

Contract No. (14)C-03-H

KRONOS SALES, SOFTWARE LICENSE AND SERVICES AGREEMENT

Rev KR-022811.1

The City of Sunrise, a Florida municipal corporation (“Customer” or “City”) and Kronos Incorporated, a Massachusetts corporation (“Kronos”) agree that the terms and conditions set forth in this Agreement shall apply to all Kronos Equipment, Software, Professional and Educational Services, Support, and such other Kronos offerings, as specified on an order form (an “Order Form”) signed by the parties which expressly references this Agreement (or is signed contemporaneously hereto).

Kronos and Customer hereby agree that the terms and conditions of this Agreement apply to any Order Form executed by Kronos and Customer which expressly references this Agreement (including any Order Form signed contemporaneously with this Agreement regardless of the appearance of any express reference to this Agreement). Kronos may require additional terms and conditions for the sale or license of products or services not contemplated by this Agreement (including without limitation those that may be related to international services) provided that no such additional terms and conditions shall be binding upon Customer without Customer’s prior written consent. Notwithstanding, Kronos will not be obligated to accept or approve an order for any products or services for which such additional terms and conditions are required. All orders are subject to the approval of Kronos’ corporate office in Chelmsford, Massachusetts. This Agreement and the Order Form shall supersede the pre-printed terms of any Customer purchase order or other Customer ordering document, and no such Customer pre-printed terms shall apply to the items ordered.

1. INITIAL ORDER.

The parties hereby agree that with the execution of this Agreement the City agrees to order and Kronos agrees to provide the products and services described in the Statement of Work for Implementation of Workforce Central v7.0 and Workforce TeleStaff v4 and the Order Form #491814 – 1 dated May 19, 2015 (“Order 1”) both attached as Exhibit A. Kronos and Customer shall have a kick off meeting within thirty (30) days following the execution of the Agreement by both parties.

2. PAYMENT AND DELIVERY

(a) Payment. Unless otherwise set forth in this Agreement, payment terms are indicated on the Order Form or other contemporaneous ordering document containing product-specific payment terms signed by the parties. Delivery terms are as stated on the Order Form (“Delivery”). Kronos will invoice Customer for products upon Delivery. Unless otherwise set forth on the Order Form, Professional and Educational Services are provided on a time and materials basis, invoiced monthly as rendered. Customer agrees to pay all applicable taxes levied or based on the products, services or other charges hereunder, including state and local sales and excise taxes, and any taxes or amount in lieu thereof paid or payable by Kronos, exclusive of taxes based on net income, except to the extent that Customer is exempt from such taxes and in which case it shall present to Kronos a validly issued tax-exempt certificate, or other sufficient evidence of tax exemption. Payment of Fees will be made in accordance with the Local Government Prompt Payment Act, Section 218.70, et al., Florida Statutes, as amended, which provides for prompt payment, interest payments, and dispute resolution provided detailed invoices are submitted in compliance with the terms of this Agreement.

(b) Invoices. Invoices must identify the PO number and shall be submitted to: **The City of Sunrise Accounts Payable Department, 10770 W Oakland Park Blvd., Sunrise, FL, 33351**. Invoices shall show the actual hours worked, nature of the service, hourly rate, unit prices and dates(s) of service, as applicable.

(c) No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement by Kronos, either wholly or in part, and no payment shall be construed to be an acceptance of or to relieve Kronos of liability for the defective, faulty or incomplete rendition of the services consistent with the terms of this Agreement.

3. TERM.

The term of this Agreement shall commence as of the Effective Date and shall continue for a term of five (5) years, unless earlier terminated. The parties may mutually agree in writing to renew this Agreement for five (5) additional terms of one

(1) year each on mutually acceptable terms. Any term extension shall be evidenced by a formal written amendment to this Agreement duly executed by both Customer and Kronos.

4. PRICE AGREEMENT.

Provided that Customer continuously maintains the Equipment and Software under support plans with Kronos, all prices set forth in the pricing schedule attached as Exhibit B will remain unchanged during the initial term of five (5) years for purchase by Customer of additional products and services listed in Exhibit B.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Authority. Kronos hereby represents and warrants to the City that it has full power and authority to enter into and fully perform its obligations under this Agreement without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it.

(b) Duly Licensed. Kronos represents that it is duly licensed to perform the obligations under this Agreement and that it will continue to maintain all licenses and approvals required to conduct its business.

(c) No Contingency. Kronos warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Kronos, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Kronos, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by Kronos, Customer shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

6. INDEPENDENT CONTRACTOR.

Kronos acknowledges and agrees that Kronos is an independent contractor of Customer. Kronos more specifically acknowledges that its employees will not be covered by Customer's workers' compensation insurance; Kronos will be solely and exclusively responsible for payment of all federal and state income taxes due in respect of all compensation and/or other consideration paid by Customer to Kronos under this Agreement. Kronos shall be responsible for social security, unemployment and disability taxes and all other payroll taxes due with respect to Kronos' employees who provide Services under this Agreement. Kronos acknowledges that it shall have no authority to bind Customer to any contractual or other obligation whatsoever. Kronos shall be responsible to Customer for all work or services performed by Kronos or any person or firm engaged as a sub-consultant or subcontractor to perform work in fulfillment of this Agreement.

7. GENERAL LICENSE TERMS

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

8. FEE BASED LIMITATIONS

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by Customer. Limitations, which are set forth on the Order Form, may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number and partition, and/or the number of telephone lines or terminals to which the Software is permitted to be connected. Customer agrees to: i) use the Software only for the number of employees, simultaneous or active users, computer model, partition and serial number,

and/or terminals permitted by the applicable license fee; ii) use only the product modules and/or features permitted by the applicable license fees; and iii) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, partitions, terminals, products modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable fee for such increase/upgrade. Customer may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos.

9. OBJECT CODE ONLY

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

10. PERMITTED COPIES

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

11. UPDATES

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

12. EXPORT

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

13. FIRMWARE

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

14. TRAINING POINTS

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

15. ACCEPTANCE

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

The Test Period shall be for 45 days. If Customer has not given Kronos a written deficiency statement specifying how the Equipment or Software fails to meet the Specifications ("Deficiency Statement") within the Test Period, the Equipment and Software shall be deemed accepted. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, and Customer shall have an additional 45 days to evaluate the Equipment and Software. If the Equipment or Software does not meet the Specifications at the end of the second 45 day period, either Customer or Kronos may terminate this Agreement. Upon any such termination, Customer shall return all Equipment and Software (and related documentation) to Kronos, and Kronos shall refund any monies paid by Customer to Kronos for the returned Equipment and Software. Neither party shall then have any further liability to the other for the products that were the subject of the Acceptance Test.

16. LIMITED WARRANTY

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

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

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

17. INDEMNIFICATION

(a) Infringement Indemnification. Kronos agrees to indemnify Customer and to hold it harmless from and against any and all claims, costs, fees and expenses (including reasonable legal fees) relating to actual or alleged infringement of United States or Canadian patents or copyrights asserted against Customer by virtue of Customer's use of the Software as delivered and maintained by Kronos, provided that: i) Kronos is given prompt written notice of any such claim and has sole control over the investigation, (provided that no such settlement shall include an admission of liability or guilt of Customer without

Customer's prior written consent), preparation, defense and settlement of such claim; and, ii) Customer reasonably cooperates with Kronos in connection with the foregoing and provides Kronos with all information in Customer's possession related to such claim and any further assistance as reasonably requested by Kronos. Customer may participate in the defense of such action with counsel of its own selection and at its sole cost. Kronos will have no obligation to indemnify Customer to the extent any such claim is based on the use of the Software with software or equipment not supplied by Kronos. Should any or all of the Software as delivered and maintained by Kronos become, or in Kronos' reasonable opinion be likely to become, the subject of any such claim, Kronos may at its option: i) procure for Customer the right to continue to use the affected Software as contemplated hereunder; ii) replace or modify the affected Software to make its use non-infringing; or iii) should such options not be available at reasonable expense, terminate this Agreement with respect to the affected Software upon sixty (60) days prior written notice to Customer. In such event of termination, Customer shall be entitled to a pro-rata refund of all fees paid to Kronos for the affected Software, which refund shall be calculated using a five year straight-line depreciation commencing with the date of the relevant Order.

(b) Indemnification. Kronos agrees to be liable for tangible property damage or personal injury caused solely by the negligence or willful misconduct of its employees. Kronos agrees to indemnify, defend, save and hold harmless Customer, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense that may be asserted, claimed or recovered against or from Customer, its officials, agents, or employees by reason of damage to tangible property or personal injury, including death, and to the extent such damage, injury or death arises out of or negligence or willful misconduct of Kronos' employees or subcontractors in any way connected with Kronos' performance of this Agreement or caused by or arising out of (a) any willful misconduct or negligence of Kronos in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death to the extent arising out of or is willful misconduct or negligence of with Kronos' execution of services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by Kronos. The Customer shall provide to Kronos a prompt written notice of any such claim and give to Kronos sole control over the investigation, (provided that no such settlement shall include an admission of liability or guilt of Customer without Customer's prior written consent), preparation, defense and settlement of such claim, and further Customer shall reasonably cooperate with Kronos in connection with the foregoing and provides Kronos with all information in Customer's possession related to such claim and further assistance as reasonably requested by Kronos,. Customer may participate in the defense of such action with counsel of its own selection and at its sole cost. This paragraph shall not be construed to require Kronos to indemnify the City for its own negligence, or intentional acts of Customer, its agents or employees. Nothing in this Agreement shall be deemed to be a waiver of Customer's sovereign immunity under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

18. INSURANCE

(a) Kronos shall purchase from and maintain, in a company or companies lawfully authorized to do business in Florida, such insurance as will protect Customer from claims set forth below which may arise out of or result from performance under this Agreement by Kronos. Should Kronos use the services of a subcontractor for the performance of the services under this Agreement, this section shall apply to the subcontractor unless the Customer specifically agrees otherwise.

(b) Coverage shall be maintained without interruption from the effective date of this Agreement until date of final payment and termination of any coverage required to be maintained after final payment. Any liability coverage on claims made basis shall remain effective for five (5) years after final payment. If any of the required insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

(c) Kronos will endeavor to provide to Customer a minimum of thirty (30) days prior written notice of any adverse non-renewal or cancellation of Kronos' required insurance coverage.

(d) Certificates of Insurance. Evidence of insurance, being a current ACORD certificate of insurance or its equivalent, executed by the insurer, or its agent or broker, evidencing that a policy of insurance have been issued by the agent/broker shall be delivered to Customer prior to execution of this Agreement. The Certificate of Insurance shall be dated and show

the name of the insured, the name of the insurer, the number of the policy, its effective date, and its termination date.

(e) Additional Insured. All required insurance (except Worker's Compensation and Professional Liability) shall include an Additional Insured endorsement identifying Customer as an Additional Insured. No costs shall be paid by Customer for an additional insured endorsement.

(f) Required Coverage: Kronos shall maintain the insurance coverage consistent with its current coverage which is evidence by the attached certificate of insurance as Exhibit C to this Agreement.

19. PROFESSIONAL AND EDUCATIONAL SERVICES

(a) TRAVEL EXPENSES

Customer agrees to reimburse Kronos for all reasonable, pre-approved and necessary travel incurred by Kronos in the performance of any professional and/or educational services, provided that such travel complies with Customer's then current Travel and Expense Policies attached as Exhibit D. Customer agrees that approval by Email shall constitute a valid approval. Customer will be billed no more than monthly by Kronos for such travel expenses. Invoices requesting reimbursement of expenses shall include copies of all documentation of the expenses, to the satisfaction of Customer.

(b) ENGAGEMENTS

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

(c) WARRANTY

Kronos warrants that all professional and educational services performed under this Agreement shall be performed in a professional and competent manner. In the event that Kronos breaches this warranty, and Customer so notifies Kronos within 60 days of receipt of invoice for the applicable services, the Customer's sole remedy and Kronos' 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 Customer.

(d) KRONOS PROFESSIONAL/EDUCATIONAL SERVICES POLICIES

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

(e) COVENANT NOT TO HIRE

Throughout the term of the applicable project and for a period of one (1) year following the completion of the SOW, each party agrees not to directly recruit for hire any employee of the other party involved in such project without the other party's prior written consent. The foregoing covenant not to recruit for hire shall not apply in the case of an individual's response to a general advertisement for a job opening at either party's place of business.

20. SOFTWARE AND EQUIPMENT SUPPORT SERVICES

(a) SUPPORT OPTIONS

Customer may select from the following Software support purchase options: Gold (or Gold Plus) and Platinum (or Platinum Plus) support ("Service Type"), each providing different service coverage periods and/or service offerings, as specified herein ("Service Offerings") and in the Kronos Support Service Policies (defined below). Customer must purchase the same

Service Type for all of the Software specified on the Order Form, (however, if Customer is purchasing support services for Visionware Software, Customer may only purchase Gold Service Type for the Visionware Software). All Updates shall be provided via remote access. Customer may purchase support services for Equipment in accordance with the terms and conditions of Kronos' standard Equipment Support Addendum attached as Exhibit E. In the event of a conflict between the Equipment Support Addendum and this Agreement, this Agreement shall prevail.

(b) EXTENDED SUPPORT PROGRAM (DELL SERVERS)

Customers purchasing the Extended Support Program (as indicated on the Order Form) for their Dell servers purchased from Kronos shall receive a specialized, bundled set of Kronos Support Services. Because of the specialized nature of these services, the terms and conditions located at <http://www.kronos.com/Legal/SupplementalTerms.aspx> shall supersede the provisions of this Agreement for the Extended Support Program.

(c) TERM OF SOFTWARE SUPPORT

Unless otherwise indicated on the Order Form, support service shall commence on the Software Delivery Date and shall continue for an initial term of one (1) year. Support service for Software shall automatically renew for four (4) additional one year terms on the applicable anniversary date of the respective commencement date, unless either party notifies the other in writing sixty (60) days prior to that anniversary renewal date. After the one year initial term of this Agreement, the Service Offerings provided and the Service Coverage period are subject to change by Kronos with sixty (60) days advance written notice to Customer. For the initial term and four (4) renewal terms the annual support fee, for the same products and service type, will not increase by more than 3% over the prior year's annual support fee.

(d) GOLD SERVICE OFFERINGS

Customer shall be entitled to receive:

- (i) Updates for the Software (not including any Software for which Kronos charges a separate license fee), provided that Customer's operating system and equipment meet minimum system configuration requirements, as reasonably determined by Kronos. If Customer requests Kronos to install such Updates or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' 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 Kronos holidays.
- (iii) Web-based support including access to Software documentation, FAQ's, access to Kronos knowledge base, Customer forums, and e-case management. Such offerings are subject to modification by Kronos. Current offerings can be found at <http://www.kronos.com/services/support-services.aspx>.
- (iv) Web-based remote diagnostic technical assistance which may be utilized by Kronos to resolve Software functional problems and user problems during the Service Coverage Period.
- (v) Access to specialized content as and when made available by Kronos such as technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerforce and service case studies.

(e) PLATINUM AND PLUS SERVICE OFFERINGS:

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

Plus option: In addition to the Service Offerings specified for the Gold Service Offering above, customers purchasing the Plus option shall receive the services of a dedicated, but not exclusive, Kronos Technical Account Manager ("TAM") for one production instance of the Software. Customers purchasing the Gold-Plus option shall designate up to one primary and one secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM, while customers

purchasing the Platinum-Plus option shall designate up to two primary and three secondary backup Technical Contacts. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos product training for the Software covered under this Agreement at Customer's expense.

Customers purchasing the Platinum-Plus option shall also receive a one day per year visit to be performed at the Customer location where the Software is installed. During this onsite visit, Kronos shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment. Customer must be utilizing the then-current version of the Software. Travel and expenses are not included and shall be paid by Customer.

(f) PAYMENT

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

(g) ADDITION OF SOFTWARE

Additional Software purchased by Customer 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. Customer agrees to pay the charges for such addition, and any such addition shall be automatically renewed as provided in these terms.

(h) RESPONSIBILITIES OF CUSTOMER

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

(i) DEFAULT

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

(j) WARRANTY

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

(k) KRONOS SUPPORT SERVICE POLICIES

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

(l) Kronos agrees not to discontinue support on the Software for five (5) years from the date of this Agreement. Customer acknowledges that Kronos only provides Service Packs for the then-current and the immediately two (2) preceding Point Releases of the Software.

21. KNOWLEDGEPASS EDUCATION SUBSCRIPTION:

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

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

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

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

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

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

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

22. CONFIDENTIAL INFORMATION AND PUBLIC RECORDS LAW

22.1 "Confidential Information" is defined as information that is: i) disclosed between the parties after the date of this Agreement that is considered to be trade secret under Florida State Statutes section 812.081; and ii) identified as "confidential" by Kronos prior to or 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 Kronos' Confidential Information. 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 for three (3) years after the disclosure of such Confidential Information.

This Agreement imposes no obligation upon either party with respect to the other party's Confidential Information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an

obligation to maintain its confidentiality prior to receipt from the disclosing party, (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; (d) is independently developed by the receiving party without use of the disclosing party's confidential information, which can be shown by tangible evidence; or (e) was required to be disclosed by applicable law, including without limitation, the provisions of Chapter 119, Florida Statutes; 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.

22.2 Both parties agree that failure by Kronos to comply with applicable laws relating to public records shall be grounds for immediate unilateral cancellation of this Agreement by Customer.

Kronos expressly agreed that if it is acting as a Contractor as defined in Section 119.0701 of the Florida Statute under this Agreement, Kronos will comply with the following requirements pursuant to Florida Statutes Section 119.0701, as amended pursuant to Laws of Florida Chapter 2013-154, which include the following:

- (a) Kronos will keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service provided herein.
- (b) Kronos will provide the public with access to public records on the same terms and conditions that the Customer would provide the records and at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.
- (c) Kronos will ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Kronos will meet all requirements for retaining public records and transfer, at no cost, to the Customer all public records in possession of Kronos upon termination of this Agreement for any reason, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. When such records are stored electronically, Kronos will provide the Customer all records stored electronically in a format that is compatible with the Customer's information technology systems.

23. MARKETING ACTIVITIES

Customer agrees that Kronos may use Customer's name as part of Kronos' published customer lists. Upon Kronos' request, Customer may participate in mutually beneficial marketing and public relations activities with Kronos. All content shall be subject to the prior review and approval of Customer, whose approval may be withheld in its sole discretion.

24. LIMITATION OF LIABILITY

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

EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL KRONOS' OR ITS PARENTS', SUBSIDIARIES', AFFILIATES', OR THIRD PARTY LICENSOR'S LIABILITY TO A CUSTOMER, HOWSOEVER CAUSED, EXCEED 1.5 TIMES VALUE OF THE TOTAL ORDER WHICH GIVES RISE TO THE CLAIM, AND IN NO EVENT WILL KRONOS OR ITS PARENTS, SUBSIDIARIES AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT (ALL OF SUCH LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT SHALL BE REFERED TO AS "INDIRECT DAMAGES") WHETHER SUCH CLAIM FOR INDIRECT DAMAGES IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

25. TERMINATION

(a) The City shall have the right to terminate this Agreement, in whole or in part, with or without cause, and for its convenience, upon thirty (30) days written notice to Kronos.

(b) In the event of termination, Customer shall compensate Kronos for all authorized services performed and products delivered through the termination date, under the payment terms contained in this Agreement. Kronos shall immediately deliver all documents, written information, electronic data and other materials concerning City information in its possession to Customer and shall reasonably cooperate in transition of its duties to appropriate parties at the direction of Customer to the extent that Kronos resources are available to provide such associated services.

(c) Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability hereunder, except that the provisions of this Section and the provisions regarding the right to audit, limitation of liability, confidential information, insurance, indemnification, governing law and litigation shall survive termination of this Agreement and remain in full force and effect.

26. AVAILABILITY OF FUNDS

This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of Customer. If funding for this Agreement is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Agreement become unavailable, Customer may terminate this Agreement upon no less than twenty-four (24) hours (which shall be solely used in the event of emergencies as otherwise the Customer will reasonably try to provide a thirty (30) day notice) notice to Kronos. Customer shall be the sole and final authority as to the availability of funds. In the event of such termination, section 25 (b) shall apply.

27. RIGHT TO AUDIT

Kronos shall maintain adequate records for the invoices sent in relation with the services performed under this Agreement for five (5) years following completion of the delivery of the products or services, or conclusion of any litigation regarding this Agreement. Customer shall have the right to audit Kronos' books and records, Customer's expense and solely during Kronos regular business hours, upon a thirty (30) days prior notice, with regard to the services and products provided to Customer under this Agreement. Failure by Kronos to permit such audit shall be grounds for termination of this Agreement by Customer.

28. NO CONFLICTS

(a) Kronos represents that to the best of its knowledge it has not given or accepted a kickback in relation to this Agreement and has not solicited this Agreement by payment or acceptance of a gratuity or offer of employment.

(b) Kronos represents that to the best of its knowledge it has not solicited this contract by payment of a gift or gratuity or offer of employment to any official, employee of Customer or any City agency or selection committee.

(c) Kronos represents that it does not employ, directly or indirectly, the mayor, members of the city commission or any official, department director, head of any City agency, or member of any board, committee or agency of the City.

(d) Kronos represents that it does not knowingly employ, directly or indirectly, any official of the City. Kronos represents that it does not employ, directly or indirectly, any employee or member of any board, committee or agency of the City who, alone or together with his household members, own at least five percent (5%) of the total assets and/or common stock of Kronos.

(e) Kronos represents that it has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to the mayor, members of the city commission, any department director or head of any

City agency, any employee of the City or any City agency, or any member of a board that provides regulation, oversight, management or policy-setting recommendations regarding Kronos or its business.

(f) Kronos represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance under this Agreement.

(g) Kronos, its officers, personnel involved in the performance of the services of this Agreement, shall not knowingly have or hold any continuing or frequently recurring employment, contractual relationship, business association or other circumstance which may influence or appear to influence Kronos' exercise of judgment or quality of the Services being provided under this Agreement.

(h) Kronos, its officers, personnel, shall not, during the term of this Agreement, serve as an expert witness against Customer in any legal or administrative proceeding unless compelled by court process. Further, Kronos agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of Customer or in connection with any pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

(i) Kronos shall promptly notify Customer in writing by certified mail of all potential conflicts of interest or any event described in this Section. Said notification shall identify the prospective business interest or circumstance and the nature of work that Kronos intends to undertake and shall request the opinion of Customer as to whether such association, interest or circumstance would, in the opinion of Customer, constitute a conflict of interest if entered into by Kronos. Customer agrees to notify Kronos by certified mail of its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of Customer, the prospective business association, interest or circumstance would not constitute a conflict of interest by Kronos, Customer shall so state in its opinion and Kronos may, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to Customer by Kronos under this Agreement.

(j) In the event Kronos is permitted to utilize subcontractors to perform any services required by this Agreement, Kronos agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

29. PUBLIC ENTITY CRIMES ACT

Kronos represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that Kronos and its subconsultants under this Agreement have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months from the date of submitting a proposal for this Agreement or entering into this Agreement. Violation of this section may result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Customer's competitive procurement activities.

30. UNAUTHORIZED ALIENS/PATRIOT'S ACT

The knowing employment by Kronos or its sub-consultants to this Agreement of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of this Agreement which results in unilateral termination. In the event that the Kronos is notified or becomes aware of such default, Kronos shall take appropriate measures to correct such breach within an appropriate period. Kronos' failure to take such steps as appropriate measures shall be grounds for immediate termination of this Agreement and unilateral termination. Kronos shall take all commercially reasonable precautions to ensure that it and its sub-consultants to this Agreement do not employ persons who are not authorized to work by the immigration laws or the Attorney General of the United States. Kronos further represents that it is not in violation of any laws relating to terrorism or money laundering, including the Executive Order No. 13224 on Terrorist Financing and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56., the "Patriot Act").

31. GOVERNING LAW

This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. Customer and Kronos submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be Broward County, Florida, or the Federal Southern District of Florida. Kronos agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

32. GENERAL

- (a) The parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of this Agreement.
- (b) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.
- (c) Neither party may assign this Agreement without the prior written consent of the other party and Customer shall not assign the license to the Software without the prior written consent of Kronos. Any purported assigned without such consent shall be void.
- (d) Neither party shall be liable for failures or delays in performance due to causes beyond its reasonable control, including war, strikes, lockouts, fire, flood, storm or other acts of God. Both parties agree to use their best efforts to minimize the effects of such failures or delays.
- (e) All notices given under this Agreement shall be in writing and sent postage pre-paid, or by electronic transmission producing a written record, if to Kronos, to the Kronos address on the Order Form, or if to Customer, to The City of Sunrise City Manager, 10770 W Oakland Park Blvd., Sunrise, FL, 33351 with a copy to the billing address on the Order Form
- (f) The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.
- (g) The parties agree that if this Agreement is delivered via fax or electronically delivered via email it shall constitute a valid and enforceable agreement.
- (h) This Agreement and any information expressly incorporated herein (including information contained in any referenced URL), together with the exhibits to this Agreement and applicable Order Form, constitute the entire agreement between the parties for the products and services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos may disclose to customers certain confidential information regarding general product development direction, potential future products and/or product enhancements under consideration, Customer is not entitled to any products or product enhancements other than those contained on the Order Form. Customer has not relied on the availability of any future version of the Software or Equipment identified on an Order Form, nor any other future product in executing this Agreement.
- (i) Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (c)(1)(2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, as applicable. Manufacturer/distributor is Kronos Incorporated, 297 Billerica Road, Chelmsford, MA.
- (j) In performing under this Agreement, Kronos shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.
- (k) In the conduct of the services under this Agreement, Kronos shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and City ordinances and regulations.

CUSTOMER: City of Sunrise

BY: _____

NAME: _____

TITLE: _____

DATED: _____

Attest: _____
City Clerk

Office of the City Attorney
Approved as to form and legality
By: _____

KRONOS INCORPORATED

BY: _____

NAME: _____

TITLE: _____

DATED: _____

EXHIBIT A

ORDER 1

See attached Statement of Work for Implementation of Workforce Central v7.0 and Workforce TeleStaff v4 and Order Form #491814 - 1

EXHIBIT B

Provided that the City continuously maintains the Equipment and Software under support plans with Kronos, Kronos agrees that for a period of five (5) years from the effective date of this Agreement, the City may purchase the following product or services at the prices indicated below in Sections 1.00 to 6.00. After the initial 5 year term, if the parties agree to renew this Agreement, the parties may expressly and mutually agree to renew this schedule 1A by amendment to this Agreement.

1. Additional Kronos Software Licenses per user

Product Description	Unit Price
Workforce Core Employee per employee (minimum purchase of 50 licenses)- includes Workforce Timekeeper, Absence Manager, and Integration Manager	\$61.50
Workforce Manager per manager (minimum purchase of 5 licenses)	\$226.00
Workforce Employee per employee (minimum purchase of 50 licenses)	\$20.00

The City may purchase additional Kronos Workforce Central Suite modules (minimum purchase of 50 licenses per modules) not detailed above from Kronos for a forty percent (40%) discount off of the then current list price for the product.

All software must be purchased in standard Kronos increments as indicated in the table in Section 1 above.

2. Equipment

Product Description	Unit Price
9000 InTouch Time Clock Bundle per unit includes InTouch Barcode Clock and Finger Scan unit.	\$2,997.00
9000 InTouch Time Clock Bundle per unit includes InTouch HID Proximity Clock and Finger Scan Unit.	\$3,417.00

The Kronos Equipment listed below may be purchased from Kronos at a discount of thirty percent (30%) off of the then current list price for the product:

- Kronos InTouch, Standard Enclosure, with Bar Code Badge Reader
- Kronos InTouch Standard Enclosure, with HID Proximity Reader
- North America Power Kit For external Outlet, Intouch STD
- Touch ID Option In Touch
- Battery Backup, In Touch

3. Depot Exchange Services

Depot Exchange Services Description	Unit Price for the first year
Initial purchase of Depot Exchange maintenance for 9000 InTouch Time Clock per unit	\$285.00
Initial Purchase Biometric Verification Depot Exchange Maintenance	\$120.00

3.1 Initial fees for Depot Exchange Services relating to equipment are detailed above in Section 3.00 Depot Exchange Services.

3.2 Depot Exchange Services are subject to the annual renewal increase of three percent (3%) per year.

4. Kronos Software Maintenance Recurring Fees

Services, license counts, and quantities may be revised by Order Form subject to terms of the Agreement.

4.1 Kronos Gold Software Support Services (maintenance) on future or new software will be provided for an initial annual fee equal to twenty-two percent (22%) of the software selling price. For the Telestaff software, Kronos Platinum Software Support Services (maintenance) on future or new software will be provided for an initial annual fee equal to twenty-five percent (25%) of the software selling price. The applicable support fees will be detailed on the Kronos Order Form related to the specific purchase.

4.2 Kronos Gold Software Support Services (maintenance) are subject to the annual renewal increase of three percent (3%) per year. For the Telestaff software, Kronos Platinum Software Support Services (maintenance) are also subject to the annual renewal increase of three percent (3%) per year.

5. Professional Services

5.1 Kronos professional service hours will be billed at a rate of \$187.50 per hour for all resources with the exception of the Technology Consultant which will be billed at a rate of \$200.00 per hour.

5.2 Kronos custom application development, custom application extensions, custom reporting, or solution developer will be billed at a rate of \$215.00 per hour.

6. Training Options

6.1 A current list of available training classes and options can be located on the Kronos Customer Portal: <http://customer.kronos.com/edservices/default.aspx>.

6.2 The City may purchase Kronos training points and products at a discount of ten percent (10%) off of the then current list price for training. KnowledgePass and training bundles are excluded from this discount structure and will be billed at the then current list price. All training relating to a specific project will be described in the Services Scope Statement for that project.

(The remainder of this page is intentionally blank.)

EXHIBIT C

ACORD CERTIFICATE

EXHIBIT D

Customer Travel Policy

Per Hour cost starts when contractor is “on-site” ready to work. Travel costs and per diem shall be paid for in accordance with the City of Sunrise Code for a Category 3 traveler. The City shall pay the following travel costs including: Airport parking, Airfare, Hotel, Rental Vehicle and Fuel. IRS Standard rates for mileage shall apply. Additionally, for a scheduled non-working day, the City shall pay the following: Hotel (weekend rates for the hotel used on the last working day), Rental Vehicle and gallons of gas per day and per diem in accordance with the City of Sunrise Code for a Category 3 traveler.

See below for the current rates for Category 3 from our intranet:

Beginning on January 1, 2013, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be 57.5 cents per mile for business miles driven.

Meal allowance has been adjusted in accordance with Travel Ordinance 410-01-A.

The current meal allowance, effective October 1, 2013, is as follows:

Category 3

Breakfast	\$ 7.00
Lunch	\$13.00
Dinner	\$26.00
Full Day	\$46.00

EXHIBIT E

EQUIPMENT SUPPORT SERVICES ADDENDUM TO SALES SOFTWARE LICENSE SERVICES AGREEMENT

The following terms and conditions shall supplement the terms and conditions of the Agreement entered into between the parties and shall govern the equipment support services provided by Kronos to Customer. In the event of a conflict of inconsistency between the Agreement and this Addendum, the Agreement shall govern.

Kronos and Customer hereby agree that Kronos shall provide depot equipment repair support services ("Depot Support Services") for Customer's Kronos Equipment ("Product(s)") specified on a Kronos order form (the "Order Form") to and from locations within the United States, Canada and Puerto Rico pursuant to the following terms and conditions:

1. TERM

Depot Support Services for the Product(s) have a term of one (1) year commencing upon the expiration of the applicable warranty period, as specified in the Agreement entered into between Kronos and Customer. Depot Support Services shall automatically renew for four (4) additional one year terms on the applicable anniversary date of the commencement date ("Renewal Date"), unless either party notifies the other in writing sixty (60) days prior to that anniversary renewal date. After the one year initial term of this Agreement, Kronos 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 Customer at least sixty (60) days prior written notification. For the initial term and four (4) renewal terms the annual support fee, for the same products and service type, will not increase by more than 3% over the prior year's annual support fee.

Kronos agrees not to discontinue support on the InTouch Equipment for five (5) years from the date of this Agreement to the extent consistent with the applicable support terms and policies.

2. PAYMENT

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

3. DEPOT SUPPORT SERVICE

Upon the failure of an installed Product, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Product related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Product if Customer is to return the failed Product to Kronos, as reasonably determined by Kronos. Customer 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://customer.kronos.com/ContactUs.htm> 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 Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies which may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies").

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

(b) Depot Repair: It is Customer's obligation to purchase and retain, at Customer's location and at Customer's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow Customer to replace failed Products at all Customer locations. Upon failure of an installed Product, Customer shall install a Spare Product to replace the failed Product. Customer shall also specify the address to which the repaired Product should be returned. Customer shall then return the failed Product, with the required RMA, to the applicable Kronos Depot Repair Center. Customer 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, Kronos shall repair the failed Product and ship it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Product by regular surface transportation to Customer.

4. RESPONSIBILITIES OF CUSTOMER

Customer agrees that it shall return failed Products promptly as the failures occur and that it shall not hold failed Products and send failed Product to

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

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

5. SUPPORT EXCLUSIONS

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

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

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

6. DELIVERY All domestic shipments are FOB Destination to/from Customer and Kronos with the shipping party bearing all costs and risks of loss, and with title passing upon delivery to the identified destination. All international shipments are DDU (Deliver Duties Unpaid) to the Customer, with Customer responsible for all duties and V.A.T. when sending Product to Kronos (DDP). Customer agrees to pay or reimburse Kronos for any substantial increase in fuel surcharges which may occur during the term of the Agreement.

7. WARRANTY

Kronos warrants that all repairs performed under the Agreement shall be performed in a professional and competent manner.

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.

8. DEFAULT, SUSPENSION, AND TERMINATION

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

Customer may terminate Depot Support Services if Kronos is in default under the Agreement, and such default is not corrected within thirty (30) days after written notice. Kronos may terminate Depot Support Services if Customer defaults under this or any other agreement with Kronos, 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 Customer ceases to do business as a going concern or has its assets assigned by law.

9. LIMITATION OF REMEDIES

The exclusive remedy of Customer and sole liability of Kronos shall be 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.