|  |
| --- |
| Exhibit EFeesForJudicial Council of California(Judicial Council) |

**1.0 Introduction**

This Exhibit E provides the basis for determining the Fees applicable to the Services under the Agreement and describes the processes and methodologies as to how the Fees shall be calculated.

**2.0 Resource Units, Baseline and Measurement**

**2.1 Resource Units`**

Resource Unit(s) (“RU(s)”) for each Service Area are the components of the Service Area to be priced as contained in Appendix E.1. A RU is a unit of resource (e.g., virtual Machines for Data Center Services) for which the Judicial Council and the Vendor have established a monthly baseline quantity, monthly RU Unit Price, and a monthly baseline fee. Each monthly RU baseline fee is calculated by multiplying each RU baseline quantity by its monthly RU Unit Price. The fixed RU Unit Prices are defined as all direct variable and fixed cost components of the Vendor’s charges, including all associated start-up costs associated with that RU (i.e., installation and setup associated with the Resource Unit) and costs associated with the Services defined in ***[Statement of Work – to be determined]***. The monthly Baseline Fee for each RU is contained in this Exhibit E as Appendix E. 1.

***2.1.1 RUs Measurement***

The Vendor will measure, track, retain measurement data in a repository, validate and report on the Judicial Council’s usage of RUs for each RU defined in this Exhibit E as Appendix E.1. The Resource Measurements require the Judicial Council’s prior express written approval and may be updated from time to time, subject to the Judicial Council’s prior written approval. The Vendor will not alter its measurement process, procedures, data measurement, data collection or reporting in connection with Resource Measurements without the Judicial Council’s prior written approval. The Vendor shall provide the Judicial Council with ongoing reporting of actual RU usage for each RU for each month after the Effective Date of the Agreement. The RU usage amount shall be based on an RU quantity measurement taken on the last Friday of each calendar month.

***2.1.2 Baseline Quantity Adjustments***

***Inventory Adjustment***

Within the last two months of each Contract Year, the Vendor will conduct an inventory of all managed Assets, including the RUs with baseline quantities. This inventory will be a confirmation by both Parties of the actual existence of a managed asset, a profile of its attributes, and the confirmation that it is designated as a managed asset as part of the Services. Baseline quantities will be adjusted to reflect the relevant outcome of such inventory. If the adjusted baseline quantity is greater than or less than five percent (5%) of the quantities identified before the inventory, then the Vendor shall provide the Judicial Council with a unit pricing adjustment for the applicable RU that reflects the actual quantities identified in the inventory. Any changes to the inventory, including the RUs with baseline quantities, shall be subject to the Section 25.36 Amendments provision of the Agreement.

**3.0 Fees**

*See* Appendix E. 1 for each fee type described below.

**3.1 Recurring Fees**

“Recurring Fees” pertain to the ongoing fees for Services in accordance with the Baseline Fees that are established as of the Effective Date of the Agreement and adjusted thereafter in accordance with the Baseline Quantity Adjustment provisions of this Agreement.

**3.2 Baseline Fees**

“Baseline Fees” for each Service Area are the sum of the monthly RU Baseline Fees set forth in Appendix E. 1.

**3.3 Annual Service Fees**

“Annual Service Fees” for each Service Area are monthly RU Baseline Fees multiplied by twelve.

**3.4 Variable Services Fees**

The Variable Services Fees sections below describe the methodology for compensation for Actual Service Area Fees above or below the Baseline Fees Deadband. Actual Service Area Fees are defined as the sum of monthly actual RU usage multiplied by the RU Unit Price.

The Baseline Fees Deadband consists of the Additional Resource Charges (ARCs) Deadband and the Reduced Resource Credits (RRCs) Deadband as defined below.

***3.4.1 ARC Deadband***

The ARC Deadband is expressed as a percentage amount and is set forth in the ARC Deadband Table that is provided for each Service Area. For the purposes hereof, "ARC Deadband Percentage" means the percentage above the Baseline Fee within which ARCs will not apply, and above which ARCs will apply.

***3.4.2 ARC Deadband Table***

The following ARC Deadband Table identifies the factors that are to be used in calculating ARCs for each of the Service Areas. The ARC Deadband is calculated by multiplying the Baseline Fee by the sum of 1.00 plus the ARC Deadband percentage. For example, if the ARC Deadband percentage is 5%, then the ARC Deadband is equal to Baseline Fee x (1.00 + 0.05).

**Table 2. ARC Deadband Table**

|  |  |
| --- | --- |
|  | **ARC Deadband** |
|  | **% of Baseline** |
| **Service Area** |  |
|  |  |
| **Data Center Operational Services** | 5% |
|  |  |
| **Data Network Management Services** | 5% |
|  |  |
| **IT Service Management** | 5% |
|  |  |

***3.4.3 ARCs Calculation***

The Vendor will compare the Actual Service Area Fees during the applicable calendar month against the ARC Deadband Baseline for such Service Area. Actual Service Area Fees are defined as the sum of monthly actual RU usage multiplied by the RU Unit Price. If the Actual Service Area Fees for such calendar month do not exceed the ARC Deadband Baseline for the Service Area for such calendar month, there will be no ARC charges imposed for such calendar month. If the Actual Service Area Fees exceed the ARC Deadband Baseline for such period, the Judicial Council will then pay the Vendor, in addition to the Service Area Baseline Fee, an ARC charge equal to the difference between the total Actual Service Area Fees and the ARC Deadband amount.

***3.4.4 Reduced Resource Credits (RRCs)***

The RRC Deadband is expressed as a percentage amount and is set forth in the RRC Deadband Table that is provided for each Service Area. For the purposes hereof, the RRC Deadband means the percentage below the baseline quantity within which RRCs will not apply, and below which RRCs will apply.

***3.4.5 RRC Deadband Table***

The following RRC Deadband Table identifies the factors that are to be used in calculating RRCs for each of the Service Areas. The RRC Deadband is calculated by multiplying the Baseline Fee by the sum of 1.00 less the RRC Deadband percentage. For example, if the RRC Deadband percentage is 5%, then the RRC Deadband is equal to Baseline Fee x (1.00 - 0.05).

**Table 3. RRC Deadband Table**

|  |  |
| --- | --- |
|  | **RRC Deadband** |
|  | **% of Baseline** |
| **Service Area** |  |
|  |  |
| **Data Center Operational Services** | 5% |
|  |  |
| **Data Network Management Services** | 5% |
|  |  |
| **IT Service Management** | 5% |
|  |  |

***3.4.6 Reduced Resource Charges (RRCs) Calculation***

The Vendor will compare the Actual Service Area Fees during the applicable calendar month against the RRC Deadband Baseline for such Service Area. If the Actual Service Area Fees for such calendar month are not less than the RRC Deadband Baseline for the Service Area, then there will be no RRC credits provided for such calendar month. If the Actual Service Area Fees are less than the RRC Deadband Baseline for such period, the Vendor will give Judicial Council an RRC credit against current or future fees (or, if no future fees will be due, make payment to Judicial Council) that is equal to the difference between the total Actual Service Area Fees and the RRC Deadband amount.

The following table provides an example of the ARC and RRC calculation:

**Table 4. ARC and RRC Calculation**

|  |  |
| --- | --- |
| **Description** | **Calculation Formula** |
| Baseline Fee (See Section 3.2 for reference) | $334,000 |
| ARC Deadband | $334,000 x 1.05 = $350,700 |
| RRC Deadband | $334,000 x .95 = $317,300 |
| Actual Service Area Fees | Sum of (actual RU usage x RU Unit Price) |
| Monthly Invoiced Fees1. If monthly Actual Service Area Fees > ARC Deadband:
 | (Monthly Actual Service Area Fees – ARC Deadband) + Baseline Fee($355,000 - $350,700) + $334,000 = $338,300 |
| 1. If monthly Actual Service Area Fees < RRC Deadband:
 | Baseline Fee - (RRC Deadband - monthly Actual Service Area Fees)$334,000 - ($317,300 - $315,000) = $331,700 |
| c) If monthly Actual Service Area Fees < ARC Deadband and > RRC Deadband | Baseline Fee $334,000 |

***3.4.7 ARCs and RRCs Measurement Period and Reconciliation True-Up***

The period for determining ARCs and RRCs will be performed on a calendar month basis after the Effective Date of the Agreement for each applicable Service Area for which the Judicial Council receives Services.

At the end of every calendar month, the Judicial Council and the Vendor shall reconcile the Judicial Council’s Actual Service Area Fees for such calendar month against the Baseline Fees by Service Area applicable to such calendar month, and the Vendor shall calculate ARCs and/or RRCs, as applicable for each Service Area. The Vendor shall ensure that all actual usage of RUs is measured and reported in accordance with the Resource Measurement provisions of this Exhibit. The Judicial Council shall pay ARCs and the Vendor shall credit (or refund if the Term has ended) RRCs in accordance with the terms and conditions of the Agreement.

The Vendor shall complete its analysis and reporting of actual RU usage, and Actual Service Area Fees, to the Judicial Council no later than fifteen (15) days following the end of the calendar month in which the Services were delivered. In the event that Vendor discovers inaccuracies in the measurement or reporting of actual RU usage, or Actual Service Area Fees, which discovery occurs after the thirty (30) day period following the end of such calendar month, the maximum amount of ARCs allowable will be limited to the quantities that had already been reported by the Vendor and received by the Judicial Council during the thirty (30) day period following the end of the calendar month.

***3.4.8 ARCs Ceiling and RRCs Floor***

"ARC Ceiling" means the maximum percentage that the Vendor may charge ARCs above the ARC Deadband Baseline. "RRC Floor" means the minimum percentage that the Vendor may credit RRCs below the RRC Deadband Baseline. ARC Ceilings and RRC Floors are established to provide a means to evaluate and adjust pricing if there are dramatic shifts in Actual Service Area Fees over a sustained period. In the event that the Judicial Council Actual Service Area Fees are greater than the ARC Ceiling or less than the RRC Floor for a period of three (3) consecutive months, the Parties agree to mutually review and renegotiate applicable Baselines Fees. The following ARC Ceiling and RRC Floor Table identifies the factors that are to be used in calculating whether Actual Service Area Fees has exceeded those limits.

The ARC Ceiling is to be calculated by multiplying the ARC Deadband by the sum of 1.00 plus the ARC Ceiling percentage. The RRC Floor is to be calculated by multiplying the RRC Deadband by the sum of 1.00 less the RRC Floor percentage.

Upon the third consecutive month that the Judicial Council Actual Service Area Fees is greater than the ARC Ceiling or lower than the RRC Floor then, at the Judicial Council’s sole election, the occurrence of such event shall constitute written notice to the Vendor of the Judicial Council’s intent to renegotiate the Baseline Fee, and the parties shall have sixty (60) days there from to reach mutual agreement on an adjustment to such Baseline Fee. If no agreement is reached within the aforementioned sixty (60) day period, then the Baseline Fees for the affected RUs, shall be reduced by 10% from its current value until such time as agreement is reached. Upon agreement any adjustments to Baseline Fees shall be retroactive to the date of the above-mentioned event and shall take into account the 10% step-down provision in this Section if utilized.

Notwithstanding the foregoing, until a mutual agreement is reached by the parties on making adjustments to the Baseline Fees referenced above, the then-existing ARCs and RRCs will continue in effect.

**Table 5. ARC Ceiling and RRC Floor Table**

|  |  |  |
| --- | --- | --- |
| **Factor** | **ARC Ceiling** | **RRC Floor** |
| **Factor basis** | **% above ARCDeadband** | **% below RRCDeadband** |
| **Service Area** |  |  |
| **Data Center Operational Services** | 20% | 20% |
|  |  |  |
| **Data Network Management Services** | 20% | 20% |
|  |  |  |
| **IT Service Management** | 20% | 20% |
|  |  |  |
|  |  |  |
|  |  |  |

**3.5 Hourly Service Fees**

***3.5.1 Hourly Services***

If the Judicial Council requests that the Vendor supply Other Services, such Other Services will be provided by the Vendor as set forth in this Section. The Vendor may not perform Other Services without the Judicial Council’s express written approval of such Other Services that shall be granted through the Change Control Procedures, as set forth in Article 9 of the Agreement.

***3.5.2 Other Services Fees***

When the Vendor performs Other Services, the Judicial Council will pay the Vendor a pre-negotiated fixed fee amount for the Vendor’s actual hours or months expended in performing such Services at the mutually agreed upon hourly or monthly Services Rates as set forth in the applicable Rate Schedule Table included in Appendix E. 1 or as mutually agreed.

***3.5.3 Other Services Rate Calculation***

For hourly rates, the Vendor will charge the Judicial Council for the actual number of hours expended by the Vendor, rounded up to a quarter-hour, multiplied by the applicable Other Services rate. Any additional rates which include overtime or other special considerations are not applicable.

For monthly rates the Vendor will charge the Judicial Council for the actual number of months expended by the Vendor multiplied by the applicable Other Services rate. Rates for partial months will be prorated based on the percentage of the month expended.

**4.0 Referenced Exhibits and Appendices**

| Appendix | Description |
| --- | --- |
| Appendix E.1 | Fees |
| Attachment/Exhibit | Description |
| Exhibit K | Relationship Management and Contract Change Management |
|  |  |

**Appendix E.1**