

Virginia Information Technologies Agency



Exhibit 4.0
Pricing and Financial Provisions
Modification 16

VA-180112-ATOS

COMMONWEALTH OF VIRGINIA
VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA)
SUPPLY CHAIN MANAGEMENT DIVISION

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1. Introduction

1.1. This **Exhibit 4 (Pricing and Financial Provisions)** provides the methodology for calculating the Charges for all of the Services.

1.2. The following attachments to this **Exhibit 4** are hereby incorporated by reference:

- **Exhibit 4.1-a (Pricing and Volumes Matrix)**
- **Exhibit 4.1-b (Milestone Charges Template)**
- **Exhibit 4.2 (Resource Unit Definitions)**
- **Exhibit 4.3 (Financial Responsibilities Matrix)**
- **Exhibit 4.4 (Form of Invoice)**
- **Exhibit 4.5 (Intentionally left blank)**
- **Exhibit 4.6 (Equipment Assets)**
- **Exhibit 4.7 (Software Assets)**
- **Exhibit 4.8 (Third Party Contracts)**
- **Exhibit 4.9 (Billing Triggers)**

1.3. This **Exhibit 4** provides four (4) major pricing methodologies for the Services:

- Base Charges;
- Milestone Charges;
- Solution Services; and
- Pass Through Expenses

1.4. Each pricing methodology is intended to align with Services which have different economics. The Base Charge pricing methodology is for Charges which have a fixed component and a variable component and allows such components to be clearly delineated. The Milestone Charge pricing methodology is for pre-defined deliverables based on one time or recurring activities and their related charges, including Implementation Services. The Solution Services methodology is for compensating Supplier for fulfillment of Solution Requests that are chargeable pursuant to the Terms and Conditions of the Agreement, but that are not covered by the Base Charges, or otherwise suited to the other pricing methodologies. The Pass Through

Expense methodology is for Supplier expenses which VITA has agreed to pay directly to a third party or reimburse to Supplier.

2. Base Charges

The Base Charges Pricing methodology set forth in this **Section 2.0** is applicable only for Services provided to VITA and its Customers, and is not applicable to Authorized Users.

- 2.1. **General.** The Base Charge pricing methodology utilizes Resource Units defined in **Exhibit 4.2 (Resource Unit Definitions)** with Charges listed in the Base Charges section of **Exhibit 4.1-a (Pricing and Volumes Matrix)**.
- 2.2. **Base Charges for Resource Unit Usage at Resource Baseline Levels.** The Resource Units set out in the Base Charges section of **Exhibit 4.1-a (Pricing and Volumes Matrix)** provide the Base Charges for each Contract Year representing the fixed charges that would be payable by VITA for Supplier's provision of the Services at the levels of Resource Unit (RU) usage reflected in the monthly Resource Baselines.
 - 2.2.1. The monthly Resource Baseline for each Resource Unit is set forth in the Resource Baseline section of **Exhibit 4.1-a (Pricing and Volumes Matrix)**.
 - 2.2.2. The Base Charge for each Resource Unit will fully compensate Supplier for providing the Services at the level of Resource Unit usage reflected in the applicable monthly Resource Baseline over the applicable Contract Year.
- 2.3. **Calculation of Monthly Base Charge.** Supplier shall invoice VITA on a monthly basis the Base Charge for each Resource Unit for a pro rata portion of the Annual Base Charge, which shall be calculated by dividing the Base Charge specified in **Exhibit 4.1-a (Pricing and Volumes Matrix)** for the applicable Contract Year by the number of months in that Contract Year, as applicable.
- 2.4. If the actual consumption of a Resource Unit in any month is greater or less than the applicable monthly Resource Baseline, an Additional Resource Charge (ARC) or Reduced Resource Credit (RRC) will be applied, as provided in this **Exhibit 4**.
- 2.5. **Calculation of Monthly ARCs and RRCs.** Customers' increased or decreased consumption of Resource Units may result in ARCs or RRCs, calculated as set forth herein. Starting as of the Billing Month, as defined herein, following the Commencement date and monthly thereafter during the Term, Supplier will calculate and invoice ARCs and RRCs in accordance with the following:
 - 2.5.1. The monthly billing period (the "**Billing Month**") will be from the first day of the calendar month through the last day of the calendar month. If the Commencement Date occurs on a day later than the first day of a calendar month, then the first Billing Month shall be the period from the Commencement Date through the last day of such calendar month, and in that case, any amounts payable on a monthly basis shall be prorated for such month based upon the actual number of days from the Commencement Date to the end of such month. The Resource Unit usage will be counted as of the measurement date specified in **Section 6.0 (Resource Units and Measurement Methodology)** of this **Exhibit 4.0 (Pricing and Financial Provisions)** for purposes of determining the billable Resource Unit count for the Billing Month.

2.5.2. Supplier will record all ARC and RRC amounts due, and reflect these amounts in the Monthly Invoice by applicable Resource Unit. All applicable ARCs and RRCs for a particular month will be presented in one (1) invoice. ARCs and RRCs will be calculated using the rates applicable in the month in which the ARCs or RRCs were incurred, rather than the month of invoicing.

2.5.3. After the completion of each month subsequent to the Commencement date, Supplier will determine the quantity of Resource Units actually consumed for each Resource Unit by each Customer. There will be no ARC or RRC for a given month unless the consumption for each Resource Unit during such month exceeds or is less than the applicable monthly Resource Baseline. In the event such actual use exceeds or is less than the applicable monthly Resource Baseline, Supplier will invoice VITA for an ARC or credit VITA a RRC, calculated as follows:

- i. If aggregate Customer consumption of any Resource Unit is above the applicable Resource Baseline for the month, an ARC shall apply, calculated as follows:

$$\text{ARC} = \{(\text{Actual Resource Units consumed} - \text{monthly Resource Baseline}) \times \text{ARC rate}\}$$

- ii. If aggregate Customer consumption of any Resource Unit is below the applicable Resource Baseline for the month, a RRC shall apply, calculated as follows:

$$\text{RRC} = \{(\text{monthly Resource Baseline} - \text{Actual Resource Units consumed}) \times \text{RRC rate}\}.$$

- 2.6. The ARC and RRC rates for each Resource Unit Category will be symmetrical.
- 2.7. Base Charges, ARC rates and RRC rates are valid within the volume bands associated with each of the Resource Unit, as set forth in **Exhibit 4.1-a (Pricing and Volumes Matrix)**. If actual Resource Unit consumption is above or below this range for six (6) consecutive months, then the Base Charge, Resource Baseline, ARC rate and RRC rate for that Resource Unit Category shall be equitably adjusted by the Parties, provided that any such adjustments to the Base Charge, ARC rate and RRC rate will reflect the different percentage of fixed versus variable costs resulting from the new Resource Baseline. Any adjustments to the Charges pursuant to this provision (a) shall not be made as a result of any temporary or seasonal fluctuations in the volume of the Services and (b) shall not result in Charges that are higher than such Charges would have been if the then-current ARC rates and RRC rates had been applied.
- 2.8. Supplier acknowledges and agrees that the combined total of the Base Charges plus applicable ARCs or minus applicable RRCs shall fully compensate the Supplier for providing the applicable Services at the actual usage levels for each Resource Unit in a given month.
- 2.9. There is no minimum revenue commitment, required minimum fees, or support level pricing for any Resource Baseline or at the total Agreement level. In no event will VITA be required to pay Supplier for volumes not consumed or utilized by VITA.

3. Milestone Charges

- 3.1.** Milestone Charges are payable in the amounts set forth against the applicable Milestone Deliverables and billed in accordance with the schedule of Milestone Deliverables, provided that Supplier has obtained Acceptance of the applicable Milestone Deliverable. Milestone Charges shall utilize **Exhibit 4.1-b (Milestone Charges)**. If the completion and Acceptance date of the Milestone varies from the date in **Exhibit 4.1-b (Milestone Charges)**, the amortization of the Milestones will be recalculated based on the remaining months in the initial Term of the Agreement from the date of Acceptance. The calculation will factor in the discounted value of the Milestone amortized in equal monthly amounts over the remaining Term. VITA reserves the right to pay each Milestone upon its Acceptance at the amount shown under Option 1 in **Exhibit 4.1-b (Milestone Charges)**.
- 3.2.** Milestone Charges consist of Charges for performance, attainment and Acceptance of certain Milestone Deliverables and must be set forth in **Exhibit 4.1-b (Milestone Charges)**. Such Milestone Charges shall be itemized on the applicable Monthly Invoices to the Authorized User in sufficient detail to delineate the specific nature of the Charges and the applicable percentage thereof then payable. The invoice will clearly identify each Milestone Charge (e.g., Implementation Services Charges shall be clearly identified as “Charges for Implementation Services”), as well as by the relevant Implementation Milestone Identifier with which it is associated).
- 3.3. Implementation Charges.** Implementation services will be priced utilizing the Milestone Charges Pricing Methodology.

4. Solution Services

4.1. Remuneration. To the extent Solution Services are subject to additional Charges pursuant to **Section 1.3 (Solution Services)** of the Agreement, the pricing methodologies that may be used are Fixed Fee, Time and Materials (T&M), Capped T&M, or Staff Supplementation.

4.2. T&M, Capped T&M and Staff Supplementation Calculation Rules

4.2.1. “Productive Hours” means the number of productive hours actually worked by Supplier Personnel or Supplier Subcontractor to provide the Solution Services within the scope of the approved Statement of Work. Productive Hours do not include:

- i. Vacation time, holiday time, medical leave, military leave, non-productive commuter travel time and other analogous time;
- ii. Time expended by Supplier Personnel to remedy Supplier performance failures or perform warranty services;
- iii. Time not authorized by VITA or the Customer;
- iv. Time devoted to any Supplier overhead functions (Supplier training, Supplier internal meetings, Supplier internal projects, etc.);
- v. Time devoted to prepare the proposal for the Statement of Work, including the gathering of requirements; or
- vi. Work performed that would otherwise be included in on-going support fees for the Services

4.2.2. “Material” means any additional and direct costs incurred by the Supplier needed to provide the Services within the scope of the approved Statement of Work. Materials do not include:

- i. Costs related to general administration and overhead;
- ii. End User Computing devices for Supplier Staff and other peripherals (e.g., Laptop, mobile devices, etc.)

4.2.3. Supplier shall invoice in each month, with respect to each individual Supplier Personnel performing Solution Services (other than with respect to Fixed Fee Projects), the product of:

- i. the hourly rate applicable to him or her in his or her role in such month as set forth in the applicable rate card set forth in **Exhibit 4.1 (Pricing and Volumes Matrix)** or the applicable Statement of Work, and

- ii. the number of Productive Hours that he or she devoted to providing such Solution Services during such month, subject to the limitations in **Section 4.2.4** of this **Exhibit 4.0**.

4.2.4. Invoicing is subject to the following limitations:

- i. If the Parties have expressly agreed on a maximum number of Productive Hours in a Statement of Work, Supplier shall not charge for Productive Hours beyond such maximum.
- ii. The maximum number of hours Supplier may invoice in any month for a single authorized position shall not exceed 42 hours per week unless otherwise agreed in writing by the parties.

4.3. Productive Hours Reports. Supplier shall provide a monthly report showing all Productive Hours worked by Supplier Personnel for all work that utilizes T&M and Capped T&M remuneration models. Such Productive Hours reports shall include Project Name, Role, Employee Name, Date and any other detail requested by VITA.

5. Pass-Through Expenses

- 5.1. Supplier will administer and invoice VITA for Supplier's Pass-Through Expenses identified in **Exhibit 4.1 (Pricing and Volumes Matrix)** in accordance with this section and pursuant to additional procedures to be established by VITA and incorporated in the Service Management Manual. No new Pass-Through Expenses may be added without VITA's prior written consent, which it may withhold in its sole discretion.
- 5.2. It is the expectation that Supplier will not pass on any administrative or processing costs associated with the Pass-Through Expenses. If it is determined by VITA that the request for goods or services that are to be treated as Pass-Through Expenses will require significant additional resources by Supplier, a Statement of Work may be used to treat the administrative or processing costs associated with the Pass-Through Expense as Solution Services.

6. Resource Units and Measurement Methodology

6.1. The following are the rules for Resource Unit measurement methodology.

6.1.1. Supplier will maintain the flexibility to respond to changes in Customers' demand for the Services. If the provision of the Services requires increased dedicated support, additional resources, or additional hours of service, beyond that included in or contemplated under Supplier's proposal, Supplier will provide such support, resources, or additional hours of service at no additional charge (other than for ARCs, as provided herein).

6.1.2. Resource Unit usage is measured on a monthly basis to determine Customers' actual utilization of such Resource Units for calculation of Charges as described above. Starting the month following the Commencement date and monthly thereafter Supplier will measure, track and report usage of Resource Units for all Resource Units. **Exhibit 4.9 (Billing Triggers - Managed Security)**, is a template which may be used by Supplier and VITA to develop a Billing Triggers document. When completed, the Billing Triggers document should summarize information related to calculation of Charges, such as the system of record, start date for services, etc. as well as any other items requested for inclusion by VITA. For purposes of determining the billable Resource Unit count for such month, the Resource Unit volumes will be counted as of the last day of each Billing Month (the "Measurement Date"), unless otherwise expressly stated in the Billing Triggers document.

6.1.3. The allocable measured volumes will be provided to VITA no later than 24 hours after measurement.

6.1.4. Calculation of such billable Resource Units will only include counts which as of the Measurement Date are authorized to receive Services and are actually available for use for the applicable location or users as designated by VITA.

6.1.5. Supplier's method and tools for measuring, tracking and reporting Resource Units is subject to VITA written approval. Any automated system used by Supplier to perform this responsibility will be configured to track and record all user entries, reports, modifications, and all other actions taken in relation to the billing source data. VITA or its designee may, at any time, perform an audit. Prior to the commencement of the Resource Baseline True-Up, VITA and the Supplier will review, the measurement tools and processes for Resource Unit measurement, as well as resulting data, to ensure that such tools and processes are appropriate, accurate, producing consistent data, and reaching all devices that are to be measured. Such review will be subject to VITA written approval.

7. Charges for Additional Services or Operational Changes

7.1. The following describe examples of items that would qualify as No Cost Change pursuant to **Section 1.12.3 (Charges Related to Changes)** of the Agreement:

7.1.1. Activities that are part of the day-to-day (i.e. regular, not daily) services included within the monthly Base Charge and/or described in **Exhibit 2 (Description of Services and Solution)**

e.g., The addition of FTEs to an existing Supplier functional group (i.e. Relationship Management)

7.1.2. Activities Supplier is responsible for in accordance with **Exhibit 4.3 (Financial Responsibilities Matrix)**

e.g., Increasing the memory capacity of the CPU in order for equipment to be operational and run n/n-1 software.

7.1.3. Activities required for the performance of contracted Implementation Services;

e.g., The one-time acceleration of server or application consolidation

7.1.4. A Project described as a Supplier obligation under the agreement;

e.g., Customer specific work related to the early upgrade of O/S software, the creation or deletion of user accounts, or stand up or tear down of an LPAR.

7.1.5. Activities required by Supplier to meet the existing Service Levels

e.g., The implementation of additional resources (Tools or Personnel) as part of a mitigation strategy for the improvement of failing service levels

7.1.6. Ongoing evolution of Services to keep pace with developments in the technology marketplace

e.g., The installation and implementation of new specialty engines that improve processing productivity.

8. Travel, Shipping, Packing & Other Expenses

- 8.1. Except for expenses associated with Time and Material Projects pursuant to **Section 4.0** of this **Exhibit 4** or otherwise provided in this **Exhibit 4**, all travel and living expenses incurred by Supplier Personnel in the delivery of the Services are included within the Charges and shall not be separately chargeable. All other expenses incurred by Supplier, including all taxes, shipping, packing, postal expenses, and moving expenses, are the financial responsibility of Supplier and are not separately chargeable or reimbursable.

9. Economic Change Adjustment

- 9.1. Supplier shall calculate and apply an adjustment to certain Charges to account for inflationary changes. This inflationary adjustment shall be called the “Economic Change Adjustment” or “ECA.” The ECA shall be applied to applicable Charges on an annual basis beginning on the first day of the second Contract Year under the Agreement and continue to be applied as of the beginning of each Contract Year thereafter according to the methodology described herein.
- 9.2. All billable items subject to inflationary adjustments shall be referred to as “Inflation Sensitive Billing Items”. All Inflation Sensitive Billing Items shall be listed on the Inflation Sensitivity section of **Exhibit 4.1-a (Pricing and Volumes Matrix)**. No ECA shall apply to any Charges not listed in the Inflation Sensitivity section of **Exhibit 4.1-a (Pricing and Volumes Matrix)**, including Charges for Additional Services.
- 9.3. Each Inflation Sensitive Billing Item shall be subject to an “Inflation Sensitivity Factor.” An Inflation Sensitivity Factor is the pre-established percentage that reflects the impact of a change in the rate of inflation on Supplier's cost of delivering the corresponding Services. The Inflation Sensitivity Factors are set forth in **Exhibit 4.1-a (Pricing and Volumes Matrix)**.
- 9.4. Supplier shall use the unadjusted Consumer Price Index, as published in the Summary Data from the Consumer Price Index News Release by the Bureau of Labor Statistics, U.S. Department of Labor, For All Urban Consumers (the “CPI-U”), for purposes of determining the rate of inflation used for the ECA. In the event the Bureau of Labor Statistics stops publishing the CPI-U or substantially changes its content and format, VITA and Supplier shall substitute another comparable index published at least annually by a mutually agreeable source. If the Bureau of Labor Statistics merely redefines the base year for the Price Index from 1982-84 to another year, Supplier shall continue to use CPI-U, but shall convert the Base Year Index to the new base year by using an appropriate conversion formula.
- 9.5. Supplier shall submit the ECA calculation to be applied in the upcoming contract year to VITA for review and approval 30 days prior to the contract year anniversary, and continue to do so annually thereafter for the remainder of the Term. Supplier shall deliver the supporting data to VITA along with the ECA calculation. Such an ECA calculation shall include an updated rate table with the Pre-ECA Charges, the ECA factor, and the Charges with ECA applied.
- 9.6. The ECA adjustment amount shall be calculated according to the following steps:
- a) The Supplier shall calculate the “Effective Rate of Inflation,” the rate of inflation used to determine the Economic Change Adjustment.
 - b) The Effective Rate of Inflation shall be calculated as a function of the “Base Year Index” and the “Current Year Index” as stated in the formula and language below:
 - i. Effective Rate of Inflation = Lesser of A and B
 - ii. $A = (\text{Current Year Index} - \text{Base Year Index}) / \text{Base Year Index}$
 - iii. $B = 3\%$

- c) The Current Year Index shall be the CPI-U for the average of the final six (6) months available at the ECA calculation due date.
- d) The Base Year Index shall be the average of the CPI-U data values for the same six (6) months used for the Current Year Index, but for the previous year.
- e) The Effective Rate of Inflation used for the ECA calculation shall be expressed as a percentage.
- f) The Supplier shall calculate the “Inflation Factor” by multiplying the Effective Rate of Inflation by the applicable Inflation Sensitivity Factor.
 - i. $\text{Inflation Factor} = (\text{Effective Rate of Inflation} * \text{Inflation Sensitivity Factor}) + 1$
- g) The Supplier shall calculate the “ECA Factor” by subtracting one (1) from the product of all Inflation Factors that have been calculated for each Contract Year that an ECA has been applicable, including the Inflation Factor being calculated for the upcoming contract year. The following equation describes the ECA Factor calculation:
 - i. $\text{ECA Factor} = (\text{Inflation Factor 1} * \text{Inflation Factor 2} * \dots * \text{Inflation Factor “n”}) - 1$, where:
 - 1) Inflation Factor 1 is the Inflation Factor for Contract Year Two (2) if more than two (2) Contract Years have passed for which ECA has been calculated, zero (0) otherwise;
 - 2) Inflation Factor 2 is the Inflation Factor for Contract Year Three (3) if more than three (3) Contract Years has passed for which ECA has been calculated, zero (0) otherwise;
- h) The Supplier shall calculate the ECA by multiplying the “Pre-ECA Charges” by the ECA factor. The following equation describes the ECA calculation:
 - i. $\text{ECA} = \text{Pre-ECA Charges} * \text{ECA Factor}$
 - ii. The Pre-ECA Charges are the Charges for Inflation Sensitive Billing Items prior to application of the ECA adjustment.

9.7. Below are ECA example calculations based on the following assumptions:

ECA calculation is calculated and delivered May 1, 2017;
The Inflation Sensitivity Factor is 70%;
The Base Year Index is 2016, which equals 236.525;
The amount of the Inflation Sensitive Charge is \$500,000; and
The following CPI-U Index examples:

| Example CPI-U Inflation Indices | | | | |
|---|---------|---------|---------|---------|
| | 2016 | 2017 | 2018 | 2019 |
| Avg. CPI-U Index, for six months ending March | 236.525 | 241.475 | 248.249 | 257.735 |

This results in the ECA calculated values depicted in the table below and described in the following text.

| | Contract Year 1 | Contract Year 2 | Contract Year 3 | Contract Year 4 |
|------------------------------|-----------------|-----------------|-----------------|-----------------|
| Effective Rate of Inflation | N/A | 2.093% | 2.805% | 3.000% |
| Inflation Sensitivity Factor | N/A | 70% | 70% | 70% |
| Inflation Factor | N/A | 1.0147 | 1.0196 | 1.0210 |
| ECA Inflation Factor | N/A | 0.0147 | 0.0346 | 0.0563 |

The ECA calculations for Contract Year 1 are not applicable (the ECA does not apply until July 2017). For Contract Year 1, the invoice amounts shall not be adjusted for Economic Change Adjustment.

In the example above, all Pre-ECA Charges for Contract Year 3 shall be multiplied by .0346, the ECA Factor, and the \$500,000 in Pre-ECA Charges shall be adjusted by \$17,287 to become \$517,287 [$\$500,000 + (\$500,000 * .0346)$].

10. Customer Data Center Space and Customer Remote Facilities

VITA shall provide secure data center space in the VITA data center and disaster recovery site for hosting of the Managed Security Services equipment to include floor space, power and LAN connectivity.

VITA will also provide office space in the in the CESC for Managed Security Service Provider's 25 supplier personnel.

11. Termination Fees

11.1. Section 11.2 (Supplier Costs Build-Up) below describes the categories of potential termination fees and, if applicable, their manner of calculation, in circumstances of termination in whole or in part. Termination fees are applicable as set forth in Section 11.3 below.

11.2. Supplier Costs Build-Up

11.2.1. Termination fees are calculated based upon different categories of potential Supplier costs, as described below. The actual amount of termination fees payable will, for each category, be equal to the lesser of the calculation for that category, or the cap for that same category as detailed in Exhibit 4.1-a (Pricing and Volumes Matrix). All calculations below are based upon the Service that is being terminated in whole or in part.

11.2.2. Supplier Equipment

11.2.2.1. The following applies only with respect to Equipment that is (a) owned by Supplier (including Equipment owned by Affiliates of Supplier), and (b) used on a fully dedicated basis to perform the Services, prior to notice of termination. If (i) due to such termination such Equipment will no longer be used by Supplier to provide Services; (ii) there has been no election to purchase such Equipment pursuant to Section 13.3.4 (Equipment) of the Agreement; and (iii) neither Supplier nor its Subcontractors are not able to redeploy such Equipment through diligent effort within sixty (60) days of the date on which such Equipment is no longer required to perform any Affected Services, then the termination fee for this category will equal the sum, for all such equipment, of the net book value, net of any amounts recovered by Supplier or Subcontractors through the sale or other disposition of such Equipment. Assets with a net book value and unpaid stream of lease payments on an asset at transition out are assumed to be purchased by VITA. Termination fees for stranded assets are calculated based on the remaining net asset book value, considering Atos IFRS compliant accounting treatment of linear depreciation over the useful lifetime of each asset. Supplier will use commercially reasonable efforts to minimize the costs described above, including by: (i) working with VITA to identify all commercially reasonable means to avoid or minimize such costs, (ii) make the Equipment described in this Subsection available to VITA, Customers and their designee(s) in accordance with Section 13.3.4 (Transition Out Assistance, Equipment) of the Agreement, (iii) redeploy any such Equipment that is not assumed or acquired by VITA, any Customer or their designee(s) within Supplier's, any Affiliate's or any Subcontractor's organization if, and as soon as, commercially reasonable, and (iv) sell, cancel or otherwise dispose of any such Equipment that cannot be redeployed.

11.2.3. Employee Severance Costs

11.2.3.1. The following applies only to Supplier's employees that are fully dedicated and solely assigned to the provision of Affected Services over the six (6) month period prior to the notice of termination (the "**Eligible Supplier Employees**"). For this category, the termination fee will equal the product of (A) the "Severance Cost Per Employee" (as specified in **Table 1** below for the Contract Year during which the date of severance occurs), multiplied by (B) the number of Eligible Supplier Employees that are actually terminated within the later of (1) the effective date of the relevant termination and (2) sixty (60) days after the date on which each such employee ceases to perform the Affected Services; provided, however, that such amounts will not be payable with respect to Eligible Supplier Employees who, during such sixty (60) day period:

- a) are transferred to VITA, any Customer or their designee(s) or who are offered and accept employment with VITA, any Customer or their designee(s);
- b) Supplier declines to make available for transfer to or employment by VITA, Customers and their designee(s); or
- c) are offered employment with VITA, Customer or their designee(s) at equal or higher compensation (taking into consideration the total benefits package), but who do not accept such offer

| Table 1: Severance Cost Per Employee | | | | |
|--------------------------------------|-----------------|-----------------|-----------------|-----------------|
| Contract Year 1 | Contract Year 2 | Contract Year 3 | Contract Year 4 | Contract Year 5 |
| - | - | \$28,000 | \$28,000 | \$28,000 |

11.2.4. Supplier's Third Party Contracts

11.2.4.1. With respect to Supplier's Third Party Contracts (including leases, licenses, and services contracts with Supplier's Third Parties) that are (A) no longer to be used to provide Services due to the relevant termination event, (B) which are identified in **Exhibit 4.6 (Equipment Assets)**, **Exhibit 4.7 (Software Assets)** and **Exhibit 4.8 (Third Party Contracts)**, and (C) are used by Supplier solely to perform the Services and (D) are expressly reflected in **Exhibit 4.8** and described as a potential basis for the Third Party Contracts component of a Termination Charge under **Exhibit 4.8**. If VITA, the Customers and their designee(s) decide not to assume any such Third Party Contract and Supplier is not able to use such Third Party Contract in connection with its performance of services for any other Supplier customers within sixty (60) days of the date on which such Third Party Contract is no longer required to perform the Affected Services, then the termination fee for this category will equal any termination or cancellation fees that Supplier is contractually required to pay to the

counter-party to such Third Party Contract in connection with the early termination of such Third Party Contract.

11.2.4.2. Supplier and its Affiliates and Subcontractors will use commercially reasonable efforts to avoid and minimize the costs described in clause (a) above. The commercially reasonable efforts to be employed by Supplier and its Affiliates and Subcontractors will include, to the extent applicable, (A) working with VITA to identify all commercially reasonable means to avoid or minimize such costs, (B) redeploying any such Third Party Contracts that are not assumed or acquired by VITA, any Customer or their designee(s) within Supplier's, any Affiliate's or any Subcontractor's organization if, and as soon as, commercially reasonable, (C) negotiating with the applicable counter-parties to such Third Party Contracts to eliminate or reduce such costs, and (D) canceling or otherwise disposing of any such Third Party Contracts that cannot be redeployed.

11.2.5. **Unrecovered Milestone Charges**

11.2.5.1. The Termination Charges will, to the extent applicable, include the unpaid balance of Milestone Charges for those milestones in **Exhibit 4.1-b (Milestone Charges)** that have been completed by Supplier and Accepted (the "**Unrecovered Milestone Amount**"). For purposes of calculating the Unrecovered Milestone Amount, the amount representing the balance due will be discounted back to present value using the rate implicit in the difference between Scenario 1 and 2 in **Exhibit 4.1-b (Milestone Charges)**, "Milestone Charges". The Unrecovered Milestone Amount will be calculated and due and payable at such time that the Affected Services are no longer received, including any Termination Assistance Services associated therewith.

11.3. **Calculation of Termination Fee**

11.3.1. The applicability (expressed in terms of a percentage of the potential total) of the categories of termination fees described above is based on the type of termination being exercised (i.e., Cause, Convenience, etc.), as described in the termination categories table below:

Termination Fees by Termination Categories

| | Cause § 12.1 of Agreement | Privatization, Divestiture or Dissolution of VITA § 12.3.1 of Agreement | Change in Control § 12.3.2 of Agreement | Adverse Changes in the Supplier's Financial Circumstances § 12.3.3 of Agreement | Non- Appropriati on of Funds § 12.3.4 of Agreement | Regulatory Terminatio n Rights § 12.3.5 of Agreement | Force Majeure § 21.3.3 of Agreement | Conveni ence § 12.2 of Agreement |
|--|---------------------------------|---|--|---|--|--|--|---|
| Unrecovered Implementation Charges | 0% | 100% | 100% | 0% | 100% | 100% | 100% | 100% |
| Employee Severance | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 100% |
| Supplier Equipment | 0% ⁽¹⁾ | 50% | 50% | 0% ⁽¹⁾ | 50% | 50% | 0% ⁽¹⁾ | 100% |
| Third Party Contracts (Software Licenses) | 0% ⁽²⁾ | 0% ⁽²⁾ | 0% ⁽²⁾ | 0% ⁽²⁾ | 0% ⁽²⁾ | 0% ⁽²⁾ | 0% ⁽²⁾ | 100% |
| Third Party Contracts (Other) | 0% ⁽³⁾ | 50% | 50% | 0% ⁽³⁾ | 50% | 50% | 0% ⁽³⁾ | 100% |

Table Notes

Note 1: While no termination fee for Equipment is due, VITA has the right but not the obligation to acquire Equipment and would pay the appropriate amount as described in this section for the equipment that they chose to acquire. (See, **Section 13.3.4 (Equipment)** of the Agreement)

Note 2: While no termination fee for software licenses is due, VITA has the right but not the obligation to acquire software licensing and would pay the appropriate amount as describe in this section for the equipment that they chose to acquire. (See, **Section 13.3.6 (Third Party Contracts)** of the Agreement)

Note 3: While no termination fee for Third Party Contracts is due, VITA has the right but not the obligation to acquire Third Party Contracts, if transferable, and would pay the appropriate amount as described in this section for the Third Party Contracts that they chose to acquire. (See, **Section 13.3.6 (Third Party Contracts)** of the Agreement)

11.3.2. As described above, if the Agreement is terminated in its entirety pursuant to the Terms of the Agreement, the termination fee payable with respect to such termination will be the sum of the applicable costs described in **Section 11.2** above, multiplied by the applicable percentage in Termination Category table. If the Agreement is terminated in

part pursuant to **Section 12 (Termination)** of the Agreement, the Termination Charges payable with respect to such termination will be the sum of the applicable costs described in **Section 11.2**, multiplied by the applicable percentage in Termination Category table, reduced in proportion to the portion of the terminated Services.

11.3.3. Termination fees shall be calculable and payable as of the date of cessation of the Affected Services (including Transition-Out Services). Supplier will prepare an itemized calculation of the expected termination fee and deliver it to VITA within thirty (30) days after Supplier's receipt of the notice of termination. Such calculation will contain such documentation as is reasonably necessary to validate the potential termination fees and Supplier shall address VITA's questions regarding such calculation and documentation. VITA will be entitled to audit the actual termination fee. Supplier will invoice for the applicable termination fees owed Supplier (as applicable) following the date agreed as the date of cessation of the Affected services (including Transition-Out Services) and such invoice will be due and payable in accordance with the Agreement.

11.4. Return of Prepayments

11.4.1. Any Charges, expenses, refunds, rebates, credits or other amounts prepaid to Supplier which Supplier has not (a) refunded or (b) applied to invoices presented for Services rendered prior to the date on which the relevant termination fees, if any, are calculated pursuant to **Section 4.7 (Prepaid Amounts and Refundable Items)** of the Agreement shall be, at VITA's option, credited toward such termination fee or refunded to the extent such amounts are related to the Services implicated by the relevant termination event.

12. Financial Responsibility Matrix

- 12.1.** Financial responsibilities with respect to affected personnel, equipment, software, and facilities are set forth in **Exhibit 4.3 (Financial Responsibility Matrix)**.

13. Authorized User Pricing

13.1. Pricing for Authorized User consumption will be set forth in the Authorized User Pricing Section of **Exhibit 4.1-a (Pricing and Volumes Matrix)** and be subject to ECA as described in Section 9 of this Exhibit 4.

13.2. Resource Unit usage by an Authorized User will be measured in accordance with **Exhibit 4.2 (Resource Unit Definitions)**. Each Resource Unit will be charged to the Authorized User at the applicable rate set forth in the Authorized User Pricing Section of **Exhibit 4.1-a (Pricing and Financial Provisions)**, for the applicable Contract Year. The total charges to the Authorized User for each Resource Unit Category will be calculated as follows:

Total Resource Unit Category Charges = Resource Unit Rate * Authorized User Resource Unit Consumption

13.3. Implementation Pricing

Subject to the provisions of the agreement an Authorized User may agree with Supplier to include additional implementation services in a SOW, only if a technical or service requirement unique to that Authorized User necessitates an additional implementation charge for the effected service. Implementation Pricing for Authorized User will utilize either the Milestone Charges Methodology described in Section 3 of this Exhibit 4.0, or the Solution Services Methodology described in Section 4 of this Exhibit 4.0. Any such additional implementation charge shall be limited to a SOW specific to the services provided to such Authorized User. Additional Implementation Charges for a new Authorized User are only permissible for the services identified in the Authorized User Pricing Section of **Exhibit 4.1-a (Pricing and Financial Provisions)**.