

**AuditBoard, Inc.**  
Subscription Agreement

THIS SUBSCRIPTION AGREEMENT is entered into between AuditBoard and Customer (as designated in the Order) as of the Effective Date (defined below). This Agreement includes and is subject to the following terms and conditions. AuditBoard and Customer may be collectively or individually referred to as the "Parties" or "Party" below.

**TERMS AND CONDITIONS**

**1 DEFINITIONS.** The following definitions shall apply as used in the terms and conditions:

- 1.1 "Affiliate" means with respect to a Party to this Agreement, any entity that directly or indirectly controls, is controlled by or is under common control with such Party. "Control", "controls", or "controlled" with respect to this definition of "Affiliate" means the ability to direct the management and policies of an entity, whether through the ownership of a majority share of voting securities, by contract or otherwise.
- 1.2 "Agreement" means the Subscription Agreement, the attached Exhibits, and any associated Order.
- 1.3 "Applicable Law" means all local, state, national and foreign laws, treaties and regulations, including those related to data privacy, international communications and the transmission of technical or personal data each as applicable to the performance, delivery or use of the Service by a Party.
- 1.4 "Audit" means a project created by Customer within the Service's OpsAudit module during a given Year consisting of one or more work steps.
- 1.5 "AuditBoard" means AuditBoard, Inc., a Delaware corporation with a place of business at 12900 Park Plaza Drive, Suite 200, Cerritos, CA 90703.
- 1.6 "Compliance Framework" means a structured set of guidelines that details processes for maintaining accordance with established regulations, specifications or legislation such as, but not limited to, Payment Card Industry Data Security Standard (PCI DSS) and/or General Data Protection Regulation (GDPR).
- 1.7 "Control" means, collectively, Tested Controls and Non-Tested Controls.
- 1.8 "Customer Data" means (i) all data and other information supplied by or on behalf of Customer for the Service, and (ii) all data or other information created by AuditBoard, through the Service or otherwise, from any data or other information supplied by or on behalf of Customer for the Service.
- 1.9 "Documentation" means AuditBoard documents (in electronic and hard copy format) generally made available to customers that may aid in the use and operation of the Services, which may be updated by AuditBoard from time to time in its sole discretion.
- 1.10 "Effective Date" means the Order Effective Date of the first Order between the Parties.
- 1.11 "Key Report" means a report, spreadsheet or any other information or evidence provided by Customer that is separately tested within the Service.
- 1.12 "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- 1.13 "Non-Tested Control" means having the ability to only document control information and control test information on a single control page within the Service.
- 1.14 "Risk" means having the ability to document risk information on a single Risk page within the Service.
- 1.15 "Tested Control" means having the ability to document control information, control test information, and control testing results on a single control page within the Service.
- 1.16 "User" or "Users" means the Customer and Customer's employees, agents, consultants each (i) who are under the direction or supervision of Customer's internal audit or compliance functions and (ii) who are authorized to use the Service and have been supplied User identifications and passwords by Customer (or by AuditBoard at Customer's request). A "Stakeholder" is a limited User as further defined in the applicable Order. A "Core User" is any User other than a Stakeholder.
- 1.17 "Year" means each twelve (12) month period during the Term, with Year 1 commencing on the Effective Date and each Year thereafter commencing on the subsequent anniversary of the Effective Date.

**2 LIMITED USER ACCESS.**

- 2.1 Customer understands that AuditBoard hereby grants Customer a non-transferable, non-exclusive right to use and access the Service, solely for Customer's own internal business purposes and subject to this Agreement. All rights not expressly granted to Customer are reserved by AuditBoard and its licensors. Customer shall not (i) license, sublicense, sell, resell, distribute, or otherwise commercially exploit or make any part of the Service available to any non-User third party; (ii) modify or make derivative works based upon any part of the Service; (iii) "frame" or "mirror" any part of the Service on any server or wireless or Internet-based device; (iv) knowingly interfere with or disrupt the integrity or performance of the Service or the data contained therein; (v) provide any protected health information (as defined under the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act, both as amended, including

their implementing regulations promulgated at 45 C.F.R. Parts 160 and 164), payment card information, or information relating to identified or identifiable individuals other than Users (“Highly-Sensitive Data”); (vi) attempt to gain unauthorized access to the Service or its related systems or networks; (vii) reverse engineer or otherwise attempt to discover the underlying source or object code, structure or ideas of the Service; or (viii) share login credentials between more than one individual User (collectively, the “Usage Restrictions”). The right to use and access may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service. Customer is responsible for activity of all its Users under the Agreement and shall take all commercially reasonable steps to prevent unauthorized access to or use of the Services and notify AuditBoard promptly of any such unauthorized access or use.

- 2.2** Customer understands and agrees that the Service is not designed to any specific security requirements for Highly Sensitive Data. Customer is responsible for determining if the Service meets Customer’s needs with regard to the data and information Customer intends to load into the Service.

### **3 INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP**

**3.1** Customer acknowledges and understands that, as between the Parties, AuditBoard is the sole owner of all rights, title and interest in and to the Service, including, without limitation, all Intellectual Property Rights therein, and Customer shall have no rights, title or interest therein or thereto other than the limited right to use and access expressly set forth herein. Customer understands that AuditBoard considers the Service to be a trade secret. AuditBoard name, the AuditBoard logo, and the product names associated with the Service are trademarks of AuditBoard or third parties, and no right or license is granted to use them.

**3.2** AuditBoard acknowledges and understands that, as between the Parties, Customer is the sole owner of all rights, title and interest in and to the Customer Data, including, without limitation, all Intellectual Property Rights therein, provided that Customer hereby grants AuditBoard a limited license to use, copy and store Customer Data in order to perform its obligations or exercise its rights herein

**3.3.** Customer understands and agrees that the Services are offered online and on a subscription basis and that all materials developed by AuditBoard that are related to or comprise the Service, including but not limited to, all software modifications, customizations, developments, specifications, updates and upgrades, derivative works based on the Service are created by AuditBoard for AuditBoard to benefit its Customers and shall be and remain the property of AuditBoard, and Customer shall not obtain any rights or interest therein. At their discretion, Users may choose to submit comments or ideas related to the Service, including, without limitation, about how to improve the Service (“Ideas”). Customer agrees the AuditBoard has all rights to use, disclose and incorporate Ideas into the Service without restriction or payment to Customer.

- 4 PAYMENT OBLIGATIONS.** AuditBoard charges and collects payment in advance for use of the Service. Customer shall pay all fees specified in all Orders. Customer will pay all fees and charges in accordance with the terms contained in each Order Form. Fees are based on Services purchased and not actual usage. Except as set forth herein, payment obligations are non-cancelable and fees paid are non-refundable. The Subscription Fees and Included Use cannot be reduced during the relevant subscription term stated on the Order absent a written amendment executed by the Parties. Customer will maintain accurate billing information with AuditBoard throughout the term and will promptly provide updates should their billing information change.

- 5 TAXES AND FEES.** Customer is solely responsible for paying all taxes, duties, levies, tariffs and government charges on the Services (including, to the extent applicable, VAT) except for those based on AuditBoard’s net income or property which shall remain the responsibility of AuditBoard. An interest rate of 1.5% per month will be assessed on overdue invoices which are not subject to a good faith dispute between the Parties. Except as otherwise specified in an Order, all fees due hereunder shall be paid in U.S. Dollars.

### **6 RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES.**

- 6.1** By signing the Subscription Agreement and agreeing to its terms, each Party represents and warrants that it has the legal power and authority to enter into this Agreement.
- 6.2** When used in accordance with this Agreement, AuditBoard represents and warrants that the Service shall (i) comply with Applicable Laws, (ii) perform and be provided in accordance with generally accepted industry standards; and (iii) materially operate in accordance with applicable Documentation.
- 6.3** Customer is solely responsible for all use of Customer’s User accounts. Customer represents and warrants that (i) Customer shall only use the Service in accordance with Applicable Laws, the Agreement and any relevant Documentation and (ii) Customer will not, and will not permit any third party to upload, download, post, submit, provide, transmit, distribute, or otherwise make available to or through the Services any Customer Data that (A) is unlawful, infringing, deceptive, fraudulent, invasive of another’s privacy, tortious, obscene, or that otherwise violates any other right of any third party, including any intellectual property, proprietary, or privacy rights, or that is otherwise inappropriate, as determined by AuditBoard in its sole discretion; (B) contains any viruses, code, files, or programs designed or intended to disrupt, damage, limit, or interfere with the proper function of any software, hardware, or telecommunications equipment or that is or can be otherwise malicious or disruptive; or (C) contains any Highly Sensitive Data. Customer acknowledges and agrees that AuditBoard is not a “Business Associate” under HIPAA and will not provide any protected health information to AuditBoard.

- 7 MAINTENANCE, SUPPORT AND IMPLEMENTATION.** Unless otherwise agreed by the parties, the Implementation Services will commence promptly upon Customer's execution of this Agreement and may be subcontracted in whole or in part by AuditBoard unless prohibited by Applicable Law. In the event the Implementation Services are subcontracted by AuditBoard, such subcontractors will be third party beneficiaries to this Agreement. Upon completion of the Implementation Services, AuditBoard agrees to provide updates, upgrades, corrections and enhancements covering common functional and performance issues as AuditBoard deems appropriate. AuditBoard will provide the Service in accordance with the Service Level Agreement as available at <https://www.auditboard.com/auditboard-sla>. Any other services by AuditBoard shall be provided only under a separate written agreement between Customer and AuditBoard.
- 8 TERM AND TERMINATION.** The Agreement shall remain in full force and effect for so long as the parties maintain an active Order. AuditBoard reserves the right to immediately suspend any User account or right to use and access the Service for breach of the Usage Restrictions contained herein. AuditBoard may suspend User accounts or Customer's right to use and access the Services if Customer is delinquent on its payment obligations under this Agreement and fails to cure such delinquency within fifteen (15) days of written notice from AuditBoard. In all other circumstances, either Party may terminate this Agreement or the relevant Order for: (i) a material breach by the other Party that is not cured within thirty (30) days after written notice of such material breach, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 9 REFUND UPON TERMINATION.** If Customer terminates this Agreement pursuant to Section 8, AuditBoard shall refund Customer any prepaid fees covering the remainder of the term of all Subscription Fees after the effective date of termination. If AuditBoard terminates this Agreement pursuant to Section 8, Customer must pay any unpaid fees covering the remainder of the term of all Orders after the effective date of termination. In no event will any termination relieve Customer of the obligation to pay fees payable to AuditBoard for the period prior to the effective date of termination.

## **10 DISCLAIMER.**

- 10.1** WITH THE EXCEPTION OF THE REPRESENTATIONS SET FORTH IN THIS AGREEMENT, AUDITBOARD AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY OR GUARANTY WHATSOEVER AND DISCLAIMS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.
- 10.2** CUSTOMER ASSUMES ALL RESPONSIBILITIES AND RISKS, FOR ITSELF AND ALL USERS, REGARDING THE PREPARATION, ACCURACY, REVIEW AND USE OF RESULTS OBTAINED THROUGH USE OF THE SERVICE, AND ANY DECISIONS OR ADVICE MADE OR GIVEN TO ANY PARTY BASED ON THE USAGE OF THE SERVICE. AUDITBOARD AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND SUPPLIERS ARE NOT ENGAGED IN RENDERING AUDITING, ACCOUNTING, LEGAL OR OTHER PROFESSIONAL OR EXPERT ADVICE AND ARE NOT RESPONSIBLE FOR HOW THE SERVICE IS USED, THE RESULTS AND ANALYSIS DERIVED BY CUSTOMER BY USE OF THE SERVICE AND ANY DECISIONS THE CUSTOMER MAY MAKE BASED ON THE CUSTOMER'S USAGE OF THE SERVICE.

## **11 INDEMNIFICATION.**

- 11.1** AuditBoard shall indemnify and hold Customer and Customer's Affiliates, officers, directors, employees, attorneys and agents harmless from and against claims and associated finally awarded costs and damages and reasonable expenses (including attorneys' fees and costs) arising out of a claim alleging that the Service provided to Customer pursuant to this Agreement directly infringes any third-party's Intellectual Property Rights, provided that Customer: (a) promptly gives written notice of the claim to AuditBoard; (b) gives AuditBoard sole control of the defense and settlement of the claim (provided that AuditBoard may not settle any claim unless it unconditionally releases Customer of all liability); (c) provides to AuditBoard all reasonable information and assistance; and (d) have not compromised or settled such claim. AuditBoard shall have no indemnification obligation for claims arising from: (i) allegations that do not state the Services are the basis of the claim; (ii) any infringement arising from the use or combination of the Service, or any part thereof, with other products, processes or materials not provided by AuditBoard, if the Services or use thereof would not infringe without such combination; (iii) any modification to the Service made by anyone other than AuditBoard or its personnel; or (iv) Customer's use of the Services that is inconsistent with, or contrary to, the terms of this Agreement. In addition to the above indemnification obligation, AuditBoard may, in its reasonable judgment, and at its option and expense: (A) obtain for Customer the right to continue to use the Services; or (B) replace the Services with a non-infringing substitute of equivalent functionality; or (C) modify the Services so that they are not infringing, provided that the modification does not materially affect the functionality of the Service.
- 11.2** Customer shall indemnify and hold AuditBoard, and its Affiliates, officers, directors, employees, attorneys and agents harmless from and against claims and associated finally awarded costs and damages and reasonable expenses (including attorneys' fees and costs) arising out of (i) a claim alleging that the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) any third party intellectual property infringement claim arising from the modification to the Service made by anyone other than AuditBoard or its personnel, or a combination of the Service, or any part thereof, with other products, processes or materials not provided by AuditBoard, if the Services or use thereof would not infringe without such combination; or a (iii) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties; provided in any such case that AuditBoard (a) promptly gives written notice of the claim to Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle any claim unless it unconditionally releases AuditBoard of all liability); (c) provides to Customer all reasonable information and assistance; and (d) have not compromised or settled such claim.

**11.3** THIS SECTION 11 (INDEMNIFICATION) STATES THE INDEMNIFYING PARTY'S SOLE LIABILITY TO THE OTHER PARTY FOR ANY TYPE OF CLAIM DESCRIBED IN THIS SECTION.

**12 CONFIDENTIALITY.** AuditBoard agrees that any information or data disclosed by Customer that a reasonable person under similar circumstances would consider confidential in nature, including, without limitation, all Customer Data, is Customer's "Confidential Information." Customer agrees that in addition to all data and other information disclosed by AuditBoard that a reasonable person under similar circumstances would consider confidential in nature, the pricing and the Service are "Confidential Information" of AuditBoard. The Parties' confidential information are hereafter collectively referred to as "Confidential Information." Confidential Information does not include information that the receiving Party can establish by legally sufficient evidence: (a) is generally known to the public at the time of disclosure or becomes generally known without the receiving Party violating this Agreement; (b) was lawfully in the receiving Party's possession at the time of disclosure; (c) becomes known to the receiving Party through disclosure by sources other than the disclosing Party without such sources violating any confidentiality obligations to the disclosing Party; or (d) is independently developed by the receiving Party without reference to or reliance upon any of the disclosing Party's Confidential Information. The Parties agree to use the same care and discretion to protect Confidential Information of the other Party as it employs with similar information of its own (but in no event less than reasonable care). Each Party may only disclose Confidential Information of the other Party to its employees, agents, or contractors who need access for purposes consistent with this Agreement and who are bound to confidentiality terms containing protections no less stringent than those contained herein. Neither Party may disclose, sell, assign, lease, rent or otherwise transfer Confidential Information to any third party without the prior written consent of the other Party. However, this Agreement shall not prohibit the receiving Party from disclosing Confidential Information of the disclosing Party to the extent required to comply with a court order or Applicable Law, provided that the receiving Party provides prior written notice of such required disclosure to the disclosing Party where legally permitted and assists the disclosing Party in its reasonable efforts to prevent or limit such disclosure. Each Party agrees that any actual or threatened use or disclosure of Confidential Information by the other Party in a manner inconsistent with this Agreement may cause the owner irreparable damage for which remedies other than injunctive relief might be inadequate, and the disclosing Party agrees that the owner may seek injunctive or other equitable relief restraining such prohibited use or disclosure.

**13 DATA SECURITY.**

**13.1** Each Party shall: (i) notify the other Party without undue delay of any unauthorized copying, distribution, disclosure or processing of any Confidential Information (each a "Data Security Incident") upon becoming aware of such Data Security Incident; and (ii) report to the other Party promptly thereafter with such details as the other Party may reasonably require regarding such Data Security Incident; and (iii) use reasonable efforts to immediately stop any unauthorized copying, distribution, disclosure or processing of a Party's Confidential Information.

**13.2** In providing the Service, AuditBoard utilizes the services of Microsoft Corporation and Amazon Web Services, Inc. to provide certain cloud-based hosting services ("Cloud Hosting Providers"). Customer consents to AuditBoard's use of the Cloud Hosting Providers in performing its obligations hereunder. AuditBoard and its Cloud Hosting Providers may record and collect information related to account activity (e.g. standard web analytics, which includes but is not limited to latency, packet size, hops, and source destination) in the course of providing the Services, but may only use such information for internal business purposes (including, but not limited to, improving the services and/or fulfilling its rights and obligations under this Agreement). Any such recorded or collected information is anonymized and aggregated and remains subject to Section 12.

**13.3** AuditBoard shall maintain appropriate administrative, physical, and technical safeguards designed to protect the security of the Services and Customer Data in accordance with the AuditBoard Security Standards available at <https://www.auditboard.com/customer-security-terms>. If Customer's use of the Services involves processing personal data pursuant to Regulation 2016/679 (the "GDPR") and/or transferring personal data outside the European Economic Area or Switzerland to any country not deemed by the European Commission as providing an adequate level of protection for personal data, the terms of the data processing addendum shall apply to such personal data and be incorporated into the Agreement upon the execution and submission of the data processing addendum. AuditBoard's data processing addendum will be provided upon request.

**13.4** If this Agreement is terminated, AuditBoard will provide a file of the Customer Data in a mutually agreed format within thirty (30) days of termination if Customer so requests at the time of termination. Customer agrees and acknowledge that AuditBoard has no right or obligation to retain Customer Data more than thirty (30) days after termination or expiration and will destroy Customer Data in its possession or control thirty (30) days after termination or expiration of this Agreement.

**14 LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY'S OR ANY OF ITS AFFILIATES, LICENSORS, OR SUBCONTRACTORS' AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT FOR DIRECT DAMAGES EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER UNDER THE RELEVANT ORDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, LICENSORS, OR SUBCONTRACTORS, BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OR IN ANY WAY CONNECTED WITH THIS SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitations of liability for incidental, consequential or certain other types of damages, and to that extent, the exclusions set forth above may not apply.

**15 MISCELLANEOUS.**

- 15.1** Customer agrees that AuditBoard is acting as an independent contractor in the performance of all services provided hereunder and no joint venture, partnership, employment, or agency relationship exists between Customer and AuditBoard.
- 15.2** This is the entire Agreement of the parties relating to this subject and it supersedes all other commitments, negotiations and understandings. This Agreement cannot be amended except by a writing signed by both Parties. This Agreement cannot be assigned without written consent of the non-assigning Party, except that either Party may assign this Agreement (a) to an acquirer of substantially all of that Party's assets, stock or business by sale, merger or otherwise or (b) to a corporate affiliate. All provisions of this Agreement which by their nature should survive termination or expiration, will survive the expiration or termination of this Agreement. Any claims (in court or arbitration) must be brought in the initiating Party's individual capacity and not as a plaintiff or member in any class action or other similar proceeding.
- 15.3** Except for payment obligations, neither Party will be liable to the other for any delays or failure in performance of any obligation under this Agreement in the event of and for so long as the performance of any such obligation is prevented or delayed by any cause beyond the reasonable control of such Party, provided that the Party prevented or delayed from performance immediately notifies the other Party of such disability and resumes performance as soon as possible following removal of the disability.
- 15.4** This Agreement is made in and shall be governed by the laws of the State of California without reference to conflicts of laws. Any action arising under or related to this Agreement will be resolved in the state or federal courts (and the parties hereby consent to personal jurisdiction) in the County of Los Angeles, California. The prevailing Party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.
- 15.5** Unless otherwise expressly stated herein, no third party is intended to be, and no third party shall be, a third-party beneficiary of this Agreement.
- 15.6** Multiple signature pages, signatures delivered via pdf copy or fax, and electronic signatures will all constitute originals and together constitute the same instrument.
- 15.7** Any notice required under this Agreement shall be mailed, postage prepaid, to the post office address on record with the Customer or given by email or other means of electronic communication, and shall be deemed sent upon such mailing, email or electronic communication.