



MASTER SERVICES AGREEMENT

Date of Agreement: . Is the date that nFocus Limited countersigns this Agreement using DocuSign (the Customer having previously signed using DocuSign)

nFocus Contract Ref:

Agreement Version: V0.8

Parties:

Services Provider: nFocus Limited

Incorporated in: England and Wales

Registered Office: SE119, e-Innovation Centre, Shifnal Road, Priorslee, Telford TF2 9FT.

Registered No: 03942714

Customer:

Incorporated in:

Registered Office:

Registered No:

This Agreement, includes and incorporates the terms and conditions that follow.

This Agreement has been entered into by the parties on the date referred to above

Signature:

Name:

Position

For and on behalf of: nFocus Limited

Signature:

Name:

Position:

duly authorised to sign for and on behalf of:

THIS AGREEMENT is made on the Date of Agreement between the parties

WHEREAS nFocus has agreed to provide the Services to the Customer upon the following terms and conditions.

1. Appointment

1.1 The Customer hereby appoints nFocus to render the Services from the Start Date for the duration of the term of this Agreement on the terms and conditions set out in this Agreement, and nFocus accepts such appointment.

2. Nature of Agreement

2.1 Each duly signed Statement of Work shall be deemed to incorporate the terms and conditions set out in this Agreement to the exclusion of any other terms and conditions subject to which a Purchase Order is placed or purported to be accepted or placed by the Customer

2.2 This Agreement shall commence on the Date of Agreement and shall continue in force until terminated in accordance with Clause 12 of this Agreement.

2.3 The Customer shall duly sign and issue a Statement of Work to nFocus.

2.4 Each Statement of Work signed by both parties shall be binding with effect from the date on it entered as 'Date of SOW'. Each party will treat a Statement of Work, issued pursuant to this Agreement, as a contract for the supply of Services of which these terms and conditions form part.

3. Obligations

3.1 During the term of this Agreement nFocus will provide the Services to the Customer as set out in a Statement of Work and in accordance with the terms and conditions specified in the Statement of Work and this Agreement. If there is any conflict between the provisions of this Agreement and the provisions of a Statement of Work, the provisions of the relevant Statement of Work will prevail over the obligations set out in this Agreement.

3.2 The Customer will perform the Customer Obligations and will comply with all relevant legislative requirements including but not limited to the Health and Safety at Work Act etc 1974. The Customer will assist nFocus by promptly providing access to those facilities of the Customer and any information or assistance which nFocus may reasonably request or request access to for the performance of the Services.

3.3 If nFocus is delayed from performing the Services in accordance with the timetable in the relevant Statement of Work, because:

3.3.1 the Customer does not promptly perform the Customer Obligations;

3.3.2 a third party working on the project has not completed a task necessary to bring the project to a point where nFocus can perform the relevant Services;

3.3.3 the Customer does not provide the access, information and/or assistance contemplated in clause 3.2;

then nFocus shall have no liability to the Customer for such delay and the Customer shall indemnify nFocus from any costs or losses arising from the circumstances in the preceding sub clauses of this clause 3.3.

3.4 The Customer shall ensure that there are in place all necessary licences and permissions needed to allow nFocus and its sub-contractors to access and use all facilities, PCs computer systems, access to the network, Materials, information and other items as may be appropriate in connection with this Agreement or a relevant Statement of Work. In particular the Customer will ensure that any consents of software licensors to nFocus or its sub-contractors' access to software are obtained in advance of the Start Date of the Services being performed under a Statement of Work.

3.5 The Customer acknowledges that the consultants appointed by nFocus to perform the Services under a specific Statement of Work may require training, leave or other specific time away from any piece of work defined by a Statement of Work. In these cases nFocus, with the agreement of the Customer, which agreement shall not be unreasonably withheld shall substitute the relevant consultant with another of equal grade and similar experience for the given period.

3.6 Within 10 working days of the start of the term of the relevant Statement of Work the Customer will raise and deliver to nFocus a valid Purchase Order to cover all the Fees.

3.7 nFocus is permitted to use other persons to provide some or all of the Services. nFocus shall be responsible for the work of its sub-contractors (if any) whose work shall be undertaken to the same standard as stated in this Agreement. However, the Customer acknowledges and agrees that some sub-contractors have their own terms and conditions on which they trade and which are more restrictive than the provisions in this Agreement. For example, without limiting the generality of the foregoing, a sub-contractor may have more restrictive wording as to the standard it will reach in work it performs (as to timing or quality), what is to happen if that standard is not reached or met, or issues concerning the restriction and exclusion of liability. Where the terms and conditions of a sub-contractor are more restrictive or exclusory than the provisions of this Agreement, nFocus and the Customer agree that work provided by a sub-contractor will be governed by the terms and conditions of the sub-contractor rather than the provisions of this Agreement.

3.8 Notwithstanding any other clause in this Agreement it is agreed and understood by the Customer that nFocus's Personnel will not be directed or controlled by the Customer. nFocus is not acting as an employment business and its consultants are not agency workers for the purposes of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 or the Agency Workers Regulations 2010. Likewise, nFocus's Personnel do their work for nFocus who is their end client for IR 35 purposes.

Data Protection

3.9 All personal data that nFocus may use will be collected, processed and held in accordance with Data Protection Legislation.

3.10 For complete details of nFocus's collection, processing, storage, and retention of personal data including, but not limited to, the purposes for which personal data is used, the legal basis for using it, details of the Customer's rights and how to exercise them and personal data sharing (where applicable), the Customer should refer to nFocus Privacy Notice available on nFocus website <http://www.nfocussoftwaretesting.com/page.aspx/Terms-and-conditions> (URL last checked 23 May 2018) or by email from dataprotection@nfocus.co.uk

3.11 The data protection clause set out in the Schedule shall apply to this Agreement.

4. Fees

4.1 In consideration of the Services supplied by nFocus to the Customer under a Statement of Work the Customer agrees to pay to nFocus:

4.1.1 the Fees; and

4.1.2 all Reimbursable Costs

in accordance with clause 4.2.

4.2 nFocus will render invoices to the Customer for Fees and any Reimbursable Costs on or about the 1st day of each month or on completion of each stage the Services (whichever comes sooner). Payment for invoices will be made, without deduction or set off, by the Customer within 30 days from the date of invoice from nFocus.

4.3 The Fees agreed to be paid under this Agreement or a Statement of Work do not include VAT or other government taxes and levies. Where these apply they will be paid by the Customer to nFocus.

4.4 The Customer agrees to take all actions reasonably considered necessary by nFocus to ensure that nFocus receives payments gross and without any deduction or withholding for or on account of tax including, without prejudice to the generality of this Clause 4.4, co-operating with nFocus in relation to any application to any relevant tax authority for a direction or other ruling pursuant to any relevant double taxation agreement enabling the Customer to make payments to nFocus without or at a reduced rate of deduction or withholding for or on account of tax.

4.5 Without prejudice to Clause 4.4 the Customer will use its best endeavours to obtain any appropriate tax certificate enabling nFocus to recover, or obtain a tax credit for, any withholding or deduction for or on account of tax as soon as reasonably possible and in any event within 180 days of the payment of any tax to which this clause applies. In the event of the Customer not complying with this obligation, the Customer will forthwith upon demand pay a sum to nFocus sufficient so that after any deductions or withholdings for or on account of tax nFocus will receive the amount to which it would have been entitled if the Customer had complied with its obligations under this clause.

4.6 If any sum payable by the Customer to nFocus under a Statement of Work is not paid by the due date then nFocus may suspend the performance of its obligations and/or charge interest at the Interest Rate on that sum on a daily basis (after as well as before judgement) from the last day for payment of that sum to the date of actual payment.

4.7 Default of payment under a Statement of Work on more than 1 occasion will entitle nFocus to suspend the performance of its obligations under other current Statements of Work without incurring any liability whatsoever, in addition to any other remedy available to nFocus at law or under this Agreement.

4.8 If the Customer breaches clause 3.6, regardless of any other remedy available under this Agreement, nFocus may suspend the performance of its obligations and/or charge interest at the Interest Rate on all invoices that include fees for work done before valid Purchase Orders to cover all the Fees are delivered to nFocus.

4.9 Unless otherwise stated in the Statement of Work, Saturday work will be charged at 150% of the applicable weekday daily rate on an hourly basis. Sundays and English public holidays will be charged at 200% of the applicable weekday daily rate on an hourly basis. In respect of any of nFocus's Personnel: work over the PPD (as defined in clause 23.1) by any of them on any day will be charged at 100% of the applicable daily rate on an hourly basis and work less than the PPD per person on any day is charged on an hourly basis subject to a minimum charge if any part of a day is worked as a half day (3.75 hours)

5. Change Control

5.1 If the Customer wishes to amend any of the Services to be supplied under a Statement of Work, it will notify nFocus in writing providing details of the amendment. nFocus will give the Customer a written quotation for those amendments specifying any changes in the Fees. If the Customer accepts the quotation, a Statement of Work will be changed accordingly, but if the Customer rejects the quotation, the Statement of Work will continue unchanged.

5.2 No addition to or modification of any provision of this Agreement or any Statement of Work shall be binding upon the parties unless made in writing signed by a duly authorised representative of each of the parties.

6. Confidentiality

6.1 Each party shall hold in confidence, use only for the purposes hereof and not disclose to any third party Confidential Information of the other party.

6.2 nFocus shall not disclose or otherwise publicise work undertaken for the Customer, nor shall it use the name of the Customer in its client list without the Customer's prior written consent.

6.3 The obligations under this Clause 6 shall continue for a period of 5 years after the completion of the Services including any agreed changes (under clause 5 above), or termination of this Agreement, whichever is earlier.

7. Warranties

7.1 nFocus confirms that the Services under a Statement of Work will be performed by nFocus Personnel using the reasonable standard of skill and care normally exercised by a software testing businesses in performing similar services under similar conditions.

7.2 Unless expressly set out in this Agreement, all conditions, warranties, and representations, express or implied, statutory or otherwise in respect of the Services, and any Materials provided by nFocus under a Statement of Work are excluded. In particular, but without limiting the generality of the foregoing, nFocus makes no warranty of merchantability or of fitness for a particular purpose.

8. Intellectual Property

8.1 Pre Existing IP remains with the party that created or owned it or who is the licensee of it.

8.2 Any SOW IP will belong wholly to the Customer.

9. Limitation of Liability

9.1 nFocus will not be, and nor will any of its sub-contractors or suppliers or any of nFocus's or its sub-contractors' or suppliers' respective directors, officers, employees or agents be liable (whether in tort, contract, negligence or otherwise) for:

9.1.1 loss of profits; the cost of substitute services; loss of anticipated business, contracts, savings, time or goodwill; or for business interruption or for any indirect or consequential loss or damage arising out of, or in connection with, this Agreement or a Statement of Work;

9.1.2 any loss or damage arising out of, connected with, or resulting from: the performance of any third party; any software, hardware or other product or component provided by any third party; or the reliance by the Customer on any non-fraudulent statement or representation made by nFocus or its employees, agents or sub-contractors regarding a third party vendor; or

9.1.3 any loss to the extent arising from the Customer's acts or omissions directions instructions or management.

9.1.4 any loss of or damage to or corruption of information or data

9.2 nFocus provides no warranty that any result or objective can or will be achieved or attained at all or by a given completion date or any other date, whether stated in this Agreement or the Statement of Work or elsewhere.

9.3 The maximum aggregate liability of nFocus for loss or damage arising in respect of particular Services or particular Materials provided by nFocus under a Statement of Work (and any extension of the Agreement) will not exceed the amount of the Fees actually paid to nFocus by the Customer for the particular Services provided by nFocus under the relevant Statement of Work.

9.4 The limitations of liability in a Statement of Work do not apply to nFocus's liability for death or personal injury resulting from its negligence or loss caused to the Customer by its fraudulent statement for any of which there is no limitation.

9.5 Subject to the earlier sub clauses of this clause 9, the maximum aggregate liability of nFocus for any loss or damage arising in respect of Services or Materials provided by nFocus under this Agreement (and any extension of this Agreement) in total will not exceed £5 million provided that if professional indemnity insurance to cover the £5 million maximum aggregate liability aforesaid is no longer available on reasonable terms at reasonable commercial rates then the liability of the consultant shall be restricted to such lesser sum as is reasonably available on reasonable terms at reasonable commercial rates in the UK marketplace for such insurance for service providers providing similar services to nFocus.

9.6 No claim relating to a Statement of Work may be presented to nFocus or court proceedings commenced against nFocus after six years from the Date of Agreement of that Statement of Work.

9.7 nFocus Security Scanning services.

9.7.1 Where nFocus has agreed to provide security scanning services the Customer acknowledges that nFocus security scans and audits, only serve as a connector to identify, report, and deliver fix recommendations for various avenues of insecurity or vulnerability in the Customers licensed web applications and IP ranges. While a detailed post scan report may contain fix steps and links to solutions if vulnerabilities are detected on the Customer's system, nFocus does not, and is not intended to, fix, remedy, prevent, or eliminate such vulnerabilities or other insecurities. The Customer is solely and ultimately responsible for securing and protecting the Customer's system. In addition, the Customer acknowledges that new security threats may not be detected by the scope of the scan and agree that a successful scan does not guarantee or ensure that the system scanned is free of vulnerabilities or other insecurities.

9.7.2 The Customer agrees to, indemnify, defend and hold harmless nFocus and any of its partners, contractors, agents, employees, officers, directors, shareholders, affiliates and assigns from all liabilities, claims, damages, costs and expenses, including reasonable professional fees and expenses, relating to or arising out of:-

- a) falsehoods or misrepresentations of fact by the Customer;
- b) any infringement of intellectual property or other proprietary right of any person or entity due to the Customer's default and or due to the work or instructions from the Customer to nFocus;
- c) failure to disclose a material fact if the misrepresentation or omission was made negligently or with intent to deceive any party;
- d) failure to take the precautions necessary to prevent the compromise, loss, disclosure, modification or unauthorised use of the Customer's password and account name; and
- e) any liabilities, losses, damages, costs, and expenses, including reasonable legal fees, incurred by nFocus due to the Customer scanning or requesting nFocus to scan an IP address not owned by the Customer.

If nFocus receives a claim by a third party which relates to any of a) to e) above nFocus shall have the right:

- (i) to participate in any defence by the Customer and nFocus can use its own legal advisors. The Customer may defend any claim, but the Customer must receive nFocus's prior written consent regarding any defence, settlement or other step or decision to act or not to act in relation to such claim which has negative implications for nFocus; and
- (ii) to suspend its work and or fulfilment of obligations for the Customer.

9.8 The terms of this clause 9 will survive any termination or cancellation of this Agreement.

10. Modifications

10.1 The Customer may, subject to clause 8.1, at its risk, modify and alter the Materials and/or combine them with other information.

10.2 The Customer shall indemnify nFocus against any claim that any modifications, alterations and/or combined works made by or for the Customer infringe the intellectual property rights of any third party.

10.3 nFocus will not be responsible for any defect nor will it indemnify the Customer for any liability which is caused by or occurs in any part of the Materials which have been modified, altered or combined by or for the Customer.

11. Force Majeure

11.1 Despite anything else contained in this Agreement, neither party will be liable for any delay in performing its obligations under a Statement of Work or this Agreement if that delay is caused by circumstances beyond its reasonable control (including, without limitation, any delay caused by an act or omission of the other party) and, in those circumstances, the party affected will be entitled to a reasonable extension of time for the performance of its obligations. The affected party will tell the other, in writing, of the occurrence and date of this delay as soon as reasonably possible and inform the other party of any effect on the affected party's ability to perform its obligations under a

Statement of Work. As soon as reasonably possible after those circumstances have come to an end, the affected party will notify the other of the end of those circumstances.

11.2 If either party's delay under this clause continues for more than 6 consecutive months either party may end the relevant Statement of Work by giving not less than 30 days' notice to the other. Notwithstanding such termination, the Customer's obligations and liability in clause 3.3 shall remain in place.

12. Termination of Agreement

12.1 A party will have the right to end this Agreement if the other:

12.1.1 commits any significant breach of this Agreement and (in the case of a breach which is not persistent and can be remedied) has failed, within 30 days after receipt of a request in writing to do so, to remedy the breach; or

12.1.2 has a receiver or administrative receiver appointed to it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or it becomes subject to an administration order or an order granting court protection or appointing an examiner or enter into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.

12.2 A party will have the right to terminate a Statement of Work if the other commits any significant breach of the Statement of Work and (in the case of a breach which is not persistent and can be remedied) has failed, within 30 days after receipt of a request in writing to do so, to remedy the breach.

12.3 Subject to clause 12.6, in relation to the termination of a Statement of Work, or in relation to the termination of this Agreement under clause 12.1 or 12.7, all rights and obligations of the parties (in relation to that Statement of Work, or the Agreement, as the case may be) will cease to have effect immediately on termination except that termination will not affect:

12.3.1 the accrued rights and obligations of the parties at the date of termination; and

12.3.2 the continued existence and validity of the rights and obligations of the parties under this Clause 12 and those Clauses, including, but not limited to Clauses 4.2, 9, and 10, which are expressly or by implication intended to survive termination and any provisions of the Agreement necessary for the interpretation or enforcement of this Agreement, including, without limiting the generality of the foregoing, nFocus's rights to claim damages in terms of clause 3.3.

12.4 The Customer will and will procure that its directors, employees, contractors, consultants or agents will, upon the termination of this Agreement, immediately deliver up to nFocus all correspondence, documents, specifications, papers and property belonging to nFocus which may be in its or their possession or under its or their control and will when requested so to do by nFocus, confirm in writing to nFocus its compliance in full with this provision such confirmation to acknowledge that no copies of or extracts from any such documentation have been retained by the Customer.

12.5 Promptly after the date of termination or cancellation of a Statement of Work or the Agreement, as the case may be, nFocus will render a final invoice to the Customer in respect of Services rendered and the Customer will pay the same in accordance with Clause 4.2 of this Agreement.

12.6 For the avoidance of doubt, termination (for whatever reason) of a Statement of Work shall not affect the validity of the remainder of this Agreement or of the remaining Statements of Work, which shall remain in full force and effect.

12.7 Either party hereto may terminate this Agreement and or any particular Statement of Work without cause upon 30 days' prior written notice to the other party hereto. Such termination takes effect at the end of the 30 days' prior written notice. The Customer shall pay nFocus Fees and expenses up to the date of termination.

13. Non-Solicitation of Employees

13.1 During the period beginning with the date of this Agreement and ending 12 months after all Services to be provided under this Agreement or a relevant Statement of Work have been performed the Customer will not solicit the employment of any of nFocus's Personnel, nor will the Customer contract directly with any of nFocus's Personnel nor will the Customer contract indirectly for the services of any of nFocus's Personnel through any company other than nFocus. Likewise nFocus will not solicit the employment of any of the Customer's Personnel, nor will nFocus contract directly with any of the Customer's Personnel. It is acknowledged that this restriction is reasonable and it is the considered view of both parties that such a restriction is not an unreasonable restraint of trade of any of the affected employees, agents or consultants.

13.2 Without prejudice to any other obligation under this Agreement or a Statement of Work, if the Customer is in breach of its obligations under clause 13.1 then the Customer will be liable for and will pay immediately on demand by nFocus a sum equivalent to all expenses losses and liabilities suffered or incurred by nFocus which directly arise from the Customers breach. Without limiting the forgoing, such expenses losses and liabilities together are routinely 30% of the annual contractual salary or fees being paid by nFocus to the relevant employee, officer or consultant. The parties agree that this is a genuine pre-estimate of the damages which nFocus will suffer.

13.3 Without prejudice to any other obligation under this Agreement or a Statement of Work, if nFocus is in breach of its obligations under clause 13.1 then nFocus will be liable for and will pay immediately on demand by the Customer a sum equivalent to all expenses losses and liabilities suffered or incurred by the Customer which directly arise from the nFocus's breach. Without limiting the forgoing, such expenses losses and liabilities together are routinely 30% of the annual contractual salary or fees being paid by the Customer to the relevant employee, officer or consultant. The parties agree that this is a genuine pre-estimate of the damages which the Customer will suffer.

14. Publicity

14.1 Each party gives the other its consent to publicise the fact that the parties have a business relationship, but not to disclose the terms of this Agreement or a Statement of Work.

14.2 The engagement can be used by nFocus as a case study by agreement with the Customer.

15. Dispute Resolution

15.1 In the event of any dispute between the Customer and nFocus under this Agreement or a Statement of Work, the parties will negotiate with each other in good faith in an attempt to resolve the dispute, without limiting any other remedy available to the parties at law or under this Agreement.

16. Notices

16.1 All notices to be given under this Agreement or a Statement of Work must be in writing and sent to the address of the recipient set out at the start of this Agreement, or any other address which the recipient may notify the other in writing from time to time. Any notice may be delivered by hand personally or sent by first class prepaid letter or by email and will be treated as served.

17. Status

17.1 Each party to this Agreement or a Statement of Work is an independent contractor. No provision of this Agreement or a Statement of Work or any act of the parties pursuant to this Agreement or a Statement of Work will be construed to express or imply a joint venture, partnership, agency, employment, legal association or relationship other than vendor and purchaser of the Services.

17.2 No employee, agent or other representative of either party will at any time be deemed to be under the control or authority of the other party, or under the joint control of both parties.

17.3 The Customer shall not have any authority or power (and shall not represent itself as having any such authority or power) to contract in the name of or to undertake any liability or obligation on behalf of or to give any warranties or representations of any nature on behalf of nFocus (except with the express written consent of nFocus).

17.4 Without limiting the provisions of clause 17, nothing contained in this Agreement and any relevant Statement of Work constitutes authority by nFocus to the Customer to act as the agent of nFocus (except with the express prior written consent of nFocus).

17.5 The Customer will not (without nFocus's prior written consent) commit nFocus to any legally binding obligation or hold nFocus's Personnel out as its officers or employees.

18. Waiver

18.1 No forbearance or delay by either party in enforcing the provisions of this Agreement or a Statement of Work will prejudice or restrict its rights, nor will any waiver of rights operate as a waiver of any subsequent breach.

19. Entire Agreement

19.1 This Agreement, save as expressly set out herein, supersedes all prior agreements, arrangements, representations, discussions, writings, negotiations and understandings between the parties and constitutes (subject to any alternative arrangements in a Statement of Work) the entire agreement between them relating to the Services and any Materials. Neither party shall be liable to the other in respect of such prior agreements, arrangements, representations, discussions, writings, negotiations or understandings. The preceding sentence shall not apply in respect of any fraudulent misrepresentation. No change to this Agreement or a Statement of Work is agreed unless in writing signed by both parties.

19.2 To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

20. Governing Law and Jurisdiction

20.1 This Agreement and each Statement of Work will be governed by and construed in accordance with English law and both parties submit to the exclusive jurisdiction of the courts of England.

21. Assignment

21.1 The Customer shall not be entitled to cede or transfer any of its rights or obligations or to delegate any of its obligations in terms of this Agreement and/or any Statement of Work without the prior written consent of nFocus

21.2 nFocus may assign or transfer this Agreement to a third party without the prior written consent of the Customer. No term of this Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a party to the Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise)

22. Severability

22.1 If any provision of this Agreement or a Statement of Work or the application of any such provision to any party or circumstance, is declared judicially to be invalid, unenforceable or void, that decision shall not invalidate or void the remainder of this Agreement. It is the intent and agreement of the parties that this Agreement shall be deemed amended by modifying the offending provision as far as necessary to make it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting for it another provision that is valid, legal and enforceable so as to materially effectuate the parties' intent.

23. Definitions and Interpretation

23.1 In this Agreement, the following expressions have the following meanings:

"Agreement" means these terms and conditions together with all schedules and any attached Statement of Work;

"Confidential Information" means any Materials, software, document, idea, data or other information which:

- (a) relates to either party's research and development, trade secrets or business affairs;
or

- (b) is marked as confidential or is by its nature confidential,

and is disclosed by either party or their associated or subsidiary companies or representatives to the other for the purpose of this Agreement but excluding anything which:

- (i) is known to the receiving party, under no obligation of confidence, at the time of disclosure by the other party and can produce documentary evidence of the same;

- (ii) is or becomes publicly known through no wrongful act or omission of the receiving party;

- (iii) is lawfully obtained by the receiving party from a third party who in making such disclosure breaches no obligation of confidence to the other party;

- (iv) is independently developed by the receiving party and can produce documentary evidence of the same; or
- (v) is required to be disclosed as a matter of law.

“Customer” “Date of Agreement” and “parties” means as set out on the front page headed ‘Master Services Agreement’

“Customer Obligations” means the services and deliverables to be provided by the Customer to nFocus as specified in the relevant Statement of Work;

“Customers’ Personnel” means the Customers employees, its directors and officers and its agents, contractors and sub-contractors whilst acting in their capacity as such;

“Data Protection Legislation” means REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) the Data Protection Act 1998 and all other applicable laws and regulations relating to the processing of personal data and privacy (as amended, re-enacted or replaced from time to time) in effect in all relevant territories from time to time;

“Fees” means the fees payable by the Customer as set out in this Agreement and the relevant Statement of Work;

“Interest Rate” means the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 (regardless of whether the implied term in the Act applies to the clause or the Agreement);

“KPI” means Key Performance Indicator as described in this Agreement (if any);

“Materials” means all documentation and information created by and/or supplied by nFocus under or in connection with this Agreement (on whatever media) and a Statement of Work;

“nFocus’s Personnel” means nFocus’s employees, its directors and officers and its agents and sub-contractors whilst acting in their capacity as such;

“PPD” means “per person-day”;

“Purchase Orders” means one or more purchase orders or other necessary authorisation required by the Customer to ensure payment of invoices for Fees in accordance with this Agreement and a Statement of Work;

“Reimbursable Costs” means all costs and out-of-pocket expenses incurred by nFocus in providing the Services including, but without limitation, the costs of Materials and external services, reasonable travel expenses, subsistence and accommodation expenses, together with any applicable VAT or other taxes thereon;

“Pre Existing IP” means all intellectual property rights (except SOW IP) which either owned by or licensed to either of the parties immediately prior to the date of this Agreement including (without prejudice to the generality of the foregoing): any copyright; copyright in software and or any algorithms; rights to databases or trademarks; service marks; trade secrets; registered designs; patents; design rights (whether registered or unregistered); semiconductor topography rights; applications for any of the above; rights to extract data; knowhow; trade secrets or rights of confidence.

“Schedule” means the terms and conditions contained the relevant schedule;

“Services” means the services and deliverables to be provided by nFocus to the Customer as specified in the relevant Statement of Work;

“SOW IP” means all intellectual property rights which are created or developed in whole or in substantial part by nFocus in the course of providing the Services including (without prejudice to the generality of the foregoing): any copyright; copyright in software and or any algorithms; rights to databases; rights to extract data; knowhow; trade secrets or rights of confidence; and any copyright in the Materials;

“Start Date” means the date provided in the relevant Statement of Work for the start of the Services

“Statement of Work” means an order for Services together with related terms and conditions substantially in nFocus’s standard form and which is signed by both parties. Unless otherwise agreed in writing by both parties, the terms and conditions of this Agreement shall be expressly incorporated into the Statement of Work.

“VAT” means value added tax or similar tax in substitution for or in addition to the same;

23.2 Other terms given a meaning in this Agreement shall have the corresponding meaning in a Statement of Work.

23.3 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.

23.4 The use of any expression in this Agreement covering a process available under English law such as a winding-up (without limitation eiusdem generis) shall, if any of the parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.

23.5 The termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.

23.6 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply.

23.7 Any reference in this Agreement to a party shall, if such party is liquidated or sequestrated, be applicable also to and binding upon that party’s liquidator or trustee, as the case may be.

23.8 This Agreement will continue if nFocus is acquired by/merged with another company.

The Schedule - Data Protection Clause

Data Processing

- 1.1 In this Clause “personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation (“GDPR”).
- 1.2 The parties to this Agreement hereby agree that they shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.
- 1.3 For the purposes of the Data Protection Legislation and for this Clause the Customer is the “Data Controller” and nFocus is the “Data Processor”.
- 1.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing are set out in the appendix below ‘the Appendix’.
- 1.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in this Agreement and the Customer hereby agrees to indemnify the Data Processor and shall keep the Data Processor fully and effectively indemnified from and against all costs, claims, damages and losses brought against all suffered by the Data Processor as a result of a failure by the Data Controller to comply with this clause.
- 1.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under this Agreement:
 - 1.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.
 - 1.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken are set out in the Appendix.
 - 1.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and
 - 1.6.4 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are satisfied:
 - 1.6.4.1 the Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
 - 1.6.4.2 affected data subjects have enforceable rights and effective legal remedies;

- 1.6.4.3 the Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - 1.6.4.4 the Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.
- 1.6.5 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
- 1.6.6 Notify the Data Controller without undue delay of a personal data breach;
- 1.6.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of this Agreement unless it is required to retain any of the personal data by law; and
- 1.6.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause and to allow for audits by the Data Controller and/or any party designated by the Data Controller.
- 1.7 The Data Processor shall not sub-contract any of its obligations to a sub-processor with respect to the processing of personal data under this Clause without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-processor, the Data Processor shall:
 - 1.7.1 Enter into a written agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor by this Clause and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and
 - 1.7.2 Ensure that the sub-processor complies fully with its obligations under that agreement and the Data Protection Legislation.

APPENDIX

1. Data Processing

Scope

<<Insert description of the scope of the processing to be carried out>>.

Nature

<<Insert description of the nature of the processing to be carried out>>.

Purpose

<<Insert description of the purpose(s) for which the processing is to be carried out>>.

Duration

<<Insert details of the duration of the processing>>.

2. Types of Personal Data

<<List the types of personal data to be processed>>.

3. Categories of Data Subject

<<List the categories of data subject>>.

4. Organisational and Technical Data Protection Measures

<<Describe the organisational and technical measures to be implemented as referenced in 1.6.2>>