

Terms of Service

Last Updated June 15, 2021

Entaice LLC, a Delaware limited liability company (herein referred to as "Entaice", "we", "us" and/or "our"), provides a solution for e-commerce businesses to create visually-engaging, on-brand collection pages (the "Service"). By signing up and using the Service, you, the user of the Service, represent that you are a representative of an organization (herein referred to as "customer", "you", and/or "your"), you are duly authorized to enter into these Terms of Service which constitute a contractual agreement (the "Agreement") between you and Entaice, and you and the entity you represent do hereby agree to and accept this Agreement. For the avoidance of doubt, if you are using the Service on behalf of an entity, you represent that you have the authority to bind such entity to this Agreement and the terms "Customer", "you", and "your" also include such entity.

1. The Service

- 1.1. *Provision of the Service.* Entaice will make the Service available to Customer pursuant to the terms of this Agreement. Subject to the terms of this Agreement, Entaice hereby grants Customer a non-exclusive right to access and use the Service solely for its lawful internal business purposes. Entaice retains the right to change, modify, suspend, disable or otherwise terminate access to the Service at any time for any reason or no reason, with or without notice.
- 1.2. *Limitations.* The Service may only be used or accessed by an authorized representative of Customer. As a condition of your use of and access to the Service, you agree to comply with any rules published within the Service from time to time.
- 1.3. *Customer Responsibilities.* Customer will at all times (a) be responsible for its compliance with this Agreement and use of the Service; (b) be solely responsible for the accuracy, quality, integrity and legality of the Customer Materials (as defined below); (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and associated documentation (the "Documentation") and notify Entaice promptly of any such unauthorized access or use; and (d) use the Service only in accordance with the Agreement, the Documentation and applicable laws and regulations. Without limitation of the foregoing, Customer represents, warrants and covenants that it has (and will maintain) the right to provide any information about an identified or identifiable natural person, household or device to Entaice in connection with Customer's use of the Service and will provide such information to Entaice in compliance with applicable laws and that all such information has been (and will have been) obtained in compliance with all applicable laws and that all such information shall be true, accurate, complete and correct and correspond to the natural person or device to which it purports to relate, including to any natural person or device intended to be contacted in connection with the Service (if any); and it has (and will at all times have) provided any notice and obtained any consents necessary to enable Entaice to lawfully provide the Service to Customer.
- 1.4. *Accounts; Passwords.* In the event that you are required to be a registered user of any platform or service to access the Service, directly or indirectly, you are responsible for keeping your password(s) secure, and you are solely and strictly liable for any activity that occurs under your username(s). You also agree not to access, or attempt to access, other user's accounts and/or data.

2. Pricing; Cancellation

- 2.1. *Pricing; Payment.* Entaice will maintain a pricing page [here](#), which Entaice may update from time to time in its sole discretion. By using the Service, you agree to pay Entaice the amount set forth on the pricing page or the amount otherwise approved by you and Entaice in writing for the particular Service to which you are subscribing. If you are a paying subscriber to the Service, Entaice will use a third-party payment processor to process payment.
- 2.2. *Cancellation.* If you wish to cancel your paid subscription to the Service, you may uninstall and discontinue the Service at any time. Once you have done so, Entaice will no longer charge your account for future subscription payments.
- 2.3. *Refunds.* Entaice does not provide partial refunds for unused monthly or annual plans unless we have verified that a system malfunction caused a problem or we terminate your subscription without cause.

3. Ownership Rights

- 3.1. *Our Ownership Rights.* Entaice exclusively owns all right, title and interest in and to the Service, Documentation and its other materials. Except for the limited access rights expressly granted hereunder, Entaice reserves all rights, title and interests in and to the Service, Documentation and Entaice's confidential information.
 - 3.2. *Feedback.* Customer may voluntarily provide Entaice with feedback in connection with the Service ("Feedback"), but no party shall have any obligation to do so. If Customer chooses to provide Feedback, Entaice may use such Feedback for any purpose, including incorporating Feedback into, or using Feedback to develop and improve the Service and other Entaice products or services without attribution or compensation. Customer grants to Entaice a perpetual, royalty-free, fully-paid up, worldwide and irrevocable license to use Feedback for any purpose. Entaice will be the exclusive owner of any modifications or enhancement to the Service and other Entaice products or services that result from Entaice's use of Feedback.
 - 3.3. *Service Data.* In providing the Service, Entaice may derive aggregated and anonymous statistical data from the operation and use of the Service, including, without limitation, information related to Customer's and its users' activity ("Service Data"). Entaice shall own all Service Data, and nothing herein shall be construed as prohibiting Entaice from utilizing Service Data for any lawful purpose, including, without limitation, to build or improve the quality of the Service and other Entaice products or services.
 - 3.4. *Public Areas.* The Service may feature community areas and other public forums, including but not limited to a blog (the "Public Areas"). If you use a Public Area, you are solely responsible for your Feedback, the consequences of posting your Feedback, and your reliance on any information in the Public Areas or other areas of the Service. If you feel threatened or believe that someone else is in danger, you should contact your local law enforcement agency immediately. Any information you share, including, without limitation, any discussions with others, in any online Public Area is by design open to the public and is not private. Entaice reserves the right, but shall not be obligated, to record any dialogue or exchanges in the Public Areas of the Service. Entaice shall have no responsibility for any actions taken, or failure to take any action, with respect to the Public Areas or any submissions by you or other users. As with any public forum on any website, the information you post may appear elsewhere, including third-party search engine results.
 - 3.5. *Customer Materials.* As between Entaice and Customer, information collected by the Customer (including information about its users, but excluding Service Data) through the Service or made available to users through the Service, and any content owned or licensed by Customer and made available through the Service (collectively, "Customer Materials") will be owned by Customer and its licensors. Customer hereby grants to Entaice a non-exclusive, royalty-free, fully paid up and worldwide ongoing license to copy, modify (including the right to create derivative works of), display and use the Customer Materials solely in connection with providing the Service.
 - 3.6. *Use of Name/Marks.* You agree that Entaice may reference Customer (including use of Customer's name(s) and logo(s)) as a user of the Service in Entaice marketing materials, including website content, blog content and email messages.
4. **Representations and Warranties; Disclaimer**
- 4.1. Customer represents, warrants and covenants to Entaice as follows: (a) it has full power and authority to enter into and perform this Agreement; (b) this Agreement has been duly authorized and constitutes a binding obligation enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy laws or other laws affecting the rights of creditors generally; (c) the person(s) executing this Agreement on Customer's behalf has actual authority to bind Customer to this Agreement; and (d) Customer's execution and performance of this Agreement does not and will not violate or conflict with any provision of Customer's governing documents or of any commitment, agreement or understanding that such party has or will have to or with any person or entity.
 - 4.2. Except as expressly set forth herein, Entaice makes no, and hereby disclaims any and all, warranties, express or implied, including, without limitation, any implied warranties of merchantability, title, non-infringement and fitness for a particular purpose. Entaice does not guarantee that the Service will meet all of Customer's requirements. Customer represents and acknowledges that Entaice does not warrant that the Service will operate at all times in an uninterrupted, error free, secure or virus-free fashion, and Entaice hereby disclaims any and all liability resulting from or related to any such

interruption or error. Some jurisdictions do not allow the disclaimer of certain warranties, and, to the extent that you are subject to a jurisdiction that refuses to enforce the foregoing disclaimers, Entaice hereby disclaims all warranties, express or implied, to the fullest extent permitted by applicable law.

5. Indemnification

Customer will defend Entaice against any claim made or brought against Entaice by a third party (a "Claim") arising out of or relating to Customer's use of the Service and will indemnify Entaice for any damages finally awarded against, and for reasonable attorney's fees incurred by, Entaice in connection with any Claim; provided, that (a) Entaice will promptly notify Customer of a Claim, (b) Customer will have the sole and exclusive authority to defend and/or settle any such Claim (provided that Customer may not settle any Claim without Entaice's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Entaice of all liability) and (c) Entaice reasonably cooperates with Customer in connection therewith.

6. Limitation of Liability

Under no circumstances and under no legal theory, whether in tort, contract or otherwise, will Entaice be liable to Customer for any indirect, special, incidental, consequential or punitive damages of any character, including, without limitation, damages for loss of goodwill, lost profits, lost sales or business, work stoppage, computer failure or malfunction, loss of data or for any and all other damages or losses, even if a Entaice has been advised, knew or should have known of the possibility of such damages. In no event will Entaice be liable for any direct damages, costs or liabilities in excess of the amounts paid or payable by Customer during the six (6) months immediately preceding the incident which first gave rise to the applicable claim. The provisions of this section allocate the risks under this Agreement between the parties, and the parties have relied on the limitations set forth herein in determining whether to enter into this Agreement. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may wish to assert related in any manner to the Service must be filed within one (1) year after such claim or cause of action first accrued or be forever barred.

7. Term; Termination; Suspension

7.1. *Term.* The term of this Agreement will commence upon Customer's acceptance of this Agreement.

Thereafter, the term of this Agreement will continue indefinitely; provided, however, that Entaice may terminate this Agreement and the availability of the Service to Customer at any time with or without notice. If Customer desires to discontinue the Service, Customer may uninstall and discontinue the Service at any time.

7.2. *Right to Suspend.* Entaice may temporarily suspend Customer's or any of Customer's end users' access to all or any portion of the Service if Entaice determines that: (a) there is a threat or attack on the Service or other event that may create a risk to Entaice, the Service, Customer or any other customer of Entaice; (b) Customer's use of the Service or any Customer Materials disrupts or poses a security risk to the Service or any other Entaice customer; or (c) Customer is using the Service in violation of the Agreement, including, without limitation, using the Service for fraudulent or illegal activities. Entaice will provide written notice of any service suspension to Customer and provide updates regarding resumption of Service following any service suspension. Entaice will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer may incur as a result of any service suspension.

8. Miscellaneous

8.1. *Data Processing Addendum.* The terms of our [Data Processing Addendum](#) (the "DPA") shall apply to:

(a) the processing (as defined in the GDPR) of personal data (as defined in the GDPR) that is regulated by the General Data Protection Regulation (EU) 2016/679 (the "GDPR") by Entaice on behalf of Customer, if any; and (b) the processing (as defined in the CCPA) of personal information (as defined in the CCPA) that is regulated by the California Consumer Privacy Act of 2018 (the "CCPA") by Entaice on behalf of Customer, if any.

8.2. *Communications.* You consent to receive communications from us electronically, such as emails, texts, mobile push notices or notices and messages through the Service, and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

8.3. *Copyright Policy.* We respect the intellectual property of others, and we ask all of our Customers and their users to do the same. If you believe that your copyrighted work has been copied and is accessible via the

Service in a way that constitutes copyright infringement, please provide our Copyright Agent (as set forth below) with a written notification containing the following information required by the Digital Millennium Copyright Act, 17 U.S.C. §512 ("DMCA"): (a) the physical or electronic signature of a person authorized to act on behalf of the copyright owner of the work that allegedly has been infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works allegedly have been infringed, then a representative list of such copyrighted works; (c) identification of the material that is claimed to be infringing and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the allegedly infringing material (e.g., the specific URL); (d) information reasonably sufficient to permit us to contact the party alleging infringement, including an email address; (e) a statement that the party alleging infringement has a good-faith belief that use of the copyrighted work in the manner complained of is not authorized by the copyright owner or its agent, or is not otherwise permitted under the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that the party alleging infringement is authorized to act on behalf of the copyright owner of the work that allegedly has been infringed. Please send this notification to our copyright agent by mail at Entaice LLC, Attention: Copyright Agent, [INSERT POSTAL ADDRESS] or by email at operations@entaice.com. Please note that the information provided in such a notice of copyright infringement may be forwarded to the user who posted the allegedly infringing content. UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES. Please note that this procedure is exclusively for notifying us that your copyrighted material has been infringed. The preceding requirements are intended to comply with our rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

- 8.4. *Relationship.* Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties. Neither party will represent to the contrary, either expressly, implicitly or otherwise.
- 8.5. *Unenforceability.* If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such provision will be deemed not to be a part of this Agreement.
- 8.6. *Governing Law.* All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its rules of conflict of laws. Each of the parties hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the State of Delaware and of the United States of America located in New Castle County, Delaware (the "Courts") for any litigation between the parties arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in the Courts and agrees not to plead or claim in any Court that such litigation brought therein has been brought in any inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of the Courts.
- 8.7. *Notices.* All notices under this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (a) delivered personally; (b) sent by confirmed email; (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt.
- 8.8. *Entire Agreement.* This Agreement, including these Terms of Service and the documents incorporated by reference herein, including the DPA and the Privacy Policy, constitutes the entire agreement between the parties with respect to the subject matter hereof. It supersedes and replaces all prior or

contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations.

- 8.9. *Changes.* Entaice reserves the right to make changes to this Agreement, including these Terms of Service, from time to time without prior notice. If we make such a change, it will be effective as soon as we post it, and the most current version of these Terms of Service will always be posted under the "Terms of Service" or similar link available on our website. You agree that you will review this Agreement periodically. By continuing to access or use the Service after we post updated terms, you agree to be bound by the updated terms, and if you do not agree to the updated terms, you must stop using the Service. The updated Agreement will govern any disputes between you and Entaice, even if the dispute arises or involves facts dated before the effective date of the updated Agreement.
- 8.10. *Force Majeure.* Neither party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to causes beyond its reasonable control, including, without limitation, earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree (each a "Force Majeure Event").
- 8.11. *Titles.* All article and section titles herein are provided for general information and reference only. Thus, the subject matter in each section herein will not be construed by reference to the title nor will the scope of section be limited in any manner based on the title of that section.