

Bento Engine Inc Terms of Service

Last Update: 12/11/2023

These terms of service serve as the End User License Agreement (this “Agreement”) governing access to and use of the proprietary software, content materials and related intellectual property licensed by Bento Engine Inc. (“Bento Engine”, “we”, or “us) and you (“you” or “Customer”). “You” refers to an individual with credentials to access the software or content materials, whether provided by an entity with which you are associated that has a direct agreement with Bento Engine (“Direct Agreement”) or if you have independent access through your own direct agreement with Bento Engine.

1. License

- a. License Grant Bento Engine hereby grants you a worldwide, non-transferable, non-sublicensable, non-exclusive right during the Term (the “License”) to access and use the elements of the software and content materials made available to you. If you have a separate written agreement with Bento Engine, this End User License Agreement will not apply to you, unless that written agreement does not cover a particular program, in which case, this End User License Agreement will apply solely to your use of that particular program.
- b. Use Restrictions Customer shall not use the Subscription Services for any purposes beyond the scope of the license granted in this Agreement unless permission has been granted in writing via hello@bentoengine.com. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Customer shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Subscription Services, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Subscription Services; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Subscription Services, in whole or in part; (iv) remove any proprietary notices from the Subscription Services; or (v) use the Subscription Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- c. Reservation of Rights. Bento reserves all rights not expressly granted to Customer in this Agreement.

2. Purchases and Payment

- a. We accept the following forms of payment
 - I. Visa
 - II. Mastercard
 - III. American Express
- b. You agree to provide current, complete and accurate purchase and account information for all purchases made via the Services. You further agree to promptly update account and payment information, including email address, payment method, and payment card

expiration date, so we can complete your transactions and contact you as needed. Prices may change at any time. All payments should be in US dollars.

- c. You agree to pay all charges at the prices then in effect for your purchases, and authorize us to charge your chosen payment provider for such amounts upon placing your order. If your order is subject to recurring charges, then you consent to our charging your payment method on a recurring basis without requiring your prior approval for each recurring charge, until such time as you cancel the applicable order. We reserve the right to correct any errors or mistakes in pricing, even if we have already requested or received payment.
- d. Agreement will automatically renew unless either Party gives the other Party written notice of non-renewal at least 60 days prior to the expiration of the then-current term.

3. Customer Responsibilities

- a. General Customer is responsible and liable for all uses of the Subscription Services resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall make reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Subscription Services, and shall cause Authorized Users to comply with such provisions.
- b. Cooperation Customer shall provide all cooperation and assistance as Bento may reasonably request to enable Bento to exercise its rights and perform its obligations under, and in connection with, this Agreement, including providing Bento and its agents with such access to its information technology infrastructure as is necessary for Bento to perform the Subscription Services in accordance with this Agreement.
- c. Training and Education Customer shall use commercially reasonable efforts to cause Authorized Users to be, at all times, educated and trained in the proper use and operation of the Subscription Services such Authorized Users utilize, and to ensure that each Subscription Services are used in accordance with applicable manuals, instructions, specifications and documentation provided by Bento from time to time.
- d. Customer Systems Customer shall be responsible for obtaining and maintaining—both the functionality and security of—any equipment, software and ancillary services needed to connect to, access or otherwise use Subscription Services, including: Customer Relationship Management (“CRM”) software, Application Programming Interface Keys (“API Keys”), email software, telecommunications equipment, hardware, servers, other software, operating systems, networking, web servers and the like.
- e. Compliance with All Applicable Laws and Regulation Customer shall be solely responsible for ensuring they are in compliance with all applicable laws and regulations related to Customer's use of the Subscription Services including, but not limited to, compliance review and approval of all Bento Content for use in client communications.

4. Confidential Information

During the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a nonconfidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed

5. Termination

- a. Termination In addition to any other express termination right set forth in this Agreement:
 - I. Bento may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty days after Bento's delivery of written notice thereof; or (B) breaches any of its obligations under Section 1(b) or Section 5;
 - II. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) remains uncured thirty days after the breaching Party was provided with written notice of such breach.
- b. Effect of Expiration or Termination Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and, without limiting Customer's obligations under Section 5, Customer shall immediately cease using and delete or destroy all copies of the Subscription Services and certify such in writing to Bento. No expiration or termination will affect Customer's obligation to pay all Fees that have become due before such expiration or termination.

6. Intellectual Property Ownership

Customer acknowledges that, as between Customer and Bento, Bento owns all right, title, and interest, including all intellectual property rights, in and to the Subscription Services.

7. Limited Warranties and Warranty Disclaimer

- a. Bento warrants that at the time of delivery the Software does not contain any virus or other malicious code that it is reasonably able to identify.
 - I. The warranties set forth in Section 7(a) do not apply and become null and void if Customer breaches any material provision of this Agreement, or if Customer
 - II. Installs or uses the Software or Content on or in connection with any hardware or software not disclosed in Exhibit A; or
 - III. Modifies or damages the Software or Content.
- b. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(a), THE SUBSCRIPTION SERVICES ARE PROVIDED "AS IS" AND BENTO HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. BENTO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(a), BENTO MAKES NO WARRANTY OF ANY KIND THAT THE SUBSCRIPTION SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

8. Indemnification

a. Bento Indemnification

- I. Bento shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, and costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the Subscription Services, or any use of the Subscription Services in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights/US patents, copyrights, or trade secrets, provided that Customer promptly notifies Bento in writing of the claim, cooperates with Bento, and allows Bento sole authority to control the defense and settlement of such claim.
- II. If such a claim is made or appears possible, Customer agrees to permit Bento, at Bento's sole discretion, to
 - a) Modify or replace the Subscription Services, or component or part thereof, to make it non-infringing, or
 - b) Obtain the right for Customer to continue use.
- III. This Section 8(a) will not apply to the extent that the alleged infringement arises from:
 - c) Use of the Subscription Services in combination with data, software, hardware, or technology not provided by Bento or authorized by Bento in writing;
 - d) Modifications to the Subscription Services not made by Bento; or
 - e) Use of any version other than the most current version of the Subscription Services delivered to Customer.

- b. Customer Indemnification Customer shall indemnify, hold harmless, and, at Bento's option, defend Bento from and against any Losses resulting from any Third-Party Claim based on Customer's, or any Authorized User's: (i) negligence or willful misconduct; (ii) use of the Subscription Services in a manner not contemplated by this Agreement; or (iii) modifications to the Subscription Services not made by Bento, provided that Customer may not settle any Third-Party Claim against Bento unless such settlement completely and forever releases Bento from all liability with respect to such Third-Party Claim or unless Bento consents to such settlement, and further provided that Bento will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.
- c. Sole Remedy THIS SECTION 8 SETS FORTH CUSTOMER'S SOLE REMEDIES AND BENTO'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SUBSCRIPTION SERVICES INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL BENTO'S LIABILITY UNDER THIS SECTION 8 EXCEED AMOUNT PAID IN FEES FOR THE CURRENT TERM OF THIS AGREEMENT TO BENTO BY CUSTOMER.

9. Limitations of Liability

IN NO EVENT WILL BENTO BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER BENTO WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL BENTO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND OTHERWISE EXCEED ONE TIMES THE TOTAL AMOUNTS PAID TO BENTO UNDER THIS AGREEMENT IN THE PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$10,000, WHICHEVER IS LESS.

10. General

- a. Entire Agreement This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements with respect to such subject matter. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each Party.
- b. Force Majeure In no event shall Bento be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Bento's reasonable control, including but not limited to: acts of God; flood, fire, earthquake, epidemic, or explosion; war, invasion, hostilities (whether war is declared or

not), terrorist threats or acts, riot or other civil unrest; government order, law, or actions; embargoes or blockades in effect on or after the date of this Agreement; and national or regional emergency.

- c. Governing Law; Submission to Jurisdiction: This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice of law provision. Any legal suit, action, or proceeding arising out of or related to this Agreement will be exclusively heard in courts located in the County of New York, New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- d. Assignment: Customer may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Bento, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder.