

## BASECONE N.V. SERVICE LEVEL AGREEMENT

Version: SLANL2.0  
Date: 9 November 2016

### ARTICLE 1. DEFINITIONS

The following definitions are employed in this SLA in addition to those used in the General Terms and Conditions:

- 1.1. **Actual Availability:** the actual degree of availability of a Service which is achieved;
- 1.2. **Incident:** a report of a situation which the Client does not expect. Such an unexpected situation may be caused by a malfunction of the relevant software or its erroneous use;
- 1.3. **Malfunction:** a malfunction is deemed to have occurred where a Service (mentioned in the relevant Agreement) is not available and Basecone cannot be held culpable for this. A Malfunction only exists where the Client can show this to be the case;
- 1.4. **Functional Question:** any question of a functional nature, as well as any which does not directly relate to a Malfunction;
- 1.5. **Preferred Availability:** the degree of availability of a Service which Basecone seeks to achieve;
- 1.6. **Resolution Time:** the time between (i) when Basecone discovers a Malfunction or the Client reports one and Basecone confirms it, and (ii) when that Malfunction is resolved, the Service (or Malfunction thereof) is replaced or a Workaround is created as determined by Basecone;
- 1.7. **Maintenance:** active maintenance for the purposes of ensuring that a Service works properly by carrying out repairs, adopting precautionary measures and regularly monitoring the Service;
- 1.8. **Response Time:** the time between (i) when Basecone receives a report of an Incident, and (ii) when Basecone notifies that Client that it has received that report as determined by Basecone;
- 1.9. **RPO (Recovery Point Objective):** a Data unit, the period which commences when the Client's End User creates or modifies Data and which ends when that Data is backed up;
- 1.10. **Working Day:** from 9 am to 5 pm CET on Mondays to Fridays with the exception of recognised and official public holidays in the Netherlands;
- 1.11. **Workaround:** a procedure which makes it possible to circumvent a Malfunction temporarily or otherwise.

### ARTICLE 2. NATURE OF THIS AGREEMENT

- 2.1. This document constitutes an SLA for the Service provided by Basecone. The purpose of this SLA is to set out the level of the service provided. This may be achieved by describing important features, and setting out performance standards and the implications of the unlikely event that those standards are not achieved.
- 2.2. This SLA shall come into effect at such time as the Service is first provided and shall be concluded for a term identical to that of the Agreement pursuant to which the Service is provided. This SLA shall expire automatically on the date on which that Agreement terminates. Cancellation of that Agreement shall also serve to cancel this SLA.
- 2.3. This SLA shall only cover the following standard support work carried out by Basecone:
  - a. the performance of Maintenance (periodically or otherwise);
  - b. resolving Malfunctions;
  - c. monitoring the Preferred Availability; and
  - d. communicating with the Client and its End Users.
- 2.4. In addition to this standard support work, Basecone may carry out other work for the Client. Such work shall be charged for separately. In so far as is possible, Basecone shall present the Client with a statement of the fee beforehand.

- 2.5. The General Terms and Conditions shall govern this SLA. In the event of any conflict between the provisions of this SLA, the relevant Agreement, the General Terms and Conditions, and any annexes thereto, the following order of priority shall apply:
- a. the relevant Agreement;
  - b. any annexes to that Agreement;
  - c. this SLA;
  - d. the General Terms and Conditions.

### **ARTICLE 3. CONTACT DETAILS**

3.1. The following options shall be available for reporting any Incident:

**3.1.1. Online help desk**

The Service shall include an online help desk which will enable the End Users of the Service to send reports to Basecone describing an Incident;

**3.1.2. Email address**

In the event that the Service is unavailable, an End User shall be required to report an incident to the email address, support@basecone.nl, stating the name of their Organisation;

**3.1.3. Telephone number**

Where the parties have explicitly agreed to this, the Client shall be entitled to call Basecone on the telephone number designated for that purpose. That telephone number shall be provided before or while the Agreement is concluded.

3.2. Before presenting Basecone with a Functional Question (a Priority Level 4 Incident), the Client shall first be required to consult the frequently asked questions (FAQ) and tutorials which are available to End Users under the Help menu item ("Basecone Experience Centre").

3.3. Basecone shall not be liable for any inaccurate, incomplete, delayed consignment and/or receipt of a report submitted by the Client, which may or may not have been caused by the failure of any telecommunications service or device belonging to a third party and/or the Client to function properly (or not at all).

### **ARTICLE 4. PRIORITY LEVELS AND INCIDENT HANDLING**

4.1. The Client and/or its End Users shall report Incidents to Basecone in accordance with the procedure set out in Article 3 (Contact Details). In the event that an Incident is reported to Basecone in some other way, for example, through a different telephone number, email address or Basecone's social media, it will not be possible to ensure that it is dealt with appropriately.

The following details must be communicated to Basecone when reporting an Incident:

- a) a description of the Malfunction which is as accurate as possible. This description must contain at least the following details:
  - the date and time when the Incident was discovered;
  - the user name through which the Incident was discovered;
  - a textual description of the outcome (the observation of the Incident);
  - a textual statement of the anticipated outcome;
  - a screenshot of what the relevant End User saw on their screen (where possible);
  - the Incident's priority level. Basecone may modify the foregoing citing reasons for doing so;
- b) a description of any steps which the Client has already taken.

4.2. Provided that it is possible for Basecone to deal with it any further, the relevant Incident shall be assigned any of the following priority levels.

Priority	Description	Notes
1	High	The Service is entirely unavailable due to a defect on the part of Basecone or the Service has entirely ground to a halt and no functions can be accessed.
2	Average	A problem which makes it difficult but not impossible to continue using the Service but which does not cause it to grind to a halt entirely.
3	Low	A problem which is not substantial, where one or only a few only a few functions of the Service impede its use.
4	Functional Question	Any question of a functional nature, as well as any which does not directly relate to a Malfunction.

The Basecone support assistant who deals with an Incident shall assign it a reasonable priority level in response to the relevant report from the Client.

4.3. The column below lists Basecone's duty of care by priority level when dealing with an Incident.

P	Response Time On Working Days	Resolution Time On Working Days	Response Time On Other Days	Resolution Time On Other Days
1	0.5 hours	2 hours	By no later than 10 am on the following Working Day or 10:30 am where the following day is not a Working Day.	3 hours
2	2 hours	1 Working Day	By no later than 12 pm on the following Working Day	1 Working Day
3	1 Working Day	5 Working Days	3 Working Days	5 Working Days
4	1 Working Day	N/A	1 Working Day as of the next Working Day	N/A

Basecone shall always have a duty of care in relation to the response time in the case of a Priority Level 4 Incident.

4.4. The Basecone support assistant shall notify the Client's relevant End User – who has reported an Incident – by email within the Response Time of the Incident priority level, and the cause and resolution of the Incident, provided that this is already known.

4.5. The Basecone support assistant shall notify the Client's End User involved in an Incident by email within the Resolution Time of the cause of that Incident and its possible resolution.

- 4.6. In order to provide the Client with feedback, Basecone must be in possession of the applicable contact details of the Client's contact person in accordance with Article 4.6 (Contact Details). In this respect the Client shall be responsible for supplying correct, up-to-date contact details. In the event that the contact details known to Basecone are incorrect due to any act or omission on the part of the Client or Basecone's failure to provide timely feedback concerning an Incident is due to circumstances for which it cannot be held culpable, the time when Basecone attempts to provide feedback shall be deemed to be the time when such feedback is provided.
- 4.7. The Client consents to doing all in its power to assist with the resolution of an Incident.
- 4.8. In the event that the assistance referred to in the foregoing clause is not provided and this is not due to any involvement of Basecone, the Resolution Time shall only commence at such time as the Client provides the requisite assistance.
- 4.9. Basecone shall employ an escalation procedure, which shall be used when it is impossible to resolve an Incident within a specific period of time (the Resolution Time). In the course of this procedure Basecone shall employ all reasonably available resources (which is deemed to include external technical engineers should it deem it necessary to do so) to expedite the resolution of the Incident. During the escalation procedure specific arrangements concerning the resolution of an Incident shall also be made with the Client where necessary. In the course of the escalation procedure Basecone shall update the client on the progress made with the resolution of a Malfunction every Working Day.

## **ARTICLE 5. AVAILABILITY**

- 5.1. For twenty-four (24) hours a day, seven (7) days a week throughout the relevant month, Basecone shall make an effort to ensure that the Service is available 99.5% of the time, which is deemed to constitute the Preferred Availability.
- 5.2. "Available" is deemed to mean that the Service can be accessed and used by the Client. This does not include a malfunction of any connection and/or equipment over which Basecone exercises no control, including any connection and/or equipment belonging to the Client itself.
- 5.3. Every month Basecone shall calculate the Actual Availability as follows:

$$DB = \frac{GB - \sum G}{GB} * 100\%$$

"DB" is the rate of Actual Availability;

"GB" is the Preferred Availability in minutes;

"G" is the number of minutes during which a Malfunction occurs.

- 5.4. Any unavailability due to force majeure or Maintenance shall not be deemed to constitute a Malfunction and shall at any rate not affect the calculation of Actual Availability.
- 5.5. Basecone shall arrange for the Service to be actively monitored by an independent party periodically to determine whether the warranty stipulated in Article 5.1 has been complied with. An average shall be calculated on the basis of the figures obtained through such monitoring. That average shall determine whether the stipulated standards have been exceeded, unless the Client can produce evidence to the contrary.
- 5.6. Basecone shall not have a duty to supply the reports drawn up on the basis of the monitoring referred to in the foregoing clause.

## **ARTICLE 6. VERIFICATION OF SECURITY MEASURES**

- 6.1. An independent third party shall use an automated process to determine on a daily basis whether the Service reasonably complies with the generally accepted security standards which may be stipulated in respect of an online Service.
- 6.2. Any report and/or assessment which the independent third party prepares shall be made available through the Website.
- 6.3. Every day Basecone shall display the status of the findings of that daily process on the Service's log-in page in the form of a seal with a date of validity.
- 6.4. The display of a valid seal on the Service's log-in page shall provide an indication of some of the security measures which have been adopted.
- 6.5. Basecone has set up the Service to a data centre which at the very least complies with the standards specified in ISO 27001 and ISO 9001.

## **ARTICLE 7. MAINTENANCE**

- 7.1. Any Maintenance which reduces the availability of the Service shall not be scheduled more than three (3) times in any calendar month and shall not commence before 22.00 pm CET. Basecone shall notify the Client of this no less than two (2) Working Days before such Maintenance. Such notice shall take the form of mentioning:
  - a. the nature of the Maintenance;
  - b. the time when the work is to commence;
  - c. the anticipated duration of the work; and
  - d. the expected time of unavailability.

## **ARTICLE 8. BACKUPS**

- 8.1. Basecone shall back up the Service every day. Such a backup shall be kept for no less than five (5) working days and shall only be accessible to Basecone. Within two (2) Working Days the Client may ask Basecone to supply it with a backup. Basecone shall be entitled to charge a fee for supplying and/or restoring a backup.
- 8.2. Basecone shall be entitled to charge the Client a reasonable fee for supplying or restoring a backup. In so far as is possible, Basecone shall notify the Client of the fee beforehand.
- 8.3. Basecone shall ensure that the RPO does not exceed a period of twenty-four (8.2) hours.
- 8.4. Basecone shall not be liable for the loss of any Data:
  - a. during the RPO; or
  - b. after the expiry of the RPO, provided that it is possible for Basecone to restore or recreate the relevant Data within a period of three (3) Working Days after the time when the Data was lost and the Client reported this to Basecone.

## **ARTICLE 9. COMPENSATION**

- 9.1. The Client may claim compensation in accordance with the table below whenever Basecone fails to achieve the Resolution Times referred to in Article 4 (Priority Levels and Incident Handling) and the Preferred Availability referred to in Article 5 (Availability).

Frequency	Penalty
First performance shortfall in one (1) month	Refund of 30% of the last monthly fee invoiced
Second performance shortfall within thirty (30) days after the first time	Refund of 30% of the last monthly fee invoiced
Third performance shortfall within forty-five (45) days after the first time	Refund of 90% of the last monthly fee invoiced
More than three (3) times within 45 days	Refund of 100% of the last monthly fee invoiced in the past calendar year and the possibility of the Client cancelling the Agreement free of charge

- 9.2. Such an amount shall take the place of any compensation which the Client could claim on the grounds of default.
- 9.3. The Client shall only be eligible for a penalty scheme provided that it submits a written application to Basecone within fourteen (14) days and it contains at least the following information:
- the Client's name and that of its contact person;
  - the date and time when the performance shortfall was noted;
  - a description of the performance shortfall which was noted;
  - the manner in which the performance shortfall or non-compliance was noted; and
  - proof (such as screen dumps) where available.
- 9.4. In the event that Basecone is liable for the loss of any Data (Article 10), the maximum penalty shall apply, which coincides with more than three (3) Incidents within forty-five (45) days.
- 9.5. Any penalty shall be paid within two (2) months after agreement is reached on the degree of any failure on the part of Basecone to achieve the relevant Resolution Time and/or Preferred Availability and it may be paid by setting off any outstanding items or by depositing the relevant refund into a bank account belonging to the Client which is known to Basecone.
- 9.6. A multiple failure on the part of Basecone to achieve the degree of Preferred Availability on the same day shall be deemed to constitute an ongoing Malfunction and not separate Incidents.
- 9.7. Any claim for a penalty shall cease to apply merely by virtue of the expiry of twelve (12) months after entitlement to such penalty arises.

## ARTICLE 10. AMENDMENT OF THIS SLA

- 10.1. Basecone shall be entitled to amend this SLA at any time.
- 10.2. Basecone shall give notice of any amendment or addendum in writing or through the relevant Service no less than thirty (30) days before it comes into effect, so as to ensure that the Client concerned is able to take cognisance of it.
- 10.3. In the event that the Client does not wish to consent to an amendment of or addendum to this SLA, it shall be entitled to cancel this SLA until the date on which the relevant amendment or addendum is scheduled to come into effect. The use of the Service after the date on which it is scheduled to come into effect shall be deemed to constitute consent to this SLA as amended or supplemented.