Terms of Service - Enterprise

This agreement is between Invoiced, Inc., a Delaware corporation (**Invoiced**), and the customer agreeing to these terms (**Customer**). This agreement is dated as of date of signature by Invoiced below.

1. **SOFTWARE-AS-A-SERVICE**. This agreement provides Customer access to and usage of an Internet based software service as specified on an order and as further outlined at: invoiced.com (**Service**).

2. **USE OF SERVICE**.

   a. **Customer Owned Data.** All data and logos uploaded by Customer remains the property of Customer, as between Invoiced and Customer (**Customer Data**). Customer grants Invoiced the right to use, publicly display and distribute the Customer Data for purposes of performing under this agreement. See the Invoiced **FAQs** (https://invoiced.com/faq) regarding export of Customer Data.

   b. **Contractor Access and Usage**. Customer may allow its contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors.

   c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Invoiced promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's Knowledge Base and applicable law.

   d. **Technical Support.** Invoiced must provide customer support for the Service under the terms of Invoiced Customer Support Policy (**Support**) which is located at https://invoiced.com/support, and is incorporated into this agreement for all purposes.

   e. **API.** Invoiced provides access to its application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this agreement, Invoiced grants Customer a non-exclusive, nontransferable, terminable license to interact with the API only for purposes of the Service as allowed by the API.
      - Customer may not use the API in a manner that fails to comply with the API technical documentation or with any part of the API. If any of these occur, Invoiced can suspend or terminate Customer's access to the API on a temporary or permanent basis.
      - Invoiced may change or remove existing endpoints or fields in API results upon at least 30 days' notice to Customer, but Invoiced will use commercially reasonable efforts to support the previous version of the API for at least 6 months. Invoiced may add new endpoints or fields in API results without prior notice to Customer.x
      - The API is provided on an 'AS IS' and 'WHEN AVAILABLE' basis. Invoiced has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.

   f. **30-Day Trial Version.** If Customer has registered for a trial use of the Service, Customer may access the Service for a 30-day time period (unless extended by Invoiced in writing). The Service is provided AS IS, with no warranty during this time period. All Customer data will be deleted after the trial period, unless Customer converts its account to a paid Service.

3. **WARRANTY**

   a. **Warranty.** Invoiced warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (excluding maintenance outages, force majeure, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

Availability Warranty	Credit
- 99.5 - 95% =	10% of monthly fee.
- 94.99 - 90% =	25% of monthly fee.
- Less than 90% =	50% of monthly fee.

   Maximum amount of the credit/refund is 100% of such fee for that month.

   b. **LIMITED REMEDY. Customer's exclusive remedy and Invoiced's sole obligation for its failure to meet the warranty in a(i) above will be for Invoiced to provide a credit for the applicable month as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies Invoiced of such breach within 30 days of the end of that month.**

   c. **DISCLAIMER. INVOICED DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE INVOICED TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, INVOICED DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.**

4. **PAYMENT**. Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

5. **MUTUAL CONFIDENTIALITY**

   a. **Definition of Confidential Information**. Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Invoiced's Confidential Information includes without limitation the Service (including without limitation the Service user interface design and layout, and pricing information).

   b. **Protection of Confidential Information**. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

   a. **Exclusions**. Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. **PROPRIETARY PROPERTY**.

   a. **Reservation of Rights**. The software, workflow processes, user interface, designs, know-how, and other technologies provided by Invoiced as part of the Service are the proprietary property of Invoiced and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Invoiced. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. Invoiced reserves all rights unless expressly granted in this agreement.

   b. **Restrictions**. Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer the Service; or (vi) access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

   c. **Aggregate Data.** During and after the term of this agreement, Invoiced may use non-personally identifiable Customer Data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

7. **TERM AND TERMINATION.**

   a. **Term**. This agreement continues until all orders have terminated.

   b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

   c. **Suspension for Non-Payment.** Invoiced may temporarily suspend or terminate, or both, the Service if Customer's payment on any invoice is more than 15 days past due. See the Invoiced **FAQs** (https://invoiced.com/faq) for details.

   d. **Maintenance of Customer Data.**

      - *Within 90-days after termination,* Customer Data will be available as specified in the Invoiced **FAQs** (https://invoiced.com/faq).
      - *After such 90-day period,* Invoiced has no obligation to maintain the Customer Data and may destroy it.

   e. **Return Invoiced Property Upon Termination**. Upon termination of this agreement for any reason, Customer must pay Invoiced for any unpaid amounts, and destroy or return all property of Invoiced. Upon Invoiced's request, Customer will confirm in writing its compliance with this destruction or return requirement.

   f. **Suspension for Violations of Law.** Invoiced may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. Invoiced will attempt to contact Customer in advance.

8. **LIABILITY LIMIT**.

   a. **EXCLUSION OF INDIRECT DAMAGES. Invoiced is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of data, records or information; and lost profits), even if it knows of the possibility of such damage or loss.**

   b. **TOTAL LIMIT ON LIABILITY. Invoiced's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability.**

9. **DEFENSE OF THIRD PARTY CLAIMS.** Invoiced will defend or settle any third party claim against Customer to the extent that such claim alleges that Invoiced technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Invoiced of the claim in writing, cooperates with Invoiced in the defense, and allows Invoiced to solely control the defense or settlement of the claim. **Costs**. Invoiced will pay infringement claim defense costs incurred as part of its obligations above, and Invoiced negotiated settlement amounts, and court awarded damages. **Process**. If such a claim appears likely, then Invoiced may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Invoiced determines that none of these are reasonably available, then Invoiced may terminate the Service and refund any prepaid and unused fees. **Exclusions.** Invoiced has no obligation for any claim arising from: Invoiced's compliance with Customer's specifications; A combination of the Service with other technology where the infringement would not occur but for the combination; Use of Customer Data; or Technology not provided by Invoiced. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND INVOICED'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Travis County, Texas, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

11. **OTHER TERMS**.

   a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.
   b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
   c. **Independent Contractors**. The parties are independent contractors with respect to each other.
   d. **Enforceability and Force Majeure**. If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
   e. **Money Damages Insufficient**. Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
   f. **No Additional Terms.** Invoiced rejects additional or conflicting terms of any Customer form-purchasing document.
   g. **Order of Precedence**. If there is an inconsistency between this agreement and an order, the order prevails.
   h. **Survival of Terms**. Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.
   i. **Feedback**. By submitting ideas, suggestions or feedback to Invoiced regarding the Service, Customer agrees that such items submitted do not contain confidential or proprietary information; and Customer hereby grants Invoiced an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.

_____ / Customer	Invoiced, Inc.
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:
Address:	Address: 5301 Southwest Parkway Suite 470 Austin, TX 78735