



POKESHOT
PEOPLE SOLUTIONS PERFORMANCE

MASTER SERVICE AGREEMENT

This Master Services Agreement ("MSA") constitutes a written contract between Pokeshot GmbH ("Pokeshot" "we" "us" and "our"), and You ("Customer" "you" "your"). By signing an Order Form (which may set forth pricing and other relevant terms) or by providing a credit card, you have agreed to be bound by all the terms and conditions of this MSA and any other terms set forth in the Order Form or reflected on any web-based form that you filled out in connection with the creation of your account (in each case, a "Specific Terms Schedule"), each of which is hereby made a part of this MSA. Pokeshot and Customer shall be individually referred to herein as "Party" and collectively as "Parties."



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1. DEFINITIONS

“Administrator” shall mean the individual identified on the Order Form as the Learning Environment Administrator and any other individuals designated as Administrators by an authorized customer representative.

“Affiliate” shall mean any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Authorized User” shall mean any employees, affiliates, agents, independent contractors or consultants of Customer’s who have email addresses in Customer Learning Environment and are authorized or permitted by Customer to access and use the Services pursuant to the Agreement and such individuals as are invited by Company to be part of Customer’s External Learning Environment.

“Customer’s Data” means any text, images, data or other content transmitted by Customer or your Authorized Users to Pokeshot in connection with Customer’s and/or Customer’s Authorized Users’ use of the Services.

“Customer Interface” means the web-based interface and APIs hosted by Pokeshot by which Customer and your Authorized Users may access the Services and/or any downloadable desktop or mobile device application provided by Pokeshot.

“Customer Learning Environment” shall mean Customer’s Social Business environment (1 production, 1 test) like Jive, O365, or others set forth on the Order Form and/or the “External Network” Customer set up, wherein “Authorized Users” shall be only such individuals as are invited by Customer to be part of the External Learning Environment.

“Enhancement” means any correction, modification, customization, revision, enhancement, improvement, update, upgrade, new release or other change that is released generally by Pokeshot for similarly situated customers of the Services.

“Order Form” means the documents for placing orders, including addenda, that are entered into between Customer and Pokeshot from time to time. By entering into an Order Form, Customer agrees to be bound by the terms of this Agreement. Order Forms shall be deemed incorporated herein by reference.

“Renewal Term” means each subsequent additional Term after the Initial Term.

“Service Level Agreement” means Pokeshot’s commitments for the performance and availability of the Services and applicable remedies, as set forth in the attached Schedule1.

“Services” means the management of an intra-company communication system using Software run on Pokeshot’s hosting servers or those of Pokeshot’s hosting service provider(s) intended to enable Customer and Customer’s Authorized Users to interact with the same via the worldwide web as such Services may be revised as provided herein.

“Software” means the software application(s) used by Pokeshot to provide the Services and any Enhancements thereto made available by Pokeshot to Customer and your Authorized Users from time to time, including any desktop or mobile device application provided to Authorized Users by Pokeshot to facilitate Pokeshot’s provision of the Services. Pokeshot shall not be obligated to provide Enhancements that include new features or functionality for which Pokeshot generally charges a separate fee.

“Term” means the Initial Term and any applicable Renewal Terms.

“User Identification” means the unique user identification name and password issued or otherwise assigned by Customer to each Authorized User for access to and use of the Services through the Customer Interface.

“Pokeshot Technology” means the Software and any know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, user manuals, online documentation, products or other technology and materials of any kind, or any Enhancement thereto, used by Pokeshot in connection with the performance of the Services or made available by Pokeshot to Customer, any Authorized User or any third party.

2. THE SERVICES

2.1 Services

Subject to the terms and conditions of this Agreement, Pokeshot will perform the Services on behalf of Customer and your Authorized Users during the Term according to the Service Level Agreement. Promptly after the Effective Date set forth on the Order Form, Pokeshot will send instructions to the Administrator regarding the Administrator tools made available to Customer together with appropriate administrator credentials. The administrator tools allow the Administrator to authorize Pokeshot to take a variety of actions, including, for example, to publish Customer’s Logo on Customer’s Interface, and all such actions using the administrator tools will be deemed approved by Customer and covered by this Agreement. Pokeshot may delegate the performance of certain portions of the Services to third parties, provided Pokeshot remains primarily responsible to Customer for the delivery and performance of the Services. Pokeshot will provide Customer and your Authorized Users access to Customer’s Interface pursuant to password protected user accounts. Pokeshot may in our sole discretion modify, enhance or otherwise change

the Software and/or Customer's Interface without materially decreasing the functionality of the Services. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Pokeshot regarding future functionality of features.

2.2 Restrictions on Use of Services

Customer shall

- (1) be responsible for Customer's Authorized Users' compliance with this Agreement,
- (2) be responsible for the accuracy, quality and legality of Customer's Data and for the means by which Customer acquired Customer's Data, and
- (3) warrant Customer's Data does not and will not violate third-party rights of any kind, including without limitation any intellectual property rights or rights of publicity and privacy.

Customer agrees that you will prohibit Users from uploading material to our servers in violation of the intellectual property rights of any party or entity and will maintain and enforce a policy that complies with the Digital Millennium Copyright Act ("DMCA") or its German equivalent and will act promptly to remove any infringing material from the Learning Environment if Customer or Pokeshot receive a notice qualifying under the DMCA or German equivalent.

Customer agrees not to use or launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc., that overburdens Pokeshot's servers or ability to deliver the Services.

Customer agrees not to collect or harvest any personally identifiable information, including account names, from the Services nor to use the communication systems provided by Pokeshot for any commercial solicitation purposes.

Customer agrees not to use any portion of the Services as a destination linked from any unsolicited bulk messages or unsolicited commercial messages. In addition, Customer agrees not to engage in any of the following prohibited actions:

- (1) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services;
- (2) taking any action that imposes, or may impose in Pokeshot's sole discretion an unreasonable or disproportionately large load on Pokeshot's infrastructure;
- (3) uploading invalid data, viruses, worms, or other software agents through the Services;
- (4) impersonating another person or otherwise misrepresenting Customer's affiliation with a person or entity, conducting fraud, hiding or attempting to hide Customer's (or an Authorized User's) identity;

(5) interfering with the proper working of the Services; or

(6) bypassing the measures that Pokeshot may use to prevent or restrict access to the Services.

Customer agrees to take commercially reasonable steps to ensure that Authorized Users do not post Customer's Data that:

(1) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to an Authorized User, or any other person or entity;

(2) may create a risk of any other loss or damage to any person or property;

(3) may constitute or contribute to a crime or tort;

(4) contains any information or content that is unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable.

Pokeshot is not responsible for any public display or misuse of Customer's Data, except in the case of gross negligence or intentional misconduct by Pokeshot or Pokeshot's employees.

3. LICENSE, RESTRICTIONS ON USE

3.1 LICENSE to Customer

Subject to the restrictions and limitations set forth in this Section 3 of this MSA and elsewhere in the Agreement, Pokeshot hereby grants to Customer a nonexclusive, nontransferable, limited license, during the Term of the Agreement, to enable Authorized Users to access and use the Services through Customer's Interface, subject and according to this MSA solely for the Authorized Users' use in the regular course of Customer's business.

3.2 General Restrictions and Limitations

Section 3.1 sets forth the entirety of Customer's right to access and use the Services and to make the Services available to Authorized Users. The License does not include the right to

(a) enable any person or entity other than Authorized Users to access and use the Services or Pokeshot Technology;

- (b) modify or create any derivative work based upon the Services or Pokeshot Technology;
- (c) engage in, permit or suffer to continue any unauthorized copying, reselling or distribution of the Services or Pokeshot Technology;
- (d) grant any sublicense or other rights to the Services or Pokeshot Technology;
- (e) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any Software; or
- (f) remove, obscure or alter any Intellectual Property Rights notice related to the Software, the Services or the Pokeshot Technology.

Customer will ensure, through proper instructions and enforcement actions, that all access to and use of the Services by Customer and your Authorized Users', or otherwise through Customer's facilities, equipment, identifiers or passwords, will be in accordance with the terms of this Agreement and will be made and used solely for proper and legal purposes, and will be conducted in a manner that does not violate any law or regulation, or the rights of any third party.

3.3 License to Pokeshot

Subject to the Agreement, Customer hereby grants Pokeshot a worldwide, non-exclusive, royalty-free license during the Term to use, reproduce, electronically distribute, transmit, have transmitted, perform, display, store, archive, and index Customer's Data in order to provide the Services. Pokeshot shall have no right to sub-license or resell Customer's Data or any component thereof.

3.4 Reservation of Rights

Subject to the limited rights expressly granted hereunder,

- (a) Pokeshot reserves all right, title and interest in and to the Services including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein; and
- (b) Customer reserves all right, title and interest in and to the Customer Data including all related intellectual property rights. No rights are granted to Pokeshot hereunder other than as expressly set forth herein.

3.5 Identification Of Other Party as Customer/Service Provider

Nothing contained herein shall be deemed to grant either party any right, title or interest in or to the other's trademarks other than the limited rights granted herein. Upon termination of this Agreement, each Party shall promptly cease to use all the other party's trademarks except as permitted pursuant to another agreement between the parties.

4. ACCESS TO THE SERVICES

4.1 Single-Sign on through the Customers Learning Environment

Users will be automatically authenticated to the service through a single sign-on (SSO) mechanism provided by the Learning Environment (OAuth). No separate login or credentials are required. Customer acknowledges that it is fully responsible for all liabilities incurred through the use of any User Identification and that any transaction under a User Identification will be deemed to have been performed by Customer. Customer will immediately notify Pokeshot of any unauthorized use of any User Identification or any other breach of security known to it. Use of any User Identification, other than as provided in the Agreement, will be considered a breach of the Agreement by Customer.

4.2 Hours of Operation; Scope of Services

Pursuant to the terms of the Service Level Agreement, Pokeshot reserves the right at any time with reasonable advance notice to Customer to temporarily change the Service hours of operation or to limit Customer's and your Authorized Users' access to and use of the Services in order to perform repairs, make modifications, or to do so without advance notice as a result of circumstances beyond Pokeshot's reasonable control. Pokeshot may alter or modify all or part of the Services from time to time. Such alterations and modifications, or both, may include, without limitation, the addition or withdrawal of features, products, services, software or changes in instructions, provided that this does not result in material decrease in the functionality of the Services.

5. ENGAGEMENT RESOURCES

5.1 Engagement Resources

Subject to the terms and conditions of this Agreement and corresponding Order Form, Customer may purchase professional services to support deployment and successful usage of the Services, ("Engagement Resources").

5.2 Expenses

The fees for the Engagement Resources do not include reasonable travel and related expenses of the Engagement Resources. Incurring any such expenses shall require prior written approval by Customer, and shall be separately invoiced to and reimbursed by Customer.

5.3 IP Ownership

The services provided by the Engagement Resources shall not result in a transfer or assignment of intellectual property rights between the parties. Any work product of an Engagement Resource shall be owned by Pokeshot and when provided to Customer, will be deemed a part of the Services or Software, which may be utilized by Customer under the terms of this Agreement.

5.4 Location of Engagement Resources.

The services of the Data Center Service Management (DCSM) and the Engagement Resources will primarily be provided remotely, but in certain cases such services may be provided on the customers site, by mutual agreement of both parties.

5.5 Pokeshot`s Employees; Non-solicitation

During the Term of this Agreement, the Engagement Resources shall at all times remain Pokeshot's employees. Customer agrees not to solicit or recruit for employment or independent contract service any of the Engagement Resources. The preceding sentence shall not

(1) apply to Engagement Resources who are no longer in Pokeshot's employ (i.e. have accepted employment with a third party) at least three months prior to the time Customer solicits them, or

(2) restrict Customer's right to solicit or recruit generally in the media and hire a person who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by Customer.

5.6 Support Procedures

During periods for which Customer purchases Designated Engagement Resource Services, the services provided by the Engagement Resources will be provided to Customer as provided in the corresponding Order Form.

6. FEES AND PAYMENTS

6.1 Fees

Customer shall pay Pokeshot the fees set forth on the Order Form. Fees are based on Services purchased and payment obligations are non-cancelable and fees paid are non-refundable. In order to ensure an adequate number of licenses, Customers who have pre-existing Pokeshot learning environments shall purchase at least the number of licenses equivalent to the number of Authorized Users in their Learning Environment at the time of execution of the Agreement. For each subsequent invoice period during the term, as outlined in the Purchase Terms on the Order Form, Pokeshot will invoice Customer with respect to Additional Authorized Users (in excess of the number of Authorized Users set forth in the Order Form(s)), payable in advance for the number of months remaining in the Initial Term or then current Renewal Term.

6.2 Invoicing and Payment Terms

Customer will provide Pokeshot with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Pokeshot. If Customer provides credit card information to Pokeshot, Customer authorizes Pokeshot to charge such credit card for all Services listed in the Order Form for the initial subscription term and any Renewal Term. If the Order Form specifies that payment will be by a method other than a credit card, Pokeshot will invoice Customer in advance, in accordance with the billing frequency stated on the applicable Order Form, and unless otherwise stated on the order form, you shall pay all amounts invoiced within forty five (45) days of the date of invoice. In the event of any action by Pokeshot to collect any amount not paid when due, Customer will pay or reimburse Pokeshot's costs of collection (including, without limitation, any attorneys' fees and court costs).

6.3 Overdue Charges

If any charges are not received from Customer by the due date, then at Pokeshot's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the day such payment was due until the date paid, and/or (b) Pokeshot may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2.

6.4 Taxes

All fees are net. Customer will pay or reimburse all taxes, duties and assessments, if any due, based on or measured by amounts payable to Pokeshot in any transaction between Customer and Pokeshot under the Agreement (excluding taxes based on Pokeshot's income) together with any

interest or penalties assessed thereon, or furnish Pokeshot with evidence acceptable to the taxing authority to sustain an exemption therefrom.

7. OWNERSHIP

7.1 Customer's Data

Subject only to the limited license expressly granted hereunder, as between Customer and Pokeshot, Pokeshot acquires no right, title or interest from Customer or your Authorized Users under this Agreement in or to Customer's Data, including any intellectual property rights therein. Customer is solely responsible for Customer's Data that Authorized Users upload, publish, display, link to or otherwise make available (hereinafter, "post") on the Service, and Customer agrees that Pokeshot is only acting as a passive conduit and Data Processor for the online distribution and publication of Customer's Data which Customer controls. Pokeshot will not review, share, distribute, or reference any of Customer's Data except as provided herein to provide the Services or as may be required by law.

7.2 Security

Pokeshot has implemented commercially reasonable technical and organizational measures designed to secure Customer's Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, Pokeshot cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Customer's Data for improper purposes. Customer acknowledges that all of Customer's Data is provided at Customer's and its Authorized Users' own risk.

7.3 Suggestions

Customer may choose to, or Pokeshot may invite Customer and/or Authorized Users to, submit comments or ideas about the Services, including without limitation how to improve the Services or products. Pokeshot shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Company or Authorized Users relating to the operation of the Services.

7.4 Right to Monitor

Pokeshot will have the right to review and monitor all use of the Services to ensure compliance with all of the terms of the Agreement and evaluate performance of the Services. Pokeshot will also have the right to analyze user behavior to evaluate use of our Website and emails, both on an individual

basis and in the aggregate, and otherwise to collect, create and analyze metadata about Customer's use of the Services, provided that such metadata is never disclosed to any third party other than in an anonymized and aggregate format.

8. PRIVACY POLICY

The terms and conditions of the Pokeshot Privacy Policy shall apply to Customer's Data, to Customer, and its Authorized Users' use of the Services, and Customer hereby acknowledges and agrees to the terms thereof. The Pokeshot SmarterPath Privacy Policy may be amended from time to time and amendments shall be effective upon posting at the URL: <https://support.pokeshot-smz.com/support/solutions/articles/19000026912-privacy-policy-smarterpath>.

Customer acknowledges that Pokeshot's employees may contact Customer and/or certain Authorized Users to assist them in realizing the maximum benefit from the Services.

9. TERM AND TERMINATION

9.1 Term

The Term of the Agreement will commence as of the Effective Date set forth in the Order Form and, unless specified otherwise in the Order Form, will end on the Contract End Date set forth in the Order Form, or upon earlier termination in accordance with Sections 9.2 or 9.3 below.

9.2 Termination by Customer

The Agreement may be terminated by Customer

(1) in the event of a material breach by Pokeshot of any provision of the Agreement and Pokeshot fails to cure such breach within thirty (30) days of written notice; or

(2) upon Pokeshot's bankruptcy, reorganization or assignment for the benefit of creditors.

9.3 Termination by Pokeshot

Pokeshot may terminate this agreement

- (1) if Customer defaults in the timely payment of any amounts due Pokeshot and fails to cure within ten (10) days of receipt of written notice;
- (2) immediately if Customer breaches any provisions of Section 2.2 or fails upon written notice to remove content in violation of the DMCA or German equivalent pursuant to Section 2.2 of this Agreement;
- (3) in the event of a material breach by Customer of any other provision of this Agreement and Customer fails to cure such breach within thirty (30) days of written notice; or
- (4) upon Customer's bankruptcy, reorganization or assignment for the benefit of creditors.

9.4 Effect of Termination

If the Agreement is terminated pursuant to this Section 9, then, unless otherwise specifically provided for in writing by the parties, the following will apply:

- (a) any license rights granted to Customer with respect to the Services, the Software and/or the Pokeshot Technology will terminate as of the effective date of the termination;
- (b) Customer will return to Pokeshot any and all technical or business information of Pokeshot's in Customer's possession or control;
- (c) unless otherwise agreed upon by the parties, Pokeshot will have no obligation to provide the Services to Customer or your Authorized Users after the effective date of the termination;
- (d) Customer will pay Pokeshot any amounts payable for Customer's and your Authorized Users' use of the Services through the effective date of the termination; and
- (e) Pokeshot will provide Customer and its Authorized Users with access to Customer's Data until twenty (20) days following the date of termination, at which point such access shall cease. It is Customer's sole responsibility to download or delete any of Customer's Data following a termination; Pokeshot has no obligation to make such data available more than twenty (20) days following the date of termination or to maintain copies of Customer's Data. No refunds of prepaid fees shall be made to Customer in connection with any termination pursuant to Section 9.3.

10. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH HEREIN, POKESHOT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY ERROR, DEFECT,

DEFICIENCY, INFRINGEMENT OR NONCOMPLIANCE IN THE SERVICES, THE SOFTWARE, THE POKESHOT TECHNOLOGY OR ANY OTHER ITEMS PROVIDED BY, THROUGH OR ON BEHALF OF POKESHOT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. POKESHOT DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE OFFERED BY A THIRD PARTY THROUGH THE SERVICES AND POKESHOT WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN CUSTOMER AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

11. PUBLICITY/PRESS

Each Party shall be allowed to refer to the other as a customer of or service provider to (as the case may be) on its website and in marketing materials, including but not limited to case studies, blog posts and webinars, provided that such reference shall not imply an affiliation, sponsorship, or endorsement of the other. Other than as provided in the foregoing sentence, neither Party shall issue any public announcement regarding the subject matter herein without the prior written approval of the other.

12. MUTUAL INDEMNIFICATION

12.1 Indemnity by Pokeshot

Pokeshot shall defend, indemnify and hold Customer and your subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, harmless from and against any and all third party claims that the Services as provided by Pokeshot infringe a copyright or misappropriate a trade secret of a third party; provided, that Customer

(a) promptly gives Pokeshot written notice of the Claim;

(b) gives Pokeshot sole control of the defense and settlement of the Claim (provided that Pokeshot may not settle any Claim without Customer's prior written consent unless the settlement unconditionally releases Customer of all liability); and

(c) provides to Pokeshot all reasonable assistance, at Pokeshot's expense.

If the Software and/or the Services become, or, in Pokeshot's opinion are likely to become, the subject of such a claim, Pokeshot shall have the right to

- (1) obtain for Customer the right to continue using the Software and the Services,
- (2) replace or modify the Software and/or the Services so that they become non-infringing, or
- (3) terminate the Services and the license granted hereunder to the Software and provide a pro-rated refund to Customer of the fees paid for the Services for the portion of the Term remaining at the time of such termination.

THE FOREGOING STATES POKESHOT'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

Pokeshot will have no liability for any infringement claim to the extent it

- (1) is based on modification of the Services or Software by or at the direction of Customer or its Authorized User;
- (2) results from Customer's failure to use an updated version of the Services or Software made available to Customer;
- (3) is based on the combination or use of the Software or the Services with any other software, program or device not provided or specified by Pokeshot if such infringement would not have arisen but for such use or combination; or
- (4) results from Customer's operation of the Software or the Service in a manner that is inconsistent with its intended use.

12.2 Indemnity by Customer

Customer shall defend, indemnify and hold Pokeshot and our subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from:

- (1) Customer's and your Authorized Users' use of and access to the Service, including any data or work transmitted or received by Customer or your Authorized Users;
- (2) Customer's or an Authorized User's violation of any term of the Agreement;
- (3) Customer's or an Authorized User's violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights;
- (4) Customer's or an Authorized User's violation of any law, rule or regulation of the United States or any other country;

(5) any claim or damages that arise as a result of the posting, transmission or storage of any of Customer's Data that is submitted via Authorized User accounts; or

(6) any other party's access and use of the Service with Customer's or an Authorized User's unique username, password or other appropriate security code provided, that Pokeshot

(a) promptly gives Customer written notice of the Claim;

(b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any claim without Pokeshot's prior written consent unless the settlement unconditionally releases Pokeshot of all liability); and

(c) provides to Customer all reasonable assistance, at Customer's expense.

13. CONFIDENTIALITY

13.1 Definition of Confidential Information

As used herein, "Confidential Information" means all confidential 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. Customer's Confidential Information shall include Customer's Data. Pokeshot's Confidential Information shall include the Services. Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer's Data) shall not include any information that

(1) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,

(2) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,

(3) is received from a third party without breach of any obligation owed to the Disclosing Party, or

(4) was independently developed by the Receiving Party as evidenced by contemporaneous written records.

13.2 Protection of Confidential Information

Except as otherwise permitted in writing by the Disclosing Party,

(1) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and

(2) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

13.3 Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest 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 such Confidential Information.

14. LIMITATIONS OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, THEIR RESPECTIVE DIRECTORS, EMPLOYEES OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE OR ANY OTHER ASPECT OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN, INCLUDING BUT NOT LIMITED TO ANY BREACH OF SECTION 13. YOUR EXCLUSIVE REMEDIES FOR ANY INTERRUPTION OR CESSATION OF ACCESS OR

TRANSMISSION TO OR FROM THE SERVICE ARE SET FORTH IN THE SERVICE LEVEL AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE ASSUME NO LIABILITY OR RESPONSIBILITY FOR (1) ANY PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR OR YOUR AUTHORIZED USERS' ACCESS TO AND USE OF THE SERVICES; (2) ANY ERRORS OR OMISSIONS IN, OR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF, ANY MATERIALS POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; (3) DAMAGE CAUSED BY THE POSTING, TRANSMISSION OR STORAGE OF YOUR DATA SUBMITTED VIA AUTHORIZED USER ACCOUNTS; OR (4) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY AUTHORIZED USER OR THIRD PARTY. IN NO EVENT SHALL POKESHOT, ITS DIRECTORS, EMPLOYEES, OR LICENSORS BE LIABLE TO CUSTOMER OR YOUR AUTHORIZED USERS FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AGGREGATE AMOUNT CUSTOMER PAID OR PAYABLE TO POKESHOT HEREUNDER DURING THE 12 MONTHS PRECEDING THE CLAIM. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF POKESHOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

15. MISCELLANEOUS

15.1 Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent, of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party.

15.2 Notices

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon:

- (1) personal delivery or
- (2) written verification of receipt by established overnight courier.

Notices to Customer shall be sent to the respective addresses set forth in the Order Form, Attention: Legal, or such new address as Customer specify to Pokeshot by written notice.

Notices to Pokeshot shall be sent to:

Pokeshot GmbH
Am Studio 2
12489 Berlin
Germany

15.3 Entire Agreement

The Agreement is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Agreement, including the online Pokeshot Terms of Use Agreement with respect to Customer's and your Authorized Users' use of the Services, which is hereby terminated. Any terms and conditions of any purchase order or other instrument issued by Customer in connection with the Agreement which are in addition to, inconsistent with or different from the terms and conditions of the Agreement, including any confidentiality agreement to the extent it purports to cover Customer's Data or other information provided by Customer or your Authorized Users in connection with this MSA, shall be of no force or effect. The Agreement may be modified only by a written instrument duly executed by authorized representatives of the parties. Any waiver by either party of any condition, term or provision of the Agreement shall not be construed as a waiver of any other condition, term or provision. If any provision of the Agreement is held invalid or unenforceable, such provision shall be replaced with an enforceable provision with as similar import as is legally permissible and the remainder of the Agreement shall continue in full force and effect.

15.4 Counterparts

The Agreement may be executed in two or more counterparts, including execution evidenced by Customer's "clicking" on the "button" on Pokeshot's website in connection with the acceptance of the Services, in which event Pokeshot's execution will be deemed to occur at the same time, each of which shall be deemed to be an original and each of which together shall constitute a single instrument.



END OF MASTER SERVICE AGREEMENT

Generated by Pokeshot on 2017-06-06

CUSTOMER

Signature _____
Name (Printed) _____
Title _____
Date _____

POKESHOT GmbH.

Signature _____
Name (Printed) _____
Title _____
Date _____



POKESHOT
PEOPLE SOLUTIONS PERFORMANCE

SERVICE LEVEL AGREEMENT



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Pokeshot offers its products currently for two different social business environments: Jive and Microsoft Office 365 (called O365). Products for Jive will either be titled as plugins or add-ons, products for O365 as apps.

1. SUPPORT PROCEDURES

In order to troubleshoot problems or issues related to a specific product (plugin, add-on or app), license holder will submit support cases by sending an email to a specific support email address or creating a ticket via Pokeshot's Helpdesk.

A support case must contain the license holder's contact details and information regarding the specific problem or issue. The problem description needs to be provided in a way that the issue is understandable and reproducible by a Pokeshot Support Engineer.

For each submitted case the license holder will receive a unique case number that will be used throughout the entire communication to resolve the issue associated with the case.

License holder agrees to help, cooperate, and work closely with Pokeshot Support Engineers in order to resolve the issue. This includes appropriate help to reproduce errors, conducting diagnostic or troubleshooting activities, etc., as requested by the Pokeshot Support Team.

2. SUPPORT SERVICES

Pokeshot support includes the following services, if customer has obtained a valid license under the provisions of the Agreement:

(1) Upgrades –Jive Plugins

Pokeshot will deliver a new version of the plugin when Jive upgrades to a new major version (e.g. upgrade from Jive 7.0.x. to Jive 8.0.x) and has released the source code for Jive core, within three (3) months.

Pokeshot will provide a new plugin version for a minor Jive version (e.g. Jive 8.x.1 to Jive 8.x.2, Jive 8.1.x to Jive 8.2.x) on license holder's request only. License holder must allow at least twenty (20) days for shipment of a new minor plugin-upgrade after an upgrade has been requested. An upgrade request needs to be filed as a support case under the provisions set forth in Section 4, below.

(2) Maintenance - Plugin

Pokeshot will deliver bug-fixes and new features (if applicable) and other improvements for a plugin. These changes will be made available to license holder with the latest plugin version. License holder should always use the latest plugin version available.

(3) Upgrades – Jive Add-on and O365 App

Pokeshot may deliver a new version of the add-on/apps files if needed. This may happen when new features for add-ons/apps are released. These add-on/apps files are independent from customer's Jive ($\geq 7.0.0$) or O365 version and must be installed on customer's site within at least twenty (20) days after shipment via email to the customer.

(4) Maintenance – Add-On

Pokeshot may continuously update its add-on/app software according to customer demand. Those updates will be rolled out automatically for the customer. Customer will be informed at least five (5) days before the update.

(5) Case Reporting, Troubleshooting and resolving Errors

Reporting a case is described in the section "Logging A Case" (see Section 4, below).

Troubleshooting reported issues is handled by Pokeshot's Support Team.

Resolving Errors (see Section 6, below) will be carried out by Pokeshot's Engineering Team in alignment with Pokeshot's Support Team and license holder.

(6) License holder Communication

License holder will be informed regularly if a new plugin version is available. Pokeshot may use various channels (phone, website, email) to inform the license holder.

(7) Business Hours

Monday through Friday, excluding holidays.
• EMEA: 8 am – 6 pm Central European Time

3. SUPPORT SERVICES EXCLUSIONS

The Pokeshot support services will NOT cover:

- (1) issues that are caused by factors outside of Pokeshot's reasonable control; or
- (2) issues that resulted from license holder's equipment or third party equipment, or both (not within Pokeshot's primary control e.g. Jive errors, firewalls, network connectivity, etc.); or
- (3) resolving or fixing issues that cannot be reproduced in a "Standard Environment (see Section 8, below)"; or
- (4) new functionality or certain fixes / requests for older plugin versions (downgrades); or
- (5) issues that are caused by manipulating or changing any source code or binaries of the plugins provided by Pokeshot.

Pokeshot can provide a solution for these issues at its sole discretion and as a separately paid professional service engagement.

Pokeshot will not provide services under this SLA if license has expired, or as soon as the Agreement has been terminated.

4. LOGGING A CASE

License holder will create a support case by sending an email to Pokeshot at support@pokeshot.com or create a ticket via Pokeshot's Helpdesk at <https://support.pokeshot.eu>. Pokeshot will have no obligation to respond to or remedy any Error (as defined below) not reported to Pokeshot in accordance with the terms herein. The only Helpdesk communication channel will be the email address provided by the Requester when logging a ticket or in the Helpdesk directly (Link to the ticket will be sent to the email address of the Requester).

License holder must provide the following information when reporting an issue to Pokeshot:

- License holder name
- Product name
- Product version (plugin version)
- Jive version
- Environment type (e.g. production vs UAT)
- Reporter contact information
 - o Name
 - o Telephone number
 - o Email address

- Description of the issue
 - o Where did it happen in the product?
 - o When did it happen? Is it a static or a random issue?
 - o Is the issue happening on the whole platform (all users) or just for a few users?
- Supporting information
 - o Error messages
 - o Screenshots
 - o Steps to reproduce the issue
- Severity level (impact to community)

The case must be written in either English or German only.

5. SEVERITY LEVELS

In general, issues will be categorized and handled according to an assigned severity level as follows:

Severity Level	Description and Examples
Sev A (Critical)	<p>This incident level is attained when the following types of conditions are met:</p> <ul style="list-style-type: none"> • A complete outage of the plugin or add-on/app • A reoccurring temporary outage of the plugin or add-on /app • • Inability to provision a service
Sev B (High)	<p>This incident level is attained when the following types of conditions are met:</p> <ul style="list-style-type: none"> • A significant degradation of the service occurs. • Recent modifications to the system cause services to operate in a way that is materially different from those described in the product specifications.
Sev C (Medium)	<p>This incident level is attained when the following types of conditions are met:</p> <ul style="list-style-type: none"> • A minor degradation of the service delivery occurs (i.e. content feed not being updated regularly). • Recent modifications to the system cause services to operate in a way that is materially different from those described in the product definition for non-essential features. • Product doesn't work as expected, but a workaround is available.

Sev D (Low)*	<p>This incident level is attained when the following types of conditions are met:</p> <ul style="list-style-type: none"> • General usage questions. • Cosmetic issues, including errors in the documentation. <p>* - All UAT issues receive Low priority.</p>
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Pokeshot has a structured response plan to address the most critical issues first.

Pokeshot will use commercially reasonable efforts to remedy any Error of the plugin or add-on/app (see Section 6, below).

6. ERROR DEFINITION

An Error is an issue that causes the plugin or add-on/app to be inoperable or to materially fail to conform to the functional specifications for the plugin described in the applicable documentation published by Pokeshot.

Any malfunctions of the plugin or add-on /app or inconformity to the functional specifications for the plugin or add-on which is caused by not using the “Standard Environment” (see Section 8, below), are not considered as fault.

Each Error reported to Pokeshot by license holder in accordance with this SLA must be reproducible and demonstrable in the “Standard Environment” (see Section 8, below) for which the plugin was designed to operate.

7. RESPONSE TIMES

When license holder has opened a case via email, license holder will receive a response from Pokeshot’s Case and Issue Tracking System via email*. The support response email will contain a case number for the issue reported. Providing the case number via email as an initial response is included in the response time.

The actual resolution time will depend on the nature of the case and the complexity of the resolution. A resolution may consist of an upgrade, fix, workaround or other solution in Pokeshot's reasonable determination.

Reproducible errors that cannot promptly be resolved will be escalated to higher support tiers for further investigation and analysis. In this case the license holder will be regularly updated on the progress until the issue is resolved.

Action	Priority	Time or Interval
Initial response to ticket	critical	Within 4 business hours of notification by customer
	high	Within 6 business hours of notification by customer
	medium	Within 8 business hours of notification by customer
	low	Within 16 business hours of notification by customer
First analysis and time estimation for resolution	critical	2 business hours after initial response
	high	6 business hours after initial response
	medium	16 business hours after initial response
	low	32 business hours after initial response

**It is the license holder's responsibility to make sure that all emails from "support@pokeshot.com" are not considered SPAM by license holder's email-system.*

8. STANDARD ENVIRONMENT

Pokeshot must be able to reproduce and demonstrate an Error in a Standard Environment in order to resolve it.

A Standard Environment is based on a "plain vanilla" Jive or O365 installation - without any changes ("Customizations") to the core Jive Product and in conjunction with certain Browser Versions ("Supported Browsers", see Section 9, below).

Jive

The vendor Jive Software offers several deployment Strategies for the Jive Product. Pokeshot will only support a) On-Premise b) Hosted Environments and c) Jive Cloud (only add-ons). Jive Cloud installations are generally not supported by Pokeshot. Plugins cannot be installed per Jive's policy; only add-ons can be installed on c) Jive Cloud.

Pokeshot's plugin versions are built for and need to be deployed to a specific Jive Version. Pokeshot's plugin version must match the target Jive version.

Pokeshot's add-on versions are built for any Jive version equal to or later than 7.0.0.

Pokeshot will only support those Jive versions that still have official support from Jive Software and have not reached EOL (End Of Live) as officially stated by Jive Software at the following website: <https://community.jivesoftware.com/docs/DOC-35149>

O365

Pokeshot support the current O365 version including SharePoint online (SharePoint on premise is not supported through the app).

9. SUPPORTED BROWSERS

Jive

Each Jive version supports different Browsers and Browser Versions. Pokeshot's plugins and add-ons will support the same Browsers and Browser Versions that are supported by the underlying Jive Version. The same end of support rules apply as officially stated here by Jive Software in the compatibility changes section: <https://community.jivesoftware.com/docs/DOC-35149>

These supported Browsers and Browser Versions are expected to be "out of the box" installations provided by their vendors. Browser Versions using custom installers, different configurations, additional add-ons or extensions are considered non-standard and will not be supported by Pokeshot.

O365

Pokeshot's apps will support the same Browsers and Browser Versions that are supported by the underlying O365 Version.

These supported Browsers and Browser Versions are expected to be "out of the box" installations provided by their vendors. Browser Versions using custom installers, different configurations, additional add-ons or extensions are considered non-standard and will not be supported by Pokeshot.



10. CUSTOMIZATIONS

Customizations are changes to the standard Jive/O365 installation by the license holder, a partner, Jive professional services or any other party. Customizations can include:

- using war-overlays,
- using theme changes,
- installing other plugins or add-ons or apps
- browser css override

or applying any changes that may break the plugin or add-ons/apps functionally.