



Enterprise Terms of Service

This Service Agreement governs the relationship between Kudoboard, Inc. ("Kudoboard") and the party that subscribes to the Kudoboard products and services, which we call the "Kudoboard Services" or "Services" and Customer ("Customer"), also referred to collectively as the "Parties."

1. **Service:** Kudoboard shall host cloud-based, Customer branded Kudoboards.
2. **Delivery of Service Date:** Delivery of Service Date shall be the date in which the Customer Platform is operating and ready for use per email notice from Kudoboard unless Customer, within five business days of said notice, replies with comments as to why the Customer Platform is not ready for use. The estimated Delivery of Service date is 1-2 business days after the service agreement is signed.
3. **Fees:** The fee for the Kudoboard enterprise plan subscription is included in the Service Order Form.
4. **Setup:** All setup fees are included in the Service Order Form, if applicable.
5. **Terms:** Kudoboard has the right to terminate services in the event payment is delinquent thirty (30) days or more.
6. **Publicity:** Kudoboard may not publicly disclose that Customer uses Kudoboard unless explicit written permission is provided. Customer can promote its use of Kudoboard's Services as desired.
7. **Users' Terms of Service:** Kudoboard has the right, but not the obligation, to do any one or more of the following: (a) to state or otherwise post Terms of Service on or in association with their Platform; (b) to, from time to time, amend or otherwise modify said Terms of Service with advanced notice to Customer; (c) to require users of the Platform to accept or otherwise acknowledge consent to the then current Terms of Service as a condition of their use of the Platform; and, (d) to enforce said Terms of Service.
8. **Service Uptime and DISCLAIMERS:** During the Term, Kudoboard shall use reasonable efforts to maintain the Services in a manner for which the goal is to minimize errors and interruptions in the Services as to items under Kudoboard's reasonable control. Without limiting the generality of the foregoing, Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Kudoboard or by third-party providers, or because of other causes beyond Kudoboard's reasonable control, but Kudoboard shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. **DISCLAIMER:** KUDOBOARD DOES NOT REPRESENT OR WARRANT WHATSOEVER ANY OF, AND KUDOBOARD HEREBY DISCLAIMS, THE FOLLOWING: (1) THAT THE SERVICES WILL BE UNINTERRUPTED, SECURE, PRIVATE OR ERROR FREE; (2) ANYTHING ABOUT THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES; OR, (3) THAT ANY CONTENT THAT MAY BE POSTED, DISTRIBUTED OR OTHERWISE PUBLISHED ON THE CUSTOMER PLATFORM IS FREE OF INFRINGING, LIBELOUS, SLANDEROUS, OFFENSIVE, PRIVATE, CONFIDENTIAL OR OTHERWISE ACTIONABLE CONTENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SERVICES ARE PROVIDED "AS IS" AND KUDOBOARD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE AND FOR NON-INFRINGEMENT.
9. **Limitation Of Liability:** The term "KUDOBOARD AND ITS INTERESTS" means Kudoboard and its members, managers, shareholders, directors, officers, representatives, agents, employees, suppliers, licensors and contractors. The term "CONSEQUENTIAL CLAIMS" means (and whether sounding in, in the nature of or otherwise arising in, under or by: contract, quasi-contract, subrogation, negligence, fault, tort, error, omission (and regardless of whether said negligence, fault, tort, error or omission is whole, partial, comparative, strict or other kind), statute, strict liability or otherwise): any and all claims, demands, actions, causes of actions, suits, arbitrations, injunctions, proceedings, investigations, liabilities, obligations, losses, fines, penalties, assessments, liens or otherwise damages which are or for (or which are in the nature of or which seek, demand or otherwise claim, or which threaten to seek, demand or otherwise claim) indirect, consequential, incidental, statutory, reliance, special, enhanced, exemplary, punitive or willful damages of any kind or character or otherwise indirect, consequential, incidental, statutory, reliance, special, enhanced, exemplary, punitive or willful awards or recoveries of any kind or character (including, without limitation, any of the following: loss of profits, revenue, patronage, patients, employees, or business; loss of discounts or other pricing adjustments; delay damages; damage to reputation; loss or reduction of goodwill; loss or suspension of (or failure to obtain, achieve or maintain) franchises, credentials,



accreditations, certifications, credits, licensure, professional licenses, medical privileges or other privileges whatsoever; reprimand; censure; the loss of, the destruction of, the alteration of, the disclosure of, the unauthorized access to, the inaccuracy of, the incompleteness of or the corruption to information, data or any database; or, the cost of procurement of substitute goods, services or technology); as well as attorneys' fees, investigatory fees, consultant fees and expert fees of any kind or character for or related to any of the forgoing.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW KUDOBOARD AND ITS INTERESTS SHALL NOT BE RESPONSIBLE OR LIABLE WHATSOEVER FOR OR WITH RESPECT TO, AND KUDOBOARD HEREBY DISCLAIMS ALL RESPONSIBILITY AND LIABILITY WHATSOEVER FOR AND WITH RESPECT TO, CONSEQUENTIAL CLAIMS.

THE TERM "KUDOBOARD ASSETS" MEANS THE SERVICES AS WELL AS ANY SOFTWARE, CONTENT, WEBSITE, SERVER, COMPUTER, EQUIPMENT, FACILITIES, NETWORK, UTILITIES, PROPERTY OR OTHER ASSETS OF, OR USED BY, KUDOBOARD.

FOR THE AVOIDANCE OF DOUBT, AND WITHOUT LIMITING IN ANY WAY WHATSOEVER ANY OF THE FORGOING PROVISIONS OF THIS SECTION 9 (AND NOTWITHSTANDING ANY OTHER TERM OR PROVISION OF THIS AGREEMENT), KUDOBOARD AND ITS INTERESTS, TO THE FULLEST EXTENT PERMITTED BY LAW, SHALL NOT BE RESPONSIBLE OR LIABLE FOR OR WITH RESPECT TO, AND KUDOBOARD HEREBY DISCLAIMS ANY AND ALL RESPONSIBILITY AND LIABILITY FOR AND WITH RESPECT TO, ANY CLAIM, DEMAND, LOSS, LIABILITY, FINE, DAMAGE OR OTHER RISK WHATSOEVER FOR, DUE TO, CAUSED BY, BASED ON, RESULTING FROM, IN CONNECTION WITH, ASSOCIATED WITH, INCIDENT TO, ATTRIBUTABLE TO, AS A RESULT OF, ORIGINATING WITH, CONCERNING OR ARISING FROM OR OUT OF ANY ONE OR MORE OF THE FOLLOWING:

- (1) THE USE OF OR INABILITY TO USE (OR THE WHOLE, PARTIAL OR INTERMITTENT INTERRUPTION, CESSATION OR SUSPENSION IN USE OF) THE KUDOBOARD ASSETS;
- (2) ANY INTERRUPTION OR DELAY IN THE AVAILABILITY OR USE OF THE KUDOBOARD ASSETS;
- (3) ANY FAILURES, DEFECTS OR ERRORS WHATSOEVER IN THE KUDOBOARD ASSETS;
- (4) TRANSACTIONS, TRANSMISSIONS, INFORMATION, DATA OR OTHER COMMUNICATIONS WHATSOEVER WITH, BY, THROUGH, TO, FROM OR ENTERED INTO THE KUDOBOARD ASSETS;
- (5) ACCESS TO, DISCLOSURE OF, ALTERATION OF, CORRUPTION OF, DESTRUCTION OF, LOSS OF OR OTHERWISE DAMAGE WHATSOEVER TO COMMUNICATIONS, TRANSMISSIONS, INFORMATION OR DATA TRANSMITTED TO, RECEIVED BY, STORED IN OR TRANSMITTED BY THE KUDOBOARD ASSETS;
- (6) STATEMENTS, CONTENT, DATA OR CONDUCT OF ANY CUSTOMER USERS, OR OF OTHER THIRD PARTIES, PUBLISHED, POSTED, CONDUCTED, ORCHESTRATED, DISTRIBUTED, PRODUCED OR OTHERWISE MADE AVAILABLE ON, IN OR BY (OR ACCESSIBLE, LINKED OR NAVIGABLE ON, BY OR THROUGH) THE KUDOBOARD ASSETS;
- (7) INCOMPLETE, ALTERED, EDITED, UNTRUE, FALSE, DEFAMATORY, LIBELOUS, OFFENSIVE, CONFIDENTIAL, PRIVATE OR OTHER ACTIONABLE CONTENT PUBLISHED, POSTED, DISTRIBUTED, DISPLAYED, PRODUCED OR OTHERWISE MADE AVAILABLE BY CUSTOMER USERS OR OTHER THIRD PARTIES ON, IN OR BY (OR ACCESSIBLE, LINKED OR NAVIGABLE ON, BY OR THROUGH) THE KUDOBOARD ASSETS;
- (8) ANY ERROR, OMISSION, DEFICIENCY, DEFECT, INACCURACY OR OTHER CONDITION OR PROBLEM WITH ANY PICTURES, TEXT, VIDEO, INFORMATION OR OTHER CONTENT ON, IN OR MADE AVAILABLE BY THE KUDOBOARD ASSETS;
- (9) THE USE OF, ADOPTION OF, REFERENCE TO, OR RELIANCE ON THE KUDOBOARD ASSETS;
- (10) ANYTHING ARISING OUT OF CAUSES BEYOND KUDOBOARD'S REASONABLE CONTROL.

AS AN ADDITIONAL RIGHT AND REMEDY OF KUDOBOARD, AND WITHOUT LIMITING KUDOBOARD'S RIGHTS AND DEFENSES UNDER THE OTHER PROVISIONS OF THIS SECTION 9, KUDOBOARD SHALL NEVER IN THE AGGREGATE OF ALL CLAIMS AND DEMANDS, BE LIABLE FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS AND DEMANDS, EXCEED THE FEES PAID BY CUSTOMER TO KUDOBOARD FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT



GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT KUDOBOARD HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES.

The provisions of this Section 9 are a material and integral consideration for Kudoboard entering into this Agreement, without which Kudoboard would not enter into this Agreement. The provisions of this Section 9 survive the termination, expiration, dissolution or rescission of this Agreement.

- 10. Data & Rights to Content:** End users or third party licensors own all of the content and information that users post on Customer Kudoboards. When an end user publishes content or information, it means that they are allowing Customer to access and use that information, including to repost and/or publish the content without restriction, and to associate it with them. Kudoboard acknowledges (i) that it has no right or interest in content posted by users to Customer Kudoboards and related information; and (ii) under Kudoboard's Terms of Service, Kudoboard receives a limited license from such users solely to display content on Customer Kudoboards. No other license is granted to Kudoboard under this Agreement or Kudoboard's Terms of Service.
- 11. Technology Rights:** To the extent that Kudoboard does not suffer any loss or limitation in enforcing any copyrights of Kudoboard (or where any such loss or limitation in so enforcing is of a kind or degree that Kudoboard is willing to, and has clearly consented in writing to, suffer), Customer further covenants and agrees that Customer shall not do anything that would be (or would cause or contribute to) a violation of (or noncompliance with) any one or more of the following: (1) Customer will not at any time directly or indirectly reverse engineer, recompile, reverse assemble, copy, distribute, publish or create derivative works from or otherwise based upon Kudoboard's software, content or other technology or from or otherwise based upon the Services; (2) Customer acknowledges and agrees that any and all web properties contained inside of the Customer Platform including, without limitation, technology, intellectual property, software, programs, data or other information, is the sole property of Kudoboard; (3) Customer agrees that the Services and their associated technology, copyright, trade secrets, intellectual property and goodwill are the property of Kudoboard; (4) Customer acknowledges and agrees that the Services provided by Kudoboard are unique, confidential and valuable to Kudoboard, are provided in trust and confidence by Kudoboard to Customer; (5) Customer will keep confidential and will not disclose any of Kudoboard's trade secrets; and, (6) Customer is purchasing only a license during the Term to access and use the Customer Platform on and as a site hosted by Kudoboard. The site and servers used by Kudoboard to host the Customer Platform may be owned, leased, rented or otherwise provided by third parties to Kudoboard. The provisions of this Section 11 shall survive the termination, expiration, dissolution or rescission of this Agreement. Customer acknowledges this is not work-for-hire.
- 12. Miscellaneous:** Nothing contained in this Agreement shall be deemed or interpreted to constitute the relationship between the Parties as a legal partnership, agency, joint venture or the like. This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, representations, warranties, proposals, communications and understandings, whether written or verbal, with respect to the subject matter hereof. This Agreement may not be assigned by Customer except with the written consent of Kudoboard. This Agreement shall not be for the benefit of, or enforceable by, any person or entity not a party hereto and shall not confer any rights or remedies upon any party other than the Parties and their respective successors and permitted assigns. This agreement shall be interpreted under the laws of the State of Delaware.
- 13. Arbitration:** The term "DISPUTED MATTERS" means each and every claim, dispute or controversy as to, concerning, arising out of or relating to the Services or this Agreement (and the term "DISPUTED MATTERS", for the avoidance of doubt includes, without limiting the generality of the forgoing, the following: any claim, dispute or controversy as to, concerning, arising out of or relating to the formation, existence, creation, modification, extinguishment, amendment, performance, enforcement, breach, termination, expiration, dissolution, rescission, revocation, voiding, nullifying, end, validity, arbitrability or interpretation of this Agreement or any provision thereof (collectively, "Arbitration Claims"; and, for the avoidance of doubt, the term "Arbitration Claims" includes, without limiting the generality of the forgoing, each claim, dispute, or controversy arising out of, relating to, or in connection with, directly or indirectly, the interpretation, settlement and resolution of the scope of these arbitration provisions). Kudoboard and Customer shall attempt, through good faith negotiations, to resolve all DISPUTED MATTERS. Notwithstanding the foregoing, if the DISPUTED MATTERS are not resolved within thirty (30) days after it first comes to Kudoboard's and Customer's mutual attention, the DISPUTED MATTERS shall be settled by Kudoboard and Customer by final, non-appealable binding arbitration in Delaware, in accordance with the Commercial Rules of the American Arbitration Association (the "Commercial Rules").



14. **Modification and Severability:** In the event that any portion of this agreement is found to be unenforceable by a court or other tribunal of competent jurisdiction, the remaining portions shall remain in full force and effect to the degree necessary to preserve the intent of the parties.
15. **Notices:** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given: when received if personally delivered; when transmitted if transmitted by electronic mail (Email) to the email address shown below without any bounce-back or other indication of non-delivery; the first business day after it is sent if delivered by a national or international overnight delivery service which systematically tracks deliveries; and five days after it is sent if mailed, first class certified mail, return receipt requested, proper postage prepaid. In each case notices shall be sent:

If to Kudoboard

Kudoboard, Inc.
3000 Lawrence St #8
Denver, CO 80205
Phone: 504-507-0349
Email: legal@Kudoboard.com

If to Customer

Contact information provided on Service Order Form