

SaaS Support and Service Level Policy

MatchMetrix[®] EMPI and Registries

Updated March 01, 2021

Table of Contents

1	Definitions.....	3
1.1	Definitions.....	3
2	Support Services and Service Levels	3
2.1	Support Services	3
2.2	Service Level Objectives.....	5
3	Service Credits.....	7
3.1	Service Credits	7
3.2	Service Credit Calculation.....	7

SaaS Support and Service Level Policy

MatchMetric® EMPI and Registries

This SaaS Support and Service Level Policy for the above NextGate SaaS Service offerings is governed by the Software as a Service Agreement entered into between NextGate and Customer (the “Agreement”). Capitalized terms not defined here have the meanings given to them in the Agreement.

1 Definitions

1.1 Definitions

- (a) **“Dependencies”** means all necessary and recommended hardware, software, operating environment, and other requirements necessary for the Customer to operate the SaaS Services, including Third-Party Software, applications, technologies, network access, operating systems, computers, telecommunications services, electricity, and other necessary software and hardware requirements. Dependencies required by Customer shall be procured, licensed and maintained at Customer’s expense.
- (b) **“Downtime”** is any time where the SaaS Services in the Production environment are not substantially available for use by the Customer, other than Downtime Exclusions as described in 2.2(d), below.
- (c) **“Target Resolution Time”** means the target elapsed time between when NextGate receives notification of a request for Support Services by Customer and the time a final position is agreed between NextGate and Customer, where a solution has been implemented (which may be remedying the Fault (as defined below) or providing a reasonable and temporary work-around). The Target Resolution Time does not include any time spent waiting for a response from Customer. For Faults which need to be reproduced to be corrected, the Target Resolution Time does not commence until Customer provides sufficient information to enable NextGate to reproduce the Fault.

2 Support Services and Service Levels

2.1 Support Services

- (a) During the Term, NextGate will provide the support services for the SaaS Service as described below (the “Support Services”). NextGate will:
 - (i) Correct any failure of the SaaS Services to operate substantially in conformance with the Documentation (“Fault”), including without limitation, defect repair, programming corrections, configuration changes and remedial programming or a procedure or routine that, when observed in regular operation of the SaaS Service, eliminates the practical adverse effect of the Fault.
 - (ii) Provide all bug fixes and patches to the SaaS Service.
 - (iii) Provide access for up to ten (10) named users to NextGate’s ticketing system to log any issue or Fault. Telephone support will also be provided in

accordance with Table 1 below. Customer may modify its named users upon written notice to NextGate.

- (iv) Provide online access to technical support bulletins and other user support information and forums to the extent NextGate makes such resources available to its customers.
 - (v) In the event of a Severity Level 1 incident, NextGate will propose as soon as reasonably possible, a corrective action plan for Customer's review, comment and approval (the "Corrective Action Plan"). The Corrective Action Plan will include, at a minimum: (i) a commitment by NextGate to Customer to devote the appropriate time, skilled personnel, systems support and equipment, and/or resources to remedy the Severity Level 1 incident; and (ii) time frames for execution of the Corrective Action Plan.
- (b) NextGate will provide reasonable efforts to provide Customer within a reasonable timeframe after the resolution of a Severity Level 1 Incident an analysis of root causes (the "Root Cause Analysis") and provide a strategy for developing any programming/software updates, configuration changes, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of such incidents. Should the Root Cause Analysis require resources or time commitment from the Customer, Customer agrees to provide the required cooperation necessary in order for NextGate to provide such Root Cause Analysis.
 - (c) Customer's support staff will be responsible for first-level support, including the provision of an internal support desk service to end users of the SaaS Service for providing general assistance and initially diagnosing any operational or functional problems with the SaaS Service. Customer's support staff will, within 24 hours of the reported issue, report Faults which cannot be solved internally. Support requests may be logged by Customer in relation to the use of the SaaS Service in a non-Production environment, provided that such calls are not subject to the Service Levels. To the extent that a Fault is observed between Customer's Dependencies and the SaaS Service, NextGate will use reasonable efforts to resolve such Fault through recourse to the Customer's third-party provider of the Dependency, but such Faults will not be subject to the Service Levels and NextGate reserves the right to charge for such efforts.
 - (d) Customer will ensure that its support staff are familiar with and knowledgeable about the functional capabilities of the SaaS Service. If they are not available or are unable to respond to the support requests within 72 hours, then NextGate will notify Customer that it intends to lower the Severity Level and if Customer fails to correct the issue, NextGate has the right to lower the Severity Level until corrected by Customer.
 - (e) Server-side access to any SaaS environments will not be provided to the Customer.
 - (f) NextGate may charge Customer additional fees in accordance with the Consulting Rates for any support outside the scope of the Support Services, including first-level support requests for assistance with respect to use of the SaaS Service or other matters not relating to Faults (e.g. troubleshooting for problems not relating to Faults). The parties will agree upon such additional support in writing.

2.2 Service Level Objectives

- (a) NextGate will use commercially reasonable efforts to meet the service level objectives identified below (together, the “**Service Levels**”):
- (i) **Response and Resolution Time Objectives.** Response Time Objectives and Resolution Time Objectives for the Production environment are set forth in Table 1 below.
 - (ii) **System Availability Objective.** NextGate will make the SaaS Service for the Production environment available such that the amount of non-excluded Downtime in a given month will not exceed 0.5%.
- (b) **TARGET INCIDENT RESPONSE AND RESOLUTION TIME.**
Any incident / issue reported to NextGate will be assigned a severity level, which will be determined by NextGate. However, the Customer may utilize a second set of definitions to include urgency. The Customer can increase the urgency (low / medium / high) of an issue to guide the support team as to which issue to fix first. NextGate will only pay service credits based on severity level.

Table 1					
Severity Level	Target Receipt Acknowledged Response Time	Target Response Time Objectives	Target Resolution Time	Target Resolution Time Objectives	Coverage Hours
Severity 1	1 hour	99%	4 hours	99%	24/7/365
Severity 2	2 hours	99%	8 hours	99%	24/7/365
Severity 3	Next Business Day	95%	2 weeks	None	8am ET – 5pm PT
Severity 4	Next Business Day	90%	By Arrangement	None	8am ET – 5pm PT
Severity Level	Definition				
Severity 1	Critical Business Impact – in the Production environment, a “complete system down or complete system failure” or the operation of a mission critical application in the Production environment is severely impacted by the problem and work cannot reasonably continue.				
Severity 2	Significant Business Impact – Limited functionality in the Production environment. Some features work, but others do not and the production server or application is considered unstable after service has been restored.				
Severity 3	Minor Business Impact – An error that does not cause a significant portion or feature of the SaaS Service to be inoperative—but it is certainly more than an irritant.				
Severity 4	No Business Impact / Enhancement Request – No impact on production. Technical questions or enhancement request.				

(c) LIMITATIONS ON SERVICE LEVELS.

The Service Levels will not apply if: (1) Customer disables (either intentionally or unintentionally) NextGate's administrative access to the configuration (e.g., by changing a password); (2) Customer makes any modifications which prohibit the SaaS Services from working properly; (3) Customer has delinquent payments under the Agreement; (4) Customer violates the restrictions on use as set forth in the Agreement; (5) Customer is not compliant with the Upgrade Policy; or (6) the incident was due to Customer's failure to meet Customer's security responsibilities as set forth in the Agreement.

(d) DOWNTIME EXCLUSIONS

Downtime does not include unavailability caused by:

(1) Scheduled Maintenance, emergency preventative maintenance, or a suspension of SaaS Services when such suspension is permitted in the Agreement

(2) flaws and faulty changes made to Customer's Data directed by Customer

(3) the incompatibility of any Customer Dependencies with Customer's Data or the SaaS Service

(4) where the Customer is not compliant with NextGate's Upgrade Policy

(5) acts or omissions of Customer or its agents, including testing by Customer of the SaaS Services' functionality, data, performance, and usability

(6) the failure of third party servers or services outside of a datacenter on which the SaaS Services are dependent, including, but not limited to, inaccessibility on and to the Internet that is not caused by NextGate's network or network providers

(7) NextGate's blocking of Data transferred or sent to NextGate that NextGate deems in its sole reasonable discretion to be in violation of applicable laws

(8) Force Majeure events, denial of service attacks, viruses, or hacking attacks for which there is no commercially reasonable known solution, or any other events which are not within NextGate's control or that could not have been avoided with commercially reasonable care

(9) expired or invalid trust certifications

(10) Downtime of Customer's Dependencies

(11) a specific request by Customer to delay restoring the SaaS Services

(12) delays in restoring the Services as a result of Customer's failure to provide to NextGate current and accurate contact information of available and ready to act Customer resources that is necessary for NextGate to restore Services

3 Service Credits

3.1 Service Credits

Should NextGate fail to achieve the Service Levels for the Production environment, NextGate will provide Customer with the service credits identified below ("Service Credits").

- (a) **Response Time Objectives.** The Service Credit for not meeting Severity Level 1 or Level 2 Response Time Objectives in any given month will be two percent (2%) of the month's SaaS Service Fees for each unique incident.
- (b) **Resolution Time Objectives.** The Service Credit for not meeting Severity Level 1 or Level 2 Resolution Time Objectives in any given month will be five percent (5%) of the month's SaaS Service Fees for each unique incident.
- (c) **System Availability Objective.** For each full hour that the system is unavailable beyond the System Availability Objective, the Service Credit for not meeting this objective in any given month is 1/720 times the SaaS Service Fee, but not to exceed ten percent (10%) of the monthly SaaS Service Fee for that month.

3.2 Service Credit Calculation

- (a) The maximum combined amount of all Service Credits earned in a given calendar month may not exceed eighteen percent (18%) of the monthly SaaS Service Fees for the calendar month in which the events giving rise to the Service Credits occurred.
- (b) Customer must request any Service Credit that may be due hereunder by submitting an e-mail to ngsar@NextGate.com within thirty (30) calendar days of the conclusion of the calendar month in which the applicable Service Level failure occurs, otherwise, such request is waived. Service Credits will be issued once such Service Level failure has been validated by NextGate. Service Credits will be awarded as Credit Memos to be applied by Customer towards a future invoice for Services. All Service Level failure measurements, performance calculations and applicable Service Credits are based on NextGate's internal monitoring equipment, records and data unless Customer can provide NextGate with clear and convincing evidence to the contrary. In the event Service Credits remain following termination of this Agreement, NextGate will refund Customer the remaining Service Credits within sixty (60) days of the termination date.
- (c) **Effect of System Stabilization Period.** The Service will be considered in a system stabilization period during the seventy-two (72) hour window following Customer's first productive use after go-live of the Production environment (the "System Stabilization Period"). During a System Stabilization Period, changes to the Services may be required to achieve optimal performance. Such System Stabilization Period is excluded from the periods subject to the availability calculations. Service Credits do not apply until post-System Stabilization Period.
- (d) The Service Credits specified in this SaaS Support and Service Level Policy are Customer's sole and exclusive remedies for any Service Level events occurring during Customer's subscription term.