



INTELLECTUAL PROPERTY POLICY & USER AGREEMENT

This Intellectual Property Policy & User Agreement (this “Agreement”) describes the terms and conditions applicable to (1) your acquisition and use of the services provided by the Postsecondary Electronic Standards Council (“PESC”) (the “Services”) to its members and the public, (2) your acquisition and use of each and every software, website link, resource, interface, tool, standard or program created, published, provided or made available or accessible by PESC (collectively, the “IP”), (3) your participation in any and all PESC development initiatives and Workgroups as a member or otherwise (“PESC Benefits”), and (4) your use of the website maintained and operated by PESC under the domain and sub-domains of www.PESC.org (the “Website”). If you do not agree to be bound by the terms and conditions of this Agreement, you will not have the right to access or use the Services, the IP, the PESC Benefits or the Website (collectively referred to herein for purposes of convenience as the “PESC IP”). Any such access to, or use of, the PESC IP without acceptance of this Agreement shall be an unauthorized act by you and shall be strictly prohibited by PESC. To accept the terms and conditions of this Agreement, you must first read carefully the provisions below, as well as the other information and provisions that are incorporated by reference (if any). By applying to become a member of PESC, or by renewing your membership in PESC, you are expressly acknowledging that these terms, conditions, provisions and information are acceptable to you, and you are agreeing to become bound by the same.

Your enrollment as a member of PESC or your renewal of your PESC membership also represents your acknowledgement of and consent to the terms of this Agreement as well as your assent to the standard terms and conditions of your use of the PESC IP and your membership in PESC, found on the Website at www.PESC.org/termsandconditions, each of which are incorporated herein and made a part hereof by reference, and your concurrence that these terms and conditions are fair and reasonable. We will refer to ourselves in this contract as “PESC”, “we”, “us”, or our.

1. **Qualified User.** The PESC IP is available only to persons who can form legally binding contracts under applicable law. This Agreement is not available to minors. If you are a business entity (i.e., not a natural person), your acceptance of this Agreement constitutes a representation and warranty that: (i) the business entity is validly formed and in good standing under the laws of the state of its formation, (ii) all company action has been taken by its management and ownership to authorize the acceptance of, and performance under, this Agreement, and (iii) upon acceptance by the business entity, this Agreement will be a valid and binding agreement with it, enforceable by PESC against it.
2. **Additional Terms.** Certain aspects or features of the PESC IP that are available to members may contain additional terms, codes of conduct, or guidelines that govern

your use of those features or tools, or your participation in those events (and we refer to all of these, collectively, as “Additional Terms”). If any terms in this Agreement conflict with any Additional Terms, then the terms in this Agreement will control as applied to the PESC IP and your legal relationship with PESC. Nothing in any Additional Terms will increase our legal liability or change your relationship with us (unless we are the contracting party identified in the Additional Terms, and we state, in the Additional Terms, our intent to modify the terms of this contract). The Additional Terms may, however, form an additional contract between you and a third party (for example, a third party that is offering content to you or working together with you in a Workgroup). Any dealings between you and such a third party are solely between you and the third party, and your relationship with the third party may be governed by the Additional Terms. We do not endorse and will not be responsible or liable for any aspect of any such dealings.

3. How You May Use the PESC IP. In using the PESC IP, you will: (a) obey the law; (b) obey any codes of conduct or other notices we provide; (c) keep your account information secret; and (d) promptly notify us if you learn of a security breach, infringement, misuse or misappropriation of or related to the PESC IP, or any portion thereof.

4. You Are Responsible for Your Use of the PESC IP. You are responsible for all use and acquisition of the PESC IP, and you agree that you will use any part or portion of the PESC IP at your own risk.

5. Your Materials. You may be able to submit materials, works of authorship, technology, ideas, concepts and other forms of intellectual property for use in connection with the PESC IP, including but not limited to those instances during which you are participating in a PESC-organized Workgroup (“Your Content”). You understand that PESC does not control or endorse the content that you and others post or provide in connection with the use of the PESC IP. Except for content that we license, provide or otherwise make available to you, we do not claim ownership of the materials you post or provide when using the PESC IP. However, with respect to content or intellectual property of any kind you post, provide, disseminate or otherwise make available to PESC members and others users of the PESC IP, you grant to PESC, those members of PESC and those users of the PESC IP, free, unlimited, worldwide, nonexclusive, perpetual, and irrevocable permission to: (a) use, modify, copy, distribute, and display Your Content or intellectual property in connection with the service and other PESC IP, and other products and services; and (b) to grant these rights to others. If the submission is a photograph or other digital image, you also expressly waive any and all rights of privacy and publicity with respect to the image. You understand that we may need to make copies, change the format, transcode, or otherwise process Your Content posted on or submitted when using any PESC IP. This section only applies to legally permissible content and only to the extent that use and publishing of legally permissible content does not violate the law. You understand that sharing content that violates others’

copyrights, privacy, publicity, or other intellectual property rights breaches this Agreement. We will not pay you for your content. We may refuse to publish your content, and we may remove your content from the PESC IP at any time.

If you participate in any Workgroup and you post, provide, publish, disseminate or otherwise make available to members of such Workgroup any proprietary content or intellectual property of any form or format whatsoever, you grant to PESC, and those members of the Workgroup a free, unlimited, worldwide, nonexclusive, perpetual, and irrevocable permission and license to: (a) use, modify, copy, distribute, and display the proprietary content or intellectual property in connection with the goals, objectives, strategies and purposes of the particular Workgroup; and (b) to grant these rights to others. It is your sole responsibility to determine what limitations, if any, are placed on shared group content that you distribute within your Workgroup. You agree that PESC has no liability of any kind should members of your Workgroup modify, destroy, corrupt, copy or distribute your shared group content in violation of the limitations that you may impose on its use.

You represent and warrant that: (i) you own the intellectual property rights, or have obtained all necessary license(s) from the owners of the intellectual property rights, to use Your Content in keeping with your use in connection with the Site, the Services or as otherwise permitted by the Terms; (ii) you have the rights necessary to grant the license and sublicenses described in this Agreement; and (iii) you have received consent from any and all persons depicted in Your Content to use Your Content as set forth in this Agreement, including distribution, public display, public performance and reproduction of Your Content.

6. **Changes to Agreement.** If we change this Agreement, then we will require you to agree to a new Agreement that includes such changes if you want to continue to use and enjoy the PESC IP. If you do not want to agree to the new contract, you may suspend and terminate your use of the PESC IP. Your continued use of the PESC IP will be deemed acceptance of and agreement to the new contract.

7. **WE MAKE NO WARRANTY.** We provide the PESC IP “as-is,” “with all faults,” and “as available.” We do not guarantee the accuracy or timeliness of information available from the PESC IP. PESC gives no express warranties, guarantees, or conditions under or in relation to the PESC IP, this Agreement or its subject matter. You may have additional rights under your local laws that this contract cannot change. We exclude any implied warranties, including those of merchantability, fitness for a particular purpose, workmanlike effort, and non-infringement. Further, we are in no way liable for your use or misuse of the PESC IP, or the theft of any data or intellectual property of any sort or form.

8. **LIABILITY LIMITATION.** You can recover from PESC for any and all claims you may have only direct damages up to a total, aggregate amount equal to your PESC

membership fee, pro-rated for one month of a year's membership. You cannot recover any other damages, including consequential, lost profits, special, indirect, incidental, or punitive damages. This limitation applies to anything related to: (a) the PESC IP; (b) third party content (including code), third party programs, or third party conduct; (c) viruses or other disabling features that affect your access to or use of the PESC IP; (d) incompatibility between the PESC IP and other services, software, and hardware; (e) claims for breach of contract; breach of warranty, guarantee, or condition; strict liability; negligence; or other tort. This policy also applies even if: (i) this remedy does not fully compensate you for any losses, or fails of its essential purpose; or (ii) PESC knew or should have known about the possibility of damages.

PESC SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM YOUR USE OF THE WEBSITE AND PESC IP, OR YOUR PARTICIPATION IN ANY WORKGROUP. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH USE OF THE PESC IP IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. PESC ASSUMES NO LIABILITY FOR ANY COMPUTER VIRUS OR SIMILAR CODE THAT IS DOWNLOADED TO YOUR COMPUTER FROM THE SITE OR ANY OF THE SERVICES.

PESC DOES NOT CONTROL, ENDORSE OR ACCEPT RESPONSIBILITY FOR ANY MATERIALS OR SERVICES OFFERED BY THIRD PARTIES, INCLUDING THIRD PARTY VENDORS AND THIRD PARTIES ACCESSIBLE THROUGH LINKED SITES. PESC MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER ABOUT, AND SHALL NOT BE LIABLE FOR, ANY SUCH THIRD PARTIES, THEIR MATERIALS OR SERVICES. ANY DEALINGS THAT YOU MAY HAVE WITH SUCH THIRD PARTIES ARE AT YOUR OWN RISK.

MEMBERS, HOSTS, PARTICIPANTS, MODERATORS AND OTHER THIRD PARTIES ARE NOT AUTHORIZED PESC SPOKESPERSONS, AND THEIR VIEWS DO NOT NECESSARILY REFLECT THOSE OF PESC. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PESC WILL HAVE NO LIABILITY RELATED TO USER CONTENT ARISING UNDER INTELLECTUAL PROPERTY RIGHTS, LIBEL, PRIVACY, PUBLICITY, OBSCENITY OR OTHER LAWS. PESC ALSO DISCLAIMS ALL LIABILITY WITH RESPECT TO THE MISUSE, LOSS, MODIFICATION OR UNAVAILABILITY OF ANY USER CONTENT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

9. Storage of Content. Unless expressly agreed to by PESC in writing elsewhere, PESC has no obligation to store any materials, information, data or content that you upload, post, email, transmit or otherwise make available (collectively, "Materials"). PESC has no responsibility or liability for the deletion or accuracy of any Materials, including your content, the failure to store, transmit or receive transmission of

Materials, or the security, privacy, storage or transmission of other communications originating with or involving use of the PESC IP. You are solely responsible for applying the appropriate level of access to your Materials.

10. **PESC Marks.** The trademarks, logos and service marks displayed on the Website (the “Marks”) are the property of PESC or third parties. You are not permitted to use the Marks without the prior consent of PESC or the third party that may own the Marks. PESC and the PESC logo are trademarks of PESC.

11. **Termination.** The terms of this Agreement will continue to apply until terminated by either you or PESC as set forth below.

- a. If you want to terminate your agreement with PESC, you may do so by (i) notifying PESC at any time and (ii) closing your accounts for all of the PESC IP that you use, where PESC has made this option available to you. Your notice should be sent, in writing, to PESC’s main address set forth on the Website.
- b. PESC may at any time terminate its agreement with you if:
 - i. You have breached any provision of the terms hereof (or have acted in a manner that clearly shows you do not intend to, or are unable to, comply with the Terms;
 - ii. PESC is required to do so by law;
 - iii. PESC has elected to discontinue the PESC IP (or any part thereof); or
- c. Upon termination of your membership with PESC.
- d. You agree that all terminations for cause shall be made in PESC’s sole discretion and that PESC shall not be liable to you or any third party for any termination of your account, or access to the PESC IP, including Your Content.