 Miscellaneous

If any part of the Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in effect.

No failure or delay in enforcing any provision, exercising any option, or requiring performance, shall be construed to be a waiver of that or any other right in connection with the Agreement.

No action arising out of this Agreement or your access to or use of the PAC, regardless of form or the basis of the claim, may be brought by you more than one (1) year after the cause of action has arisen (or if multiple causes, from the date the first such cause arose) and you hereby waive any longer statute of limitations that may be permitted by law.

If the POGIL Project does take any legal action against you as a result of your violation of the Agreement, the POGIL Project will be entitled to recover from you, and you agree to pay, all

reasonable attorneys' fees and costs of such action, in addition to any other relief granted to the POGIL Project. You agree that the POGIL Project will not be liable to you or to any third party for termination of your access to or use of any part of the PAC as a result of any violation of the Agreement or for any reason at all.

You may not assign, by operation of law or otherwise, any rights or delegate any duties under the Agreement to any third party without prior written consent by the POGIL Project. Any purported assignment lacking such consent will be void at its inception. The POGIL Project may assign all or part of its rights and/or delegate all or part of its duties under the Agreement to any party, at any time, and in its sole discretion, upon notice of assignment by publishing such notice through the PAC.

PAC ACTIVITY USER LICENSE

For reference, this PAC Activity User License is based upon—but has material differences from—the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Public License. PLEASE READ THIS PAC ACTIVITY USER LICENSE BEFORE SUBMITTING ANY ACTIVITY-RELATED MATERIALS TO, OR USING ANY ACTIVITY-RELATED MATERIALS OBTAINED FROM, THE PAC.

This PAC Activity User License applies to Activity-related materials submitted to and obtained from the POGIL Activity Clearinghouse (“PAC”) by PAC Users. Each User of the PAC who submits Activity-related materials to the PAC is a “Licensor” under this PAC Activity User License and in submitting such materials to the PAC agrees that each other User of the PAC who obtains and uses such materials (including any Activities developed from such materials) (each, a “Licensee”) may do so in accordance with this PAC Activity User License and that the POGIL Project may sublicense (as necessary) such materials to other Users of the PAC according to this PAC Activity User License. Additionally, the POGIL Project itself may be the Licensor under this PAC Activity User License where a User transfers and assigns a copyright in Activity-related materials to the POGIL Project (e.g., in connection with approval of a final Activity in accordance with the POGIL Activity Pathway) or the POGIL Project has rights to sublicense Activity-related materials under the Terms and Conditions of the POGIL Activity Clearinghouse, or otherwise. In turn, each Licensee who obtains Activity-related materials from the PAC that were submitted by a Licensor and exercises the Licensed Rights (defined below) hereby agrees that the Licensee shall use such materials (including any Activities developed from such materials) in accordance with this PAC Activity User License.

To the extent this PAC Activity User License may be interpreted as a contract, the Licensee is granted the Licensed Rights in consideration of the Licensee’s acceptance of these terms and conditions, and the Licensor grants the Licensee such rights in consideration of benefits the Licensor receives from making the Licensed Material available under these terms and conditions.

1. Definitions

- (a) “**Adapted Material**” means material subject to Copyright and Similar Rights that is derived from or based upon the Licensed Material and in which the Licensed Material is translated, altered, arranged, transformed, or otherwise modified in a manner requiring permission under the Copyright and Similar Rights held by the Licensor.
- (b) “**Adapter's License**” means the license the Licensee applies to the Licensee’s Copyright and Similar Rights in the Licensee’s contributions to Adapted Material in accordance with the terms and conditions of this PAC Activity User License.
- (c) “**Copyright and Similar Rights**” means copyright and/or similar rights closely related to copyright including, without limitation, performance, broadcast, sound recording, and Sui Generis Database Rights, without regard to how the rights are

labeled or categorized. For purposes of this PAC Activity User License, the rights specified in Section 2(b)(1)-(2) are not Copyright and Similar Rights.

- (d) **“Effective Technological Measures”** means those measures that, in the absence of proper authority, may not be circumvented under laws fulfilling obligations under Article 11 of the WIPO Copyright Treaty adopted on December 20, 1996, and/or similar international agreements.
- (e) **“Exceptions and Limitations”** means fair use, fair dealing, and/or any other exception or limitation to Copyright and Similar Rights that applies to the Licensee’s use of the Licensed Material.
- (f) **“License Elements”** means license attributes, such as Attribution, NonCommercial, and ShareAlike (as defined herein).
- (g) **“Licensed Material”** means the Activity-related material that a Licensors submits to the PAC.
- (h) **“Licensed Rights”** means the rights granted to the Licensee subject to the terms and conditions of this PAC Activity User License, which are limited to all Copyright and Similar Rights that apply to the Licensee’s use of the Licensed Material and that the Licensors has authority to license.
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