

Blue Nectar agrees to furnish services to the Client, subject to the following User Agreement.

**1. Definitions**

**a. Blue Nectar**

Any reference to Blue Nectar is deemed to include, its directors, employees, and organisations that supply services to Blue Nectar. Blue Nectar is registered with the Australian Government under ABN 90 467 669 562

**b. Client**

The person or persons, organisation, company, partnership and or group of individuals that are a party to using the services offered by Blue Nectar. This also includes the Clients directors, servants, agents or employees

**c. Services**

The services plan offered by Blue Nectar on the Blue Nectar Web Site or via a quote presented by a Blue Nectar authorised representative.

**d. Notice**

The Client is deemed to have been "given notice" under this agreement when an email is sent to the primary email address maintained by the client on the Support Forum site <http://www.blunectar.com.au>. The Client is also requested to maintain a secondary email account independent of our current service.

**e. Agreement**

Any reference to "Agreement" is deemed to include this entire User Agreement and the written quote offered by the Blue Nectar website and/or a quote presented by an authorised representative of Blue Nectar. The Client acknowledges and agrees that this Agreement is the entire Agreement between the parties and excludes all oral or implied representations and terms unless such terms are agreed between the parties in writing.

**f. Currency**

All reference to fees and charges in this agreement with the exception to the quoted service fees, are expressed in United States Dollars. Clients will be invoiced in the equivalent amount in the currency quoted in the service fees. Blue Nectar will refer to a credible financial Institution to determine the exchange rate.

**2. Acceptance of this Agreement**

The use of Blue Nectars services is deemed to constitute acceptance of this Agreement. The person or persons that initiate the acceptance of this agreement asserts that he or she does have the authority within the Clients organisation to accept such an agreement on the clients behalf.

**3. Variations to this Agreement**

Blue Nectar reserves the right to unilaterally vary the terms, fees and conditions contained in this Agreement at any time without prior notification to the client of it's intention to do so. However, upon any variation the Client will be notified by Blue Nectar, detailing the variations made and the client will be deemed to have accepted the variation unless notice of termination is received by Blue Nectar within 7 days of the notice of variation.

**4. Period of the Agreement**

This Agreement remains active for the time specified by the client when applying for Blue Nectars services. The Agreement is automatically renewed upon expiry of each term of the agreement, unless terminated in accordance with this agreement.

**5. Termination of the Agreement**

Unless otherwise stated this Agreement may be terminated at anytime upon giving thirty (30) days notice in writing by, Post, Fax or via a web page specifically designed for the purpose on the Blue Nectar Web Site. Upon termination or suspension of this agreement by Blue Nectar, the Client will be notified.

**6. Governing Law**

This Agreement shall be subject to the applicable local, state and federal laws relevant to the State of South Australia, Australia. From time to time laws affecting services provided to Blue Nectar from other parts of world may also have an impact on this agreement. Blue Nectar reserves the right to terminate this agreement without prior notice if Blue Nectar considers that any of these laws may have been broken.

**7. Privacy**

The Client understands that the Clients account information may be held on servers located anywhere in the world. Blue Nectar will make every reasonable effort that Blue Nectar deems necessary to secure personal information. The Client may at anytime request for a fee a copy of all information held by Blue Nectar on the Client.

Blue Nectar will not make your account information available to any other organisation, except those required to provide services to the Client and requests from law enforcement authorities.

**8. Limitation / Disclaimer of Liability.**

Blue Nectar does not represent or warrant to the Client that the Client will receive continual and uninterrupted services. In no event shall Blue Nectar be liable to the Client for any damages resulting from or related to any failure or delay of Blue Nectar ability to provide services under this Agreement, if such delays or failures are due to causes beyond Blue Nectar's control, such a failure or delay shall not constitute a default under this Agreement.

Neither Blue Nectar, its directors, servants, agents or employees shall be in any way liable for any loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the services by Blue Nectar to the Client. The Client further acknowledges that Blue Nectars liability for its own negligence may not in any event exceed an amount equivalent to charges payable by Client for services during the period damages occurred. In no event shall Blue Nectar be liable for any special or consequential damages, loss or injury.

**9. Variation of Service Plans**

The Client acknowledges that the specified rates and charges may change from time to time. These changes will take effect upon the next automatic renewal of this agreement

**10. Payments**

Upon receipt of payment Blue Nectar will create the Clients Account. Subsequent payments for the following periods of the agreement are due on the date of renewal of this agreement. Accounts not paid by due date are subject to a \$10.00 late fee. Accounts outstanding for more than 21 days will be suspended and an additional \$10 reconnection fee will apply. Accounts outstanding for more than sixty (60) days will be transferred to a collection agency at the clients expense. Dishonoured Credit Cards will be subject to a \$25 dishonour fee.

**11. Legal expenses**

If a legal proceeding is commenced to enforce or obtain a declaration of rights under this Agreement, Blue Nectar will be entitled to recover its reasonable attorneys' fees and costs incurred in the proceeding from the Client, as well as any reasonable solicitors' fees and costs that Blue Nectar incurred prior to commencing the proceeding.

**12. Refund and Disputes**

Blue Nectar will provide a refund for services paid for and not made available to the Client as per this Agreement. The amount of refund will be determined by Blue Nectar.

All billing disputes must be reported within 60 days of the time the incident occurred. If Blue Nectar receives a "Chargeback" from a Clients Credit Card transaction an "Administrative Fee" of \$100 will apply.

**13. Technical Support**

Blue Nectar will provide 24hr / 7 Days e-mail support to our Clients for server related enquiries

**14. SPAM and Unsolicited Commercial Email (UCE)**

Blue Nectar reserves the right to suspend or terminated this agreement without prior notice if the account is deemed by Blue Nectar to be involved in or associated with the sending of SPAM or Unsolicited Commercial Email.

**15. IP Address Ownership**

All IP Addresses issued by Blue Nectar will always remain the property of Blue Nectar. The Client accepts that these IP addresses may be changed or withdrawn at anytime.

**16. Resource Usage**

The Client agrees that the Data Traffic and disk usage shall not exceed the number quoted in the Clients Service plan otherwise excess charges will apply, and if deemed by Blue Nectar to be beyond the scope of that Service Plan, the account may be suspended.

The Client acknowledges that Blue Nectar offers services on shared resources and If Blue Nectar deems that a script installed by the Client on the Server places an undue burden on resources that affect the performance of other Clients, Blue Nectar reserves the right to suspend or terminate that account.

Where specified, 'Unlimited' implies that the referred resources will not be actively monitored or restricted unless the usage is considered excessive, affects the performance of the server or breaches the Terms & Conditions of Service in other ways.

**17. System and Network Security**

Clients are prohibited from violating or attempting to violate the security of the Blue Nectar Network. Blue Nectar reserves the right to suspend or terminate any accounts that it deems may have been involved in or associated with violations of system or network security.

These violations include, without limitation

- Accessing data not intended for such Client or logging into a server or account, which such Client is not authorized to access.
- Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization
- Attempting to interfere with service to any Client, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".
- Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting
- Taking any action in order to obtain services to which such Client is not entitled
- Denial of Service Attack
- Any activity deemed by Blue Nectar to have been designed for harassing or harming others.

**18. Acceptable Content**

The Client shall not knowingly or unknowingly allow the publication of the following types of material through Blue Nectar service;

- Any material which violates or infringes any copyright, trademark, trade secret, patent, statutory, common law or other proprietary rights of others
- Any material that is libellous or slanderous
- Any material which is or contains anything obscene or pornographic, including Child Pornography / Violence
- Fraudulent offers to sell or buy products, items, or services, or to advance any type of financial scam such as "pyramid schemes", "ponzi schemes," and "chain letters".
- Information on how to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Blue Nectar or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data, is expressly prohibited. This includes Hacking, hackz, crackz, passwordz sites

Blue Nectar reserves the right to suspend or terminate the account found to contain this type of material

**19 Suspension of Servers or Termination**

Blue Nectar reserves the right to suspend network access to any Client if in the judgment of the Blue Nectar the Client's server is the source or target of the violation of any of the terms of this Agreement or for any other reason which Blue Nectar chooses

**20 Third Party Activity**

Clients will be held responsible and accountable for any activity by third parties, using their account that violates this Agreement

**21 Waiver of Agreement conditions**

If Blue Nectar on an occasion waives of any section of this Agreement for the Client, despite how many times it may occur, It shall be considered a once only event, and that section shall be remain active for the remaining period of the agreement

**22. Transfer**

The Client shall not transfer or assign this Agreement without the prior written consent of Blue Nectar. Blue Nectar may assign this Agreement at anytime without consent from or notice to Client. Blue Nectar reserves right to cancel customers rights under this contract at anytime without further obligation.

**23. Severability**

Should any part of this Agreement be or become invalid, that part shall be severed from this Agreement and such invalidity shall not affect the validity of the remaining provisions of the Agreement.

**24. Survival of Certain Provisions**

Each indemnity under this Agreement is a continuing indemnity and shall constitute a separate and independent obligation of the party giving the indemnity from its other obligations under this Agreement and unless a contrary intention is indicated shall survive the termination or completion of this Agreement.

**25. Uptime Guarantee**

Blue Nectar provides an uptime guarantee of 99.9% in a calendar month. Uptime refers to the network only and does not include, scheduled outages or hardware failure. In the event of a breach of the uptime guarantee the client acknowledges their responsibility to make a claim within 7 days of the breach. The client will be entitled to a refund for one month only, that month being the one in which the breach occurred.