

**DIR-DCS-SCP-MSA-003**

**Appendix 2 to  
Seventh Amendment of  
Master Service Agreement**



**Exhibit to Data Center Services  
Service Component Provider  
Master Services Agreement  
DIR Contract No. DIR-DCS-SCP-MSA-003**

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Between

**The State of Texas, acting by and through  
the Texas Department of Information Resources**

*and*

**Xerox Corporation**

**Exhibit 3  
Service Levels**

June 30, 2013

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**EXHIBIT 3**  
**SERVICE LEVELS**

**Update Methodologies and Attachments to Exhibit 3**

The following update methodologies and attachments are incorporated as part of **Exhibit 3**:

Title	Methodology for Updating Associated Exhibit Attachments
<b><u>Exhibit 3</u></b> Service Levels	<b><u>Exhibit 3</u></b> may only be modified by formal amendment, in accordance with <b><u>Section 21.7</u></b> of the MSA.
<b><u>Attachment 3-A</u></b> Service Levels Matrix	<b><u>Attachment 3-A</u></b> may be updated in accordance with the provisions in <b><u>Exhibit 3</u></b> . Any changes not provided for in <b><u>Exhibit 3</u></b> shall be modified by formal amendment, in accordance with <b><u>Section 21.7</u></b> of the MSA.
<b><u>Attachment 3-B</u></b> SLA Definitions, Tools, Methodologies	<b><u>Attachment 3-B</u></b> may be updated in accordance with the provisions in <b><u>Exhibit 3</u></b> . Any changes not provided for in <b><u>Exhibit 3</u></b> shall be modified by formal amendment, in accordance with <b><u>Section 21.7</u></b> of the MSA.
<b><u>Attachment 3-C</u></b> Critical Deliverables	<b><u>Attachment 3-C</u></b> may be updated in accordance with the provisions in <b><u>Exhibit 3</u></b> . Any changes not provided for in <b><u>Exhibit 3</u></b> shall be modified by formal amendment, in accordance with <b><u>Section 21.7</u></b> of the MSA.
<b><u>Attachment 3-D</u></b> Service Level Outcomes Examples	<b><u>Attachment 3-D</u></b> may only be modified by formal amendment, in accordance with <b><u>Section 21.7</u></b> of the MSA.
<b><u>Attachment 3-E</u></b> Severity Levels	<b><u>Attachment 3-E</u></b> may only be modified by formal amendment, in accordance with <b><u>Section 21.7</u></b> of the MSA.

## 1. GENERAL

The methodology set out in this **Exhibit 3** will support the Service Level Management cycle of monitoring, reporting and improving the delivery of the Services to DIR and DIR Customers.

As of the Commencement Date (or as otherwise specified in this Exhibit and the Attachments to this Exhibit), the Service Provider will perform the Services to which Service Levels apply so that the Service Level performance will, in each month of the Term, meet or exceed, the Service Levels.

Performance Categories, Critical Service Levels, Key Measurements and Recurring Deliverables may be added or substituted by DIR as specified in this Exhibit during the Term. For example, such additions or substitutions may occur in conjunction with changes to the environment and the introduction of new Equipment or Software or means of Service delivery – provided, however, that where such Equipment or Software or such means of Service delivery is a replacement or upgrade of existing technology, there shall be a presumption of equivalent or improved performance.

The achievement of the Service Levels by the Service Provider requires the coordinated, collaborative effort of the Service Provider with Third Parties, including the other DCS Service Providers. The Service Provider will provide a single point of contact for the prompt resolution of all Service Level Defaults and all failures to provide high quality Services to DIR, regardless of whether the reason for such Service Level Defaults, or failure to provide high quality Services to DIR, was caused by the Service Provider.

As part of its delivery of the Services, the MSI has overall responsibility for communication, coordination, reporting, and process across the enterprise. Each Service Component Provider is obligated to provide Services in its designated functional area and coordinate, as required to deliver Services, with other Service Component Providers and the MSI. Accordingly, specific Service Levels have been created to measure the MSI on its overall responsibility for performance across the enterprise, including, as described below, with certain elements of the performance of Service Component Providers.

## 2. SHARED AND RELATED SERVICE LEVEL TYPES

To clarify how specific Service Levels are intended to be tracked and calculated, individual Service Levels may be generally categorized as one of three types, representing the manner in which individual DCS Service Providers are either individually or jointly responsible for the specific Service Level's performance. Service Level Credits assessed against each DCS Service Provider will be calculated based on the specific DCS Service Provider's Service Level Invoice Amount, At-Risk Amount, and Allocation of Pool Percentage.

- **Type S (shared):** Type S Service Levels are shared between the MSI and an individual Service Component Provider. Type S Service Levels are measured once (i.e. both providers share a single measurement) using the same pool of events and have the same Expected Service Level and Minimum Service Level percentages. If a Service Level Default occurs for a Type S Service Level, both the MSI and the Service Component Provider are responsible for that Service Level Default. Examples of Type S Service Levels include S1.1.2 "Servers - Gold Tier Availability – Consolidated" (MSI) and S1.1.2 "Servers - Gold Tier Availability – Consolidated" (Server Service Component Provider). The definition and descriptions of Type S Service Levels as well as the Expected Service Level and Minimum Service Level remain identical in the related agreements for both the MSI and the applicable Service Component Provider during the Term.
- **Type R (related):** Type R Service Levels are related measures shared between the MSI and the Service Component Provider(s). Type R Service Levels for the MSI are measured in the aggregate, counting events for both the MSI and the Service Component Provider(s). For the Service Component Provider, the Type R Service Level measures a discrete subset of the same pool of events, the subset

applicable to that Service Component Provider. Each DCS Service Provider may have different Expected Service Level and Minimum Service Level percentages. Examples of Type R Service Levels include R1.2.1E “Resolution Time - Sev 1 Enterprise” (MSI) and R1.2.1S “Resolution Time - Sev 1 Server” (Server Service Component Provider).

- **Type U (unique):** Type U Service Levels are intended to measure Services that are specific to one DCS Service Provider’s performance, and therefore are not shared between DCS Service Providers. Examples of Type U Service Levels include U2.1.4E “Incident Communication” (MSI) and U1.4.1S “Successful Backups – Consolidated – Server” (Server Service Component Provider).

The groupings described above are intended to clarify Service Level types for tracking purposes; none of the Service Provider’s obligations as fully described in the Agreement are limited by these groupings.

### **3. REPORTING**

Unless otherwise specified in this Exhibit, each Critical Service Level, Key Measurement, Recurring Deliverable and One Time Deliverable shall be measured and reported on a monthly basis. The format, layout and content of such monthly reports shall be agreed between DIR and Service Provider. The Service Provider's monthly performance reports are due by the 20th day of each month and shall include a set of soft-copy reports such that DIR is able to verify the Service Provider's performance and compliance with the Critical Service Levels, Key Measurements, Recurring Deliverables and One Time Deliverables (for purposes of clarity, with respect to One Time Deliverables, such reporting is only required until all One Time Deliverables are received and approved by DIR). The monthly reports shall describe any failure to meet Critical Service Levels and Key Measurements for the month.

In addition to the reports described above, the Service Provider shall also provide detailed supporting information for each report to DIR in machine-readable form suitable for use on a personal computer. The data and detailed supporting information shall include sufficient detail such that DIR is able to reproduce the calculations made by Service Provider and validate the results reported in the monthly Service Level performance reports. The methodology used by Service Provider to calculate the service level performance shall be documented and maintained in the Service Management Manual. All detailed supporting information shall be DIR's Confidential Information, and DIR may access such information online and in real-time, where feasible, at any time during the Term. In addition, Service Provider shall provide DIR with direct, unaltered access to review and audit all raw data collection related to Service Levels.

The Service Provider will create and maintain detailed procedure documentation of its SLA measurement process used to collect SLA data and calculate SLA attainment. The process documentation must include quality assurance reviews and verification procedures. The measurement process must be automated to the extent possible, and any manual data collection steps must be clearly documented, verified and auditable. All methods, codes and automated programs must be documented and provided to DIR for validation and approval. The Service Provider must ensure it tests and validates the accuracy and currency of the documentation and measurement process on a quarterly basis.

### **4. NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS & MODIFICATIONS**

DIR will send notice to the Service Provider at least ninety (90) days prior to the date that additions or deletions to Performance Categories, or additions or deletions to Service Levels (which include the movement of Critical Service Levels to Key Measurements and Key Measurements to Critical Service Levels), or modifications to Service Level Credit Allocation Percentages for any Critical Service Levels or additions or deletions to Recurring Deliverables are to be effective, provided that DIR may send only

one such notice (which notice may contain multiple changes) each calendar quarter. Movement of Critical Service Levels to Key Measurements and Key Measurements to Critical Service Levels does not constitute creation of new Service Levels.

## 5. SERVICE LEVEL CREDITS

In the event of a Service Level Default, the Service Provider shall provide DIR credits as defined below:

1. **Attachment 3-A** sets forth the information required to calculate the Service Level Credit in the event of a Service Level Default. For each Service Level Default, the Service Provider shall pay to DIR, subject to Section 6 below, a Service Level Credit that will be computed in accordance with the following formula:

$$\text{Service Level Credit} = A \times B \times C$$

**Where:**

- A = The Allocation of the Pool Percentage specified for the Performance Category in which the Service Level Default occurred as shown in **Attachment 3-A**.
- B = The Service Level Credit Allocation Percentage for which the Service Level Default occurred as shown in **Attachment 3-A**.
- C = The At-Risk Amount

For example, assume that the Service Provider fails to meet the Service Level for a Critical Service Level, the Service Provider's Service Level Invoice Amount for the month in which the Service Level Default occurred was \$100,000 and that the At Risk Amount is 10% of these charges.

Additionally, assume that the Allocation of Pool Percentage for the Performance Category of such Critical Service Level is 50% and that its Service Level Credit Allocation Percentage is 40%.

The Service Level Credit due to DIR for such Service Level Default would be computed as follows:

- A = 50% (the Allocation of Pool Percentage) multiplied by
  - B = 40% (the Service Level Credit Allocation Percentage) multiplied by
  - C = \$10,000 (ten percent (10%)) of \$100,000, the Service Provider's corresponding Service Level Invoice Amount)
    - = \$2,000 (the amount of the Service Level Credit)
2. Subject to Item 3, if more than one Service Level Default has occurred in a single month, the sum of the corresponding Service Level Credits shall be credited to DIR.
  3. In no event shall the amount of Service Level Credits credited to DIR with respect to all Service Level Defaults occurring in a single month exceed, in total, the At-Risk Amount.
  4. The Service Provider shall notify DIR in writing if DIR becomes entitled to a Service Level Credit, which notice shall be included in the standard monthly reporting for Critical Service Levels and Key Measurements as described in Section 3 above.
  5. The total amount of Service Level Credits that the Service Provider will be obligated to pay to DIR, with respect to Service Level Defaults occurring each month, shall be credited on the invoice for the month following the month during which the Service Level Default(s) giving rise to such credit(s) occurred. For example, the amount of Service Level Credits payable with respect to Service Level Defaults occurring in August shall be set forth in the Monthly Invoice for September issued in October.

6. For Service Levels U1.4.8P Per Piece Daily Mailing Completion Timeliness and U1.4.9P Per Piece Critical Mail Output Quality, a Service Level Credit of \$50 per piece not meeting standard will be applied, up to the at risk amount for the measure.
7. The Service Provider acknowledges and agrees that the Service Level Credits shall not be deemed or construed to be liquidated damages or a sole and exclusive remedy or in derogation of any other rights and remedies DIR has hereunder or under the Agreement.

## **6. EARNBACK**

The Service Provider shall have Earnback opportunities with respect to Service Level Credits as follows:

1. Within thirty (30) days after the first anniversary of the month in which any Service Level Default occurs, the Service Provider shall provide a report to DIR that will include, with respect to each Critical Service Level for which there was a Service Level Default, the following:
  - 1.1. Statistics on the Service Provider's average monthly performance during the preceding twelve (12) months
  - 1.2. The amount of Service Level Credit imposed for each Service Level Default
  - 1.3. The total amount of Service Level Credits imposed for Service Level Defaults
2. If, for the rolling twelve (12) month period immediately following a Service Level Default (the "12-Month Review Period"), Service Provider achieved, on average, a monthly performance in the corresponding Critical Service Level that was greater than, or equal to, the Service Level in effect for such Critical Service Level and there was no recurrence of a Service Level Default during such rolling 12-Month Review Period, DIR will refund Service Provider the Service Level Credits that were credited for that Service Level Default for such Critical Service Level. Service Provider will invoice DIR for the Earnback Credit in the monthly invoice following such rolling 12-Month Review Period.
3. If, during the 12-Month Review Period, DIR deletes the Critical Service Level (including demotion of a Critical Service Level to a Key Measurement) that corresponds to the Service Level Default giving rise to such 12-Month Review Period, Service Provider shall continue to track its performance for such former Critical Service Level and shall be entitled to an Earnback if and to the extent, and at the time, it would have otherwise been entitled to such Earnback in accordance with the procedures described in Item 2 of **Section 6** above had the Critical Service Level not been so deleted or demoted to a Key Measurement during such 12-Month Review Period.
4. If the Agreement is terminated prior to the end of the Term, the foregoing process shall be undertaken with respect to the months of the applicable outstanding 12-Month Review Period(s) (if any) during which the Agreement was in effect.

## **7. ADDITIONS AND DELETIONS OF PERFORMANCE CATEGORIES**

DIR may add or delete Performance Categories by sending notice as described in Section 4 herein. Such change notice shall include changes necessary to accommodate the addition of new Performance Categories made pursuant to **Section 1** above. In no event may the sum of the Service Level Credit Allocation Percentages for all Critical Service Levels exceed the Pool Percentage Available for Allocation.

## 8. ADDITIONS, MODIFICATIONS AND DELETIONS OF SERVICE LEVELS

DIR may add, modify or delete Critical Service Levels or Key Measurements as described below by sending written notice in accordance with **Section 4** above.

### 8.1 Additions

DIR may add Service Levels in accordance with this **Section 8.1** and by providing written notice in accordance with Section 4. Service Level commitments associated with added Service Levels will be computed as follows:

1. The Parties shall attempt in good faith to agree on a Service Level commitment using industry standard measures or third party advisory services (for example, Gartner Group, Yankee Group, etc.),
2. If the Parties fail to agree on an Expected Service Level and Minimum Service Level commitment as described in Item 1, the following will apply:
3. Where at least nine (9) consecutive months of verifiable service measurements exist for a particular Service that is being provided by the Service Provider (the "Nine-Month Measurement Window"), the Parties agree that the Expected Service Level shall be defined as the average of such service measurements for the Nine-Month Measurement Window and that the Minimum Service Level shall be defined as the lowest service measurement achieved during the Nine-Month Measurement Window, unless the lowest measurement is more than the equivalent of one standard deviation for the data set of measurements below the second lowest service measurement achieved in which case the Minimum Service Level shall be defined as the second lowest service measurement.
4. Where less than nine (9) months or no measurements exist for a particular Service that is being provided by the Service Provider, the Parties shall do the following:
  - 4.1. The Service Provider shall begin providing monthly measurements within ninety (90) days after the Service Provider's receipt of DIR's written request.
  - 4.2. After nine (9) or more actual service level attainments have been measured (or should have been measured per Item 4.1 of **Section 8.1** of this Exhibit and if not so measured, constructed as described in Item 4.2.1 of **Section 8.1** of this Exhibit), DIR may at any time in writing request that Item 3 of **Section 8.1** above be used to establish the Service Level commitments:
    - 4.2.1. If the Service Provider is responsible for measuring actual service level attainments for nine (9) consecutive months and fails to provide one (1) or more measurements during the nine-month period such that nine (9) consecutive measurements are not available, the missing measurement(s) shall be constructed according to the following: (i) if one measurement is missing, the missing measurement shall be constructed by using the highest of the eight (8) actual measurements, or (ii) if two (2) or more measurements are missing, the first missing measurement shall be constructed by using the highest of the actual measurements and adding to that measurement twenty percent (20%) of the difference between that measurement and one hundred percent (100%) and each of the remaining missing measurements shall be constructed by using the highest of the actual measurements and adding to that measurement thirty-five percent (35%) of the difference between that measurement and one hundred percent (100%).

For example, if there were four measurements for a particular Service, and the highest of the four measurements was 95%, then the measurements for the missing five months

would be deemed to be 96.00% (representing 95.00% plus (20% of 5%)) for one month and 96.75% (representing 95.00% plus (35% of 5%)) for the remaining four months.

- 4.2.2. If the Service Provider has provided twenty-four (24) actual service level attainment measurements for any particular Service provided by the Service Provider, and DIR has not used Item 3 of **Section 8.1** of this Exhibit to establish Service Level commitments, then continued provision of actual service level attainment measurements shall be subject to the Parties' mutual agreement in accordance with the Change Control Procedures.

## **8.2 Modification**

DIR may modify Service Level commitments or measurements methodology in accordance with this **Section 8.2** and by providing written in accordance with **Section 4**.

The Service Provider may propose modifications to Service Level measurement methodology for DIR approval, Service level measurement methodology may be modified by updating **Attachment 3-B**.

For any Service Level commitments associated with modified Service Levels, the Parties shall attempt in good faith to agree on a modification to current Service Level commitments using industry standard measures or third party advisory services. In the event the Parties cannot agree on proposed modifications, **Section 19**, Dispute Resolution and **Section 2.4.1** of **Exhibit 6**, Escalation Process, of the Agreement apply.

## **8.3 Deletions**

DIR may delete Critical Service Levels or Key Measurements by sending written notice in accordance with **Section 4** herein.

## **8.4 Impact of Additions and Deletions of Critical Service Levels on Service Level Credit Allocation Percentages**

When adding or deleting a Critical Service Level, DIR shall modify the Service Level Credit Allocation Percentages for the Critical Service Levels such that the total Service Level Credit Allocation Percentages for all Critical Service Levels within the Performance Category sums to less than or equal to one hundred percent (100%)

If DIR adds a Critical Service Level in accordance with **Section 8.1** above, but does not modify the Service Level Credit Allocation Percentages for the Critical Service Levels under this **Section 8.4**, then, until such time as DIR so modifies such Service Level Credit Allocation Percentages, the Service Level Credit Allocation Percentage for such added Critical Service Level shall be zero.

## **8.5 Modifications of Service Level Credit Allocation Percentages for Critical Service Levels**

DIR may modify the Service Level Credit Allocation Percentages for any Critical Service Levels within the Performance Category by sending written notice in accordance with **Section 4**. DIR shall modify the Service Level Credit Allocation Percentages for two or more of the Critical Service Levels within the Performance Category such that the sum of the Service Level Credit Allocation Percentages for all Critical Service Levels is less than or equal to one hundred percent (100%).

The Pool Percentage Available for Allocation in any Service Component area, as specified in **Attachment 3-A**, may only be modified by formal amendment, in accordance with **Section 21.7** of the MSA.

## **9. SERVICE DELIVERY FAILURE; CAP FAILURE EVENT**

1. If three (3) Service Level Defaults for the same Service Level occur in any six (6) month period, then upon such third occurrence, this shall be deemed a "Service Delivery Failure". Within thirty (30) days of the occurrence of a Service Delivery Failure, Service Provider will provide DIR with a written plan (the "SD Corrective Action Plan") for improving the Service Provider's performance to address the Service Delivery Failure, which plan will include a specific implementation timetable and measurable success criteria. Within 30 days of plan submission, or such other timeframe agreed to by DIR, Service Provider will implement the SD Corrective Action Plan, which will include making timely and appropriate investments in people, processes and technology. In addition, the Service Provider will demonstrate to DIR's reasonable satisfaction that the changes implemented by Service Provider have been made in normal operational processes to sustain compliant performance results in the future.
  
2. Upon the occurrence of (i) a CAP Failure Event, or (ii) if Service Provider fails to implement the SD Corrective Action Plan in the specified timetable or if after the implementation of the SD Corrective Action Plan performance has not consistently improved, then Service Provider will be liable for a Service Level Credit in an amount equal to one and one quarter percent (1.25 %) of the then-current Service Level Invoice Amount (the "CAP Failure Credit"). The CAP Failure Credit will be applied to the monthly invoice until such time as Service Provider has demonstrated effective Service delivery, as evidenced by either (i) no reoccurrence of the Service Level Defaults which triggered the applicable Service Delivery Failure or (ii) in DIR's reasonable judgment, Service Provider has remedied the failure which is the subject of the CAP Notice. If the CAP Failure Event or Service Delivery Failure reoccurs within three (3) months, the CAP Failure Credit will be reapplied to the then-current and each subsequent monthly invoice until the CAP Failure Event or Service Delivery Failure has been resolved. The CAP Failure Credit will not be subject to Earnback. The Service Provider acknowledges and agrees that the CAP Failure Credit shall not be deemed or construed to be liquidated damages or a sole and exclusive remedy or in derogation of any other rights and remedies DIR has hereunder or under the Agreement. For purposes of clarity, the CAP Failure Credit is separate from and therefore additive to any other Service Level Credits due in a given month, even if the Service Level Credits are for Service Level Defaults related to the Service Delivery Failure. In no event shall the sum of the CAP Failure Credit and any Service Level Credits credited to DIR with respect to all Service Level Defaults occurring in a single month exceed, in total, the At-Risk Amount. The Service Provider will not be liable for a CAP Failure Credit any earlier than 90 days after the Commencement Date.
  
3. In addition, the Service Provider will work with DIR and the DCS Service Providers to define and document a repeatable Chronic Service Issue Resolution process in the Problem Management section of the Service Management Manual to be effective at Commencement. At a minimum the process should address:
  1. Establishment of a project team to drive and manage the process improvement.
  2. Approach to development of an improvement plan which will include milestones, resources and dependencies.
  3. Approach to program management of plan implementation including integration of improvements/changes into daily operational processes.

4. Implementation of progress reporting within the Service Provider's management structure and DIR and DIR Customers.
5. Closure process to transition solution into normal operations including alignment of processes defined in the Service Management Manual.

## 10. RECURRING DELIVERABLES

Certain of the Service Provider's obligations under the Agreement are periodic obligations to deliver key Recurring Deliverables. **Attachment 3-A** sets forth the amounts that shall be payable by the Service Provider to DIR in the event the Service Provider fails to deliver any of the Recurring Deliverables within the required time period specified in **Attachment 3-A** (the "Recurring Deliverables Credit"). Imposition of a Recurring Deliverables Credit for failure to meet the Recurring Deliverables obligations shall not be subject to or included in the At-Risk Amount. The total amount of Recurring Deliverables Credit that the Service Provider will be obligated to pay to DIR shall be reflected on the invoice that contains charges for the month following which the Recurring Deliverables Credits accrued (for example, the amount of Recurring Deliverables Credits payable for failure to deliver any Recurring Deliverable(s) in August shall be set forth in the invoice for September charges issued in October). Recurring Deliverables Credits shall not be subject to Earnback. Under no circumstances shall the imposition of the Recurring Deliverables Credit described above or DIR's exercise of any other rights hereunder be construed as DIR's sole or exclusive remedy for any failures described hereunder.

DIR may add, modify or delete Recurring Deliverables by sending written notice in accordance with **Section 4**, provided that after the implementation of any such addition or modification the aggregate amount of the Recurring Deliverables Credits will not exceed the maximum amount of Recurring Deliverables Credits set forth on **Attachment 3-A**.

## 11. ONE TIME DELIVERABLES – AFTER EFFECTIVE DATE

Certain of the Service Provider's obligations under the Agreement are one-time or periodic obligations to deliver One Time Deliverables. **Attachment 3-A** sets forth the Deliverable Credits that shall be payable by the Service Provider to DIR in the event the Service Provider fails to deliver any of the One Time Deliverables within the required time period specified in **Attachment 3-A**. Imposition of Deliverable Credits for failure to meet the One Time Deliverables obligations shall not be subject to or included in the At-Risk Amount. The total amount of Deliverable Credits that the Service Provider will be obligated to pay to DIR shall be reflected on the invoice that contains charges for the month following which the Deliverable Credits accrued (for example, the amount of Deliverable Credits payable for failure to deliver any One Time Deliverable(s) in August shall be set forth in the invoice for September charges issued in October). Unlike Service Level Credits, Deliverable Credits shall not be subject to Earnback.

## 12. COMMENCEMENT OF OBLIGATIONS

The obligations set forth herein shall commence on the Commencement Date or as otherwise specified in **Attachment 3-A** referencing the column "Comm + mos\*\*". The numbers used in the column "Comm +mos\*\*" are in the format X where "X" represents the number of months after the Commencement Date when the Service Provider will be responsible to provide measurement data in support of the Critical Service Level or Key Measurement. Beginning ninety (90) days after the Commencement Date (the "Service Level Credit Start Date"), the Service Provider will be responsible for Service Level Credits for any failures to attain the Critical Service Level. For those Service Levels which commence after the

Service Level Credit Start Date, Service Provider will be liable for Service Level Credits as of the date specified in **Attachment 3-A**.

### **13. CONTINUOUS IMPROVEMENT – SERVICE LEVELS**

The Parties agree to the concept of continuous improvement and that the Critical Service Levels and Key Measurements should be modified during this Agreement to reflect this concept. To accomplish this, Critical Service Levels and Key Measurements will be modified each twelve (12) month period following the commencement of obligations date specific to each Critical Service Level and Key Measurement as described below:

1. Each Expected Service Level will be reset to the average of the four highest reported actual results (for example, 99.60% is higher than 99.40%) at or above the Expected Service Levels achieved during the previous year; provided that, if fewer than four reported actual results exceeded the Expected Service Level, the Expected Service Level will be reset by taking the four (4) highest monthly actual results, replacing each such actual result that is below the Expected Service Level with the Expected Service Level, and dividing the sum of the resulting four (4) numbers by four (4).

For example, if the Expected Service Level being adjusted were 99.6%, and there were three actual results that were higher and none equal (e.g. 99.90%, 99.80%, and 99.70%), the calculation would be  $(99.90\% + 99.80\% + 99.70\% + 99.60\%) / 4 = 99.75\%$  with the subsequent reset governed by Item 2 of Section 14 below.

2. Notwithstanding Item 1 of this Section 13 above, in no event shall any single increase in an Expected Service Level pursuant to Item 1 of this Section 13 above exceed ten percent (10%) of the difference between one hundred percent (100%) and the then-current Expected Service Level.

For example, if the Expected Service Level being adjusted were 99.60%, the maximum increase for that reset would be 0.04% (i.e. from 99.60% to 99.64%).

3. Each Minimum Service Level will be reset by adding to the Minimum Service Level being adjusted a sum equal to five percent (5%) of the difference between one-hundred percent (100%) and the then-current Minimum Service Level.

For example, if the Minimum Service Level being adjusted were 99.40%, the increase would be 0.03% (i.e., from 99.40% to 99.43%).

4. For ease of administration, beginning with the second anniversary of the Commencement Date and continuing with every anniversary of the Commencement Date thereafter, the process described in this Section 13 will be performed as of the anniversary of the Commencement Date, utilizing the previous twelve (12) months' data, replacing the Critical Service Level or Key Measurement unique dates that were based upon the commencement of obligations dates specific to each Critical Service Level.

### **14. IMPROVEMENT PLAN FOR KEY MEASUREMENTS**

If the Service Provider fails to meet the Minimum Service Level for the same Key Measurement for three (3) months in any rolling six (6) month period, the Service Provider shall provide DIR with a written plan for improving the Service Provider's performance to satisfy the Key Measurement within thirty (30) days of the third (3<sup>rd</sup>) failure to meet the Service Level for the Key Measurement. At Service Provider's sole cost and expense, the Service Provider shall promptly implement such plan. If Service Provider fails to implement the plan in the specified timetable, or if after ninety (90) days after any such implementation of the plan, the Key Measurement has not consistently improved, then DIR may at its option declare that such failure will constitute a Service Delivery Failure and Service Provider will comply with the requirements of Section 9 above.

## 15. MEASURING TOOLS

As of the Effective Date, the measuring tools and methodologies set forth in **Attachment 3-B** represent acceptable measuring tools and methodologies for the Critical Service Levels and Key Measurements designated.

If there are any Critical Service Levels for which the measuring tools and methodologies have not been agreed upon by DIR and the Service Provider and for which measuring tools are not included in **Attachment 3-B**, and the Service Provider fails to propose a measuring tool for such Critical Service Level that is acceptable to DIR prior to the date upon which the Service Provider shall be responsible for Service Level performance and Service Level Credits due for Service Level Default, such failure shall be deemed a Service Level Default for the Critical Service Level until the Service Provider proposes and implements such acceptable measuring tool. DIR will not unreasonably withhold approval for the Service Provider's recommendation for an alternate tool.

Tools for new Critical Service Levels will be implemented according to the Change Control Procedures. Upon DIR's written notice approving a proposed alternate or new measurement tool, such tool shall be deemed automatically incorporated into **Attachment 3-B** as of the date for completion of implementation set forth in DIR's notification without requirement for an additional written amendment of this Agreement.

If, after the Effective Date or the implementation of tools for new Critical Service Levels, the Service Provider desires to use a different measuring tool for a Critical Service Level, the Service Provider shall provide written notice to DIR, in which event the Parties will reasonably adjust the measurements as necessary to account for any increased or decreased sensitivity in the new measuring tools; provided that, if the Parties cannot agree on the required adjustment, the Service Provider will continue to use the measuring tool that had been initially agreed to by the Parties.

It is not anticipated that changes in the measuring tools will drive changes in Service Levels; rather, the need to collect and accurately reflect the performance data should drive the development or change in performance monitoring tools. Service Provider will configure all measuring tools to create an auditable record of each user access to the tool and any actions taken with respect to the data measured by or residing within the tool. All proposed measuring tools must include functionality enabling such creation of an auditable record for all accesses to the tool.

## 16. TIMES

Unless otherwise set forth herein, all references in this Exhibit to times shall refer to Central Time.

## 17. SINGLE INCIDENT/MULTIPLE DEFAULTS

If a single incident results in the failure of the Service Provider to meet more than one Service Level, DIR shall have the right to select any one of such multiple Service Level Defaults for which it will be entitled to receive a Service Level Credit and must respond to the Service Provider's reporting of the multiple Service Level Default and request for selection by notifying the Service Provider of the selection within five (5) business days. DIR shall not be entitled to a Service Level Credit for each of such Service Level Defaults.

## 18. EXCEPTIONS

The Service Provider shall not be responsible for a failure to meet any Service Level solely to the extent that such failure is directly attributable to any of the following:

1. Any circumstances that excuse Service Provider's performance in accordance with **Section 10.2** of the Agreement.

2. The failure of Third Party Equipment and Third Party Materials consisting of Software that are no longer supported by the licensor or manufacturer for which Service Provider has operational responsibility under the Agreement ("Out of Support Third Party Equipment and Software"), provided that: (a) as stated in **Section 15.2(b)** of the Agreement, Service Provider has used commercially reasonable efforts to perform maintenance for such Out of Support Third Party Equipment and Software as required to meet its obligations under this Agreement; (b) such Out of Support Third Party Equipment and Software has been agreed in writing by DIR to be such prior to any failure incident qualifying as an exception, and (c) Service Provider has proposed an upgrade or replacement of such Out of Support Third Party Equipment and Software and DIR has expressly rejected such proposal.

## 19. EXCLUSIONS

Any incidents or requests opened prior to Commencement Date or any other incidents or requests designated as backlog by DIR are excluded from SLA measurements and will be tracked separately within stabilization tasks and milestones.

Additional exclusions are indicated in **Attachment 3-B**.

## 20. SERVICE LEVEL ESCALATION EVENT

A Service Level Escalation Event occurs, if (a) the Service Provider asserts that it has been unable to perform all or a portion of the Services measured by a Type S or Type R Service Level solely as a result of the failure by another DCS Service Provider with whom it shares such Type S or Type R Service Level to perform obligations specified in that DCS Service Provider agreement with DIR, including its SOWs the Service Management Manual and the applicable OLA, (b) the Service Provider has performed its own obligations as set forth in the Agreement, including the SOWs, Service Management Manual and the applicable OLA, which actions shall include (i) immediately notifying DCS Service Provider that such failure may result in a Service Level Default, (ii) provides the DCS Service Provider with reasonable opportunity to correct such failure to perform and thereby avoid the Service Provider non-performance, (iii) documents that it has performed its obligations under the Agreement notwithstanding another DCS Service Provider's failure to perform (iv) has notified DIR that a corrective action has commenced, and (v) has otherwise performed its obligations to cause the DCS Service Provider to perform. Upon the occurrence of a Service Level Escalation Event, the Service Provider may escalate the other DCS Service Provider failure through the appropriate governance structure for resolution in accordance with **Exhibit 6**. If the applicable governance committee has determined that Service Provider has satisfied each of the requirements and obligations set forth above, such resolution shall include excusing Service Provider's performance related to such failure and may include other actions as reasonably determined by DIR including appropriate changes to the Service Management Manual and the applicable OLA.

## 21. PERCENTAGE OBJECTIVES

Both parties understand that certain Service Levels may not be measured against an objective of one hundred percent (100%), for example, Time (days, hours, etc.), defects, etc. where zero (0) hours/days and zero percent (0%), respectively, are the appropriate objectives. The calculations described in this Section will be modified when appropriate to reflect these objectives. For example, if the Service Level involved defects in lines of code where zero percent (0%) is the objective, lowest would be changed to highest in Item 1 of **Section 8.1** herein, highest would be changed to lowest in Item 3.2.1 of **Section 8.1** herein and one hundred percent (100%) would be changed to zero percent (0%) in Item 3 of **Section 8.1**.