

## **Terms of Service**

KudoBoost.com (<https://www.KudoBoost.com>), including all of its related applications, dashboards, or platforms (individually and collectively, the “Website”), is owned and operated by KudoBoost LLC. (“KudoBoost,” “we,” “us,” or “our”). By using, installing, or accessing the Website or Services (as defined below), by signing or clicking to accept these terms or any Subscription Documentation (as defined below) referencing these terms, you agree to be bound by the following terms and conditions (together, these “Terms”, or this “Agreement”).

If you are using a KudoBoost Service on behalf of a company, organization, or other entity, then “Client” or “you” means that entity, and you are binding that entity to this Agreement. You represent and warrant that you have the legal power and authority to enter into this Agreement and that, if the Client is an entity, this Agreement is entered into by an employee, agent, or other authorized representative with all necessary authority to bind that entity to this Agreement.

If you do not agree with all of these Terms of Service, then you are expressly prohibited from using the Platform and you must discontinue use immediately.

**1. Services Provided by Service Provider.** Service Provider shall provide Client with full use of Service Provider’s Platform (the “Platform”) and provide Client with the services associated therewith, including, but not limited to, (i) contacting Client’s Customers via text message and/or email requesting feedback, (ii) directing such customers to review sites, (iii) and providing customary reports on such interactions (the “Services”). Service Provider’s Employee App, Marketing Campaigns, Scoreboard, Chat Widget, and Embedded Review features are not included in the Services unless Client elects such feature, in which case there shall be an additional charge mutually agreed upon by the Parties. Service Provider hereby grants Client with the access and use of Service Provider’s website, software, and other related services so long as these Terms of Service remain in effect.

**2. Fees.** Client agrees to pay Service Provider a monthly cost per location (the “Fees”) for any business locations utilizing the Services, as mutually agreed to by and between the parties hereto (each a “Location” and collectively, the “Locations”). The Fees are due and payable on the same day of each successive month from the date the contract is signed for each Location. The Client shall also pay a one-time Onboarding Fee per Location, payable prior to the beginning of the Services, unless otherwise agreed upon by both parties.

**3. No Rights Granted.** Nothing in these Terms of Service shall be construed as granting any rights under any trade secrets, know-how, patents, copyright or other intellectual property right of Service Provider, nor shall this Terms grant Client any rights in or to

Service Provider's Confidential Information (as defined below), except the limited right to use the Confidential Information in connection with the Services.

Except as set forth in Section 4 below, nothing in these Terms of Service shall be construed as granting any rights under any trade secrets, know-how, patents, copyright or other intellectual property right of Client, nor shall these Terms grant Service Provider any rights in or to Client's Confidential Information, except the limited right to use the Confidential Information in connection with the Services.

Except as otherwise set forth herein or pursuant to applicable law, neither party shall use any trade name, service mark or trademark of the other party or refer to the other party in any promotional or sales activity or materials without first obtaining the prior written consent of the other party.

**4. Assignment of Inventions.** To the extent that, in connection with performing the Services, Service Provider jointly or solely conceives, develops, or reduces to practice any inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws, Service Provider shall retain all rights, titles and interest to such inventions, and Client, to the extent necessary to perfect such rights, hereby assigns all rights, titles, and interest to such inventions to the Service Provider.

**5. Software Rights.** Client agrees to not copy, edit, share, or reverse engineer any software or services provided to Client by Service Provider without Service Provider's prior written consent. Client shall immediately report any damage or malfunction of Service Provider's software to a representative of Service Provider or to [support@KudoBoost.com](mailto:support@KudoBoost.com).

Except as expressly provided in these Terms of Service, no part of the Platform and no Content may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission. Client will be granted access and use of the Platform and permission to download or print a copy of any portion of the Content to which Client has properly gained access solely for Client's personal, non-commercial use. We reserve all rights not expressly granted to Client in and to the Platform, the Content and Services.

Service Provider's product may include certain open source components that are subject to open source licenses ("Open Source Software"), in which case, the embedded Open Source Software is owned by a third party. The Open Source Software is not

subject to the terms and conditions of the Service Provider. Instead, each item of Open Source Software is licensed under its applicable license terms which accompanies such Open Source Software. Nothing in this Service limits your rights under, nor grants you rights that supersede, the terms and conditions of any applicable license terms for the Open Source Software. Any fees charged in connection with the Service, do not apply to the Open Source Software for which fees may not be charged under the applicable license terms. The terms and conditions of the applicable license for the Open Source Software are available by request.

**6. Confidential Information.** “Confidential Information” means any information, technical data or know-how (whether disclosed before or after Client’s use of the Platform), including, but not limited to, information relating to business and product or service plans, financial projections, customer lists, employee lists, API/ integration information, business forecasts, sales and merchandising, human resources, patents, patent applications, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing or finance clearly marked as confidential or proprietary or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary.

The recipient of Confidential Information (the “Recipient”) shall not use any Confidential Information disclosed to it by the discloser of such Confidential Information (the “Discloser”) for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, these Terms of Service. Recipient shall not disclose or permit disclosure of any Confidential Information of Discloser to third parties or to employees of Recipient, other than directors, officers, employees, consultants and agents of Recipient or any third parties who are required to have the information in order to carry out the Services. Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of Discloser in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under these Terms of Service to have any such information. Such measures shall include the degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature. Recipient shall notify Discloser of any misuse, misappropriation or unauthorized disclosure of Confidential Information of Discloser which may come to Recipient’s attention.

Notwithstanding the above, information disclosed hereunder shall not be considered “Confidential Information” as defined herein where Recipient can prove that such information: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of Recipient; (b) was known to Recipient, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (c) was independently developed by Recipient without any use of the Confidential Information, as demonstrated by files created at the time of such

independent development; (d) is disclosed generally to third parties by Discloser without restrictions similar to those contained in these Terms of Service (e) becomes known to Recipient, without restriction, from a source other than Discloser without breach of these Terms of Service by Recipient and otherwise not in violation of Discloser's rights; (f) is disclosed with the prior written approval of Discloser; or (g) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that Recipient shall provide prompt notice of such court order or requirement to Discloser to enable Discloser to seek a protective order or otherwise prevent or restrict such disclosure.

The parties acknowledge that: (i) the Confidential Information of the other party is a valuable, special, and unique asset of the other party; (ii) the use or disclosure of the other party's Confidential Information in violation of these Terms of Service may cause immediate, substantial, and irreparable harm, the value of which may be extremely difficult to determine; and (iii) money damages may not be a sufficient remedy for a breach of this section. Accordingly, in addition to all other remedies that the non-breaching party may have, each party agrees that the other party will be entitled to seek any form of equitable relief against the continuation of any breach of the Sections of these Terms of Service governing Confidential Information.

**7. Communications and Personally Identifiable Information.** Client acknowledges that the Services are dependent on Client providing personally identifiable information ("PII") to Service Provider in compliance with applicable laws. Client understands and agrees that the Services are intended to allow Client to send electronic communications, including but not limited to text messages, only to Client's own current customers and employees who have given consent to the receipt of such communications and are provided with necessary notices in accordance with applicable law and regulations. Client agrees and acknowledges that Client is solely responsible for its compliance with applicable law and regulations and shall not rely on the Services for any such compliance. Use of the Services does not guarantee compliance with applicable law or regulation and Service Provider expressly disclaims any liability for Client's non-compliance. Service Provider reserves the right to suspend or terminate Client's access to the Services or the messaging features if Service Provider believes, in its discretion, that Client has violated these Terms of Service.

Service Provider shall not disclose or permit disclosure of any PII to third parties or to employees of Service Provider, other than directors, officers, employees, consultants and agents of Service Provider or any third parties who are required to have the information in order to carry out the Services.

**8. Term and Termination.**

**8.1.Term.** This Agreement is effective until the applicable Subscription Term for the Services has expired or the Subscription is terminated as expressly permitted herein. Unless otherwise stated in Client's Subscription Documentation, the initial term for any Subscription to the Services is twelve (12) months and will automatically renew for subsequent periods of equal duration (the "Subscription Term"), unless either party gives written notice of non-renewal at least one (1) month before the end of the then-current Subscription Term. Client may give notice of non-renewal by sending an email to support@KudoBoost.com. If no Subscription start date is specified on the applicable Subscription Documentation, the Subscription starts when Client first obtains access to the Services ("Subscription Start Date"). By agreeing to any Subscription Documentation, Client is agreeing to pay applicable fees for the entire Subscription Term. Client cannot cancel or terminate a Subscription Term except as expressly permitted by this Section 8.1 (Term) or Section 8.3 (Termination for Cause). Unless Client's Subscription Documentation expressly states otherwise, any additional Services purchased during Client's Subscription Term will be coterminous with Client's most recent KudoBoost platform Subscription Term.

**8.2.Suspension of Services.** KudoBoost may suspend Client's (or any Authorized User's, as applicable) access to the Services if: (a) Client's account is overdue, or (b) Client has exceeded its Scope of Use limits. KudoBoost may also suspend Client's (or any Authorized User's, as applicable) access to the Services, remove Client Data, or disable Third-Party Products if it determines that: (i) Client has breached Sections 3 (Use Rights; Restrictions) or 5 (Client Obligations); or (ii) suspension is necessary to prevent harm or liability to other clients of KudoBoost or third parties or to preserve the security, stability, availability, or integrity of the Services. KudoBoost will have no liability for taking action as permitted above. For avoidance of doubt, Client will remain responsible for payment of Fees during any suspension period other than for any suspension that: (a) is not due to the fault of the Client, and (b) lasts longer than five (5) days. Unless this Agreement has been terminated, KudoBoost will cooperate with Client to restore access to the Services once it verifies that Client has resolved the condition requiring suspension.

**8.3.Termination for Cause.** Either party may terminate this Agreement, including any related Subscription Documentation, if the other party: (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after written notice detailing the breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter)

(or in the case of clients located in Australia, such party has a liquidator appointed or otherwise ceases to carry on business). If Client terminates during the Subscription Term for any reason other than the foregoing, Client will be responsible for the Fees due for the entire Subscription Term. KudoBoost may also terminate this Agreement or any related Subscription Documentation immediately if Client breaches Sections 3 (Use Rights; Restrictions) or 5 (Client Obligations), for repeated violations of other Sections of this Agreement, or if applicable, a breach of the parties' BAA.

**8.4.Effect of Termination.** Upon any expiration or termination of this Agreement or any Subscription Documentation: (a) Client's license rights will terminate and it must immediately cease use of the Services (including any related KudoBoost Technology) and delete (or, at KudoBoost's request, return) any and all copies of any KudoBoost documentation, scripts, passwords or access codes, and any other KudoBoost Confidential Information in Client's possession, custody, or control; and (b) Client's right to access any Client Data in the applicable Services will cease, and unless otherwise precluded by a BAA or other obligation under applicable Law, KudoBoost may delete any such data in its possession at any time. If KudoBoost terminates this Agreement for cause as provided in Section 8.3 (Termination for Cause), any payments for the remaining portion of the Subscription Term will become due and must be paid immediately by Client. Except where this Agreement specifies an exclusive remedy, all remedies under this Agreement, including termination or suspension, are cumulative and not exclusive of any other rights or remedies that may be available to a party.

**9. Recurring Payment Authorization.** Client authorizes Service Provider to regularly charge the payment method saved to Client's account for the per location monthly service cost during the term agreed upon by both parties or any renewal thereof. A receipt for each payment will be sent to the email address on file for Client and the charge will appear on the credit card or bank statements. Client understands that no prior notification will be provided and that each charge will take place at the beginning of each billing cycle, unless multiple attempts to process payment are needed due to insufficient funds, wrong billing information provided, or other reasons outside of Service Providers control and knowledge. It is the sole responsibility of the Client to ensure sufficient funds and correct billing information is provided to the Service Provider. Service Provider will not be responsible for any fees or charges that Client may incur as a result of failed payments or Service Providers attempts to collect payment.

**10. HIPAA.** Service Provider specifically disclaims any representations or warranties that the Services, as offered, comply with the federal Health Insurance Portability and Accountability Act (“HIPAA”). Customers requiring secure storage of “protected health information” under HIPAA are expressly prohibited from using this Service for such purposes.

**11. Representations and Warranties.**

(a) Service Provider represents and warrants that:

(i) Neither an automatic telephone dialing system nor an autodialer as defined under the Telephone Consumer Protection Act (the “TCPA”) will be utilized by Service Provider to provide the Services;

(ii) The intellectual property utilized by Service Provider to render the Services complies with applicable law and does not violate the intellectual property rights held by a third party; and

(iii) Service Provider will not perform the Services in a manner that is inconsistent with Customer’s instructions and directives.

(b) Client represents and warrants that:

(i) Client has written authorization from its customers and employees for electronic communications as well as to collect and/or share any such PII and has undertaken any and all necessary actions in accordance with applicable law to ensure the collection and use of such PII, including such use as contemplated in these Terms of Service, does not violate applicable law;

(ii) Client will for the duration of the Platform usage: (a) provide all required disclosures to its customers and employees to obtain all required consents and/or authorizations, in accordance with applicable laws, prior to utilizing the Services; and (b) obtain all necessary rights, releases and consents to allow PII to be collected, used and disclosed in the manner outlined in these Terms of Service and to grant Service Provider the rights herein;

(iii) All Client information submitted will be true, accurate, current, and complete;

(iv) Client will maintain the accuracy of such information and promptly update such information as necessary;

(v) Client has the legal capacity and agrees to comply with these Terms of Service;

(vi) Client will not access the Site through automated or non-human means, whether through a bot, script, or otherwise; and

(vii) Client will not use the Site for any illegal or unauthorized purpose.

If you provide any information that is untrue, inaccurate, not current, or incomplete, Service Provider has the right to suspend or terminate Client's account and refuse any and all current or future use of the Platform or any portion thereof.

**12. Indemnification.** Each party shall indemnify, defend, and hold harmless the other party and their respective officers, employees, agents, members, affiliates, subsidiaries, successors and assigns, and all of their respective directors, employees, agents and members (each an "Indemnified Party") harmless from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification under these Terms of Service, incurred by an Indemnified Party relating to, arising out of, or resulting from any claim, action, audit, investigation, inquiry, or other proceeding that arises out of or relates to: (a) any breach of representations, warranties, or obligations set forth in these Terms of Service by such party; and (b) the violation by such party of any third-party right, including without limitation any right of privacy, publicity rights, rights under the TCPA or intellectual property rights of third parties.

**13. Non-Disparage.** During and after the term of Platform usage, the parties hereto agree not to disparage or encourage or induce others to disparage the other party hereto or their respective affiliates or any of their products or services. For purposes of this paragraph, the term "disparage" includes, without limitation, comments or statements to the press, to a party's or its affiliates' members, owners, employees or to any individual or entity with whom such party or its affiliates has a personal or business relationship (including, without limitation, any contact, vendor, supplier, Client or distributor), or any public statement, that in each case is intended to, or can be reasonably expected to, damage the other party hereto or its affiliates.

**14. Non-Solicit.** During the term of Platform usage and for a period of one (1) year thereafter, neither party shall (i) solicit any person who is employed by or a consultant to the other party or any affiliate or subsidiary of the other party, to terminate such person's employment by or consultancy to such other party, such affiliate or subsidiary, or (ii) hire such employee or consultant. As used herein, the term "solicit" shall include, without limitation, requesting, encouraging, assisting or causing, directly or indirectly,



any such employee or consultant to terminate such person's employment by or consultancy to the other party or its affiliate or subsidiary.

**15. Limitation of Liability.** IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NOT EVENT SHALL SERVICE PROVIDER'S LIABILITY UNDER THESE TERMS OF SERVICE EXCEED THREE TIMES THE AMOUNTS PAID TO SERVICE PROVIDER PURSUANT TO AGREED UPON TERM AND PER LOCATION MONTHLY COST.

**16. Prohibited Activities.** Client may not access or use the Platform for any purpose other than that for which we make the Platform available. The Platform may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by Service Provider.

As a Client and user of the Platform, you agree not to:

(a) systematically retrieve data or other content from the Platform to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from Service Provider.

(b) make any unauthorized use of the Platform, including collecting usernames and/or email addresses of Clients by electronic or other means for the purpose of sending unsolicited email, or creating Client accounts by automated means or under false pretenses.

(c) circumvent, disable, or otherwise interfere with security-related features of the Platform, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the Platform and/or the Content contained therein.

(d) trick, defraud, or mislead Service Provider and other Clients, especially in any attempt to learn sensitive account information such as Client passwords;

(e) make improper use of Service Providers support services or submit false reports of abuse or misconduct;

(f) interfere with, disrupt, or create an undue burden on the Platform or the networks or services connected to the Platform;

(g) attempt to impersonate another Client or person or use the username of another Client;

(h) use any information obtained from the Platform in order to harass, abuse, or harm another person;

(i) use the Platform as part of any effort to compete with Service Provider or otherwise use the Platform and/or the Content for any revenue-generating endeavor or commercial enterprise;

(j) decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the Platform;

(k) attempt to bypass any measures of the Platform designed to prevent or restrict access to the Platform, or any portion of the Platform;

(l) harass, annoy, intimidate, or threaten any of Service Providers employees or agents engaged in providing any portion of the Platform to you as a Client and user;

(m) upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses, or other material, including excessive use of capital letters and spamming (continuous posting of repetitive text), that interferes with any party's uninterrupted use and enjoyment of the Platform or modifies, impairs, disrupts, alters, or interferes with the use, features, functions, operation, or maintenance of the Platform; and

(n) disparage, tarnish, or otherwise harm, in Service Providers opinion, us and/or the Platform.

## **17. Miscellaneous.**

(a) Supplemental Terms of Service or documents that may be posted on the Platform from time to time are hereby expressly incorporated herein by reference. We reserve the right, in our sole discretion, to make changes or modifications to these Terms of Service at any time and for any reason. Service Provider shall notify Clients of any material changes or modifications to these Terms of Service.

(b) It is the Clients responsibility to periodically review these Terms of Service to stay informed of updates. Client will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms of Service by the continued use of the Platform after the date such revised Terms of Service are posted.

Service Provider shall notify Clients of any material changes or modifications to these Terms of Service and post such changes by updating the “Last updated” date of these Terms of Service. Client waives any right to receive specific notice of each such change unless otherwise agreed upon by both Client and Service Provider.

(c) The Platform is intended for Clients who are at least 18 years old. All Clients who are minors in the jurisdiction in which they reside must have the permission of, and be directly supervised by, their parent or guardian to use the Platform. If you are a minor, you must have your parent or guardian read and agree to these Terms of Service prior to you using the Platform.

(d) Neither the Services nor the rights contained herein may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other; provided, however, that these Terms of Service and/or the rights contained herein may be assigned without the Client’s consent by the Service Provider to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Service Provider or in connection with a reincorporation to change the Service Provider’s domicile.

(e) In the event any one or more of the provisions of these Terms of Service is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of these Terms operates or would prospectively operate to invalidate the Terms of Service, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of these Terms and the remaining provisions of these Terms of Service will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of California, without regard to the conflicts of law provisions of such jurisdiction. Any disputes, controversies, or claims arising out of these Terms of Service shall be heard in the state or federal courts of California, and all parties waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

(g) These Terms of Service constitutes the entire Service Terms of the parties with respect to the subject matter hereof and supersedes all proposals (oral and written), all negotiations, past dealings, and/or conversations or discussions between or among the parties.

(h) Except for the Indemnified Parties, these Terms are for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein,

express or implied, is intended to or will confer upon any other person or entity, any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of these Terms.

(i) We reserve the right, but not the obligation, to:

(i) monitor the Site for violations of these Terms of Service;

(ii) take appropriate legal action against anyone who, in our sole discretion, violates the law or these Terms of Service;

(iii) in Service Provider's sole discretion and without limitation, refuse, restrict access to, limit the availability of, or disable the Platform or any portion thereof;

(iv) in Service Provider's sole discretion and without limitation, notice, or liability, to remove from the Site or otherwise disable all files and content that are excessive in size or are in any way burdensome to the Platform;

(v) otherwise manage the Platform in a manner designed to protect both parties rights and property and to facilitate the proper functioning of the Platform.

## **19. Tax Obligations**

(a) Parties who receive incentives (including points) through the Platform are reminded of their responsibility to comply with all relevant tax laws and regulations. Any earnings received by a Party through the Platform can be viewed within that Party's portal and must be claimed on their tax returns, regardless of whether the Service Provider reports those earnings to the Party on Form 1099-NEC, as described in 19(b). Failure to properly report earnings may result in legal consequences and/ or penalties.

(b) At the end of each calendar year, Service Provider will request an Internal Revenue Service Form W-9 from any Party that received \$600 or more in incentives through the Platform during the calendar year. After receiving a Party's completed Form W-9, a Form 1099-NEC will be sent directly to the Party using the information on file or provided through their Form W-9.

(c) Service Provider strongly encourages all Parties to seek guidance from qualified tax professionals to ensure compliance with all tax obligations. By using the Services, all Parties agree to adhere to these tax requirements.

(d) Service Provider specifically disclaims responsibility and each Party agrees to indemnify Service Provider for any legal consequences or interest or penalties that arise out of the Party's failure to properly report on their taxes all their earnings received through the Platform on their taxes.