

Virginia Information Technologies Agency



**Exhibit 4.0 – **Modification 23****  
**Pricing and Financial Provisions**

VA-180815-UC

**COMMONWEALTH OF VIRGINIA**  
**VIRGINIA IT AGENCY (VITA)**  
**SUPPLIER STRATEGY AND PERFORMANCE 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 Exhibits are referenced herein:
  - **Exhibit 4.1 (Pricing and Volumes Matrix)**
  - **Exhibit 4.2 (Resource Unit Definitions)**
  - **Exhibit 4.3 Reserved**
  - **Exhibit 4.4 (Form of Invoice)**
  - **Exhibit 4.5 Reserved**
  - **Exhibit 4.6 (Equipment Assets)**
  - **Exhibit 4.7 (Software Assets)**
  - **Exhibit 4.8 (Third Party Contracts)**
  - **Exhibit 4.9 (Billing Triggers)**
- 1.3. Supplier will be responsible for the accuracy and completeness of the operational and financial assumptions underlying its pricing. Supplier will not be entitled to adjust its pricing or any other terms of the Agreement because of any incorrect or incomplete assumption on the part of Supplier.
- 1.4. All Charges calculated in accordance with this **Exhibit 4** will be invoiced to VITA by Supplier in accordance with the applicable invoice and payment provisions set forth in **Section 4 (Charges)** of the Agreement.
- 1.5. This **Exhibit 4** provides four (4) major pricing methodologies for the Services:
  - Unit Rate Charges;
  - Milestone Charges;
  - Solution Services; and
  - Pass Through Expenses

## 2. Unit Rate Charges

- 2.1. **General.** The Unit Rate Charge pricing methodology utilizes Resource Units defined in **Exhibit 4.2 (Resource Unit Definitions)** with Charges calculated from the Unit Rates listed in the Unit Rates section of **Exhibit 4.1 (Pricing and Volumes Matrix)**.

**Calculation of Monthly Unit Rate Charges.** The Monthly Unit Rate Charges shall be calculated by multiplying the applicable Unit Rate for the applicable Contract Year by the quantity of corresponding Resource Units actually consumed during the applicable Billing Month (as defined below).

- 2.2. The monthly billing period (the “**Billing Month**”) will be from the first day of the calendar month through the last day of the same calendar month.
- i. 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.
  - ii. In the event of Termination, if the Termination Date occurs on a day prior to the last day of a calendar month, then the last Billing Month shall be the period from the first calendar day of the month of Termination through the Termination Date, 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 first calendar day of the month of Termination to the Termination Date.
- 2.3. The monthly Resource Unit consumption 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)**.
- 2.3.1. Supplier will record all billable Resource Unit consumption amounts and the corresponding Charges, and reflect these amounts in the Monthly Invoice by applicable Resource Unit. All applicable Resource Unit Consumption and Unit Rate Charges for a particular month will be presented in one (1) invoice.
- 2.4. Supplier acknowledges and agrees that the total Unit Rate Charges shall fully compensate the Supplier for providing the applicable Services at the actual usage levels for each Resource Unit in a given month.
- 2.5. In no event will VITA be required to pay Supplier for volumes not consumed by VITA.

## 3. Milestone Charges

- 3.1. The Charges shall include the Milestone Charges set forth in **Exhibit 4.1 (Pricing and Volumes Matrix)**. Milestone Charges shall only be chargeable to VITA upon VITA’s Acceptance of the

applicable Milestone and shall be invoiced in accordance with the schedules and amounts set forth in **Exhibit 4.1 (Pricing and Volumes Matrix)**. Upon Acceptance of the first Milestone identified in **Exhibit 4.1 (Pricing and Volumes Matrix)**, VITA may elect to pay the Implementation Milestone Charges under any of the following scenarios:

- 3.1.1. **Over the initial Term:** The total of the Implementation Milestone Charges shall be paid in monthly installments, over the remainder of the initial Term, starting upon the later of the Acceptance of the last Milestone or the Commencement Date, in the amounts set forth in “Scenario 2: Milestone Charges - Paid over Term” in the Milestone Charges Section of **Exhibit 4.1 (Pricing and Volumes Matrix)**; or
  - 3.1.2. **Upon Acceptance of each Implementation Milestone:** The individual Implementation Milestone Charges will be paid upon Acceptance of the related Milestone, in the amounts set forth in “Scenario 1: Milestone Charges - Paid at Completion” in the Milestone Charges Section of **Exhibit 4.1 (Pricing and Volumes Matrix)**; or
  - 3.1.3. **Paid in Two Payments:** A one-time payment of \$7,748,000 for Milestones M-03 – M-05, M-07 – M-09, M-13a, M-13b, M-16a, M-16b, M-18a, M-21, M-23 and M-24. Upon acceptance of Milestone 18c, a second and final payment of \$250,000 as set forth in “Scenario 3 - Milestone Charges: Paid in Two Payments in the Milestone Charges section (Tab 6) of **Exhibit 4.1 (Pricing and Volumes Matrix)**).
- 3.2. Milestone Charges shall be itemized on the applicable Monthly Invoices to VITA in sufficient detail to delineate the specific nature of the Charges. 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. To preserve business continuity and integrity of critical systems in connection with Supplier’s performance of the Services, Supplier shall acquire the hardware and software assets used by the Incumbent Supplier to provide the Commonwealth’s server and storage infrastructure. The acquisition cost will be the fair market value of the assets. Supplier shall engage an independent third party, as approved by VITA, to determine the fair market value. Such determination shall be completed and submitted to VITA prior to December 1, 2018 for VITA’s review and approval. Once VITA has agreed to the determination, Supplier will pay to VITA the amount determined to be the fair market value for the assets. VITA will provide an executed bill of sale upon receipt of payment.

## 4. Solution Services

### 4.1. Remuneration.

- 4.1.1. To the extent Solution Services are subject to additional Charges, such Solution Services shall be documented in a Statement of Work under the Agreement. The alternative

pricing methodologies that may be used for Solution Services may include 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;
- i. Time expended by Supplier Personnel to remedy Supplier performance failures or perform warranty services;
- ii. Time not authorized by VITA and Customer;
- iii. Time devoted to any Supplier overhead functions (Supplier training, Supplier internal meetings, Supplier internal projects, etc.);
- iv. Time devoted to prepare the proposal for the Statement of Work, including the gathering of requirements; or
- v. 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. The Charges for Supplier Personnel performing Solution Services (other than with respect to Fixed Fee Projects), shall be calculated as 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)**, and
- ii. the number of Productive Hours that he or she devoted to providing such Solution Services during such month, not to exceed 42 hours per week.

#### 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.

- 4.4. **Termination Fees for Solution Services.** Termination Fees are not applicable to Statements of Work for Solution Services.

## 5. Pass-Through Expenses

- 5.1. Supplier will administer and invoice VITA for only those Supplier's Pass-Through Expenses identified in **Exhibit 4.1 (Pricing and Volumes Matrix)**, pursuant to additional procedures to be established by VITA and incorporated in the Service Management Manual.
- 5.2. It is VITA's expectation that Supplier will not pass on to VITA any administrative or processing costs associated with the Pass-Through Expenses. If VITA determines that its request for goods or services that are to be treated as Pass-Through Expenses will require significant additional resources by Supplier, VITA may enter into a Statement of Work with Supplier to treat the administrative or processing costs associated with the Pass-Through Expense as Solution Services.

## 6. Resource Units and Measurement Methodology

- 6.1. If the provision of the Services requires increased dedicated support, additional resources, or additional hours of service, Supplier will provide such support, resources, or additional hours of service at no additional charge to VITA (other than for amounts for which VITA is financially responsible as expressly provided in the Agreement).
- 6.2. Resource Unit usage is measured on a monthly basis to determine Customers' actual consumption for calculation of Charges. Supplier will measure, track and report usage of Resource Units monthly. Exhibit 4.9, Billing Triggers Template, 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.
- 6.2.1. Measurement of Resource Units will only include counts which as of the Measurement Date are authorized by VITA and are actually available for use for the applicable location or users as designated by VITA.
- 6.2.2. 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. Subject to the audit provisions of the Agreement, VITA or its designee may, at any time, perform an audit. Prior to the Commencement Date, 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.

## 7. Invoices

- 7.1. VITA will pay each invoice in accordance with **Section 4 (Charges)** of the Agreement. Supplier will develop an invoice substantially similar to the Monthly Invoice format set forth in **Exhibit 4.4 (Form of Invoice)**. Supplier shall make any changes in the Monthly Invoice format as requested by VITA. If Supplier proposes a change to the Monthly Invoice format, such change will be subject to prior written approval of VITA.
- 7.2. Invoices will include the VITA purchase order number or other pertinent information for verification of receipt of the Services by the Customer, as agreed upon by the Parties for providing Charge Back Services, and must provide detailed and customized information as requested, in accordance with the provisions of the Agreement.
- 7.3. All invoices will be supported by the Chargeback detail, as described in **Section 11** below.
- 7.4. All invoices will be paid by EFT, unless VITA chooses to pay by a different method.
- 7.5. All Charges will be expressed, invoiced and paid in U.S. Dollars.
- 7.6. In accordance with **Section 4 (Charges)** of the Agreement, all Charges will be invoiced in arrears.

## 8. Charges for Additional Services or Operational Changes

- 8.1. Charges for Additional Services or Operational Changes will be in accordance with **Section 1.11.3 (Charges Related to Additional Services and Operational Change)**.

## 9. Travel, Shipping, Packing & Other Expenses

- 9.1. Except for expenses expressly stated in a Statement of Work for Time and Material Solution Services, 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.

## 10. Economic Change Adjustment

- 10.1. 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.
- 10.2. Items listed on the Inflation Sensitivity section of **Exhibit 4.1 (Pricing and Volumes Matrix)** shall be referred to as “Inflation Sensitive Billing Items.” No ECA shall apply to any Charges not listed in the Inflation Sensitivity section, including Charges for Additional Services.
- 10.3. Each Inflation Sensitive Billing Item shall be subject to an “Inflation Sensitivity Factor,” which reflects the impact of a change in the rate of inflation on Supplier's cost. The Inflation Sensitivity Factors are set forth in **Exhibit 4.1 (Pricing and Volumes Matrix)**.
- 10.4. Supplier shall use the unadjusted Consumer Price Index For All Urban Consumer (the “CPI-U”), as published by the Bureau of Labor Statistics, U.S. Department of Labor, for purposes of determining the rate of inflation used for the ECA, further described below:
  - Series Id: CUUR0000SA0
  - Series Title: All items in U.S. city average, all urban consumers, not seasonally adjusted
  - Area: U.S. city average
  - Item: All items
  - Base Period: 1982-84=100

Supplier shall use the original data values of the CPI-U (not the “x-month percent change” values). As of the effective date, the CPI-U original data values can be found at [bls.gov](http://bls.gov) under Data Tools>Top Picks>Price Indexes.

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.

- 10.5. Supplier shall submit annually a report, for review and approval, showing the ECA Factor to be applied in the upcoming Contract Year, along with the ECA calculation, the applicable Pre-ECA Charges, and the applicable Charges with ECA applied.
- 10.6. The ECA adjustment amount shall be calculated according to the following steps:

- (1) 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)  $B = 3\%$
- The Current Year Index shall be the average of the CPI-U data values for the final six (6) months (March – August) available at the ECA calculation due date.
  - 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.
  - The Effective Rate of Inflation used for the ECA calculation shall be expressed as a percentage.
- (2) The Supplier shall calculate the “Inflation Factor” by multiplying the Effective Rate of Inflation by the applicable Inflation Sensitivity Factor and adding 1.
- (i)  $\text{Inflation Factor} = (\text{Effective Rate of Inflation} * \text{Inflation Sensitivity Factor}) + 1$
- (3) The Supplier shall calculate the “ECA Factor” by subtracting 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)  $\text{ECA Factor} = (\text{Inflation Factor 1} * \text{Inflation Factor 2} * \dots * \text{Inflation Factor “n”}) - 1,$
- (4) 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.
- (5) Below are ECA example calculations based on the following assumptions:
- Contract Year 2 starts June 1, 2017 (ECA calculation is delivered May 1, 2017);  
The Inflation Sensitivity Factor is 70%;  
The Base Year is 2016, and the Base Year Index 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 Factor	N/A	0.0147	0.0346	0.0563

For Contract Year 1, the Charges 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 [ $\$500,000 + (\$500,000 * .0346)$ ].

## 11. Chargeback

- 11.1. Supplier is responsible for data collection, data integrity, and providing data feeds to VITA for Chargeback information for all Services. At a minimum the data feed shall provide detailed billing data by Customer, Customer account identifier, by cost center, by Customer use code, by Project, by program (Federal or otherwise), by tower, by Resource Unit, and by such other factors as requested by VITA required for chargeback.
- 11.2. For all Charges, Supplier shall provide data to support the Charges by the factors described above.

## 12. Financial Planning and Forecasting

- 12.1. The Supplier will support the MSI semi-annual forecasting process by responding to forecasting related data requests in a timely and accurate manner.

## 13. Customer Data Center Space and Customer Remote Facilities

*[Note to Supplier: Supplier must document all assumptions, including those around the provision of office and data center space in the Supplier Assumptions section of **Exhibit 4.1 (Pricing and Volumes Matrix).**]*

## 14. Termination Fees

- 14.1. Supplier Costs Build-Up

14.1.1. Termination fees are calculated based upon different categories of potential Supplier costs, as described below. The actual amount of termination fees payable by VITA 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 (Pricing and Volumes Matrix).**

### 14.1.2. Supplier Equipment

14.1.2.1. 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 VITA's notice of termination. If (i) due to such termination such Equipment will no longer be used by Supplier to provide Services; (ii) none of VITA, other Customers or their designee(s) have elected to purchase such Equipment pursuant to **Section 13.3.4 (Equipment)** of the Agreement; and (iii) Supplier and its Subcontractors are unable 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 Services, then the Termination Fee for this category will equal the sum, for all such equipment, of the net book value using GAAP straight-line depreciation, net of any amounts recovered by Supplier or Subcontractors through the sale or other disposition of such Equipment. 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.

**14.1.3. Employee Severance Costs**

14.1.3.1. 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 as of the later of (1) the termination date of the affected Services 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 other 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, other Customers and their designee(s); or
- c) are offered employment with VITA, other Customer or their designee(s) at equal or higher compensation (taking into consideration the total benefits package), but who do not accept such offer

<b>Table 1: Severance Cost Per Employee</b>				
<b>Contract Year 1</b>	<b>Contract Year 2</b>	<b>Contract Year 3</b>	<b>Contract Year 4</b>	<b>Contract Year 5</b>
\$27,200	\$27,200	\$27,200	\$27,200	\$27,200

**14.1.4. Supplier’s Third Party Contracts**

14.1.4.1. 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 4.8 (Third Party Contracts)**, and (C) are used by Supplier solely to perform the Services. 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.

14.1.4.2. 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.

#### **14.1.5. Unrecovered Milestone Charges**

14.1.5.1. The Termination Charges will, to the extent applicable, include the unpaid balance of Milestone Charges for those milestones in **Exhibit 4.1 (Pricing and Volumes Matrix)** that have been completed by Supplier and Accepted by VITA (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 (Pricing and Volumes Matrix)**, "Milestone Charges". The Unrecovered Milestone Amount will be calculated and due and payable at such time that VITA no longer receives the affected Services, including any Termination Assistance Services associated therewith.

#### **14.2. Calculation of Termination Fee**

14.2.1. 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 (4)	Adverse Changes in the Supplier's Financial Circumstances § 12.3.3 of Agreement	Non- Appropriation of Funds § 12.3.4 of Agreement	Regulatory Termination Rights § 12.3.5 of Agreement	Force Majeure § 21.3.3 of Agreement	Convenience § 12.2 of Agreement
Unrecovered Milestone Charges	0%	100%	50%	0%	0%	0%	0%	100%
Employee Severance	0%	100%	50%	0%	0%	0%	0%	100%
Supplier Equipment	0% <sup>(1)</sup>	100%	50%	0% <sup>(1)</sup>	0% <sup>(1)</sup>	0% <sup>(1)</sup>	0% <sup>(1)</sup>	100%
Third Party Contracts (Software Licenses)	0% <sup>(2)</sup>	100%	50%	0% <sup>(2)</sup>	0% <sup>(2)</sup>	0% <sup>(2)</sup>	0% <sup>(2)</sup>	100%
Third Party Contracts (Other)	0% <sup>(3)</sup>	100%	50%	0% <sup>(3)</sup>	0% <sup>(3)</sup>	0% <sup>(3)</sup>	0% <sup>(3)</sup>	100%

#### Table Notes

**Note 1:** While no termination fee for Equipment is due, VITA has the right but not the obligation to acquire dedicated 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 that is transferable 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)

**Note 4:** In the event VITA has reasonable belief that VITA's receipt of the Services will be adversely impacted based on the entity, person or group acquiring Supplier, VITA will discuss such reasonable belief with Supplier, and if, subsequent to such discussion, VITA maintains such reasonable belief, the termination fee shall be reduced to 0% for all termination categories.

**14.2.2.**As described above, if VITA terminates the Agreement in its entirety, the Termination Charges will be the sum of the applicable costs described above, multiplied by the applicable percentage shown in the table above. If VITA partially terminates the

Agreement in accordance with the terms of Agreement, the Termination Charges payable with respect to such termination will be the sum of the applicable costs described above, multiplied by the applicable percentage shown in the table above, reduced in proportion to the portion of the terminated Services.

**14.2.3.** Termination fees shall be calculated and chargeable as of the date of cessation of the affected Services (including Transition-Out Services). Supplier will prepare an itemized calculation of the expected Termination Fees 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 VITA for the applicable termination fees owed Supplier (as applicable) following the date agreed with VITA 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.

#### **14.3.** Return of Prepayments

**14.3.1.** Any Charges, expenses, refunds, rebates, credits or other amounts prepaid by VITA which Supplier has not (a) paid back to VITA 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 6.6 (Prepaid Amounts and Refundable Items) of the Agreement shall be, at VITA's option, credited toward such termination fee or paid to VITA to the extent such amounts are related to the Services implicated by the relevant termination event.

## **15. Equipment**

**15.1. Equipment Categories.** Supplier is responsible for all equipment used in or for the provision of the Services, including the support, maintenance, purchase or lease costs of the assets, and refresh of that equipment (except to the extent otherwise provided in this agreement, e.g. service provided on VITA owned assets). Depending on the type of equipment, the financial treatment of these costs will be as follows. Equipment will be categorized into two major equipment types, Infrastructure and Non-Infrastructure equipment.

#### **15.1.1. Infrastructure Equipment.**

**15.1.1.1.** "**Infrastructure Equipment**" will be the equipment assets that have no directly associated billable unit as described in **Exhibit 4.2 (Resource Unit Definitions)** (e.g. servers which support the backup environment).

**15.1.1.2.** All Infrastructure Equipment costs will be the responsibility of the Supplier and will not be discretely billable, except for the initial buyout of the assets used in or for the provision of the Services as of the Commencement Date, which will be billable to VITA as described in Section 3.3. Infrastructure Equipment costs

include, but are not limited to, all Support, Hardware (including Refresh) and Maintenance. These costs should be spread to other relevant Resource Units.

#### **15.1.2. Non-Infrastructure Equipment.**

- 15.1.2.1. **“Non-Infrastructure Equipment”** will be the equipment assets that have a directly associated billable unit.
- 15.1.2.2. Non-Infrastructure Equipment costs will be billable in accordance with the RU structure set forth in **Exhibit 4.1 (Pricing and Volumes Matrix)** and the Resource Unit definitions in **Exhibit 4.2 (Resource unit Definitions)**. Support and refresh costs will be recovered in the relevant RU. Asset costs for Non-Infrastructure equipment obtained in the initial buyout of assets will be billed in a milestone. The asset lease or purchase and maintenance costs will be recovered either in the RU, or the HSC charges, as described in the **Exhibit 4.3 (Financial Responsibilities Matrix)**.

## **16. Taxes**

- 16.1. VITA and Supplier’s responsibilities with respect to taxes are set forth in **Section 6.3 (Taxes)** of the Agreement.

## **17. Service Level Credits**

- 17.1. Any Service Level or Critical Deliverable credits incurred by Supplier pursuant to **Section 3.2 (Service Level Credits)** of the Agreement will be credited by Supplier to the extent specified in **Exhibit 3 (Reporting and Service Level Management)**.