

## **Subscription Agreement (Employers)**

THIS SUBSCRIPTION AGREEMENT (this “Agreement”) sets forth the terms and conditions between Cudos, LLC, an Arizona limited liability company (the “Company”) and employers (“Employer”) and governs Employer’s use of Company’s software platform called Cudos Benefits Management Program made available through its website or mobile applicable (the “Services”). Company and Employer are individually referred to herein as a “Party” and collectively as the “Parties”.

**By clicking ‘accept,’ or using or accessing the Services, Employer agree to the terms of this Agreement. If Employer does not have authority to enter into this Agreement, or if Employer does not agree with its terms, do not click ‘accept’ and do not use or access the Services. The date Employer clicks ‘accept’ or first uses or access the Services shall be the “Effective Date” of this Agreement.**

Company reserves the right to modify or supplement any or all of the terms of this Agreement from time to time upon notice to Employer. Company reserves the right, in its sole discretion, to restrict, change, suspend, or terminate access to all or any part or aspect of the Services, including the availability of any feature, database, information, or content, at any time and without prior notice or liability. Continued use of the Services following notice of any changes to the terms of the Agreement constitutes Employer’s acceptance of the changes. If Employer does not agree with the terms of this Agreement at any time, Employer is required to stop using the Services. Company encourages Employer to print a copy of this Agreement for Employer’s records.

1. Services. Subject to the terms of this Agreement, Company hereby grants Employer a non-exclusive, non-transferable right to use the Services. Company reserves the right, in its sole discretion, to suspend or modify the Services at any time. All rights not expressly granted to Employer herein are reserved by Company.
  
2. Restrictions and Responsibilities.
  - (a) Restrictions. Employer will not, directly or indirectly, and shall not allow any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (collectively, “Software”); (ii) modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); (iii) use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of any third party; (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer the Services or any Software; (v) bypass or breach any security device or protection of the Services or Software; (vi) input, upload, transmit or otherwise provide to or through the Services or Software, any information or material that are unlawful, injurious, malicious, or contains, transmits or activates any harmful code; (vii) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Software, or Company’s provision of services to any third party, in whole or in part; (viii) access or use the Services or Software for purposes of competitive analysis of the Services or Software or development of a competing service or product; (ix) remove any proprietary notices or labels (except to the extent expressly permitted by Company); (x) violate the rights of others, including without limitation the privacy of its Participants; or (xi) violate any applicable law.

(b) Export. Employer may not remove or export from the United States or allow the export or reexport of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

(c) Accounts. To use portions of the Services, Employer and Employer's authorized employees ("Participants") must be registered and provide account information, including without limitation Employer Data (defined below), personal data and contact information. Upon Employer creating an account, Company will provide Employer a unique account uniform resource locator ("URL") to share with Participants. Employer shall direct each Participant to use such URL to access the Services, if the Participant so chooses. Once a Participant creates an account using this URL, Employer will confirm through its account that such Participant is authorized to access the Services. Employer is solely responsible for maintaining the confidentiality of its account information and passwords. Employer agrees to immediately notify Company if it knows or suspects that an account, including any account of its Participants, is being accessed or used without authorization. Employer is fully responsible for all usage and activity on its account or the accounts of its Participants, including without limitation use of an account by any third party.

(d) Add/Remove Participants. Employer can add or remove Participants from its plan at any time during the Term of this Agreement through the Services. Employer is solely responsible for using the Services to notify the Company when a Participant is no longer included under Employer's plan (whether terminated from employment or otherwise) and remove the Participant from Employer's account; provided however that, until such Participant is removed, Employer shall be solely responsible for any and all Fees (defined below) incurred for such Participant.

(d) Representations and Warranties. Employer represents and warrants that Employer (i) will use the Services only in compliance with Company's standard written policies then in effect and all applicable laws and regulations, and (ii) has the authority to provide Employer Data to Company.

### 3. Employer Data.

(a) Ownership of Employer Data. "Employer Data" means any and all content, data, information or material provided or submitted by Employer in the course of using the Services, including without limitation Participant's personal information. As between Employer and Company, Employer shall own all right, title and interest in and to Employer Data. Employer has the sole responsibility for the entry, deletion, correction, accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use Employer Data. Company will not be responsible for any destruction, damage, loss or failure to store any Employer Data beyond its reasonable control or resulting from a failure in data transmission or operation of the Services by Employer.

(b) License. Except as prohibited by applicable law, Employer hereby grants Company a worldwide, perpetual, irrevocable, transferable, sub-licensable, royalty free license to use, copy, distribute, transmit, display and prepare derivative works of Employer Data, and acknowledges that this license cannot be terminated by Employer once Employer Data is submitted through the Services. No compensation will be paid to Employer with respect to Company's use of Employer Data.

(c) Employer Data. Employer acknowledges and agrees Company acts as a passive conduit and an interactive software provider for the distribution of Employer Data, and as such Company has no duty or obligation to investigate the accuracy of any Employer Data or other content posted on the Services by third parties. Although Company has no obligation to monitor Employer Data or Employer's or a Participant's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of this Agreement. Company reserves the right to remove any Employer Data that it finds, in its sole discretion, illegal, misleading, defamatory, libelous, indecent or obscene, threatening, infringing of any third party proprietary rights, or invasive of personal privacy, or otherwise objectionable, but is under no obligation to do so.

(d) Aggregated Employer Data. Notwithstanding anything to the contrary contained in this Agreement, Company may aggregate Employer Data and other content, data, and Participant information in such a way that that it will not identify a Participant or Employer and Company may use that aggregated data to develop and improve the Services and for any other lawful purpose.

4. Ownership.

(a) Company Intellectual Property. Company shall own and retain all right, title and interest (including the copyright) in and to (i) the Services and Software, all improvements, enhancements, customizations, or modifications thereto, (ii) any software, applications, inventions or other technology developed in connection with the Services or support, (iii) any comments, suggestions, ideas, enhancements, requests, customizations, feedback, recommendations or other information provide by Employer relating to the Services or Software ("Feedback"), and (iv) all intellectual property rights related to any of the foregoing. Employer hereby assigns all right, title, and interest in and to the Feedback to Company. The name "Cudos" and other Company marks, logos, and designs are trademarks, service marks, or trade dress shall remain the exclusive property of Company and Employer shall obtain no rights or interest in such the intellectual property as a result of this Agreement.

(b) Employer Logo. Company may disclose the fact that Employer is a customer of Company. Employer hereby grants Company a royalty-free, limited license to use Employer's name and logo on Company's website and in its sales and marketing materials.

5. Fees. Employer will pay Company the following fees, costs, and expenses (collectively, the "Fees"):

(a) Participant Fee. Employer will pay Company a fee of Three Dollars (\$3.00) per month for each Participant that is included under Employer's plan according to the latest information provided to Company on the Employer's account at the time of billing, irrespective of whether or not that individual is still employed or sponsored by Employer at that time.

(b) Monthly Fee. In addition to the fee for Participants, Employer will pay Company a monthly fee of Twenty Dollars (\$20.00).

6. Payment.

(a) Payment. Employer shall pay each of Company's invoices within twenty (20) days of receipt of such invoice. All Fees are non-cancelable and non-refundable. All Fees shall be paid by

Employer to Company in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law). All amounts due under this Agreement are quoted and shall be paid in US dollars. The Fees do not include taxes. Employer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income. Payments not made on or before their due date may be subject to late fees of one and one-half percent (1.5%) per month (or the maximum allowed by law, if less).

(b) Fee adjustment. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then current Renewal Term, upon prior notice to Employer (which may be sent by email).

7. Term and Termination.

(a) Initial Term. This Agreement shall become effective on the Effective Date and continue for a one (1) year period (the "Initial Term"). Employer may terminate the Agreement at the end of the Initial Term upon written notice to Company.

(b) Term. If Employer does not provide written notice of termination prior to the end of the Initial Term, this Agreement shall automatically renew for one (1) year terms thereafter (each a "Renewal Term" and together with the Initial Term, the "Term"), until terminated by either Party upon written notice of at least thirty (30) days prior to the end of a Renewal Term, or as otherwise provided for in this Agreement.

(c) Termination. Either Party may also terminate this Agreement if the other Party (i) materially breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice requiring it to do so, (ii) ceases to do business, becomes or is deemed insolvent, has a receiver or examiner appointed in respect of the whole or any part of its assets or business enters into liquidation whether compulsorily or voluntarily, or if justifiable doubts exist as to solvency of the other Party, or (iii) provides sixty (60) days' notice of termination.

(d) Effects of Termination. Upon termination for any reason, Employer shall immediately (i) cease all use of any Services, and (ii) pay in full for the Services up to and including the last day on which the Services are provided. Termination of this Agreement shall not affect any accounts of Participants, provided however that each Participant, and not Employer, shall be responsible for any fees and charges for such Participant's use of the Services after the date this Agreement is terminated.

(e) Survival. All sections of this Agreement which by their nature should survive expiration or termination will survive expiration or termination, including, without limitation, accrued rights to payment, warranty disclaimers, indemnification obligations, and limitations of liability.

8. Warranty and Disclaimer. Company shall not be liable for any inability to provide the Services (in whole or in part) when caused by any event, condition, or circumstance beyond Company's reasonable control. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third party providers, or because of other causes beyond Company's reasonable control. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED

TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. COMPANY MAKE NO REPRESENTATION OR WARRANTY AS TO WHETHER THE SERVICES ARE COVERED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED FROM TIME TO TIME, AND THE RULES AND REGULATIONS THEREUNDER (COLLECTIVELY, “ERISA”), OR COMPANY’S COMPLIANCE THEREWITH.

9. Indemnity.

(a) Employer Obligations. Employer shall defend, indemnify and hold Company and its affiliates, and each of their members, managers, officers, directors, shareholders, employees, contractors, agents and representatives harmless for, from and against any and all claims, suits, damages, liabilities, costs and expenses (including reasonable attorneys’ fees) arising out of or resulting from (i) Employer Data, including claims that Employer Data infringes intellectual property rights or privacy rights of third parties, (ii) violation of this Agreement or applicable law, or (iii) Employer’s use of the Services or Software.

(b) Company Obligations. Company shall defend, indemnify and hold Employer harmless from and against any and all claims, suits, damages, liabilities, costs and expenses (including reasonable attorneys’ fees) to the extent arising out of any claim that Employer’s use of the Services infringes a United States patent, copyright, or trademark or misappropriates a trade secret of any third party, provided Company is promptly notified of any and all threats, claims and proceedings related thereto. In the event that the Services, or any portion thereof, becomes the subject of a claim of infringement or misappropriation, Company may (i) procure for Employer the right to continue using the Services, (ii) replace or modify the infringing portion of the Services, or (iii) terminate this Agreement. The foregoing obligations of Company do not apply with respect to Services which are modified by Employer. THE FOREGOING STATES COMPANY’S ENTIRE LIABILITY WITH RESPECT TO CLAIMS OF INFRINGEMENT BY THE SERVICES.

10. Limitation of Liability. COMPANY AND ITS AFFILIATES AND EACH OF THEIR MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS AND REPRESENTATIVES SHALL NOT BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE, OR INABILITY TO USE, THE SERVICES OR SOFTWARE, OR ARISING OUT OF THIS AGREEMENT, AND EMPLOYER SHALL NOT BE ENTITLED TO DAMAGES BASED ON LOSS OF PROFIT, LOSS OR INTERRUPTION OF DATA OR COMPUTER TIME, ALTERATION OR ERRONEOUS TRANSMISSION OF DATA, EVEN IF COMPANY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR SHOULD HAVE KNOWN OR FORESEEN SUCH POSSIBILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, COMPANY AND ITS AFFILIATES AND EACH OF THEIR MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS AND REPRESENTATIVES TOTAL LIABILITY FOR ANY AND ALL CLAIMS, LOSSES, OR DAMAGES RELATING TO THE SOFTWARE, SERVICES, OR THIS AGREEMENT, (WHETHER BASED ON TORT, CONTRACT, OR ANY OTHER THEORY) SHALL BE

LIMITED TO THE AMOUNT ACTUALLY PAID BY EMPLOYER TO COMPANY FOR THE SERVICES PROVIDED UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

11. Release. Employer hereby release and forever discharge Company and its affiliates and each of their members, managers, officers, directors, shareholders, employees, contractors, agents and representatives from all liability related to any and all claims, demands, and damages of every kind and nature known or unknown, that Employer may assert against a Participant or third party arising out of the Services. By entering into this release Employer expressly waives any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims which Employer may know or suspect to exist in Employer's favor at the time of agreeing to this release.

BY USING THE SERVICES, EMPLOYER UNDERSTANDS THAT EMPLOYER MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, EMPLOYER ACKNOWLEDGES THAT EMPLOYER HAS READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES SUBSTANTIALLY AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

12. Beta Services. Certain parts of the Services may include beta features, functionality of other beta services (the "Beta Services"). Employer's use of the Beta Services are at Employer's sole risk. Employer acknowledge that the Beta Services may contain bugs, errors and/or other problems and are being provided "AS IS, WITH NO WARRANTIES." Therefore, Company disclaims any and all warranty, indemnification, security, data back-up, support and liability obligations to Employer of any kind with respect to the Beta Services. Company does not guarantee the availability of the Beta Services.

13. Governing Law; Venue. This Agreement shall be deemed to have been made in, and be construed pursuant to the laws of the State of Arizona without regard to conflicts of laws provisions thereof. Any dispute not resolved by negotiation between the Parties shall be submitted to the exclusive jurisdiction of the state and federal courts located in Maricopa County, Arizona. Both Parties agree that such courts shall be a proper place for venue in connection with any litigation initiated hereunder. Each Party consents to and waives any objection to venue and jurisdiction in the state and federal courts located in Maricopa County, Arizona. The prevailing Party in an action brought against the other to enforce the terms of this Agreement or any rights or obligations hereunder, shall be entitled to receive its reasonable attorney fees and costs.

14. Amendments; Waiver. This Agreement may only be changed or modified by a written agreement duly signed by authorized representatives of both Parties. Any waiver of any provision of this Agreement shall be effective only if made in writing and signed by a duly authorized representative of the waiving Party.

15. Force Majeure. Except for Employer's payment obligations under this Agreement, neither Party shall be deemed to have breached this Agreement by reason of any delay or failure in its performance arising from events beyond its reasonable control, including, but not limited to, acts of God, acts of war, riot, epidemic, fire, flood or other disasters (each a "Force Majeure Event").

16. Notice. Any notice, report, approval or consent required or permitted hereunder shall be delivered by either email or in writing and mailed by registered or certified US mail, postage prepaid or reputable overnight carrier (e.g. Federal Express) to the address for Company set forth below and to the address for Employer associated with Employer's account, or such other address as a party may designate by ten (10) days written notice delivered in accordance with this Section and shall be deemed given upon receipt.

If to Company: Cudos, LLC  
7377 East Doubletree Ranch Road #100  
Scottsdale, AZ, 85258, USA

17. Assignment. Employer shall not assign or transfer, or purport to assign or transfer, any of its rights or obligations under this Agreement without the prior written consent of Company. Except as set forth in this Section, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the respective Parties hereto.

18. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

19. Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

20. Relationship of the Parties; No Third Party Beneficiaries; Nonexclusively. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. This Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21. Entire Agreement. By using the Services, Employer is also agreeing to Company's Terms of Use ("Terms of Use") and Privacy Policy ("Privacy Policy") posted to Company's website. This Agreement, the Terms of Use, and the Privacy Policy are the complete and exclusive statement of the mutual understanding of the Parties and shall and do supersede and cancel all previous written and oral agreements and communications relating to the subject matter of this Agreement. To the extent of a conflict the agreements will control in the following order: (1) this Agreement; (2) the Privacy Policy; and (3) the Terms of Use.

**Updated: March 2019**