

RESOLUTION NO. 2019 - 67

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO PURCHASE AND TO EXECUTE AN AGREEMENT FOR KRONOS WORKFORCE DIMENSIONS SOFTWARE**

**RECITALS**

**WHEREAS**, the County seeks to purchase Kronos Workforce Dimensions Software for timekeeping and attendance; and

**WHEREAS**, in accordance with section 302.6.5.4 of the St. Johns County Purchasing Manual, entitled "Piggyback or Cooperative Purchasing", the County is authorized make said purchase subject to the terms and conditions of US Communities contract #14-JHR-003 ("Contract"); and

**WHEREAS**, purchase of the software will be funded by Personnel Services; and

**WHEREAS**, the County has reviewed the terms, provisions, conditions and requirements of the Contract and finds that entering into the Contract for the purchase of the budgeting and planning software serves a public purpose.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to purchase Kronos Workforce Dimensions software.

Section 3. In accordance with the terms and conditions of the Contract, the County Administrator, or designee, is further authorized to execute an agreement in the amount of \$136,800.00 for the purchase of Kronos Workforce Dimensions software from Kronos.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 5 day of March, 2019.

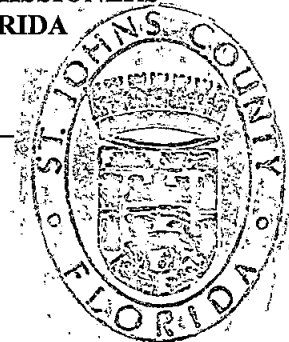
**ATTEST:** Hunter S. Conrad, Clerk

By: Pam Halterman  
Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

By: Paul M. Waldron  
Paul M Waldron, Chair

RENDITION DATE 3/8/19



**ORDER FORM**

Order Type: Quote

Date: 12/7/2018

Quote#: Q-14276

Expires: 1/5/2019

Sales Executive: Nikki Kirkpatrick

Bill To Contact: Sarah Taylor

Bill To: COUNTY OF ST JOHNS  
500 SAN SEBASTIAN VW  
SAINT AUGUSTINE, FL 32084-8686 USA

Ship To Contact: Sarah Taylor

Ship To: COUNTY OF ST JOHNS  
500 SAN SEBASTIAN VW  
SAINT AUGUSTINE, FL 32084-8686 USA

Ship to Phone: (904) 827-6888

Contact: Sarah Taylor

Email: staylor@sjcfl.us

Currency: USD

Customer PO Number:

Solution ID: 6160045

Initial Term: 36 months

Billing Start Date: 90 Days from Execution of Order Form

FOB: Shipping Point

Ship Method:

Freight Term: Prepay &amp; Add

Renewal Term: 12 months

Payment Term: Net 30 Days

**Order Notes:**

The fees for the Applications are invoiced 60 days prior to the Billing Start Date.

The Scope Statement attached to this Order Form, and incorporated herein by reference, is a summary of the Implementation Services to be provided by Kronos for the Implementation Services Fees outlined in this Order Form.

**SaaS Services**

Billing Frequency: Annual in Advance

Product Name	Quantity	PEPM	Monthly Price
WORKFORCE DIMENSIONS TIMEKEEPING HOURLY	950	USD 5.00	USD 4,750.00
WORKFORCE DIMENSIONS TIMEKEEPING SALARIED	250	USD 2.50	USD 625.00
WORKFORCE DIMENSIONS ABSENCE	1,200	USD 1.25	USD 1,500.00
<b>Monthly Total</b>			<b>USD 6,875.00</b>

**Education Services**

Billing Frequency: Invoiced Upon signature of the Order form

Item	Quantity	Total Price
KnowledgeMap Live SMB 1st Year Training	10	USD 0.00
KnowledgeMap Live SMB Subscription	5	USD 1,800.00
<b>Total Price</b>		<b>USD 1,800.00</b>

**One Time Setup Fees**

Billing Frequency: Fixed Fee 100% at signing

Item	Total Price
One Time Setup Fees	USD 43,500.00

**A La Carte Services**

Billing Frequency: Fixed Fee 100% at signing

Item	Billing Role	Quantity	Unit Price	Total Price
Onsite Assessment	Grouped	1	USD 4,500.00	USD 4,500.00
Solution Quality Assurance - Boot Camp	Grouped	1	USD 4,500.00	USD 4,500.00
				<b>USD 9,000.00</b>

**Quote Summary**

Item	Total Price
Total Monthly SaaS and Equipment Rental Fees	USD 6,875.00

Item	Total Price
Purchased Training	USD 1,800.00

Item	Total Price
Total One Time Fees	USD 52,500.00

**COUNTY OF ST JOHNS**

**Kronos Incorporated**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Invoice amount will reflect deposit received. All professional services are billed as delivered with a payment term of Net Upon Receipt. Unless otherwise indicated above, this order is subject to the attached terms and conditions which the customer acknowledges have been read. THIS ORDER IS SUBJECT TO APPLICABLE TAXES. THE TAX AMOUNT SHOWN ON THIS ORDER IS ONLY AN ESTIMATE. THE ACTUAL TAX AMOUNT TO BE PAID BY CUSTOMER WILL BE SHOWN ON CUSTOMER'S INVOICE. Shipping and handling charges will be reflected on the final invoice.



# Scope Statement

## Purpose and Overview of Scope Statement

This Scope Statement outlines the scope of services to be provided by Kronos for the Setup Fees indicated on the applicable Order Form, to Customer Name ("Customer") related to the Core entitlements, Value-add entitlements, and/or Optional Services contained in this document. Our Professional Services engagements are designed to help our Customers successfully deploy Core entitlements, as well as easily layer Value-add entitlements and functionality over time based on your priorities, schedule, and resources.

The Kronos Workforce Dimensions™ Scope Statement described herein is fixed scope based and is subject to the terms and conditions governing your Kronos Workforce Dimensions Agreement (the "Agreement"). Unless otherwise defined herein, words and expressions defined in the Agreement shall have the same meaning in this Scope Statement.

## Your Workforce Dimensions Solution

Core Entitlements	On-boarding Type	Number of Employees
Workforce Dimensions Timekeeping Hourly	Net New	950
Workforce Dimensions Timekeeping Salaried	Net New	250
Value-add Entitlements		
Workforce Dimensions Absence	Net New	1200

## Customer Name and Kronos Collaboration

A successful project requires close collaboration between Customer Name and Kronos. The Kronos Professional Services team is equipped to help keep you on target for meeting project milestones and requirements, as well as to assist you in configuring and deploying the Kronos Workforce Dimensions solution in support of your organization's business outcomes. Your organization's participation and commitment to the project goals and timeline are critical to ensure success.

The Kronos onboarding process is driven by value and enabling business outcomes. This approach is focused on accelerated time to value using tools and techniques, such as industry and region-specific configuration, Kronos process recommendations, dynamic documentation, and accelerated testing processes. All project information is available online to allow project team members access to project status, contact information, issues log, test case tracking, training plan, etc. at any time.

The onboarding process will be completed in three iterative phases: Initiate, Collaborate, and Adopt. Please review the Kronos Paragon™ Overview for the project life cycle, roles & responsibilities in more detail in the following link:

[Kronos Paragon Overview](#)

## Project Overview

### Project Management services include:

- Kronos Project Manager working with Customer Project Manager to jointly run the project.
- Transition to Kronos Global Support after the first deployment go-live.
- Maintain an online project workspace, work plan, issues and risks management, weekly status calls and reports.

### Rapid Implementation:

- Fixed scope implementations are designed to deliver value quickly to your organization. Project timelines generally span 2-5 months depending on the number of entitlements selected. Onboarding support for these time spans are included in the scope. Extended project timelines requested by customers can be supported with additional professional services and will be agreed via change order.

**Remote Implementation approach:**

- Kronos will conduct one Solution Development Workshop with your project team to create one solution design for your organization.
- Your team will conduct one testing cycle to accept that solution, which Kronos will support.
- Kronos will support one production go-live and provide knowledge transfer to allow you to be self-sufficient in any subsequent phased go-lives you choose to conduct for that module.
- Your selection of optional deployment services:
  - o 1 three days of onsite consulting for your Solution Development Workshop

**Deployed Solution:**

- Two tenants (1 Production, 1 Non-Production) will be designed and deployed with entitlements. The Non-Production environment may be refreshed from Production to support testing and training activities. Onboarding work will deliver configured solutions that operate on all supported desktop and mobile client platforms.
- Kronos will deliver the integrations using the Dell Boomi™ Workforce Dimensions Integration Platform. Integrations are based on predefined templates and are assumed to be low to medium complexity. Interfaces are scheduled via Workforce Dimensions and transfers data via flat files (CSV) to the Workforce Dimensions secure FTP (SFTP) environment.

**Educational Services**

**Kronos KnowledgeMap™**

- Targeted training is included to get the customer team knowledgeable quickly and to maximize solution adoption with Kronos KnowledgeMap™ - a progress tracking, online education portal providing anytime, anywhere access to self-paced learning and performance support resources – and the opportunity to leverage instructor led training with Kronos KnowledgeMap™ Live.

**Kronos KnowledgeMap™ Live**

- Provides the flexibility to send team members to virtual webinar and hands-on instructor led training during each phase of the project. It also allows new users to get onboard easily. Classes are offered by job role on a rotating course schedule to ensure the right training at the right time, including:
  - o **Core Team** training to help key functional and technical users make informed solution design and configuration decisions, and to provide fundamental product knowledge.
  - o **Application Administrator** training to prepare functional super users to perform daily and periodic system administration tasks.
  - o **IT Specialist** training to prepare technical super users to perform tasks in areas such as security, device management and integration.

The following Kronos KnowledgeMap™ Live Passes are provided:

Number		Year
10	passes for core project team members	1
5	passes for key functional and technical team members, renewable	2+

Kronos training curriculums can be reviewed on the Kronos customer community website.

<https://community.kronos.com/s/learn-wfd>

**Core Deliverables**

Working in close collaboration, Customer Name and Kronos will on-board the following core entitlements and functionality:

Core	Kronos Delivered Value
<b>Timekeeping</b>	Workforce Dimensions Timekeeping gets you started with the ability to accept punches and pay employees accurately through these core capabilities: <ul style="list-style-type: none"> <li>• Time capture and workflow automation</li> <li>• Adherence to policy through automated pay calculations</li> <li>• Automated time collection</li> <li>• Time-off balance tracking</li> <li>• Access to timekeeping information and self-service workflows</li> <li>• Visibility into labor tracking and accounting</li> <li>• Access to schedules</li> </ul>

- Mitigation of compliance risk
- Proactive exceptions management

**Scope assumptions:**

- Employee Pay Groups
  - Up to 8 total Employee Pay Groups to be used across:
    - Timekeeping Hourly entitlement
    - Timekeeping Salaried entitlement
  - Employee Pay Groups are a group of employees who are governed by a set of similar workforce management policy rules ( e.g. overtime, , shift premiums, holiday zones, etc.).
- User Personas and Roles
  - Up to 5 functional and data security Personas:
    - 1 payroll administrator role
    - 2 types of manager roles
    - 2 types of employee roles (e.g. "Payroll Admin", "Manager", "Salaried Employee", "Hourly Employee").
  - We will also provide knowledge transfer to the customer team to configure additional Personas as you require them.
- 2 Yes / No questions for employees to attest with workflows
- Data collection devices
  - Configure up to 5 Timekeeper Terminals with TouchID and provide knowledge transfer for customer to configure remaining terminals.
- 3 integration templates – Daily Person Import, Accrual-Reset Import and a Payroll Export that runs at the end of the pay period

**Value-Add Deliverables**

Once your core functionality is deployed, Kronos will work in close collaboration with Customer Name to deploy the following Value-Add entitlements and/or functionality over time in short, iterative, deployments aligned with your priorities, schedule, and resources.

Value-Add	Kronos Delivered Value
<b>Absence</b>	<p>Workforce Dimensions Absence provides consistent enforcement of accruals, leave and attendance policies through:</p> <ul style="list-style-type: none"> <li>• Automated accrual policies</li> <li>• Access to timekeeping information and self-service workflows</li> <li>• Mitigation of compliance risk</li> <li>• Time-off balance tracking</li> <li>• Visibility into labor tracking and accounting</li> <li>• Efficient and accurate leave management</li> <li>• Consistent enforcement of attendance policies</li> </ul> <p><b>Accrual Scope Assumptions</b></p> <ul style="list-style-type: none"> <li>• Comprehensive accrual administration to Workforce Dimensions Timekeeping by automatically enforcing your time-off policies</li> <li>• Up to 10 configurable accrual policies</li> <li>• Accruals Balance Data Import template</li> </ul> <p><b>Leave Scope Assumptions</b></p> <ul style="list-style-type: none"> <li>• Comprehensive administration of leave cases</li> <li>• One-Time data load using customer-supplied data – current leave cases, leave case entries &amp; entitlement balances (as Accrual balances) in a standard Kronos-supplied template</li> </ul> <p><b>Attendance Scope Assumptions</b></p> <ul style="list-style-type: none"> <li>• Flagging of Attendance violations and workflow structure to handle verbal and written actions pertaining to Attendance standards</li> </ul>

- Up to 4 Attendance policies. Note that complex attendance business policies may require 2 or more attendance policies in Workforce Dimensions to fully implement. The in-scope policies apply to business policies
- Flagging of Attendance violations and workflow structure to handle verbal and written actions pertaining to Attendance standards
- One-time Attendance Balance History Data Import template

**Your Selection of the following Optional Services:**

Optional Service	Description
<p><b>Solution Quality Assurance - Boot Camp</b></p>	<p>Kronos will conduct a test case development boot camp with the customer-side team to complete a Traceability Matrix and test cases per design elements available at the time of the boot camp. The customer team will execute these scripts and record the result, reporting successes and issues.</p>



# Workforce Dimensions™ Agreement

This Workforce Dimensions™ Agreement (the "Agreement") governs the provision of Kronos' Workforce Dimensions software as a service and other related offerings by Kronos Incorporated and its Participating Entities ("Kronos") to Customer and its Participating Entities ("Customer"). Capitalized terms not defined within the text of the Agreement are defined in Exhibit F.

This Agreement consists of this execution page and the following exhibits, which are incorporated by reference, and which form an integral part of this Agreement:

Exhibit A: General Terms and Conditions

Attachment A-1: Equipment Purchase, Rental, and Support

Attachment A-2: Professional and Educational Services Policies

Attachment A-3: Service Level Agreement

Exhibit B: Workforce Dimensions Cloud Guidelines:

[www.kronos.com/workforce-dimensions/agreement/exhibitb](http://www.kronos.com/workforce-dimensions/agreement/exhibitb)

Exhibit C: Success Plans

Attachment C-1: Success Plans

Attachment C-2: Support Policies

Exhibit D: Acceptable Use Policy (AUP):

[www.kronos.com/workforce-dimensions/agreement/exhibitd](http://www.kronos.com/workforce-dimensions/agreement/exhibitd)

Exhibit E: AtomSphere Service and Boomi Software

Attachment E-1: Boomi Flow Down Provisions

Exhibit F: Definitions

Exhibit G: Add-Ins

The description of the type, quantity, and cost of the specific offerings being ordered by Customer will be described in an Order Form, that will be mutually agreed upon and signed by the Parties pursuant and subject to this Agreement. If Implementation Services are to be delivered by Kronos, the Parties may need to execute a Statement of Work, which will set forth the scope, objectives and other business terms of the Implementation Services ordered with the Order Form.

This Agreement will serve as a master agreement for the Service and its related offerings. This Agreement contemplates that Participating Entities will enter into multiple Order Forms. This approach will allow the Parties to contract for additional or diverse products or services simply by signing a mutually agreeable Order Form and SOW, if applicable, without having to renegotiate or re-execute this Agreement. When Participating Entities enter into an Order Form, they are deemed to be "Customer" for purposes of this Agreement for that Order Form. Similarly, the Kronos entity that enters into an Order Form is deemed to be "Kronos" for purposes of this Agreement for that Order Form.

Kronos Incorporated
Dated:
By:
Name:
Title:

Customer County of St Johns
Dated:
By:
Name:
Title:

# Exhibit A: General Terms and Conditions

## Article 1. Order Forms

1.1 The following commercial terms may appear on an Order Form:

- a. The Application(s) included in the Service, and the other offerings being ordered by Customer
- b. Billing Start Date (i.e., the date the billing of the PEPM Fees commences)
- c. Initial Term (i.e., the initial billing term of the Service commencing on the Billing Start Date)
- d. Renewal Term (i.e., the renewal billing term of the Service)
- e. Billing Frequency (i.e., the frequency for the invoicing of the PEPM Fees such as Annual in Advance or Monthly in Arrears)
  - i. "Annual in Advance" means payment is due on an annual basis with the invoice being issued upon execution of the Order Form.
  - ii. "Monthly in Arrears" (usually for Implementation Services) means payment is due on a monthly basis with the invoice being issued at the end of the month.
- f. Payment Terms (i.e., the amount of days in which Customer must pay a Kronos invoice)
- g. Shipping Terms (i.e., FOB – Shipping Point, Prepay and Add)

1.2 The following Fees may appear on an Order Form:

- a. PEPM Fees for use of the Service, including PEPM Fees for Seasonal Licenses
- b. Success Plan Fees for Guided and Signature Plans
- c. Implementation Services Fees (The Order Form will note if Implementation Services Fees are included in PEPM Fees.)
- d. Equipment Purchase Fees
- e. Equipment Rental Fees
- f. KnowledgeMap™ Live Fees

1.3 Kronos may also sell (or rent) Equipment to Customer, and provide related Equipment Support Services, if included on an Order Form. These offerings are subject to this Agreement and the terms and conditions set forth in Attachment A-1.

## Article 2. Billing

2.1 Kronos will invoice the Fees on the Billing Frequency indicated on the Order Form. For each Order Form, the billing period of the PEPM Fees will start on the Billing Start Date and will continue for the time period indicated as the Initial Term. Customer will pay the Fees on the Payment Terms and in the currency, indicated on the Order Form. Customer will send payment to the attention of Kronos at the address indicated on the applicable invoice unless the Parties have made an alternative payment arrangement (such as credit card, wire transfer, ACH payment or otherwise). Unless expressly provided in this Agreement, Customer payments are non-refundable. Unless Customer has provided Kronos with valid evidence of tax-exemption, Customer is responsible for all applicable Taxes related to the Service and other items set forth on the Order Form. Each Party is responsible to pay all costs and fees attributable to such Party pursuant to the Shipping Terms indicated on the Order Form.

2.2 At the expiration of the Initial Term, and at the expiration of each Renewal Term, the Service will automatically renew for a Renewal Term. For each Renewal Term, Kronos may increase the PEPM Fees and the KnowledgeMap Live Fees by no more than four percent (4%) over the previous year's PEPM Fees and KnowledgeMap Live Fees, for the same Applications and the same licensed quantity. Kronos will

reflect these increased PEPM Fees and KnowledgeMap Live Fees in the applicable invoice for each Renewal Term.

2.3 Kronos will provide the Service to Customer during the entire Initial Term and each Renewal Term. Customer will pay for the Service for the entire Initial Term and each Renewal Term.

## Article 3. Implementation Services, Professional Services and Educational Services

3.1 Implementation Services are described in a SOW that the Parties will sign or reference on a signed Order Form. These SOWs are subject to this Agreement. Implementation Services are invoiced monthly as delivered, except if otherwise indicated on an Order Form. Each Party will perform their respective obligations as outlined in a signed SOW.

3.2 While Customer may configure the Applications itself, as part of the Implementation Services as described in an SOW, Kronos may also configure the Applications. Kronos will configure the Applications based on Customer's instructions and direction. Customer is solely responsible for ensuring that the Configurations comply with Applicable Law.

3.3 Kronos may also provide Professional Services to Customer that do not require an SOW but which will be as set forth on an Order Form.

3.4 KnowledgeMap™ is included in the PEPM Fees. If included on an Order Form, Kronos will also provide a subscription to KnowledgeMap™ Live. The KnowledgeMap Live 1st Year Training will expire one (1) year from purchase. KnowledgeMap Live 5 Pack entitles Customer to add up to five (5) additional named users in a KnowledgeMap Live Subscription. KnowledgeMap Live Subscription and KnowledgeMap Live 5 Pack are coterminous with the Service and will renew with the Service, unless terminated by Customer upon at least sixty (60) days prior written notice before the start of a Renewal Term. The KnowledgeMap Live Subscription Fees will be invoiced at the commencement of each year during the Term. Customer is permitted to assign one (1) employee to each user account (or seat) included in Customer's KnowledgeMap Live subscription. The number of permitted seats will appear on the Order Form. Passwords and accounts cannot be shared by multiple users. Customer will designate one (1) named user account to act as a training administrator.

3.5 Kronos may also provide ala carte educational consulting services as Implementation Services or Professional Services as described in an SOW or Order Form.

3.6 The Kronos policies set forth in Attachment A-2 shall apply to all Implementation Services and Professional Services provided by Kronos. In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

## Article 4. Service Level Agreement

Kronos offers the Service Level Agreement and associated SLA Credits as described in Attachment A-3. The SLA Credits are Customer's sole and exclusive remedy in the event of any Outage. Kronos remains obligated to provide the Service as otherwise described in this Agreement.

## Article 5. Data, Confidentiality, Security and Privacy

### Section 5.1 Data

5.1.1 Customer owns Customer Data. Customer is solely responsible for Customer Data, including ensuring that Customer Data complies with the Acceptable Use Policy and Applicable Law. Customer is solely responsible for any Claims that may arise out of or relating to Customer Data.

5.1.2 Kronos owns the Aggregated Data. Nothing in this Agreement will prohibit Kronos from utilizing the Aggregated Data for any purposes, provided that Kronos' use of Aggregated Data will anonymize Customer Data, will not reveal any Customer Confidential Information, and will not reveal any Personally Identifiable Information.

### Section 5.2 Confidentiality

Each Party will treat the Confidential Information of the other Party with a reasonable standard of care commensurate with the sensitivity of such Confidential Information and as further described in this Agreement. Each Party will only use the Confidential Information of the other Party for the purposes of fulfilling its obligations under this Agreement and as reasonably necessary to provide the Service. Confidential Information may be shared with and disclosed to (i) any subsidiary or affiliate of each of the Parties, or (ii) any court or governmental agency of competent jurisdiction, as required by a legal process, including in connection with any proceeding to establish a Party's rights or obligations under this Agreement (provided however that, when permitted by Applicable Law, a Party will give the other reasonable prior written notice so that the discloser has an opportunity to contest any disclosure required by a legal process). Either Party may seek injunctive relief to preserve its rights under this section without the requirement to post a bond.

### Section 5.3 Security and Privacy

5.3.1 Kronos will maintain the Controls throughout the Term.

5.3.2 Each Party will comply with all Applicable Laws, including, without limitation, Data Protection Laws.

5.3.3 Kronos employees will access Customer Data from the locations from which such employees work. Customer consents to Kronos' handling, collection, use, transfer, and processing of Customer Data to provide the Service. As may be required by Applicable Law, Customer will ensure that Customer Data may be provided to Kronos for the purposes of providing the Service. Customer has obtained all necessary consents from individuals to enable Kronos to use the Customer Data to provide the Service. As may be contemplated by the applicable Data Protection Laws, Customer will remain the "controller" of Customer Data and Kronos will be considered a "processor" of Customer Data.

5.3.4 Kronos will notify Customer in accordance with Applicable Law upon becoming aware of an unauthorized access of Customer Data. To the extent reasonably possible, such a notification will include, at a minimum (i) a description of the breach, (ii) the information that may have been obtained as a result of the breach, and (iii) the corrective action Kronos is taking in response to the breach.

## Article 6. Warranty

Kronos warrants that the Service will be provided in a professional and workmanlike manner. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, KRONOS DISCLAIMS ALL OTHER WARRANTIES RELATED TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If Customer informs Kronos in writing that there is a material deficiency in the Service which is making this warranty untrue, Kronos will use its reasonable commercial efforts to correct the non-conforming Service at no additional charge, and if Kronos is unable to do so within a reasonable period of time, Customer may terminate the then remaining Term of the Agreement, which will be Customer's sole and exclusive remedy. Customer agrees to provide Kronos with reasonable information and assistance to enable Kronos to reproduce or verify the non-conforming aspect of the Service.

## Article 7. License

### Section 7.1 Technology License

7.1.1 As part of the Service, Kronos will provide Customer access to and use of the Technology, including the Applications. Technology will include an Add-In if licensed by Customer pursuant to an Order Form. Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use the Service, including the Technology, during the Term and for internal business purposes only. Customer acknowledges and agrees that the right to use the Service, including Seasonal Licenses when included on the Order Form, is limited based upon the number of Authorized Users, and Customer's payment of the corresponding PEPM Fees. Customer agrees to use the Applications only for the number of employees stated on the total of all Order Forms for the applicable Applications. Customer agrees not to use any other Application nor increase the number of employees using an Application unless Customer enters into an additional Order Form that will permit the Customer to have additional Authorized Users. The license for any Add-In may be terminated by Customer at any time upon written notice to Kronos.

7.1.2 Kronos owns all title or possesses all intellectual property rights in and to the Technology used in delivering the Service. Customer has a right to use this Technology and to receive the Service subject to this Agreement. No other use of the Technology is permitted. Customer is specifically prohibited from reverse engineering, disassembling or decompiling the Technology, or otherwise attempting to derive the source code of the Technology. Customer cannot contact third party licensors or suppliers for direct support of the Technology. No license, right, or interest in any Kronos trademark, trade name, or service mark, or those of any third party supplying Technology as part of the Service, is granted hereunder.

## Article 8. Scope and Authority

8.1 Participating Entities may order the Service and other related offerings from Kronos by signing an Order Form contemporaneously with this Agreement, or in the future by signing an Order Form specifically referencing this Agreement. Only the Parties entering into a particular Order Form will be responsible under this Agreement for the items on that Order Form.

8.2 The person signing this Agreement on behalf of Kronos and on behalf of Customer represent that they are lawfully able to enter into contracts and are authorized to sign this Agreement and bind the entity on whose behalf they are entering into this Agreement. By signing an Order Form, each person signing such Order Form represents that they are lawfully able to enter into contracts and are authorized to sign the Order Form and bind the Participating Entity on whose behalf they are signing the Order Form.

8.3 Authorized Users may access the Service on Customer's behalf, and Customer will be responsible for all actions taken by its Authorized Users. Customer will make sure that Authorized Users comply with Customer's obligations under this Agreement. Unless Kronos breaches its obligations under this Agreement, Kronos is not responsible for unauthorized access to Customer's account, nor activities undertaken with Customer's login credentials, nor by Customer's Authorized Users. Customer should contact Kronos immediately if Customer believes an unauthorized person is using Customer's account or that Customer's account information has been compromised.

8.4 Use of the Service includes the ability to enter into agreements and/or to make transactions electronically. This feature of the Service is referred to as the "Marketplace". The use of the Marketplace can be configured, and Customer may disable use of the Marketplace by some or all of its Authorized Users. CUSTOMER ACKNOWLEDGES THAT WHEN AN AUTHORIZED USER INDICATES ACCEPTANCE OF AN AGREEMENT AND/OR TRANSACTION ELECTRONICALLY WITHIN THE MARKETPLACE, THAT ACCEPTANCE WILL CONSTITUTE CUSTOMER'S LEGAL AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. THIS ACKNOWLEDGEMENT THAT CUSTOMER INTENDS TO BE BOUND BY SUCH ELECTRONIC ACCEPTANCE APPLIES TO ALL AGREEMENTS AND TRANSACTIONS CUSTOMER ENTERS INTO THROUGH THE SERVICE, SUCH AS ORDERS, CONTRACTS, STATEMENTS OF WORK, AND NOTICES OF CANCELLATION.

## Article 9. Suspension

9.1 Kronos may suspend the Service if any amount that Customer owes Kronos is more than 30 days overdue. Kronos will provide Customer with at least 7 days prior written notice that the Customer's account is overdue before Kronos suspends the Service. Upon payment in full of all overdue amounts, Kronos will immediately restore the Service.

9.2 Customer is responsible for complying with the AUP. Kronos and its third party cloud service provider reserve the right to review Customer's use of the Service and Customer Data for AUP compliance and enforcement. If Kronos discovers an AUP violation, and Kronos reasonably determines that Kronos must take immediate action to prevent further harm, Kronos may suspend Customer's use of the Service immediately without notice. Kronos will contact Customer when Kronos suspends the Service to discuss how the violation may be remedied, so that the Service may be restored as soon as possible. If Kronos does not reasonably believe it needs to take immediate action, Kronos will notify Customer of the AUP violation. Even if Kronos doesn't notify Customer or suspend the Service, Customer remains responsible for any such AUP violation. Kronos will restore the Service once the AUP violation is cured or as both Parties may agree.

## Article 10. Termination

### Section 10.1. Types of Termination

10.1.1 Non-renewal. Either Party may terminate the Service upon at least 60 days prior written notice before the start of a Renewal Term. Customer may terminate Seasonal Licenses upon at least sixty (60) days prior written notice before the start of a Renewal Term.

10.1.2 For Cause. Either Party may terminate the Service and this Agreement if the other Party fails to perform any material obligation under this Agreement, and such Party is not able to cure the non-performance within 30 days of the date such Party is notified by the other Party of such default.

10.1.3 For Bankruptcy. If either Party: (i) becomes insolvent, (ii) makes a general assignment for the benefit of our creditors, (iii) is adjudicated as bankrupt or insolvent, or (iv) has a proceeding commenced against it under applicable bankruptcy laws, the other Party may ask for a written assurance of future performance of a Party's obligations under this Agreement. If an assurance that provides reasonable evidence of future performance is not provided within 10 business days of a written request, the requesting Party may immediately terminate this Agreement upon written notice.

## Section 10.2 Effects of Termination

If the Agreement is terminated for any reason:

- a. All Fees will be paid by Customer for amounts owed through the effective date of termination.
- b. Any Fees paid by Customer for the Service not rendered prior to the effective date of termination will be credited against Customer's account, with any remaining amounts refunded to Customer within thirty (30) days of the effective date of termination.
- c. Customer's right to use the Service will end as of the effective date of termination. Notwithstanding such termination, Customer will have thirty (30) days after the effective date of termination to access the Service for purposes of retrieving Customer Data through tools provided by Kronos that will enable Customer to so extract Customer Data. If Customer requires a longer period of access to the Service after termination to retrieve Customer Data, such access will be subject to additional Fees. Extended access and use of the Services will be subject to the terms of this Agreement.
- d. Kronos will delete Customer Data after Customer's rights to access the Service and retrieve Customer Data have ended. Kronos will delete Customer Data in a series of steps and in accordance with Kronos' standard business practices for destruction of Customer Data and system backups. Final deletion of Customer Data will be completed when the last backup that contained Customer Data is overwritten.
- e. Kronos and Customer will each return or destroy any Confidential Information of the other Party, with any retained Confidential Information remaining subject to this Agreement.
- f. Provisions in this Agreement which by their nature are intended to survive in the event of a dispute or because their obligations continue past termination of the Agreement will so survive.

## Article 11. Indemnification

11.1 Kronos will defend the Customer Indemnified Parties, from and against any and all Claims alleging that the permitted uses of the Service, Technology or Applications infringe or misappropriate any legitimate copyright or patent. Kronos will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party by a court of applicable jurisdiction as a result of such Claim, or as a result of Kronos' settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Service by reason of infringement or misappropriation of any such copyright or patent, or if in Kronos' opinion, the Service is likely to become the subject of a successful claim of infringement or misappropriation, Kronos (at its option and expense) will use commercially reasonable efforts to either (a) procure for Customer the right to continue using the Service as provided in the Agreement, or (b) replace or modify the Service so that the Service becomes non-infringing but remains substantively similar to the affected Service. Should neither (a) nor (b) be commercially reasonable, either Party may terminate the Agreement and the rights granted hereunder, at which time Kronos will provide a refund to Customer of the PEPM Fees paid by Customer for the infringing elements of the Service covering the period of their unavailability.



11.2 Kronos will have no liability to indemnify or defend Customer to the extent the alleged infringement or misappropriation is based on: (a) a modification of the Service undertaken by anyone other than Kronos, or not undertaken at Kronos' direction and in accordance with such direction; (b) use of the Service other than as authorized by this Agreement; or (c) use of the Service in conjunction with any equipment, service or software not provided by Kronos, where the Service would not otherwise infringe, misappropriate or otherwise become the subject of the Claim.

11.3 Customer will defend the Kronos Indemnified Parties and hold them harmless from and against any and all Claims alleging that: (a) the Configurations violate any law applicable to the rights of an Authorized User; (b) Customer's modification or combination of the Service with other services, software or equipment not furnished by Kronos, infringes or misappropriates any copyright or patent, provided that such modification or combination is the cause of such infringement and was not authorized by Kronos in writing; or, (c) a claim that the Customer Data or its collection or use by Customer violates the AUP or Applicable Laws. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise. Kronos will cooperate fully (at Customer's expense) in the defense, settlement or compromise of any such action. Customer will indemnify and hold harmless the Kronos Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party as a result of such Claims by a court of applicable jurisdiction or as a result of Customer settlement of such a Claim.

11.4 The Indemnified Party will provide written notice to the indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party will be relieved from providing such indemnity to the extent of the delay's impact on the defense. The indemnifying party will have sole control of the defense of any indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party will not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other Party. The Indemnified Parties will cooperate fully (at the indemnifying party's request and expense) with the indemnifying party in the defense, settlement or compromise of any such action. The indemnified party may retain its own counsel at its own expense, subject to the indemnifying party's rights above.

## Article 12. Extent and Limitations of Liability

12.1 EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF KRONOS TO CUSTOMER OR TO ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO ACTUAL AND DIRECT DAMAGES PROVEN BY CUSTOMER, SUCH DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS RECEIVED BY KRONOS FOR THE SERVICE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES.

12.2 **NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES.** NEITHER PARTY WILL BE LIABLE FOR THE COST OF ACQUIRING SUBSTITUTE OR REPLACEMENT SERVICES. NEITHER PARTY WILL BE LIABLE FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICES INTERRUPTION, HOWEVER CAUSED, ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT. THESE LIMITATIONS APPLY FOR ANY REASON, REGARDLESS OF ANY LEGAL THEORY AND FOR WHATEVER

REASON LIABILITY IS ASSERTED. THIS IS TRUE EVEN IF KRONOS AND CUSTOMER HAVE TOLD EACH OTHER THAT EITHER ONE IS CONCERNED ABOUT A PARTICULAR TYPE OF LIABILITY.

## Article 13. Changes

The information found in any Exhibit (or at any URL referenced in this Agreement) may change over the Term. Any such change will be effective as of the start of the next Renewal Term after such change is announced or published by Kronos.

## Article 14. Feedback

From time to time, Customer may provide Feedback. Kronos has sole discretion to determine whether or not to undertake the development of any enhancements, new features or functionality contained in or with Feedback. Customer hereby grants Kronos a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, copy, distribute, transmit, display, perform, create derivative works of and otherwise fully exercise and commercially exploit the Feedback for any purpose in connection with Kronos' business without any compensation to Customer or any other restriction or obligation, whether based on intellectual property right claim or otherwise. For the avoidance of doubt, no Feedback will be deemed to be Customer Confidential Information, and nothing in this Agreement limits Kronos' right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.

## Article 15. General

15.1 This Agreement is governed by and is to be interpreted in accordance with the laws of the state, province and country in which Kronos is incorporated, without regard to any conflict of law provision if and as applicable. Each Party waives the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of the Agreement and waives and "opts out" of the Uniform Computer Information Transactions Act (UCITA), or such other similar laws as may have been adopted.

15.2 The invalidity or illegality of any provision in this Agreement will not affect the validity of any other provision. All unaffected provisions remain in full force and effect.

15.3 Customer may not assign this Agreement without Kronos' prior written consent.

15.4 If there is some unforeseen event reasonably beyond the control of each of the Parties, such as acts of war, terrorism, or uprising, or acts of nature like earthquakes or floods, or civil unrest like embargoes, riots, sabotage or labor shortages, or changes in laws or regulations, or the failure of the internet or communications via common networks, or a power failure, or a delay in transportation, (collectively "Force Majeure"), each Party will be excused from performance of its obligations under this Agreement for the duration of the Force Majeure affecting such Party. The affected Party will use reasonable efforts to mitigate the impact of the Force Majeure on the other Party. Kronos is still obligated to provide the disaster recovery portion of the Service if Kronos' performance of those disaster recovery services is not also prevented by the Force Majeure.

15.5 When either Party needs to provide official notification under this Agreement, those notices will be in writing and considered delivered upon actual receipt to the addresses stated on the relevant Order Form or as otherwise communicated in writing to each other. Each Party agrees that an e-signature (or a

facsimile signature by the authorized representative) is evidence of acceptance of a valid and enforceable agreement.

15.6 No third party beneficiaries exist under this Agreement.

15.7 This Agreement (and any information in any referenced Exhibit or at any referenced URL or specifically incorporated by reference) along with the corresponding Order Form constitutes the entire agreement between the Parties pertaining to each Order Form. This Agreement supersedes all prior and contemporaneous representations, negotiations or communications between the Parties relating to its subject matter. This Agreement may only be amended in writing signed by each of the Parties. If Customer uses its own purchase order as an Order Form, no pre-printed terms of that purchase order shall apply to the items ordered, and any reference to a Kronos quote number or order number shall be deemed to incorporate that Kronos quote or order form into Customer's purchase order.

Attachment A-1: Equipment Purchase, Rental, and Support:

[www.kronos.com/workforce-dimensions/agreement/attachment-a1](http://www.kronos.com/workforce-dimensions/agreement/attachment-a1)

Attachment A-2: Professional and Educational Services Policies:

[www.kronos.com/workforce-dimensions/agreement/attachment-a2](http://www.kronos.com/workforce-dimensions/agreement/attachment-a2)

Attachment A-3: Service Level Agreement:

[www.kronos.com/workforce-dimensions/agreement/attachment-a3](http://www.kronos.com/workforce-dimensions/agreement/attachment-a3)

## Exhibit C: Success Plans

### Section 1. Success Plans

#### 1.1 Kronos offers the following Success Plans for Workforce Dimensions:

- a. Community Success (included in Customer's PEPM Fee)
- b. Guided Success (available for an additional Fee)
- c. Signature Success (available for an additional Fee with minimum annual spend in PEPM and Equipment Rental Fees)

#### 1.2 As part of the Community Success Plan, Kronos will provide:

- a. Local Time Zone Support: 8am – 8pm Monday to Friday, with two-hour response time to support cases.
- b. 27/7 Mission Critical Support: Immediate and on-going support for a critical issue with no available workaround, where the system or a module may be down, experiencing major system degradation, or other related factors.
- c. Kronos Community Access: Ability to access how-to articles, discussion boards, and open support cases.
- d. Kronos Onboarding Experience: Step-by-step guidance to assist Customer during onboard activities.
- e. KnowledgeMap™: On-line education portal providing access to Kronos e-learning resources.
- e. KnowledgeMap™ Live may be purchased for an additional Fee.
- f. A Technical Account Manager (TAM) may be purchased for an additional Fee: senior Technical Support Engineers or former Kronos Application Consultants with industry-specific Kronos product knowledge.

#### 1.3 As part of the Guided Success Plan, Kronos will provide:

- a. All of the services under Community Success, including the option to purchase KnowledgeMap™ Live or a TAM.
- b. Proactive Support: Monitoring of your environment and usage with proactive notification and resolution of potential issues.
- c. Named Success Manager: Dedicated, industry-specific advisor.
- d. Live Check-In Meetings: Regular meetings with your named success manager.
- e. Personalized Success Path: Tailored guidance based on your business goals.
- f. Success Reporting: Personalized reporting providing insight into your key performance indicators on an annual basis (i.e., user adoption, compliance, productivity, efficiency.)
- g. Executive Business Review: Strategic review of roadmap, realized value, engagement, relationship, and future direction.
- h. Optimization Assessment: Assistance with optimizing the use of Workforce Dimensions based on your current usage patterns.

#### 1.4 As part of the Signature Success Plan, Kronos will provide:

- a. All of the services under Guided Success. Additionally, KnowledgeMap™ Live and a TAM are included as part of the Signature Success Plan for no additional Fee.
- b. 24/7 Local Time Zone Support with one-hour response time to support cases.
- c. Technical Account Manager included at no additional charge.
- d. Integration/API Support: Assistance with enhancing and updating existing APIs and integrations.
- e. KnowledgeMap™ Live included at no additional charge.

k. Industry Best Practice Audit: Review configuration and use of Workforce Dimensions against industry peers and provide recommendations.

1.5. Each Success Plan provides different services and different service coverage periods, which are described in Attachment C-1.

1.6 The Kronos policies set forth in Attachment C-2 shall apply to all Success Plans.

Attachment C-1: Success Plans:

[www.kronos.com/workforce-dimensions/agreement/attachment-c1](http://www.kronos.com/workforce-dimensions/agreement/attachment-c1)

Attachment C-2: Support Policies:

[www.kronos.com/workforce-dimensions/agreement/attachment-c2](http://www.kronos.com/workforce-dimensions/agreement/attachment-c2)

## Exhibit E: AtomSphere Service and Boomi Software

As part of the Service, Customer has the right to access and use the Boomi AtomSphere Service and a non-exclusive, non-transferable and non-sublicensable license to use the associated Boomi Software as part of the Boomi AtomSphere Service. Customer may use the Boomi AtomSphere Service and the Boomi Software only to create integrations to and from the Service.

There are two (2) cloud environments associated with Customer use of the Boomi AtomSphere Service and the Boomi Software:

- a. Run-Time environment: A run time environment in the Kronos Cloud where the integration created by with the Boomi AtomSphere Service runs. This environment is described in Exhibit B.
- b. Development environment: A development environment in the Boomi Cloud where the design and development tools exist to build the integrations. This environment is referred to as a Hosted Environment in Attachment E-1.

The Boomi AtomSphere Service is subject to the additional terms and conditions set forth below. These additional terms and conditions apply to all integrations to and from the Service using the Boomi AtomSphere Service, whether done by Customer or by Kronos. Except as provided in these additional terms and conditions, all terms and conditions of this Agreement related to the Service apply to the Boomi AtomSphere Service. If this Agreement terminates, Customer's rights to access the Boomi AtomSphere Service and the Boomi Software also terminates.

Attachment E-1: Boomi Flow Down Provisions:

[www.kronos.com/workforce-dimensions/agreement/attachment-e1](http://www.kronos.com/workforce-dimensions/agreement/attachment-e1)

## Exhibit F: Definitions

**"Acceptable Use Policy"** and **"AUP"** are interchangeable terms referring to the Kronos policy describing prohibited uses of the Service as further described in Exhibit D.

**"Add In(s)"** mean the Kronos developed applets for Workforce Dimensions that enable limited functionality through the application programming interfaces ("APIs") of Workforce Dimensions and the associated applications of certain third-party technology providers as further described in Exhibit G.

**"Aggregated Data"** is any statistical data that is derived from the operation of the Service, including without limitation, for analysis of the Service, Configurations or Customer Data, and is created by Kronos in response to specified queries for a set point in time; including without limitation aggregation, metrics, trend data, correlations, benchmarking, determining best practices, the number and types of transactions, configurations, records, reports processed in the Service, and the performance results for the Service Agreement.

**"Applicable Law(s)"** means any applicable provisions of all laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders which govern the Party's respective business.

**"Authorized User"** means any individual or entity that directly (or through another Authorized User) accesses or uses the Service with any login credentials or passwords Customer uses to access the Service.

**"Application(s)"** means those Kronos Workforce Dimensions software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Agreement.

**"Boomi AtomSphere Service"** means the third-party service for the creation of integrations by Customer as further described in Exhibit E, which the Customer and Customer's Authorized Users have the right to access through the Service.

**"Boomi Software"** means the third-party proprietary software associated with the Boomi AtomSphere Service as further described in Exhibit E.

**"Claim(s)"** means any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party.

**"Confidential Information"** is any non-public information relating to each of Customer's and Kronos' businesses and those of Kronos' Technology suppliers that is disclosed pursuant to this Agreement and which reasonably should have been understood by the recipient of such information to be confidential because of (i) legends or other markings, (ii) the circumstances of the disclosure, or (iii) the nature of the information itself. Information will not be considered "Confidential Information" if the information was (i) in the public domain without any breach of this Agreement; (ii) disclosed to the Receiving Party on a non-confidential basis from a source which is lawfully in possession of such Confidential Information and, to the knowledge of the Receiving Party, is not prohibited from disclosing such Confidential Information to Receiving Party; or (iii) released in writing from confidential treatment by Delivering Party; or (iv) required to be disclosed pursuant to a subpoena, order, civil investigative demand or similar process with which the Receiving Party is legally obligated to comply, and of which the Receiving Party notifies Delivering Party.

**“Configuration(s)”** means the Customer specific settings of the parameters within the Applications(s), including pay and work rules, security settings such as log-in credentials, passwords, and private keys used to access the Service.

**“Controls”** means the administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer Data, designed and implemented by Kronos to secure Customer Data against accidental or unlawful loss, access or disclosure consistent with the AICPA Trust Principles Criteria for security, availability, confidentiality and processing integrity (SOC 2).

**“Customer Data”** means all content Customer, or its Authorized Users, posts or otherwise inputs into the Service, including but not limited to information, data (such as payroll data, vacation time, hours worked or other data elements associated with an Authorized User), text, multimedia images (e.g. graphics, audio and video files), or compilations.

**“Customer Indemnified Party(ies)”** means Customer and Customer’s respective directors, officers, and employees.

**“Data Protection Law(s)”** means all international, federal, state, and local laws, rules, regulations, directives and published governmental or regulatory decisions that specify data privacy, data protection or data security obligations, and which, in each case, have the force of law applicable to a Party’s collection, use, processing, storage, or disclosure of Personally Identifiable Information.

**“Documentation”** means the published specifications for the applicable Applications and Equipment, such as user manuals and administrator guides.

**“Educational Services”** means (i) KnowledgeMap Learning Portal; (ii) KnowledgeMap Live; and (iii) ala carte educational consulting services.

**“Equipment”** means Kronos equipment such as time clocks, devices, or other equipment set forth on an Order Form.

**“Equipment Support Services”** means the maintenance and support services related to Kronos’ support of Equipment as further described in Attachment A-1.

**“Feedback”** means suggestions, ideas, comments, know how, techniques or other information provided to Kronos for enhancements or improvements, new features or functionality or other feedback with respect to the Service.

**“Fees”** means the charges to be paid by Customer for a particular item.

**“Implementation Services”** means those professional services provided by Kronos to set up the cloud environment and to setup the Configurations within the Applications, as set forth in an SOW.

**“KnowledgeMap™”** means the online educational portal providing access to learning resources.

**“KnowledgeMap™ Live”** means the subscription service providing instructor led training by user role on a rotating course schedule.



**"Kronos Indemnified Party(ies)"** means Kronos and its third-party Technology suppliers and each of their respective directors, officers, employees, agents and independent contractors.

**"Order Form"** means an order form mutually agreed upon by Kronos and Customer setting forth, among other things, the items ordered by Customer and to be provided by Kronos and the Fees to be paid by Customer.

**"Participating Entity(ies)"** means those Kronos or Customer entities that (i) directly or indirectly control, are controlled by, or are under common control with Kronos or Customer, respectively and (ii) sign an Order Form for the Service. "Control" (in this context) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made through the ownership of the majority of its voting or equity securities, contract, voting trust or otherwise.

**"Party(ies)"** means Kronos or Customer, or both of them, as the context dictates.

**"PEPM"** means the per employee per month fee for a Customer's Authorized Users access to the Service.

**"Personally Identifiable Information"** means information concerning individually identifiable employees of Customer that is protected against disclosure under Applicable Data Protection Law.

**"Professional Services"** means the professional, consulting, or training services provided by Kronos pursuant to an Order Form and which are not described in a Statement of Work.

**"Seasonal Licenses"** are limited use licenses that have the following attributes: (i) valid only for the four (4) consecutive months during the annual period identified on the Order Form; (ii) valid from the first day of the month in which they commence until the end on the last day of the month in which they expire; and (iii) will be effective automatically each year during the Term, subject to termination and non-renewal as provided in the Agreement.

**"Service"** means the Kronos supply of the commercially available version of the Workforce Dimensions SaaS Applications in Kronos' hosted environment and the services described in the Agreement related thereto.

**"Statement of Work"** and **"SOW"** are interchangeable terms referring to a written description of the Implementation Services.

**"Success Plan(s)"** means the services provided by Kronos to support and maintain the Service as described in Exhibit C.

**"Taxes"** means all applicable taxes relating to the goods and services provided by Kronos hereunder, including all duties and country, federal, state, provincial or local taxes (including GST or VAT if applicable) but excluding taxes on Kronos' income or business privilege.

**"Technology"** means the intellectual property of Kronos within the Service, including but not limited to the Applications.

**"Term"** means the Initial Term and any Renewal Terms.

## Exhibit G: Workforce Dimensions™ Add-Ins

This Exhibit governs the Add-In(s) to be provided by Kronos to Customer, if specified on an Order Form. Capitalized terms not otherwise defined herein shall have the meanings prescribed to them in the Agreement. In the event of a conflict or inconsistency between the Agreement and this Exhibit, this Exhibit shall control.

Customer agrees that the Add-In(s) may only be used solely in connection with Workforce Dimensions™ for Customer's own internal purposes. The Add-Ins are not installed in the Kronos hosting environment in which Workforce Dimensions resides. The Add-Ins may only be installed and operated in a data center or other cloud environment managed by or on behalf of Customer. Customer is solely responsible to have all applicable rights, licenses and necessary infrastructure and support to use the third-party applications with which the Add-In(s) function, including security of the environment in which the Add-In(s) are installed.

The Service Level Agreement and associated SLAs (Attachment A-3) and the Workforce Dimensions Cloud Guidelines (Exhibit B) in the Agreement do not apply to the Add-In(s) because the Add-In does not reside in Kronos' hosting environment.

Implementation. Configuration and deployment of the Add-In(s) may be performed by Customer in accordance with Kronos written instructions and guidelines. Alternatively, Customer may engage Kronos or a third party to perform implementation or professional services as described in the Agreement.

Warranty Disclaimer. Kronos does not warrant that the Add-In(s) will be free from errors or service interruption. Kronos disclaims errors and liability with respect to the third-party applications or APIs with which the Add-In(s) function. Customer is solely responsible to manage its accounts or systems that may access the Add-In(s).

**ORDER FORM**

Order Type: Quote

Date: 12/7/2018

Quote#: Q-14276  
 Expires: 9/27/2019  
 Sales Executive: Nikki Kirkpatrick

Bill To Contact: Sarah Taylor

Bill To: COUNTY OF ST JOHNS  
 500 SAN SEBASTIAN VW  
 SAINT AUGUSTINE, FL 32084-8686 USA

Ship To Contact: Sarah Taylor

Ship To: COUNTY OF ST JOHNS  
 500 SAN SEBASTIAN VW  
 SAINT AUGUSTINE, FL 32084-8686 USA

Ship to Phone: (904) 827-6888  
 Contact: Sarah Taylor  
 Email: staylor@sjcfl.us

Currency: USD  
 Customer PO Number:  
 Solution ID: 6160045  
 Initial Term: 36 months  
 Billing Start Date: 90 Days from Execution of  
 Order Form

FOB: Shipping Point  
 Ship Method:  
 Freight Term: Prepay & Add  
 Renewal Term: 12 months  
 Payment Term: Net 30 Days

**Order Notes:**

The fees for the Applications are invoiced 60 days prior to the Billing Start Date.

The Scope Statement attached to this Order Form, and incorporated herein by reference, is a summary of the Implementation Services to be provided by Kronos for the Implementation Services Fees outlined in this Order Form.

**SaaS Services**

Billing Frequency: Annual in Advance

Product Name	Quantity	PEPM	Monthly Price
WORKFORCE DIMENSIONS TIMEKEEPING HOURLY	950	USD 5.00	USD 4,750.00
WORKFORCE DIMENSIONS TIMEKEEPING SALARIED	250	USD 2.50	USD 625.00
WORKFORCE DIMENSIONS ABSENCE	1,200	USD 1.25	USD 1,500.00
<b>Monthly Total</b>			<b>USD 6,875.00</b>

**Education Services**

Billing Frequency: Invoiced Upon signature of the Order form

Item	Quantity	Total Price
KnowledgeMap Live SMB 1st Year Training	10	USD 0.00
KnowledgeMap Live SMB Subscription	5	USD 1,800.00
<b>Total Price</b>		<b>USD 1,800.00</b>

**One Time Setup Fees**

Billing Frequency: Fixed Fee 100% at signing

Item	Total Price
One Time Setup Fees	USD 43,500.00

**A La Carte Services**

Billing Frequency: Fixed Fee 100% at signing

Item	Billing Rate	Quantity	Unit Price	Total Price
Onsite Assessment	Grouped	1	USD 4,500.00	USD 4,500.00
Solution Quality Assurance - Boot Camp	Grouped	1	USD 4,500.00	USD 4,500.00
				<b>USD 9,000.00</b>

**Quote Summary**

Item	Total Price
Total Monthly SaaS and Equipment Rental Fees	USD 6,875.00

Item	Total Price
Purchased Training	USD 1,800.00

Item	Total Price
Total One Time Fees	USD 52,500.00

**COUNTY OF ST JOHNS**

Invoice amount will reflect deposit received. All professional services are billed as delivered with a payment term of Net Upon Receipt. Unless otherwise indicated above, this order is subject to the attached terms and conditions which the customer acknowledges have been read. THIS ORDER IS SUBJECT TO APPLICABLE TAXES. THE TAX AMOUNT SHOWN ON THIS ORDER IS ONLY AN ESTIMATE. THE ACTUAL TAX AMOUNT TO BE PAID BY CUSTOMER WILL BE SHOWN ON CUSTOMER'S INVOICE. Shipping and handling charges will be reflected on the final invoice.



# Scope Statement

## Purpose and Overview of Scope Statement

This Scope Statement outlines the scope of services to be provided by Kronos for the Setup Fees indicated on the applicable Order Form, to Customer Name ("Customer") related to the Core entitlements, Value-add entitlements, and/or Optional Services contained in this document. Our Professional Services engagements are designed to help our Customers successfully deploy Core entitlements, as well as easily layer Value-add entitlements and functionality over time based on your priorities, schedule, and resources.

The Kronos Workforce Dimensions™ Scope Statement described herein is fixed scope based and is subject to the terms and conditions governing your Kronos Workforce Dimensions Agreement (the "Agreement"). Unless otherwise defined herein, words and expressions defined in the Agreement shall have the same meaning in this Scope Statement.

## Your Workforce Dimensions Solution

Core Entitlements	On-boarding Type	Number of Employees
Workforce Dimensions Timekeeping Hourly	Net New	950
Workforce Dimensions Timekeeping Salaried	Net New	250
Value-add Entitlements		
Workforce Dimensions Absence	Net New	1200

## Customer Name and Kronos Collaboration

A successful project requires close collaboration between Customer Name and Kronos. The Kronos Professional Services team is equipped to help keep you on target for meeting project milestones and requirements, as well as to assist you in configuring and deploying the Kronos Workforce Dimensions solution in support of your organization's business outcomes. Your organization's participation and commitment to the project goals and timeline are critical to ensure success.

The Kronos onboarding process is driven by value and enabling business outcomes. This approach is focused on accelerated time to value using tools and techniques, such as industry and region-specific configuration, Kronos process recommendations, dynamic documentation, and accelerated testing processes. All project information is available online to allow project team members access to project status, contact information, issues log, test case tracking, training plan, etc. at any time.

The onboarding process will be completed in three iterative phases: Initiate, Collaborate, and Adopt. Please review the Kronos Paragon™ Overview for the project life cycle, roles & responsibilities in more detail in the following link:

[Kronos Paragon Overview](#)

## Project Overview

Project Management services include:

- Kronos Project Manager working with Customer Project Manager to jointly run the project.
- Transition to Kronos Global Support after the first deployment go-live.
- Maintain an online project workspace, work plan, issues and risks management, weekly status calls and reports.

Rapid Implementation:

- Fixed scope implementations are designed to deliver value quickly to your organization. Project timelines generally span 2-5 months depending on the number of entitlements selected. Onboarding support for these time spans are included in the scope. Extended project timelines requested by customers can be supported with additional professional services and will be agreed via change order.

**Remote Implementation approach:**

- Kronos will conduct one Solution Development Workshop with your project team to create one solution design for your organization.
- Your team will conduct one testing cycle to accept that solution, which Kronos will support.
- Kronos will support one production go-live and provide knowledge transfer to allow you to be self-sufficient in any subsequent phased go-lives you choose to conduct for that module.
- Your selection of optional deployment services:
  - o 1 three days of onsite consulting for your Solution Development Workshop

**Deployed Solution:**

- Two tenants (1 Production, 1 Non-Production) will be designed and deployed with entitlements. The Non-Production environment may be refreshed from Production to support testing and training activities. Onboarding work will deliver configured solutions that operate on all supported desktop and mobile client platforms.
- Kronos will deliver the integrations using the Dell Boomi™ Workforce Dimensions Integration Platform. Integrations are based on predefined templates and are assumed to be low to medium complexity. Interfaces are scheduled via Workforce Dimensions and transfers data via flat files (CSV) to the Workforce Dimensions secure FTP (SFTP) environment.

**Educational Services.**

**Kronos KnowledgeMap™**

- Targeted training is included to get the customer team knowledgeable quickly and to maximize solution adoption with Kronos KnowledgeMap™ - a progress tracking, online education portal providing anytime, anywhere access to self-paced learning and performance support resources – and the opportunity to leverage instructor led training with Kronos KnowledgeMap™ Live.

**Kronos KnowledgeMap™ Live**

- Provides the flexibility to send team members to virtual webinar and hands-on instructor led training during each phase of the project. It also allows new users to get onboard easily. Classes are offered by job role on a rotating course schedule to ensure the right training at the right time, including:
  - o **Core Team** training to help key functional and technical users make informed solution design and configuration decisions, and to provide fundamental product knowledge.
  - o **Application Administrator** training to prepare functional super users to perform daily and periodic system administration tasks.
  - o **IT Specialist** training to prepare technical super users to perform tasks in areas such as security, device management and integration.

The following Kronos KnowledgeMap™ Live Passes are provided:

Number		Year
10	passes for core project team members	1
5	passes for key functional and technical team members, renewable	2+

Kronos training curriculums can be reviewed on the Kronos customer community website.

<https://community.kronos.com/s/learn-wfd>

**Core Deliverables**

Working in close collaboration, Customer Name and Kronos will on-board the following core entitlements and functionality:

Core	Kronos Delivered Value
<b>Timekeeping</b>	Workforce Dimensions Timekeeping gets you started with the ability to accept punches and pay employees accurately through these core capabilities: <ul style="list-style-type: none"> <li>• Time capture and workflow automation</li> <li>• Adherence to policy through automated pay calculations</li> <li>• Automated time collection</li> <li>• Time-off balance tracking</li> <li>• Access to timekeeping information and self-service workflows</li> <li>• Visibility into labor tracking and accounting</li> <li>• Access to schedules</li> </ul>

- Mitigation of compliance risk
- Proactive exceptions management

**Scope assumptions:**

- Employee Pay Groups
  - o Up to 8 total Employee Pay Groups to be used across:
    - Timekeeping Hourly entitlement
    - Timekeeping Salaried entitlement
  - o Employee Pay Groups are a group of employees who are governed by a set of similar workforce management policy rules ( e.g. overtime, , shift premiums, holiday zones, etc.).
- User Personas and Roles
  - o Up to 5 functional and data security Personas:
    - 1 payroll administrator role
    - 2 types of manager roles
    - 2 types of employee roles (e.g. "Payroll Admin", "Manager", "Salaried Employee", "Hourly Employee").
  - o We will also provide knowledge transfer to the customer team to configure additional Personas as you require them.
- 2 Yes / No questions for employees to attest with workflows
- Data collection devices
  - o Configure up to 5 Timekeeper Terminals with TouchID and provide knowledge transfer for customer to configure remaining terminals.
- 3 integration templates – Daily Person Import, Accrual Reset Import and a Payroll Export that runs at the end of the pay period

**Value-Add Deliverables**

Once your core functionality is deployed, Kronos will work in close collaboration with Customer Name to deploy the following Value-Add entitlements and/or functionality over time in short, iterative, deployments aligned with your priorities, schedule, and resources.

Value-Add	Kronos Delivered Value
<b>Absence</b>	<p>Workforce Dimensions Absence provides consistent enforcement of accruals, leave and attendance policies through:</p> <ul style="list-style-type: none"> <li>• Automated accrual policies</li> <li>• Access to timekeeping information and self-service workflows</li> <li>• Mitigation of compliance risk</li> <li>• Time-off balance tracking</li> <li>• Visibility into labor tracking and accounting</li> <li>• Efficient and accurate leave management</li> <li>• Consistent enforcement of attendance policies</li> </ul> <p><b>Accrual Scope Assumptions</b></p> <ul style="list-style-type: none"> <li>• Comprehensive accrual administration to Workforce Dimensions Timekeeping by automatically enforcing your time-off policies</li> <li>• Up to 10 configurable accrual policies</li> <li>• Accruals Balance Data Import template</li> </ul> <p><b>Leave Scope Assumptions</b></p> <ul style="list-style-type: none"> <li>• Comprehensive administration of leave cases</li> <li>• One-Time data load using customer-supplied data – current leave cases, leave case entries &amp; entitlement balances (as Accrual balances) in a standard Kronos-supplied template</li> </ul> <p><b>Attendance Scope Assumptions</b></p> <ul style="list-style-type: none"> <li>• Flagging of Attendance violations and workflow structure to handle verbal and written actions pertaining to Attendance standards</li> </ul>



- Up to 4 Attendance policies. Note that complex attendance business policies may require 2 or more attendance policies in Workforce Dimensions to fully implement. The in-scope policies apply to business policies
- Flagging of Attendance violations and workflow structure to handle verbal and written actions pertaining to Attendance standards
- One-time Attendance Balance History Data Import template

**Your Selection of the following Optional Services:**

Optional Service	Description
Solution Quality Assurance - Boot Camp	Kronos will conduct a test case development boot camp with the customer-side team to complete a Traceability Matrix and test cases per design elements available at the time of the boot camp. The customer team will execute these scripts and record the result, reporting successes and issues.

**CONTRACT #14-JLR-003**

THIS AGREEMENT, made this 18th day of March, 2014, by and between Harford County Public Schools, hereafter called "Owner" and Kronos Incorporated, a corporation at 297 Billerica Road, in the City of Chelmsford and State of Massachusetts, hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR, hereby agrees with the OWNER to commence and complete the services described as follows:

**RFP 14-JLR-003: Workforce Management System**

Furnish, supply and deliver Workforce Management software in accordance and compliance with all specifications, terms and conditions set forth in RFP #14-JLR-003, and subsequent terms and conditions attached herein.

Hereinafter called the contract, for the period March 18, 2014 through March 17, 2017, and all extra work in connection therewith, under the terms as stated in the General and Special Conditions of the RFP Document; and the related terms and conditions attachment, at his (its or their) own proper cost and expense to furnish all the materials, supplies, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Final Proposal, all of which are made a part hereof and collectively evidence and constitute the Contract.

This is an indefinite quantity contract with no specific assigned dollar value.

IN WITNESS WHEREOF, the parties to these presents have executed this in the year and day first above mentioned.

Harford County Public Schools

Jeffrey LaPorta  
Jeffrey LaPorta, CPPB, Supervisor of Purchasing

3/6/14  
Date

Kronos Incorporated  
Company Name

John O'Brien  
Company Representative Printed Name

Sr. Vice President, Americas  
Company Representative Title

[Signature]  
Company Representative Signature

2/21/14  
Date

**KRONOS TERMS AND CONDITIONS FOR PARTICIPATING PUBLIC AGENCIES ADMINISTERED BY US COMMUNITIES (103113V1)**

**KRONOS TERMS**

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**A PARTICIPATING PUBLIC AGENCY ("CUSTOMER"), BY SIGNING AN ORDER FORM OR PURCHASE ORDER WITH KRONOS INCORPORATED, AGREES TO THE APPLICATION OF THESE TERMS AND CONDITIONS FOR ALL PRODUCTS, SERVICES AND OFFERINGS SET FORTH ON SUCH ORDER FORM (OR PURCHASE ORDER) WHICH REFERENCES THESE TERMS AND CONDITIONS.**

- SECTION A:** GENERAL TERMS AND CONDITIONS. This Section apply for all transactions.
- SECTION B:** TERMS AND CONDITIONS FOR SOFTWARE LICENSES, SOFTWARE AND EQUIPMENT SUPPORT SERVICES, AND EDUCATIONAL AND PROFESSIONAL SERVICES. This Section apply for all transactions except Workforce Ready and the Workforce Central SaaS offering ( not including the professional and educational services governed by this Section).
- SECTION C:** CLOUD HOSTING SUPPLEMENTAL TERMS AND CONDITIONS . This Section applies only for transactions that involve Kronos hosting for Software licensed under Section B and Identified as CLOUD 2.
- SECTION C-1:** APPLICATION HOSTING TERMS AND CONDITIONS . This Section applies only for transactions that involve Kronos hosting for Software licensed under Section B and Identified as CLOUD.
- SECTION D:** KRONOS WORKFORCE CENTRAL SAAS TERMS AND CONDITIONS. This Section applies only for Workforce Central transactions in a SaaS environment (except for the related professional and educational services see Section B)
- SECTION E:** KRONOS WORKFORCE READY SAAS TERMS AND CONDITIONS. This Section applies only for Workforce Ready transactions.

## SECTION A: GENERAL TERMS AND CONDITIONS

### 1. APPLICATION OF THESE TERMS

These terms and conditions apply to each order accepted by Kronos Incorporated ("Kronos") from an eligible Participating Public Agency ("Customer") for all Kronos Equipment, Software, Professional and Educational Services, Support and such other Kronos offerings, as specified on an order form (an "Order").

In addition to the terms set forth in this Section A: General Terms and Condition, the following sections apply for the specific offering referenced:

- (i) Section B shall apply to the Software licenses and purchased Equipment, support services, and professional and educational services,
- (ii) Section C shall apply to the Hosting Services purchased in connection with certain Software licensed under Section B,
- (iii) Section D shall apply to the Workforce Central SaaS Orders; and
- (iv) Section E shall apply to the Workforce Ready SaaS Order.

All orders are subject to the approval of Kronos' corporate office in Chelmsford, Massachusetts. This Agreement and the Order Form shall supersede the pre-printed terms of any Customer purchase order or other Customer ordering document, and no such Customer pre-printed terms shall apply to the items ordered.

### 2. APPLICABLE LAWS

This Agreement shall be governed by the state law in which Customer is based, provided however, if such jurisdiction has adopted the Uniform Computer Information Transactions Act (UCITA), or such other similar law, the parties expressly agree to "opt-out" of and not be governed by UCITA or such other similar law. The parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of this Agreement.

### 3. EXPORT

Customer acknowledges that the Equipment and Software may be restricted by the United States Government or by the country in which the Equipment or Software is installed from export to certain countries and certain organizations and individuals, and agrees to comply with such laws. Customer agrees to comply with all applicable laws of all of the countries in which the Equipment and Software may be used by Customer. Customer's obligations hereunder shall survive the termination or expiration of the Order Form. Customer must obtain Kronos prior written consent before exporting the Software.

### 4. CONFIDENTIAL INFORMATION

"Confidential Information" is defined as information that is: i) disclosed between the parties after the date of this Agreement that is considered confidential or proprietary to the disclosing party; and ii) identified as "confidential" at the time of disclosure, or would be reasonably obvious to the receiving party to constitute confidential information because of legends or other markings, by the circumstances of disclosure or the nature of the information itself. Additionally, Customer acknowledges and agree that the Software (and Software documentation), and the Specifications shall be deemed to be Kronos' Confidential Information and trade secret. Each party shall protect the Confidential Information of the other party with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such party utilizes for its own information of similar character that it does not wish disclosed to the public. Neither party shall disclose to third parties (except the parent company or the wholly owned subsidiaries of the receiving party who have a need to know) the other party's Confidential Information, or use it for any purpose not explicitly set forth herein, without the prior written consent of the other party. Notwithstanding the foregoing, a party may disclose Confidential Information to the extent required: (a) to any subsidiary or affiliate of such Party, or (b) to any consultants, contractors, and counsel who have a need to know in connection with the Agreement and who are under obligations of non-disclosure agreement at least as stringent as this section 4, or (c) by law, or by a court or governmental agency, or if necessary in any proceeding to establish rights or obligations under the Agreement; provided, the receiving party shall, unless legally prohibited, provide the disclosing party with reasonable prior written notice sufficient to permit the disclosing party an opportunity to contest such disclosure. If a party commits, or threatens to commit, a breach of this Section 4, the other party shall have the right to seek injunctive relief from a court of competent jurisdiction. The obligation of confidentiality shall survive for three (3) years after the disclosure of such Confidential Information.

This Agreement imposes no obligation upon either party with respect to the other party's Confidential information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party, (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; (d) is independently developed by the receiving party without use of the disclosing party's confidential information, which can be shown by tangible evidence.

### 5. TAXES

If Customer presents to Kronos a validly issued tax-exempt certificate, or other sufficient evidence of tax exemption, Customer shall not be liable for those taxes for which Customer is exempt. Otherwise, Customer agrees to pay all other applicable duties and customs fees relating to this Agreement, as well as all taxes levied or based on the products, services or other charges hereunder, including federal, state and local sales and excise taxes, and any taxes or amount in lieu thereof paid or payable by Kronos, exclusive of taxes based on Kronos net income or business privilege.

### 6. TRAVEL EXPENSES

Customer agrees to reimburse Kronos for all pre-approved, reasonable and necessary travel incurred by Kronos in the performance of its obligations under this Agreement, provided that such travel complies with the then current Kronos Travel and Expense Policies (such policies are available upon request). Customer further agrees to pay any travel expenses such as airfare, lodging, meals and local transportation, incurred by Kronos in the performance of its obligations under this Agreement provided such expenses comply with the Kronos Travel and Expense Policies. Customer will be billed by Kronos for such travel expenses and payment thereof shall be due net 30.

### 7. GENERAL

(a) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.

(b) Customer shall not assign this Agreement or the license to the Software without the prior written consent of Kronos and any purported assignment, without such consent, shall be void.

(c) Neither Party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement (other than a failure to comply with payment obligations) where and to the extent that such failure or delay results from an unforeseeable event beyond a party's

reasonable control, including but not limited to, acts of war; acts of nature; earthquake; flood; embargo; riot; sabotage; labor shortage or dispute; changes in government codes, ordinances, laws, rules, regulations or restrictions; failure of the Internet; terrorist acts; failure of data, products or services controlled by any third party, including the providers of communications or network services; utility power failure; material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefor, or lack of or delay in transportation (each a "Force Majeure Event").

(d) All notices given under this Agreement shall be in writing and sent postage pre-paid, if to Kronos, to the Kronos address on the Order Form, or if to Customer, to the billing address on the Order Form.

(e) The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

(f) The parties agree that the Order signed by both parties and expressly reference this Agreement, which is delivered via fax or electronically delivered via email it shall constitute a valid and enforceable agreement.

(g) This Agreement and any information expressly incorporated herein (including information contained in any referenced URL), together with the applicable Order Form, constitute the entire agreement between the parties for the products and services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos may disclose to customers certain confidential information regarding general product development direction, potential future products and/or product enhancements under consideration, Customer is not entitled to any products or product enhancements other than those contained on the Order Form. Customer has not relied on the availability of any future version of the Software or Equipment identified on an Order Form, nor any other future product in executing this Agreement.

(h) Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (c)(1)(2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, as applicable. Manufacturer/distributor is Kronos Incorporated, 297 Biberica Road, Chelmsford, MA.

(i) The JBoss® Enterprise Middleware components embedded in the Software are subject to the End User License Agreement found at [http://www.redhat.com/licenses/jboss\\_eula.html](http://www.redhat.com/licenses/jboss_eula.html).

(j) Customer may pay an invoice by credit card if the amount is not greater than \$50,000.00.

**SECTION B**  
**TERMS AND CONDITIONS FOR SOFTWARE LICENSES, SOFTWARE AND EQUIPMENT SUPPORT SERVICES,**  
**AND EDUCATIONAL AND PROFESSIONAL SERVICES**

This Section B applies to Software licensed, Equipment purchased, support services for Software and Equipment, and educational and professional services, when such items are identified on the Order which expressly references this Agreement.

**1. PAYMENT AND DELIVERY**

Unless otherwise set forth in this Agreement, payment terms are indicated on the Order Form or other contemporaneous ordering document containing product-specific payment terms signed by the parties. Delivery terms are as stated on the Order Form ("Delivery"). Kronos will invoice Customer for products upon Delivery. Unless otherwise set forth on the Order Form, Professional and Educational Services are provided on a time and materials basis, invoiced monthly as rendered.

**2. GENERAL LICENSE TERMS**

Kronos owns or has the right to license the Software. The Software and Software documentation are confidential and may not be disclosed to a third party without Kronos' written consent. The Software contains proprietary trade secret technology. Unauthorized use and copying of such Software is prohibited by law, including United States and foreign copyright law. The price Customer pays for a copy of the Software constitutes a license fee that entitles Customer, to use the Software as set forth below. Kronos grants to Customer a non-exclusive, nontransferable, perpetual (except as provided herein) license to use the Software. This license may be terminated by Kronos by written notice to Customer upon any material breach of this Agreement by Customer which remains uncured for a period of thirty (30) days after such written notice from Kronos. Upon such termination of this license by Kronos, Customer will have no further right to use the Software and will return the Software media to Kronos and destroy all copies of the Software (and related documentation) in Customer's possession or control. This license is subject to all of the terms of this Section B.

**3. FEE BASED LIMITATIONS**

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by Customer. Limitations, which are set forth on the Order Form, may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number and partition, and/or the number of telephone lines or terminals to which the Software is permitted to be connected. Customer agrees to: i) use the Software only for the number of employees, simultaneous or active users, computer model, partition and serial number, and/or terminals permitted by the applicable license fee; ii) use only the product modules and/or features permitted by the applicable license fees; and iii) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, partitions, terminals, products modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable fee for such increase/upgrade. Customer may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos.

**4. OBJECT CODE ONLY**

Customer may use the computer programs included in the Software (the "Programs") in object code form only, and shall not reverse compile, disassemble or otherwise convert the Programs into uncompiled or unassembled code. The Programs include components owned by third parties. Such third party components are deemed to be Software subject to this Section B. Customer shall not use any of the Programs (or the data models therein) except solely as part of and in connection with the Software and as described in the published documentation for such Software.

**5. PERMITTED COPIES**

Customer may copy the Programs as reasonably necessary to load and execute the Programs and for backup and disaster recovery and testing purposes only, except for additional copies of the Teletime Software and the Kronos iSeries (which must be licensed separately). All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this license, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer.

**6. UPDATES**

In the event that Kronos supplies Service Packs, Point Releases and Major Releases (including legislative updates if available) of the Software (collectively referred to as "Updates"), such Updates shall be part of the Software and the provisions of this license shall apply to such Updates and to the Software as modified thereby.

**7. ACCEPTANCE**

For Customer's initial purchase of each Equipment and Software product Kronos shall provide an acceptance test period (the "Test Period") that commences upon installation. Installation shall be defined as: a.) the Equipment, if any, is mounted; b.) the Software is installed on Customer's server(s); and c.) implementation team training, if any, is complete. During the Test Period, Customer shall determine whether the Equipment and Software meet the Kronos published electronic documentation, ("Specifications").

The Test Period shall be for 30 days. If Customer has not given Kronos a written deficiency statement specifying how the Equipment or Software fails to meet the Specifications ("Deficiency Statement") within the Test Period, the Equipment and Software shall be deemed accepted. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, and Customer shall have an additional 30 days to evaluate the Equipment and Software. If the Equipment or Software does not meet the Specifications at the end of the second 30 day period, either Customer or Kronos may terminate this Agreement. Upon any such termination, Customer shall return all Equipment and Software (and related documentation) to Kronos, and Kronos shall refund any monies paid by Customer to Kronos for the returned Equipment and Software. Neither party shall then have any further liability to the other for the products that were the subject of the Acceptance Test.

**8. LIMITED WARRANTY**

Kronos warrants that all Kronos Equipment and Software media shall be free from defects in materials and workmanship, for a period of ninety (90) days from Delivery. In the event of a breach of this warranty, Customer's remedy shall be Kronos' repair or replacement of the deficient Equipment and/or Software media, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Specifications. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) or Software media in the event of:

(v) Access to specialized content as and when made available by Kronos such as technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerforce and service case studies.

(iv) Web-based remote diagnostic technical assistance which may be utilized by Kronos to resolve Software functional problems and user problems during the Service Coverage Period.

(iii) Web-based support including access to Software documentation, FAQ's, access to Kronos knowledge base, Customer forums, and e-case management. Such offerings are subject to modification by Kronos. Current offerings can be found at <http://www.kronos.com/services/support-services.aspx>.

(ii) Telephone and/or electronic access to the Kronos Global Support Center for the logging of requests for service during the Service Coverage Period for the Gold Service Offering is 8:00 a.m. to 8:00 p.m., local time, Monday through Friday, excluding Kronos holidays.

(i) Updates for the Software (not including any Software for which Kronos charges a separate license fee), provided that Customer's operating system and equipment meet minimum system configuration requirements, as reasonably determined by Kronos. If Customer requests Kronos to install such Updates or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' pricing set forth in this Agreement.

Customer shall be entitled to receive:

**10.3 GOLD SERVICE OFFERINGS**

Unless otherwise indicated on the Order Form, support services shall commence on the Software Delivery date and shall continue for an initial term of one (1) year. Support services may be renewed for additional one (1) year terms on the anniversary date of its commencement date by mutual written agreement of the parties or by Kronos sending Customer an invoice for the applicable renewal term and Customer paying such invoice prior to the commencement of such renewal term. After the one year initial term of this Agreement, the Service Offerings provided and the Service Coverage period are subject to change by Kronos with sixty (60) days advance written notice to Customer. For the initial two (2) renewal years the annual support fee, for the same products and service type, will not increase by more than 4% over the prior year's annual support fee.

**10.2 TERM OF SOFTWARE SUPPORT**

Customer may select from the following Software support purchase options: Gold (or Gold Plus) and Platinum (or Platinum Plus) support ("Service Type"), each providing different service coverage periods and/or service offerings, as specified herein ("Service Offerings"), and in the Kronos Support Service Poles (defined below). Customer must purchase the same Service Type for all of the Software specified on the Order Form. (However, if Customer is purchasing support services for Visionware Software, Customer may only purchase Gold Service Type for the Visionware Software). All Updates shall be provided via remote access.

**10.1 SUPPORT OPTIONS**

The following terms and conditions shall govern the Software support services provided by Kronos to Customer.

**10. SOFTWARE SUPPORT SERVICES**

(c) **KRONOS PROFESSIONAL/EDUCATIONAL SERVICES POLICIES**  
Kronos' then-current Professional/Educational Services Poles shall apply to all Professional and/or Educational Services purchased under the applicable SOW and may be accessed at <http://www.kronos.com/Support/ProfessionalServicesEngagementPolicies.htm> ("Professional Services Poles"). In the event of a conflict between the Professional Services Poles and this Agreement, the terms of this Agreement shall prevail.

**(b) WARRANTY**

Kronos warrants that all professional and educational services performed under this Agreement shall be performed in a professional and competent manner. In the event that Kronos breaches this warranty, and Customer so notifies Kronos within 30 days of receipt of invoice for the applicable services, the Customer's remedy and Kronos' liability shall be to re-perform the services which were deficient in a manner so as to conform to the foregoing warranty, at no additional cost to Customer.

**(a) ENGAGEMENTS**

Unless otherwise indicated on the Order, Professional and Educational Services ("Professional Services") shall be provided on a time and material basis and described in a statement of work. If a dollar limit is stated in the Order Form or any associated statement of work ("SOW"), the limit shall be deemed an estimate for Customer's budgeting and Kronos' resource scheduling purposes. After the dollar limit is expended, Kronos will continue to provide Professional Services on a time and materials basis, if a Change Order or Schedule of Services for continuation of the Professional Services is signed by the parties.

**9. PROFESSIONAL AND EDUCATIONAL SERVICES**

When using and applying the information generated by Kronos products, Customer is responsible for ensuring that Customer complies with requirements of federal and state law where applicable. If Customer is licensing Workforce Payroll Software or Workforce Absence Management Software, (ii) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using such Software, (iii) using such Software does not release Customer of any professional obligation concerning the preparation and review of such reports and documents, (iii) Customer does not rely upon Kronos, Best Software, Inc. or such Software for any advice or guidance regarding compliance with federal (and state laws where applicable) or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using such Software and satisfy itself that those calculations are correct.

(c)

malfunctions resulting from the use of badges or supplies not approved by Kronos.

(b)

failure of Customer to provide and maintain a suitable installation environment, as specified in the Specifications; or use;

(a)

damage, defects or malfunctions resulting from misuse, accident, neglect, lamping, (including modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;

#### 10.4 PLATINUM AND PLUS SERVICE OFFERINGS:

**Platinum:** In addition to the Service Offerings specified for the Gold Service Offering above, the Service Coverage Period for the Platinum Service Offering is 24 hours a day, seven days a week, 365 days a year.

**Plus option:** In addition to the Service Offerings specified for the Gold Service Offering above, Customers purchasing the Plus option shall receive the services of a dedicated, but not exclusive, Kronos Technical Account Manager ("TAM") for one production instance of the Software. Customers purchasing the Gold-Plus option shall designate up to one primary and one secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM, while Customers purchasing the Platinum-Plus option shall designate up to two primary and three secondary backup Technical Contacts. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos product training for the Software covered under this Section B at Customer's expense.

Customers purchasing the Platinum-Plus option shall also receive a one day per year visit to be performed at the Customer location where the Software is installed. During this onsite visit, Kronos shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment. Customer must be utilizing the then-current version of the Software.

#### 10.5 PAYMENT

Customer shall pay annual support charges for the initial term in accordance with the payment terms on the Order Form and for any renewal term upon receipt of invoice. Customer shall pay additional support charges, if any, and time and material charges upon receipt of invoice.

#### 10.6 ADDITION OF SOFTWARE

Additional Software purchased by Customer as per the ordering procedure set out in the agreement during the initial or any renewal term shall be added to the Support Services at the same support option as the then current Software support coverage in place under these terms. Customer agrees to pay the charges for such addition as per the Order.

#### 10.7 RESPONSIBILITIES OF CUSTOMER

Customer agrees (i) to provide Kronos personnel with full, free and safe access to Software for purposes of support, including use of Kronos' standard remote access technology, if required; (ii) to maintain and operate the Software in an environment and according to procedures which conform to the Specifications; and (iii) not to allow support of the Software by anyone other than Kronos without prior written authorization from Kronos. Failure to utilize Kronos' remote access technology may delay Kronos' response and/or resolution to Customer's reported Software problem. If Customer requires the use of a specific remote access technology not specified by Kronos, then Customer must purchase the Plus option to receive support and provide Kronos personnel with full, free and safe access to the remote access hardware and/or software.

#### 10.8 DEFAULT

Customer shall have the right to terminate Kronos support services in the event that Kronos is in breach of the support services warranty set forth below and such breach is not cured within fifteen (15) days after written notice specifying the nature of the breach. In the event of such termination, Kronos shall refund to Customer on a pro-rata basis those pre-paid annual support fees associated with the unused portion of the support term. Kronos reserves the right to terminate or suspend support service in the event the Customer is in default under this Agreement with Kronos and such default is not corrected within fifteen (15) days after written notice. In addition, the support services will terminate and all charges due hereunder will become immediately due and payable in the event that Customer ceases to do business as a going concern or has its assets assigned by law.

#### 10.9 WARRANTY

Kronos warrants that all support services shall be performed in a professional and competent manner.

#### 11. EQUIPMENT SUPPORT SERVICES

The following terms and conditions shall govern the equipment support services provided by Kronos to Customer. Kronos and Customer hereby agree that Kronos shall provide depot equipment repair support services ("Depot Support Services") for Customer's Kronos Equipment ("Product(s)") specified on an Order Form to and from locations within the United States and Puerto Rico pursuant to the following terms and conditions:

##### 11.1 TERM

Equipment Support Services for the Product(s) have a term of one (1) year commencing upon the expiration of the applicable warranty period, as specified in this Section B. Equipment Support Services can be extended for additional one year terms on the anniversary of its commencement date ("Renewal Date") by mutual written agreement of the parties or by Kronos sending Customer an invoice for the applicable renewal term and Customer paying such invoice prior to the commencement of such renewal term. For the initial two (2) renewal years the annual support fee, for the same products and service type, will not increase by more than 4% over the prior year's annual support fee to the extent consistent with the pricing set forth under the Agreement.

##### 11.2 PAYMENT

Customer agrees to pay the Support Charges for the initial term as set forth on the Order Form for each Product listed. Customer agrees that all Products of the same type that are owned by the Customer, including without limitation Customer's "Spare Products" (as defined below), will be subject to this Agreement. Customer agrees that if Customer purchases, during the term of this Agreement, any Products of the same type as those specified on an Order Form, such additional Products shall be subject to this Agreement. Customer agrees to pay a prorated fee for such additional Products and agrees to pay the full annual fee for such additional Products, upon the renewal date. Kronos will invoice Customer for the annual Support Charges each year in advance of the Renewal Date. Customer will pay Kronos within thirty (30) days of receipt of invoice.

##### 11.3 DEPOT SUPPORT SERVICE DESCRIPTION

Upon the failure of installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and can be found at <https://customer.kronos.com/contact/contact-phone.aspx> and are subject to change. Return and repair



procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies. Service packs for the Equipment (as described in subsection (b) below) are included in both Depot Exchange and Depot Repair Support Services.

(i) **Depot Exchange:** Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

(ii) **Depot Repair:** Upon failure of installed Equipment, Customer shall install a Spare Product to replace the failed Equipment. Customer shall then return the failed Equipment, with the required RMA, to the applicable Kronos Depot Repair Center. Customer shall make reasonable efforts to return the failed Equipment using the same or substantially similar packing materials in which the original Equipment was sent. Customer shall also specify the address to which the repaired Equipment should be return shipped. Upon receipt of the failed Equipment, Kronos shall repair the failed Equipment and ship it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Equipment by regular surface transportation to Customer.

Kronos warrants that all repairs performed under the Agreement shall be performed in a professional and competent manner. In the event of a breach of this warranty, the exclusive remedy of Customer and sole liability of Kronos shall be replacement of the repaired Equipment.

#### 11.4 EQUIPMENT SERVICE PACK SUPPORT SERVICE DESCRIPTION

If Customer purchase the Equipment service packs support, Kronos manufactured terminals specified on an Order, Customer shall be entitled to receive:

(i) Service packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements) available for download at Kronos' customer portal; and

(ii) Access to the Kronos Support Services Center for the logging of requests for assistance downloading service packs for the Equipment.

Service packs for the Equipment are not installed by the Kronos Depot Repair Center but are available for download at Kronos' customer portal, provided Customer is maintaining the Equipment under an annual Equipment Support Services plan with Kronos.

Kronos warrants that all service packs and firmware updates provided under this Agreement shall materially perform in accordance with the Kronos published specifications for a period of ninety (90) days after download by Customer. In the event of a breach of this warranty, Customer's exclusive remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the specifications.

#### 11.5 RESPONSIBILITIES OF CUSTOMER

Customer agrees that it shall return failed Products promptly as the failures occur and that it shall not hold failed Products and send failed Product to Kronos in "batches" which shall result in a longer turnaround time and surcharge to Customer. In addition, Customer agrees to:

- (a) Maintain the Products in an environment conforming to Kronos' published specifications for such Products;
- (b) De-install all failed Products and install all replacement Products in accordance with Kronos' published installation guidelines;
- (c) Ensure that the Product(s) are returned to Kronos properly packaged; and
- (d) Obtain an RMA before returning any Product to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Product authorized by Kronos when issuing the RMA.

#### 11.6 SUPPORT EXCLUSIONS

Depot Support Service does not include the replacement of "consumables". In addition, Depot Support Service does not include the repair of damages, and Customer will not attempt to return damaged Product, resulting from:

- (a) Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
- (b) Customer's failure to continually provide a suitable installation environment (as indicated in Kronos' published installation guidelines) including, but not limited to, adequate electrical power;
- (c) Customer's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with Kronos' published specifications;
- (d) Customer's use of the Products for purposes other than those for which they are designed or the use of accessories or supplies not approved by Kronos;
- (e) Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
- (f) Customer's repair, attempted repair or modification of the Products.

Professional services provided by Kronos in connection with the installation of any Software or firmware upgrades, if available, and if requested by Customer, are not covered by Depot Support Services. Firmware (including equipment service packs) which may be available to resolve a Product issue is not installed by the Kronos Depot Repair Center but is available for download at Kronos' customer web site provided Customer is maintaining the Product under an annual Depot Support Services plan with Kronos.

#### 11.7 WARRANTY

(a) **Depot Repair and Exchange warranty:** Kronos warrants that all repairs performed under this Section B shall be performed in a professional and competent manner.

(b) **Services Pack support Warranty:** Kronos warrants that all service packs and firmware updates provided under this Section B shall materially perform in accordance with the Kronos published specifications for a period of ninety (90) days after download by Customer. In the event of a breach of this warranty, Customer's remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the specifications.

#### 11.8 LIMITATION OF REMEDIES

To the extent permitted by law, the remedy of Customer and liability of Kronos shall be replacement of the repaired Product.

## 12. KRONOS SUPPORT SERVICE POLICIES

Kronos' then-current Support Services Policies shall apply to all Support Services purchased and may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies"). In the event of a conflict between the Support Policies and this Agreement, the terms of this Agreement shall prevail.

## 13. FIRMWARE

Customer may not download firmware updates for the Kronos Equipment unless Customer is maintaining such Equipment under a support plan with Kronos. If Customer is not maintaining the Equipment under a support plan with Kronos, Kronos shall have the right to verify Customer's Kronos Equipment to determine if Customer has downloaded any firmware to which Customer is not entitled.

## 14. TRAINING POINTS

Training Points which are purchased by Customer may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos. Available instructor-led sessions are listed at <http://customer.kronos.com> and each session has the Training Points value indicated. Training Points are invoiced when used by the Customer. Points may be redeemed at any time within 12 months of the date of the applicable Order Form, at which time they shall expire. Training Points may not be exchanged for other Kronos products and/or services.

## 15. KNOWLEDGEPASS EDUCATION SUBSCRIPTION:

The parties hereby agree that the following terms shall apply to Customer's purchase of the Kronos KnowledgePass Education Subscription only, if specified on the Order Form:

Scope: The KnowledgePass Education Subscription is available to customers who are licensing Kronos Workforce Central and iSeries Timekeeper Software products and who are maintaining such products under a support plan with Kronos. The KnowledgePass Education Subscription provides access via the internet to certain educational offerings provided by Kronos (the "KnowledgePass Content"), including:

- Product and upgrade information for project teams and end users
- Hands-on interactive instruction on common tasks
- Self-paced tutorials covering a range of topics
- Job aids
- Knowledge assessment and reporting tools to measure progress
- Webinars

Term of Subscription: The annual KnowledgePass Education Subscription shall run co-terminously with Customer's Software Support, and shall renew for additional one (1) year terms provided Customer renews its KnowledgePass Education Subscription as provided below.

Payment: Customer shall pay the annual subscription charge for the initial term of the KnowledgePass Education Subscription in accordance with the payment terms on the Order Form. Kronos will send Customer a renewal invoice for renewal of the KnowledgePass Education Subscription at least forty five (45) days prior to expiration of the then current term. KnowledgePass Education Subscription shall renew for an additional one (1) year term if Customer pays such invoice before the end of the initial term or any renewal term.

The KnowledgePass Subscription is available when the Customer subscribes on annual basis.

Limitations: Customer recognizes and agrees that the KnowledgePass Content is copyrighted by Kronos. Customer is permitted to make copies of the KnowledgePass Content provided in pdf form solely for Customer's internal use and may not disclose such KnowledgePass Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the KnowledgePass Content without the written consent of Kronos, provided that Customer may download and modify contents of Training Kits solely for Customer's internal use.

Train-the-Trainer Program (TTT): Certification under the Train-the-Trainer Program is valid only for the point release of the Software for which the TTT Program is taken, and covers only the Customer employee who completes the TTT Program.

## 16. INDEMNIFICATION

Kronos agrees to indemnify Customer and to hold it harmless from and against any and all claims, costs, fees and expenses (including reasonable legal fees) relating to actual or alleged infringement of United States or Canadian patents or copyrights asserted against Customer by virtue of Customer's use of the Software as delivered and maintained by Kronos, provided that: i) Kronos is given prompt written notice of any such claim and has sole control over the investigation, preparation, defense and settlement of such claim; and; ii) Customer reasonably cooperates with Kronos in connection with the foregoing and provides Kronos with all information in Customer's possession related to such claim and any further assistance as reasonably requested by Kronos. Kronos will have no obligation to indemnify Customer to the extent any such claim is based on the use of the Software with software or equipment not supplied by Kronos. Should any or all of the Software as delivered and maintained by Kronos become, or in Kronos' reasonable opinion be likely to become, the subject of any such claim, Kronos may at its option: i) procure for Customer the right to continue to use the affected Software as contemplated hereunder; ii) replace or modify the affected Software to make its use non-infringing; or iii) should such options not be available at reasonable expense, terminate this Agreement with respect to the affected Software upon thirty (30) days prior written notice to Customer. In such event of termination, Customer shall be entitled to a pro-rata refund of all fees paid to Kronos for the affected Software, which refund shall be calculated using a five year straight-line depreciation commencing with the date of the relevant Order. Additionally, Kronos agrees to be liable for tangible property damage or personal injury caused solely by the negligence or willful misconduct of its employees.

## 17. LIMITATION OF LIABILITY

CUSTOMER'S EXCLUSIVE REMEDIES AND KRONOS' SOLE LIABILITY FOR ANY KRONOS BREACH OF THIS AGREEMENT ARE EXPRESSLY STATED HEREIN. EXCEPT AS PROVIDED IN THIS AGREEMENT, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

EXCEPT FOR i) KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN ARTICLE 16 ABOVE; (ii) CUSTOMER'S CLAIMS FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY'S EMPLOYEES, IN NO EVENT SHALL KRONOS' OR ITS PARENTS', SUBSIDIARIES', AFFILIATES', OR THIRD PARTY LICENSOR'S LIABILITY TO A CUSTOMER, HOWSOEVER CAUSED, EXCEED THE VALUE OF THE ORDER WHICH GIVES RISE TO

THE CLAIM, AND IN NO EVENT WILL KRONOS OR ITS PARENTS, SUBSIDIARIES AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

**SECTION C  
CLOUD APPLICATION HOSTING  
SUPPLEMENTAL TERMS AND CONDITIONS**

These terms and conditions apply to the cloud services which are identified in the Pricing as the Cloud 2 in the Pricelist Name.

These Application Hosting Supplemental Terms and Conditions are applicable for hosting services ordered by Customer for Kronos Software licensed under Section B of this Agreement.

**1. DEFINITIONS**

"Application(s)" means those Kronos software applications set forth in the Cloud Hosting SSS which are made accessible for Customer to use under the terms of this Addendum.

"Application Hosting Program" or "Program" means (i) accessibility to the Applications, by means of access to the password protected customer area of the Kronos hosting environment, and (ii) all Hosting Related Services.

"Content" means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Program, including but not limited to information, data (such as payroll data, vacation time, and hours worked), designs, know-how, logos, text, multimedia images (e.g. graphics, audio and video files), compilations, software programs, third party software, applications, or other materials, or any other Customer content shared or processed on equipment under the control of Kronos.

"Hosting Related Services" means certain services set forth in a Services Scope Statement (SSS) containing hosted related services (the "Cloud Hosting SSS"), such as hosting infrastructure, equipment, bandwidth, server monitoring, backup services, reporting services, storage area network (SAN) services, load balancing services, security services, system administration, connectivity services, performance tuning, service pack installation and all professional and/or Cloud Services and maintenance services related to hosting.

"Initial Term" means the initial term of the Program as set forth in the applicable Cloud Hosting SSS.

"Internal Use" means the use of the Program: (i) by Customer's personnel solely for Customer's internal business purposes and (ii) by any authorized employee, agent or contractor of Customer to process information relating to Customer's employees assigned to, or potential employees of, Customer's authorized business unit(s), solely for the internal business purposes of such business unit(s).

"Monthly Service Fee(s)" means the monthly fees described in the Cloud Hosting SSS and set forth on the applicable Order Form.

"Order Form" means the order request form supplied by Kronos and signed by the Parties that lists the fees for the elements of Customer's particular Program.

"Personally Identifiable Data" means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

"Production Environment" means a permanent environment established for the daily use and maintenance of the Applications in a live environment throughout the term of a Program.

"Service Description" means the detailed service description (including any supplementary service terms) specified in the Cloud Hosting SSS which sets forth the specific Program to be provided to the Customer.

"SLA(s)" means a service level agreement offered by Kronos for the Production Environment and attached to this Section C as Exhibit A which contains key service level standards and commitments that apply to the Program as detailed in the Service Description.

"SLA Credit" means the credit calculated in accordance with the SLA and offered by Kronos in the event of outages, interruptions or deficiencies in the delivery of the Program that result in a failure to meet the terms of the applicable SLA.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Program.

"Temporary Environment" means a transient database environment created to serve limited purposes for a limited time period, and identified in the applicable Cloud Hosting SSS as a Temporary Environment.

**2. CLOUD HOSTING SERVICES SCOPE STATEMENT**

The description of the particular Program ordered by the Customer, the Program term, the Monthly Service Fee rates, and other fees, if any, applicable to the Program are described in the applicable Cloud Hosting SSS and Order Form. Kronos will not change the Monthly Service Fee rates it charges for Customer's existing Program, or the SLA, during the Initial Term. Kronos may change such Monthly Service Fee rates or the associated SLA for a renewal term of the particular Program by notifying Customer at least sixty (60) days prior to the expiration of the then current term. SLAs are only available in a Production Environment. Unless the Cloud Hosting SSS indicates that the Program is to be implemented in a Temporary Environment, the Program will be deemed to be implemented in a Production Environment.

**3. AUTHORIZED USE**

Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Program, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Section C.

#### **4. MAINTENANCE ACCESS**

If Kronos, its Suppliers, or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair the Program, Customer shall cooperate in a timely manner and reasonably provide such access and assistance as necessary. As part of Kronos' support services, Kronos will make updates to the Applications available to Customer at no charge as they are released generally to Kronos' customers. Customer agrees to receive those updates automatically as part of the Program. Customer may be required to purchase additional Hosting Related Services to address infrastructure requirements as released by Kronos for a new version of a particular Application.

#### **5. CUSTOMER REPRESENTATIONS AND WARRANTIES; CUSTOMER OBLIGATIONS**

5.1 Customer represents and warrants to Kronos that it has the right to publish and disclose Customer's Content in the Program.

5.2 Customer represents and warrants to Kronos that Customer's Content will not: (a) infringe or violate any third-party right, including (but not limited to) intellectual property, privacy, or publicity rights; (b) be abusive, profane, or offensive to a reasonable person; or (c) be hateful or threatening.

5.3 Customer will, at its own cost and expense, provide all end user equipment, operating systems, and software (including a web browser) not provided by Kronos and needed to access and use the Program. Customer will also provide, at its own cost and expense, all connections from its computer systems to the Program, which shall include all related costs associated with Customer accessing the Program, unless such connectivity services are purchased from Kronos as indicated on the Cloud Hosting SSS and Order Form.

5.4 Customer shall not, and shall not permit any person or entity under Customer's direct or indirect control to: (a) recirculate, republish, distribute or otherwise provide access to the Program to any third party; (b) use the Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Program; (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Program or any software components of the Program; (e) use, or allow the use of, the Program in contravention of any applicable law, or rules or regulations of regulatory or administrative organizations; (f) introduce into the Program any virus or other code or routine intended to disrupt or damage the Program, alter, damage, delete, retrieve or record information about the Program or its users; or, (g) otherwise act in a fraudulent, malicious or negligent manner when using the Program.

#### **6. CONNECTIVITY AND ACCESS**

6.1 Customer acknowledges that Customer shall (a) be responsible for securing, paying for, and maintaining connectivity to the Services (including any and all related hardware, software, third party services and related equipment and components); and (b) provide Kronos and Kronos' representatives with such physical or remote access to Customer's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under the Agreement. Customer will make all necessary arrangements as may be required to provide access to Customer's computer and network environment if necessary for Kronos to perform its obligations under the Agreement. Customer agrees that Kronos may audit Customer's use of the Services.

#### **7. FEES AND PAYMENT TERMS**

7.1 In consideration of the delivery of the Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form. The Monthly Services Fee shall begin to accrue on the date the Order Form and SSS are signed by the parties, and shall be invoiced annually in advance.

7.2 All fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be net 30 days following receipt of invoice.

7.3 SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Program shall be paid by Kronos in the month following the month in which the SLA Credits were earned.

#### **8. SERVICE LEVEL AGREEMENT**

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA; PROVIDED THAT ANY REMEDIES OR CREDITS CONTAINED IN THE SLA ARE NOT AVAILABLE FOR OUTAGES, INTERRUPTIONS OR DEFICIENCIES OCCURRING DURING ANY PERIOD IN WHICH CUSTOMER IS IN BREACH OF THIS ADDENDUM OR THE LICENSE AGREEMENT. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.

#### **9. LIMITATION OF LIABILITY**

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE LICENSE AGREEMENT, EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE OR SYSTEMS, OR MACHINE ERROR.

#### **10. DATA SECURITY**

10.1 As part of the Program, Kronos shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data as described at: <http://www.kronos.com/products/smb-solutions/workforce-central-saas/security-description.aspx>. Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under the Agreement.

10.2 As between Customer and Kronos, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of Customer's knowledge such Personally Identifiable Data supplied to Kronos is accurate. Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Kronos and Kronos' Suppliers wherever located only

for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out Kronos' duties and responsibilities under this Agreement or as required by law.

10.3 Prior to initiation of the Program and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's Industry and which could be imposed on Kronos as a result of provision of the Program. Customer will ensure that: (a) the transfer to Kronos and storage of any Personally Identifiable Data by Kronos or Kronos' data center is permitted under applicable data protection laws and regulations; and (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

#### **11. TERM AND TERMINATION**

11.1 At the expiration of the Initial Term, the applicable Program shall automatically renew for successive one year periods unless either party provides notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term. Kronos may suspend or terminate the Program upon notice in the event of any breach by Customer of this Section C if such breach is not cured within ten (10) days of the date of Kronos' written notice. No Program Interruption shall be deemed to have occurred during, and no Program credits shall be owed for, any authorized suspension of the Program.

11.2 Customer may terminate the Program by written notice at any time during the term of the Addendum if Kronos materially breaches any provision of this Addendum, and such default is not cured within thirty (30) days after receipt of written notice from Customer. In the event of such termination by Customer, Customer shall pay Kronos within thirty (30) days all fees then due and owing for the Program prior to the date of termination.

11.3 Customer may terminate the Program for convenience on no less than ninety (90) days prior written notice to Kronos.

11.4 In the event of termination of the Program by Customer for convenience or by Kronos for cause during the Initial Term, Customer will pay to Kronos any out of pocket expenses incurred by Kronos in terminating the Program plus an early termination fee based on the following calculation: one (1) month of the then-current Monthly Services Fees for every twelve (12) month period (or portion thereof) remaining in the Initial Term. By way of example only, if Customer terminates the Program for convenience with fifteen (15) months remaining in the Initial Term, Customer will be responsible to pay Kronos two (2) months of the applicable Monthly Services Fees.

**EXHIBIT A**

**SERVICE LEVEL AGREEMENT (SLA)**

**Service Level Agreement:** The Services, in a production environment and as described in the Statement of Work (aka Services Scope Statement), are provided with the service levels described in this Exhibit A. SLAs are only applicable to production environments. SLAs will be available upon Customer's signature of Kronos' Go Live Acceptance Form for Customer's production environment.

**99.75% Application Availability**

**Actual Application Availability % = (Monthly Minutes (MM) minus Total Minutes Not Available (TM)) multiplied by 100 and divided by Monthly Minutes (MM), but not including Excluded Events**

**Service Credit Calculation:** An Outage will be deemed to commence when the Applications are unavailable to Customer in Customer's production environment hosted by Kronos and end when Kronos has restored availability of the Services. Failure to meet the 99.75% Application Availability SLA, other than for reasons due to an Excluded Event, will entitle Customer to a credit as follows:

<b>Actual Application Availability % (as measured in a calendar month)</b>	<b>Service Credit to be applied to Customer's monthly invoice for the affected month</b>
<99.75% to 99.75%	10%
<98.75% to 98.25%	15%
<98.25% to 97.75%	25%
<97.75 to 96.75%	35%
<96.75	50%

**"Outage"** means the accumulated time, measured in minutes, during which Customer is unable to access the Applications for reasons other than an Excluded Event.

**"Excluded Event"** means any event that results in an Outage and is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos, including without limitation Customer Content, failures or malfunctions resulting from circuits provided by Customer, any inconsistencies or changes in Customer's source environment, including either intentional or accidental connections or disconnections to the environment; (c) Force Majeure events; (d) scheduled or emergency maintenance, alteration or implementation provided during the Maintenance Period defined below; (e) any suspension of the Services in accordance with the terms of the Agreement to which this Exhibit A is attached; (f) the unavailability of required Customer personnel, including as a result of failure to provide Kronos with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.

**"Maintenance Period"** means scheduled maintenance periods established by Kronos to maintain and update the Services, when necessary. During these Maintenance Periods, the Services are available to Kronos to perform periodic maintenance services, which include vital software updates. Kronos will use its commercially reasonable efforts during the Maintenance Period to make the Services available to Customer; however, some changes will require downtime. Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least one day in advance of any known downtime so planning can be facilitated by Customer.

Currently scheduled Maintenance Periods for the Services are:

Monday through Friday      04:00 am – 08:00 am (U.S. eastern time)  
Saturday and Sunday        12:00 am – 06:00 am (U.S. eastern time)

Maintenance Periods include those maintenance periods mutually agreed upon by Customer and Kronos.

**"Monthly Minutes (MM)"** means the total time, measured in minutes, of a calendar month commencing at 12:00 am of the first day of such calendar month and ending at 11:59 pm of the last day of such calendar month.

**"Total Minutes Not Available (TM)"** means the total number of minutes during the calendar month that the Services are unavailable as the result of an Outage.

**Limitations:** Service Credits will not be provided if: (a) Customer is in breach or default under the Agreement at the time the Outage occurred; or (b) the Outage results from an Excluded Event. If Kronos does not provide the appropriate Service Credit as due hereunder, Customer must request the Service Credit within sixty (60) calendar days of the conclusion of the month in which the Service Credit accrues. Customer waives any right to Service Credits not requested within this time period. All performance calculations and applicable Service Credits are based on Kronos records and data unless Customer can provide Kronos with clear and convincing evidence to the contrary.

The Service Level Agreements in this Exhibit, and the related Service Credits, apply on a per production environment basis. For the avoidance of doubt, Outages in one production environment may not be added to Outages in any other production environment for purposes of calculating Service Credits.

Customer acknowledges that Kronos manages its network traffic in part on the basis of Customer's utilization of the Services and that changes in such utilization may impact Kronos' ability to manage network traffic. Therefore, notwithstanding anything else to the contrary, if Customer significantly changes its utilization of the Services than what is contracted with Kronos and such change creates a material and adverse impact on the traffic balance of the Kronos network, as reasonably determined by Kronos, the parties agree to co-operate, in good faith, to resolve the issue.

**SECTION C.1:  
APPLICATION HOSTING TERMS AND CONDITIONS**

This Section applies only for transactions that involve Kronos hosting for Software licensed under Section B in relation with hosting pricing referred to as CLOUD

This attachment does not apply to CLOUD 2 items.

**APPLICATION HOSTING SUPPLEMENTAL TERMS AND CONDITIONS**

These Application Hosting Supplemental Terms and Conditions are applicable for hosting services ordered by Customer for Kronos Software licensed under Section B of this Agreement using the pricing set up on November 21, 2013.

**definitions**

"Application Hosting Program" or "Program" means (i) accessibility to the commercially available object code version of the Kronos hosted applications, as set forth in the Cloud Services SOW, by means of access to the password protected customer area of the Kronos hosting environment, and (ii) all Hosting Related Services.

"Content" means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Program, including but not limited to information, data (such as payroll data, vacation time, and hours worked), designs, know-how, logos, text, multimedia images (e.g. graphics, audio and video files), compilations, software programs, third party software, applications, or other materials, or any other Customer content shared or processed on equipment under the control of Kronos or a Supplier.

"Hosting Related Services" means certain services set forth in a statement of work containing hosted related services (the "Cloud Services SOW"), such as hosting infrastructure, equipment, bandwidth, server monitoring, backup services, reporting services, storage area network (SAN) services, load balancing services, security services, system administration, connectivity services, performance tuning, service pack installation and all professional and/or Cloud Services and maintenance services related to hosting.

"Initial Term" means the initial term for which Kronos shall provide the Program to Customer and as set forth in the applicable Cloud Services SOW executed by Customer.

"Internal Use" means the use of the Program: (i) by Customer's personnel solely for Customer's internal business purposes and (ii) by any authorized employee, agent or contractor of Customer to process information relating to Customer's employees assigned to, or potential employees of, Customer's authorized business unit(s), solely for the internal business purposes of such business unit(s).

"Monthly Service Fee(s)" means the monthly fees described in the Cloud Services SOW and set forth on the applicable Order Form, which shall include all Hosting Related Services fees.

"Order Form" means the order request form supplied by Kronos and signed by the Parties that lists the Startup Fees and Monthly Service Fees for the elements of Customer's particular Program.

"Personally Identifiable Data" means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

"Production Environment" means a permanent environment established for the daily use and maintenance of the Application in a live environment throughout the term of a Program.

"Services Commencement Date" shall, except as otherwise provided in writing in a Cloud Services SOW or Order Form signed by the parties, mean the earlier of (a) the date the Software is transferred to the hosted environment, as mutually agreed by the parties in writing or (b) 90 days after the Effective Date. Notwithstanding the foregoing, the Services Commencement Date for software hosted in a Temporary Environment shall commence seven (7) days after the Effective Date.

"Service Description" means the detailed service description (including any supplementary service terms) specified in the Cloud Services SOW which sets forth the specific Program to be provided to the Customer.

"SLA(s)" means a service level agreement offered by Kronos for the Production Environment and attached to this Section C.1 as Exhibit A.1 which contains key service maintenance standards and commitments that apply to the Program as detailed in the Service Description.

"SLA Credit" means the credit calculated in accordance with the SLA and offered by Kronos in the event of outages, interruptions or deficiencies in the delivery of the Program that result in a failure to meet the terms of the applicable SLA.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Program.

"Temporary Environment" means a transient database environment created to serve limited purposes for a limited time period, and identified in the applicable Cloud Services SOW as a Temporary Environment.

"Startup Fees" means the one time, customer-specific startup fee as indicated on the Order Form that will be charged to Customer to enable access to the Program.

**Cloud Services STATEMENT OF WORK**

The description of the particular Program ordered by the Customer, the Program term, the Monthly Service Fee rates, the Startup Fees and other fees, if any, applicable to the Program are described in the applicable Cloud Services SOW and Order Form. Kronos will not change the Monthly Service Fee rates it charges for Customer's existing Program, or the SLA, during the Initial Term. Kronos may change such Monthly Service Fee



8. SERVICE LEVEL AGREEMENT  
CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA; PROVIDED THAT ANY REMEDIES OR CREDITS CONTAINED IN THE SLA ARE NOT AVAILABLE FOR OUTAGES, INTERRUPTIONS OR DEFICIENCIES OCCURRING DURING ANY PERIOD IN WHICH CUSTOMER IS IN BREACH OF THIS SECTION C.1 OR SECTION B. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.  
8. LIMITATION OF LIABILITY  
IN ADDITION TO THE LIMITATIONS SET FORTH IN THE LICENSE AGREEMENT, EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR

7.3 SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Program shall be included in the Monthly Service Fee Invoice issued by Kronos for the month following the month in which the SLA Credits were earned.  
7.2 All fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be net 30 days following receipt of invoice. All overdue payments shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. Customer is responsible for all federal, state or local taxes, duties and customs fees relating to the Program, excluding taxes based on Kronos' income or business privilege.  
7.1 In consideration of the delivery of the Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form. The Monthly Services Fee shall begin to accrue on the Services Commencement Date, and shall be invoiced monthly in advance. In addition, Customer shall be billed the Startup Fees and any additional Cloud Hosting startup fees set forth in the applicable Order Form. Customer acknowledges that the billing commencement date does not coincide with implementation completion, final configuration, or go-live.

6.1 Customer uses open internet connectivity or Customer-supplied VPN internet connections to access the Program. Customer acknowledges that the performance and throughput of the internet connection cannot be guaranteed by Kronos, and variable connection performance may result in application response variations.  
6.2 Customer hereby acknowledges that the internet is not owned, operated, managed by, or in any way affiliated with Kronos, its Suppliers or any of its affiliates, and that it is a separate network of computers independent of Kronos. Access to the internet is dependent on numerous factors, technologies and systems, many of which are beyond Kronos' authority and control. Customer acknowledges that Kronos cannot guarantee that the internet access services chosen by Customer will meet the level of up-time or the level of response time that Customer may need. Customer agrees that its use of the internet access services and the internet is solely at its own risk, except as specifically provided in this Section C.1, and is subject to all applicable local, state, national and international laws and regulations.  
6. INTERNET ACCESS

5.4 Customer shall not, and shall not permit any person or entity under Customer's direct or indirect control to: (a) reconstitute, republish, distribute or otherwise provide access to the Program to any third party; (b) use the Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Program; (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Program or any software components of the Program; (e) use, or allow the use of, the Program in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (f) introduce into the Program any virus or other code or routine intended to disrupt or damage the Program, alter, damage, delete, remove or record information about the Program or its users; or (g) otherwise act in a fraudulent, malicious or negligent manner when using the Program.  
5.3 Customer will, at its own cost and expense, provide all end user equipment, operating systems, and software (including a web browser) not provided by Kronos and needed to access and use the Program in accordance with the technical requirements set forth in the Cloud Services SOW. Customer will also provide, at its own cost and expense, all connections from its computer systems to the Program, which shall include all related costs associated with Customer accessing the Program, unless such connectivity services are purchased from Kronos as indicated on the Cloud Services SOW and Order Form.  
5.2 Customer represents and warrants to Kronos that Customer's content will not (a) infringe or violate any third-party right including (but not limited to) intellectual property, privacy, or publicity rights; (b) be abusive, profane, or offensive to a reasonable person; or (c) be hateful or threatening.  
5.1 Customer represents and warrants to Kronos that it has the right to publish and disclose Customer's Content in the Program.

Customer representations and warranties; Customer obligations  
Customer shall cooperate in a timely manner and reasonably provide such access and assistance as necessary.  
If Kronos, its Suppliers, or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair the Program, MAINTENANCE ACCESS  
Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Program, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this section C.1.

rates of the associated SLA for a renewal term of the particular Program by notifying Customer at least sixty (60) days prior to the expiration of the current term. SLAs are only available in a Production Environment. Unless the Cloud Services SOW indicates that the Program is to be implemented in a Temporary Environment, the Program will be deemed to be implemented in a Production Environment.  
Authorized Use  
Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Program, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this section C.1.

MAINTENANCE ACCESS  
If Kronos, its Suppliers, or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair the Program, Customer shall cooperate in a timely manner and reasonably provide such access and assistance as necessary.  
Customer representations and warranties; Customer obligations  
5.1 Customer represents and warrants to Kronos that it has the right to publish and disclose Customer's Content in the Program.  
5.2 Customer represents and warrants to Kronos that Customer's content will not (a) infringe or violate any third-party right including (but not limited to) intellectual property, privacy, or publicity rights; (b) be abusive, profane, or offensive to a reasonable person; or (c) be hateful or threatening.  
5.3 Customer will, at its own cost and expense, provide all end user equipment, operating systems, and software (including a web browser) not provided by Kronos and needed to access and use the Program in accordance with the technical requirements set forth in the Cloud Services SOW. Customer will also provide, at its own cost and expense, all connections from its computer systems to the Program, which shall include all related costs associated with Customer accessing the Program, unless such connectivity services are purchased from Kronos as indicated on the Cloud Services SOW and Order Form.  
5.4 Customer shall not, and shall not permit any person or entity under Customer's direct or indirect control to: (a) reconstitute, republish, distribute or otherwise provide access to the Program to any third party; (b) use the Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Program; (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Program or any software components of the Program; (e) use, or allow the use of, the Program in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (f) introduce into the Program any virus or other code or routine intended to disrupt or damage the Program, alter, damage, delete, remove or record information about the Program or its users; or (g) otherwise act in a fraudulent, malicious or negligent manner when using the Program.

6.1 Customer uses open internet connectivity or Customer-supplied VPN internet connections to access the Program. Customer acknowledges that the performance and throughput of the internet connection cannot be guaranteed by Kronos, and variable connection performance may result in application response variations.  
6.2 Customer hereby acknowledges that the internet is not owned, operated, managed by, or in any way affiliated with Kronos, its Suppliers or any of its affiliates, and that it is a separate network of computers independent of Kronos. Access to the internet is dependent on numerous factors, technologies and systems, many of which are beyond Kronos' authority and control. Customer acknowledges that Kronos cannot guarantee that the internet access services chosen by Customer will meet the level of up-time or the level of response time that Customer may need. Customer agrees that its use of the internet access services and the internet is solely at its own risk, except as specifically provided in this Section C.1, and is subject to all applicable local, state, national and international laws and regulations.  
6. FEES AND PAYMENT TERMS

7.1 In consideration of the delivery of the Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form. The Monthly Services Fee shall begin to accrue on the Services Commencement Date, and shall be invoiced monthly in advance. In addition, Customer shall be billed the Startup Fees and any additional Cloud Hosting startup fees set forth in the applicable Order Form. Customer acknowledges that the billing commencement date does not coincide with implementation completion, final configuration, or go-live.  
7.2 All fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be net 30 days following receipt of invoice. All overdue payments shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. Customer is responsible for all federal, state or local taxes, duties and customs fees relating to the Program, excluding taxes based on Kronos' income or business privilege.  
7.3 SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Program shall be included in the Monthly Service Fee Invoice issued by Kronos for the month following the month in which the SLA Credits were earned.  
8. SERVICE LEVEL AGREEMENT  
CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA; PROVIDED THAT ANY REMEDIES OR CREDITS CONTAINED IN THE SLA ARE NOT AVAILABLE FOR OUTAGES, INTERRUPTIONS OR DEFICIENCIES OCCURRING DURING ANY PERIOD IN WHICH CUSTOMER IS IN BREACH OF THIS SECTION C.1 OR SECTION B. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.  
8. LIMITATION OF LIABILITY  
IN ADDITION TO THE LIMITATIONS SET FORTH IN THE LICENSE AGREEMENT, EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR

APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE OR SYSTEMS, OR MACHINE ERROR.

10. DATA SECURITY

10.1 As part of the Program, Kronos shall provide those Kronos security-related services described in the Cloud Services SOW. Customer acknowledges that the security-related services endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular security-related service as just one tool to be used as part of an overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulators governing the respective activities of the parties.

10.2 All Personally Identifiable Data contained in any Software, Equipment or systems supplied by Kronos, or to which Kronos has access to under this Section C.1, as between Kronos and Customer, is Customer's Confidential Information and will remain the property of Customer. Customer hereby consents to the use, processing and/or disclosure of Personally Identifiable Data only for the purposes described herein and to the extent such use or processing is necessary for Kronos to carry out its duties and responsibilities under this Section C.1 or as required by law.

10.3 Prior to initiation of the Program and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer and which could be imposed on Kronos as a result of provision of the Program. Customer will ensure that (a) the transfer and storage of any Personally Identifiable Data to Kronos and managed by Kronos or Supplier's data center is legitimate under applicable data protection laws and regulations; and (b) Customer will obtain consent from individuals for such transfer and storage to the extent required under applicable laws and regulations.

10.4 At no cost to Customer, Kronos shall upon (i) request by Customer at any time and (ii) the cessation of the Program, promptly return to Customer, in the format and on the media in use as of the date of the request, all Personally Identifiable Data.

11. Term and termination

11.1 At the expiration of the Initial Term, the applicable Programs shall automatically renew for successive one year periods unless either party provides notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term. Kronos may suspend or terminate during, and no Program credits shall be owed for, any authorized suspension of the Program.

11.2 Customer may terminate the Program by written notice at any time during the term of this Section if Kronos materially breaches any provision of this Section, and such default is not cured within thirty (30) days after receipt of written notice from Customer. In the event of such termination by Customer, Customer shall pay Kronos within thirty (30) days all fees then due and owing for the Program prior to the date of termination.

11.3 Customer may terminate the Program for convenience on no less than ninety (90) days prior written notice to Kronos. Kronos any out of pocket expenses incurred by Kronos in terminating the Program plus an early termination fee based on the following calculation: one (1) month of the then-current Monthly Services Fees for every twelve (12) month period (or portion thereof) remaining in the Initial Term. By way of example only, if Customer terminates the Program for convenience with fifteen (15) months remaining in the Initial Term, Customer will be responsible to pay Kronos two (2) months of the then-current Monthly Services Fees.

**EXHIBIT A.1  
TO SECTION C.1  
SERVICE LEVEL AGREEMENT (SLA)**

**Service Level Types:** SLAs are only applicable to Production Environments. The Program, in a Production Environment, as described in the Service Description is provided with the following service level:

**99.50% Application Availability**

**Service Levels/Credit Calculation:** An Outage will be deemed to commence when Customer opens a case with Kronos Global Support, or Kronos Cloud Services receives an application availability alert. The Outage will be deemed to end when Kronos has restored availability of the Program. Failure to meet the above service levels will entitle Customer to credits as follows.

99.50% Application Availability SLA – Production Environment	
Uptime percentage (as measured in a calendar month)	Affected Service Credit
The amount of the Credit will be determined as follows:	
<99.50% to 98.75%	15%
<98.75% to 98.25%	20%
<98.25% to 97.75%	35%
<97.75 to 96.75%	50%
<96.75	75%

**Application Availability SLA% = ((MM-TM)\*100) / (MM)**

**Definitions**

\*Affected Service\* means the monthly fees paid for the hosting of the Program.

\*Excluded Event\* means any event that adversely impacts the Program that is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos or Supplier; (c) Force Majeure events; (d) scheduled or emergency maintenance, alteration or implementation; (e) any suspension of the Program in accordance with the terms of this Section or License Agreement; (f) the unavailability of required Customer personnel, including as a result of failure to provide Supplier with accurate, current contact information; (g) using the Application in a manner inconsistent with the product documentation; or (h) any other exclusionary circumstance specified in the applicable Cloud Services SOW.

\*Monthly Minutes (MM)\* means total minutes in which service was scheduled to be available.

\*Outage\* means the accumulated time during which Customer is unable to establish an active communications connection, measured from beginning to end, between Customer and the Program for reasons other than (a) failures caused by Customer Data; or (b) any Excluded Events.

\*Scheduled Maintenance (SM)\* means scheduled maintenance periods established by Kronos to provide ample time to maintain and update the applications, when necessary. During these maintenance periods, the applications are available to Kronos to perform periodic services, which include vital software updates. Systems will generally continue to be available to Customer; however, some changes will require planned downtime. Kronos will provide notice for planned downtime via an email notice to our primary Customer contact at least one day in advance of such shutdown/restart so planning can be facilitated by Customer.

When application maintenance is required, current Scheduled Maintenance periods for the applications are:

Monday through Friday	4am – 6am
Saturday and Sunday	12am - 6am

- All times listed are U.S. Eastern Time.
- Kronos' utilization of the above maintenance windows shall not trigger SLA Credits to Customer.

\*Total Minutes Not Available\* (TM) means the total number of minutes during the calendar month that the Program is unavailable outside of scheduled maintenance windows.

**Limitations:** Kronos will apply any credits to the Customer account. Credits will not be provided if: (a) Customer is in breach or default under this Section or the Program at the time the Outage occurred and such breach is the cause of the Outage; or (b) it results from an Excluded Event.

In no event will the credits accrued in any calendar month exceed, in the aggregate across all service levels and events, one hundred (100%) of the invoice amount for the Affected Service.

The Service Level Agreements in this Exhibit, and the related credits listed, apply on a per Program basis. For the avoidance of doubt, Outages, delays, failures, etc. in one Program may not be added to Outages, delays, failures, etc. in any other Program for purposes of calculating SLA credits.

**SECTION D**  
**KRONOS WORKFORCE CENTRAL - SOFTWARE AS A SERVICE (SAAS) TERMS AND CONDITIONS**

Customer and Kronos agree that the terms and conditions set forth in this Section D shall apply to the Kronos supply of the commercially available version of the Workforce Central SaaS Applications and related services and materials (including applicable documentation) and Equipment (if any) specified on an Order Form. The Applications described on the Order Form shall be delivered by means of Customer's permitted access to the password protected customer area of a Kronos website.

**1. DEFINITIONS**

"Application(s)" or "SaaS Application(s)" means those Kronos software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Section D.

"Cloud Services" means those services related to Customer's hosting environment such as hosting infrastructure, equipment, bandwidth, server monitoring, backup services, storage area network (SAN) services, security services, system administration, connectivity services, performance tuning, update installation and maintenance services related thereto. Unless otherwise set forth in a Statement of Work, Cloud Services are described as set forth at: <http://www.kronos.com/products/smb-solutions/workforce-central-saas/implementation-guidelines.aspx>

"Customer Content" means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Services.

"Documentation" means technical publications published by Kronos relating to the use of the Services or Applications.

"Equipment" means the Kronos equipment specified on an Order Form.

"Implementation Services" means those services provided by Kronos to set up the hosting environment and configure the Services, including educational services and training. Unless otherwise set forth in a Statement of Work, Kronos' and Customer's implementation responsibilities are described in the Services Implementation Guideline set forth at: <http://www.kronos.com/products/smb-solutions/workforce-central-saas/implementation-guidelines.aspx> Implementation Services may be provided as forth in Section B

"Initial Term" means the initial term of the Services as indicated on the Order Form.

"KnowledgePass Content"/"KnowledgePass Education Subscription" have the meanings ascribed in Section 7.5.

"Minimum Contract Value" means the total of all Monthly Service Fees to be invoiced during the Initial Term.

"Monthly Service Fee(s)" means the monthly fees described in an Order Form. Monthly Service Fees include fees for usage of Applications and the Services, Cloud Services as applicable, and Equipment rental, if any. Billing of the Monthly Service Fee(s) commences on the Start Date.

"Order Form" means an order form mutually agreed upon by Kronos and Customer setting forth the items ordered by Customer and to be provided by Kronos, including without limitation the Applications and the prices and fees to be paid by Customer.

"Personally Identifiable Data" means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

"Services" means (i) accessibility to the commercially available version of the Applications by means of access to the password protected customer area of a Kronos website, (ii) the Equipment purchased or rented hereunder, (iii) the Implementation Services and Cloud Services, and (iv) such other services, items and offerings set forth on an Order Form.

"Start Date" means the date billing commences for the Services (excluding the Implementation Services) as indicated on the applicable Order Form. For any Services ordered by Customer after the date of this Section D which are incremental to Customer's then-existing Services, the Start Date shall be the date the applicable Order Form is executed by Kronos and Customer.

"Statement of Work", "SOW", "Services Scope Statement" and "SSS" are interchangeable terms referring to a written description of the Implementation Services and Cloud Services as mutually agreed upon by Kronos and Customer. An SOW supersedes any implementation guidelines or descriptions on a web page referenced in this Section D.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Program.

"Term" means the Initial Term and any monthly renewals thereafter, as further set forth in Section 2.1.

"Training Points" has the meaning ascribed to it in Section 7.6 below.

**2. TERM**

2.1 The Services shall commence on the Start Date, and shall continue for the Initial Term or until terminated in accordance with the provisions hereof. At the expiration of the Initial Term, the Term shall automatically renew on a month-to-month basis until terminated in accordance with the provisions hereof. Customer acknowledges that execution of separate third party agreements may be required in order for Customer to use certain add-on features or functionality, including without limitation tax filing services.

2.2 At any time after the Initial Term: (i) Customer may terminate the Services for convenience upon thirty (30) days prior written notice, and (ii) Kronos may terminate the Services for convenience upon ninety (90) days prior written notice.

2.3 Either party may suspend or terminate the Services upon a material breach of this Section D by the other party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Kronos may suspend or terminate the Services immediately upon notice in the event of any Customer breach of Sections 3 (Right to Use), 4 (Acceptable Use), or 14 (Confidential Information).

2.4 In the event that either party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated a bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization, the other party may request adequate assurances of future performance. Failure to provide adequate assurances, in the requesting party's reasonable discretion, within ten (10) days of delivery of the request shall entitle the requesting party to terminate the Services immediately upon written notice to the other party.

2.5 If the Services are terminated for any reason:

(a) Customer shall pay Kronos within thirty (30) days of such termination, all fees accrued for the Services prior to the date of termination, provided that if Customer terminates for material breach of this Section D by Kronos, Kronos shall be responsible to refund to Customer unused pre-paid Implementation Service fees, if any;

(b) Customer's right to access and use the Services shall be revoked and be of no further force or effect;

(c) No more than fifteen (15) days after termination or upon Customer's written request at any time during the Term, Kronos will provide to Customer, at no charge to Customer, the Customer Content. After such time period, Kronos shall have no further obligation to store or make available the Customer Content and may delete any or all Customer Content without liability.

(d) Customer agrees to timely return all Kronos-provided materials related to the Services to Kronos at Customer's expense or, alternatively, destroy such materials and provide Kronos with an officer's certification of the destruction thereof; and

(e) all provisions in this Section D, which by their nature are intended to survive termination, shall so survive.

### 3. FEES AND PAYMENT

3.1 In consideration of the delivery of the Services, Customer shall pay Kronos the Monthly Service Fees, the fees for the Implementation Services and any additional one time or recurring fees for Equipment, Training Points, KnowledgePass Education Subscription and such other Kronos offerings, all as set forth on the Order Form. If Customer and Kronos have signed a Statement of Work for the Implementation Services, Implementation Services such services will be provided and payable in accordance with Section B. All fees payable for the Services shall be sent to the attention of Kronos as specified on the invoice. Unless otherwise indicated on an Order Form, payment for all items shall be due 30 days following date of invoice. Except as expressly set forth in this Section D, all amounts paid to Kronos are non-refundable. Customer acknowledges that fees may be charged to Customer by third parties for add-on features or functionality provided by such third parties.

3.2 If any amount owing under this or any other agreement for Services is thirty (30) or more days overdue, Kronos may, without limiting Kronos' rights or remedies, suspend Services until such amounts are paid in full. Kronos will provide at least seven (7) days' prior written notice that Customer's account is overdue before suspending Services.

3.3 Deleted Intentionally.

3.4 Customer agrees that except if Customer terminates for material breach of this Section D by Kronos, if Customer has not paid the Minimum Contract Value to Kronos at the conclusion of the Initial Term or the earlier termination of the Services, whichever is earlier, Kronos shall bill, and Customer shall pay within thirty (30) days of the date of such invoice, the difference between the total Monthly Service Fees then paid by Customer and the Minimum Contract Value, less SLA Credits, if any, that have been earned previously by Customer but not yet credited.

### 4. RIGHTS TO USE

4.1 Subject to the terms and conditions of the Agreement, Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use during the Term and for internal business purposes only: a) the Application(s) and related services, including the Documentation; b) training materials and KnowledgePass Content; and, c) any embedded third party software, libraries, or other components, which are included in the Services, excluding such Third Party software, libraries or other components as are licensed directly from such Third Parties. The Services contain proprietary trade secret technology of Kronos and its Suppliers. Unauthorized use and/or copying of such technology are prohibited by law, including United States and foreign copyright law. Customer shall not reverse compile, disassemble or otherwise convert the applications into uncompiled or unassembled code. Customer shall not use any of the third party software programs (or the data models therein) included in the Services except solely as part of and in connection with the Services.

4.2 Customer acknowledges and agrees that the right to use the Applications is limited based upon the amount of the Monthly Service Fees paid by Customer. Customer agrees to use only the modules and/or features for the number of employees and users as described on the Order Form. Customer agrees not to use any other modules or features nor increase the number of employees and users unless Customer pays for such additional modules, features, employees or users, as the case may be. Customer may not license, relicense or sublicense the Services, or otherwise permit use of the Services (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Services without the express prior written consent of Kronos. No license, right, or interest in any Kronos trademark, trade name, or service mark, or those of Kronos' licensors or Suppliers, is granted hereunder.

4.3 Customer may authorize its third party contractors and consultants to access the Services on an as needed basis, provided Customer: a) abides by its obligations to protect Confidential Information as set forth in this Agreement; b) remains responsible for all such third party usage and compliance with the Agreement; and c) does not provide such access to a competitor of Kronos who provides workforce management services.

4.4 Customer acknowledges and agrees that, as between Customer and Kronos, Kronos retains ownership of all right, title and interest in the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with Customer, Customer shall not obtain or claim any rights in or ownership interest in the Services or Applications or any associated intellectual property rights in any of the foregoing. Customer agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by Customer through the Services.

4.5 When using and applying the information generated by the Services, Customer is responsible for ensuring that Customer complies with the applicable requirements of federal and state law. If the Services include the Workforce Payroll Applications or Workforce Absence Management Applications: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using these Applications, (ii) using these Applications does not release Customer of any professional obligation concerning the preparation and review of any reports and documents, (iii) Customer does not rely upon Kronos, Best Software, Inc. or these Applications for any advice or guidance regarding compliance with federal and state laws or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using these Applications and satisfy itself that those calculations are correct.

### 5. ACCEPTABLE USE

5.1 Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Services, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Section D.

5.2 Customer represents and warrants to Kronos that Customer has the right to publish and disclose the Customer Content in the Services. Customer represents and warrants to Kronos that the Customer Content does not: (a) infringe or violate any third-party right, including but not limited to intellectual property, privacy, or publicity rights, (b) be abusive, profane, or offensive to a reasonable person, or, (c) be hateful or threatening.

5.3 Customer will not (a) use, or allow the use of, the Services in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (b) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services, or alter, damage, delete, retrieve or record information about the Services or its users; (c) excessively overload the Kronos systems used to provide the Services; (d) perform any security integrity review, penetration test, load test, denial of service simulation or vulnerability scan; (e) use any tool designed to automatically emulate the actions of a human user (e.g., robots); or, (d) otherwise act in a fraudulent, malicious or negligent manner when using the Services.

## 6. CONNECTIVITY AND ACCESS

Customer acknowledges that Customer shall (a) be responsible for securing, paying for, and maintaining connectivity to the Services (including any and all related hardware, software, third party services and related equipment and components); and (b) provide Kronos and Kronos' representatives with such physical or remote access to Customer's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under this Section D. Customer will make all necessary arrangements as may be required to provide access to Customer's computer and network environment if necessary for Kronos to perform its obligations under this Section D. Customer agrees that Kronos may audit Customer's use of the Services.

## 7. IMPLEMENTATION AND SUPPORT

7.1 Implementation Services. Kronos will provide the Implementation Services to Customer. Implementation Services described in an SSS are provided on a time and materials basis, billed monthly as delivered. Implementation Services described in the Services Implementation Guideline are provided on a fixed fee basis. If Customer requests additional Implementation Services beyond those described in the SSS, Kronos will create a change order for Customer's review and approval and any additional Implementation Services to be provided by Kronos in accordance with Section B. Kronos' configuration of the Applications will be based on information and work flows that Kronos obtains from Customer during the discovery portion of the implementation. Customer shall provide Kronos with necessary configuration-related information in a timely manner to ensure that mutually agreed implementation schedules are met.

7.2 Additional Services. Customer may engage Kronos to provide other services which may be fixed by activity or provided on a time and materials basis as indicated on the applicable Order Form.

7.3 Support. Kronos will provide 24x7 support for the hosting infrastructure, the availability to the hosting environment, and telephone support for the logging of functional problems and user problems. Customer may log questions online via the Kronos Customer Portal. As part of such support, Kronos will make updates to the Services available to Customer at no charge as such updates are released generally to Kronos' customers. Customer agrees that Kronos may install such updates automatically as part of the Services.

7.4 Support Services for Equipment. Provided Customer has purchased support services for the Equipment, the following terms shall apply (support services for rented Equipment are included in the rental fees for such Equipment):

(a) Upon the failure of Installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number.

(b) Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

(c) Customer shall be entitled to receive service packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements) available for download at Kronos' customer portal. Service packs for the Equipment are not installed by Kronos.

(d) Kronos warrants that all service packs and firmware updates provided under this Section D shall materially perform in accordance with the Kronos published specifications for a period of ninety (90) days after download by Customer. In the event of a breach of this warranty, Customer's exclusive remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s).

(e) Customer agrees that it shall return failed Equipment promptly as the failures occur and that it shall not hold failed Equipment and send failed Equipment to Kronos in "batches" which shall result in a longer turnaround time to Customer. In addition, in all circumstances, Customer agrees to:

(i) Maintain the Equipment in an environment conforming to the Documentation for such Equipment;

(ii) Not perform self-repairs on the Equipment (i.e., replacing components) without prior written authorization from Kronos;

(iii) De-install all failed Equipment and install all replacement Equipment in accordance with Kronos' written installation guidelines;

(iv) Ensure that the Equipment is returned to Kronos properly packaged; and

(v) Obtain an RMA before returning any Equipment to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Equipment authorized by Kronos when issuing the RMA.

7.5 KnowledgePass Education Subscription. When KnowledgePass Education Subscription is listed on an Order Form, Kronos will provide Customer with the KnowledgePass Education Subscription. The KnowledgePass Education Subscription provides access to certain educational offerings provided by Kronos (the "KnowledgePass Content"). Customer recognizes and agrees that the KnowledgePass Content is copyrighted by Kronos. Customer is permitted to make copies of the KnowledgePass Content provided in "pdf form solely for Customer's internal use. Customer may not disclose such KnowledgePass Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the KnowledgePass Content without the written consent of Kronos, provided that Customer may download and modify contents of training kits solely for Customer's internal use.

7.6 Training Points. "Training Points" which are purchased by Customer may be redeemed for an equivalent value of instructor-led training sessions

offered by Kronos. Training Points may be redeemed only during the Term at any time no more than twelve (12) months after the date of the applicable Order Form, after which time such Training Points shall expire and be of no value. Training Points may not be exchanged for other Kronos products or services.

**7.7 Training Courses.** When Implementation Services are described in the Services Implementation Guideline rather than an SSS, as part of the Services, for each SaaS application module included in the Services purchased by Customer, Customer's employees shall be entitled to attend, in the quantity indicated, the corresponding training courses set forth at: <http://www.kronos.com/products/smb-solutions/workforce-central-saas/training-guidelines.aspx>

Participation in such training courses is limited to the number of seats indicated for the courses corresponding to the modules forming a part of the Services purchased by Customer.

## **8. CUSTOMER CONTENT**

Customer shall own all Customer Content and posts or other inputs into the Services by Customer or others acting on behalf of or through Customer. Kronos acknowledges that all of the Customer Content is deemed to be Confidential Information of Customer. Notwithstanding the foregoing, Customer grants Kronos permission to combine Customer's business data with that of other customers in a manner that does not identify the Customer or any individual in order to evaluate and improve the services Kronos offers to customers and to disclose such aggregated information for its customers generally. In addition, Kronos may, but shall have no obligation to, monitor Customer Content from time to time to ensure compliance with this Section D and applicable law.

## **9. EQUIPMENT**

If Customer purchases or rents Equipment from Kronos, a description of such Equipment (model and quantity), the applicable pricing, and delivery terms shall be listed on the Order Form.

**9.1** The following terms apply only to Equipment Customer rents from Kronos:

- a) **Rental Term and Warranty Period.** The term of the Equipment rental and the "Warranty Period" for such Equipment shall run coterminously with the Term of the other Services provided under this Section D.
- b) **Insurance.** Customer shall insure the Equipment for an amount equal to the replacement value of the Equipment for loss or damage by fire, theft, and all normal extended coverage at all times. No loss, theft or damage after shipment of the Equipment to Customer shall relieve Customer from Customer's obligations under this Section D.
- c) **Location/Replacement.** Customer shall not make any alterations or remove the Equipment from the place of original installation without Kronos' prior written consent. Kronos shall have the right to enter Customer's premises to inspect the Equipment during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to Customer, to replace any Equipment with newer or alternative technology Equipment as long as the replacement Equipment at least provides the same level of functionality as that being replaced.
- d) **Ownership.** All Equipment shall remain the property of Kronos. All Equipment is, and at all times shall remain, separate items of personal property, notwithstanding such Equipment's attachment to other equipment or real property. Customer shall not sell or otherwise encumber the Equipment. Customer shall furnish any assurances, written or otherwise, reasonably requested by Kronos to give full effect to the intent of terms of this paragraph (d).
- e) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in Section 7.
- f) **Return of Equipment.** Upon termination of the Services, Customer agrees that Customer shall return the Equipment to Kronos within thirty (30) days at Customer's expense. Equipment will be returned to Kronos in the same condition as and when received, reasonable wear and tear excepted. If Customer fails to return Equipment within this time period, upon receiving an invoice from Kronos, Customer shall pay Kronos the then list price of the unreturned Equipment.

**9.2** The following terms apply only to Equipment Customer purchases from Kronos:

- a) **Ownership and Warranty Period.** Title to the Equipment shall pass to Customer upon delivery to the carrier. The "Warranty Period" for the Equipment shall be for a period of ninety (90) days from such delivery (unless otherwise required by law).
- b) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described herein if purchased separately by Customer as indicated on the applicable Order Form. If purchased, Equipment support services shall commence upon expiration of the Warranty Period.

## **10. SERVICE LEVEL AGREEMENT**

Kronos shall provide the service levels and associated credits, when applicable, in accordance with the Service Level Agreement attached hereto as Exhibit A and which is hereby incorporated herein by reference. **CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE OR INTERRUPTION OF THE SERVICES OR FAILURE BY KRONOS TO MEET THE TERMS OF THE APPLICABLE service level agreement, SHALL BE THE REMEDIES PROVIDED IN exhibit A.**

## **11. LIMITED WARRANTY; DISCLAIMERS OF WARRANTY**

**11.1** Kronos represents and warrants to Customer that the Applications, under normal operation as specified in the documentation and when used as authorized herein, will perform substantially in accordance with such documentation during the Term.

**11.2** Kronos' sole obligation and Customer's sole and exclusive remedy for any breach of the foregoing warranty is limited to Kronos' reasonable commercial efforts to correct the non-conforming Services at no additional charge to Customer. In the event that Kronos is unable to correct material deficiencies in the Services arising during the Warranty Period, after using Kronos' commercially reasonable efforts to do so, Customer shall be entitled to terminate the then remaining Term of the Services for cause in accordance with Section 2 above as Customer's sole and exclusive remedy. Kronos' obligations hereunder for breach of warranty are conditioned upon Customer notifying Kronos of the material breach in writing, and providing Kronos with sufficient evidence of such non-conformity to enable Kronos to reproduce or verify the same.

**11.3** Kronos warrants to Customer that each item of Equipment shall be free from defects in materials and workmanship during the Warranty Period. In the event of a breach of this warranty, Customer's sole and exclusive remedy shall be Kronos' repair or replacement of the deficient Equipment, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the documentation for such Equipment. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) in the event of:

- a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including without limitation modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- b) failure of Customer to provide and maintain a suitable installation environment, as specified in the published specifications for such Equipment; or

- c) malfunctions resulting from the use of badges or supplies not approved by Kronos.

EXCEPT AS PROVIDED FOR IN THIS SECTION 11, KRONOS HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTIES AND REPRESENTATIONS RELATING TO THE SERVICES, EXPRESS OR IMPLIED, ORAL OR IN WRITING, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WHETHER OR NOT ARISING THROUGH A COURSE OF DEALING. THE SERVICES ARE NOT GUARANTEED TO BE ERROR-FREE OR UNINTERRUPTED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION D OF THIS AGREEMENT, KRONOS MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE COMPATIBILITY OF THE SERVICES, THE SAAS APPLICATIONS OR THE EQUIPMENT NOR ANY RESULTS TO BE ACHIEVED THEREFROM.

## 12.0 DATA SECURITY

12.1 As part of the Services, Kronos shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data as described at: <http://www.kronos.com/products/smb-solutions/workforce-central-saas/security-description.aspx>

Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under this Section D.

12.2 As between Customer and Kronos, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of Customer's knowledge such Personally Identifiable Data supplied to Kronos is accurate. Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Kronos and Kronos' Suppliers wherever located only for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out Kronos' duties and responsibilities under this Section D or as required by law.

12.3 Prior to initiation of the Services and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's industry and which could be imposed on Kronos as a result of provision of the Services. Customer will ensure that: (a) the transfer to Kronos and storage of any Personally Identifiable Data by Kronos or Kronos' Supplier's data center is permitted under applicable data protection laws and regulations; and, (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

## 13. INDEMNIFICATION

13.1 Kronos shall defend Customer and its respective directors, officers, and employees (collectively, the "Customer Indemnified Parties"), from and against any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party (each a "Claim") alleging that the permitted uses of the Services infringe or misappropriate any United States or Canadian copyright or patent and will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including without limitation reasonable attorneys' fees) actually awarded to a third party as a result of such Claim by a court of applicable jurisdiction or as a result of Kronos' settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Services by reason of infringement or misappropriation of such copyright or patent, or if in Kronos' opinion, the Services are likely to become the subject of a successful claim of such infringement or misappropriation, Kronos, at Kronos' option and expense, will use commercially reasonable efforts to (a) procure for Customer the right to continue using the Services as provided in this Section D, (b) replace or modify the Services so that the Services become non-infringing but remain substantively similar to the affected Services, and if neither (a) or (b) is commercially feasible, to (c) terminate the Services and the rights granted hereunder after provision of a refund to Customer of the Monthly Service Fees paid by Customer for the infringing elements of the Services covering the period of their unavailability.

13.2 Kronos shall have no liability to indemnify or defend Customer to the extent the alleged infringement is based on: (a) a modification of the Services by anyone other than Kronos; (b) use of the Services other than in accordance with Kronos' documentation for such Service or as authorized by this Section D; (c) use of the Services in conjunction with any data, equipment, service or software not provided by Kronos, where the Services would not otherwise itself be infringing or the subject of the claim; or (d) use of the Services by Customer other than in accordance with the terms of this Section D. Notwithstanding the foregoing, with regard to infringement claims based upon software created or provided by a licensor to Kronos or Suppliers, Kronos' maximum liability will be to assign to Customer Kronos' or Supplier's recovery rights with respect to such infringement claims, provided that Kronos or Kronos' Supplier shall use commercially reasonable efforts at Customer's cost to assist Customer in seeking such recovery from such licensor.

13.3 Customer shall be responsible and liable for all damages and cost of Kronos, its suppliers and their officers, directors and employees for all Claims resulting from: (a) employment-related claims arising out of Customer's configuration of the Services; (b) Customer's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification or combination is the cause of such infringement and was not authorized by Kronos; or, (c) a claim that the Customer Content infringes in any manner any Intellectual property right of any third party, or any of the Customer Content contains any material or information that is obscene, defamatory, libelous, or slanderous violates any person's right of publicity, privacy or personality, or has otherwise caused or resulted in any tort, injury, damage or harm to any other person.

13.4 The Indemnified Party(ies) shall provide written notice to the Indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party shall be relieved from providing such indemnity to the extent of the delay's impact on the defense. The indemnifying party shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party shall not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other party. The Indemnified Parties shall cooperate fully, at the Indemnifying party's request and expense, with the Indemnifying party in the defense, settlement or compromise of any such action. The Indemnified party may retain its own counsel at its own expense, subject to the Indemnifying party's rights above.

## 14. LIMITATION OF LIABILITY

14.1 Except as specifically provided in this Section D, Kronos and its suppliers will not be liable for any damages or injuries caused by the use of the services or by any errors, delays, interruptions in transmission, or failures of the services.

14.2 Except for Kronos' indemnification obligations set forth in section 13 above, the total aggregate liability of Kronos or Kronos' suppliers to



customer and/or any third party in connection with this Section D shall be limited to direct damages proven by customer, such direct damages not to exceed an amount equal to the total net payments received by Kronos for the services in the twelve (12) month period immediately preceding the date in which such claim arises.

14.3 Except for Kronos' indemnification obligations set forth in section 13 above, in no event shall Kronos or Kronos' suppliers, their respective affiliates, service providers, or agents be liable to customer or any third party for any incidental, special, punitive, consequential or other indirect damages or for any lost or imputed profits or revenues, lost data or cost of procurement of substitute services resulting from delays, nondeliveries, misdeliveries or services interruption, however caused, arising from or related to the Services, regardless of the legal theory under which such liability is asserted, whether breach of warranty, indemnification, negligence, strict liability or otherwise, and whether liability is asserted in contract, tort or otherwise, and regardless of whether Kronos or supplier has been advised of the possibility of any such liability, loss or damage.

14.4 Except with respect to liability arising from Kronos' gross negligence or willful misconduct, Kronos disclaims any and all liability, including without limitation liability related to a breach of data security and confidentiality obligations, resulting from any externally introduced harmful program (including without limitation viruses, trojan horses, and worms), Customer's content or applications, third party unauthorized access of equipment, SAAS applications or systems, or machine error.

EXHIBIT A

SERVICE LEVEL AGREEMENT (SLA)

**Service Level Agreement:** The Services, in a production environment and as described in the Statement of Work (aka Services Scope Statement), are provided with the service levels described in this Exhibit A. SLAs are only applicable to production environments. SLAs will be available upon Customer's signature of Kronos' Go Live Acceptance Form for Customer's production environment.

**99.75% Application Availability**

**Actual Application Availability % = (Monthly Minutes (MM) minus Total Minutes Not Available (TM)) multiplied by 100 and divided by Monthly Minutes (MM), but not including Excluded Events**

**Service Credit Calculation:** An Outage will be deemed to commence when the Applications are unavailable to Customer in Customer's production environment hosted by Kronos and end when Kronos has restored availability of the Services. Failure to meet the 99.75% Application Availability SLA, other than for reasons due to an Excluded Event, will entitle Customer to a credit as follows:

Actual Application Availability % (as measured in a calendar month)	Service Credit to be applied to Customer's monthly invoice for the affected month
<99.75% to 98.75%	10%
<98.75% to 98.25%	15%
<98.25% to 97.75%	25%
<97.75 to 96.75%	35%
<96.75	50%

**"Outage"** means the accumulated time, measured in minutes, during which Customer is unable to access the Applications for reasons other than an Excluded Event.

**"Excluded Event"** means any event that results in an Outage and is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos, including without limitation Customer Content, failures or malfunctions resulting from circuits provided by Customer, any inconsistencies or changes in Customer's source environment, including either intentional or accidental connections or disconnections to the environment; (c) Force Majeure events; (d) scheduled or emergency maintenance, alteration or implementation provided during the Maintenance Period defined below; (e) any suspension of the Services in accordance with the terms of the Agreement to which this Exhibit A is attached; (f) the unavailability of required Customer personnel, including as a result of failure to provide Kronos with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.

**"Maintenance Period"** means scheduled maintenance periods established by Kronos to maintain and update the Services, when necessary. During these Maintenance Periods, the Services are available to Kronos to perform periodic maintenance services, which include vital software updates. Kronos will use its commercially reasonable efforts during the Maintenance Period to make the Services available to Customer; however, some changes will require downtime. Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least one day in advance of any known downtime so planning can be facilitated by Customer.

Currently scheduled Maintenance Periods for the Services are:

Monday through Friday 04:00 am – 08:00 am (U.S. eastern time)  
Saturday and Sunday 12:00 am – 06:00 am (U.S. eastern time)

Maintenance Periods include those maintenance periods mutually agreed upon by Customer and Kronos.

**"Monthly Minutes (MM)"** means the total time, measured in minutes, of a calendar month commencing at 12:00 am of the first day of such calendar month and ending at 11:59 pm of the last day of such calendar month.

**"Total Minutes Not Available (TM)"** means the total number of minutes during the calendar month that the Services are unavailable as the result of an Outage.

**Limitations:** Service Credits will not be provided if: (a) Customer is in breach or default under the Agreement at the time the Outage occurred; or (b) the Outage results from an Excluded Event. If Kronos does not provide the appropriate Service Credit as due hereunder, Customer must request the Service Credit within sixty (60) calendar days of the conclusion of the month in which the Service Credit accrues. Customer waives any right to Service Credits not requested within this time period. All performance calculations and applicable Service Credits are based on Kronos records and data unless Customer can provide Kronos with clear and convincing evidence to the contrary.

The Service Level Agreements in this Exhibit, and the related Service Credits, apply on a per production environment basis. For the avoidance of doubt, Outages in one production environment may not be added to Outages in any other production environment for purposes of calculating Service Credits.

Customer acknowledges that Kronos manages its network traffic in part on the basis of Customer's utilization of the Services and that changes in such utilization may impact Kronos' ability to manage network traffic. Therefore, notwithstanding anything else to the contrary, if Customer significantly changes its utilization of the Services than what is contracted with Kronos and such change creates a material and adverse impact on the traffic balance of the Kronos network, as reasonably determined by Kronos, the parties agree to co-operate, in good faith, to resolve the issue.

## SECTION E

### KRONOS WORKFORCE READY® - SOFTWARE AS A SERVICE (SAAS) TERMS AND CONDITIONS

Customer and Kronos agree that the terms and conditions set forth in this Section E shall apply to the Kronos software application programs and related services and materials (including applicable documentation) and equipment (if any) specified on an Order Form for Workforce Ready (collectively, the "Services"). The Services described on an Order Form shall be delivered by means of Customer's permitted access to the password protected customer area of a Kronos website.

#### 1. TERM

1.1 The Services shall be deemed to start on the earlier of: a) ninety (90) days from Kronos' receipt of the relevant Order Form; or, b) the date Customer is authorized to "go live" with the Services for production purposes, (the "Start Date"), and shall continue indefinitely on a month-to-month basis until terminated in accordance with the provisions hereof (the "Term"). Customer acknowledges that execution of separate third party agreements may be required in order for Customer to "go live" with certain add-on features or functionality, including tax filing services ("Add-on Features"), as identified by Kronos on the Order Form.

1.2 Customer may terminate the Services or the Agreement for convenience upon thirty (30) days prior written notice.

1.3 Either party may suspend or terminate the Services or the Agreement upon a material breach of the Agreement by the other party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Kronos may suspend or terminate the Services or the Agreement immediately upon notice in the event of any Customer breach of Sections 3 (License to Use), 4 (Acceptable Use), or Section A.4 (Confidential Information), below.

1.4 In the event that either party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated a bankrupt or insolvent, commences a case under applicable bankruptcy laws, files a petition seeking reorganization, the other party may request adequate assurances of future performance. Failure to comply with such request within ten (10) days of delivery of the request shall entitle the requesting party to terminate the Agreement immediately upon written notice to the other.

1.5 If the Agreement is terminated for any reason:

(a) Customer shall pay Kronos within thirty (30) days all fees accrued for the Services prior to the date of termination, provided that if Customer terminates Kronos for material breach of the Agreement, Kronos shall be responsible to refund to Customer unused pre-paid service fees, if any;

(b) Customer's right to access and use the Services shall be revoked and be of no further force or effect;

(c) Within fifteen (15) days of termination Customer will retrieve Customer's historical data in accordance with previously established system access procedures and applicable state and federal laws. After such time period, Kronos shall have no further obligation to store and/or make available Customer's historical data and may delete same. If Customer requires additional data conversion services from Kronos, these services may be contracted from Kronos at Kronos' then published rates.

(d) Customer agrees to timely return all Kronos-provided materials related to the Services to Kronos at Customer's expense or, alternatively, upon prior written approval of Kronos, provide Kronos with an officer's certification of the destruction thereof; and

(e) all provisions in the Agreement, which by their nature are intended to survive termination, shall so survive.

#### 2. FEES AND PAYMENT

2.1 In consideration of the delivery of the Services, Customer shall pay Kronos the Setup Fees, the Monthly Service Fees and any additional one time, set-up or recurring fees, all as defined on the Order Form. All fees payable for the Services shall be sent to the address specified on the Kronos invoice. Unless otherwise indicated on an Order Form, payment terms for all items except the Setup Fees shall be net upon receipt of invoice. Except as expressly set forth in this Section E, all amounts paid to Kronos are non-refundable.

2.2 The Setup Fees shall be invoiced upon execution of the Order and shall be due net 30 days following date of invoice. Customer acknowledges that setup fees may be charged to Customer by third parties for Add-on Features. Monthly Service fees shall be based on monthly periods that begin on the Start Date. Monthly Service Fees shall include fees for Equipment rental, if any, as described in Section 8 below. Monthly Service Fees for Services added on or before the 15<sup>th</sup> day of a given month will be charged for that full monthly period and each monthly period of the Term thereafter; Monthly Service Fees for Services added after the 15<sup>th</sup> day of a given month will begin to accrue as of the 1<sup>st</sup> day of the following month and will be charged for each monthly period of the Term thereafter. Monthly Service Fees shall be invoiced promptly following the end of the calendar month in which the Monthly Service Fees were accrued. Kronos will monitor Customer's "Usage" of the Services (as defined below) in order to calculate the Usage portion of the Monthly Service Fees to be charged. Usage of the Services, depending on applicable features, components, or services, shall be priced as identified on the Order Form either on: a) (a) per month basis; (b) per active employee (herein "Active Employee") per month usage basis; or, (c) per transaction basis (e.g.: pay statement). For purposes of the Agreement, an employee shall be deemed an Active Employee during any applicable billing period if through the Services: (i) time has been entered for such employee; (ii) records have been included for such employee for the purpose of processing payroll; (iii) records have been included for such employee within an import/export process; (iv) such employee has accessed the Services, regardless of the purpose; (v) benefit time has been accrued for such employee; (vi) human resource reporting has been performed for or on such employee; or, (vii) such employee has been marked as an "Active" status during the period.

2.3 Customer agrees that except in those circumstances in which Customer is entitled to invoke the termination for cause provision set forth in Section 1.3 above, in consideration of Kronos' delivery of the Services on a variable fee basis, Customer agrees to pay Kronos each month during the Term in which charges accrue no less than the minimum monthly fees ("Minimum Monthly Fees") as identified on the Order Form. The Minimum Monthly Fees shall be calculated by Kronos based on Customer's anticipated monthly Usage of the Services plus Equipment rental fees, if any. In the event that Customer does not reach the anticipated Usage upon which the Minimum Monthly Fees was based for any given month during the Term, Customer shall remain responsible for paying the Minimum Monthly Fees for that month. If an Order Form or the Agreement is suspended by Kronos for non-payment or otherwise terminated by Kronos for cause, Customer shall remain liable to pay the applicable Minimum Monthly Fees up to and including the last day of the month in which the effective date of termination occurs.

2.4 If any amount owing under this or any other agreement for Services is 30 or more days overdue, Kronos may, without limiting its other rights and remedies, accelerate unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full. Kronos will provide at least 7 days' prior notice that Customer's account is overdue before suspending Services.

2.5 Deleted intentionally.

### 3. LICENSE TO USE

3.1 Subject to the terms and conditions of this Section E, Kronos hereby grants Customer during the Term a limited, revocable, non-exclusive, non-transferable, non-assignable license to use for Internal business purposes only: a) the Kronos application(s) and related services, including applicable Services description documentation and training materials (the "Documentation"); and, b) any embedded third party software, libraries, or other components, which collectively comprise the Services. The Services contain proprietary trade secret technology of Kronos. Unauthorized use and/or copying of such Services are prohibited by law, including United States and foreign copyright law. Customer may use the software included in the Services in object code form only, and shall not reverse compile, disassemble or otherwise convert such software into uncompiled or unassembled code. Customer acknowledges and agrees that the license to use the Services is limited based upon authorized Usage and the amount of the Monthly Service Fees to be paid by Customer. Customer agrees to use only the modules and/or features described on the Order Form. Customer agrees not to use any other modules or features unless Customer has licensed such additional modules or features. Customer may not relicense or sublicense the Services, or otherwise permit use of the Services (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Services without the express prior written consent of Kronos. No license, right, or interest in any Kronos trademark, trade name, or service mark, or those of Kronos' licensors or third party suppliers ("Suppliers"), is granted hereunder.

3.2 Customer may authorize its third party contractors and consultants to access the Services on an as needed basis, provided Customer: a) abides by its obligations to protect confidential information; b) remains responsible for all such third party usage and compliance with this Section E of this Attachment; and c) does not provide such access to a competitor of Kronos who provides workforce management services.

3.3 Customer agrees and acknowledges that Kronos retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express licenses granted herein, Customer shall not obtain or claim any rights in or ownership interest to the Services or any associated intellectual property rights therein. Customer agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by Customer through the Services.

3.4 Kronos will make updates and upgrades to the Services (tools, utilities, improvements, third party applications, general enhancements) available to Customer at no charge as they are released generally to its customers. Customer agrees to receive those updates automatically as part of the Services. Kronos also may offer new products and/or services to Customer at an additional charge. Customer shall have the option of purchasing such new products and/or services under a separate Order Form.

3.5 Kronos reserves the right to change or discontinue the Services, in whole or in part, including but not limited to, the Internet based services, technical support options, and other Services-related policies. Customer's continued use of the Services after Kronos posts or otherwise notifies Customer of any changes indicates Customer's agreement to those changes.

### 4. ACCEPTABLE USE

4.1 Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Services, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Section E.

4.2 Customer represents and warrants to Kronos that Customer has the right to publish and disclose Customer's data and other content ("Customer Content") in connection with the Services. Customer represents and warrants to Kronos that the Customer Content will not: (a) infringe or violate any third-party right, including (but not limited to) intellectual property, privacy, or publicity rights; (b) be abusive, profane, or offensive to a reasonable person; or, (c) be hateful or threatening.

4.3 Customer will not (a) use, or allow the use of, the Services or Customer Content in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (b) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services; or alter, damage, delete, retrieve or record information about the Services or its users; (c) excessively overload the Kronos systems used to provide the Services; (d) perform any security integrity review, penetration test, load test, denial of service simulation or vulnerability scan; (e) use any tool designed to automatically emulate the actions of a human user (e.g., robots); or, (d) otherwise act in a fraudulent, malicious or negligent manner when using the Services.

### 5. CONNECTIVITY AND ACCESS

5.1 Customer acknowledges that it shall (a) be responsible for securing, paying for, and maintaining connectivity to the Services (including any and all related hardware, software, third party services and related equipment and components); (b) provide Kronos and its representatives with such physical or remote access to Customer's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under this Section E of this Agreement. Kronos is hereby (i) granted access to such Customer data to perform its obligations under this Section E of this Agreement and (ii) authorized to audit the number of Active Employee counts or other transactions that have occurred to measure Usage; (iii) make all necessary arrangements as may be required to provide such physical access to Customer's computer and network environment if necessary for Kronos to perform its obligations under this Section E of this Attachment.

5.2 Customer shall be fully responsible for all access requirements imposed by law, rule, regulation or contract in order for Kronos to deliver the Services pursuant to the terms of this Section E of this Agreement. Customer shall provide 30 calendar days advance written notice to Kronos of any change, modification, or reconfiguration of components or elements of the Customer's computer and network environment which may, in any manner, affect Customer's access to the Services.

### 6. SUPPORT

- a) **Implementation.** Kronos will configure the Services utilizing scheduled remote resources. Software module configuration will be based on information and work flows obtained from Customer during the discovery portion of the implementation. Customer shall provide Kronos with necessary configuration-related information in a timely manner to ensure that mutually agreed implementation schedules are met. Kronos and Customer's implementation responsibilities are described more specifically in the Services Implementation Guideline set forth at: <http://www.kronos.com/products/workforce-ready/implementation-guidelines.aspx>. In the event of inconsistencies between the Services Implementation Guideline and this Agreement, the Agreement shall prevail.

- b) Depot Exchange Services for Equipment. As needed, Kronos will send a replacement for Equipment rented (in accordance with Section 8 below) on an advance exchange basis by next-business-day delivery, when available. When Customer receives replacement Equipment, Customer shall return the defective unit to Kronos for repair. Equipment support also includes Customer access to Equipment service packs via the Kronos Customer Portal.
- c) Standard Support. Kronos will provide telephone support 8:00 a.m. to 5:00 p.m., local time, Monday – Friday. Customers also shall be provided the capability to log questions online via the Kronos Customer Portal.
- d) Educational Materials and Content. Customer will have access to certain educational materials and content (the "Educational Content") within the Services. Customer recognizes and agrees that the Educational Content is copyrighted by Kronos. Customer is permitted to make copies of the Educational Content provided in pdf form solely for Customer's internal training purposes and may not disclose such Educational Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the Educational Content without the written consent of Kronos, provided that Customer may download and modify contents of Training Kits solely for Customer's internal use.

## 7. CUSTOMER CONTENT

Customer shall own all Customer Content and posts or other inputs into the Services by Customer or others acting on behalf of or through Customer, including but not limited to information, data (such as payroll data, vacation time, and hours worked), logos, text, multimedia images (e.g. graphics, audio and video files), compilations or any other content shared or processed through the Services. Kronos acknowledges that all such Customer Content is deemed to be the Confidential Information of Customer. Notwithstanding the foregoing, Customer grants Kronos permission to combine Customer's business data with that of other Customers in a manner that does not identify the Customer or any individual in order to evaluate and improve the services Kronos offers to customers. In addition, Kronos may, but shall have no obligation to, monitor Customer content from time to time to ensure compliance with this Section E and applicable law.

## 8. EQUIPMENT RENTAL

If Customer purchases or rents time clocks or other equipment from Kronos, a description of such Equipment (model and quantity) and the applicable pricing shall be listed on the Order Form (the "Equipment"). Delivery terms for the Equipment are FOB shipping point, prepay and add. Customer shall bear all risk of loss or damage while the Equipment is in transit to Customer.

8.1 The following additional terms apply only if Customer rents Equipment from Kronos:

- a) Rental Term and Warranty Period. The term of the Equipment rental and the "Warranty Period" for such Equipment shall run cotemporaneously with the Term of the other Services.
- b) Insurance. Customer shall insure the Equipment for an amount equal to the replacement value of the Equipment for loss or damage by fire, theft, and all normal extended coverage at all times. No loss, theft or damage after shipment of the Equipment to Customer shall relieve Customer from its obligations under this Section E.
- c) Location/Replacement. Customer shall not make any alterations or remove the Equipment from the place of original installation without Kronos' prior written consent. Kronos shall have the right to enter Customer's premises to inspect the Equipment during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to Customer, to replace any Equipment with newer or alternative technology Equipment as long as the replacement Equipment at least provides the same level of functionality as that being replaced.
- d) Ownership. All Equipment shall remain the property of Kronos. All Equipment is, and at all times shall remain, separate items of personal property, notwithstanding their attachment to other equipment or real property. Customer shall not sell or otherwise encumber the Equipment. Customer shall furnish any assurances, written or otherwise, reasonably requested by Kronos to give full effect to the intent of terms of this paragraph (d).
- e) Equipment Support. Kronos shall provide to Customer the Equipment support services described in Section 6 above. The cost of such support service shall be included in the Monthly Services Fees.

Return Of Equipment. Upon termination of the Agreement or the applicable Order Form, Customer agrees that Customer shall disconnect, crate and return the Equipment to Kronos within thirty (30) days at Customer's expense. Equipment will be returned to Kronos in the same condition as and when received, reasonable wear and tear excepted. If Customer fails to return Equipment within this time period, Kronos shall invoice Customer for the then list price of the Equipment. Return Of Equipment. Upon termination of the Order Form, Customer agrees that Customer shall disconnect, crate and return the Equipment to Kronos within thirty (30) days at Customer's expense. Equipment will be returned to Kronos in the same condition as and when received, reasonable wear and tear excepted. If Customer fails to return Equipment within this time period, Kronos shall invoice Customer for the then list price of the Equipment.

8.2 The following additional terms apply only if Customer purchases Equipment from Kronos:

- a) Ownership and Warranty Period. Title to the Equipment shall pass to Customer upon delivery to the carrier (FOB – Shipping Point, Prepay and Add). The "Warranty Period" for the Equipment shall be for a period of ninety (90) days from such delivery.
- b) Equipment Support. Kronos shall provide to Customer the Equipment support services described in Section 6 above if purchased separately by Customer as indicated on the applicable Order Form. If purchased, Equipment support services shall commence upon expiration of the Warranty Period.

## 9. SERVICE LEVEL AGREEMENT

Kronos shall: (a) provide basic support for the services at no additional charge, (b) use commercially reasonable efforts to make the services available 24 hours a day, 7 days a week, except for: (i) planned downtime (when it shall give at least 8 hours notice via the services and shall schedule to the extent practicable during the weekend hours from 5:00 p.m. Friday to 3:00 a.m. Monday, eastern time), or (ii) any unavailability caused by circumstances beyond Kronos' reasonable control, including without limitation, acts of god, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Kronos employees), internet service provider failures or delays, or denial of service attacks, and (iii) provide services in accordance with applicable laws and government regulations.

## 10. LIMITED WARRANTY; DISCLAIMERS OF WARRANTY

10.1 Kronos represents and warrants that the Services, under normal operation as specified in the Documentation and when used as authorized herein, will perform substantially in accordance with the Documentation during the Term.

10.2 Kronos' obligation and Customer's remedy for any breach of the above warranty is limited to Kronos' reasonable commercial efforts to correct the non-conforming Services at no additional charge to Customer, in the event that Kronos is unable to correct deficiencies in the

Services, after using its commercially reasonable efforts to do so, Customer shall be entitled to terminate the then remaining term of the Order Form for cause in accordance with Section 1 above as Customer's remedy. Kronos' obligations hereunder for breach of warranty are conditioned upon Customer notifying Kronos of the material breach in writing, and providing Kronos with sufficient evidence of such non-conformity to enable Kronos to reproduce and/or verify the same.

10.3 Kronos warrants that all equipment shall be free from defects in materials and workmanship during the warranty period as described in article 8 above. In the event of a breach of this warranty, customer's exclusive remedy shall be Kronos' repair or replacement of the deficient equipment, at Kronos' option, provided that customer's use, installation and maintenance thereof have conformed to the published specifications for such equipment. This warranty is extended to customer only and shall not apply to any equipment (or parts thereof) in the event of:

- a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- b) failure of Customer to provide and maintain a suitable installation environment, as specified in the published specifications for such Equipment; or
- c) malfunctions resulting from the use of badges or supplies not approved by Kronos.

EXCEPT AS WARRANTED IN THIS SECTION 10, KRONOS HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTIES AND REPRESENTATIONS RELATING TO THE SERVICES, EXPRESS AND IMPLIED, ORAL OR IN WRITING, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WHETHER OR NOT ARISING THROUGH A COURSE OF DEALING. THE SERVICES ARE NOT GUARANTEED TO BE ERROR-FREE OR UNINTERRUPTED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, KRONOS MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE COMPATIBILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM. KRONOS PROVIDES NO WARRANTY FOR SUPPLIER HARDWARE OR SOFTWARE EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED ON AN ORDER FORM.

#### 11.0 DATA SECURITY

11.1 As part of the Services, Kronos shall provide administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data. Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under this Section E.

11.2. As between Customer and Kronos, all personally identifiable data contained in any applications or systems supplied by Kronos, or to which Kronos has access to under this Section E ("Personally Identifiable Data") is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of its knowledge such Personally Identifiable Data supplied to Kronos is accurate. Customer hereby consents to the use, processing and/or disclosure of Personally Identifiable Data by Kronos and its Suppliers wherever located only for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out its duties and responsibilities under this Section E or as required by law.

11.3 Prior to initiation of the Services and on an ongoing basis thereafter, Customer agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to Customer's industry and which could be imposed on Kronos as a result of provision of the Services. Customer will ensure that: (a) the transfer to Kronos and storage of any Personally Identifiable Data by Kronos or its Supplier's data center, is permitted under applicable data protection laws and regulations; and, (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

11.4 Upon the cessation of the Services, Customer shall be afforded the opportunity to retrieve all Personally Identifiable Data in accordance with Section 1.5 above.

#### 12. RESPONSABILITY OF CUSTOMER

12.1 If notified in writing of any action (and all prior related claims) brought against Customer based on a claim that the Services infringe or misappropriate any United States or Canadian copyright or patent, Kronos will indemnify and hold Customer harmless and defend such action at its sole cost and expense and pay all costs including reasonable attorney fees and damages resulting from such claim. Kronos will have sole control of the defense of any such action and all negotiations for its settlement or compromise. Customer will cooperate fully at Kronos' expense with Kronos in the defense, settlement or compromise of any such action. In the event that a final injunction is obtained against Customer's use of the Services by reason of infringement or misappropriation of a United States or Canadian copyright or patent, or if in Kronos' opinion, the Services are likely to become the subject of a successful claim of such infringement or misappropriation, Kronos, at Kronos' option and expense, will use commercially reasonable efforts to (a) procure for Customer the right to continue using the Services as provided in the Agreement, (b) replace or modify the Services so that they become non-infringing but remains substantively similar to the affected Services, and if neither (a) or (b) is commercially feasible, to (c) terminate the Agreement and the rights granted hereunder after provision of a refund to Customer of the set-up fees and Monthly Service Fees paid by Customer for the infringing elements of the Services covering the period of their unavailability.

12.2 Kronos shall have no liability to indemnify or defend Customer to the extent the alleged infringement is based on: (a) a modification of the Services by anyone other than Kronos; (b) use of the Services other than in accordance with the Documentation or as authorized by the Agreement; (c) use of the Services in conjunction with any data, equipment, service or software not provided by Kronos, where the Services would not otherwise itself be infringing or the subject of the claim; or (d) use of the Services by Customer other than in accordance with the terms of the Agreement. Notwithstanding the foregoing, with regard to infringement claims based upon software created or provided by a licensor to Kronos or Suppliers, Kronos' maximum liability will be to assign to Customer Kronos' or Supplier's recovery rights with respect to such infringement claims, (provided that Kronos and/or its Supplier shall use commercially reasonable efforts at Customer's cost to assist Customer in seeking such recovery from such licensor).

12.3 Customer shall be responsible for all cost and expense and pay all costs, including reasonable attorney's fees and damages of Kronos or its

Suppliers, if the action is arising from or relating to: (a) employment-related claims arising out of Customer's configuration of the Services; (b) Customer's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification and/or combination is the cause of such infringement and was not authorized by Kronos; or, (c) a claim that the Customer Content infringes in any manner any intellectual property right of any third party, or any of the Customer Content contains any material or information that is obscene, defamatory, libelous, or slanderous violates any person's right of publicity, privacy or personality, or has otherwise caused or resulted in any tort, injury, damage or harm to any other person. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise. Kronos will cooperate fully at Customer's expense with Customer in the defense, settlement or compromise of any such action.

### **13. LIMITATION OF LIABILITY**

**13.1 EXCEPT AS SPECIFICALLY PROVIDED WITHIN THIS AGREEMENT, KRONOS AND ITS SUPPLIERS WILL NOT BE LIABLE FOR ANY INJURIES CAUSED BY THE USE OF THE SERVICES OR BY ANY ERRORS, DELAYS, INTERRUPTIONS IN TRANSMISSION, OR FAILURES OF THE SERVICES.**

**13.2 EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12 ABOVE, THE TOTAL AGGREGATE LIABILITY OF KRONOS OR ITS SUPPLIERS TO CUSTOMER AND/OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES PROVEN BY CUSTOMER, SUCH DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS RECEIVED BY KRONOS FOR THE SERVICES IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES.**

**13.3 IN NO EVENT SHALL KRONOS OR ITS SUPPLIERS, THEIR AFFILIATES, SERVICE PROVIDERS, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICES INTERRUPTION, HOWEVER CAUSED, ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, WHETHER BREACH OF WARRANTY, INDEMNIFICATION, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, AND WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER KRONOS OR SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE.**

**13.4 EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF DATA SECURITY AND CONFIDENTIALITY OBLIGATIONS, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT, SOFTWARE OR SYSTEMS, OR MACHINE ERROR**



Barbara P. Canavan, Superintendent of Schools  
102 S. Hickory Avenue, Bel Air, Maryland 21014  
Office: 410-838-7300 • www.hcps.org • fax: 410-893-2478

Purchasing Department  
Bobbie Wilkerson, Supervisor of Purchasing  
410-638-4083, Bobbie.Tolston-Wilkerson@hcps.org

September 8, 2017

**CONTRACT #14-JLR-003 RENEWAL #2**  
**March 18, 2018 – March 17, 2019**

This contract renewal is made and entered into this 11th day of September, 2017, by Harford County Public Schools, 102 South Hickory Avenue, Bel Air, Maryland (hereafter referred to as Owner) and Kronos Incorporated, of 297 Billerica Rd., Chelmsford, Massachusetts, (hereafter referred to as Contractor).

WHEREAS, Owner and Contractor have entered into an Agreement dated March 18, 2014 (hereafter referred to as the Contract), for the Contractor to furnish and supply Workforce Management Software in accordance with RFP #14-JLR-003.

WHEREAS, the original Contract term will expire on March 17, 2018;

THEREFORE, for and in consideration of the mutual promises to each other, as in hereinafter set forth, the parties hereto do mutually agree to renew the Contract as per the conditions set forth in the original Contract, as follows:

1. Owner chooses to offer the final option to renew this contract for one (1) year for the time period from March 18, 2018 through March 17, 2019.
2. Pricing structures and related pricing terms are adjusted as per the updated Exhibit B and the Exhibit A updated Kronos Terms and Conditions with the addition of the additional terms and conditions.
3. All other terms, conditions and provisions of the Contract remain in effect.
4. There is one additional possible renewal remaining for this Contract.

WHEREAS, the parties hereto desire to set the terms of the renewal to writing;

IN WITNESS WHEREOF, Owner and the Contractor have executed the renewal agreement the day and year written above.

**HARFORD COUNTY PUBLIC SCHOOLS**

By: [Signature]  
Signature

Name: Bobbie Wilkerson, CPPO, CPPB

Title: Supervisor of Purchasing

Date: September 8, 2017

**KRONOS INCORPORATED**

By: [Signature]  
Signature

Name: John O'Brien

Title: Sr. Vice President, Global Sales

Date: September 11, 2017