

VOTAR TERMS & CONDITIONS

This software as a service agreement for access to the **Votar Regulatory Compliance Assessment Toolkit (RCAT)** is between Votar Partners Pty Ltd (**Votar**) and the Customer. The parties agree that the following terms and conditions apply to the Services provided under this agreement.

1. SERVICES

- (a) Votar grants to the Customer for the Subscription Term the licence to the RCAT Software specified in the Order Details.
- (b) The Customer acknowledges that this agreement is a services agreement and that Votar will not be delivering copies of the RCAT Software to the Customer as part of the Services.
- (c) Votar agrees to provide to the Customer the Services, the Support Services and the Other Services in accordance with this agreement, the Service Levels and in a professional manner consistent with general industry standards.

2. INTELLECTUAL PROPERTY

- (a) Subject to the limited licenses in this agreement, Votar or its licensors own all right, title and interest including all related intellectual property rights in the RCAT Software, the Services, Documentation, and other deliverables provided under this agreement, including all modifications, improvements, upgrades, derivative works and Feedback related to the RCAT Software (**Votar IP**).
- (b) Except for the licences granted under this agreement, the Customer obtains no right, title, interest or any related intellectual property rights in the Votar IP.
- (c) The Customer agrees to inform Votar of all problems encountered using the RCAT Software and all ideas for improvements and enhancements (**Feedback**).
- (d) The Customer assigns to Votar all right, title and interest including all related intellectual property rights in the Feedback on creation.
- (e) Third party technology that may be appropriate or necessary for use with the Services or the RCAT Software that is provided by Votar as part of the Services, is specified in the Documentation or Order Details as applicable.
- (f) The Customer's right to use any third-party technology is governed by the terms of the third-party technology license agreement specified by Votar and not under this agreement.

3. CUSTOMER DATA

- (a) The Customer is responsible for collecting, inputting and updating all Customer Data stored on the Host, and for ensuring that the Customer Data does not include content that breaches the Customer's obligations in this agreement.
- (b) The Customer is responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer data.
- (c) In order to access the Services, the Customer must ensure that its systems meet the minimum system requirements specified in the Documentation.
- (d) The Customer retains ownership and all intellectual property rights in its Customer Data.
- (e) The Customer acknowledges that Votar exercises no control over the content of the information transmitted by the Customer or its Users through the Services.

- (f) The Customer grants to Votar:
 - (1) a non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Customer Data as necessary to provide the Services to the Customer;
 - (2) a licence to retain in perpetuity a copy of the Customer Data for use in an aggregated, de-identified form in benchmark comparisons in RCAT dashboards and compliance reports; and
 - (3) the right to provide aggregated, de-identified Customer Data to Australian federal and state government agencies to support their respective review and improvement of regulatory compliance in their respective sectors.
- (g) If requested by the Customer, Votar will de-identify Customer Data but the Customer acknowledges that the Customer will not be able to access such data should it wish to establish a new subscription for the Services at a later date.

4. RESTRICTIONS

Subject to this agreement, the Customer must not, and must not permit anyone to:

- (a) copy or republish the Services or the RCAT Software;
- (b) make the Services available to any person other than its authorised Users;
- (c) use or access the Services to provide service bureau or time-sharing services to third parties;
- (d) modify or create derivative works based upon the RCAT Software or Documentation;
- (e) attempt or implement measures to circumvent Subscription limits by manipulating the Services to avoid additional Fees;
- (f) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the RCAT Software or in the Documentation;
- (g) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the RCAT Software, except and only to the extent such activity is expressly permitted by applicable Law;
- (h) access the Services or use the Documentation in order to build a similar product or competitive product; or
- (i) upload, post, reproduce or distribute any information, the RCAT Software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.

5. ACCEPTABLE USE OF THE SERVICES

- (a) The Customer may use the functions and tools included in the RCAT Software and the Services as specified in the Documentation.
- (b) In receiving or using the Services, the Customer must not do or attempt to do anything that:
 - (1) violates any applicable Laws;
 - (2) infringes the rights of any third party, including any intellectual property, confidentiality or privacy rights;
 - (3) attempts or constitutes a commission of fraud, defamation, libel, abuse, menace or harassment;
 - (4) involves the publication or dissemination of material that Votar reasonably considers to be offensive, indecent, obscene, harmful or otherwise inappropriate whether or not such activity is unlawful;
 - (5) threatens the security or integrity of any network or otherwise interferes with or disrupts any network or network users (including their use of, or access to a service or network), or any network services or equipment;
 - (6) involves unauthorised access to or use of any machine or network, a denial of service attack, falsifying header information or User identification information, or monitoring or scanning the networks of others; or

- (7) introduces or allows the introduction of any virus or other form of malicious code into the Services or any network.
- (c) The Customer must not use the Services to:
 - (1) send, allow to be sent, or assist in the sending of Spam;
 - (2) use or distribute any software designed to harvest email addresses; or
 - (3) otherwise breach any Laws relating to Spam.

6. CUSTOMER RESPONSIBILITIES

- (a) The Customer must provide to Votar the information and assistance reasonably required to enable Votar to deliver the Services.
- (b) The Customer acknowledges that Votar's ability to deliver the Services in the manner provided in this agreement may depend upon the accuracy and timeliness of such information and assistance.
- (c) The Customer must ensure that each User to whom it permits access to the Services is required to comply with an acceptable use policy that meets the requirements of this agreement and which:
 - (1) guides the User to create complex passwords of a high security strength for their access to the Services;
 - (2) ensures that its Users take all necessary measures to keep those passwords secret; and
 - (3) requires Users to ensure that they log out of every session during which they access the Services.
- (d) The Customer must:
 - (1) ensure that passwords can only be reset by Users whose identity can be authenticated before the reset is permitted;
 - (2) make every reasonable effort to prevent unauthorised third parties from accessing the Services;
 - (3) promptly notify Votar of any unauthorised use of any password or User identification or any other known or suspected breach of security;
 - (4) promptly report to Votar and use reasonable efforts to stop, any unauthorised use of the Services that is known or suspected by the Customer; and
 - (5) not provide and ensure against its Users providing, false identification information to gain access to or use of the Services.
- (e) The Customer is responsible for the acts and omissions of its Users. Votar is not liable for any loss of data or functionality however caused by the Customer's Users.

7. CONFIDENTIALITY

- (a) During the Subscription Term and following its expiration, each party must:
 - (1) treat as confidential all Confidential Information of the other party;
 - (2) not use such Confidential Information except to exercise its rights and perform its obligations under this agreement; and
 - (3) except as permitted under this agreement, not disclose such Confidential Information to any third party without the discloser's prior consent.
- (b) Each party must promptly notify the other party of any actual or suspected misuse or unauthorised disclosure of the other party's Confidential Information.
- (c) Each party may disclose Confidential Information of the other party on a need-to-know basis to its Personnel, advisors or service providers who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the recipient.
- (d) The recipient may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the recipient uses

reasonable efforts to promptly notify the other party prior to such disclosure to enable the discloser to seek a protective order or otherwise prevent or restrict such disclosure.

- (e) Votar may anonymously compile statistical information related to the performance of the Services for the purposes of improving the Services, provided that such information does not identify the Customer's data or include the Customer's name.

8. PRIVACY

- (a) Each party must comply with applicable privacy Laws and not do anything that would place the other party in breach of such Laws.
- (b) The Customer agrees to obtain all necessary consents and make all necessary disclosures required under relevant privacy Laws before including Personal Information in Customer Data and using the Services and the RCAT Software as contemplated in this agreement.
- (c) Subject to rights reserved under this agreement, Votar will not use or disclose any Personal Information included in Customer Data that it may acquire through the Service for any purpose other than for the provision of the Services.
- (d) The Customer consents to Votar collecting Account Information which will include Personal Information for the creation and administration of accounts and the disclosure of such information to Votar's Personnel and service providers as necessary to provide the Services.
- (e) All Customer Data including any Account Information will be stored and processed in Australia.
- (f) Where there is an incident that meets the definition of an eligible data breach under the *Privacy Act 1988 (Cth)* each party will on becoming aware of the breach:
 - (1) make any notifications required by Law;
 - (2) promptly undertake relevant investigations to determine the cause of the breach and reasonable actions to mitigate the effects of the breach; and
 - (3) meet any other obligations under Law in relation to the breach.
- (g) Each party will co-operate with the other party in the management of any eligible data breach by:
 - (1) consulting on the content and timing of notifications required under relevant privacy Laws; and
 - (2) by providing all relevant information and assistance required by the other party immediately upon request.

9. ORDERS AND PAYMENT

- (a) The parties will complete and agree the Order Details for the supply of the Services.
- (b) The Services are governed exclusively by this agreement and the agreed and signed Order Details. If there is a conflict between the terms of the Order Details and this agreement, the terms of the Order Details take precedence.
- (c) Votar will invoice the Customer for all Fees on the Invoice Date/s.
- (d) The Customer must pay all undisputed invoices within 30 days after the Customer receives the invoice.
- (e) Except as expressly provided otherwise, fees are non-refundable.
- (f) The Customer will reimburse Votar for its reasonable, out-of-pocket travel and related expenses incurred in performing the Other Services. Votar must notify the Customer prior to incurring any such expense. Votar must comply with the Customer's travel and expense policy if made available to Votar prior to the required travel.
- (g) The Customer is responsible for payment of all sales and use taxes, GST or similar charges relating to the Customer's purchase and use of the Services.
- (h) Votar will charge the Customer for applicable taxes as a separate line item on each invoice.
- (i) The Customer is not liable for taxes based on Votar's net income, capital, payroll or other business taxes that are levied in relation to Votar's business operations.

10. TERM AND TERMINATION

- (a) The term of this agreement continues for the Subscription Term unless terminated earlier in accordance with this Agreement.
- (b) Either party may terminate this agreement immediately upon a material breach by the other party that has not been remedied within thirty (30) days after receipt of notice of that breach.
- (c) In addition to its rights of termination, Votar may suspend the Services if:
 - (1) the Customer fails to pay any undisputed amounts due to Votar under this agreement, but only after Votar has notified the Customer of the failure and the failure continues for fifteen (15) days; or
 - (2) Votar reasonably concludes that the Customer's or User's use of the Services is causing immediate or ongoing harm to Votar or others.
- (d) In the event of the suspension the parties agree to diligently attempt to resolve the issue.
- (e) Suspension of the Services does not release the Customer from its payment obligations under this agreement.
- (f) The Customer agrees that Votar is not liable to the Customer or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the Services.

11. EFFECT OF TERMINATION

- (a) Upon termination of this agreement or expiration of the Subscription Term, all usage rights granted under this agreement terminate immediately. Votar will maintain limited access to the Services for 30 days after the termination date to allow the Customer to transition out of the Service. After the expiration of the 30 days, all access will be terminated.
- (b) If Votar terminates this agreement due to a breach by Customer, then the Customer must immediately pay to Votar all amounts then due under this agreement and to become due during the remaining term of this agreement, but for such termination.
- (c) If the Customer terminates this agreement due to a breach by Votar, then Votar must immediately repay to the Customer all pre-paid amounts for any unperformed Services scheduled to be delivered after the termination date.
- (d) Subject to clause 3(f), upon termination of this agreement each party must return or destroy at the election of the owner any Confidential Information and if relevant provide written certification of any destruction, provided that each party may retain one archival copy of such information (excluding the RCAT Software) for its internal records or regulatory compliance obligations.

12. WARRANTIES

- (a) Votar represents and warrants that it will provide the Services in a professional manner consistent with general industry standards and that the RCAT Software and Services will perform substantially in accordance with the Documentation.
- (b) Votar does not guarantee that the Services will be error free or uninterrupted or that all errors will be corrected.
- (c) The Customer acknowledges that the RCAT Software:
 - (1) is a functional tool that the Customer uses as it determines to support its internal business operations; and
 - (2) does not operate to take the place of or constitute legal advice as to whether the Customer is compliant with its relevant regulatory obligations.
- (d) The Customer acknowledges that Votar does not control the transfer of data over the internet and that the Services may be subject to limitations, delays or other issues inherent in the use of such communications facilities.

- (e) The parties agree that the warranties in this clause 12 are the only warranties that apply in relation to the RCAT Software and the Services.

13. LIMITATIONS OF LIABILITY

- (a) Neither party (nor any licensor or other supplier of Votar) is liable for indirect, incidental, special or consequential damages, or damages for lost business, profits, data or loss of Services, incurred by either party in connection with this agreement.
- (b) Each party's aggregate liability for damages under this agreement, regardless of the nature of the claim will not exceed the Fees paid or payable in a period of 12 months preceding the claim. In the first 12 months of the Subscription Term, the average monthly Fee shall be multiplied by 12 for the determination of the damages amount.
- (c) The limitation of liability in clause 13(b) does not apply to the parties' obligations (including any breach) under clauses 4 (Restrictions), 7 (Confidentiality), 8 (Privacy) and 14 (Management of Third-Party Claims).

14. MANAGEMENT OF THIRD-PARTY CLAIMS

- (a) If a third party makes a claim against Customer that the RCAT Software or the Services infringes the intellectual property rights of that third party, Votar will defend the Customer and its directors, officers and employees against the claim at Votar's expense.
- (b) Votar will pay all losses, damages and expenses finally awarded against such parties or agreed to in a written settlement agreement signed by Votar, to the extent arising from the claim provided that Votar will have no liability for any claim based on:
 - (1) the Customer Data,
 - (2) modifications by the Customer of the RCAT Software or the Services that are not authorised by Votar, or
 - (3) use of the RCAT Software or the Services other than in accordance with the Documentation and this agreement.
- (c) Votar may at its sole option and expense, procure for the Customer the right to continue use of the RCAT Software or the Services, modify the RCAT Software or the Services in a manner that does not materially impair the functionality, or terminate the Subscription Term and repay to the Customer any amount paid by Customer with respect to the Subscription Term following the termination date.
- (d) If a third party makes a claim against Votar that the Customer Data infringes the intellectual property rights of that third party, the Customer must defend Votar and its directors, officers and employees against the claim at the Customer's expense and the Customer must pay all losses, damages and expenses finally awarded against such parties or agreed to in a written settlement agreement signed by Customer, to the extent arising from the claim.
- (e) A party seeking protection under this clause 14 must:
 - (1) promptly notify the other party of the claim,
 - (2) give the other party sole control of the defence and settlement of the claim, and
 - (3) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defence and settlement of the claim.

15. DISPUTE RESOLUTION

- (a) Either party may give written notice of a dispute to the other party, setting out the particulars of the dispute (**Dispute Notice**). Each party must follow the dispute resolution process in this clause 15 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- (b) Within 10 Business Days of a party receiving a Dispute Notice, the parties must meet to try and resolve the dispute in good faith. If the parties are unable to resolve the dispute within that period, a senior executive of each party must meet and try to resolve the dispute in good faith within 10 Business Days or such other agreed period.

- (c) If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Disputes Centre in accordance with its Commercial Mediation Guidelines.
- (d) Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under this agreement.

16. GENERAL PROVISIONS

- (a) The Customer acknowledges that Services are provided on a non-exclusive basis. Nothing must be deemed to prevent or restrict Votar's ability to provide the Services, the RCAT Software or other technology, including any features or functionality first developed for the Customer, to other parties.
- (b) This agreement constitutes the entire agreement between the parties as to its subject matter, and supersedes any prior understanding, representation or agreement between the parties.
- (c) This agreement is governed by the Laws of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.
- (d) The relationship of the parties is that of independent contractors and nothing in this agreement is to be treated as creating an employer/employee relationship, agency relationship, partnership or joint venture between the parties.
- (e) This agreement may only be varied by written agreement between the parties.
- (f) If any clause (or part of any clause) in this agreement is held by a court to be illegal, void or unenforceable, that clause (or part of a clause) is to be regarded as having been deleted from this agreement, and this agreement otherwise remains in full force and effect.
- (g) A right created by this agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this agreement or by Law does not waive the right or remedy. A waiver of a breach of this agreement or any other instrument does not waive any other breach.
- (h) Neither party may assign this agreement or any right under this agreement, without the consent of the other party, which consent must not be unreasonably withheld or delayed; provided however, that either party may assign this agreement to an acquirer of all or substantially all of the business of such party to which this agreement relates, whether by merger, asset sale or otherwise.
- (i) Each party must do all things reasonably necessary to give full effect to this agreement and the matters contemplated by them.
- (j) This agreement may be signed in counterparts which, when taken together, constitute one document.
- (k) Either party may employ subcontractors in performing its duties under this agreement. Each party is responsible for and remains liable for the acts or omissions of its subcontractors.
- (l) Each party will be excused from performance for any period during which, and to the extent that, it or any subcontractor is prevented from performing any obligation or Service as a result of causes beyond its reasonable control.
- (m) Any provision of this agreement which contemplates performance or observance following any termination or expiration of this agreement or by its nature is intended to do so, will survive such termination or expiration.
- (n) Votar may include the Customer's name and logo in its customer lists and on its website. Upon signing, Votar may issue a high-level press release announcing the relationship and the manner in which the Customer will use the Votar solution. Votar must coordinate its efforts with appropriate communications Personnel in the Customer's organisation to secure approval of the press release if necessary.

17. NOTICES

- (a) Notices under this agreement must be in writing and are deemed to have been given:
 - (1) two (2) Business Days after the date of postage if mailed; or
 - (2) when transmitted if sent by email or facsimile; or

- (3) when delivered if delivered personally.
- (b) All notices must be sent to the other party at the address included in the Order Details.

18. INTERPRETATION AND DEFINITIONS

18.1 In this agreement, unless otherwise stated:

- (a) a reference to this agreement includes all its parts, and includes any amendment to or replacement of them;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to a party includes a reference to the party’s executors, administrators, successors and assigns;
- (e) the singular includes the plural, and vice versa;
- (f) words importing a gender include every other gender;
- (g) “includes”, “including”, “for example”, “such as” and similar terms are not words of limitation;
- (h) a reference to “\$” or “dollars” is a reference to Australian currency; and
- (i) if the date on or by which any act must be done under this agreement is not a Business Day, the act must be done on or by the next Business Day.

18.2 The meanings of the terms used in this document are set out below.

Term	Meaning
Account Information	names, usernames, position titles, telephone contact details, email addresses and billing information associated with a User account.
Administrator User	each of the Personnel designated by Customer to serve as technical administrator of the Services on Customer’s behalf.
Business Day	a day that is not a Saturday, Sunday or a public holiday in Victoria Australia.
Confidential Information	Includes: <ul style="list-style-type: none"> (a) in the case of Votar, the RCAT Software and the Documentation; and in the case of the Customer, the Customer Data; and (b) any information disclosed by a party which: <ul style="list-style-type: none"> (1) is marked as confidential; (2) is by its nature confidential; or (3) the recipient knows or ought to know is confidential, but excludes information which: <ul style="list-style-type: none"> (c) is in the public domain, other than by a breach of confidentiality; (d) the recipient already knew or had, on a non-confidential basis, before receiving the information from the discloser; or (e) has been independently developed by the recipient.
Customer Data	all data and materials provided by Customer to Votar for use in connection with the Services including derivative data that is stored, processed or generated on the Customer’s behalf but not including systems metadata which is generated automatically in the course of Votar operating the business and systems used to provide the RCAT.

Term	Meaning
Dispute Notice	has the meaning given in clause 15(a).
Documentation	the user guides, online help, release notes, training materials and other documentation provided or made available by Votar to the Customer for the use or operation of the Services on rcat.votar.com.au/help .
Feedback	has the meaning given in clause 2(c).
Fees	the fees specified in the Order Details.
Host	the computer equipment on which the RCAT Software is installed, which is owned and operated by Votar or its external hosting solution service provider.
Laws	any applicable statute, legislation, regulation, by-law, ordinance, mandatory code or standard in force from time to time in Australia.
Order Details	a written document attached to this agreement or executed separately by Votar and Customer for the purpose of purchasing Services under the terms and conditions of this agreement.
Other Services	all technical and non-technical services performed or delivered by Votar under this agreement, including, without limitation, implementation services and other professional services, training and education services but excluding the Services and the Support Services. Other Services will be provided on a time and material basis at such times or during such periods, as may be specified in the Order Details and mutually agreed to by the parties.
Personal Information	Has the meaning given to the expression in the <i>Privacy Act 1988 (Cth)</i> .
Personnel	of a party means all employees, officers, agents and contractors of that party.
RCAT	the Votar Regulatory Compliance Assessment Toolkit further described in the Documentation.
RCAT Software	the object code version of the RCAT to which Customer is provided access as part of the Service, including any updates or new versions.
Service Levels	any minimum performance levels specified in the Order Details
Services	the internet-accessible service that provides use of the RCAT Software that is hosted by Votar or its services provider and made available to the Customer over a network.
Spam	An unsolicited commercial electronic message that: <ul style="list-style-type: none"> (a) offers, advertises or promotes the supply of goods, services, land or business or investment opportunities (b) advertises or promotes a supplier of goods, services, land or a provider of business or investment opportunities (c) helps a person dishonestly obtain property, commercial advantage or other gain from another person.
Subscription	the subscription specified in the Order Details.
Subscription Term	that period specified in the Order Details during which the Customer will have on-line access and use of the RCAT Software through the Services.

Term	Meaning
Support Services	the support services provided by Votar to the Customer as specified in the Order Details
Users	individuals that are granted access to the Services by the Customer.
Votar IP	Has the meaning given in clause 2(a).