

1 Use of PowerRoster

1.1 Overview

Velrada and the Customer have entered into an agreement for Velrada to provide PowerRoster to Customer on the terms of the Velrada Order Form and these PowerRoster Licence Terms.

PowerRoster is an extended configuration layer of the Microsoft D365 platform and is provided as a managed solution for a license fee under a prepaid subscription model.

Once deployed onto the Customer's Microsoft D365 tenancy, Velrada has no direct access and Administration is executed by the Customer. In addition, performance and availability once deployed is solely related to the underlying Microsoft D365 environment.

At the core of these terms is the requirement to protect Velrada's IP regarding PowerRoster and ensure usage is in accordance with the licenses purchased.

PowerRoster is protected by copyright and other intellectual property laws and treaties. Velrada own the title, copyright, trademarks and other intellectual property rights in PowerRoster. PowerRoster is licensed, not sold.

1.2 Compliance

- (a) Velrada provides the Customer with PowerRoster on the terms set out in this agreement. The Customer's use of PowerRoster is subject to accepting these terms.
- (b) By accessing or using PowerRoster, the Customer accepts and agrees to the terms set out in this agreement in full, without any limitation or qualification. These terms constitute a legally binding agreement between the Customer and Velrada.

1.3 Licence

During the Subscription Period and subject to compliance with this agreement, Velrada grants to the Customer a non-exclusive, non-transferable licence (without the right to sub-licence) to use PowerRoster for its internal business purposes and only:

- (a) by its Authorised Users;
- (b) at the locations and facilities and with Dataverse instances specified in item 1 of the Subscription; and
- (c) in respect of the quantity and type of licensed units specified in items 5 and 8 of the Subscription (as applicable).

1.4 Microsoft Customer Agreement

- (a) PowerRoster is hosted by Microsoft. and the Customer must acquire applicable Microsoft software licenses and services (including paying any applicable Microsoft fees and charges) to operate PowerRoster.

- (b) The Customer agrees to add Velrada's partner ID via the Partner Admin Link in the Customer's Azure tenant for the duration of the Term, and provide its Microsoft tenant and subscription IDs for relevant Microsoft licensing products to Velrada.
- (c) By entering into this agreement the Customer also accepts the Microsoft software and online services terms of use contained in the relevant Microsoft Customer Agreement between the Customer and Microsoft, which governs the Customer's use of Microsoft software.
- (d) The Customer is responsible for complying with any applicable Microsoft terms and conditions and policies.

2 About this agreement

2.1 Commencement

This agreement commences upon the beginning of the first Subscription Period and continues in accordance with either clause 2.2 or 2.3, as applicable.

2.2 Trial period

If item 2 of the Subscription specifies that the Customer's use of PowerRoster is for a trial period, then:

- (a) upon the expiry of the Subscription Period this agreement will end. The Customer may enter into a new agreement for continued use of PowerRoster by purchasing a new Subscription;
- (b) the Customer must access and use PowerRoster, and allow any Authorised Users to access and use PowerRoster only for the purposes of the Customer's internal evaluation of PowerRoster and not for any operational or production use; and
- (c) the Customer must indemnify Velrada, and Velrada's Personnel, and hold Velrada harmless against any expenses, costs, loss (including Consequential Loss) or damage suffered or incurred arising out of or in connection with any use of PowerRoster by the Customer or any Authorised User otherwise than in accordance with clause 2.2(b).

2.3 Subscription Period

If clause 2.2 does not apply, then:

- (a) the Subscription Period is the period specified in a Subscription or, where a period is not specified, the period of 12 months commencing on the date of this agreement;
- (b) upon expiry of each Subscription Period, this agreement renews for successive Subscription Periods subject to clause 2.3(c) or earlier termination; and
- (c) if, at least 10 Business Days before the end of the current Subscription Period, either party notifies the other party in writing that the first party does not want the agreement to renew for a

further Subscription Period, the agreement will expire at the end of the current Subscription Period.

2.4 Changes to this agreement

- (a) This version of this agreement is current as at the date of this agreement.
- (b) Velrada may change this agreement from time to time by bringing the changed terms to the Customer's attention not less than 30 days prior to the changed terms taking effect.
- (c) If the Customer does not agree with the changed terms, the Customer must notify Velrada and the agreement will terminate in accordance with clause 9.1.
- (d) By continuing to use PowerRoster for more than 30 days following a notice provided by Velrada under clause 2.4(b), the Customer agrees that the changed terms will apply from the date specified by Velrada in that notice.

2.5 Precedence

- (a) The documents which comprise this agreement are, in order of precedence:
 - (1) the Velrada Order Form;
 - (2) these terms and conditions;
 - (3) the Documentation; and
 - (4) any other attachments.
- (b) If a party considers there to be any ambiguity or discrepancy in this agreement, that party must notify the other. Without affecting clause 2.5(a), Velrada will then direct the Customer as to the interpretation to be followed by the Customer in performing its obligations under this agreement (acting reasonably).

3 Provision of services

3.1 PowerRoster

While this agreement continues, Velrada will use its best endeavours to provide the Customer with PowerRoster including functionality materially in accordance with the Documentation.

3.2 Support

Velrada will use reasonable endeavours to provide basic technical support in relation to PowerRoster by:

- (a) if requested by the Customer, using reasonable endeavours to fix or develop workarounds in relation to errors or bugs in PowerRoster which adversely affect the functionality of PowerRoster; and
- (b) issuing patches in relation to PowerRoster up to twice per calendar year as Velrada in its sole discretion deems necessary.

3.3 Operating environment

- (a) The Customer is solely responsible for supplying and maintaining the Minimum Requirements.
- (b) Velrada will exercise reasonable endeavours to notify the Customer of any changes to the

Minimum Requirements as soon as practicable after Velrada becomes aware of such changes.

- (c) The Customer acknowledges and agrees that:

- (1) PowerRoster relies on the Minimum Requirements being in place;
- (2) its failure to comply with clause 3.3(a) may affect its ability to successfully use PowerRoster; and
- (3) irrespective of whether Velrada has complied with its notification obligations under clause 3.3(b), Velrada will not be liable for any loss or damage whatsoever incurred by the Customer arising out of or in connection with the Customer's failure to supply and maintain the Minimum Requirements.

3.4 Standard of services

- (a) Velrada does not warrant that access to PowerRoster will be uninterrupted or error free. Despite anything else in this agreement, the Customer acknowledges and accepts that PowerRoster may not be available in all circumstances.
- (b) All services that the Customer requires in connection with its network, systems or infrastructure, other than PowerRoster as expressly described in this agreement, are not within the scope of PowerRoster.

3.5 Changes to PowerRoster

- (a) Velrada may make changes to PowerRoster at any time. Where such changes will materially reduce or remove a functionality of PowerRoster, Velrada must provide at least 30 days' notice to the Customer prior to the changes taking effect.
- (b) If any changes specified by Velrada materially reduces or removes a functionality of PowerRoster which is used by the Customer and the Customer does not agree to continue using PowerRoster following the changes, then the Customer must notify Velrada and the agreement will terminate in accordance with clause 9.1.
- (c) By continuing to use PowerRoster for more than 30 days following a notice provided by Velrada under clause 3.5(a), the Customer agrees to use PowerRoster following the changes specified by Velrada in that notice.

3.6 Resellers

- (a) Velrada may provide PowerRoster itself or through a reseller.
- (b) If Velrada uses a reseller to provide PowerRoster:
 - (1) the Customer must provide to the reseller the same assistance, information, access, rights and benefits that it is required to grant to Velrada in connection with PowerRoster; and
 - (2) a reference to Velrada's systems includes the reseller's system.

4 Conditions of access to PowerRoster

4.1 Conditions of access

- (a) The Customer must use PowerRoster:
- (1) within the usage limits of the Licence and otherwise within the scope of the Subscription; and
 - (2) in accordance with the Documentation, this agreement and all applicable Laws.
- (b) The Customer must:
- (1) not allow any Authorised User to access or use PowerRoster where such Authorised User is not within the scope of the Licence;
 - (2) prevent unauthorised access to, or use of, PowerRoster;
 - (3) notify Velrada promptly of any such unauthorised use of, or access to, PowerRoster; and
 - (4) ensure that each Authorised User complies with the requirements of this clause 4 as if a reference to the Customer was a reference to the Authorised User.

4.2 Restrictions on use

- (a) The Customer must not:
- (1) work around any technical limitations in PowerRoster that only allow use in certain ways;
 - (2) remove, minimise, block, or modify any notices of Velrada in the software;
 - (3) use PowerRoster, or permit PowerRoster to be used, in excess of the usage limits set out in the Subscription;
 - (4) insert or activate, or permit a third party to insert or activate any Disabling Code into the Customer's systems used for accessing PowerRoster, or into Velrada's systems;
 - (5) use PowerRoster in a manner other than in accordance with the Documentation;
 - (6) access PowerRoster using automated means (other than means specifically provided by Velrada for that purpose), such as software robotics;
 - (7) bypass any measure Velrada uses to prevent or restrict access to PowerRoster, any part of PowerRoster, or any other software, systems or networks connected to PowerRoster;
 - (8) use PowerRoster to transmit (or authorise the transmission of) unsolicited messages;
 - (9) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying algorithms of any part of PowerRoster;

- (10) frame or mirror any part of PowerRoster, or delete any attributions or legal or proprietary notices on PowerRoster;
- (11) copy, modify or create derivative works of any part of PowerRoster;
- (12) rent, lease, lend, sell, transfer, redistribute, publish, share, or sublicense PowerRoster;
- (13) do anything that could disable, overburden or impair the proper working of PowerRoster, such as a denial of service attack; or
- (14) let anyone else access PowerRoster using the Customer's device or login details other than its Authorised Users.

4.3 Security

The Customer must:

- (a) take reasonable commercial measures to protect the Customer's systems against any Disabling Code; and
- (b) maintain the security and confidentiality of the passwords and other information used by the Customer to access PowerRoster.

4.4 PowerRoster Information

- (a) The Customer acknowledges that Velrada does not check the reliability, accuracy or completeness of the PowerRoster Information and does not accept responsibility arising in any way for that information, including errors or omissions in the PowerRoster Information.
- (b) The Customer must not use or disclose to any person, whether using PowerRoster or otherwise, any personal information forming part of PowerRoster Information except in the ordinary course of its use of PowerRoster and in accordance with the Privacy Act.
- (c) Before using PowerRoster to upload or transmit any document or other information, the Customer must ensure that all the authorisations and consents required are obtained in order for the Customer to do so lawfully and without infringing on the rights of the person.
- (d) The Customer acknowledges and agrees that: Velrada will not have access to, store or process any personal information provided by the Customer at any time.

4.5 Customer Data

- (a) The Customer is solely responsible for Customer Data, which includes:
- (1) information uploaded to PowerRoster; and
 - (2) any other information that the Customer enters, or uploads, into PowerRoster.
- (b) The Customer represents and warrants that Customer Data will not include any material that:
- (1) infringes the rights of any person;

- (2) includes an image or personal information of another person except in accordance with clause 4.4(c);
- (3) is misleading, deceptive, defamatory or materially incorrect;
- (4) is obscene, intended to humiliate or insult, or likely to cause offence; or
- (5) is otherwise unlawful, encourages unlawful conduct, or is otherwise inappropriate having regard to the purpose of PowerRoster.

- (1) change the Fees; or
- (2) introduce Fees in respect of new PowerRoster functionalities,

which will take effect from the beginning of the next Subscription Period.

- (b) If the Customer does not accept the new or changed Fees, the Customer must notify Velrada and the agreement will terminate in accordance with clause 9.1.

5 Fees and payment

5.1 Fees

- (a) The Customer must pay to Velrada the Fees as specified in the Subscription.
- (b) Velrada will issue invoices in respect of the Fees in accordance with the schedule set out in item 12 of the Subscription.
- (c) Subject to clause 5.2, the Customer must pay any invoices issued by Velrada within 10 days following the Customer's receipt of the invoice.
- (d) The Customer must make all payments due under this agreement without set-off or deduction of any kind.

5.2 Amounts in dispute

- (a) If the Customer, in good faith, disputes an amount invoiced by Velrada, the Customer must notify Velrada in writing, within 5 Business Days of the Customer's receipt of the relevant invoice.
- (b) Velrada will, within 10 Business Days of receiving a notice under clause 5.2(a), review the relevant Fees for the purposes of resolving the dispute.
- (c) If Velrada resolves the dispute in the Customer's favour, Velrada will refund the Fees that it determines have been overpaid.
- (d) The Customer is not entitled to withhold payment of any amount whether disputed or not.

5.3 Exceeding usage limits

- (a) If Velrada becomes aware that the Customer is exceeding the usage limits of the Licence, or otherwise using PowerRoster outside the scope of the Subscription, Velrada may:
 - (1) issue an invoice to the Customer in respect of any resulting undercharge, and the Customer must pay the invoiced amount within 30 days of receiving such invoice; and
 - (2) adjust the Fees to reflect the Customer's actual use.
- (b) The Customer must notify Velrada if it becomes aware that it is exceeding the usage limits of the Licence, or otherwise using PowerRoster outside the scope of the Subscription.

5.4 Review of Fees

- (a) As part of the changes to these terms that may be specified by Velrada under clause 2.4(b), Velrada may:

6 Customer's obligations

6.1 The Customer's use of PowerRoster

- (a) The Customer is responsible for all of the Customer's and each Authorised User's activity on and in connection with PowerRoster (including all Customer Data) and all activity that occurs in PowerRoster through the Customer's and each Authorised User's login details.
- (b) The Customer is responsible for what the Customer and each Authorised User accesses on PowerRoster, how the Customer and each Authorised User uses PowerRoster, PowerRoster Information and Customer Data, and any actions the Customer and any Authorised User may take as a result of such use of PowerRoster.
- (c) The Customer must not use PowerRoster, and must ensure that each Authorised User does not use PowerRoster, (including PowerRoster Information):
 - (1) for any unlawful purpose, or in breach of any applicable laws or regulations;
 - (2) to engage in any conduct that is, or is likely to be, misleading or deceptive; or
 - (3) in any manner that may bring Velrada or PowerRoster into disrepute.
- (d) The Customer remains responsible for any breach of contract or infringement of any intellectual property, privacy, confidentiality or other rights of any third party in connection with Customer Data or that is caused or contributed to by the Customer's or any Authorised User's use of PowerRoster.

7 Audit

- (a) Velrada may at any time, and without giving notice to the Customer, monitor the Customer's usage of PowerRoster in order to verify compliance with this agreement.
- (b) Velrada has the right to audit and inspect any premises, systems, documents, records, practices, data and matters as Velrada reasonably requests in order to verify compliance with the terms of this agreement.
- (c) The Customer must permit the audits and inspections referred to in clause 7(b).
- (d) Audits conducted by Velrada pursuant to this clause 7 must only be carried out during usual business hours and following reasonable written notice to the Customer of not less than 14 days.

- (e) The Customer must provide all reasonable assistance required by Velrada, including by answering any questions relating to the audit or inspection in writing, and by generating reports through PowerRoster as requested by Velrada.
- (f) If an audit or inspection reveals any breach of this agreement by the Customer, then the Customer must take remedial action including complying with any reasonable directions or instructions from Velrada and paying any invoices issued in accordance with clause 5.3(a)(1).

8 Suspension

Without limiting any of Velrada's rights or remedies under this agreement or at law, Velrada may limit or suspend the provision of PowerRoster to the Customer by notice in writing with immediate effect if:

- (a) Velrada is affected by a Force Majeure Event;
- (b) Velrada is directed or required to do so by Law;
- (c) the Customer fails to pay an amount that is due and payable under clause 5;
- (d) Velrada reasonably believes that, in the course of using PowerRoster, the Customer or any Authorised User has breached a person's rights (including any Intellectual Property Rights) or any Law;
- (e) Velrada reasonably believes that the Customer has failed to comply with its obligations under clause 4; or
- (f) an Insolvency Event occurs in relation to the Customer.

9 Termination

9.1 Termination by Velrada for cause

Velrada may, in its absolute discretion, terminate this agreement:

- (a) without limiting clause 9.1(b), immediately by notice to the Customer if the Customer breaches this agreement and, in Velrada's reasonable opinion, the breach:
 - (1) cannot be remedied; or
 - (2) can be remedied, but the Customer does not remedy it within 10 Business Days after Velrada gives the Customer notice of the breach;
- (b) immediately by notice to the Customer if the Customer has failed to pay an invoice by the due date as required by clause 5.1(c);
- (c) immediately by notice to the Customer if an Insolvency Event occurs in relation to the Customer; or
- (d) on 30 days' notice to the Customer if Velrada stops offering PowerRoster as part of its business.

9.1 Termination by Customer

- (a) If Velrada makes changes to:
 - (1) these terms, including the Fees, under clause 2.4(b); or

- (2) PowerRoster under clause 3.5 that materially reduce, remove or affect a functionality of PowerRoster that was used by the Customer,

and the Customer does not agree to such changes, then the Customer must notify Velrada that it does not agree to the changes within 30 days of receiving notice of the changes from Velrada.

- (b) Customer may terminate this agreement for no cause and at any time, upon thirty (30) days written notice to Velrada and the Customer shall forego any subscription fees paid in advance for the current subscription year of such termination.
- (c) If the Customer provides notice under clause 9.1(a) that it does not agree to the changes specified by Velrada then:
 - (1) this agreement will terminate upon the date on which the changes will take effect, as specified by Velrada in its notice in respect of the changes; and
 - (2) Velrada must promptly provide a pro-rated refund of any Fees that have been paid by the Customer in respect of its use of PowerRoster following the date of termination.

9.2 Consequences of termination

- (a) On expiry or termination of this agreement:
 - (1) the Customer must immediately pay to Velrada all Fees outstanding at the date of termination; and the Customer must promptly return, and must ensure that its Personnel promptly return, any copies of PowerRoster, Documentation and any Confidential Information of Velrada in its possession, custody or control, except as permitted under clause 9.1(c).
- (b) The termination of this agreement does not affect any of Velrada's other rights or remedies.
- (c) If this agreement is terminated, each party may retain one copy of the other party's Confidential Information for the sole purpose of, and only to the extent required to, comply with any applicable Laws relating to archiving or recordkeeping.

10 Warranties

10.1 General representations and warranties

Each party represents and warrants to the other that:

- (a) the execution of this agreement has been properly authorised;
- (b) it is entitled to enter into this agreement and perform its obligations under this agreement;
- (c) it has full corporate power to execute, deliver and perform its obligations under this agreement; and
- (d) this agreement constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms by appropriate legal remedy.

10.2 PowerRoster warranties

- (a) Velrada represents and warrants that:
 - (1) if the Customer complies with its obligations under clauses 4 and 6,

- (2) PowerRoster will operate materially in accordance with the Documentation;
 - (2) Velrada will exercise reasonable endeavours to ensure that PowerRoster is, at the date of installation, free of Disabling Code; and
 - (3) Velrada will provide PowerRoster in accordance with all applicable Laws.
- (b) Subject to any Consumer Rights, other than as expressly specified in the Documentation Velrada makes no warranties:
- (1) about PowerRoster, the PowerRoster Information, or the Customer's use of PowerRoster or the PowerRoster Information;
 - (2) as to the merchantability, suitability for a particular purpose of PowerRoster or the PowerRoster Information; and

10.3 Non-infringement of Intellectual Property Rights. Customer's warranties

- (a) The Customer warrants that, at all times while using PowerRoster, the Customer and each of its Authorised Users:
- (1) will not rely solely or primarily on PowerRoster and any PowerRoster Information to determine any course of action; and
 - (2) will comply with the Documentation in relation to its use of PowerRoster, including the Documentation and the Privacy Policy (both of which may change from time to time).
- (b) The Customer represents and warrants that it will not use PowerRoster, or permit PowerRoster to be used, in any way that causes or contributes to any:
- (1) breach of any applicable Law;
 - (2) infringement of any person's privacy or confidentiality; or
 - (3) breach of any person's rights (including any Intellectual Property Rights).

11 Indemnity

11.1 Indemnity

The Customer must indemnify Velrada, and Velrada's Personnel, and hold Velrada harmless against any expenses, costs, loss (including Consequential Loss) or damage suffered or incurred due to any claim by a third party arising out of or in connection with:

- (a) any wrongful act or omission by the Customer, the Customer's Personnel or the Customer's Authorised Users, including:
- (1) breach of contract;
 - (2) tort (including negligence and breach of statutory duty);
 - (3) breach of any applicable Law;

- (4) breach of privacy;
 - (5) breach of confidence; and
 - (6) infringement of any person's Intellectual Property Rights or other rights; or
- (b) any breach of Law by any person to whom the Customer, the Customer's Personnel or an Authorised User discloses any PowerRoster Information.

11.2 Exclusion

The indemnities in clauses 11.1 do not apply to any loss or damage to the extent that the loss or damage is caused by Velrada's breach of this agreement.

12 Liability Limits

12.1 Consumer Laws

Velrada acknowledges that, in some circumstances, the Customer may have rights under the Australian Consumer Law or other Laws which cannot be excluded, modified or restricted (**Consumer Rights**). The Consumer Rights may relate to conditions, warranties, undertakings and guarantees (including the Consumer Guarantees) which apply in relation to PowerRoster.

12.2 Limit of liability for Consumer Rights

- (a) Subject to clause 12.1 and any Consumer Rights that the Customer may have, except as expressly set out in this agreement, and to the fullest extent permitted at Law, Velrada disclaims all express, implied and statutory warranties, guarantees and conditions with regard to PowerRoster.
- (b) This limitation applies to anything related to the software, services, content (including code) on third party Internet sites, or third-party applications, even if Velrada knew or should have known about the possibility of the damages.
- (c) Velrada's liability to the Customer in respect of any Consumer Rights is limited, at Velrada's option, to replacing or repairing PowerRoster.

12.3 No Liability

Subject to clause 12.2:

- (a) Velrada's liability to the Customer is excluded to the fullest extent permitted by Law. This exclusion includes liability in respect of torts, breach of contract, warranty, guarantee or condition, breach of statute and all other causes of action; and
- (b) Velrada is not liable for any Consequential Loss suffered in connection with this agreement, whether arising under contract, tort, including negligence, or otherwise.

13 Intellectual Property Rights

13.1 Velrada Intellectual Property Rights

- (a) The Customer acknowledges and agrees that:
- (1) all Intellectual Property Rights in or in connection with PowerRoster; and
 - (2) all Intellectual Property Rights created in the course of or in connection with

the provision of access to PowerRoster (excluding any rights in Customer Data),

vest, or will vest upon its creation, in Velrada.

- (b) The Customer acknowledges and agrees that nothing in this agreement transfers to the Customer, or gives the Customer any right or interest in, any Intellectual Property Rights relating to PowerRoster.
- (c) The Customer must notify Velrada of any actual, threatened or suspected infringement of any of Velrada's Intellectual Property Rights.

13.2 Background IP

Each party's Background IP remains vested in that party and nothing in this agreement transfers any interest in any Background IP to a party.

14 Confidentiality

14.1 Confidentiality

- (a) Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the other party.
- (b) The obligation of confidence in clause 14.1(a) extends to Confidential Information provided to or obtained by a party before entering into this agreement.

14.2 Exclusions

The obligation of confidence in clause 14.1 does not apply to Confidential Information that is:

- (a) required to be disclosed by applicable Law or the rules of any stock exchange upon which the recipient's securities are listed, provided that the recipient:
 - (1) discloses the minimum amount of Confidential Information required to satisfy the Law or rules; and
 - (2) before disclosing any information, the recipient provides a reasonable amount of notice to the discloser and exhausts all reasonable steps (whether required by the discloser or not) to maintain the Confidential Information in confidence;
- (b) disclosed by Velrada on a confidential basis to potential investors in, or financiers of, Velrada or its Related Companies, provided that such information is reasonably necessary to be disclosed for the potential investors or financiers to assess whether or not to invest in or finance Velrada;
- (c) in the public domain otherwise than as a result of a breach of this agreement or another obligation of confidence;
- (d) independently developed by the recipient; or
- (e) already known by the recipient independently of its involvement in this agreement or interaction with the other party and free of any obligation of confidence.

14.3 Permitted disclosures

- (a) Each party may disclose Confidential Information of the other party only on a 'need-to-know' and confidential basis:
 - (1) with the prior written consent of the other party;
 - (2) to its Personnel; or
 - (3) to its Related Companies,
 for the exercise of rights or the performance of obligations under this agreement.
- (b) Each party who discloses Confidential Information of the other party pursuant to clause 14.3(a) must ensure that the information is kept confidential by the recipients.

14.4 Preventing disclosures

Each party must take all steps and do all things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

14.5 Remedies for breach

- (a) Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause 14 is breached.
- (b) Each party acknowledges that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 14, a party may seek and obtain an ex-parte interlocutory or final injunction to prohibit or restrain the other party or its Personnel from any breach or threatened breach of this clause 14.

15 Privacy

- (a) Each party agrees to comply with all applicable Laws, including the Privacy Act, relating to privacy and data protection with respect to any act done, or practice engaged in, by that party in the course of this agreement.
- (b) The Customer agrees to comply with all applicable Laws, including the Privacy Act, relating to privacy and data protection with respect to all PowerRoster Information and any other information that is collected, transferred or stored using PowerRoster.
- (c) Each party agrees to promptly notify the other party if it becomes aware of a breach of this clause 15.

16 Tax

- (a) The Fees do not include any taxes, levies, duties or other amounts levied, charged or otherwise collected by any government authority in any jurisdiction including, for example, any value-added, goods and services, sales, use or withholding tax (**Taxes**).
- (b) Customer is responsible for paying all Taxes associated with Velrada's provision, or its receipt, of the benefits of this agreement.

- (c) If Velrada has the legal obligation to pay or collect Taxes for which the Customer is responsible under clause 16(b), Velrada will invoice the Customer and the Customer must pay the invoiced amount unless the Customer provides Velrada with a valid tax exemption certificate authorised by the appropriate authority.

17 Dispute Resolution

- (a) If a party believes that a dispute has arisen in relation to this agreement (**Dispute**), then that party must deliver a notice to the other party setting out the particulars of that Dispute (**Notice of Dispute**).
- (b) If a party delivers a Notice of Dispute, then:
- (1) representatives from each party must meet as soon as possible and use all reasonable endeavours to resolve the Dispute within 10 Business Days of the receipt of the Notice of Dispute (**Initial Discussions**); and
 - (2) if the Dispute is not resolved during the Initial Discussions, then it must be immediately escalated to the CEO (or equivalent representative) from each party, who must use all reasonable endeavours to resolve the Dispute within 10 Business Days of the end of the timeframe for the Initial Discussions.
- (c) Neither party may commence legal proceedings in relation to a Dispute without complying with the requirements in clauses 17(a) and 17(b), unless the party is seeking urgent interlocutory relief.

17.2 Continued performance of the agreement

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the agreement.

18 General

18.1 Interpretation

- (a) In this agreement, unless the context requires otherwise:
- (1) headings are for convenience only and do not affect the interpretation of this agreement;
 - (2) words importing the singular include the plural and vice versa;
 - (3) words importing a gender include any gender;
 - (4) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
 - (5) a reference to a right includes a power, authority, discretion, benefit or remedy conferred on a party by this agreement or any applicable law;
 - (6) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;

- (7) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this agreement and a reference to this agreement includes an attachment and schedule;
- (8) a reference to a statute, regulation includes all statutes or regulations, amending, consolidating or replacing it and a reference to a statute includes all regulations issued under that statute;
- (9) a reference to a party to a document includes that party's successors and permitted assigns;
- (10) no rule of construction applies to the disadvantage of a party solely because that party was responsible for the preparation of this agreement or any part of it; and
- (11) a promise or agreement by two or more persons binds them jointly and severally.

(b) **Notices:** Any notice or other communication to or by a party to this agreement must comply with the requirements of this clause 18.1(b), be legible, in English and addressed to the addresses set out in the Velrada Order Form or, if applicable, to the alternative address details notified by a party in writing, and:

- (1) a notice is regarded as being given by the sender and received by the addressee:
 - (A) if delivered in person, when delivered to the addressee;
 - (B) if by post, 2 Business Days from the date of posting; and
 - (C) if by email, upon receipt of an acknowledgement (in any form) from the recipient that the email was received;
- (2) if the delivery or receipt of any notice is on a day which is not a Business Day or is after 4.00pm (addressee's time), it is regarded as received on the following Business Day; and
- (3) a notice must not be sent by email if it is a notice in relation to the breach or termination of this agreement.

(c) **Governing law and jurisdiction:** This agreement is governed by the laws of Western Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

(d) **Entire agreement:** This agreement replaces all previous agreements in respect of its subject matter and contains the entire agreement between the parties.

(e) **Further assurances:** Each party must do all things and execute all further documents as reasonably required by the other party to give full effect to this agreement.

- (f) **Relationship of parties:** This agreement does not:
- (1) constitute a partnership or a joint venture between the parties;
 - (2) authorise a party to act or hold itself out as an agent or representative of the other party, or assume or create any obligations on behalf of the other party; or
 - (3) constitute an employer and employee relationship between the parties.
- (g) **Costs and expenses:** Each party must pay its own costs and expenses in respect of the negotiation, preparation, execution and delivery of this agreement.
- (h) **Prohibition and enforceability:**
- (1) Any provision of, or the application of any provision of, this agreement or any right of a party under this agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
 - (2) Where a clause in this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.
- (i) **No waiver:** No delay or failure to act will be construed as a waiver of, or in any prejudice, any of Velrada's rights. No waiver will be effective unless it is in writing. A waiver of a breach will not waive any other breach.
- (j) **Variation:** A variation of any term of this agreement must be in writing and executed by the parties.
- (k) **Cumulative rights:** The rights of the parties arising out of or under this agreement are cumulative and do not exclude any other right of the parties.
- (l) **Assignment:** Velrada may assign, transfer, novate, mortgage, encumber, charge, grant a security over or otherwise dispose of its rights and obligations under or in connection with this agreement without the Customer's consent. The Customer must not do any of these things without Velrada's consent.
- (b) **Authorised User** means any person to whom the Customer has provided access to PowerRoster;
- (c) **Background IP** means, in relation to a party:
- (1) all Intellectual Property Rights of the party that were in existence prior to the date of this agreement; and
 - (2) all Intellectual Property Rights of the party that come into existence independently of this agreement;
- (d) **Business Day** means a day on which banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city;
- (e) **Confidential Information** of a party means any information:
- (1) regarding the business or affairs of that party or its Related Companies;
 - (2) regarding the Customers, employees or contractors of, or other persons doing business with, that party or its Related Companies;
 - (3) regarding the terms of this agreement, or the commercial arrangements between the parties;
 - (4) which is by its nature confidential or which is designated as confidential by that party; or
 - (5) which the other party knows, or ought to know, is confidential;
- (f) **Consequential Loss** means any loss of data, business, profits, opportunity, reputation or goodwill, or any other indirect or consequential loss, which is suffered by the Customer in connection with this agreement;
- (g) **Consumer Guarantee** means a consumer guarantee applicable to this agreement under the Australian Consumer Law, including any express warranty (as defined in section 2(1) of the Australian Consumer Law);
- (h) **Consumer Rights** has the meaning given to it in clause 12.1;
- (i) **Customer** means the party specified as such in Velrada Order Form;
- (j) **Customer Data** means all information, documents, images, audio or video files or other materials or data entered into PowerRoster by the Customer or any Authorised User;
- (k) **Disabling Code** means any virus, bomb, Trojan horse or other malware or computer programming code, including source and object code, which may impair, deny or otherwise adversely affect the use of software;
- (l) **Documentation** means any documents describing PowerRoster's functionality and usage provided by Velrada to the Customer with PowerRoster;
- (m) **Fees** means the fees for access to, and use of, PowerRoster as set out in the Subscription;
- (n) **Force Majeure Event** means:

18.2 Survival of obligations

Clauses 4, 5 (in relation to Fees that are unpaid at the date of termination or expiry) 9.1, 10 to 15, 17 to 19 and any other obligations which are expressed to or, by their nature, survive expiry or termination of this agreement, will survive expiry or termination of this agreement and are enforceable at any time at law or in equity.

19 Definitions

In this document:

- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 2010* (WA);

- (m) **Fees** means the fees for access to, and use of, PowerRoster as set out in the Subscription;
- (n) **Force Majeure Event** means:

- (1) an act of God;
 - (2) war, revolution or any other unlawful act against public order or authority;
 - (3) an industrial dispute;
 - (4) a governmental restraint; or
 - (5) any other event which is not within the reasonable control of Velrada;
- (o) **Insolvency Event** means, in relation to a party:
- (1) an administrator, liquidator or provisional liquidator is appointed to the party or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the party;
 - (2) an application or order is made for the winding-up or dissolution of the party or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party;
 - (3) a receiver, receiver and manager, official manager, trustee, administrator, other controller or similar officer is appointed over the assets or undertaking of the party or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the party;
 - (4) the party suspends payment of its debts generally or is unable to pay its debts as and when they fall due or is presumed to be insolvent under applicable law, or enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (5) the party ceases to carry on business; or
 - (6) anything having a substantially similar effect to any of the events specified in 1 to 5 above happens to that party under the law of any jurisdiction;
- (p) **Intellectual Property Rights** means any industrial and intellectual property rights throughout the world and for the duration of the rights including:
- (1) any patents, copyright including future copyright, registered or unregistered trademarks or service marks, trade names, brand names, registered or unregistered designs, commercial names, circuit layouts, database rights;
 - (2) any inventions, discoveries, processes, methods, trade secrets, know how, computer software, confidential information and scientific, technical and product information;
 - (3) the right to apply for any industrial and intellectual property rights;
 - (4) any moral rights; and
 - (5) any other similar or analogous rights and any intellectual or industrial rights whether now existing or which come into existence in the future;
- (q) **Law** means any:
- (1) legislation, including regulations, determinations, by laws, declarations, ministerial directions and other subordinate legislation;
 - (2) common law;
 - (3) Governmental Agency requirement or authorisation (including conditions in respect of any authorisation);
 - (4) mandatory codes, standards and guidelines;
 - (5) writ, order, injunction, or judgment; or
 - (6) local government legislation, including regional plans, district plans, regulations, by laws, declarations, ministerial directions and other subordinate legislation.
- (r) **Licence** means the licence to use PowerRoster specified in clause 1.3;
- (s) **Maintenance** includes any maintenance, upgrade, update, enhancement, modification, reconfiguration or other like activity undertaken in respect of any or all of PowerRoster;
- (t) **Minimum requirements** means the licences, software, hardware, operating system, network connections and other operational requirements required to access and use PowerRoster, including those specified in item 4 of the Subscription.
- (u) **Personnel** means in relation to a party, that party's employees, agents, consultants and subcontractors;
- (v) **PowerRoster** means the extension to Microsoft Dataverse created by Velrada, which automates workforce allocation as further described in the Documentation;
- (w) **PowerRoster Information** means information, data, results, analyses and other output that the Customer obtains from PowerRoster;
- (x) **Privacy Act** means the *Privacy Act 1988* (Cth);
- (y) **Related Company** means a related body corporate as that expression is defined in the *Corporations Act 2001* (Cth);
- (z) **Subscription** means the details of the Customer's subscription to PowerRoster as specified in the Velrada Order Form;
- (aa) **Subscription Period** means the period specified in item 3 of the Subscription, including any renewal entered into in accordance with clause 2.3(b);
- (bb) **Velrada** means the party specified as such in the Velrada Order Form;
- (cc) **Velrada Order Form** means the order form executed by Velrada and the Customer, which incorporates these terms and conditions; and

Velrada Privacy Policy means Velrada's privacy policy available at <https://velrada.com/privacy-policy/>.