

VILLAGE OF DOWNERS GROVE
Report for the Village
2/5/2019

SUBJECT:	SUBMITTED BY:
Telestaff Platform Migration	Dave Kenny Director, Information Technology

SYNOPSIS

A resolution has been prepared authorizing the migration and upgrade of Workforce Telestaff from an on-premise solution to a hosted software-as-a-service (SaaS) solution with Kronos Incorporated of Lowell, Massachusetts in an amount of \$89,490 for three years.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Exceptional Municipal Services*.

FISCAL IMPACT

The cost for this contract in FY19 will be \$43,290. The FY19 Budget provides \$43,800 in the General Fund (Page 4-3, Line 18) for this contract.

RECOMMENDATION

Approval on the February 5, 2019 Consent Agenda.

BACKGROUND

Workforce Telestaff is an automated scheduling solution specifically developed for public safety agencies. The fire department has utilized Telestaff since 2007, and the police department has utilized Telestaff since 2009.

Many IT vendors are moving away from an on-premise platform to a cloud-based platform (SaaS – software as a service). The biggest difference between these two solution structures is how they are deployed. Cloud-based software is hosted on the vendor's servers and accessed through a web browser. On-premise software is installed locally, on a company's own computers and servers.

Another distinction is when the monetary investment is made. On-premise solutions usually have higher capital investment to procure the hardware and software but lower operational expense. Cloud-based solutions do not have the higher upfront and cyclical capital expenditures but have higher, annual subscription costs. When comparing the costs of the on-premise solution versus the cloud SaaS solution over a five year period, the cost is similar for the Village (not including phone usage costs).

There are three components in the proposal:

COMPONENT	COST: Year 1	COST: Year 2	COST: Year 3	COST: SUM
Migration	\$20,190.00	\$0.00	\$0.00	\$20,190.00
Subscription	\$19,200.00	\$19,200.00	\$19,200.00	\$57,600.00
IVR Service (estimate)	\$3,900.00	\$3,900.00	\$3,900.00	\$11,700.00
TOTALS:	\$43,290.00	\$23,100.00	\$23,100.00	\$84,490.00

The last component, IVR (interactive voice response) service, is the dial-out component used to contact staff via telephone for scheduling. The Village would be charged a “minute usage fee” at a rate of \$0.13 per minute in arrears. Staff analyzed current phone usage for dial-outs and estimate this cost to be \$3,900.00. This cost would be eliminated if communication is switched to text or email.

Staff recommends moving to the cloud-based SaaS model due to costs being approximately even, the ability to eliminate telephone lines and the greater uptime features that come with a hosted, cloud-based solution.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND KRONOS INCORPORATED**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Customer") and Kronos Incorporated ("Kronos"), for automated scheduling services for the Fire Department personnel, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk



Order Form - Workforce Central SaaS for SMB

Quote # 608028
Expires: 2/22/2019
Prepared By: Dylan Kennedy

Order Type: Standard
Date: 11/27/2018

Bill To: Attn: Dave Kenny
Village of Downers Grove (Fire)
6701 Main St
Downers Grove, IL 60516

Ship To: Attn: Dave Kenny
Village of Downers Grove (Fire)
6701 Main St
Downers Grove, IL 60516

Solution ID: 6104786
Currency: US
Customer PO #:
Data Center: USA

Email: duplication@kronos.com
FOB: Shipping Point
Ship Method: FedEx Ground
Freight Terms: Prepay & Add

Notes:

Initial Term: Three year
Billing Start Date: 90 days from execution of Order Form
Renewal Term: One Year
Payment Terms: Net 30
Billing Frequency (unless otherwise noted, all invoices are due per the payment terms noted above):
Applications: Annual in Advance
Professional Services: Monthly in Arrears as delivered
KnowledgePass & Education Subscription: Upon execution of Order Form

Customer agrees that in consideration of the foregoing and discounted pricing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Customer is giving up its right to use Customer's existing Kronos Workforce Telestaff software on a perpetual basis. Customer's existing Kronos Workforce Telestaff software will remain in effect and subject to the license and maintenance agreement for such software for a period of (ninety (90) days) from signature of this document by both parties, at which time Customer's license in such software shall terminate. The Kronos Workforce Central Software as a Service Terms and Conditions as agreed upon by Customer and Kronos apply to the Applications set forth on this order. As of the Billing Start Date, Kronos will credit any pre-paid but unused fees for support, maintenance, and hosting (if applicable) for such perpetual software licenses to be applied against amounts owed by Customer to Kronos hereunder until such pre-paid but unused fees are expended.

The Workforce TeleStaff bundle on this Order Form includes: Workforce TeleStaff Enterprise, Workforce TeleStaff Global Access, Workforce TeleStaff Institution Focus, Workforce TeleStaff Contact Manager and Workforce TeleStaff Bidding, Workforce TeleStaff Gateway Manager, and Workforce TeleStaff Gateway Manager Interface are licensed on per quantity basis and not a per employee basis and only need to be licensed once. The costs of any individual Application(s) included in the Workforce TeleStaff Bundle (i.e., Workforce TeleStaff Institution Focus) will be set forth on a mutually agreed upon Order Form based on Kronos' then current list price.

APPLICATIONS

Item	License/Qty	PEPM	Monthly Price
Workforce TeleStaff Enterprise v6	100	\$8.00	\$800.00
Workforce TeleStaff Global Access v6	100	\$0.00	Included
Workforce TeleStaff Institution Focus v6	100	\$0.00	Included
Workforce TeleStaff Contact Manager v6	100	\$0.00	Included
Workforce TeleStaff Gateway Manager v6	1	\$0.00	Included
Workforce TeleStaff Bidding v6	100	\$0.00	Included
Monthly Total:			\$800.00

CORP SMB PROFESSIONAL / EDUCATIONAL SERVICES

Item	Duration	Total Price
KnowledgePass SaaS WFC SMB		Included
Total Price		\$0.00

BILL AS YOU GO SERVICES

Item	Qty	Rate	Billing Role	Total Price
TSG Professional Services	11	\$180.00	Project Manager	\$1,980.00
TSG Professional Services	20	\$180.00	Solution Consultant	\$3,600.00
TSG Technical Services	17	\$215.00	Technology Consultant	\$3,655.00
TSG Solution Services	4	\$215.00	KSS Consultant	\$860.00
Total Price:				\$10,095.00

SUMMARY

Item	Total Price
Monthly Application Fee	\$800.00
Total Monthly Service Fees:	\$800.00
Bill As You Go Services	\$10,095.00
Total Bill As You Go:	\$10,095.00

Village of Downers Grove (Fire)

By: _____
Name: _____
Title: _____
Date: _____

Kronos Incorporated

By: *Mary Lavoie*
Name: _____
Title: _____
Date: _____

Signed by: Mary Lavoie, Business Project Manager, OM
Date & Time: Jan 28 2019 3:21 PM



Kronos | Time Attendance - Scheduling - Absence Management - HR & Payroll - Hiring - Labor Analytics



ORDER FORM

Quote#: 608043 - 1
 Expires: 22-FEB-2019
 Sales Executive: Kennedy, Dylan

Order Type: Upgrade US
 Date: 16-JAN-2019
 Page: 1/2

Bill To: VILLAGE OF DOWNERS GROVE (FIRE)
 6701 MAIN ST
 DOWNERS GROVE
 IL 60516
 United States

Ship To: Attn:MATT BEYER
 VILLAGE OF DOWNERS GROVE (FIRE)
 6701 MAIN ST
 DOWNERS GROVE
 IL 60516
 United States

Solution ID: 6104786

Contact: Dave Kenny
 Email: dkenny@downers.us
 Ship To Phone: 1 630 434-5962

Payment Terms: N30
 Currency: USD
 Customer PO Number:

FOB: Shipping Point
 Ship Method:
 Freight Term: Prepay & Add

Order Notes:

Kronos will invoice Customer each month in arrears for Workforce Telestaff IVR service usage fees for the total actual number of metered minutes used each month (the "Minute Usage Fee") at a rate of \$0.13 per minute.

Your Kronos solution includes:

SOFTWARE

Item	License/Qty	Total Price
WORKFORCE TELESTAFF IVR SERVICE	1	
	Total Price	0.00

SUPPORT SERVICES

Item	Duration	Total Price
UNLESS OTHERWISE NOTED ABOVE, SOFTWARE SUPPORT SERVICES HAVE BEEN DECLINED.		0.00
	Total Price	0.00

Item	Quantity	Total Price
SUBSCRIPTION SOFTWARE SERVICE	1	0.00
	Total Price	0.00

QUOTE SUMMARY

Description	Total Price
Subtotal	0.00
Deposit	0.00
Tax	0.00
Grand Total	0.00



Quote#: 608043 - 1

Page: 2/2

VILLAGE OF DOWNERS GROVE (FIRE)

Kronos Incorporated

Signed by: Mary Lavoie, Business Project Manager, OM
Date & Time: Jan 28 2019 3:21 PM

Signature: _____

Signature: Mary Lavoie

Name: _____

Name: _____

Title: _____

Title: _____

Effective Date: _____

Effective Date: _____



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



Professional Services Work Order

Opportunity ID: Opp-195380

Customer Name: Village of Downers Grove (Fire)

SID: 6104786

Customer Contact: Dave Kenny

Phone Number: 630-434-5544

Email Address: dkenny@downers.us

Currency: USD

Professional Services Objective/Outcome Deliverable

Technical Upgrade Service Scope to the Kronos Cloud

- * Cloud overview
- * Installation of Workforce TeleStaff (1) PROD and (1) DEV
- * System Overview
- * (4) hours of testing support
- * (4) hours of go live support

New Version Features Instructor-Led Training Course

- * Configure Aspect Evolution - Cloud Hosted
- * Single phone number is provisioned

4 KSS hours for custom payroll script

Assumptions

- * All services delivered remotely.
- * Customer is responsible for migration of the database to MS SQL prior to the upgrade.
- * Each upgrade is considered as "like-for-like" and does not include customizations, configuration, new features or functionality other than what is required by the new version.
- * Customer is responsible for recreating the tasks in excess of (5).
- * Customer is responsible for testing the upgraded database in the development environment, not to exceed a (4) week time period and should mimic current end to end persona-based tasks.
- * The project will be closed after eight weeks if customer testing stalls and forward progress toward go live on the upgraded database ceases.

Any additional time required to assist customer will be managed through a mutually agreed upon change order signed by both parties.

Budget

Professional Services	Part #	Billing Role	Contract Type	UOM	Qty.	Rate	Total Price
9990057-PRO		Project Manager	Time and Materials	Hours	11	\$180.00	\$1,980.00
9990057-PRO		Solution Consultant	Time and Materials	Hours	20	\$180.00	\$3,600.00
9990079-PRO		Technology Consultant	Time and Materials	Hours	17	\$215.00	\$3,655.00
9990060-PRO		KSS Consultant	Time and Materials	Hours	4	\$215.00	\$860.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
Total Professional Services							\$10,095.00

Sales Executive:	Dylan Kennedy	Create Date:	1/29/2019
Author:	Dylan Kennedy	Expiration Date:	2/28/2019

**ADDENDUM
KRONOS INCORPORATED
AND THE VILLAGE OF DOWNERS GROVE**

The following terms shall apply to the Workforce Central SaaS Agreement for software services between Kronos Incorporated ("Contractor") and the Village of Downers Grove ("Village"):

A. USE OF VILLAGE'S NAME

The Contractor is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

B. CAMPAIGN DISCLOSURE

Contractor shall execute the Campaign Disclosure Certificate, attached hereto.

C. PATRIOT ACT COMPLIANCE

The Contractor represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Contractor further warrants to the Village that the Contractor and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Contract on behalf of any person or entity named as a Specially Designated National and Blocked Person.

D. NONDISCRIMINATION

Contractor shall, as a party to a public contract:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) Certify that it is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of this Contract.

It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Contractor shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101 et. seq., and The Americans With Disabilities Act, 42 U.S.C. Sec. 12101 et. seq.

E. SEXUAL HARASSMENT POLICY

The Contractor, as a party to a public contract, represents that it has a written sexual harassment policy.

F. EQUAL EMPLOYMENT OPPORTUNITY

In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, the Contractor agrees as follows:

That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, sexual orientation, sexual identity or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military services.

That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

G. DRUG FREE WORK PLACE

Contractor, as a party to a public contract, certifies and agrees that it will provide a drug free workplace and that it has a policy addressing same.

H. STANDARD OF CARE

Services performed by Contractor under this Contract will be conducted in a manner

consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representations express or implied, and no warranty or guarantee is included or intended in this Contract, or in any report, opinions, and documents or otherwise.

I. GOVERNING LAW AND VENUE

This Contract will be governed by and construed in accordance with the laws of the State of Illinois without regard for the conflict of laws provisions.

J. COOPERATION WITH FOIA COMPLIANCE

Contractor acknowledges that the Freedom of Information Act may apply to public records in possession of the Contractor or a subcontractor. Contractor and all of its subcontractors shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 et.seq.

K. INSURANCE

The Contractor shall be required to obtain, from a company or companies lawfully authorized to do business in Illinois insurance coverage for a minimum of \$2 million for professional liability (errors and omissions).

CONTRACTOR:

Kronos Incorporated
Company Name

900 Chelmsford Street
Street Address of Company

Lowell, MA 01851-5114
City, State, Zip

978-250-9800
Business Phone

978-367-5900
Fax

Date: _____
Dylan.Kennedy@Kronos.com
Email Address

Dylan Kennedy
Contact Name (Print)

847 969 6557
Hour Telephone


Signature of Officer, Partner or Sole Proprietor

John O'Brien, Chief Revenue
Print Name & Title *officer*

ATTEST: If a Corporation


Signature of Corporation Secretary

VILLAGE OF DOWNERS GROVE:

Authorized Signature

Title

Date

CAMPAIGN DISCLOSURE CERTIFICATE

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the Contract, Contractor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

- Contractor has not contributed to any elected Village position within the last five (5) years.


John O'Brien
 Signature Print Name

- Contractor has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

 Signature

 Print Name

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

This is an Addendum to the agreement between Kronos and Customer governing those certain Kronos Workforce Telestaff software applications whether on a perpetual license basis or in a software as a service model (the "Agreement") between Village of Downers Grove ("Customer") and Kronos.

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

1. Description. Telestaff IVR is an Interactive Voice Response (IVR) solution, provided solely for Customer's internal use, by which Customer may initiate phone calls to staff members to fill vacancies or receive notifications of work opportunities for employees who are licensed to use the Kronos Workforce TeleStaff® product. Each exchanged message (notice, response, confirmation, denial) shall be considered an "Interaction."
2. Maintenance. Telestaff IVR maintenance will entitle Customer to Telestaff IVR phone support and software updates and shall commence upon the execution of the Order Form. For Workforce Telestaff IVR Service, maintenance will be provided at the same level of support as Customer's Workforce TeleStaff product at no additional charge. For Workforce Telestaff IVR License Per Port, if Customer wants maintenance for the Workforce Telestaff IVR License Per Port, Customer must purchase maintenance for both Workforce TeleStaff and Workforce Telestaff IVR License Per Port, and maintenance for Workforce Telestaff IVR License Per Port will be charged at the same level of support as Workforce TeleStaff (i.e., Gold or Platinum).
3. Implementation. To initiate and setup administration of the required communications, Kronos will perform the standard implementation of Telestaff IVR, including configuration, as described in the Statement of Work ("SOW") signed by the Customer. Any additional professional services for non-standard implementation services will be provided at mutually agreed upon rates subject to a separate Order Form or a separate statement of work mutually agreed upon by both parties.
4. Payment. Kronos will invoice Customer for the Telestaff IVR implementation/configuration professional services fees set forth in the applicable SOW and Order Form, pursuant to the Agreement and on the payment terms set forth therein. Kronos will invoice Customer as follows: (i) for the license fees and annual maintenance associated with the Workforce Telestaff IVR License Per Port, upon execution of the Order Form; or (ii) each month in arrears for the Workforce Telestaff IVR Service usage fees for the total actual number of metered minutes used each month (the "Minute Usage Fee") at a rate of \$0.13 per minute, subject to Section 7 below. Customer's right to begin using the service shall begin upon activation of the service after implementation/configuration.

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

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

damage or injury that may result from Customer's failure to abide by such Policy. Customer acknowledges that communications occurring through Telestaff IVR may be subject to standard mobile carrier policies or government regulatory requirements for mobile communications.

6. Telestaff IVR Security. The Telestaff IVR service relies upon a third party hosted communication platform. Accordingly, notwithstanding any other provision of the Agreement or this Addendum to the contrary, Customer understands and acknowledges that the exclusive statement of the security protections provided for i) Interactions by Customer and its employees through Telestaff IVR, and ii) all associated data, is part of the provider's privacy policy which is subject to change with prior written notice. The current security statement is as follows:

Security of Your Personal Information

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

7. Renewal and Termination. The initial term is twelve months commencing upon the execution of the Order Form. At the expiration of the initial term, unless the Order Form provides as different renewal period, the term shall automatically renew on an annual basis until terminated in accordance with the provisions hereof. At any time: (i) Customer may terminate the Telestaff IVR service for convenience upon thirty (30) days prior written notice, and (ii) Kronos may terminate the Telestaff IVR service for convenience upon one hundred and twenty (120) days prior written notice. Kronos may increase the per minute rate upon renewal with sixty (60) days prior written notice for use based Telestaff IVR.

AGREED AND ACCEPTED

CUSTOMER:

By: _____

Name: _____

Title: _____

Date: _____

KRONOS:

By:  _____

Name: John O'Brien

Title: Chief Revenue Officer

Date: January 25, 2019

WORKFORCE CENTRAL - SOFTWARE AS A SERVICE TERMS AND CONDITIONS

Village of Downers Grove ("Customer") defined to include Customer's Affiliate's (as such term is defined herein) and Kronos Incorporated agree that the terms and conditions set forth below shall apply to the Kronos supply of the commercially available version of the Workforce Central SaaS Applications in Kronos' hosting environment, the services related thereto, and the sale or rental of Equipment (if any) specified on a Kronos Order Form. The Applications described on the Order Form shall be delivered by means of Customer's permitted access to the Kronos infrastructure hosting such Applications.

Kronos and Customer hereby further agree that Kronos and/or its direct and indirect majority owned subsidiaries may enter into orders with Customer and/or its direct and indirect majority owned subsidiaries subject to the terms and conditions of this Agreement. By signing and entering into an Order Form that expressly references this Agreement, each such subsidiary of Kronos and/or Customer will be deemed to have agreed to be bound by the terms and conditions of this Agreement and all references in this Agreement to "Kronos" shall be references to the applicable Kronos entity entering into the order, and all references in this Agreement to "Customer" shall be references to the applicable Customer entity entering into the order.

I. DEFINITIONS

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

"Agreement" means these terms and conditions and the Order Form(s).

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

"Affiliate" means any department, organization or other business entity that is controlled by or is under common control with Customer excluding any entity that is a competitor of Kronos. "Control" means ownership of at least fifty percent (50%) of the voting capital stock or other interest having voting rights with respect to the election of the board of directors or similar governing authority.

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

"Cloud Services" means those services related to Customer's cloud environment as further described at: <http://www.kronos.com/products/workforce-central-cloud/cloud-guidelines.aspx>

"Confidential Information" means any non-public information of a party or its Suppliers relating to such entity's business activities, financial affairs, technology, marketing or sales plans that is disclosed pursuant to this Agreement and reasonably should have been understood by the receiving party, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary or confidential to the disclosing party or its Suppliers.

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

"Documentation" means user manuals published by Kronos relating to the features and functionality of the Applications.

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

"Implementation Services" means those professional and educational services provided by Kronos to set up the cloud environment and configure the Applications. Unless otherwise set forth on an Order Form as "a la carte" services (supplemental fixed fee, fixed scope services) or "bill as you go" services (time and material services described in a Statement of Work), Kronos will provide, as part of the Monthly Service Fee for the Applications, the fixed fee, fixed scope Implementation Services described in the Services Implementation Detail set forth at: <https://www.kronos.com/wfc-saas-implementation-guideline-details-flat-fee>

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

“**KnowledgePass Content**”/“**KnowledgePass Education Subscription**” have the meanings ascribed in Section 7.5.

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

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

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

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

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

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

“**Supplier**” means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Services. Kronos may at its sole discretion replace a Supplier, provided that a change to Supplier will not have a materially adverse effect on the Services delivered by Kronos under this Agreement.

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

“**Training Points**” has the meaning ascribed to it in Section 7.6 below.

2. TERM

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

2.2 Either party may terminate the Services and this Agreement to be effective at the expiration of the then current Term upon no less than 60 days prior written notice.

2.3 Either party may terminate the Services and the Agreement upon a material breach of the Agreement by the other party if such breach is not cured within 15 days after receipt of written notice.

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

2.5 If the Agreement is terminated for any reason:

- (a) Customer shall pay Kronos within thirty (30) days of such termination, all fees accrued and unpaid under this Agreement prior to the effective date of such termination, provided however, if Customer terminates for material breach of the Agreement by Kronos, Kronos shall refund Customer any pre-paid fees for Services not delivered by Kronos;
- (b) Customer’s right to access and use the Applications shall be revoked and be of no further force or effect and return rented Equipment as provided in Section 9.1 below;
- (c) Customer agrees to timely return all Kronos-provided materials related to the Services to Kronos at Customer’s expense or, alternatively, destroy such materials and provide Kronos with an officer’s certification of the destruction thereof; and
- (d) All provisions in the Agreement, which by their nature are intended to survive termination, shall so survive.

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

3. FEES AND PAYMENT

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

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

3.3 At the later of (i) one (1) year after the effective date of this Agreement, or (ii) expiration of the Initial Term, and at each annual anniversary of that date thereafter, Kronos may increase the Monthly Service Fee rates in an amount not to exceed three percent (3%). The increased Monthly Service Fees will be reflected in the monthly invoice following the effective date of such increase without additional notice.

4. RIGHTS TO USE

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

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

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

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

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

5. ACCEPTABLE USE

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

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

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

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

6. CONNECTIVITY AND ACCESS

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

7. IMPLEMENTATION AND SUPPORT

7.1 *Implementation Services.* Kronos will provide the Implementation Services to Customer. Implementation Services described in an SOW are provided on a time and materials basis, billed monthly as delivered unless otherwise indicated on the Order Form. Implementation Services described in the Services Implementation Guideline are provided on a flat fee basis. If Customer requests additional Implementation Services beyond those described in the Services Implementation Guideline, Kronos will create a change order for Customer's review and approval and any additional Implementation Services to be provided by Kronos will be billed as delivered at the then-current Kronos professional services rates. Kronos' configuration of the Applications will be based on information and work flows that Kronos obtains from Customer during the discovery portion of the implementation. Customer shall provide Kronos with all necessary and accurate configuration-related information in a timely manner to ensure that mutually agreed implementation schedules are met. In the event that Kronos is required to travel to Customer's location during the implementation, Customer agrees to pay any travel expenses, such as airfare, lodging, meals and local transportation, plus an administrative fee of ten percent (10%) of the amount of such travel expenses, incurred by Kronos in accordance with the then-current standard Kronos travel and expense policies, which Kronos will provide to Customer upon request. Kronos shall invoice Customer for such travel expenses and payment thereof shall be due net thirty (30) days from date of invoice. Kronos' then-current Professional/Educational Services Policies shall apply to all Implementation Services provided by Kronos and may be accessed at: <http://www.kronos.com/Support/ProfessionalServicesEngagementPolicies.htm> ("Professional Services

Policies"). In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

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

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

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

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

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

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

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

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

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

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

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

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

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

7.5 KnowledgePass Education Subscription. When KnowledgePass Education Subscription is purchased on an Order Form (i.e., not indicated as "Included" in the Monthly Service Fees), Kronos will provide Customer with the KnowledgePass Education Subscription for a period of one (1) year from execution of the Order Form. Kronos will send Customer a renewal invoice for renewal of the KnowledgePass Education Subscription, and the KnowledgePass Education Subscription shall renew for an additional one (1) year term if Customer pays such invoice before the end of the then-current term for 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**" are points which are purchased by Customer that may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos. Training Points may be redeemed only during the Term but only prior to the date which is no more than 12 months after the date of the Order

Form pursuant to which the Training Points were acquired, after which time such Training Points shall expire and be of no value. Training Points may not be exchanged for other Kronos products or services.

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

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

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

8. CUSTOMER CONTENT

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

9. EQUIPMENT

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

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

(a) **Rental Term and Warranty Period.** The term of the Equipment rental and the "Warranty Period" for such Equipment shall run coterminously with the Term of the other Services provided under the Agreement.

(b) **Insurance.** Customer shall insure the Equipment for an amount equal to the replacement value of the Equipment for loss or damage by fire, theft, and all normal extended coverage at all times. No loss, theft or damage after shipment of the Equipment to Customer shall relieve Customer from Customer's obligations under the Agreement.

(c) **Location Replacement.** Customer shall not make any alterations or remove the Equipment from the place of original installation without Kronos' prior written consent. Kronos shall have the right to enter Customer's premises to inspect the Equipment during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to Customer, to replace any Equipment with newer or alternative technology Equipment as long as the replacement Equipment at least provides the same level of functionality as that being replaced.

(d) **Ownership.** All Equipment shall remain the property of Kronos. All Equipment is, and at all times shall remain, separate items of personal property, notwithstanding such Equipment's attachment to other equipment or real property. Customer shall not sell or otherwise encumber the Equipment. Customer shall furnish any assurances, written or otherwise, reasonably requested by Kronos to give full effect to the intent of terms of this paragraph (d).

(e) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in Section 7.

(f) **Return of Equipment.** Upon termination of the Agreement or the applicable Order Form, Customer shall return, within thirty (30) days of the effective date of termination and at Customer's expense, the Equipment subject to this Section 9.1. Equipment will be returned to Kronos in the same condition as and when received, reasonable wear and tear excepted. If Customer fails to return Equipment within this time period, upon receiving an invoice from Kronos, Customer shall pay Kronos the then list price of the unreturned Equipment.

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

(a) **Title and Warranty Period.** When the Order Form indicates FOB – Shipping Point, title to the Equipment passes to Customer upon delivery to the carrier; for all other shipping terms, title passes upon delivery to Customer. The “**Warranty Period**” for the Equipment shall be for a period of 90 days from such delivery (unless otherwise required by law).

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

10. SERVICE LEVEL AGREEMENT

Kronos shall provide the service levels and associated credits, when applicable, in accordance with the Service Level Agreement attached hereto as Exhibit 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 Applications at no additional charge to Customer. In the event that Kronos is unable to correct material deficiencies in the Services arising during the Warranty Period, after using Kronos’ commercially reasonable efforts to do so, Customer shall be entitled to terminate the then remaining Term of the Agreement as Customer’s sole and exclusive remedy. Kronos’ obligations hereunder for breach of warranty are conditioned upon Customer notifying Kronos of the material breach in writing, and providing Kronos with sufficient evidence of such non-conformity to enable Kronos to reproduce or verify the same.

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

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

EXCEPT AS PROVIDED FOR IN THIS SECTION 11, KRONOS HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTIES AND REPRESENTATIONS RELATING TO THE SERVICES, EXPRESS OR IMPLIED, ORAL OR IN WRITING, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WHETHER OR NOT ARISING THROUGH A COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT MAY OTHERWISE ARISE PURSUANT TO ANY STATUTE, CODE, COMMON LAW OR JUDICIAL DECISION. THE SERVICES ARE NOT GUARANTEED TO BE ERROR-FREE OR UNINTERRUPTED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, KRONOS MAKES NO WARRANTIES OR

REPRESENTATIONS CONCERNING THE COMPATIBILITY OF THE SERVICES, THE SAAS APPLICATIONS OR THE EQUIPMENT NOR ANY RESULTS TO BE ACHIEVED THEREFROM.

12. 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>

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

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

13. INDEMNIFICATION

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

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

13.3 Customer shall defend Kronos, its Suppliers and their respective directors, officers, employees, agents and independent contractors (collectively, the "**Kronos Indemnified Parties**") from and against any and all Claims, and will indemnify and hold harmless the Kronos Indemnified Parties against liabilities, obligations, costs or expenses (including without limitation reasonable attorneys' fees), arising out of: (a) employment-related claims arising out of Customer's configuration of the Services; (b) Customer's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification or combination is the cause of such infringement and was not authorized by Kronos; or, (c) a claim that the Customer Content infringes in any manner any intellectual property right of any third party, or any of the Customer Content contains any material or information that is obscene,

defamatory, libelous, or slanderous violates any person's right of publicity, privacy or personality, or has otherwise caused or resulted in any tort, injury, damage or harm to any other person. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise. Kronos will cooperate fully at Customer's expense with Customer in the defense, settlement or compromise of any such action.

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

14. LIMITATION OF LIABILITY

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

14.2 - EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 13 ABOVE, THE TOTAL AGGREGATE LIABILITY OF KRONOS OR KRONOS' SUPPLIERS TO CUSTOMER AND/OR ANY THIRD PARTY IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES PROVEN BY CUSTOMER. SUCH DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS RECEIVED BY KRONOS FOR THE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH SUCH CLAIM ARISES.

14.3 EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 13 ABOVE, IN NO EVENT SHALL KRONOS OR KRONOS' SUPPLIERS, THEIR RESPECTIVE AFFILIATES, SERVICE PROVIDERS, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICES INTERRUPTION, HOWEVER CAUSED, ARISING FROM OR RELATED TO THE SERVICES OR THE AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, WHETHER BREACH OF WARRANTY, INDEMNIFICATION, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, AND WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER KRONOS OR SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE.

14.4 - EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY, INCLUDING WITHOUT LIMITATION LIABILITY RELATED TO A BREACH OF DATA SECURITY AND CONFIDENTIALITY OBLIGATIONS, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING WITHOUT LIMITATION VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT, SAAS APPLICATIONS OR SYSTEMS, OR MACHINE ERROR.

15. CONFIDENTIAL INFORMATION

15.1 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 the other Party's Confidential Information, or use it for any purpose not explicitly authorized herein, without the prior written consent of the other Party. The obligation of confidentiality shall survive for 5 years after the return of such Confidential Information to the disclosing party or 5 years after the expiration or termination of the Agreement, whichever is later, as applicable. Notwithstanding anything herein to the contrary, each party acknowledges and agrees that all trade secrets shall be safeguarded by a

receiving party as required by this Agreement for so long as such information remains a trade secret pursuant to applicable law.

15.2 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 have executed a non-disclosure agreement with obligations at least as stringent as this Section 15, or (c) by law, or by a court or governmental agency, or if necessary in any proceeding to establish rights or obligations under the Agreement; provided, the receiving party shall, unless legally prohibited, provide the disclosing party with reasonable prior written notice sufficient to permit the disclosing party an opportunity to contest such disclosure. If a party commits, or threatens to commit, a breach of this Section 15, the other party shall have the right to seek injunctive relief from a court of competent jurisdiction.

15.3 This Agreement imposes no obligation upon either Party with respect to the other Party's Confidential Information which the receiving Party can establish: (a) is or becomes generally known through no breach of the Agreement by the receiving party, or (b) is already known or is independently developed by the receiving party without use of or reference to the Confidential Information.

16. EXPORT

Customer understands that any export of the Equipment may require an export license and Customer assumes full responsibility for obtaining such license. Customer must obtain Kronos' prior written consent before exporting the Equipment.

17. GENERAL

17.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to any conflict of law provisions. The parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of the Agreement and waive and "opt out" of the Uniform Computer Information Transactions Act (UCITA), or such other similar law.

17.2 The invalidity or illegality of any provision of the 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.

17.3 Customer shall not assign the Agreement or the rights to use the Services without the prior written consent of Kronos and any purported assignment, without such consent, shall be void.

17.4 Neither Party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement (other than a failure to comply with payment obligations) where and to the extent that such failure or delay results from an unforeseeable event beyond a party's reasonable control, including but not limited to, acts of war; acts of nature; earthquake; flood; embargo; riot; sabotage; labor shortage or dispute; changes in government codes, ordinances, laws, rules, regulations or restrictions; failure of the Internet; terrorist acts; failure of data, products or services controlled by any third party, including the providers of communications or network services; utility power failure; material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefor, or lack of or delay in transportation (each a "**Force Majeure Event**").

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

17.6 Intentional Omitted. .

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

17.8 The parties agree that if the Agreement is accepted by the parties and that acceptance is delivered via fax or electronically delivered via email or the internet it shall constitute a valid and enforceable agreement.

17.9 This Agreement and any information expressly incorporated by reference herein, together with the applicable Order Form and Addenda, constitute the entire agreement between the parties for the Services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos may disclose to customers certain confidential information regarding general Service or product development direction, potential future Services, products or product enhancements under consideration. Customer is not entitled to any Services, 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 Services (including SaaS Applications or equipment) identified on an Order Form, nor any other future product in executing the Agreement.

CUSTOMER AGREES TO THESE TERMS AND CONDITIONS FOR ALL ORDER FORMS FOR THE SERVICES. THE INDIVIDUAL ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO CONTRACTUALLY BIND CUSTOMER.

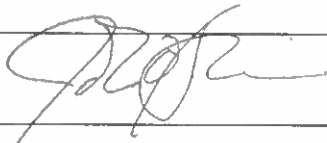
Village of Downer Grove	Kronos Incorporated
Dated:	Dated: January 25, 2019
By:	By: 
Name:	Name: John O'Brien
Title:	Title: Chief Revenue Officer

EXHIBIT A

SERVICE LEVEL AGREEMENT (SLA)

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

99.75 % Application Availability

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

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

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

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

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

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

Customer Specific Maintenance Period

1. Customer will choose one of the following time zones for their Maintenance Period:
 - a. United States Eastern Standard Time,
 - b. GMT/UTC,
 - c. Central European Time (CET) or
 - d. Australian Eastern Standard Time (AEST).

2. Customer will choose one of the following days of the week for their Maintenance Period: Saturday, Sunday, Wednesday or Thursday.
3. Kronos will use up to six (6) hours in any two (2) consecutive rolling months (specifically: January and February; March and April; May and June; July and August; September and October; November and December) to perform Customer Specific Maintenance, excluding any customer requested Application updates. Downtime in excess of these six (6) hours will be deemed to be an Outage.
4. Customer Specific Maintenance will occur between 12am-6am during Customer's selected time zone.
5. Excluding any customer requested Application updates, Kronos will provide notice for planned downtime via an email notice to the primary Customer contact at least seven (7) days in advance of any known downtime so planning can be facilitated by Customer.
6. Customer Specific Maintenance Windows also include additional maintenance windows mutually agreed upon by Customer and Kronos.
7. In absence of instruction from Customer, Kronos will by default perform Maintenance in the time zone where the Data Center is located.

Non-Customer Specific Maintenance Period

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

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

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

Reporting and Claims Process: Service Credits will not be provided if: (a) Customer is in breach or default under the Agreement at the time the Outage occurred; or (b) the Outage results from an Excluded Event.

Kronos will provide Customer with an Application Availability report on a monthly basis for each prior calendar month. Within sixty (60) days of receipt of such report, Customer must request the applicable Service Credit by written notice to Kronos. Customer waives any right to Service Credits not requested within this time period. All performance calculations and applicable Service Credits are based on Kronos records and data unless Customer can provide Kronos with clear and convincing evidence to the contrary.

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

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