

# TERMS OF SERVICE

You as a “Client” and/or “you” agree with “Invisible” (Invisible Technologies Inc.) to these “Terms of Service” (the “Agreement”): These Terms of Service (the “Terms”) are between you and Invisible Technologies, Inc. (“Invisible”, “we”, “us”) and govern the provision of services by Invisible to you (the “Services”), unless you and Invisible have executed a separate agreement governing the Services. By clicking on the checkbox marked “I accept and agree to be bound by the Terms and Invisible’s Privacy Policy located at <https://inv.tech/privacy-policy> on the registration page, you indicate that you understand the Terms and accept them in their entirety. If you are accepting these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to the Terms, and, in such event, “you” and “your” will refer to that company or other legal entity. If you do not accept all the terms of these Terms, then you must not click on the above-mentioned checkbox and you may not register for Services.

## 1. Services and Pricing

During the Term (as defined in Section 12), and subject to your strict compliance with these Terms, including payment of all applicable fees set forth in Section 6 (“Fees”), we will use commercially reasonable efforts to provide you with the Services in accordance with the agreed upon specifications for your project.

## 2. Authorized Users.

Subject to the restrictions set forth herein, you may grant access to the Services to your employees and independent contractors, who may only access and use the Services for the sole purpose of performing their job or services (as applicable) for you (“Authorized Users”). You acknowledge and agree that your Authorized Users’ use of the Services is subject to these Terms, and that you are directly responsible to us for ensuring that your Authorized Users agree to, and comply with, these Terms and our Privacy Policy (as defined below).

## 3. Privacy Policy.

Our Privacy Policy governs the manner in which we collect, use and disclose information from our customers. You acknowledge that you have reviewed and agreed to our Privacy Policy, and agree that your and your Authorized Users’ use of the Services is subject to our Privacy Policy. Our Privacy Policy can be found at <https://inv.tech/privacy-policy>.

## 4. Account Registration and WebApp

If you or your Authorized Users want to use the Services, you will have to create an account (“Account”). You can do this via our website through our online registration procedures, which we may update from time to time. Invisible will then grant you access to a password-protected customer portal (“WebApp”) showing credits for payments, and debits for Services delivered (“Usage”). It is important that you and your Authorized Users provide us with accurate, complete and up-to-date information for your Account, and you agree to update such information to keep it accurate, complete and up-to-date. If you or they don’t, we might have to suspend or terminate your or their Account or access to WebApp. You agree that you won’t disclose your Account or WebApp password to anyone, that you will make best efforts to keep your WebApp password private, and that you will notify us immediately of any unauthorized use of your Account or WebApp. You are responsible for all activities that occur by you, or by some third party authorized by you, under your Account or WebApp, whether or not you know about them.

## 5. Feedback.

We welcome feedback, ideas, comments, suggestions and recommendations for improvements to the Services (“Feedback”). By providing Feedback, you grant to Invisible a non-exclusive, transferable, worldwide, perpetual, irrevocable, fully-paid, royalty-free license, with the right to sublicense, under any and all intellectual property rights that you own or control, to use, copy, modify, disclose, reproduce, exploit and create derivative works based upon such Feedback in any manner and for any purpose, entirely or in part, without obligation or restriction. You hereby agree that you will not have any right, title or interest in any product, service, material or other work derived from such Feedback by or on behalf of Invisible.

## 6. Fees.

You will pay Invisible the fees for the Services as listed on the registration page when you register for the Services (“Fees”). The Fees will vary depending on the Term you chose and the type of Services you request. Fees are due and payable on the start date of the Term. Other Fees may be payable at the end of each rolling month period (“Period(s)”), beginning on the start date of the Term. Each purchase shall be applied to Usage for the Term(s) stated in the Plan(s) for which you registered, plus a Rollover Period, on a first in first out basis, after which any remainder shall expire. The Rollover Period is defined as follows: For Plan(s) with term(s) of one month, the Rollover Period shall be the 30 days following the end of the term For Plan(s) with term(s) equal to or greater than one quarter (three months), the Rollover Period shall be the 90 days following the end of the term You shall maintain a positive prepaid balance at all times, and shall make additional payments as necessary. Should a negative balance exist and exceed outstanding invoices at the end of any Period, an Overage Charge equal to this excess amount will be automatically issued and charged to Client’s payment method, if available, else will be due 7 days after the end of that Period, unless there is an agreement in writing to the contrary. All Fees paid by you under the Terms are non-refundable. In the event that third party software, software platform, software plug-in, product, data, lead generation services, content or ancillary services (“Third Party Product”) are either required for Invisible to be able to provide you with the Services or if you otherwise request Invisible to obtain such Third Party Product, and provided that you consent in writing to the use of such Third Party Product, you will be responsible for the payment of such Third Party Product, either directly or as a reimbursement to Invisible. All such payments for a Third Party Product(s) will carry a 3% convenience fee, and will be due at the end

of the Period in which the cost to Invisible was incurred. You shall be responsible for all taxes associated with the Services other than U.S. taxes based on Invisible's net income. All Fees due carry Net 7 payments terms unless agreed otherwise. The lowest of an interest rate of 2% of the late amount, per month, or the highest applicable rate allowed by law will be charged monthly on late payments. It is your responsibility to ensure your Invisible account has up-to-date payment information on file. Invisible has the right to suspend service if fees are not paid on time. You authorize Invisible to charge your credit card and, if necessary, electronically debit your account to pay for any fees due.

## **7. IP Ownership**

(a) You own all right, title and interest in the documents, information, text, images, software, audio, video, works of authorship of any kind (collectively referred to as "Customer Material") provided by you to or otherwise made available by you to Invisible in connection with the provision of the Services. You hereby grant to Invisible a non-exclusive, transferable, worldwide, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works based upon, distribute the Customer Material in connection with the provision of the Services to you. You are solely responsible for all Customer Material. You represent and warrant that you own all Customer Material, or that you have all rights that are necessary to grant us the license rights in Customer Material under these Terms. You also represent and warrant that neither Customer Material, nor your use and provision of Customer Material to be made available through the Services, nor any use of Customer Material by Invisible on or through the Services will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation. (b) Invisible retains ownership of all right, title and interest in and to any preexisting and independently developed tool, software, technology, methods, processes, materials and any modifications, improvements and enhancements thereof, and all intellectual property included therein ("Invisible IP"). You agree not to interfere with, reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any component of the Invisible IP, in whole or in part.

## **8. General Prohibitions**

(a) You agree not to (and will ensure that your Authorized Users do not): (i) access, tamper with, or use Invisible's computer systems, or the technical delivery systems of Invisible's providers; (ii) attempt to probe, scan or test the vulnerability of any Invisible system or network or breach any security or authentication measures; (iii) avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Invisible or any of Invisible's providers, customer or any other third party (including another user) to protect the Services; (iv) send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation; (v) interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services; (vi) collect or store any personally identifiable information from the Services from other users of the Services without their express permission; (vii) violate any applicable law or regulation; or (viii) encourage or enable any other individual to do any of the foregoing. (b) Although we are not obligated to monitor your use of the Services, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to disable access to your Account or WebApp, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider your use of the Services to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conducts that affect the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

## **9. Marketing**

With your prior approval, we may (i) produce and publish a case study on our Site regarding your use of the Services, and (ii) create self-promotional materials such as press releases, advertisements, brochures, and other similar items that refer to you as an Invisible customer.

## **10. Third Party Services, Websites or Resources.**

The Services may also contain or utilize Third Party Products or links to third-party websites or resources (collectively "Third Party Services"), which may be related to or used as part of the Services provided by Invisible including, without limitation, for example purposes, by exchanging data with the Services or by offering additional functionality including software plug-ins including without limitation, within the user interface of the Services. You understand that you will be subject to and agree to comply with any third party terms applicable to the Third Party Services. Moreover, Invisible will not be responsible for the Third Party Services, anything made available by or through the Third Party Services or for the security of the Third Party Services. You acknowledge sole responsibility for and assume all risk arising from or associated with your use of any Third Party Services and Invisible makes no additional representations, warranties or otherwise agrees to provide any support or assume any obligations or liability with respect to such Third Party Services.

## **11. Security.**

Invisible will use reasonable commercial efforts to maintain reasonable administrative, physical and technical safeguards intended to protect the Customer Material against accidental loss and unauthorized access or disclosure, in accordance with applicable industry standards and our Privacy Policy. You will be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, "Equipment"). You will be responsible for ensuring that all Equipment is compatible with the Services. You shall also be responsible for maintaining the security of the Equipment, the Account, passwords and files, and for all uses of the Account or the Equipment with or without your knowledge or consent.

## **12. Term**

These Terms of Service will remain in full force and effect for the duration of the Services chosen by you at the time of registration (the "Term"). The Term will include the period(s) stated in the Plan(s) for which you register. Upon expiration of the initial Term, such Term will automatically renew, unless there is an agreement in writing to the contrary.

## **13. Termination and Cancellation.**

(a) You or Invisible may terminate these Terms upon notice to the other party, if the other party (or in your case, any of your Authorized Users) materially breaches these Terms and such breach is not cured within thirty (30) days of receipt of such notice. Such cancellation will not relieve you of any obligation to pay the Fees due by you under these Terms. (b) We may immediately terminate these Terms upon notice to you if we reasonably believe that you or your Authorized Users are using the Services in a manner that would violate applicable laws, rules or regulations. (c) Upon any termination, cancellation or expiration of these Terms, the following Sections will survive: 6 (Fees), 7 (IP Ownership), 10 (Third Party Services) and 13 through 21 (Termination and Cancellation, Warranty Disclaimers, Indemnity, Limitation of Liability, Governing Law, Dispute Resolution, Confidential Information, Non-Solicitation, General Terms).

## **14. Warranty Disclaimers**

Invisible warrants that the Services will be performed in a professional manner, in accordance with agreed upon specifications for your project. Except for the foregoing warranty, THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. As your sole and exclusive remedy and Invisible's entire liability for any breach of the foregoing warranty, Invisible will, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty if and only if you notify Invisible of this failure within 10 business days of it occurring.

## **15. Indemnity**

(a) Invisible hereby agrees to indemnify, defend and pay all damages finally awarded against you in a court of law or binding settlement arising from any suit, claim, or proceeding brought against you by a third party alleging: (i) that the use of Services in accordance with these infringes any intellectual property or trade secret; or (ii) gross negligence, provided that you (a) promptly notify Invisible in writing of any such suit, claim or proceeding, (b) allow Invisible to direct the defense of such suit, claim or proceeding, and (c) give Invisible all information and assistance necessary to defend such suit, claim or proceeding. You may participate in the defense at your sole expense. The foregoing obligations do not apply with respect to the Services or portions or components thereof (x) not supplied by Invisible, (y) made in whole or in part in accordance to your specifications, (z) combined with other products, processes or materials where the alleged infringement would not have occurred without such combination. This Section states our entire liability and your exclusive remedy for our indemnification obligation to you. (b) You hereby agree, at your own expense, to indemnify, defend and hold harmless Invisible against any damages, losses, liabilities, settlements and expenses (including, without limitation, costs and attorneys' fees, third party subpoena costs or governmental fines or penalty) in connection with any demand, claim, action, suit or proceeding that arises from or is otherwise related to your or your Authorized Users': (i) breach of these Terms; (ii) use of the Services; (iii) gross negligence; or (iv) use of the Customer Material.

## **16. Limitation of Liability**

(a) NEITHER INVISIBLE NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT INVISIBLE OR ANY OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. (b) IN NO EVENT WILL INVISIBLE'S AGGREGATE LIABILITY IN CONNECTION WITH THE SERVICES OR THESE TERMS (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) EXCEED THE TOTAL FEES PAID BY YOU TO INVISIBLE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. (c) THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN INVISIBLE AND YOU.

## **17. Governing Law and Forum Choice**

These Terms and any action related thereto will be governed by the laws of the State of New York, without regard to its conflict of laws provisions.

## **18. Dispute Resolution**

You agree that any dispute, claim or controversy you may have with Invisible arising out of or relating to these Terms will be resolved solely by binding in accordance with the rules and procedures of the American Arbitration Association ("AAA Rules"). You are waiving the right to a trial by jury or to participate in a class action. The arbitration shall be heard before a mutually agreed upon arbitrator, subject to the AAA Rules and such arbitration will take place in Wilmington, Delaware.

## 19. Confidential Information

(a) Any information that one party provides to the other party during the Term that is identified at the time of disclosure as confidential or, given the circumstances of disclosure or the nature of the information, reasonably should be considered to be confidential will be considered "Confidential Information" of the disclosing party. (b) Each party will maintain the other party's Confidential Information in strict confidence, and will not use the Confidential Information of the disclosing party, except as necessary to perform its obligations or enforce its rights under the Terms. The receiving party will not disclose or cause to be disclosed any Confidential Information of the disclosing party, except to its employees, representatives, or contractors who have a bona fide need to know such Confidential Information to perform under the Terms and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in the Terms, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the receiving party providing to the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or otherwise contest the disclosure. (c) Nothing in the Terms will prohibit or limit either party's use of information (i) rightfully known to it prior to receiving it from the disclosing party, (ii) independently developed by or for it without use of or access to the other party's Confidential Information, (iii) permissibly acquired by it from a third party which is not under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of these Terms. (d) The terms and conditions of these Terms will constitute Confidential Information of each party, but may be disclosed on a confidential basis to a party's advisors, attorneys, actual or bona-fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes. (e) Each Party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section 19.

## 20. Non-solicitation.

You acknowledge that Invisible's employees are a valuable asset. Accordingly, you agree that during the Term and for one (1) year thereafter, you shall not, directly or indirectly, recruit or solicit any of the Invisible's employees who are involved in the performance of the Services. Nothing in this Section 20 shall prohibit you from soliciting or hiring any person who responds to a general advertisement or solicitation not specifically directed at employees of Invisible. If either party breaches its obligations under this section, the non-breaching party, in addition to any other remedies, is entitled to liquidated damages of an amount equivalent to 100% of the annual salary of each employee recruited or solicited by you, for each and every violation of this section. The parties specifically acknowledge and affirm that this amount is reasonable given the difficulties of proof of damages in this context, and it is intended by the parties to be a reasonable measure of the anticipated damages Invisible would suffer as a result of the violation of this section and not as a punitive measure.

## 21. General Terms

(a) Entire Agreement. These Terms constitute the entire and exclusive understanding and agreement between Invisible and you regarding the Services, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Invisible and you regarding the Services. If any provision of these Terms is held invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Invisible's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Invisible may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns. (b) Notices. Any notices or other communications provided by Invisible under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted. (c) Waiver of Rights. Invisible's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Invisible. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. (d) Amendment and Modification; No amendment to or modification of these Terms is effective unless it is in writing and signed by an authorized representative of each party. (e) Severability. If any provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of these Terms 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 shall negotiate in good faith to modify these Terms so as to effect their original intent 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. (f) Assignment. Neither party may assign or transfer these Terms, in whole or in part, by operation of law or otherwise, without the other party's express prior consent. Notwithstanding the foregoing, Invisible may assign these Terms in case of merger, acquisition or sale of all or substantially all of the assets to which these Terms relate. Any attempt to assign or transfer these Terms in contravention of the foregoing will be null and of no effect. Subject to the foregoing, these Terms will bind and inure to the benefit of each party's permitted successors and assigns. (g) Force Majeure. Neither Party will be responsible for any failure or delay in its performance under these terms (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, communications failure or degradation, material changes in law, war, terrorism, riot, or acts of God.

## 22. Contact Information

If you have any questions about these Terms or the Services, please contact Invisible at [legal@invisible.email](mailto:legal@invisible.email) 😊