Customer Terms of Service

Effective Date: October 14, 2022

1. SOFTWARE SERVICES

1.1 **Agreement.** The following:

- These Customer Terms of Service (CTS) ;
- The order form ("Order Form") ;
- Service Level Agreement (SLA) ;
- Privacy Policy ;
- Acceptable Use & IT Requirements Policy (AUP) ;
- Security Policy ;

and if applicable, the Data Processing Addendum (DPA) shall together constitute the complete terms and conditions applicable between the Parties with respect to the Services described herein (the ''Agreement''). The Order Form shall have precedence over any other conflicting terms and conditions contained in the Agreement.

1.2 **Right to use the Services**. during the Term or any Renewal Term Poka shall make available to the Client and its Subscribed Users, either directly or indirectly through Poka's approved reseller or designated third parties, the Poka software, mobile application and all associated services ("Software Services") in accordance with the Agreement and an executed Order Form. Subject to the terms and conditions of this Agreement, Client shall have the limited, worldwide, non-exclusive, non-transferable, and non-sublicensable right except to Affiliates to use and access the Software Services for Client's internal business use.

1.3 **Sandbox, Trial or Demonstration Services.** This Agreement applies to trial, demonstration, or sandbox version of the Software Services. All terms and conditions for such products shall be specified in an Order Form.

1.4 **Beta Products.** Poka may from time to time make available certain features, functionalities, or Software Services for evaluation purposes at no additional costs ("Beta Products"). Such Beta Products will be made available "as is" without any representations, warranties, or SLA of any kind and Client agrees that Poka may be removing the use or access to such Beta Products at any time.

1.5 **Subscribed Users.** Individuals authorized by Client to access the Software Services ("Subscribed Users") shall have the right to input, upload, transmit or otherwise make available data, content and documents using the Services ("Client Data"). Client is solely responsible for the use and access to the Software Services by Subscribed Users, as Poka and ensuring that there is no unauthorized use or access to the Software Services.

1.6 **Ownership of Client Data.** At all times, Client Data will remain the sole property of Client and Subscribed Users, as the case may be. Client shall remain responsible and liable for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Client Data.

1.7 **Client Data Hosting.** Client Data will be hosted in accordance with Poka's Privacy Policy.

1.8 **Security of Client Data.** Poka will maintain during the Term the appropriate technical and organizational measures to ensure the security and backup of Client Data including protection against unauthorized or unlawful processing and against accidental or unlawful destruction, loss or alteration in accordance with Poka's Security Policy.

1.9 **Client Systems.** Client is responsible for the procurement and management of any and all telecommunication lines, internet connection or other facilities, software, hardware, mobile devices or equipment required for the use of the Software Services ("Client Systems"). Client shall at its own expense acquire, install and maintain Client Systems in accordance with the recommended technical requirements for the Software Services as more fully described in Poka's Acceptable Use & IT Requirements Policy.

1.10 **Service Level Agreement.** The Software Services include the provision of maintenance, support, updates, and fixes to the Software Services as more fully described in Poka's Service Level Agreement.

1.11 **Audits.** Poka shall have the right to conduct periodic inspections and audits for the purpose of verifying compliance with the terms of this Agreement.

2 ACCEPTABLE USE OF SOFTWARE SERVICES

2.1 **Acceptable Use of Services**. Client and its Subscribed Users agree to comply with Poka's Acceptable Use & IT Requirements Policy.

3. SUBSCRIPTION FEES AND PAYMENT

3.1 **Order Form.** In consideration for the provision of the Software Services during the Term, Client agrees to pay the applicable fees in accordance with an executed Order Form ("Subscription Fee").

4. PROFESSIONAL SERVICES

4.1 Poka provides Client with professional services for the implementation of the Software Services ("Professional Services"). For greater clarity, Poka does not provide tangible or customized deliverables nor does Professional Services include any software or hardware to Client. Poka Professional Services is comprised of remote and/or onsite training and consulting services for the implementation and use of the Software Services. To this extent, Poka hereby grants to Client a limited, perpetual, worldwide, non-exclusive, non-transferable, non-sublicensable, royalty-free right to copy and use any deliverables and any Poka materials incorporated in the deliverables solely for Client's own internal business purposes.

4.2 In consideration for the provision of Professional Services during the Term, Client agrees to pay the fees in accordance with an executed Order Form.

5. INTELLECTUAL PROPERTY

5.1 **Ownership of Software.** All rights, titles, and interests in and to the Software Services and the including all enhancements, changes, and modifications to the Software and Software Documentation are owned solely and exclusively by Poka and/or its third party licensors. Nothing in this Agreement shall, or shall be deemed or construed to, assign, transfer or convey to or vest in Client any title, rights or interest in or to any intellectual property in the Software Services. Poka reserves all rights not expressly granted to Client hereunder.

5.2 **Client Data.** Subject to the limited licenses granted herein, all rights, titles and interests in and to the Client Data including all intellectual property and other proprietary rights therein are owned solely and exclusively by Client and/or the Subscribed Users as the case may be. Client is solely responsible for the accuracy, quality, integrity, legality and reliability of all Client Data.

6. CONFIDENTIALITY

6.1 "Confidential Information" means any and all data or information including specifications, documents, correspondence, research, software, web logs, trade secrets, discoveries, ideas, know-how, designs, drawings, product information, technical information and all information concerning the operations, affairs and businesses of a party, the financial affairs of a party and the relations of a party with its clients, employees and service providers (including client lists, client information, account information, consumer markets, sales figures and marketing plans) which is disclosed or made available (in any format) by such party (the "Disclosing Party") in connection with the Agreement to the other party (the "Receiving Party").

6.2 The Receiving Party hold in strict confidence any Confidential Information under the same degree of care as it normally protects its own confidential information, but in no case less than a reasonable degree of care. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information in cases where (i) the information is made public through no fault of or contribution by the Receiving Party; (ii) the information was made available to the Receiving Party by a third party that was legally in possession thereof and was free to disclose same; (iii) the information was independently acquired by third parties without access to or knowledge of the Confidential Information; or (iv) this disclosure was required by law or a court order, provided that the Receiving Party gives the Disclosing Party enough advance warning of this requirement so as to give the latter enough time to adopt whatever measures may be needed to avoid or limit the disclosure.

6.3 **Public Announcements.** Poka shall be permitted to disclose the fact that Client is a customer of Poka in its marketing, promotional or other similar materials and on its website or orally. Upon Client's prior approval, Poka may be authorized to use Client as the basis for published case studies.

7. REPRESENTATIONS AND WARRANTIES

7.1 Mutual Representations and Warranties. Each party represents and warrants that: (i) it has the full right, power and authority to enter into this Agreement, grant the licenses set forth herein and to discharge its obligations hereunder; and (ii) the execution and delivery of this Agreement and the performance of its obligations hereunder does not and will not violate any agreement to which it is a party or by which it is or will be otherwise bound (iii) Each Party will comply with all laws, rules and regulations applicable to the execution of their respective obligations and responsibilities under this Agreement.

7.2 Poka's Representations and Warranties. Poka warrants that, during the Term, (i) the Software Services will be provided in accordance with this Agreement and in a professional, workmanlike manner; and (ii) it has not received, and has no knowledge, of any claim or allegation that the Software Services, or Client's use of the Software Services infringes or misappropriates any intellectual property right of any third party.

7.3 Client's Representations and Warranties. Client hereby represents and warrants that: (i) it shall at all times comply with applicable law and this Agreement (including any applicable privacy or data protection laws); (ii) the Client Data does not infringes or misappropriates any rights of any third party (including Subscribed Users'); and (iii) it has obtained all necessary rights and consents from any identified or

identifiable person or Subscribed Users represented (directly or indirectly) in the Client Data, prior to such Client Data being made available through the Software Services.

7.4 Exclusions. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES FROM A COURSE OF DEALING OR USE OF TRADE. CLIENT ACKNOWLEDGES THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT, NO REPRESENTATIONS HAVE BEEN MADE RESPECTING THE SOFTWARE OR THE SERVICES PROVIDED, AND THAT CLIENT HAS NOT RELIED ON ANY REPRESENTATION NOT INCLUDED IN THIS AGREEMENT.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 **Indemnification.** Poka agrees to indemnify, hold harmless, and defend the Client from and against all claims, actions, and demands made or threatened against Client from any third party that results from or arise out of any breach by Poka of its obligations, representations and warranties under this Agreement.

8.2 Client agrees to indemnify, hold harmless, and, upon Poka's request, defend Poka from and against all claims, actions, and demands made or threatened against Poka that result from or arise out of any breach by Client of its obligations, representations and warranties under this Agreement.

8.3 **Indemnification Procedure.** A party invoking the indemnification (the "Indemnified Party") shall promptly notify the other party (the "Indemnifying Party") in writing upon knowledge of any claim for which it may be entitled to indemnification under this Agreement. The Indemnified Party must permit the Indemnifying Party to have the sole right to control the defense and settlement of any such lawsuit (provided that the Indemnified Party may opt to participate in the defense at its own expense). The Indemnified Party must provide assistance to the Indemnifying Party in the defense of such lawsuit, at the Indemnifying Party's cost and expense. The Indemnifying Party must not enter into any settlement agreement or otherwise settle any such claim or lawsuit that does not contain a full and final release of all claims against the Indemnified Party without its express prior consent or request. Where Client invokes its rights as a result of a third party claim or allegation that the Software, or Client's use of the Software infringes any intellectual property right of any third party, Poka may, at its own expense and at its sole discretion, (a) replace or modify the Software so as to be non-infringing, (b) obtain for Client the right to continue using the Software, or (c) if neither (a) nor (b) is feasible, terminate this Agreement and refund a pro rata portion of the monthly Subscription Fees paid by Client during the remaining Term. Notwithstanding the foregoing, Poka shall have no obligation under this Section for any claim resulting or arising from modifications of the Software that were approved in writing and performed by Poka. This Section states Client's exclusive remedies for any third party intellectual property claim or action.

8.4 **Limitation of Liability.** IN NO EVENT SHALL POKA HAVE ANY LIABILITY TO CLIENT FOR ANY LOSS OF PROFITS, REVENUES OR INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER AND REGARDLESS OF THE FORM OR CAUSE OF ACTION, EVEN IF SUCH DAMAGES ARE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO CASE SHALL POKA'S LIABILITY WITH RESPECT TO ANY AND ALL INCIDENTS ARISING OUT OF OR RELATED TO THIS AGREEMENT, SHALL EXCEED IN THE AGGREGATE THE SUBSCRIPTION FEES PAID BY CLIENT HEREUNDER DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM (OR THE AVERAGE MONTHLY FEES

PAID IF SUCH PERIOD IS INFERIOR TO 12 MONTHS), REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY.

9. TERM AND TERMINATION

9.1 **Term.** This Agreement shall commence on the effective date and continue for the period of time specified in the Order Form ("Initial Term"). The Initial Term shall be automatically renewed for successive renewal periods, each of a length set forth on the Order Form unless Client sends a written notice of non-renewal at least 30 days prior to the expiry of the Initial Term or of such renewed term (each a "Renewal Term", and together with the Initial Term, the "Term").

9.2 **Termination.** Either party may, in addition to other relief, suspend or terminate this Agreement if (A) the other party commits a material breach of this Agreement, and either fails within 30 days after receipt of notice of such breach to correct such material breach or to commence corrective action reasonably acceptable to the aggrieved Party and proceed with due diligence to completion; or (B) becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed, or a petition in bankruptcy is filed with respect to the Party and is not dismissed within 30 days. Poka may, at its sole discretion, elect to suspend the Software Services during the 30-day cure period. Notwithstanding anything to the contrary, except for termination by Client for material breach by Poka all fees paid under this Agreement shall remain non-refundable and be deemed to have been fully earned by Poka.

9.3 **Effects of Termination.**

(a) Upon any termination of this Agreement: (i) Poka shall cease providing the Software Services, and Client and Subscribed Users shall cease all use of, the Software and Documentation and return the Documentation, and all copies thereof, in its possession or under its control to Poka (or at Poka's direction, destroy it); and (ii) each party shall return to the other party, or at the direction of the other party destroy (and provide an officer's certificate attesting to the destruction as is satisfactory to the other party, acting reasonably), within 30 calendar days of the termination date all Confidential Information of the other party.

(b) During the Term, Poka makes all Client Data accessible for retrieval at any time using Poka's API (Application Programing Interface) and any Amazon AWS S3 compatible file transfer software. Structured data is available in JSON format and documents in their original format. Upon termination of the Software Services for any reason, Poka shall discontinue the use of the Software Services by Client and Subscribed Users. Limited access will be provided for no more than 60 days after which period and unless otherwise notified or instructed by Client, Poka will delete from its servers any and all Client Data.

10. GENERAL PROVISIONS

10.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to all the matters herein and supersedes all prior agreements, proposals, understandings, letters of intent, negotiations and discussions between the Parties, whether oral or written. This Agreement may only be amended or modified in writing by the Parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable in any respect, then such provisions shall be read down so as to not be invalid or enforceable. The remaining provisions of this Agreement shall remain unaffected.

10.2 This Agreement prevails over any pre-printed terms or other conflicting or additional terms of any purchase order, ordering document, acknowledgement, invoice, quotation form, confirmation or other

document issued by Client ("PO Terms"), even if signed and returned, or even if stated otherwise in the PO Terms. The PO Terms are expressly unenforceable and of no effect under this Agreement, unless contained in an amendment to this Agreement signed by the Parties.

10.3 **Notice.** All notices or approvals required under this Agreement will be in writing and delivered by email transmission to Poka at legal@poka.io and to Client at the coordinates set forth in the Software Services by Client. For notices, the date of receipt of the email notice will be deemed to be the date on which such email notice is transmitted.

10.4 **Governing law and jurisdiction.** This Agreement shall be exclusively governed by laws of the Province of Quebec, Canada (and all federal laws applicable therein). The Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Quebec district of Quebec in respect of all matters and disputes arising hereunder. Les parties ont spécifiquement exigé que cette entente et la documentation qui s'y rapport soit rédigées en anglais.

10.5 **Assignment and Delegation.** This Agreement shall be binding upon and shall ensure to the benefit of and be enforceable by each of the Parties, their respective successors and permitted assigns. Client may not assign all or any part of this Agreement without the prior written consent of Poka, which consent will not be unreasonably withheld, except to an Affiliate which agrees in writing to be bound by the terms of this Agreement. Where Client's business undergoes a change of control through the purchase by a third party of a substantial part of Client's assets for which the Software Services were provided, the third party acquirer of such assets shall be required to separately enter into an agreement with Poka for the Software Services, and Poka may invoice Client and/or such third party acquirer for the migration and separation of Client Data, as agreed upon. Poka may assign this Agreement without the consent of Client at any time. Poka may subcontract the performance of its obligations hereunder to any person without the prior written consent of Client.

10.6 **Independent Contractor.** It is expressly understood and agreed that each party shall be acting as an independent contractor in performing its obligations hereunder and shall not be considered or deemed to be an agent, employee, joint venture or partner of the other party. Nothing in this Agreement shall prevent Poka from providing any services to any third party.

10.7 **Waiver and Remedies.** No delay or omission by a party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of the other party to be performed in a timely and complete manner shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

10.8 **Force Majeure.** Neither party shall be liable for delays in or for failures to perform hereunder due to causes beyond reasonable control, including acts of God, Tablets or service failures, Internet or telecommunications outages, acts of civil or military authorities, fire, strikes, power surges or outages, epidemics, flood, earthquakes, riot, or war ("Force Majeure Event"). Each party shall use commercially reasonable efforts to provide the other party with notice of any such events. If Poka is unable to perform for a period of more than 30 days due to any such delay, Client may terminate this Agreement without liability to Poka (other than fees and charges payable through the effective date of the Force Majeure Event).

10.9 **Counterparts.** This Agreement may be executed in one or more counterparts, including by email, each of which when executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.

10.10 **Survival.** The provisions of this Agreement required to give effect to the intention of the parties or that by definition are intended to survive the termination of this Agreement shall continue in effect and be binding upon the parties notwithstanding its termination.

10.11 **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties, and nothing in this Agreement will be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.