

## US Public Sector Addendum

This US Public Sector Addendum (“Public Sector Addendum” or “Addendum”) is incorporated into and forms part of the AuditBoard Subscription Agreement, which is available at <https://www.auditboard.com/enterprise-agreements/> or as executed by AuditBoard and Customer (“Agreement”).

This Public Sector Addendum applies to United States government customers, including but not limited to entities of the United States Federal Government (each, a “Federal Customer”), as well as state entities, local entities, or public education entities created by the Laws (including constitution or statute) of the applicable state (each, a “SLED Customer”). AuditBoard also reserves the right, at its sole discretion, to offer this Public Sector Addendum to US-based (1) private higher education entities, (2) quasi-public entities (not otherwise qualified as a Federal Customer or a SLED Customer), such as federally funded research and development centers, and/or (3) public healthcare entities (not otherwise qualified as a Federal Customer or a SLED Customer). In order for this Public Sector Addendum to apply it must be explicitly referenced and incorporated into the signed Order as between AuditBoard and such entity. As applicable, an entity qualified under (1), (2), or (3) above shall be referred to herein as an “Approved Customer”; an Approved Customer is specifically not included in the definition of “Federal Customer” or “SLED Customer” and any sections in this Addendum indicating it applies only to a Federal Customer or a SLED Customer shall not extend to an Approved Customer.

Unless otherwise defined herein, all other capitalized terms used in this Public Sector Addendum have the same meaning as set forth in the Agreement. Customer and AuditBoard agree that in the event of a conflict between this Addendum or the Agreement, the Public Sector Addendum will take precedence over provisions of the Agreement.

**1. Taxes.** The following shall hereby be added to the beginning of “Taxes and Fees” section of the Agreement:

“This section applies only if Customer has not provided AuditBoard with a valid tax exemption certificate authorized and honored by applicable taxing authorities that covers all taxes.”

**2. No Auto-Renewal and Late Payment Interest.** Renewals of any Order under the Agreement require written agreement of the parties. Any auto-renewal terms in the Agreement or Orders do not apply. To the extent any late payment interest charges set forth in the Agreement conflict with applicable Law, such charges do not apply.

**3. Termination for Non-Appropriation.** To the extent required by Law, the following provision is hereby added to the end of the “Termination” section of the Agreement for a Federal or SLED Customer only:

“Customer is a US federal, state, or local governmental entity that relies on funding which is allocated at the federal, state and/or local level to fund the Service in the Agreement. Customer intends to continue the Agreement for its entire term and to satisfy its obligations thereunder. Customer will seek to obtain funding for each fiscal year of an Order. For each succeeding fiscal period: (1) Customer agrees to include in its budget request appropriations sufficient to cover Customer’s obligations under the Agreement; (2) Customer agrees to use all reasonable means to secure appropriations; and (3) Customer agrees it will not use non-appropriations as a means of terminating the Agreement in order to acquire functionally equivalent products or services from a third party. If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, Customer may terminate the impacted portion of an Order, in whole or in part. In accordance with the foregoing, Customer will give AuditBoard written notice 30 days prior to the effective date of any such termination. All obligations of Customer to make payments after the termination date will cease and all AuditBoard obligations to provide the Service will terminate. Notwithstanding the foregoing, Customer will pay for (1) the entire time period the Service was made available to Customer prior to AuditBoard’s receipt of notice of termination for non-appropriation; and (2) for all amounts and Service periods for which Customer has received services. Customer shall not execute any Order unless funds have been appropriated for at least the first year’s subscription fee. Upon termination, Customer will remit all amounts due, and all costs reasonably incurred up to the date of termination. Upon request by AuditBoard, Customer shall identify to AuditBoard the extent to which funds have been allocated for an individual Order throughout the term of the Agreement.”

**4. Freedom of Information.** AuditBoard acknowledges that Customer may be compelled to disclose certain AuditBoard Confidential Information pursuant to the Federal Freedom of Information Act and/or any state equivalents or other applicable public disclosure Law(s). To the extent the confidentiality provisions of the Agreement are in conflict with public disclosure Laws governing Customer as a public institution, such confidentiality provisions are limited to the extent necessary to comply with such Laws. A disclosure by the Customer of AuditBoard’s Confidential Information to the extent required by Law shall not be considered a breach of the Agreement, provided the Customer promptly provides AuditBoard with prior notice of such compelled disclosure (to the extent legally permitted), follows the process set forth in any applicable public disclosure Law(s), and provides reasonable assistance, at AuditBoard’s cost, if AuditBoard wishes to contest the disclosure. Subject to the foregoing, in the event of any request by a government agency or law enforcement authority for access to Customer Data, AuditBoard will seek to redirect the inquiry to Customer. In all such cases, AuditBoard will take all reasonable and legally permissible measures to protect the Customer Data and to inform Customer of such demand.

**5. FERPA.** To the extent required for a public institution SLED Customer or an Approved Customer, the parties agree to the following addition to the Agreement:

“To the extent Customer is an educational institution subject to the Family Educational Rights and Privacy Act (“**FERPA**”) and determines that AuditBoard is a 'School Official' for purposes of 34 CFR §99.31(a)(1)(B), AuditBoard will comply with its obligations thereunder by complying with the terms of this Agreement and the DPA.”

**6. Indemnification and Liability Limitations.** The following shall replace the Customer Indemnification Section of the Agreement for a Federal or SLED Customer:

“**Customer Obligations.** Unless Customer is prohibited by Law from indemnifying its vendors, Customer shall defend AuditBoard, at Customer’s expense, from any third-party claim against AuditBoard alleging that (1) Customer Data, or (2) data submitted by Customer, its Affiliates or its Authorized Parties used by AuditBoard to provide the Service infringes or misappropriates such third-party’s Intellectual Property Rights and Customer shall be directly and solely responsible for any Losses related to such Claim. If Customer is prohibited by Law from indemnifying its vendors, any indemnification clause found in an Order(s) or linked terms found in an Order shall be read only as an acknowledgement that Customer is responsible for materials and data it provides to AuditBoard and for the behavior of its Authorized Parties. In the event that Customer is prohibited by Law from providing AuditBoard with prompt notice, reasonable cooperation, or sole control over the defense and settlement of any Claim that would otherwise be subject to indemnification by AuditBoard pursuant to the Agreement, Customer hereby waives AuditBoard’s indemnification obligations.”

**7. No Waiver of Immunity.** Nothing in the Agreement will be construed as a waiver of any sovereign immunity or other immunity to which Customer is entitled as a matter of law.

**8. Subcontracting.** AuditBoard is permitted to delegate services to third parties without the prior written approval of Customer, and AuditBoard will: (1) remain responsible for the performance of services by its subcontractors; (2) remain Customer’s sole point of contact for such services; and (3) be responsible for the payment of such subcontractors.

**9. Background Check.** Unless prohibited by Law, AuditBoard agrees to conduct (or has previously conducted) a criminal background check on personnel employed by AuditBoard who will have access to Customer Data. Such background check shall be in the form generally used by AuditBoard in its initial hiring of employees during the employment-screening process. AuditBoard will not allow any person performing under the Agreement on behalf of AuditBoard to be assigned to have access to Customer Data whose background check revealed a conviction of any violent crime or crime involving theft, dishonesty, moral turpitude, breach of trust, or money laundering.

**10. Code of Conduct.** AuditBoard has a code of conduct with rules for ethical business conduct which complies with applicable Law. AuditBoard uses commercially reasonable efforts to ensure that AuditBoard complies with its code of conduct, including but not limited to periodic training of employees about the code. AuditBoard’s code of conduct can be provided to Customer upon Customer’s request.

**11. Assignment.** In the event of an assignment in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of the assignee’s assets, the non-assigning party shall be entitled to request from the assignee reasonable information to demonstrate that the assignee has the necessary resources and expertise to provide the Service.

**12. Federal Government End Use.** AuditBoard’s offering constitutes 'commercial items' as defined under FAR 2.101. AuditBoard’s contracting documents are in conformance with AuditBoard’s commercial item offerings and tailoring of acquisition terms is pursuant to FAR 12.302(b). If you are a FAR governed Federal Customer, AuditBoard agrees that the resulting contract will include the mandatory FAR commercial flow downs for a subcontractor under FAR 52.244-6. Additionally, the parties agree that the purpose of the Agreement is to provide a sophisticated integrated system solution, principally for the provision of a product, not a service and as such, neither the Service Contract Act nor its related statutes or regulations apply to AuditBoard’s performance hereunder.



**13. Publicity.** Except as set forth in this section, AuditBoard shall not use Customer's name, logos or trademarks, without the prior written consent of Customer, in any written press releases, advertisements and/or marketing materials. Notwithstanding the foregoing, AuditBoard may use Customer's name and logo in lists of customers and on its website, including, but not limited to, AuditBoard's help center and community portal; however, such usage shall not be classified as an advertisement but only identification as an entity who receives the Service from AuditBoard. For the avoidance of doubt, this section does not prohibit AuditBoard from referencing Customer's name in a verbal format.

**14. Governing Law; Dispute Resolution.**

For a Federal Customer only: This Addendum and the Agreement and any disputes arising out of or related thereto shall be governed by US Federal Law. Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by Federal Law is deleted and superseded by the forum or venue required by Law. If AuditBoard believes a Federal Customer is in breach of the Agreement, AuditBoard shall pursue its rights under the Contract Disputes Act or other applicable Law while continuing performance as set forth in Federal Acquisition Regulation 52.233-1 (Disputes).

For a SLED Customer only: This Addendum and the Agreement and any disputes arising out of or related thereto shall be governed by the Laws of the state pursuant to which Customer is created, or else the state in which Customer's primary headquarters or main office is geographically located. With respect to all disputes arising out of or related to this Addendum and the Agreement, the parties consent to exclusive jurisdiction and venue in the state and federal courts located in such state. Furthermore, to the extent required by Law, any provision of the Agreement that requires or permits the resolution of disputes through arbitration or in a court other than a state or federal court located in the State in which Customer operates shall be deemed ineffective and unenforceable against Customer.