

CONTRACT BETWEEN THE CITY OF AUSTIN
And
IMMIXTECHNOLOGY, INC.
For
Workforce TeleStaff

This Contract is between ImmixTechnology, Inc. at 8444 Westpark Drive, Suite 200, McLean, VA 22102 and the City, a home-rule municipality incorporated by the State of Texas. Solicitation requirements are met by using Department of Information Resources Contract No. DIR- TSO-2585.

1.1 This Contract is composed of the following documents:

- 1.1.1 DIR-TSO-2585
- 1.1.2 This Contract
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, ImmixTechnology, Inc.'s Offer
- 1.1.5 Exhibit C, Appendix D to DIR Contract NO. DIR-TSO-2585, Krono Incorporated Terms and Conditions for Participating Public Agencies Administered by ImmixTechnology, Inc.
- 1.1.6 Exhibit D, Non-Discrimination Certification
- 1.1.7 Exhibit E, Non-Suspension or Debarment Certification

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 DIR-TSO-2585
- 1.2.2 This Contract
- 1.2.3 Exhibit A
- 1.2.4 Exhibit B
- 1.2.5 Exhibit C

1.3 Quantity. Quantity of goods or services as described in Exhibit B.

1.4 Term of Contract. The Contract will be in effect on the date executed by the City (Effective Date) and shall remain in effect for 60 months or the City terminates the Contract.

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$270,770.80, including all fees and expenses.

Year 1		Year 2		Year 3		Year 4		Year 5			
\$	45,199.89	\$	49,095.43	\$	49,730.16	\$	49,754.16	\$	49,778.16	\$	243,557.80
\$	5,045.40	\$	5,459.48	\$	5,514.08	\$	5,569.20	\$	5,624.84	\$	27,213.00
\$	50,245.29	\$	54,554.91	\$	55,244.24	\$	55,323.36	\$	55,403.00	\$	270,770.80

Services available to Customer; however, some changes will require downtime. Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least one day in advance of any known downtime so planning can be facilitated by Customer.

Scheduled Maintenance Period for the Services shall be:

Monday through Friday, 12 am to 4 am EST Saturday through Sunday, 12 am to 4 am EST

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

IMMIXTECHNOLOGY, INC.

CITY OF AUSTIN

Vaughn Harman

Printed Name of Authorized Person
Vaughn
Harman
Digitally signed by Vaughn Harman
Date: 2018.05.04 10:41:20 -04'00'

Signature


Sr Director

Title:

5/4/18

Date:

Sai Purcell

Printed Name of Authorized Person


Signature
Procurement Specialist IV

Title:

5/4/18

Date:

Exhibit Listing

Exhibit A	Supplemental Terms
Exhibit B	ImmixTechnology, Inc.'s Offer
Exhibit C	Non Discrimination Certification
Exhibit D	Non Suspension or Debarment Certification

Exhibit A
Supplemental Terms

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Lyn Witt, Phone: 703-663-1920 Email: Lyn_Witt@immixgroup.com. The City's Contract Manager for the engagement shall be William Alderete; Phone: 512-978-0485, email: William.alderete@austintexas.gov.

2. **Invoices.**

Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management (CTM)
Attention	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov

3. **Travel Expenses.** Travel expenses are not authorized under this Contract.

4. **Equal Opportunity**

4.1.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

4.1.2 **Americans With Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5. **Right To Audit**

5.1.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

5.1.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

Exhibit C

**Appendix D to DIR Contract No. DIR-TSO-2585
KRONOS INCORPORATED TERMS AND CONDITIONS FOR PARTICIPATING PUBLIC AGENCIES
ADMINISTERED
BY IMMIX TECHNOLOGY, INC.**

Appendix D to DIR Contract No. DIR-TSO-2585

KRONOS INCORPORATED TERMS AND CONDITIONS FOR PARTICIPATING PUBLIC AGENCIES ADMINISTERED BY IMMIX TECHNOLOGY, INC

KRONOS TERMS

A CUSTOMER, BY SIGNING AN ORDER FORM OR PURCHASE ORDER WHICH REFER TO THESE TERMS AND CONDITIONS WITH KRONOS INCORPORATED, AGREES TO THE APPLICATION OF DIR CONTRACT No. DIR-TSO-2585 and THESE TERMS AND CONDITIONS FOR ALL PRODUCTS, SERVICES AND OFFERINGS SET FORTH ON SUCH ORDER FORM (OR PURCHASE ORDER) WHICH REFERENCES THESE TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT THE DIR CONTRACT NO. DIR-TSO-2585 SHALL PREVAIL.

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

Appendix D to DIR Contract No. DIR-TSO-2585

SECTION A: GENERAL TERMS AND CONDITIONS

1. APPLICATION OF THESE TERMS

DIR Contract No. DIR-TSO-2585 and these terms and conditions apply to each order accepted by Kronos Incorporated ("Kronos") from an eligible Technical and Educational Services, Support and such other Kronos offerings, as specified on an order form (an "Order"). In any event of conflict however, DIR Contract No. DIR-TSO-2585 shall prevail.

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

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

All orders are subject to the approval of Contractor. 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. In any event of conflict however, DIR Contract No. DIR-TSO-2585 shall prevail.

2. APPLICABLE LAWS

Applicable laws shall be in accordance to Appendix A, Section 4F of DIR Contract No. DIR-TSO-2585.

3. EXPORT

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

4. CONFIDENTIAL INFORMATION

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

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

5. TAXES

Taxes will be handled in accordance to Appendix A, Section 8E of DIR Contract No. DIR-TSO-2585.

6. TRAVEL EXPENSES

Customer agrees to reimburse Contractor for all pre-approved, reasonable and necessary travel incurred by Contractor in the performance of its obligations under this Agreement, provided that such travel complies with the then Texas Travel Management Program and current Kronos Travel and Expense Policies (such policies are available upon request) or such other policies mutually agreed between the parties in the statement of work. Customer further agrees to pay any travel expenses such as airfare, lodging, meals and local transportation, incurred by Contractor in the performance of its obligations under this Agreement provided such expenses comply with the applicable policies. Customer will be billed by Contractor for such travel expenses and payment thereof shall be made in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

7. GENERAL

- (a) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.
- (b) Customer shall not assign the license to the Software without the prior written consent of Kronos and any purported assignment, without such consent, shall be void. Assignment of Contract will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-2585.
- (c) Force Majeure will be handled in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-2585.
- (d) All notices will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-2585.
- (e) The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.
- (f) The parties agree that the Order signed by both parties and expressly references DIR Contract No. DIR-TSO-2585 and this Agreement, and any associated SOW which is delivered via fax or electronically delivered via email it shall constitute a valid and enforceable agreement.
- (g) DIR Contract No. DIR-TSO-2585 and this Agreement and any information expressly incorporated herein (including information contained in any referenced URL), together with the applicable Order Form, constitute the entire agreement between the parties for the products and services

Appendix D to DIR Contract No. DIR-TSO-2585

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

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

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

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

(k) Additionally, Contractor agrees to be liable for damages in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-2585.

Appendix D to DIR Contract No. DIR-TSO-2585

SECTION B

TERMS AND CONDITIONS FOR SOFTWARE LICENSES, SOFTWARE AND EQUIPMENT SUPPORT SERVICES, AND EDUCATIONAL AND TECHNICAL SERVICES

This Section B applies to Software licensed, Equipment purchased, support services for Software and Equipment, and educational and technical services, when such items are identified on the Order which expressly references DIR Contract No. DIR-TSO-2585 and this Agreement.

1. PAYMENT AND DELIVERY

Payments will be made in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585. Delivery terms are as stated in Appendix A, Section 8D of DIR Contract No. DIR-TSO-2585. Contractor will invoice Customer for products upon Acceptance. Unless otherwise set forth on the Order Form, Technical and Educational Services are provided on a time and materials basis, invoiced monthly as rendered.

2. GENERAL LICENSE TERMS

Kronos owns or has the right to license the Software. The Software and Software documentation are confidential and may not be disclosed to a third party without Kronos' written consent. The Software contains proprietary trade secret technology. Unauthorized use and copying of such Software is prohibited by law, including United States and foreign copyright law. The price Customer pays for a copy of the Software constitutes a license fee that entitles Customer to use the Software as set forth below. Kronos grants to Customer a non-exclusive, nontransferable, perpetual (except as provided herein) license to use the Software. This license may be terminated in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585. Upon such termination of this license, 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 as allowable by record retention policies and law. This license is subject to all of the terms DIR Contract No. DIR-TSO-2585 and of this Section B.

3. FEE BASED LIMITATIONS

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by Customer. Limitations, which are set forth on the Order Form and in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-2585, and may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number and partition, and/or the number of telephone lines or terminals to which the Software is permitted to be connected. Customer agrees to: i) use the Software only for the number of employees, simultaneous or active users, computer model, partition and serial number, and/or terminals permitted by the applicable license fee; ii) use only the product modules and/or features permitted by the applicable license fees; and iii) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, partitions, terminals, products modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable fee for such increase/upgrade. Customer may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos.

4. OBJECT CODE ONLY

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

5. PERMITTED COPIES

Customer may copy the Programs as reasonably necessary to load and execute the Programs and for backup and disaster recovery and testing purposes only, except for additional copies of the Teletime Software and the Kronos iSeries (which must be licensed separately). All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms DIR Contract No. DIR-TSO-2585 and of this license, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer.

6. UPDATES

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

7. ACCEPTANCE

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

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

8. LIMITED WARRANTY

Kronos warrants that all Kronos Equipment and Software media shall be free from defects in materials and workmanship, for a period of ninety (90) days from Delivery. In the event of a breach of this warranty, Customer's remedy shall be Kronos' repair or replacement of the deficient Equipment and/or Software media, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Specifications.

This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) or Software media in the event of:

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

Appendix D to DIR Contract No. DIR-TSO-2585

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

9. TECHNICAL AND EDUCATIONAL SERVICES

(a) ENGAGEMENTS

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

(b) WARRANTY

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

(c) KRONOS TECHNICAL/EDUCATIONAL SERVICES POLICIES

Kronos' then-current Technical/Educational Services Policies shall apply to all Technical and/or Educational Services purchased under the applicable SOW and may be accessed at: <http://www.kronos.com/Support/ProfessionalServicesEngagementPolicies.htm> ("Technical Services Policies"). In the event of a conflict between the Technical Services Policies, DIR Contract No. DIR-TSO-2585 and this Agreement, the terms of DIR Contract No. DIR-TSO-2585 shall prevail.

10. SOFTWARE SUPPORT SERVICES

DIR Contract No. DIR-TSO-2585 and the following terms and conditions shall govern the Software support services provided by Kronos to Customer.

10.1 SUPPORT OPTIONS

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

10.2 TERM OF SOFTWARE SUPPORT

Unless otherwise indicated on the Order Form, support service shall commence on the Software Delivery date and shall continue for an initial term of one (1) year. Support service may be renewed for additional one (1) year terms prior to the anniversary date of its commencement date by issuance of an Order from the Customer to immixTechnology Inc. 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 DIR approval and sixty (60) days advance written notice to Customer. For the initial two (2) renewal years the annual support fee, for the same products and service type, will not increase by more than 4% over the prior year's annual support fee.

10.3 GOLD SERVICE OFFERINGS

Customer shall be entitled to receive:

(i) Updates for the Software (not including any Software for which Kronos charges a separate license fee), provided that Customer's operating system and equipment meet minimum system configuration requirements, as reasonably determined by Kronos. If Customer requests Kronos to install such Updates or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' pricing set forth in this Agreement and Appendix C, Pricing Index of DIR Contract No. DIR-TSO-2585.

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

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

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

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

10.4 PLATINUM AND PLUS SERVICE OFFERINGS:

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

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

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

10.5 PAYMENT

Customer shall pay annual support charges for the initial term in accordance with the payment terms of Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585. Customer shall pay additional support charges, if any, and time and material charges upon receipt of invoice.

10.6 ADDITION OF SOFTWARE

Additional Software purchased by Customer as per the ordering procedure set out in the agreement during the initial or any renewal term shall be added to the Support Services at the same support option as the then current Software support coverage in place under these terms. Annual support will be co-terminated into the Customers current period of performance following the first year of support. Customer agrees to pay the charges for such addition as per Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

10.7 RESPONSIBILITIES OF CUSTOMER

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

10.8 DEFAULT

Customer shall have the right to terminate Kronos support services in the event that Kronos is in breach of the support services warranty set forth below and such breach is not cured within fifteen (15) days after written notice specifying the nature of the breach. In the event of such termination, Kronos shall refund to Customer on a pro-rata basis those pre-paid annual support fees associated with the unused portion of the support term. Kronos reserves the right to terminate or suspend support service in the event the Customer is in default under this Agreement with Kronos and such default is not corrected within fifteen (15) days after written notice. In addition, the support services will terminate and all charges due hereunder will become due and payable in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

10.9 WARRANTY

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

11. EQUIPMENT SUPPORT SERVICES

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

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

11.1 TERM

Equipment Support Services for the Product(s) have a term of one (1) year commencing upon the expiration of the applicable warranty period, as specified in this Section B. Equipment Support Services can be extended for additional one year terms prior to the anniversary of its commencement date ("Renewal Date") by issuance of an Order from the Customer to Contractor. For the initial two (2) renewal years the annual support fee, for the same products and service type, will not increase by more than 4% over the prior year's annual support fee to the extent consistent with the pricing set forth under Appendix C Pricing Index of DIR Contract No. DIR-TSO-2585.

11.2 PAYMENT

Customer agrees to pay the Support Charges for the initial term as set forth on the Order Form for each Product listed. Customer agrees that all Products of the same type that are owned by the Customer, including without limitation Customer's "Spare Products" (as defined below), will be subject to this Agreement. Customer agrees that if Customer purchases, during the term of this Agreement, any Products of the same type as those specified on an Order Form, such additional Products shall be subject to DIR Contract No. DIR-TSO-2585 and this Agreement. Customer agrees to pay a prorated fee for such additional Products and agrees to pay the full annual fee for such additional Products, upon the renewal date. Kronos will invoice Customer for the annual Support Charges each year in advance of the Renewal Date. Customer will pay in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

11.3 DEPOT SUPPORT SERVICE DESCRIPTION

Upon the failure of installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and can be found at <https://customer.kronos.com/contact/contact-phone.aspx> and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies. Service packs for the Equipment (as described in subsection (b) below) are included in both Depot Exchange and Depot Repair Support Services.

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

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

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

11.4 EQUIPMENT SERVICE PACK SUPPORT SERVICE DESCRIPTION

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

- (i) Service packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements) available for download at Kronos' customer portal; and
- (ii) Access to the Kronos Support Services Center for the logging of requests for assistance downloading service packs for the Equipment.

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

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

11.5 RESPONSIBILITIES OF CUSTOMER

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

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

11.6 SUPPORT EXCLUSIONS

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

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

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

11.7 WARRANTY

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

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

12. KRONOS SUPPORT SERVICE POLICIES

Kronos' then-current Support Services Policies shall apply to all Support Services purchased and may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies"). In the event of a conflict between the DIR Contract No. DIR-TSO-2585, the Support Policies and this Agreement, the terms of DIR Contract No. DIR-TSO-2585 shall prevail.

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13. FIRMWARE

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

14. TRAINING POINTS

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

15. KNOWLEDGE PASS EDUCATION SUBSCRIPTION:

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

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

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

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

Payment: Customer shall pay the annual subscription charge for the initial term of the KnowledgePass Education Subscription in accordance with the payment terms of Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585. Contractor will send Customer a quote 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 an Order from the Customer to Contractor is received prior to the end of the initial term or any renewal term.

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

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

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

16. INDEMNIFICATION

Indemnification will be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-2585.

17. LIMITATION OF LIABILITY

Limitation of Liability will be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-2585.

18. TERMINATION OF ORDER FORM OR SOW

Terminations will be handled in accordance to Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585.

Appendix D to DIR Contract No. DIR-TSO-2585

SECTION C CLOUD APPLICATION HOSTING SUPPLEMENTAL TERMS AND CONDITIONS

Terms and conditions apply to the cloud services which are identified in the Pricing as the Cloud 2 in the Pricelist Name and subject to Appendix C of DIR Contract No DIR-TSO-2585. In the event of conflict the DIR Contract No. DIR-TSO-2585 shall prevail.

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

1. DEFINITIONS

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

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

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

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

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

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

“Monthly Service Fee(s)” means the monthly fees described in the Cloud Hosting SSS and set forth on the applicable Order Form and Appendix C Pricing Index of DIR Contract No. DIR-TSO-2585.

“Quote” means the quote supplied by Contractor that lists the fees for the elements of Customer's particular Program.

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

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

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

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

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

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

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

2. CLOUD HOSTING SERVICES SCOPE STATEMENT

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

3. AUTHORIZED USE

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

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4. MAINTENANCE ACCESS

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

5. CUSTOMER REPRESENTATIONS AND WARRANTIES; CUSTOMER OBLIGATIONS

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

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

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

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

6. CONNECTIVITY AND ACCESS

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

7. FEES AND PAYMENT TERMS

7.1 In consideration of the delivery of the Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form and in accordance to Appendix C Pricing Index of DIR Contract No. DIR-TSO-2585.

7.2 All fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

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

8. SERVICE LEVEL AGREEMENT

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

9. LIMITATION OF LIABILITY

Limitation of Liability will be handle in accordance to Appendix A, Section 10K of DIR Contract No. DIR-TSO-2585.

10. DATA SECURITY

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

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

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

11. TERM AND TERMINATION

11.1 At the expiration of the Initial Term, the applicable Program may be renewed for successive one year periods by Customer providing notice of its intent to renew at least thirty (30) days prior to the expiration of the then-current term. Kronos may suspend or terminate the Program upon notice in the event of any breach by Customer of this Section C if such breach is not cured within ten (10) days of the date of Kronos' written notice. No Program interruption shall be deemed to have occurred during, and no Program credits shall be owed for, any authorized suspension of the Program.

11.2 Customer may terminate the Program in accordance to Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585 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 for all fees then due and owing for the Program prior to the date of termination in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

11.3 Customer may terminate the Program for convenience in accordance to Appendix A, Section 11.B3) of DIR Contract No. DIR-TSO-2585 ninety (90) days prior written notice to Kronos.

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EXHIBIT A

SERVICE LEVEL AGREEMENT (SLA)

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

99.75% Application Availability

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

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

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

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

"Excluded Event" means any event that results in an Outage and is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos, including without limitation Customer Content, failures or malfunctions resulting from circuits provided by Customer, any inconsistencies or changes in Customer's source environment, including either intentional or accidental connections or disconnections to the environment; (c) Force Majeure events in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-2585; (d) scheduled or emergency maintenance, alteration or implementation provided during the Maintenance Period defined below; (e) any suspension of the Services in accordance with the terms of the Agreement to which this Exhibit A is attached; (f) the unavailability of required Customer personnel, including as a result of failure to provide Kronos with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.

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

Currently scheduled Maintenance Periods for the Services are:

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

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

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

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

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

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

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

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SECTION C.1:

APPLICATION HOSTING TERMS AND CONDITIONS

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

This attachment does not apply to CLOUD 2 items.

APPLICATION HOSTING SUPPLEMENTAL TERMS AND CONDITIONS

These Application Hosting Supplemental Terms and Conditions are applicable for hosting services ordered by Customer for Kronos Software licensed under Section B of this Agreement using the pricing as established in Appendix C Pricing Index of DIR Contract No. DIR-TSO-2585;

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 and in accordance to Appendix C Pricing Index of DIR Contract No. DIR-TSO-2585; which shall include all Hosting Related Services fees.

"Quote" means the quote supplied by Contractor that lists the Startup Fees and Monthly Service Fees for the elements of Customer's particular Program.

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

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

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

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

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

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

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

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

"Startup Fees" means the one time, customer-specific startup fee as indicated on the Customer Order 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

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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 section C.1.

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 Order Form.

5.4 Customer shall not, and shall not permit any person or entity under Customer's direct or indirect control to: (a) recirculate, republish, distribute or otherwise provide access to the Program to any third party; (b) use the Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Program; (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Program or any software components of the Program; (e) use, or allow the use of, the Program in contravention of any 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 Section C.1, 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 Contractor the Monthly Services Fee as defined in the applicable Order Form and in accordance to Appendix C, Pricing Index of DIR Contract No. DIR-TSO-2585. The Monthly Services Fee shall begin to accrue on the Services Commencement Date, and shall be invoiced monthly in advance. In addition, Customer shall be billed the Startup Fees and any additional Cloud Hosting startup fees set forth in the applicable Order Form. Customer acknowledges that the billing commencement date does not coincide with implementation completion, final configuration, or go-live.

7.2 All fees payable hereunder shall be paid in United States Dollars and sent to the attention of Contractor as specified on the invoice. Payments will be made in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

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

8. SERVICE LEVEL AGREEMENT

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA; PROVIDED THAT ANY REMEDIES OR CREDITS CONTAINED IN THE SLA ARE NOT AVAILABLE FOR OUTAGES, INTERRUPTIONS OR DEFICIENCIES OCCURRING DURING ANY PERIOD IN WHICH CUSTOMER IS IN BREACH OF THIS SECTION C.1 OR SECTION B. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.

9. LIMITATION OF LIABILITY

Limitation of Liability will be handled in accordance to Appendix A, Section 10K of DIR Contract No. DIR-TSO-2585.

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

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

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

11. TERM AND TERMINATION

11.1 At the expiration of the Initial Term, the applicable Program may be renewed for successive one year periods by Customer providing notice of its intent to renew at least thirty (30) days prior to the expiration of the then-current term. Kronos may suspend or terminate the Program upon notice in the event of any breach by Customer of this Section C.1. 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 in accordance to Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585 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 Contractor for all fees then due and owing for the Program prior to the date of termination in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585.

11.3

Customer may terminate the Program for convenience in accordance to Appendix A, Section 11.B3) of DIR Contract No. DIR-TSO-2585 ninety (90) days prior written notice to Kronos.

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

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

99.50% Application Availability

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

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

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

Definitions

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

“Excluded Event” means any event that adversely impacts the Program that is caused by (a) the acts or omissions of Customer, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos or Supplier; (c) Force Majeure events in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-2585 ; (d) scheduled or emergency maintenance, alteration or implementation; (e) any suspension of the Program in accordance with the terms of this Section or License Agreement; (f) the unavailability of required Customer personnel, including as a result of failure to provide Supplier with accurate, current contact information; (g) using the Application in a manner inconsistent with the product documentation; or (h) any other exclusionary circumstance specified in the applicable Cloud Services SOW.

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

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

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

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

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

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

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

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

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

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

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

Customer and Kronos agree that the terms and conditions set forth in this Section D shall apply to the Kronos supply of the commercially available version of the Workforce Central SaaS Applications and related services and materials (including applicable documentation) and Equipment (if any) specified on an Order Form. The Applications described on the Order Form shall be delivered by means of Customer's permitted access to the password protected customer area of a Kronos website. In the event of a conflict, however, DIR Contract No. DIR-TSO-2585 shall prevail.

1. DEFINITIONS

"Application(s)" or **"SaaS Application(s)"** means those Kronos software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Section D. Multitenant Applications shall be subject to the terms and conditions of DIR Contract No. DIR-TSO-2585 and this Agreement and those set forth at: <http://www.kronos.com/products/cloud/multi-tenant-description.aspx>. With respect to Multitenant Applications, the terms and conditions of DIR Contract No. DIR-TSO-2585 will supersede any conflicting terms.

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

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

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

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

"Implementation Services" means those technical and educational services provided by Kronos to set up the cloud environment and configure the Services, including educational services and training. Unless otherwise set forth in a Statement of Work or in an Order Form, Kronos will provide the fixed fee, fixed scope Implementation Services described in the Services Implementation Detail set forth at: www.kronos.com/products/workforce-central-saas/implementation-guidlines.aspx. Implementation Services may be provided as forth in Section B and in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-TSO-2585.

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

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

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

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

"Quote" means a quote provided by Contractor, and mutually agreed upon by Contractor and Customer setting forth the items requested by Customer and to be provided by Kronos, including without limitation the Services and Applications and the prices and fees to be paid by Customer.

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

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

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

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

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

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

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

2. TERM

2.1 The Services shall commence on the Start Date, and shall continue for the Initial Term or until terminated in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585. At the expiration of the Initial Term, the Term may be renewed on a month-to-month basis until terminated in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585.

2.2 At any time after the Initial Term: (i) Customer may terminate the Services for convenience in accordance to Appendix A, Section 11.B3) of DIR Contract No. DIR-TSO-2585.

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2.3 Either party may suspend or terminate the Services upon a material breach of this Section D by the other party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Kronos may suspend or terminate the Services immediately upon notice in the event of any Customer breach. Termination shall be handled in accordance to Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585. In the event of conflict, however, the DIR Contract No. DIR-TSO-2585 shall prevail.

2.4 If the Services are terminated for any reason:

(a) Customer shall pay Contractor in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585, all fees accrued for the Services prior to the date of termination, provided that if Customer terminates for material breach of this Section D by Kronos, Contractor shall be responsible to refund to Customer unused pre-paid Implementation Service fees, if any;

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

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

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

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

3. FEES AND PAYMENT

3.1 In consideration of the delivery of the Services, Customer shall pay Contractor the Monthly Service Fees, the fees for the Implementation Services and any additional one time or recurring fees for Equipment, Training Points, KnowledgePass Education Subscription and such other Kronos offerings, all as set forth on the Order Form. If Customer and Contractor have signed a Statement of Work for the Implementation Services, Implementation Services such services will be provided and payable in accordance with Section B. All fees payable for the Services shall be sent to the attention of Kronos as specified on the invoice. Unless otherwise indicated on an Order Form, payment for all items shall be due 30 days following date of invoice. Except as expressly set forth in this Section D, all amounts paid to Kronos are non-refundable. Customer acknowledges that fees may be charged to Customer by third parties for add-on features or functionality provided by such third parties. Customer may be required to purchase additional Cloud Services to address infrastructure requirements as released by Kronos for a new version of a particular Application. In the event of conflict, however, the DIR Contract No. DIR-TSO-2585 shall prevail.

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

3.3 Deleted intentionally.

3.4 Deleted intentionally.

4. RIGHTS TO USE

4.1 Subject to the terms and conditions of the Agreement, Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use during the Term and for internal business purposes only: a) the Application(s) and related services, including the Documentation; b) training materials and KnowledgePass Content; and, c) any embedded third party software, libraries, or other components, which are included in the Services, excluding such Third Party software, libraries or other components as are licensed directly from such Third Parties. The Services contain proprietary trade secret technology of Kronos and its Suppliers. Unauthorized use and/or copying of such technology are prohibited by law, including United States and foreign copyright law. Customer shall not reverse compile, disassemble or otherwise convert the Applications into uncompiled or unassembled code. Customer shall not use any of the third party software programs (or the data models therein) included in the Services except solely as part of and in connection with the Services. The JBoss® Enterprise Middleware components of the Service are subject to the end user license agreement found at http://www.redhat.com/licenses/jboss_eula.html. Customer acknowledges that execution of separate third party agreements may be required in order for Customer to use certain add-on features or functionality, including without limitation tax filing services.

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

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

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

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

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review any calculations made by using these Applications and satisfy itself that those calculations are correct.

5. ACCEPTABLE USE

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

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

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

6. CONNECTIVITY AND ACCESS

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

7. IMPLEMENTATION AND SUPPORT

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

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

7.3 Support. Kronos will provide 24x7 support for the cloud infrastructure, the availability to the cloud environment, and telephone support for the logging of functional problems and user problems. Customer may log questions online via the Kronos Customer Portal. As part of such support, Kronos will make updates to the Services available to Customer at no charge as such updates are released generally to Kronos' customers. Customer agrees that Kronos may install such updates automatically as part of the Services. Kronos' then-current Support Services Policies shall apply to all Equipment Support Services provided by Kronos and may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies"). In the event of a conflict between the Support Policies and this Addendum and the Agreement, the terms of this Addendum, then the Agreement shall prevail.

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

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

(b) Equipment Support Service

(i) Depot Exchange and Depot Repair. If Customer has selected Depot Exchange or Depot Repair Equipment Support Services, the following provisions shall apply:

Upon the failure of installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies. Service packs for the Equipment (as described in subsection (b) below) are included in both Depot Exchange and Depot Repair Support Services.

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

Depot Repair: Upon failure of installed Equipment, Customer shall install a Spare Product to replace the failed Equipment. Customer shall then return the failed Equipment, with the required RMA, to the applicable Kronos Depot Repair Center.

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Customer shall make reasonable efforts to return the failed Equipment using the same or substantially similar packing materials in which the original Equipment was sent. Customer shall also specify the address to which the repaired Equipment should be return shipped. Upon receipt of the failed Equipment, Kronos shall repair the failed Equipment and ship it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Equipment by regular surface transportation to Customer.

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

- (i) Service packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements) available for download at Kronos' customer portal. Service packs for the Equipment are not installed by the Kronos Depot Repair Center but are available for download at Kronos' customer portal, provided Customer is maintaining the Equipment under an annual Equipment Support Services plan with Kronos.; and
- (ii) Access to the Kronos Support Services Center for the logging of requests for assistance downloading service packs for the Equipment.

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

(d) Responsibilities of Customer: It is Customer's responsibility to purchase and retain, at Customer's location and at Customer's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow Customer to replace failed Equipment at Customer's locations in order for Customer to continue its operations while repairs are being performed and replacement Equipment is being shipped to Customer. For each of the Depot Exchange and Depot Repair Equipment Support Services options, Customer agrees that it shall return failed Equipment promptly as the failures occur and that it shall not hold failed Equipment and send failed Equipment to Kronos in "batches" which shall result in a longer turnaround time to Customer. In addition, Customer agrees to:

- (i) Maintain the Equipment in an environment conforming to the Kronos published specifications for such Equipment;
- (ii) Not perform self-repairs on the Equipment (i.e., replacing components) without prior written authorization from Kronos;
- (iii) De-install all failed Equipment and install all replacement Equipment in accordance with Kronos' written installation guidelines;
- (iv) Ensure that the Equipment is returned to Kronos properly packaged; and
- (v) Obtain an RMA before returning any Equipment to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Equipment authorized by Kronos when issuing the RMA.

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

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

7.6 Training Points. "Training Points" which are purchased by Customer may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos. Training Points may be redeemed only during the Term at any time no more than twelve (12) months after the date of the applicable Order Form, after which time such Training Points shall expire and be of no value. Training Points may not be exchanged for other Kronos products or services.

7.7 Training Courses. When Training Points or training sessions are set forth in an SSS, the SSS applies. When Training Points or training sessions are not set forth in an SSS, as part of the Services, for each SaaS application module included in the Services purchased by Customer, Customer's employees shall be entitled to attend, in the quantity indicated, the corresponding training courses set forth at: www.kronos.com/products/workforce-central-saas/training-guidlines.aspx. Participation in such training courses is limited to the number of seats indicated for the courses corresponding to the modules forming a part of the Services purchased by Customer.

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

8. CUSTOMER CONTENT

Customer shall own all Customer Content and posts or other inputs into the Services by Customer or others acting on behalf of or through Customer. Kronos acknowledges that all of the Customer Content is deemed to be the Confidential Information of Customer. Kronos may, but shall have no obligation to, monitor Customer Content from time to time to ensure compliance with this Section D and applicable law.

9. EQUIPMENT

If Customer purchases or rents Equipment from Kronos, a description of such Equipment (model and quantity), the applicable pricing, and delivery

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terms shall be listed on the Order Form.

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

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

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

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

10. SERVICE LEVEL AGREEMENT

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

11. LIMITED WARRANTY; DISCLAIMERS OF WARRANTY

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

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

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

- a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including without limitation modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- b) failure of Customer to provide and maintain a suitable installation environment, as specified in the published specifications for such Equipment; or
- c) malfunctions resulting from the use of badges or supplies not approved by Kronos.

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

12.0 DATA SECURITY

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

12.2 As between Customer and Kronos, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer represents that to the best of Customer's knowledge such Personally Identifiable Data supplied to Kronos is accurate.

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Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Kronos and Kronos' Suppliers wherever located only for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out Kronos' duties and responsibilities under this Section D or as required by law.

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

13. INDEMNIFICATION

Indemnification will be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-2585.

14. LIMITATION OF LIABILITY

Limitation of Liability will be handled in accordance with Appendix A, Section 10K of. DIR Contract No. DIR-TSO-2585.

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EXHIBIT A

SERVICE LEVEL AGREEMENT (SLA)

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

99.75% Application Availability

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

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

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

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

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

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

Currently scheduled Maintenance Periods for the Services are:

Monday through Friday 04:00 am – 06:00 am (U.S. eastern time)

Saturday and Sunday 12:00 am – 06:00 am (U.S. eastern time)

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

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

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

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

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

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

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SECTION E

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

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

1. TERM

1.1 The Services shall be deemed to start on the earlier of: a) ninety (90) days from Kronos' receipt of the relevant Order Form; or, b) the date Customer is authorized to "go live" with the Services for production purposes, (the "Start Date"), and shall continue indefinitely on a month-to-month basis until terminated in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585. Customer acknowledges that execution of separate third party agreements may be required in order for Customer to "go live" with certain add-on features or functionality, including tax filing services ("Add-on Features"), as identified by Kronos on the Order Form.

1.2 Customer may terminate the Services or the Agreement for convenience in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585.

1.3 Either party may suspend or terminate the Services or the Agreement upon a material breach of the Agreement by the other party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Kronos may suspend or terminate the Services or the Agreement immediately upon notice in the event of any Customer breach. Termination shall be handled in accordance to Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585.

1.4 If the Agreement is terminated for any reason:

(a) Customer shall pay Kronos in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585 all fees accrued for the Services prior to the date of termination, provided that if Customer terminates Kronos for material breach of the Agreement, Kronos shall be responsible to refund to Customer unused pre-paid service fees, if any; (b) Customer's right to access and use the Services shall be revoked and be of no further force or effect;

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

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

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

2. FEES AND PAYMENT

2.1 In consideration of the delivery of the Services, Customer shall pay Contractor the Setup Fees, the Monthly Service Fees and any additional one time, set-up or recurring fees, all as defined on the Order Form. All fees payable for the Services shall be sent to the address specified on the Kronos invoice. Payments will be made in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585. Except as expressly set forth in this Section E, all amounts paid to Contractor are non-refundable.

2.2 The Setup Fees shall be invoiced upon execution of the Order and will be paid in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-2585. Customer acknowledges that setup fees may be charged to Customer by third parties for Add-on Features. Monthly Service fees shall be based on monthly periods that begin on the Start Date. Monthly Service Fees shall include fees for Equipment rental, if any, as described in Section 8 below. Monthly Service Fees for Services added on or before the 15th day of a given month will be charged for that full monthly period and each monthly period of the Term thereafter; Monthly Service Fees for Services added after the 15th day of a given month will begin to accrue as of the 1st day of the following month and will be charged for each monthly period of the Term thereafter. Monthly Service Fees shall be invoiced promptly following the end of the calendar month in which the Monthly Service Fees were accrued. Kronos will monitor Customer's "Usage" of the Services (as defined below) in order to calculate the Usage portion of the Monthly Service Fees to be charged. Usage of the Services, depending on applicable features, components, or services, shall be priced as identified on the Order Form and in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585 either on a: (a) per month basis; (b) per active employee (herein "Active Employee") per month usage basis; or, (c) per transaction basis (e.g.: pay statement). For purposes of the Agreement, an employee shall be deemed an Active Employee during any applicable billing period if through the Services: (i) time has been entered for such employee; (ii) records have been included for such employee for the purpose of processing payroll; (iii) records have been included for such employee within an import/export process; (iv) such employee has accessed the Services, regardless of the purpose; (v) benefit time has been accrued for such employee; (vi) human resource reporting has been performed for or on such employee; or, (vii) such employee has been marked as an "Active" status during the period.

2.3 Customer agrees that except in those circumstances in which Customer is entitled to invoke the termination for cause provision set forth in Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585., in consideration of Kronos' delivery of the Services on a variable fee basis, Customer agrees to pay Kronos each month during the Term in which charges accrue no less than the minimum monthly fees ("Minimum Monthly Fees") as identified on the Order Form. The Minimum Monthly Fees shall be calculated by Kronos based on Customer's anticipated monthly Usage of the Services plus Equipment rental fees, if any. In the event that Customer does not reach the anticipated Usage upon which the Minimum Monthly Fees was based for any given month during the Term, Customer shall remain responsible for paying the Minimum Monthly Fees for that month. If an Order Form or the Agreement is suspended by Kronos for non-payment or otherwise terminated by Kronos for cause, Customer shall remain liable to pay the applicable Minimum Monthly Fees up to and including the last day of the month in which the effective date of termination occurs. In the event of conflict, however, the DIR Contract No. DIR-TSO-2585 shall prevail.

2.4 Deleted intentionally.

2.5 Deleted Intentionally.

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3. LICENSE TO USE

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

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

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

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

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

4. ACCEPTABLE USE

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

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

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

5. CONNECTIVITY AND ACCESS

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

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

6. SUPPORT

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

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

7. CUSTOMER CONTENT

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

8. EQUIPMENT RENTAL

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

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

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

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

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

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

9. SERVICE LEVEL AGREEMENT

Kronos shall: (a) provide basic support for the services at no additional charge, (b) use commercially reasonable efforts to make the services available 24 hours a day, 7 days a week, except for: (i) planned downtime (when it shall give at least 8 hours notice via the services and shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday, eastern time), or (ii) any unavailability caused by circumstances beyond Kronos' reasonable control, including without limitation, acts of god, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Kronos employees), internet service provider failures or delays, or denial of service attacks, and (iii) provide services in accordance with applicable laws and government regulations..

10. LIMITED WARRANTY; DISCLAIMERS OF WARRANTY

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

10.2 Kronos' obligation and Customer's remedy for any breach of the above warranty is limited to Kronos' reasonable commercial efforts to correct the non-conforming Services at no additional charge to Customer. In the event that Kronos is unable to correct deficiencies in the Services, after using its commercially reasonable efforts to do so, Customer shall be entitled to terminate the then remaining term of the Order Form for cause in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2585. Kronos' obligations hereunder for breach of warranty are conditioned

Appendix D to DIR Contract No. DIR-TSO-2585

upon Customer notifying Kronos of the material breach in writing, and providing Kronos with sufficient evidence of such non-conformity to enable Kronos to reproduce and/or verify the same.

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

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

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

11.0 DATA SECURITY

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

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

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

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

12. RESPONSIBILITY OF CUSTOMER

Indemnification will be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-2585.

13. LIMITATION OF LIABILITY

Limitation of Liability will be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-2585.

Exhibit D
Non Discrimination Certification

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 29th day of May, 2018

CONTRACTOR	<u>immixTechnology, Inc.</u>
Authorized Signature	<u></u>
Title	<u>Sr Director</u>

Exhibit E
City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: ☐ immixTechnology, Inc.

Signature of Officer or
Authorized
Representative: ☐ *Vaughn Harman* Date: ☐ 5/29/18

Printed Name: ☐ Vaughn Harman

Title ☐ Sr Director