

**MASTER SERVICES AGREEMENT**

between

**THE STATE OF TEXAS, ACTING BY AND THROUGH  
THE TEXAS DEPARTMENT OF INFORMATION RESOURCES**

and

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

**DATED NOVEMBER 22, 2006**

**EXHIBIT 3**

**SERVICE LEVELS**

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**SERVICE LEVELS**

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## 1.0 GENERAL

As of the Commencement Date (or as otherwise specified in this Exhibit and the Attachments to this Exhibit), Service Provider will perform the Services at or above the Service Levels indicated in this Exhibit and in accordance with the Agreement. For the purposes of describing such Services and performance, references to DIR include all DIR Customers unless otherwise stated.

New Performance Categories, Critical Service Levels and Key Measurements 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.

## 2.0 ATTACHMENTS

The following Attachments are attached to this Exhibit and are hereby incorporated by reference:

**Attachment 3-A:** Service Levels Matrix. This Attachment sets forth the quantitative measurements associated with Critical Service Levels, Key Measurements, and Critical Deliverables. Service Provider shall perform the Services at or above the levels of performance indicated in Attachment 3-A.

**Attachment 3-B:** Critical Service Levels and Key Measurements. This Attachment sets forth the descriptions and definitions of Critical Service Levels and Key Measurements.

**Attachment 3-C:** Critical Deliverables. This Attachment sets forth the descriptions and definitions of Critical Deliverables.

**Attachment 3-D:** Service Levels Outcome Examples. This Attachment provides example scenarios regarding Earnback and continuous improvement.

**Attachment 3-E:** Measuring Tools and Methodologies. This Attachment lists the required measuring tool and methodology associated with measuring and reporting Service Levels.

**Attachment 3-F:** Severity Levels. This Attachment provides a description of the various Severity Levels.

## 3.0 REPORTING

Unless otherwise specified in this Exhibit, each Critical Service Level and Key Measurement shall be measured on a monthly basis. Service Provider shall provide to DIR, as part of Service Provider's monthly performance reports, a set of hard- and soft-copy Reports to verify Service Provider's performance and compliance with the Critical Service Levels, Key Measurements and (until all Critical Deliverables are received and approved by DIR) Critical Deliverables.

Service Provider shall provide detailed supporting information for each such Report to DIR in machine-readable form suitable for use on a personal computer. The data and 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.

#### 4.0 NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS AND MODIFICATIONS

DIR will send notice to Service Provider at least ninety (90) days prior to the date that additions or deletions to Performance Categories, additions or deletions to Service Levels (which include the movement of Critical Service Levels to Key Measurements and Key Measurements to Critical Service Levels), modifications to Service Level Credit Allocation Percentages for any Critical Service Levels or modifications to the Pool Percentage Available for Allocation – Core Infrastructure, the Pool Percentage Available for Allocation – Print/Mail and/or the Pool Percentage Available for Allocation – Cross-Functional 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.

#### 5.0 SERVICE LEVEL CREDITS

In the event of a Service Level Default, Service Provider shall provide DIR a Service Level Credit, which shall be calculated as follows:

- Attachment 3-A sets forth the information required to calculate Service Level Credits in the event of Service Level Defaults. For each Service Level Default, Service Provider shall pay to DIR, subject to Section 6 of this Exhibit, 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 respective 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 allocated to the Service Level in which the Service Level Default occurred as shown in Attachment 3-A.
- C** = At Risk Amount

For example, assume that Service Provider fails to meet the Minimum Service Level for a Critical Service Level, Service Provider's Monthly Charges for the month in which the Service Level Default occurred was \$100,000 and that the At-Risk Amount was 15% of the Monthly Invoice Amount.

Additionally, assume that the applicable 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 applicable Allocation of Pool Percentage)  
Multiplied by
- B** = 40% (the Service Level Credit Allocation Percentage)  
Multiplied by
- C** = \$15,000 (fifteen percent (15%) of \$100,000, Service Provider's Monthly Invoice Amount for the month during which the Service Level Default occurred).

= \$3,000 (the amount of the Service Level Credit)

2. 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 with respect to all Service Level Defaults occurring in a single month exceed, in total, the At-Risk Amount.
4. Service Provider shall notify DIR if DIR becomes entitled to a Service Level Credit, which notice shall be included in the standard monthly Reports described in Section 3 to this Exhibit. The monthly reports shall also describe any failure to meet Key Measurements for the month.
5. The total amount of Service Level Credits that Service Provider will be obligated to pay to DIR, with respect to Service Level Defaults occurring each month, shall be credited on the invoice that contains charges for 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 invoice for the August Monthly Invoice Amount issued in September.
6. 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.

## 6.0 EARNBACK

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

1. Within fifteen (15) days after the first anniversary of the last day of the month in which any Service Level Default occurred, 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 during such month, the following:
  - 1.1. Statistics on Service Provider's average monthly performance during the preceding twelve (12) months;
  - 1.2. The amount of Service Level Credit imposed for each such Service Level Default; and
  - 1.3. The total amount of Service Level Credits imposed for all such Service Level Defaults.
2. If, during the twelve (12) month period immediately following the last day of the month in which a Service Level Default occurred (e.g., January through December 2008 with respect to a Service Level Default occurring in December 2007) (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 Expected Service Level in effect for such Critical Service Level during the Measurement Window in which such Service Level Default occurred and there was no recurrence of a Service Level Default of such Critical Service Level during such 12-Month Review Period, DIR will refund Service Provider the Service Level Credit that was credited for that Service Level Default of such Critical Service Level. Service Provider will invoice DIR for such amount in the monthly invoice following such 12-Month Review Period. Notwithstanding the foregoing, in the case of the Critical Service Levels described in Sections 1.1.2, 1.1.4, 1.1.6, 1.1.8, 1.1.9, and 1.1.11 of Attachment 3-B ("**Single Infrastructure Metrics**"), DIR will refund Service Provider the Service Level Credit that was credited for a Service Level Default of a Single Infrastructure Metric if, during the 12-Month Review Period, there was no recurrence of a

Service Level Default of such Single Infrastructure Metric that was caused by the non-Availability of the same Application (in the case of Sections 1.1.2, 1.1.9, and 1.1.11) or the same Server or Instance (in the case of Sections 1.1.4, 1.1.6, and 1.1.8) that caused such Service Level Default.

3. With respect to Applications, Servers or Instances for which Availability is measured by the same Single Infrastructure Metric, if the cumulative period during which each of two (2) or more of such Applications, Servers or Instances is not Available during a Measurement Window exceeds the maximum duration stated in **Attachment 3-A** for such Single Infrastructure Metric (i.e., there would have been a Service Level Default with respect to each such Application, Server or Instance viewed independently), then: (a) for the avoidance of doubt, only a single Service Level Default shall be deemed to have occurred; and (b) for purposes of Earnback, (i) DIR shall allocate up to fifty percent (50%) of the applicable Service Level Credit to one of such Applications, Servers or Instances, (ii) DIR shall allocate the remaining portion of the applicable Service Level Credit among the other of such Applications, Servers or Instances and (iii) Service Provider may Earnback the percentage amount of the Service Level Credit allocated by DIR to each such Application, Server or Instance if, during the 12-Month Review Period, there is no recurrence of a Service Level Default of such Single Infrastructure Metric that is caused by the non-Availability of such Application, Server or Instance.
4. If, during a 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 Section 6, Item 2 of this Exhibit had the Critical Service Level not been so deleted or demoted to a Key Measurement during such 12-Month Review Period.
- . If the Agreement is terminated prior to the end of the Term, the foregoing process shall be undertaken for the portion of any outstanding 12-Month Review Period(s) during which the Agreement was in effect.

## **7.0 ADDITIONS AND DELETIONS OF PERFORMANCE CATEGORIES**

DIR may add or delete Performance Categories by sending notice as described in Section 4. Such change notice shall include changes necessary to accommodate the addition of new Performance Categories made pursuant to Section 1.

## **8.0 POOL PERCENTAGES AVAILABLE FOR ALLOCATION AND CHANGES**

### **8.1 Definitions**

For purposes of the Agreement, the following terms shall have the following meanings:

1. **“Pool Percentage Available for Allocation – Core Infrastructure”** means the total number of percentage points available for allocation among those Service Levels applicable to Services in respect of the Server and Mainframe Tower. As of the Commencement Date, the Pool Percentage Available for Allocation – Core Infrastructure shall equal two-hundred forty (240) percentage points.

2. “**Pool Percentage Available for Allocation – Cross-Functional**” means the total number of percentage points available for allocation among those Service Levels applicable to Services in respect of the Cross-Functional – General and Cross-Functional – Equipment and Software Towers. As of the Commencement Date, the Pool Percentage Available for Allocation – Cross-Functional shall equal thirty (30) percentage points.

3. “**Pool Percentage Available for Allocation – Print/Mail**” means the total number of percentage points available for allocation among those Service Levels applicable to Services in respect of the Production Print and Mail Tower (Exhibit 2.7). As of the Commencement Date, the Pool Percentage Available for Allocation – Print/Mail shall equal thirty (30) percentage points.

## 8.2 Changes

DIR may increase or decrease the total number of percentage points comprising the Pool Percentage Available for Allocation – Core Infrastructure, the Pool Percentage Available for Allocation – Print/Mail and/or the Pool Percentage Available for Allocation – Cross-Functional by sending notice as described in Section 4 of this Exhibit, provided that the aggregate of percentage points available for allocation among all Service Levels shall not exceed the aggregate of such percentage points as of the Commencement Date. In no event shall:

- (i) the total number of percentage points comprising the Pool Percentage Available for Allocation – Core Infrastructure exceed two-hundred forty (240) percentage points, or be less than one-hundred seventy (170) percentage points;
- (ii) the total number of percentage points comprising the Pool Percentage Available for Allocation – Print/Mail or the Pool Percentage Available for Allocation – Cross-Functional exceed one-hundred (100) percentage points, or be less than thirty (30) percentage points; or
- (iii) the sum of the number of percentage points comprising the Pool Percentage Available for Allocation – Cross-Functional plus the percentage points comprising the Pool Percentage Available for Allocation – Print/Mail exceed one-hundred thirty (130) percentage points.

## 9.0 ADDITIONS, MODIFICATIONS AND DELETIONS OF SERVICE LEVELS

DIR may add, modify or delete Critical Service Levels or Key Measurements as follows:

### 9.1 Additions

DIR may add Service Levels in accordance with this Section 9.1 and by providing notice in accordance with Section 4. Expected Service Levels and Minimum Service Level commitments associated with added Service Levels will be computed as follows:

1. Where at least nine (9) consecutive months of verifiable service measurements exist for a particular Service that is being provided by Service Provider, 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<sup>1</sup>

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<sup>1</sup> 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 Section 8.1, Item 1, highest would be changed to lowest in Section 8.1, Item 3.2.1 and one hundred percent (100%) would be changed to zero percent (0%) in Section 8.1, Item 3.2.1.

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, or

2. Where no measurements exist for a particular Service that is being provided by Service Provider, the Parties shall attempt in good faith to agree on an Expected Service Level and a Minimum Service Level commitment using industry standard measures or third party advisory services (for example, Gartner Group, Yankee Group, etc.), or
3. Where less than nine (9) months or no measurements exist for a particular Service that is being provided by Service Provider, and the Parties fail to agree on an Expected Service Level and a Minimum Service Level commitment using as described in Section 9.1, Item 2 of this Exhibit, the Parties shall do the following:
  - 3.1. Service Provider shall begin providing monthly measurements within ninety (90) days after Service Provider's receipt of DIR's request pursuant to Section 4 of this Exhibit, subject to agreement on such measurements in accordance with the Change Control Procedures.
  - 3.2. After nine (9) or more actual Service Level attainments have been measured (or should have been measured per Section 9.1, Item 3.1 of this Exhibit and if not so measured, constructed as described in Section 9.1, Item 3.2.1 of this Exhibit), DIR may at any time request that Section 9.1, Item 1 of this Exhibit be used to establish the Expected Service Level and Minimum Service Level commitments, in which event such Service Levels shall be so established.
    - 3.2.1. If 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 Measurement Window 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 seven measurements for a particular Service, and the highest of the seven measurements were 95%, then the measurements for the missing two months would be deemed to be 96.00% (representing 95.00% plus (20% of 5%)) and 96.75% (representing 95.00% plus 35% of 5%), respectively.

- 3.2.2. If Service Provider has provided twenty-four (24) actual Service Level attainment measurements for any particular Service provided by Service Provider, and DIR has not used Section 9.1, Item 1 of this Exhibit to establish Expected Service Level and Minimum Service Level commitments, then continued provision of actual Service Level attainment measurements shall be subject to the Parties' agreement in accordance with the Change Control Procedures.

## 9.2 Deletions

DIR may delete Critical Service Levels or Key Measurements by sending notice in accordance with Section 4 of this Exhibit.

## 9.3 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 within the applicable Performance Category such that the total Service Level Credit Allocation Percentages for all Critical Service Levels within the applicable Performance Category equals one hundred percent (100%).

If DIR adds a Critical Service Level in accordance with Section 9.1 of this Exhibit, but does not modify the Service Level Credit Allocation Percentages for the Critical Service Levels within the applicable Performance Category under this Section 9.3, 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.

## 9.4 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 a Performance Category by sending notice in accordance with Section 4 of this Exhibit. DIR shall modify the Service Level Credit Allocation Percentages for two or more of the Critical Service Levels within a Performance Category such that the sum of the Service Level Credit Allocation Percentages for all Critical Service Levels within the Performance Category equals one hundred percent (100%).

## 9.5 Limitation on Changes to Service Level Credit Allocation Percentages

Notwithstanding any changes to the Service Level Credit Allocation Percentages, in no event may (i) the sum of the Service Level Credit Allocation Percentages for all Critical Service Levels within a Performance Category exceed one hundred percent (100%) or (ii) the Service Level Credit Allocation Percentage for any Single Infrastructure Metric exceed two (2) times the amount of such percentage as of the Effective Date.

## 10.0 CRITICAL DELIVERABLES – AFTER EFFECTIVE DATE

Certain of Service Provider's obligations under the Agreement are one-time or periodic obligations to deliver Critical Deliverables. Attachment 3-A sets forth the Deliverable Credits that shall be payable by Service Provider to DIR in the event Service Provider fails to deliver any of the Critical Deliverables within the required time period specified in Attachment 3-A, provided that: (a) in no event shall the total aggregate amount of Deliverable Credits payable with respect to a particular Critical Deliverable (excluding, however, the Critical Deliverables described in Sections 3.0, 5.0, 19.0, 21.0 and 23.0 of Attachment 3-C) exceed (i) two (2) times the applicable Deliverable Credit if such Deliverable Credit is stated on a monthly basis or (ii) four (4) times the applicable Deliverable Credit if such Deliverable Credit is stated on a weekly basis; and (b) with respect to the Critical Deliverables described in Sections 3.0, 5.0, 19.0, 21.0 and 23.0 of Attachment 3-C, in no event shall the total aggregate amount of Deliverable Credits payable in respect of all such Critical Deliverables exceed Two Million Dollars (\$2,000,000). Imposition

of Deliverable Credits for failure to meet the Critical Deliverables obligations shall not be subject to or included in the calculation related to the At-Risk Amount. The total amount of Deliverable Credits that Service Provider will be obligated to pay to DIR shall be reflected on the invoice that contains charges for the month during which the Deliverable Credits accrued (for example, the amount of Deliverable Credits payable for failure to deliver any Critical Deliverable(s) in August shall be set forth in the invoice for August charges issued in September). Unlike Service Level Credits, Deliverable Credits shall not be subject to Earnback.

## **11.0 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\*\*”. As soon as practicable after the Effective Date, the Parties will work together to review (i) the Service Level metrics being used by DIR and DIR Customers as of the Effective Date; (ii) the methods by which DIR and DIR Customers have been tracking performance against such metrics (and the extent to which such methods need to be maintained pending implementation of new system management tools and processes); and (iii) the actual performance results against such metrics. Based on such review, the Parties will mutually agree on the extent and manner, if at all, in which to take into account the findings from such review. 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 Service Provider will be responsible to provide measurement data in support of the Critical Service Level or Key Measurement and Service Provider will be responsible for Service Level Credits for any failures to attain the Critical Service Levels.

## **12.0 PROMOTION FROM CURRENT MODE TO FUTURE MODE OBLIGATIONS**

The Expected and Minimum Service Level obligations set forth in Attachment 3-A are segregated into two categories: Current Mode of Operation (“CMO”) and Future Mode of Operation (“FMO”). The number of months specified in the column “Comm +mos\*\*” apply to the Service Level obligations in the CMO category. The obligations so identified shall continue unless and until replaced by the corresponding Service Level obligations in the FMO category. The calendar dates nominated in the column “Milestone / Date” specify when the Service Level obligations in CMO shall be replaced with the corresponding Service Level obligations in the FMO category.

## **13.0 COOPERATION**

The achievement of the Service Levels by Service Provider may require the coordinated, collaborative effort of Service Provider with third parties. 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 Customer, regardless of whether the reason for such Service Level Defaults, or failure to provide high-quality Services to DIR, was caused by Service Provider.

## **14.0 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 the Term 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 in Sections 11 and 12 and this Section:

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 actual results exceeded the Expected Service Level, the Expected Service Level will be reset by taking the four (4) highest 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 Section 13, Item 2 of this Exhibit.

2. Notwithstanding Section 14, Item 1 of this Exhibit, in no event shall any single increase in an Expected Service Level pursuant to Section 14, Item 1 of this Exhibit 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 will be performed as of the applicable 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 or Key Measurement.

## 15.0 CRITICAL SERVICE LEVEL OUTCOME EXAMPLES

Attachment 3-D is a graphical example of Critical Service Level outcomes under the following headings:

1. Expected Service Level Default – One Service Level Credit.
2. Expected Service Level Default – Two Service Level Credits.
3. Minimum Service Level Default.
4. Minimum Service Level Default and Expected Service Level Default.
5. Expected Service Level Earnback – Service Provider DOES earnback Service Level Credit (s).
6. Expected Service Level Earnback – Service Provider DOES NOT earnback Service Level Credit(s).
7. Minimum Service Level Earnback – Service Provider DOES NOT earnback Service Level Credit(s).
8. Resetting the Minimum Service Level.

9. Resetting the Expected Service Level.
10. Setting a new Minimum Service Level.
11. Setting a new Expected Service Level.

These examples are not meant to be all-inclusive of the Critical Service Level outcomes but, instead, are examples of possible results and impacts to Service Level Credits and Critical Service Level adjustments.

## **16.0 IMPROVEMENT PLAN FOR KEY MEASUREMENTS**

If Service Provider fails to meet the Expected Service Level or Minimum Service Level for any Key Measurement, Service Provider shall provide DIR with a written plan for improving Service Provider's performance to meet the Expected Service Level or Minimum Service Level for the Key Measurement within thirty (30) days of the failure to meet the Expected Service Level or the Minimum Service Level for the Key Measurement, which plan shall be subject to DIR's approval. Service Provider shall promptly implement such plan once it has been approved by DIR.

## **17.0 MEASURING TOOLS**

As of the Effective Date, the measuring tools and methodologies set forth in Attachment 3-E 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 Service Provider and included in Attachment 3-E, and Service Provider fails to propose a measuring tool for such Critical Service Level that is acceptable to DIR prior to the date upon which Service Provider shall be responsible for performance in accordance with such Critical Service Level, such failure shall be deemed a Minimum Service Level Default for such Critical Service Level until Service Provider proposes and implements such acceptable measuring tool.

Tools for new Critical Service Levels will be implemented according to the Change Control Procedures.

If, after the Effective Date or the implementation of tools for new Critical Service Levels, Service Provider desires to use a different measuring tool for a Critical Service Level, Service Provider shall provide 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 tool; provided that, if the Parties cannot agree on the required adjustment, 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 monitoring 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.

## **18.0 TIMES**

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

## **19.0 SINGLE INCIDENT/MULTIPLE DEFAULTS**

If a single incident results in the failure of Service Provider to meet more than one Minimum Service Level, DIR shall have the right to select any one of such multiple Minimum Service Level Defaults for

which it will be entitled to receive a Service Level Credit. DIR shall not be entitled to a Service Level Credit for each of such Minimum Service Level Defaults.

## 20.0 EXCEPTIONS

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. DIR's (or DIR Customer's or DIR Contractor's) acts, errors, omissions, or breaches of the Agreement to the extent such acts, errors, omissions or breaches excuse Service Provider's performance in accordance with **Section 10.2** of the Agreement.
2. Infringements of Third Party proprietary rights by DIR, a DIR Customer, or a DIR Contractor to the extent such infringements excuse Service Provider's performance in accordance with **Section 10.2** of the Agreement.
3. Willful misconduct or violations of law by DIR, DIR Customer, or a DIR Contractor to the extent willful misconduct or violations of law excuse Service Provider's performance in accordance with **Section 10.2** of the Agreement.
4. Service or resource reductions requested or approved by DIR and agreed to by the Parties through the Change Control Procedures; provided that Service Provider has previously notified DIR in writing as part of such Change Control Procedures that the implementation of such request would result in such failure to meet the Service Level.
5. 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; and (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.
6. Services performed during the execution of a Disaster Recovery Plan, the execution of which is in support of a DIR declared disaster (but failure to execute a Disaster Recovery Plan may constitute a breach of the Agreement); provided, however, that Service Provider shall be responsible for (a) any Service Levels and Services to the extent not directly impacted by such disaster and (b) any Service Levels set forth in the Disaster Recovery Plan(s).

## 21.0 EXCLUSIONS

For purposes of calculating Actual Uptime and Availability, Downtime shall not include any period of Downtime that is the result of scheduled time required and actually used to perform system maintenance (for example, preventive maintenance, system upgrades, etc.), provided that such time has been mutually agreed between the Parties and is scheduled so as to minimize the impact to DIR's business. Service Provider shall maintain Availability during such periods to the extent reasonably practicable.