

**SCHEDULE 4**  
**FEE REDUCTIONS**

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## 1.0 General

The Fee Reductions, as described in this Schedule 4, have been designed to encourage the consistent and timely delivery of service and value to the Client. The Fee Reductions are not intended to compensate the Client for damages, but rather to reimburse the Client the value of the diminished services actually delivered, and to provide incentives to the Vendor to achieve the Agreement's stated objectives and focus on the Client's critical needs.

This Schedule 4 outlines the circumstances under which the Client will be entitled to Fee Reductions for failures to achieve the Service Level Requirements and/or Critical Milestones. The tables attached to this Schedule 4 shall be updated to reflect the Client's current initiatives and service requirements at least annually.

For a period commencing as of the Effective Date of the Agreement for a period of twelve (12) months, Weighting Factors for the individual SLRs may be adjusted by mutual agreement. Thereafter, Client may unilaterally adjust Fee Reduction Weighting Factors for SLRs, but must give the Vendor one hundred eighty (180) days prior written notice. The sum of all Fee Reductions shall not exceed the total Annual At-Risk Amount for any Contract Year. The sum of all Weighting Factors shall not exceed one hundred fifty percent (150%). The Weighting Factor for each individual SLR shall not exceed forty percent (40%).

The tables attached to this Schedule identify, among other things:

- (a) in Appendix 4.1, the Service Level Requirements and the Weighting Factors for each such Service Level Requirement; and
- (b) in Table 1, the Critical Milestones and the Weighting Factors for each such Critical Milestone

For the purposes of this Schedule 4, "failure" shall mean (a) with respect to Service Level Requirements, the failure to meet such Service Level Requirements performance (calculated using the formula in the applicable Service Level Requirements table) with respect to the specified performance target for the applicable Measurement Interval, and (b) with respect to a Critical Milestone, the failure to achieve such Critical Milestone by the specified end date set forth in Table 1 of this Schedule 4 or the specified due date set forth in the Transition Plan, Disentanglement Plan or through any Work Order.

For the purposes of this Schedule 4, "Weighting Factor" means a number expressed as a percentage which is assigned to a Service Level Requirement for the purpose of calculating a Fee Reduction resulting from a failure to meet the applicable SLR.

## 2.0 Service Level Requirements

Each Service Level Requirement set forth in Appendix 4.1 identifies key performance measures that will be used to evaluate the Vendor's delivery of the requested Services. The overriding goal in developing Service Level Requirements is to support the Client's desire to manage the Vendor by monitoring and measuring performance on the Client's most important business and technical requirements. The Client expects the Service Level Requirements to improve over time. New Service Level Requirements may be added by mutual agreement to reflect changing or new business requirements per the Changes to Service Levels process described in Section 4.9.3 of the Agreement.

## 2.1 Fee Reductions

For each Contract Year, the annual portion of fees at-risk, or available, for Fee Reductions (“Annual At-Risk Amount”) for the Vendor’s failure to meet Service Level Requirements is ten percent (10%) of the sum of that Contract Year’s monthly recurring fees, which shall be estimated at the beginning of each Contract Year. If a significant Change in monthly recurring fees occurs, the total at-risk amount will be adjusted accordingly. The Fee Reductions for the Vendor’s failure to achieve the Service Level Requirements are set forth in Appendix 4.1.

The non-attainment of the Service Level Requirements by the Vendor will result in a reduction of Fees for each affected Service Level Requirement based on the percentage amount shown in the applicable table. Fee Reductions are not capped on a monthly basis, but shall not exceed the total Annual At-Risk Amount at any point during the Contract Year, except as outlined below in Section 2.1.2. Should the Annual At-Risk Amount be reached prior to the end of the then-current Contract Year, the Agreement shall be deemed to be in Default and Client shall be entitled to such other remedies as are available to it under this Agreement.

The Client expects to develop new Service Level Requirements to reflect changing needs or new projects, and the Service Level Requirements may be added to or deleted from, and Weighting Factors may be modified in Appendix 4.1. In the absence of any modifications to Appendix 4.1, the performance targets, Service Level Requirements and Weighting Factors therein shall apply to all Contract Years.

### 2.1.1 Initial Service Level Requirements Failure Fee Reduction

Upon any initial failure of the Vendor to attain a Service Level Requirement in a Measurement Interval, the associated Fee Reduction shall be equal to the product of: (a) one twelfth (1/12) of the Annual At-Risk Amount, multiplied by (b) the Weighting Factor for the Service Level Requirement that was missed.

### 2.1.2 Multiple Failures

Consecutive Failures: If the Vendor does not attain a Service Level Requirement in two (2) or more consecutive Measurement Intervals, the Weighting Factor for the second (2<sup>nd</sup>), third (3<sup>rd</sup>), and subsequent consecutive Measurement Intervals shall be increased as follows:

Second Measurement Interval	1.5 x the Weighting Factor
Third and Subsequent Measurement Intervals	2 x the Weighting Factor

The Vendor’s failure to attain a Service Level Requirement in four (4) consecutive Measurement Intervals or four (4) non-consecutive Measurement Intervals during any rolling ten (10) month period shall be considered a material breach of this Agreement and Client shall be entitled to the available remedies under the Agreement.

Non-consecutive Failures: In addition, if the Vendor does not attain a Service Level Requirement for any four (4) or more non-consecutive Measurement Intervals over any rolling ten (10) month period, the Weighting Factor for each such Measurement Interval shall be increased as follows:

Third, Fourth and Fifth Measurement Interval	1.5 x the Weighting Factor
Sixth and Subsequent Measurement Intervals	2 x the Weighting Factor

Notwithstanding the foregoing, and for the purpose of calculating Fee Reductions, where the Measurement Interval for a particular Service Level Requirement is for a duration of less than one (1) month, for purposes of the calculations set forth above only, the Measurement Interval shall be deemed to be one (1) month; provided that the Measurement Interval shall continue to apply for the purpose of meeting such Service Level Requirement. By way of example, but not in limitation of the foregoing, if the Measurement Interval of a Service Level Requirement is one (1) week, the Vendor shall be required to meet the Service Level Requirement as measured on a weekly basis; provided that if such Service Level Requirement is missed in any week of month one (1), a miss of such Service Level Requirement in any other week of month one (1) shall not trigger the increase of the Weighting Factor set forth above. If such Service Level Requirement is subsequently missed in any week of month two (2), such miss shall trigger the increase in the Weighting Factor as set forth above adjacent to “Second Measurement Interval” and a subsequent consecutive miss in any week of month three (3) shall trigger the increase in the Weighting Factor as set forth above adjacent to “Third and Subsequent Measurement Intervals.”

Notwithstanding the foregoing, in the event a single SLR failure triggers failures across several SLRs, Client shall impose a Fee Reduction only on the single SLR that initially caused the failure.

### 2.1.3 Failures Across Service Level Requirements

If there are failures across more than fifteen percent (15%) of the total number of Service Level Requirements that are assigned a weighting factor of zero percent (0%), then an automatic Fee Reduction will be invoked at five percent (5%) of one-twelfth (1/12<sup>th</sup>) of the Annual At-Risk Amount.

### 2.1.4 Earnback

Vendor shall have the opportunity to “earnback” (or receive a credit against) accumulated Fee Reductions for the failure to achieve a SLR under the following conditions:

- (a) If Vendor successfully meets the SLR during the next three (3) consecutive Measurement Interval periods immediately following the Measurement Interval in which the SLR was missed, Vendor shall be entitled to earn back fifty percent (50%) of the accumulated Fee Reduction.
- (b) If Vendor successfully meets the SLR during the next six (6) consecutive Measurement Interval periods immediately following the Measurement Interval in which the SLR was missed, Vendor’s shall be entitled to earn back one hundred percent (100%) of the accumulated Fee Reduction.
- (c) Earnbacks are applicable for the initial SLR miss only. Vendor shall not be entitled to an earnback for a second or subsequent failure of the same SLR during a rolling twelve (12) month period commencing as of the date of the Measurement Interval immediately following the Measurement Interval in which the SLR was missed. Additionally, if a second miss occurs during the second three (3) month earnback period (i.e., Vendor has met the SLR for the initial 3 month period following the SLR failure,

entitling it to a partial earnback) then Vendor shall not be entitled to an earnback on the second miss, but will have an opportunity to have an earnback on the second or subsequent miss, subject to the procedure outlined in subsection (b) above.

By way of example, only, if Vendor fails to meet a SLR (the performance of which is tracked on a monthly Measurement Interval) in January, and has a second failure of the same SLR in February, Vendor will not be entitled to an earnback for the January SLR failure, but will have the opportunity to receive an earnback for the February SLR failure, provided that it meets such SLR for the ensuing three (3) or six (6) month period (i.e., Vendor meets the SLR from March-May, or March-August) .

### **3.0 Critical Milestones**

#### **3.1 Critical Milestones At-Risk Amount**

With respect to each specific project performed under this Agreement, to the extent such projects involve the implementation of SLRs or other recurring service performance measures the annual portion of fees at-risk, or available, for Fee Reductions for the Vendor's failure to meet such agreed Critical Milestones shall be as follows:

At-Risk Amount for Critical Milestones associated with projects with specific project fees (e.g., Transition Services) – ten percent (10%) of the total project fees for each project; provided, however, the Parties may mutually agree to an alternative remedy with respect to such project based SLRs.

The remedy for the Vendor's failure to achieve the initial Critical Milestones for this Agreement are set forth in Table 1 (Critical Milestones). Each Critical Milestone shall identify key project milestones that will be used to evaluate the Vendor's delivery of the requested Services. The overriding goal in developing Critical Milestones is to support the Client's desire to manage the Vendor by monitoring and measuring actual performance against the Client's most important business deadlines. The Client expects to develop new Critical Milestones to reflect changing needs or new projects and may be added at the Client's discretion.

#### **3.2 Failure to Timely Achieve a Critical Milestone**

If the Vendor fails to achieve any Critical Milestone by the corresponding date for achieving such Critical Milestone, then the Fee Reductions shall be equal to the product of: (a) the At-Risk Amount, multiplied by (b) the Weighting Factor for the Critical Milestone that was missed; provided, however, that the Parties may mutually agree to an alternative remedy for each specific project.

#### **3.3 Critical Milestone Corrective Assessment**

Upon any failure with respect to a Critical Milestone, if specified in Table 1, the Client shall have the right to impose a Corrective Assessment on the Vendor, in addition to any of the other Fee Reductions (if applicable) for the project(s) in question. Such Corrective Assessments shall not apply toward satisfaction of the Annual At-Risk Amount. Corrective Assessments may be

imposed on the same Critical Milestone if such Critical Milestone is initially missed, rescheduled and subsequently missed again.

**Table 1. Critical Milestones**

<b>Milestones</b>	<b>Milestone Date</b>	<b>Corrective Assessment (\$)</b>
Completion of Transition, by Tower, by Service Commencement Date	See Attachment B (Transition Plan)	Subject to Section 4.2.5 (b)\$5,000 per day for each day late, applicable to the Service Commencement Date for each Transition Wave by tower. .