

## CUSTOMER AGREEMENT

### Terms and Conditions

These Customer Agreement Terms and Conditions (these “**Terms and Conditions**”) are entered into by and between Auditive, Inc., a Delaware corporation (“**AUDITIVE**”), and the counterparty identified as the customer in the applicable Order Form (“**Customer**”). This Agreement, together with all Order Forms (as defined below), constitute this “**Agreement**”. If you are accepting these Terms and Conditions or an Order Form on behalf of your employer or another entity (which will be deemed to the case if you sign up for a Auditive Product (as defined below) using an email address from your employer or such entity), then the “**Customer**” under this Agreement will be such employer or other entity, and you represent and warrant that (a) you have read and understand this Agreement, (b) you have full legal authority to bind your employer or such entity to this Agreement and (c) you agree to this Agreement on behalf of your employer or such entity.

#### 1. Definitions

1.1 The following terms, when used in this Agreement will have the following meanings:

“**Affiliates**” means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For the purposes of this definition, “**Control**” means beneficial ownership of 50% or more of the voting power or equity in an entity.

“**Auditive Product**” means the SaaS-based platform made available by AUDITIVE to Customer, to automate, simplify and build confidence in vendor security assessments.

“**Confidential Information**” means any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure. However, “Confidential Information” will not include any information which (a) is in the public domain through no fault of receiving party; (b) was properly known to receiving party, without restriction, prior to disclosure by the disclosing party; (c) was properly disclosed to receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.

“**Customer Data**” means data uploaded by or on behalf of Customer to the Auditive Product. For the avoidance of doubt, Customer Data shall not include comments posted on the Auditive Product by Customer or its authorized users.

“**Documentation**” means AUDITIVE’s then-current printed and digital instructions, on-line help files, technical documentation and user manuals made available by AUDITIVE for the Auditive Product.

“**Effective Date**” means the date of the initial Order Form entered into between Customer and AUDITIVE.

“**Non-Auditive Product**” means a third party or Customer web-based, mobile, offline or other software application or service or content that integrates or is combined with the Auditive Product (other than third party data hosting services used by Auditive).

“**Order Form**” means an ordering document or online order entered into between Customer and AUDITIVE, or online ordering flow completed by Customer, in each case specifying the Auditive Product to be provided under this Agreement..

## **2. Auditive Product**

2.1 Provision of Auditive Product. Subject to the terms and conditions of this Agreement, AUDITIVE will make the Auditive Product available to Customer pursuant to this Agreement and the applicable Order Form, and hereby grants Customer a non-exclusive right to access and use the Auditive Product (and to the extent applicable, any Non-Auditive Product combined with the Auditive Product, for which AUDITIVE is permitted to grant a sublicense) for its internal business purposes to augment its vendor security assessment capabilities.

### 2.2 Customer Responsibilities.

(a) Customer acknowledges that AUDITIVE’s provision of the Auditive Product is dependent on Customer providing all reasonably required cooperation (including the prompt provision of access to Customer’s systems, personnel, cooperation and materials as reasonably required and any other access as may be specified in the applicable Order Form), and Customer will provide all such cooperation in a diligent and timely manner.

(b) Customer will (i) be responsible for all use of the Auditive Product under its account, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Auditive Product and notify AUDITIVE promptly of any such unauthorized access or use or any other known or suspected breach of security or misuse of the Auditive Product, (iii) be responsible for obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use the Auditive Product, including as set forth in the Documentation and (iv) be solely responsible for any answers produced from the Auditive Product and submitted to Customer’s own clients. AUDITIVE accepts no responsibility or liability for final answers submitted by Customer to its clients or Customer’s failure to meet any of its other obligations under this Agreement.

(c) Customer will not use the Auditive Product to transmit or provide to AUDITIVE any medical information of any nature, or any sensitive personal data (*e.g.*, social security numbers, driver’s license numbers, birth dates, personal bank account numbers, passport or visa numbers and credit card numbers).

(d) Customer shall be responsible for the content of all communications sent by its users via the Auditive Product. Customer agrees that it will not use the Auditive Product to communicate any message or material that (i) is libellous, harmful to minors, obscene or constitutes pornography; (ii) infringes the intellectual property rights of any third party or is otherwise unlawful; or (iii) constitutes or encourages conduct that could constitute a criminal offense.

2.3 Affiliates. Any Affiliate of Customer will have the right to enter into an Order Form and this Agreement will apply to each such Order Form. With respect to any such Order Form, such Affiliate becomes a party to this Agreement and references to Customer in this Agreement are deemed to be references to such Affiliate. Each Order Form is a separate obligation of the Customer entity that executes such Order Form, and no other Customer entity has any liability or obligation under such Order Form.

## **3. Fees**

3.1 Fees. Customer will pay AUDITIVE the fees set forth in the applicable Order Form. Customer shall pay those amounts due and not disputed in good faith within thirty (30) days of the date of receipt thereof, unless a specific date for payment is set forth in such Order Form, in which case payment will be due on the date specified. Except as otherwise specified herein or in any applicable Order Form, (a) fees are quoted and payable in United States dollars and (b) payment obligations are non-cancelable and non-proratable for partial months, and fees paid are non-refundable.

3.2 Late Payment. AUDITIVE may suspend access to the Auditive Product immediately upon notice if Customer fails to pay any amounts hereunder at least five (5) days past the applicable due date.

3.3 Taxes. All amounts payable hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively "**Taxes**"). Customer will be solely responsible for payment of all Taxes, except for those taxes based on the income of AUDITIVE. Customer will not withhold any Taxes from any amounts due to AUDITIVE.

#### **4. Proprietary Rights**

4.1 Proprietary Rights. As between the parties, AUDITIVE exclusively owns all right, title and interest in and to the Auditive Product, System Data and AUDITIVE's Confidential Information, and Customer exclusively owns all right, title and interest in and to the Customer Data, insights produced specifically for Customer via the use of the Auditive Product by Customer (which will constitute Customer Data for purposes hereof) and Customer's Confidential Information. "**System Data**" means data collected by AUDITIVE regarding the Auditive Product that may be used to generate logs, statistics or reports regarding the performance, availability, usage, integrity or security of the Auditive Product.

4.2 Feedback. Customer may from time to time provide AUDITIVE suggestions or comments for enhancements or improvements, new features or functionality or other feedback ("**Feedback**") with respect to the Auditive Product. AUDITIVE will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality. AUDITIVE will have the full, unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services.

4.3 Artificial Intelligence. Customer acknowledges that a fundamental component of the Auditive Product is the use of artificial intelligence for the purpose of improving and providing AUDITIVE's products and services. Notwithstanding anything to the contrary, Customer agrees that AUDITIVE is hereby granted the right to use (during and after the term hereof) anonymized Customer Data to train its algorithms internally through machine learning techniques for such purpose.

#### **5. Confidentiality; Restrictions**

5.1 Confidentiality. Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose the same directly or indirectly, to any third party without the other party's prior written consent, except as otherwise permitted hereunder. However, either party may disclose Confidential Information (a) to its employees, officers, directors, attorneys, auditors, financial advisors and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and (b) as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the

opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section 5, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

5.2 Technology Restrictions. Customer will not directly or indirectly: (a) reverse engineer, decompile, disassemble, modify, create derivative works of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code underlying the Auditive Product; (b) attempt to probe, scan or test the vulnerability of the Auditive Product, breach the security or authentication measures of the Auditive Product without proper authorization or wilfully render any part of the Auditive Product unusable; (c) use or access the Auditive Product to develop a product or service that is competitive with AUDITIVE's products or services, or engage in competitive analysis or benchmarking; (d) transfer, distribute, resell, lease, license, or assign the Auditive Product or otherwise offer the Auditive Product, or any portion thereof (including, but not limited to, any combined Non-Auditive Product, to the extent applicable), on a standalone basis; or (e) otherwise use the Auditive Product in violation of applicable law (including any export law) or outside the scope expressly permitted hereunder and in the applicable Order Form or (f) upload any personal data or personally identifiable information to the Auditive Product.

## 6. Warranties and Disclaimers

6.1 AUDITIVE. AUDITIVE warrants that it will, consistent with prevailing industry standards, provide the Auditive Product in a professional and workmanlike manner and the Auditive Product will conform in all material respects with the Documentation. For material breach of the foregoing express warranty, Customer's exclusive remedy shall be the re-performance of the deficient Auditive Product.

6.2 Customer. Customer warrants that it has all rights necessary to provide any information, data or other materials that it provides hereunder, and to permit AUDITIVE to use the same as contemplated hereunder.

6.3 DISCLAIMERS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT THE AUDITIVE PRODUCT IS INTENDED TO AUGMENT THE EFFICIENCY OF, BUT NOT REPLACE, CUSTOMER'S SYSTEMS AND PROCESSES. AUDITIVE DOES NOT REPRESENT OR WARRANT THAT THE AUDITIVE PRODUCT WILL NOT BE ERROR-FREE AND CUSTOMER ACKNOWLEDGES THAT THE INSIGHTS PROVIDED BY THE AUDITIVE PRODUCT DO NOT CONSTITUTE PROFESSIONAL ADVICE OR COUNSEL. AUDITIVE IS NOT RESPONSIBLE OR LIABLE FOR ANY NON-AUDITIVE PRODUCTS, DOES NOT GUARANTEE THE CONTINUED AVAILABILITY THEREOF OR ANY INTEGRATION THEREWITH, AND MAY CEASE MAKING ANY SUCH INTEGRATION AVAILABLE IN ITS DISCRETION.

6.4 No-Charge Products. AUDITIVE may offer certain Auditive Products at no charge, including free accounts, trial use and pre-release, alpha or beta versions or features (collectively, "**No-Charge Products**"). Customer's use of No-Charge Products is subject to any additional terms that AUDITIVE may specify. Except as otherwise set forth in this Section, these Terms and Conditions apply to No-Charge

Products. AUDITIVE may modify or terminate Customer's right to use No-Charge Products at any time. NOTWITHSTANDING ANYTHING TO THE CONTRARY, To the maximum extent permitted by applicable law, AUDITIVE disclaims all obligations, warranties and liabilities with respect to No-Charge Products, including any service level OR indemnity obligations, AND AUDITIVE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER IN RESPECT OF NO-CHARGE PRODUCTS WILL BE US\$100.

## **7. Indemnification**

7.1 Indemnity by AUDITIVE. AUDITIVE will defend Customer against any claim, demand, suit, or proceeding ("**Claim**") made or brought against Customer by a third party alleging that the use of the Auditive Product as permitted hereunder infringes or misappropriates a United States patent, copyright or trade secret and will indemnify Customer for any damages finally awarded against Customer (or any settlement approved by AUDITIVE) in connection with any such Claim; provided that (a) Customer will promptly notify AUDITIVE of such Claim, (b) AUDITIVE will have the sole and exclusive authority to defend and/or settle any such Claim (provided that AUDITIVE may not settle any Claim without Customer's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Customer of all related liability) and (c) Customer reasonably cooperates with AUDITIVE in connection therewith. If the use of the Auditive Product by Customer has become, or in AUDITIVE's opinion is likely to become, the subject of any claim of infringement, AUDITIVE may at its option and expense (i) procure for Customer the right to continue using and receiving the Auditive Product as set forth hereunder; (ii) replace or modify the Auditive Product to make it non-infringing (with comparable functionality); or (iii) if the options in clauses (i) or (ii) are not reasonably practicable, terminate the applicable Order Form and provide a pro rata refund of any prepaid subscription fees corresponding to the terminated portion of the applicable subscription term. AUDITIVE will have no liability or obligation with respect to any Claim if such Claim is caused in whole or in part by (A) compliance with designs, guidelines, plans or specifications provided by Customer; (B) use of the Auditive Product by Customer not in accordance with this Agreement; (C) modification of the Auditive Product by any party other than AUDITIVE without AUDITIVE's express consent; (D) Customer Confidential Information or (E) the combination, operation or use of the Auditive Product with other applications, portions of applications, product(s) or services where the Auditive Product would not by itself be infringing (clauses (A) through (E), "**Excluded Claims**"). This Section states AUDITIVE's sole and exclusive liability and obligation, and Customer's exclusive remedy, for any claim of any nature related to infringement or misappropriation of intellectual property.

7.2 Indemnification by Customer. Customer will defend AUDITIVE against any Claim made or brought against AUDITIVE by a third party arising out of the Excluded Claims, and Customer will indemnify AUDITIVE for any damages finally awarded against AUDITIVE (or any settlement approved by Customer) in connection with any such Claim; provided that (a) AUDITIVE will promptly notify Customer of such Claim, (b) Customer will have the sole and exclusive authority to defend and/or settle any such Claim (provided that Customer may not settle any Claim without AUDITIVE's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases AUDITIVE of all liability) and (c) AUDITIVE reasonably cooperates with Customer in connection therewith.

## **8. Limitation of Liability**

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, A BREACH OF SECTION 5 OR A PARTY'S INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL

OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST CONTENT OR DATA, EVEN IF A REPRESENTATIVE OF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) EXCLUDING CUSTOMER'S PAYMENT OBLIGATIONS, ANY AGGREGATE DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

## **9. Termination**

9.1 Term. The term of this Agreement will commence on the date of the initial Order Form and continue until terminated as set forth below. The initial term of each Order Form will begin on the start date indicated in such Order Form and will continue for the subscription term set forth therein. Except as set forth in such Order Form, the term of such Order Form will automatically renew for successive renewal terms equal to the length of the initial term of such Order Form, unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the end of the then-current term. If Customer does not agree to automatic renewals, Customer may opt-out of automatic renewals by providing written notice to AUDITIVE within fourteen (14) days of the date of the initial Order Form.

9.2 Termination. Each party may terminate this Agreement upon written notice to the other party if there are no Order Forms then in effect. Each party may also terminate this Agreement or the applicable Order Form upon written notice in the event (a) the other party commits any material breach of this Agreement or the applicable Order Form and fails to remedy such breach within thirty (30) days after written notice of such breach or (b) subject to applicable law, upon the other party's liquidation, commencement of dissolution proceedings or assignment of substantially all its assets for the benefit of creditors, or if the other party become the subject of bankruptcy or similar proceeding that is not dismissed within sixty (60) days.

9.3 Survival. Upon termination of this Agreement all rights and obligations will immediately terminate except that any terms or conditions that by their nature should survive such termination will survive, including the Technology Restrictions (Section 5.2) and terms and conditions relating to proprietary rights and confidentiality, disclaimers, indemnification, limitations of liability and termination and the general provisions below. Upon expiration or termination of this Agreement, each party will return or destroy, at the other party's option, any Confidential Information of such party in the other party's possession or control.

9.4 Customer Data Retrieval. Upon Customer's written request made on or prior to expiration or termination of the applicable Order Form, AUDITIVE will give Customer limited access to the Auditive Product for a period of up to thirty (30) days after such expiration or termination, at no additional cost, solely for purposes of retrieving Customer Data. Subject to such retrieval period and AUDITIVE's legal obligations, AUDITIVE has no obligation to maintain or provide any Customer Data and will, unless legally prohibited, delete Customer Data after such expiration or termination; provided, however, that AUDITIVE will not be required to remove copies of the Customer Data from its backup media and servers until such time as the backup copies are scheduled to be deleted, provided further that in all cases AUDITIVE will continue to protect the Customer Data in accordance with this Agreement. For clarity, during the term of the applicable Order Form, Customer may extract Customer Data using AUDITIVE's standard web services as described in the Documentation.

## 10. General

10.1 Publicity. Customer agrees that AUDITIVE may refer to Customer's name and trademarks in AUDITIVE's marketing materials and website; however, AUDITIVE will not use Customer's name or trademarks in any other publicity (e.g., press releases, customer references and case studies) without Customer's prior written consent (which may be by email). If Customer does not agree to AUDITIVE's use of Customer's name or trademark in AUDITIVE's marketing materials, Customer may opt-out of such use by providing written notice to ABC within fourteen (14) days of the date of the initial Order Form.

10.2 Assignment; Delegation. Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without consent to a successor to all or substantially all of its assets or business related to this Agreement. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

10.3 Amendment. AUDITIVE reserves the right in its sole discretion and at any time and for any reason to modify these Terms and Conditions. With respect to each Order Form, any modifications to these Terms and Conditions shall become effective upon the date of Customer's next renewal of such Order Form. It is Customer's responsibility to review these Terms and Conditions from time to time for any changes or modifications. If Customer does not agree to the modified Terms and Conditions, Customer may provide notice of Customer's non-renewal at any point prior to the Customer's next renewal. Except as set forth in this Section, no amendment or modification to this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in writing by both parties.

10.4 Waiver. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

10.5 Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

10.6 Unenforceability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms.

10.7 Governing Law. This Agreement will be governed by the laws of the State of California, exclusive of its rules governing choice of law and conflict of laws. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

10.8 Notices. Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, or by overnight delivery. Notices to Customer

may be sent to the address listed on the Customer's applicable Order Form or email address provided by Customer when Customer creates its Auditive Product account. Notices to AUDITIVE must be sent to the following:

Auditive, Inc.  
1212 Broadway Plaza Suite 2100  
Walnut Creek, CA 94596  
Attn: Legal

10.9 Entire Agreement. This Agreement (consisting of these Terms and Conditions and each Order Form) comprises the entire agreement between Customer and AUDITIVE with respect to its subject matter, and supersedes all prior and contemporaneous proposals, statements, sales materials or presentations and agreements (oral and written). No oral or written information or advice given by AUDITIVE, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement. In the event of a conflict between these Terms and Conditions and an Order Form, the terms of the Order Form shall control. In the event that Customer has executed a separate, written agreement with AUDITIVE governing access to and use of the Auditive Product, the terms and conditions of such agreement shall prevail and supersede any conflicting or inconsistent provisions set forth in these Terms and Conditions.

10.10 Force Majeure. Neither party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control ("**Force Majeure Event**"), including earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared), cyber attacks (e.g., denial of service attacks), or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

10.11 Government Terms. AUDITIVE provides the Auditive Product, including related software and technology, for ultimate federal government end use solely in accordance with the terms of this Agreement. If Customer is an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Auditive Product, or any related documentation of any kind, including technical data, software, and manuals, is restricted by the terms of this Agreement. All other use is prohibited and no rights than those provided in this Agreement are conferred. The Auditive Product was developed fully at private expense.

10.12 Interpretation. For purposes hereof, "including" means "including without limitation".