

NCC GROUP (AUSTRALIA) TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

Services Module (Commercial Product Assurance and Common Criteria Services)

1 Contract 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 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:

"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;

"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; and

"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 Works, and includes the Assurance Maintenance Services;

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

"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 NCSC and NCC Group's ISO 17025 accreditation, even if instructed otherwise by the Client;
 - 3.1.2 that NCC Group 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 Group 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 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;
 - 3.1.5 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;

- 3.1.6 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;
- 3.1.7 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 the Consultant(s) while working on the Client's or its third party supplier's premises who can provide reasonable assistance to NCC Group upon request;
- 3.1.8 to provide necessary access to the Client's premises, systems and equipment as reasonably required by NCC Group to enable the Consultant 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;
- 3.1.9 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 Start Date. The Client may provide NCC Group with updated versions of the Product after the Start Date, however, if it does, NCC Group 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 Works; and
- 3.1.10 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.
- 3.1.11 that for every 10 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 Works.

4 Assurance Maintenance

- 4.1 Where the Client has entered into a Contract for Assurance Maintenance Services (as specified in the Statement of Works) 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 Works) 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) 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.
- 4.4 The Client accepts and acknowledges that, 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.
- 4.5 Where the AMRR Process is being followed, Services may be provided over a number of months. As such, the Client agrees that NCC Group shall be entitled to invoice quarterly in respect of the 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 Group to obtain information and/or approval from third parties (including but not limited to NCSC), 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 Works 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 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 Group 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 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.
- 7.2 The relevant percentages and time periods as referred to in the General Terms and Conditions are as follows:
- 7.2.1 cancellation request 8-21 days before the Start Date: 50% of the Scheduled Days Cost;
 - 7.2.2 rescheduling request 8-14 days before the 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 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, 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 Start Date. In such circumstances, a Cancellation Fee shall be payable as described in this clause 7 and the general terms and conditions.

8 Industry Notifications

- 8.1 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 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.