



Terms of Service

This agreement is between Invoca, Inc ("we," "us" or "Invoca") and you ("you"), as an authorized user of any service offered by Invoca (individually and collectively, the "Services") and governs the terms and conditions of your use of the Services. The Services are provided to you under these Terms of Service, our [privacy policy](#), and any operating rules and/or policies that we may publish from time to time (collectively, the "Agreement"), and you agree you are a direct party to those agreements, rules and policies. This Agreement and such policies constitute the entire agreement between you and us and supersede all prior agreements between the parties regarding the subject matter contained herein.

1. ACCEPTANCE OF TERMS

- a. BY ACCESSING OR USING ANY OF THE SERVICES, YOU CONFIRM YOUR ACCEPTANCE OF, AND AGREE TO BE BOUND BY, THIS AGREEMENT AND THE APPLICABLE TERMS OF SERVICE OF AMAZON WEB SERVICE, INC. AND ITS AFFILIATES AND/OR PARTNERS (collectively, "AWS"). IF YOU ACCEPT THESE TERMS ON BEHALF OF ANY EMPLOYER OR BUSINESS ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT.
- b. The effective date of this Agreement is the earlier of the date Customer receives access to the Services through any AWS registration or order process or the effective date of the Order Form referencing this Agreement ("Effective Date").
- c. We may amend the Agreement at any time, and such amended Agreement will automatically be effective seven (7) days after we have posted the amended Agreement on our website. Your continued use of the Services will constitute acceptance of the amended Agreement, and no other Agreement version will be effective or enforceable against us.

2. SCOPE OF SERVICES

- a. This Agreement applies to your use of Invoca's proprietary software marketing technology platform (the "Invoca Platform"), including, without limitation, any content, products and offline components along with any options and/or integrations selected by you on a subscription basis (collectively, the "Subscription Services") as identified in an ordering document specifying the services to be provided and that is entered into between you and us and that incorporates this Agreement (the "Order Form") and such supplemental professional services as indicated in either or both an Order Form or statement of work ("Statement of Work" or "SOW") (collectively the "Services").
- b. Subject to and conditioned on your payment of the Fees to AWS and compliance and performance in accordance with all other terms and conditions of this Agreement, we will provide you with access to and use on a non-exclusive and non-transferable basis, during the Term, the Services solely for your own business purposes by and through your employees, contractors, publishers, Affiliates (defined below), advertisers or other third parties to whom you provides access to the Invoca Platform on its behalf ("Authorized Users") in accordance with the conditions and limitations set forth in this Agreement. An "Affiliate" of a party is an entity who controls, is controlled by, or is under common control with the party with the power to direct or cause the direction of the management and policies of such entity through the ownership of more than fifty percent (50%) of the voting securities of such entity.
- c. We will provide you with the means to activate your instance of the Invoca Platform. The activated Services will be deemed complete and accepted once we have made access to the Invoca Platform available to you. Any other additional professional services performed by us will be identified in a subsequent Order Form and/or SOW.
- d. We will make commercially reasonable efforts to meet or exceed the performance standards set forth in the Invoca Service Availability and Support Plan to the extent identified in an Order Form.

3. YOUR OBLIGATIONS AND USAGE RESTRICTIONS



- a. You are responsible for procuring telecommunications service capable of receiving inbound phone calls, access to internet service and computer or other connectivity capability to access and log into the Invoca Platform. You are responsible for the accuracy, quality and legality of your data and the means by which you acquired such data. You are responsible for maintaining the security of your account access passwords. You will make every reasonable effort to prevent unauthorized third parties from accessing the Services. You shall be liable for all activity occurring under your accounts.
- b. You will not, and will cause your Authorized Users not to, access and/or engage in any use of the Services: (i) in a manner that abuses, materially disrupts, overburdens or otherwise interferes with the networks and/or security systems of Invoca or our provision of the Services; (ii) to communicate any message or material that we deem harassing, threatening, indecent, obscene, slanderous, or otherwise unlawful; (iii) access or use the Services for any fraudulent or illegal purposes, including, but not limited to any violation of the Copyright Act or other applicable laws of the United States or any other jurisdiction; (iv) in a manner that violates privacy laws and regulations; (v) to engage in denial of services attacks or spamming; or (vi) for the purpose of, or which results in the copying, modification, reverse engineering, disassembling, redistribution, alteration, creation of derivative works, assigning the authorization to use the Services, transferring or adapting any of the software, information, source code or HTML code, or other code. If you become aware of any actual or threatened activity prohibited by this Section, you will, and will cause your Authorized Users to, immediately: (i) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (ii) notify us of any such actual or threatened activity.
- c. You represent and warrant that you will use the Services only in compliance with applicable laws and regulations, including those related to spamming, privacy, data protection, intellectual property, consumer and child protection, pornography, obscenity or defamation. Without limiting the foregoing, you (i) will at all times comply with the Telephone Consumer Protection Act (47 U.S.C. §227 – restriction on the use of telephone equipment (TCPA)); (ii) agree to make outbound calls and/or transfer calls only to legitimate and intended recipients and/or destinations; and (iii) will comply with all federal, state, and local laws in the relevant jurisdiction when using recordings.
- d. In addition to and not in lieu of all other rights and remedies, we may, with reasonably contemporaneous telephonic or email notice to you, remove telephone number(s) from your pool of dynamic or static telephone numbers from your Invoca Platform instance, suspend access to the Services, or terminate the Services if we reasonably conclude that you are not complying with Sections 3.b or 3.c and/or your use of the Service is causing immediate, material and ongoing harm to us or others. If we suspend access to or terminate the Services as described in this section; (i) we will not be liable to you nor to any third party for any suspension or termination of the Services and (ii) you will not be relieved of your payment obligations hereunder.

4. TERM; TERMINATION

- a. The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for as long as any Order Forms or SOWs are in effect (the "Term").
- b. An Order Form shall begin on the effective date in the applicable Order Form and continue for the duration specified in such Order Form. At the conclusion of the initial or a renewal term of any Order Form, as applicable, the Agreement and current Order Form will automatically renew for an additional twelve (12) months, absent either party providing written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then current Term.
- c. Either party may terminate this Agreement (and any Order Forms then in effect): (i) if the other party breaches any of its material obligations and fails to cure such breach within thirty (30) days of receipt of written notice from the non-breaching party; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors (collectively, "Termination").



- d. Upon expiration of Services authorized in an Order Form, you will, and will cause your Authorized Users to, immediately discontinue all access and use of the Services. Upon termination, we will have no obligation to maintain or provide any Customer Data, and may thereafter delete or destroy all copies of Customer Data in our possession or control unless legally prohibited. Notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: we may retain Customer Data in its then-current state and solely to the extent and for so long as required by applicable law and in our backups, archives and disaster recovery systems or until such Customer Data is deleted in the ordinary course, provided all such Customer Data will remain subject to all confidentiality, security and other applicable requirements of this Agreement. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

5. FEES

You agree to pay the fees set forth in an applicable Order Form or SOW. We or our partner(s) will charge you fees in accordance with the terms of either: (i) an Order Form or SOW, or (ii) the registration or ordering process you complete with AWS. Unless otherwise stated, all fees are quoted in U.S. dollars. You are responsible for paying all fees associated with using the Services and all applicable taxes.

6. INTELLECTUAL PROPERTY; LIMITED LICENSE TO USERS

- a. The Invoca Platform and all Services performed under this Agreement remain the exclusive property of Invoca and shall not be used in any way other than as allowed by this Agreement. You acknowledge that we or our licensors retain all (i) proprietary right, title and interest in and to, or practiced in connection with, the Services or any intellectual property rights related thereto, including, without limitation, all modifications, enhancements, derivative works and upgrades thereto even if based on your feedback, and (ii) copyrights to materials contained on the Invoca websites. Invoca reserves any rights not expressly granted herein.
- b. You own the data, information or material generated in whole or part by the Invoca Platform and/or your use of the Services, including any personal data ("Customer Data"); provided, however, that we may access and/or use Customer Data to respond to service or technical problems, and you grant us a perpetual, irrevocable non-exclusive license to access and/or use Customer Data in an anonymous or aggregated format to improve or optimize the Invoca Platform, Services, and for future offerings. You will have sole responsibility for the accuracy, quality, integrity, legality of and intellectual property ownership or right to use all Customer Data. We are not responsible or liable for the deletion, correction, destruction, damage or loss of Customer Data not caused by us.

7. CONFIDENTIALITY

- a. The parties hereto agree to keep confidential, during and after the Term of this Agreement, all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that the Disclosing Party designates as confidential as well as all information that should be reasonably assumed by the Receiving Party to be confidential in nature ("Confidential Information"). Such Confidential Information means all non-public information, whether business or technical in nature, including, but not limited to, this Agreement and all Order Forms, information concerning each party's business, operations, technology, customers, finances, pricing, inventions, trade secrets, products, services, intellectual property and all other information that is either identified as confidential at the time of disclosure or may be reasonably assumed to be proprietary, sensitive or confidential. Confidential Information shall not include any information that, as evidenced by the Receiving Party's records: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was 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 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 reference to or use of the Confidential Information of the Disclosing Party.



- b. The parties agree: (i) not to use Confidential Information except to fulfill its rights and obligations herein and (ii) to use commercially reasonable efforts to safeguard such Confidential Information in the same manner in which it would safeguard its own Confidential Information (at all times exercising at least a commercially reasonable degree of care in the protection of such Confidential Information). The Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. The parties further agree, except as required by law, not to disclose such Confidential Information to any third party.

8. MODIFICATIONS OF INVOKA SERVICES

We reserve the right to terminate or modify individual features of our Services from time to time with reasonable advance notice, provided that any such changes will not result in a material reduction in the level of performance or availability of the Services.

9. DISCLAIMER OF WARRANTIES

- a. Each party to this Agreement represents and warrants to the other that such party has the necessary right, power and authority to enter into and perform this Agreement and that this Agreement's execution has been duly authorized by all necessary corporate action.
- b. Each party agrees to comply with all applicable local, state, national and foreign laws, rules and regulations including, but not limited to, all applicable export and import laws and regulations, in connection with their performance, access and/or use of the Services under this Agreement.
- c. Subject to subsection 10.d below, we represent that we will perform the Services described in the applicable Order Form(s) in a manner consistent with generally accepted industry standards. For breach of the express warranty set forth in this Section, your exclusive remedy shall be the re-performance of the deficient Services and/or fulfillment of the Service Availability and Support Plan. If we cannot re-perform such deficient Services as warranted, you will be entitled to recover a pro-rata portion of the fees that you have paid to us for such deficient Services, and such refund will be our entire liability for a breach of this Section.
- d. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, INVOKA AND ITS THIRD-PARTY SUPPLIERS HEREBY DISCLAIM ALL EXPRESS, IMPLIED, STATUTORY OR OTHER WARRANTIES WITH REGARD TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. INVOKA AND ITS THIRD-PARTY SUPPLIERS DO NOT REPRESENT OR WARRANT THAT: (i) THE USE OF SUCH SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (ii) SUCH SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; OR (iii) ALL ERRORS OR DEFECTS WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS; THEREFORE, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMERS LOCATED IN SUCH JURISDICTIONS.

10. LIMITATION OF LIABILITY

- a. EXCEPT FOR (i) A PARTY'S INDEMNIFICATION OBLIGATIONS OR (ii) A BREACH BY CUSTOMER OF SECTIONS 3.b OR 3.c, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT, SHALL BE LIMITED TO THE SUM OF THE AMOUNTS OWED FOR THE APPLICABLE SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING SHALL NOT LIMIT YOUR OBLIGATION TO PAY ANY UNDISPUTED FEES AND/OR OTHER SUMS DUE UNDER ANY ORDER FORM.

- b. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. INDEMNIFICATION

- a. You shall indemnify, defend, and hold us, our parent(s), subsidiaries, affiliates, officers, directors, and employees free and harmless from any and all claims, costs, damages, and expenses (including but not limited to reasonable attorneys' fees), which arise from or are related to any act or omission by you in connection with the use of the Services, including but not limited to, any such claims, costs, damages, and expenses arising from or related to your violation of any terms of this Agreement, your violation of any applicable law, rule, or regulation, or any infringement by you (or any other person using the Services in reliance on your rights under this Agreement) of any intellectual property or other rights of any other person. This Section 12 shall survive termination of this Agreement.
- b. We will indemnify and defend you against any loss, damages finally awarded, court costs (including reasonable attorneys' fees), or reasonable settlement costs incurred in connection with an Infringement Claim (defined below) provided that: (i) you promptly notify us in writing of an Infringement Claim such that we are not prejudiced by any delay of such notification; (ii) we will have sole control over the defense and any settlement of any Infringement Claim; and (iii) you will provide reasonable assistance in the defense of same. We will reimburse you for reasonable expenses incurred in providing such assistance. For the purposes of this Agreement, **"Infringement Claim"** means any claim, suit or proceeding brought against you by a third party alleging that the Services, as used by you in accordance with the Agreement and applicable documentation, infringes upon any patent, trademark, copyright or violates any trade secret rights of any third party.

12. GENERAL

- a. Neither party may assign this Agreement, in whole or in part, or an Order Form without the other party's prior written consent, which shall not be unreasonably withheld; provided, however, that either party may assign this Agreement without such consent in connection with a merger, consolidation, sale of all or substantially all of its assets or any other transaction in which more than fifty percent (50%) of its voting securities are transferred, subject to (i) such assigning party to provide prompt notice of assignment to the non-assigning party, and (ii) all of the terms of this Agreement being accepted in writing by the resulting entity in such assignment. Any attempt to assign this Agreement other than in accordance with this provision shall be null and void.
- b. The relationship between the parties created by this Agreement is that of independent contractors. Nothing contained in this Agreement shall be construed to create any joint venture, partnership, agency or fiduciary relationship between the Parties.
- c. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.
- d. Except for payment obligations, neither party will be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control, but only for so long as such conditions persist. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; activities of local exchange carriers, telephone carriers, wireless carriers, internet service providers, and other third parties; explosions and fires; embargoes, epidemics, pandemics, public health emergencies, strikes, and labor disputes; governmental decrees; and any other cause beyond the reasonable control of a party.
- e. This Agreement may be modified only by a writing executed by an authorized representative of each party. Unless otherwise specified, remedies are cumulative.
- f. Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement.

- g. This Agreement shall be construed and governed by the laws of the State of California, without regard to the principles of conflict of laws thereof. The parties agree and accept that all such disputes/claims will be resolved by means of a court trial conducted by the superior or district court in Los Angeles County, California. EACH PARTY EXPRESSLY WAIVES ANY RIGHT IT MAY OTHERWISE HAVE TO A JURY TRIAL UNLESS PROHIBITED BY APPLICABLE LAW. Notwithstanding the foregoing, in the event of any such dispute/claim, the Parties may agree to mediate the dispute/claim on such terms and conditions as to which the Parties may be agree in writing.
- h. All legal notices required to be provided under this Agreement must be delivered in writing: (i) by email; (ii) in person; (iii) by a nationally recognized overnight delivery service with tracking capabilities; or (iv) by US certified mail (requiring signature) to the other party at the address and/or email address set forth in an Order Form. Notice to us by email must include legal@invoca.com. Notice is effective upon receipt. Either party may change its address by giving timely written notice of the new address to the other party pursuant to this Section and identifying in such notice the date on which such changes are effective.
- i. Neither the waiver of any term, provision or condition of this Agreement, nor the waiver of a breach or default thereof, by conduct or otherwise, in one or more instances will be deemed to be either a continuing waiver or a waiver of a subsequent breach or default of any such term, provision or condition of this Agreement.
- j. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
- k. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legal body having jurisdiction to make such determination, the remainder of the Agreement shall remain in full force and effect.
- l. The parties may identify this business relationship and release publications, announcements and/or press releases relating to this Agreement and the Invoca Platform technology described herein; however, no terms of this Agreement may be disclosed without the prior written consent of both Parties.
- m. This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or current oral or written agreements concerning such subject matter, excluding any agreements incorporated herein by reference or attachment. In the event of any conflict between this Agreement and any applicable Order Form or applicable SOW, the applicable Order Form or SOW will control. No modification, variation or amendment of this Agreement shall be effective unless made in writing and signed by the parties.

Last Updated: June 1, 2025