

**AGREEMENT BETWEEN THE CITY OF CUPERTINO,
FREMONT UNION HIGH SCHOOL DISTRICT AND POGO, INC.
RE: KIDPOOL PILOT PROJECT**

THIS AGREEMENT, is by and between CITY OF CUPERTINO, a municipal corporation (hereinafter referred to as "City"), FREMONT UNION HIGH SCHOOL DISTRICT (hereinafter referred to as "FUHSD"), and POGO, INC. (hereinafter referred to as "Software Provider"), is made with reference to the following:

RECITALS

The following recitals are a substantive portion of this Agreement:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.

B. The Fremont Union High School District covers the City of Cupertino, most of Sunnyvale, and parts of San Jose, Los Altos, Saratoga, and Santa Clara, California. The FUHSD operates five high schools (9-12) and one Adult School; and

C. POGO Inc. is a Software Provider and possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City, FUHSD and Software Provider desire to enter into an agreement for a Kidpool Pilot Project upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

The term of this Agreement shall commence on October 18, 2017 and shall end on June 30, 2018, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED:**

Software Provider shall perform each and every service set forth in Exhibit "A" Scope of Work which is attached hereto and incorporated herein by this reference. Software Provider shall enter into a Terms of Service Agreement with any users of the software in the form attached hereto as Exhibit "B". City and FUHSD are not subject to or bound by the Terms of Service Agreement.

3. **COMPENSATION TO SOFTWARE PROVIDER :**

Software Provider shall be compensated for services performed pursuant to this Agreement in the amount set forth below and as described in Exhibit "A" which is attached hereto and incorporated herein by this reference. The compensation and reimbursable expenses to be paid to Software Provider under this Agreement for all services described in Exhibit "A" by City and FUHSD shall not exceed eleven thousand five hundred dollars (\$11,500.00). City shall pay no more than ten thousand dollars (\$10,000.00) and FUHSD shall pay no more than one-thousand, five hundred dollars (\$1,500.00) under this Agreement.

4. **TIME IS OF THE ESSENCE:**

Software Provider, City, and FUHSD agree that time is of the essence regarding the performance of this Agreement.

5. **LICENSES; PERMITS; ETC:**

Software Provider represents and warrants to City and FUHSD that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required to carry out the purposes of this Agreement.

6. **ASSIGNMENTS:**

Software Provider may assign, sublease, or transfer this Agreement, or any interest therein, to a third party with the prior written consent of City and FUHSD. Such consent shall not be unreasonably withheld. City's or FUHSD's withholding of consent shall be deemed reasonable if it appears that the intended assignee in question is not financially or technically capable of performing Software Provider's obligations under this Agreement, or if City or FUHSD has reason to conclude that the proposed assignee is otherwise incapable of fulfilling Software Provider's duties hereunder.

7. **STANDARD OF CARE:**

Software Provider warrants it is specially trained, experienced and competent to

perform the special services which will be required under this Agreement. Software Provider further warrants that it will meet industry standard in the delivery of services. It further warrants that all services shall be performed by qualified and experienced personnel who are not employed by the City, FUHSD nor have any contractual relationship with City or FUHSD outside of this Agreement.

8. **INDEPENDENT PARTIES:**

Software Provider is an independent contractor for both City and FUHSD. The manner and means of conducting the work are under the control of Software Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Software Provider's services. None of the benefits provided by City or FUHSD to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from City or FUHSD to Software Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Software Provider. Payments of the above items, if required, are the responsibility of Software Provider.

9. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Software Provider assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Software Provider shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Software Provider.

10. **NON-DISCRIMINATION:**

Consistent with City and FUHSD's policy that harassment and discrimination are unacceptable employer/employee conduct, Software Provider agrees that harassment or discrimination directed toward a job applicant, a City or FUHSD employee, or a citizen by Software Provider or Software Provider's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Software Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

11. **INTELLECTUAL PROPERTY INDEMNIFICATION**

Software Provider agrees to, at its sole expense, to indemnify, defend, hold harmless and/or settle any claim made by a third party against City and FUHSD alleging that the City's or FUHSD's use of the Services infringes such third party's United States patent, copyright, trademark or trade secret (an "IP Claim"), and pay those amounts finally awarded by a court of competent jurisdiction against City and FUHSD with respect to any such IP Claims.

12. **DUTY TO INDEMNIFY AND HOLD HARMLESS:**

Software Provider shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and FUHSD, its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury or death of any person damage to property, or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of, pertaining to, or related to the performance of this Agreement by Software Provider or Software Provider 's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City and FUHSD's choice, expert fees and all other costs and fees related to litigation. The provisions of this Section survive the completion of the Services or termination of this Contract.

Pursuant to Government Code Section 895.4, and in lieu of Government Code Section 895.6 which provides for pro-rata risk allocation FUHSD shall indemnify, defend, and hold harmless the City, its officers, agents and employees from any loss, liability, claim, injury or damage arising out of, or in connection with, performance of the duties and obligations of the County and its employees set forth in this agreement. The City shall indemnify, defend, and hold harmless the FUHSD, its officers, agents and employees from any loss, liability, claim, injury or damage arising out of, or in connection with, performance of the duties and obligations of the City and its employees set forth in this agreement. The provisions of this Section survive the completion of the Services or termination of this Contract.

13. **INSURANCE:**

A. **GENERAL REQUIREMENTS:**

On or before the commencement of the term of this Agreement, Software Provider shall furnish City and FUHSD with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in

compliance with the requirements listed in Appendix "C". Software Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and FUHSD and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

B. SUBROGATION WAIVER:

Software Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Software Provider shall look solely to its insurance for recovery. Software Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Software Provider or City with respect to the services of Software Provider herein, a waiver of any right to subrogation which any such insurer of said Software Provider may acquire against City by virtue of the payment of any loss under such insurance.

C. ADDITIONAL NAMED INSURED:

City, FUHSD, and their respective legislative bodies, the Cupertino City Council, FUHSD Boards of Trustees, other boards and commissions, officers, employees and volunteers shall be named as an additional insureds under all insurance coverage, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional named insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

14. RECORDS

Software Provider shall maintain internal records documenting the Services performed by Software Provider hereunder, in accordance with customary recordkeeping practices in the software development industry. Such records shall be maintained for a period of three (3) years after Software Provider receives final payment from City for all services required under this agreement. Software Provider shall provide free access to such records to a designated City representative at all reasonable and proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary. No such examination and audit shall give City the right to access

records relating to other Software Provider customers who are not participants in the KidPool Pilot Project referenced in this Agreement.

If supplemental examination or audit of the records is necessary due to concerns raised by City's and FUHSD's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Software Provider shall reimburse City and FUHSD for all reasonable costs and expenses associated with the supplemental examination or audit.

15. **NONAPPROPRIATION**

This Agreement is subject to the fiscal provisions of the Cupertino Municipal Code and Agreement will terminate without any penalty (a) at any time in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

16. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO CITY:

City of Cupertino
10300 Torre Ave
Cupertino CA 95014
Attention: Jaqui Guzmán, Deputy City Manager

Copy to:

Randolph Hom, Esq.
City Attorney, City of Cupertino
20410 Town Center Lane, Suite 210
Cupertino, CA 95014-3255

TO FUHSD:

Fremont Union High School District
589 W. Fremont Ave
Sunnyvale, CA 94087
Attention: Polly M. Bove, Superintendent

TO POGO:

Pogo, Inc.
3400 Wallingford Ave. N #171
Seattle, WA 98103
Attention: Melissa Lehman, CEO

17. **TERMINATION:**

A. **Basis for Termination**

In the event Software Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Software Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within the time specified after receipt by Software Provider from City or FUHSD of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City or FUHSD may terminate the Agreement forthwith by giving to the Software Provider written notice thereof.

City and FUHSD shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving thirty (30) days' prior written notice to Software Provider as provided herein. Upon receipt of any notice of termination, Software Provider shall immediately discontinue performance.

B. ***Pro Rata Payments.*** City and FUHSD shall pay Software Provider for services satisfactorily performed up to the effective date of termination. In such event, a calculation of the amounts due shall be deemed correct as computed on a *pro rata* basis with compensation provided for the period of service paid as a percentage of the total contract amount.

18. **WARRANTY AND WARRANTY DISCLAIMER**

Software Provider warrants that (i) the services shall be provided in a diligent, professional, and workmanlike manner in accordance with industry standards, (ii) the services provided under this agreement do not infringe or misappropriate any intellectual property rights of any third party, and (iii) the services shall substantially perform in all material respects as described in the Scope of Work in the event of any

breach of section (iii), above, Software Provider shall, as its sole liability and your sole remedy, repair or replace the services that are subject to the warranty claim at no cost to City and FUHSD or if Software Provider is unable to repair or replace, then it will refund any pre-paid fees for services not rendered. Except for the warranty described in this section, the services are provided without warranty of any kind, express or implied including, but not limited to, the implied warranties or conditions of design, merchantability, fitness for a particular purpose, and any warranties of title and non-infringement.

19. **COMPLIANCE**

Software Provider shall comply with all state or federal laws and all ordinances, rules, policies and regulations enacted or issued by City.

20. **CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed with the Superior Court for the County of Santa Clara, State of California.

21. **ADVERTISEMENT**

Software Provider shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City and FUHSD to do otherwise.

22. **INTEGRATED CONTRACT**

This Agreement, including all appendices, represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by City, FUHSD and Software Provider. In the event that any Terms of Service, Exhibit, associated instrument or agreement executed by the Parties in conjunction with this Agreement or prior thereto contains a term that conflicts with the terms of this Agreement, the terms of this Agreement shall govern and supersede any other document or Exhibit.

23. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the

legal capacity and authority to do so on behalf of their respective legal entities.

24. **WAIVER:**

A waiver by City and FUHSD of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. **INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

26. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

[illegible]

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

SOFTWARE PROVIDER

CITY OF CUPERTINO
A Municipal Corporation

By: Melissa Lehman
Title: Co-Founder and CEO

By: David Brandt
Title: City Manager

Date: _____

Date: _____

FREMONT UNION HIGH SCHOOL
DISTRICT

RECOMMENDED FOR APPROVAL:

By: Polly M. Bove
Title: Superintendent
Date: _____

By: Jacqueline Guzman
Title: Deputy City Manager

APPROVED AS TO FORM:

By: Randolph Stevenson Hom,
City Attorney

ATTEST:

Grace Schmidt
City Clerk

CUPERTINO EXPENDITURE DISTRIBUTION:

Account No: 100-12-120-700-702

Amount: 10,000.00

EXHIBIT A: SCOPE OF WORK

Vendor

Pogo Rides provides community-sourced rides for kids through a mobile application available for iOS and Android. The Pogo app helps parents organize carpools and discover new shared trip options within their trusted groups.

Project Objectives

The Kidpool Pilot Project's objective is to create an effective parent carpool program that provides a safe, reliable alternative for busy parents. Our goal is to help Cupertino parents create and manage local walk, bike, or car "kidpools" for school pick up and drop off as well as afterschool activities using the Pogo mobile application. Additionally, we anticipate that this program will measurably reduce traffic congestion around Cupertino school during peak hours as well as reduce its community's GHG emissions to help meet its CAP targets.

Project Scope

The City of Cupertino and Fremont Union High School District ("Clients") have expressed interest in piloting a walk, bike, and carpool/kidpool management and route matching discovery solution, Pogo, at up to two (2) schools for the 2017-18 school year. The application should provide parents with an easy platform to create or join trustworthy, reliable, and convenient pools with minimal expenditure of School/City resources. The City will evaluate the pilot program after one full semester. If successful, the City may make a recommendation to roll out this application at additional school locations the following school year.

Pogo Rides Scope of Work

Application Support

1. Application – Provide a mobile application available for iOS, and Android for (1) coordination of walk, bike, and car kidpools and (2) discovery of convenient kidpool route matches between parents within a group community. Application features include:

For Users:

- a. Trip scheduling and calendar integration
- b. In-app messaging and contact details
- c. Real-time GPS tracking of drivers with pick up and drop off notifications for parents
- d. Optional background checks:
 - i. Optional background and motor vehicle record check, sent out via email by Pogo (\$9.75 per user).
 - ii. Starting, Q1 2018, in-app required verification of California driver's license for drivers and state-issued identification for non-drivers (\$2 per user).

- iii. School verification for fingerprinted volunteers (no additional cost)
- iv. In-app profile badge to indicate background checks passed.
- e. Pogo will require that all Users have sufficient comprehensive Auto and Liability Coverage for claims and accidents consistent with the statutory requirements of California.

For Administrators

- a. Customizable click through terms of service language for group users.
 - b. Customizable user surveys to aid in the evaluation process
 - c. Ability to review active users and approve users for the program and relevant groups.
 - d. Ability to remove users within 24 hours at administrator's discretion.
 - e. Ability to change group pass code to maintain security.
2. Maintenance and Support – Provide ongoing application maintenance and customer support for users and administrators via a dedicated support person, in app support and email support.
 - a. A service level agreement (SLA) of 48 hours to remedy any critical application issues as identified by Clients, noting that for some issues Pogo is dependent on Apple's App Store approval process and 3rd party service providers
 - b. Notices to all administrators of planned down-time or maintenance windows that impact service availability for more 12 hours during at least a week in advance.
 - c. User maintenance – bulk removal of users as requested by the administrators to keep the user pool relevant to current school enrollment, limited to a quarterly basis unless there is a security concern, which will be accommodated with 24 hours.
 3. Reporting – Provide reports to be used to evaluate program.
 - a. Quarterly reports which include number of users, number of riders, number of rides/bikepools/walkpools, number of groups formed, connections made, and calculated carbon offsets per group or identified individuals
 - b. Ad-hoc reports may be requested

Onboarding Support

1. Written best practices to be used in implementing and launching a carpool/walkpool/bikepool program at schools.
2. Marketing Materials – Electronic marketing messages, plus a wide range of physical collateral options, including A-frame stands, which can be customized for Clients by Pogo with input and approval by Clients. Physical marketing materials can be produced

by Pogo and billed to Cupertino, or the art files can be shared with Cupertino and produced locally.

- a. Permission to use Pogo's logo and branding
- b. Permission to alter collateral and messaging as needed
3. Branded school community groups and support of bulk invitations

Additional liability coverage by Founders Shield with coverage for City and District:

1. Cyber security insurance to protect against potential data security breaches;
2. Hired and non-owned auto supplemental coverage (optional).

Client Partner Responsibilities

City of Cupertino

Program Rollout

- a. City will assist in the coordination of the Pilot Program with Pogo and the School Districts
- b. Provide funding for the Pilot Program in conjunction with the School District. The City will cover the cost of the onboarding fee, driver's license verification, and optional background check for first 500 users.

Outreach

Cupertino will lead the outreach strategy and coordinate outreach efforts with Pogo and school contacts. Deliverables include:

- a. Partner with the School Districts and POGO to develop a Marketing and Outreach Plan
- b. Working with Pogo to distribute program material that enhances parent awareness of Pogo and encourages walking, biking and carpooling
- c. Working with key school site staff to disseminate marketing material
- d. Enlisting parent champions at each school who will volunteer to raise awareness of Pogo and provide testimonials that encourage download and adoption of application.
- e. Speaking and/or tabling at school and community events.

Evaluation

Cupertino will develop and execute an Evaluation Plan that:

- a. Defines and tracks key metrics to evaluate if the pilot program was successful, such as measuring *activity* (groups formed, rides initiated, connections made) and *reduced congestion* (periodic manual counts of single family and carpool drop offs).
- b. Analyze data provided to City by POGO from the Pogo app.
- c. Arrange for staff and/or volunteers to manually gather survey data or conduct manual counts periodically.
- d. Analyze and present data to project partners.
- e. City reserves the right to discontinue its participation in program at any time.

Fremont Union High School District

Program Rollout

School Districts will:

- a. Provide funding for the Pilot Program in conjunction with the City. The District will cover the cost of the software licensing fee.
- b. Assign a Pogo site administrator to each school site.
- c. Direct the Pogo site administrator to set up a Pogo group at their respective school site (i.e. "Cupertino High"), including the creation of a group code to be included in marketing material.
- d. Direct the school principal to consider designating a carpool drop-off/pick-up area in a convenient location. The principal should assign a staff member to monitor the carpool drop-off/pick up area marked by a carpool A-frame stand provided by Pogo or City.
- e. Allow Cupertino staff and/or volunteers to periodically conduct car ride and bicycle counts at the school site.

Group Administration

District will be responsible for ensuring that a group administrator is assigned for each school site. The responsibilities of the group administrator are to manage a Pogo group for their school site, including user badges and group management:

- i. Email group code to parents with an introductory email emphasizing to parents that it is their responsibility to vet and determine with whom to form a carpool.
- ii. At the end of the school year, ensure users that age-out or will not return to the school site the following year are removed.
- iii. Direct parents to Pogo customer service if complaints are received.

Communication

The School District will ensure coordination related to project communication. Specifically, the School District will:

- a. Direct the Pogo site administrator to coordinate the dissemination of marketing materials provided by the City to school parents via email, mail, social media, and other channels.
- b. Direct the school principal to make an announcement about Pogo or allow Cupertino staff and/or volunteers to speak and/or table at school events, including Back-to-School Night.

Project Timeline

August 14, 2017	School Begins
September 2017 – December 2017	Collect evaluation data
October 2017	Soft Launch
January 2018	Official Launch
January 2018-June 2018	Manage Pilot
July 2018	Analyze evaluation data
August 2018	Present evaluation findings

Project Fees

	Timeframe	Scope	Cost
Phase 1	Oct 2017-Jun 2018	- Client selects school/s to pilot program.	- Software Licensing: \$500 per school - Onboarding: \$1,000 per school - Background and DMV record check: \$9.75 per user (optional)

Marketing Material

Posters

- Large (11X17 one-sided color): \$3.00 each, electronic copies free
- Small (5.5X8.5 two-sided half-sheet color): \$0.75 each, electronic copies free

Business cards (two-sided color cards): \$20.00 for 500

Yard sign (18x24 two-sided color): \$30.00 each

Sandwich board (24x36 heavy-duty, two-sided color): \$225.00 each

EXHIBIT B: TERMS OF SERVICE LEVEL

THIS FOLLOWING USER AGREEMENT DESCRIBES THE TERMS AND CONDITIONS UNDER WHICH POGO OFFERS YOU ACCESS TO THE POGO PLATFORM.

THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE AND A CLASS ACTION WAIVER.

1. Agreement to Terms

Hello and welcome to Pogo, Inc. ("**Pogo**," "**Us**," "**We**" or "**Our**"), a mobile device application ("**App**") and website located at www.pogorides.com (the "**Site**"). These Terms of Service ("**Terms**"), along with Our Privacy Policy, which is incorporated herein by reference, constitute the user agreement (the "Agreement") for the Site, desktop and mobile software internet application platform owned and operated by Pogo, Inc. (the "**Services**"). This Agreement is a legally binding agreement made between you ("**User**," "**You**," "**Your**," "**Yourself**," "**Driver**," "**Passenger**," or "**Ride Requestor**," as applicable) and Pogo. If You are a parent or guardian of a minor who may use the Services (a "**Minor Passenger**," as defined in Section 6 below), You are legally consenting to these Terms on behalf of such Minor Passenger.

Pogo is willing to license, not sell, the Services to You only upon the condition that You accept all the terms contained in this Agreement. By signing up with or by using the Services, You indicate that You understand this Agreement and accept all of its terms. If You do not accept all the terms of this Agreement, then Pogo is unwilling to license the Services to You and You should not use the Services.

The Services provide a means to enable persons who seek transportation to certain destinations ("**Ride Requestors**") to coordinate Rides for Passengers with persons driving to or through those destinations ("**Drivers**") in the nature of ride sharing. Drivers are not paid and are not required to undergo Checks and Monitoring, but may do so voluntarily at their own expense. Drivers are Users of the Services who provide Rides.

This Agreement describes the terms and conditions that will govern Your use of and participation in the Services.

For purposes of this Agreement, all transportation coordinated through the Services among Users or Between Users and Drivers shall collectively be defined as "**Ride**" or "**Rides**" or "**Ride Offer**" or "**Ride Request**."

Please read this Agreement carefully before using the Services. You must read, agree with and accept all of the terms and conditions contained in this Agreement, which includes those terms and conditions expressly set out below and those incorporated by reference, before You use the Services. By accessing the Services or offering or accepting Rides, You agree to be bound by the terms and conditions of this Agreement with respect to such usage.

IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE DO NOT USE OR ACCESS THE SERVICES.

2. General Disclaimer

POGO DOES NOT PROVIDE TRANSPORTATION SERVICES, AND POGO IS NOT A TRANSPORTATION CARRIER. IT IS UP TO THE DRIVER TO DECIDE WHETHER OR NOT TO OFFER A RIDE TO A RIDE REQUESTOR THROUGH THE SERVICES, AND IT IS UP THE RIDE REQUESTOR TO DECIDE WHETHER OR NOT TO ACCEPT A RIDE FROM ANY DRIVER THROUGH THE SERVICES. ANY DECISION BY A USER TO OFFER OR ACCEPT RIDES THROUGH THE SERVICES IS A DECISION MADE IN SUCH USER'S SOLE DISCRETION. POGO OFFERS INFORMATION AND A METHOD TO CONNECT DRIVERS AND RIDE REQUESTORS WITH EACH OTHER TO COORDINATE SHARED RIDES, BUT DOES NOT, AND DOES NOT INTEND TO, PROVIDE "FOR HIRE" TRANSPORTATION SERVICES OR ACT IN ANY MANNER AS A TRANSPORTATION CARRIER, AND HAS NO RESPONSIBILITY OR LIABILITY FOR ANY TRANSPORTATION SERVICES VOLUNTARILY PROVIDED TO ANY PASSENGER BY ANY DRIVER USING THE SERVICES.

We cannot verify or guarantee the accuracy of the information Users provide on the Services, and We do not control the information provided by Users that is made available through the Services. Therefore, Pogo cannot and does not confirm each User's purported identity or representations those Users make on the Services other than as explicitly laid out in these Terms. You may find other Users' information to be offensive, harmful, inaccurate, or deceptive. Please use caution and common sense when using the Services. Please note that there are also risks of dealing with underage persons or people acting under false pretense. By using the Services, You agree to accept such risks and that Pogo is not responsible for the acts or omissions of Users on the Services. We encourage You to communicate directly with each potential Driver or Ride Requestor prior to coordinating a Ride.

3. Changes to Services and Terms

Because Our Services are evolving over time, We reserve the right to change or discontinue all or any part of the Services any time and without notice, at Our sole discretion. Pogo also reserves the right, at its sole discretion, to amend these Terms at any time by posting the amended terms on the App and the Site. We will also update the "Last Updated" date at the top of these Terms. If We post amended Terms on the App and Site, You may not use the Services thereafter without accepting the amended Terms. Except as stated below, all amended Terms shall automatically be effective after they are posted on the App and Site. By continuing to access or use the Site, App or Services after We have posted a modification on the Site or the App or have provided You with notice of a modification, You are indicating that You agree to be bound by the modified Terms. If the modified Terms are not acceptable to You, Your only recourse is to cease using the Site, App and Services.

4. Introduction to the Services

Below is a list of some of the important things We do and don't do.

What We do:

- We provide a platform via Our App and Our Website (defined above as the “Services”) for Ride Requestors and Drivers who register with Us to coordinate shared Rides with each other.
- We allow Users to post and display information on the Services about themselves and Minor Passengers on whose behalf the User submits a Ride Request, which Drivers can see prior to accepting Ride Requests.
- We allow Users to form “**Groups**” in order to facilitate Rides among members of the Group. Members of a Group are able to see other members’ profile information, including information about the adult member, any Minor Passengers included in the member’s profile, and vehicle information that may be included in the member’s profile. Users of the Services who are not members of a Group are not able to see the Group’s members (except for the Group administrator) or their profile information.
- We allow Users who wish to act as Drivers to post Ride Offers for Passengers.
- We also allow Users to act as Ride Requestors and post Ride Requests for Passengers
- After receiving a Ride Request, Drivers can then choose to accept the Ride Request and coordinate a Ride in whatever manner the Driver deems appropriate, including coordinating Rides among Passengers from different Groups. Users who have special instructions for Drivers must specify such instructions in the “Notes” field of the Ride request. Pogo cannot control whether a Driver will or can abide by such instructions.
- In the event there is a dispute between or among two or more Users with respect to a Ride, We may—but are not obligated to—investigate the dispute.
- We may send You text messages, push notifications, emails and other communications, including advertising and promotional materials from Pogo or third parties.
- We may remove from Our site any Inappropriate Content when We become aware of it.
- Through Our third party partners, We may provide driving record and/or background checks, GPS tracking, and driving behavior monitoring (collectively, “**Checks and Monitoring**”). Drivers may voluntarily request Checks and Monitoring at their own expense.

What We don’t do:

- We are not a transportation carrier. We do not provide or arrange for provision of cars or drivers. Users who offer themselves as Drivers or Passengers on the Services are not employees or agents of Pogo and have no authority to act or speak on Pogo’s behalf.

- We do not make any representations or warranties about Drivers or their vehicles. We do not monitor, inspect or verify the information Drivers post about themselves or their vehicles on the Services.
- We do not verify the truth or accuracy of information provided by Users on the Services other than as explicitly set out in these Terms. It is up to You to evaluate and determine whether You want to share a Ride with one or more other Users.
- We do not allow Ride Requestors to request Rides on behalf of anyone other than the Ride Requestor or Passengers on whose behalf the Ride Requestor has legal authority to request a Ride.
- It is up to You to coordinate with Your Driver and other Users if You would like to specify which Passengers should be included in a Ride or provide other special instructions. Pogo cannot control whether a Driver will or can abide by such instructions.
- We do not provide any assurances that any Rides negotiated between Users in fact will occur; that Drivers will pick up Passengers on time or at all; or that Passengers will reach their destinations on time or at all. We also make no representations or warranties regarding the timing, duration, quality or safety of the Rides.
- The Checks and Monitoring We may offer are in no way a representation or warranty regarding the accuracy of the information that Users post about themselves or their vehicles, and do not constitute representations or warranties regarding the quality or safety of the Users, their vehicles, or the Rides.
- We do not express any opinion, nor do We make any assurances regarding, the truth or accuracy of any User reviews or ratings. We do not regularly monitor or remove reviews or ratings, or any portion thereof, unless they contain Inappropriate Content.

5. Ride Requests

A Ride Requestor may request a Ride on behalf of a Passenger for whom the User has legal authority to contract, by providing the necessary descriptive information for the desired Ride through the Services, including (1) the Passenger who will be participating in the Ride, (2) the pick-up and drop-off locations, (3) the desired pick-up time and date and (4) the desired drop-off time and date (collectively, the **“Ride Description”**). The Ride Requestor may—but is not obligated to—consent to Passengers (including Minor Passengers) being able to communicate with the Driver through text message, in which case the Ride Requestor will also provide the Passengers’ mobile numbers. If such consent is not provided, Passengers other than the Ride Requestor will not receive communication from, and will not be able to send communication to, the Driver.

The terms defined by the Ride Requestor and Driver with respect to the Ride, including but not limited to the pick-up location, drop-off location, pick-up time, drop-off time, identity of

Passenger[s], and route, constitute an agreement between the Ride Requestor and the Driver. You acknowledge and agree that You, and not Pogo, will be responsible for performing the obligations of any such agreements, that Pogo is not a party to such agreements, and that Pogo disclaims all liability arising from or related to any such agreements.

Once Pogo receives confirmation of a Ride request from the applicable Driver, Pogo will send the Driver, Ride Requestor and Passenger (if the Ride Requestor has consented to notification messages or such Passenger) message notification confirming the Ride.

6. Eligibility to Use the Services

The Services are available only to, and may only be used by, individuals who can form legally binding contracts under applicable law. Without limiting the foregoing, certain parts of the Services are available to minors younger than age 18 whose parents or guardians have consented to such minors' use of the Services ("**Minor Passengers**"). The Services are not intended to allow adult Passengers unless they are parents or guardians of Minor Passengers.

The Services are not available to temporarily or indefinitely terminated Users. By using the Services, You represent and warrant that (1) You are at least 18 years old and capable of forming a binding contract with Pogo and are not barred from using the Services under applicable law or (2) that Your parent or guardian has consented on Your behalf to Your use of the Services. If You are utilizing the Services on behalf of a Passenger (including but not limited to Minor Passengers), You represent that You are legally authorized to enter into this agreement and agreements with Drivers on behalf of such Passenger. Please see Section 8 for additional User representations and warranties.

You must be willing to provide general biographical information for Yourself and, as applicable, Passenger[s] on whose behalf You use the Services. In the event the Minor Passenger on whose behalf You are utilizing the Services is under the age of 13, by providing such information about the Minor Passenger, You affirm that You are the Minor Passenger's parent or guardian and have all requisite authority to provide Us with such information and to authorize Us to use such information. For more information on Pogo's policies related to children under the age of 13 and The Children's Online Privacy Protection Act ("COPPA"), please refer to the Pogo Privacy Policy.

By using the Services, You represent and warrant that You have the right, authority and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement.

7. Account Information

You are the sole authorized user of Your account. You are responsible for maintaining the confidentiality of any password provided by You or Pogo for accessing the Services. You are solely and fully responsible for all activities that occur under Your password or account. Pogo has no control over the use of any User's account and expressly disclaims any liability derived therefrom. Should You suspect that any unauthorized party may be using Your password or

account or You suspect any other breach of security, You will contact Us immediately at support@pogorides.com.

8. User Representations and Warranties

As a condition to use of the Services, You represent, warrant and agree that You will abide by Pogo's User standards:

For Drivers:

- a) Drivers must possess a valid Driver's license and be authorized to operate a motor vehicle and possess all appropriate licenses and other legal authority necessary to operate his or her vehicle in the jurisdiction in which Driver uses the Services and gives Rides.
- b) Drivers must possess automobile insurance required by State statutory minimums.
- c) Drivers must own, or have the legal right to operate, the vehicle such Driver uses when accepting Passengers, and such vehicle must be in good operating condition and meet all applicable statutory and state department of motor vehicle requirements for a vehicle of its kind.
- d) Drivers must be willing to provide and share general biographical information (such as legal name, age, phone number) with Ride Requestors, Passengers (including Minor Passengers), and Pogo.
- e) Drivers will be solely responsible for any and all liability which results from or is alleged to result from the operation of the vehicle the Driver uses to transport Passengers, including, but not limited to personal injury, death and property damages suffered by Passengers and others.
- f) In the event of a motor vehicle accident, the Driver will be solely responsible for compliance with any applicable law, and making all necessary communications with the Driver's insurance carrier and the insurance carriers of the other persons involved in the accident.
- g) Drivers will obey all applicable laws related to the matters set forth herein, and will be solely responsible for any violations of such laws.
- h) Drivers will not make any misrepresentation regarding Pogo, the Services, the Rides, or the Driver's status as a Driver.
- i) Drivers must have a mobile phone in his or her possession and the App open and operational at all times during the Ride in order to facilitate communication with the applicable Ride Requestor and Passenger[s]. Drivers must not interact with the App while driving, except as permitted by applicable law.
- j) Drivers will not provide, or offer to provide, transportation services for profit, as a public carrier or taxi service, charge for rides or otherwise seek non-voluntary compensation from Ride Requestors or Passengers, or engage in any other activity in a manner that is inconsistent with the Driver's obligations under these Terms.
- k) Drivers must not permit anyone other than the Driver to drive the Driver's vehicle during a Ride.

- l) Drivers agree that Pogo may, at its sole discretion, prohibit a Driver from being or continuing to be a Driver and providing Rides under the Services.

For Ride Requestors/Passengers:

- a) Ride Requestors must be at least 18 years old and capable of forming a binding contract with Pogo and not barred from using the Services under applicable law.
- b) Ride Requestors who are using the Services on behalf of a Minor Passenger or other Passenger must consent on the Passenger's behalf to use of the Services, and represent and warrant that the Ride Requestor is legally authorized to enter into this agreement and agreements with Drivers on behalf of such Passenger.
- c) Passengers must be at the designated pick-up location at the designated time. If Passengers will not be at the appointed pick-up location at the designated time, the Passenger or Ride Requestor should use the App to notify the Driver.
- d) Passengers must not do anything during a Ride that could compromise the safety of the Driver, other Passengers, or the vehicle.
- e) The Ride Requestor must have a mobile phone in his or her possession and the App open and operational at all times an hour before the Ride, during the Ride, and an hour after the Ride's designated end time in order to facilitate communication with the applicable Driver and Passenger[s] (if the Ride Requestor has consented to such communication with the Passenger).
- f) Passengers must abide by the Driver's reasonable requests regarding Passenger behaviors that could damage or blemish the interior of the Driver's vehicle.

All Users:

- a) You represent and warrant that the information You input into Your Pogo account and the information You make visible to other Users (Your "**profile information**") is accurate, current and complete. You agree to maintain and timely update Your account and profile information to keep it accurate, current and complete at all times during Your use of the Services. You agree that Users and Pogo may rely on Your account and profile information as accurate, current and complete.
- b) Users will not:
 - 1) Transport any illegal or hazardous objects or material during Rides. Impersonate any person or entity; "stalk" or otherwise harass any person.
 - 2) Express or imply that any statements You make are endorsed by Pogo, without Our specific prior written consent.
 - 3) Use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Services.

- 4) Post, distribute or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior consent of the owner of such proprietary rights; remove any copyright, trademark or other proprietary rights notices contained in the Services.
 - 5) Rent, lease, lend, sell, redistribute, sublicense, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Services, any updates, or any part thereof.
 - 6) Interfere with or disrupt the Services or Rides or the servers or networks connected to the Services; post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment connected to the Services; forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted through the Service; "frame" or "mirror" any part of the Service, or use meta tags or code or other devices containing any reference to Us or the Services in order to direct any person to any other web site for any purpose.
- c) You warrant, represent, and agree that Your account and profile information and Your interactions on the Services, including Your reviews of other Users, shall not be false, inaccurate or misleading (directly or by omission or failure to update information); infringe any third party's rights, including but not limited to intellectual property rights, copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; violate any law, statute, ordinance or regulation; be defamatory, libelous, abusive, obscene, profane, offensive, threatening, harassing, or racially offensive; contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; or link directly or indirectly to any other web sites.
 - d) You represent, warrant, and agree that You will use the Services in a manner consistent with all applicable laws and regulations. We reserve the right to, but are not obligated to, investigate and terminate Your participation in the Services if You misuse the Services or the Rides, or behave in a way which could reasonably be regarded as inappropriate, unlawful or illegal.
 - e) If You sign up for the Services on behalf of a company or other entity, You represent and warrant that You have the authority to accept these Terms on its behalf.
 - f) You agree that You will not transfer, use, or sell Your Pogo account and/or User information to any another party. We reserve the right, but We have no obligation, to terminate any account for noncompliance with these Terms.
 - g) You acknowledge and agree that Pogo has no obligation to monitor Your access to or use of the Services or Rides or to review or edit any content, but has the right to do so for the purpose of operating the Services, to ensure Your compliance with these

Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body.

- h) You are solely responsible for, and assume any and all risk and liability associated with, Your conduct with other people You may interact with through the Services. Pogo acts only as a passive conduit for Users' coordination of Rides. POGO ENDEAVORS TO ENSURE POSITIVE INTERACTIONS BETWEEN RIDE REQUESTORS, PASSENGERS, AND DRIVERS AND WORKS HARD TO ENSURE AN OPTIMAL, COMFORTABLE AND SAFE EXPERIENCE. HOWEVER, DRIVERS ARE HUMAN BEINGS, AND NO ONE IS PERFECT. POGO DOES NOT CONTROL, AND MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, OR ACCURACY OF, THE DRIVERS' PERFORMANCE OF RIDES OR THE CONDITION OF THE VEHICLES IN WHICH RIDES ARE PERFORMED. THE PROVISION AND QUALITY OF RIDES REQUESTED THROUGH THE USE OF THE SERVICES IS ENTIRELY THE RESPONSIBILITY OF THE APPLICABLE DRIVER. POGO MAKES NO WARRANTY, AND UNDER NO CIRCUMSTANCE ACCEPTS LIABILITY IN CONNECTION WITH AND/OR ARISING FROM, DRIVERS' PROVISION OF RIDES, THE CONDITION OF THE VEHICLES IN WHICH RIDES ARE PERFORMED, ANY ACTS, ACTION, BEHAVIOR, CONDUCT, AND/OR NEGLIGENCE ON THE PART OF THE DRIVER, OR ANY LOSS OF OR DAMAGE TO RIDE REQUESTOR OR PASSENGER, OR TO RIDE REQUESTOR OR PASSENGER'S PROPERTY, CAUSED BY A RIDE.

9. Groups

Group membership is controlled by the administrator/creator of each Group, but access must be provided in accordance with these Terms.

Only Users with invited phone numbers or emails can post Ride requests and offer Rides in a Group.

10. Limited License to Use the Services

Pogo owns and retains ownership in the Services and all intellectual property therein. Contingent upon Your compliance with these Terms and Privacy Policy, Pogo hereby grants to You a limited, non-transferable, non-exclusive, non-assignable, revocable license to use the Services, Site, and App.

11. Additional Terms for App Store Apps

- If You accessed or downloaded the App from the Apple Store, then You agree to use the App only: (1) on an Apple-branded product or device that runs iOS (Apple's proprietary operating system software); and (2) as permitted by the "Usage Rules" set forth in the Apple Store Terms of Service. If You accessed or downloaded the App from any app

store or distribution platform (like the Apple Store, Google Play or the Amazon Appstore) (each, an “**App Provider**”), then You acknowledge and agree that:

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- These Terms are concluded between You and Pogo, and not with App Provider, and that, as between Pogo and the App Provider, Pogo is solely responsible for the App.
- App Provider has no obligation to furnish any maintenance and support services with respect to the App.
- In the event of any failure of the App to conform to any applicable warranty, You may notify App Provider and App Provider will refund the purchase price for the App to You (if applicable) and, to the maximum extent permitted by applicable law, App Provider will have no other warranty obligation whatsoever with respect to the App. Any other claims, losses, liabilities, damages, costs or expenses attributable to any failure of an App to conform to any warranty will be the sole responsibility of Pogo.
- App Provider is not responsible for addressing any claims You have or any claims of any third party relating to the App or Your possession and use of the App, including, but not limited to: (1) product liability claims; (2) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.
- In the event of any third-party claim that the App or Your possession and use of the App infringes that third party’s intellectual property rights, Pogo will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim solely to the extent required by these Terms.
- App Provider and its subsidiaries are third-party beneficiaries of these Terms as related to Your license of the App, and that, upon Your acceptance of the terms and conditions of these Terms, App Provider will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to Your license of the App against You as a third party beneficiary thereof.
- You agree to comply with all U.S. and foreign export laws and regulations to ensure that neither the App nor any technical data related thereto nor any direct product thereof is exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. By using the App You represent and warrant that: (1) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (2) You are not listed on any U.S. Government list of prohibited or restricted parties.
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12. User Provided Content

Pogo may, in Pogo's sole discretion, permit You from time to time to submit, upload, publish or otherwise make available to Pogo through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests, and ratings and reviews (“**User Content**”). User Content should not necessarily be relied upon. We do not guarantee the accuracy, completeness, or usefulness of any User Content on the Services. We do not adopt or endorse, nor are We responsible for, the accuracy

or reliability of any opinion, advice, or statement made by parties other than Us on the Services. Under no circumstances will We be responsible for any loss or damage resulting from anyone's reliance on User Content. We reserve the right, but We have no obligation, to monitor User Content. Notwithstanding this right, You remain solely responsible for any User Content that You submit to the Services. We shall have the right to remove any such material that in Our sole opinion violates, or is alleged to violate, the law or this agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Users or others.

Any User Content provided by You, except Feedback (defined below) remains Your property. However, by providing User Content to Pogo, You grant Pogo a worldwide, perpetual, irrevocable, transferrable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and Pogo's business and on third-party sites and services), without further notice to or consent from You, and without the requirement of payment to You or any other person or entity.

You represent and warrant that: (i) You either are the sole and exclusive owner of all User Content or You have all rights, licenses, consents and releases necessary to grant Pogo the license to the User Content as set forth above; and (ii) neither the User Content nor Your submission, uploading, publishing or otherwise making available of such User Content nor Pogo's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that includes links to or marketing content for third party sites or products or is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Pogo in its sole discretion, whether or not such material may be protected by law ("**Inappropriate Content**"). Pogo may, but is obligated to, review, monitor, or remove User Content, at Pogo's sole discretion and at any time and for any reason, without notice to You.

You represent and warrant that You own or otherwise control all of the rights to the User Content that You post; that such User Content is accurate; that posting of such User Content does not violate these Terms and will not cause injury to any person or entity; and that You will indemnify Us for all claims resulting from User Content You supply.

13. Third Party Content and Links

The Services may contain links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Content"). Such Third Party Content is not investigated, monitored or checked for

accuracy, appropriateness, or completeness by Us, and We are not responsible for any Third Party Sites accessed through the Services or any Third Party Content posted on, available through or installed from the Services, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Content. Inclusion of, linking to or permitting the use or installation of Third Party Content does not imply approval or endorsement thereof by Us. If You decide to leave the Services and access the Third Party Sites or to use or install any Third Party Content, You do so at Your own risk and You should be aware that Our Terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any web site to which You navigate from the Services or relating to any applications You use or install from the Services.

14. Location Information

Location data provided by the Services is for basic location purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage, or other loss. Neither Pogo, nor any of its content providers, guarantees the availability, accuracy, completeness, reliability, or timeliness of location data displayed by the Services, whether provided by Pogo, Third Party Content, or Users.

Geolocation data that You upload, provide, or post on the Services may be accessible to certain Users of the Services. You assume any and all risk of providing such data to other Users of the Services.

15. Pogo Communications to Users

E-mail communications, text messages, and other messages sent from Us through the Services are designed to make Your Pogo experience more efficient. You specifically agree to accept and consent to receive Pogo e-mail communications and text messages, which include, without limitation: notification messages informing You about potential available Drivers or Passengers, messages regarding the status and coordination of Your Ride and Ride Description through the Services, messages informing You of promotions We run, and messages informing You of new and existing features We provide. If You are a parent or guardian with legal authority to do so, You must consent on behalf of a Minor Passenger before that Passenger can receive text notifications or phone calls through the Services.

16. Network Access and Devices

- You are responsible for obtaining the device and data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply if You access or use the Services from a wireless-enabled device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and any updates thereto. Pogo does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

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17. Intellectual Property

All intellectual property rights in the Services are owned by Us absolutely and in their entirety. These rights include and are not limited to database rights, copyrights, design rights (whether registered or unregistered), trademarks (whether registered or unregistered), trade dress, and other similar rights wherever existing in the world together with the right to apply for protection of the same. All other trademarks, logos, service marks, company or product names set forth in the Services are the property of their respective owners.

18. Copyright Complaints and Copyright Agent – DMCA Provision

Pogo respects the intellectual property of others, and expects Users to do the same. If You believe, in good faith, that any materials on the Services infringe upon Your copyrights, please send the following information to Pogo's Copyright Agent at 3400 Wallingford Ave N #171, Seattle, Washington, 98103:

- a) A description of the copyrighted work that You claim has been infringed, including specific location on the Services where the material You claim is infringing is located. Include enough information to allow Pogo to locate the material, and explain why You think an infringement has taken place;
- b) A description of the location where the original or an authorized copy of the copyrighted work exists – for example, the URL (Internet address) where it is posted or the name of the book in which it has been published;
- c) Your address, telephone number, and e-mail address;
- d) A statement by You that You have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- e) A statement by You, made under penalty of perjury, that the information in Your notice is accurate, and that You are the copyright owner or authorized to act on the copyright owner's behalf; and
- f) An electronic or physical signature of the owner of the copyright or the person authorized to act on behalf of the owner of the copyright interest.

We may terminate access, usage or subscription to the website, as the case may be, for repeat infringers in appropriate circumstances.

19. Indemnity

You are solely responsible for Your actions on the Services, and for the Passengers on whose behalf You coordinate Rides on the Services. You are therefore solely responsible for, and will compensate Us for, any and all liability we incur due to Your actions or the actions of Passengers on whose behalf You coordinate Rides on the Services. Specifically, You will defend, indemnify, and hold Us and Our officers, directors, employees, agents and any third party partners harmless for any losses, costs, liabilities and expenses (including reasonable attorneys' fees and costs) relating to or arising out of Your use of the Services (including User Content You post) or Your provision or acceptance of Rides on Your own behalf or on behalf of other Passengers, including but not limited to Your breach of these Terms, Your violation of any

law or the rights of a third party, including, without limitation, Drivers, Ride Requestors, Passengers, other motorists, and pedestrians, any allegation that any materials that You submit to Us or transmit to the Services infringe or otherwise violate the copyright, trademark, trade secret or other intellectual property or other rights of any third party; Your ownership, use or operation of a motor vehicle, including Your provision of Rides to Passengers; and/or any other activities in connection with the Services and Rides. This indemnity shall be applicable without regard to the negligence of any party, including any indemnified person.

IN NO EVENT WILL A GROUP BE HELD LIABLE FOR ITS MEMBERS' CONDUCT. IN THE EVENT THAT A CLAIM IS BROUGHT AGAINST A GROUP ARISING OUT OF ITS MEMBER'S CONDUCT, THE MEMBER OR MEMBERS WHOSE CONDUCT GAVE RISE TO THE CLAIM AGREE TO INDEMNIFY AND HOLD THE GROUP HARMLESS FOR SUCH CLAIM. Specifically, a member of a Group (the "Indemnifying Party") shall, at its sole cost and expense, indemnify, defend and hold the Group, its affiliates and subsidiaries, and its and their respective directors, officers, employees and agents (the "Indemnified Parties") harmless from any and all costs, expenses (including reasonable attorney's fees), losses, damages or liabilities incurred insofar as such costs, expenses, losses, damages or liabilities are based on any action or inaction by the Indemnifying Party. Each Indemnified Party shall promptly notify the Indemnifying Party in writing of any claim for which it seeks indemnification, provided the failure or delay in doing so shall not relieve the Indemnifying Party from any obligation to indemnify any Indemnified Parties, except to the extent such delay or failure prejudices the defense of any such claim.

20. Release of Pogo in User Disputes

Pogo reserves the right, but has no obligation, to monitor and manage disputes between You and other Users of the Services. You are solely responsible for Your interaction with other Users of the Services and other parties that You come in contact with through the Services. You will cooperate fully with Pogo in any investigation of suspected unlawful, fraudulent or improper activity, including, without limitation, granting Pogo access to any password-protected portions of Your account. Pogo hereby disclaims any and all liability to You or any third party relating to any dispute between You and other Users of the Services.

In the event that You have a dispute with one or more Users, You agree to release Pogo (and Our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected to such disputes with other Users or to Your use of the Services or Rides.

21. Other Disclaimers

- THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." POGO DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, POGO MAKES NO

REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF THE SERVICES, RIDES OR ANY SERVICES OR GOODS REQUESTED THROUGH THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. POGO DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

- POGO'S SERVICES MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION SERVICES WITH OTHER USERS, BUT YOU AGREE THAT POGO HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO THE SERVICES OR ANY RIDES COORDINATED OR OFFERED BY YOU THROUGH THE SERVICES OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS. YOU ASSUME ALL LIABILITY AND RISK OF USING THE SERVICES AND COORDINATING AND/OR OFFERING RIDES.

WE RESERVE THE RIGHT, BUT HAVE NO OBLIGATION, TO MONITOR DISPUTES BETWEEN YOU AND OTHER USERS. PLEASE CAREFULLY SELECT THE TYPE OF INFORMATION THAT YOU POST ON THE SITE OR THROUGH THE SERVICES OR RELEASE TO OTHERS. WE DISCLAIM ALL LIABILITY, REGARDLESS OF THE FORM OF ACTION, FOR THE ACTS OR OMISSIONS OF OTHER USERS (INCLUDING UNAUTHORIZED USERS, OR "HACKERS"). POGO ONLY OFFERS TECHNOLOGY THAT ENABLES DRIVERS AND RIDERS TO COORDINATE SHARED TRANSPORTATION. POGO DOES NOT OFFER TRANSPORTATION SERVICES AND POGO IS NOT A TRANSPORTATION COMPANY OR CARRIER. WE ARE NOT INVOLVED IN THE ACTUAL TRANSPORTATION SERVICES BETWEEN DRIVERS AND RIDERS. AS A RESULT, WE HAVE NO CONTROL OVER THE QUALITY OR SAFETY OF ANY VEHICLE OR OF THE TRANSPORTATION THAT OCCURS AS A RESULT OF THIS SERVICE; NOR DO WE HAVE ANY CONTROL OVER THE TRUTH OR ACCURACY OF USERS' AND PASSENGERS' INFORMATION LISTED ON POGO. WE CANNOT ENSURE THAT A DRIVER OR PASSENGER IS WHO HE OR SHE CLAIMS TO BE OR THAT A DRIVER OR PASSENGER WILL ACTUALLY COMPLETE AN ARRANGED RIDE. WE RESERVE THE RIGHT TO CHANGE ANY AND ALL CONTENT, SOFTWARE AND OTHER ITEMS USED OR CONTAINED IN THE SERVICES AT ANY TIME WITHOUT NOTICE.

THE SERVICE MAY BE TEMPORARILY UNAVAILABLE FROM TIME TO TIME FOR MAINTENANCE OR OTHER REASONS. POGO ASSUMES NO RESPONSIBILITY FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER COMMUNICATIONS. POGO IS

NOT RESPONSIBLE FOR ANY TECHNICAL MALFUNCTION OR OTHER PROBLEMS OF ANY TELEPHONE NETWORK OR SERVICE, COMPUTER SYSTEMS, SERVERS OR PROVIDERS, COMPUTER OR MOBILE PHONE EQUIPMENT, SOFTWARE, FAILURE OF EMAIL OR PLAYERS ON ACCOUNT OF TECHNICAL PROBLEMS OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY SITE OR COMBINATION THEREOF, INCLUDING INJURY OR DAMAGE TO A USER'S OR TO ANY OTHER PERSON'S COMPUTER, MOBILE PHONE, OR OTHER HARDWARE OR SOFTWARE, RELATED TO OR RESULTING FROM USING OR DOWNLOADING MATERIALS IN CONNECTION WITH THE WEB AND/OR IN CONNECTION WITH THE SERVICES.

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22. LIMITATION OF LIABILITY

- POGO SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT POGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
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- POGO SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF: (i) YOUR USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO ACCESS OR USE THE SERVICES; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY OTHER USER OR ANY THIRD PARTY. POGO SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND POGO'S REASONABLE CONTROL. YOU ACKNOWLEDGE THAT DRIVERS PROVIDING TRANSPORTATION SERVICES REQUESTED THROUGH THE SERVICES OFFER RIDESHARING OR PEER-TO-PEER TRANSPORTATION SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED. IN NO EVENT SHALL POGO'S TOTAL LIABILITY TO YOU IN CONNECTION WITH THE SERVICES AND RIDES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED FIVE HUNDRED U.S. DOLLARS (US \$500).

THE LIMITATIONS AND DISCLAIMER IN SECTIONS 21 AND 22 DO NOT PURPORT TO LIMIT LIABILITY OR ALTER YOUR RIGHTS AS A CONSUMER THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

THE ASSUMPTION OF RISK AND LIMITATION OF LIABILITY SET FORTH ABOVE IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN POGO AND YOU.

23. Term

The Term begins when You begin using the Services, and continues as long as You use the Services. Use of the Services; i.e., accessing the App or the Site, means that You have officially “signed” the Terms. If You sign up for the Services on behalf of a company or other entity, You represent and warrant that You have the authority to accept these Terms on its behalf.

24. Breach

Without limiting other remedies, We may terminate Your account and participation in the Services, remove Your profile information, warn other Users of Your actions, issue a warning, and any other action deemed reasonable by Us in Our sole discretion, if:

- a) You breach these Terms;
- b) We are unable to verify or authenticate any information You provide to Us;
- c) We believe that Your actions may cause financial loss or legal liability for You, Our Users or Us, or subject Pogo or You or any other User to regulation by any state or local government or regulatory agency; or
- d) We suspect that You have engaged in fraudulent activity in connection with the Services or Rides.

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25. Feedback, Complaints and Dispute Resolution

Feedback

- We welcome feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You can submit Feedback by contacting Pogo at support@pogorides.com.

Complaints

To resolve a complaint regarding the Service, You should first contact Our Customer Service Department at support@pogorides.com.

Dispute Resolution - Agreement to Arbitrate

- You and Pogo agree that any dispute, claim or controversy between You and Pogo arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services or Rides (collectively, “**Disputes**”) will be settled by binding arbitration between You and Pogo, except that each party retains the right: (1) to bring an individual action in small claims court and (2) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party’s

copyrights, trademarks, trade secrets, patents or other intellectual property rights (an **"IP Protection Action"**). The exclusive jurisdiction and venue of any IP Protection Action will be the state and federal courts located in the State of Washington (with the exception of any User, Driver, Passenger or Ride Requester that utilizes the Services through the City of Cupertino or the Fremont Union High School District will be resolved in Santa Clara County under California law) and each of the parties hereto waives any objection to jurisdiction and venue in such courts. **You acknowledge and agree that You and Pogo are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.** Further, unless both You and Pogo otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. The parties specifically disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. If this specific paragraph is held unenforceable, then the entirety of this **"Dispute Resolution"** section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

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- The arbitration will be administered by the American Arbitration Association ("**AAA**") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "**AAA Rules**") then in effect, except as modified by this Dispute Resolution section. (The AAA Rules are available through www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.
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- Unless You and Pogo otherwise agree, the arbitration will be conducted in King County, Washington by one arbitrator (with the exception of any User, Driver, Passenger or Ride Requester that utilizes the Services through the City of Cupertino or the Fremont Union High School District will be resolved in Santa Clara County under California law). If Your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that You and Pogo submit to the arbitrator, unless You request a hearing or the arbitrator determines that a hearing is necessary. If Your claim exceeds \$10,000, Your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.
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- The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types

and amounts of damages for which a party may be held liable. The prevailing party in the arbitration will be entitled to an award of reasonable attorneys' fees and expenses.

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- Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if Your claim for damages does not exceed \$75,000, Pogo will pay all such fees unless the arbitrator finds that either the substance of Your claim or the relief sought in Your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).
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26. Governing Law

- These Terms and any action related thereto will be governed by and construed in accordance with the laws of the State of Washington, without giving effect to any conflict of law principles. Any User, Driver, Passenger or Ride Requester that utilizes the Services through the City of Cupertino or the Fremont Union High School District will be resolved in Santa Clara County under California law.
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27. Notice

- Pogo may give notice by means of a general notice on the Services, electronic mail to Your email address in Your account, or by written communication sent by first class mail or pre-paid post to Your address in Your account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Pogo, with such notice deemed given when received by Pogo, at any time by first class mail or pre-paid post to 3400 Wallingford Ave N #171, Seattle, Washington 98103.
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28. Entire Agreement

- These Terms constitute the entire and exclusive understanding and agreement between Pogo and You regarding the Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Pogo and You regarding the Services and Content. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect, unless otherwise specified in these Terms.
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29. Assignment

- You may not assign or transfer this Agreement, by operation of law or otherwise, without Pogo's prior written consent. Any attempt by You to assign or transfer this Agreement, without such consent, will be null and of no effect. Pogo may freely assign or transfer this Agreement without restriction. The assignment shall be to an assignee that is financially and technically capable of performing Pogo's obligations under this

Agreement. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

30. Waiver

- A party's failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of such party. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.
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31. No Agency

You and Pogo are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement.

32. Headings

Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

- If You have any questions about these Terms or the Services, please contact Pogo at support@pogorides.com.

By using Our Services, You agree to be bound by these Terms. If You don't agree to these Terms, do not use the Services.

EXHIBIT C: INSURANCE REQUIREMENTS AND PROOF OF INSURANCE

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

A. COVERAGE:

MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES

Software Provider shall maintain the following insurance coverage:

Workers' Compensation:

Workers' compensation insurance as required by the State of California, with Statutory Limits, and's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease (if applicable).

Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:

\$1,000,000 each occurrence

\$1,000,000 aggregate - all other

Property Damage:

\$500,000 each occurrence

\$1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

Cyber Liability:

Insurance, with limits not less than:

\$2,000,000 each occurrence

\$2,000,000 aggregate - all other

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Software Provider in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Software Provider maintains broader coverage and /or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Software Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

END OF ATTACHMENT C