

**Annex (1)**

**COMMITMENT TO COMPLY WITH REQUIREMENTS OF INFRINGEMENT NOTICE  
ISSUED TO NINTEX PROPRIETARY LIMITED BY COMPETITION COMMISSION**

**Whereas:**

- (a) On 10 January 2020, the Competition Commission (“**Commission**”) issued an infringement notice to Nintex Proprietary Limited (“**Nintex**”) under section 67 of the Ordinance (“**Infringement Notice**”);
- (b) The Infringement Notice was issued on the basis that the Commission had reasonable cause to believe that:
  - (i) Nintex had contravened the first conduct rule in the Competition Ordinance (Cap. 619) (“**Ordinance**”), by its former manager Mr [Nintex representative] engaging in the conduct relating to a bidding exercise held by Ocean Park Corporation in June 2017, as more particularly described in Part 2 of the Infringement Notice (“**Subject Conduct**”); and
  - (ii) the contravention involved serious anti-competitive conduct within the meaning of section 2(1) of the Ordinance;
- (c) Pursuant to the Infringement Notice, the Commission offered not to bring proceedings in the Competition Tribunal against Nintex, on condition that Nintex made a commitment to comply with the requirements of the Infringement Notice, as more particularly described below,

**Nintex hereby makes a commitment to the Commission to comply with the requirements of the Infringement Notice as follows:**

- (1) Nintex admits that, by Mr [Nintex representative] engaging in the Subject Conduct as more particularly described in Part 2 of the Infringement Notice, Nintex has contravened the first conduct rule in section 6 of the Ordinance; and
- (2) Nintex commits to adopt and implement, to the satisfaction of the Commission, an effective competition compliance programme, in the

time period and manner set out in the confidential letter from the Commission to Nintex of 10 January 2020.

**SIGNED for and on behalf of Nintex Proprietary Limited**

[Signed]

**Date:** 16 January 2020

**Name:** [Signatory name]

**Position:** Director

**Details of the Competition Compliance Programme referred to in paragraph (2) of the Commitment**

1 Circulation of Commission materials

(a) Within seven (7) working days of the date of the Commitment, Nintex shall circulate by email (and any other form Nintex considers appropriate) copies of the following documents in both English and Chinese languages to all current staff involved in its business activities in Hong Kong, as well as all of its authorised resellers in Hong Kong with whom Nintex has conducted any business within the twelve (12) months preceding the date of the Commitment (“**Authorised Resellers**”), and indicate that such documents be carefully studied:

- i. The published non-confidential version of the Infringement Notice;
- ii. “The Competition Ordinance and SMEs” brochure;
- iii. “Combat Market Sharing” brochure;
- iv. “Fighting Bid-rigging” brochure;
- v. “How to comply with the Competition Ordinance Practical Compliance Tools for Small and Medium-sized Enterprises” brochure; and
- vi. “Guideline on the First Conduct Rule”, in particular paragraphs 2.27 to 2.31 and 6.38 to 6.49.

(b) In respect of new staff and new resellers recruited within twelve (12) months from the date of the Commitment, the requirement in paragraph 1(a) shall

apply as specified, except that Nintex shall meet the requirement within seven (7) working days from the commencement date of their employment or reseller agreement.

- (c) Nintex shall provide a copy of the email referred to in paragraph 1(a) to the Commission within seven (7) working days of the date of the Commitment, and any emails circulated pursuant to paragraph 1(b) upon the Commission's request from time to time for two (2) years from the date of the Commitment.

## 2 Competition compliance policy

- (a) Nintex shall adopt a competition compliance policy, in the form of a written statement signed by its directors, which shall at least indicate their personal commitment to compliance with competition law and that competition law compliance is the responsibility of all staff and a key requirement of its resellers ("**Policy**").
- (b) Before adoption, Nintex shall first submit its draft Policy for the Commission's approval within fourteen (14) working days from the date of the Commitment.
- (c) After receiving the Commission's approval, Nintex shall adopt the Policy as approved by the Commission within seven (7) working days from the date of receiving the Commission's approval.
- (d) Nintex shall promulgate the Policy to all current and future staff involved in its business activities in Hong Kong and its Authorised Resellers in Hong Kong, and ensure that each staff member signs a statement acknowledging their

receipt and understanding of the Policy.

(e) Nintex shall keep record of the staff acknowledgments referred to in paragraph 2(d) and provide them for the Commission's inspection upon the Commission's request from time to time for two (2) years from the date of the Commitment.

### 3 Revision of standard reseller agreement applied in Hong Kong

(a) Nintex shall add a specific requirement in its standard reseller agreement for Hong Kong resellers that the latter must comply with, among others, the Competition Ordinance and pay heed to the Policy, and must not engage in any anti-competitive conduct during the term of its appointment as Nintex's authorised reseller.

(b) Nintex shall first submit its proposed revision for the Commission's approval within fourteen (14) working days from the date of the Commitment.

(c) After receiving the Commission's approval, Nintex shall apply the revised standard reseller agreement as approved by the Commission to new resellers recruited after the date of the approval, and implement the revision to existing resellers' agreements upon their earliest renewal.

(d) Nintex shall keep record of the use of the revised standard reseller agreement and the revision to existing reseller agreements referred to in paragraph 3(c) and provide them for the Commission's inspection upon the Commission's request from time to time for two (2) years from the date of the Commitment.

4 Attendance at Commission training

- (a) Nintex shall ensure that all current staff and new staff recruited within twelve (12) months from the date of the Commitment who are based in Hong Kong attend one of the Commission’s public seminars or workshops on competition law within twelve (12) months from the date of the Commitment or the commencement date of their employment, whichever is later.
- (b) Nintex shall use its best endeavour to procure its Authorised Resellers, and any new resellers in Hong Kong who are recruited within twelve (12) months from the date of the Commitment, to attend one of the Commission’s public seminars or workshops on competition law within twelve (12) months from the date of the Commitment or the commencement date of their reseller agreement, whichever is later.
- (c) Nintex shall keep proper training records recording each staff’s name, the date and venue of the seminar or workshop attended.
- (d) Nintex shall provide a copy of the records in paragraph 4(c) for the Commission’s inspection upon the Commission’s request from time to time for two (2) years from the date of the Commitment.

5 Local contact during monitoring period

- (a) For the purpose of complying with the Infringement Notice requirements, Nintex shall appoint, at its own cost, a solicitors’ firm registered with The Law Society of Hong Kong as its local representative for two (2) years from the date of the Commitment, with whom the Commission may correspond and

conduct any inspections of Nintex's performance of its obligations in the above paragraphs.

- (b) Nintex shall notify the Commission of its choice of solicitors' firm and provide a copy of the relevant appointment agreement within fourteen (14) working days from the date of the Commitment.