

MASTER SERVICES AGREEMENT

between

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

and

INTERNATIONAL BUSINESS MACHINES CORPORATION

DATED JULY 1, 2011

EXHIBIT 4

CHARGES

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EXHIBIT 4

CHARGES

1. Introduction

This Exhibit describes the methodology for calculating the Charges for all of the Services, unless otherwise expressly provided in the Agreement. In addition, this Exhibit describes the measurement and tracking of resource utilization.

2. Accuracy, Completeness and Interpretation

Service Provider shall be responsible for the accuracy and completeness of the operational and financial assumptions underlying its pricing, and if such assumptions are incorrect or incomplete, Service Provider shall not be entitled to adjust its pricing or any other terms of the Agreement.

All Charges calculated in accordance with this Exhibit shall be invoiced to DIR by Service Provider in accordance with the applicable invoice and payment provisions set forth in **Article 12** of the Agreement. Invoices provided by Service Provider shall be paid by funds transfer or other electronic means reasonably acceptable to Service Provider to an account specified in writing by the Service Provider.

Unless otherwise specified, (i) Section or Attachment references in this Exhibit refer to the Sections of or Attachments to this Exhibit, respectively, and (ii) Exhibit references in this Exhibit are to Exhibits of the Agreement.

3. Definitions

Except as otherwise expressly provided in this Exhibit, all capitalized terms used in this Exhibit shall have the meanings ascribed to them in **Exhibit 1**.

4. Annual Base Charges

The Annual Base Charges for the Stub Period and each Contract Year are set forth in **Attachment 4-A** and are the fixed charges to DIR for Service Provider's provision of the Services in accordance with the levels of Resource Unit (RU) usage included in the Monthly Resource Baselines. The Monthly Resource Baselines may be revised from time to time by agreement of the Parties based on the usage, demand and business requirements of DIR Customers and, in such event, the Annual Base Charges will be adjusted accordingly. The Annual Base Charges may only be modified over time in accordance with the Agreement, including this Exhibit. The Annual Base Charges, as adjusted pursuant to this Exhibit, shall fully compensate Service Provider for providing the Services at the Resource Unit usage levels of the Monthly Resource Baselines. Service Provider shall invoice DIR on a monthly basis in accordance with **Section 12.1** of the Agreement for a pro rata portion of the Annual Base Charge, which shall be calculated by dividing the

Annual Base Charge specified in **Attachment 4-A** for the Stub Period or applicable Contract Year by the number of months in the Stub Period or that Contract Year, as applicable. At its option, at least sixty (60) days prior to the start of an annual billing cycle, DIR may determine the historical utilization pattern for a specific Resource Unit and instruct Service Provider to invoice DIR on a monthly pro rata basis for that Resource Unit in accordance with **Section 12.1** of the Agreement following the DIR-specified allocation of the Annual Base Charge. 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 Reduce Resource Credit (RRC) shall be applied, as provided in this Exhibit.

4.1 ASU Volumes and Allowance for ASU Services

In exchange for the use of the State Data Center, an allowance for services in support of Angelo State University shall be calculated each month in accordance with this Section. Charges for services in excess of such allowance shall be calculated after the completion of each month as follows:

$$\text{ASU Billable Charges} = (\text{ASU Charges} - \text{ASU Allowance})$$

Where:

“**ASU Billable Charges**” is the total monthly amount of the Resource Unit-based services provided to ASU in excess of the ASU Allowance;

“**ASU Charges**” is the total monthly amount of the ASU Resource Volumes multiplied by the Chargeback Blended Rates for each applicable Resource Unit Category; and

“**ASU Allowance**” is the total monthly amount of the ASU Allowance Volumes multiplied by the Chargeback Blended Rates for each applicable Resource Unit Category.

For purposes of calculating the ASU Charges and ASU Allowance, the following shall apply:

“**ASU Allowance Volumes**” is the pre-defined Resource Unit allowance volumes for certain Resource Unit Categories set forth in the “ASU” tab of **Attachment 4-D**;

“**ASU Resource Volumes**” is the number of Resource Units for each Resource Unit Category actually used by ASU during the month for which ASU Charges are calculated; and

“**Chargeback Blended Rate**” is the unit rate for each Resource Unit Category calculated by dividing the actual chargeback charges for each Resource Unit Category by the quantity of Resource Units actually used for each Resource

Unit Category, excluding the ASU Resource Volumes. The actual chargeback charges for each Resource Unit Category are the Monthly Base Charges, excluding ASU Charges, plus Additional Resource Charges minus Reduced Resource Charges.

Service Provider shall only invoice DIR for the ASU Billable Charges that are greater than zero. In the event that the ASU Billable Charges are less than zero, no charges, adjustments or credits shall be issued by the Service Provider to DIR. For any additional services requested by ASU which meet the definition of New Services, Service Provider shall submit a proposal in accordance with **Section 11.5** of the Agreement.

The following example for calculating the ASU Billable Charges is provided for illustrative purposes.

Resource Unit Category	Chargeback Blended Rate	ASU Allowance Volumes (Attachment 4-D)	ASU Resource Volumes
Data Center: UNIX: High Complexity Service Level	\$937.60	6	7
Data Center: UNIX: Medium Complexity Service Level	\$849.06	9	15
Server Storage: Allocated Disk Storage - Shared GB	\$1.30	6,000	3,000
Server Storage: Allocated Disk Storage – Dedicated GB	\$1.60	0	2,000

1. Calculate the ASU Allowance
 $\$21,067.14 = (\$937.60 * 6) + (\$849.06 * 9) + (\$1.30 * 6,000)$
2. Calculate the ASU Charges
 $\$26,399.10 = (\$937.60 * 7) + (\$849.06 * 15) + (\$1.30 * 3,000) + (\$1.60 * 2,000)$
3. Calculate the ASU Billable Charges
 $\$5,331.96 = \$26,399.10 - \$21,067.14.$

In the event that DIR makes changes to its Chargeback Blended Rate methodology which would adversely impact the amounts collected by Service Provider under this provision, the Parties will mutually agree to equitably modify this provision.

5. Resource Unit Categories and Measurement Methodology

In managing the provision of Resource Units, Service Provider shall maintain the flexibility to respond to changes in DIR’s and DIR Customers’ demand for the

Services on a day-to-day and month-to-month basis, particularly as to those portions of the Services where DIR and DIR Customers experience significant variations in demand. Unless otherwise provided in the Agreement, if the provision of the Services requires increased dedicated support, additional resources, or extended hours of service, Service Provider shall provide such support, resources, or extended hours of service at no additional charge to DIR or DIR Customers (other than for ARCs, as provided herein, and amounts for which DIR is financially responsible as expressly provided in the Agreement).

Billable Resource Unit usage is measured on a monthly basis to determine DIR Customers' actual utilization of such Resource Units compared to the applicable Monthly Resource Baseline for purposes of calculating ARCs and RRCs. Starting on the Commencement Date and monthly thereafter, Service Provider will measure, track and report usage of Resource Units. Unless otherwise expressly stated with respect to an RU, the RU volume used in determining if ARCs or RRCs are applicable will be determined as of the last day of each calendar month for purposes of determining the Resource Unit count for such month.

Service Provider shall be responsible for recording all ARCs and RRCs due, and for reflecting these amounts in each Monthly Invoice. All applicable ARCs and RRCs for a particular month shall be presented in one Monthly Invoice in accordance with **Section 12.1** of the Agreement. ARCs and RRCs shall be calculated using the applicable ARC rates and RRC rates for each Resource Unit Category.

Resource Unit Categories may be added to or deleted from the current list of Resource Unit Categories from time to time as provided in the Agreement or as otherwise agreed upon by the Parties. Appropriate adjustments will be made to reduce the existing or new Resource Baselines and associated Base Charges and ARCs and RRCs, as applicable, to reflect advancements or changes in technology and related changes in functionality and relative performance, where applicable.

5.1 Mainframe Services

Mainframe Services are comprised of thirteen (13) distinct Resource Unit Categories. Each of these Resource Unit Categories has a separate Annual Base Charge and Monthly Resource Baseline. These Annual Base Charges are set forth in **Attachment 4-A** and these Monthly Resource Baselines are set forth in **Attachment 4-D** and reflect the resources required to provide the Mainframe Services. Such Annual Base Charges, as adjusted by any ARCs and RRCs, for the Resource Unit Categories for Mainframe Services will fully compensate Service Provider for the performance of the Mainframe Services.

(a) MVS Application CPU Hours

“MVS Application CPU Hours” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category will be the CPU - IBM

2064-1C1 equivalent application hours, or its equivalent, defined as one 2064-1C1 Application CPU Hour that consists of the following:

- Application time;
- Authorized User usage;
- All time associated with data base management system and transaction system address spaces (for example, CICS, IMS, TSO);
- Authorized User usage of SAS, FOCUS, and other similar Software products; and
- Application driven backup time; and
- Application development and maintenance time for DIR or a third party hired by DIR.

Billable Resource Units for CPU - IBM 2064-1C1 equivalent application hours will not include Resource Units which are attributable to Systems Overhead or system level work, including CPU outage or unavailability; CPU wait time; CPU un-captured time; Service Provider system operations support and administrative personnel usage (including usage for billing functions and capacity planning studies) and other Service Provider initiated activities; Service Provider caused lost batch time or other usage attributable to reruns which are due to the fault of Service Provider; and the following system services where controlled by Service Provider, including different products (or with different names) providing equivalent function:

- Basic operating system components (JES2, LLA, VLF, GRS, MSTJCL, IEESYSAS, TRACE, RASP, XCFAS, DUMPSRV, CONSOLE, ALLOCAS, CATALOG, MOUNT, IOSAS, PCAUTH, etc.);
- Service Provider system performance monitor, capacity management, and billing data collection tools (MICS, SMF, RMF, OMEGAMON, SLR, DCOLLECT, EREP, etc.);
- Service Provider system operation and support tools (SMP/E, JOB SCHEDULER, RERUN MANAGER, CONSOLE MANAGEMENT, SAR, RMDS, GDIF, etc.);
- Mainframe based network operations, support, access methods, and standard system print drivers (VTAM, TCP/IP, TCAM, BTAM, NETVIEW, NPM, JES328X, VPS, NETMASTER, etc.);
- Service Provider system-managed storage tools (DFSMS, ICKDSF, TAPE MANAGER, etc.); and

- Service Provider's Problem Management and Change Management Software.

Mainframe CPU utilization will be measured over applicable usage periods and will include only the TCB and SRB components of Mainframe CPU time logged via System Management Facilities (“SMF”) Type 30 records for MVS systems, equivalent facilities for VM systems, or other applicable substitutes at the end of the month.

One (1) Application CPU hour equals one (1) RU. Resource usage for Mainframe CPU will be rounded to the nearest whole hour for measurement, tracking and reporting purposes. For billing purposes, the CPU hour should be rounded to the nearest minute. A more finite measurement may be used if agreed to in writing by DIR and Service Provider.

(i) **Classes of MVS CPU Hours**

There shall be four (4) Resource Unit Baselines for MVS Application CPU Hours, categorized as Class 1, Class 2, Class 3, and Class 4, respectively. Separate Annual Base Charges and ARC/RRC rates apply to each category.

The following attributes define each of the Classes:

Class 1 – Full Sysplex Data Sharing

- Deployed on and exploiting latest, i.e., “N” technology
- Significant DB2 or IMS workload
- Significant production DB2 or IMS application data sharing
- Significant OLTP cross-system workload parallelism
- Significant usage of cross-system workload balancing utilizing zOS Workload Manager
- No or few application affinities that limit workload balancing

Class 2 – Basic Sysplex

- Little or no application DB2 or IMS data sharing
- Qualifying characteristics for Sysplex licensing from SW vendors

Class 3 – Non-Sysplex

- Stand alone environments that are not participating in a Sysplex

Class 4 – Non-z/OS

- DIR Customers running DOS/VSE

Attachment 4-D establishes baselines by Class of MVS CPU Hours for each DIR Customer receiving mainframe Services. As of the Commencement Date, MVS CPU Hours used by DIR Customers will be deemed to fall into the following Classes:

Class 1: TWC

Class 2: HHSCE
 OAG CS
 TDCJ
 TEA
 TxDOT

Class 3: RRC (scheduled to move to Class 2 following transformation)

Class 4: OAG
 TYC

(ii) Changes in Class of MVS CPU Hours

MVS CPU Hour usage by DIR Customers may be re-categorized to a higher Class, provided that the class change is approved and scheduled as part of the Transition and Transformation Plans or the Technology Plan.

(b) UNISYS MIPS

“UNISYS MIPS” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category will be measured as MIPS, which is the monthly metered usage of the Unisys Mainframes based on MIPS. Unisys MIPS includes backup services (e.g., equipment, software, labor, and media). The Unisys configuration as of the Effective Date through September 30, 2008 is an IX6802-7. The Unisys configuration as of October 1, 2008 is a Unisys ClearPath Plus Dorado 390 System

The monthly metered usage will consist of the average MIPS utilization, excluding Systems Overhead tasks, during the month. This will be measured using a standard utility named Utilization Report Utility for OS2200, or another mutually agreeable substitute, which collects the usage data from each Unisys ClearPath Plus Dorado 390 System partition in use. A report will be produced monthly and imported into ITUAM for invoicing.

The monthly metered usage will not include any resource usage attributable to Systems Overhead or system level work, including CPU outage or unavailability; CPU wait time; CPU un-captured time; Service Provider system operations support and administrative personnel usage (including usage for billing functions and capacity planning studies) and other Service

Provider initiated activities; Service Provider caused lost batch time or other usage attributable to reruns which are due to the fault of Service Provider; and the following system services were controlled by Service Provider: basic operating system components, system performance monitoring, capacity management, billing data collection tools, system operation and support tools, network operations, support, access methods and standard system print drivers, system-managed storage tools, data replication tools or processes, and components, and Service Provider's problem management and change management software.

(c) **DASD**

(i) **Mainframe Allocated Application DASD**

"Mainframe Allocated Application DASD" shall be a Resource Unit Category. There will be a Resource Unit Category for IBM DASD and an RU for Unisys DASD. The Resource Unit for Mainframe Allocated Application DASD is one (1) gigabyte. Resource Unit usage for this category will be measured as the peak number of gigabytes of DASD allocated by or to Applications and Authorized Users each month. One gigabyte will be equal to 1,000,000,000 bytes. The sum of partial Resource Unit usage in this Resource Category during a calendar month will be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. A more finite measurement may be used if agreed to in writing by DIR and Service Provider. Mainframe Allocated Application DASD will be measured using DCOLLECT, or another mutually agreeable substitute, where DASD is shared, and will include:

- (1) Application space;
- (2) Authorized User space;
- (3) Temporary data sets;
- (4) DASD migration space;
- (5) Spool space;
- (6) Application recovery logs/data sets; and
- (7) Application development and maintenance space.

Allocated Application DASD measured resource usage will exclude Systems Overhead and:

- (1) spare volumes;
- (2) flash copy volumes

- (3) unallocated (free) space;
- (4) any initial DASD migration space for conversion from any bubble/one-time migration space for technology upgrades or refresh DASD technology and/or future conversions, as required;
- (5) system product libraries;
- (6) catalogues;
- (7) system space (e.g., temporary work space, page and swap space, spool space, system parameter and control data sets, and error analysis space); and
- (8) Service Provider-controlled system operation, support and administration data sets (e.g., scheduled system maintenance and error analysis, DLIBS, console logs, contract measurement and billing, system monitors, and system service machine space).

Service Provider shall use proven storage management tools and other commercially reasonable measures to use DASD efficiently and to avoid or minimize usage spikes. As part of the Services, Service Provider shall perform ongoing capacity management and planning and shall notify DIR expeditiously if actual DASD usage exceeds 85% of the agreed upon level of installed DASD. Should this occur, Service Provider shall use commercially reasonable efforts to identify the root cause of such increased DASD usage and implement measures to avoid increasing the level of installed or allocated DASD to the extent possible.

(ii) **UNISYS DASD – GBs**

“UNISYS DASD” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) gigabyte. Resource Unit usage for UNISYS DASD will be measured, tracked and reported as the total amount of DASD storage capacity installed on the Unisys Mainframes excluding gigabytes attributable to replicated data for disaster recovery purposes. One gigabyte will be equal to 1,000,000,000 bytes. The sum of partial Resource Unit usage in this Resource Category during a calendar month will be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. A more finite measurement may be used if agreed to in writing by DIR and Service Provider.

(d) **Application Tapes in Storage**

“Application Tapes in Storage” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) tape reel or cartridge utilized by DIR Customers for DIR Data storage and stored by Service Provider at Data Centers during the calendar month of measurement, excluding Tape Storage attributable to Systems Overhead. This Resource Unit will be measured as of the last day of the applicable month for purposes of determining the Resource Unit count for such month. Application Tapes in Storage are counted for each reel or cartridge containing Application or DIR Data and include:

- (i) transactions, data, Application backups, journals and archives;
- (ii) tape correspondence; and
- (iii) Application development and maintenance tapes.

Application Tapes in Storage will be measured using Tape Mount Management records for MVS systems, or another mutually agreeable substitute for other systems and will exclude tape storage attributable to Systems Overhead and:

- (i) scratch tapes;
- (ii) tapes to support Service Provider-controlled system services, operations, maintenance, and administration; and
- (iii) system managed periodic full storage volume and incremental storage volume backups.

(e) **Virtual Tape Storage**

(i) **Application Tapes in Storage – Virtual Tape Storage**

“Application Tapes in Storage – Virtual Tape Storage” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) gigabyte of (i) VTS internal high-speed cache storage of application data (disk or buffer), and/or (ii) VTS media storage. This Resource Unit will be measured as of the last day of the applicable month for purposes of determining the Resource Unit count for such month. The sum of partial Resource Unit usage in this Resource Unit Category during a calendar month will be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. One GB will be equal to 1,000,000,000 bytes. A more finite measurement may be used if agreed to in writing by DIR and Service Provider.

(ii) **Application Tapes in Storage – Unisys Virtual Tape Storage**

“Application Tapes in Storage – Unisys Virtual Tape Storage” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) gigabyte of (i) Unisys VTS internal high-speed cache storage of application data (disk or buffer), and/or (ii) Unisys VTS media storage. One gigabyte will be equal to 1,000,000,000 bytes. This Resource Unit will be measured as of the last day of the applicable month for purposes of determining the Resource Unit count for such month. The sum of partial Resource Unit usage in this Resource Unit Category during a calendar month will be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. Application Tapes in Storage – Unisys Virtual Tape Storage will exclude gigabytes attributable to replicated data for disaster recovery purposes and gigabytes stored on media at an offsite media storage location.

(f) **Mainframe Output Print Pages**

“Print Pages” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one thousand (1,000) pages of printed output. Quantities other than one thousand (1,000) pages will be reflected at a fractional amount (i.e. 639 pages would equal 0.639 Resource Units). A “**Print Page**” shall mean one (1) 8.5-inch by 11-inch sheet of printed output, initiated by DIR Customers, for which printing is managed by Service Provider during the calendar month of measurement. Output printed in “two up” format on a 17-inch by 11-inch sheet of paper, perforated to allow for two (2) 8.5-inch by 11-inch sheets of paper, each of which otherwise satisfies the definition of Print Page, shall constitute two (2) Print Pages.

Print will not include the following print resource usage: System management reports or printed output associated with Service Provider error.

Print utilization will be measured using the printer meter counts or other mutually agreeable substitute.

There shall be two Resource Unit Categories. Print Pages will be categorized as one of two types:

- (i) Standard – A white page with black text printed on blank paper
- (ii) Custom – A Print Page printed on preprinted form paper as required and provided by DIR Customer

(g) **Mailing Insertions**

“Mailing Insertions” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one thousand (1,000) envelopes (into which various mailers and documents are inserted),

measured monthly. Quantities other than one thousand (1,000) envelopes will be reflected at a fractional amount (i.e., 639 envelopes would equal 0.639 Resource Units). For the avoidance of doubt, insertions are thus reflective of the number of the envelopes produced rather than the number of documents inserted during the calendar month of measurement.

There shall be two Resource Unit Categories for Mailing Insertions:

- (i) Mailing Insertions - Standard – A mailing insertion that uses a non-customized two window envelope
- (ii) Mailing Insertions - Custom – A mailing insertion that requires the use of a DIR Customer provided envelope

Mailing Insertions is inclusive of all associated distribution and shredding requirements.

(h) **Microfiche - Originals / Duplicates**

“Microfiche – Originals/Duplicates” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) sheet of microfiche produced by Service Provider for DIR Customers for both originals and duplicates, measured monthly. The production process will include the set up effort required for the creation of a single original copy, from which duplicates can be produced.

(i) **CD Production Creates/Re-creates**

“CD Production Creates/Re-creates” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) CD produced by Service Provider for DIR Customers, measured monthly. The production process will include the set-up effort required for the creation of an original CD. The production of duplicate copies of the original CD or from the saved set-up settings will be considered re-creations.

(j) **Optical Storage**

“Optical Storage” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) gigabyte of optical storage capacity in the optical storage device or on-site (excluding blank platters) each month. The sum of partial Resource Unit usage in this Resource Category during a calendar month will be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. One GB will be equal to 1,073,741,824 bytes. A more finite measurement may be used if agreed to in writing by DIR and Service Provider.

(k) **Mainframe Fixed Charge**

“Mainframe Fixed Charge” shall be a fixed amount invoiced as part of the Monthly Base Charges. During the Stub Period, these charges are for Mainframe functions that are not performed by Northrop Grumman Technical Services, Inc. or any of its Affiliates (collectively, “**Northrop Grumman**”) but are part of the Services performed by Service Provider for the DIR Customers as identified in Attachment 4-A. The Mainframe Fixed Charge in Contract Year 1 and 2 is a price allocation to account for higher cost environments assumed by Service Provider in the pre-transformation period for the DIR Customers as identified in Attachment 4-A. These Charges are not variable and have no associated Resource Units.

(l) **Mainframe True Up**

The Monthly Resource Baselines shown on Attachment 4-D for the Resource Unit Categories described in Sections 5.1(c) through 5.1(j) (the “**Mainframe Resource Unit Categories**”) are based upon the Parties’ expectation as of the Effective Date of DIR’s and the DIR Customers’ actual Resource Unit usage on and after the Commencement Date in respect of such Resource Unit Categories. During the ninety (90) days following the Commencement Date, Service Provider shall conduct a one-time true-up to inventory the DIR Customers’ Resource Unit utilization of and validate the Monthly Resource Baselines for the Mainframe Resource Unit Categories. Such inventory shall only be for purposes of verifying and correcting any inaccuracies in the number of Resource Units comprising the Monthly Resource Baselines shown on Attachment 4-D for the Mainframe Resource Unit Categories by adjusting such Monthly Resource Baselines to reflect the DIR Customers’ actual usage of such Resource Units as of the Commencement Date. Service Provider shall utilize tools and apply methodologies approved by DIR to collect the necessary data to perform such true-up inventory.

Upon DIR’s approval of Service Provider’s inventory of such Resource Units:

- (i) the Monthly Resource Baseline for each Mainframe Resource Unit Category for which Service Provider discovers a variance between (1) the Monthly Resource Baseline shown on Attachment 4-D for such Mainframe Resource Unit Category versus (2) the DIR Customers’ actual usage of Resource Units in respect of such Mainframe Resource Unit Category as of the Commencement Date shall be increased or decreased (as applicable) for each Contract Year by the amount of such variance; and
- (ii) the Annual Base Charges for such Mainframe Resource Unit Category shall be increased or decreased (as applicable) for each Contract Year by an amount equal to the product of (1) the amount

of such variance multiplied by (2) the applicable ARC rate or RRC rate for such Mainframe Resource Unit Category.

Any adjustments made pursuant to this Subsection shall be effective prospectively on and after September 1, 2007, and any subsequent ARCs and RRCs shall be calculated from such adjusted Monthly Resource Baselines. For the avoidance of doubt, ARC rates and RRC rates shall not be adjusted pursuant to this Subsection.

To the extent the true-up inventory conducted pursuant to this Subsection discloses variances in the level of Resource Unit usage that result from actual volume changes in the DIR Customers' consumption of Resource Units in respect of the Mainframe Resource Unit Categories and not inaccuracies in the number of Resource Units comprising the Monthly Resource Baselines shown on **Attachment 4-D** for the Mainframe Resource Unit Categories, such variances shall not result in adjustments to the Monthly Resource Baselines or Annual Base Charges for the Mainframe Resource Unit Categories in accordance with this Subsection, but rather shall result in ARCs or RRCs, as the case may be.

(m) **Unisys Mainframe True Up**

The Monthly Resource Baselines for Contract Year 2 through Contract Year 7 shown on **Attachment 4-D** for the Resource Unit Categories described in Sections 5.1(b), 5.1(c)(ii), and 5.1(e)(ii) (the "**Unisys Mainframe Resource Unit Categories**") are based on Service Provider's expectation of the DIR Customer's Resource Unit usage on or after Contract Year 2 in respect of such Resource Unit Categories.

During the ninety (90) calendar days following completion of the transformation from the IX6802-7 configuration to the Unisys ClearPath Plus Dorado 390 System configuration (the "**Resource Utilization Assessment Period**"), Service Provider shall perform an assessment of the utilization of the Unisys Mainframe Resource Unit Categories in order to verify the Monthly Resource Baselines shown on **Attachment 4-D**. At the end of the Resource Utilization Assessment Period, an adjustment shall be made to the Resource Units comprising the Monthly Resource Baselines upon DIR's approval as follows:

- (i) the Monthly Resource Baseline for the UNISYS DASD and Application Tapes in Storage – Unisys Virtual Tape Storage Resource Unit Categories for which Service Provider discovers a variance between (1) the Monthly Resource Baseline shown on **Attachment 4-D** versus (2) the DIR Customer's average utilization of such Resource Unit Categories during the Resource Utilization Assessment Period shall be adjusted for Contract Year 2 through Contract Year 7;

- (ii) the Monthly Resource Baseline for the UNISYS MIPS Resource Unit Category for which Service Provider discovers a variance between (1) the Monthly Resource Baseline shown on **Attachment 4-D** versus (2) the DIR Customer's average utilization of such Resource Unit Category during the Resource Utilization Assessment Period shall be adjusted for Contract Year 2 through Contract Year 3. The Monthly Resource Baseline for the UNISYS MIPS for Contract Year 4 through Contract Year 7 shall be adjusted to eighty percent (80%) of the adjusted Contract Year 2 Monthly Resource Baseline; and
- (iii) the Annual Base Charges shall not be increased for any such adjustments to the Unisys Mainframe Resource Unit Categories.

Any adjustments to the Monthly Resource Baselines made pursuant to this Subsection shall be effective prospectively on and after the Resource Utilization Assessment Period, and any subsequent ARCs shall be calculated from such adjusted Monthly Resource Baselines. For the avoidance of doubt, ARC rates shall not be adjusted pursuant to this Subsection.

For the period beginning on month 2 of Contract Year 2 through the end of the Resource Utilization Assessment Period, an increase in the DIR Customer's consumption of Resource Units in respect of the Unisys Mainframe Resource Unit Categories shall not result in ARCs unless such increase is the result of change in the DIR Customer's business conditions.

Through the end of month 1 of Contract Year 2, Service Provider shall invoice DIR for the IX6802-7 configuration UNISYS MIPS and UNISYS DASD in accordance with the Base Charges specified in **Attachment 4-A**. At the end of month 1 of Contract Year 2, Service Provider shall cease invoicing DIR for the IX6802-7 configuration UNISYS MIPS and UNISYS DASD. The UNISYS MIPS Resource Units on the IX6802-7 configuration shall be adjusted to 774 MIPS at no charge to DIR and the DIR Customer for the period beginning on month 2 of Contract Year 2 through decommission of the IX6802-7.

For the period beginning on month 2 of Contract Year 2 and until the adjustments to the Monthly Resource Baselines made pursuant to this Subsection, Service Provider shall invoice DIR for the Base Charges specified in **Attachment 4-A** for the Unisys Mainframe Resource Unit Categories. On and after the adjustments to the Monthly Resource Baselines made pursuant to this Subsection, Service Provider shall invoice DIR based on the DIR Customer's utilization of the Unisys Mainframe Resource Unit Categories.

5.2 Application Server Services

There are two (2) distinct Resource Unit Categories for Application Server Services: Application Server Complexity and MSDOS Legacy Servers. In addition to such Resource Unit Categories, there are two (2) additional Charges described in Sections 5.2(c) and 5.2(d) in respect of Application Server Services. The Application Server Complexity Resource Units are classified by Data Center and Site Types and further classified by High, Medium, and Low Complexity. Each of these Resource Unit Categories has separate Annual Base Charges, ARCs/RRCs and Monthly Resource Baselines.

Resource Unit usage for Application Server Services will be measured on a per Instance basis. The Annual Base Charges for such Services are set forth in **Attachment 4-A** and the Monthly Resource Baselines for such Services are set forth in **Attachment 4-D** and reflect the required resources to provide the Application Server Services. Depending on the Application Server's configuration, one (1) or more Instances may run on a single Application Server. Instances in a clustered configuration shall be deemed to be discrete Instances, though each Instance within a cluster shall accommodate a different complexity categorization, depending on DIR Customer requirements.

The applicable Annual Base Charges, as adjusted by any ARCs and RRCs, for the Resource Unit Categories for Application Server Services will fully compensate Service Provider for the performance of the Application Server Services.

(a) Application Server Complexity

One (1) Instance in service on the last day of a calendar month equals one RU. Instances shall be classified by DIR as High, Medium, or Low Complexity, each as determined using the methodology described in **Attachment 4-E**. A new Instance is considered operational when available for use by Authorized Users. Instances are further categorized by "Site Type." The Site Types are:

- (i) Data Center; and
- (ii) Remote Locations:
 - (1) Urban; and
 - (2) Rural.

(b) MSDOS Legacy Servers

Service Provider shall charge DIR for maintenance and support Services that are provided in respect of MSDOS Legacy Servers at the applicable rate set forth on **Attachment 4-A** on a per event basis each time that a MSDOS Legacy Server fails and such failure requires Service Provider to

dispatch Service Provider Personnel to the site at which such Server is located in order to Resolve the underlying problem. There is no Annual Base Charge for MSDOS Legacy Servers. In addition, the applicable rates set forth on **Attachment 4-A** include all travel and travel-related expenses in connection with the provision of maintenance and support Services for MSDOS Legacy Servers, and such expenses shall not be separately charged to or reimbursed by DIR or any DIR Customer.

(c) **Hardware Maintenance for Existing Equipment**

The “Hardware Maintenance for Existing Equipment” line in **Attachment 4-A** indicates the amounts payable for maintenance and support Services performed in respect of Equipment installed in the DIR Customers’ Production Environments as of the Effective Date.

(d) **New Application Server Hardware Service Charges**

The Charges include a monthly “**New Application Server Hardware Service Charge**,” which shall be calculated in accordance with this Section. The New Application Server Hardware Service Charge shall be determined based on the Capital Expenditures, OTC Capital Expenditures, Maintenance Costs and Software Costs where payment was made by Service Provider for amounts approved in advance by DIR. Service Provider will use commercially reasonable efforts to obtain the lowest possible discounted prices for such Capital Expenditures, OTC Capital Expenditures, Maintenance Costs and Software Costs, including through DIR contracts under **Section 11.3** of the Agreement.

For purposes of this Section, the following terms shall have the following meanings:

“**Capital Expenditures**” means the Instance Allocation of the amounts where payment was made by Service Provider for amounts approved in advance by DIR for Application Servers acquired or leased by Service Provider after the Commencement Date for dedicated use by any DIR Customer(s), including all associated peripheral Equipment, applicable sales and use taxes, freight and, only for new Application Servers (and not Application Server Upgrades or refreshed Application Servers), installation charges. For purposes of the New Application Server Hardware Service Charge for Capital Expenditures, lease payment streams under leases for Application Servers that are procured by Service Provider after the Commencement Date for dedicated use by any DIR Customer(s) shall be converted to a single Capital Expenditure by taking the net present value of such lease payments, using the then-current value of “i” defined for the HSMA calculation below as the applicable interest rate.

“**Capital Expenditure Application Server**” means an Application Server charged to DIR as a Capital Expenditure.

“**OTC Capital Expenditures**” means the Instance Allocation of the amounts of a one-time charge where payment was made by Service Provider for amounts approved in advance by DIR for Application Servers acquired or leased by Service Provider after the Commencement Date for dedicated use by any DIR Customer(s), including all associated peripheral Equipment, applicable sales and use taxes, freight and, only for new Application Servers (and not Application Server Upgrades or refreshed Application Servers), installation charges. For purposes of the New Application Server Hardware Service Charge, the net present value and applicable interest for lease payment streams under leases for Application Servers that are procured by Service Provider after the Commencement Date for dedicated use by any DIR Customers(s) shall be excluded from the OTC Capital Expenditure calculation.

“**OTC Capital Expenditure Application Server**” means an Application Server charged to DIR as a OTC Capital Expenditure.

“**Instance Allocation**” means that portion of the planned usage of an Application Server that is allocated to a single Instance. For the avoidance of doubt, if the planned usage of an Application Server is only one Instance, then the Instance Allocation shall equal 100%.

“**Maintenance Costs**” means the amounts where payment was made by Service Provider for amounts approved in advance by DIR for the provision of maintenance and support Services in respect of Application Servers and peripheral Equipment used in connection with such Application Servers that are acquired by Service Provider after the Commencement Date.

“**Server Lease Costs**” means the amounts where payment was made by Service Provider for amounts approved in advance by DIR under the Application Server and Utility Server leases identified on **Attachment 12-B**.

“**Software Costs**” means the amounts where payment was made by Service Provider for amounts approved in advance by DIR for license fees and the provision of maintenance and support Services in respect of the Software which is installed on Application Servers or Utility Servers and is categorized in the “Software Rates and HSC” tab of **Attachment 4-B** as “DIR Customer Request.”

The New Application Server Hardware Service Charge payable by DIR shall be calculated for each month following the Commencement Date, and

shall equal the sum of the results of the HSC and HSMA calculations set forth in this Section. For the avoidance of doubt, the HSMA calculation may yield a negative result for any given month, in which case the result of the HSC calculation shall be decreased by the result of the HSMA calculation; provided, if the HSMA calculation yields a negative result for any given month and such negative result exceeds the result of the HSC calculation for that month, such excess amount shall be credited by Service Provider to DIR on the applicable Monthly Invoice for that month.

Capital Expenditures shall be included in the HSMA calculation on a prorated basis over a sixty (60) month period beginning in the month following the month during which the applicable Application Server was installed in a DIR Customer's Production Environment in accordance with the Policies and Procedures Manual. The Maintenance Costs and Software Costs for the Capital Expenditures shall be included in the HSMA calculation in the month in which payment was by Service Provider; provided, however, that where Service Provider pre-pays for a benefit that will be received over a period of time (e.g., pre-paid maintenance services), such amount shall be included in the HSMA calculation on a prorated basis over such time period (e.g., if Service Provider pays \$120 in January for an annual software license or annual maintenance agreement, Service Provider will spread such cost over 12 months). Software Licenses for which payment was made as a one-time payment by Service Provider will be billed as a one-time charge to DIR.

OTC Capital Expenditures and the initial Maintenance Costs and Software Costs for the OTC Capital Expenditures shall be included in the HSMA calculation as one time charges beginning in the month following the month during which the applicable Application Server was installed in a DIR Customer's Production Environment in accordance with the Policies and Procedures Manual. The Maintenance Costs and Software Costs for the OTC Capital Expenditures shall be included in the HSMA calculation in the month in which payment was made by Service Provider. The Application Server will have a sixty (60) month installation period; and therefore, any ongoing Maintenance Costs and Software Costs for the OTC Capital Expenditures that are subsequent to the initial Maintenance Costs and Software Costs, shall be included in the HSMA calculation in the month in which payment was made by Service Provider (e.g., if the one time charges initially include 36 months of server maintenance and 12 months of software maintenance, then ongoing Maintenance Costs and Software Costs should begin in months 37 and 13 respectively).

No Capital Expenditures, OTC Capital Expenditures, Maintenance Costs or Software Costs shall be included in the HSMA calculation with respect to any Applications Server (a) that is not installed in a DIR Customer's Production Environment (e.g., the applicable order for such Server is cancelled), (b) that remains installed in a DIR Customer's Production

Environment following the end of its applicable Capital Expenditure sixty (60) month payment period or OTC Capital Expenditure sixty (60) month installation period (except as expressly provided in this Section below) or (c) that is not dedicated to use by or for a DIR Customer.

HSC Calculation:

The applicable HSC amounts for purposes of determining the New Application Server Hardware Service Charge are set forth in the “Detailed Base Charges” tab of **Attachment 4-A**. In order to derive the applicable monthly amounts for purposes of determining the New Application Server Hardware Service Charge payable by DIR each month, the applicable amount set forth on the “Detailed Base Charges” tab of **Attachment 4-A** for the Stub Period or relevant Contract Year shall be divided by the number of monthly periods in the relevant time period (e.g., Stub Period has five (5) months). For illustrative purposes, the following formula indicates the manner in which HSC amounts set forth on the “Detailed Base Charges” tab of **Attachment 4-A** were determined.

$$HSC = \left(P_{\text{baseline}} * \left[\frac{\frac{i}{12} * \left(1 + \frac{i}{12}\right)^{60}}{\left(\left(1 + \frac{i}{12}\right)^{60} - 1\right)} \right] + \left[\frac{\text{Property Tax \%} * P_{\text{baseline}} * .5}{12} \right] \right) + HSCM_{\text{baseline}} + HSCS_{\text{baseline}} + HSCXL_{\text{baseline}}$$

Where:

“**HSC**” is the hardware service charge;

“**P_{baseline}**” is an amount equal to the applicable amount for the Stub Period or relevant Contract Year set forth in the capital plan shown on the “Server Refresh” tab of **Attachment 4-A**, divided by the number of monthly periods in the relevant timeframe (e.g., Stub Period has five (5) months);

“**Property Tax %**” is one and one-half percent (1½%);

“**HSCM_{baseline}**” is the total amount of Maintenance Costs that were forecasted as of the Commencement Date for the applicable month;

“**HSCS_{baseline}**” is the total amount of Software Costs that were forecasted as of the Commencement Date for the applicable month;

“**HSCXL_{baseline}**” is the total amount of Server Lease Costs that were forecasted as of the Commencement Date for the applicable month; and

“**i**” is equal to .0813 (i.e., 8.13%).

The annual $HSCM_{baseline}$, $HSCS_{baseline}$ and $HSCXL_{baseline}$ are set forth in **Attachment 4-A**. Such annual baselines, divided by the number of monthly periods in a given timeframe (e.g. Stub Period has five (5) months), equals the applicable monthly $HSCM_{baseline}$, $HSCS_{baseline}$ and $HSCXL_{baseline}$, respectively, for purposes of calculating the HSC.

HSMA Calculation:

The HSMA shall be determined for each month during the Term in accordance with the following formula:

$$\begin{aligned}
 HSMA = & \left(P_{actual} * \frac{\frac{i}{12} * \left(1 + \frac{i}{12}\right)^{60}}{\left(\left(1 + \frac{i}{12}\right)^{60} - 1\right)} + \left[\frac{PropertyTax \% * P_{actual} * .5}{12} \right] \right) \\
 & + ((P_{actualOTC} + \left(\frac{PropertyTax \%}{12} * P_{actualOTC} * .5 * 60\right)) - (HSC_{baseline})) \\
 & + (HSCM_{actual} - HSCM_{baseline}) + (HSCS_{actual} - HSCS_{baseline}) + (HSCXL_{actual} - HSCXL_{baseline})
 \end{aligned}$$

Where:

“**HSMA**” is the monthly adjustment to the HSC;

“**P_{actual}**” is the amount of actual Capital Expenditures;

“**i**” is equal to the most recently published International Swaps and Derivatives Association mid-market par 3-year swap rate as of the ~~actual~~ date Service Provider generates the pricing for the Capital Expenditure ~~date~~ plus 0.0256 (i.e., plus 2.56%) (Note: Service Provider will include in each pricing proposal to DIR the date of the applicable rate that was used by Service Provider in calculating “i”; current rates can be found at: <http://www.federalreserve.gov/releases/h15/update/>);

“**Property Tax %**” is the then-current applicable personal property tax rate for the location of the Application Server, pro rated as applicable based on the actual acquisition date of the subject Application Server;

“**P_{actualOTC}**” is the monthly amount of actual OTC Capital Expenditures;

“**HSCH_{baseline}**” is the total amount of Capital Expenditures that were forecasted as of the Commencement Date for the applicable month;

“**HSCM_{actual}**” is the total amount of Maintenance Costs where payment was made by Service Provider during the applicable month;

“**HSCM_{baseline}**” is the total amount of Maintenance Costs that were forecasted as of the Commencement Date for the applicable month;

“**HSCS_{actual}**” is the total amount of Software Costs where payment was made by Service Provider during the applicable month; and

“**HSCS_{baseline}**” is the total amount of Software Costs that were forecasted as of the Commencement Date for the applicable month.

“**HSCXL_{actual}**” is the total amount of Server Lease Costs where payment was made by Service Provider during the applicable month; and

“**HSCXL_{baseline}**” is the total amount of Server Lease Costs that were forecasted as of the Commencement Date for the applicable month.

Service Provider shall provide DIR with a supplemental invoice which will include a reconciliation of the HSC and HSMA calculations for each month and shall also identify the amount of Capital Expenditures, Maintenance OTC Capital Expenditures, Costs, Software Costs and Server Lease Costs in which payment was made by the Service Provider during each month. In the event that Service Provider chooses to lease a OTC Capital Expenditure Application Server, the cost included in the OTC Capital Expenditures supplemental invoice reconciliation shall reflect the amounts charged to DIR rather than the actual amount paid by Service Provider. Copies of relevant Third Party invoices and such other information reasonably requested by DIR will also be included with such invoices.

Service Provider shall obtain DIR’s approval prior to incurring any Capital Expenditure, OTC Capital Expenditures, Maintenance Costs or Software Costs. If Service Provider does not obtain DIR’s prior approval in respect of any Capital Expenditures, OTC Capital Expenditures, Maintenance Costs or Software Costs, then such costs shall not be included in the New Application Server Hardware Service Charge and Service Provider shall be responsible for such costs.

If DIR requests Service Provider to remove a Capital Expenditure Application Server from the DIR Customers’ Production Environments prior to the end of its applicable sixty (60) month payment period, Service Provider shall use commercially reasonable efforts to re-deploy such Application Server. Any remaining New Application Server Hardware

Services Charges for that Application Server shall continue until the earlier of (a) such time as Service Provider is able to re-deploy such Server or (b) end of the applicable sixty (60) month payment period for such Server, using a discount rate equal to the applicable rate of interest for that Server as included in the HSMA calculation, provided that Service Provider continues to use commercially reasonable efforts to re-deploy such Server. Alternatively, at DIR's option, DIR may purchase or assume the lease for such Application Server in a manner consistent with that described in **Section 4.4(b)(4)(ii)** of the Agreement.

With respect to any Capital Expenditure Application Server that DIR elects, in DIR's sole discretion, to keep installed in a DIR Customer's Production Environment following the end of its applicable sixty (60) month payment period, only the personal property taxes actually paid by Service Provider in respect of such Application Server (and not any other Capital Expenditures) and any ongoing Maintenance Costs, Software Costs and Server Lease Costs where payment was made by Service Provider in respect of such Application Server shall continue to be included in the HSC and HSMA calculations until such Application Server is refreshed or is removed from the DIR Customers' Production Environments.

With respect to any OTC Capital Expenditure Application Server that DIR elects, in DIR's sole discretion, to keep installed in a DIR Customer's Production Environment following the end of its applicable sixty (60) month installation period, only the personal property taxes actually paid by Service Provider in respect of such Application Server (and not any other OTC Capital Expenditures) and any ongoing Maintenance Costs and Software Costs where payment was made by Service Provider in respect of such Application Server shall continue to be included in the HSC and HSMA calculations until such Application Server is refreshed or is removed from the DIR Customer's Production Environments.

(e) **Application Server Asset Plan**

Service Provider shall present an "Application Server Asset Plan" to DIR on an annual basis at least one hundred twenty (120) days prior to the end of each Contract Year. Such plan shall forecast Service Provider's purchases of Application Servers during the subsequent Contract Year and such forecast shall be consistent with the capital plan shown in the "Server Refresh" tab of **Attachment 4-A**, or, if not, Service Provider and DIR shall discuss and agree upon any deviations. Application Servers purchased under the Application Server Asset Plan shall be owned or leased by Service Provider in Service Provider's name.

The Application Server Asset Plan shall identify projected Capital Expenditures, Maintenance Costs and Software Costs for which Service Provider may be compensated through the New Applications Server

Hardware Service Charge. Charges associated with Service Provider Personnel that are providing any Application Server Services shall not be included in the Application Server Asset Plan.

(f) **Server Consolidation**

Service Provider shall not invoice DIR for any ARCs above the applicable Resource Baselines for the Application Server Complexity Resource Unit Category or for any incremental New Application Server Hardware Service Charges that are attributable to Service Provider's failure to achieve the targeted Server consolidation, as contemplated by the Resource Baselines for the Application Server Complexity Resource Unit Category and the capital plan shown on the "Server Refresh" tab of **Attachment 4-A**, except if and to the extent that such failure is caused by (a) DIR's direction to Service Provider that specific Servers targeted for consolidation shall not be so consolidated or (b) DIR's failure to perform those DIR obligations that are expressly identified as consolidation dependencies in the portion of the final detailed Transformation Plan that constitutes the Consolidation Plan (and then only to the extent that such consolidation is so prevented), provided in each case that: (i) (A) Service Provider advises DIR in advance of such decision or expeditiously upon becoming aware of such failure to perform that such decision or failure to perform would result in additional Charges and identifies such Charges for DIR, (B) such Charges would not have been applicable had such Servers been consolidated as contemplated by the Resource Baselines for the Application Server Complexity Resource Unit Category and the capital plan shown on the "Server Refresh" tab of **Attachment 4-A**, (C) Service Provider identifies and suggests for DIR's consideration reasonable alternatives to address and avoid the circumstances giving rise to such Charges and (D) Service Provider uses commercially reasonable efforts to accomplish the planned consolidation and avoid the circumstances giving rise to such Charges; and (ii) with respect to clause (a) of this Subsection, such decision is not based on any change in the standards, processes, procedures and controls or associated technologies, architectures, standards, products, Materials, Equipment, Systems or services provided, operated, managed, supported or used in connection with the Services (but only to the extent that such decision is not based on any such change).

(g) **Application Server Infrastructure Stack Software True-Up**

The Annual Base Charge and ARC/RRC rates applicable during the Stub Period for the Resource Unit Category described in Section 5.2(a) (the "**Application Server Instance Charge**") are based in part upon Service Provider's estimate as of the Effective Date of the amounts payable during the Stub Period to Third Parties as license fees and for maintenance Services provided in respect of Application Server Infrastructure Stack Software (collectively, "**Application Server Infrastructure Stack Costs**").

Set forth on **Attachment 4-A** is the estimated total amount of the Application Server Infrastructure Stack Costs payable by Service Provider during each month of the Stub Period that are included in the Application Server Instance Charge. During the six (6) month period following the Commencement Date, Service Provider shall conduct two (2) true-ups to determine the amount of any variance between the amount of Application Server Infrastructure Stack Costs actually incurred by Service Provider versus the applicable estimate of such amount set forth on **Attachment 4-A**, taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer. The first of such true-ups shall occur during August 2007 with respect to the Application Server Infrastructure Stack Costs actually incurred by Service Provider during the period beginning on the Commencement Date through July 31, 2007, and the second of such true-ups shall occur during September 2007 with respect to the Application Server Infrastructure Stack Costs actually incurred by Service Provider during the month of August 2007. Notwithstanding the previous two sentences, DIR may direct Service Provider to perform additional monthly true-ups of the Application Server Infrastructure Stack Costs actually incurred by Service Provider during any month of the Stub Period as designated by DIR. Within five (5) business days following the end of each month of the Stub Period, Service Provider shall provide DIR with a Report indicating the Application Server Infrastructure Stack Costs that were actually incurred by Service Provider during the prior month along with reasonable supporting data and invoices as requested by DIR.

Upon DIR's approval of each true-up amount, if Service Provider discovers a variance between the total amount of Application Server Infrastructure Stack Costs actually incurred by Service Provider during the relevant period versus the estimate of such amount set forth on **Attachment 4-A** (after taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer), Service Provider shall, on the Monthly Invoice submitted during the month in which the relevant true-up is performed (or the subsequent month, if so directed by DIR), either:

- (i) invoice DIR for the amount of such variance if and to the extent (1) the total amount of Application Server Infrastructure Stack Costs actually incurred by Service Provider during the relevant period exceeds (2) the estimate of such amount set forth on **Attachment 4-A** (after taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer); or
- (ii) credit DIR for the amount of such variance if and to the extent (1) the total amount of Application Server Infrastructure Stack Costs actually incurred by Service Provider during the relevant period is less than (2) the estimate of such amount set forth on **Attachment 4-A** (after taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer).

For the avoidance of doubt, the Annual Base Charge and ARC/RRC rates for the Application Server Complexity Charge shall not be adjusted pursuant to this Subsection.

5.3 Utility Server Services

There are two (2) distinct Resource Unit Categories for Utility Server Services. Each of these Resource Unit Categories has separate Annual Base Charges, ARCs/RRCs, and Monthly Resource Baselines. These Annual Base Charges are set forth in **Attachment 4-A** and these Monthly Resource Baselines are set forth in **Attachment 4-D** and reflect the required resources to support DIR and the DIR Customers. Such Annual Base Charges, as adjusted by any ARCs and RRCs, for the Resource Unit Categories for the Utility Server Services will fully compensate Service Provider for the performance of the Utility Server Services.

(a) Utility Server Services -- Email Accounts

“Email Accounts” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one discrete email identification approved by DIR.

Email Accounts are inclusive of all labor, Utility Server Infrastructure Stack Software, Equipment, maintenance and Systems management to support services and project activities (including installation and discontinuance) required to manage, maintain, and enhance the email environments. Storage and backup for email is not included in the email service, but are part of Allocated Disk Storage either dedicated or shared. Usage will be provided by running a maintained script against the directory services and providing valid counts at the end of the month utilizing a mutually agreeable tool.

(b) Utility Server Services -- LAN Attached Devices

“LAN Attached Devices” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) intelligent workstation, fixed-function terminal (e.g., 3270 or Citrix-type device), printers, docking station, or Kiosk that is attached to a local area network. For the avoidance of doubt, telephones do not constitute Resource Units for purposes of this Resource Unit Category. Resource Unit usage for LAN Attached Devices will be measured, tracked and reported as the number of Devices attached to the LAN at the end of the month utilizing a mutually agreeable tool.

LAN Attached Devices must be inclusive of all labor, Utility Server Infrastructure Stack Software, Equipment, maintenance and Systems management to support services and project activities (including installation and discontinuance) required to manage, maintain, and enhance the

following services: file, print, DNS, firewall, authentication, WINS, Citrix, infrastructure management, and domain controllers.

(c) **Utility Server Infrastructure Stack Software True-Up**

The Annual Base Charge and ARC/RRC rates applicable during the Stub Period for the Resource Unit Categories described in Sections 5.3(a) and 5.3(b) (the “**Utility Server Services Charges**”) are based in part upon Service Provider’s estimate as of the Effective Date of the amounts payable during the Stub Period to Third Parties as license fees and for maintenance Services provided in respect of Utility Server Infrastructure Stack Software (collectively, “**Utility Server Infrastructure Stack Costs**”); provided that Utility Server Infrastructure Stack Costs in respect of E-mail / Collaborative Software are only included in the Email Accounts Resource Unit Category. Set forth on **Attachment 4-A** is the estimated total amount of the Utility Server Infrastructure Stack Costs payable by Service Provider during each month of the Stub Period that are included in the Utility Server Services Charges. During the six (6) month period following the Commencement Date, Service Provider shall conduct two (2) true-ups to determine the amount of any variance between the amount of Utility Server Infrastructure Stack Costs actually incurred by Service Provider versus the applicable estimate of such amount set forth on **Attachment 4-A**, taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer. The first of such true-ups shall occur during August 2007 with respect to the Utility Server Infrastructure Stack Costs actually incurred by Service Provider during the period beginning on the Commencement Date through July 31, 2007, and the second of such true-ups shall occur during September 2007 with respect to the Utility Server Infrastructure Stack Costs actually incurred by Service Provider during the month of August 2007. Notwithstanding the previous two sentences, DIR may direct Service Provider to perform additional monthly true-ups of the Utility Server Infrastructure Stack Costs actually incurred by Service Provider during any month of the Stub Period as designated by DIR. Within five (5) days following the end of each month of the Stub Period, Service Provider shall provide DIR with a Report indicating the Utility Server Infrastructure Stack Costs that were actually incurred by Service Provider during the prior month along with reasonable supporting data and invoices as requested by DIR.

Upon DIR’s approval of each true-up amount, if Service Provider discovers a variance between the total amount of Utility Server Infrastructure Stack Costs actually incurred by Service Provider during the relevant period versus the estimate of such amount set forth on **Attachment 4-A** (after taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer), Service Provider shall, on the Monthly Invoice submitted during the month in which the relevant true-up is performed (or the subsequent month, if so directed by DIR), either:

- (i) invoice DIR for the amount of such variance if and to the extent (1) the total amount of Utility Server Infrastructure Stack Costs actually incurred by Service Provider during the relevant period exceeds (2) the estimate of such amount set forth on **Attachment 4-A** (after taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer); or
- (ii) credit DIR for the amount of such variance if and to the extent (1) the total amount of Utility Server Infrastructure Stack Costs actually incurred by Service Provider during the relevant period is less than (2) the estimate of such amount set forth on **Attachment 4-A** (after taking into account any such license fees or maintenance charges that have been pre-paid by DIR or any DIR Customer).

For the avoidance of doubt, the Annual Base Charge and ARC/RRC rates for the Utility Server Services Charges shall not be adjusted pursuant to this Subsection.

5.4 Server Storage Services

There are five (5) distinct Resource Unit Categories for Server storage Services. Each of these Resource Unit Categories has separate Annual Base Charges, ARCs/RRCs, and Monthly Resource Baselines. These Annual Base Charges are set forth in **Attachment 4-A** and these Monthly Resource Baselines are set forth in **Attachment 4-D** and reflect the required resources to support DIR and the DIR Customers. Such Annual Base Charges, as adjusted by any ARCs and RRCs, for the Resource Unit Categories for Server storage Services will fully compensate Service Provider for the performance of the Server storage Services. The sum of partial Resource Unit usage during a calendar month for each of the Resource Unit Categories described in Subsections (a) through (d) of this Section shall be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. A more finite measurement may be used if agreed to in writing by DIR and Service Provider.

(a) Allocated Disk Storage Dedicated

“Allocated Disk Storage Dedicated” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) GB of dedicated storage on a Server that is allocated to a specific Application or function (i.e., not considered available as free space) allocated to DIR Customers and unavailable for re-allocation to Service Provider for other purposes. One GB will be equal to 1,073,741,824 bytes.

(b) Allocated Disk Storage Shared

“Allocated Disk Storage Shared” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) GB of storage that is shared by multiple Servers (e.g., SAN, NAS)

allocated to DIR and unavailable for re-allocation to Service Provider for other purposes. One GB will be equal to 1,073,741,824 bytes.

(c) **Direct Attached Tape**

“Direct Attached Tape” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) utilized GB of Direct Attached Tape excluding any space attributed to Systems Overhead and scratch tapes, tapes to support vendor-controlled system services, operations, maintenance, administration, system managed periodic full storage volume and incremental storage volume backups. One GB will be equal to 1,073,741,824 bytes.

(d) **Centralized Tape**

“Centralized Tape” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) GB of Centralized Tape excluding storage and any storage attributed to Systems Overhead and scratch tapes, tapes to support provider controlled system services, operations, maintenance, and administration, system managed periodic full storage volume and incremental storage volume backups. One GB will be equal to 1,073,741,824 bytes.

(e) **Offsite Tape**

“Offsite Tape” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) tape device or cartridge utilized by DIR Customers and physically transported and stored at a DIR approved or pre-negotiated offsite (non-DIR Facility) location. For purposes of this Resource Unit Category, each partial Resource Unit usage in this Resource Unit Category during a calendar month shall be considered one (1) Resource Unit for measurement, tracking, reporting and billing purposes.

5.5 Server True Up

The Monthly Resource Baselines shown on **Attachment 4-D** for the Resource Unit Categories described in Sections 5.2(a), 5.3 and 5.4 (the “**Server Resource Unit Categories**”) are based upon the Parties’ expectation as of the Effective Date of what DIR’s and the DIR Customers’ actual Resource Unit usage shall be on and after the Commencement Date in respect of such Resource Unit Categories. During the ninety (90) days following the Commencement Date, Service Provider shall conduct a one-time true-up to inventory the DIR Customers’ Resource Unit utilization of and validate the Monthly Resource Baselines for the Server Resource Unit Categories. Such inventory shall only be for purposes of verifying and correcting any inaccuracies in the number of Resource Units comprising the Monthly Resource Baselines shown on **Attachment 4-D** for the Server Resource Unit Categories by adjusting such Monthly Resource Baselines to reflect the DIR

Customers' actual usage of such Resource Units as of the Commencement Date. Service Provider shall utilize tools and apply methodologies approved by DIR to collect the necessary data to perform such true-up inventory.

Upon DIR's approval of such inventory, the Monthly Resource Baseline for each Server Resource Unit Category for which Service Provider discovers a variance between (a) the Monthly Resource Baseline shown on **Attachment 4-D** for such Server Resource Unit Category versus (b) the DIR Customers' actual usage of Resource Units in respect of such Server Resource Unit Category as of the Commencement Date shall be increased or decreased (as applicable) for each Contract Year by the amount of such variance. In addition, if and to the extent such variance is:

- (a) less than or equal to five percent (5%) of the Monthly Resource Baseline shown on **Attachment 4-D** for such Server Resource Unit Category, there shall be no change to the Annual Base Charge for such Server Resource Unit Category;
- (b) more than five percent (5%) but less than or equal to ten percent (10%) of the Monthly Resource Baseline shown on **Attachment 4-D** for such Server Resource Unit Category, then the Annual Base Charge for such Server Resource Unit Category will be increased or decreased (as applicable) for each Contract Year by an amount equal to the product of (i) the portion of such variance that exceeds five percent (5%) of the Monthly Resource Baseline shown on **Attachment 4-D** for such Server Resource Unit Category, multiplied by (ii) seventy-five percent (75%) of the applicable ARC/RRC rate; and
- (c) more than ten percent (10%) of the Monthly Resource Baseline shown on **Attachment 4-D** for such Server Resource Unit Category, then the Annual Base Charge for such Server Resource Unit Category will be increased or decreased (as applicable) for each Contract Year by an amount equal to the sum of (i) the product of (1) an amount equal to the difference between five percent (5%) and ten percent (10%) of the Monthly Resource Baseline shown on **Attachment 4-D** for such Server Resource Unit Category multiplied by (2) seventy-five percent (75%) of the applicable ARC/RRC rate, plus (ii) the product of (1) the portion of such variance that exceeds ten percent (10%) of the Monthly Resource Baseline shown on **Attachment 4-D** for such Server Resource Unit Category multiplied by (2) the applicable ARC/RRC rate.

Any adjustments made pursuant to this Section shall be effective prospectively on and after September 1, 2007, and any subsequent ARCs and RRCs shall be calculated from such adjusted Monthly Resource Baselines. For the avoidance of doubt, ARC rates and RRC rates shall not be adjusted pursuant to this Section.

To the extent the true-up inventory conducted pursuant to this Section discloses variances in the level of Resource Unit usage that result from actual volume changes in the DIR Customers' consumption of Resource Units in respect of the Server Resource Unit Categories and not inaccuracies in the number of Resource Units comprising the Monthly Resource Baselines shown on **Attachment 4-D** for the Server Resource Unit Categories, such variances shall not result in adjustments to the Monthly Resource Baselines or Annual Base Charges for the Server Resource Unit Categories in accordance with this Section, but rather shall result in ARCs or RRCs, as the case may be.

6. Changes to Resource Categories and Resource Baselines

DIR may from time to time propose to add to or remove Resource Unit Categories and may also from time to time, by giving at least thirty (30) days notice to Service Provider (or such shorter period as may be required by applicable Laws), move service delivery resources from one Resource Unit Category to another Resource Unit Category, in each case for purposes of re-allocating the pricing under the Agreement without changes in scope; provided that, in any such event, the aggregate Monthly Base Charges for all Resource Unit Categories shall not be changed as a result of such re-allocation. If DIR proposes to add or remove a Resource Unit Category or move service delivery resources from one Resource Unit Category to another, the Parties shall agree on the Resource Unit Baseline and Charges components applicable thereto and on corresponding adjustments to the Resource Baselines, Base Charges, ARC rates and RRC rates, and other Charges components for the remaining other Resource Unit Categories. Notwithstanding the foregoing, to the extent any of the foregoing changes are required by federal funding requirements or applicable Laws, such changes will be implemented as required, and if such changes require the addition or removal of a Resource Unit Category, then the Resource Unit Baseline and Charges components applicable thereto and the corresponding adjustments to the Resource Baselines, Base Charges, ARC rates and RRC rates, and other Charges components for the remaining other Resource Unit Categories shall be equitably adjusted.

7. Additional Resource Charges and Reduced Resource Credits (ARCs and RRCs)

DIR Customer's increased or decreased consumption of Resource Units may result in ARCs or RRCs as set forth herein. After the completion of each month during the Term, starting with the first month after the Commencement Date, Service Provider shall calculate ARCs and RRCs as set forth in this Section.

Service Provider shall be responsible for recording all ARC amounts due and RRC credits due, and for reflecting these amounts in the Monthly Invoice. All applicable ARCs and RRCs for a particular month shall be presented in one (1) invoice. ARCs billed and RRCs credited in a subsequent month's invoice will be calculated using the rates applicable in the month incurred.

After the completion of each month subsequent to the Commencement Date, Service Provider shall determine the quantity of Resource Units actually consumed for each Resource Unit Category. There shall be no change in the Charges otherwise payable to Service Provider during a given month unless the number of Resource Units for a Resource Unit Category actually used 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, Service Provider shall invoice DIR for an ARC or credit DIR a RRC, as applicable, as follows:

If DIR's consumption of any Resource Unit is above the applicable Monthly Resource Baseline, DIR must pay the applicable ARC for each such Resource Unit at the applicable ARC rate, calculated as follows:

$$\text{ARC} = [(\text{Actual Resource Units} - \text{Monthly Resource Baseline}) \times \text{ARC rate}]$$

If DIR's consumption of any Resource Unit is below the applicable Monthly Resource Baseline, DIR shall be credited the applicable RRC for each such Resource Unit at the applicable RRC rate, calculated as follows:

$$\text{RRC} = [(\text{Monthly Resource Baseline} - \text{Actual Resource Units}) \times \text{RRC rate}].$$

8. One-Time Charges

The Charges include certain One-Time Charges set forth in **Attachment 4-A** that are payable in the percentages set forth in **Attachment 4-X** and so billed to DIR on or after the completion dates set forth in **Attachment 4-X** provided that Service Provider has obtained DIR's Acceptance of the applicable Transition Milestones and Transformation Milestones. DIR reserves the right to compensate Service Provider for any One-Time Charges on or after the completion dates set forth in **Attachment 4-X** provided that Service Provider has obtained DIR's Acceptance of the related Transition Milestone or Transformation Milestone, as applicable, rather than pay such Charges on an amortized basis over the Initial Term, and in such event the amount of the One-Time Charges set forth in **Attachment 4-A** and the amounts contained in **Table 2** in Section 10.1(c) shall be reduced to reflect (a) the amount of any such One-Time Charges that are paid upon completion of the related Transition Milestone or Transformation Milestone, as applicable, and (b) the amount of interest that is no longer payable by DIR as a result of paying such One-Time Charges upon completion (as opposed to paying such Charges on an amortized basis over the Initial Term as contemplated by **Attachment 4-A** and **Table 2** in Section 10.1(c)).

With respect to the Wave 2 Transition Milestones and Transformation Milestones that are broken out into a series of partial Milestones (i.e., "Server Consolidation Implement – Wave 2" and "DIR Customer Data Center Shutdown – Wave 2"), DIR reserves the right to compensate Service Provider for any One-Time Charges due and payable hereunder by paying a monthly payment calculated in accordance with this paragraph. The monthly

payment for the applicable Wave 2 Transformation Milestones is determined for each Contract Year by dividing the corresponding amount provided in the Contract Year column set forth in **Attachment 4-X** by twelve or, in the case of the initial Contract Year (i.e., the Contract Year in which the Completion Date falls), by the total number of months from the specified Completion Date through the completion of the initial Contract Year. If the Service Provider obtains DIR's Acceptance of a Transformation Milestone after the Completion Date set forth in **Attachment 4-X**, the first monthly payment for the Accepted Transformation Milestone will be determined by totaling all prior month's allocated monthly payments for that Milestone through and including the month of DIR's Acceptance and billed as a one-time charge. After the first payment and through the remainder of the Initial Term, the remaining payments will be the monthly payment calculated as described above.

With respect to the two Transformation Milestones that are broken out into a series of partial Milestones (i.e., "Server Consolidation Implement – Wave 2" and "DIR Customer Data Center Shutdown – Wave 2"), DIR's obligation to pay the monthly payments associated with any completed partial Milestone is subject to Service Provider continuing to make good faith efforts to complete the remaining partial Milestones for such Milestone. If at any point Service Provider is not making such good faith efforts, a notice may be sent by DIR in accordance with Section 21.3(a) of the Agreement, "Primary Notices", including a description of the basis for DIR's position that Service Provider is not making good faith efforts to complete the remaining partial Milestones. Subsequently, Service Provider shall have fourteen (14) calendar days to demonstrate such good faith efforts. After such period, if good faith effort has not been demonstrated by Service Provider, DIR's obligation to pay the monthly payments associated with all previously completed partial Milestones for such Milestone will cease immediately and shall not resume until Service Provider has resumed good faith efforts toward full completion of the subject Wave 2 Milestone in accordance with the applicable schedule. (Note: Subject to Service Provider's compliance with Section 4.3(a) of the Agreement, delays due to a failure by DIR to perform as described by Section 4.3(a) or other causes beyond IBM's reasonable control shall not constitute a basis for alleging lack of good faith efforts.)

One-Time Charges consist of Charges for Transition Services and Transformation Services as detailed in **Attachment 4-A**, including Report and manual preparation; human resource transition including severance benefits; implementation of governance processes; Mainframe and Server migrations; physical inventory; disaster recovery transition; Equipment migration study; Data Center build outs and migrations; network migrations; security assessments; and Data Center testing. Such One-Time Charges will be itemized on the applicable Monthly Invoices to DIR in sufficient detail to delineate the specific nature of the Charges and the applicable percentage thereof then payable. The invoice will clearly identify each One-Time Charges (e.g., transition Charges will be clearly identified as "Charges for Transition Services" or "Charges for Transformation Services", as applicable, as well as the relevant Transition Milestone or Transformation Milestone with which it is associated).

9. Charges for Certain Additional Services

9.1 Use of Problem Tracking System

As described in Exhibit 2.1, DIR Customers may wish to procure access to and Use of the Problem Tracking System for managing IT problems unrelated to the Services. The pricing for such access and Use is set forth in Attachment 4-H.

9.2 Additional DR Services

In addition, Service Provider shall provide the resources required to perform Disaster Recovery Services for any new DIR Customers (the “**Additional DR Services**”) if and to the extent requested by DIR. If DIR requests that Service Provider perform any Additional DR Services then, prior to commencing performance of such Additional DR Services, Service Provider shall prepare a written proposal based on the applicable requirements set forth in Section 11.5(a) of the Agreement, which shall be prepared by Service Provider with a commitment by Service Provider to provide such Additional DR Services on the terms and conditions set forth in this Agreement; provided, however, that the applicable Charges for Additional DR Services that may be provided for DPS are set forth in Attachment 4-H. The DIR Data Center Services Manager may accept or reject such proposal(s) in his or her sole discretion. If DIR decides to engage Service Provider to perform any such Additional DR Services, then Service Provider shall perform such Additional DR Services.

9.3 Co-location Services

The Charges for co-location services are comprised of monthly recurring charges as described in Section 9.3(a), one-time charges as described in Section 9.3(b) and build-out charges as described in Section 9.3 (c).

(a) Co-location Services Monthly Recurring Charges

The monthly recurring charges for the services and support of co-located equipment comprising DIR Customer information technology (IT) environments, as defined in Exhibit 2.8, includes facility charges, utility charges and media charges.

(i) Facility Charges

Facility charges are inclusive of data center floor space, overhead labor components for physical security, Project Management Office (e.g., financial billing, utility calculations, Change Management, Disaster Recovery Plan, Problem Management, and business controls), and all services described

in **Exhibit 2.8** that are not identified in this Section 9.3 as having separate charges. The unit rates for the facility charges are set forth in **Attachment 4-J.1**.

Facility charges are based on the number of co-located equipment cabinets comprising the DIR Customer IT environments. **Attachment 4-J.2** contains a specific number of cabinets for each IT environment of a DIR Customer receiving co-location services as of the dates listed in ~~of~~ **Attachment 4-J.2**. It is understood that the DIR Customer IT environments may be dynamic in nature and the number of cabinets may vary and that additional cabinets may be needed for DIR Customers receiving co-location services. Therefore, facility charges will be calculated based on the actual number of cabinets co-located at the State Data Center and the Service Provider Consolidated Data Center. If a cabinet is co-located at the State Data Center or the Service Provider Consolidated Data Center for a portion of a calendar month, then the charges will be calculated on a prorated basis.

(ii) **Utility Charges**

Utility charges are inclusive of all electrical, heating and cooling costs. **Attachment 4-J.2** contains the utility consumption for each IT environment of a DIR Customer receiving co-location services as of the dates listed in ~~of~~ **Attachment 4-J.2**. It is understood that the DIR Customer IT environments may be dynamic in nature and additional equipment may be needed. Therefore, utility charges will be calculated based on the actual utility consumption for the DIR Customer IT environments co-located at the State Data Center, ~~and~~ the Service Provider Consolidated Data Center, and the Austin Disaster Recovery Operations Center. The unit rates for the utility charges are set forth in **Attachment 4-J.1**.

Prior to the start of each Contract Year, Service Provider will review the electric utility rates in effect at the State Data Center and the Service Provider Consolidated Data Center and the utility consumption for each co-located environment therein. Based on any changes in the aforementioned electric utility rates and/or utility consumption, Service Provider will provide DIR with the proposed adjustments to the utility charges by July 1st for the upcoming Contract Year. Utility charges for the upcoming Contract Year will be adjusted accordingly upon DIR's approval. The annual utility rate and consumption adjustment will be effective September 1, 2008 and will be

adjusted each Contract Year thereafter, subject to the approval of DIR.

The electric utility rates in effect at the time any new DIR Customer IT environment is co-located at the State Data Center or the Service Provider Consolidated Data Center or any additions are made to any existing co-located DIR Customer IT environment therein, shall apply to the new or changed environment. For co-location of new DIR Customer IT environments at the State Data Center or the Service Provider Consolidated Data Center, Service Provider will provide DIR with the utility usage amounts as part of the initial pricing proposal. Prior to the addition of equipment to any existing co-located DIR ~~customer~~ Customer IT environment at the State Data Center or the Service Provider Consolidated Data Center, Service Provider will provide DIR with the additional utility usage for such equipment.

Prior to the start of each Contract Year, DIR and Service Provider will review the electric rates in effect at the Austin Disaster Recovery Operations Center and the utility consumption for each co-located environment therein. Based on any changes in the aforementioned electric utility rates and/or utility consumption, DIR and Service Provider will mutually agree to any proposed adjustments to the utility charges by July 1st for the upcoming Contract Year and the utility charges for the upcoming Contract Year will be adjusted accordingly. The annual utility rate and consumption adjustment will be effective September 1, 2008 and will be adjusted each Contract Year thereafter.

The electric utility rates in effect at the time any additions are made to any existing DIR Customer IT environment co-located at the Austin Disaster Recovery Operations Center shall apply to the changed environment. Prior to the addition of equipment to any existing co-located DIR Customer IT environment at the Austin Disaster Recovery Operations Center, DIR and Service Provider will determine the additional utility usage for such equipment.

(iii) **Media Charges**

Media charges are fixed monthly charges based on the following factors for each DIR Customer IT environment: media type, the number of daily tape changes, the number of tapes sent to/retrieved from offsite storage, all labor, offsite storage,

destruction or disposal of tapes, and new or replacement tapes up to 20% of the annual baseline volumes as listed in **Attachment 4-J.2**. The media charges for the applicable DIR Customer IT environments are set forth in **Attachment 4-J.1**.

In the event that the 20% replacement limitation is exceeded, DIR will be charged at actual tape cost, plus an administrative/processing fee not to exceed 3%. Media charges are not inclusive of archival storage of tapes beyond one year.

The off-site storage volume, average daily quantity of tapes sent off-site, and average daily tape changes may increase by 25% of the annual baseline volumes for each DIR Customer IT environment listed in **Attachment 4-J.2** at no additional charge.

Service Provider may revise the media charges, upon DIR's approval, for the applicable DIR Customer IT environment in the case where a "Do Not Destroy" order is imposed.

For co-location of new DIR Customer IT environments, Service Provider will provide DIR with the monthly media charge as part of the initial pricing proposal.

(iv) **Economic Change Adjustment**

As defined in Section 15, an Economic Change Adjustment shall apply as set forth on the "Inflation Sensitivity" tab of **Attachment 4-J.1**.

(b) **Co-location Services One-Time Charges**

(i) **Transition Services**

The Charges may include a one-time charge for co-location transition services that are described in **Exhibit 2.8**. Prior to the commencement of any co-location transition services, Service Provider shall submit a Project proposal to DIR and obtain DIR's approval in accordance with **Section 4.7** of the Agreement. The one-time charges shall be billed to DIR upon DIR's Acceptance of the completion of such services.

(ii) **Migration Services**

The Charges may include a one-time charge for installing electrical power drops and LAN/WAN/SAN cabling at the rates as set forth in **Attachment 4-J.1**. In addition to the installation

of power drops and LAN/WAN/SAN cabling, Service Provider may provide additional co-location migration services as requested by DIR Customer or Third Party.

Prior to the commencement of any co-location migration services, Service Provider shall submit a Project proposal to DIR and obtain DIR's approval in accordance with **Section 4.7** of the Agreement. The one-time charges shall be billed to DIR upon DIR's Acceptance of the completion of such services.

(c) **Build-Out Charges**

The Charges may include charges for any co-location-related build-out activities as described in **Exhibit 20 – Part B** that may be necessary due to: 1) DIR Customer's or Third Party's failure to comply with the equipment configuration specified in **Exhibit 2.8**; or 2) a demand for co-location raised floor space that exceeds the expansion limitations set forth in **Exhibit 2.8**. Prior to the commencement of any co-location-related build-out activities, Service Provider shall submit a Project proposal to DIR and obtain DIR's approval in accordance with **Section 4.7** of the Agreement. The one-time charges shall be billed to DIR upon DIR's Acceptance of the completion of such services.

At the option of DIR, the charges for build-out activities may be payable either in a one-time payment or in twelve (12) equal monthly payments. Service Provider's Project proposal shall include pricing for both a one-time payment and twelve equal monthly payments.

10. Termination Charges

10.1 Costs

Termination Charges shall consist of the following costs that are reasonably and actually incurred by Service Provider as a direct result of DIR's termination of the Agreement, in whole or in part, pursuant to **Section 11.4(d)(iii)**, **11.10(c)**, **15.11(g)**, **18.2(c)**, **20.2**, **20.3**, or **20.4** of the Agreement:

(a) **Third Party Contracts and Service Provider Equipment**

- (i) With respect to Third Party Contracts (including leases, licenses, and services contracts with third parties) that are implicated by the relevant termination event and that are used by Service Provider solely to perform the Services, if DIR, the DIR Customers and their designee(s) decide not to assume any such Third Party Contract and Service Provider is not able to use such Third Party Contract in connection with its performance of services for any other Service

Provider customers within sixty (60) days of the date on which such Third Party Contract is no longer required to perform the Termination Assistance Services, the Termination Charges shall equal the sum of (A) any termination or cancellation fees that Service Provider 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, plus (B) subject to clauses (iii) through (v) of this Subsection (a), any non-cancelable charges that Service Provider is contractually required to pay to the counter-party to such Third Party Contract during the remaining initial term of such Third Party Contract.

- (ii) With respect to Equipment owned by Service Provider (including Equipment owned by Service Provider Affiliates and Subcontractors) that is implicated by the relevant termination event and that is used by Service Provider, Service Provider Affiliates or Subcontractors on a dedicated basis to perform the Services, if DIR, the DIR Customers and their designee(s) decide not to purchase such Equipment and Service Provider, Service Provider Affiliates or Subcontractors is/are not able to redeploy such Equipment within sixty (60) days of the date on which such Equipment is no longer required to perform the Termination Assistance Services, the Termination Charges shall consist of the sum of the fair market value (as shall be determined by an agreed-upon appraisal) for each such item of Equipment, net any amounts recovered by Service Provider, Service Provider Affiliates or Subcontractors through the sale or other disposition of such Equipment); provided, however, in the case of any such item of Equipment for which the acquisition cost has been the basis of Charges to DIR (e.g., as in the case of the New Application Server Hardware Service Charge), the Termination Charges shall consist of the sum of any then unrecovered acquisition costs computed in accordance with the method used to charge DIR therefor.
- (iii) Service Provider, Service Provider Affiliates and Subcontractors shall use commercially reasonable efforts to avoid incurring the costs described in clauses (i) and (ii) of this Subsection, minimize any such costs that are incurred and/or recover amounts previously paid. The commercially reasonable efforts to be employed by Service Provider, Service Provider Affiliates and Subcontractors shall include, to the extent applicable, (A) working with DIR to identify all commercially reasonable means to avoid or minimize such costs, (B) offering to make the Third Party Contracts and Equipment described in clauses (i) and (ii) of this Subsection available to DIR, DIR Customers and/or their designee(s) in accordance with **Section 4.4** of the Agreement, (C) redeploying any such Third Party Contracts and Equipment that are not assumed or

acquired by DIR, any DIR Customer or their designee(s) within Service Provider's, any Service Provider Affiliate's or any Subcontractor's organization if, and as soon as, commercially reasonable, (D) negotiating with the applicable counter-parties to such Third Party Contracts to eliminate or reduce such costs and (E) selling, canceling or otherwise disposing of any such Third Party Contracts and Equipment that cannot be redeployed. The costs to be reimbursed by DIR shall cease to accrue following the redeployment or use of such Third Party Contract or Equipment for any other purpose and shall be reduced by the net proceeds received from any sale or other disposition.

- (iv) In addition, Service Provider, Service Provider Affiliates and Subcontractors shall use commercially reasonable efforts to avoid agreeing in any Third Party Contract (including Third Party Contracts between Service Provider and its Affiliates) to termination or cancellation fees or non-cancelable charges.
- (v) Notwithstanding clauses (i) through (iv) of this Subsection (a), DIR shall not be obligated to pay any Termination Charges with respect to any Third Party Contract or Equipment implicated by any termination event to the extent (A) DIR, any DIR Customer or their designee(s) purchases any such Third Party Contracts or Equipment or (B) Service Provider, the applicable Service Provider Affiliate or the applicable Subcontractor is unable (unless otherwise expressly agreed by DIR pursuant to **Section 6.4** of the Agreement) or unwilling to offer DIR, the DIR Customers and their designee(s) the right to assume such Third Party Contract or purchase such Equipment.

(b) **Employee Severance Costs**

With respect to Service Provider's employees that are implicated by the relevant termination event and that are dedicated to the provision of Services as of the date of DIR's notice of termination ("**Eligible Service Provider Personnel**"), the Termination Charges shall equal the product of (A) the "**Severance Cost Per Employee**" (as specified in **Table 1** below for the Stub Period or the Contract Year during which the date of severance occurs), multiplied by (B) the actual number of Eligible Service Provider Personnel that are terminated within the later of (1) the effective date of the relevant termination event and (2) sixty (60) days after the date on which each such employee ceases to perform the Termination Assistance Services; provided, however, that such amounts shall not be payable with respect to Eligible Service Provider Personnel who:

- (i) are transferred to DIR, any DIR Customer or their designee(s) or who are offered and accept employment with DIR, any DIR Customer or their designee(s);
- (ii) Service Provider declines to make available for transfer to or employment by DIR, any DIR Customer or their designee(s); or
- (iii) are offered employment with DIR, any DIR Customer or their designee(s) at equal or higher compensation, but who have the opportunity to remain with Service Provider and elect to do so.

Table 1:

Severance Cost Per Employee								
Stub Period	CY1	CY2		CY3	CY4	CY5	CY6	CY7
\$51,000	\$52,530	\$54,106 (Through March of CY2)	\$27,045 (Remainder of CY2)	\$27,856	\$28,692	\$29,553	\$30,439	\$31,353

(c) **Miscellaneous Termination Charges**

Service Provider shall also recover as miscellaneous Termination Charges the applicable amount(s) specified in **Table 2** below for the Stub Period or relevant Contract Year during which Termination Charges are calculated pursuant to **Section 20.10(b)** of the Agreement.

Table 2:

Milestone (\$000)	Stub Period	CY1	CY 2	CY 3	CY 4	CY5	CY6	CY7
General Transition	\$2,653	\$5,484	\$9,097	\$8,339	\$6,671	\$5,003	\$3,336	\$1,668
Facilities Build Out	\$3,582	\$7,403	\$10,998	\$9,165	\$7,332	\$5,499	\$3,666	\$1,833
Support Center	\$3,992	\$3,992	\$-	\$-	\$-	\$-	\$-	\$-
Server Consolidation	\$9,021	\$18,645	\$30,930	\$28,352	\$22,682	\$17,011	\$11,341	\$5,670
Mainframe Consolidation	\$4,987	\$10,309	\$17,732	\$16,805	\$13,443	\$10,083	\$6,722	\$3,361

Milestone (\$000)	Stub Period	CY1	CY 2	CY 3	CY 4	CY5	CY6	CY7
Storage Consolidation	\$1,327	\$2,742	\$4,752	\$4,752	\$3,802	\$2,851	\$1,901	\$950
Print and Mail	\$1,194	\$2,467	\$4,277	\$3,921	\$3,136	\$2,352	\$1,568	\$784
Computer Operations	\$1,592	\$3,290	\$5,703	\$5,609	\$4,487	\$3,365	\$2,244	\$1,122
Disaster Recovery	\$1,061	\$2,193	\$3,802	\$3,802	\$3,041	\$2,281	\$1,521	\$760
Transformation Acceptance	\$3,071	\$6,347	\$11,000	\$11,000	\$ -	\$ -	\$ -	\$ -
Total	\$32,479	\$62,872	\$98,290	\$91,744	\$64,595	\$48,446	\$32,297	\$16,149

The amounts specified in **Table 2** represent such miscellaneous Termination Charges in total and by milestone as of the first day of the Stub Period and the first day of each Contract Year of the Initial Term thereafter. The applicable amount(s) to be utilized in determining such miscellaneous Termination Charges shall depend on the portion of the Services terminated and the point in time at which such miscellaneous Termination Charges are calculated pursuant to **Section 20.10(b)** of the Agreement. In addition, the amounts in **Table 2** for the Stub Period and any Contract Year assume that the applicable miscellaneous Termination Charges are calculated on the first day of the Stub Period or a Contract Year. If the miscellaneous Termination Charges are calculated on any date other than the first day of the Stub Period or a Contract Year, the Termination Charge shall be appropriately prorated based on the date of such calculation. Finally, the amounts included in **Table 2** include interest compounding over the Initial Term at a rate of 8.3%. The portion of such amounts that constitute interest shall not be payable by DIR as Termination Charges, and such interest shall be subtracted from the amounts used to calculate the applicable miscellaneous Termination Charges.

(d) **Unisys**

If DIR terminates this Agreement or the portion of this Agreement relating to the Unisys Mainframes under **Section 11.4(d)(iii)**, **11.10(c)**, **15.11(g)**, **18.2(c)**, **20.2**, **20.3**, or **20.4** of the Agreement, and the applicable Termination Charges are calculated pursuant to **Section 20.10(b)** of the Agreement during the Stub Period or any of the first four (4) Contract Years, Service Provider shall also recover as Termination Charges the applicable amount(s) specified in **Table 3** below with respect to the relevant

Stub Period or Contract Year and month during which such Termination Charges are calculated.

Table 3:

Month	Charge
During Stub Period	\$4,629,936
CY1, Month 1	\$14,004,065
CY1, Month 2	\$12,954,071
CY1, Month 3	\$11,904,077
CY1, Month 4	\$10,854,083
CY1, Month 5	\$9,804,089
CY1, Month 6	\$8,754,094
CY1, Month 7	\$7,704,100
CY1, Month 8	\$6,654,106
CY1, Month 9	\$5,604,112
CY1, Month 10	\$4,554,118
CY1, Month 11	\$3,504,124

Month	Charge
CY1, Month 12	\$2,454,129
CY2, Month 1	\$1,404,135
CY2, Month 2	\$8,950,526
CY2, Month 3	\$8,599,009
CY2, Month 4	\$8,247,492
CY2, Month 5	\$7,895,975
CY2, Month 6	\$7,544,458
CY2, Month 7	\$7,192,941
CY2, Month 8	\$6,841,424
CY2, Month 9	\$6,489,907
CY2, Month 10	\$6,138,390
CY2, Month 11	\$5,786,872
CY2, Month 12	\$5,435,355

Month	Charge
CY3, Month 1	\$5,083,838
CY3, Month 2	\$4,764,241
CY3, Month 3	\$4,444,644
CY3, Month 4	\$4,125,047
CY3, Month 5	\$3,805,450
CY3, Month 6	\$3,485,854
CY3, Month 7	\$3,166,257
CY3, Month 8	\$2,846,660
CY3, Month 9	\$ 2,527,063
CY3, Month 10	\$2,207,466
CY3, Month 11	\$1,887,869
CY3, Month 12	\$1,568,272
CY4, Month 1	\$1,248,675
CY4, Month 2	\$1,144,619
CY4, Month 3	\$1,040,562
CY4, Month 4	\$936,506
CY4, Month 5	\$832,450
CY4, Month 6	\$728,394
CY4, Month 7	\$624,337
CY4, Month 8	\$520,281
CY4, Month 9	\$416,225
CY4, Month 10	\$312,169
CY4, Month 11	\$208,112

Month	Charge
CY4, Month 12	\$104,056

(e) **Co-location Termination Charges**

Unless transitioning to fully managed services under the Agreement, termination of the co-location services for a DIR customer, pursuant to **Section 11.4(d)(iii)**, **11.10(c)**, **15.11(g)**, **18.2(c)**, **20.2**, **20.3**, or **20.4** of the Agreement, may result in termination charges. Such termination charges shall consist of costs that are reasonably and actually incurred by Service Provider as a direct result of termination of the services (e.g. disassembling equipment cabinets, removing power whips, replacing floor tiles). If any of the co-location services for a DIR Customer are terminated without transition to fully managed services, DIR shall, at its own expense, remove or cause to be removed within 60 days of the termination effective date all co-located equipment applicable to the terminated services.

Upon termination of co-location services for a DIR Customer, Service Provider shall not be obligated to provide the Termination Assistance Services described in **Section 4.4** of the Agreement and **Exhibit 23**. Notwithstanding the foregoing, termination assistance services may be requested by DIR. Prior to the commencement of any co-location termination assistance services, Service Provider shall submit a Project proposal to DIR and obtain DIR's approval in accordance with **Section 4.7** of the Agreement. The termination assistance services charges shall be billed to DIR upon DIR's Acceptance of the completion of such services.

10.2 Termination Charges Calculation

- (a) If DIR terminates the Agreement in its entirety pursuant to **Section 11.4(d)(iii)**, **18.2(c)**, **20.2**, **20.3**, or **20.4** of the Agreement, the Termination Charges payable with respect to such termination shall be the sum of the applicable costs described in Section 10.1. If DIR terminates a Tower or otherwise terminates the Agreement in part pursuant to **Section 11.4(d)(iii)**, **18.2(c)**, **20.2**, **20.3**, or **20.4** of the Agreement, the Termination Charges payable with respect to such termination shall be the sum of the applicable costs described in Section 10.1, equitably reduced in proportion to the portion of the terminated Services.
- (b) If DIR terminates the Agreement in its entirety pursuant to **Section 11.10(c)** of the Agreement, the Termination Charges payable with respect to such termination shall be the sum of the following costs described in Section 10.1: (i) fifty percent (50%) of the applicable "Third Party Contracts and Service Provider Equipment" costs described in Section 10.1(a); (ii) fifty percent (50%) of the applicable "Employee Severance Expenses" costs

described in Section 10.1(b); (iii) one-hundred percent (100%) of the “Miscellaneous Termination Charges” costs described in Section 10.1(c); plus (iv) if applicable, one-hundred percent (100%) of the “Unisys” costs described in Section 10.1(d). If DIR terminates a Tower or otherwise terminates the Agreement in part pursuant to **Section 11.10(c)** of the Agreement, the Termination Charges payable with respect to such termination shall be the sum of the percentage amounts of the applicable costs described in the previous sentence, equitably reduced in proportion to the portion of the terminated Services.

- (c) If DIR terminates the Agreement in its entirety pursuant to **Section 15.11(g)** of the Agreement, the Termination Charges payable with respect to such termination shall be the sum of the following costs described in Section 10.1: (i) seventy-five percent (75%) of the applicable “Third Party Contracts and Service Provider Equipment” costs described in Section 10.1(a); (ii) one-hundred percent (100%) of the applicable “Employee Severance Expenses” costs described in Section 10.1(b); (iii) seventy-five percent (75%) of the “Miscellaneous Termination Charges” costs described in Section 10.1(c); plus (iv) if applicable, one-hundred percent (100%) of the “Unisys” costs described in Section 10.1(d). If DIR terminates a Tower or otherwise terminates the Agreement in part pursuant to **Section 15.11(g)** of the Agreement, the Termination Charges payable with respect to such termination shall be the sum of the percentage amounts of the applicable costs described in the previous sentence, equitably reduced in proportion to the portion of the terminated Services.
- (d) Service Provider shall invoice DIR for the Termination Charges owed Service Provider pursuant to clauses (a), (b) or (c) of this Section (as applicable) following the date that such Termination Charges are calculated pursuant to **Section 20.10(b)** of the Agreement, and such invoice shall be due and payable in accordance with **Article 12** of the Agreement. Service Provider shall prepare an itemized calculation of the potential Termination Charges and deliver it to DIR within thirty (30) days after Service Provider’s receipt of the notice of termination. Such calculation shall contain such documentation as is reasonably necessary to validate the potential Termination Charges. For the avoidance of doubt, DIR shall be entitled to audit the Termination Charges in accordance with **Section 9.9** of the Agreement.

10.3 Return of Prepayments

Any Charges, expenses, refunds, rebates, credits or other amounts prepaid by DIR which Service Provider has not (a) paid back to DIR or (b) applied to invoices presented for Services rendered prior to the date on which the relevant Termination Charges are calculated pursuant to **Section 20.10(b)** of the Agreement shall be, at DIR’s option, credited toward such

Termination Charges or paid to DIR to the extent such amounts are related to the Services implicated by the relevant termination event.

11. U.S. Dollars

All Charges are expressed and shall be paid in U.S. Dollars.

12. Charges for New Services

If and to the extent that DIR requests Service Provider to perform any New Services in accordance with the terms of the Agreement, the Charges shall be adjusted in accordance with the corresponding proposal submitted by Service Provider and approved by DIR in accordance with **Section 11.5** of the Agreement; provided, however that to the extent that any New Services are FTP-based, the Charges for such New Services shall be subject to the terms of Section 14, unless the Parties otherwise agree.

13. Project Activities

The Services shall include project activities consisting of discrete units of non-recurring work that do not constitute inherent, necessary or customary parts of the day-to-day Services, and that are not required to be performed by Service Provider to meet then existing Service Levels (other than Service Levels related to the performance of such project activities). The Parties acknowledge that there is limited data and trending information describing the historic level of project activity performed by DIR Personnel prior to the Commencement Date, although the Parties agree that a level of such activities were in fact undertaken in support of and as part of the activities replaced by the Services and the Service Provider shall provide a reasonably consistent level of project activity output (or capacity) relative to the Services, as or performed as projects and not as Projects. This Section describes the process by which the Parties intend to measure and analyze project activity on an ongoing basis to provide an appropriate basis for on-going management decision making and determination of circumstances in which project activity shall constitute Projects and for use by DIR for purposes of **Section 4.8** of the Agreement.

Beginning on the Commencement Date, Service Provider shall collect data relating to the performance of projects by Service Provider Personnel. Such data will, at a minimum, identify:

- (a) the number of hours Service Provider Personnel are engaged in project activity (recognizing that it may be impractical to track such activity below some reasonable level of discrete work units to be mutually agreed (e.g., forty (40) hours), but that tracking such activity at such levels may provide a useful proxy for the overall level of such activity);
- (b) the number of FTPs performing such work at such levels;

- (c) the skill set (classification title) of such personnel;
- (d) the types of projects being performed; and
- (e) (to the extent a project is intended to benefit a specific DIR Customer rather than the enterprise as whole) the applicable DIR Customer.

These data collection categories shall be modified or expanded over time to capture other pertinent data. Service Provider shall report such data to DIR on a monthly basis and shall work with DIR to categorize and analyze such data (including performing trend analyses) as requested by DIR.

The information reported by Service Provider (as described above) shall be collated and organized by Service Provider and used by the Parties to:

- (i) establish and confirm the volume, nature and timing of project activities performed by Service Provider Personnel; and
- (ii) establish trend lines, time of year profiles and the degree of variability of project activity, including appropriate adjustments to account for the change in volume and scope of the Services over the Term and Transition and Transformation-related activities during those periods.

Service Provider will work with DIR to assess the likely availability of resources (consistent with Service Provider's maintenance of a reasonably consistent level of project activity output (or capacity) relative to the Services) over a reasonable planning horizon (e.g., three months), taking into account the data collected and reported as described in this Section, the current level of project activity (identified by DIR Customer, to the extent applicable), DIR's and the Service Provider's reasonable forecast of near-term future activity, and DIR's decisions regarding prioritization of work as stated in **Section 4.8** of the Agreement.

In the event that the Parties determine that any project activity constitutes a Project in accordance with the foregoing due to the nature, volume or timing of such activity, the provisions of **Section 4.7** of the Agreement shall apply.

14. Full-Time Professional (FTP) Pricing Methodology

This Section applies to DIR's request for New Services FTP resources (e.g., New Services for which Service Provider may expressly charge DIR additional amounts, in each case only for which Service Provider is expressly entitled to additional compensation).

"FTP" shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) FTP.

Upon DIR's request for and approval of New Services performable by FTP resources as contemplated in **Section 4.7** of the Agreement, Service Provider shall

provide to DIR the number of FTPs in any month as requested and approved by DIR using the skill categories and applicable rates for billable FTPs identified in that certain Information Technology Staff Augmentation Contract (DIR-SDD-390) between DIR and Service Provider (as amended or replaced). As of the Effective Date, such rates are specified for all positions as time and materials rates. In such month, Service Provider shall provide the names, number of days assigned and actual hours of each Service Provider Personnel who recorded time on DIR’s account. Service Provider may not assign professionals to DIR’s account for performance of New Services on an FTP basis in less than full Business Day increments.

For the avoidance of doubt, Service Provider shall under no circumstances charge for FTP resources utilized to remedy Service Provider performance failures, and any such FTP resources so utilized shall be excluded from any calculation of Charges.

For New Services, each Resource Unit category for which FTPs are the applicable Resource Unit, the total Resource Unit usage during a given month shall be calculated by totaling the FTPs for all Service Provider Personnel who performed such New Services during such month. The number of such FTPs for each Service Provider Personnel during a given month shall be the lesser of the following:

- (a) Monthly Productive Hours Worked / [(Monthly Business Days Assigned / Monthly Business Days) x Standard Work Hours]; and
- (b) (Monthly Business Days Assigned / Monthly Business Days).

Examples	Number of FTPs
One person works 150 Monthly Productive Hours Worked in a given month in which the number of Monthly Business Days was 20; was a member of the Service Provider Personnel exclusively performing New Services priced on a FTP basis all 20 Business Days.	150 Monthly Productive Hours Worked 20 Monthly Business Days Assigned 20 Monthly Business Days in Month 150 Standard Work Hours $150 \div [(20/20) \times 150] = 1 \text{ FTP}$
One person works 200 Monthly Productive Hours Worked in a given month in which the number of Monthly Business Days was 21; was a member of the Service Provider Personnel exclusively performing New Services priced on a FTP basis all 21 Business Days	200 Monthly Productive Hours Worked 21 Monthly Business Days Assigned 21 Monthly Business Days in Month 150 Standard Work Hours $200 \div [(21/21) \times 150] = 1.33$, but limited to 21/21 or 1 FTP

Examples	Number of FTPs
<p>One person works 120 Monthly Productive Hours Worked in a given month in which the number of Monthly Business Days was 21; was a member of the Service Provider Personnel exclusively performing New Services priced on a FTE basis all 21 Business Days</p>	<p>120 Monthly Productive Hours Worked 21 Monthly Business Days Assigned 21 Monthly Business Days in Month 150 Standard Work Hours $120 \div [(21/21) \times 150] = .8 \text{ FTP}$</p>
<p>One person works 100 Monthly Productive Hours Worked in a given month in which the number of Monthly Business Days was 21; they began as a member of the Service Provider Personnel on the 11th Business Day of such month and exclusively performed New Services priced on a FTP basis for the balance of the month</p>	<p>100 Monthly Productive Hours Worked 11 Monthly Business Days Assigned 21 Monthly Business Days in Month 150 Standard Work Hours $100 \div [(11/21) \times 150] = 1.27$, but limited to 11/21 or .524 FTP</p>
<p>One person works 30 Monthly Productive Hours Worked in a given month in which the number of Monthly Business Days was 21; began as a member of the Service Provider Personnel on the 16th Business Day of such month and exclusively performed New Services priced on a FTP basis for the balance of the month</p>	<p>30 Monthly Productive Hours Worked 6 Monthly Business Days Assigned 21 Monthly Business Days in Month 150 Standard Work Hours $30 \div [(6/21) \times 150] = .70$, but limited to 6/21 or .286 FTP</p>
<p>One member of the Service Provider Personnel takes a vacation for the entire month, in which the number of Monthly Business Days was 22</p>	<p>0 Monthly Productive Hours Worked 0 Monthly Business Days Assigned 22 Monthly Business Days in Month 150 Standard Work Hours $0 \div [(0/22) \times 150] = 0 \text{ FTP}$</p>

Notwithstanding the foregoing, at the end of each calendar quarter, Service Provider shall calculate the total Monthly Productive Hours Worked for each of the Service Provider Personnel performing New Services priced on a FTP basis for the entirety of such calendar quarter. If the total Monthly Productive Hours Worked for any such Service Provider Personnel during such quarter is greater than or equal to 450, such individual shall be deemed to have worked three (3) FTPs over such calendar quarter, and Service Provider shall invoice DIR for the appropriate

number of FTPs such that the cumulative billing for such individual shall equal three (3) FTPs over such calendar quarter.

For example, if a Service Provider staff member assigned to DIR's account for an entire calendar quarter works .8 FTP in January, 1.0 FTP in February and .9 FTP in March, and such staff member's total Monthly Productive Hours Worked during such quarter equals 465 hours, then Service Provider shall bill DIR for 3 FTPs over such calendar quarter, not 2.7 FTPs (the actual total of FTPs), and the difference (.3 FTPs) will be added to the FTPs included in the Monthly Invoice for March (e.g., 1.2 FTPs in March, which equals .9 FTP for March plus .3 FTPs in accordance with the preceding paragraph).

If DIR requests the addition of FTPs with respect to New Services chargeable on an FTP basis, Service Provider shall use commercially reasonable efforts to provide such additional FTPs in accordance with DIR's request and authorization, but in any case within thirty (30) days of the date of DIR's request and authorization. Service Provider shall accommodate DIR's needs for shorter notification periods for ramp up of FTPs in accordance with the applicable project management and governance process set forth in the Policies and Procedures Manual. Service Provider's Charges shall reflect the addition of any FTP as of the date such FTP commences performance of New Services priced on an FTP basis, in accordance with the foregoing.

If DIR provides written request to reduce FTPs with respect to any New Services, Service Provider shall reduce such FTPs. Service Provider shall use commercially reasonable efforts to reduce the number of FTPs in accordance with DIR's request and authorization, but in any case, within sixty (60) days of the date of DIR's authorization. Unless otherwise approved by DIR, DIR shall not pay for any New Services priced on an FTP basis that extend beyond such sixty (60) day period. In the event that Service Provider redeploys any FTP prior to the date required in DIR's authorization, Service Provider's Charges shall reflect the reduction of the FTP and the resulting reduction in Charges as of the date such FTP is redeployed. DIR may change or cancel any authorization for the reduction of FTPs, without incurring any penalty or charge whatever in respect of any such reduction, or part thereof, if such notice is received by Service Provider prior to Service Provider making a commitment to another customer for the redeployment of such FTPs.

15. **Economic Change Adjustment**

Beginning on September 1, 2008 and each anniversary of such date thereafter during the Term (the "**ECA Adjustment Date**"), Service Provider will calculate and apply an adjustment (an "**Economic Change Adjustment**" or "**ECA**") to the Billable Resource Units set forth on the "Inflation Sensitivity" tab of **Attachment 4-A** (each, an "**Inflation Sensitive Charge**") based upon increases in the rate of inflation. The ECA for each Inflation Sensitive Charge will be determined within five (5) days following each ECA Adjustment Date using the ECA Factor formula described below.

DIR and Service Provider agree to use the July 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 “**Price Index**”) for purposes of determining the rate of inflation. The base year shall be the Price Index published in July 2007 (the “**Base Year Index**”). In the event such Price Index is no longer published or its content and format is substantially changed, the Parties will 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, DIR and Service Provider will continue to use the Price Index, but will convert the Base Year Index to the new base year by using an appropriate conversion formula.

Service Provider will determine the change in the rate of inflation by comparing the Base Year Index to the actual Price Index published during the July immediately preceding the applicable ECA Adjustment Date (the “**Current Index**”). If the Current Index is equal to or less than the Base Year Index, then no ECAs shall be owed hereunder during the Contract Year that begins on the applicable ECA Adjustment Date (the “**ECA Adjusted Year**”). If the Current Index is greater than the Base Year Index, then ECAs shall be owed Service Provider during the ECA Adjusted Year as calculated in accordance with this Section. For the avoidance of doubt, there will be no adjustments for deflation below the Base Year Index.

The Adjustment Factor for purposes of determining the ECA Factor shall be calculated as follows:

Adjustment Factor		
Adjustment Factor	=	<p>$I + [0.5 \times (\text{Current Index} - I)]$, where:</p> <p style="text-align: center;">$I = 1.03^N \times \text{Base Year Index}$</p> <p>and</p> <p>N = 1 for the adjustment to take place September 1, 2008; 2 for the adjustment to take place September 1, 2009; 3 for the adjustment to take place September 1, 2010; 4 for the adjustment to take place September 1, 2011; 5 for the adjustment to take place September 1, 2012; and 6 for the adjustment to take place September 1, 2013.</p>

On or before the end of the fifth (5th) Contract Year, Service Provider shall propose for DIR’s consideration a revised Adjustment Factor calculation for purposes of calculating applicable ECAs (if any) for any Renewal Term.

Inflation sensitivity percentages are set forth on the “Inflation Sensitivity” tab of **Attachment 4-A** that reflect the impact of inflation, by Contract Year, on each Inflation Sensitive Charge. The ECA Factor for each Inflation Sensitive Charge owed Service Provider during an ECA Adjusted Year shall be calculated as follows:

ECA Factor		
ECA Factor	=	Adjustment Factor x applicable inflation sensitivity percentage set forth on the “Inflation Sensitivity” tab of Attachment 4-A for the Inflation Sensitive Charge

The ECA for each Inflation Sensitive Charge shall be determined each month that such Inflation Sensitive Charge is owed Service Provider during the ECA Adjusted Year, and shall equal the product of the following calculation:

ECA		
ECA	=	{ applicable ECA Factor x (Inflation Sensitive Charge +/- any ARC/RRC for the relevant month) }

The total ECA that shall be owed Service Provider for each month of the ECA Adjusted Year shall equal the sum of the individual ECAs for the Inflation Sensitive Charges for the Services that were performed during such month. Such total amount and the individual ECAs comprising such total amount shall be included as separate line items on each relevant Monthly Invoice.

16. Chargeback

For all Base Charges, One-Time Charges, New Services, and all other services for which Service Provider is authorized to charge separately by DIR, Service Provider will provide lists of Charges by DIR Customer in both hard and soft copy that conforms with the requirements of **Section 12.1** of the Agreement. DIR will provide Service Provider with the chargeback unit rate methodology and Service Provider will make available to DIR and DIR Customers through the Portal the monthly chargeback volumes, rates, and extended price per Resource Unit per DIR Customer. Except for the ASU Allowance, it is anticipated that the DIR chargeback methodology will include the use of applying the ARC/RRC rates against the total volume per DIR Customer plus the allocation of the remaining fixed cost and One-Time Charges on a weighted average basis. Service Provider will implement chargeback in a phased approach as described in **Exhibit 20-A**.

At a minimum, DIR requires Service Provider to provide detailed billing data by DIR Customer, by project, by Resource Unit, and by such factors as requested by DIR, including the ability to track usage by major Application and Authorized

User. DIR will be responsible for providing Service Provider with the factors to track, as well as the methodology to be used to indicate usage among such factors. Service Provider will provide detailed billing information available online in a database that lends itself to searching, ad hoc reporting, and the ability to export data. Service Provider will provide billing detail utilizing the cost allocation templates provided by DIR.

Service Provider will develop and implement changes to comply with OMB Circular A-87 based upon chargeback requirements provided by DIR. The chargeback unit rate methodologies may be adjusted as necessary to meet federal approval or to better facilitate effective and efficient charging of the Services to DIR and DIR Customers. It is anticipated that the chargeback methodologies generally fall into three categories.

For most billable resource units, the chargeback methodology will distribute charges to the benefiting programs based upon proportionate usage. This approach requires that appropriate utilization data be captured for each of these resource units and used to distribute charges to the benefiting programs identified by each DIR Customer.

For certain billable resource units, such as One-Time Charges for Transition, it may not be possible to determine utilization attributable to specific DIR Customers. In this case, the charges associated with each milestone are to be amortized and then distributed to the DIR Customers in the following manner. Charges directly attributable to a DIR Customer should be allocated to that DIR Customer. Charges that are not attributable to a specific DIR Customer should be allocated using cost data from the prior month. Mainframe related charges should be allocated based on each DIR Customer's Mainframe related costs as a proportion of total Mainframe related costs. Similarly, Server related charges should be allocated based on each DIR Customer's Server related costs as a proportion of total Server related costs. Finally, charges which cannot be attributable solely to a DIR Customer or as a Mainframe or Server related cost should be allocated based on each DIR Customer's total costs as a proportion of the total costs for all DIR Customers. Service Provider will allocate the chargeback for the ASU Billable Charges as instructed by DIR.

The Service Provider will allocate to DIR Customers the Hardware Services Charge based upon the proportion that each Server instance represents of the total Server capacity.

Service Provider will provide detailed billing data by DIR Customer for the co-location services monthly recurring charges, one-time charges for co-location transition services, one-time charges for migration services, and any allocation of build-out charges.

17. Financial Planning and Forecasting

Service Provider shall provide DIR with a rolling quarterly forecast of Resource Unit usage trends by Resource Unit for the four (4) quarters immediately following the quarter in which each such forecast is provided. Such forecasts shall be delivered by Service Provider to DIR at least thirty (30) days prior to the end of each calendar quarter through the Portal.

Service Provider shall provide DIR with a historical view of actual billed Resource Unit volumes per month as set forth in a standard report - the form and substance of which shall be approved by DIR within sixty (60) days after the Effective Date. This report shall provide a thirteen (13) month rolling view of billed Resource Unit volumes for the thirteen (13) months immediately prior to the month in which such report is provided.

18. Pass-Through Expenses

Service Provider shall administer and invoice DIR for Pass-Through Expenses identified on **Attachment 4-G** in accordance with **Section 11.2** of the Agreement and pursuant to the applicable procedures in the Policies and Procedures Manual. No new Pass-Through Expenses may be added without DIR's prior consent, which it may withhold in its sole discretion. The administration/processing of Pass-Through Expenses by Service Provider is included in the Monthly Base Charge

19. Managed Third Parties

The Parties' respective financial responsibilities for the Third Party Contracts of Managed Third Parties is provided in **Section 6.6** of the Agreement. In accordance with the foregoing, unless otherwise specified in **Exhibit 22** or agreed in writing by the Parties, Service Provider shall be responsible for the payment of all costs and charges associated with the provision of in-scope services by Managed Third Parties. In the case of Managed Third Parties for which the charges are not included in the Charges (as provided in **Exhibit 22**), the invoices of such Managed Third Parties shall be treated as Pass-Through Expenses in accordance with Section 18.

20. DIR Customer Data Center Space and DIR Customer Remote Facilities

Each DIR Customer will provide Service Provider with Data Center space in the DIR Customer Data Center(s) identified in the relevant Transformation Plan for such DIR Customer during the applicable period of time set forth in such plan. For the avoidance of doubt, the previous sentence does not apply to the DIR Consolidated Data Centers. After the expiration of each such applicable time period, DIR may charge Service Provider the fair market value rent for the floor space in such DIR Customer Data Centers that Service Provider continues to use, except if and to the extent Service Provider's failure to achieve the targeted Server consolidation (as contemplated by the Resource Baselines for the Application Server Complexity Resource Unit Category and the capital plan shown in the "Server Refresh" tab of **Attachment 4-A**) is excused pursuant to Section 5.2(f).

Notwithstanding the foregoing, Service Provider will vacate such space by the third (3rd) anniversary of the Commencement Date, except for DIR Customer Data Center space or DIR Customer Remote Facilities that Service Provider demonstrates to DIR are essential to provide connectivity or on-site Services.

21. Adjustments to Charges

Annual Base Charges, ARC rates and RRC rates are valid within the ranges associated with each of the Resource Baseline volumes, as set forth in **Attachment 4-A**. If any actual Billable Resource Unit count is above or below this range for six (6) consecutive months, then the Annual Base Charge, Resource Baseline, ARC rate and RRC rate for that Billable Resource Unit shall be equitably adjusted by the Parties, provided that any such adjustments to the Annual Base Charge, ARC rate and RRC rate will reflect the different percentage of fixed versus variable costs resulting from the new Resource Baseline. Notwithstanding the previous sentence, any adjustments to the Charges pursuant to this Section shall not (a) be made as a result of any temporary or seasonal fluctuations in the volume of the Services and (b) result in Charges being higher than such Charges would have been if the then-current ARC rates and RRC rates had been applied.

22. True Up of Software AG Estimates

The Software AG Licenses are designated as DIR Enterprise License Software. A one-time true-up to determine the total annual amount of Software AG Fees payable by Service Provider shall not occur.

23. Credit for Seconded Employees

Service Provider shall provide DIR with a credit against the Charges due and owing Service Provider on each Monthly Invoice that is equal to the sum of the salaries paid and benefit costs incurred by the State in respect of the Seconded Employees. If a Seconded Employee terminates his or her employment with the State effective as of any day other than the last day of a month, then the portion of the credit described in the preceding sentence that is applicable to such individual shall be prorated based on such effective date of termination. DIR shall notify Service Provider of the amount of such credit within five (5) days following the end of each month during which any Seconded Employee remains employed by the State and will provide Service Provider with data supporting DIR's calculation of such amount as reasonably requested by Service Provider. Notwithstanding the provisions of this Section, the total amount of the credits provided by Service Provider to DIR under this Section shall not exceed One Hundred Twenty-Five Thousand Dollars (\$125,000.00).

24. Northrop Grumman Equipment and Assignable Leases

24.1 Buyout of Northrop Grumman Unassignable Leased Equipment

On May 30, 2008, Service Provider and DIR agreed upon the price for the Service Provider's buyout from Northrop Grumman of certain Equipment and Software ~~that is~~ leased to Northrop Grumman under leases that were not assignable to Service Provider and which were used by Northrop Grumman for the provision of services to DIR and the DIR Customers. As part of that agreement, responsibility for and payment of all sales, use and other similar taxes arising out of or in connection with such transaction remained with Service Provider. Service Provider submitted to DIR the March 2008 invoice which included the total amount agreed to by Service Provider and DIR pursuant to this Section. The payment by DIR represents the final amount due to Service Provider and Service Provider shall be responsible for any necessary Equipment or Software discovered after May 29, 2008 that is leased to Northrop Grumman under leases that are not assignable to Service Provider and which were used by Northrop Grumman for the provision of services to DIR and the DIR Customers.

Additionally, on May 30, 2008, Service Provider and DIR agreed upon the price for Service Provider's purchase of certain Equipment leased to Northrop Grumman under leases that ended August 31, 2007, and which were used by Northrop Grumman for the provision of services to DIR and the DIR Customers. As part of that agreement, responsibility for and payment of all sales, use and other similar taxes arising out of or in connection with such transaction remained with Service Provider. Service Provider submitted to DIR the February 2008 invoice which included the total amount agreed to by Service Provider and DIR pursuant to this Section. The payment by DIR represents the final amount due to Service Provider and Service Provider shall be responsible for any necessary Equipment discovered after May 29, 2008 that is owned by Northrop Grumman and which were used by Northrop Grumman for the provision of services to DIR and the DIR Customers.

24.2 Purchase of Northrop Grumman Owned Equipment

On or prior to September 1, 2007, Service Provider shall, at the price agreed upon by DIR and Northrop Grumman, purchase certain Equipment that is owned by Northrop Grumman and which is used by Northrop Grumman for the provision of services to DIR and the DIR Customers. Service Provider shall be responsible for and shall pay all sales, use and other similar taxes arising out of or in connection with such transaction. Service Provider shall invoice DIR and DIR shall reimburse Service Provider for the total amount actually paid by Service Provider pursuant to this Section over two (2) equal annual installments. Such installment amounts shall be included on the Monthly Invoices submitted by Service Provider for Services provided during September 2007 and September 2008.

24.3 True-Up of Northrop Grumman Assignable Leases

The Charges identified in the “NG Lease True-Up” tab of **Attachment 4-A** (the “**Impacted Equipment Charges**”) are based in part upon Service Provider’s estimate as of the Effective Date of the amounts payable under the Equipment leases that are to be assigned by Northrop Grumman to Service Provider other than the leases for the Application Servers and Utility Servers identified on **Attachment 12-B** (the “**NG Lease Payments**”). Set forth on **Attachment 4-A** is the estimated total annual amount of the NG Lease Payments which are included in the Impacted Equipment Charges. During the ninety (90) days following the Commencement Date, Service Provider shall conduct a one-time true-up to determine the total annual amount of NG Lease Payments actually payable by Service Provider. Upon DIR’s approval of such actual amounts, the Annual Base Charge, ARC rate and RRC rate for each Impacted Equipment Charge shall be increased or decreased for each Contract Year by adding or subtracting (as applicable) amounts that reflect the amount of the variance between the NG Lease Payments actually payable by Service Provider for the relevant Contract Year and the estimate of such amount set forth on **Attachment 4-A**. The amount of each such adjustment shall be in proportion to the portion of the NG Lease Payments that are included in the applicable Annual Base Charge, ARC rate and RRC rate for each Impacted Equipment Charge being adjusted. Any adjustments made pursuant to this Section shall be effective prospectively on and after September 1, 2007.

25. Attachments

The following Attachments are hereby incorporated into and deemed part of this Exhibit, and all references in the Agreement to this Exhibit shall be read and understood to include the following Attachments:

- (a) **Attachment 4-A**, Service Provider Pricing Forms;
- (b) **Attachment 4-B**, Financial Responsibility/Asset Allocation Matrix;
- (c) **Attachment 4-C.1**, Financial Base Case;
- (d) **Attachment 4-C.2**, Financial Base Case Assumptions;
- (e) **Attachment 4-D**, Resource Baselines;
- (f) **Attachment 4-E**, Server Complexity Matrix;
- (g) **Attachment 4-F**, Form of Invoice;
- (h) **Attachment 4-G**, Pass-Through Expenses;
- (i) **Attachment 4-H**, Service Provider Pricing Forms – Add On Services;
- (j) **Attachment 4-I**, Application Server Urban Centers;

- (k) **Attachment 4-J.1**, Service Provider Pricing Forms - Co-location Services;
- (l) **Attachment 4-J.2**, Attachment 4-J.2 – Co-location Services Baselines; and
- (m) **Attachment 4-X**, Transition and Transformation Milestones.