

Last Update: August 18, 2025.

MASTER SAAS AGREEMENT (MSA)

BY ACCEPTING THIS AGREEMENT, BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, OR BY USING OR ACCESSING ANY OF THE SERVICES, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

This Master SaaS Agreement (the “**Agreement**”) is between Poka (as defined under the “Contracting Entity” Section below) and the entity or person placing an Order for, or accessing and using, the Services (“**Customer**”; each a “**Party**” and together the “**Parties**”). Capitalized terms in this Agreement have the meanings given in the text or in **Exhibit A**.

The Agreement is effective between Customer and Poka as of the date of your acceptance of its terms (the “**Effective Date**”).

If you are a direct competitor of Poka, or if you offer or intend to offer products or services to the general public substantially similar to the Services, you are prohibited from accessing the Services without Poka's prior express consent. Further, you may not access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

1. OVERVIEW

- 1.1. **Scope.** The terms of this Agreement apply to Customer's Orders and govern Customer's purchase and use of the Services and, as applicable, Customer's registration or participation in the Evaluation Suite. If Customer elects to purchase any specific features, services, or capabilities (“**Optional Features**”) that are not included in the general offering of the Software Services, such Optional Features may be subject to additional terms and/or, as applicable, the Product Terms. If Customer elects to purchase any Professional Services, such Professional Services will be governed by the terms of a *Statement of Work* (“**SOW**”).
- 1.2. **Benefit.** The benefit of this Agreement can extend to Customer's Affiliates by i) Customer distributing the accesses to the Software Services to its Affiliates; or ii) Customer's Affiliates entering into Orders with Poka directly. In either case, Customer will remain jointly and severally liable for any actions, omissions or breaches of this Agreement by its Affiliates.
- 1.3. **Compliance with the Agreement.** Customer is responsible for ensuring that all its Affiliates and Authorized Users comply with this Agreement and the Laws. Any breach or failure by an Affiliate or Authorized User will be deemed a breach or failure by the Customer. If a Customer's Affiliate enters into an Order directly with Poka, that Affiliate will be considered the 'Customer' for all purposes of this Agreement.

2. ACCESS AND USE

- 2.1. **Provision of access.** Subject to this Agreement, conditioned on Customer's payment of Fees and during the applicable Term, Poka grants Customer a non-exclusive, non-sublicensable, non-transferable (except as authorized under this Agreement) right for Authorized Users to access and use the Software Services, Content and related Documentation for its internal business purposes.
- 2.2. **Subscription; Service changes.** Customer acknowledges that the Software Services are provided as an online, hosted subscription service. Access to applicable Content may be purchased as subscriptions for the Term (defined below). Customer is not entitled to access or obtain a copy of the underlying computer code for the Software Services, nor is any ownership interest transferred, regardless of any references to "purchase" or "sale". As part of its ongoing commitment to innovation and service enhancement, Poka reserves the right to update, modify, enhance, improve, replace, or discontinue any feature, functionality, or service offering of the Software Services, Content, related Documentation and any Poka Materials from time to time. Poka will deploy reasonable efforts to provide prior notice to Customer of material changes or the removal of substantial features. Continued use of the Software Services after such modifications shall constitute acceptance of the modified Software Services. Customer further agrees that its purchases are not contingent upon receiving any future functionality or features, nor are they based on any public, oral or written, statements by Poka regarding the availability of such functionality or features.
- 2.3. **Use Restrictions.** Except to the extent otherwise expressly permitted by this Agreement, Customer must not (and must not permit any third party to), directly or indirectly: (a) rent, lease, sell, reproduce, modify, adapt, create derivative works of, distribute, sublicense, transfer, or provide access to the Software Services to any third party or otherwise use the Software Services to provide service bureau, timesharing services, or shared processing services; (b) charge its own customers a specific fee for use of the Software Services, but Customer may charge an overall fee for its own offerings (of which the Software Services are ancillary); (c) publicly disseminate information regarding the performance of the Software Services; (d) reverse engineer, decompile, disassemble, translate, or seek to obtain, access or derive the source code, non-public APIs to the Software Services, underlying ideas, algorithms, files formats; (e) interfere with any license key mechanism in the Software Services or otherwise circumvent mechanisms in the Software Services intended to protect it, limit its use or maintain the Scope of Use restrictions, (f) remove, obscure or modify in any way any proprietary or other notices or attributions in the Software Services; (g) use the Software Services: (1) for any fraudulent or unlawful purpose, (2) in violation of any Laws, or a third party's proprietary or contractual rights, (3) to build any products or services that are competitive to the Software Services, (4) from any sanctioned, embargoed, prohibited, or unauthorized country where Poka cannot provide or is prohibited from providing access, (5) in a way that circumvents the Scope of Use, or (6) for any system or application in which the failure of the Software Services could create a risk of personal injury or death, such as medical systems, life sustaining or life-saving systems, transportation systems, or nuclear systems, or (7) in any way that otherwise violates the use restrictions in this Agreement, the Documentation or the

Acceptable Use Policy. The above restrictions are material to this Agreement and Customer's failure to comply with any of them, in Poka's reasonable opinion, will constitute sufficient cause for termination of the Agreement and related Orders.

- 2.4. **Scope of Use.** Customer is responsible for ensuring its use of the Software Services remains within the Scope of Use set forth in the applicable Order. Poka reserves the right to audit or monitor such use. If Customer exceeds the Scope of Use, Poka reserves the right to, without limiting its other rights and remedies: i) suspend access the Software Services for unauthorized users as provided under the "Suspension" Section; and ii) invoice Customer for the increased or upgraded Scope of Use (past or ongoing) at Poka's then-current list price, and Customer hereby agrees to pay such invoice in accordance with the "*Fees and Payment*" Section.

3. AUTHORIZED USERS

- 3.1. **Responsibility for Authorized Users.** Customer may authorize Authorized Users to access and use the Software Services, in accordance with the Documentation and Customer's Scope of Use. Customer is responsible for all actions or omissions of its Authorized Users, including any instructions given, any features activated, any Third Party-Products enabled, and more generally how Authorized Users access and use Customer Data.
- 3.2. **Credentials.** Customer shall implement all necessary physical, organizational, and technical measures to (a) securely manage credentials and prevent unauthorized access to the Software Services, and (b) control the type and use of Customer Data, including its processing by the Software Services. Customer is responsible for all actions taken using Authorized Users' credentials, Account, and passwords, and Customer shall promptly notify Poka of any unauthorized access or use of the Software Services. Poka will not be liable for any Security Incident resulting from Customer's failure to adequately protect credentials.

4. CUSTOMER DATA

- 4.1. **Ownership & Responsibility.** As between the Parties, Customer retains all right, title and interest in and to the Customer Data. Subject to the terms of this Agreement, Customer hereby grants to Poka and its Affiliates a non-exclusive, worldwide, royalty-free license (with the right to sublicense to its authorized service providers) to use, copy, store, transmit, distribute, display, modify and create derivatives works of Customer Data during the applicable Term, as necessary to provide, operate, maintain, support and improve the Software Services, including as described in the Documentation. Customer is responsible for the means by which Customer acquired Customer Data and Customer's use of Customer Data within the Software Services.
- 4.2. **Security.** Customer Data will be protected by the industry standard measures and procedures set out in the Security Exhibit. Poka will improve its security measures and procedures from time to time to reflect process improvements and changing industry practices, provided that no such change will materially reduce the overall security of the Software Services as of the Effective Date. Customer shall not, without Poka's prior written consent (not to be unreasonably withheld): (i) conduct or authorize any security testing of the Software Services, including but not limited to

penetration testing, vulnerability assessments, load testing, or performance testing; or (ii) use any automated tools (including bots, scripts, or other software emulating human behavior) in connection with the Software Services.

- 4.3. **Data Restrictions.** Customer is responsible for ensuring that its use of the Software Services complies with all Laws at all times and does not infringe upon any third-party rights. Customer further agrees not to submit to the Software Services any (i) protected health information, including as regulated by the *Health Insurance Portability and Accountability Act* (as same can be amended, “**HIPAA**”); or; (ii) sensitive data, including, without limitation, “special categories” as defined under applicable privacy Laws.
- 4.4. **Privacy.** To the extent applicable under data protection Laws, Customer Data will be processed by Poka in accordance with Poka’s standard DPA.
- 4.5. **Performance Data.** Poka may collect and use Performance Data for internal business purposes, including developing, improving and supporting the functionality and operation of the Services.

5. SERVICE LEVELS.

- 5.1. Service level commitments and Support Services are described and outlined in the SLA. Poka may update the SLA periodically to reflect process improvements and industry practices, provided such changes do not materially reduce the Support Services initially purchased by the Customer.

6. EVALUATION SUITE.

- 6.1. Customer may receive access, at its own option and discretion, to certain services or features in the Evaluation Suite on a free, fully discounted, or trial basis. Use and access to the Evaluation Suite is subject to this Section and may be subject to any additional terms specified by Poka. At any time and at its sole discretion, Poka may modify or terminate Customer’s use of the Evaluation Suite, or elect to discontinue or never to release the Evaluation Suite into general availability, without any liability to Customer. Customer agrees to cease all access and use of the Evaluation Suite at the end of any agreed upon period. Customer acknowledges and agrees that i) any data entered into the Evaluation Suite, and any configuration or customization made to the Evaluation Suite may be permanently lost; ii) the Evaluation Suite may be inoperable, incomplete or include errors and bugs; iii) the features and performance information of the Evaluation Suite are Poka’s Confidential Information. Customer further acknowledges that the Evaluation Suite is provided on an as-is and as-available basis. Notwithstanding anything else in this Agreement, and to the maximum extent permitted by Laws, Poka provides no warranty, indemnity, SLA or Support Services, and assumes no liability, for the Evaluation Suite. Customer shall review the applicable Services’ Documentation during the trial period to become familiar with the features and functions of the Services before proceeding with a purchase.

7. FEES AND PAYMENT; TAXES; PAYMENT DISPUTES

- 7.1. **Fees and Payment.** All Fees (including the applicable currency) and payment terms are as set forth in the applicable Order. Except as expressly set forth in the Order, all payment obligations are non-cancelable and Fees are non-refundable and non-creditable.
- 7.2. **Purchase Order.** If Customer requires invoices to include a purchase order (“PO”) number for administrative convenience, Customer must i) provide such a PO or its number to Poka before the applicable Order’s Term begins; ii) ensure such a PO covers the total Fees due under the Order.
- 7.3. **Invoicing and Payment.** Poka will invoice Customer using the shipping contact information set forth in the applicable Order. In the event Customer prefers to use its own billing platform for invoicing and payment hereunder, the Parties will reasonably work together to facilitate the same, provided that such platform is: (i) able to accommodate the services payable hereunder; and (ii) operational without or with reasonable costs to Poka (i.e., use of such platform is either without unreasonable out-of-pocket cost to Poka, including for any related set-up fees, or Customer promptly reimburses such fees or otherwise credits Poka for any such additional costs or fees).
- 7.4. **Late Payment & Payment Dispute.** If any invoiced amount remains unpaid past its due date as set forth in the Order, Poka may, without limiting its other rights and remedies, charge interest at 1% per month (12% per annum) or the maximum rate permitted by Laws, whichever is lower. If payment under a valid invoice is overdue and Poka has given the Customer at least ten (10) business days’ prior written notice, Poka may suspend Customer’s access to the Software Services until payment is received. Poka will not exercise the rights under this Section if Customer is reasonably disputing the Fees in good faith and cooperating diligently to resolve the issue.
- 7.5. **Increases.** Customer may increase its Scope of Use by placing a new Order or modifying by mutual agreement with Poka an existing Order. Unless otherwise specified in the applicable Order, Poka will charge Customer for any increased Scope of Use at Poka’s then-current rates, prorated for the remainder of the then-current Term.
- 7.6. **Taxes.** Fees are exclusive of any sales, use, GST, value-added, withholding or similar taxes or levies (“Taxes”) that apply to Customer’s Orders. Other than taxes on Poka’s net income, Customer is responsible for any other Taxes and must pay those Taxes, which Poka will itemize separately, in accordance with an applicable invoice. To the extent Customer is required to withhold tax from payment to Poka in certain jurisdictions, Customer must provide valid documentation it receives from the taxing authority in such jurisdictions confirming remittance of withholding. This documentation must be provided at the time of payment of the applicable invoice to Poka. If Customer claims exemption from any Taxes under this Agreement, Customer must provide Poka with a valid tax exemption certificate, tax ID or relevant tax information at the time of Order or when providing the PO, and after receipt of valid evidence of exemption, Poka will not include applicable Taxes on the relevant Customer invoice.

8. PROPRIETARY RIGHTS AND LICENSES.

- 8.1. **Reservation of rights.** Customer agrees that Poka and its licensors retain all right, know-how, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Poka Materials. Except for the express limited rights set forth in this Agreement, no right, title or interest in any Poka Materials is granted to Customer.
- 8.2. **Feedback.** Customer grants to Poka and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and incorporate into its Services any suggestions, enhancement requests, recommendations, corrections or other feedback provided by Customer or Authorized Users relating to the operation of the Services. Poka may, in connection with the performance and improvement of the Services, communicate directly with Authorized Users (e.g., via email or in-app messaging) for the purposes of collecting feedback, conducting surveys, or providing operational notices.

9. CONFIDENTIALITY.

- 9.1. **Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Poka includes the Services and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidential Information” Section apply to Confidential Information exchanged between the Parties in connection with the evaluation of additional Poka services including, without limitation, any information exchanged in connection with a Request for Proposal (“RFP”) process.
- 9.2. **Exclusions.** Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 9.3. **Protection of Confidential Information.** As between the Parties, each Party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but not less than reasonable care. The Receiving Party further agrees to: (i) not use any Confidential Information for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized in writing by the Disclosing Party, limit access to Confidential Information to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective than those herein.

- 9.4. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information to the extent compelled by Laws to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the validity of the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

10. TERM AND TERMINATION

- 10.1. **Term.** This Agreement commences on the Effective Date and will remain in effect until terminated in accordance with its terms. If there is no Order currently in effect, either Party may immediately terminate this Agreement upon written notice to the other Party. Such termination shall not affect any rights or obligations that have accrued prior to the effective date of termination.
- 10.2. **Term of Orders.** The term of each Software Services and Customer Success Services (and related services) subscription will be specified in each Order ("**Term**"). Each Order will terminate upon expiration of the applicable Term. Except as otherwise specified in an Order, upon expiry of the Term, Customer's subscription to the Software Services and Customer Success Services will automatically renew for successive terms equal in duration to Customer's then-current Term and at Poka's applicable list price in effect at the time of the applicable renewal. Poka will contact Customer before any automatic renewal, thereby allowing Customer to opt-out by sending a written notification to that effect to finances@poka.io at least thirty (30) business days before the expiration of Customer's then-current Term. If no such notice is received by Poka, then Customer's Term will be deemed to have been automatically renewed in accordance with this Section. The Term may also be renewed by entering into an Order, including if Customer wishes to increase its allocated Scope of Use.
- 10.3. **Termination.** A Party may terminate this Agreement and the applicable Order for cause (i) upon 30 days written notice to the other party of a material breach if such breach remain incurred at the expiration of such period; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding in relation to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 10.4. **Suspension.** Poka reserves the right to suspend, or otherwise restrict access, to the Software Services or Poka Materials for the Customer or any Authorized User, without incurring liability, if Poka determines in good faith and at its sole discretion that: (i) Customer or any Authorized User has materially violated any provision of this Agreement; (ii) Customer has exceeded the agreed Scope of Use after being notified as set forth under the "Scope of Use" Section; (iii) this Agreement or the applicable Order has expired or been terminated; (iv) a Security Incident happened. Before taking such action, Poka will notify the Customer and provide a reasonable opportunity to remedy the situation, except in emergency situations (eg. a Security Incident)

where the security, confidentiality, integrity, or availability of the Software Services, Customer Data or other users may be compromised. This Section does not limit Poka's other rights or remedies available under law, equity, or this Agreement.

- 10.5. **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, except as provided under the "Customer Data Retrieval" Section, Customer and its Authorized Users will no longer have any right to access or use the Services, Content, or any Poka Materials, including any Confidential Information. Customer shall delete any of the foregoing from its systems (including any third-party systems operated on Customer's behalf) and, upon request, provide Poka with written confirmation of such deletion.
- 10.6. **Customer Data Retrieval.** Customer may retrieve its Customer Data in its original format, where applicable, using the industry-standard Poka API at any time during the Term. Upon termination or expiration of this Agreement, Poka will provide Customer with limited access to the Software Services for a period of sixty (60) days solely for the purpose of retrieving its Customer Data (the "**Retrieval Period**"). It is Customer's responsibility to obtain their Customer Data within the Retrieval Period. After the Retrieval Period, Poka shall have no obligation to store or maintain Customer Data and may permanently delete all such data from Poka Systems. Any data extraction assistance or transition services requested by Customer shall be provided at Poka's then-current rates and subject to a separate written agreement.
- 10.7. **Survival.** All provisions herein that, by their very nature, shall survive any termination or expiration of this Agreement will survive. Except where an exclusive remedy may be specified in this Agreement, the exercise by either Party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by Law, or otherwise.

11. REPRESENTATIONS & WARRANTIES; DISCLAIMER

- 11.1. **Mutual Representation.** Each Party represents and warrants that it has the legal authority to enter into this Agreement and that an authorized agent has executed this Agreement and will execute each Order on its behalf.
- 11.2. **Performance Warranty.** Poka warrants that: (i) the Software Services will substantially conform to the applicable Documentation; (ii) except as provided in the Agreement, their functionality and security will not materially decrease during the Term; (iii) the Professional Services will be performed in a professional and workmanlike manner, in substantial accordance with the applicable SOW; (iv) the Support Services will adhere to industry standards; and (v) Poka will use reasonable efforts to ensure the Software Services are free of Malicious Code (collectively, the "Performance Warranties"). If Poka breaches a Performance Warranty, Customer's sole remedy is for Poka to correct the issue. If Poka fails to do so within a commercially reasonable timeframe, Customer may terminate the affected Order and receive a refund of prepaid, unused Fees for the terminated portion of the Term.

- 11.3. **Disclaimer.** Except as expressly set forth in this Agreement, the Services and Content are provided “as is” and Poka makes no other warranties, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular purpose, title or non-infringement. Poka does not warrant that Customer’s use of the Services will be secure, timely, uninterrupted or error-free, nor does Poka warrant that it will review Customer Data or Content for legality, integrity, accuracy, quality or reliability. Poka is not liable for delays, failures or problems inherent in use of the internet and electronic communications or other systems outside Poka’s control. The Performance Warranties will not apply if the error or non-conformance was caused by: (i) Customer’s use or configuration of the Services, other than as recommended in the Documentation; (ii) modifications made to the Services by or on behalf of Customer; (iii) Third-Party Products or the interoperability or compatibility of the Services with any Third-Party Products; or (iv) any Customer Systems. For Professional Services, Section 11.2 (iii) of the Performance warranties will not apply unless Customer provides written notice of a claim within thirty (30) days after expiration of the applicable SOW.

12. INDEMNIFICATION

- 12.1. **Customer Indemnification.** Poka will defend Customer against any claim by a third party alleging that the Software Services, when used in accordance with this Agreement, infringes any intellectual property right of such third party and will indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by Poka (including reasonable attorneys’ fees) resulting from such claim. If Customer’s use of the Services results (or in Poka’s opinion is likely to result) in an infringement claim, Poka may either: (a) substitute functionally similar products or services; (b) procure for Customer the right to continue using the Software Services; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement, or the applicable portion of the Order, and refund to Customer any prepaid unused Fees for the applicable Services. The foregoing indemnification obligation of Poka will not apply to the extent the applicable claim is attributable to: (i) the modification of the Software Services by any party other than Poka or based on Customer’s specifications or requirements; (ii) the combination of the Software Services with Third-Party products or any products not provided by Poka; (iii) any use of the Software Services in non-conformance with this Agreement; or (iv) any action arising as a result of Customer Data, or any deliverables or components not provided by Poka. This Section sets forth Customer’s sole remedy with respect to any claim of intellectual property infringement.
- 12.2. **Poka Indemnification.** Customer will defend Poka against any claim by a third party arising from or relating to Customer’s use of the Software Services, or any Customer Data, any Customer Systems or any Third-Party Products (or any products not provided by Poka) used in connection with the Services and will indemnify and hold harmless Poka from and against any damages and costs awarded against Poka or agreed in settlement by Customer (including reasonable attorneys’ fees) resulting from such claim.
- 12.3. **Indemnification Procedure.** Either Party’s indemnification obligations are subject to the other Party receiving (i) prompt written notice of the claim (but in any event notice in sufficient time or

the indemnifying Party to respond without prejudice); (ii) the exclusive right for the Indemnifying Party to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of the indemnified Party at its expense. The indemnifying Party may not, except with prior written consent of the indemnified Party, enter into any settlement of an indemnified Claim that imposes a direct financial liability on the indemnified Party or includes an admission of fault by the indemnified Party.

13. LIMITATION OF LIABILITY

13.1. **Exclusions.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, REPUTATIONAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

13.2. **Limitations.** EXCEPT FOR EXCLUDED CLAIMS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR THE SOFTWARE SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

14. FORCE MAJEURE

14.1. Neither Party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure results from any cause beyond such party's reasonable control, including but not limited to acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, public health emergencies (including pandemics and epidemics), acts or orders of government, acts of terrorism, or war.

15. GENERAL

15.1. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral

agreements and communications relating to the subject matter of this Agreement.

- 15.2. **Relationship of the Parties.** The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent. Neither Party's employees are eligible for any form or type of benefits, including, but not limited to, health, life or disability insurance, offered by the other Party to its employees.
- 15.3. **Export Control.** Each Party agrees to comply with all export and import laws and regulations, including without limitation, those of the United States and Canada, applicable to such Party in connection with its respective provision or use of the Services under this Agreement. Without limiting the foregoing, Customer represents and warrants that it: (a) is not listed on, or majority-owned by any entity listed on, any U.S. government list of prohibited or restricted parties; (b) is not located in (or a national of) a country that either is subject to a U.S. government embargo or has been designated by the U.S. government as a "state sponsor of terrorism"; (c) will not (and will not permit any third parties to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction; and (d) will not submit to the Services any information that is controlled under the *U.S. International Traffic in Arms Regulations* (ITAR).
- 15.4. **No Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement, except to the extent expressly stated in this Agreement.
- 15.5. **Contracting Entity; Governing Laws; Forum.** The governing laws, exclusive jurisdiction, and notice address for this Agreement depend on the Poka contracting entity specified in the applicable Order. This Agreement will be governed by the applicable law below, without regard to choice of law or conflict of law rules; the Parties consent to personal jurisdiction and venue accordingly. The Agreement is not governed by the *United Nations Convention on Contracts for the International Sale of Goods* or the *Uniform Computer Information Transactions Act (UCITA)*.

Contracting Entity	Address for notices	Governing Laws	Courts with exclusive jurisdiction
Poka Inc.	214 Saint-Sacrement Avenue, #130 Quebec City, Quebec G1N 3X6 Canada Attn: Legal Department	Quebec and controlling Canadian federal law	District of Quebec city, Quebec

Poka US Inc.	251, Little Falls Drive, Wilmington, DE, 19808 Attn: Legal Department	California and controlling United States federal law	San Mateo County, California
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- 15.6. **Notices.** Except as otherwise specified in this Agreement, all notices required or permitted to be given pursuant to this Agreement shall be in writing and will be considered properly given if mailed first class mail, sent by a recognized courier service or emailed in accordance with this Section. If sent to Customer, notices will be to the attention of “Legal” at Customer’s mailing or email address indicated in the Order. If sent to Poka, notices will be to the attention of “Legal” at the applicable address indicated in the “Contracting Entity” Section, with a copy to legal@poka.io. Poka may also provide notices and communications to Customer through its Account in the Software Services.
- 15.7. **Updates to this Agreement.** From time to time, Poka may modify this Agreement. Unless specified by Poka, updates become effective for Customer upon renewal of the then-current Term or upon the effective date of a new Order. Poka will notify Customer of material changes through notices in the Account, by email or other means. In any event, continued use of the Software Services after the updated version comes into effect constitutes Customer’s acceptance of the updated version.
- 15.8. **Reference.** Customer grants Poka a non-exclusive, non-transferable, royalty-free, worldwide license to use Customer’s trade name and logo (“Licensed Marks”) for the limited purpose of identifying Customer as a customer in promotional materials, including on Poka’s website and in marketing activities. Poka may use the Licensed Marks as provided directly by Customer or as publicly available on Customer’s website. Customer may, at any time, provide or update brand guidelines, request modifications to how its Licensed Marks are used, or request Poka to cease using its Licensed Marks by sending an email to marketing@poka.io. To the extent commercially feasible, Poka will promptly comply with such requests.
- 15.9. **Advocacy.** Customer agrees to collaborate with Poka to organize and host, once per year (subject to availability), a panel discussion and factory tour for non-competing manufacturing leaders (the “Event”). The Event will highlight the benefits and impact of using the Software Services.
- 15.10. **Assignment.** Customer may not assign or otherwise transfer any of its rights or delegate or otherwise transfer any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Poka, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment, transfer, or delegation in violation of this Section will be null and void. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement

is binding upon and inures to the benefit of the Parties and their respective permitted successors
and assigns.

- 15.11. **Waiver.** No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the Party claimed to have waived. No terms or conditions stated in a Customer purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Orders) shall be incorporated into or form any part of this Agreement or the Order, and all such terms or conditions shall be null and void, notwithstanding any language to the contrary therein, whether signed before or after this Agreement.
- 15.12. **Jurisdiction-specific (Quebec).** For customers located in the Province of Quebec, the Parties expressly agree that Article 2125 of the *Civil Code of Québec* shall not apply to this Agreement. Accordingly, neither Party may unilaterally terminate this Agreement or any Order prior to the end of their term, except in accordance with the terms of this Agreement. Each Party confirms having read and understood the legal implications of this clause, and agrees to it freely, having had the opportunity to consult with legal counsel.
- 15.13. **Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect. Section headings are inserted for convenience only and shall not affect interpretation of this Agreement. Except for the Acceptable Use Policy, the DPA, the Product Terms, the Security Exhibit and the SLA, each of which shall govern solely with respect to the subject matter therein, this Agreement governs and controls in the event of a conflict with any other ancillary documents or provisions applicable to the Services unless otherwise expressly agreed in writing by the parties.
- 15.14. **Dispute Resolution and Arbitration.** In the event of any controversy or claim arising out of or relating to this Agreement, the Parties shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. If the Parties do not reach settlement within a period of sixty (60) days of either Party sending written notice of a dispute or controversy, any unresolved controversy or claim arising out of or relating to this Agreement shall proceed to binding arbitration under the *Rules of Arbitration of the International Chamber of Commerce*. The Parties will appoint a single arbitrator. Arbitration will take place in the city where the courts have jurisdiction according to the “*Contracting Entity*” Section. All negotiations and arbitration proceedings pursuant to this Section will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.
- 15.15. **Execution; Counterparts.** The Parties may execute any documents hereunder in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement. The Parties will be bound by signatures made by hand or electronic means,

which may be transmitted to the other Party by mail, hand delivery, email and/or any electronic method and will have the same binding effect as any original ink signature.

- 15.16. **Injunctive Relief.** Nothing in this Agreement shall prevent either Party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

**EXHIBIT A
DEFINITIONS**

- 1.1.** “Acceptable Use Policy” means Poka’s policy relating to the permitted and prohibited uses of the Software Services, made available at https://artifacts.poka.io/Acceptable_Use_IT_and_Networks_Requirements_Policy_EN.pdf (or a successor URL designated by Poka).
- 1.2.** “Account” means Customer’s administrative account(s) for accessing and managing the Software Services, including the ability to configure settings, manage Authorized Users, and oversee account permissions.
- 1.3.** “Affiliate” means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with a party; where “ownership” means the beneficial ownership of more than fifty percent (50%) of an entity’s voting equity securities or other equivalent voting interests and “control” means the power to direct the management or affairs of an entity.
- 1.4.** “Authorized Users” means Customer’s and its Affiliates’ employees, consultants, contractors, and agents (including, without limitation, automated processes, scripts, integrations, or API keys provisioned by or on behalf of Customer) (a) who are authorized by Customer to access and use the Software Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Software Services has been purchased under an Order.
- 1.5.** “Content” means any information delivered to Customer by Poka through the Software Services that is either created by Poka, sourced from publicly available sources, or supplied by Poka’s third-party content providers.
- 1.6.** “Customer Data” means a) any data provided by Customer or its Authorized Users to Poka in connection with the use of the Software Services, b) any data generated through the use of the Software Services by Authorized Users, c) any data derived by Poka from the data described in (a) and (b), excluding Performance Data and Content.
- 1.7.** “Customer Success Services” means the support, guidance, training, and advisory services provided by Poka to assist the Customer in maximizing the value of the Software Services, as further detailed in an applicable Order.
- 1.8.** “Customer Systems” means the information technology infrastructure owned, operated, leased, or controlled by Customer, including but not limited to hardware, software, networks, databases, servers, devices, and any other technology resources, whether on-premises or cloud-based, that interact with, connect to, or are used in conjunction with the Services.
- 1.9.** “Documentation” means the technical documentation and specifications, usage guides and instructions for operations applicable to the Software Services, made available when logged into the Account.

- 1.10.** “DPA” means Poka’s standard Data Processing Addendum, which sets forth the terms governing the processing of personal data by Poka on behalf of Customer in connection with the Software Services, available at: https://artifacts.poka.io/Poka_Data_Processing_Addendum.pdf (or a successor URL designated by Poka).
- 1.11.** “Evaluation Suite” means Poka services or features that may be made available to Customer for evaluation and testing purposes, which may include beta products, pilots, proofs of concept (POC) or value (POV), non-production or evaluation instances, or any other similar description.
- 1.12.** “Excluded Claims” means obligations and claims based on: (a) a party’s breach of its obligations in **Section 9** (Confidentiality); (b) either party’s express obligations under **Section 12** (Indemnification); and/or (c) liability which, by law, cannot be limited (e.g., tort claims for gross negligence and intentional misconduct).
- 1.13.** “Fees” means the fees payable by Customer to Poka for the applicable Services, as set forth in the relevant Order.
- 1.14.** “Laws” means any applicable local, state, provincial, federal and international laws and regulations, including privacy laws and associated regulations;
- 1.15.** “Malicious Code” means code, files, scripts, agents or programs intended to do harm, such as viruses, worms, time bombs and Trojan horses.
- 1.16.** “Orders” means an ordering document that is mutually agreed between Customer and Poka, specifying the Services and Scope of Use. Each Order is subject to and forms part of this Agreement.
- 1.17.** “Performance Data” means aggregated and anonymized data relating to Customer’s use of the Software Services.
- 1.18.** “Poka Materials” means the Services (including their “look and feel”), Documentation, Content, Poka Systems and any and all other information, data (including Performance Data), documents, materials, works and other content, devices, methods, processes, hardware, software, and other related or underlying technologies, and inventions, including any deliverables, modifications, derivative work, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Poka in connection with the Services or otherwise comprise or relate to the Services or Poka Systems. For the avoidance of doubt, Poka Materials do not include Customer Data.
- 1.19.** “Poka Systems” means the information technology infrastructure used by or on behalf of Poka in performing the Software Services, including but not limited to all hardware, software, networks, databases, servers, devices, and any other technology resources, including the cloud-based infrastructure provided by third-parties (e.g. AWS) that are integral to the operation, management, and delivery of the Software Services.
- 1.20.** “Product Terms” means product-specific terms that apply only to certain features, add-ons, capabilities, services or products, available at https://artifacts.poka.io/Product_Terms_EN.pdf (or a

successor URL designated by Poka). For greater clarity, the Product Terms are incorporated into and form an integral part of this Agreement.

- 1.21.** “Professional Services” means any consulting, implementation, training, configuration, optimization, customization, integration, data migration, or other related services provided by Poka to the Customer under this Agreement, as further detailed in an applicable SOW.
- 1.22.** “Scope of Use” means Customer’s entitlements, permitted use, limitations and restrictions for the Services specified in the Order and further described in the Documentation, which may include number of Authorized Users, number of credits, instances, or other restrictions and billable units.
- 1.23.** “Security Exhibit” means the exhibit detailing the technical and organizational security measures applicable to the Software Services, which can be made available to Customer upon request.
- 1.24.** “Security Incident” means any unauthorized or unlawful access to, use, disclosure, alteration, destruction, loss, theft, or any compromise of the security, confidentiality, integrity or availability, of Customer Data.
- 1.25.** “Services” means the Software Services, the Professional Services, the Support Services, and the Customer Success Services, as applicable.
- 1.26.** “SLA” means the service level commitments as well as the Support Services applicable to the Software Services, as detailed in the applicable Order.
- 1.27.** “Software Services” means the generally available software-as-a-service offering hosted on behalf of Poka and ordered by or for Customer to make available to Authorized Users, as set forth in an Order.
- 1.28.** “Support Services” means Poka’s maintenance and support operations for the Software Services, including updates and bug fixes, as more fully described in the SLA.
- 1.29.** “Third-Party Products” means any third-party applications, services, software, hardware, platforms, integrations, or other products that are used by Customer in connection with the Software Services but are not provided, controlled, or directly supported by Poka.