



TERMS AND CONDITIONS

Background

- A. The aim of the Power Pro Software and SaaS Services is to assist you as a registered training organisations with the management of, and record keeping for, the training services you provide.
- B. You have requested to receive the Services.
- C. We have agreed to provide the Services to you in accordance with the terms of this Agreement.

1 Parties and agreement

- 1.1 This Agreement is between you, the person or entity using the Services and named in the Schedule (**you** or **your**) and Marcada Group Pty Ltd (ACN 138 671 744) trading as Vidatek, its successors and assignees (**we**, **us** or **our**), each a **Party** and collectively the **Parties**.
- 1.2 This Agreement forms the agreement under which we agree to provide you with the Services. Please read this Agreement carefully. If you have any questions, please contact us using the contact details in the Schedule, before accepting this Agreement.

2 Services

- 2.1 You have requested the Services. We will supply the Services to you as set out in this Agreement.
- 2.2 We warrant and agree that, we will use reasonable effort to ensure all of our obligations under this Agreement will be carried out:
 - (a) by suitably competent and trained Personnel; and
 - (b) in an efficient and professional manner.

3 Acceptance

- 3.1 You accept this Agreement by signing and returning to us the signed copy of the Agreement.
- 3.2 By accepting this Agreement, you warrant to us that:
 - (a) you have reviewed this Agreement, including our privacy policy, available on the Site and you understand them and will use the Services in accordance with them;
 - (b) you have the legal capacity to enter into a legally binding agreement;
 - (c) you have the authority to act on behalf of any person or entity for whom you are using the Services and you are deemed to have agreed to this Agreement on behalf of any entity for whom you use the Services; and
 - (d) you have all hardware, software and services which are necessary to access and use the Services, including any required operating systems as set out on the Site.

4 Term

- 4.1 This Agreement commences on the (**Commencement Date**), will continue for the Initial Term and will automatically

renew for subsequent periods of the same length as the Initial Term (each a **Renewal Term**), unless either Party gives the other written notice of termination prior to the expiration of the then current Initial Term or Renewal Term (**Agreement Term**).

- 4.2 The Commencement Date is the date when the cloud server is activated after the initial payment.

5 Accounts

- 5.1 We will create an account for you, in order for you and your Authorised Users to access and use the Services, being (as applicable) the database Software or the database SaaS we provide to you (**Account**). This may include creating an account with a third party service provider such as Amazon Web Services, to host your Customer Data. We may request access to any relevant data, including on any third party service, so that we may coordinate migration of this data to your Account with us. You must ensure that any information you provide to us, or we request from you as part of the creation process is complete and accurate and you are authorised to provide this information to us.
- 5.2 You are the Account owner and regardless of any change in any contact details, you will remain responsible for your Account as set out in this Agreement. If you wish to change the Account owner, you must provide us with a written request to transfer the ownership of the Account to the incoming party, which must also include the incoming party's written consent to take over full responsibility for the Account in a form acceptable to us.
- 5.3 It is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account, including activity by Authorised Users and for ensuring that any activities on your Account comply with this Agreement.
- 5.4 We are not responsible for the management or administration of your Account or your Authorised Users.

6 Licence and restrictions on use

- 6.1 Subject to the payment of any applicable Fees, we grant you a non-exclusive, non-transferable (except with our written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to:
 - (a) access and use the SaaS Services for the Agreement Term in accordance with any Authorised User limits (**SaaS Licence**); and/or
 - (b) download, install and use the Software in accordance with any Authorised User limits (**Software Licence**),and together (**Licence**).
- 6.2 You must not (and must ensure your Authorised Users do not) access or use the Services except as permitted by the Licence and you must not permit any other person to use the Services in any way which is in breach of any applicable

Laws or which infringes any person's rights, including Intellectual Property rights, including to;

- (a) use the Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (b) use the Services in any way that damages, interferes with or interrupts the supply of the Services;
- (c) introduce malicious programs into our hardware and software or Systems, including viruses, worms, trojan horses and e-mail bombs;
- (d) reveal your Account's password to others or allow others to use your Account (other than Authorised Users);
- (e) carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (f) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Services;
- (g) if applicable, send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the Services in breach of any person's privacy (such as by way of identity theft or "phishing"); or
- (h) circumvent user authentication or security of any of our networks, accounts or hosts or those of our users.

6.3 For us to provide the Services to you, you must promptly obtain and provide to us any required licences, approvals or consents necessary for our performance of the Services.

7 Authorised Users

- 7.1 You agree that the Licence permits you to access and use the Services in accordance with the number of Authorised Users, as set out in the Schedule (if applicable).
- 7.2 Where a limit applies to number of permitted Authorised Users, solely for the purpose of calculating this number of Authorised Users, this is to be calculated only based on the number of users who may concurrently be logged into your Account.
- 7.3 You may, at any time increase the number of Authorised Users by requesting an increase by email and we will quote and after your acceptance of the quote, apply new fees, which will be applicable as of the agreed effective date of the increase of the number of Authorised Users.
- 7.4 You may authorise additional systems to use the Service by having the authorised administrator request access keys from within the Software.
- 7.5 You are responsible for uninstalling any systems no longer required to access the Service
- 7.6 You are responsible for deleting any users accounts that no longer require access to the Service.

8 Third Parties

8.1 You acknowledge and agree that:

- (a) the provision of the Services may be contingent on, or impacted by, third parties, other users' use of our services, suppliers, other subcontractors (**Third Party Inputs**); and
- (b) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible, and will have no Liability, for any default or breach of this Agreement or law, if such default or breach was caused or contributed to by any Third Party Inputs.

8.2 You acknowledge that the Services include certain optional functionality that may interface or interoperate with third party software or services.

8.3 To the extent that you choose to use such functionality and they are not a part of the Services, you are responsible for:

- (a) the purchase of;
- (b) the requirements; and
- (c) the licensing obligations,

related to the applicable third party software and services.

8.4 It is your responsibility to ensure these requirements are met in order for you to benefit from the specific functionality made available to you.

9 Support Services

9.1 During the Agreement Term:

- (a) we will provide you with technical support services for the Services, as set out in the Schedule, during Business Hours and on Business Days (**Support Hours**), via email and/or telephone, or as otherwise agreed between the Parties; and
- (b) we will provide any training as described in the Schedule, on dates and at times as agreed between the Parties.

10 Additional Services

10.1 During the Agreement Term, you may request Additional Services, including training and bespoke customisation to the scope or functionality of the Services.

10.2 To request Additional Services, you must notify us of the changes or further services you require. Following notification, at our discretion, we may provide you with written notice in the form of a scope of services, a proposal or a statement of work (as applicable) covering the Additional Services required and any further fee required for us to undertake the Additional Services.

10.3 If you agree to the scope of services, proposal or statement of work (as applicable), for the Additional Services, then (subject to the Parties having signed this Agreement), we will provide the Additional Services to you in consideration for payment of the additional fee which will form part of the Fees.

11 Privacy

11.1 You are responsible for the collection, use, and otherwise dealing with Personal Information related to your business and all matters relating to the Customer Data.

11.2 You must and must ensure that your Personnel and Authorised Users comply with any privacy or anti-spam Laws applicable to you in respect of all Personal Information

collected, used, stored or otherwise dealt with under or in connection with this Agreement.

12 Fees and payment

- 12.1 You must pay us any Fees and any other amounts payable to us under this Agreement in accordance with the payment dates and payment methods set out in any invoice we provide to you (**Payment Terms**).
- 12.2 We will issue an invoice for the Fees for any Renewal Term, at least 6 weeks before the expiration of the then current Initial Term or Renewal Term.
- 12.3 You will not be entitled to any part of the Services until the Fee for these Services has been paid in full. Additional Services may include in arrears Payment Terms.
- 12.4 If any payment has not been made in accordance with the Payment Terms, we may (in our absolute discretion):
- (a) immediately cease or suspend the provision of the Services, and recover as a debt due and immediately payable from you any additional costs of doing so;
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 5% per month, calculated daily and compounding monthly, on any such amounts unpaid after the due date; and
 - (c) engage debt collection services and/or commence legal proceedings in relation to any such amounts.
- 12.5 If you rectify such non-payment after the Services have been suspended, then we will recommence the provision of the Services as soon as reasonably practicable. Any costs for re-instating the Services will be passed onto you.
- 12.6 The Fees are non-refundable. To the maximum extent permitted by law, there will be no refunds or credits for any unused Licence (or part thereof).
- 12.7 The Fees are subject to change upon notice from us. Any change to Fees will be published on the Site and reflected in the next invoice we issue to you. Any change to our Additional Service Fees will be notified to you via email before or at the time of receiving any request from you. If you do not agree to the any Fee change for the Services, you may terminate this Agreement in accordance with clause 4.1. If you do not agree to any Additional Service Fees you may choose not to request any further Additional Services.

13 GST

- 13.1 The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 13.2 If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.
- 13.3 If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an

adjustment note issued (if required), and any payments to give effect to the adjustment must be made.

- 13.4 If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

14 Intellectual Property Rights

- 14.1 All Intellectual Property in the Software, SaaS Services and all Intellectual Property developed, adapted, modified or created by us or our Personnel (including in connection with this Agreement, the Software and the SaaS Services and any machine learning algorithms output from the Services) is and will remain owned exclusively by us or our third party service providers.
- 14.2 You must not whether directly or indirectly, without our prior written consent:
- (a) copy or use, in whole or in part, any of our Intellectual Property;
 - (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
 - (c) reverse assemble, reverse engineer, reverse compile or enhance the Services;
 - (d) attempt to discover the source code or object code or underlying structures, ideas, know how or algorithms in relation to the Services, the data or documentation;
 - (e) breach any Intellectual Property Rights connected with the Services, including altering or modifying any of our Intellectual Property;
 - (f) cause any of our Intellectual Property to be framed or embedded in another website; or create derivative works from any of our Intellectual Property;
 - (g) resell, assign, transfer, distribute or make available the Services to third parties;
 - (h) "frame", "mirror" or serve any of the Services on any web server or other computer server over the Internet or any other network; and
 - (i) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Services.
- 14.3 Despite anything to the contrary in this Agreement or elsewhere, we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it:
- (a) does not contain identifying information; and
 - (b) is not compiled using a sample size small enough to make the underlying Customer Data identifiable.
- 14.4 We and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property rights in the foregoing.

14.5 You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Customer Data during the Agreement Term and for a reasonable period after the Agreement Term to:

- (a) supply the Services (including for back-ups) to you (including to enable you, your authorized Users and your Personnel to benefit from the Services);
- (b) diagnose problems with the Services; and

enhance and otherwise modify the Services, as reasonably required to perform our obligations under this Agreement.

14.6 You agree that all Intellectual Property Rights in Feedback will at all times vest, or remain vested, in us upon creation and we may use Feedback in any manner which we see fit and no benefit will be due to you as a result of any use by us of any Feedback. To the extent that ownership of such Intellectual Property Rights in any Feedback does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.

14.7 You must, at all times, ensure the integrity of the Customer Data and that your use of the Customer Data is compliant with all Laws.

14.8 You represent and warrant that:

- (i) you have obtained all necessary rights, releases and permissions to provide all your Customer Data to us and to grant the rights granted to us in this Agreement;
- (ii) the Customer Data is accurate and complete;
- (iii) the Customer Data (and its transfer to and use by us as authorised by you) under this Agreement does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity; and
- (iv) any use, collection and disclosure authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.

14.9 We assume no responsibility or Liability for the Customer Data. You are solely responsible for the Customer Data and the consequences of using, disclosing, or transmitting it.

14.10 You acknowledge and agree that the operation of the Services is reliant on the accuracy of the Customer Data, and the provision of inaccurate or incomplete Customer Data by you may affect the use, output and operation of the Services.

15 Liability

15.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) our maximum Liability arising from or in connection with this Agreement (including the Services or the subject matter of this Agreement) will be limited to, and must not exceed for any claim, the total amount of Fees you paid to us to which such Liability relates; and
- (b) we will not be liable to you for any Consequential Loss,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

15.2 Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you waive

and release us from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:

- (a) loss of, or damage to, any property or any injury to or loss to any person;
- (b) failure or delay in providing the Services;
- (c) breach of this Agreement or any Laws; or
- (d) the Computing Environment,

where caused or contributed to by any:

- (e) Force Majeure Event;
- (f) a fault, defect, error or omission in the Computing Environment or Customer Data; or
- (g) act or omission by you, your related parties, authorized Users, Personnel or any third party (including customers, end users, suppliers, providers or subcontractors),

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services.

15.3 Certain legislation, including the Australian Consumer Law (ACL) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection Laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement attempts to exclude, restrict or modify your Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.

15.4 You acknowledge and agree that:

- (a) you are responsible for all users using the Services, including your Personnel and any Authorized Users; and
- (b) you use the Services and any associated programs and files at your own risk;
- (c) the technical processing and transmission of the Services, including Customer Data, may be transferred unencrypted and involve:
 - (i) transmissions over various networks; and
 - (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- (d) we may use third party service providers to integrate with the Services or to host the SaaS Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without Liability or entitling you to any refund, credit, or other compensation;
- (e) the Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third party products, facilities or services;
- (f) we do not guarantee that any file or program available for download and/or execution from or via the Services is free from viruses or other conditions which could damage or interfere

- with data, hardware or software with which it might be used;
- (g) we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, your Authorised Users or your Personnel; and
- (h) we may pursue any available equitable or other remedy against you if you breach any provision of this Agreement.

16 Termination

16.1 To the extent permitted by law, either Party may terminate this Agreement, if the other Party:

- (a) has breached a material term of this Agreement and has failed to remedy such breach within 10 Business Days of receiving notice to do so, subject to any other express right of termination;
- (b) ceases operation without a successor; or moves to a new provider. We require 14 days written notice prior to the end of the Agreement Term in order to process the decommissioning of the Services.
- (c) is subject to an Insolvency Event.

16.2 We may terminate this Agreement by providing you with 5 Business Days notice, in our sole discretion, if you fail to pay any amounts owing to us within 30 days of the due date.

16.3 On termination of this Agreement:

- (a) you must cease using the Services and we will cease to provide the Services;
- (b) we will provide you with your Customer Data as a set of CSV files along with a copy of all Student documents and Contact Logs;
- (c) If an earlier data extraction is requested and Vidatek services are still needed until final expiry date were another extraction must be carried out, Vidatek reserve the right to charge a fee for the extra work required.
- (d) will provide any further disengagement services at our then current rates, and such further disengagement support services must be agreed in writing by the Parties.
- (e) you agree that any payments made are not refundable;
- (f) you must pay for all Services provided under this Agreement including Services which have been performed and have not yet been paid by you, and all other amounts due and payable under this Agreement, including under an indemnity, within 7 Business Days of termination;
- (g) you must promptly return (where possible) or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property unless you are required by Law or regulatory requirements to retain such information;
- (h) we must promptly return (where possible) or delete or destroy (where not possible to return), your Confidential Information and

Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property unless we are required by Law or regulatory requirements to retain such information; and

- (i) for the avoidance of doubt, any provisions of this Agreement that by their nature survive the termination of this Agreement will remain in force after the Agreement Term.

16.4 The accrued rights, obligations and remedies of the Parties are not affected by the termination of this Agreement.

17 General Warranties

17.1 We warrant and agree that:

- (a) we are properly constituted and have the right and authority to enter into this Agreement; and
- (b) we will provide the Services in accordance with all applicable Laws.
- (c) we apply a data back up policy safeguarding any disaster/recovery situations.
- (d) We apply a cloud server monitoring and maintenance plan including periodical reboots and operating system patching.

17.2 You warrant and agree that:

- (a) there are no legal restrictions preventing you from entering into this Agreement;
- (b) you are not subject to an Insolvency Event;
- (c) you will cooperate with us and provide us with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable us to perform the Services and as otherwise requested by us, from time to time, and in a timely manner;
- (d) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete and that we will rely on such information and documentation in order to provide the Services;
- (e) you will inform us if you have reasonable concerns relating to our provision of the Services under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
- (f) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the Services to be provided in accordance with this Agreement, at your cost, and for providing us with the necessary consents, licences, authorities and permissions, and in a timely manner;
- (g) if applicable, you hold a valid ABN which has been advised to us; and
- (h) if applicable, you are registered for GST purposes.

18 Confidential Information

18.1 Each Party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other Party (**Discloser**) except:

- (a) where permitted by this Agreement;
- (b) with the prior written consent of the Discloser;

- (c) where the Confidential Information is received from a third party, except where there has been a breach of confidence;
 - (d) on a confidential, "needs to know" basis to the Recipient's Personnel, auditors, insurers, agents and professional advisors, provided they have been notified of this obligation of confidence; or
 - (e) where the Recipient is compelled to do so by Law, or ASQA Vet regulating body notice issued pursuant to section 62 of the NVR Act where vidatek must provide information to the regulator and not inform the RTO.
- 18.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.

19 General

- 19.1 This Agreement may only be amended by a written instrument executed by both Parties.
- 19.2 Neither Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Party. Any purported dealing in breach of this clause is of no force or effect.
- 19.3 A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 19.4 This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 19.5 The Services will be provided to you on a non-exclusive basis.
- 19.6 We reserves the right at any time and from time to time to change or remove features of the Services provided that, where there is any material negative alteration to the functionality of the Services in accordance with this clause, we will provide you with 20 Business Days' notice and you may terminate this Agreement by written notice without Liability to us.
- 19.7 The Services may be downloaded, installed or accessed in Australia and overseas. We make no representation that the Services comply with the Laws (including Intellectual Property Laws) of any country outside of Australia. If you access the Services from outside Australia, you do so at your own risk and you are responsible for complying with the Laws in the place you access the Services.

- 19.8 With your prior written consent, we may use advertising or publicly announce that we have undertaken work for you, including in website testimonials and in our marketing material.
- 19.9 We may engage subcontractors to perform the Services on our behalf. Despite this, we will remain responsible for all of our obligations under this Agreement.
- 19.10 Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to this Agreement does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.
- 19.11 If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.
- 19.12 This Agreement is governed by the laws of Western Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

20 Definitions

Agreement means these terms and conditions, all schedules (including the Schedule), annexures and attachments included, or referred to, in this agreement.

Additional Services means any Services not set out in the Services description in the Schedule.

Authorised User means a user permitted to access and use the Services under your Account;

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Western Australia;

Business Hours means 7am to 4pm on a Business Day;

Commencement Date means the date that the last Party to this Agreement signs the Agreement.

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

Confidential Information includes confidential information about a Party's business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential" but does not include any information which is in the public domain other than through a breach of confidence. Our Confidential Information includes our Intellectual Property. Your Confidential Information includes the Customer Data;

Consequential Loss includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage

relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this Agreement (whether involving a third party or a Party to this Agreement or otherwise);

Customer Data means the information, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel or Authorised Users into the Services or stored by the Services or generated by the Services as a result of your use of the Services;

Feedback means any idea, suggestion, recommendation or request by you or any of your Personnel or Authorised Users, whether made verbally, in writing, directly or indirectly, in connection with the Services;

Fees means the fees as set out in the Schedule;

Force Majeure Event means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

Insolvency Event means the occurrence of any one or more of the following events in relation to either Party:

- (a) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable Laws;
- (b) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of its property;
- (e) it is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
- (g) it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
- (i) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the relevant Party;

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names. Our Intellectual Property includes the Software and the SaaS Services and any Feedback;

Laws means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory and includes the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth);

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise;

Personal Information is defined in the *Privacy Act 1988* (Cth) and also includes any similar term as defined in any other privacy law applicable to you;

Personnel means, in relation to a Party, the officers, employees, contractors, sub-contractors and agents of that Party;

SaaS Services means our Software as a service as described in the Schedule and on the Site;

Schedule means the schedule attached to these terms and conditions;

Site means the website located at <http://powerprorto.com.au/>, and may be available through other addresses and channels;

Services means the Software and/or the SaaS Services, and any training, or support as further particularised in the Schedule and any Additional Services requested throughout the Agreement Term.

Software means the software provided to you as software for download and installation, and as used to provide any of the SaaS Services, and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties; and

System means all hardware, software, networks and other IT systems used by a Party from time to time, including a network.

21 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;

- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) the word "**month**" means calendar month;
- (f) the words "**in writing**" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (g) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (h) the word "**includes**" and other similar words mean "**includes without limitation**";
- (i) a reference to \$ or dollars refers to the currency of Australia from time to time; and
- (j) no **clause** will be interpreted to the disadvantage of a Party merely because that Party drafted the **clause** or would otherwise benefit from it.

EXECUTION

EXECUTED for and on behalf of **Marcada Group Pty Ltd (ACN 138 671 744) trading as Vidatek** by a duly authorised representative:

Signature:

Name:

Position:

EXECUTED for and on behalf of "**Company Name**" (ABN:) by a duly authorised representative:

Signature:

Name:

Position:

SCHEDULE

TERM	MEANING
we, us or our	Marcada Group Pty Ltd (ACN 138 671 744) trading as Vidatek Address: PO Box 7196, SAFETY BAY, WA 6169 Phone: 08 9511 1040 Email: support@powerprorto.com.au
you or your	Company name ABN: Address: Phone: Email:
Services	The Services include the following: - Provisioning of a customer dedicated online database virtual server using high availability and security settings; - Remote installation of the client workstations for Authorized Users; - PowerPro RTO Sky with * Authorised Users; - Current Database size: (GB) - as part of the onboarding process, 5 hours of remote training on the Services delivered in 1 hour blocks, in accordance with clause 9; - technical support services which include: - o set up and remote installation of the Services; - o monitoring of any emails sent to support@powerprorto.com.au during Support Hours; - o telephone support during Support Hours; and - access to general updates to the Services, as they become available.
Additional Services	The Additional Services you may request include (without limitation), the following: • Additional modules/plugins as listed and priced on the site; • Development of customised reports; at a fixed rate of \$100+GST per report • On-site training; • Public workshops on PowerPro RTO; • Service customisation;
Initial Term	12 months
Renewal Term	12 months
Fees	For the Services during the Initial Term a fixed fee amount of <as per quote> applies ; For each Renewal term, the fee amount may be adjusted due to CPI indexation; and For the hosting and backup of databases larger than 50GB (at the time of renewal) a Database size surcharge applies. A tiered system of \$200+GST applies to each 50GB block (database size) over the first 50GB; databases above 100GB are charged in 100GB increments at a time, \$400+GST; and For the Additional Services, as calculated on the basis of a schedule of rates (as attached to this Agreement or as otherwise agreed between the Parties) for any Additional Services. OR [As further particularised on the Site.]