

## Terms of Service v10

Updated 27<sup>th</sup> August 2021

### 1. Introduction

- 1.1. The terms and conditions set out in these Terms of Service including our Content Policy and Data Protection Addendum (collectively, the “Terms”) apply to each order placed with and the service provided by Nectarine Limited t/a Nectarine (“Nectarine”, “we”, “our” or “us”) from time to time relating to subscriptions to our web-based content platform (“Service”) currently located at [nectarine.pr](https://nectarine.pr) (“Site”). Nectarine is the owner and operator of the Service.
- 1.2. Orders may be placed for the Service online by submitting a webform via our Site or by signing and submitting a standalone order form document (each, an “Order”). Each Order submitted to us shall be deemed an offer by the company or other organisation specified in the Order and on whose behalf it is submitted to us (“you” or “your”) to purchase a subscription to the Service subject to and in accordance with these Terms.
- 1.3. You must be a commercial or other organisation acting in the course of trade to place an Order. We do not accept Orders from consumers.
- 1.4. Each Order shall be entered into by you and Nectarine and, once accepted by Nectarine, forms a binding contract between you and Nectarine (each a “party” and together the “parties”) which incorporates these Terms (“Contract”). We shall have no obligation to enter into a Contract and each Contract shall not enter into force or be legally binding or have any other effect unless the parties have validly executed the Order or you have submitted and paid for the Order, as applicable (“Contract Date”).
- 1.5. Each Contract shall commence on the Contract Date and shall continue in force on a rolling monthly basis (“Rolling Contract” and each such month a “Contract Month”) or until the Contract expires where an expiry date is expressly specified in the Order (“Fixed-Term Contract”), in each case, unless and until terminated at an earlier date in accordance with clause 12 below (“Subscription Period”).

### 2. Interpretation

- 1.6. In the event of any conflict or inconsistency between the provisions of an Order and these Terms, the latter shall prevail to the extent necessary to resolve such conflict or inconsistency (except in relation to any Special Conditions set out in an Order which shall take precedence over the provisions of these Terms).
- 1.7. The headings used in these Terms are for convenience only and shall not control the meaning or the interpretation of any of the provisions in these Terms.
- 1.8. Words that appear after the expression “include”, “including”, “other” “for example”, “such as” or “in particular” (or any similar expression) in these Terms shall not limit the meaning of the words appearing before such expression.

### 3. Access to the Service

- 3.1. We shall provide you with access to the Service from the subscription commencement date specified in the Order (if an order document) or otherwise from the Contract Date.
- 3.2. We shall supply you with instructions to create access credentials on or around the Contract Date up to the total number of Authorised Users (as defined in clause 3.4 below) specified in the Order (“Logins”).
- 3.3. Authorised Users with a Login are permitted to create, edit and publish via the Service webpages containing curated content (“Pages”) in connection with brands or campaigns relating to your business and/or its activities (“Brands”) in accordance with the provisions set out under clause 4.
- 3.4. We authorise you to provide members of your and, if applicable, your marketing service providers’, personnel (“Authorised Users”) with access to the Service via a Login for the duration of the

Subscription Period only and for such users to use the Service in accordance with the provisions set out under clause 4 below.

- 3.5. We reserve the right to use appropriate technical protection measures to control access and/or to detect unauthorised use of the Service in accordance with these Terms provided that no such measure shall adversely affect your rights under them.
4. Permitted uses and restrictions of use of the Service
  - 4.1. We permit you and Authorised Users to use the Service during the Subscription Period on a non-exclusive basis in the following ways, in each case, only in connection with Authorised Users' performance of their duties for your business via their allocated Login:
    - 4.1.1. to create and edit Brands;
    - 4.1.2. to create, view and edit draft Pages by uploading content to the Site using the Service and using the online tools and functionality provided. Any content which you upload or post to the Site or create using the Service ("user generated content" or "UGC") must comply with our Content Policy located at the end of these Terms of Service; and
    - 4.1.3. to publish and view Pages online, distribute links to them generated by the Service and edit Pages after publication.
  - 4.2. You acknowledge that the extent to which an Authorised User shall have the usage rights set out in clause 4.1 shall be dependent on the type of Login allocated to that user and the configuration of the permissions you have made for that user's account.
  - 4.3. Any use by you or Authorised Users of the Site other than via your account (e.g. to view content and/or pages created by other users) shall be exclusively governed by the terms and conditions set out in the [Terms of Use](#).
  - 4.4. Nothing in these Terms: (i) authorises you or Authorised Users to divulge or distribute any Login details to any person other than an Authorised User; (ii) grants any person other than you and Authorised Users the right to access or use the Service without our prior written consent; (iii) authorises you to grant or facilitate access to Authorised Users in a way that could reasonably be viewed as substitutable for a subscription to the Service by a third party employer of those users; or (iv) shall affect our ability to grant any third party access to the Service.
  - 4.5. By uploading any UGC using the Service you warrant, represent and undertake to us and to other users that: (i) you either own any copyright and other intellectual property rights in that content or that you have obtained the necessary right(s) to make the UGC available through the Site (or, where, applicable, the right to embed or link to that content) in accordance with these Terms and to permit its use via the Site or in any other way permitted under these Terms; and (ii) you will not be infringing anyone's rights or breaching any law or regulation (including Data Protection Laws (as defined in the Data Protection Addendum), by contributing that UGC and by allowing it to be used in the ways described in these Terms.
5. Payment
  - 5.1. If you place an Order via the Site, we only accept payment using the types of payment methods listed on the Order submission page. When placing an Order, you confirm that the form of payment that you use to make payment to us is yours and that the person acting on your behalf has authority to place the Order.
  - 5.2. If you place an Order using an order form document, we shall invoice you using the details in your Order and you shall pay all the fees specified in the Order (collectively, the "Fee") in accordance with the payment terms set out in that document.
  - 5.3. We will take payment from you in advance using the payment details you provide in the Order. If the Fee is payable monthly it shall be due on the date we accept the Order and on that date on each month thereafter and we shall take payment from you accordingly. .
  - 5.4. The Fee is exclusive of VAT and of any equivalent sales taxes.

- 5.5. We shall be entitled to claim interest on the late payment of any amount properly due to the Supplier under the Contract accruing on a daily basis from the due date until the date of actual payment in full, both before and after judgment, at a rate equal to the statutory interest prescribed for such purposes under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time.
  - 5.6. The parties may from time to time agree in writing that a company controlling, controlled by or in common control with you ("Affiliate") may pay the Fee and any interest due under a Contract. The parties acknowledge and agree that where any payment is made by an Affiliate to Nectarine, such payment shall not affect or reduce your responsibilities or obligations under these Terms and/or any Contract.
6. Availability of the Service
- 6.1. We make every effort to make the Service available to you and Authorised Users at all times during the Subscription Period (except during periods of routine or essential maintenance), and to restore access to the Service as soon as possible in the event of its interruption or suspension. In the event that the Service is unavailable for longer than 12 consecutive hours ("Incident") under a Fixed-Term Contract, we will provide a 14 day extension to the Subscription Period, up to a maximum of 56 days in aggregate for all Incidents. Such extension shall be your sole and exclusive remedy in respect of the unavailability of the Service.
  - 6.2. We reserve the right:
    - 6.2.1. to conduct routine and/or essential maintenance, software upgrades and other works necessary to maintain the efficient provision of the Service. Where such works result in the Service becoming temporarily unavailable, we will provide you and/or Authorised Users with advance notice wherever possible; and
    - 6.2.2. to make changes at any time to all or any parts of the Service (including changes to the URL or method by which the Service is accessed and to these Terms (but not to any of the terms expressly set out in an Order)), provided that the functionality and performance of the Service shall not be substantially and adversely affected by any such changes. These changes may take the form of the addition, revision, correction, removal or editing of features or content or the migration of the Service to a different format. Furthermore, these changes may be made for, without limitation, legal, editorial or commercial reasons.
7. Your obligations
- 7.1. You shall (and procure that Authorised Users shall):
    - 7.1.1. keep confidential your access details to the Service and shall not disclose them to any third party, unless expressly authorised by us in writing;
    - 7.1.2. ensure that any unauthorised disclosure or use of such access details is reported to us as soon as you or your Authorised Users become aware of it. You will be responsible for any misuse of the Service or unauthorised disclosure of access details by Authorised Users; and
    - 7.1.3. access and use the Service and the content available through it only in accordance with these Terms and the terms of the relevant Contract.
  - 7.2. We reserve the right to monitor the use of the Service (including the use of internet protocol ("IP") addresses) and you shall provide such assistance and use of your facilities as is reasonable for us to carry out investigations into the misuse of or unauthorised access to the Service.
  - 7.3. In the event of any unauthorised use of the Service and/or failure to pay to us any sum under a Contract when it falls due, we may, at our discretion and without prejudice to any other remedy, suspend or terminate access to one or more Authorised Users by such method as we deem appropriate (e.g. by disabling access to the Service by one or more IP addresses or ranges). In the case of suspension, this will continue until we are satisfied that the unauthorised use will not recur.
  - 7.4. You shall ensure that a link to an appropriate privacy statement is included on any Pages that are made available from your account to end users of the Site where such Pages contain any personal

information and that you shall comply with all Data Protection Laws (as defined in the Data Protection Addendum).

- 7.5. You acknowledge and agree that you are solely responsible for ensuring that you have all licences, rights, permissions and consents (“Licences”), including but not limited to any Licences required from applicable collecting societies and rights clearance centres (by way of example only, the Newspaper Licensing Agency, Copyright Licensing Agency and Copyright Clearance Center), required by:
  - 7.5.1. you and/or Authorised Users to reproduce, upload, create, link to, embed, publish and distribute all content within the Pages you create on the Site; and
  - 7.5.2. end users of the Site to download and view the content within the Pages you create.
8. Intellectual Property Rights
  - 8.1. You hereby grant to us and our third party suppliers and contractors non-exclusive, unlimited, royalty-free, fully paid up, worldwide permission (including the right to sublicense that permission) to use your UGC and Pages: (i) to provide the Service to you and Authorised Users; and (ii) to provide the Site (and content therein) to our end users. Nothing in this clause 8 shall prevent our use of any UGC under a separate licence from the relevant rights owner or pursuant to the exceptions provided under applicable copyright law.
  - 8.2. We will retain our ownership of all intellectual property rights (including but not limited to copyright and database right) in the Site and Service and any content we make available through them (other than your UGC). The intellectual property rights in your UGC will be retained by you or your licensors, as applicable.
  - 8.3. ‘Nectarine’ and the Nectarine logo are trade marks of Releasd Limited. All other brand names and trade marks that appear on the Service and its content are trade marks or trade names of their respective holders. No permission is given in respect of the use of any of these names and marks.
9. Warranties and indemnities
  - 9.1. Each party warrants, represents and undertakes that:
    - 9.1.1. it has full right and authority to enter into each Contract and is not prevented from doing so under the terms of any agreement or arrangement with any other party; and
    - 9.1.2. in entering into any Contract, it is not in breach of any of its ongoing express or implied obligations to any third party.
  - 9.2. We warrant, represent and undertake that:
    - 9.2.1. we will operate the Service with reasonable skill and care and will use reasonable endeavours to correct any faults of which we are aware; and
    - 9.2.2. the exercise of the rights granted to you and/or Authorised Users under each Contract in accordance with these Terms will not infringe the rights of any third party.
  - 9.3. You warrant, represent and undertake that:
    - 9.3.1. in performing your obligations under these Terms and in the course of your access and use of the Service, you will comply with all applicable laws and regulations (including but not limited to your obligations as a Controller, as defined in the Data Protection Addendum) and will procure that Authorised Users do the same; and
    - 9.3.2. you will not do, or omit to do, anything that is likely to: (a) prejudice or impair our intellectual property rights; or (b) damage or otherwise devalue the reputation or goodwill associated with such intellectual property rights and/or the Service and/or Nectarine.
  - 9.4. You shall indemnify, defend and hold harmless Nectarine, its officers, members, employees and licensors from and against any claim, liability, cost, damage or loss that they may suffer or incur

(including reasonable legal fees) arising out of or connected with any claim by any third party against any of them arising from your or Authorised Users' breach of these Terms or any Contract.

- 9.5. We shall indemnify, defend and hold harmless you from and against any claim, liability, cost, damage or loss that you may suffer or incur (including reasonable legal fees) arising out of or connected with any claim by a third party against you arising from a breach by Nectarine of the warranty it provides under clause 9.2.2 except in relation to any UGC or third party content made available via the Service.
- 9.6. Whenever a party ("Indemnifier") is required to indemnify the other party ("Indemnified") in accordance with these Terms, the Indemnified shall: (i) notify the Indemnifier promptly upon becoming aware of any matter or claim to which the indemnity relates; (ii) not make any admission or settlement in respect of such matter or claim without the Indemnifier's prior consent; and (iii) allow the Indemnifier to appoint legal advisers of its choice and to conduct or settle negotiations or proceedings relating to such matter or claim.
10. Exclusions and Limitations of Liability
- 10.1. The express terms and conditions in these Terms shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.
- 10.2. In particular and subject always to the provisions of the Data Protection Addendum:
- 10.2.1. except as set out in clause 6, we cannot guarantee that the Service, any UGC or its other content will always be available, accessible, backed-up or error-free. You will be responsible for keeping a separate copy of the UGC you include in any Pages; and
- 10.2.2. we make no warranties in respect of any harm that may be caused by the transmission of a computer virus, worm, time bomb, Trojan horses, cancelbots, logic bomb or any other form of programming routine designed to damage, destroy or otherwise impair a computer's functionality or operation including transmission arising from you and/or Authorised Users' upload or download of any content, software they use to download the content or the server that makes the Service and such content available. In this respect you agree that it is your responsibility to install suitable anti-virus and security software on your computer hardware and other devices to protect against any such bugs, viruses or other such harmful programming routines ("Malware"). Any content downloaded or otherwise obtained through the use of the Service is done at your own risk and you will be solely responsible for any damage to your computer system or loss of data that results from the download or use of any such content or any Malware.
- 10.3. Nothing in these Terms shall restrict or exclude the liability of either party for:
- 10.3.1. death or personal injury resulting from its negligence, for fraud or fraudulent misrepresentation or for any other liability that cannot be limited or excluded by applicable law; or
- 10.3.2. its wilful misconduct or deliberate default of these Terms.
- 10.4. Subject to clause 10.3 and to the fullest extent permitted by law, neither party shall be liable for: (i) any loss of information or data (whether of a confidential nature or otherwise), use, reputation, goodwill or opportunity; (ii) any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether such loss is direct or indirect; or
- (iii) any indirect, special, incidental, punitive, consequential damages or losses that the other party may suffer, in each case howsoever arising.
- 10.5. Notwithstanding any provision to the contrary, nothing in these Terms shall exclude or limit your indemnification obligations under clause 9.4.
- 10.6. Subject to the foregoing provisions in this clause 10:

- 10.6.1. our maximum aggregate liability to you, whether arising in contract, tort, out of breach of statutory duty or otherwise, and, whether in respect of a single event, series of connected events or of unconnected events, under or in connection with: (i) a Rolling Contract in each Contract Month will be limited to the Fee paid by you to us under that Contract in that Contract Month; and (ii) a Fixed-Term Contract will be limited to the Fee paid by you to us under that Contract; and
- 10.6.2. your maximum aggregate liability to us arising from or in connection with a Contract, whether arising in contract, tort, out of breach of statutory duty or otherwise, and, whether in respect of a single event, series of connected events or of unconnected events, will be limited to the Fee and interest paid or payable by you to us under that Contract.

## 11. Data Protection

- 11.1. Each party shall comply with the provisions in the Data Protection Addendum.

## 12. Termination and Effect of Termination

- 12.1. Either party may terminate any Contract immediately by giving written notice to the other party:
  - 12.1.1. if the other party commits any breach of these Terms in relation to that Contract (which, in your case, is a breach you commit other than a breach referred to in clause 12.3) and fails to remedy that breach (if capable of remedy) within fourteen (14) days after notice from the other party giving full particulars of breach and requiring it to be remedied;
  - 12.1.2. if the other party: enters into liquidation; makes any arrangements with, or makes a general assignment for the benefit of, its creditors; has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets; ceases (or threatens to cease) to carry out its business; makes any material change in its business; or suffers any analogous process under any foreign law; or
  - 12.1.3. in accordance with the Data Protection Addendum.
- 12.2. Either party may terminate any Rolling Contract by giving written notice to the other party after which the Contract shall terminate at the end of the Contract Month in which the notice is received.
- 12.3. We may terminate any Contract immediately by giving written notice: (i) if you fail to pay any sum due under any Contract when it falls due; (ii) if any Authorised User commits a material breach of the Content Policy and/or the Terms of Use; and/or (iii) in the event of unauthorised use or misuse of the Service which continues for a period of more than fourteen (14) days or and which, following written notice to you by us, is not brought to an end immediately.
- 12.4. The Fee is non-refundable and no refunds shall be provided by us if a Contract terminates for any reason.
- 12.5. Upon expiry or termination of a Contract:
  - 12.5.1. access to the Service by you and all Authorised Users shall terminate immediately under that Contract;
  - 12.5.2. all Logins relating to that Contract will be deleted; and
  - 12.5.4. you must destroy (so that they are not recoverable) any Login information provided to you and/or Authorised Users in connection with that Contract.
- 12.6. Subject to the Data Protection Addendum, we will, within a reasonable time of your written request, delete your account information and/or any Pages and content within them from the Service, in each case, relating to any Contract that has expired or terminated in accordance with these Terms.

- 12.7. The expiry or termination of a Contract will not affect any right to damages or other remedy to which a party is entitled at the date of expiry or termination and, in the case of termination, which the terminating party may have in respect of the event giving rise to the termination.
- 12.8. In the event of expiry or termination of any Contract, clauses 5, 7, 8, 12 and 13 shall remain in full force and effect.
13. General
- 13.1. Counterparts. Each Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts of a Contract shall together constitute the one Contract.
- 13.2. Severability. If any part of these Terms is found to be unenforceable as a matter of law, all other parts of these Terms will not be affected and shall remain in force. For the avoidance of doubt, should these Terms or any part of them be deemed void or voidable, this shall not affect the validity of any licence provided under a Contract.
- 13.3. Entire agreement. Each Contract constitutes the entire agreement between the parties in relation to that Contract and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter of the relevant Contract. No terms and conditions (other than these Terms) endorsed upon or delivered with an Order, purchase order, confirmation of order or other document or contained in any document other than an Order (whether or not any such document is referred to in the Contract) or any terms that you seek to impose or incorporate will form part of any Contract between the parties
- 13.4. No reliance. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.
- 13.5. No partnership. Neither these Terms nor any Contract constitutes, establishes or implies any partnership, joint venture, agency, employment or fiduciary relationship between the parties.
- 13.6. Events or circumstances beyond our reasonable control. If we are prevented or delayed from complying with our obligations under these Terms (or any Contract under them) by anything you, or anyone acting on your behalf, does or fails to do or due to events or circumstances beyond our reasonable control (including, but not limited to, fire, flood and other acts of God, strikes, trade disputes, subcontractors' non-performance, lock outs, restrictions of imports or exports, riot, accident, disruption to energy supplies, civil commotion, acts of terrorism or war) then our inability or delay in performing our obligations will not be deemed to be in breach of these Terms or the applicable Contract.
- 13.7. References to 'including' and other similar expressions. In these Terms, words that appear after the expression 'include', 'including', 'other', 'for example', 'such as' or 'in particular' (or any similar expression) will not limit the meaning of the words appearing before such expression.
- 13.8. Assignment. You may not assign, sub-license or otherwise transfer any of your rights under these Terms or any Contract. We may subcontract part or all of the performance of the Service and/or our obligations under these Terms or any Contract and may assign, sublicense or otherwise transfer any of our rights and benefits under the same.
- 13.9. Waiver. If you breach these Terms and we choose to ignore your breach, we will still be entitled to use our rights and remedies at a later date or in any other situation where you breach the Terms again.

- 13.10. Exclusion of third party rights. These Terms do not create any right enforceable under the Contracts (Right of Third Parties) Act 1999 by any person who is not a party to a Contract made under them.
- 13.11. Notices. All notices, requests, instructions, consents and other communications which are required or permitted under these Terms or any Contracts will be in writing and will be deemed to be given: (i) when delivered by hand to the recipient's address at the time of such delivery; or (ii) when sent by post (with proof of posting) or email (with copy sent by post) to the postal or email address, 2 working days (being a day other than a Saturday, Sunday or public holiday in England) after the date of posting or sending. However, any Documented Instructions (as defined in the Data Protection Addendum, or notices declaring a breach of, or terminating, a Contract, will be given only in person or by recorded delivery post or by courier delivery to the recipient's address. Notice of change of address will be given in the same manner as other communications. For the purposes of this clause 13.11, your email address and postal address shall be as set out in the Order and our email address and postal address are as follows: [hello@nectarine.pr](mailto:hello@nectarine.pr) and Releasd Limited t/a Nectarine, 5 Jardine House, Harrovia Business Village, Bessborough Road, Harrow, Middlesex, England, HA1 3EX.
- 13.12. Governing law and jurisdiction. These Terms and all Contracts made under them (and any dispute or claim arising out of or in connection with them or their subject matter or formation) shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts. Nothing in this clause 13.12 will prevent us from applying to the court of any jurisdiction for any injunctive or interim relief or such other provisional or protective measures as are available under the laws of that jurisdiction.

## Content Policy

Welcome to [nectarine.pr](https://nectarine.pr) ("the Site"). The Site and the content presentation subscription service we provide through it ("the Service") is owned and operated by Releasd Limited t/a Nectarine ("Nectarine", "we" or "our").

This Content Policy sets out the terms that govern the content you upload, create, embed or link to on the pages you create and publish via the Site ("Pages"). To make this policy easier to read we refer to this content as "user generated content" or "UGC" and to visitors to the Site who view your Pages as "Visitors".

You may only access the Service and edit, create and/or publish Pages via an account provided to you by an account administrator in accordance with their permitted use under a valid subscription agreement with us. Nothing in this Content Policy grants you with any licence or other right of access or use of the Site or Service other than as provided under that subscription.

If you have any queries relating to your access to the Site or this Content Policy, please contact us by email at [hello@nectarine.pr](mailto:hello@nectarine.pr).

### 1 YOUR USER GENERATED CONTENT

- 1.1 Your UGC includes any text, hyperlinks, metadata, images, audio, and/or video content and/or HTML or other programming code or other language that you may upload, embed or link to when creating a Page.
- 1.2 You agree to ensure that:
- o Any Page that you publish through the Service and all UGC that you upload to the Site is:
    - not in breach of any applicable laws, statutes, codes of practice and regulations in force from time to time;

- lawful and not defamatory, abusive, threatening, harassing, obscene, discriminatory, likely to cause distress, intended to incite hatred or otherwise objectionable or embarrassing to any other person as determined by us in our sole discretion;
  - accurate and true in all respects and is not misleading in any way;
  - does not contain any personal data about any person unless you have obtained their prior consent to do so or otherwise have a lawful basis to process such data. This includes any information that could potentially identify an individual such as their name, date of birth, email or home address, information about their family, any contact information or any sensitive information (e.g. regarding their ethnic background or their religious beliefs). In the case of minors, you shall ensure that you obtain consent from their parents before you process their personal data;
  - not in breach of any copyright and, in the case of any photos, audio, video or other material containing images that identify individuals, that you have their full permission or otherwise have a lawful basis to make their image and/or likeness available through the Site and to permit their use by Visitors and other users in the way described in this Content Policy and our [Terms of Use](#).
- o you will distribute links to any Pages that you publish or any UGC contained in them in a responsible and lawful manner;
  - o you will use the Service lawfully and only for the purposes for which it has been provided and always in accordance with this Content Policy and the [Terms of Use](#).

### 1.3

You may not:

- o except as permitted under this Content Policy and the [Terms of Use](#), copy, modify, or distribute our content or trade marks, or that of our licensors or any content or trade marks owned by a third party unless you have our or their explicit permission, as applicable;
- o use the Service to upload or distribute any malicious code or viruses or any other harmful programming routines (or links to them) that may harm the Site, Service, Visitors or other users, their devices or that otherwise interfere with or disrupts our servers;
- o falsely state in a Page (or otherwise misrepresent) your affiliation with a person, brand, campaign or entity;
- o engage in any conduct that restricts or inhibits our customers, Visitors or any other user from using or enjoying the Site or Service or which, in our judgment, exposes us to any liability or detriment of any type;
- o use the Service or any links to the Site to harass or mislead or act unlawfully towards any Visitor, user or other individual or third party;
- o use the Service or engage in any action or behaviour that reflects poorly on us or otherwise disparages or devalues our reputation or goodwill or that of our licensors;
- o use the Service or the Site to disrupt or harm the Service, the Site or any website or service provided by a third party;
- o continue to use the Service, or allow others to do the same, if access to your account has been suspended or terminated.

## 2 MISUSE OF THE SERVICE

2.1 We reserve the right (but are not obliged) to do any or all of the following for all users of the Service:

2.1.1 edit or remove any Page or UGC on the Site, if such content breaches the terms of this Content Policy;

- 2.1.2 remove without notice any Page or UGC that is abusive, illegal, or disruptive, or that otherwise fails to conform with this Content Policy whether before or after such content is published using the Service;
- 2.1.3 temporarily suspend or permanently terminate your access to the Site or Service for any reason (including for copyright infringement) at our sole discretion. The length of suspension may vary depending on the reasons for the suspension. If we suspend or terminate your access under your account and you try to access the Service via another account, we may suspend or terminate access to that other account too;
- 2.1.4 investigate a claim that any one or more Pages or items of UGC do not conform to the terms of this Content Policy and decide to remove or request the removal (e.g. from a third party website) of the Page or any UGC.
- 2.2 You may not use the Service to dispute or argue about any decision we make.
- 2.3 Any decision we make to remove or request the removal of any Page and/or UGC or to terminate or suspend your account shall be final and binding.
- 3 **CHANGES TO THIS CONTENT POLICY**
- 3.1 We may change this Content Policy from time to time and will notify your account administrator of such changes and/or post the modified versions of the policy on the Site. Please check the Site and with your administrator regularly as you are responsible for ensuring that you comply with the most recent version of this Content Policy.

## Data Protection Addendum

### 1. INTRODUCTION

- 1.1 We process personal data in the course of providing the services under each Contract. Data protection laws apply to the processing of that data which include the requirement that specific provisions are included in the terms of each Contract in respect of processing for which we are a Processor (as defined below).
- 1.2 This Data Protection Addendum (**DPA**), as amended by us from time to time, forms part of and shall be deemed incorporated into each Contract.

### 2. DEFINITIONS

- 2.1 Expressions defined in the Terms of Service shall have the same meanings when used in this DPA.
- 2.2 In this DPA, the following expressions shall have the following meanings:

**Controller, Processor, Data Subject, Personal Data, Process and Processing** shall have the respective meanings given to them (and equivalent, expressions) in Data Protection Laws, and **Client Personal Data Personal Data Breach** means the Personal Data set out in the Description of Processing where such data is Processed by us as a Processor on your behalf;

**Data Protection Laws** means any applicable legislation in force from time to time relating to the protection of personal data of individuals including, where applicable, the UK GDPR (as defined in and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended)) and the General Data Protection Regulation (EU 2016/679) (together, the **GDPR**) and the Data Protection Act 2018 (or any successor legislation);

**Documented Instructions** means the information in the attached Description of Processing, together with any additional instructions sent by you in an email or letter sent directly to Nectarine expressly referencing this DPA; and

**Liabilities**

means all losses, reasonable costs, charges, expenses, legal and other professional costs awarded against, suffered, incurred or paid by us or you, as applicable (and **Liability** shall be construed accordingly).

2.3 You acknowledge and agree that: (i) you are a Controller and that we are a Processor for the purposes of Processing Client Personal Data; and (ii) we are a Controller in relation to any Processing described in our [Privacy Policy](#) and [Cookie Policy](#).

2.4 In respect of any Client Personal Data Processed by us, we shall:

2.4.1 only Process Client Personal Data in accordance with your Documented Instructions from time to time unless we are required by Data Protection Laws applicable to us to Process that data otherwise than in accordance with those instructions (in which case we shall notify you unless the law prohibits us from doing so on public interest grounds). ;

2.4.2 ensure that those of our staff who have access to and/or Process Client Personal Data are committed to keeping Client Personal Data confidential;

2.4.3 implement appropriate technical and organisational measures to protect against accidental, unlawful or unauthorised destruction, loss, alteration or disclosure of, or access to, Client Personal Data in accordance with our obligations under Data Protection Laws;

2.4.4 with your general authorisation (which you hereby provide) engage other Processors to Process the Client Personal Data (**Sub-Processor**) provided we notify you of any intended changes concerning the addition or replacement of Sub-Processor(s) and provide you with the opportunity to object to such changes. Any objections must be notified to us in writing within fourteen (14) days of the date of our notice to you. If we do not receive an objection from you within such period, you shall be deemed to have given your authorisation for us to use such Sub-Processor. If you object within such period or after we notify you in writing that a Sub-Processor we propose does not accept some or all of the obligations set out above in this DPA (or after we notify you in writing that an existing Sub-Processor is no longer bound by some or all of those obligations), then we and you shall, acting in good faith, discuss, and each of us use reasonable (but commercially prudent) endeavours to resolve your objections. If we are unable to resolve these within fourteen (14) days of your objection, we or you may terminate any affected Contract without liability on giving seven (7) days' written notice to the other party;

2.4.5 not transfer any Client Personal Data outside of the United Kingdom and European Economic Area (**EEA**) if such transfer would directly cause you to breach your obligations under Article 44 of the GDPR. Subject to the foregoing provisions of this paragraph 2.4.5, you hereby consent to any of our Sub-Processors transferring Client Personal Data outside the UK and/or EEA. Any standard contractual clauses issued by the European Commission or other competent body and entered into between you and us pursuant to this paragraph 2.4.5 shall, once executed, be incorporated into and form part of this DPA. You shall promptly enter into any such standard contractual clauses as we require to comply with this DPA and/or Data Protection Laws;

2.4.6 provide such assistance (at your cost and to such extent permitted by Data Protection Laws) as you may reasonably require in responding to any request from a Data Subject and in ensuring compliance with your obligations under Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with any data protection regulators. In no event shall we be obliged to respond directly to any such request or correspondence unless specifically required to do so by law; and

2.4.7 for the sole purpose of demonstrating our compliance with this DPA, provide such information as you reasonably require, or where, in our reasonable opinion, the provision of information alone is not reasonably sufficient for that purpose, allow for and contribute to an audit (including inspection) of the relevant parts of our business by up to two (2) of your representatives (in each case, at your cost, including any auditors' or administrative fees). You shall give not less than one (1) month's prior written notice prior to the date you wish to conduct the audit and shall

conduct any such audit no more than once per calendar year at such time and date that is convenient for us (except where required otherwise by a data protection regulator with competent jurisdiction). You shall promptly notify us in writing of any non-compliance discovered by such audit. You shall not disclose to any third party (other than, where applicable, the external auditor performing the audit) any information or reports obtained or produced in connection with any such audit and shall use such information and reports solely for the purposes of meeting your regulatory audit requirements and/or confirming our compliance with the requirements of this DPA. You shall ensure that you take reasonable steps and any steps we request to minimise any interruption to our business when exercising your rights under this paragraph 2.4.7. If a third party conducts the audit, we may object to the auditor if the auditor is, in our reasonable opinion, not suitably qualified or independent, our competitor or a competitor of our shareholders, or otherwise manifestly unsuitable. If we do object, we may require you to appoint another auditor or to conduct the audit yourself.

- 2.5 You shall: (i) ensure that all Documented Instructions you issue to us comply with Data Protection Laws; (ii) be, and remain, solely responsible for the content of the Description of Processing and for determining the lawful basis and conditions for the Processing of all Client Personal Data in connection with each Contract; and (iii) not seek our assistance in respect of any activities or tasks that can be performed by you. You shall immediately notify us in writing if the Description of Processing is inaccurate or incomplete at any time together with full details.
- 2.6 To the extent permitted by law, we accept no liability for any inaccurate data (including Personal Data) provided to you as part of the Services to the extent that such inaccuracy arises from incorrect data provided by you, any Data Subjects or any sources that are not our Sub-Processors. We make no representations or provide any guarantees that the Service or the Client Personal Data is fit for a particular purpose or shall meet your requirements.
- 2.7 We shall not be liable for any Liabilities in connection with this DPA or the Services to the extent that we are not in any way responsible for the event giving rise to the Liabilities or you are responsible for the Liabilities, in each case, in accordance with Article 82 of the GDPR.
- 2.8 Notwithstanding paragraph 2.4.1, we shall have no obligation to comply (nor any Liability for non-compliance) with your or Authorised Users' use of the Services or any of your instructions which in our opinion shall or are likely to: (i) vary the provisions of any Contracts; (ii) be inconsistent with the Description of Processing; or (iii) breach any Data Protection Laws.
- 2.9 We shall immediately notify you if, in our opinion, any Documented Instructions you provide to us breach Data Protection Laws. You shall not rely on such notice, which you acknowledge and agree does not constitute legal advice. You shall seek independent legal advice if you wish to determine whether any instruction received by us and which we believe breaches Data Protection Laws, is in fact a breach or likely to be a breach of those laws.
- 2.10 Following expiry or termination of a Contract (at your option and cost) we shall either return to you and/or delete any Client Personal Data Processed by us solely as a Processor, in each case, in accordance with the terms of the relevant Contract, except where we are required to store it pursuant to applicable law.
- 2.11 We and you acknowledge and agree that the following shall be determined by Authorised Users using the Service in their sole discretion: the type of Client Personal Data uploaded or posted to the Service, the categories of Data Subject to whom the data relates, the subject-matter of the Pages and content within them (including the subject matter of any Client Personal Data they include), in each case, subject to the restrictions set out in our Contents Policy.

## DESCRIPTION OF PROCESSING

### Processing of Client Personal Data

Subject matter: Processing in connection with the provision of the Service to Authorised Users.

Nature: Collection, making available, storage, disclosure to and receipt from third parties, structuring, retrieval, alteration, restriction, deletion and destruction.

Duration: The Subscription Period and any deletion period set out in clause 12 of the [Terms of Service](#).

### Purposes of the Processing

The Processing is necessary for the following purposes:

To provide the Service (including the features and functionality as described at [nectarine.pr](https://nectarine.pr) from time to time).

### Data Subjects

The Client Personal Data relates to the following categories of Data Subjects:

As determined by Authorised Users in their sole discretion.

### Categories of Personal Data

The Client Personal Data Processed falls within the following categories:

UGC that is Personal Data for use in connection with any Pages.

### Special categories of Personal Data and/or criminal offence/conviction data

The Client Personal Data Processed falls within the following special categories of Personal Data/criminal offence/conviction data:

Any special categories of Personal Data or criminal offence/conviction data comprised in any UGC.

### Rights and obligations of the Controller

Your rights and obligations as a Controller in relation to the Client Personal Data shall be as set out in this DPA and Data Protection Laws.