

User Content Agreement

nFocus Testing is a trading name of nFocus Limited.

This User Content Agreement sets out the terms that apply to you when you use any interactive functions on our website, <https://www.nfocus.co.uk/> (our **website**). By using our website, you agree to be bound by, and to comply with, the following: you agree to be bound by its terms in addition to our website terms of use, you acknowledge that your information will be processed in accordance with our privacy policy, and that we use cookies and similar technologies in accordance with our cookies policy. This also covers all activity undertaken on our blog blog.nfocussoftwaretesting.com

This User Content Agreement is effective from May 25th 2018.

Please read this User Content Agreement carefully. We recommend that you print off a copy of this User Content Agreement for your records, as well as any future versions of it, as we may update it from time to time.

If for any reason whatsoever you do not agree to this User Content Agreement or do not wish to be bound by any or all of its terms, you must not click agree to this User Content Agreement, and you must not access or use any interactive functions of our website, link to our website, contact other users of our website or upload any content to our website.

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1. Basis of agreement

- 1.1 This User Content Agreement, in addition to our Terms of Use, sets out the terms and conditions that apply to you when you access any interactive features of our website, upload content onto our website, interact with other users of our website or upload links on our website.
- 1.2 By using this website, you agree to be bound by the terms set out herein on the User Content Agreement.

2. Variation of this User Content Agreement

- 2.1 We may vary the terms of this User Content Agreement from time to time:
- (a) to reflect any changes in the way we carry out our business;
 - (b) to account for any changes we make to our website, including, without limitation, any new features or functionality we provide, any adjustments to the means by which we provide notices to you, or any changes in the content, purpose or availability of the website; or
 - (c) to ensure that our documentation complies and remains compliant with any and all current and future applicable laws, regulations and guidance.
- 2.2 By continuing to access our website after we have updated this User Content Agreement, you agree to be bound by that updated version.
- 2.3 You must check this User Content Agreement each time you access our website in order to ensure that you are aware of the terms and conditions that apply to you at that time.
- 2.4 If required by law, we will provide you with notice of any changes we make to this User Content Agreement by posting a notice on our website. Where we make any changes to this User Content Agreement, we will post the updated version on our website with a new effective date stated at the beginning of it.
- 2.5 The date that this User Content Agreement was last amended is set out at the top of the document and may be described as the document's "effective date".

3. Content uploaded to our website

- 3.1 Whenever you make use of any feature or interactive function on our website that enables you to upload content to our website, any content you upload must:
- (a) state any facts accurately;
 - (b) state opinions only when, and to the extent that, they are genuinely held, and you must also state the person to whom those opinions belong;
 - (c) comply with all applicable laws and regulations both in England and Wales, any country from which you upload the content and any other applicable laws from time to time; and
 - (d) not constitute Prohibited Content (described in [clause 6 \(Prohibited Content\)](#) below).
- 3.2 You may upload your own confidential information to our website, but any confidential information you upload will be made public and non-confidential by you uploading it. We do not guarantee that any content uploaded by you will be treated as confidential, and we disclaim any responsibility for maintaining the confidentiality of any such uploaded content. You must not upload confidential information belonging to any other person. Any and all content that you upload to our website will be treated as non-confidential.
- 3.3 We are not responsible for securing or backing up any data or content uploaded by you, and we are not responsible for any loss or corruption of such data or content. If you do not wish to lose any content uploaded by you, you should back up and secure such content independently.

- 3.4 You shall be solely responsible for content you upload to our website and for the consequences of uploading or publishing it. In connection with your uploads and anything contained, displayed, featured, incorporated, or appearing therein or related thereto, you hereby represent and warrant that you either:
- (a) are the owner of all copyright and other intellectual property rights in the content uploaded by you; or
 - (b) are licensed or otherwise legally authorised by the owner of the copyright or other intellectual property rights in the content you upload to use that content and to distribute that content on or via third party websites (including on or via our website) in the public domain on a non-confidential basis, and to grant the licence described in clause 4.2 (Rights you grant in relation to content uploaded to our website) for and on behalf of the owner of the copyright.
- 3.5 You further represent and warrant that your use and/or uploading of any content to our website does not infringe and will not infringe on the copyright, trade mark, trade secret, rights or privacy or publicity, or other intellectual property or personal rights of any person or entity.
- 3.6 If you own the copyright in any photograph, video or other material that appears on our website and you consider that its appearance on our website violates your copyright, please notify us by email at info@nfocus.co.uk. If you are uncertain whether the use of the content you are reporting infringes your legal rights, you may wish to seek legal guidance. Please bear in mind that submitting intentionally misleading reports of infringement may be punishable under the Digital Millennium Copyright Act, 17 U.S.C. Section 512 (“DMCA”) in the United States, with similar laws existing in other countries.

4. Rights you grant in relation to content uploaded to our website

- 4.1 You shall at all times remain the owner of all copyright in the content uploaded by you, unless the copyright in such content is owned by a person other than yourself, in which case that person shall retain the ownership of the content.
- 4.2 By uploading content to our website, you grant us a worldwide, transferable, non-exclusive, perpetual, irrevocable, royalty-free licence to use, copy, adapt, modify, reproduce, process, publish, transmit, display and distribute such content to anyone, by any means whatsoever, for any lawful purpose, and to relicense, whether or not in exchange for payment, third parties to do the same. This means that any content you upload to the internet via our website is public, and may be distributed anywhere by anyone, including persons other than ourselves and those to whom we have relicensed it.
- 4.3 You grant each user of the website a non-exclusive licence to access the content you upload through the website, and to use, copy, reproduce, distribute and display such content as permitted through the functionality of the website and under this User Content Agreement.
- 4.4 You waive any claims you may have based on any usage of the content you upload or the works derived therefrom including (but not limited to) claims for infringement, invasion, misappropriation, or violation of intellectual property or personal rights.

5. Prohibited uses of our website

You must use our website for lawful purposes only and in accordance with this User Content Agreement. You must not use our website:

- (a) to upload, host or transmit any viruses, malware, adware, spyware, worms, Trojan horses, keystroke loggers, spyware, logic bombs, time bombs or any other harmful programs or code which could adversely affect the use or operation of the website, our hardware or systems, or the computers, tablets, phones or other devices of any users or other third parties, or to upload any content or materials containing the same;
- (b) to conduct any unsolicited or unauthorised advertising or direct or indirect marketing to anyone by any means, or to otherwise spam, communicate or market to anyone any goods, services or business not authorised by us;
- (c) for any purpose that is unlawful or that in any way breaches any applicable laws or regulations, whether local, national or international;
- (d) for any fraudulent purposes whatsoever;
- (e) to communicate with, harm or attempt to harm children in any way; or
- (f) in any way or for any purpose that breaches this User Content Agreement or the terms of any other documents referred to in it.

6. Prohibited Content

You must not upload any content to our website, or upload to our website any links to third party websites containing content which falls into any one or more of the following categories (**Prohibited Content**):

- (a) contains confidential information belonging to any other person, save and except where you have the legally binding authorisation of such person to upload the content to our website;
- (b) contains any advertising or promotions relating to any other business or that provides a link to any other business, without our prior written consent;
- (c) is deceptive, dishonest, deceitful, inaccurate or untrue;
- (d) misrepresents your identity, status or any affiliation you may have with any third party;
- (e) impersonates any other person or organisation;
- (f) represents or suggests that the content is provided by us or reflects our views, opinions, positions, activities or affairs;
- (g) contains any swear word or profanity, is offensive, obscene, hateful or aggressive, threatening, abusive, harassing or malicious towards any person or is likely to cause anxiety, distress, discontent or annoyance, or which promotes violence, hatred, aggression or unrest;
- (h) is in any way discriminatory towards any person or class of persons on account of nationality, race, gender, age, religion, disability, sexual orientation or any other characteristic or ground(s) capable of constituting unlawful discrimination under the Equality Act 2010;
- (i) infringes any intellectual property rights of any other person, including, without limitation, any copyrights, database rights or trade marks;
- (j) breaches any statutory duty owed to any other person;
- (k) breaches the terms of any contract owed to any other person;
- (l) contravenes the terms of any court order;

- (m) is defamatory, disparaging, rude or insulting towards any person or organisation or which is capable of harming the reputation of any person or organisation;
- (n) contains, alludes to or describes any sexually explicit material, or which redirects users to such content;
- (o) incites, encourages, advocates or promotes any illegal activity, or assists anyone in the commission, planning or conduct of any illegal activity; or
- (p) contains a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of hatred, violence or terrorism.

7. Actions we may take in relation to uploaded content

7.1 We reserve the right to take any action whatsoever that we deem appropriate in respect of any suspected or actual breach of this User Content Agreement. Such action may include:

- (a) issuing you with a warning in respect of your non-compliance with the terms of this User Content Agreement;
- (b) suspension or termination, without notice, of your right to use our website;
- (c) modification or removal of any content uploaded by you;
- (d) disclosure of your identity to any third party where that third party (or their representative) makes a complaint to us relating to content uploaded by you, and it appears to us that the content uploaded by you constitutes a violation of their or any other person's intellectual property rights, privacy rights or any other rights;
- (e) disclosure of your identity, any content uploaded by you and any other relevant information to the police or any other law enforcement authority in the event that we deem this to be reasonable, necessary or otherwise required or permitted by law;
- (f) commencing legal proceedings against you for all expenses that we incur because of any breach by you of this User Content Agreement; or
- (g) any other or additional action that we deem appropriate in the circumstances.

7.2 YOU HEREBY HOLD HARMLESS AND INDEMNIFY US FROM AND AGAINST ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REPUTATION OR GOODWILL, AND ANY OTHER SECONDARY OR CONSEQUENTIAL LOSSES), PENALTIES, COSTS (INCLUDING PROFESSIONAL AND LEGAL COSTS ON A FULL INDEMNITY BASIS) AND EXPENSES SUFFERED OR INCURRED BY US ARISING FROM, IN CONNECTION WITH OR RELATING TO ANY BREACH BY YOU OF THIS USER CONTENT AGREEMENT OR OUR TERMS OF USE OR ANY ACTION BROUGHT AS A CONSEQUENCE OF ANY CONTENT BEING UPLOADED BY YOU (INCLUDING, WITHOUT LIMITATION, ANY DEFAMATORY CONTENT).

7.3 We shall have no liability to you whatsoever for the consequences of any action we take in response to any breach by you of the terms of this User Content Agreement, our website terms of use, or any other document, laws or regulations governing your use of our website.

8. No responsibility for user-generated content

Some parts of our website may contain content and materials that have been uploaded by other users. Any such content is owned by or licensed to the users who uploaded the material, or owned by other third parties and has not been approved by us. We make no representations and provide no warranties whatsoever in respect of any such user-generated content, and have no obligation to monitor or review any such content. Any opinions or views contained in any user-generated content may describe the opinions and views of the users who uploaded it and/or the views of third parties and not our own views, opinions, positions or values. Accordingly, we do not endorse any opinions, advice or recommendations contained in any user-generated content.

9. Viruses and other harmful content

- 9.1 You must ensure that you have in place up-to-date and effective anti-virus protection on your computer or browsing device which you use to access our website.
- 9.2 You must not upload or otherwise introduce to our website any viruses, malware, spyware, adware, Trojan horses, worms, logic bombs, time bombs, keystroke loggers or any other programs or code that is harmful or malicious.
- 9.3 You must not use, whether by yourself or in conjunction with any third parties, any software or technology to attempt to gain unauthorised access to our website, our servers, systems, hardware, software or data, or cause, encourage or entice any third party to do the same.
- 9.4 You must not perform any denial of service type attack on our website.
- 9.5 You must not perform any action which would contravene the Computer Misuse Act 1990.
- 9.6 We may report any breach or suspected breach of this clause 9 (Viruses and other harmful content) to the relevant authorities and may disclose your identity to them.

10. Links to other websites

- 10.1 We are not responsible for the content of any website(s) accessible via any link(s) on our website from time to time. All content on third party websites is outside of our control, and we do not represent or warrant that such content is related, suitable, appropriate, lawful or accurate.
- 10.2 Any third party website accessible via a link on our website may collect and process information about you. We are not responsible for any data-processing activities carried out by any third party website linked to from our website or how such third parties may use information about you, and we disclaim any and all liability in respect of the same. You must check the privacy policy of any such third party to establish how they may use information about you before you decide to use their website and its features.

11. Links to our website

- 11.1 Where you have obtained our consent to link to our website:
 - (a) you may provide links to our website on other websites owned by you, provided that such websites and the use of any links to our website comply with these Terms of Use;

- (b) wherever you post a link to our website on any other website, you agree that you will do so in an appropriate manner, and not in any way which is defamatory or disparaging towards us, which misrepresents us or our business, or which causes any harm whatsoever to us or our business; and
 - (c) you must not link to our website in order to suggest any form of joint venture, partnership, collaboration, affiliation, business relationship, approval or endorsement in connection with us where none exists and in any event, without having first obtained our prior written consent.
- 11.2 We may withdraw permission to link to our website at any time. In the event that we withdraw permission to link to our website and inform you of the same, you must immediately remove or cause to be removed any links to our website.

12. Conflict

The terms of this User Content Agreement shall prevail over any other terms which may conflict with them, including any terms in our Terms of Use, privacy policy or cookies policy.

13. Severance

In the event that any term of this User Content Agreement is found by a court of competent jurisdiction to be void, invalid, illegal, unenforceable or non-binding, it shall be modified to the minimum extent necessary to make it valid, legal, effective and binding, giving effect to the purpose of the original term to the maximum extent possible. In the event that such modification of the term is not possible, it shall be deleted from this User Content Agreement. Where a term is defective only because of a partial term, sub-clause or part-provision of a term, and such modification is not capable of remedying the defect, that defective partial term, sub-clause or part-provision alone shall be deleted. No deletion of any term or partial term, sub-clause or part provision under this clause shall affect the validity of the remainder of this User Content Agreement or any other terms contained herein.

14. Assignment

- 14.1 We may assign, transfer or otherwise deal with, in any way whatsoever, any of our rights and obligations under this User Content Agreement. We may need to do this, for example, if we sell part or all of our business, in order to obtain credit from a third party, where we engage subcontractors, or in connection with the enforcement of our rights. Where we do assign, transfer or otherwise deal with our rights and obligations under this User Content Agreement, we will try to give you notice of such action.
- 14.2 You may not assign, transfer or otherwise deal with, in any way whatsoever, any of your rights and obligations under this User Content Agreement.

15. Waiver

Any failure to exercise or delay by us in exercising any of the rights or remedies that we may have under this User Content Agreement or otherwise shall not constitute a waiver of those rights or remedies, or any other rights or remedies that we may have against you or any other person at any time. Any exercise of our rights and remedies

under this User Content Agreement or otherwise shall not restrict us in any way from the further exercise of those same rights or remedies, or any other rights or remedies that we may have against you or any other person at any time.

16. Third party rights

Save and except as expressly provided in this User Content Agreement, no person other than a party to this agreement shall have any rights or remedies (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) in respect of this User Content Agreement.

17. Reservation of rights

The rights and remedies arising under this User Content Agreement are in addition to any rights and remedies arising under law.

18. Governing law and jurisdiction

- 18.1 This User Content Agreement, any documents referred to in it, and any disputes arising from or in relation to it, whether contractual or not, shall be governed by and construed in accordance with English law.
- 18.2 The courts of England and Wales shall have exclusive jurisdiction over any claims or disputes arising from or in relation to this User Content Agreement or any documents referred to in it.

19. Copyright, credit and logo

- 19.1 The copyright in this User Content Agreement is either owned by, or licensed to, us and is protected by copyright laws around the world and copyright protection software. All intellectual property rights in this document are reserved.
- 19.2 This User Content Agreement is based on a General Data Protection Regulation (Regulation (EU) 2016/769) ("GDPR") compliant template provided by GDPR Privacy Policy. For further information, please visit www.gdprprivacypolicy.org
- 19.3 Where we display the GDPR Privacy Policy logo on our website, this is used to indicate that we have adopted a privacy policy template provided by GDPR Privacy Policy as the basis for this Privacy Policy.