

NCC GROUP TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

Services Module (Retained Incident Response Services)

1 Agreement Structure and Interpretation

- 1.1 This Services Module sets out the terms and conditions applicable to Retained Incident Response 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 Services Module.
- 1.3 Capitalised terms in this Services Module shall have the same meaning ascribed 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:

"**Additional Services**" has the meaning ascribed to it in clause 8;

"**Alternative Services**" means any or all of the following services offered by NCC (or its Related Bodies Corporate): security testing services, security consultancy services, risk management and/or cyber-forensics, first responder training courses or such other services as agreed by NCC;

"**Call-Off Payment**" means together the Pre-Paid Hours Fee and the Retainer Fee;

"**Equipment**" means the hardware, software or other materials and equipment which are to be investigated by NCC as part of the Retained Incident Response Services;

"**Initial Term**" has the meaning ascribed to it in clause 3.1;

"**Minimum Call-Off Hours**" has the meaning ascribed to it in clause 8.1;

"**NCC Equipment**" has the meaning ascribed to it in clause 7.1;

"**Normal Office Hours**" means 9:00am – 5:30pm (GMT/BST or as applicable at the relevant time in the country or region specified in the Statement of Work) on any day which is a Working Day unless otherwise specified in the Statement of Work;

"**Pre-Paid Hours Fee**" means the fees payable for the Minimum Call-Off Hours (which may be expressed in a Statement of Work as days, where 8 Pre-Paid Hours comprises one day, and if less than 8 hours, rounded down to the nearest half day) as set out in the Statement of Work and as amended from time to time in accordance with the terms of this Agreement;

"**Renewal Term**" has the meaning ascribed to it in clause 3.1;

"**Report**" means any report produced by NCC detailing the results of the Retained Incident Response Services;

"**Response Proposal**" has the meaning ascribed to it in clause 4.4;

"**Retained Incident Response Services**" means the retained incident response services as described in the Statement of Work;

"**Retainer Fee**" means the annual retention fee set out in the Statement of Work, as amended from time to time in accordance with the terms of the Agreement;

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

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

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

"**Service Request**" has the meaning ascribed to it in clause 4.1;

"**System**" means the systems and networks which the Client requires to be tested or investigated as part of the Retained Incident Response Services pursuant to this Agreement, together with any software, systems and networks linked to the same and data passing across or contained in any of the foregoing; and

“Working Day” means a period of 8 hours on any day other than a Saturday, a Sunday or any day which is a public holiday in the country (or countries) specified in the Statement of Work.

3 Term of Agreement

- 3.1 The Agreement shall commence on the date stated in the Statement of Work and, unless terminated earlier in accordance with its terms, shall continue for a period one (1) year or such other term as stated in a Statement of Work (**“Initial Term”**) after which it will automatically renew for rolling terms of an equivalent period to the Initial Term (**“Renewal Term”**) unless either Party gives the other at least 30 days’ written notice to terminate prior to the date of such renewal or otherwise specified in the Statement of Work.

4 Services Requests

- 4.1 Where the Client wishes to request the provision of the Retained Incident Response Services (**“Service Request”**), such Service Request shall be made by email or phone using the dedicated instant response telephone and email details provided by NCC to the Client from time to time or via NCC’s AssistLive portal or such other portal which NCC provide access to for this purpose (**“Portal”**).
- 4.2 A Service Request shall be treated as having been received:
- 4.2.1 if by telephone, upon receipt of the call; or
 - 4.2.2 if by email, upon receipt by the sender of a delivery receipt that the email has been transmitted to the addressee;
 - 4.2.3 if through a Portal, upon receipt by NCC of the alert in the Portal.
- 4.3 Upon receipt of a Service Request, NCC shall telephone the Client to log the incident in accordance with the applicable timescales as set out in **Appendix 1**.
- 4.4 Once a Service Request has been logged and NCC has carried out a review of the initial incident information (subject to the limitations set out in clauses 5.7 to 5.9 and in **Appendix 1**), NCC shall prepare a proposal setting out the scope of the work to be carried out by NCC in relation to the relevant Service Request (a **“Response Proposal”**).
- 4.5 NCC shall provide the Retained Incident Response Services and any Additional Services to the Client in accordance with the terms and conditions set forth in this Agreement. Where Client orders Alternative Services, additional terms and conditions shall apply to such Alternative Services which shall be set out in the Statement of Work relating to the Alternative Services.
- 4.6 NCC will not be required to travel to such countries listed as “Advise against all travel” or “Advise against all but essential travel” by the Foreign Commonwealth Office (FCO) in its travel advice or to those countries where travel is restricted in accordance with NCC’s internal policies.

5 NCC’s Duties

- 5.1 NCC shall carry out the Retained Incident Response Services using reasonable care and skill and in a professional manner.
- 5.2 Where a Report is required it shall, unless otherwise stated in the Response Proposal or otherwise agreed, be produced by NCC’s Personnel within ten (10) days of completion of the Retained Incident Response Services and sent to the Client.
- 5.3 Whilst NCC will use its reasonable endeavours to ensure that the same NCC Personnel will continue to be involved throughout the Retained Incident Response Services, it reserves the right to replace that NCC Personnel.
- 5.4 NCC shall, where NCC’s Personnel is present on the Client’s premises, use all reasonable endeavours to ensure that such Personnel complies with such reasonable site rules and procedures as are notified to NCC from time to time.
- 5.5 NCC grants to the Client during the term of this Agreement a non-exclusive, non-transferable licence to use the NCC Equipment.
- 5.6 In the event that a level of security clearance is required in order to provide the Retained Incident Response Services, NCC will use its reasonable endeavours to provide NCC Personnel with the appropriate levels of security clearance. For the avoidance of doubt, if NCC is unable to provide NCC Personnel with appropriate levels of security clearance, NCC will not be liable for any failure to perform or complete the Retained Incident Response Services or delay in performing its obligations under the Agreement.
- 5.7 The triage time for reviewing initial incident information (**“Initial Triage Time”**) shall not exceed the length of time as set out in a Statement of Work. Where the Initial Triage Time will require more time than as set out in Appendix 1, NCC reserves the right to charge additional fees at its standard rates in force from time to time. NCC shall not exceed the agreed Initial Triage Time without the Client’s consent.

- 5.8 Any timescales set out in a Statement of Work remain subject to availability of commercial travel, visa application processing times, government restrictions and the availability of travel health services e.g. travel vaccinations and immunisations.
- 5.9 NCC does not guarantee compliance with the timescales set out in Appendix 1 in "Exceptional Circumstances". Exceptional Circumstances means where, in NCC's reasonable opinion, it has received or is receiving an exceptional volume of incident requests owing to a large scale event affecting the majority of its incident response client base.

6 Client's Duties

6.1 The Client:

- 6.1.1 confirms that any hardware which is included within the Equipment is in good working order and that any software which is included in the Equipment functions fully and properly, in each case unless otherwise agreed with NCC. If, when carrying out the Retained Incident Response Services, NCC discovers faults in the Equipment or System which require additional work, NCC reserves the right to charge additional fees in accordance with clause 8.12;
- 6.1.2 acknowledges that, due to the nature of the Retained Incident Response Services, NCC cannot guarantee that it will be able to perform and/or complete the Retained Incident Response Services. In particular, NCC may be unable to recover the data in whole or in part, may be unable to gain access to some or all of the Equipment or System and may need to examine additional equipment not included in the Response Proposal. In addition, the data recovered may not be of evidentially significant material, the Equipment or System may suffer damage as a result of the data recovery process and/or the Retained Incident Response Services may result in loss of business operating time or interruption to service for the Client. Such problems cannot be identified by NCC until it has commenced the Retained Incident Response Services and so the Client is still liable to pay the Fees (or such proportion of the Fees as NCC may determine in its absolute discretion);
- 6.1.3 agrees, where the Retained Incident Response Services are to take place on the Client's premises, to ensure that a suitable working space is provided for the NCC Personnel which shall include (without limitation) a desk and network access where appropriate;
- 6.1.4 agrees that it will, unless otherwise agreed, deliver the Equipment to the relevant NCC premises and collect the Equipment from those premises or authorise other means of delivery and return at the Client's own risk. NCC shall not be liable for the Equipment during transit to or from its offices;
- 6.1.5 the Client shall assume all liability and shall indemnify, keep indemnified and hold harmless NCC, its Related Bodies Corporate and its and their officers, employees, agents, contractors and sub-contractors in full and on demand from and against any and all third party claims (including, but not limited to, claims for alleged or actual infringement of Intellectual Property Rights), losses, damages, demands, costs, expenses, fees (including, but not limited to, court and legal fees) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered, incurred or sustained by NCC (or its Related Bodies Corporate) directly or indirectly as a result of the provision of the Retained Incident Response Services, save to the extent that any such losses, damages, demands, costs, expenses, fees or liabilities are incurred as a direct result of NCC's breach of this Agreement;
- 6.1.6 agrees for the duration of the Retained Incident Response Services to provide NCC with prompt access to at least one employee who shall have detailed knowledge of the Equipment and the System to act as liaison between the Client and NCC;
- 6.1.7 agrees at all times to co-operate with NCC and to provide it promptly with such information about the Equipment as is reasonably required by NCC;
- 6.1.8 agrees to ensure that its System shall use Western character sets and the Client acknowledges and agrees that NCC shall not be required to carry out the NCC Services on any System which use non-Western character sets. For the avoidance of doubt, NCC will not be liable for any failure to perform or complete the NCC Services or delay in performing its obligations under the Agreement in relation to any System which uses non-Western character sets;
- 6.1.9 agrees to ensure that, where the Retained Incident Response Services are taking place on its premises, the premises are safe at all times. The Client will indemnify, keep indemnified and hold harmless NCC in full and on demand from and against all liabilities, direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including without limitation costs of enforcement) and expenses which NCC incurs or suffers directly or indirectly in any way whatsoever arising out of or in connection with any claim or action against NCC for death and/or personal injury arising out of the Client's failure to provide safe premises;
- 6.1.10 agrees that it has procured any consent required for NCC (or its Related Bodies Corporate) to be permitted to carry out the Retained Incident Response Services and that, when requested by NCC it will provide

evidence of such consents. NCC will be carrying out the Retained Incident Response Services in the belief that it has all appropriate consents, permits and permissions from the Client;

- 6.1.11 authorises NCC to work on or remove Equipment which is compromised or which it believes to be compromised; and
- 6.1.12 that, if the Client requires the Report to be used as evidence in legal proceedings, the Client must make this known to NCC during the Service Request.

7 NCC Equipment

- 7.1 NCC (or its Related Bodies Corporate) may temporarily provide hardware to the Client to assist in delivery or performance of the Retained Incident Response Services (the "**NCC Equipment**"). In such cases, this clause **Error! Reference source not found.** shall apply.
- 7.2 NCC consents to the Client using the NCC Equipment, solely in relation to the Retained Incident Response Services, for such period as may be agreed (or, in the absence of agreement, for so long as NCC stipulates) (the "**NCC Equipment Term**"). The NCC Equipment shall at all times be and remain NCC's exclusive property, and shall be held by the Client in safe custody and an appropriate environment at Client's own risk and maintained and kept in good condition until returned to NCC. The NCC Equipment shall not be disposed of or used other than in accordance with NCC's written instructions or authorisation.
- 7.3 A return-to-base warranty is provided for all NCC Equipment for the NCC Equipment Term. The Client acknowledges and agrees that it shall return the NCC Equipment to NCC within 14 days of the NCC Equipment Term ending. Delivery to the Client is at NCC's cost and any return of the NCC Equipment is at the Client's cost. On returning of the NCC Equipment, risk in the NCC Equipment shall pass to NCC once the Client has received written signed acknowledgement of receipt of the NCC Equipment.

8 Fees and Expenses

- 8.1 The Statement of Work sets out the minimum number of hours that the Client agrees to call-off during the Initial Term and each Renewal Term ("**Minimum Call-Off Hours**"). The Parties may agree in the 30-day period prior to the expiry of the Initial Term or relevant Renewal Term whether to change the Minimum Call-Off Hours in the immediately following Renewal Period. If any such amendment to the Minimum Call-Off Hours is agreed, the definition of "Minimum Call-Off Hours" in this Agreement shall be construed accordingly and the Pre-Paid Hours Fee shall be amended accordingly and be agreed by the Parties in writing.
- 8.2 Subject to clause 8.7, NCC shall invoice the Client for the Call-Off Payment upon signature of this Agreement and each anniversary thereof until this Agreement is terminated.
- 8.3 The Client agrees that it shall be committed to calling-off at least the Minimum Call-Off Hours during the Initial Term and each Renewal Term. To the extent the Client has not used all the Minimum Call-Off Hours for Retained Incident Response Services by the expiry of the Initial Term or the relevant Renewal Term, ("**Remaining Hours**"), then the Client shall, subject to the remainder of this clause 8, be entitled to use the Remaining Hours to order Alternative Services.
- 8.4 The following conditions shall apply to the Client's use of the Remaining Hours:
 - 8.4.1 additional terms and conditions shall apply to such Alternative Services pursuant to clause 4.5 of this Service Module;
 - 8.4.2 unless agreed otherwise, the Client may order one hour of Alternative Services per Remaining Hours, irrespective of NCC's usual day or hourly rate for the Alternative Services in question; and
 - 8.4.3 the work to be undertaken by NCC in relation any Remaining Hours must be scoped and scheduled to take place within 3 months of expiry of the Initial Term or the relevant Renewal Term (as appropriate). If the Client then cancels or re-schedules the Alternative Services once a Service Start Date has been agreed then the Remaining Hours shall expire and cannot be used by the Client.
- 8.5 The Parties agree that the Call-Off Payment is non-refundable in all circumstances. Accordingly, if the Agreement is terminated or if the Retained Incident Response Services are cancelled, NCC will be entitled to retain the Call-Off Payment (and be paid for all amounts that are as at that date invoiced but unpaid) and no refunds or credits will be given.
- 8.6 If the Client wishes to purchase additional hours for Retained Incident Response Services over and above the Minimum Call-Off Hours during the Initial Term or any Renewal Term ("**Additional Services**"), the fees payable for such Additional Services shall be calculated and invoiced in accordance with the rates set out in the Statement of Work (as amended from time to time in accordance with clause 8.8).
- 8.7 Reasonable expenses incurred by NCC in providing the NCC Services hereunder shall be invoiced on or after submission of the Report prepared in relation to each particular engagement.

- 8.8 NCC shall be entitled to review and vary the Call-Off Payment and Rate Card set out in the Statement of Work from time to time but no more than once a year and only on at least 30 days' written notice prior to the expiry of the Initial Term or the relevant Renewal Term.
- 8.9 NCC will have no obligation to provide any NCC Services until the Call-Off Payment has been received by NCC.
- 8.10 Unless otherwise stated in the relevant Response Proposal the Fees do not include attendance by an NCC representative at any case conferences, meetings or court hearings the storage by NCC of any property or data post completion of the NCC Services, unless as otherwise set out in clause 8.11, and/or the cost of transporting the Equipment to/from NCC's premises. If NCC agrees to carry out any of these activities it shall be entitled to charge reasonable additional fees.
- 8.11 Once the Report for the NCC Services has been delivered to the Client, digital artefacts associated with the case will be stored by NCC for a period of six (6) months. If requested by the Client prior to the end of this six-month period, NCC can extend the retention for an additional fee, provide the Client with a copy of the materials on appropriate storage device couriered to them at the Client's cost, or erase the materials from our facilities.
- 8.12 NCC reserves the right to increase the Fees and/or to charge additional fees should additional work not listed in the Response Proposal, such as reverse engineering, become necessary. This includes, but is not limited to, additional work necessitated by a defect in any of the software or hardware included within the Equipment. NCC will not increase the Fees and/or charge any additional fees without informing the Client in advance.
- 8.13 Any Pricing Assumptions specified in the Statement of Work shall apply to the Retained Incident Response Services and also to any fees payable for Additional Services.

9 Cancellation and Rescheduling

- 9.1 The Retained Incident Response 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**").
- 9.2 The Client accepts and acknowledges that NCC often allocates Personnel weeks in advance and would suffer a loss should the Retained Incident Response Services or any Service Portion be postponed or cancelled at short notice. As such, the Client agrees that:
 - 9.2.1 it shall pay to NCC a Cancellation Fee (as genuinely pre-estimated liquidated damages) in the amount calculated in accordance with clause 9.3 below; and
 - 9.2.2 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.
- 9.3 The Cancellation Fee shall be calculated as follows:
 - 9.3.1 cancellation or rescheduling request within 7 days of the Scheduled Date: 100% of the Scheduled Days Cost; and
 - 9.3.2 cancellation or rescheduling request between 8 and 14 days prior to the Scheduled Date: 50% of the Scheduled Days Cost.
- 9.4 Charging of the Cancellation Fees are 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.
- 9.5 If the Client re-books the Retained Incident Response Services for another date, the Fees for the Retained Incident Response Services as re-booked will be payable in addition to any Cancellation Fees.
- 9.6 The Client shall be permitted to set off any liability under this clause 9 against any Remaining Hours. For the avoidance of doubt, to the extent the Client does not have sufficient Remaining Hours to satisfy any liability under this clause 9, NCC shall invoice the Client for any shortfall amount.

10 Liability

- 10.1 Subject to clause 23.6 of NCC's General Terms and Conditions, NCC shall not be liable for any loss of or damage to the Client's, its agents' and/or its subcontractors' property caused directly or indirectly by the NCC Equipment.

11 Industry Notifications

- 11.1 Subject to the remainder of this clause, NCC and/or its Related Bodies Corporatemay elect to notify relevant third-party software and systems vendors of the existence of critical vulnerabilities discovered during performance of the Retained Incident Response 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.

Appendix 1 – Response Times

TABLE OF RESPONSE TIMES

Service	Bronze	Silver	Gold	MDR Standard Retainer	MDR Enhanced Retainer
SLA (Mon- Sunday 24 hours)					
▪ Telephone	6 hours	3 hour	1 hour	3 hour	1 hour
▪ Remote**	BE*	24 hours	12 hour	12 hours	6 hours
▪ Onsite support in transit (EU, NA & SEA)*	BE	24 hours	12 hours	24 hours	12 hours
▪ First Responder In transit (RoW)*	BE	BE	48 hours	BE	48 hours
Initial Triage Time Included	1 hour	2 hours	2 hours	2 hours	2 hours

*BE – Best Endeavors

Caveats and Conditions:

1. All of the above timescales remain subject to availability of commercial travel, visa application processing times, government restrictions and the availability of travel health services e.g. travel vaccinations and immunisations.
2. The review of initial incident information shall not exceed one hour's effort. Where the initial review will require more than 1 hour's effort, NCC reserves the right to charge additional fees at its standard rates in force from time to time. NCC shall not exceed one hour's effort on the initial review without the Client's consent.
3. NCC does not guarantee compliance with the above timescales in "Exceptional Circumstances". Exceptional Circumstances means where, in NCC's reasonable opinion, it has received or is receiving an exceptional volume of incident requests owing to a large scale event affecting the majority of its incident response client base.