

NCC GROUP SERVICE MODULE

COMMERCIAL EVALUATION FACILITY SERVICES

1 Contract Structure and Interpretation

- 1.1 This Service Module sets out the terms and conditions applicable to the NCC Group Commercial Evaluation Facility ('CLEF') services and is to be read in conjunction with the NCC Group Master Services Agreement or the Short Form Terms and Conditions, as applicable, which applies to this Service Module. Capitalised terms in this Service Module shall have the same meaning ascribed to them in the NCC Group Master Services Agreement or the Short Form Terms and Conditions, as applicable, unless stated otherwise.
- 1.2 Clauses 1 to 7 of this Service Module apply to all CLEF Services. The Schedules attached to this Service Module set out additional terms and conditions that are applicable to the individual CLEF Scheme Providers.
- 1.3 To the extent that there is any conflict between (i) Clauses 1-7 of this Service Module and (ii) a Schedule to this Service Module, the relevant Schedule shall take precedence in respect of the applicable CLEF Scheme Provider to which it relates.

2 Definitions:

"**Assurance Maintenance Services**" means ongoing testing and evaluation of the Product following changes made to the Product to ensure continuing compliance with the Scheme Requirements;

"**CPNI**" means the Centre for the Protection of National Infrastructure;

"**Evaluation-Specific Materials**" means the kit, equipment or hardware which is required in order to conduct the Evaluation;

"**NCSC**" means the National Cyber Security Centre in the UK;

"**Product**" means the Client's software or hardware product that is the subject of the Product Assurance Services;

"**Product Assurance Services**" means the testing of the Product against the Scheme as specified in the Statement of Work;

"**Report**" means the Evaluation Summary Report (or similar reporting document) to be prepared by NCC Group as the output of the Product Assurance Services;

"**Scheme**" means an evaluation scheme which is overseen by the Scheme Provider;

"**Scheme Provider**" mean an independent and impartial organisation, including but not limited to. NCSC and CPNI, who operate and administer the Scheme;

"**Scheme Requirements**" means the requirements specified within the relevant Scheme as defined in the relevant Schedule;

"**SIA**" means a Security Impact Analysis document in the form specified by NCC Group; and

"**Source Code**" means the source code of the software or firmware that makes up the Product, or of any software or firmware that is contained within the Product, including where the same is licensed from a third party.

3 Client's Duties

- 3.1 The Client agrees:
- 3.1.1 that at all times when performing the Services, NCC Group is acting as an official test lab and, as such, NCC Group is required to act at all times in accordance with both the rules and procedures specified by the Scheme and NCC Group's ISO 17025 accreditation, even if instructed otherwise by the Client;
- 3.1.2 that NCC Group is dependent upon certain third parties that operate, administrate or are otherwise involved with the Scheme, including the Scheme Provider) in order to perform the Product Assurance Services. As such, the time required for performance of the Product Assurance Services will be dependent upon response times from such third parties;
- 3.1.3 that the Product Assurance Services provided by NCC Group offer no guarantee that the Product under assessment will meet the Scheme Requirements and the Product may consequently fail the assessment. Any certificates are provided by the Scheme Provider, and payment of the Fees is due upon completion of the Report;

- 3.1.4 that the Scheme Provider may review, amend, update, replace, withdraw or issue new Scheme Requirements as may be required from time to time and NCC Group shall not be liable to the Client to the extent that the Evaluation is no longer valid or applicable;
- 3.1.5 to provide NCC Group with access to Source Code to the extent reasonably required by NCC Group to perform the Product Assurance Services. If the Client is unable to provide the Source Code to NCC Group to examine at NCC Group's premises, then the Client must provide NCC Group with access to reasonable facilities at which NCC Group may examine the Source Code. Expenses may be chargeable for NCC Group's travel to any such facilities;
- 3.1.6 to provide NCC Group with full and accurate design documentation relating to the Product and that of any third party components that form part of the Product;
- 3.1.7 that it shall be responsible for all aspects of organising and facilitating with the relevant third party suppliers access for NCC Group to third party software, hardware, design documents or other materials relating to the Product as reasonably necessary for NCC Group to perform the Product Assurance Services;
- 3.1.8 to appoint a designated project manager to represent the Client and with whom NCC Group can liaise regarding all aspects of the Product Assurance Services, as well as a person to serve as a point of contact for NCC Group Personnel while working on the Client's or its third party supplier's premises who can provide reasonable assistance to NCC Group upon request;
- 3.1.9 to provide necessary access to the Client's premises, systems and equipment as reasonably required by NCC Group to enable its Personnel to perform the Product Assurance Services and to ensure that, where NCC Group is required to witness the Client's performance of a specific activity, the necessary people and resources are available at the time agreed for the same to take place;
- 3.1.10 that NCC Group will perform the Product Assurance Services against a stable version of the Product as provided to NCC Group by the Client prior to the Service Start Date. The Client may provide NCC Group with updated versions of the Product after the Service Start Date; however, if it does, NCC Group reserves the right to: (i) charge additional Fees to cover any repeat testing that is required; and/or (ii) to extend any deadlines and dates for performance agreed in the Statement of Work;
- 3.1.11 that NCC Group may be required to allow the Scheme Provider to inspect or supervise its performance of the Services. In such cases, NCC Group shall be permitted to allow such supervision and to disclose Client's Confidential Information to the Scheme Provider to the extent reasonably required, including providing copies of the Reports where applicable;
- 3.1.12 that the time needed for NCC Group to perform the Product Assurance Services is dependent on the number and quality of the Product(s) made available to NCC Group and agrees to provide any additional items or copies of the Product (or any components of the Product) that NCC Group may reasonably request in order to expedite performance of the Product Assurance Services; and
- 3.1.13 that for every 10 (ten) days of Product Assurance Services that are to be performed, NCC Group reserves the right to schedule 1 day of project management office time ("**PMO Time**"). PMO Time will be used to assess and organise the performance of the Product Assurance Services with the aim of avoiding wasted time and ultimately reducing costs for the Client. NCC Group shall have no obligation to provide PMO Time, and the Fees for PMO time will be charged at the full day rate as set out in the Statement of Work.

4 Assurance Maintenance

- 4.1 Where the Client has entered into the Agreement for Assurance Maintenance Services (as specified in the Statement of Work) the Client shall order such Services by submitting an SIA to NCC Group at the email addressed specified by NCC Group from time to time. The SIA must be in the form reasonably specified by NCC Group.
- 4.2 The Client agrees that submission of the SIA will automatically incur a minimum charge of one day (at the rate specified in the Statement of Work) to cover the initial review and analysis of the SIA by NCC Group (the "**Initial Charge**"). The Initial Charge may increase to more than one day in the event that the information provided by the Client is: (i) excessive so as to reasonably require NCC Group to spend additional time filtering or analysing such information; and/or (ii) inaccurate or incomplete so as to reasonably require NCC Group to raise questions and discuss with the Client in order to elicit the required information. The Initial Charge will be payable even if no further Services are carried out.
- 4.3 Following submission of the SIA, NCC Group will determine (in its sole discretion) how the changes will be assessed in line with the Scheme. Such determination will be made by NCC Group in accordance with the rules and guidelines issued by the Scheme. NCC Group will then prepare and return to the Client a proposal based on the details in the SIA and following the selected process.
- 4.4 The Client accepts and acknowledges that, for any SIA that results in additional work, it is not always possible for NCC Group to provide a fixed figure for the applicable Fees prior to the Services being carried out. As such, the Client commits to paying the Fees as notified to it by NCC Group following completion of the Services.

5 Liability

- 5.1 Further to clause 3.1.1 above, as some elements of the Product Assurance Services require NCC Group to obtain information and/or approval from third parties (including but not limited to the Scheme Providers), NCC Group shall not be liable for any failure to meet any agreed times for response or delivery of the Product Assurance Services as stated in the Statement of Work to the extent that the same is due to a delay in the response by such third parties to NCC Group.
- 5.2 NCC Group shall have no liability to the Client to the extent that the Schemes are: (i) withdrawn; or (ii) amended by Scheme Provider (or any other party with authority over them or the Client's participation in them) such that NCC Group is no longer able to perform the Product Assurance Services using its commercially reasonable efforts.
- 5.3 NCC Group shall have no liability to the Client in the event that the Product is damaged in any way during the provision of the Services.

6 Ownership of System

- 6.1 Ownership of the Product and all Intellectual Property Rights in the Product remain at all times with the Client and/or its third party suppliers (as applicable).

7 Cancellation and Rescheduling

- 7.1 The Client accepts and acknowledges that NCC Group often orders Evaluation-Specific Materials and allocates its Personnel weeks in advance and would suffer a loss should the CLEF Services or any Service Portion be postponed or cancelled at short notice. As such, the Client agrees that NCC Group shall have sole discretion to charge the Client (as genuinely pre-estimated liquidated damages) an amount (the "**Cancellation Fees**") to reflect the losses which NCC Group will incur if such cancellation or rescheduling is requested within a set number of days of the Scheduled Date.
- 7.2 The Cancellation Fees shall be calculated as the cost of the Evaluation-Specific Materials plus a percentage of the Fees that correspond to the days scheduled by NCC Group for provision of the CLEF Services or the relevant Service Portion (as applicable) (the "**Scheduled Days Cost**"). The relevant percentages and time periods as referred to above are as follows:
 - 7.2.1 cancellation request 8-21 days before the Service Start Date: 50% of the Scheduled Days Cost;
 - 7.2.2 rescheduling request 8-14 days before the Service Start Date with firm re-booking date: 50% of the Scheduled Days Cost; and
 - 7.2.3 cancellation or rescheduling request within 7 days of the Service Start Date: 100% of the Scheduled Days Cost.
- 7.3 For the avoidance of doubt: (i) failure by the Client to provide NCC Group with access to the Product; and/or (ii) failure by the Client to comply with any of its other obligations set out in clause 3.1 above, that in either case means that NCC Group cannot perform the Product Assurance Services despite using its commercially reasonable efforts to overcome the Client's failure, shall be deemed to be a cancellation by the Client made within 7 days of the Service Start Date. In such circumstances, a Cancellation Fee shall be payable as described in this clause **Error! Reference source not found.**

8 Industry Notifications

Subject to the remainder of this clause, NCC Group and/or its Affiliates may elect to notify relevant third-party software and systems vendors of the existence of critical vulnerabilities discovered during performance of the Product Assurance Services. NCC Group will only make such a notification where it reasonably considers that the existence of the vulnerability should be brought to the relevant vendor's attention to prevent harm to other users of the software or systems, and that NCC Group making the notification is generally in the public interest. NCC Group will limit the content of any notification to the existence of the vulnerability in question and will not provide any data or information specific to the Client or which might reasonably be expected to identify the Client. In all cases, NCC Group will never make such a notification in a way that would cause NCC Group to breach its obligations owed to the Client regarding confidentiality and data protection, or any other provision of the Contract unless it is required to do so by law.

Schedule A – NCSC SCHEMES

1 Contract Structure and Interpretation

- 1.1 This Schedule A sets out the additional terms and conditions applicable to NCSC Schemes (including the CPA Scheme, CAS(S) Scheme and CTAS Scheme) and is to be read in conjunction with the remainder of this Service Module.

2 Definitions

“**AMAP Process**” means the process followed by NCC Group when performing the Assurance Maintenance Services where it has been determined that reference to NCSC will be necessary;

“**AMRR Process**” means the process followed by NCC Group when performing the Assurance Maintenance Services where it has been determined that reference to NCSC will not be necessary;

“**CAS(S) Scheme**” means the NCSC Commodity Assurance Services Scheme (Sanitisation Services);

“**CPA Scheme**” means the NCSC Commercial Product Assurance standards; and

“**CTAS Scheme**” means the NCSC Tailored Assurance Scheme (formally the CSEG Tailored Assurance Scheme).

3 Evaluation

- 3.1 The Client acknowledges and accepts that:

3.1.1 NCC Group requires written approval from NCSC in respect of the Evaluation and NCSC’s decision is final in respect of this. There is no dispute resolution process if the Evaluation is not approved;

3.1.2 NCC Group is required to provide a copy of the Report to NCSC following the Evaluation;

3.1.3 it is NCSC’s decision as to whether or not to award a certification in respect of the Evaluation and its decision is final, with no process for dispute resolution between the Client and NCSC; and

3.1.4 NCSC may withdraw a Scheme at any time and any associated Certification may be discontinued as a result.

- 3.2 In respect of the CPA Scheme, the Client acknowledges and accepts that:

3.2.1 following submission of the SIA in accordance with clause 4 of this Service Module, NCC Group will determine (in its sole discretion) whether it will be necessary to follow the AMRR Process or the AMAP Process. Such determination will be made by NCC Group in accordance with the rules and guidelines issued by NCSC. NCC Group will then prepare and return to the Client a proposal based on the details in the SIA and following the selected process; and

3.2.2 for any SIA that results in following the AMRR process, it is not possible for NCC Group to provide a fixed figure for the applicable Fees prior to the Services being carried out. As such, the Client commits to paying the Fees as notified to it by NCC Group following completion of the Services. For any SIA that results in following the AMAP process, the Fees will be specified in the proposal produced for that SIA.

Schedule B – CPNI Evaluation Schemes

1 Contract Structure and Interpretation

- 1.1 This Schedule B sets out the additional terms and conditions applicable to CPNI Evaluation Schemes (including but not limited to the CAPSS Scheme, TKR Scheme and AACS Scheme) and is to be read in conjunction with the remainder of this Service Module.

2 Definitions:

“**AACS**” means the CPNI Automatic Access Control Systems standards;

“**CAPSS**” means the CPNI Cyber Assurance for Physical Security Systems standards;

“**CPNI Standard**” means the requirements and standards devised by CPNI that a Product must meet in order to be included in its CSE;

“**Critical National Infrastructure**” means those infrastructure assets (physical or electronic) that are vital to the continued delivery and integrity of the essential services upon which the UK relies, the loss or compromise of which would lead to severe economic or social consequences or of loss of life;

“**CSE**” means the Catalogue of Security Equipment which is a catalogue of equipment maintained by CPNI that CPNI has assessed as being suitable for inclusion in the Critical National Infrastructure; and

“**TKR Scheme**” means the CPNI Token, Keypad and Reader standards.

3 Evaluation

- 3.1 The Client acknowledges and accepts that:

3.1.1 NCC Group cannot disclose the CPNI Standard against which the Product will be tested;

3.1.2 the Client may be prohibited, at CPNI’s sole discretion, from observing all or part of the Evaluation;

3.1.3 the Client will keep confidential all aspects of the Evaluation which it has observed or are disclosed to it by NCC Group or CPNI including but not limited to any testing methodology and / or the results of testing (which may not be disclosed to any third party without the prior written permission of CPNI); and

3.1.4 CPNI may, at its sole discretion, redact the Report if it deems it to be either necessary or appropriate and that the Client may therefore receive a Report which is redacted.