

## NCC GROUP TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

### Services Module (Commercial Product Assurance and Common Criteria Services)

#### 1 Agreement Structure and Interpretation

- 1.1 This Services Module sets out the terms and conditions applicable to commercial product assurance and common criteria services, and is to be read in conjunction with NCC's General Terms and Conditions.
- 1.2 NCC's General Terms and Conditions apply to this Service Module.
- 1.3 Capitalised terms in this Services Module shall have the same meaning ascribed to them in NCC's General Terms and Conditions unless stated otherwise. A reference to "Related Body Corporate" includes "Related Corporation" as defined in NCC's General Terms and Conditions (where applicable).

#### 2 Definitions:

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

**"Assurance Maintenance Services"** means ongoing testing and evaluation of the Product following changes made to the Product to ensure continuing compliance with the CC Standard or the CPA Standard (as applicable);

**"CC Standard"** means Common Criteria being an international standard (ISO/IEC 15408) for computer security certification;

**"CPA Standard"** means the NCSC Commercial Product Assurance standards;

**"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 either or both of the CC Standard and/or the CPA Standard as specified in the Statement of Work, and includes the Assurance Maintenance Services;

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

**"Scheduled Days Cost"** means Fees that correspond to the days scheduled by NCC for provision of the Product Assurance Services or the relevant Service Portion (as applicable);

**"Service Portion"** means a phase, subproject, or similar portion of the total Product Assurance Services as described in the Statement of Work or otherwise agreed between the parties;

**"SIA"** means a Security Impact Analysis document in the form specified by NCC; 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 Product Assurance Services, NCC is acting as an official test lab and, as such, NCC is required to act at all times in accordance with both the rules and procedures specified by NCSC and NCC's ISO 17025 accreditation, even if instructed otherwise by the Client;
  - 3.1.2 that NCC is dependent on certain third parties that operate, administrate or are otherwise involved with the CC Standard and CPA Standard (including, but not limited to, NCSC) in order to perform the Product Assurance Services. As such, the time required for performance of the Product Assurance Services will be dependent on response times from such third parties;
  - 3.1.3 that the Product Assurance Services provided by NCC offer no guarantee that the Product under assessment will meet the CC Standard or CPA Standard (as applicable) and the Product may consequently fail the

assessment. Any certificates are provided by NCSC, and payment of the Fees is due upon completion of the Report;

- 3.1.4 to provide NCC with access to Source Code to the extent reasonably required by NCC to perform the Product Assurance Services. If the Client is unable to provide the Source Code to NCC to examine at NCC's premises, then the Client must provide NCC with access to reasonable facilities at which NCC may examine the Source Code. Expenses may be chargeable for NCC's travel to any such facilities;
- 3.1.5 to provide NCC with full and accurate design documentation relating to the Product and that of any third party components that form part of the Product;
- 3.1.6 that it shall be responsible for all aspects of organising and facilitating with the relevant third party suppliers access for NCC to third party software, hardware, design documents or other materials relating to the Product as reasonably necessary for NCC to perform the Product Assurance Services;
- 3.1.7 to appoint a designated project manager to represent the Client and with whom NCC can liaise regarding all aspects of the Product Assurance Services, as well as a person to serve as a point of contact for the Consultant(s) while working on the Client's or its third party supplier's premises who can provide reasonable assistance to NCC upon request;
- 3.1.8 to provide necessary access to the Client's premises, systems and equipment as reasonably required by NCC to enable the Consultant to perform the Product Assurance Services and to ensure that, where NCC 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;
- 3.1.9 that NCC will perform the Product Assurance Services against a stable version of the Product as provided to NCC by the Client prior to the Service Start Date. The Client may provide NCC with updated versions of the Product after the Service Start Date, however, if it does, NCC reserves the right if necessary 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; and
- 3.1.10 that the time needed for NCC to perform the Product Assurance Services is dependent on the number and quality of the Product(s) made available to NCC, and agrees to provide any additional items or copies of the Product (or any components of the Product) that NCC may reasonably request in order to expedite performance of the Product Assurance Services.
- 3.1.11 that for every 10 days of Product Assurance Services that are to be performed, NCC 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 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 an Agreement for Assurance Maintenance Services (as specified in the Statement of Work) the Client shall order such Assurance Maintenance Services by submitting an SIA to NCC at the email address specified by NCC from time to time. The SIA must be in the form reasonably specified by NCC.
- 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 (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 to spend additional time filtering or analysing such information; and/or (ii) inaccurate or incomplete so as to reasonably require NCC 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 NCC Services are carried out.
- 4.3 Following submission of the SIA, NCC 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 in accordance with the rules and guidelines issued by NCSC. NCC 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 following the AMRR process, it is not possible for NCC to provide a fixed figure for the applicable Fees prior to the NCC Services being carried out. As such, the Client commits to paying the Fees as notified to it by NCC following completion of the NCC Services. For any SIA that results in following the AMAP process, the Fees will be specified in the proposal produced for that SIA.
- 4.5 Where the AMRR Process is being followed, NCC Services may be provided over a number of months. As such, the Client agrees that NCC shall be entitled to invoice quarterly in respect of the NCC Services carried out in the preceding quarter.

## 5 Liability

- 5.1 Further to clause 3.1.1 above, as some elements of the Product Assurance Services require NCC to obtain information and/or approval from third parties (including but not limited to NCSC), NCC 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.
- 5.2 NCC shall have no liability to the Client to the extent that the CC Standard, CPA Standard and/or the associated accreditation schemes are: (i) withdrawn; or (ii) amended by NCSC (or any other party with authority over them or the Client's participation in them) such that NCC is no longer able to perform the Product Assurance Services using its commercially reasonable efforts.

## 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 Product Assurance Services or, if applicable, each Service Portion will commence on the date set out in the Statement of Work unless otherwise agreed in writing between NCC and the Client (the "**Scheduled Date**").
- 7.2 The Client accepts and acknowledges that NCC often allocates Personnel weeks or months in advance and would suffer a loss should the Product Assurance Services or any Service Portion be postponed or cancelled at short notice. As such, the Client agrees that:
- 7.2.1 it shall pay to NCC a Cancellation Fee (as genuinely pre-estimated liquidated damages) in the amount calculated in accordance with clause 7.3 below; and
- 7.2.2 the Cancellation Fee reflects the losses which NCC will incur if such cancellation or rescheduling is requested within a set number of days of the Scheduled Date.
- 7.3 The Cancellation Fee shall be calculated as follows:
- 7.3.1 cancellation request 8-21 days before the Scheduled Date: 50% of the Scheduled Days Cost;
- 7.3.2 rescheduling request 8-14 days before the Scheduled Date with firm re-booking date: 50% of the Scheduled Days Cost; and
- 7.3.3 cancellation or rescheduling request within 7 days of the Scheduled Date: 100% of the Scheduled Days Cost.
- 7.4 Charging of the Cancellation Fee is at NCC's discretion. NCC will use reasonable commercial efforts to re-deploy Personnel to other projects to mitigate its losses resulting from cancellation or rescheduling. If NCC is able to successfully redeploy Personnel, then it shall reduce the Cancellation Fee payable by the Client accordingly.
- 7.5 If the Client re-books the Product Assurance Services for another date, the Fees for the Product Assurance Services as re-booked will be payable in addition to any Cancellation Fee.
- 7.6 For the avoidance of doubt: (i) failure by the Client to provide NCC 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, that in either case means that NCC 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 Scheduled Date. In such circumstances, a Cancellation Fee shall be payable as described in this clause 7.

## 8 Industry Notifications

- 8.1 Subject to the remainder of this clause, NCC and/or its Related Bodies Corporate 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 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 making the notification is generally in the public interest. NCC 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 will never make such a notification in a way that would cause NCC to breach its obligations owed to the Client regarding confidentiality and data protection, or any other provision of the Agreement unless it is required to do so by law.