

NCC GROUP TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

Services Module (Incident Response Services)

1 Contract Structure and Interpretation

- 1.1 This Services Module sets out the terms and conditions applicable to incident response services, and is to be read in conjunction with NCC Group's General Terms and Conditions.
- 1.2 NCC Group'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 the General Terms and Conditions unless stated otherwise.

2 Definitions:

"Additional Services" has the meaning ascribed to it in clause 7.5;

"Alternative Services" means any or all of the following services offered by NCC Group (or its Affiliates): security testing services, security consultancy services, risk management and/or cyber-forensics first responder training courses ;

"Pre-Paid Days Fee" means the fees payable for the Minimum Call-Off Days as set out in the Statement of Works and as amended from time to time in accordance with the terms of this Contract;

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

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

"Incident Response Services" means the incident response services as described in the Statement of Works;

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

"Minimum Call-Off Days" has the meaning ascribed to it in clause 7.1;

"Normal Office Hours" means Monday to Friday 9:00am – 5:30pm (GMT/BST as applicable at the relevant time in England and Wales), excluding bank holidays in England and Wales;

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

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

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

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

"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 Incident Response Services pursuant to this Contract, together with any software, systems and networks linked to the same and data passing across or contained in any of the foregoing;

"Unutilised Days" means any Minimum Call-Off Days that have been paid for by the Client but not yet utilised during the Initial Term or relevant renewal Term; and

"Working Day" means a period of 8 hours on any day other than a Saturday, a Sunday or any day which is a bank holiday in England and Wales.

3 Term of Contract

- 3.1 The Contract shall commence on the date stated in the Statement of Works and, unless terminated earlier in accordance with its terms, shall continue for a period one (1) year ("**Initial Term**") after which it will automatically renew for rolling terms of 12 months ("**Renewal Term**") unless either party gives the other at least 30 days' written notice to terminate prior to the date of such renewal.

4 Services Requests

- 4.1 Where the Client wishes to request the provision of the 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 Group to the Client from time to time.
- 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.
- 4.3 Upon receipt of a Service Request, NCC Group shall telephone the Client to log the incident in accordance with the timescales set out in Appendix 2.
- 4.4 Once a Service Request has been logged and NCC Group has carried out a review of the initial incident information (subject to the limitations set out in Appendix 2), NCC Group shall prepare a proposal setting out the scope of the work to be carried out by NCC Group in relation to the relevant Service Request (a "**Response Proposal**").
- 4.5 NCC Group shall provide the Services and any Additional Services to the Client in accordance with the terms and conditions set forth in this Contract. 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 Group will not 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.

5 NCC Group Duties

- 5.1 NCC Group shall carry out the 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 the Consultant within ten (10) days of completion of the Incident Response Services and sent to the Client.
- 5.3 Whilst NCC Group will use its reasonable endeavours to ensure that the same Consultant will continue to be involved throughout the Incident Response Services, it reserves the right to replace that Consultant.
- 5.4 NCC Group shall, where the Consultant is present on the Client's premises, use all reasonable endeavours to ensure that the Consultant complies with such reasonable site rules and procedures as are notified to NCC Group from time to time.
- 5.5 NCC Group grants to the Client during the term of this Contract 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 Incident Response Services, NCC Group will use its reasonable endeavours to provide a Consultant with the appropriate levels of security clearance. For the avoidance of doubt, if NCC Group is unable to provide a Consultant with appropriate levels of security clearance, NCC Group will not be liable for any failure to perform or complete the Incident Response Services or delay in performing its obligations under the Contract.

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 Group. If, when carrying out the Incident Response Services, NCC Group discovers faults in the Equipment or System which require additional work, NCC Group reserves the right to charge additional fees in accordance with clause 7.10;
 - 6.1.2 acknowledges that, due to the nature of the Incident Response Services, NCC Group cannot guarantee that it will be able to perform and/or complete the Incident Response Services. In particular, NCC Group 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 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 Group until it has commenced the Incident Response Services and so the Client is still liable to pay the Fees (or such proportion of the Fees as NCC Group may determine in its absolute discretion);
 - 6.1.3 agrees, where the Incident Response Services are to take place on the Client's premises, to ensure that a suitable working space is provided for the Consultant(s) 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 Group premises and collect the Equipment from those premises or authorise other means of delivery and return at the Client's own risk. NCC Group 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 Group, its Affiliates 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 Group (or its Affiliates) directly or indirectly as a result of the provision of the 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 Group's breach of this Contract;
- 6.1.6 agrees for the duration of the Incident Response Services to provide NCC Group 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 Group;
- 6.1.7 agrees at all times to co-operate with NCC Group and to provide it promptly with such information about the Equipment as is reasonably required by NCC Group;
- 6.1.8 agrees to ensure that its System shall use Western character sets and the Client acknowledges and agrees that NCC Group shall not be required to carry out the Services on any System which use non-Western character sets. For the avoidance of doubt, NCC Group will not be liable for any failure to perform or complete the Services or delay in performing its obligations under the Contract in relation to any System which uses non-Western character sets;
- 6.1.9 agrees to ensure that, where the 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 Group 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 Group incurs or suffers directly or indirectly in any way whatsoever arising out of or in connection with any claim or action against NCC Group 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 Group (or its Affiliates) to be permitted to carry out the Incident Response Services and that, when requested by NCC Group it will provide evidence of such consents. NCC Group will be carrying out the Incident Response Services in the belief that it has all appropriate consents, permits and permissions from the Client;
- 6.1.11 authorises NCC Group to work on or remove Equipment which is compromised or which it believes to be compromised;

7 Fees and Expenses

- 7.1 The Statement of Works sets out the minimum number of days that the Client agrees to call-off during the Initial Term and each Renewal Term ("**Minimum Call-Off Days**"). 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 Days in the immediately following Renewal Period. If any such amendment to the Minimum Call-Off Days is agreed, the definition of "Minimum Call-Off Days" in this Contract shall be construed accordingly and the Pre-Paid Days Fee shall be amended accordingly and be agreed by the parties in writing.
- 7.2 The Client agrees that it shall be committed to calling-off at least the Minimum Call-Off Days during the Initial Term and each Renewal Term. To the extent the Client has not used all the Minimum Call-Off Days for Services by the expiry of the Initial Term or the relevant Renewal Term ("**Remaining Days**"), then the Client shall, subject to the remainder of this clause 7.3, be entitled to use the Remaining Days to order Alternative Services. The following conditions shall apply to the Client's use of the Remaining Days:
 - 7.2.1 additional terms and conditions shall apply to such Alternative Services pursuant to clause 4.5 of this Service Module.
 - 7.2.2 unless agreed otherwise, the Client may order one day of Alternative Services per Remaining Day, irrespective of NCC Group's usual day rate for the Alternative Services in question.
 - 7.2.3 the work to be undertaken by NCC Group in relation any Remaining Day 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 start date has been agreed then the Remaining Days shall expire and cannot be used by the Client.
- 7.3 The parties agree that the Call-Off Payment is non-refundable in all circumstances. Accordingly if the Contract is terminated or if the Services are cancelled, NCC Group 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.
- 7.4 If the Client wishes to purchase additional days for Services over and above the Minimum Call-Off Days 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 Works (as amended from time to time in accordance with clause 7.7). Appendix 1 (Additional Services – Pricing Assumptions) shall also apply to any fees payable for Additional Services.

- 7.5 NCC Group shall be entitled to review and vary the Call-Off Payment and Rate Card set out in the Statement of Works 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.
- 7.6 NCC Group will have no obligation to provide any Services until the Call-Off Payment has been received by NCC Group.
- 7.7 Unless otherwise stated in the relevant Response Proposal the Fees do not include attendance by an NCC Group representative at any case conferences, meetings or court hearings; the storage by NCC Group of any property or data post completion of the Services and/or the cost of transporting the Equipment to/from NCC Group's premises. If NCC Group agrees to carry out any of these activities it shall be entitled to charge reasonable additional fees.
- 7.8 NCC Group 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 Group will not increase the Fees and/or charge any additional fees without informing the Client in advance.

8 Cancellation and Rescheduling

- 8.1 The Services provided under this Services Module are subject to a Cancellation Fee for short term cancellation or rescheduling as described in the General Terms and Conditions.
- 8.2 The relevant percentages and time periods as referred to in the General Terms and Conditions are as follows:
 - 8.2.1 cancellation or rescheduling request within 7 days of the Start Date: 100% of the Scheduled Days Cost; and
 - 8.2.2 cancellation or rescheduling request between 8 and 14 days prior to the Start Date: 50% of the Scheduled Days Cost.
- 8.3 The Client shall be permitted to set off any liability under this clause 8 against any Unutilised Days. For the avoidance of doubt, to the extent the Client does not have sufficient Unutilised Days to satisfy any liability under this clause 8, NCC Group shall invoice the Client for any shortfall amount.

9 Industry Notifications

- 9.1 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 Security Testing. 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.

Appendix 1

Additional Services - Pricing Assumptions

1. All fees are exclusive of VAT and expenses.
2. All Services (including the Minimum Call-Off Days) are invoiced on the basis that work will be undertaken during Normal Office Hours. Any work carried out outside of Normal Office Hours, including Saturdays and Sundays, will be charged at twice the day rate:
3. NCC Group's Consultants record all time spent on an assignment including time spent travelling for the purposes of the assignment. Time is accounted for in units of half a day. No charge is made for periods when the Consultant is absent due to illness or holidays.
4. As a worked example, if NCC Group was required to work from 9:00am until midnight on a Working Day, the rate would be two and half days.
5. To the extent NCC Group is required to work outside normal office hours, the Client shall be permitted to set off any surcharge incurred in accordance with paragraphs 2.1 to 2.3 of this Appendix 1 against any Unutilised Days. For the avoidance of doubt, to the extent the Client does not have sufficient Unutilised Days to satisfy the surcharge payable in accordance with paragraph 2 of this Appendix 1, NCC Group shall invoice the Client for any shortfall amount.

**Appendix 2
Response Times**

Level of support	Initial telephone response where Service Request is logged	Review of initial incident information (not to exceed 1 hours' effort)	Consultant in transit
Monday 8AM to Friday 6PM (GMT) "Working Hours"	1 hour	4 hours	Within 24 hours
Outside Working Hours (incl. weekends and holidays)	1 hour	8 hours	Next Working Day

All of the above timescales remain subject to availability of commercial travel, visa application processing times and the availability of travel health services e.g. travel vaccinations and immunisations

Caveats and Conditions:

1. Notwithstanding the response times set out in this Appendix 2, where Service Requests are received on Friday to Sunday, the following service levels apply:
 - 1.1 For any Service Request received before and including 12:00pm Friday a consultant will be in transit to the Client's site by 9am Monday.
 - 1.2 For any Service Request received after 12:00pm Friday a consultant will be in transit to the Client's site by 12:00pm Monday.
2. The above response times apply with effect from the time of receipt of the relevant Service Request in accordance with clause 4.2.
3. The review of initial incident information shall not exceed one hours' effort. Where the initial review will require more than 1 hours' effort, NCC Group reserves the right to charge additional fees at its standard rates in force from time to time. NCC Group shall not exceed one hours' effort on the initial review without the Client's consent.
4. NCC Group does not guarantee compliance with the above service levels in "Exceptional Circumstances". Exceptional Circumstances means where, in NCC Group'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.