



Statement of Work

City of Killeen, TX

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1. Overview and Approach

1.1. Agreement

This Statement of Work (“SOW”) identifies services that OpenGov, Inc. (“OpenGov” or “we”) will perform for City of Killeen, TX (“Customer” or “you”) pursuant to that order for Professional Services entered into between OpenGov and the Customer (“Order Form”) which references the Master Services Agreement or other applicable agreement entered into by the parties (the “Agreement”).

- Customer acknowledges and agrees that this Statement of Work is subject to the confidentiality obligations set forth in the Agreement between OpenGov and Customer.
- The Deliverables listed in [Appendix B](#) are the single source of the truth of the deliverables to be provided.
- Customer’s use of the Professional Services is governed by the Agreement and not this SOW.
- Upon execution of the Order Form or other documentation referencing the SOW, this SOW shall be incorporated by reference into the Agreement.
- In the event of any inconsistency or conflict between the terms and conditions of this SOW and the Agreement, the terms and conditions of this SOW shall govern with respect to the subject matter of this SOW only. Unless otherwise defined herein, capitalized terms used in this SOW shall have the meaning defined in the Agreement.
- This SOW may not be modified or amended except in a written agreement signed by a duly authorized representative of each party.
- OpenGov will be deployed as is, Customer has access to all functionality available in the current release.

2. Statement of Work

This SOW is limited to the implementation of the OpenGov Financials and Budgeting & Planning suites as defined in the OpenGov Responsibilities section of this document ([Section 2.5](#)). Any additional services or support will be considered out of scope.

2.1. Project Scope

Under this project, OpenGov will deliver cloud based Financials and Budgeting & Planning solutions (detailed list in “[Activity 3 – OpenGov Solutions](#)”) to help the Customer power a more effective and accountable government. OpenGov’s estimated charges and schedule are based on performance of the activities listed in the “[OpenGov Responsibilities](#)” section below. Deviations that arise during the project will be managed through the procedure described in [Appendix A-2:Change Order Process](#), and may result in adjustments to the Project Scope, Estimated Schedule, Charges and other terms. These adjustments may include charges on a time-and-materials or fixed-fee basis using OpenGov’s standard rates in effect from time to time for any resulting additional work or waiting time.

2.2. Facilities and Hours of Coverage

OpenGov will:

- A. Perform the work under this SOW remotely, except for any project-related activity which OpenGov determines would be best performed at the Customer's facility in order to complete its responsibilities under this SOW.
 - i. Facility must contain a conference room to accommodate the number of attendees and AV equipment for projecting OpenGov software on a screen visible to all participants.
- B. Provide the Services under this SOW during normal business hours, 8:30am to 6:00 pm local time, Monday through Friday, except holidays.
- C. Use personnel and resources located across the United States, and may also include OpenGov-trained staffing contractors to support the delivery of services.

2.3. Key Assumptions

The SOW and OpenGov estimates are based on the following key assumptions. Deviations that arise during the proposed project will be managed through the Project Change Order Process (see [Appendix A-2](#)), and may result in adjustments to the Project Scope, Estimated Schedule, Charges, and other terms.

- A. General
 - i. The OpenGov Suites are not customized beyond current capacities based on the latest release of the software.
 - ii. Individual software modules are configured based on discussions between OpenGov and Customer.
 - iii. A Change Order, as outlined in Appendix A-2, may be necessary if changes in the Customer's project team impacts the project's timeline and/or scope.
 - iv. Customer is responsible for providing appropriate time and resources to the project to meet deliverables as outlined in the project plan.
 - v. Deadlines shall be met by the described timeline or by a mutually agreed upon date.
 - vi. OpenGov will provide all services remotely via audio; video; and web conferences unless otherwise noted in the Suite specific Key Assumptions below.
 - vii. OpenGov assumes that the customer is responsible for performing quality control measures on its data for all suites.
 - viii. OpenGov assumes that the customer is responsible for testing its workflows, automations, integrations, and configurations and will update the configurations as part of its testing and training activities for all suites.
 - ix. OpenGov assumes that the customer accepts the Phase deliverables upon the completion of the following: Phase go-live data conversation acceptance, Phase go-live event, and Phase HyperCare completion, as defined in each phase of Appendix B.
 - x. Appendix D details OpenGov's current product functionality which was discussed and reviewed with the Customer prior to contract signing. It is focused on areas that OpenGov wants to ensure alignment with the Customer prior to engaging in this project. By signing this contract, the Customer acknowledges that they will adjust processes as necessary to fit the current OpenGov product.

- xi. The intention is to use the demonstration scripts as targets for success criteria. They were reviewed and discussed with the customer prior to the scope of the project being finalized. As such not all of the descriptions or activities as discussed in the demonstration scripts are still applicable. Where there is ambiguity within the script response or where the response envisioned additional product being deployed, the details within Appendix D describe product capabilities most accurately and completely. For example, when providing responses to items on the script application components such as Forms and Workflows and Enterprise Asset Management were not included in the scope, as such any requirements that required those capabilities are not included.

B. Financials Suite

- i. Customer's Chart of Accounts must comply with OpenGov software. Once the Chart of Accounts is agreed upon, signed-off, and loaded, Customer retains ownership to future changes, updates, or addition of new codes.
- i. Customer will provide their Chart of Accounts, Current Year Trial Balance and Fixed Assets listing within two (2) weeks of the kickoff meeting or mutually agreed upon date.
- ii. Customer will validate and provide sign off on all configuration and converted data.
- iii. Customer is responsible for making process and configuration decisions in such a manner that adheres to the project timeline.
- iv. Customer will name the Subject Matter Expert(s) "SME" by module, who will:
 - 1. Learn the OpenGov software
 - 2. Update the internal Standard Operating Procedures
 - 3. Attend all meetings for the module in which the SME is assigned
- v. OpenGov will provide a series of Administrator training sessions (outlined in Appendix B) for the Subject Matter Expert(s).
- vi. OpenGov will be responsible for conducting End User Training as outlined in Appendix B.
- vii. Customer is responsible for providing data to OpenGov.
- viii. OpenGov will not allow the upload of unreconciled or unbalanced General Ledger Data. Additionally, all data upload must be validated by the Customer to ensure accuracy.
- ix. Customer will extract data tables from Central Square Naviline and convert data to delimited file. Data must remain unfiltered and untransformed.
- x. OpenGov will travel onsite up to seven (7) times with up to two (2) OpenGov resources. The onsites are intended to be used for the following:
 - 1. Chart of Accounts: Design, Crosswalk, and Sign-off on COA.
 - 2. Validation: Review system requirements and Blueprint. Review data formats required for system configuration.
 - 3. Configuration Walkthrough: Review end-to-end configuration & business workflow steps prior to User Acceptance Testing. Confirm that configuration is complete.
 - 4. Administrator Training: Train module SME(s). Sign-off that Administrator Training was completed.
 - 5. End User Training: Train required End User on relevant workflows noted in Appendix B. Sign-off that End User Training was completed.

6. Go-Live Support: Support Customer resources as they begin using OpenGov Financials as their system of record.
7. Flexible onsite to be used as agreed upon by the Customer and OpenGov project manager(s).

C. Budgeting & Planning Suite

- i. OpenGov budget proposal configuration will include: up to fifty (50) department proposals and up to two hundred (200) project proposals.
- ii. OpenGov Online Budget Book (OBB) configuration will include:
 1. Six (6) Standard OBB templates; up to fifty (50) department stories pages and up to fifty (50) project pages from the templates; and up to two (2) reports with report views to use in the OBB.
- iii. OpenGov will travel onsite up to four (4) times with up to two (2) OpenGov resources. The onsites may be used for the following:
 1. Validation
 2. Configuration
 3. Training
- iv. OpenGov best practice is to not exceed tested limits of the product.

2.4. Exclusions

- Implementation of any custom modification or integration developed by OpenGov; the Customer internal staff; or any third-party is not included in the scope of this project unless specifically listed in Appendix B.
- Data conversion services from other software system(s) or sources are not included in the scope of this project unless specifically listed in Appendix B.
- Any service items discussed during demonstrations; conference calls; or other events are not included in the scope of this project unless specifically listed in Appendix B. This includes any discussions, demonstration, or reference regarding Enterprise Asset Management, Forms & Workflows, and Permitting, Licensing, & Code Enforcement.
- Any product items discussed during demonstrations; conference calls; or other events are not included in the scope of this project unless specifically listed in Appendix D. This includes any discussions, demonstration, or reference regarding Enterprise Asset Management, Forms & Workflows, and Permitting, Licensing, & Code Enforcement.
- OpenGov will not complete any content migration. Customer will attach documents in OpenGov on a go-forward basis after go-live only.

2.5. OpenGov Responsibilities

2.5.1. Activity 1 – Project Management

OpenGov will provide project management for the OpenGov responsibilities in this SOW. The purpose of this activity is to provide direction to the OpenGov project personnel and to provide a framework for project planning, communications, reporting, procedural and contractual activity. This activity is composed of the following tasks:

Planning

OpenGov will:

- A. review the SOW, contract and Project Plan with Customer's Project Manager and key stakeholders to ensure alignment and agreed upon timelines;
- B. maintain project communications through Customer's Project Manager;
- C. establish documentation and procedural standards for deliverable Materials; and
- D. assist Customer's Project Manager to prepare and maintain the Project Plan for the performance of this SOW which will include the activities, tasks, assignments, and project milestones.

Project Tracking and Reporting

OpenGov will:

- A. review project tasks, schedules, and resources and make changes or additions, as appropriate. Measure and evaluate progress against the Project Plan with Customer's Project Manager;
- B. work with Customer's Project Manager to address and resolve deviations from the Project Plan;
- C. conduct regularly scheduled project status meetings; and
- D. administer the Project Change Control Procedure with the Customer's Project Manager.

Completion Criteria:

This is an on-going activity which will be considered complete at the end of the Services defined in this Statement of Work.

Deliverable Materials:

- Weekly status reports
- Project Plan
- Project Charter
- Risk, Action, Issues and Decisions Register (RAID)

2.5.2. Activity 2 – Initialization

OpenGov will provide the following:

- A. Customer Entity configuration
- B. System Administrators creation
- C. Solution Blueprint creation
- D. Data Validation strategy confirmation

Completion Criteria:

This activity will be considered complete when:

- Customer Entity is created
- System Administrators have access to Customer Entity
- Solution Blueprint is presented to Customer

Deliverable Materials:

- Solution Blueprint
- Sign-off of Initial Draft Solution Blueprint

2.5.3. Activity 3 – OpenGov Solutions

OpenGov will provide the following:

Financials Solutions

- A. General Ledger
- B. Accounts Payable
- C. Cash Receipts
- D. Bank Reconciliation
- E. Accounts Receivable
- F. Purchase Cards
- G. Fixed Assets

Budget & Planning Use Cases

- A. Centralized Operating Budget
- B. Multi-Year Workforce Planning
- C. Capital Improvement Planning
- D. Interactive Online Budget Books

Completion Criteria:

This activity will be considered complete when the following are configured:

Financials Solutions

- Chart of Accounts
- General Ledger
- Accounts Payable
- Cash Receipts
- Bank Reconciliation
- Accounts Receivable
- Purchase Cards
- Fixed Assets

Budget & Planning Use Cases

- Operating Budget proposals
- Capital Budget proposals
- Workforce Plan
- Online Budget Book templates
- Budget reports

Deliverable Materials:

- Formal sign off document

2.5.4. Activity 4 – Training

Training will be provided in instructor-led virtual sessions or through OpenGov University Training courses. For any instructor-led virtual sessions, the class size is recommended to be ten (10). Recordings of the Training Sessions will be provided to the customers for future usage and access to OpenGov University, even after the project is complete.

Completion Criteria:

- Administrator training is provided for Financials and Budgeting & Planning.
- End User training is provided for Financials and Budgeting & Planning.

Deliverable Materials:

- Formal sign off document

2.6. Customer Responsibilities

The completion of the proposed scope of work depends on the full commitment and participation of Customer's management and personnel. The Customer's Project Manager should have access to the appropriate Subject Matter Expert personnel needed for the successful implementation of the project. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement and are to be provided at no charge to OpenGov. OpenGov's performance is predicated upon the following responsibilities being managed and fulfilled by Customer. Delays in performance of these responsibilities may result in delay of the completion of the project and will be handled in accordance with [Appendix A-1: Communication and Escalation Procedure](#).

2.6.1. Customer's Project Manager

Prior to the start of this project, Customer will designate a person called Customer's Project Manager who will be the primary point of contact for OpenGov communications relative to this project and will have the authority to act on behalf of Customer in all matters regarding this project.

Customer's Project Manager's responsibilities include the following:

- A. Create, with OpenGov’s assistance, the Project Plan for the performance of this SOW which will include the activities, tasks, assignments, milestones and estimates;
- B. Manage Customer personnel and responsibilities for this project (for example: ensure personnel complete any self-paced training sessions, configuration, validation or user acceptance testing);
- C. Identify and assign Subject Matter Experts (SME); a SME, for example, may include an Accounts Payable Manager for the Accounts Payable module deployment.
- D. Serve as the communication liaison between OpenGov and Customer representatives participating in the project;
- E. Participate in project status meetings;
- F. Obtain and provide information, data, and decisions within five (5) business days of OpenGov’s request unless Customer and OpenGov agree in writing to a different response time;
- G. Resolve deviations from the estimated schedule, which may be caused by Customer;
- H. Help resolve project issues and escalate issues within Customer’s organization, as necessary; and
- I. Administer the Project Change Control Procedure with the Project Manager, if applicable.

2.7. Completion Criteria

OpenGov will have fulfilled its obligations under this SOW when any of the following first occurs:

- A. OpenGov accomplishes the activities set forth in “OpenGov responsibilities” section and delivers the Materials listed, if any; or
- B. The End Date is reached.

2.8. Estimated Schedule

OpenGov will schedule resources for this project upon signature of the order form. Unless specifically noted, the OpenGov assigned Project Manager will work with Customer Project Manager to develop the Project Plan for all requested deliverables under this SOW. OpenGov reserves the right to adjust the schedule based on the availability of OpenGov resources and/or Customer resources, and the timeliness of deliverables provided by the Customer.

The Services are currently estimated to start within two (2) weeks but no later than four (4) weeks from signatures and have an estimated end date (“End Date”) or on other dates mutually agreed to between Customer and OpenGov.

Estimated Delivery Times:

- Phase 1: Seven (7) months from project kickoff
- Phase 2: Eleven (11) months from project kickoff

2.9. Illustrative Project Timelines

The typical project timelines are for illustrative purposes only and may not reflect Customer’s use cases. The order of delivery of the suites will be determined during the project planning phase.

Illustrative Timeline per phase		Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
Phase 1: Financials	Chart of Accounts											
	General Ledger											
	Requisitions/Accounts Payable											
	Cash Receipts/Accounts Receivable											
	Fixed Assets											
	Hypercare											
Phase 2: Budgeting & Planning	Operating Budget											
	Workforce Planning											
	Capital Budget											
	Budget End User Training											
	Online Budget Book											
	Hypercare											

2.10. Travel Expenses

Customer shall reimburse OpenGov for reasonable out-of-pocket expenses OpenGov incurs providing Professional Services. Reasonable expenses include, but are not limited to, travel, lodging, and meals. Expenses are billed based on actual costs incurred.

OpenGov will adhere to the GSA Travel Guidelines and submit reimbursements in accordance with guidelines. Any OpenGov resources that travel to the City of Killeen will stay at a hotel located within the City Limits of Killeen Texas..

2.11. Offer Expiration Date

This offer will expire on April 5, 2024 unless extended by OpenGov in writing.

Appendix A: Engagement Charter

A-1: Communication and Escalation Procedure

Active engagement throughout the implementation process is the foundation of a successful deployment. To help assess progress, address questions, and minimize risk during the course of deployment both parties agree to the following:

- Regular communication aligned to the agreed upon Project Plan and timing.
 - OpenGov expects Customer to raise questions or concerns as soon as they arise. OpenGov will do the same, in order to be able to address items when known.
- Executive involvement
 - Executives may be called upon to clarify expectations and/or resolve confusion.
 - Executives may be needed to steer strategic items to maximize the value through the deployment.
- Escalation Process:
 - OpenGov and Customer agree to raise concerns and follow the escalation process, resource responsibility, and documentation in the event an escalation is needed to support issues raised.
 1. Identification of an issue impeding deployment progress, outcome or capturing the value proposition, that is not acceptable.
 2. Customer or OpenGov Project Manager summarizes the problem statement and impasse.
 3. Customer and OpenGov Project Managers jointly will outline solution, acceptance and OpenGov Project Manager will schedule an Executive Review Meeting, if necessary.
 4. Resolution will be documented and signed off following the Executive Review Meeting.
- 5. Phase Sign-Off
 - a. OpenGov requests sign-offs at various stages during the implementation of the project. Once the Customer has signed-off, any additional changes requested by Customer on that stage will require a paid change order for additional hours for OpenGov to complete the requested changes.

A-2: Change Order Process

This SOW and related efforts are based on the information provided and gathered by OpenGov. Customer acknowledges that changes to the scope may require additional effort or time, resulting in additional cost. Any change to scope must be agreed to in writing or email, by both Customer and OpenGov, and documented as such via a Change Order. No verbal agreement will be binding on OpenGov or Customer.

A *Change Order* is defined as work that is added to or deleted from the original scope of this SOW. Depending on the magnitude of the change, it may or may not alter the original contract amount or completion date. Changes might include:

- Timeline for completion

- o Sign off process.
- o Cost of change and/or Invoice timing.
- o Amending the SOW to correct an error.
- o Extension of work as the complexity identified exceeds what was expected by Customer or OpenGov.
- o Change in type of OpenGov resources to support the SOW.

The approval process for change orders is:

1. Identification and documentation of a need for modification of scope of the project as defined in the Statement of Work and any subsequent change orders.
2. A change order is created and Customer and OpenGov review and approve.
3. Change order is incorporated into the Statement of Work and implemented.

A-3: Deliverable Materials Acceptance Procedure

Deliverable Materials, as defined in Section 2.5, will be reviewed and accepted in accordance with the following procedure:

1. The Deliverable Material will be submitted to the Customer's Project Manager.
2. Customer's Project Manager will have decision authority to approve/reject all Project Criteria, Phase Acceptance and Engagement Acceptance.
3. Within five (5) business days of receipt, the Customer's Project Manager will either accept the Deliverable Material or provide OpenGov's Project Manager a written list of requested revisions. If OpenGov receives no response from the Customer's Project Manager within five (5) business days, then the Deliverable Material will be deemed accepted. The process will repeat for the requested revisions until acceptance.
4. All acceptance milestones and associated review periods will be tracked on the Project Plan.
5. Both OpenGov and Customer recognize that failure to complete tasks and respond to open issues may have a negative impact on the Project.
6. For any tasks not yet complete, OpenGov and/or Customer will provide sufficient resources to expedite completion of tasks to prevent negatively impacting the Project.
7. Any conflict arising from the Deliverable Materials Acceptance Procedure will be addressed as specified in the Communication and Escalation Procedure set forth in Appendix A-1. As set forth in Section 6.1(e) of the Agreement, if there are extended delays (greater than 10 business days) in Customer's response for requested information or deliverable; OpenGov may opt to put the project on an "On Hold" status. After the Customer has fulfilled its obligations, Professional Services can be resumed and the project will be taken off the "On-Hold" status.
8. Putting a project "on Hold" may have several ramifications including, but not restricted, to the following:
 - o Professional Services to the customer could be stopped;
 - o Delay to any agreed timelines; or
 - o Not having the same Professional Services team assigned.

Appendix B: Implementation Activities

B-1: Core Financials Phase 1

B-1.1: Data Deliverables

OpenGov Financials Data Migration

- OpenGov will:
 - Set up a secure SFTP site for data transfer purposes.
 - Validate the extracted data matches the following reports provided by the Customer:
 - General Ledger
 - Three (3) years historical journal entry detail
 - Current Year journal entry detail
 - Budget
 - Three (3) year of historical budgets
 - Current fiscal year YTD budget
 - Accounts Payable
 - Three (3) years of historical paid and unpaid invoices
 - Current calendar YTD 1099 totals by vendor by tax payment type
 - Outstanding checks and deposits for bank reconciliation, at the time of go-live
 - Accounts Receivable
 - Accounts Receivable customer balance by service code
 - Transform the Customer's data into OpenGov's field requirements.
 - Load the following template data previously transformed into the OpenGov Financials Suite:
 - General Ledger
 - Three (3) years historical journal entry detail
 - Current Year journal entry detail
 - Budget
 - Three (3) year of historical budgets
 - Current fiscal year budget
 - Accounts Payable
 - Three (3) years of historical paid and unpaid invoices
 - Current YTD unpaid invoices
 - Current calendar YTD 1099 totals by vendor by tax payment type
 - List of outstanding checks and deposits for bank reconciliation, at the time of go-live
 - Accounts Receivable
 - Accounts Receivable service account balances
 - Accounts Receivable Open Invoices

- Customer will:
 - Extract data tables from Central Square Naviline and convert data to a delimited file. Data must remain unfiltered and untransformed.
 - Upload delimited files to the secure SFTP site.
 - Validate all data and reports prior to providing to OpenGov.
 - General Ledger
 - Prior year trial balance for current year beginning balances
 - Current YTD trial balance for current YTD balances
 - Three (3) years historical journal entry detail
 - Current Year journal entry detail
 - Budget
 - Current fiscal year YTD budget
 - Three (3) year of historical budgets
 - Accounts Payable
 - Three (3) years of historical paid and unpaid invoices
 - Current YTD paid and unpaid invoices
 - Current calendar YTD 1099 totals by vendor by tax payment type
 - List of outstanding checks and deposits for bank reconciliation, at the time of go-live
 - Three (3) years of historical AP transactions
 - Accounts Receivable
 - Accounts Receivable customer balance by service code
 - Validate the data once it is loaded to OpenGov Financials.
 - Assist OpenGov in transformation data errors.
 - Provide sign off confirming agreement with OpenGov that the data is accurate and complete.
- OpenGov assumptions:
 - OpenGov will load cutover data up to two (2) times including:
 - One (1) mock cutover
 - One (1) go live cutover
 - For any converted General Ledger data, Customer's Trial Balance is in balance by Fund at the start of the implementation.
 - Customer's subsidiary ledgers are reconciled to the general ledger.
 - In the event that the customer cannot extract unfiltered data to delimited file(s), the Customer is responsible for providing transformed and ready-to-load data in the OpenGov provided data templates. This means that the customer will assume responsibility for any data mapping and required transformations.
 - OpenGov will not convert any transactions not listed above, including Open Purchase Orders, Closed Purchase Orders, and Requisitions.

Imports and Integrations

- OpenGov will:
 - Provide an automated import capability between FASTER and OpenGov Financials, to be able to import journal entries to the General Ledger. The automated import will run on a nightly basis.
 - Provide required journal entry import file structure necessary to import data to the General Ledger from the following systems:
 - UKG
 - Incode Municipal Court
 - KCCC - Ungerboeck
 - KAAC - Ungerboeck
 - ActiveNet (parks)
 - My Permit Now
 - Utility Billing
 - Paradigm (Weight transfers tickets)
 - Provide training on how to import journal entries to the General Ledger.
- Customer will:
 - For the FASTER automated interface:
 - Transform FASTER import file to meet OpenGov specifications. This includes ensuring that the file format meets OpenGov specifications and ensuring that all data is valid for OpenGov Financials to ingest (date, fiscal year period, chart of accounts codes, etc.).
 - Load transformed FASTER file to OpenGov SFTP.
 - Validate that the FASTER file loads correctly to OpenGov General Ledger.
 - For all other manual imports listed above:
 - Transform all files to meet OpenGov specifications.
- OpenGov Assumptions:
 - OpenGov is not responsible for transforming 3rd party system file formats.
 - OpenGov will not set up any integrations for the Customer that include pulling data from a 3rd party system in an automated fashion.
 - There will not be any customizations to any OpenGov native import/export functionality.

B-1.2: Configuration Deliverables

Chart of Accounts

- OpenGov will:
 - Build Customer's Chart of Accounts in OpenGov in accordance with OpenGov technical requirements.
 - Build the Chart of Accounts in Excel format.
 - Provide up to twenty (20) hours of working sessions for Chart of Accounts.
 - Review the Chart of Accounts with the customer.
 - Gather sign off from the Customer on the Chart of Accounts in Excel.

- Load the Chart of Accounts into OpenGov.
- Gather sign off from the Customer on the uploaded Chart of Accounts in OpenGov.
- Load the Customer's Chart of Accounts to Reporting & Transparency.
- Build Customer's COA hierarchies in Reporting & Transparency.
- Customer will:
 - Provide current Chart of Accounts and transactional data in CSV or Excel format.
 - Attend all Chart of Accounts working sessions.
 - Review and complete Chart of Account mappings.
 - Validate and provide sign off on the Chart of Accounts in excel.
 - Validate and provide sign off on the Chart of Accounts once it is uploaded to OpenGov.
 - Validate and provide sign off on the Chart of Accounts once it is uploaded to Reporting & Transparency.
 - Provide Chart of Accounts hierarchies.
 - Maintain the Chart of Accounts in OpenGov following signoff.
- OpenGov assumptions:
 - OpenGov will load the signed off Chart of Accounts into the Financials Suite one (1) time.
 - OpenGov will load the signed off Chart of Accounts into Reporting & Transparency one (1) time.

General Ledger

- OpenGov will:
 - Configure General Ledger settings.
 - Provide up to sixteen (16) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
- Customer will:
 - Provide all current imported Journal Entries.
 - Provide account access details.
 - Validate data.
 - Validate reports.
 - Review, Test, and Sign off on configuration.
 - Attend all working sessions.

Accounts Payable

- OpenGov will:
 - Configure Accounts Payable settings.
 - Configure Consolidated Cash.
 - Import Vendors.
 - Provide up to twenty-four (24) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
- Customer will:
 - Provide a bank account listing.
 - Provide a Vendor listing.

- Define user access levels and approval workflows.
- Provide examples of recent invoices.
- Provide a voided check copy.
- Provide MICR, ACH, and positive pay specifications from Citibank.
- Test checks, ACH file, and positive pay file with Citibank for accuracy.
- Validate data.
- Review, Test, and Sign off on configuration.
- Attend all working sessions.

Requisitions

- OpenGov will:
 - Configure Requisition settings.
 - Provide up to twenty-four (24) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
- Customer will:
 - Provide departments.
 - Provide a purchasing policy.
 - Provide examples of recent requisitions with workflows.
 - Review, Test, and Sign off on configuration.
 - Attend all working sessions.

Cash Receipts

- OpenGov will:
 - Configure Cash Receipts settings.
 - Provide up to sixteen (16) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
- Customer will:
 - Provide Receipt Categories and Receipt Groups.
 - Provide Tender Types.
 - Provide examples of current receipts.
 - Review, Test, and Sign off on configuration.
 - Attend all working sessions.

Bank Reconciliation

- OpenGov will:
 - Configure Bank Reconciliation settings.
 - Provide up to twelve (12) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
- Customer will:
 - Provide a .pdf version of the Bank Statement used to complete their last reconciliation.
 - Provide a bank reconciliation report in excel format showing the last balanced reconciliation.

- Provide a list of outstanding checks in .csv or excel format.
- Review, Test, and Sign off on configuration.
- Attend all working sessions.
- Complete bank reconciliation in OpenGov within 30 days following go-live.

Accounts Receivable

- OpenGov will:
 - Configure Accounts Receivable settings.
 - Import Customers.
 - Provide up to sixteen (16) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
- Customer will:
 - Provide a list of customers.
 - Provide AR accounts with Balances.
 - Review, Test, and Sign off on configuration.
 - Attend all working sessions.

Fixed Assets:

- OpenGov will:
 - Configure Fixed Assets settings.
 - Provide up to sixteen (16) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
 - Processing Depreciation
- Customer will:
 - Provide Fixed Assets data as of end of prior FY (or last audited date) in csv or excel format.
 - Populate the Fixed Assets upload template.
 - Review, Test, and Sign off on configuration.
 - Attend all working sessions.

Purchase Cards

- OpenGov will:
 - Configure Purchase Cards settings.
 - Provide up to sixteen (16) hours of working sessions covering:
 - Design
 - Module overview
 - Configuration review
- Customer will:
 - Complete Categories and Cardholders template.
 - Provide Pcard output report from Customer Bank.
 - Review, Test, and Sign off on configuration.
 - Attend all working sessions.
- OpenGov Assumptions:
 - Customer to provide Bank Name within 2 weeks of contract signing data.

B-1.3: Reporting Deliverables

Reporting and Transparency NextGen Reporting

- OpenGov will:
 - Configure “Standard Datasets” in Reporting and Transparency following the go-live of the General Ledger and Accounts Payable modules.
 - Set up (1) view per standard dataset.
 - Configure the following OpenGov Standard Reports:
 - Budget vs. Actuals
 - Includes Views for up to three (3) Funds and up to three (3) Departments.
 - Monthly Statement of Revenues & Expenditures
 - Includes Views for up to three (3) Funds and up to three (3) Departments.
 - Balance Sheet
 - Includes Views for up to three (3) Funds.
- Customer will:
 - Set up additional views beyond those listed above.
 - Review, Test, and Sign off on configuration.
- OpenGov Assumptions:
 - OpenGov will configure the reports to account for all funds, departments, and other segments.
 - The Customer is responsible for making any desired adjustments to the reports.

B-1.4: Training Deliverables

Administrator Training

- OpenGov will:
 - Provide up to thirty (30) hours of Financials system administrator training to enable system administrators on the following topics:
 - Maintaining the Chart of Accounts
 - Creating and posting Journal Entries
 - Running reports and navigating inquiries
 - Importing and exporting data from financials
 - Maintaining Vendor records
 - Maintaining Customer records
 - Requisition workflow
 - Invoice Approval workflow
 - Paying invoices
 - Creating Cash Receipt deposits
 - Adding invoices to Customer accounts
 - Processing Bank Reconciliation for one (1) banks
 - Creating and maintaining Fixed Asset records

- Processing depreciation
 - Purchase Card transactions
- Provide up to ten (10) hours of Reporting & Transparency Administrator training, to enable system administrators on the following topics:
 - Download and upload data to Reporting & Transparency
 - How to create reports and dashboards
 - Standard Datasets
- Customer will:
 - Identify relevant participants and attend scheduled trainings.
 - Test all relevant use cases as to Customer's processes and Complete User Acceptance Testing according to the project plan.

End User Training

- OpenGov will:
 - Provide up to sixteen (16) hours of Financials system end user training to enable system administrators on the following topics:
 - Running reports and navigating inquiries
 - Requisition workflow
 - Invoice Approval workflow
- Customer will:
 - Identify relevant participants and attend scheduled trainings.

B-1.5: Go Live Support

Hypercare

- OpenGov will:
 - Provide up to eighty (80) hours over four (4) weeks of support from the OpenGov project team.
 - Assist the customer with up to (1) live check run.
 - Assist the customer with up to one (1) bank reconciliation within 30 days following go-live.
- Customer will:
 - Attend all working sessions.
 - Manage ongoing support and questions through Customer Success and Support following each Phase's go-live.

B-2: Budgeting & Planning Phase 2

B-2.1: Configuration Deliverables

Chart of Accounts (COA)

- OpenGov will:
 - Review configured COA and uploaded data and provide training to Customer on how to:
 - Manage new codes
 - Edit COA

- Customer will:
 - Maintain the COA following configuration.

Operating Budget

- OpenGov will:
 - Configure one (1) Budget instance-
 - Configure OpenGov Budget Proposals and Worksheets for up to two hundred (200) Departments in the base budget file based on the agreed upon structure.
 - Review configured OpenGov Budget and provide training to Customer on how to:
 - Create new Proposals and Worksheets
 - Manage Budgets
- Customer will:
 - Provide current budget.
 - Validate and provide signoff on Budget Proposals and Worksheets.

Operating Budget Community Feedback Topic

- OpenGov will:
 - Configure one (1) standard budget topic in Community Feedback.
 - Review configured OpenGov Topic and provide training to Customer on how to:
 - Create new topics
 - Manage topics
 - Set Topics to Public and Closed.
- Customer will:
 - Provide logo and branding guidelines.
 - Validate and provide signoff on the standard budget topic.
 - Update the standard budget topic with Customer relevant information.

Operating Budget Story

- OpenGov will:
 - Configure one (1) standard budget Story template.
 - Review configured OpenGov Story and provide training to Customer on how to:
 - Create new Stories
 - Manage Stories
 - Publish Stories
- Customer will:
 - Provide logo and branding guidelines.
 - Validate and provide signoff on Operating Budget Story template.
 - Update standard budget Story with Customer relevant information.

Capital Budget

- OpenGov will:
 - Configure one (1) Budget instance.
 - Configure and upload Customer's base budget files into OpenGov budget instances.
 - Configure proposals and worksheets for up to fifty (50) Capital Projects in the base budget file based on the agreed upon structure.
 - Review configured OpenGov Budget and provide training to Customer on how to:
 - Create new Proposals and Worksheets
 - Manage Budgets

- Customer will:
 - Provide current budget.
 - Validate Proof of Concept prior to OpenGov building out proposals and worksheets.
 - Validate and provide signoff on Budget Proposals.

Capital Budget Story

- OpenGov will:
 - Configure one (1) standard capital budget Story template.
 - Review configured OpenGov Story and provide training to Customer on how to:
 - Create new Stories
 - Manage Stories
 - Publish Stories
- Customer will:
 - Provide logo and branding guidelines.
 - Validate and provide signoff on Capital Budget Story template.
 - Update standard budget Story with Customer relevant information.

Workforce Planning

- OpenGov will:
 - Provide cost elements based on Customer's existing personnel forecast to workforce document as per OpenGov's best practices.
 - Review configured OpenGov Workforce Plan and provide training to Customer on how to:
 - Create Cost Elements
 - Populate and upload the Position Template
- Customer will:
 - Provide Position calculations and tables.
 - Populate the Position Template and upload the completed template into OpenGov.
 - Validate and provide signoff on the Workforce Plan calculations.
 - Maintain the Workforce Plan and data once configured.

Online Budget Book (OBB)

- OpenGov will:
 - Based on best practices, build out the look and feel of six (6) Standard OBB Templates:
 - Home Page
 - Generic (multi-use)
 - Operating
 - Department
 - Capital
 - Capital Project
 - Create up to two (2) OBB Reports using OpenGov Budget data and Report Views to use in Department and Project OBB Story Shells.
 - Create Department and Project OBB Story Shells from OBB Templates for up to one hundred (100) Departments and Projects and add OpenGov Report Views to Department and Project Story Shells.
 - Provide up to ten (10) one-hour working sessions to answer Customer questions on OBB Configuration.

- Customer will:
 - Provide logo and branding colors to OpenGov.
 - Sign off on OBB Templates prior to OBB Story Shell Configuration.
 - Validate and sign off on OBB Department and Project Story Shells.
 - Complete Department and Project Story Shells by adding Customer content including:
 - Narrative
 - Images
 - External Data
 - Create remaining OBB Stories from OBB Templates for each section of the Table of Contents and add Customer content including:
 - Narrative
 - Images
 - External Data
 - Create any additional Reports and Report Views needed to add to OBB.
 - Attend working sessions to get answers on OBB questions.
 - Make Stories public and Publish OBB.

B-2.2: Reporting Deliverables

Budgeting and Planning Suite Reporting

- OpenGov will:
 - Configure up to four (4) Operating Budget Reports using OpenGov budget data:
 - Milestones
 - Development
 - Details
 - Categories*
 - Configure up to four (4) Capital Budget Reports using OpenGov budget data:
 - Development
 - Details
 - Categories*
 - Capital Plan
 - Review configured OpenGov Reports and provide training Customer on how to:
 - Export Budget Data for use in OpenGov Reports.
 - Create new Reports
 - Manage Reports
 - Share Reports

*Budget Categories report is only available to customers using a zero-based budget.

- Customer will:
 - Validate and provide sign-off of Reports.
 - Maintain the Reports once configured.

B-2.3: Training Deliverables

OpenGov University

- OpenGov will:
 - Provide access to OpenGov University online training courses intended to teach users on the basics of OpenGov.
- Customer will:
 - Review training courses.

Reporting & Transparency Administrator Training

- OpenGov will:
 - Provide training to Customer System Administrators on how to:
 - Maintain the Chart of Accounts
 - Upload and manage data for reporting
 - Create and share Reports, Dashboards, Stories, and Topics
- Customer will:
 - Identify relevant participants and attend scheduled trainings.

Budgeting and Workforce Administrator Training

- OpenGov will:
 - Provide training to Customer System Administrators on how to:
 - Create and manage Budgets
 - Prepare to set up Next Year’s Budget
 - Create and manage Workforce Plans including Cost Elements and Position Upload Templates
- Customer will:
 - Identify relevant participants and attend scheduled training sessions.

Onsite Budget End-User Training

- OpenGov will:
 - Provide up to two (2) days of onsite end user training session(s) to Customer’s Internal Users on how to:
 - Navigate Opengov Budgets and Reports
- Customer will:
 - Identify relevant participants and attend scheduled training sessions.

B-3: Post Core Financials Hypercare Reporting Support

Post Core Financials Hypercare

- OpenGov will:
 - Provide up to fifty (50) hours of reporting support post go live. The hours must be used within six (6) months of the first financials (“Core Financials”) project go live date.
- Customer will:
 - Attend all working sessions.
 - Provide example(s) of reports that are needed.
- OpenGov Assumptions:
 - OpenGov may deliver the report in a different format or a combination of reports.

Appendix C: Technical Requirements

C-1: Financials Hardware and Technical Requirements

Computers, tablets or other user devices

- Access to the internet; Google Chrome is the recommended browser for optimal performance.

Printer

- MICR ink compatible

Check Stock

- blank, 8 1/2" x 11", check at the bottom

Cash Drawers

- MMF Cash Drawer - Value Line or MMP Cash Drawer - Advantage

Receipt Printer

- Model options: Ithaca 9000 - Thermal Printer, Epson T20III - Thermal, Thermal/inkjet, Epson TM-H6000IV

Thermal Paper

- Compatible with receipt printer

Scanner (Optional)

- Twain driver scanner

Chart of Accounts

- Flat file
- .csv, .xls, .xlsx with headers
- Active Accounts and Accounts with activity in the years of data being loaded into OpenGov.

Vendor Listing

- Flat file
- .csv, .xls, .xlsx with headers

Customer Listing

- Flat file
- .csv, .xls, .xlsx with headers

Trial Balance

- Flat file
- .csv, .xls, .xlsx with headers
- 3-5 Years of Data

Current Budget

- Flat file

- .csv, .xls, .xlsx with headers

Unpaid Invoice Report

- Flat file
- .csv, .xls, .xlsx with headers

Calendar YTD 1099 totals by vendor and tax payment type

- Flat file
- .csv, .xls, .xlsx with headers

Fixed Assets Data

- Flat file
- .csv, .xls, .xlsx with headers

Bank Statement

- .pdf

Bank Reconciliation Report

- Flat file
- .csv, .xls, .xlsx with headers

Outstanding Checks and Deposits List

- Flat file
- .csv, .xls, .xlsx with headers

AR Customer Balance by Service Code

- Flat file
- .csv, .xls, .xlsx with headers

C-2: Budgeting & Planning Technical Requirements

Current Budget

- Flat file
- .csv, .xls, .xlsx with headers
- Operating Budget

Personnel Calculations and Tables

- PDF, Word, csv, .xls, .xlsx with headers

Logo Image

- .jpg or .png format
- Transparent

Branding Guidelines

- Hex codes



OpenGov End User License Agreement

Texas DIR Contract DIR-TSO-4227

Last Modified: 6/01/2023

[View agreement archive](#) →

This End User License Agreement (this “Agreement”) is made between OpenGov, Inc., a Delaware corporation (“OpenGov”), and a party procuring OpenGov’s services (“Customer”) through Vertosoft, LLC, an authorized reseller (“Reseller”). This Agreement sets forth the terms under which Customer may use OpenGov’s hosted software services and receive professional services, subject to DIR Contract DIR-TSO-4227 (“DIR-TSO-4227”).

1. Definitions

1.1 “Customer Data” means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer’s software systems of record). Customer Data does not include any confidential personally identifiable information.

1.2 “Documentation” means materials produced by OpenGov that provide information about OpenGov’s software products and systems. Customers



1.3 “Intellectual Property Rights” means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

1.4 “Purchase Order” means the document used between the Reseller and the Customer to purchase specified OpenGov services.

1.5 “Party” (or “Parties”) refers to OpenGov and/or Customer. For the avoidance of doubt, Reseller is not a Party to this Agreement.

1.6 “Subscription Term” means the period from the start date of the Software Services specified on the first Purchase Order to the last end date of the Software Services specified on any Purchase Order.

2. Software Services, Support, and Professional Services

2.1 Software Services. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to provide the commercial off-the-shelf software solutions identified in the applicable Purchase Order (“Software Services”). The Software Services do not include any Work Product as defined in DIR-TSO-4227, Appendix A, Section 5.1.1.



Software Services, both of which are available during OpenGov's standard business hours. Customer may report issues any time. However, OpenGov will address issues during business hours. OpenGov will provide support for the Software Services in accordance with the Support and Software Service Levels found at opengov.com/service-sla, as long as Customer is entitled to receive support under the applicable Purchase Order and this Agreement.

2.3 Professional Services. If OpenGov or its authorized independent contractors provides professional services to Customer through Reseller, such as implementation services, then OpenGov will specify the professional services ("Professional Services") in an applicable statement of work ("SOW"). Unless otherwise specified in a SOW, any pre-paid professional services must be utilized within one year from the start of the Subscription Term.

3. Restrictions and Responsibilities

3.1 Restrictions. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement and Documentation. In addition, Customer shall not, and shall not permit or enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource, copy or otherwise



any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.

3.2 Responsibilities. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer's ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov.

4. Intellectual Property Rights; License Grants; Access to Customer Data

4.1 Software Services. OpenGov owns all interests and Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov. Customer may not copy, imitate, or use them, in whole or in part, without OpenGov's prior written consent. Subject to Customer's obligations under this Agreement, OpenGov grants Customer a non-exclusive, royalty-free license during the Subscription Term to use the Software Services.



(such as hosting providers) a non-exclusive, royalty-free license to use, store, edit, and reformat the Customer Data for the purpose of providing the Software Services. Customer further agrees that OpenGov and its partners may use aggregated, anonymized Customer Data for purposes of sales, marketing, business development, product enhancement, customer service, and data analysis. Insights gleaned from aggregated, anonymized Customer Data will belong to OpenGov.

4.3 Access to Customer Data. Customer may download the Customer Data from the Software Services at any time during the Subscription Term, excluding during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer.

4.4 Deletion of Customer Data. Unless otherwise requested pursuant to this Section 4.4, upon the termination of this Agreement, the Customer Data shall be deleted pursuant to OpenGov's standard data deletion and retention practices. Upon written request, Customer may request deletion of Customer Data prior to the date of termination of this Agreement. Such a request must be addressed to "OpenGov Vice President, Customer Success" at OpenGov's address for notice in Section 10.2.

4.5 Feedback. "Feedback" means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums. Customer grants OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer's



derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

5. Confidentiality

5.1 "Confidential Information" means all confidential business, technical, and financial information of the disclosing Party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure. OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services, and all Documentation.

5.2 Confidential Information does not include: (a) data that the Customer has previously released to the public; (b) data that Customer would be required to release to the public upon request under applicable federal, state, or local public records laws; (c) Customer Data that Customer requests OpenGov make available to the public in conjunction with the Software Services; (d) information that becomes publicly known through no breach by either Party; (e) information that was rightfully received by a Party from a third Party without restriction on use or disclosure; or (f) information independently developed by the receiving Party without access to the disclosing Party's Confidential Information.

5.3 Each Party agrees to obtain prior written consent before disclosing any of the other Party's Confidential Information. Each Party further agrees to use the other's Confidential Information only in connection with this



to its own Confidential Information of a similar nature, but in no event with less than reasonable care. If a Party is required to disclose Confidential Information by law or court order, they must notify the other Party in writing before making the disclosure to give the other Party an opportunity to oppose or limit the disclosure.

6. Term and Termination

6.1 Subscription Term. This Agreement commences when the Parties execute this Agreement and continues until the last end date of the Software Services specified on the Purchase Order, unless sooner terminated pursuant to Section 6.3.

6.2 Renewal. This Agreement will renew if Customer enters another Purchase Order for the Software Services and/or additional Professional Services before the end of the Subscription Term.

6.3 Termination. If either Party materially breaches any term of this Agreement and fails to cure such breach within 30 days after receiving written notice by the non-breaching Party the non-breaching Party may terminate this Agreement. Neither Party shall have the right to terminate this Agreement early without a legally valid cause.

6.3.1 Termination for Non-Appropriation. Customer may terminate this Agreement for non-appropriation pursuant to DIR-TSO-4227, Appendix A, Section 11.2.1.1.



Appendix A, Section 11.2.5.

6.3.3 Termination for Cause. Customer may terminate this Agreement for Cause pursuant to DIR-TSO-4227, Appendix A, Section 11.2.4.2. OpenGov may terminate this Agreement if Customer materially breaches any term of this Agreement and fails to cure such breach within 30 days after receiving written notice by OpenGov.

6.4 Effect of Termination. Upon termination of this Agreement pursuant to Section 6.1, 6.2, or 6.3: (a) Customer shall pay in full for all Software Services and Professional Services performed up to the date of termination or expiration, (b) OpenGov shall stop providing Software Services and Professional Services to Customer; and (c) each Party shall (at the other Party's option) return or delete any of the other Party's Confidential Information in its possession. See DIR Contract TSO-DIR-4227, Appendix A, Sections 11.2.6—Customer Rights Under Termination, and 11.2.7—Vendor or Order Fulfiller Rights Under Termination.

7. Payment of Fees

Fees for Software Services are due at the beginning of each year of the Subscription Term, and Customer must timely pay all applicable fees to Reseller to avoid interruption of the Software Services. Fees for Professional Services are due in advance, unless indicated otherwise in the Purchase Order.

8. Representations and Warranties; Disclaimer



all right and authority necessary to enter into and perform this Agreement.

8.1.2 Professional Services Warranty. OpenGov further represents and warrants that the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with generally prevailing industry standards. For any breach of the Professional Services warranty, Customer's exclusive remedy and OpenGov's entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must give written notice of any claim under this warranty to OpenGov within 90 days of performance of such work to receive such warranty remedies.

8.1.3 Software Services Warranty. OpenGov further represents and warrants that for a period of 90 days after the subscription start date specified in the Purchase Order, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Customer must give written notice of any claim under this warranty to OpenGov during the Subscription Term. OpenGov's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming



terminate the license for such Software Services and refund the pre-paid, unused portion of the fee for such Software Services to the Reseller.

8.2 By Customer. Customer represents and warrants that (a) it has all right and authority necessary to enter into and perform this Agreement; and (b) OpenGov's use of the Customer Data pursuant to this Agreement will not infringe, violate or misappropriate the Intellectual Property Rights of any third party.

8.3 Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. Limitation of Liability

9.1 By Type. NEITHER OPENGOV NOR CUSTOMER, NOR THEIR SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR



BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND A PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID FOR THE SOFTWARE SERVICES UNDER THE APPLICABLE PURCHASE ORDER IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

9.3 Limitation of Liability Exclusions. The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each Party accepts liability to the other for: (a) claims based on either Party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claims arising out of fraud or willful misconduct by either Party and (c) either Party's infringement of the other Party's Intellectual Property Rights.

9.4 No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

10. Miscellaneous

10.1 Logo Use. Upon Customer's prior written consent, OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes for OpenGov's website and marketing



10.2 Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone. However, for notices, including legal notices, required by the Agreement (in sections where the word “notice” appears) the Parties must communicate more formally in a writing sent via USPS certified mail and via email. OpenGov’s addresses for notice are: OpenGov, Inc., 6525 Crown Blvd #41340, San Jose, CA 95160, and legal@opengov.com.

10.3 Anti-corruption. Neither OpenGov nor any of its employees or agents has offered or provided any illegal or improper payment, gift, or transfer of value in connection with this Agreement. The Parties will promptly notify each other if they become aware of any violation of any applicable anti-corruption laws in connection with this Agreement.

10.4 Injunctive Relief. The Parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a Party’s intellectual property may result in serious and irreparable injury to the aggrieved Party for which damages may not adequately compensate the aggrieved Party. The Parties agree, therefore, that, in addition to any other remedy that the aggrieved Party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.

10.5 Force Majeure. Neither Party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement due to any act of god, act of governmental authority, or due to



control of the Party delayed or prevented from performing.

10.6 Severability; Waiver. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

10.7 Survival. The following sections of this Agreement shall survive termination: Section 5. (Confidentiality), Section 7 (Payment of Fees), Section 4.4 (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).

10.8 Assignment. There are no third-party beneficiaries to this Agreement. Except as set forth in this Section 10.8, neither party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's written consent, which consent may not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to its corporate affiliate or to any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise or as allowed by DIR-TSO-4227, Appendix A, Section 4.4(B). Any other attempted assignment shall be void. This Agreement will benefit and bind permitted assigns and successors.

has any authority to bind the other.

10.10 Governing Law and Jurisdiction. This Agreement will be governed by the laws of the Customer’s jurisdiction, without regard to conflict of laws principles. The parties submit to personal jurisdiction and venue in the courts of the Customer’s jurisdiction.

10.11 Complete Agreement. OpenGov has made no other promises or representations to Customer other than those contained in this Agreement and those required by DIR-TSO-4227 .In the event of a conflict, the terms of DIR-TSO-4227 shall prevail. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each Party.

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Stevie Awards 2023



SOC II

COBB COUNTY, GA

Contract #18220

for

Workforce Management Systems and Related Products,

Services and Solutions

with

Kronos Incorporated

Effective: March 18, 2019

The following documents comprise the executed contract between the Cobb County, GA, Kronos Incorporated, effective March 18, 2019:

- I. Vendor Master Agreement Reference No. 18220 and Signature Form
- II. Kronos Terms and Conditions for Participating Public Agencies
– Exhibit A (022019)

Reference No. 18220

Reference Number	
Reference Depart.	Purchasing Department

Master Agreement

Owner: Cobb County Board of Commissioners
100 Cherokee Street
Marietta, GA 30090

Contractor: Kronos Incorporated
900 Chelmsford Street
Lowell, MA 01851

Description: **WORKFORCE MANAGEMENT SYSTEMS AND RELATED PRODUCTS, SERVICES AND SOLUTIONS:** The undersigned parties understand and agree to comply with and be bound by the entire contents of Sealed Bid #18-6390 ("the RFP") and the Contractor's Proposal submitted September 27, 2018 which is incorporated herein by reference. Contractor understands and agrees that insurance required in the Request for Proposals are to be kept current at all times through the length of each term and for ninety (90) days following the completion of each term. Insurance must be renewed and presented to the Owner at the time of each renewal term if Owner chooses to renew. Insurance shall be written by a firm acceptable to the Owner as specified in the Request for Proposals.

U.S. COMMUNITIES GOVERNMENT PURCHASING ALLIANCE: Contractor agrees to enter into the U.S. Communities Administration Agreement that is included in the RFP and the memorandum of understanding with U.S. Communities ("Administration Agreement"). Any Public Agency, as defined in the Administration Agreement, may purchase Products and Services at the prices indicated in the Contractor's Proposal upon prior registration with U.S. Communities, and in accordance with the terms of the Administration Agreement.

Terms: **March 18, 2019 to March 17, 2022** with full renewal options per the Request for Proposals. Owner shall exercise renewal options by issuance and delivery to Contractor of a written notice to renew this agreement. Orders executed with public entities in the state of Georgia shall be in compliance with multi-year contract provisions of O.C.G.A. Section 36-60-13. The products and services which are subject to this Master Agreement are also covered by the applicable Contractor commercial service or maintenance terms and conditions incorporated as Appendix A. The term of the Commercial service or maintenance terms and conditions shall be governed by that applicable order and may extend beyond the expiration date of this Master Agreement. In the event of conflicting language between the Terms and Conditions of the Master Agreement, including the RFP, and the terms and conditions contained in Appendix A, the Master Agreement shall prevail.

Price: Prices for services and equipment, if applicable, as stated in the Contractor's proposal

Billing: For purchases made by Cobb County Government, all original invoices shall be submitted directly to the Cobb County Finance Department. Invoices shall bill only for items received during the period covered by the invoice and shall clearly identify such items in accordance with invoicing guidelines in the Sealed Bid Proposal. For purchases made by participating public agencies, the Contractor shall comply with each agency's invoicing and billing requirements outlined on the applicable order.

{SIGNATURES ON NEXT PAGE}

IN WITNESS, WHEREOF, this Agreement has been executed by Owner and accepted by Contractor to be effective as of the date first above written.

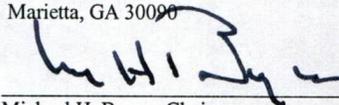
APPROVED
PER MINUTES OF
COBB COUNTY
BOARD OF COMMISSIONERS

2-12-2019



Cobb County... Expect the Best!

Cobb County Board of Commissioners
100 Cherokee Street
Marietta, GA 30090

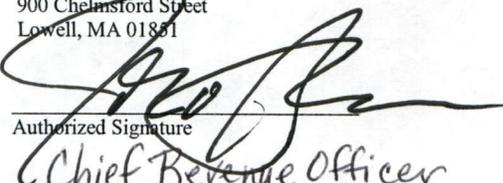


Michael H. Boyce, Chairman
Cobb County Board of Commissioners

3-5-2019
Date



Kronos Incorporated
900 Chelmsford Street
Lowell, MA 01851



Authorized Signature

Chief Revenue Officer
Title

2/25/19
Date

FEDERAL TAX ID NUMBER

04-2640942

Approved as to form



County Attorney's Office

3/4/19
Date

Exhibit A

KRONOS TERMS AND CONDITIONS FOR PARTICIPATING PUBLIC AGENCIES ADMINISTERED BY US COMMUNITIES
(022019)

KRONOS TERMS

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. For renewal of the Cloud Services only.
- 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 ADDENDUM WORKFORCE TELESTAFF IVR SERVICE](#). This Section applies to the Workforce Telestaff IVR service.
- SECTION F: [KRONOS HEALTHCARE EXTENSION WITH THE WORKFORCE CENTRAL SAAS](#). This section applies to the Healthcare Extension ordered with the Workforce Central SaaS.
- SECTION G: [KRONOS HEALTHCARE EXTENTION WITH THE APPLICATION HOSTING](#). This section applies to the Healthcare extension ordered with the Kronos Application Cloud services.
- SECTION H: [BUSINESS ASSOCIATED AGREEMENT](#). This Section applies with the services ordered under Sections G, H and K.
- SECTION I: [CLOUD SERVICES FOR EXTENSION APPLICATION](#). This Section applies with the Sections G and H.
- SECTION J: [CLIENT PARTNERSHIP SERVICES](#). This Section applies to the client Partnership services ordered by Healthcare Customers.
- SECTION K: [KRONOS WORKFORCE DIMENTIONS TERMS AND CONDITIONS](#). This section applies to the Workforce Dimension Services ordered by Customers.

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;
- (iv) Section E shall apply to Workforce Telestaff IVR ordered to Kronos;
- (v) Section F shall apply to the Kronos Healthcare Extension order;
- (vi) Section G shall apply to the Healthcare Extension ordered with the Kronos Application Cloud services;
- (vii) Section H shall apply with the services ordered under Sections F, G and J.;
- (viii) Section I shall apply with the Sections F and G.
- (ix) Section J shall apply to the client Partnership services ordered by Healthcare Customers.
- (x) Section K shall apply to the Workforce Dimension orders.

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 (including the applicable public record laws), 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) or such other mutually agreed policies or mutually agreed between the parties in the statement of work. 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 Agreement. 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 Billerica 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.

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

(k) Kronos agrees to comply with any applicable federal, state and local laws and regulations.

(l) Additionally, Kronos agrees to be liable for tangible property damage or personal injury to the extent caused by the negligence or willful misconduct of its employees.

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:

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

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: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using such Software, (ii) 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.

9. PROFESSIONAL AND EDUCATIONAL SERVICES

(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 both parties.

(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.

(c) KRONOS PROFESSIONAL/EDUCATIONAL SERVICES POLICIES

Kronos' then-current Professional/Educational Services Policies 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 Policies"). In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

10. SOFTWARE SUPPORT SERVICES

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

10.1 SUPPORT OPTIONS

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 Policies (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.

10.2 TERM OF SOFTWARE SUPPORT

Unless otherwise indicated on the Order Form, support service shall commence on the Software Delivery date and shall continue for an initial term of one (1) year. Support service 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.

10.3 GOLD SERVICE OFFERINGS

Customer shall be entitled to receive:

- (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.

(ii) Telephone and/or electronic access to the Kronos Global Support Center for the logging of requests for service during the Service Coverage Period. 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.

(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>.

(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.

(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.

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 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 subscribe 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 to the extent caused 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.

18. TERMINATION OF ORDER FORM OR SOW

(a) Termination for breach. For any breach of this Agreement by Kronos in relation with that Customer which cannot be cured by repair, replacement or re-performance, Customer shall have the right to terminate this the Order Form or applicable SOW upon thirty (30) days prior written notice to Kronos, provided Kronos has not cured such breach during such thirty (30) day period. Upon such termination, Customer shall be entitled to pursue its remedies at law or in equity subject to the terms of this Agreement.

(b) Termination for non-appropriation of funds. Should the funding for the services ordered by Customer be discontinued, Customer shall have the right to terminate the Order Form relating to such services ordered upon a 30 days written advance notice to Kronos. In such event, the Customer agrees to pay for the products delivered and the services performed under the terms of the Agreement prior to the receipt by Kronos of the termination notice.

**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 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

“**Acceptable Use Policy**” means the Kronos policy describing prohibited uses of the Cloud Services as further described at: <https://www.kronos.com/policies/acceptable-use>

“**Application(s)**” means those Kronos software applications set forth on the applicable Order Form (or a schedule to the Order Form if Customer is only hosting a portion of the Applications for which Customer has a perpetual license) and which are made accessible to Customer for use in the Kronos Private Cloud under the terms of this Section C.

“**Billing Start Date**” means the date on which billing for the Cloud Services will commence, as indicated on the Order Form.

“**Cloud Services**” means access to the password protected customer area of the Kronos Private Cloud and those services related thereto, all as further described at: <http://www.kronos.com/products/workforce-central-cloud/cloud-guidelines.aspx>

“**Customer Content**” means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Kronos Private Cloud.

“**Initial Term**” means the initial billing term of the Cloud Services as indicated on the Order Form. The Initial Term commences on the Billing Start Date. Customer may have access to the Cloud Services prior to the commencement of the Initial Term.

“**Monthly Services Fee(s)**” means the monthly fees described in the applicable Order Form.

“**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 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.

“**Production Environment**” means the environment established for Customer’s daily use of the Applications in a live environment throughout the Term.

“**Renewal Term**” means the renewal billing term of the Cloud Services as indicated on the Order Form.

“**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 Kronos Private Cloud.

“**SLA Credit**” means the credit calculated in accordance with the SLA and offered by Kronos in the event of outages or interruptions in the delivery of the Cloud Services 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 Cloud Services. Kronos may at its sole discretion replace a Supplier, provided that a change to Supplier will not have a materially adverse effect on the Cloud Services delivered by Kronos under this Agreement.

“**Temporary Environment**” means a transient, non-production environment created to serve limited purposes for a limited time period, and identified on the applicable Order Form as a Temporary Environment.

“**Term**” means the Initial Term and any Renewal Terms.

2. CLOUD SERVICES AND TERM

2.1 During the Term, Kronos will provide the Cloud Services for the Applications. Unless the Order Form indicates that the Applications are to be implemented in a Temporary Environment, the Applications will be deemed to be implemented in a Production Environment.

2.2 Billing for the Cloud Services commences on the Billing Start Date, and continues for the Initial Term or until terminated in accordance with the provisions hereof. At the expiration of the Initial Term and each Renewal Term as applicable, the Cloud Services shall automatically renew for an additional Renewal Term until either party provides notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current Term.

2.3 Kronos may suspend or terminate the Cloud Services upon notice in the event of any breach by Customer of this Section C if such breach is not cured within thirty (30) days of the date of Kronos' written notice. No interruption shall be deemed to have occurred during, and no credits shall be owed for, any authorized suspension of the Cloud Services.

2.4 Customer may terminate the Cloud Services by written notice at any time during the term of the Section C if Kronos materially breaches any provision of this Section C, 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 Cloud Services prior to the date of termination.

2.5 Customer may terminate any or all of the Cloud Services for convenience on no less than ninety (90) days prior written notice to Kronos. In the event of termination of any of the Cloud Services 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 Cloud Services 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 Cloud Services 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.

2.6 Customer Content shall be available to Customer to retrieve at any time and at no additional charge throughout the Term and for no more than fifteen (15) days after expiration or termination of the Agreement for any reason. After such time period, Kronos shall have no further obligation to store or make available the Customer Content and will securely delete all Customer Content without liability of any kind.

2.7 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 Agreement immediately upon written notice to the other party.

3. CLOUD SERVICES, FEES AND PAYMENT

3.1 In consideration of the delivery of the Cloud Services, Customer shall pay Kronos the Monthly Services Fee for such Cloud Services as defined in the applicable Order Form. The Monthly Services Fee shall commence on the Billing Start Date and will be invoiced on the "Billing Frequency" indicated on the Order Form. When billed annually in advance, Kronos will invoice Customer an amount equal to twelve (12) months of the Monthly Services Fees for the Cloud Services annually in advance for each year during the Term commencing on the Billing Start Date. The Billing Start Date for the Monthly Service Fees for any Cloud Services ordered by Customer after the date of this Agreement which are incremental to Customer's then-existing Cloud Services shall be the date the applicable Order Form is executed by Kronos and Customer.

3.2 All fees payable for the Cloud 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. Customer is responsible for all applicable federal, state, country, provincial or local taxes relating to the Cloud Services (including without limitation GST and/or VAT if applicable), excluding taxes based on Kronos' income or business privilege. Customer may be required to purchase additional Cloud Services to address infrastructure requirements as released by Kronos for a new version of a particular Application.

3.3 If any amount owing under this or any other agreement for Cloud Services is thirty (30) or more days overdue, Kronos may, without limiting Kronos' rights or remedies, suspend Cloud 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 Cloud Services.

3.4 At the commencement of each Renewal Term, Kronos may increase the Monthly Service Fee rates in an amount not to exceed four percent (4%). The increased Monthly Service Fees will be reflected in the invoice following the effective date of such increase without additional notice. Customer may be required to purchase additional Cloud Services to address increased infrastructure requirements for a new version of a particular Application as released by Kronos. Any additional Cloud Services will be set forth on an Order Form to be mutually agreed upon by Customer and Kronos.

4. ACCEPTABLE USE

4.1 Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Cloud Services, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Agreement. Customer is responsible for all activities undertaken under the auspices of its passwords and other login credentials to use the Cloud Services.

4.2 Customer represents and warrants to Kronos that Customer has the right to publish and disclose the Customer Content in connection with the Cloud Services. Customer represents and warrants to Kronos that the Customer Content will comply with the Acceptable Use Policy.

4.3 Customer will not (a) use, or allow the use of, the Cloud Services in contravention of the Acceptable Use Policy.

4.4 Kronos may suspend the Cloud Services immediately upon written notice in the event of any security risk, negative impact on infrastructure or Acceptable Use Policy violation.

5. MAINTENANCE

Monthly Service Fees are in addition to the fees Customer pays for annual maintenance and support under the License Agreement. Customer must maintain the Software under an active maintenance plan with Kronos throughout the Term. If Kronos, its Suppliers,

or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair access to the Kronos Private Cloud, Customer shall cooperate in a timely manner and reasonably provide such access and assistance as necessary.

6. CUSTOMER CONTENT

Customer shall own all Customer Content. Kronos acknowledges that all of the Customer Content is deemed to be the Confidential Information of Customer. Customer will ensure that all Customer Content conforms with the terms of this Agreement and applicable law. Kronos and its Suppliers may, but shall have no obligation to, access and monitor Customer Content from time to time to provide the Cloud Services and to ensure compliance with this Agreement and applicable law. Customer is solely responsible for any claims related to Customer Content and for properly handling and processing notices that are sent to Customer regarding Customer Content.

7. CONNECTIVITY AND ACCESS

Customer acknowledges that Customer shall (a) be responsible for securing, paying for, and maintaining connectivity to the Kronos Private Cloud (including any and all related hardware, software, third party services and related equipment and components required for access); and (b) provide Kronos and Kronos' representatives with physical or remote access to Customer's computer and network environment as mutually agreed upon may be 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.

8. indemnification

8.1 Customer shall defend Kronos, its Suppliers and their respective directors, officers, employees, agents and independent contractors (collectively, the "**Kronos Indemnified Parties**") harmless, 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: (a) employment-related claims arising out of Customer's configuration of the Cloud Services; (b) Customer's modification or combination of the Cloud 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. 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. 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's settlement of such a Claim.

8.2 The Kronos 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.

9. 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 CLOUD SERVICES OR FAILURE BY KRONOS TO MEET THE TERMS OF THE APPLICABLE SERVICE LEVEL AGREEMENT, SHALL BE THE REMEDIES PROVIDED IN EXHIBIT A.

10. 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 CLOUD SERVICES (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE OR SYSTEMS, OR MACHINE ERROR.

11. DATA SECURITY

11.1 As part of the Cloud 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/workforce-central-cloud/cloud-guidelines.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.

11.2 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 the Agreement or as required by law.

11.3 Prior to initiation of the Cloud 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 Cloud 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.

EXHIBIT A OF SECTION C

SERVICE LEVEL AGREEMENT (SLA)

Service Level Agreement: The Applications, in a production environment, 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 Applications. 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) expected downtime during the Maintenance Periods described below; (e) any suspension of the Cloud 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 Documentation for such Application.

"Maintenance Period" means scheduled maintenance periods established by Kronos to maintain and update the Cloud Services, when downtime may be necessary, as further described below. The Maintenance Period is used for purposes of the Service Credit Calculation; Kronos continuously maintains the production environment on a 24x7 basis to reduce disruptions.

Customer Specific Maintenance Period

- Customer will choose one of the following time zones for their Maintenance Period:
 - United States Eastern Standard Time,
 - GMT/UTC,
 - Central European Time (CET) or
 - Australian Eastern Standard Time (AEST).
- Customer will choose one of the following days of the week for their Maintenance Period: Saturday, Sunday, Wednesday or Thursday.
- Kronos will use up to six (6) hours in any two (2) consecutive rolling months (specifically: January and February; March and April; May and June; July and August; September and October; November and December) to perform Customer Specific Maintenance, excluding any customer requested Application updates. Downtime in excess of these six (6) hours will be deemed to be an Outage.
- Customer Specific Maintenance will occur between 12am-6am during Customer's selected time zone.
- Excluding any customer requested Application updates, Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least seven (7) days in advance of any known downtime so planning can be facilitated by Customer.

6. Customer Specific Maintenance Windows also include additional maintenance windows mutually agreed upon by Customer and Kronos.
7. In absence of instruction from Customer, Kronos will by default perform Maintenance in the time zone where the Data Center is located.

Non-Customer Specific Maintenance Period

Kronos anticipates non-Customer Specific Maintenance to be performed with no or little (less than three hours per month) Customer downtime. If for any reason non-Customer Specific Maintenance requires downtime, Kronos will provide as much notice as reasonably possible of the expected window in which this will occur. Downtime in excess of three (3) hours per month for Non-Customer Specific Maintenance will be deemed to be an Outage.

“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 Cloud Services are unavailable as the result of an Outage.

Reporting and Claims Process: 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 Cloud 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 Cloud 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 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 in Kronos' hosting environment, the services related thereto, and the sale or rental of Equipment (if any) specified on a Kronos Order Form. The Applications described on the Order Form shall be delivered by means of Customer's permitted access to the Kronos infrastructure hosting such Applications.

1. DEFINITIONS

"Acceptable Use Policy" means the Kronos policy describing prohibited uses of the Services as further described at: <https://www.kronos.com/policies/acceptable-use>

"Agreement" means the terms and conditions of Section D and the Order Form(s).

"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 Agreement.

"Billing Start Date" means the date the billing of the Monthly Service Fees commences as indicated on the applicable Order Form. Notwithstanding, Implementation Services provided on a time and material basis are billed monthly as delivered. The Billing Start Date of the Monthly Service Fees for any Services ordered by Customer after the date of this Agreement which are incremental to Customer's then-existing Services shall be the date the applicable Order Form is executed by Kronos and Customer.

"Cloud Services" means those services related to Customer's cloud environment as further described at: <http://www.kronos.com/products/workforce-central-cloud/cloud-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 professional and educational services provided by Kronos to set up the cloud environment and configure the Applications. Unless otherwise set forth on an Order Form as "a la carte" services (supplemental fixed fee, fixed scope services) or "bill as you go" services (time and material services described in a Statement of Work), Kronos will provide, as part of the Monthly Service Fee for the Applications, the fixed fee, fixed scope Implementation Services described in the Services Implementation Detail set forth at: www.kronos.com/products/workforce-central-saas/implementation-guidelines.aspx. Implementation Services may also be provided as set 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.

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

"Renewal Term" means the renewal term of the Services as indicated on the Order Form.

"Services" means (i) the Cloud Services, (ii) accessibility to the commercially available version of the Applications by means of access to the password protected customer area of a Kronos website, and all such services, items and offerings accessed by Customer therein, and (ii) the Equipment rented hereunder, if any.

"Statement of Work", "SOW", "Services Scope Statement" and **"SSS"** are interchangeable terms referring to a written description of the Implementation Services mutually agreed upon by Kronos and Customer and set forth as "bill as you go" services on the Order Form.

"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 Services.

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

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

2. TERM

2.1 Billing for the Services commences on the Billing Start Date, and continues for the Initial Term or until terminated in accordance with the provisions hereof. At the expiration of the Initial Term and each Renewal Term as applicable, the Services shall automatically renew each year for an additional Renewal Term until terminated in accordance with the provisions hereof.

2.2 Customer may terminate the Services and this Agreement for convenience upon sixty (60) days prior written notice subject to Customer's payment for services performed. Kronos may terminate the Services and this Agreement to be effective at the expiration of the then current Term upon no less than sixty (60) days prior written notice.

2.3 Either party may terminate the Services and 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.

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 Agreement immediately upon written notice to the other party.

2.5 If the Agreement is terminated for any reason:

(a) Customer shall pay Kronos within thirty (30) days of such termination, all fees accrued and unpaid under this Agreement prior to the effective date of such termination, provided however, if Customer terminates for material breach of the Agreement by Kronos, Kronos shall refund Customer any pre-paid fees for Services not delivered by Kronos;

(b) Customer's right to access and use the Applications shall be revoked and be of no further force or effect and return rented Equipment as provided in Section 9.1 below;

(c) 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

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

2.6 Customer Content shall be available to Customer to retrieve at any time and at no additional charge throughout the Term and for no more than fifteen (15) days after expiration or termination of the Agreement for any reason. After such time period, Kronos shall have no further obligation to store or make available the Customer Content and will securely delete all Customer Content without liability of any kind.

3. FEES AND PAYMENT

3.1 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. The Monthly Service Fees will be invoiced on the frequency set forth on the Order Form ("Billing Frequency"). If Customer and Kronos have signed a Statement of Work for the Implementation Services, Implementation Services will be invoiced monthly as delivered unless otherwise indicated on the Order Form. If Kronos is providing Implementation Services in accordance with the Services Implementation Guideline or as "a la carte" services on the Order Form, Kronos will invoice Customer for Implementation Services in advance of providing such Implementation Services unless otherwise indicated on the Order Form. All other Kronos offerings will be invoiced upon execution of the applicable Order Form by Kronos and Customer. Unless otherwise indicated on an Order Form, payment for all items shall be due 30 days following date of invoice. All payments shall be sent to the attention of Kronos as specified on the invoice. Except as expressly set forth in this Agreement, all amounts paid to Kronos are non-refundable. Customer is responsible for all applicable federal, state, country, provincial or local taxes relating to the goods and services provided by Kronos hereunder (including without limitation GST and/or VAT if applicable), excluding taxes based on Kronos' income or business privilege.

3.2 If any amount owing under this or any other agreement between the parties 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 At the latest of (i) one (1) year after the effective date of this Agreement, or (ii) expiration of the Initial Term, and at each annual anniversary of that date thereafter, Kronos may increase the Monthly Service Fee rates in an amount not to exceed four percent (4%). The increased Monthly Service Fees will be reflected in the monthly invoice following the effective date of such increase without additional notice.

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 Applications and related services, including the Documentation; b) training materials and KnowledgePass Content; and, c) any embedded third party software, libraries, or other components, which form a part of the Services. 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 or other software comprising the Services 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. The JBoss® Enterprise Middleware components of the Service are subject to the end user license agreement found at http://www.redhat.com/licenses/jboss_eula.html 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.

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 through Customer's administrative access privileges 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 to 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 to 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 applicable laws and regulations. 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 Agreement. Customer is responsible for all activities undertaken under the auspices of its passwords and other login credentials to use the Services.

5.2 Customer represents and warrants to Kronos that Customer has the right to publish and disclose the Customer Content in connection with the Services. Customer represents and warrants to Kronos that the Customer Content will comply with the Acceptable Use Policy.

5.3 Customer will not (a) use, or allow the use of, the Services in contravention of the Acceptable Use Policy.

5.4 Kronos may suspend the Services immediately upon written notice in the event of any security risk, negative impact on infrastructure or Acceptable Use Policy violation.

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 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.

7. IMPLEMENTATION AND SUPPORT

7.1 Implementation Services. Kronos will provide the Implementation Services to Customer. Implementation Services described in a SOW are provided on a time and materials basis, billed monthly as delivered unless otherwise indicated on the Order Form. 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 Services Implementation Guideline, Kronos will create a change order for Customer's review and approval and any additional Implementation Services to be provided by Kronos will be billed as delivered at the then-current Kronos professional services rates. 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. In the event that Kronos is required to travel to Customer's location during the implementation, travel expenses shall be set forth in accordance with Section 6 Exhibit A. Kronos shall invoice Customer for such travel expenses and payment thereof shall be due net thirty (30) days from date of invoice.

7.2 Additional Services. Customer may engage Kronos to provide other services which may be fixed by activity ("a la carte") or provided on a time and materials basis ("bill as you go") as indicated on the applicable Order Form.

7.3 Support. Kronos will provide 24x7 support for the cloud infrastructure, the availability to the cloud 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 critical security patches and infrastructure updates automatically as part of the Services. Kronos' then-current Support Services Policies shall apply to all Support Services provided by Kronos 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.

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

(a) Customer may select, as indicated on an Order Form, an Equipment Support Services option offered by the local Kronos entity responsible for supporting the Equipment if and as such offerings are available within the Kronos territory corresponding to the Equipment's location. Kronos shall provide each Equipment Support Services offering as specified herein.

(i) **Depot Exchange and Depot Repair.** If Customer has selected Depot Exchange or Depot Repair Equipment Support Services, the following provisions shall apply: 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 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 (ii) below) are included in both Depot Exchange and Depot Repair Support Services.

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.

Depot Repair: Upon failure of installed Equipment, Customer shall install a Spare Product (as defined below) 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.

(ii) **Device Software Updates Only.** If Customer has selected Device Software Equipment Support Services, Customer shall be entitled to receive:

(A) 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 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.; and

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

(b) **Warranty.** 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.

(c) **Responsibilities of Customer.** It is Customer's responsibility to purchase and retain, at Customer's location and at Customer's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow Customer to replace failed Equipment at Customer's locations in order for Customer to continue its operations while repairs are being performed and replacement Equipment is being shipped to Customer. For each of the Depot Exchange and Depot Repair Equipment Support Services options, 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, Customer agrees to:

(i) Maintain the Equipment in an environment conforming to the Kronos published specifications 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.

(d) **Delivery.** All domestic shipments within the United States are FOB Destination to/from Customer and Kronos with the shipping party bearing all costs and risks of loss, and with title passing upon delivery to the identified destination. All international shipments from Kronos to Customer are DAP (Incoterms 2010) to the applicable Customer location, and are DDP (Incoterms 2010) to the applicable Kronos Depot Repair Center when Customer is shipping to Kronos. Customer is responsible for all duties and taxes when sending Equipment to Kronos.

7.5 KnowledgePass Education Subscription. When KnowledgePass Education Subscription is purchased 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 Training Points or training sessions are set forth in an SSS, the SSS applies. When Training Points or training sessions are not set forth in 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: www.kronos.com/products/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.

7.8 Technical Account Manager. Customers purchasing a Kronos Technical Account Manager ("TAM") as indicated on the Order Form shall receive the services of a dedicated, but not exclusive, TAM for one production instance of the Software. Customer will designate up to two primary and three secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos training for the Applications covered under this Agreement at Customer's expense.

8. Customer content

Customer shall own all Customer Content. Kronos acknowledges that all of the Customer Content is deemed to be the Confidential Information of Customer. Kronos may, but shall have no obligation to, monitor Customer Content from time to time to ensure compliance with the Agreement and applicable law.

9. EQUIPMENT

Customer shall own all Customer Content. Kronos acknowledges that all of the Customer Content is deemed to be the Confidential Information of Customer. Customer will ensure that all Customer Content conforms with the terms of this Agreement and applicable law. Kronos and its Suppliers may, but shall have no obligation to, access and monitor Customer Content from time to time to provide the Services and to ensure compliance with this Agreement and applicable law. Customer is solely responsible for any claims related to Customer Content and for properly handling and processing notices that are sent to Customer regarding Customer Content.

9.1 Rented Equipment. 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 the Agreement.
- 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 the Agreement.
- 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 Agreement or the applicable Order Form, Customer shall return, within thirty (30) days of the effective date of termination and at Customer's expense, the Equipment subject to this Section 9.1. 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 Purchased Equipment. 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 in this Agreement if purchased separately by Customer as indicated on the applicable Order Form. If purchased, Equipment support services have a term of one (1) year commencing upon expiration of the Warranty Period. Equipment support services will be automatically extended for additional one year terms on the anniversary of its commencement date ("Renewal Date"), unless either party has given the other thirty (30) days written notification of its intent not to renew. Kronos may change the annual support charges for Equipment support services effective at the end of the initial one (1) year term or effective on the Renewal Date, by giving Customer at least thirty (30) days prior written notification.

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 D-1 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 D-1.

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 Agreement 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 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/workforce-central-cloud/cloud-guidelines.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.

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 the Agreement or as required by law.

12.3 Prior to initiation of the Services under the Agreement 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 the Agreement, (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 Agreement 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 the Documentation for such Service 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 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 respective directors, officers, employees, agents and independent contractors any and all Claims alleging that: (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 agreement, 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 the 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 (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 or the 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.

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 D-1

SERVICE LEVEL AGREEMENT (SLA)

Service Level Agreement: The Services, in a production environment, 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 Applications. 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) expected downtime during the Maintenance Periods described 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 Documentation for such Application.

"Maintenance Period" means scheduled maintenance periods established by Kronos to maintain and update the Services, when downtime may be necessary, as further described below. The Maintenance Period is used for purposes of the Service Credit Calculation; Kronos continuously maintains the production environment on a 24x7 basis to reduce disruptions.

Customer Specific Maintenance Period

1. Customer will choose one of the following time zones for their Maintenance Period:
 - a. United States Eastern Standard Time,
 - b. GMT/UTC,
 - c. Central European Time (CET) or
 - d. Australian Eastern Standard Time (AEST).
2. Customer will choose one of the following days of the week for their Maintenance Period: Saturday, Sunday, Wednesday or Thursday.
3. Kronos will use up to six (6) hours in any two (2) consecutive rolling months (specifically: January and February; March and April; May and June; July and August; September and October; November and December) to perform Customer Specific Maintenance, excluding any customer requested Application updates. Downtime in excess of these six (6) hours will be deemed to be an Outage.
4. Customer Specific Maintenance will occur between 12am-6am during Customer's selected time zone.
5. Excluding any customer requested Application updates, Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least seven (7) days in advance of any known downtime so planning can be facilitated by Customer.
6. Customer Specific Maintenance Windows also include additional maintenance windows mutually agreed upon by Customer and Kronos.

7. In absence of instruction from Customer, Kronos will by default perform Maintenance in the time zone where the Data Center is located.

Non-Customer Specific Maintenance Period

Kronos anticipates non-Customer Specific Maintenance to be performed with no or little (less than three hours per month) Customer downtime. If for any reason non-Customer Specific Maintenance requires downtime, Kronos will provide as much notice as reasonably possible of the expected window in which this will occur. Downtime in excess of three (3) hours per month for Non-Customer Specific Maintenance will be deemed to be an Outage.

"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.

Reporting and Claims Process: 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.

Kronos will provide Customer with an Application Availability report on a monthly basis for each prior calendar month. Within sixty (60) days of receipt of such report, Customer must request the applicable Service Credit by written notice to Kronos. 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 ADDENDUM
WORKFORCE TELESTAFF IVR SERVICE
(Licensed or User based)

The parties hereby agree that the following terms and conditions are supplemental terms and conditions to the Agreement and are applicable to the Workforce Telestaff IVR service ("Workforce Telestaff IVR"), a service of Aspect Software Inc., which Kronos is authorized to resell. The Workforce Telestaff IVR service can be ordered either on a licensed basis (in which case Workforce Telestaff IVR is only available with a perpetual license to Workforce Telestaff and is not hosted by Kronos) ("Workforce Telestaff IVR License Per Port") or on a per minute basis ("Workforce Telestaff IVR Service"). The applicable designation for Workforce Telestaff IVR will be indicated on the applicable Order Form..

Description. Workforce Telestaff IVR is an Interactive Voice Response (IVR) solution, provided solely for Customer's internal use, by which Customer may initiate phone calls to staff members to fill vacancies or receive notifications of work opportunities for employees who are licensed to use the Kronos Workforce TeleStaff® product. Each exchanged message (notice, response, confirmation, denial) shall be considered an "Interaction."

Maintenance. Workforce Telestaff IVR maintenance will entitle Customer to Workforce Telestaff IVR phone support and software updates and shall commence upon Order execution. For Usage Based Workforce Telestaff IVR, maintenance will be provided at the same level of support as Customer's Workforce TeleStaff product at no additional charge. For Workforce Telestaff IVR License Per Port, Customer must purchase maintenance for both Workforce TeleStaff and Workforce Telestaff IVR License Per Port, and maintenance for Workforce Telestaff IVR License Per Port will be charged at the same level of support as Workforce TeleStaff (i.e., Gold or Platinum).

Implementation. To initiate and setup administration of the required communications, Kronos will perform the standard implementation of Workforce Telestaff IVR, including configuration, as described in the Statement of Work ("SOW") signed by the Customer. Any additional professional services for non-standard implementation services will be provided at mutually agreed upon rates subject to a separate Order Form or a separate statement of work mutually agreed upon by both parties.

Payment. Kronos will invoice Customer for the Workforce Telestaff IVR implementation/configuration professional services fees set forth in the applicable SOW and Order Form, pursuant to the Agreement and on the payment terms set forth therein. Kronos will invoice Customer as follows: (i) for the license fees and annual maintenance associated with the Licensed Based Workforce Telestaff IVR as indicated on the Order Form; or (ii) each month in arrears for the Usage Based Workforce Telestaff IVR usage fees for the total actual number of metered minutes used each month (the "Minute Usage Fee") at a rate of \$0.13 per minute. Customer's right to begin using the service shall begin upon activation of the service after implementation/configuration.

Customer will pay invoices issued by Kronos hereunder within thirty (30) days of receipt.

Restrictions on Workforce Telestaff IVR Services; Additional Responsibilities. Customer agrees that Workforce Telestaff IVR has not been designed for, and may not be used as, a means to connect with 911 or E911 emergency services. Kronos shall have no liability for any delays, failures or unavailability of Workforce Telestaff IVR due to transmission or other delays, errors or problems beyond Kronos' control, or any other interruptions caused by the mobile communications network and/or mobile devices. Use of Workforce Telestaff IVR is subject to the software license terms set forth in the Agreement as well as the Acceptable Use Policy found at: <https://www.aspect.com/acceptable-use-policy> and Customer agrees that it shall be liable for all loss, damage or injury that may result from Customer's failure to abide by such Policy. Customer acknowledges that communications occurring through Workforce Telestaff IVR may be subject to standard mobile carrier policies or government regulatory requirements for mobile communications.

Workforce Telestaff IVR Security. The Workforce Telestaff IVR service relies upon a third party hosted communication platform. Accordingly, notwithstanding any other provision of the Agreement or this Addendum to the contrary, Customer understands and acknowledges that the exclusive statement of the security protections provided for i) Interactions by Customer and its employees through Workforce Telestaff IVR, and ii) all associated data, is found at: <https://www.aspect.com/privacy-policy>, under the heading "Information Security."

Renewal and Termination. The initial Term is twelve months. 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. At any time: (i) Customer may terminate the Workforce Telestaff IVR service for convenience upon thirty (30) days prior written notice, and (ii) Kronos may terminate the Workforce Telestaff IVR service for convenience upon one hundred and twenty (120) days prior written notice. Kronos may increase the per minute rate upon renewal with sixty (60) days prior written notice for use based Workforce Telestaff IVR.

SECTION F
WFC Extensions for Healthcare Terms and Conditions
to
Section D (Workforce Central Software as a Services Terms and Conditions)

This WFC Extensions for Healthcare addendum of supplemental terms and conditions (the "**Section F**") is entered into by and between Kronos and Customer and shall supplement the Agreement. Capitalized terms not otherwise defined herein shall have the meanings prescribed to them in the Agreement.

WHEREAS, Kronos and Customer entered into an agreement governing the provision of Kronos' Workforce Central Software as a Service in Section D offering (the "**SaaS Agreement**") pursuant to which Customer acquires Cloud Services for certain Applications to be used by Customer in the "**Kronos Private Cloud**" or "**KPC**;

WHEREAS, Customer desires to acquire from Kronos the Extensions for Healthcare Application(s) (i.e., Workload Manager for Healthcare; Target Intelligence for Healthcare; and/or Forecast Manager for Healthcare, as such Applications set may be updated from time to time) (collectively, the "**Extension Applications**") to be used and managed in Kronos Private Cloud and in accordance with this Section F Terms and Conditions and Section D, SaaS Agreement;

WHEREAS, Kronos agrees to host and manage the Extension Applications in the Kronos Private Cloud for the benefit of Customer and in accordance with this Section F and the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereafter set forth, the parties agree as follows:

Customer and Kronos agree that the terms and conditions set forth herein shall only apply to the Extension Applications in Kronos' Private Cloud, and the services related thereto. The Extension Applications described on the Order Form shall be delivered by means of Customer's permitted access to the Kronos Private Cloud. Notwithstanding any provision in the Agreement or any prior Statement of Work signed by the parties for the Cloud Services to the contrary, the terms and conditions of this Section F shall apply to the Extension Applications hosted by Kronos in the Kronos Private Cloud. In the event of a conflict or inconsistency between the Agreement and this Section F, and only as it pertains to the Extension Applications, the provisions of this Section F shall prevail.

1. DEFINITIONS

"**Agreement**" means the underlying agreement including the SaaS Terms and Conditions set forth in Section D and to which this Section F shall apply.

"**Business Associate Agreement**" or "**BAA**" means the Business Associate Agreement attached hereto as Section H.

"**Client Partnership Services**" means those services provided pursuant to Section 4, below.

"**Cloud Services**" means those services described in Section I, the "Cloud Services for Extension Applications".

"**Encrypt**" or "**Encryption**" means to cryptographically protect data using methods such as symmetric encryption algorithm, asymmetric encryption algorithm or a one-way hashing algorithm.

"**HIPAA**" means the Health Insurance Portability & Accountability Act of 1996, P.L. 104-191, as amended from time to time, together with its implementing regulations promulgated under HIPAA and under the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), by the U.S. Department of Health and Human Services, including, but not limited to, the Privacy Rule, the Security Rule and the Breach Notification Rule, as amended from time to time.

"**PHI**" means Protected Health Information as defined by HIPAA. PHI shall be deemed to be Personally Identifiable Data under the Agreement.

"**Solution**" means the combination and use of the Extension Applications working with the Encryption Gateway Tool.

2. KRONOS CLOUD ENCRYPTION GATEWAY

a. As part of acquiring the Extension Applications pursuant to this Section F, Kronos licenses to Customer the right to use the Kronos Cloud Encryption Gateway tool ("**Encryption Gateway Tool**"). The Encryption Gateway Tool will Encrypt PHI before it is transmitted to the Kronos Private Cloud and it will un-Encrypt the PHI when it is extracted from the Kronos Private Cloud in accordance with the encryption product documentation.

b. Kronos will deliver the Encryption Gateway Tool by giving Customer access to the secure Customer portal and such tool shall be available for download and to be installed by Customer, on Customer's server and behind its firewall at its location. The Encryption Gateway Tool will at all times be under Customer's control and Customer shall install updates to the Encryption Gateway Tool, when such updates are made available by Kronos. The Encryption Gateway Tool is licensed to Customer concurrently with the Extension Application(s) and upon termination or expiration of the Extension Application(s), Customer's right to use the Encryption Gateway Tool shall also terminate. Customer agrees to uninstall the Encryption Gateway Tool upon termination of Customer's right to use of the Extension Applications.

- c. As part of the Services for the Extension Applications, Customer is entitled to receive the Support Services detailed in Section D.
- d. The Application Availability SLA of the Agreement shall not apply to the Encryption Gateway Tool which is installed on Customer's server at Customer's control.

3. CUSTOMER RESPONSIBILITIES

Customer agrees to:

- a. install, maintain and use the Encryption Gateway Tool as part of the cloud hosting services for the Extension Applications in accordance with the product documentation. Customer acknowledges that its failure to immediately apply updates to the Encryption Gateway Tool when such updates become available may: (i) compromise the security of Customer Content, including, Personally Identifiable Data and PHI; and (ii) result in incompatibility between the Healthcare Extensions and the Encryption Gateway Tool, which could cause failures in Encrypting and un-Encrypting data, and affect the scope of the Services provided by Kronos and its ability to adhere with its compliance programs, including those verified by the independent auditor report (i.e., SOC reports). Customer acknowledges Kronos shall not provide any credits for SLA issues under the Agreement that resulted from Customer's failure to update the Encryption Gateway Tool.
- b. install and maintain the encryption gateway private key per the encryption product documentation, and not share the encryption gateway private key with any third party who does not have a need to know, including not sharing the encryption gateway private key with Kronos. Should Customer lose the key, any encrypted data will remain encrypted.
- c. enter and maintain PHI only in the fields defined in the Extension Applications product documentation; and to only send PHI data (e.g., screen shots containing PHI) to Kronos by means of secure support channels for such data.
- d. use unique user ID and passwords for all users of Extension Applications
- e. configure Extension Application user's account to meet Customer's HIPAA policy requirements for complexity, length duration and lockout.
- f. determine user access/authorization to the application level of the Solution and assure that the level of access and the user assigned roles and permission are appropriate, which includes periodic application level logical access review.
- g. review application logs to meet Customer's HIPAA compliance program.
- h. immediately notify Kronos in the event Customer discovers a security issue with the Solution.
- i. provide Kronos resources with application level accounts as reasonably needed to support the Extension Applications, and not unreasonably withhold such access.

4. CLIENT PARTNERSHIP SERVICES

If acquired by Customer on the applicable Order Form, the parties agree that the following terms shall apply to Customer's purchase of Client Partnership Services only:

- a. Scope. Client Partnership Services will provide to Customer additional support services to develop performance improvement for clients utilizing the Extension Applications. This service includes a dedicated Strategic Client Advisor (the "Advisor") that works with the Customer to guide the Customer in optimizing the use of the Extension Applications. The Advisor will also provide consultation services which may include, but is not limited to, developing supporting processes, staff engagement and accountability structures, service plan development in response to Customer's business requirements, as well as serving as a resource link to assist Customers in networking with other Kronos customer's healthcare organizations.
- b. Term. Client Partnership Services shall be for a term of one (1) year and shall renew for additional one (1) year terms provided Customer renews the Client Partnership Services as provided below.
- c. Payment: Customer shall pay the annual Client Partnership Services charges for the initial term in accordance with the payment terms on the Order Form as executed by Customer. Kronos will send Customer a renewal invoice for renewal of the Client Partnership Services at least forty five (45) days prior to expiration of the then current term. Client Partnership Services 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.
- d. Change to Offerings; Support Increases: After the one year initial term, the Client Partnership Services offerings provided and the service coverage period are subject to change by Kronos with sixty (60) days advance written notice. For the initial two (2) renewal terms from the date of the Addendum, the annual Client Partnership Services fee, for the same service type, is subject to increase by not more than four percent (4%) over the prior year's annual Client Partnership Services fee.

5. BUSINESS ASSOCIATE AGREEMENT

The parties agree that the provisions of the Business Associate Agreement referenced as **Section H** shall apply.

6. DATA SECURITY

As part of the Services for the Extension Applications, Kronos shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data as described in **Section I** herein.

SECTION G

WFC Extensions for Healthcare Terms and Conditions to Section C / Section C-1 (Hosting Terms and Conditions)

This WFC Extensions for Healthcare addendum of supplemental terms and conditions ("**Section G**") is entered into by and between Kronos and Customer and shall supplement the Agreement. Capitalized terms not otherwise defined herein shall have the meanings prescribed to them in the Agreement.

WHEREAS, Kronos and Customer entered into an agreement to have Kronos host the Workforce Central Software in its managed cloud environment in Section C/Section C-1 (the "**Kronos Private Cloud**" or "**KPC**") and to allow Customer to use such software in the Kronos Private Cloud;

WHEREAS, Customer desires to acquire from Kronos the Extensions for Healthcare Application(s) (i.e., Workload Manager for Healthcare; Target Intelligence for Healthcare; and/or Forecast Manager for Healthcare, as such Application set may be updated from time to time) (collectively, the "**Extension Applications**") to be used and managed in the Kronos Private Cloud and in accordance with this Section G terms and conditions and Section C / Section C-1;

WHEREAS, Kronos agrees to host and manage the Extension Applications in the Kronos Private Cloud for the benefit of Customer and in accordance with this Section G and the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereafter set forth, the parties agree as follows:

Customer and Kronos agree that the terms and conditions set forth herein shall only apply to the Extension Applications in Kronos' Private Cloud, and the services related thereto. The Extension Applications described on the Order Form shall be delivered by means of Customer's permitted access to the Kronos Private Cloud. Notwithstanding any provision in the Agreement or any prior Statement of Work signed by the parties for the Cloud Services to the contrary, the terms and conditions of this Section G shall apply to the Extension Applications hosted by Kronos in the Kronos Private Cloud. In the event of a conflict or inconsistency between the Agreement and this Section G, and only as it pertains to the Extension Applications, the provisions of this Section G shall prevail.

1. DEFINITIONS

"Agreement" means the underlying agreement including the Cloud Hosting Terms and Conditions set forth in Section C/Section C-1, as applicable, and to which this Section G shall apply.

"Business Associate Agreement" or **"BAA"** means the Business Associate Agreement attached Section H.

"Client Partnership Services" means those services provided pursuant to Section 4, below.

"Cloud Services" means those services described in Section I, the "Cloud Services for Extension Applications".

"Encrypt" or **"Encryption"** means to cryptographically protect data using methods such as symmetric encryption algorithm, asymmetric encryption algorithm or a one-way hashing algorithm.

"HIPAA" means the Health Insurance Portability & Accountability Act of 1996, P.L. 104-191, as amended from time to time, together with its implementing regulations promulgated under HIPAA and under the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), by the U.S. Department of Health and Human Services, including, but not limited to, the Privacy Rule, the Security Rule and the Breach Notification Rule, as amended from time to time.

"PHI" means Protected Health Information as defined by HIPAA. PHI shall be deemed to be Personally Identifiable Data under the Agreement.

"Solution" means the combination and use of the Extension Applications working with the Encryption Gateway Tool.

7. KRONOS CLOUD ENCRYPTION GATEWAY

a. As part of acquiring the Extension Applications pursuant to this Section G, Kronos licenses to Customer the right to use the Kronos Cloud Encryption Gateway tool ("**Encryption Gateway Tool**"). The Encryption Gateway Tool will Encrypt PHI before it is transmitted to the Kronos Private Cloud and it will un-Encrypt the PHI when it is extracted from the Kronos Private Cloud in accordance with the encryption product documentation.

b. Kronos will deliver the Encryption Gateway Tool by giving Customer access to the secure Customer portal and such tool shall be available for download and to be installed by Customer, on Customer's server and behind its firewall at its location. The Encryption Gateway Tool will at all times be under Customer's control and Customer shall install updates to the Encryption

Gateway Tool, when such updates are made available by Kronos. The Encryption Gateway Tool is licensed to Customer concurrently with the Extension Application(s) and upon termination or expiration of the license to use the Extension Application(s) or termination or expiration of Software Support maintenance, Customer's right to use the Encryption Gateway Tool shall also terminate.

c. Customer is entitled to receive the Support Services detailed in Section C/Section C-1.

d. The Application Availability SLA of the Agreement shall not apply to the Encryption Gateway Tool which is installed on Customer's server at Customer's control.

8. CUSTOMER RESPONSIBILITIES

Customer agrees to:

a. install, maintain and use the Encryption Gateway Tool as part of the cloud hosting services for the Extension Applications in accordance with the product documentation. Customer acknowledges that its failure to immediately apply updates to the Encryption Gateway Tool when such updates become available may: (i) compromise the security of Customer Content, including, Personally Identifiable Data and PHI; and (ii) result in incompatibility between the Healthcare Extensions and the Encryption Gateway Tool, which could cause failures in Encrypting and un-Encrypting data, and affect the scope of the Hosting Related or Cloud Services provided by Kronos and its ability to adhere with its compliance programs, including those verified by the independent auditor report (i.e., SOC reports). Customer acknowledges Kronos shall not provide any credits for SLA issues under the Agreement that resulted from Customer's failure to update the Encryption Gateway Tool.

b. install and maintain the encryption gateway private key per the encryption product documentation, and not share the encryption gateway private key with any third party who does not have a need to know, including not sharing the encryption gateway private key with Kronos. Should Customer lose the key, any encrypted data will remain encrypted.

c. enter and maintain PHI only in the fields defined in the Extension Applications product documentation; and to only send PHI data (e.g., screen shots containing PHI) to Kronos by means of secure support channels for such data.

d. use unique user ID and passwords for all users of Extension Applications

e. configure Extension Application user's account to meet Customer's HIPAA policy requirements for complexity, length duration and lockout.

f. determine user access/authorization to the application level of the Solution and assure that the level of access and the user assigned roles and permission are appropriate, which includes periodic application level logical access review.

g. review application logs to meet Customer's HIPAA compliance program.

h. immediately notify Kronos in the event Customer discovers a security issue with the Solution.

i. provide Kronos resources with application level accounts as reasonably needed to support the Extension Applications, and not unreasonably withhold such access.

9. CLIENT PARTNERSHIP SERVICES

If acquired by Customer on the applicable Order Form, the parties agree that the following terms shall apply to Customer's purchase of Client Partnership Services only:

a. Scope. Client Partnership Services will provide to Customer additional support services to develop performance improvement for clients utilizing the Extension Applications. This service includes a dedicated Strategic Client Advisor (the "Advisor") that works with the Customer to guide the Customer in optimizing the use of the Extension Applications. The Advisor will also provide consultation services which may include, but is not limited to, developing supporting processes, staff engagement and accountability structures, service plan development in response to Customer's business requirements, as well as serving as a resource link to assist Customers in networking with other Kronos customer's healthcare organizations.

b. Term. Client Partnership Services shall be for a term of one (1) year and shall renew for additional one (1) year terms provided Customer renews the Client Partnership Services as provided below.

c. Payment: Customer shall pay the annual Client Partnership Services charges for the initial term in accordance with the payment terms on the Order Form as executed by Customer. Kronos will send Customer a renewal invoice for renewal of the Client Partnership Services at least forty five (45) days prior to expiration of the then current term. Client Partnership Services 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.

d. Change to Offerings; Support Increases: After the one year initial term, the Client Partnership Services offerings provided and the service coverage period are subject to change by Kronos with sixty (60) days advance written notice. For the initial two (2) renewal terms from the date of the Addendum, the annual Client Partnership Services fee, for the same service type, is subject to increase by not more than four percent (4%) over the prior year's annual Client Partnership Services fee.

10. BUSINESS ASSOCIATE AGREEMENT

The parties agree that the provisions of the Business Associate Agreement attached hereto and incorporated herein by reference as **Section H** shall apply

11. DATA SECURITY

As part of the Services for the Extension Applications, Kronos shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data as described in **Section I** herein.

SECTION H
BUSINESS ASSOCIATE AGREEMENT

RECITALS

WHEREAS, Customer (hereinafter "Covered Entity") has entered into an agreement with Kronos (hereinafter "Business Associate") governing the provision of Kronos' Workforce Central Software provided by Business Associate to Covered Entity in accordance with the Underlying Agreement;

WHEREAS, Business Associate may perform certain services to support Business Associate's software licenses for or on behalf of Covered Entity, and in performing said services, Business Associate may receive, maintain, or transmit Protected Health Information ("PHI");

WHEREAS, Covered Entity is a "Covered Entity" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, ("**HIPAA**"), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services ("**Secretary**"), including, without limitation, the regulations codified at 45 C.F.R. Parts 160 and 164 ("**HIPAA Regulations**");

WHEREAS, the Parties intend to protect the privacy and provide for the security of PHI disclosed by Covered Entity to Business Associate, or received by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) ("the HITECH Act") and its implementing regulations and guidance issued by the Secretary, and other applicable state and federal laws, all as amended from time to time; and

WHEREAS, as a Covered Entity, Covered Entity is required under HIPAA to enter into a Business Associate Agreement ("BAA") with Business Associate that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

AGREEMENT

NOW WHEREFORE, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

The following terms shall have the meaning set forth below. Capitalized terms used in this BAA and not otherwise defined shall have the meanings ascribed to them in HIPAA, the HIPAA Regulations, or the HITECH Act, as applicable.

- 1.1. "**Breach**" shall have the meaning given under [42 U.S.C. § 17921\(1\)](#) and [45 C.F.R. § 164.402](#).
- 1.2. "**Designated Record Set**" shall have the meaning given such term under [45 C.F.R. § 164.501](#).
- 1.3. "**Disclose**" and "**Disclosure**" mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).
- 1.4. "**Electronic PHI**" or "**e-PHI**" means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).
- 1.5. "**Protected Health Information**" and "**PHI**" mean any information, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (c) shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.
- 1.6. "**Security Incident**" means a confirmed successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system which affects Covered Entity's PHI or e-PHI in possession and/or control of Business Associate. Security Incident shall exclude (i) "pings" on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline; or (v) "malware" (e.g., a worm or a virus) that does not result in unauthorized access, use, disclosure, modification or destruction of PHI.
- 1.7. "**Services**" shall mean the services provided to Covered Entity by Business Associate pursuant to the Underlying Agreement.
- 1.8. "**Unsecured PHI**" shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

1.9. **“Use” or “Uses”** mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

1.10. **“Workforce”** shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

2. OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 **Permitted Uses and Disclosures of Protected Health Information.** Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of Subpart E of 45 C.F.R. Part 164 if so Used or Disclosed by Covered Entity. However, Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached; (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity. To the extent that Business Associate carries out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

2.2 **Prohibited Marketing and Sale of PHI.** Notwithstanding any other provision in this BAA, Business Associate shall comply with the following requirements: (i) Business Associate shall not Use or Disclose PHI for fundraising or marketing purposes, except to the extent expressly authorized or permitted by any Underlying Agreement and consistent with the requirements of 42 U.S.C. § 17936, 45 C.F.R. §§ 164.514(f), and 164.508(a)(3)(ii), and (ii) Business Associate shall not directly or indirectly receive remuneration in exchange for PHI except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. § 17935(d)(2), and 45 C.F.R. § 164.502(a)(5)(ii); however this prohibition shall not affect payment by Covered Entity to Business Associate for the provision of Services pursuant to any Underlying Agreement.

2.3 **Adequate Safeguards of PHI.** Business Associate shall implement and maintain reasonably appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it receives, maintains or transmits on behalf of Covered Entity in compliance with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

2.4 **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

2.5 **Reporting Non-Permitted Use or Disclosure.**

2.5.1 **Reporting Security Incidents and Non-Permitted Use or Disclosure.** Business Associate shall report to Covered Entity in writing each confirmed Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than ten (10) business days after confirming such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity’s PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI. Business Associate shall document and retain records of its investigation of any Breach, including its reports to Covered Entity under this Section 2.5.1. Upon written request by Covered Entity, Business Associate shall furnish to Covered Entity the documentation of its investigation and an assessment of whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach. If such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.5.2 below.

2.5.2 **Breach of Unsecured PHI.** If Business Associate determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than thirty (30) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate’s written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall reasonably cooperate with Covered Entity in meeting Covered Entity’s obligations under the HITECH Act with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media, as required by the HITECH Act.

2.6 **Availability of Internal Practices, Books, and Records to Government.** Business Associate agrees to make its internal policies, books and records relating to the Use and Disclosure of PHI received from, or received by the Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity’s compliance with HIPAA, the HIPAA Regulations, and the HITECH Act. Except to the extent prohibited by law, Business Associate shall notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary.

2.7 **Access to and Amendment of Protected Health Information.** To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) business days of a written request by Covered Entity, Business Associate shall (a) make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying to fulfill its obligations under 45 C.F.R. § 164.524, or (b) permit Covered Entity

to amend the PHI Business Associate maintains (or which is maintained by Business Associate's Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. In the event that an individual makes a direct request to Business Associate to amend any PHI of such individual maintained in a Designated Record Set on behalf of Covered Entity, Business Associate shall promptly forward such individual's request to Covered Entity for review. Business Associate shall not Disclose PHI to a health plan for payment or Health Care Operations purposes except as otherwise directed by Covered Entity or required by law. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format as commercially reasonable and available to enable Covered Entity to fulfill its obligations under 42 U.S.C. § 17935(e) and 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within fifteen (15) business days of receipt of a request for access to PHI.

2.8 **Accounting.** To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, within thirty (30) days of receipt of a request from Covered Entity or an individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and its obligations under 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within fifteen (15) business days of receipt of a request by an individual or other requesting party for an accounting of disclosures of PHI.

2.9 **Use of Subcontractors.** Business Associate shall require each of its Subcontractors, if any, that maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors the same, or substantially similar, restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

2.10 **Minimum Necessary.** Business Associate (and its Subcontractors) shall, to the extent practicable, limits its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

3. COVERED ENTITIES RESPONSIBILITIES

Covered Entity Responsibilities. With respect to the use and disclosure of the PHI by Business Associate, Covered Entity agrees to: (a) inform Business Associate of any change in or revocation of any authorization provided to Covered Entity by Individuals pursuant to applicable law, including, but not limited to, the HIPAA Statute and which is applicable to Business Associate; and (b) to timely notify Business Associate, in writing, of any arrangement permitted or required of Covered Entity under applicable law, including, but not limited to, the HIPAA Statute, that may impact in any manner the use, disclosure, or access to PHI by Business Associate under the Agreement, including, but not limited to, any agreement by Covered Entity to restrict use or disclosure of any PHI as permitted by the HIPAA Statute.

4. TERM AND TERMINATION

4.1 **Term.** Subject to the provisions of Section 4.2 herein, the term of this BAA shall be the term of the Underlying Agreement.

4.2 **Termination for Cause.** In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

a. Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within fifteen (15) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period, Covered Entity may immediately terminate this BAA and any Underlying Agreement upon written notice to Business Associate; or

b. Upon written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured

4.3 **Disposition of Protected Health Information Upon Termination or Expiration.**

4.3.1 Upon termination or expiration of this BAA, Business Associate shall either return or destroy all PHI received from, or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a format utilized at the time of termination and timeframe, at no additional charge to Covered Entity.

4.3.2 If return or destruction is not feasible, Business Associate shall (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Section 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

5. MISCELLANEOUS

5.1 **Amendment to Comply with Law.** The parties agree to enter into an amendment to this BAA to incorporate any mandatory obligations of Covered Entity or Business Associate under the HITECH Act and its implementing HIPAA Regulations, as applicable, and as mutually agreed between the parties. Additionally, the Parties agree to take such action as is reasonably necessary to amend this BAA from time to time for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Regulations, or the HITECH Act, and to the extent mutually acceptable to the parties.

5.2 **Relationship to Underlying Agreement Provisions.** Except as otherwise specifically stated in this BAA, in the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement, subject to Section 5.3 below.

5.3 **Entire Agreement.** This BAA supplements and is entered into subject to the Underlying Agreement, and constitutes the entire agreement between the Parties for the services described herein and supersedes all prior or contemporaneous representations, negotiations, or other communications between the Parties relating to the subject matter of this BAA. Any provisions in the Underlying Agreement regarding limitations or exclusion of liability or indemnification will apply to any of the rights and obligations of the parties under this BAA or breach thereof. This BAA supersedes and replaces any existing Business Associate Agreement in effect between Business Associate and Covered Entity. Any PHI received from Covered Entity prior to, on, or after the date of this Agreement is subject to the terms and conditions of this Agreement.

5.4 **Notices.** Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this Agreement, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.4. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

5.5 **Relationship of Parties.** Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

SECTION I

Cloud Services for Extension Applications Applicable to Sections F and G Only

Cloud Offering	
<p>Environments:</p> <p>One standard Production and one Non-Production (Development) environment.</p> <p>Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.</p>	<p>Included. More non-production environments are available for additional fees.</p>
<p>Environment restoration:</p> <p>Restore of Production environment to one Non-Production environment once per week.</p> <p>Customer is responsible for requesting data to be moved from the Production environment to the Non-Production environment and for the contents of the data moved from the Production environment to the Non-Production environment.</p> <p>Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.</p>	<p>Included. More frequent restores or additional environments will be subject to additional time and material fees.</p>
<p>Connectivity to Service:</p> <p>Customer's users connect to application via secure TLS connection over the internet. Cooperative efforts with customer IT staff may be required to enable access. Kronos will assist with validating site connectivity but assumes no responsibility for customer internet connection or ISP relationships. Kronos related Internet traffic cannot be filtered by proxy or caching devices on the client network. Exclusions must be added for the fully qualified domain names and public IP addresses assigned to the environments in the Kronos Cloud. Applicable ports must be opened from customer network as described in product documentation.</p>	<p>Included</p>
<p>Operating System and Database Software Management: Includes application of critical security patches, service packs and hot-fixes; maintenance of servers.</p> <p>Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.</p>	<p>Included</p>
<p>Server Maintenance: Repair and replacement of defective or failed hardware and the installation of hardware upgrades.</p> <p>Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.</p>	<p>Included</p>
<p>Application Updates: Services to perform technical tasks required to apply application service packs, legislative updates (if applicable), point releases and version upgrades.</p> <p>Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.</p>	<p>Included</p>

Cloud Offering	
<p>Backup:</p> <p>Customer data is backed up daily. Database backups are replicated via encrypted connections to a second Kronos Cloud datacenter. Backups are retained for the prior 28 days on a rotating basis. All historical employee and configuration data is stored in the rotating backups.</p> <p>Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.</p>	Included
<p>Security:</p> <p>Kronos maintains a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts (AICPA) Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). The Kronos Private Cloud (KPC) is evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The Kronos Private Cloud is located in data centers that undergo SSAE 16 examinations. Management access to the KPC is limited to authorized Kronos support staff and customer authorized integrations. The security architecture has been designed to control appropriate logical access to the KPC to meet the Trust Services Principles of Security, Availability and Confidentiality. The Applications provide the customer with the ability to configure application security and logical access per the customer's business processes. Additionally the independent auditor will provide an opinion on the design and operating effectiveness of controls to meet the security requirements of the Health Insurance Portability and Accountability Act Security Rule, which will be first issued by end of calendar year 2016.</p> <p>In the event the customer identifies a security issue, the customer will notify Kronos. For security purposes, customers are restricted from accessing the desktop, file systems, databases and operating system of the environments.</p> <p>Customer agrees not to upload payment card information as the service is not certified for PCI DSS.</p> <p>For each of the customer's production and non-production environments in a data center in the United States of America, Customer Content will be Encrypted at rest at the storage level for the Extension Application(s). Encryption at rest is defined as Customer Content is made unreadable on disk via encryption technology when the Kronos Cloud computing environment hardware is powered off. For clarity this storage level of Encryption within the Kronos Private Cloud is independent of the Encryption at the Encryption Gateway Tool located at the customer's location, thus providing a second layer of encryption at rest.</p>	Included
<p>Basic Disaster Recovery Services:</p> <p>Customer environment and all customer data in the Kronos Cloud are replicated to a secondary Kronos Cloud data center. Basic Disaster Recovery Services provides a Recovery Point Objective (RPO) of 24 hours and Kronos strives to restore Application Availability in a commercially reasonable timeframe.</p> <p>The customer will be down until production processing is restored in the primary or secondary data center if needed. No application environment is readily available at the alternate site to process data. Customers are expected to use fully qualified domain names (FQDNs) to access the service given that IP address of the service may change.</p> <p>Any issues arising out of the disaster recovery event due to customer configuration/customization and/or customer third party software outside of the Kronos Cloud is the responsibility of the customer to resolve.</p>	Included

Cloud Offering	
Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.	
<p>Enhanced Disaster Recovery Services:</p> <p>Customer environment and all customer data in the Kronos Cloud are replicated to a secondary Kronos Cloud datacenter. Enhanced Disaster Recovery Services provide an RTO (Recovery Time Objective) of 72 hours and a RPO (Recovery Point Objective) of 24 hours.</p> <p>In the unlikely event that Kronos declares a disaster in the primary datacenter, Kronos will notify the customer and activate the Disaster Recovery steps necessary to restore application availability within the RTO defined.</p> <p>As part of the enhanced service, Kronos will conduct an annual Disaster Recovery Process test which has the objectives to 1) test backups 2) train Kronos employees 3) verify and improve internal Kronos procedures. The annual Disaster Recovery Process test may be live or simulated test.</p> <p>Customers are expected to use fully qualified domain names (FQDNs) to access the service given that IP address of the service may change. Any issues arising out of the disaster recovery event due to customer configuration/customization and/or customer third party software outside of the Kronos Cloud is the responsibility of the customer to resolve.</p> <p>Excludes encryption gateway software running at a location in customer's control outside of Kronos Cloud.</p>	If purchased on Order Form

Guidelines and Assumptions:

Category	Assumption
	Estimated availability of production server hardware in Kronos Cloud is approximately 30 days after the Order Form is processed.
	Customer agrees to receive automatic updates to the Applications.
	Applications will support English only.
	Customer agrees not to conduct security testing, which includes but is not limited to penetration testing and vulnerability scanning.
	Customer agrees not conduct any sort of automated or manual performance testing of the Service.

Category	Assumption
	Retention policies must be configured in the Application(s). Setting retention policies will ensure that unnecessary system data (e.g. temp files, deleted records, empty rows, etc.) is routinely purged from the system and will help in managing database growth. Additionally application audit log will retained for 30 days.
	Customer will be required to sign a go live milestone document confirming customer has completed its testing and is ready to go live with the Workforce Central Application EHC module(s).

Workforce Central EHC Upgrade Services

The Service includes services for Kronos to execute tasks to apply point releases and version upgrades to customer's Kronos Applications in the Kronos Cloud. Services are limited to those tasks which apply these updates to the Applications. Services related to upgrade of Encryption Gateway Environment and encryption gateway software running at a location in customer's control outside of Kronos Cloud are not included.

The table below reflects the included upgrade tasks.

Planning Phase	
Customer/ Kronos Introduction Call – up to 30 minutes	Included
Technical readiness & architecture review – Kronos Cloud Environment	Included
Technical readiness & architecture review – Encryption Gateway environment	Not Included
Assessment Phase	
Assessment of Interface Upgrade to WFC	Included
Assessment of new features or changes to configuration	Not included
Assessment of customs, custom interfaces and custom reports and development activities related thereto	Not included
Solution Upgrade / Build Phase	
One (1) restore of Production database to Pre-Production environment for the purpose of upgrade testing. Additional restores, if requested, shall be subject to additional time and material fees.	Included

Upgrade Non-Production and Production environments to new point release or version.	Included
Upgrade of interface integration to Workforce Central per features in product documentation.	Included
Upgrade of integrations beyond integration to Workforce Central per features in product documentation.	Not Included
Upgrade of any customs, custom interfaces and custom reports and development activities related thereto	Not Included
Configuration of new features or functionality or changes to existing configuration	Available for Purchase
Upgrade of Encryption Gateway Environment and encryption gateway software running at a location in customer's control outside of Kronos Cloud.	Not Included
Test & Certify Phase	
User acceptance testing (UAT) of upgraded environments, interfaces, custom reports, new features, etc.	Not Included
Develop customer-specific test cases	Not Included
Sign-off on upgraded Non-Production and Production Environments	Customer
Deploy & Support Phase	
Deployment Readiness Call – up to 30 minutes	Included

Note that new feature configuration, project management services, other Professional, Managed and Educational Services and training are not included as part of Upgrade Services, but may be purchased independently, if desired.

If not specifically noted, the customer should assume responsibility of the task and/or deliverable.

SECTION J

CLIENT PARTNERSHIP SERVICES SUPPLEMENTAL TERMS AND CONDITIONS

(For Healthcare Customers only)

This Client Partnership Services Supplemental Terms and Conditions apply to the Client Partnership Services purchased by Customer set forth in the applicable Order Form.

Customer has purchase software licenses and/or acquire software services, as well as related equipment, professional, educational and training services and support maintenance services (collectively, the "Products") under Section A and B of the Agreement;

WHEREAS, Customer desires to purchase the Client Partnership Services set forth in the applicable Order Form, as executed by Customer;

WHEREAS, Customer acknowledges that the purchase and use of the Client Partnership Services shall be subject to the Agreement, as modified and supplemented by this Section K.

WHEREAS, the Parties agree that the terms and conditions of this Section K shall apply only to the Client Partnership Services as identified on the Order Form executed by the Parties, and this Section K shall not affect the rights or use of such other Kronos software modules or applications (i.e., the Kronos Workforce software suite of products) acquired by Customer under the other section of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereafter set forth herein, the Parties agree as follows:

1. Client Partnership Services for Kronos Software.

If purchased by Customer on the applicable Order Form, the parties agree that the following terms shall apply to Customer's purchase of Client Partnership Services only and shall supplement the Software Support Services offered by Kronos under Section B:

- (a) Scope. Kronos Client Partnership Services will provide to Customer's organization an additional set of support services to develop performance improvement for those customers using the Kronos software. This service includes a dedicated Strategic Client Advisor (the "Advisor") who works closely with the Customer to guide the Customer in optimizing the use of the Software. The Advisor will be the Customer's link to Kronos' broad industry practice, support tools and knowledge base. The Advisor will also provide consultation services which include, but are not limited to, developing supporting processes, staff engagement and accountability structures, service plan development in response to Customer's business requirements, as well as serving as a resource link to assist Customers in networking with other Kronos healthcare organizations;
- (b) Term. Client Partnership Services shall be for a term of one (1) year and shall renew for additional one (1) year terms provided Customer renews the Client Partnership Services as provided below;
- (c) Payment: Customer shall pay the annual Client Partnership Services charges for the initial term in accordance with the payment terms on the Order Form as executed by Customer. Kronos will send Customer a renewal invoice for renewal of the Client Partnership Services at least forty-five (45) days prior to expiration of the then current term. Client Partnership Services 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 and;
- (d) Change to Offerings; Support Increases: Client Partnership Services are offered under Kronos Software Support offerings and after the one year initial term of this Addendum, the Client Partnership Service offerings provided and the service coverage period are subject to change by Kronos.

SECTION K WORKFORCE DIMENSIONS™ AGREEMENT

Customer and Kronos agree that the terms and conditions set forth in this Section K apply to Kronos' Workforce Dimensions software as a service and other related offerings specified on a Kronos Order Form.

This Section K includes the following exhibits, which are incorporated by reference, and which form an integral part of this contract:

- Exhibit K-A: Attachment A-1: Equipment Purchase, Rental, and Support
Attachment A-2: Professional and Educational Services Policies
Attachment A-3: Service Level Agreement
- Exhibit K-B: Workforce Dimensions Cloud Guidelines:
www.kronos.com/workforce-dimensions/agreement/exhibitb
- Exhibit K-C: Customer Success
Attachment C-1: Customer Success Plans
Attachment C-2: Support Policies
- Exhibit K-D: Acceptable Use Policy (AUP):
www.kronos.com/workforce-dimensions/agreement/exhibitd
- Exhibit K-E: AtomSphere Service and Boomi Software
Attachment E-1: Boomi Flow Down Provisions

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 Section K. 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.

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.

“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.

“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 Success Plan(s)” means the services provided by Kronos to support and maintain the Service as described in Exhibit C, including but not limited to the Support Plans and the Customer Success Programs.

“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.

“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 and educational services provided by Kronos to set up the cloud environment and to setup the Configurations within the Applications, as set forth in an SOW.

“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.

“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, educational, 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 section related thereto.

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

“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.

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" means payment is due on a monthly basis with the invoice being issued at the end of the month in which the Service was delivered.
- 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. Customer Success Fees for Premium and Premium Plus 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

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.

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 Section K, Customer payments are non-refundable. 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 by no more than four percent (4%) over the previous year's PEPM Fees, for the same Applications and the same licensed quantity. Kronos will reflect these increased PEPM fees in the applicable invoice for each Renewal Term.

3. Implementation Services and Professional 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 Section K. 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 The Kronos policies set forth in Section B 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 Section K, the terms of this Section K shall prevail.

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 Section K.

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 Security and Privacy

5.2.1 Kronos will maintain the Controls throughout the Term.

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

5.2.3 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.

5.2.4 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.

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, 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.

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. 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.

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 Section K. 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.

8. Scope and Authority

8.1 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 Section K. Unless Kronos breaches its obligations under this Section K, 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.

9. Suspension

9.1 Kronos may suspend the Service if any amount that Customer owes Kronos is more than thirty (30) days overdue. Kronos will provide Customer with at least seven (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.

10. Termination

Section 10.1. Types of Termination

10.1.1 For Convenience. Customer may terminate the Service and this Section K for convenience upon ninety (90) days prior written notice. Customer may terminate Seasonal Licenses upon at least sixty (60) days prior written notice before the start of a Renewal Term.

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

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

10.1.4 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 ten (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 Section K 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 Section K.
- 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 Section K.
- f. Provisions in this Section K which by their nature are intended to survive in the event of a dispute or because their obligations continue past termination will so survive.

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 Section K, 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 Section K; 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 shall be responsible and liable for all damages and costs of Kronos arising out of 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.

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.

12. Extent and Limitations of Liability

12.1 EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN SECTION 11 ABOVE, 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.

13. Changes

The information found in any Exhibit (or at any URL referenced in this Section K) 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.

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 Section K limits Kronos' right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.

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

www.kronos.com/workforce-dimensions/agreement/attachment-a1

Attachment A-2: Professional and Educational Services Policies:

www.kronos.com/workforce-dimensions/agreement/attachment-a2

Attachment A-3: Service Level Agreement:

www.kronos.com/workforce-dimensions/agreement/attachment-a3

Exhibit K-C: Customer Success

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

Attachment C-2: Support Policies:

www.kronos.com/workforce-dimensions/agreement/attachment-c2

Exhibit K-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 sublicenseable 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 Section K related to the Service apply to the Boomi AtomSphere Service. Upon termination, 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

Exhibit K F: 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).