

## END USER LICENSE AGREEMENT

(Last Updated: October 2019)

**IMPORTANT** – YOUR USE OF THE SOFTWARE IS SUBJECT TO ALL THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT ("**AGREEMENT**"). THEREFORE, PLEASE READ BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE.

THIS AGREEMENT, MADE AND ENTERED INTO AS OF THE TIME AND DATE OF CLICK THROUGH ACTION, IS A LEGAL AGREEMENT BETWEEN YOU AND NECTARI SOFTWARE INC. ("**NECTARI**") AND GOVERNS THE USE OF THE NECTARI SOFTWARE AND THE DOCUMENTATION MADE AVAILABLE FOR USE WITH SUCH SOFTWARE.

BY CLICKING THE "ACCEPT" BUTTON OR SIMILAR AFFIRMATION AS APPLICABLE WHEN DOWNLOADING OR INSTALLING THIS SOFTWARE, OR BY USING THE SOFTWARE OR DOCUMENTATION, OR BY SIGNING A COPY OF THIS AGREEMENT OR AN ORDER FORM, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND THAT THIS AGREEMENT GOVERNS YOUR USE OF THIS SOFTWARE AND DOCUMENTATION. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL OR USE THIS SOFTWARE OR DOCUMENTATION.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY TO THIS AGREEMENT, IN WHICH CASE "YOU" WILL MEAN THE ENTITY YOU REPRESENT. IF YOU DON'T HAVE SUCH AUTHORITY, OR IF YOU DON'T ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN NECTARI DOES NOT AGREE TO LICENSE THE SOFTWARE TO YOU, AND YOU MAY NOT USE IT.

THIS AGREEMENT MAY BE AMENDED FROM TIME TO TIME. PLEASE REFER TO SECTION 10.1 FOR FURTHER DETAILS.

### 1. DEFINITIONS

For the purposes of this Agreement:

- 1.1. "**Affiliate**" means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity. For the purposes of this definition, an entity shall control another entity if the first entity: (i) owns, beneficially or of record, more than 50% of the voting securities of the other entity; or (ii) has the ability to elect a majority of the directors of the other entity;
- 1.2. "**Cloud Software**" means the Software made available to you via the internet on a software-as-a-service basis for the term set out in the Order Form;
- 1.3. "**Customer Data**" means all the electronic data or information, regardless of the format, that is (i) submitted by you, entered or processed via the Software; or (ii) provided by you to Nectari to be used in connection with the Software;
- 1.4. "**Documentation**" means all documents, user manuals or other information, available in writing, online or otherwise, relating to the Software and the Support Services;
- 1.5. "**Enhancements**" means any new versions, releases, updates, upgrades or other enhancements to the Software, which Nectari, in its sole discretion, may make generally available to you;
- 1.6. "**Fees**" means the fees set out in the Order Form to be paid by you for the license of the Software and the provision of Support Services;
- 1.7. "**Force Majeure**" means any unavailability caused by circumstances beyond a party's reasonable control, including acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems, Internet service provider failures or

delays, computer hacking, security breach, or denial of service attacks or power failure that ordinary commercial efforts could not reasonably have prevented;

- 1.8. **“Intellectual Property”** means any and all ideas, concepts, inventions, methods, processes, know-how, works, software, computer programs and other computer software (including all source and object codes, algorithms, architectures, structures, user interfaces including display screens, lay-out and development tools), databases, designs, plans, drawings, brochures, website content, sales and advertising literature and other marketing materials, and any improvements thereon or applications or derivative works thereof, and all other forms of intellectual property, all whether or not registered or capable of such registration;
- 1.9. **“Intellectual Property Rights”** means any and all patents, copyrights, trademarks, trade names and other proprietary rights, and all registrations or applications in relation to the foregoing;
- 1.10. **“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;
- 1.11. **“On-premise Software”** means the Software made available to you for the subscription term (fixed term or perpetual) set out in the Order Form, whether hosted by you or a third party (including a Reseller) on your behalf;
- 1.12. **“Order Form”** means the document provided by Nectari (or your Reseller) evidencing your purchase of the Software, which may specify among other things, the license term, the components, the number and type of Users and the applicable Fees; each Order is incorporated into and becomes a part of this Agreement. If you want to make any change to an Order Form (e.g., increase the number of Users), you will need to place a new Order Form or obtain Nectari’s prior written consent through other means;
- 1.13. **“Personal Data”** means any information relating to an identified or identifiable natural person (each, a **“Data Subject”**); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- 1.14. **“Reseller”** means an independent third party authorized or accredited by Nectari to distribute the Software;
- 1.15. **“Software”** means the Nectari software referred to in the applicable Order Form, which may be further specified as either Cloud Software or On-premise Software. For greater certainty, all Enhancements shall form part of the Software;
- 1.16. **“Software Data”** means all data that relate to the operation or configuration the Software;
- 1.17. **“Support Services”** means the support and maintenance services provided by Nectari (or your Reseller if you have purchased Support Services from a Reseller) in connection with the Software. Support Services are subject to a separate agreement between you and Nectari or your Reseller, as applicable; and
- 1.18. **“User”** means any of your or your Affiliates’ employees, consultants or agents (i) who is authorized by you or your Affiliates to access and use the Software; and (ii) who has been supplied user identification codes and passwords by you/your Affiliates.

## **2. LICENSE AND USE OF SOFTWARE**

- 2.1. **License Grant.** Subject to the terms of this Agreement and the Order Form, Nectari hereby grants you a non-exclusive, personal, non-transferable license (except to your Affiliates) without the right to sublicense (except to your Affiliates and the Users):

- (a) to access, use and make a reasonable number of copies of the Documentation in connection with your use of the Software; and
- (b) for On-premise Software, to use such Software for the licensed term (fixed or perpetual) for which Nectari has received your Fees; or
- (c) for Cloud Software, to access and use the Software for the term for which Nectari has received your Fees;

in each case for your own business purposes and data and those of your Affiliates, and for no other purposes.

The licenses granted under paragraphs (a) and (b) above include the right to make a reasonable number of archival (i.e., not active) copies of the Software in machine-executable form as reasonably required for back-up and disaster recovery purposes (and for the disaster recovery service/system). Your archival copy of the Software may be hosted by a third party disaster recovery supplier (which may be used in the event of inability to use the Software caused by a force majeure event or for purpose of testing disaster recovery procedures), provided that such Software copy contains all of Nectari's copyright or other proprietary rights notices as indicated on the Software.

- 2.2. **Enhancements.** For On-premise Software, Enhancements will be made available to you by Nectari or your Reseller, if you have purchased a subscription license that includes Support Services or have otherwise purchased Support Services. For Cloud Software, all any Enhancements shall be made available to you as they are made generally available to Nectari's Cloud Software customers.
- 2.3. **Purchase through Reseller.** If you have purchased the Software from a Reseller, (i) your access and use of the Software (together with any other related services that it provides to you) are subject to the terms of the agreement entered into between you and the Reseller, and (ii) the Reseller (and not Nectari) is fully responsible and liable for the provision of the Software. If there is any conflict between this Agreement and the agreement you have with your Reseller, then the provisions of the separate agreement with the Reseller will apply in relation to the Software (and any other services provided to you by the Reseller) but you will still remain responsible and liable to Nectari for your compliance with this Agreement.
- 2.4. **Functionalities.** You acknowledge that your use of the Software in accordance with the terms of this Agreement is neither contingent on the delivery of any future Enhancements to or functionality or features of the Software, nor dependent on any oral or written public comments made by Nectari regarding future functionality or features of the Software.
- 2.5. **Your Responsibilities.** You are responsible (i) for the means by which you acquired Customer Data, the accuracy, quality, legality and use of Customer Data; (ii) for implementing reasonable efforts to prevent unauthorized access to or use of the Software (including, but not limited to, by preserving the confidentiality of the Users' user identifications and passwords and for restricting or protecting access to your equipment (hardware and software), whether operated and/or maintained by you or by third parties on your behalf, required to access and use the Software), and notifying Nectari promptly of any unauthorized access or use of the Software which may have an impact on the Software or Nectari; (iii) using the Software only in accordance with the Agreement and the Documentation and applicable laws and government regulations; and (iv) purchasing and maintaining in good working order of all your equipment (including network equipment and systems, whether operated and/or maintained by you or by third parties on your behalf), software and Internet connection necessary to access and use the Software, and complying with any third party licence terms

or other third party agreements in relation to your use of such equipment, software and Internet connection.

- 2.6. **Users.** You are responsible for all use and misuse of the Software by the Users or their breach of the terms of the Agreement, and shall indemnify Nectari for any damages, costs and expenses suffered as a result of such use, misuse or breach.
- 2.7. **Restrictions.** Any right to use or exploit the Software not expressly licensed to you in this Agreement is strictly prohibited, and all rights not expressly set out in this Agreement are reserved by Nectari. You will take all reasonable measures to prevent the Software to be accessed or used by anyone other than the Users. Except as provided herein, you may not (i) loan, rent, lease, transfer, convey, assign, sell, distribute the Software or grant sublicenses for the Software or any part thereof; (ii) modify, combine or distribute the Software (or any part thereof) with any other software or code in a manner which would subject the Software to open source license terms; (iii) use the Software to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material (including Customer Data) in violation of third party privacy rights; (iv) use the Software to store or transmit Malicious Code; (v) interfere with or disrupt the integrity or performance of the Software; (vi) copy, frame or mirror any part or content of the Software, other than copying or framing on your own intranets or otherwise for your own internal operational purposes; (vii) reverse engineer, decompile or disassemble the Software or attempt to gain unauthorized access to the Software or Nectari's systems or networks; or (ix) use or access the Software in order to build a competitive product or service, or copy any features, functions or graphics of the Software. In addition to the above, access and use of the Software may be subject to restrictions and/or specifications (including, without limitation, with respect to the maximum cloud outbound data transfer monthly allowance) set forth in the Documentation.
- 2.8. **Security.** It is your responsibility (i) to preserve the confidentiality of the Users' user identifications and passwords; (ii) to restrict and protect access to your equipment (hardware and software) required to access and use the Software; (iii) to have and maintain in place Malicious Code protection software and security for all of its systems and data, including firewalls, passwords, physical security, access control policies.
- 2.9. **Data Backup.**
  - (a) For On-premise Software, you are responsible to have and maintain in place industry standard backup/disaster recovery processes for Customer Data and Software Data, including for reconstruction of lost or altered source data.
  - (b) For Cloud Software, (i) you are responsible to keep copies (in any relevant format) of all source data that is submitted/entered by you or your representatives on the Software and to have and maintain in place industry standard backup/disaster recovery processes for Customer Data (including for the reconstruction of lost or altered source data) and (ii) Nectari is responsible to have and maintain in place industry standard backup/disaster recovery processes for Software Data; provided, however, that Nectari shall only be obligated to provide you the same backup/disaster recovery standards as those provided by Nectari's hosting providers.
- 2.10. **Personal Data.** You represent and warrant that (i) you will comply all applicable data protection laws; (ii) you are authorized pursuant to all applicable data protection laws to disclose any Personal Data which you disclose or otherwise provide to Nectari; and (iii) you have obtained all necessary consents and rights and provide all necessary information and notices to Data Subjects in order for (a) you to disclose Personal Data to Nectari; (b) Nectari

to process personal data the purposes set out in this Agreement; and (c) Nectari to disclose Personal Data to its Affiliates, its and their agents, and any other person in order to meet any obligations under this Agreement or under applicable law.

- 2.11. **Compliance.** You must keep records relating to all use of the Software. Nectari (or its agents) may, at its expense, audit such records to verify compliance with the terms of this Agreement; provided that: (i) Nectari gives you at least 5 days advance written notice of the audit; (ii) Nectari (or its agents) conducts the audit during normal business hours ; and (iii) Nectari conducts no more than one such audit in a given calendar year.

### 3. SUPPORT SERVICES

#### 3.1. Scope.

(a) **Support Services Purchased From Nectari.** If (i) you have purchased a subscription license of an On-premise Software or Cloud Software (which include Support Services) from Nectari or (ii) you have otherwise purchased Support Services from Nectari (e.g., purchased with a perpetual license for On-premise Software), information about such Support Services is set out in the separate agreement between you and Nectari which sets out the terms of the Support Services.

(b) **Support Services Purchased From a Reseller.** If (i) you have purchased a subscription license of an On-premise Software or Cloud Software (which include Support Services) from a Reseller or (ii) you have otherwise purchased Support Services from a Reseller, such Support Services will be provided to you in accordance with the Reseller's own documentation and instructions and the provisions of Section 3 will not apply to you.

- 3.2. **Limitations.** Where Nectari provides Support Services directly to you, Nectari is under no obligation to provide such Support Services where errors arise from (i) use of any third party equipment, hardware, software or communication lines; (ii) the modification of the Software by you or a third party (other than an third party authorized by Nectari); (iii) your failure to fulfil or observe your obligation in Section 2 of this Agreement; or (iv) incorrect use of the Software or operator error. The foregoing limitations are in addition to any other limitations/restrictions set out in the separate agreement between you and Nectari or your Reseller, as applicable, which sets out the terms of the Support Services.

- 3.3. **Warranty.** Nectari warrants that provided Nectari has received payment of all required Fees for Support Services and where Nectari provides Support Services directly to you, Nectari will use qualified personnel to provide Support Services in a professional manner consistent with industry standards. Your sole remedy under this Section 3 is limited to Nectari's re-performance of the Support Services giving rise to your claim. You may request that Nectari performs additional consultancy, implementation or other services, which Nectari may at its discretion agree to do, subject to and on the terms of a separate services agreement.

- 3.4. **Cloud Software Availability.** Subject to service availability from Nectari's hosting providers Nectari will use reasonable commercial efforts to ensure that you have access to the Cloud Software at all times. Notwithstanding the foregoing, you acknowledge and agree that Nectari may suspend your access to or use of the Cloud Software (i) for routine maintenance, (ii) if Nectari detects fraud, a security breach or any other similar threat that causes or that could cause, in Nectari's reasonable opinion, damage to the Cloud Software or Customer Data, or (iii) if Nectari's hosting providers suspend their services to Nectari. Any suspension by Nectari of the Cloud Software in application of this Section shall not release you from your payment obligations under the Agreement. Nectari will use commercially reasonable efforts (i) to

minimise interruptions for routine maintenance and to schedule such maintenance at non-peak hours and (ii) for fraud, security breach or other threat, to restore your access to the Cloud Software as soon as possible after the suspension. In addition, you acknowledge and agree that as the Cloud Software is accessible via the internet, it is therefore subject to limitations, security vulnerabilities, delays and other problems inherent to the operation of the internet and other electronic communications and that Nectari and/or its licensors will not be liable or responsible to you for any such delays, interruptions, security problems, delivery failures or other damage resulting from such problems.

#### **4. INTELLECTUAL PROPERTY**

- 4.1. **Customer Data.** Nectari acknowledges and agrees that you own all rights, titles, and interests in Customer Data, including all Intellectual Property Rights related thereto.
- 4.2. **Nectari Intellectual Property.** Nectari (or its licensors or suppliers) owns all right, title and interest in and to (i) the Software, the Software Data and the Documentation; (ii) the trademarks associated with the Software or Nectari; and (iii) all Intellectual Property and Intellectual Property Rights related to any of the foregoing. You will acquire no rights or licenses to the Software or any other Nectari property unless otherwise expressly provided in the Agreement.
- 4.3. **Feedback.** Nectari owns all right, title and interest in and to any suggestions, requests or recommendations for improvements or enhancement to the Software that you (including any of the Representatives) may, alone or jointly with Nectari, propose or make during the term of the Agreement (collectively, “**Feedback**”). You hereby irrevocably (i) assign all your right, title and interest in and to the Feedback to Nectari; and (ii) waive in favour of Nectari, its successors and assigns any and all moral rights that you have or may have in the Feedback in each jurisdiction throughout the world, to the fullest extent that such rights may be waived in each respective jurisdiction.
- 4.4. **Notices.** You shall not remove any Intellectual Property Rights notice that appear on the Documentation or displayed through or embodied in the Software.

#### **5. FEES AND PAYMENT**

- 5.1. **Fees.** You must pay the relevant fees and any other charges arising under this Agreement as stated on the Order Form or Nectari’s invoice. If you purchased your Software licence or Support Services from a Reseller, Fees and payment terms are set out in the agreement with your Reseller and such terms prevail over the terms of this Section 5. If at any time during the term of your Software license you want to increase the number of your Users which can access the Software or to access additional components or modules in the Software, you must pay all applicable fees.
- 5.2. **Payment Terms.** Unless otherwise set out in the Order Form or Nectari’s invoice (or if you have purchased the Software from a Reseller, as set out in the Reseller’s purchase order or invoice), (i) Fees for a perpetual license of an On-premise Software shall be paid in full upon placement of your Order Form; (ii) Fees for a subscription license of an On-premise Software or for Cloud Software, shall be paid in full at the beginning of each subscription period; and (iii) all Fees for Support Services must be paid annually in advance. All Fees are non-cancellable and non-refundable even if you cancel or choose not to renew your Software license or Support Services. All payments must be made in the full amount, free of any deductions or withholdings and without exercising any right of set-off.

- 5.3. **Price Increase.** If you purchased a subscription license of an On-premise Software or Cloud Software, Nectari may not increase the license fees more than once in any given calendar year. Nectari will use its reasonable endeavours to give you (or your Reseller if you purchased the subscription license from a Reseller) 60 days' written notice prior to your next renewal date of any price increase. If you continue to use the Software after the fee change takes effect, you will be deemed to (i) agree to the increase in the fees and (ii) authorize Nectari (or your Reseller, as applicable) to collect the new fees amount using the agreed payment method.
- 5.4. **No Payment.** If Nectari has not received payment of the applicable fees either from you or from your Reseller (as the case may be) or if Nectari has received notification from your Reseller of your non-payment of the same, then without prejudice to Nectari's other rights and obligations Nectari may suspend or terminate your license.
- 5.5. **Interest.** In addition to any other rights or remedies of Nectari, any amount not paid by you when due shall bear interest at the rate that is the lesser of 1.5% per month or the maximum rate allowable by law.
- 5.6. **Currency.** All invoices or order forms to you and payments from you to Nectari will be in the currency specified on your invoice or order form.
- 5.7. **Taxes.** Fees quoted do not include applicable sales taxes but all applicable taxes will be included in the amount Nectari or your Reseller charges you, and you shall be responsible for the payment of all such taxes.

## 6. TERM AND TERMINATION

### 6.1. Term – License

- (a) **Term.** This Agreement is effective from the date you have accepted this Agreement and continues until terminated in accordance with this Section 6.
- (b) **Termination – Perpetual License (On-premise Software).** If you acquire a Perpetual License for On-premise Software you may terminate this Agreement at any time, in which case (i) your license hereunder will terminate and (ii) you will no longer have access to the Software and any Customer Data. If you terminate this Agreement under this paragraph (b), Nectari will not refund or credit your Fees.
- (c) **Termination – Subscription License (On-premise Software and Cloud Software).** If you acquire a subscription license for On-premise Software or Cloud Software, this Agreement will remain in effect for an initial term of one (1) year or otherwise as set out in the applicable Order Form (the "**Initial Term**"). This Agreement shall automatically continue to renew thereafter for successive one-year periods (each, a "**Renewal Term**") on the terms and conditions contained herein. You may choose not to renew your Initial Term or subsequent Renewal Term (as the case may be) by providing at least 60 days' prior written notice of your non-renewal to Nectari or your Reseller from which you purchased the Software.

### 6.2. Term – Support Services

- (a) If you have purchased Support Services from Nectari, the initial period for such Support Services will be for one (1) year or otherwise set out in the applicable Order Form (the "**Support Initial Term**"). The Support Initial Term shall automatically continue to renew thereafter for the successive one-year periods (each, a "**Support Renewal Term**") on the terms and conditions. You may choose not to renew your

Support Initial Term or subsequent Support Renewal Term (as the case may be) by providing at least 60 days' prior written notice of your non-renewal to Nectari.

- (b) If you have purchased Support Services from a Reseller, the term of such Support Services is set out in the agreement with your Reseller and your right to terminate such Support Services are subject to the terms of such agreement.
- (c) If you terminate the provision of your Support Services, you will still have the right to continue to use the Software in accordance with the terms of this Agreement.

6.3. **Termination.** Each Party may terminate this Agreement at any time: (i) if the other Party fails to perform any of its obligations under this Agreement and such failure is not remedied within 30 days from written notice thereof having been given to such defaulting Party; or (ii) upon written notice to the other Party, if such other Party takes or is required by any person with proper authority to take, any of the following actions: (a) an assignment, composition or similar act for the benefit of creditors; (b) an attachment or receiving of assets; (c) the filing of a petition for bankruptcy, insolvency or relief of debtors or the institution of any proceedings relating to bankruptcy, insolvency or relief of debtors; (d) committing or threatening to commit any act of bankruptcy; or (e) a winding-up, liquidation or dissolution of the business pursuant to an order of a court of competent jurisdiction.

6.4. **Effect of Termination.** At the expiry or termination of this Agreement:

- (a) Nectari shall be entitled to the payment of any remaining Fees accrued as of the date of termination;
- (b) If you have purchased On-premise Software, you shall uninstall the Software within 5 days of the expiry or termination of this Agreement and certify Nectari that you have done so; and
- (c) If you have purchased Cloud Software, your access to the Software will immediately terminate.

6.5. **Recourse.** The termination of this Agreement for any reason whatsoever will in no way affect either Party's rights and recourse against the other Party, at law or in equity, for damages for failure to discharge an obligation under this Agreement.

6.6. **Survival.** Sections 4.2, 4.3, 6.4, 6.6, and 7 to 10 shall survive any termination or expiration of this Agreement.

## 7. CONFIDENTIALITY

7.1. **Use and Protection.** You acknowledge that the Software contains intellectual property rights and know-how, system design and proprietary information which is the exclusive and valuable property of Nectari or its Affiliates ("**Confidential Information**"). You will not, without the prior written consent of Nectari, use the Confidential Information other than in connection with your access or use of the Software. You will treat the Confidential Information as confidential to and as the property of Nectari and take reasonable and customary precautions to protect the confidential nature of the Confidential Information and prevent disclosure of such Confidential Information to any such third party.

7.2. **Limited Disclosure.** You will not disclose the Confidential Information to any third party. You may only disclose Confidential Information to your personnel only to the extent necessary and to those personnel having a legitimate need to know. Prior to disclosing the Confidential Information to your personnel, you shall ensure that (i) they are bound by confidentiality



obligations that are substantially similar to those contained in this Agreement; and (ii) they are made aware that all Confidential Information is the confidential and proprietary material of Nectari or its Affiliates, and that such personnel owe a duty of confidence to Nectari. You shall remain responsible to Nectari for any disclosure or use of the Confidential Information by your personnel contrary to the provisions hereof.

- 7.3. **Exception.** The restrictions imposed by this Section 7 shall not apply to the disclosure of Confidential Information which (i) is now, or which hereafter, through no act or failure to act on your part, becomes generally known or available to the public without breach of this Agreement; (ii) is known to you at the time of disclosure of such Confidential Information provided that you can satisfactorily demonstrate such prior knowledge by appropriate written records antedating the disclosure and that such knowledge was not gained from third parties through breach of secrecy; (iii) is hereafter furnished to you in good faith by a third party without breach by such third party, either directly or indirectly, of an obligation of secrecy to Nectari; or (iv) is approved for such use or disclosure by written authorization of Nectari.
- 7.4. **Legal Disclosure.** If you receive a request or is required by law to disclose all or any part of the information contained in Nectari's Confidential Information, you shall, to the extent permitted by law (i) immediately notify Nectari of the existence of and the terms and circumstances surrounding the request or requirement; (ii) consult with Nectari on the advisability of taking legally available steps to resist or narrow the request or lawfully avoid the requirement; and (iii) at Nectari's request and cost, take all necessary steps to seek a protective order or other appropriate remedy.

## 8. WARRANTY DISCLAIMER

- 8.1. **Disclaimer.** EXCEPT TO THE EXTENT SET FORTH IN THIS AGREEMENT, NECTARI EXPRESSLY DECLINES, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES, AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, REPRESENTATIVES, VENDORS AND LICENSORS, ANY AND ALL EXPRESS, LEGAL OR IMPLICIT REPRESENTATIONS, WARRANTIES AND CONDITIONS NOT CONTAINED HEREIN, INCLUDING REPRESENTATIONS, WARRANTIES AND CONDITIONS OF MERCHANTABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND ACCURACY. IN PARTICULAR, NECTARI EXPRESSLY DECLINES THE FOLLOWING AND MAKES NO REPRESENTATION OR WARRANTY IN THESE REGARDS: (I) THE FACT THAT THE SOFTWARE WILL MEET YOUR OPERATIONAL REQUIREMENTS; (II) THE FACT THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED OR, THAT THE RESULTS OBTAINED FROM THEIR USE WILL BE ACCURATE OR RELIABLE; AND (III) THE FACT THAT ALL PROGRAMMING OR SERVICE ERRORS CAN BE CORRECTED OR FOUND IN ORDER TO BE CORRECTED.
- 8.2. **Other Limitations.** Nectari will have no responsibility under these limited warranties for any Software that has been modified, lost, stolen, or damaged by accident, abuse, or misapplication. No employee, agent, or representative of Nectari, nor any Reseller (including your Reseller) or any other third party, is authorized to make any warranty with respect to the Software, except those expressly stated in this Agreement, and you may not rely on any such unauthorized warranty. You acknowledge and agree that you have chosen your Reseller and that such Reseller is an independent party and not an agent of Nectari.

## 9. LIMITATION OF LIABILITY; INDEMNIFICATION

- 9.1. **Exclusion of Certain Damages.** Nectari shall not be liable and assumes no responsibility for any losses or damages arising, directly or indirectly, from your omission to comply with or breach of your obligations hereunder. You acknowledge and understand that software is

inherently complex and may not be free from errors and that you have been advised to verify the work produced by the Software.

- 9.2. **Exclusion of Indirect Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT MAY NECTARI, ITS AFFILIATES, OR ITS AND THEIR SHAREHOLDERS, DIRECTORS, OFFICERS, REPRESENTATIVES, AGENTS, SUPPLIERS OR LICENSORS (I) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXTRAORDINARY, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR (II) FOR LOSS OF REVENUE OR PROFITS, LOSS OF TIME, LOST OF OR CORRUPTION TO DATA, LOSS OF USE, BUSINESS INTERRUPTION, DEPLETION OF GOODWILL OR ANY OTHER FINANCIAL LOSS, ARISING DIRECTLY OR INDIRECTLY FROM THE AGREEMENT, OR CAUSED BY THE SOFTWARE, OR THE MISUSE OR INABILITY TO USE THE SOFTWARE, OR THE DOCUMENTATION, EVEN IF NECTARI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NECTARI SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES OR COSTS INCURRED IN CONNECTION WITH OBTAINING SUBSTITUTE SOFTWARE, RECEIVING SUPPORT SERVICES, CLAIMS MADE AGAINST YOU BY OTHERS, OR SIMILAR COSTS. THIS FOREGOING LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION: WHETHER IN CONTRACTUAL LIABILITY, APPLICATION OF THE WARRANTY, TORT, NEGLIGENCE, PRODUCT LIABILITY OF MANUFACTURERS AND VENDORS, STRICT CIVIL LIABILITY OR UNDER ANY OTHER LEGAL THEORY.
- 9.3. **Amount Limitation.** THE OVERALL LIABILITY OF NECTARI IN RESPECT OF ANY OF YOUR CLAIMS OR THE CLAIMS OF ANY OTHER PERSON IS LIMITED TO AN AMOUNT EQUAL TO (I) IF YOU HAVE PAID FOR A PERPETUAL LICENSE OF AN ON-PREMISE SOFTWARE, THE FEES ACTUALLY PAID BY YOU TO PURCHASE SUCH PERPETUAL LICENSE, OR (II) IF YOU HAVE PAID FOR A SUBSCRIPTION LICENSE OF AN ON-PREMISE SOFTWARE OR A CLOUD-SOFTWARE, THE FEES ACTUALLY PAID BY YOU DURING THE 12-MONTH PERIOD PRECEDING THE EVENT FROM WHICH THE LIABILITY ARISES.
- 9.4. **Claims for Infringement.** If all or any portion of the Software is, in Nectari's opinion, likely to or otherwise does become the subject of a claim for infringement of any Intellectual Property Rights, Nectari may, at its option and its sole cost and expense, either: (i) procure in your favour the right to use the same as contemplated herein; (ii) modify the same to become non-infringing provided that any such modification does not materially impair the ability of Software, or any part thereof to conform to and perform in accordance with the Documentation or the intended use of the Software; or (iii) replace the infringing part of the Software with compatible, feature and functionally equivalent, and non-infringing products or documentation, as the case may be. If in Nectari's reasonable opinion it is not commercially reasonable for it to comply with any of (i), (ii) or (iii) above, Nectari may upon written notice to you, terminate this Agreement. and reimbursed you for the affected Software. The remedies set forth in this Section 9.4 are Nectari's sole obligations and your sole remedy in the event of a potential infringement or a claim for infringement relating to the Software.
- 9.5. **Indemnification.** You shall defend Nectari, its Affiliates, and their respective shareholders, officers, directors, employees, subcontractors, agents, suppliers and licensors ("**Customer Indemnified Parties**") against any claim, demand, suit or proceeding made or brought against a Customer Indemnified Party by a third party alleging that Customer Data or Customer use of the Software is in breach of this Agreement, infringes or misappropriates its Intellectual Property Rights or other rights of a third party or violates applicable law (a "**Claim**"), and shall indemnify and hold harmless the Customer Indemnified Parties for any loss, claim, damages, cost, expenses, and other liability (including reasonable lawyers' and expert's fees and expenses) that any Customer Indemnified Party incurs a result of or in connection with such Claim. Nectari must: (i) promptly give you written notice of the Claim; (ii) give you sole control of the defense and

settlement of the Claim (provided that you may not settle any Claim unless the settlement unconditionally releases the Customer Indemnified Parties of all liability); and (iii) provide to you all reasonable assistance, at your expense.

- 9.6. **Force Majeure.** If Nectari performance is prevented, hindered or delayed by reason of any Force Majeure event, Nectari shall be excused from performance to the extent that it is prevented, hindered or delayed thereby during the continuance of such causes, and such Nectari's obligation hereunder shall be suspended for so long and to the extent that such causes prevent or delay its performance. Nectari shall give you written notice of the commencement of a Force Majeure event. If Nectari is unable to resume performance within 30 days after giving notice or fails within that period to give reasonable assurance that it will resume performance within further 15 days, then you may terminate this Agreement upon a 15-day written notice.

## 10. GENERAL

### 10.1. Amendment to the Agreement.

- (a) **On-premise Software.** For On-premise Software, Nectari may, from time to time, ask you to accept changes to this Agreement upon opening the On-premise Software or any of its Enhancements, in which case, your continued use of the On-premise Software shall be conditional upon your acceptance of those changes. The most recent version of this Agreement can be found at <https://www.nectari.com/en/legal/eula>.
- (b) **Cloud Software.** For Cloud Software, Nectari reserves the right, at any time and without prior notice, to modify or replace any of the terms of this Agreement. Any change to the most recent version of this Agreement can be found at <https://www.nectari.com/en/legal/eula>. It is your responsibility to check the Agreement periodically for changes. Your use of the Cloud Software following the posting of any changes to the Agreement constitutes acceptance of those changes. If there are any significant changes to the Agreement that materially affect your relationship with us, you will be notified by email or upon opening the Cloud Software.

- 10.2. **Independent Contractors.** This is an agreement between separate legal entities and neither party will represent itself as agent, servant, franchisee, joint venture or legal partner of the other. Neither Party shall have the right to bind the other to any agreement or to incur any obligation or liability on behalf of the other party.

- 10.3. **Export.** Regardless of any disclosure made by you to Nectari (or your Reseller) of an ultimate destination of the Software, the Documentation or Nectari Confidential Information, you acknowledge that the Software, the Documentation and Nectari Confidential Information may be subject to export laws and regulations. You shall ensure that your exports are in compliance with such export laws and regulations. In addition, (i) you shall not permit your Users of the Software to access or use the Software in any embargoed country or in violation of any export law or regulation and (ii) you are responsible for complying with all applicable governmental regulations of any foreign countries with respect to the use of the Software, the Documentation and Nectari Confidential Information outside of Canada.

- 10.4. **Governing Law; Jurisdiction.** This Agreement will be governed by, interpreted and construed in accordance with the laws of the Province of Québec, Canada and the laws of Canada applicable therein, other than rules governing conflicts of laws. Each party agrees that any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be submitted to the exclusive jurisdiction of the courts of the Province of Quebec, Canada (district of Montréal). The foregoing choice of

jurisdiction and venue shall not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction. The parties expressly disclaim applicability of the terms of the *United Nations Convention of Contracts for the International Sale of Goods* and any legislation implementing such Convention will not apply to this Agreement nor to any dispute arising therefrom.

- 10.5. **Entire Agreement.** This Agreement (as amended from time to time) constitutes the complete agreement between you and Nectari and supersedes all prior or contemporaneous agreements or representations or warranties, written or oral, concerning the subject matter of this Agreement.
- 10.6. **No Third Party Beneficiaries.** Except as expressly set out in this Agreement, a person who is not a party to this Agreement will have no rights to enforce any terms in this Agreement.
- 10.7. **Transfer and Assignment.** You shall not assign, delegate or otherwise transfer this Agreement in whole or in part, directly or indirectly, by operation of law, merger, acquisition, or otherwise without Nectari's prior written consent. Any assignment, delegation or transfer which violates the foregoing will be void. This Agreement is assignable by Nectari and Nectari is entitled to sub-contract any of its obligations under this Agreement provided that any such sub-contracting will not relieve Nectari of its obligations to you.
- 10.8. **Severability.** If any of the provision contained in this Agreement are found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not be in any way affected or impaired hereby.
- 10.9. **Waiver.** The failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such provision or the right of such party to enforce such provision and every other provision.
- 10.10. **Notice.** Your day to day communication with Nectari must be via the contact details given in Nectari's relevant documentation and Nectari's communication to you will be via those details given to Nectari when you accepted this Agreement (or any new details which you subsequently notify to Nectari). Each party will use the appropriate communication medium, including e-mail, and in the case of Nectari communicating with you, by publishing notices on its website. Any formal notice required to be given under this Agreement will be in writing and will be sent by pre-paid mail or recorded delivery or by email to the party required to receive the notice at the address given for that party. Any notice will be deemed to have been duly received if sent by: (a) pre-paid mail, 5 days after posting; or (b) recorded delivery on the next business day; or (c) email on the next business day after the email is sent, or earlier if the intended recipient has confirmed receipt (either specifically or by conduct).
- 10.11. **Language.** The Parties have requested that this Agreement and all documents related thereto be drafted in English. *Les parties aux présentes ont exigé que le présent contrat, ainsi que tous les documents y afférents, soient rédigés en langue anglaise.*