

SCHEDULE F

SERVICE LEVEL METHODOLOGY

TABLE OF CONTENTS

1.	General Provisions.....	3
2.	Service Level Obligations.....	5
3.	Additions, Modifications, Deletions and Reclassifications of Service Levels.	10
4.	Continuous Improvement of Service Levels.....	11
5.	Measuring Tools.	11
6.	Service Level Credits and Earn Backs.....	12
7.	Annual Review.....	16
8.	Investigation and Correction.....	16

Schedule F - Service Level Methodology

1. General Provisions.

The following terms shall have the following meanings:

(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 and thereafter during the Term (and any Termination Assistance Period) against all Service Levels then in effect.

(ii) This Schedule F 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 Schedule F and Schedule F-1 (*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 Schedule F 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 seven 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 Schedule F-1 (*Service Level Matrix*).

(v) The Contractor shall promptly investigate and remediate all failures associated with Service Levels in accordance with Section 8 below.

(vi) The Contractor shall provide the Commonwealth with the performance reporting for the Services as specified in this Schedule F.

(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, such as outages, that appear likely

to result in a failure to meet any Service Level, within 30 minutes 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 Schedule F.

(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 Schedule F and the Contract.

(b) Reporting of Performance Measures.

Commencing on the Service Level Commencement Date and continuing throughout the Term, including during any Termination Assistance Period:

(i) The Contractor shall assemble and create the reports described in this Schedule F 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. In addition, the Contractor shall make such information available to the Commonwealth on-line using commonly available technology. The raw data and detailed supporting information shall be the Commonwealth Confidential Information, and the Commonwealth may access such information on-line at any time during the Term.

(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 GPIs 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 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 CPIs, KPIs and GPIs are described in Schedule F-1 (*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 by Service Area. Unless otherwise agreed in writing, the Contractor is not accountable for Service Level performance prior to each applicable Service Level Commencement Date by Service Area.

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

(i) CPIs, KPIs and GPIs 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 CPIs and KPIs. Certain of the Service Levels, while

important to the Commonwealth's business operations, are less critical to the Commonwealth and are designated as GPIs.

(ii) CPI Service Level Defaults.

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

- (A) Entitle the Commonwealth to receive a Service Level Credit,
- (B) Be escalated to the Operational Governance Board, 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 Operational Governance Board, 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 six (6) times in any Service Level Reporting Period;
- (C) The Minimum Service Level for the same KPI six (6) times in any Service Level Reporting Period; or

(D) The Minimum Service Level for any combination of CPIs and KPIs twelve (12) 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 30 (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.

(d) Service Level Types.

(i) Identification.

For all Service Levels, Schedule F-1 (*Service Level Matrix*) contains a column labeled "Service Level Type". Service Levels labeled with a "1" in the Service Level Type column shall be "Type 1 Service Levels". Service Levels labeled with a "2" in the Service Level Type column shall be "Type 2 Service Levels."

(ii) Type 1 Generally.

Type 1 Service Levels are Service Levels that are supported with Baseline Data for periods prior to the Effective Date or are otherwise deemed reasonable by the Parties based on industry standards or the Contractor's capabilities applicable to the Services and will not be adjusted during the Term except pursuant to Sections 3(a), 3(c), 4 and 7 of this Schedule F or as otherwise agreed by the Parties.

(iii) Type 2 Generally.

Type 2 Service Levels are Service Levels that the Parties believe to be reasonable as of the Effective Date, but for which the Commonwealth does not have sufficient supporting historical data on its performance against such Service Levels for periods prior to the Effective Date. For Type 2 Service Levels, the Contractor, during the Measurement Period, shall collect and validate such performance data commencing on each applicable Service Level Commencement Date. Within sixty (60) days after completion of such Measurement Period for a Type 2 Service Level, either Party may propose an equitable adjustment to such Service Level based on the Measurement Period data. Upon mutual agreement of the Parties, neither to withhold assent unreasonably, the proposed adjustment will be accepted and such Service Level will be relabeled as a Type 1 Service Level in Schedule F-1 (*Service Level Matrix*) and follow all other protocols for a Type 1 Service Level.

(iv) Dispute Resolution.

If, after negotiating in good faith, the Parties are unable to agree on an equitable adjustment for Target and Minimum Service Levels for Type 2 Service Levels within ninety (90) days after completion of the applicable Measurement Period, either Party may escalate the matter in accordance with the governance procedures set forth in Schedule K(*Governance*), and if the dispute is not resolved thereby, the matter shall be resolved through the dispute resolution procedures set forth in the Contract. Until such adjustment is resolved pursuant to such procedures, such Type 2 Service Level shall remain as originally agreed by the Parties and such Service Level shall be relabeled as a Type 1 Service Level in Schedule F-1 (*Service Level Matrix*) and follow all other protocols for a Type 1 Service Level, each effective no later than ninety (90) days after completion of the applicable Measurement Period.

(v) Service Level Defaults During Dispute Resolution.

If the applicable Service Level referenced in Section 2(d)(iv) above is a CPI and during the continuation of such governance and dispute resolution procedures:

- (A) One or more Service Level Defaults occurred for which the Commonwealth received Service Level Credits and pursuant to such governance or dispute resolution procedures the CPI is adjusted to such a level that such Service Level Default(s) would not have occurred and such Service Level Credits would not have been otherwise credited or paid to the Commonwealth at the adjusted level, then the adjusted Service Level shall be given retroactive effect and the Contractor and the Commonwealth shall promptly agree (not to be unreasonably withheld or delayed) upon an equitable method of reversing the effect of such Service Level Default(s) and Service Level Credits in favor of the Contractor; or

(B) There were no Service Level Defaults for which the Commonwealth received any Service Level Credits and if pursuant to such governance or dispute resolution procedures the CPI is adjusted to a level such that there would have been one or more Service Level Defaults for which the Commonwealth would have received Service Level Credits, then the adjusted Service Level shall be given retroactive effect and the Contractor and the Commonwealth shall promptly agree (not to be unreasonably withheld or delayed) upon an equitable method of giving effect to such Service Level Defaults and Service Level Credits in favor of the Commonwealth.

(vi) Reclassification to Type 1.

If, following collection of Baseline Data, neither Party proposes an adjustment to a Type 2 Service Level pursuant to this Section 2(d), then any such Type 2 Service Level will automatically be reclassified as a Type 1 Service Level as of ninety (90) days after completion of the applicable Measurement Period. In no event will a Type 2 Service Level remain a Type 2 Service Level beyond ninety (90) days after completion of the applicable Measurement Period.

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

(a) Additions and Modifications of Service Levels.

(i) The Commonwealth may require the Contractor to add CPIs, KPIs or GPIs, or modify the definition, metrics, data elements, measurement standards, or other pertinent features (as set forth in Schedule F-1 (*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.

(ii) For new Service Levels the Parties shall establish the applicable Minimum Service Levels and Target Service Levels in accordance with the following:

(A) Where at least six (6) months of service measurements exist for a proposed new Service Level or the Parties agree that such proposed new Service Level does not need Baseline Data based on industry standards for such Service Level, then the Parties agree that the Target Service Level and Minimum Service Level shall be defined as Type 1 Service Levels through the mutual agreement of the Parties and adopted in accordance with Section 2(d)(ii) above; and

(B) Where no or less than six (6) months of service measurements exist for a proposed new Service Level, the Parties shall agree on Type 2 Target and Minimum Service Levels and appropriate measurement tools in accordance with Section 5 below. The Contractor shall measure and report the actual service attainment and the Parties will make adjustments in accordance with Sections 2(d)(iii-vi) above. The Contractor shall begin providing monthly measurements within thirty (30) calendar days after the determination of the measurement tools.

(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.

(c) Reclassifications and Change in Allocation of Pool Percentage.

In its sole discretion and upon written notice at least ninety (90) days prior to the date that such modifications are to be effective, the Commonwealth may (i) require a reclassification of any Service Level (*e.g.*, from CPI, KPI or GPI to any of CPI, KPI or GPI), or (ii) as part of the reclassification request or separately, the Commonwealth may also require a redistribution of the existing Allocation of Pool Percentages for one or more CPIs. Changes made by the Commonwealth pursuant to this Section 3(c):

(i) shall not result in any impact to the Charges, Service Level metrics set forth in Schedule F-1 (*Service Level Matrix*), or other terms and conditions of this Contract, and

(ii) are not required to be processed through the Change Control Procedures.

4. Continuous Improvement of Service Levels.

(a) Continuous Improvement Availability and Dates.

The Parties agree to the concept of continuous improvement with respect to the Target Service Levels (but not Minimum Service Levels) for certain CPI and KPI Service Levels available for continuous improvement. Those Service Levels available for continuous improvement pursuant to this Section 4 have a “Y” in the column entitled “Continuous Improvement” in Schedule F-1 (*Service Level Matrix*). Beginning twelve (12) months after each applicable Service Level Commencement Date (the “Service Level Improvement Date”) and on each annual anniversary of the Service Level Improvement Date (after all initial Service Level Commencement Dates have passed, the Parties shall agree to synchronize all Service Level Improvement Dates to a single date for future use), the Parties shall adjust the applicable CPI and KPI Target Service Levels using the methodology described below.

(b) Continuous Improvement Methodology.

For Service Levels available for continuous improvement, upon each Service Level Improvement Date each Target Service Level will be reset to the lowest of the eight (8) highest monthly actual results (*e.g.*, 99.6% is higher than 99.4%) at or above the Target Service Levels achieved during the previous twelve (12) months; provided that, if fewer than eight (8) monthly actual results exceeded the Target Service Level, the Target Service Level will not be reset. Notwithstanding the foregoing, no single increase in a Target Service Level for any twelve-month period may exceed 10% of the difference between 100% and the then-current Target Service Level. For example, if the Target Service Level being adjusted were 99.6%, the maximum increase for that reset would be 0.04 (with an adjusted annual cap of 99.64%).

5. Measuring Tools.

(a) 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.

(b) Notwithstanding the foregoing, any new tools required for new Service Levels added after the Effective Date shall be identified in the Change Order or other documentation approving such new Service Level. In connection therewith, the Contractor shall be obligated to propose a commercially reasonable measuring tool or methodology for a Service Level, and if it fails to do so, such tool or methodology shall be determined using the dispute resolution procedure set forth in the Contract.

(c) If, after the Effective Date or the implementation of tools for new Service Levels or the tools the Contractor is required to implement pursuant to Section 5(a) above for existing Service Levels, one Party desires to use a different measuring tool or methodology for a Service Level, such Party shall request such change through the Change Control Procedures. If the other Party approves the new measuring tool or methodology, the Parties will reasonably adjust the Service Level measurements to account for any increased or decreased sensitivity in the new measuring tools, provided that if the Parties cannot agree on the required adjustment, either Party may escalate the matter in accordance with the governance procedures set forth in Schedule F (*Governance*), and if the dispute is not resolved thereby, the matter shall be resolved under the dispute resolution process set forth in the Contract. It is not anticipated that changes in the measuring tools or methodologies will drive changes in Service Levels; rather, the need to collect and accurately reflect the performance data should drive the development or change in measuring tools or methodologies.

6. Service Level Credits and Earn Backs.

(a) Service Level Credit Calculation.

Subject to Section 6(f) below, for each CPI Target Service Level Default or Minimum 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 At Risk Amount;

Where B is the Allocation of Pool Percentage for the applicable CPI.

For example only, assume that the Contractor fails to meet the Minimum Service

Level for a CPI, the At Risk Amount is 15% of the Monthly Charges, and the Monthly Charges for the month in which the Service Level Default occurred were \$1,000,000. Additionally, assume that the Allocation of Pool Percentage for such CPI is 10%. The Performance Credit due to the Commonwealth for such Service Level Default would be computed as follows:

A (the At Risk Amount) is \$150,000 ($\$1,000,000 * 15\%$);

Multiplied by B (the Allocation of Pool Percentage for such CPI), which is 10 percentage points;

Yields a Performance Credit = \$15,000

(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. If in any month there is both a Minimum Service Level Default and a Target Service Level Default with respect to any Service Level, Service Level Credits shall only accrue for one of such Service Level Defaults. In no event shall the amount of CPI Service Level Credits accrued to be potentially credited to the Commonwealth with respect to all CPI 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 CPI report.

(d) Type 2 Service Level Exemption.

Subject to Sections 2(d)(v-vi) above, the Contractor shall not be obligated to accrue, credit, or pay the Commonwealth Service Level Credits resulting from Service Level Defaults attributable to Type 2 CPI Service Levels until such Type 2 CPI Service Levels are relabeled as Type 1 CPI Service Levels. Notwithstanding anything to the contrary herein, during the Measurement Period, the accuracy, quality, completeness, timeliness, responsiveness, and efficiency of the Contractor's provision of the Services that are subject to Type 2 Service Levels is an important element of Service delivery. The Contractor shall use commercially reasonable efforts to deliver the Services in a manner designed to ensure that the Type 2 Service Level Target Service Level metric is met or exceeded.

(e) Earn Backs.

(i) For any given Service Level Credit generated from a Target Service Level 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 nine (9) 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 nine (9) monthly Measurement Windows; or

(B) (1) the Contractor does not generate a Service Level Default, and

(B) (2) 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 7(f) below.

(ii) For any given Service Level Credit generated from a Target Service Level Default for a CPI with a quarterly Measurement Window, the Contractor will have the ability to earn an Earn Back associated with such failure if the Contractor meets the required Target Service Level metric for the Service Level that generated the Service Level Credit for each of the three (3) quarterly Measurement Windows immediately following the Measurement Window of the failure that generated the Service Level Credit.

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 7(f) below.

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

(iv) Upon the expiration of the Term, the Earn Back processes set forth in Section 7(e)(i) and Section 7(e)(ii) above shall be undertaken with respect to the portion of the Service Level Reporting Period that fell within the term, so that if the period available for earn back is less than the required period of time (*e.g.*, 9 months for monthly Measurement Windows and 3 quarters for quarterly Measurement Windows), the Contractor can earn back the straight-line, pro-rata value of the Service Level Credit for each consecutive month or quarter, as applicable, following the month or quarter, as applicable, in which the Service

Level Default occurred and in which the Contractor achieves the required Target Service Level for such CPI, up to the expiration of the Term.

(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 Schedule F. 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 (*e.g.*, Minimum Service Level Defaults and semi-annual and annual Measurement Windows), 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 Schedule F, 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 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.

7. Annual Review.

Within 12 months after each applicable Service Level Commencement Date, and at least annually thereafter (after all initial Service Level Commencement Dates have passed, the Parties shall agree to synchronize to a single date for future use), or at either Party's request, the Contractor and the Commonwealth will review the Service Levels and any proposed adjustments to them as appropriate pursuant to the Change Control Procedures to reflect any improved performance capabilities associated with advances in the technology and methods used to perform the Services or material changes in volumes and metrics used to determine the Service Levels. The Parties will also review any other considerations relating to the Service Levels raised by either Party. As part of this review process, the Parties may: (a) jointly determine and agree on the addition and/or removal of Service Levels, (b) revise the categorization of Service Levels, (c) revise the results of the automatic continuous improvement adjustment developed for a particular Service Level pursuant to Section 4 above or improve a particular Service Level not subject to the automatic continuous improvement adjustments of Section 4 above.

8. 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.