

Terms of Use

(Last modified June 4, 2021)

1. Introduction, Acceptance, Definitions, and Modifications

Welcome to Nectari! We hope you will enjoy and appreciate using our “**Services**”, which may be visiting the website at <https://www.nectari.com/> or any subdomain thereof (the “**Website**”) and using the support portal accessible from the Website (the “**Portal**”).

By interacting with the Services in any way, by activating or setting up an account to access the Portal or by logging into the Portal, you hereby accept to be bound by these Terms of Use (“TOU”) without any reservations, modifications, additions or deletions. If you do not agree to all the provisions contained in the TOU, you are not authorized to use the Services. The TOU are a legal and binding agreement between you and us.

If you are using the Services and accepting or agreeing to these TOU on behalf of a company, association or other legal entity (a “Legal Entity”), you represent and warrant that you have the authority to bind that Legal Entity to these TOU and, in such event, "you" and "your" will refer and apply to that Legal Entity.

Nectari Software Inc., a duly-incorporated company located in Montreal, Canada at the address listed below, owns and operates the Services. Where the present TOU refer to “Nectari” they may refer to Nectari Software Inc. and / or its affiliates, and their respective shareholders, officers, directors, employees, agents, partners, principals, affiliates (including, but not limited to, Tangerine Software Inc.), representatives, successors and assigns (collectively “**Representatives**”), depending on the context. Any reference to “**we**”, “**our**”, or “**us**” in these TOU shall also refer to Nectari Software Inc. and / or its Representatives.

In these TOU, a Website visitor or Services user may be referred to as “**you**” or “**your**”. When a Services user has set up an account through the Services and is accessing the Portal via an account, they may be referred to as a “**Logged-In User**.”

Nectari reserves the right, at any time and without prior notice, to modify or replace any of the TOU. Any changes to the TOU can be found at this URL. It is your responsibility to check the TOU periodically for changes. Your use of the Services following the posting of any changes to the TOU constitutes acceptance of those changes. If we make any substantial changes to the TOU that materially affect your legal relationship with Nectari, we will use commercially reasonable efforts to notify you by posting a prominent notice when you use the Services for the first time following those changes, or if you have an account, by email to the email address associated with your account.

The TOU should be read in conjunction with the [Privacy Policy](#), as both these documents govern your use of the Services.

2. Contacting Us

If you have any questions about the TOU, please contact:

Nectari Legal Services
legal@nectari.com

or:

Nectari Legal Services
1120-400 Saint-Croix Avenue
Montréal, Québec
H4N 3L4, Canada

If you have any questions regarding the Services themselves, please contact support@nectari.com.

3. General Code of Conduct for Use of the Services

In addition to the more specific rules found elsewhere in these TOU, you agree that by interacting with the Services in any way, you will:

- (i) Not use the Services in any manner that in any way violates these TOU or any other applicable policy posted on the Website or in the Services by Nectari;
- (ii) Not use the Services in any manner that violates any intellectual property rights of Nectari or any third party;
- (iii) Not use the Services in any manner to propagate spam, including but not limited to unsolicited advertising or bulk electronic mail or messages, including to link to a spam or phishing website;
- (iv) Not use the Services in any manner to propagate software viruses, Trojan horses, worms, or any other malicious or non-malicious computer code, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment in any form whether belonging to Nectari or a third party, or to damage or obtain unauthorized access to any system, data, password or other information (whether personal data or not) of Nectari, other Services users, or any other third party;
- (v) Not: (1) take any action that imposes or may impose (as determined by Nectari in its sole discretion) an unreasonable or disproportionately large load on Nectari's (or its third party providers') infrastructures; (2) interfere or attempt to interfere with the proper functioning of the Services or any activities conducted on or via the Services; (3) bypass any measures Nectari may use to prevent or restrict access to the Services or any element thereof; (4) use manual or automated software, devices, or other processes to "crawl" or "spider" any page or portion of the Services; or (5) harvest or scrape any content from the Services in an unreasonable manner;
- (vi) Not take any action or use any process that removes, modifies, disables, blocks, obscures or otherwise impairs any advertising or other promotions in connection with the Services;
- (vii) Not use the Services in any way to collect information (whether personal information or not) of any third party or in violation of our Privacy Policy, except as permitted by the nature and function of the Services;

- (viii) Not use the Services to advertise or promote products or services that are not expressly approved in advance in writing by Nectari, or as permitted by these TOU;
- (ix) Not interfere with any third party's use or enjoyment of the Services;
- (x) Not do anything or encourage conduct that would constitute a criminal offense or give rise to civil liability, or is any way unlawful, illegal, fraudulent or harmful to any third party;
- (xi) Not attempt to do any of the foregoing prohibitions; and
- (xii) Use the Services in good faith, and in compliance with all applicable local, provincial or state, national, and international laws.

4. Accounts

a. Accounts and Passwords – General Information

In order to be able to access the Portal, you will be required to set up an account. Accounts are available to Nectari clients and their employees, subject to the restrictions and conditions as outlined elsewhere in these TOU. Nectari will send you an email to set up an account. As will be explained in the email that you receive from us inviting you to set up your account, the initial log-in for your account will use your email address and a generic password.

As part of the account set-up, you may be asked to change the generic password and to choose a new password. It is your responsibility to create a password of sufficient strength that cannot easily be discovered by third parties. You are responsible for maintaining the confidentiality of your password and are responsible for all activities that occur under your account whether by you or any third party. You agree to immediately notify us of any unauthorized use of your account or any other breach of security regarding your account.

If you are a Logged-in User, it is strongly suggested that you log out of your account at the end of every session, or not leave a logged-in account unattended for any period of time. Nectari and its Representatives will not be held liable for any losses or damages, direct or indirect, pecuniary or non-pecuniary, resulting from your failure to log out at the end of the session, an unattended logged-in session, or a third party using the Portal with your Account Information and accessing your account through any means, and disclaims any responsibility in this regard.

Nectari reserves the right to suspend or terminate your account, at its sole discretion, at any time and for any reason, including but not limited to whether you have violated the letter or spirit of the TOU, as more fully described hereinbelow.

b. Age Requirements

In order to set up an account to access the Portal, you affirm that you are at least eighteen (18) years of age or over, or the age of majority in the jurisdiction you reside and from which you access the Portal where the age of majority is greater than eighteen (18) years of age.

c. Account Information

The information required to set up a Portal account with Nectari is the following: your name, your email address and the company that you work for. This information required for the account sign-up and log-in process may be referred to in the present TOU or the Privacy Policy as “**Account Information**”.

By accepting Nectari’s invitation to create an account and by confirming and then using your Account Information to log into your account, you represent and warrant that the Account Information is true and accurate to the best of your knowledge. Submitting false or misleading Account Information or using false or misleading Account Information to log into an account may result in you being banned from using the Services, at our sole discretion.

5. Proprietary Rights

a. Intellectual Property Rights

You acknowledge that: (a) the Services contain proprietary and confidential information that are protected by applicable intellectual property and other laws, and (b) Nectari and/or third parties (via license) own all right, title and interest in and to the Services and content that may be presented or accessed through the Services (except for User Content as defined below), including without limitation all Intellectual Property Rights therein and thereto. All rights not specifically granted under these TOU are reserved to Nectari and its licensors. “**Intellectual Property Rights**” means any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide, whether registered or not.

You agree that you will not, and will not allow any third party, to (i) copy, sell, license, distribute, transfer, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Services, or content that may be presented or accessed through the Services for any purpose, unless otherwise permitted by these TOU or the functionalities of the Services; (ii) take any action to circumvent or defeat the security deployed or enforced by any functionality contained in the Services; or (iii) remove, obscure, or alter Nectari’s or any third party’s copyright notices, trademarks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Services.

The content, arrangement and layout of the Services, including but not limited to the trademarks, photos, logos, videos, audio, images, text (in the form of plain text, HTML, or PDFs) and Computer Code are proprietary to Nectari, either owned or under license, and may not be copied, imitated, reproduced, displayed, distributed, transmitted, decompiled or otherwise used without the express permission of Nectari, or as permitted by the functionality of the Services or these TOU. Any unauthorized use of the content, arrangement or layout of the Services, Computer Code, images, logos, videos, audio or trademarks found in the Services or any portion of or derivative works thereof may violate civil or criminal laws, including but not limited to intellectual property laws, and Nectari may take action accordingly.

The above paragraph further applies to third party property used as part of the Services, including but not limited to third party Computer Code. For the purposes of the present section, “**Computer Code**” includes but is not limited to source code in any programming language, object code, frameworks, CSS, PHP, JavaScript or similar files, templates, modules, or any similar files, and related documentation.

b. Submitted Information

If you choose to communicate to Nectari (via any means) suggestions for improvements to the Services or any idea or proposal related to Nectari or its businesses or properties (collectively, “**Feedback**”), Nectari shall own all right, title, and interest in and to the Feedback and will be entitled to use the Feedback without restriction. You hereby irrevocably assign all right, title and interest in and to the Feedback to Nectari and waive in favor of Nectari, its successors and assigns all your moral rights in the Feedback; and agree to provide Nectari such assistance as Nectari may require to document, perfect, and maintain Nectari’s rights to the Feedback. You acknowledge and agree that, by providing any Feedback to Nectari, you are not entitled to any compensation or reimbursement of any kind from Nectari under any circumstances.

6. External Links

a. General External Links

From time to time Nectari may provide links to other websites or services. Links from the Services may take you to websites or services not covered by these TOU. When you access third party resources on the Internet in this manner, you do so at your own risk. Nectari provides those links as a convenience to you and Nectari takes no responsibility for your use of those other websites or services or protection of your privacy (including collection of your personal information) on those other websites or services. We encourage you to check the Terms of Use and / or Privacy Policy of any website or service you visit. Nectari does not make any claim or warranty whatsoever about the content of those websites or services to which we link, or any products or services available through those websites or the third parties operating those websites.

In no way will Nectari be held responsible for any damages, direct or indirect, pecuniary or non-pecuniary: (1) arising from your use of websites or other services that may be linked to from the Services or the information thereon; (2) arising from any virus, Trojan horse, worm or other similar destructive file received as a result of your use of those websites or services; (3) caused by or in connection with, use of or reliance on any content, or products or services (whether free or for purchase) available on or through any linked-to website or service; or (4) arising from the actions of the operators of any such website or service.

b. Use of Google Maps

The Services make use of the Google Maps Platform for numerous functions, and when you use the Services, Google Maps may be opened from a link in the Services. Your use of Google Maps in the Services or on its own is subject to the current Google Maps/Google Earth Additional Terms of Service at https://maps.google.com/help/terms_maps.html and Google Privacy Policy at <https://policies.google.com/privacy>, which we encourage you to read.

7. Interruption of Services

From time to time, the Services may be unavailable for periods of time for maintenance and / or modifications to the Services. While we will endeavour to make this unavailability as brief as possible, Nectari shall not be held liable for any losses or damages, pecuniary or non-pecuniary, resulting from the interruption of the normal functioning of the Services, and disclaims any responsibility thereto.

8. Termination of the Services or Your Access to the Services and the TOU

You agree that Nectari, in their sole discretion, with or without cause, has the right (but not the obligation) to block your IP address, revoke your account credentials, or otherwise terminate your access to or use of the Services (or any portion thereof), immediately and without notice, if Nectari believes that you have acted inconsistently with the letter or spirit of the TOU or the Privacy Policy.

You may also end your access to the Services by contacting us at support@nectari.com or using the Support form available in the account management section when you are a Logged-in User.

Nectari may also, in their sole discretion and at any time, discontinue providing the Services, or any part thereof, with or without notice. You agree that Nectari shall not be liable to you or any third party for any losses or damages, pecuniary or non-pecuniary, resulting from termination of your access to the Services, or from Nectari's termination of the Services or any part thereof.

Termination of the Services or your access to the Services shall terminate the present TOU as between you and Nectari. All provisions of these TOU which by their nature should survive termination of these TOU shall survive termination, including without limitation, intellectual property provisions, disclaimers, indemnity and limitations of liability.

8. Disclaimer of Warranties

You expressly understand and agree that your use of the Services, the information thereon (whether provided by Nectari or third parties) or any activity arising from your use of the Services or the information thereon or the materials downloaded therefrom is at your sole risk. The Services, any materials downloaded therefrom, or any third party materials, are provided on an "as is" and "as available" basis, and you will be solely responsible for any damage to your computer system or Device or loss of data that results from the download, stream or access of any material obtained through the use of the Services or any other functionalities of the Services, or losses or damages (financial or otherwise) resulting from your use of the Services, the information thereon, any materials downloaded therefrom, or any activity arising from the use of the Services, the information thereon or any materials downloaded therefrom.

The information or resources provided through the Services, written or produced by Nectari staff, freelance writers or other subcontractors hired by Nectari are expected to be as accurate as possible at the time of writing or production, and every effort has been made to ensure that the information from the Services are as accurate and up-to-date as possible. However, certain information may change, and errors or omissions may occur. Nectari shall not be responsible for any loss or damage, financial or otherwise, resulting from changes or errors in information, or any omission, on the Services or the information thereon, or your reliance on such information whether the information is correct or not.

Nectari expressly disclaims all warranties of any kind, whether express or implied, including but not limited to: warranties of title and non-infringement; warranties that the Services, the information thereon or any materials downloaded therefrom, and any third-party materials will be uninterrupted, error-free, accurate, reliable and free from virus and other harmful components; and the implied warranties of merchantability and fitness for a particular purpose. Nectari, its affiliates and their respective Representatives, do not warrant that: (i) the Services will be secure or available at any

particular time or location; (ii) any defects or errors or omissions will be corrected; (iii) any content (whether provided by Nectari or third parties) available on or through the Services are free of viruses or other harmful components; (iv) functionalities of the Services will work equally in desktop and handheld or tablet device environments; or (v) the results of using the Services or any activity arising therefrom, or any content downloaded therefrom will meet your requirements.

Some of the content displayed on the Services may include elements that belong to or are provided by third parties. You acknowledge that Nectari assumes no responsibility for such content.

To the extent that the law does not permit a disclaimer of warranties, all content accessible on the Services, or any other website to which we link, and all operations on this Services are warranted only to the minimum amount legally required.

9. Limitation of Liability

In no case will Nectari or its Representatives or licensees be liable for any indirect, special, consequential, exemplary, punitive damages or other damages, or for any losses, damages, liabilities, costs and expenses arising out of or relating to (i) your access, use, misuse or inability to access or use the Services, or (ii) the interruption, suspension or termination of any part of or all the Services; and in both cases (i) and (ii) regardless of the cause of action (whether in contract, warranty, delict, quasi-delict, tort, negligence, strict liability or any other theory of liability) and even if we have been advised of the possibility of such damages. To the extent applicable and to the maximum extent permitted by law, and notwithstanding anything to the contrary in the TOU, in no event will our aggregate liability for any claims in connection with your use of the Services and exceed the amount of \$100.

You expressly understand and agree that Nectari or its Representatives or licensees shall not be liable for any direct, indirect, incidental, special, consequential, punitive or exemplary damages, including, but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses, in contract, tort, strict liability, negligence, general civil liability or any other cause of action under legal or equitable theory, relating to the Services, the information on the Services, your use of the Services, activities arising from your use of the Services, any third party materials on the Services, or any materials downloaded from the Services. This limitation of liability applies, without limitation, to any damages or injury caused by any error, omission or other failure of performance by Nectari or its Representatives; any interruption, defect or delay in operation or transmission, including communication line failure; any computer virus; and any theft, destruction or alteration of, or unauthorized access to or use of, any electronic records.

Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above exclusions and limitations may or may not apply to you.

10. Indemnity

Notwithstanding any other term of the TOU or any act or failure to act by Nectari or its Representatives, you agree to indemnify, defend and hold harmless Nectari and its Representatives, where applicable, from and against any damages, liabilities, costs and expenses (including attorneys' fees), claims or demands, arising out of (i) your use of or connection to the Services, the information thereon, the information downloaded therefrom; (ii) your participation in any activities arising from the Services or

the information thereon; (iii) your violation of, or failure to perform your obligations under the TOU or the Privacy Policy; or (iv) your violation of any rights of a third party.

11. Governing Law and Applicable Jurisdiction

These TOU and your use of the Services shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws applicable therein in force at the time without regard to conflict of law provisions. You agree that any legal action or proceeding between you and Nectari shall be brought exclusively in the courts located in the Judicial District of Montreal, Canada.

Notwithstanding the foregoing, Nectari shall have the right to bring action against you in courts of competent jurisdiction in the jurisdiction in which you reside or are located: (i) to seek injunctive relief against you; (ii) to obtain a judgment against you where a judgment by the Montreal court will, or may not be, enforced by the jurisdiction in which you reside or are located; or (iii) to enforce in your jurisdiction a judgment obtained against you in the Montreal court.

12. Miscellaneous Provisions

- (i) The TOU, in conjunction with the Privacy Policy and any Master Services Agreement or End User License Agreement that you have entered into with Nectari, constitutes the entire agreement between you and Nectari with respect to your use of the Services, superseding any prior agreements between you and Nectari.
- (ii) Nectari shall not be liable for any failure to perform its obligations under the present TOU where such failure results from any cause beyond Nectari's reasonable control, including, but not limited to, mechanical, electronic or communications failure or degradation, or any force majeure event.
- (iii) If any provision of the TOU or Privacy Policy is found by a court of competent jurisdiction to be invalid, you and Nectari nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOU or Privacy Policy, as the case may be, shall remain in full force and effect.
- (iv) The failure of Nectari to exercise or enforce any right or provision of these TOU does not constitute a waiver of such right or provision, which will still be available to Nectari.
- (v) The section titles in the TOU and Privacy Policy are for convenience only and have no legal or contractual effect.
- (vi) The parties acknowledge having expressly required that these TOU and the Privacy Policy are to be drawn up in the English language. *Les parties aux présentes reconnaissent avoir expressément exigé que les présentes Conditions d'utilisation et la Politique de confidentialité soient rédigées en anglais.*