



NON DISCLOSURE AGREEMENT

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if you are our direct competitor, except with our prior written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on October 15, 2017. It is effective between you and us as of the date of you accepting this Agreement.

THIS NONDISCLOSURE AGREEMENT (this “Agreement”), dated as October 15, 2017 (the “Effective Date”), is made by and between MyFocus, LLC, a Delaware limited liability company (“MyFocus”) and Windstream Services, LLC a Delaware limited liability company with its principal place of business at 4001 N. Rodney Parham Road, Little Rock, AR 72212, on behalf of itself and any Affiliate, Employee, Contractor, Vendor or any other party whatsoever (“Potential User”).

WHEREAS, in connection with the limited purpose of the evaluation, discussion and negotiation of a potential arrangement with Potential User pursuant to which MyFocus may provide services to Potential User and certain affiliates of Potential User in connection with business transformation initiatives of Potential User (the “Business Purpose”), Potential User and/or its affiliates (collectively, “Potential User”) may disclose now or in the future certain Confidential Information (as defined below) relating to the business processes, products, technology, and other proprietary matters of MyFocus to Potential User; and

WHEREAS, MyFocus shall also be receiving Potential User’s Confidential Information in connection with the Business Purpose.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Confidentiality.

1.1 Definition of Confidential Information. As used herein, “Confidential Information” of MyFocus shall mean any and all information and data, technical or non-technical, whether written, electronic, graphic or oral, (a) furnished or disclosed by MyFocus or on MyFocus’ behalf, including by an affiliate, consultant or representative of MyFocus, to Potential User, either directly or indirectly, or (b) that relates to or refers to MyFocus or its affiliates or the officers, employees, strategies, MyFocus or operations of MyFocus or its affiliates, including in the case of (a) and (b), any modification or enhancements thereto or any information based or derived therefrom. In the case of Potential User, “Confidential Information” shall only include information that is marked “confidential” or “proprietary” prior to or upon disclosure by Potential User, or that, if disclosed orally, is identified by Potential User at the time as being confidential or proprietary and is confirmed by Potential User as being Confidential Information in writing within 30 days after its initial disclosure. In no event shall “Confidential Information” include any of the following: (i) information that is in the public domain as of the Effective Date or subsequently enters the public domain through no fault or act of the receiving party; (ii) information that is presently known or becomes known to the receiving party from its own independent sources as evidenced by the receiving party provided that the source of such information was not under any obligation to keep such information confidential; (iii) information that the receiving party receives from any third party not under any obligation to the disclosing party to keep such information confidential; and (iv) information that is independently developed by the receiving party as evidenced by the receiving party’s written records or otherwise owned by the receiving party.

1.2 Obligation of Confidentiality. The receiving party agrees that it shall maintain in confidence all Confidential Information of the disclosing party. The receiving party shall take necessary and reasonable precautions to prevent such information from being disclosed to any person, firm, or company not specifically permitted by this Agreement or specifically authorized in writing by the disclosing party. **Notwithstanding anything to the contrary set forth herein, Potential User may not disclose any Confidential Information of MyFocus to any person who is not an employee of Potential User without MyFocus's prior written approval.** Prior to disclosing Confidential Information to its officers or employees, subcontractors, agents, or representatives (collectively, "Representatives"), the receiving party shall advise same of the confidential nature thereof, and shall take necessary and reasonable precautions to prevent the unauthorized disclosure of such information by its Representatives. The receiving party agrees that it shall use the Confidential Information of the other disclosing party solely for the Business Purpose. The receiving party shall not, without obtaining the disclosing party's prior written consent, disclose any of the Confidential Information to anyone except its Representatives (subject to the third sentence of this Section) with a need to know, except pursuant to court order (in accordance with Section 1.3 below) or as otherwise required by law. If Confidential Information of the disclosing party is given by the receiving party (or by the disclosing party at the receiving party's request) to receiving party's Representatives, the receiving party shall be liable to the disclosing party for any failure by any such Representative to treat the Confidential Information in the same manner as the receiving party is obligated to treat it under the terms of this Confidentiality Agreement.

1.3 Compelled Disclosures. The receiving party agrees that if it receives a subpoena or other government process that purports to require the production of any Confidential Information of the other party for use in an action or proceeding or for any purpose other than for the purpose specified above, the receiving party (a) shall promptly inform the party or entity issuing such subpoena or other government process of the existence of this Agreement; (b) shall promptly inform the disclosing party of the receipt of such subpoena or other government process. If the disclosing party fails to intervene to quash said subpoena or other government process after being given notice and a reasonable opportunity to do so, or if such motion is denied by a court of competent jurisdiction, the Confidential Information may be produced, notwithstanding anything in this Agreement to the contrary. In the event that any Confidential Information is ordered produced in an action or proceeding, it shall not lose its confidential status through such use, and the receiving party shall take all reasonable and necessary steps to protect its confidentiality during such use, to the extent possible.

1.4 Confidentiality of Agreement. The parties agree that they shall not disclose the existence of this Agreement, any of the activities that may take place pursuant to this Agreement, the relationship formed, if any, under this Agreement or the other party's interest in the subject matter to which this Agreement relates, to anyone except their Representatives (subject to the third sentence in Section 1.2) with a need to know.

1.5 Return of Confidential Information. If either party determines that it does not wish to proceed with a business relationship with the other party, such party shall promptly notify the other party in writing of that decision. In that case and subject to

Section 2, the receiving party shall promptly deliver to the disclosing party all Confidential Information of the disclosing party, in whatever medium, and shall cause all copies, summaries, synopses, or derivations thereof to be destroyed. Said destruction shall be confirmed in writing by the receiving party to the disclosing party within 30 days following the date of the notice described above.

1.6 **No Representations or Warranties.** MyFocus makes no representations or warranties as to the accuracy or completeness of any Confidential Information furnished by MyFocus or on its behalf. Neither MyFocus or its affiliates, nor any of their Representatives, shall have any liability to Potential User or any of its Representatives relating to or arising from their use of any Confidential Information of MyFocus.

1.7 **Right to Disclose Information.** Potential User hereby represents and warrants that (a) it has the right to disclose to MyFocus and its Representatives any information or data provided by or on behalf of Potential User or its Representatives and (b) Potential User's entry into this Agreement and disclosure of information to MyFocus does not violate or constitute a breach of any agreement to which Potential User is otherwise bound. Potential User shall defend, indemnify, and hold MyFocus and its Representatives harmless against any and all claims, demands, or causes of action of every kind and character arising from or in connection with a breach by Potential User of the foregoing warranties.

2. **Ownership.** Except as set forth herein, all materials and information submitted or provided by either party remain the property of the party that created such materials or information. Except for use permitted in this Agreement between the parties, in no event shall Potential User or its affiliates or subcontractors acquire any rights in any MyFocus data or confidential or proprietary information. Potential User grants, and shall cause its affiliates and subcontractors to grant, MyFocus, MyFocus affiliates and their agents the right to use, for the sole benefit of MyFocus and MyFocus affiliates, the Potential User, Potential User affiliate, and Potential User subcontractor ideas, concepts, and know-how embodied in Potential User's communications or materials provided during to MyFocus. Potential User also grants, and shall cause its affiliates and subcontractors to grant, to MyFocus ownership of copyrights of those parts of Potential User's communications or materials provided to MyFocus.

3. **Equitable Relief.** The parties agree that the receiving party's use of the disclosing party's Confidential Information outside of the scope of this Agreement may cause irreparable injury to the disclosing party, and that the disclosing party shall be entitled to apply for injunctive relief in the state or federal courts of the State of California in the event of such improper use of Confidential Information by the receiving party.

4. **No Agreement.** Regarding the Transaction. Except as set forth in this Agreement, neither party shall have any liability or obligation of any nature whatsoever to the other party unless and until a definitive agreement is executed and delivered by each of the parties with respect to the subject matter of the Business Purpose.

5. **Acknowledgment of Possible Parallel Efforts.** Each party acknowledges and understands that the other party may be exploring various other business proposals and

opportunities, and that such party may continue to explore such proposals and opportunities. The disclosure by either party of its Confidential Information to the other party hereunder shall not affect or impede in any manner such party's right to explore such other proposals and opportunities, subject only to such party's obligations under this Agreement.

6. **Entire Agreement.** This Agreement embodies the entire understanding between the parties and supersedes and replaces any and all prior understandings, arrangements and agreements, whether oral or written, relating to the matters set forth herein.

7. **Binding Effect.** The rights and obligations of each party hereunder shall inure to the benefit of, and be binding upon, each party's division(s), affiliate(s) and subsidiary(ies).

8. **Survival.** The provisions of this Agreement shall apply during the period of disclosure and survive any termination or expiration of this Agreement.

9. **Assignment.** Potential User may not assign this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of MyFocus.

10. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the conflict of laws doctrine thereof. Any action to enforce or interpret this Agreement shall be brought in the appropriate judicial forum located in the State of California. Each party expressly consents to the jurisdiction of the state or federal courts in the State of California and hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim, in any legal action or proceeding with respect to this Agreement brought in any of the aforesaid courts, that any such court lacks jurisdiction over it. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement in the courts referred to in this Section and hereby further irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

12. **Expenses.** Potential User shall bear its own costs and expenses and the costs and expenses of its Representatives incurred in responding to and evaluating the documents relating to the Business Purpose, preparing proposals, entering into any discussions, and performing any due diligence, including, without limitation, any costs and expenses relating to the preliminary work performed by Potential User in connection with due diligence, analysis, or design activities.

13. **Compliance with Laws.** Potential User and its Representatives shall comply with all federal, state and local laws, including, without limitation, all import/export laws, in providing or receiving any information or materials to or from MyFocus.