

# Contract Abstract

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## Contract Information

Contract & Solicitation Title: **Software license renewal, support, maintenance and hosting services.**  
 Contract Summary: **Provide software license renewal, support, maintenance and hosting services.**  
**Contract Number:** 428700 **Solicitation Number:** N/A **Requisition Number:** N/A  
**Type of Contract/PO:** Multi-Year Contract **Requires Council Legislation:** Yes  
**Estimated Start Date:** 06/10/2018 **Estimated Expiration Date:** 06/09/2020 **Contract Term:** 24 months  
**Estimated Contract Life Value:** \$10,000,000.00 **Fund:** 51137 **BU:** 14521014  
**Payment Terms:** Net 30 **Selection Method:** Sole Source  
**Procurement Staff:** Matt Dillinger **BAO Staff:** Bryan Gleason  
**Department(s) Served:** ITS

## Contractor Information

**Contracting Firm:** Kronos, Inc.  
**Address:** 900 Chelmsford St.  
**City:** Lowell **State:** MA **Zip:** 01851  
**Contractor is (Enter Applicable %):** SBE  SDV  MBE  WBE   
**Company Contact:** David Herndon **Email Address:** David.Herndon@Kronos.com  
**Phone #:** 901-746-8643 **E1#:** 473003  
**Contract Signatory:** John O'Brien **Email Address:** John.Obrien@Kronos.com

## Subcontractor Information

**Small Business and Service Disabled**  
**Veteran Business Program:** N/A **Amount:** N/A  
**Percent, if applicable:** N/A  
**Procurement Nondiscrimination Program:** Program Not Applicable **Amount:** N/A  
**Percent:** N/A  
**Federal Disadvantaged Business Enterprise:** No **Amount:** N/A  
**Percent:** N/A  
 \* Amounts and/or percentages are not exclusive

## Summary of Offers

	Score (RFQ Only)	Evaluated Cost	Result
Kronos, Inc.	N/A	N/A	Approved Sole Source Form
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No Other Offers
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No Other Offers
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No Other Offers
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No Other Offers

## Terms and Conditions

### 1. GOODS AND SERVICES CONTRACT

#### 1.1. Heading

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") and **Kronos Incorporated** ("CONTRACTOR") located at **900 Chelmsford St, Lowell, MA 01851**. This Contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document, including exhibits,*
  - Exhibit A – Products, Support Services and Professional Services Pricing
  - Exhibit B – Scope of Services,
  - Exhibit C – Kronos Application Hosting Addendum Supplemental Terms and Conditions
  - Exhibit D – Workforce Telestaff IVR Addendum

*The Approved Sole Source Justification form & supporting documentation (all made a part of this contract by reference)*

In the event of conflicting provisions, all terms and conditions shall be construed in the order listed above.

### 2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

#### 2.1. Duties and Responsibilities

CONTRACTOR agrees to provide software license renewal, support, maintenance and hosting services to the Metropolitan Government of Nashville and Davidson County as per Exhibit A (Products, Support Services and Professional Services Pricing), Exhibit B (Scope of Services), and Exhibit C (Kronos Application Hosting Addendum Supplemental Terms and Conditions) and Exhibit D (Workforce Telestaff IVR Addendum).

#### 2.2. Delivery and/or Installation.

All deliveries (if provided by the performance of this Contract) are F.O.B. Destination, Prepaid by Supplier, Inside Delivery, as defined by METRO.

METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made as defined in the purchase order and Statement of Work.

Installation of Product will be described in a Statement of Work.

### **2.3. Purchase Order**

METRO and CONTRACTOR agree that in lieu of submitting a signed order form(s) or purchase order(s) ("Purchase Order"), METRO may place orders under this Contract by submitting an authorized purchase order(s) that expressly references and states that such purchase order is subject to the terms and conditions of this Contract.

For all such orders, payment terms are net thirty (30) days from date of invoice. Unless otherwise agreed in advance in writing by CONTRACTOR, Delivery terms are as set forth in this Contract. With respect to all purchase orders issued by METRO hereunder, METRO represents and warrants that (i) in the ordinary course of its business, all purchase orders issued by METRO through its iProcurement system are unsigned and are valid and binding obligations of METRO and (ii) all purchase orders issued by METRO pursuant to this Agreement shall be and shall constitute a valid and binding obligation(s) of METRO, notwithstanding the fact that such purchase orders are unsigned. To the extent that the parties use CONTRACTOR's order form, such order form should be approved in writing by METRO.

## **3. CONTRACT TERM**

### **3.1. Contract Term**

The Contract Term will begin on the date this Contract is approved by all required parties and filed in the Metropolitan Clerk's Office. The Contract Term will end twenty four (24) months from the date of filing with the Metropolitan Clerk's Office. This Contract may be extended by Contract Amendment with the option to renew on a year by year basis for a maximum of three additional years. The option to extend may be exercised by and at the discretion of the Purchasing Agent. However, in no event shall the term of this Contract exceed sixty (60) months from the date of filing with the Metropolitan Clerk's Office.

## **4. COMPENSATION**

### **4.1. Contract Value**

This contract has an estimated value of ten million dollars (\$10,000,000). Pricing is as set forth in Exhibit A, and the initial pricing associated with the first order details are documented in the on the initial purchase order. CONTRACTOR shall be paid as products are delivered and as the work is performed and METRO is accordingly invoiced. Unless otherwise set forth on the applicable order and services scope statement, the Professional and Educational Services are provided on a time and materials basis, invoiced monthly as rendered.

### **4.2 Other Fees**

There will be no other charges or fees for the performance of this contract other than as mutually agreed between the parties under this Contract. METRO will make payments within 30 days of receipt of invoice for all services and products. For the initial products ordered with the execution of this Agreement, the parties agree to payment of Net 45 days. The CONTRACTOR agrees that it will not charge a late charge or interest to METRO for overdue amounts.

### **4.3. Electronic Payment**

All payments shall be effectuated by ACH (Automated Clearing House).

#### **4.4. Invoicing Requirements**

CONTRACTOR shall invoice METRO no more frequently than once a month or for each delivered good and performed service. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation. CONTRACTOR shall submit all invoices no later than ninety (90) days after the products and/or services have been delivered/performed.

### **5. TERMINATION**

#### **5.1. Breach**

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, METRO shall identify the breach and CONTRACTOR shall cure the performance within thirty (30) days. If CONTRACTOR fails to provide cure, METRO shall have the right to immediately terminate this Contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

#### **5.2. Lack of Funding**

Should funding for this Contract be discontinued, METRO shall have the right to terminate this Contract immediately upon written notice to CONTRACTOR. In such event, METRO shall pay for the product delivered and the services performed prior to such termination.

#### **5.3. Notice**

METRO may terminate this Contract at any time upon thirty (30) days written notice to CONTRACTOR. Should METRO terminate this Contract, CONTRACTOR shall immediately cease work and deliver to METRO, within thirty (30) days, all completed or partially completed satisfactory work, to the extent applicable to the related Statement of Work, and METRO shall determine and pay to CONTRACTOR the amount due for products delivered and services performed.

### **6. NONDISCRIMINATION**

#### **6.1. METRO's Nondiscrimination Policy**

It is the policy of METRO not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

## 6.2. Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all offerors entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

## 6.3. Covenant of Nondiscrimination

CONTRACTOR agrees to make reasonable efforts to abide by to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to METRO's website.

## 6.4. Americans with Disabilities Act (ADA)

CONTRACTOR assures METRO that all services provided shall be completed in full compliance with the Americans with Disabilities Act ("ADA") 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

## 7. INSURANCE

### 7.1. Proof of Insurance

During the term of this Contract, for any and all awards, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract, including any extension(s), the types and amounts of insurance identified below. Proof of insurance shall be required naming METRO as additional insured and identifying either the project name, Purchase Order, or Contract number on the ACORD document.

### 7.2. Products Liability Insurance

In the amount of one million (\$1,000,000.00) dollars (If the CONTRACTOR is producing the goods purchased by METRO)

### 7.3. General Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

**7.4. Automobile Liability Insurance**

In the amount of one million (\$1,000,000.00) dollars (if CONTRACTOR will be making on-site deliveries)

**7.5. Worker's Compensation Insurance (if applicable)**

CONTRACTOR shall maintain workers' compensation insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee (Not required for companies with fewer than five (5) employees).

**7.6. Product Liability Insurance** in the amount of one million (\$1,000,000.00) dollars (if being manufactured by Offeror);

**7.7. Cyber Liability Insurance** in the amount of one million (\$1,000,000.00) dollars

**7.8. Technological Errors and Omissions Insurance** in the amount of one million (\$1,000,000.00) dollars (for software and hardware manufacturers & website designers);

**7.9. Such insurance shall:**

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

For any claims related to this Contract, CONTRACTOR's insurance coverage shall be primary insurance with respects to METRO, its officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability insurance shall include vehicles owned, hired, and/or non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

CONTRACTOR shall maintain Workers' Compensation insurance (if applicable) with statutory limits as required by the State of Tennessee or other applicable laws and Employers' Liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's Workers' Compensation insurance coverage.

#### **7.10. Other Insurance Requirements**

Prior to commencement of services, CONTRACTOR shall furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, non-renewed, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW  
INSURANCE AND RISK MANAGEMENT  
METROPOLITAN COURTHOUSE, SUITE 108  
PO BOX 196300  
NASHVILLE, TN 37219-6300**

In the event of a claim or dispute, CONTRACTOR agrees to provide certified copies of endorsements if requested by METRO in lieu of or in addition to certificates of insurance.

Replace certificates, and/or endorsements for any such insurance expiring prior to completion of services.

Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by METRO as a material breach of this Contract.

Said insurance shall be with an insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.

Require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall require subcontractor's to have all necessary insurance and maintain the subcontractor's certificates of insurance.

Contractor will inform Metro if it has deductibles or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO prior to the commencement of services.

If CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies

### **8. GENERAL TERMS AND CONDITIONS**

#### **8.1. Taxes**

METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Upon request from the CONTRACTOR, METRO shall provide a validly issued tax-exempt certificate, or other sufficient evidence of tax exemption, METRO shall not be liable for those taxes for which METRO is exempt. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

## 8.2. Warranty

### 8.2.1 Product Warranty

CONTRACTOR 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. Provided that METRO purchases and continuously remains on support maintenance services with CONTRACTOR for the Software and Equipment, CONTRACTOR warrants that the Software and Equipment shall materially perform in accordance with the Specifications.

During the warranty period, and in the event of a breach of this warranty, CONTRACTOR, at its option, shall repair or replace the defective goods, at CONTRACTOR's expense provided that Metro's use, installation, and maintenance have conformed to the Specifications.

This warranty is extended to METRO only and shall not apply to 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 Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- B. Failure of Metro 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 CONTRACTOR.

When using and applying the information generated by Kronos products, Metro is responsible for ensuring that Metro complies with the applicable requirements of federal and state law. If Metro is licensing Workforce Payroll Software or Workforce Absence Management Software: (i) Metro 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 Metro of any professional obligation concerning the preparation and review of such reports and documents, (iii) Metro does not rely upon Kronos, Best Software, Inc. or such Software 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) Metro will review any calculations made by using such Software and satisfy itself that those calculations are correct.

### 8.2.2 Professional Services Warranty

The Contractor warrants that all professional and education services performed shall be in a professional and competent manner. In the event that the Contractor breaches this warranty, and Metro so notifies the Contractor within thirty (30) days of receipt of invoice for the applicable services, Metro's sole remedy and the Contractor's exclusive 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 Metro.

### 8.2.3 Support Services Warranty

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

### 8.3. Software License

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software listed in Exhibit A under the following terms and conditions:

#### 8.3.1. General license terms

CONTRACTOR 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 CONTRACTOR's 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 METRO pays for a copy of the Software constitutes a license fee that entitles METRO to use the Software as set forth below. CONTRACTOR grants to METRO a non-exclusive, nontransferable, perpetual (except as provided herein) license to use the Software. This license may be terminated by CONTRACTOR by written notice to METRO upon any material breach of this Agreement by METRO which remains uncured for a period of thirty (30) days after such written notice from CONTRACTOR. Upon such termination of this license by CONTRACTOR, METRO will have no further right to use the Software and will return the Software media to CONTRACTOR and destroy all copies of the Software (and related documentation) in METRO's possession or control. This license is subject to all of the terms of this Agreement.

#### 8.3.2. Fee based limitations

METRO recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by METRO. Limitations, which are set forth on the Purchase Order, 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. METRO 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 METRO's own business. METRO 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 METRO pays the applicable fee for such increase/upgrade. METRO may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. METRO may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of CONTRACTOR.

#### 8.3.3. Object code only

METRO 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 Agreement. METRO 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.

#### **8.3.4. Permitted copies**

METRO 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 METRO.

#### **8.3.5. Updates**

In the event that CONTRACTOR 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.

#### **8.3.6. Export**

METRO 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. METRO agrees to comply with all applicable laws of all of the countries in which the Equipment and Software may be used by METRO. METRO's obligations hereunder shall survive the termination or expiration of this Agreement. METRO must obtain CONTRACTOR' prior written consent before exporting the Software.

#### **8.3.7 JBoss**

The JBoss® Enterprise Middleware components embedded in the Software are subject to the license terms found at

[http://www.redhat.com/licenses/iboss\\_eula.html](http://www.redhat.com/licenses/iboss_eula.html).

#### **8.4. Firmware**

METRO may not download firmware updates for the CONTRACTOR Equipment unless METRO is maintaining such Equipment under a support plan with CONTRACTOR. If METRO is not maintaining the Equipment under a support plan with CONTRACTOR, CONTRACTOR shall have the right to verify METRO's CONTRACTOR Equipment to determine if METRO has downloaded any firmware to which METRO is not entitled. If METRO has downloaded firmware for the CONTRACTOR Equipment to which METRO is not entitled, METRO shall be responsible to pay CONTRACTOR for such updated firmware in accordance with CONTRACTOR' then-current support policies.

### 8.5 Training points

Training Points which are purchased by METRO may be redeemed for an equivalent value of instructor-led training sessions offered by CONTRACTOR. Available instructor-led sessions are listed at <http://customer.CONTRACTOR.com> and each session has the Training Points value indicated. Training Points may be redeemed at any time within 12 months of the date of the applicable Purchase Order, at which time they shall expire. Training Points may not be exchanged for other CONTRACTOR products and/or services. CONTRACTOR will invoice METRO for the Training Points identified in the Purchase Order upon execution of such Purchase Order with payment due upon the payment terms indicated in such Purchase Order.

### 8.6. Acceptance

### 8.5. Training points

For METRO's initial purchase of each Equipment and Software product CONTRACTOR 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 METRO's server(s), and c.) implementation team training, if any, is complete. During the Test Period, METRO shall determine whether the Equipment and Software meet the CONTRACTOR published electronic documentation, ("Specifications").

The Test Period shall be for 30 days. If METRO has not given CONTRACTOR 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 METRO provides a Deficiency Statement within the Test Period, CONTRACTOR shall have 30 days to correct the deficiency, and METRO 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 METRO or CONTRACTOR may terminate this Agreement. Upon any such termination, METRO shall return all Equipment and Software (and related documentation) to CONTRACTOR, and CONTRACTOR shall refund any monies paid by METRO to CONTRACTOR 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.

### 8.7 Support Terms

#### 8.7.1. Software support services

##### (a) Support options

METRO 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 CONTRACTOR Support Service Policies (defined below). METRO must purchase the same Service Type for all of the Software specified on the Purchase Order, (however, if METRO is purchasing support services for Visionware Software, METRO may only purchase Gold Service Type for the Visionware Software). All Updates shall be provided via remote access.

##### (b) Term of software support

Unless otherwise indicated on the Purchase Order, support service shall commence on the Software Delivery date and shall continue for an initial term of one (1) year. The Support service may be renewed for additional one (1) year terms, for a maximum of four renewal terms, on the anniversary date of its commencement date ("Renewal Date") by

mutual written agreement of the parties or by Kronos sending to Customer an invoice for the applicable renewal term and the Customer paying such invoice prior to the commencement of such renewal term. After the first year of this Contract, the Service Offerings provided and the Service Coverage period are subject to change by CONTRACTOR with sixty (60) days advance written notice to METRO. For the initial two (2) years of the contract, 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.

**(c) Gold service offerings**

METRO shall be entitled to receive:

(i) Updates for the Software (not including any Software for which CONTRACTOR charges a separate license fee), provided that METRO's operating system and equipment meet minimum system configuration requirements, as reasonably determined by CONTRACTOR. If METRO requests CONTRACTOR to install such Updates or to provide retraining, METRO agrees to pay CONTRACTOR for such installation or retraining at CONTRACTOR's then-current time and materials rate.

(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 CONTRACTOR holidays.

(iii) Web-based support including access to Software documentation, FAQ's, access to CONTRACTOR knowledge base, customer forums, and e-case management. Such offerings are subject to modification by CONTRACTOR. 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 CONTRACTOR to resolve Software functional problems and user problems during the Service Coverage Period.

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

**(d) 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, CONTRACTOR 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, METRO may designate additional and/or backup Technical Contacts. METRO is required to place all primary Technical Contacts through CONTRACTOR product

training for the Software covered under this Agreement at METRO's expense.

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

**(e) Payment**

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

**(f) Addition of software**

Additional Software purchased by METRO during the initial or any renewal term shall be added to this Agreement at the same support option as the then current Software support coverage in place under these terms. METRO agrees to pay the charges for such addition and any such addition shall be renewed in accordance with paragraph (c) of this Section.

**(g) Responsibilities of METRO**

METRO agrees (i) to provide CONTRACTOR personnel with full, free and safe access to Software for purposes of support, including use of CONTRACTOR's 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 CONTRACTOR without prior written authorization from CONTRACTOR. Failure to utilize CONTRACTOR's remote access technology may delay CONTRACTOR's response and/or resolution to METRO's reported Software problem. If METRO requires the use of a specific remote access technology not specified by CONTRACTOR, then METRO must purchase the Plus option to receive support and provide CONTRACTOR personnel with full, free and safe access to the remote access hardware and/or software.

**(h) Default**

METRO shall have the right to terminate CONTRACTOR support services in the event that CONTRACTOR is in breach of the support services warranty set forth above in Section 7.2.3 and such breach is not cured within thirty (30) days after written notice specifying the nature of the breach. In the event of such termination, CONTRACTOR shall refund to METRO on a pro-rata basis those pre-paid annual support fees associated with the unused portion of the support term. CONTRACTOR reserves the right to terminate or suspend support service in the event the METRO is in default under this Agreement with CONTRACTOR and such default is not corrected within thirty (30) 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 METRO ceases to do business as a going concern or has its assets assigned by law.

**(i) CONTRACTOR support service policies**

CONTRACTOR's 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.

**8.7.2 Equipment Support Services**

METRO may purchase support services for Equipment in accordance with the terms and conditions below.

**(a) TERM**

Depot Support Services for the Product(s) have a term of one (1) year commencing 90 days after the delivery of the Equipment, as specified in this Agreement entered into between CONTRACTOR and METRO. Depot Support Services. The Depot Support Services support may be renewed for additional one (1) year terms, for a maximum of four renewal terms, on the anniversary date of its commencement date ("Renewal Date") by mutual written agreement of the parties or by Kronos sending to Customer an invoice for the applicable renewal term and the Customer paying such invoice prior to the commencement of such renewal term. CONTRACTOR may change the annual support charges effective at the end of the initial one (1) year term or effective on the Renewal Date, by giving METRO at least thirty (30) days prior written notification.

**(b) PAYMENT**

METRO agrees to pay the Support Charges for the initial term as set forth on the Purchase Order for each Product listed. METRO agrees that all Products of the same type that are owned by the METRO, including without limitation METRO's "Spare Products" (as defined below), will be covered by the Depot Support Services. METRO agrees that if METRO purchases, during the term of the Depot Support Services, any Products of the same type as those specified on an Purchase Order, such additional Products shall be covered by the Depot Support Services. METRO 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.

CONTRACTOR shall invoice METRO for annual Support Charges each year in advance of the Renewal Date. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation. METRO will make payment within 30 days of receipt of invoice. The CONTRACTOR agrees that it will not charge a late charge or interest to METRO for overdue amounts.

**(c) DEPOT SUPPORT SERVICE**

Upon the failure of an installed Product, METRO shall notify CONTRACTOR of such failure and CONTRACTOR will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by CONTRACTOR to be Product related shall be dispatched to a CONTRACTOR Depot Repair Center, and METRO will be provided with a Return Material Authorization Number (RMA) for the failed Product if METRO is to return the failed Product to CONTRACTOR, as reasonably determined by CONTRACTOR. METRO must return the failed product with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers can be found at <http://customenkronos.com/ContactUs.htra> and are subject to change. Return and repair procedures for failed Product

shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by METRO on the applicable Purchase Order and as specified herein and in CONTRACTOR' then-current Support Services Policies which may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies").

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

(ii) Depot Repair: It is METRO's obligation to purchase and retain, at METRO's location and at METRO's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow METRO to replace failed Products at all METRO locations. Upon failure of an installed Product, METRO shall install a Spare Product to replace the failed Product. METRO shall also specify the address to which the repaired Product should be return shipped. METRO shall then return the failed Product, with the required RMA, to the applicable Kronos Depot Repair Center. METRO shall make every reasonable effort to return the failed Product using the same packing materials in which the original Product was sent. Upon receipt of the failed Product, CONTRACTOR shall repair the failed Product and ship it, within ten (10) business days after receipt, to METRO. CONTRACTOR shall ship the repaired Product by regular surface transportation to METRO.

**(d) RESPONSIBILITIES OF METRO**

METRO 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 CONTRACTOR in "batches" which shall result in a longer turnaround time and surcharge to METRO. In addition, METRO agrees to:

(iii) Maintain the Products in an environment conforming to CONTRACTOR' published specifications for such Products;

(i) De-install all failed Products and install all replacement Products in accordance with CONTRACTOR' published installation guidelines;

(vi) Ensure that the Product(s) are returned to CONTRACTOR properly packaged; and

(iv) Obtain an RMA before returning any Product to CONTRACTOR and place the RMA clearly and conspicuously on the outside of the shipping package. METRO may only return the specific Product authorized by CONTRACTOR when issuing the RMA.

**(e) 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 METRO will not attempt to return damaged Product, resulting from:

- (ii) Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
- (vii) METRO's failure to continually provide a suitable installation environment (as indicated in CONTRACTOR' published installation guidelines) including, but not limited to, adequate electrical power; METRO's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with CONTRACTOR' published specifications;
- (iv) METRO'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 CONTRACTOR;
- (iii) Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
- (viii) METRO's repair, attempted repair or modification of the Products.

Professional services provided by CONTRACTOR in connection with the installation of any Software or firmware upgrades, if available, and if requested by METRO, 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 CONTRACTOR Depot Repair Center but is available for download at CONTRACTOR' customer web site provided METRO is maintaining the Product under an annual Depot Support Services plan with CONTRACTOR.

**(f) DELIVERY**

All domestic shipments are FOB Destination to/from METRO and CONTRACTOR with the shipping party bearing all costs and risks of loss, and with title passing upon delivery to the identified destination. All international shipments are DDU (Deliver Duties Unpaid) to the METRO, with METRO responsible for all duties and V.A.T. when sending Product to CONTRACTOR (DDP).

**(g) DEFAULT, SUSPENSION, AND TERMINATION**

Under the Depot Exchange Support option, CONTRACTOR may suspend Depot Support Services if METRO does not ship Failed Product to CONTRACTOR within ten (10) business days of receipt of the Replacement Product. CONTRACTOR will restore Depot Support Services upon return of such Failed Product or upon payment at the then-prevailing CONTRACTOR list price for such unreturned Failed Product. The term of this Agreement shall not be extended or affected by any such suspension.

METRO may terminate Depot Support Services if CONTRACTOR is in default under this Agreement, and such default is not corrected within thirty (30) days after written notice. CONTRACTOR may terminate Depot Support Services if METRO defaults under this or any other agreement with CONTRACTOR, and such default is not

corrected within thirty (30) days after written notice. In addition, this Agreement will terminate and all charges due hereunder will become immediately due and payable in the event that METRO ceases to do business as a going concern or has its assets assigned by law.

**(h) LIMITATION OF REMEDIES FOR EQUIPMENT SUPPORT SERVICES**

ALL OTHER WARRANTIES FOR THE DEPOT SUPPORT SERVICES PROVIDED HEREUNDER, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE AND MERCHANTABILITY, ARE EXCLUDED BY AGREEMENT OF THE PARTIES.

The first remedy of METRO shall be the replacement of the repaired Product.

IN NO EVENT SHALL KRONOS OR ITS SUBSIDIARIES OR AFFILIATES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES. **Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent it is finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the state of Tennessee.**

**8.8. Knowledgepass education subscription:**

The parties hereby agree that the following terms shall apply to METRO's purchase of the CONTRACTOR

KnowledgePass Education Subscription only, if specified on the Purchase Order:

**(a) Scope:**

The KnowledgePass Education Subscription is available to customers who are licensing

CONTRACTOR' Workforce Central and iSeries Timekeeper Software products and who are maintaining such products under a support plan with CONTRACTOR. The KnowledgePass Education Subscription provides access via the internet to certain educational offerings provided by CONTRACTOR (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

**(b) Term of Subscription**

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

**(c) Payment**

METRO shall pay the annual subscription charge for the initial term of the KnowledgePass Education Subscription in accordance with the payment terms on the Purchase Order. CONTRACTOR will send METRO 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 METRO pays such invoice before the end of the initial term or any renewal term.

**(d) Limitations**

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

**(e) Train-the-Trainer Program**

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

**8.9. Professional and Educational Services**

**(a) Engagements**

Unless otherwise indicated on the Purchase Order, Professional and Educational Services ("Professional Services") shall be provided on a time and material basis at the rates set forth in Attachment D'Contract Pricing if applicable as per subsection 3.2.3 or as mutually agreed if not included. If a dollar limit is stated in the Purchase Order or any associated statement of work ("SOW"), the limit shall be deemed an estimate for METRO's budgeting and CONTRACTOR's resource scheduling purposes. After the dollar limit is expended, CONTRACTOR will continue to provide Professional Services on a time and materials basis, if a Change Order or Schedule of Services for continuation of the Professional Services is signed by the parties.

**(b) CONTRACTOR professional/educational services policies**

CONTRACTOR's 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. The parties agree that METRO may attach the then current Professional Services Policy to the applicable SOW and such policy shall govern the professional and educational services provided for the scope of such project.

#### **8.10. Confidentiality**

Tennessee Code Annotated §10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential "Confidential Information" is also defined as information that is: i) disclosed between the parties after April 23, 2013 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, the Software (and Software documentation), and the Specifications shall be deemed to be CONTRACTOR's Confidential Information and Government Property shall be deemed to be METRO's Confidential information. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to Tennessee Code Annotated §10-7-504(i). Such records include: (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

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. The obligation of confidentiality shall survive the termination of this Contract.

This Contract 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; or (e) was required to be disclosed by applicable law or a court order; including without limitation the public records laws, provided that the receiving party notifies the disclosing party of such requirement prior to disclosure, and provided further that the receiving party makes diligent efforts to limit disclosure.

#### **8.11 Information Ownership**

All METRO information is and shall be the sole property of METRO. CONTRACTOR hereby waives any and all

statutory and common law liens it may now or hereafter have with respect to METRO information. Nothing in this Contract or any other agreement between METRO and CONTRACTOR shall operate as an obstacle to such METRO's right to retrieve any and all METRO information from CONTRACTOR or its agents or to retrieve such information or place such information with a third party for provision of services to METRO, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon METRO's advanced written request, CONTRACTOR shall supply METRO with an inventory of METRO information that CONTRACTOR stores and/or backs up.

#### **8.12. Information Security Breach Notification**

Should there be a breach affecting the Customer's data, CONTRACTOR will activate the Incident Response Plan and the Customer will be notified within 24 hours of confirmation of the breach. Kronos Incident Response Plan includes identification, containment/eradication, root cause analysis, and the implementation of any mitigating controls to prevent recurrence.

#### **8.13. Virus Representation and Warranty**

CONTRACTOR warrants to METRO that it has tested the Software using commercially reasonable methods designed to ensure that upon Delivery to METRO no copy of the Software provided contains (i) any virus, code or other routine that can disable, erase or otherwise harm the Software or Equipment, or METRO's other equipment, software or data; and (ii) any software routine, code, or instruction, hardware component or combination of the above which is designed to intentionally repossess the METRO's systems or network, or any component thereof, by electronic or other means.

#### **8.14. Copyright, Trademark, Service Mark, or Patent Infringement**

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a Copyright, Trademark, Service Mark, or Patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action, with counsel of its own selection and at its sole cost. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise which creates an obligation upon METRO shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this Contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:

- Procure for METRO the right to continue using the products or services
- Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing

- Remove the products or discontinue the services and cancel any future charges pertaining thereto and terminate the Contract. In such event of termination, METRO shall be entitled to a pro-rata refund of all fees paid to CONTRACTOR for the affected Software, which refund shall be calculated using a five year straight-line depreciation commencing with the date of the relevant Order.

Provided; however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR has reasonably determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO; however, if any such infringement or claim thereof is based upon or arises out of:

- The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;
- The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or,
- The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

#### **8.15. Maintenance of Records**

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed, invoices or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable advance written notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to the invoices of services or products provided under this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon reasonable prior written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all statements of works, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

#### **8.16. Monitoring**

CONTRACTOR's activities conducted and records maintained pursuant to this Contract, under the Maintenance of Records provision above, shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

#### **8.17. METRO Property**

Any METRO property, including but not limited to books, records, and equipment that is provided by METRO and in

CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of this Contract. CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of this Contract; provided, however, that in no event shall CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization.

**8.18. Modification of Contract**

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

**8.19. Partnership/Joint Venture**

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall become liable for any representation, act, or omission of any other Party contrary to the terms of this Contract.

**8.20. Waiver**

No waiver of any provision of this Contract shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

**8.21. Employment**

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities..

CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

**8.22. Compliance with Laws**

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

**8.23. Iran Divestment Act**

In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., CONTRACTOR certifies that to the best of its knowledge and belief, neither CONTRACTOR nor any of its subcontractors are on the

list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under METRO contracts.

#### **8.24. Taxes and Licensure**

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

#### **8.25. Ethical Standards**

CONTRACTOR hereby represents that CONTRACTOR has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Contract, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

#### **8.26. Indemnification and Hold Harmless**

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents, and employees from:

A. Any claims, damages, costs, and attorney fees for personal injuries or tangible property damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the services under this contract.

B. Any claims, damages, penalties, costs, and reasonable attorney fees arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

C. In any and all claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any approved subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any approved subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.

D. METRO will not indemnify, defend, or hold harmless in any fashion CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that CONTRACTOR may provide.

E. In any case, METRO agrees that CONTRACTOR shall be given prompt written notice of any such claim and has sole control over the investigation, preparation, defense and settlement of such claim, and further METRO shall reasonably cooperate with CONTRACTOR in connection with the foregoing and provides CONTRACTOR with all information in METRO's possession related to such claim and further assistance as reasonably requested by CONTRACTOR. METRO reserves the right to participate in the defense of any such action with counsel of its own selection and at its sole cost. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no settlement or compromise which creates an obligation upon METRO shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

**8.27. Limitation of liability**

METRO's exclusive remedies and contractor's sole liability for any contractor 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.

To the extent allowed under Tennessee law, except for contractor's indemnification obligations set forth in the Indemnification and Hold Harmless provision of this Contract, in no event shall CONTRACTOR's or its parents', subsidiaries', affiliates', or third party licensor's liability to METRO, howsoever caused, exceed the greater of two times the value of the order which gives rise to the claim or five million dollar (\$5,000,000.00), and in no event will contractor 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 or the existence, furnishing, functioning or metro's specific use of, or ability to so use, any equipment, software or services provided for in this Contract.

Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent it is finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the state of Tennessee.

**8.29. Assignment--Consent Required**

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT  
DIVISION OF ACCOUNTS  
DEPARTMENT OF FINANCE  
PO BOX 196300  
NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request.

**8.30. Entire Contract**

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties 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. METRO understands and acknowledges that while CONTRACTOR may disclose to customers certain confidential information regarding general product development direction, potential future products and/or product enhancements under consideration, METRO is not entitled to any products or product enhancements other than those contained on the Purchase Order. METRO has not relied on the availability of any future version of the Software or Equipment identified on a Purchase Order, nor any other future product in executing this Agreement.

**8.31. Force Majeure**

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

**8.32. Governing Law**

The validity, construction, and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that CONTRACTOR may provide.

**8.33. Venue**

Any action between the Parties arising from this Contract shall be maintained in the courts of Davidson County, Tennessee.

**8.34. Severability**

Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.

**8.35 Cooperative Purchasing**

CONTRACTOR and METRO hereby further agree that CONTRACTOR may use this Contract to provide products and services to other public sector entities subject to the terms and conditions of this Contract which will be referred to in an Order Form and purchase order. By signing and entering into an order form or purchase order that expressly references this Contract, each such public sector entity and will be deemed to have agreed to be bound by the terms and conditions of this Contract and all references in this Contract to "Customer" or "METRO" shall be references to the applicable customer entity entering into the order.

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Contract Number 428700

**Notices and Designation of Agent for Service of Process**

All notices to METRO shall be mailed or hand delivered to:

**PURCHASING AGENT  
PROCUREMENT DIVISION  
DEPARTMENT OF FINANCE  
PO BOX 196300  
NASHVILLE, TN 37219-6300**

Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR: Kronos  
Attention: John Obrien  
Address: 900 Chelmsford Street, Lowell, Ma 01851  
Telephone: 978-947-4854  
Fax: xxx  
E-mail: John.OBrien@Kronos.com

CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent: xxx  
Attention: xxx  
Address: xxx

**[SPACE INTENTIONALLY LEFT BLANK]**

Contract Number 428700

**Effective Date**

This contract shall not be binding upon the parties until it has been fully electronically approved by the supplier, the authorized representatives of the Metropolitan Government, and filed in the office of the Metropolitan Clerk.

**THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

**APPROVED AS TO PROJECT SCOPE:**

KD GN  
Dept. / Agency / Comm. Head or Board Chair. Dept. Fin.

**APPROVED AS TO COMPLIANCE WITH PROCUREMENT CODE:**

Michelle B. Hernandez Lane MD  
Purchasing Agent Purchasing

**APPROVED AS TO AVAILABILITY OF FUNDS:**

Talia Lomas O'dneal AN KG  
Director of Finance OMB BA

**APPROVED AS TO FORM AND LEGALITY:**

Mary Lou Thomas BL  
Metropolitan Attorney Insurance

**FILED BY THE METROPOLITAN CLERK:**

\_\_\_\_\_  
Metropolitan Clerk Date

**CONTRACTOR**

Kronos  
Company Name

[Signature]  
Signature of Company's Contracting Officer

John O'Brien  
Officer's Name

svp  
Officer's Title



## Exhibit A

### Product, Support Services and Professional Services Pricing

#### Enterprise Software Licenses

Provided that Customer continuously maintains the Equipment and Software under support plans with Kronos, Kronos agrees that for a period of sixty (60) months from the date of this Agreement, Customer may purchase as follows:

Description	Per License Cost after Discount	First year of	First year of
		Gold Support Per License	Platinum Support Per License
Workforce Timekeeper	\$32.45	\$7.14	\$8.11
Workforce Absence Manager	\$28.05	\$6.17	\$7.01
Workforce Accruals	\$12.65	\$2.78	\$3.16
Workforce Employee	\$22.00	\$4.84	\$5.50
Workforce Integration Manager	\$7.15	\$1.57	\$1.79
Workforce Manager	\$254.10	\$55.90	\$63.53
Workforce Mobile Employee	\$4.40	\$0.97	\$1.10
Workforce Mobile Manager	\$35.75	\$7.87	\$8.94
Workforce Tablet	\$54.45	\$11.98	\$13.61
Workforce Record Manager / Enterprise Archive	\$3.30	\$0.73	\$0.83
Workforce Analytics Core	\$30.25	\$6.66	\$7.56
Workforce Analytics Industry	\$44.00	\$9.68	\$11.00
Workforce Activities	\$38.50	\$8.47	\$9.63
Attestation Tool Kit	\$8.25	\$1.82	\$2.06
Workforce Scheduler	\$35.75	\$7.87	\$8.94
Workforce TeleStaff Enterprise	\$74.25	\$16.34	\$18.56
Workforce TeleStaff Contact Manager	\$8.25	\$1.82	\$2.06
Workforce TeleStaff Global Access	\$13.75	\$3.03	\$3.44
Workforce TeleStaff Institution Focus	\$11.00	\$2.42	\$2.75
Workforce TeleStaff Gateway Manager	\$2,750.00	\$605.00	\$687.50
Workforce TeleStaff Gateway Manager Interface to WFC	\$0.00	\$0.00	\$0.00
Workforce TeleStaff Bidding	\$27.50	\$6.05	\$6.88



## Telephony

Description	Cost after Discount	First year Gold Support	First year Platinum Support
Workforce TeleTime IP, Base System, 5 Lines	\$11,000.00	\$2,420.00	\$2,750.00
Workforce TeleTime IP, Add'l Line (Lines 6-10)	\$1,650.00	\$363.00	\$412.50
Workforce TeleTime IP, Add'l Line (Lines 11+)	\$550.00	\$121.00	\$137.50
Workforce TeleStaff IVR License Per Port	\$1,375.00	\$302.50	\$343.75
Workforce TeleStaff IVR Service \$0.13/minute invoiced monthly in arrears			

## Cloud Services

	Current Monthly Fee
Cloud Services – Hosting*	\$25,940.00

\*Cloud Services – Hosting Fee is based on the current license counts. Adding additional modules or licenses could result in changes to these fees.

Cloud Hosting Additional Offerings	Fee **
Cloud Hosting TeleTime IP Base Fee Per Month	\$1,000.00
Cloud Hosting TeleTime Per 25 Lines Fee Per Month	\$500.00
Cloud Hosting Workforce TeleStaff Enterprise Base Fee Per Month	\$1,250.00
Cloud Hosting Workforce TeleStaff Enterprise Per Employee Per Month	\$0.50
Cloud Hosting Workforce TeleStaff Enhanced Disaster Recovery Base Fee Per Month	\$1,000.00
Cloud Hosting Workforce TeleStaff Enhanced Disaster Recovery Per Employee Per Month	\$0.15

\*\*Fee based on an employee count of 20,000.

## Services and Training\*

Remote Services Hourly Rate	\$190 / hour
On-site Services Hourly rate Inclusive of Travel Costs	\$215 / hour
Technical Account Manager (TAM)	\$75,000.00 / year
Bill as you go Training Points - Invoices upon class attendance. Point value determined by specific class.	\$1.00 / point
KnowledgePass 20,001+	\$22,000.00 / year

The Professional and educational services above are applicable for a period of sixty (60) months.



## Kronos InTouch Time Clocks



Provided that Customer continuously maintains the Equipment and Software under support plans with Kronos, Kronos agrees that for a period of sixty (60) months from the date of this Agreement, Customer may purchase Equipment and Equipment support for the first year as follows:

Description	# of Terminals per transaction				First year of annual Support Per Terminal		
	1 to 49	50 to 249	250 to 499	Over 500	Firmware Only	Depot Repair	Depot Exchange
InTouch Badge Terminals	\$2,846.00	\$2,277.00	\$2,182.00	\$2,087.00	\$99.00	\$210.00	\$285.00
InTouch Biometric Badge Terminals	\$3,746.00	\$2,997.00	\$2,872.00	\$2,747.00	\$99.00	\$306.00	\$405.00
InTouch Prox Terminals	\$3,371.00	\$2,697.00	\$2,585.00	\$2,472.00	\$99.00	\$210.00	\$285.00
InTouch Biometric Prox Terminals	\$4,271.00	\$3,417.00	\$3,275.00	\$3,132.00	\$99.00	\$306.00	\$405.00
InTouch Smart Card Terminals	\$3,445.00	\$2,756.00	\$2,641.00	\$2,527.00	\$99.00	\$210.00	\$285.00
InTouch Biometric Smart Card Terminals	\$4,385.00	\$3,508.00	\$3,363.00	\$3,217.00	\$99.00	\$306.00	\$405.00
Lithium-ion backup battery, InTouch	\$227.00	\$182.00	\$174.00	\$167.00	n/a	n/a	n/a

**Exhibit B**

**Scope of Services**

**Kronos**

**RFQ 316396**

**Future Implementation and Change Orders**

1. Upon execution of this contract, Metro and the Contractor shall perform the following tasks to procure devices, services, and/or support under this contract:

A. The Contractor shall continue to provide the services as outlined in Exhibit A.

**General Requirements**

2. The Contractor shall provide as requested by Metro, any reports in a form, substance, and frequency mutually agreed between the parties.

4. The Contractor shall appoint a primary point of contact for Metro. No more than one (1) primary contact should be appointed. In the event the contractor's contact is unresponsive, unprofessional, or otherwise not fulfilling his/her duties to the satisfaction of Metro, Metro reserves the right to request that a new contact be appointed.

5. While providing Professional Services onsite at Metro's facility Kronos agrees to comply with all applicable federal and state laws. If Kronos assigns a Professional Services resource to perform Services onsite at any of Metro's facility, Kronos agrees that it shall before proceeding with the official assignment, conduct a background screening in accordance to the terms below and as permitted by law, on all such Kronos personnel before Metro will grant such personnel access to Metro's facility. Background screenings will be performed on Kronos Professional Services personnel provided that: (i) such personnel voluntarily agrees to undergo such background screening; (ii) Metro pays for all costs associated with such background screenings; (iii) such background screenings shall be performed by a nationally recognized provider used by Kronos; and (iv) Metro acknowledges that the requirement to perform background screenings for Kronos onsite personnel may cause delays to the project implementation. The background screenings shall, at a minimum, have been performed within the preceding twelve (12) month period prior to the date of the project. Kronos shall not staff a Professional

Services resource onsite at Metro's facility if such person has a negative result from the background screening. All results from the background screening shall remain confidential.

In addition, each Contractor employee assigned to work on-site in Nashville must agree to submit to fingerprinting for a separate felony arrest record check covering the past ten (10) years to be performed by the Metro Nashville Police Department.

**Exhibit C**  
Application Hosting Addendum

**SUPPLEMENTAL TERMS AND CONDITIONS**

This Application Hosting Addendum of Supplemental Terms and Conditions (the "Addendum") is made by and between Kronos Incorporated ("Kronos") and The Metropolitan Government of Nashville and Davidson County ("Customer"). Kronos and Customer are collectively referred to herein as the "Parties", and individually as a "Party."

WHEREAS, Customer desires to use those Kronos applications, related hardware and services in a managed hosted environment in accordance with the Contract and upon the supplemental terms and conditions herein, and Kronos desires to assist Customer in doing so.

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

**1. DEFINITIONS**

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

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

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

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

**"Internal Use"** means the use of the Program: (i) by Customer's personnel solely for Customer's internal business purposes and (ii) by any authorized employee, agent or contractor of Customer to process

information relating to Customer's employees assigned to, or potential employees of, Customer's authorized business unit(s), solely for the internal business purposes of such business unit(s).

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

**"Purchase Order"** means the order request form or Purchase Order validly issued and agreed between the parties as set forth in section 2.3 of the contract that lists the Startup Fees and Monthly Service Fees for the elements of Customer's particular Program.

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

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

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

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

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

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

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

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

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

## **2. CLOUD SERVICES STATEMENT OF WORK**

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

## **3. AUTHORIZED USE**

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

## **4. MAINTENANCE ACCESS**

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

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

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

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

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

**5.4** Customer shall not, and shall not permit any person or entity under Customer's direct or indirect control to: (a) recirculate, republish, distribute or otherwise provide access to the Program to any third party; (b) use the Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Program; (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Program or any software components of the Program; (e) use, or allow the use of, the Program in contravention of any federal, state, local, foreign or

other applicable law, or rules or regulations of regulatory or administrative organizations; (f) introduce into the Program any virus or other code or routine intended to disrupt or damage the Program, alter, damage, delete, retrieve or record information about the Program or its users; or, (g) otherwise act in a fraudulent, malicious or negligent manner when using the Program.

## **6. INTERNET ACCESS**

**6.1** If Customer uses open internet connectivity or Customer-supplied VPN internet connections to access the Program, Customer acknowledges that the performance and throughput of the internet connection cannot be guaranteed by Kronos, and variable connection performance may result in application response variations.

**6.2** Customer hereby acknowledges that the internet is not owned, operated, managed by, or in any way affiliated with Kronos, its Suppliers or any of its affiliates, and that it is a separate network of computers independent of Kronos. Access to the internet is dependent on numerous factors, technologies and systems, many of which are beyond Kronos' authority and control. Customer acknowledges that Kronos cannot guarantee that the internet access services chosen by Customer will meet the level of up-time or the level of response time that Customer may need. Customer agrees that its use of the internet access services and the internet is solely at its own risk, except as specifically provided in this Addendum, and is subject to all applicable local, state, national and international laws and regulations.

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

**7.1** In consideration of the delivery of the Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Purchase Order. The Monthly Services Fee shall begin to accrue on the Services Commencement Date, and shall be invoiced monthly in advance. In addition, Customer shall be billed the Startup Fees and any additional Cloud Hosting startup fees set forth in the applicable Purchase Order. Customer acknowledges that the billing commencement date does not coincide with implementation completion, final configuration, or go-live.

**7.2** SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Program shall be included in the Monthly Service Fee invoice issued by Kronos for the month following the month in which the SLA Credits were earned.

## **8. SERVICE LEVEL AGREEMENT**

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

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

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

(B) IN THE EVENT OF A BREACH OF THIS AGREEMENT ARISING FROM KRONOS' NEGLIGENCE AND CAUSING A BREACH OF SECURITY OR DISCLOSURE RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATION, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE, OR SYSTEM OR MACHINE ERROR, THE AGGREGATE LIABILITY OF KRONOS UNDER FOR SUCH BREACH SHALL NOT EXCEED THE AMOUNT EQUAL TO **TWO TIMES** THE TOTAL NET PAYMENTS RECEIVED BY KRONOS FOR THE PROGRAM IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES

(C) **Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent it is finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the state of Tennessee.**

## 10. DATA SECURITY

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

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

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

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

## 11. TERM AND TERMINATION

**11.1** At the expiration of the Initial Term, this Agreement and all applicable Programs shall terminate. Kronos may suspend or terminate the Program upon notice in the event of any breach by Customer of this Addendum. No Program interruption shall be deemed to have occurred during, and no Program credits shall be owed for, any authorized suspension of the Program.

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

**11.3** CONTRACTOR or METRO may terminate the Program for convenience on no less than ninety (90) days prior written notice to other contracting entity.

**EXHIBIT D: ATTACHMENT A  
SERVICE LEVEL AGREEMENT (SLA)**

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

**99.50% Application Availability**

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

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

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

**Definitions**

“Affected Service” means the monthly fees paid for the hosting of the Program.

“Excluded Event” means any event that adversely impacts the Program that is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos or Supplier; (c) Force Majeure events; (d) scheduled or emergency maintenance, alteration or implementation; (e) any suspension of the Program in accordance with the terms of the Addendum or License Agreement; (f) the unavailability of required Customer personnel, including as a result of failure to provide Supplier with accurate, current

contact information; (g) using the Application in a manner inconsistent with the product documentation; or (h) any other exclusionary circumstance specified in the applicable Cloud Services SOW.

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

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

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

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

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

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

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

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

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

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

**Exhibit D****KRONOS ADDENDUM  
WORKFORCE TELESTAFF IVR SERVICE  
(Licensed or User Based)**

This is an Addendum to the agreement between Kronos and Customer governing those certain Kronos Workforce Telestaff software applications whether on a perpetual license basis or in a software as a service model (the "Agreement") between The Metropolitan Government of Nashville and Davidson County ("Customer") and Kronos.

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 offering ("Telestaff IVR"), a subscription service Kronos is authorized to resell. Telestaff IVR can be ordered either on a licensed basis with Port (in which case 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 Telestaff IVR will be indicated on the applicable Order Form.

1. **Description.** 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."
2. **Maintenance.** Telestaff IVR maintenance will entitle Customer to Telestaff IVR phone support and software updates and shall commence upon the execution of the Order Form. For Workforce Telestaff IVR Service, 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, if Customer wants maintenance for the 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).
3. **Implementation.** To initiate and setup administration of the required communications, Kronos will perform the standard implementation of 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.
4. **Payment.** Kronos will invoice Customer for the 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 Workforce Telestaff IVR License Per Port, upon execution of the Order Form; or (ii) each month in arrears for the Workforce Telestaff IVR Service 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, subject to Section 7 below. Customer's right to begin using the service shall begin upon activation of the service after implementation/configuration.

Unless otherwise indicated on the Order Form, Customer will pay invoices issued by Kronos hereunder within thirty (30) days of receipt.

5. **Restrictions on Telestaff IVR Services; Additional Responsibilities.** Customer agrees that 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 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 Telestaff IVR is subject to the software

license terms set forth in the Agreement as well as the provider's 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 Telestaff IVR may be subject to standard mobile carrier policies or government regulatory requirements for mobile communications.

6. Telestaff IVR Security. The 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 Telestaff IVR, and ii) all associated data, is part of the provider's privacy policy which is subject to change with prior written notice. The current security statement is as follows:

**Security of Your Personal Information**

Kronos' provider takes appropriate technical, physical and administrative steps to protect the security of your information. Access to your personal information is limited only to those employees, contractors or authorized agents of Kronos and its provider who have authorization to access your personal information and such access is limited to the extent such information is needed to fulfill the task for which personal information was collected. While we strive to protect your personal information, we cannot ensure the security of the information you transmit. We recommend you to take every precaution to protect your personal information when you are on the Internet. For example, change your passwords often, use a combination of letters and numbers when creating passwords, and make sure you use a secure browser.

7. Renewal and Termination. The initial term is twelve months commencing upon the execution of the Order Form. At the expiration of the initial term, unless the Order Form provides as different renewal period, the term shall automatically renew on an annual basis for no longer than sixty (60) months until terminated in accordance with the provisions hereof. At any time: (i) Customer may terminate the Telestaff IVR service for convenience upon thirty (30) days prior written notice, and (ii) Kronos may terminate the 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 Telestaff IVR.

**AGREED AND ACCEPTED**

**CUSTOMER:**

By: \_\_\_\_\_

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

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

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

**KRONOS:**

By: \_\_\_\_\_

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

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

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





## ADDITIONAL REMARKS SCHEDULE

AGENCY <b>HUB International New England</b>	License # 1780862	NAMED INSURED <b>Kronos Incorporated</b> 900 Chelmsford Street Lowell, MA 01851
POLICY NUMBER <b>SEE PAGE 1</b>		
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>

### ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
 FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Coverage continued

17-18 Employers Liability (cont'd):

Travelers Indemnity Company

Policy# HVYFUB0F144017 - All States (except CA, MN, MO, NY and monopolistic)

Effective 10/01/17 to 10/01/18

Limits of Liability:

Bodily Injury by Accident \$1,000,000 each accident  
 Bodily Injury by Disease \$1,000,000 policy limit  
 Bodily Injury by Disease \$1,000,000 each employee

Travelers Property and Casualty Company of America

Policy# UB0F14486517 - CA, MN, MO, NY

Effective 10/01/17 to 10/01/18

Limits of Liability:

Bodily Injury by Accident \$1,000,000 each accident  
 Bodily Injury by Disease \$1,000,000 policy limit  
 Bodily Injury by Disease \$1,000,000 each employee

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion
B. Non-Owned Watercraft Less Than 75 Feet
C. Aircraft Chartered With Pilot
D. Damage To Premises Rented To You
E. Increased Supplementary Payments
F. Who Is An Insured – Employees And Volunteer Workers – First Aid
G. Who Is An Insured – Employees – Supervisory Positions
H. Who Is An Insured – Newly Acquired Or Formed Organizations
I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises
J. Blanket Additional Insured – Lessors Of Leased Equipment
K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement
L. Blanket Additional Insured – Broad Form Vendors
M. Who Is An Insured – Unnamed Subsidiaries
N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures
O. Medical Payments – Increased Limits
P. Contractual Liability – Railroads
Q. Knowledge And Notice Of Occurrence Or Offense
R. Unintentional Omission
S. Blanket Waiver Of Subrogation

PROVISIONS

A. REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion a., Expected Or Intended Injury, in Paragraph 2., of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

- a. Expected Or Intended Injury Or Damage
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

- (2) A watercraft you do not own that is:
(a) Less than 75 feet long; and
(b) Not being used to carry any person or property for a charge.

C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION

## COMMERCIAL GENERAL LIABILITY

### I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

### D. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

Exclusions c., g. and h., and Paragraphs (1), (3) and (4) of Exclusion j., do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion - All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III – Limits Of Insurance.

3. The following replaces Paragraph 6. of SECTION III – LIMITS OF INSURANCE:
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph a. of the definition of "insured contract" in the DEFINITIONS Section:

- a. A contract for a lease of premises. However; that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the DEFINITIONS Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

- (b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted.

### E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of SUPPLEMENTARY PAYMENTS – COVERAGES A AND B of SECTION I – COVERAGES:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of SUPPLEMENTARY PAYMENTS – COVERAGES A AND B of SECTION I – COVERAGES:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

## COMMERCIAL GENERAL LIABILITY

**F. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – FIRST AID**

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

**G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS**

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of

your "employees" who hold a supervisory position.

**H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED** of the Commercial General Liability Coverage Form, and Paragraph 3. of **SECTION II – WHO IS AN INSURED** of the Global Companion Commercial General Liability Coverage Form, to the extent such coverage forms are part of your policy:

Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

**I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

## COMMERCIAL GENERAL LIABILITY

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

### J. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

### K. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

### L. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
  - (1) Any express warranty not authorized by you;
  - (2) Any change in "your products" made by such vendor;
  - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
  - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
  - (6) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

COMMERCIAL GENERAL LIABILITY

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

**M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

**N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES**

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

**O. MEDICAL PAYMENTS – INCREASED LIMITS**

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE**:

- 7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:
  - (a) \$10,000; or

- (b) The amount shown on the Declarations of this Coverage Part for Medical Expense Limit.

**P. CONTRACTUAL LIABILITY – RAILROADS**

- 1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
- 2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

**Q. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:
  - (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.
  - (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
    - (a) Any individual who is:
      - (i) A partner or member of any partnership or joint venture;
      - (ii) A manager of any limited liability company;

## COMMERCIAL GENERAL LIABILITY

(iii) A trustee of any trust; or

(iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

(b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

(3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its

abrupt commencement, this Paragraph e. does not affect that requirement.

### R. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of SECTION IV – **COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

### S. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of SECTION IV – **COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the Insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**BLANKET ADDITIONAL INSURED  
(CONTRACTORS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL GENERAL LIABILITY – CONTRACTORS COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization you are required to include as an additional insured on this policy by a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization. The person or organization is only an additional insured with respect to liability caused by "your work" for that additional insured.
2. The insurance provided to the additional insured is limited as follows:
  - a) In the event that the limits of liability stated in the policy exceed the limits of liability required by a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought, the insurance provided by this endorsement shall be limited to the limits of liability required by such contract or agreement. This endorsement shall not increase the limits stated in Section III – LIMITS OF INSURANCE.
  - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of an architect's, engineer's or surveyor's rendering of or failure to render any professional services including:
    - I. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
    - II. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
  - c) This insurance does not apply to "bodily injury" or "property damage" caused by "your work" included in the "products-completed operations hazard" unless you are required to provide such coverage for the additional insured by a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought and then only for the period of time required by such contract or agreement and in no event beyond the expiration date of the policy.
3. Subpart (1)(a) of the Pollution exclusion under Paragraph 2., Exclusions of Bodily Injury and Property Damage Liability Coverage (Section I – Coverages) does not apply to you if the "bodily injury" or "property damage" arises out of "your work" performed on premises which are owned or rented by the additional insured at the time "your work" is performed.
4. Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought specifically requires that this insurance apply on a primary or non-contributory basis. When this insurance is primary and there is other insurance available to the additional insured from any source, we will share with that other insurance by the method described in the policy.
5. As a condition of coverage, each additional insured must:
  - a.) Give us prompt written notice of any "occurrence" or offense which may result in a claim and prompt written notice of "suit".

## COMMERCIAL GENERAL LIABILITY

- b.) Immediately forward all legal papers to us, cooperate in the investigation or settlement of the claim or defense against the "suit," and otherwise comply with policy conditions.
- c.) Tender the defense and indemnity of any claim or "suit" to any other insurer which also insures against a loss we cover under this endorsement. This includes, but is not limited to, any insurer which has issued a policy of insurance in which the additional insured qualifies as an insured. For purposes of this

requirement, the term "insures against" refers to any self-insurance and to any insurer which issued a policy of insurance that may provide coverage for the loss, regardless of whether the additional insured has actually requested that the insurer provide the additional insured with a defense and/or indemnity under that policy of insurance.

- d.) Agree to make available any other insurance that the additional insured has for a loss we cover under this endorsement.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY  
DEPARTMENT OF FINANCE – PROCUREMENT  
SOLE SOURCE JUSTIFICATION FORM



Send an email to PRG@nashville.gov and attach completed sole source form and supporting documentation.  
Purchasing Agent approval **MUST** be received prior to entering a requisition in iProcurement to minimize the potential for delay.

**Proposed supplier MUST be Registered in iProcurement**

Date: 1/4/18 Requesting Department/Agency/Commission: ITS

Requesting Official: Dawn Clark Telephone #: 26033 This request is for a multi-year contract.

Product/Service Description: Enterprise wide solution for Time and Attendance

Total Purchase (Enter the value for the entire contract life) Price: \$10,000,000

BU Number: 14521014 Fund #: 51137 Object Account: 502233/505252 Any Other Accounting Info:  
Enterprise wide including MNPS so their BU and fund would also be included

Proposed Supplier: Kronos

Proposed Supplier Contact: David Herndon

Supplier Address: 900 Chelmsford Street

City: Lowell

ST: MA

Zip: 01851

Supplier Telephone #: 1-901-746-8643

Supplier Email: david.herndon@kronos.com

**Metro Code: 4.12.060 Sole Source Procurement.**

A contract may be awarded for a supply, service or construction item without competition when, under regulations promulgated by the standards board, the purchasing agent determines in writing that there is only one source for the required supply, service or construction item. The standards board may, by regulation, establish specific categories of supplies, services, or construction items as sole source items. (Ord. 92-210 § 1 (3-205), 1992)

Proprietary compatability.

If Other, Explain Request: Not required if "Other" was not selected above.

Requesting Department Director's or Approved Designee's Signature of Approval

1/4/18  
Date

To be completed by the Procurement Division

Sole Source is Approved for a Purchase Order of 2 Year(s) Contract with 3yr option to renew

Sole Source is Denied; Reason for Denial

SENIOR PROCUREMENT OFFICER:

DATE: 1/4/18

PURCHASING AGENT:

DATE: 1/2/18