

APPENDIX L

Service Level Methodology

1. General Provisions.

(a) General.

(i) The Service Levels measure whether the Contractor is meeting certain agreed, measurable criteria for the Services that the Contractor is contractually committed to provide to the Commonwealth. The Contractor shall monitor, measure, collect, record and report to the Commonwealth its performance beginning on the Service Level Commencement Date, which shall be mutually agreed upon by the parties, and thereafter during the Term against all Service Levels then in effect.

(ii) This Appendix L sets forth certain Service Levels against which the Contractor's performance of the Services shall be measured. The Contractor shall perform the Services at or above the levels of performance indicated for Critical Performance Indicators (CPIs), Key Performance Indicators (KPIs) and General Performance (GPIs) as set forth in this Appendix L and Appendix M (*Service Level Matrix*), and if the Contractor fails to do so and is not otherwise excused from such failure, the Contractor shall take the corrective actions and may be subject to the other remedial measures specified in this Appendix L and the Contract.

(iii) The Contractor shall be responsible for, and have in place as of the applicable Service Level Commencement Date, all of the measuring, monitoring and reporting capabilities necessary for measuring, monitoring and reporting the Contractor's performance against the Service Levels.

(iv) Except as otherwise stated, all Service Levels shall be measured by the Contractor on a twenty-four (24) hours-per-day, (7) days-a-week, three hundred sixty-five (365) days-per-year basis. The Contractor shall report to the Commonwealth its performance against Service Levels upon the Measurement Window frequency specified for each Service Level in Appendix M (*Service Level Matrix*).

(v) The Contractor shall promptly investigate and remediate all failures associated with Service Levels in accordance with Section 6 below.

(vi) The Contractor shall provide the Commonwealth with the performance reporting for the Services as specified in this Appendix L and the RFP.

(vii) The Contractor shall minimize recurrences of all performance-related failures for which it is responsible. The Contractor shall also be responsible for reporting to the Commonwealth any problems that appear likely to result in a

failure to meet any Service Level, within one hour of the Contractor becoming aware of any such problem.

(viii) The Commonwealth will have the right to receive Service Level Credits and ultimately to terminate the Services notwithstanding any of the aforesaid efforts of the Contractor, if and to the extent such rights accrue in accordance with the Contract or this Appendix L.

(ix) The Commonwealth and the Contractor will each provide a single point of contact for the prompt resolution of all Service Level Defaults and all failures to provide Services to the Commonwealth in accordance with this Appendix L and the Contract.

(b) Reporting of Performance Measures.

Commencing on the Service Level Commencement Date and continuing throughout the Term:

(i) The Contractor shall assemble and create the reports described in this Appendix L and the RFP on the performance of the services, in order to assist in the effective management of the services and support the improvement of the Service Levels as described herein.

(ii) The Contractor shall provide detailed supporting information for each report to the Commonwealth in electronic form suitable for use on a personal computer.

(iii) Commencing with the Service Level Commencement Date, within five (5) business days after the last day of each month during the Term, the Contractor will provide a monthly performance report for CPIs and KPIs that reports various metrics, including:

(A) The Contractor's performance against and calculations with respect to each Service Level during the preceding month;

(B) The Contractor's performance with respect to each Service Level as a trend analysis against the prior three (3) months and prior three (3) calendar quarters (the "Performance Trend/Improvement Report"); and

(C) Potential problems of which the Contractor is aware that could reasonably be expected to result in a failure to meet a Service Level and remedial actions including summaries of the reports submitted to the Commonwealth in accordance with the Contractor's obligation to periodically submit Service Level reports and Service Level Credits.

Notwithstanding the above, the Contractor shall only be required to report on GPIs upon the request of the Commonwealth and upon such request, the Contractor shall produce the monthly performance report within five (5) business days. The Contractor shall only be

required to provide within ten (10) business days Performance Trend/Improvement Reports on GIs upon the request of the Commonwealth.

(iv) If any monthly performance report provided by the Contractor to the Commonwealth does not have sufficient detail and accuracy for the Commonwealth to determine whether the Contractor achieved or failed to achieve the Target Service Level and/or Minimum Service Level for each Service Level in the immediately preceding Measurement Window, then the Commonwealth may provide written notice thereof to the Contractor, which notice must contain reasonable detail of the deficiencies in the subject monthly performance report. If within ten (10) calendar days after receiving such a notice the Contractor fails to deliver to the Commonwealth a revised or replacement monthly performance report containing sufficient detail and accuracy for the Commonwealth to determine whether the Contractor achieved or failed to achieve a Service Level in the applicable Measurement Window, such failure shall constitute a Service Level Default with respect to such Service Level for such immediately preceding Measurement Window.

2. Service Level Obligations.

(a) Service Level Obligations.

The metrics, measurement standards, and other pertinent features for CIs, KIs and GIs are described in Appendix L (*Service Level Matrix*).

(b) Commencement of Service Level Obligations.

The Contractor shall begin delivering the Services in accordance with the Service Levels as of each applicable Service Level Commencement Date.

(c) Service Level Defaults, Service Level Termination Event, and Excused Performance.

(i) CIs, KIs and GIs Generally.

The Commonwealth believes that all Service Levels are important to the proper support and operation of the Commonwealth's business. However, certain of the Service Levels are of particular importance to the Commonwealth's business and are therefore designated as CIs and KIs. Certain of the Service Levels, while important to the Commonwealth's business operations, are less critical to the Commonwealth and are designated as GIs.

(ii) CI Service Level Defaults.

The Contractor performance that results in a Service Level Default with respect to a CI shall:

- (A) Entitle the Commonwealth to receive a Service Level Credit,
- (B) Be escalated to the Contracting Officer, and
- (C) Result in the Contractor promptly preparing a formal written recovery plan designed to prevent the reoccurrence of such Service Level Default and, once approved by the Commonwealth, promptly implemented by the Contractor at the Contractor's sole cost.

(iii) KPI Service Level Defaults.

The Contractor performance that results in a Service Level Default with respect to a KPI shall:

- (A) Be escalated to the Contracting Officer, and
- (B) Result in the Contractor promptly preparing a formal written recovery plan designed to prevent the reoccurrence of such Service Level Default and, once approved by the Commonwealth, promptly implemented by the Contractor at the Contractor's sole cost.

(iv) Service Level Termination Events.

A "Service Level Termination Event" shall be deemed to exist if the Contractor fails to meet:

- (A) The Minimum Service Level for the same CPI three (3) times in any Service Level Reporting Period;
- (B) The Minimum Service Level for any combination of CPIs three (3) times in any Service Level Reporting Period;
- (C) The Minimum Service Level for the same KPI four (4) times in any Service Level Reporting Period; or
- (D) The Minimum Service Level for any combination of CPIs and KPIs five (5) times in any Service Level Reporting Period. The Commonwealth shall have available to it the remedies set forth in the Contract for the occurrence of Service Level Termination Events.

(v) Excused Performance

- (A) Any occasional request by the Contractor for temporary SLA relief on a per incident basis shall be submitted in advance in writing to the Commonwealth in accordance with Change Control Procedures. The Commonwealth shall in its sole discretion determine whether SLA relief should be granted and the period of time for such relief (if any), and its

decision in this respect shall not be subject to the dispute resolution procedures set out at Paragraph 26 (CONTRACT CONTROVERSIES).

The Contractor's failure to achieve any Minimum Service Level or Target Service Level will not constitute a Service Level Default or accrue toward a Service Level Termination Event to the extent such failure is excused in accordance with the terms of the Contract.

3. Additions, Modifications, Deletions and Reclassifications of Service Levels.

(a) Additions and Modifications of Service Levels.

The Commonwealth may require the Contractor to add or reclassify CPIs, KPIs or GPIs, or modify the definition, metrics, data elements, measurement standards, or other pertinent features (as set forth in Appendix M (Service Level Matrix) of any existing CPIs, KPIs or GPIs, by sending a written request to the Contractor at least ninety (90) days prior to the date that such modifications are to be effective; provided that the Commonwealth may send such a request (which request may contain multiple changes) not more than once each calendar quarter. The terms and conditions upon which such modifications of metrics are implemented shall be subject to the reasonable and mutual agreement of the Parties and shall be determined pursuant to the Change Control Procedures (in which measurement tools and design changes appropriate to each new Service Level or modified metric or measurement standard shall be negotiated in good faith and agreed). The Contractor may not withhold its consent to add new Service Levels or modify the definition, metrics, data elements, measurement standards, or other pertinent features of any existing CPI, KPI or GPI, but the Contractor is permitted to negotiate in good faith the implementation specifics for such requested additions and modifications, including equitable adjustments to the Charges.

(b) Deletions of Service Levels.

The Commonwealth may delete Service Levels by sending written notice to the Contractor at least thirty (30) days prior to the date that such deletions are to be effective. Any Service Level Credits that are still eligible for an Earn Back at the time of such deletion shall be deemed to have been earned back by the Contractor.

4. Measuring Tools.

Commencing on each applicable Service Level Commencement Date, the Contractor shall provide, implement, maintain and utilize the necessary measurement and monitoring tools and procedures required to measure and report on the Contractor's performance of the Services against the applicable Service Levels. The Contractor's measurement and monitoring of Service Level performance shall permit reporting at a level of detail sufficient to permit the Commonwealth to verify compliance with the Service Levels, and shall be subject to audit by the Commonwealth pursuant to the Contract. The Contractor shall provide the Commonwealth with information about and access to such procedures upon request for purposes of verification.

5. Service Level Credits and Earn Backs.

(a) Service Level Credit Calculation.

Subject to Section 5(f) below, for each Service Level Default, the Contractor shall accrue to the Commonwealth a Service Level Credit that will be computed in accordance with the following formula:

$$\text{Performance Credit} = A \times B$$

Where A is the Percentage of At Risk Amount;

Where B is the applicable At Risk Amount.

For example only, a Performance Credit due to the Commonwealth for a Service Level Default would be computed as follows:

A (the Percentage of At Risk Amount) is 15 percentage points (15%);

Multiplied by B (the At Risk Amount for the applicable CPI), which is \$1,000,000;

Yields a Performance Credit = \$150,000

(b) Multiple Defaults.

If more than one CPI Service Level Default has occurred in a single month, each of the Service Level Credits shall be accrued and potentially credited to the Commonwealth, unless such Service Level Defaults are due to the same root cause as documented by the Contractor and agreed by the Commonwealth. In no event shall the amount of Service Level Credits accrued to be potentially credited to the Commonwealth with respect to all Service Level Defaults occurring in a single month exceed, in total, the At Risk Amount for that month.

(c) Notice of Service Level Credits.

The Contractor shall notify the Commonwealth in writing if the Commonwealth becomes entitled to a Service Level Credit, which notice shall be provided monthly and shall describe the Service Level Default for the month that is the subject of the monthly report.

(d) Earn Backs.

(i) For any given Service Level Credit generated from a Default for a CPI with a monthly Measurement Window, the Contractor will have the ability to earn an Earn Back associated with such failure if during the twelve (12) month period immediately following the Measurement Window of the failure that generated the Service Level Credit, either:

(A) The Contractor meets the required Target Service Level metric for each of the twelve (12) monthly Measurement Windows; or

(B) the Contractor does not generate a Service Level Default, and

(B) the average monthly performance for the Service Level metric during the total eighteen (18) month period meets or exceeds the target Service Level.

If the Contractor fails to satisfy the above requirement, then the Contractor shall not be capable of generating an Earn Back for that Service Level Credit and such Service Level Credit shall be credited or paid to the Commonwealth as set forth in Section 5(f) below.

(ii) Notwithstanding anything to the contrary herein, the Contractor shall not have any opportunity to generate an Earn Back for Service Level Credits associated with any Service Level with a semi-annual or annual Measurement Window.

(f) Reconciliation of Service Level Credits and Earn Backs.

Upon occurrence of the events giving rise to a Service Level Credit, the Contractor shall owe a debt to the Commonwealth for the applicable Service Level Credit amount. Each Service Level Credit will be accrued and held in account by the Contractor until the earlier of achievement by the Contractor of a corresponding Earn Back or foreclosure of the Earn Back opportunity pursuant to the terms of this Appendix L. The Contractor shall credit to the Commonwealth within the next three billing cycles:

(A) All accrued Service Level Credits that are not subject to an Earn Back opportunity, and

(B) All accrued Service Level Credits that are no longer eligible for an Earn Back (through failure to achieve required Earn Back performance).

If there will be no further invoices, the Contractor will pay the amount of such Service Level Credits to the Commonwealth within three billing cycles. At no time shall the Commonwealth be obligated to pay an Earn Back directly to the Contractor. Earn Backs are capped at the amount of any accrued Service Level Credits and can only result in a net reduction of Service Level Credits.

(g) Cumulative Remedies and Waivers.

The exercise by the Commonwealth of its rights under this Appendix L, including the right to receive Service Level Credits and to grant Earn Backs, shall be without prejudice to its other rights or remedies under the Contract or at law or equity, including the Commonwealth's right to claim and collect damages, the Commonwealth's right to declare the Contractor in Default, and the Commonwealth's right to terminate the

Contract in whole or in part in accordance with the Contract. If the Commonwealth elects to waive in writing a Service Level Credit, such waiver will not be considered a waiver of the application of the Service Level Default toward a Service Level Termination Event or other termination rights set forth in the Contract, unless otherwise expressly stated in such writing. Any waived Service Level Credit shall not be eligible for an Earn Back.

(h) Liquidated Damages.

Service Level Credits shall not constitute liquidated damages for the corresponding failure to perform, and the Commonwealth shall be free to pursue any and all remedies available under the Contract with respect thereto, provided that any such credits actually paid by the Contractor to the Commonwealth shall be offset against any damages awarded to the Commonwealth for claims arising from the corresponding failure to perform.

6. Investigation and Correction.

The Contractor shall promptly investigate and correct each failure to meet the Service Levels (whether or not such failure constitutes a Service Level Default) by:

- (a)** Promptly initiating problem investigations;
- (b)** Promptly reporting problems and findings to the Commonwealth;
- (c)** Correcting problems and meeting or restoring Service Levels as soon as practicable;
- (d)** Advising the Commonwealth of the root cause of problems and the status of remedial efforts being undertaken with respect to such problems;
- (e)** Providing reasonable evidence to the Commonwealth that the causes of such problems have been or will be corrected; and
- (f)** Making written recommendations to the Commonwealth for improvement in procedures.