Enterprise Terms of Service

EFFECTIVE DATE OF ENTERPRISE TERMS OF SERVICE: JANUARY 29, 2021

These "Enterprise Terms of Service" (which term includes any applicable Order Forms (defined below)) set forth the terms and conditions pursuant to which InVisionApp Inc. ("InVision," "we," "us" or "our") provides its Services (defined below) to the customer identified on an Order Form ("you," "your," "yours" or "Customer") . These Enterprise Terms of Service govern your access and use of our Services, so please read them fully and carefully before using any of the Services. For a PDF version of these Enterprise Terms of Service, please click here. Please note that if you are not an enterprise customer, your use of InVision’s services are governed by a different Terms of Service which can be found here.

By indicating your acceptance of these Enterprise Terms of Service, whether by entering into an Order Form, clicking a box next to a link to these Enterprise Terms of Service (e.g. as part of an online checkout process), submitting a purchase order (in accordance with Section 14.a.), or by accessing or using the Services under an Enterprise account, you are confirming that you have read, understand and accept these Enterprise Terms of Service. If you are entering into this on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind such entity and its affiliates to these Enterprise Terms of Service. The use or continued use of any portion of the Services by Customer or any of its Users (defined below) shall constitute assent to these Enterprise Terms of Service. If you do not unconditionally agree to all of the terms of these Enterprise Terms of Service, you will have no right to use the Services. If these Enterprise Terms of Service are considered an offer by InVision, acceptance is expressly limited to these Enterprise Terms of Service to the exclusion of all other terms.

Please note: if you have entered into an Order Form with InVision dated prior to January 29, 2021, then such version of the terms, available here, shall continue in effect until your next subscription renewal, at which time this version of the Enterprise Terms of Service shall be effective. If you have executed a separate written agreement with InVision regarding your use of certain of our Services, then that agreement, and not these Enterprise Terms of Service, applies to those Services.
1. **Eligibility.** Customer represents and warrants that (a) any individual using Customer’s Account (defined below) or otherwise accessing the Services on Customer’s behalf is at least 18 years of age and (b) Customer’s use of the Services shall (i) be in compliance with all applicable laws, rules and regulations and (ii) not conflict with or violate any other agreement to which Customer is a party.

2. **Order Forms and Registration.** “Order Form” means an ordering document accepted in writing by InVision (e.g. by issuing an invoice). Order Forms are not valid until accepted in writing by InVision. To use the Services, Customer must register for an account on the Services (an “Account”). Customer must provide accurate and complete information for Customer’s Account and keep all such Account information updated. Customer may create additional user accounts in connection with Customer’s Account for any individuals who are authorized by Customer to use the Services, such as Customer’s employees, consultants, contractors and agents, and third parties with which Customer transacts business, up to the number of seats or users indicated on an applicable Order Form (each such user, a “User”). Please note that each User refers to one natural human. Customer shall designate one User for each seat it purchases (and may reassign such seat to a new individual replacing one who no longer uses the Services). Customer shall not permit more than the authorized number of Users to use Customer’s Account in any manner, and shall not, nor shall Customer permit any of its Users, to share any access credentials for the Services with any other individuals or entities. Customer is solely responsible for the activity that occurs on Customer’s Account, including on User Accounts, whether or not authorized, and for keeping all access credentials associated with Customer’s Account, including User Accounts, secure. Customer shall promptly notify InVision of any breach of security or unauthorized use of Customer’s Account. Users may have the ability to invite other users to their teams, unless Customer’s Account settings restrict this functionality. We will provide Customer with periodic updates of its list of active Users, and Customers may request this list from us.

3. **The Services.**

   a. **Services.** “Services” means, collectively, the InVision services you access as an enterprise customer, including, without limitation, the InVision design collaboration platform as set forth on the Order Form (the “Platform”), any other InVision products or services set forth on the Order Form, and any InVision Content (defined below), platforms, software, applications, documentation or training materials, provided by InVision in connection therewith. Subject to these Enterprise Terms of Service, InVision will use commercially reasonable efforts to
make the Services available to Customer. Use of the Services shall also be subject to InVision’s Privacy Policy.

b. Content.

i. "Content" means information, data, templates, reports, UI kits, interfaces, utilities, forms, documentation, content, tools, features, text, fonts, photographs, videos, audio clips, written posts and comments, software, scripts, and graphics interactive features.

ii. "InVision Template Content" means Content made accessible by InVision via the Platform expressly for use by customers in creating value-added Customer Data (for the avoidance of doubt, excluding Content obtained through InVision Learn, design maturity collateral, and any Content made available via any Third Party Services (defined below)). An example of InVision Template Content would be a design template provided by InVision through the Platform for use by Customer in creating a digital asset. Subject to these Enterprise Terms of Service, InVision grants to Customer and its Users a worldwide, non-exclusive, sublicensable, and transferable right and license to use copy, access, process, reproduce, perform, display, transmit and modify InVision Template Content made available by the Platform, solely for the purpose of incorporating the InVision Template Content into value-added Customer Data (InVision Template Content may not be resold or redistributed). “InVision Content” means InVision Template Content and any other Content provided by InVision (excluding any Third Party Services).

c. Restrictions on Use of the Services. Customer shall not, directly or indirectly: (i) make the Services available to, or use the Services for the benefit of, anyone other than Customer or the Users; (ii) sell, resell, license, sublicense, distribute, rent or lease the Services, or include any Services in a service bureau or outsourcing offering; (iii) use the Services to store or transmit infringing, libelous, or otherwise unlawful, or tortious content, material or data or in any unlawful manner or for any unlawful purpose; (iv) store, use, process, or transmit material or data on or through the Services in violation of third-party rights, including without limitation privacy rights or any contract to which Customer is a party; (v) use the Services to store or transmit malicious or disruptive code; (vi) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; (vii) attempt to gain unauthorized access to the Services or its related systems or networks; (viii) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit; (ix) copy the Services or any part, feature, function or user interface thereof; (x) frame or mirror any part of any Services, other than framing on Customer’s own internal intranets; (xi) access or use the Services for benchmarking or similar competitive
analysis purposes or in order to build a competitive product or service; (xii) modify, translate, or create derivative works based on the Services or any underlying software; (xiii) remove any copyright notices, logos, trade or service marks, information and restrictions contained in the Services or any InVision Content; (xiv) bypass, circumvent or attempt to bypass or circumvent any measures InVision may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services) or take any action that imposes or may impose (as determined by us in InVision’s sole discretion) an unreasonable or disproportionately large load on InVision’s (or InVision’s third party providers’) infrastructure; (xv) use manual or automated software, devices, or other processes to “crawl” or “spider” any page of the Services; or (xvi) otherwise take any action in violation of InVision’s guidelines and policies, including these Enterprise Terms of Service. InVision may suspend access to the Services by you or any User pending an investigation of misuse.

d. **Availability.** InVision is not and will not be responsible or liable for any failure in the Services resulting from or attributable to (i) Customer Data or failures to deliver Customer Data to InVision; (ii) failures in any telecommunications, network or other service or equipment outside of InVision’s facilities; (iii) Customer’s or any third party’s (acting on Customer’s behalf) products, services, negligence, willful misconduct, breach of these Enterprise Terms of Service or other unauthorized access or use; or (iv) any force majeure or other cause beyond InVision’s reasonable control. Users are responsible for testing and reviewing the results they obtain from using the Services. InVision does not guarantee that the Services or any InVision Content will be available, or that any InVision Content that is available is or will continue to be accurate. InVision reserves the right, but does not have any obligation, to remove, edit, modify or block access to any Content in its reasonable discretion, at any time, without notice to Customer (including upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have violated these Enterprise Terms of Service).

4. **Ownership and Data Usage.**

a. **Definition.** “Customer Data” means any and all Content (e.g. designs, projects and prototypes), and other information submitted, linked to, uploaded or made available to the Services by Customer or by a third party on Customer’s behalf (including any modifications thereto made by Users), but does not include the Services, InVision Content or Third Party Services. Customer retains all of its rights to its Customer Data.

b. **Proprietary Rights.** As between the parties, all right, title and interest in and to the Services and InVision Content, and all copies, modifications and derivative works thereof is and will remain the sole and exclusive property of InVision.
(except for derivative works resulting from the incorporation of InVision Template Content into value-added Customer Data, which derivative works shall be deemed to be Customer Data owned by Customer). Except as expressly set forth herein, no license or other right, title or interest in the Services or InVision Content is granted by InVision to Customer.

c. **License to Customer Data.** Customer hereby grants InVision a non-exclusive, worldwide, royalty-free, sublicensable, fully paid-up right and license to use, copy, access, process, reproduce, perform, display, modify, distribute and transmit Customer Data, solely in connection with providing the Services to Customer and its Users. Further, Customer hereby grants, and permits InVision to grant Users the rights to use, copy, access, process, reproduce, perform, display, modify, create derivative works from, distribute, and transmit Customer Data that Users share as permitted by the functionality of the Platform. Customer acknowledges and agrees that (i) the quality of the Services depends on the uploading or other provisioning of the Customer Data into the Platform and (ii) InVision will not assume any responsibility for, or undertake to verify, the accuracy or completeness of the Customer Data.

d. **Aggregate Data.** Notwithstanding anything to the contrary set forth herein, InVision may collect and use data regarding the use and performance of the Services in anonymized and aggregated form, to analyze and improve the Services and for distribution in general benchmarking data and industry reports, provided that any reported user data is aggregated and anonymized such that no personally identifying information of Customer or its users is revealed.

e. **Representations and Warranties.** Customer represents, warrants and covenants that (i) all Customer Data has been collected and provided in accordance, and is compliant with all applicable laws, rules and regulations; (ii) Customer owns all rights, title and interest in and to the Customer Data, or has otherwise secured all necessary rights in the Customer Data, as may be necessary to permit the access, use and distribution thereof as contemplated by these Enterprise Terms of Service; (iii) Customer shall only use the Services in accordance with all applicable laws, rules and regulations, these Enterprise Terms of Service and any relevant documentation provided by InVision; and (iv) Customer will not, and will not permit any third party, to upload, download, post, submit, provide, transmit, distribute or otherwise make available to or through the Services any Customer Data that (A) is unlawful, infringing, deceptive, fraudulent, invasive of another’s privacy, tortious, obscene, or that otherwise violates any other right of any third party, including any intellectual property, proprietary or privacy rights, or that is otherwise inappropriate, as determined by InVision in its sole discretion; (B) contains any viruses, code, files or programs designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or that is or can be otherwise malicious or
disruptive; (C) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (“spamming”) or otherwise violates federal CAN-SPAM regulation; or (D) contains any personally identifying information subject to specialized security regimes including without limitation the Health Insurance Portability and Accountability Act (“HIPAA”), and the standards promulgated by the PCI Security Standards Council (“PCI”) or their applicable international equivalents. Customer acknowledges and agrees that InVision is not a “Business Associate” under HIPAA, and Customer will not provide any protected health information to InVision. Customer will not provide InVision with any personally identifying information except for User information as necessary to allow Users to access the Services as set forth in these Enterprise Terms of Service. Customer is responsible for complying with CAN-SPAM or any international equivalent, including without limitation for supplying an “Unsubscribe” link in any emails required to include such link.

f. **Fonts.** When Users create or input Customer Data into the Services, the Services may enable such Users to, either by active or automated processes (e.g. via autosave functionality), to upload third party-owned fonts included in such Customer Data from their local machine to InVision, and by doing so Customer understands that its Users will cause InVision to host such fonts on its servers. The Services may also allow Users to call or link to third party-owned web fonts which are hosted on such third parties’ services. In either case, the Services may allow Users to share these fonts with other Users with whom they collaborate on a project. While InVision may present notifications within the Services informing Users about the use of fonts, it is ultimately Customer’s sole responsibility to ensure that it possesses sufficient rights to use, store on the Services, and redistribute the fonts for use by its Users and their collaborators, for all uses of the Services, and all Users with whom Users share Customer Data. In some cases, such uses may require Customer to obtain extended rights from the font licensor. When deciding whether to use a font on the Services it is always recommended that Customer consults the font licensor’s license agreement and informational materials. For example, here are some publicly available informational resources from a few of the most common font licensors:

- https://docs.microsoft.com/en-us/typography/fonts/font-faq
- https://developers.google.com/fonts/faq


"Review Purposes"


g. **Sharing.** The Services allow Users to share Customer Data in a number of ways including, for example, by the use of a “share link”, via third party services and platforms Users link to the Enterprise Service, on social media services that Users interact with through the Services, and within a User’s team and organization. Some share functionality is limited to view only, but some will allow the recipient of a User’s shared Customer Data to modify and create derivative works of such
Customer Data, so Customer should always be aware of the access permissions it and its Users are granting before deciding to do so. Customer understands and agrees that it and its Users participate in the sharing of Customer Data and third party data through the Services at Customer’s own risk, and that if Customer or its Users choose to participate in such sharing Customer is solely responsible for ensuring that it has sufficient rights to do so. Any disputes regarding ownership or licensing of Customer Data that has been shared by Customer or any User are between Customer and those parties that have access to such Customer Data due to Customer or its Users sharing activities. We are not responsible for resolving any intellectual property or ownership disputes between Customer and its Users, or between Customer, its Users and anyone else that has access to Customer Data due to Customer or its Users sharing, so Customer and its Users should exercise good judgment when deciding whether or not to participate in sharing Customer Data, or to allow others to participate in Customer or its Users’ sharing of Customer Data.

h. Enforcement. InVision reserves the right, during the term of these Enterprise Terms of Service, to access, read, preserve, and disclose any information, including without limitation Customer Data, as InVision reasonably believes is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request; (ii) enforce these Enterprise Terms of Service, including investigation of potential violations hereof; (iii) detect, prevent, or otherwise address fraud, security or technical issues; (iv) respond to user support requests; or (v) protect the rights, property or safety of InVision, InVision’s users and the public.

i. Feedback. At all times InVision will have the unrestricted right to use and act upon any suggestions, ideas, enhancement requests, feedback and recommendations you provide specifically relating to the features, functionality and performance of the Services.

5. Third Party Services. “Third Party Services” are products and services provided by a non-InVision party at Customer’s direction, and that interoperate with the Services, including software applications and assets (e.g. design components) that may compliment your use of the Services. You understand and acknowledge that Third Party Services are accessed and used at your own risk and may access and use your data (including Customer Data) in accordance with such third party’s privacy policy and/or other legal terms, even when you access such third party services through a platform that InVision maintains. InVision is not responsible or liable for: (a) the content, functions, accuracy, legality, appropriateness or any other aspect of any Third Party Services; or (b) any damage or loss caused or alleged to be caused by or in connection with, the use of or reliance on any such content, goods or services available on or through any Third Party Services. Please note that the Third Party Services may be modified or disabled at any time with or without notice to you. If you choose to enable a Third Party Service, please
be sure you understand whether and how you will be sharing any data with the provider of such service, and what you will be permitting the provider to do to such data. InVision is not responsible for any use, modification, disclosure or deletion of data (including Customer Data) that is transmitted to, or accessed by, a Third Party Service. Any Third Party Services are not our services, and we do not warrant, certify, endorse or support any Third Party Services, and you (and not us) will decide whether or not to access, download, enable or use them, and any use of such Third Party Services is solely the responsibility of Customer and the applicable third party provider.

6. Payments and Billing.

a. **Payment.** Customer shall be responsible for and shall pay to InVision the fees set forth in the applicable Order Form (“Fees”) in accordance with the terms and conditions contained therein. Customer shall pay all invoices within thirty (30) days of the date of invoice. If Customer’s actual usage exceeds the subscribed-for amount indicated in an Order Form, Customer shall be responsible for paying the applicable overage charges. InVision may periodically review Customer usage and invoice (both retroactively and on a going-forward basis) for any overages or increased usage (e.g. additional user seats) at our then-current rates. All amounts are stated in, and shall be paid in, U.S. dollars.

b. **Taxes.** All Fees are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, “Taxes”). Customer shall be responsible for paying all Taxes associated with the Services (without any offset or deduction to the fees paid to InVision) other than U.S. taxes based on InVision’s net income.

c. **Credit Card Payment.** To the extent the option is made available to Customer through the Services, Customer may elect to have the Fees paid through automatic deduction from a credit card or other similar payment method (“Credit Card”). If Customer elects to pay via Credit Card, Customer hereby authorizes InVision to charge the account associated with Customer’s chosen Credit Card for the applicable Fees through InVision’s third party payment processor, at any time from the Effective Date of the Order Form.

d. **Late Fees.** Unpaid invoices or payment obligations are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Unpaid debts will be reported to all available credit reporting agencies.

e. **Current Information Required.** YOU MUST PROVIDE CURRENT, COMPLETE, AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT
CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY US OR OUR PAYMENT PROCESSOR IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR ACCOUNT CREDENTIALS OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE DIRECTLY BY YOU USING THE SERVICE. PLEASE CONTACT US AT BILLING@INVISIONAPP.COM IF YOU NEED ANY ASSISTANCE. IF YOU FAIL TO PROVIDE ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT WE MAY CONTINUE CHARGING YOU FOR ANY USE OF THE ENTERPRISE SERVICES UNDER YOUR BILLING ACCOUNT UNLESS YOU HAVE TERMINATED YOUR ENTERPRISE SERVICES AS SET FORTH BELOW.

f. **No Refunds.** Payment obligations are non-cancelable. Except as expressly set forth in these Enterprise Terms of Service, InVision will not, under any circumstances, issue refunds or prorate any Fees for early cancellation or termination of the Services, or for any other reason, including for any unused Services or if Customer’s actual usage of the Services falls below the purchased amount applicable to Customer’s subscription level for the Services. Subscription quantities cannot be decreased during the relevant subscription term.

g. **Chargeback Policy; Disputes.** Customer must promptly contact InVision for any disputes related to Customer’s Account. InVision has a zero tolerance policy for chargebacks. Any customer who disputes a Credit Card payment that is found to be valid will be permanently banned from use of any and all InVision services.

h. **Free Trials and Other Promotions.** Any free trial or other promotion that provides access to the Services must be used within the specified time of the trial or promotion in order for Customer to avoid being charged the Fees associated with the relevant service or feature offered in the promotion.

i. **Non-payment.** Without limitation of its other rights, InVision may suspend access to the Services for failure to pay any fees when due after thirty (30) days’ notice of such failure, provided that InVision will reinstate the Services once payment has been made.

j. Payment intermediaries. If a you use a third party payment intermediary to pay for the Services, you hereby acknowledge and agree that: (a) such third party payment intermediary is not purchasing the Services from InVision or reselling the Services to you and is therefore not a party to these Enterprise Terms of Service; and (b) no contract exists between InVision and your third party payment intermediary, even if such third party payment intermediary’s purchase order purports to bind InVision to its standard terms of purchase.

7. **Termination.**
a. **Term.** These Enterprise Terms of Service commence on the date listed in the first Order Form executed by the parties (“Effective Date”) and continue in effect through the duration of all Order Forms issued hereunder, unless terminated earlier in accordance with the terms of this Section 7. The term of each subscription is set forth in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional terms equal to the expiring subscription term, unless and until either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current subscription term. Subscriptions may also be renewed by way of an email confirmation between InVision and Customer that includes these Enterprise Terms of Service by reference. Fees for a specific Enterprise Service will not change during a current subscription term (except for the assessment of any fees for overages or additional usage). Furthermore, Fees for a specific Enterprise Service received by a Customer will not change for such Customer’s subsequent renewal unless InVision gives Customer prior written notice thereof, with such change being effective as of the first day of the immediately following renewal term.

b. **Termination.** If either party materially breaches any of its duties or obligations under these Enterprise Terms of Service or an Order Form, and such breach is not cured within thirty (30) calendar days of the non-breaching party providing the breaching party with written notice of the breach, the non-breaching party may terminate these Enterprise Terms of Service or the applicable Order Form, as applicable.

c. **Effect of Termination.** Upon termination or expiration of these Enterprise Terms of Service, all provisions of these Enterprise Terms of Service which by their nature should survive termination or expiration shall survive such termination or expiration, including provisions regarding ownership, aggregate data use, payment (to the extent any payment obligations remain outstanding), warranty disclaimers, indemnity and limitations of liability.

d. **Customer Data and Use after Termination.** Upon termination, cancelation or expiration of your account, InVision will delete or destroy all copies of Customer Data in InVision’s systems or otherwise in InVision’s possession or control (or, upon Customer’s request, transfer such data to a non-Enterprise InVision account, unless not reasonably feasible due to technical limitations e.g. feature incompatibility), unless legally prohibited or to prevent material harm.

e. **Fees Due or Refunds Upon Termination.** In the event of termination, Customer shall pay InVision all Fees due for the entire subscription period, unless Customer terminates due to InVision’s material breach in accordance with Section 7.b, in which case InVision will refund to Customer a prorated amount of the prepaid
fees for Services not provided under the applicable Order Form(s) as of the termination effective date.

8. **Confidential Information.**

a. **Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), 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. Customer’s Confidential Information includes Customer Data, InVision’s Confidential Information includes the Services and InVision Content, and any methodologies InVision uses to perform a Design Maturity Assessment or create Design Maturity Snapshots or other collateral (including any documentation related thereto, such as design maturity indexes, surveys or questionnaires), and Confidential Information of each party includes the terms and conditions of all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, source code and business processes disclosed by such party. However, Confidential Information of a Disclosing Party does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was rightfully known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is rightfully received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party.

b. **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the Confidential Information of the Disclosing Party as it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care). The Receiving Party will (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Enterprise Terms of Service, and (ii) except as otherwise authorized by the Disclosing Party in writing, only disclose Confidential Information of the Disclosing Party to those of its and its affiliates’ employees and contractors who (A) need that access for purposes consistent with these Enterprise Terms of Service and (B) have confidentiality obligations with respect to the Disclosing Party’s Confidential Information consistent with those contained herein. Neither party will disclose the terms of Order Form to any third party other than (1) its affiliates, legal counsel and accountants, or (2) in connection with a bona fide due diligence inquiry for a financing, acquisition or similar transaction, in each case subject to confidentiality obligations consistent with these Enterprise Terms of Service, without the other party’s prior written
consent. A Receiving Party shall be responsible for any breach of confidentiality obligations hereunder by any third party to whom it discloses the Disclosing Party’s Confidential Information. Notwithstanding anything to the contrary set forth herein, InVision is expressly authorized to use data regarding Customer’s use of the Services in anonymized and aggregated form, to analyze and improve the Services and for distribution in general benchmarking data and industry reports, provided that any reported user data is aggregated and anonymized such that no personally identifying information of Customer or its users is revealed.

9. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.

10. **Data Security.** InVision shall maintain appropriate administrative, physical, and technical safeguards designed to protect the security of the Services and Customer Data. If Customer’s use of the Services involves processing personal data that is subject to applicable data protection laws, including but not limited to Regulation 2016/679 (the “GDPR”), and/or transferring personal data outside the European Economic Area or Switzerland to any country not deemed by the European Commission as providing an adequate level of protection for personal data, the terms of InVision’s Data Processing Addendum shall apply to such personal data and be incorporated into these Enterprise Terms of Service upon the Effective Date.

11. **Warranty Disclaimer.**

   a. InVision makes no representations concerning any Content contained in or accessed through the Services, and InVision will not be responsible or liable for the accuracy, copyright compliance, or legality of material or Content contained in or accessed through the Services.

   b. THE ENTERPRISE SERVICES AND INVISION CONTENT ARE PROVIDED “AS IS”, “AS AVAILABLE” AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. INVISION, AND ITS DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS AND CONTENT PROVIDERS DO NOT WARRANT THAT: (I) THE ENTERPRISE SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (III) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE ENTERPRISE SERVICES IS FREE OF VIRUSES OR
12. **Indemnification.**

a. **Indemnification by InVision.** InVision will defend Customer against any claim, demand, suit or proceeding (“Claim”) made or brought against Customer by a third party alleging that Customer’s use of the Services provided hereunder in accordance with these Enterprise Terms of Service infringes or misappropriates such third party’s intellectual property rights, and will indemnify and hold harmless Customer from any damages, attorney fees and costs finally awarded to such third parties as a result of, or for any amounts paid by InVision under a settlement of, such Claim made in accordance with the terms of this Section 12. InVision’s obligations set out in 12(a) do not apply with respect to any Claim based on or arising from: (i) the Customer Data; (ii) Third Party Services; (iii) the Services or portions or components thereof (A) used not strictly in accordance with these Enterprise Terms of Service or in an environment or on a platform or with devices for which it was not designed or contemplated; (B) made in whole or in part in accordance with Customer specifications; (C) modified, altered or enhanced by Customer or a third party acting on behalf of Customer; (D) combined with other products, services, processes, content or materials not supplied by InVision where the alleged infringement would not have occurred without such combination; or (E) any continuing allegedly infringing activity after being notified thereof or provided modifications that would have avoided the alleged infringement, or (F) any Claims based on or arising out of Customer’s, Customer’s Affiliates, or Customer’s Users breach of these Enterprise Terms of Service or an applicable Order Form ((A) through (F) collectively, the “Excluded Claims”). If InVision receives information about an infringement or misappropriation claim arising directly out of the Services (and not arising out of an Excluded Claim), InVision may in its discretion and at no cost to Customer: (a) modify the infringing portion of the Services so that it is non-infringing; (b) procure for Customer sufficient rights to continue to exercise its rights under these Enterprise Terms of Service; or (c) terminate Customer’s subscription for the Services, and refund Customer a pro-rated amount of any prepaid fees covering the remainder of the term of the terminated subscriptions. This Section 12(a) represents the sole liability of InVision, and the sole right and remedy available to Customer, if the Services or InVision Content infringe a third party’s intellectual property rights.

b. **Indemnification by Customer.** Customer shall defend, InVision and its affiliates’ respective employees, contractors, directors, suppliers and representatives from any Claim made or brought against InVision by a third party (i) alleging that Customer Data, or Customer’s use of the Services, or a third party using on
behalf of Customer, in breach of these Enterprise Terms of Service, violates, infringes or misappropriates such third party’s intellectual property or other proprietary or privacy rights or violates applicable law, order, rule or regulation or (ii) arising from any Excluded Claims, and will indemnify and hold harmless InVision from any damages, attorney fees and costs finally awarded to such third parties as a result of, or for any amounts paid by Customer under a settlement of, such Claim made in accordance with the terms of Section 12(c)(Indemnification Procedure).

c. **Indemnification procedure.** Any claim for indemnification under this Section 12 requires that the indemnified party: (i) promptly give the indemnifying party written notice of the Claim; (ii) give the indemnifying party sole control of the defense and settlement of the Claim, provided that the indemnified party may participate in the defense of the Claim with counsel of its choosing at its own expense and further provided that the indemnified party will not be responsible for any settlement that it does not approve in writing, such approval not to be unreasonably withheld, and (iii) give the indemnifying party all reasonable assistance, at the indemnifying party’s expense.

13. **Limitation of Liability.** EXCEPT FOR CUSTOMER’S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY, NOR SUCH PARTY’S DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE ENTERPRISE SERVICES (A) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (HOWEVER ARISING); (B) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGardless OF THE SOURCE OF ORIGINATION); OR (C) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID TO IT (IN THE CASE OF INVISION) OR PAYABLE BY IT (IN THE CASE OF CUSTOMER) UNDER THE APPLICABLE ORDER FORM DURING THE IMMEDIATELY PREVIOUS TWELVE (12) MONTH PERIOD.

14. **Miscellaneous.**

a. **Entire Agreement and Severability.** These Enterprise Terms of Service (including the Order Forms) constitute the entire agreement, and supersede all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of these Enterprise Terms of Service (and all past dealing or industry custom). A Customer purchase order may be used as an “Order Form” if it: (i) sets forth the products being purchased, their price and applicable service period (i.e. subscription term), and (ii) such purchase order is accepted in writing by InVision (e.g. by issuing an invoice). InVision's acceptance of an Order Form/purchase order will be effective only if you accept all of the
terms of these Enterprise Terms of Service, and any inconsistent or additional terms on any such purchase order (or any related purchase order, customer confirmation or similar form), even if accepted by InVision, are hereby rejected and shall be void and have no effect, and these Enterprise Terms shall govern without modification or addition. No waiver under these Enterprise Terms of Service will be effective unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under these Enterprise Terms of Service at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. No waiver by any party of any breach or default of any provision of these Enterprise Terms of Service by the other party shall be effective as to any other breach or default, whether of the same or any other provision and whether occurring prior to, concurrent with, or subsequent to the date of such waiver. These Enterprise Terms of Service may only be amended by an instrument in writing signed by authorized representatives of the parties that specifically references these Enterprise Terms of Service (“Amendment(s)”), provided however that we may modify these Enterprise Terms of Service from time to time and such modification(s) will be effective upon your next subscription renewal. Any references to these Enterprise Terms of Service shall be deemed to include any Amendments. If any provision of these Enterprise Terms of Service is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that these Enterprise Terms of Service will otherwise remain in full force and effect and enforceable. In the event of a conflict between the terms on Order Form and these Enterprise Terms of Service, the Order Form will control. These Enterprise Terms of Service are in English only, which language shall be controlling in all respects. No version of these Enterprise Terms of Service in another language shall be binding or of any effect.

b. **Force Majeure.** Neither party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such party’s reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation.

c. **Subcontractors.** We use subcontractors to provide certain aspects of the Services and in some cases permit them to access Customer Data subject to appropriate obligations of security, confidentiality and compliance with applicable laws. We remain responsible for our subcontractors’ compliance with these Enterprise Terms of Service.

d. **Assignment.** These Enterprise Terms of Service and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party’s written consent, not to be unreasonably withheld. However, upon providing notice to the other party, but without the other party’s consent, either
party may assign these Enterprise Terms of Service (for clarity, including all Order Forms) to any successor to all or substantially all of its business or assets which concerns these Enterprise Terms of Service (whether by sale of assets or equity, merger, consolidation or otherwise). These Enterprise Terms of Service shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

e. **Agency.** No agency, partnership, joint venture, or employment relationship is created as a result of these Enterprise Terms of Service and neither party has any authority of any kind to bind the other in any respect.

f. **Notices.** Unless otherwise specified in these Enterprise Terms of Service, all notices under these Enterprise Terms of Service will be in writing and delivered to the parties. (i) Notice to you: InVision may give notice to you by placing a notice on the Platform or our website. We may also provide notice to you or your Users through your InVision account or contact information you provide, such as email or telephone or through your account. If you fail to maintain accurate account information, such as contact information, you may not receive critical information about our Services or these Enterprise Terms of Service. (ii) Notice to InVision: For any notice to InVision that you give under or regarding these Enterprise Terms of Service, you must notify InVision by email at support@invisionapp.com with a duplicate copy sent to the following address: 41 Madison Ave, Flr 25, New York, NY 10010. Notices will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Customer acknowledges and agrees that InVision may send notices to Customer regarding Customer’s Account or the Services via the Services, and are deemed effective upon receipt.

g. **Federal Government End Use Provisions.** If Customer is a U.S. government or U.S. public entity (or, to the extent that the use of the Services is for the U.S. Government), the terms of this Section 14(g) apply: The Services are a “commercial item,” as defined at 48 C.F.R. §2.101, and constitute “commercial computer software” and “commercial computer software documentation,” as used in 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202 to §227.7204. This commercial computer software and related documentation is provided to end users for use, by and on behalf of the U.S. Government, with only those rights as are granted to all other end users pursuant to the terms and conditions herein. The sections in these Enterprise Terms of Service titled “Governing Law”, ”Venue”, “Term”, and “Indemnification” are hereby waived to the extent they are inconsistent with federal law. We agree that customer seals, trademarks, logos, service marks, trade names, and the fact that you use our Services, will not be used by us in such a manner as to state or imply that our products or services are
endorsed, sponsored or recommended by you or by any other element of the U.S. Government, or are considered by you or the U.S. Government to be superior to any other products or services. We agree not to display any customer or government seals, trademarks, logos, service marks, and trade names on the InVision website unless permission to do so has been granted by you or by other relevant federal government authority. We may list your name in a publicly available customer list, on an InVision website, or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third party name.

h. **State or Local Government End User Provisions.** This Section 14(h) applies to Customer if Customer is a state or local government, but only to the extent the Services are being used in a User’s official capacity as a state or local government official. The sections in these Enterprise Terms of Service titled “Governing Law”, “Venue”, “Term”, and “Indemnification” will not apply to Customer only to the extent Customer’s jurisdiction’s laws prohibit Customer from accepting the requirements in those sections.

i. **Headings; Interpretation.** The section and paragraph headings in these Enterprise Terms of Service are for convenience only and shall not affect their interpretation. Any use of “including” “for example” or “such as” in these Enterprise Terms of Service shall be read as being followed by “without limitation” where appropriate.

j. **Publicity.** Customer hereby consents to the inclusion of Customer’s name and logo in client lists that may be published as part of InVision’s marketing and promotional efforts.

k. **Governing Law.** These Enterprise Terms of Service and the transactions contemplated hereby shall be governed by and construed under the law applicable depending on where the Customer is domiciled, without regard to conflicts of laws provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods or any implementation of the Uniform Computer Information Transactions Act:

<table>
<thead>
<tr>
<th>CUSTOMER DOMICILE</th>
<th>GOVERNING LAW</th>
<th>VENUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>US and Rest of the World (excluding the EU or UK)</td>
<td>State of New York</td>
<td>New York, New York State</td>
</tr>
</tbody>
</table>
EU or UK  Ireland  Dublin, Ireland

1. **Venue.** Except that either party may seek equitable or similar relief from any court of competent jurisdiction, any dispute, controversy or claim arising out of or in relation to these Enterprise Terms of Service, or at law, or the breach, termination or invalidity of these Enterprise Terms of Service shall be finally settled in accordance with the arbitration rules of JAMS then in force, by one or more arbitrators appointed in accordance with said rules. Any dispute arising from or related to the subject matter of these Enterprise Terms of Service shall be resolved in the location set out above.

m. **Proceedings; Judgment.** The award rendered shall be final and binding on both parties. Judgment on the award may be entered in any court of competent jurisdiction. In any action or proceeding to enforce rights under these Enterprise Terms of Service, the prevailing party shall be entitled to recover costs and attorneys’ fees.

**InVision commits to being GDPR compliant!** If you have users in the EU, please follow this link where you can execute our InVision’s Data Processing Addendum, which further sets forth the details of our GDPR compliance.

**Contact.** InVision can be contacted at the following address: InVisionApp Inc. at support@invisionapp.com or 41 Madison Ave, Flr 25, New York, NY 10010.