

SERVICE LEVEL AND KPI TERMS

1. Introduction

These Service Level and KPI Terms shall be incorporated into each Contract in which Nasstar offers Service Levels, KPIs or Service Credits.

2. Service Levels and KPIs

2.1 Nasstar will ensure the Services meet the applicable Service Levels set out in the Contract. If the Services are not performed in accordance with the applicable Service Levels, then the Customer shall be entitled to Service Credits provided for in the Contract (if any).

2.2 Nasstar will also use reasonable endeavours to meet the applicable KPIs, including to meet any applicable target Response Times and Resolution Times. Nasstar will measure its performance against the KPIs but shall not be liable to pay any Service Credits or offer any other financial remedy to the Customer in the event that it fails to meet them. If it is identified during fault investigation that due to circumstances beyond Nasstar's control, Resolution Times will exceed the stated target Resolution Times, the Customer will be notified.

3. Nasstar Service Desk

3.1 Customers shall use the Nasstar Service Desk to log Incidents. The Nasstar Service Desk is accessible via the Customer portal, by telephone, or email using the details set out in the Customer Support Plan or as otherwise notified to the Customer from time to time.

3.2 If an Incident is logged with the Nasstar Service Desk, Nasstar will allocate a ticket number. The ticket will identify the priority level of the issue that has been logged. Incidents will be prioritised by Nasstar in accordance with the applicable Service Desk Priorities. For all P1 (Critical) Incidents, the Customer should telephone the Nasstar Service Desk. Service Requests and Change Requests will be logged by default as Low priority (P5).

3.3 Nasstar will provide the level of support to the Customer for an Incident according to the Contract. Nasstar shall be entitled to charge for any support that is outside of the scope of a Contract or which is charged on a consumption basis in accordance with Nasstar's standard rates or such other rates as are set out in the Contract. All support provided by Nasstar with respect to any infrastructure, systems, equipment or software that is outside of the scope of the Services shall be provided at an additional charge, unless otherwise stated in the Contract.

3.4 The Nasstar Service Desk will work remotely with the Customer via telephone and email to investigate and resolve a Service Failure or to action a Service Request or Change Request, according to the standards required by the Contract. Where Nasstar is unable to do so remotely, Nasstar may arrange for an engineer to attend the Customer Site. If the Contract does not provide for Nasstar to perform on-site support at the Customer Site, Nasstar shall be entitled to charge for providing such support at Nasstar's standard rates or such other rates as are set out in the Contract.

3.5 Nasstar shall not be liable for any loss or damage in the event of an incorrect categorisation of, or an inappropriate priority being assigned to, an Incident by any third party, the Customer

or Nasstar's monitoring platform. The Customer shall promptly notify Nasstar if it believes or has reason to suspect that an Incident has been incorrectly categorised or has had an inappropriate priority assigned to it.

3.6 Nasstar will respond to requests for support in respect of P1 (Critical) Incidents on a 24/7/365 basis. Nasstar will respond to all other requests for support during Operating Hours. Nasstar will use reasonable efforts to respond to Incidents in accordance with the KPIs (if any) set out in the Contract.

3.7 The Customer shall comply with the Customer Support Plan with respect to all Incidents.

4. Service Availability

4.1 Nasstar will use reasonable efforts to ensure that each Service meets the Service Levels for Service Availability set out in the Contract.

4.2 Service Availability shall be calculated in accordance with the following formula:

$$x\% = \frac{A - (B - C)}{A} \times 100$$

Where:

- A is the total number of minutes within the relevant Measurement Period during which the Service should have been provided under the Contract
- B is the total number of minutes within the relevant Measurement Period during which the Service was not available in accordance with the Contract
- C is the total number of minutes within the relevant Measurement Period during which any Maintenance, Exempted Failure, Stalled Time or Amnesty Period applies

4.3 Each Contract will set out the target Service Availability in a particular Measurement Period as a percentage or by way of an indicative amount of downtime for a Measurement Period.

5. Planned and Emergency Maintenance

Nasstar will aim to provide Customers with at least five (5) days' notice for any Planned Maintenance. On occasion, emergency maintenance will be required where there may not be an opportunity to provide notice. The Customer acknowledges that notice of maintenance or upgrades in respect of third-party software / services is dependent on Nasstar's receipt of notice from the relevant third-party provider.

6. Exempted Failures

6.1 Any Exempted Failure shall be excluded from the measurement of Nasstar's performance against the Service Levels or KPIs. The following events or circumstances shall each constitute an Exempted Failure:

- (a) a Force Majeure Event;
- (b) a Relief Event;

- (c) suspension of a Service by Nasstar where it is entitled to do so under the Contract;
- (d) a failure or delay by the Customer to comply with the procedures for the reporting of Incidents set out in these Service Level and KPI Terms;
- (e) a failure or delay by the Customer to allow Nasstar sufficient access to any Nasstar Equipment and/or Customer Equipment in accordance with the Contract or following Nasstar's request;
- (f) a failure or delay by the Customer to implement any reasonable and clear instructions issued by Nasstar in relation to the Service (including capacity management recommendations);
- (g) a failure or delay by the Customer to provide up to date contact details for a member of its staff with whom Nasstar can liaise for the period of Service Failure;
- (h) a failure by the Customer to comply with any constraints, assumptions or limitations concerning the capacity, consumption or usage of the Services as set out in the Contract;
- (i) a fault in or failure of Customer Equipment or any other equipment, systems, services or infrastructure for which the Customer is responsible or which is otherwise outside of Nasstar's responsibilities (including the public internet and any wireless network services);
- (j) connections made by the Customer to any Customer Equipment that do not comply with the Contract;
- (k) unauthorised changes implemented by the Customer or its users in breach of the Contract;
- (l) unauthorised access to the Services, Nasstar Equipment or Customer Equipment; and
- (m) any Virus affecting the Customer Equipment, the Nasstar Equipment or the Nasstar Network that has been introduced otherwise than as a result of Nasstar's breach of the Contract.

6.2 For the avoidance of doubt, the following faults or failures will not constitute a Service Failure for the purposes of measuring Nasstar's performance against the Service Levels or KPIs:

- (a) loss of resilience of a Service;
- (b) failure or loss of ancillary services (such as monitoring) deployed in a non-resilient manner where the primary Service is available; and
- (c) unavailability of the Customer portal or loss of access to control panels or support panels made available to the Customer.

6.3 Where the Customer is eligible for Service Credits in respect of a Service Failure affecting an underlying Service (for example connectivity) on which another Service is dependent, the

Customer shall not be entitled to claim Service Credits in respect of any Service Failure in respect of the dependent Service.

7. Making a Claim for Service Credits

- 7.1 The Customer must claim Service Credits by submitting any claim in writing to the Nasstar Service Desk at service.desk@nasstar.com within thirty (30) days after the end of the Measurement Period to which the Service Credit relates, unless otherwise stated in the Contract. The Customer shall provide details of all relevant dates, times and Incident references and such other information as Nasstar may reasonably require to enable it to assess the claim. Failure to provide sufficient information with a claim shall result in the Customer's right to claim such Service Credits being forfeited or rejected.
- 7.2 Nasstar's determination of the amount of Service Credits due, shall be (in the absence of manifest error) final and binding on the Customer and no such report or other document produced by any other party shall be used to calculate or prove the existence or extent of a Service Failure or the entitlement of Service Credits due to the Customer.

8. Payment of Service Credits

- 8.1 Service Credits will be calculated for each Measurement Period. Where a Service is only provided for part of a Measurement Period, the calculations will be computed on a pro-rata basis in proportion to the period during which Nasstar was contractually required to provide the Service during the Measurement Period.
- 8.2 Service Credits are expressed as a percentage (%) of the recurring Charges in a Measurement Period. Call charges are not included for purposes of calculating Service Credits.
- 8.3 Service Credits shall only be calculated based on the Charges payable for the affected Service or Service Element to which the Service Failure relates.
- 8.4 Service Credits shall be a debt due from Nasstar to the Customer. All valid claims for Service Credits will be settled by the issue of a credit note and at the end of each Measurement Period, a credit note will be issued for the total Service Credits payable which have accumulated over the previous Measurement Period.
- 8.5 Any Service Credits that have not been settled at the end of the Contract will be paid to the Customer by Nasstar. Service Credits will not be paid where the Customer is in arrears or where Nasstar is expecting to invoice the Customer for other Charges, whether under that Contract or another Contract, as these amounts shall be set-off against any sums payable to Nasstar.

9. Cap on Service Credits

- 9.1 Total Service Credits in respect of a Service within any one (1) month will not exceed the total Charges for that Service for that month.
- 9.2 Total Service Credits in respect of a Service within any one (1) calendar year will not exceed thirty percent (30%) of the total Charges for that Service for that year.

- 9.3 The parties agree that the Service Credits are reasonable, are in proportion to the Customer's legitimate interest in having Nasstar meet the Service Levels and are an adequate remedy. Nasstar's liability to the Customer for failure to provide the Services in accordance with the Service Levels shall be limited to the amounts payable to the Customer by way of Service Credits, unless otherwise stated in the Contract.

10. Definitions

- 10.1 In these Service Level and KPI Terms, unless the context otherwise requires, these terms will be given the following meanings:

"Amnesty Period": (a) a period of thirty (30) days following the Service Commencement Date for a Service; (b) any period of time during which (i) Nasstar is performing transition activities to support the commencement of the Services; (ii) Nasstar is performing transition activities to upgrade the Services or any Service Elements or technology used to provide the Services; or (iii) Nasstar implements a Service or any Service Elements or moves the Services or any Service Elements to the Customer or any replacement service provider; (c) the period of time during which a Service is provided as pre-release, beta or proof of concept (if any); and (d) any other period specified in the Contract in which Service Credits will not accrue for Service Failures;

"Exempted Failure": the exempted failures set out in these Service Level and KPI Terms and any applicable Service Description;

"Nasstar Service Desk": the service desk operated by Nasstar to receive reports of Incidents, which may be contacted as described in paragraph 3 of these Service Level and KPI Terms;

"Incident": an event affecting the proper performance of a Service, including a Service Failure;

"Key Performance Indicator" or **"KPI"**: a metric against which Nasstar's performance of certain obligations in the Contract will be measured and which is described as a KPI or Key Performance Indicator (and not as a Service Level);

"Measurement Period": a calendar month or such other period as stated in a Contract during which the Service Levels will be measured and Service Credits (if any) will be calculated;

"Operating Hours": the standard Nasstar Service Desk hours of 09:00 – 18:00 Monday-Friday, excluding bank and public holidays in England & Wales, unless otherwise specified in a Contract;

"Planned Maintenance": a period of time during which Nasstar or an Affiliate, agent or third-party sub-contractor is performing planned activities or planned maintenance which may impact the Services and this has been communicated in advance to the Customer;

"Resolution Time": the elapsed time, during Operating Hours, between a support request being received by the Nasstar Service Desk to the time when that support request is resolved, excluding Planned Maintenance, Stalled Time or Amnesty Period;

"Response Time": the elapsed time, during Operating Hours (save in relation to P1 (Critical) Incidents to which paragraph 3.6 applies), between a support request being received by the Nasstar Service Desk to the point where a Nasstar agent, employee or representative is actively involved in resolving the request;

"Service Availability": the availability of a Service calculated in accordance with paragraph 4 of these Service Level and KPI Terms;

"Service Description": the description of the standard offering for a Service as set out or referred to in the Contract;

"Service Desk Priorities": the Service Desk priority classifications as may apply to an individual Service as set out in the relevant Service Description or as notified to the Customer in the Service handover documentation; and

"Stalled Time": any period of time where Nasstar is unable to progress any further with an outstanding request/ticket in respect of an Incident until a specific action has been performed by the Customer (including performance of any Customer Obligation).

10.2 All other terms shall be interpreted in accordance with the Contract.