

SPONSOR:

Ken Stewart

## ORDINANCE NO. 30-06

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT BETWEEN KRONOS INCORPORATED, 297 BILLERICA ROAD, SHELMSFORD, MA. 01824, AND THE CITY OF JACKSON, OHIO, FOR A NEW TIMEKEEPING SYSTEM FOR THE CITY, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

**Section One.** The Mayor and/or City Council President is authorized to enter into an Agreement, and to sign any associated or ancillary documents, between Kronos Incorporated, 297 Billerica Road, Chelmsford, Ma., 01824, and the City of Jackson, Ohio, to provide a new timekeeping system for the City of Jackson, Ohio. This Agreement shall be a lease agreement for a term of 36 months. A copy of the Agreement is attached hereto as Exhibit "A". The cost of this contract shall be in an total amount of Fifty Seven Thousand Five Hundred Sixty-Nine and 60/100 dollars (\$57,569.60), and shall be paid from line item 110-7715-54008 (Auditor's Office – IT Expense).

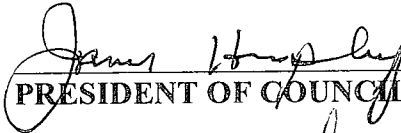
**Section Two.** This Ordinance is hereby declared to be an emergency Ordinance necessary for the immediate preservation of the public peace, health, or safety of the City of Jackson, in that it is necessary to enter into this agreement as soon as possible in order to implement the new timekeeping system. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

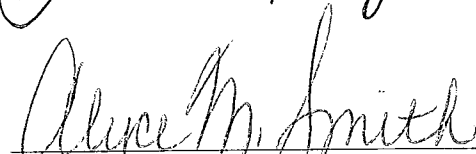
**Section Three.** In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

Section Four.

It is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: 2/27/06

  
PRESIDENT OF COUNCIL

  
CLERK OF COUNCIL

Approved:

Date: 2/27/06

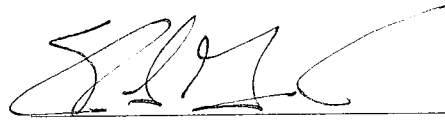
  
MAYOR

EXHIBIT "A"



Kronos Incorporated  
297 Billerica Road  
Chelmsford, MA 01824  
Telephone: 1-978-250-9800

Quote#: 37174 - 1  
Date: 07-FEB-2006  
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KRONOS SALES, SOFTWARE LICENSE AND SERVICES AGREEMENT Rev KR-040405

Customer and Kronos agree that the terms and conditions set forth: i) in Section A of this Agreement apply to all Equipment and Software specified on a Kronos order form (the "Order Form"); ii) in Section B apply to all Software, firmware (contained in or downloaded to the Equipment), and Training Materials specified on the Order Form; iii) in Section C apply to all Professional Services, if any, specified on the Order Form; iv) in Section D apply to all Software Support Services, if any, specified on the Order Form; and v) in Section E of the Agreement apply to all items specified on the Order Form and supplement the terms of Sections A through D. For purposes of this Agreement, the term "Customer" shall include Customer's parent company as well as Customer's wholly owned subsidiaries, if any.

SECTION A. TERMS AND CONDITIONS APPLICABLE TO EQUIPMENT AND SOFTWARE ONLY

1. PAYMENT AND DELIVERY

Payment terms are indicated on the Order Form or other contemporaneous ordering document containing product-specific payment terms signed by the parties. Delivery terms are as stated on the Order Form ("Delivery").

2. 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 the data base server(s) and/or personal computer(s); and c.) implementation team training, if any, is complete. During the Test Period, Customer shall determine whether the Equipment and Software meet the Kronos published electronic documentation, ("Specifications"). The Test Period shall be for 30 days. If Customer has not given Kronos a written deficiency statement specifying how the Equipment or Software fails to meet the Specifications ("Deficiency Statement") within the Test Period, the Equipment and Software shall be deemed accepted. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, and Customer shall have an additional 30 days to evaluate the Equipment and Software. If the Equipment or Software does not meet the Specifications at the end of the second 30 day period, either Customer or Kronos may terminate this Agreement. Upon any such termination, Customer shall return all Equipment and Software to Kronos, and Kronos shall refund any monies paid by Customer to Kronos therefor. Neither party shall then have any further liability to the other for the products that were the subject of the Acceptance Test.

3. 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 exclusive remedy shall be Kronos' repair or replacement of the deficient Equipment and/or Software media, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Specifications. This warranty is extended to Customer only and shall not apply to any Equipment, (or parts thereof) or Software media in the event of:

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

If Customer is licensing Workforce Payroll Software the following additional warranty exclusions shall apply: i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using the Software. (ii) using the 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 the Software for any advice or guidance regarding compliance with federal and state laws or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using the Software and satisfy itself that those calculations are correct.

4. INDEMNIFICATION

Kronos agrees to indemnify Customer and to hold it harmless from and against any and all claims, costs, fees and expenses (including reasonable legal fees) relating to actual or alleged infringement of U.S. patents or copyrights asserted against Customer by virtue of Customer's use of the Software as delivered and maintained by Kronos, provided that: i) Kronos is given prompt written notice of any such claim and has sole control over the investigation, preparation, defense and settlement of such claim; and, ii) Customer reasonably cooperates with Kronos in connection with the foregoing and provides Kronos with all information in Customer's possession related to such claim and any further assistance as reasonably requested by Kronos. Kronos will have no obligation to indemnify Customer to the extent any such claim is based on the use of the Software with software or equipment not supplied by Kronos. Should any or all of the Software as delivered and maintained by Kronos become, or in Kronos' reasonable opinion be likely to become, the subject of any such claim, Kronos may at its option: i) procure for Customer the right to continue to use the affected Software as contemplated hereunder; ii) replace or modify the affected Software to make its use non-infringing; or iii) should such options not be available at reasonable expense, terminate this Agreement with respect to the affected Software upon thirty (30) days prior written notice to Customer. In such event of termination, Customer shall be entitled to a pro-rata refund of all fees paid to Kronos for the affected Software, which refund shall be calculated using a five year straight-line depreciation commencing with the date of the relevant Order.



Kronos Incorporated  
297 Billerica Road  
Chelmsford, MA 01824  
Telephone: 1-978-250-9800

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SECTION B. LICENSE TERMS APPLICABLE TO SOFTWARE (INCLUDING SOFTWARE DOCUMENTATION), FIRMWARE AND TRAINING MATERIALS ONLY

GENERAL LICENSE TERMS

Kronos owns or has the right to license the Software. The Software and Software documentation are confidential and may not be disclosed to a third party without Kronos' written consent. The Software contains proprietary trade secret technology. Unauthorized use and copying of such Software is prohibited by law, including United States and foreign copyright law. The price Customer pays for a copy of the Software constitutes a license fee that entitles Customer to use the Software as set forth below. Kronos grants to Customer a non-exclusive, nontransferable, perpetual (except as provided herein) license to use the Software. This license may be terminated by Kronos by written notice to Customer upon any material breach of this Agreement by Customer. This license is subject to all of the terms of this Agreement, including those set forth below:

(a) FEE BASED LIMITATIONS

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by Customer. Limitations, which are set forth on the Order Form, may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number, and/or the number of 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 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, 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 sublicense 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.

(b) 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.

(c) PERMITTED COPIES

Customer may copy the Programs as reasonably necessary to load and execute the Programs and for backup purposes only. All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this license, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer.

(d) 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.

(e) CUSTOMER TERMINATION

Customer may terminate this license at any time by returning to Kronos the original copy of the Software and destroying all other copies of the Software. Upon termination of this license by Kronos, Customer will return the original Software to Kronos and destroy all other copies of the Software.

(f) ISERIES SOFTWARE

If Customer is licensing Kronos iSeries Central Software, the following additional terms shall apply: Upon Customer's request and full payment of all license fees, Kronos shall license to Customer, for Customer's internal use only, the source code for the Kronos iSeries Central application programs licensed to Customer under this license. All of the terms and conditions specified in this Agreement for object code shall also apply to the source code. Customer acknowledges and agrees that the Software, all source code, object code and algorithms relating thereto, all user interface screens generated by the Software and source code, and all copyright, trade secret and other proprietary rights therein, are and shall remain the sole and exclusive property of Kronos. Customer agrees that it shall not disclose or otherwise make the Software available to third parties unless and to the extent such disclosure is necessary for Customer's permitted use of the Software. Furthermore, Customer must obtain Kronos' written consent to any such disclosure and any such third party must agree in writing to be bound by the terms contained herein.

(g) MICROSOFT SQL SERVER SOFTWARE

If Customer is sublicensing Microsoft SQL Server software, the following additional terms shall apply: The Microsoft SQL Server software being sublicensed hereunder ("SQL") as part of the Kronos Software is "Runtime-Restricted Use" software; as such, SQL may only be used to run the Software. SQL may not be used either (i) to develop and/or (ii) in conjunction with, new applications, databases or tables other than those contained in the Software. The foregoing, however, does not prohibit Customer from using a tool to run queries or reports from existing tables, and/or from using a development environment of workbench, which is part of the Software to configure or extend such Software. Notwithstanding any provision



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of this Agreement, Customer may only transfer SQL as part of the Software. Customer also agrees to use the Microsoft SQL Server software only on the servers, processors or other electronic devices which the Software is permitted to be connected.

#### (h) RESTRICTED RIGHTS

Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (c)(1)(2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, as applicable. Manufacturer/distributor is Kronos Incorporated, 297 Billerica Road, Chelmsford, MA 01824.

#### (i) TRAINING MATERIALS

If Customer is licensing Training Materials and/or purchasing the Kronos Train-the Trainer (KTTT) Program (the "Certification Program"), the following additional terms shall apply: "Training Materials" shall mean the instructor guide(s), student guide(s), job aids, recorded executable files, and/or tutorials developed by Kronos for one or more Kronos products. Kronos grants to Customer a non-exclusive, nontransferable license to use the Training Materials. Customer recognizes and agrees that: i) the Training Materials constitute confidential and proprietary information of Kronos; ii) the Training Materials are copyrighted by Kronos; iii) the license to use the Training Materials is limited, based upon the amount of the license fee paid by Customer; iv) Customer may not copy or reproduce the Training Materials in excess of the number of copies permitted by the applicable license fee; v) Customer may not transmit, distribute or disclose the Training Materials to any third party, unless agreed to in writing by Kronos; vi) Customer's license to use the Training Materials is granted solely for the purpose of permitting Customer to train Customer's employees and no other use of the Training Materials is permitted; and vii) Customer may not edit, modify, revise, amend, change, alter, customize or vary the Training Materials in any manner without the written consent of Kronos. Certification under the Certification Program is valid for two (2) years after successful completion of the Certification Program, applies only to the point release of the Software for which the Certification Program is taken, and covers only the Customer employee who completes the Certification Program.

### SECTION C. TERMS AND CONDITIONS APPLICABLE TO PROFESSIONAL SERVICES AND EDUCATIONAL SERVICES ONLY

#### 1. ESTIMATED PROFESSIONAL SERVICES RESOURCES AND HOURS

Customer recognizes and agrees that the Kronos professional services resources ("PS Resources") identified and the hours defined within any Professional Services Estimate (PSE), or similar statement of work document that may be provided by Kronos, have been estimated based upon: (i) the preliminary information provided by Customer; and, (ii) Customer fulfilling its obligations as defined in the PSE or similar statement of work document. Additional PS Resources and/or hours may be required to complete the implementation as a result of newly discovered information, Customer's delay in fulfilling its obligations, or a change in the scope of the project. Kronos will review with Customer the PS Resources and the number of hours Kronos anticipates will be required for the completion of the work after assessment of Customer's requirements. Kronos will monitor the PS Resources and hours used as the work progresses, and will advise Customer through a change order if more are required. The applicable rate for each PS Resource is set forth in the PSE and/or the Order Form and shall remain in effect for 12 months from the effective date of the PSE or similar statement of work document. Pricing for professional services associated with the implementation of add-on Software licensed subsequent to an initial PSE will be priced at the then-current Kronos professional service rates.

#### 2. EDUCATIONAL SERVICES/TRAINING POINTS

Customer agrees to purchase the quantity of Kronos "training points" indicated on the Order Form at the rate quoted (the "Training Points"). Purchased Training Points may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos. Available instructor-led sessions are listed at <http://customer.kronos.com> and each session has the Training Points value indicated. Training Points may be redeemed at any time within 12 months of the date of the applicable Order Form, at which time they shall expire. Training Points may not be exchanged for other Kronos products and/or services.

#### 3. PROFESSIONAL SERVICES AND EDUCATIONAL SERVICES PAYMENT

Kronos will invoice Customer for professional services at the PS Resrouce rates and on the payment terms indentified in the PSE and/or the Order Form. Kronos will invoice Customer for the Training Points identified in the Order Form on the payment terms indicated therein.

#### 4. TRAVEL EXPENSES

Customer agrees to reimburse Kronos for all reasonable and necessary travel incurred by Kronos in the performance of any professional and/or educational services, provided that such expenses comply with the then current Kronos' Travel and Expense Policies. Customer further agrees to pay any travel expenses such as airfare, lodging, meals and local transportation incurred by Kronos to deliver purchased professional services and/or educational services in accordance with Kronos' Travel and Expense Policies. Customer will be billed by Kronos for such travel expenses and payment thereof shall be due net 30.

#### 5. WARRANTY

Kronos warrants that all professional and educational services performed under this Agreement shall be performed in a professional and competent manner. In the event that Kronos breaches this warranty, and Customer so notifies Kronos within 90 days of completion of the Services, the Customer's sole remedy and Kronos' exclusive liability shall be to reperform the deficient services.



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## 6. KRONOS PROFESSIONAL/EDUCATIONAL SERVICES POLICIES

Kronos' then-current Professional/Educational Services Policies shall apply to all Professional and/or Educational Services purchased 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.

## SECTION D. TERMS AND CONDITIONS APPLICABLE TO SOFTWARE SUPPORT SERVICES ONLY

### 1. SUPPORT OPTIONS

Customer may select from the following Software support purchase options: Silver, 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 (see Section 11 below). Customer must purchase the same Service Type for all of the Software specified on the Order Form, (however, if Customer is purchasing support services for Visionware Software, Customer may only purchase Gold Service Type for the Visionware Software.) All Updates shall be provided via remote access. Customer may purchase support services for Equipment under a separate agreement.

### 2. TERM OF SOFTWARE SUPPORT

Support service shall commence on the Software Delivery date and shall continue for an initial term of one (1) year. Support service shall automatically renew for additional one year terms on the anniversary date of its commencement date, unless either party notifies the other in writing thirty (30) days prior to that anniversary renewal date. After the one year initial term of this Agreement, the Service Offerings provided and the Service Coverage period are subject to change by Kronos with thirty (30) 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 5% over the prior year's annual support fee.

### 3. SERVICE OFFERINGS PROVIDED FOR ALL SERVICE TYPES (SILVER, GOLD, GOLD PLUS, PLATINUM OR PLATINUM PLUS)

Customer shall be entitled to receive:

- (a) 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 Service Packs, Point Releases and/or Major Releases (including legislative updates, if available) or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' then-current time and materials rate.
- (b) Telephone and/or electronic access to the Kronos Global Support Center for the logging of requests for service during the Service Coverage Period.
- (c) Web-based support including access to Software documentation, live online help, FAQ's, access to Kronos knowledge base, Customer forums, e-case management and e-mail support. Such offerings are subject to modification by Kronos. Current offerings can be found at [www.kronos.com/customer](http://www.kronos.com/customer).
- (d) Remote diagnostic technical assistance may be utilized to resolve Software functional problems and user problems during the service coverage period.

### 4. SERVICE OFFERINGS ADDITIONAL TO THOSE SPECIFIED IN SECTION D.3 ABOVE, PROVIDED BY SERVICE TYPE:

- (a) Gold and Platinum: Technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerforce and service case studies. Such offerings are subject to modification by Kronos without notice.
- (b) Gold Plus: Customers purchasing Gold support service may purchase, for an additional fee, the Gold Plus services of a dedicated, but not exclusive, Kronos technical account manager ("Technical Account Manager") to provide on-going account management support to Customer. Customer shall designate up to one primary and one secondary backup technical contact ("Technical Contacts") to be the sole contacts with the Technical Account Manager. Customer is required to place primary Technical Contacts through Kronos certification support training for the Software covered under this Agreement at Customer's expense.
- (c) Platinum: A one day per year visit to be performed at the Customer location where the Software is installed. During this onsite visit, a Kronos application consultant shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment, provided Customer's annual Software support fee is at least \$5,000 per year. Customer must be utilizing the then-current version of the Software. Travel time and expenses are not included and shall be charged to Customer at Kronos' then-current rate.  
Platinum

Customers also receive a two hour or less response time for all calls placed to Kronos Global Support, regardless of the Priority level.

- (d) Platinum Plus: Customers purchasing Platinum support services may purchase, for an additional fee, the Platinum Plus services of a dedicated, but not exclusive, Kronos Technical Account Manager. Customer shall designate up to two primary and three secondary backup Technical Contacts to be the sole contacts with the Technical Account Manager. Upon request, Customer may designate additional and/or backup Technical Contacts.



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Customer is required to place all primary Technical Contacts through Kronos certification support training for the software covered under this Agreement at Customer's expense.

#### 5. PAYMENT

Customer shall pay annual support charges for the initial term in accordance with the payment terms on the Order Form and for any renewal term within thirty (30) days after receipt of invoice. Customer shall pay additional support charges, if any, and time and material charges upon receipt of invoice. Customer agrees to pay all applicable taxes levied or based on the service or other charges hereunder, including state and local sales and excise taxes, and any taxes or amount in lieu thereof paid or payable by Kronos, exclusive of taxes based on net income.

#### 6. ADDITION OF SOFTWARE

Additional Software purchased by Customer during the initial or any renewal term shall be added to this Agreement at the same support option as the then current Software support coverage in place under these terms. Customer agrees to pay the charges for such addition, and any such addition shall be automatically renewed as provided in these terms.

#### 7. RESPONSIBILITIES OF CUSTOMER

Customer agrees (a) to provide Kronos personnel with full, free and safe access to Software for purposes of support, including use of data communication facilities, if required; (b) to maintain and operate the Software in an environment and according to procedures which conform to Kronos' specifications; and (c) not to allow support of the Software by anyone other than Kronos without prior written authorization from Kronos.

#### 8. DEFAULT

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

#### 9. WARRANTY

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

#### 10. LIMITATION OF REMEDIES

Except as provided in Section D.8 above, Customer's exclusive remedy, and the sole liability of Kronos, for any breach of the support service warranty specified above, shall be repeat performance of any support service required under this Agreement. Kronos agrees to be liable for tangible property damage or personal injury caused solely by the negligence or willful misconduct of its support service employees.

#### 11. KRONOS SUPPORT SERVICE POLICIES

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

### SECTION E. TERMS AND CONDITIONS APPLICABLE TO ALL ORDERED ITEMS AND SERVICES

#### 1. APPLICABILITY

The terms of this Section E supplement the terms of Sections A through D above and apply to all items specified on the Order Form.

#### 2. APPROVAL

All orders are subject to the approval of Kronos' corporate office in Chelmsford, Massachusetts.

#### 3. OVERDUE AMOUNTS

Customer agrees to pay a late charge of one percent (1%) per month, (but not in excess of the rate allowed by law), on any overdue amounts not the subject of a good faith dispute. If full payment is not made within 90 days of final payment due date, Customer is responsible for all expenses, including legal fees, incurred by Kronos for collection.

#### 4. LIMITATION OF LIABILITY

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





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INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

EXCEPT FOR KRONOS' INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION A.4 ABOVE, IN NO EVENT SHALL KRONOS' OR ITS PARENTS', SUBSIDIARIES' AFFILIATES' OR THIRD PARTY LICENSOR'S LIABILITY TO A CUSTOMER, HOWSOEVER CAUSED, EXCEED THE VALUE OF THE ORDER WHICH GIVES RISE TO THE CLAIM, AND IN NO EVENT WILL KRONOS OR ITS PARENTS, SUBSIDIARIES AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

#### 5. FUTURE PURCHASES

For two (2) years following the execution of this Agreement Customer may order additional Equipment, Software and Services under the terms and conditions hereof (subject to then applicable pricing) by placing an order which expressly references these terms. Thereafter, the terms and conditions of this Agreement may be renewed for additional one year periods upon the mutual agreement of the parties. This Agreement and the Order Form shall supercede 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 Equipment, Software and/or Services ordered.

#### 6. CONFIDENTIAL INFORMATION

Confidential Information means any information of one party that is clearly marked as "confidential" and that is disclosed to the other party pursuant to this Agreement. Additionally, the terms, conditions and pricing contained in this Agreement and the Order Form, the Software (and Software documentation), and the Specifications shall be deemed to be Kronos' Confidential Information. Each party shall protect the Confidential Information of the other party with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such party utilizes for its own information of similar character that it does not wish disclosed to the public. Neither party shall disclose to third parties (except the parent company or the wholly owned subsidiaries of the disclosing party who have a need to know) the other party's Confidential Information, or use it for any purpose not explicitly set forth herein, without the prior written consent of the other party. The obligation of confidentiality shall survive for three (3) years after the disclosure of such Confidential Information.

This Agreement imposes no obligation upon either party with respect to the other party's Confidential Information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party, (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; (d) is independently developed by the receiving party without use of the disclosing party's confidential information, which can be shown by tangible evidence; or (e) was required to be disclosed by applicable law; provided that the receiving party notifies the disclosing party of such requirement prior to disclosure, and provided further that the receiving party makes diligent efforts to limit disclosure. Customer agrees that Kronos may use Customer's name as part of Kronos' published customer lists.

#### 7. GENERAL

- (a) This Agreement shall be governed by Massachusetts law.
- (b) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.
- (c) Customer shall not assign this Agreement or the license to the Software without the prior written consent of Kronos and any purported assignment, without such consent, shall be void.
- (d) Neither party shall be liable for failures or delays in performance due to causes beyond its reasonable control, including war, strikes, lockouts, fire, flood, storm or other acts of God. Both parties agree to use their best efforts to minimize the effects of such failures or delays.
- (e) All notices given under this Agreement shall be in writing and sent postage pre-paid, if to Kronos, to the Kronos address on the Order Form, or if to Customer, to the billing address on the Order Form.
- (f) Customer understands that any export of the Equipment or Software or related documentation or information may require an export license and Customer assumes full responsibility for obtaining such license. Customer must obtain Kronos' prior written consent before exporting the Software.
- (g) No action, regardless of form, may be brought by either party more than two (2) years after the cause of action has arisen.
- (h) The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.
- (i) This Agreement and any information expressly incorporated herein (including information contained in any referenced URL), together with the applicable Order Form, constitute the entire agreement between the parties for the products and services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

ADDENDUM TO LEASE SCHEDULE # \_\_\_\_\_  
BETWEEN

KRONOS INCORPORATED  
AS "KRONOS"  
AND

\_\_\_\_\_  
AS "CUSTOMER"

DATED \_\_\_\_\_

This addendum shall become a part of the above-referenced Lease Schedule ("Schedule") IF, AND ONLY IF, there is an EXPLICIT REFERENCE to this Addendum on the face of the Schedule.

If funds are not appropriated for any succeeding fiscal year, subsequent to the one in which the Schedule was entered into, which are sufficient to satisfy any or all of Customer's obligations under the Schedule during said fiscal period, and if all the conditions listed below are met, then Customer shall return the Products pursuant to Section 1.3 of the Kronos Incorporated Master Lease Agreement ("Agreement"), and the Schedule will be terminated in accordance with the provisions herein.

1. Customer has exhausted all funds available for all payments due under the Schedule, and
2. The financial or administrative officer for Customer properly and in a timely manner requested sufficient funds to satisfy the obligations due under the Schedule and diligently pursued and exercised all reasonable efforts to obtain such funds from the governing body which controls such appropriations, and
3. Customer has paid all such amounts due during the fiscal period(s) preceding the fiscal period for which sufficient funds were not appropriated, and
4. Kronos has received, within thirty (30) days of the adoption of the final budget for the fiscal year in question, a written opinion of Customer's counsel, or other written evidence satisfactory to Kronos verifying that funds were not appropriated and the occurrence of the events set forth above.

No termination of the Schedule shall occur without written notification from Kronos to Customer. If the Schedule is terminated in accordance with this Addendum, Customer shall not (1) purchase, lease or rent equipment performing functions similar to those performed by the Products, or (2) obtain services similar to those performed by the Products from any agency, service bureau or entity hired by Customer until after the expiration of the term of the Schedule. This provision survives any termination of the Schedule.

By execution hereof, Customer represents, covenants, and warrants that (1) it is a fully constituted political entity, subdivision, or agency of or within a state in which the Products are located and is authorized by the constitution and laws of such state to enter into the transactions contemplated by the Agreement and Schedule and to carry out its obligations hereunder, and (2) it has complied with any and all applicable bidding requirements, and (3) it has made sufficient appropriations or has other funds available to pay all amounts due under the Schedule for the current fiscal year, and (4) it will make *bona fide* best efforts to include in its annual or biennial budgets amounts sufficient to pay all sums due during each fiscal period.

The foregoing is approved and agreed to as an Addendum to and part of the Lease Schedule # \_\_\_\_\_.

KRONOS INCORPORATED

CUSTOMER

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

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

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

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



# Kronos Lease Schedule to Master Lease Agreement

Kronos Incorporated  
297 Billerica Road  
Chelmsford, MA 01824  
Telephone: 1-978-250-9800

Quote# : 37174 - 1  
Date : 07-FEB-2006  
Page : 1 / 8

# \_\_\_\_\_

Customer PO Number

Sales Representative Porter, Rex I  
Order Type Upgrade US

Bill To Attn: Accounts Payable  
CITY OF JACKSON  
145 BROADWAY ST  
JACKSON  
OH 45640  
United States

Ship To Attn: WENDY SEXTON  
CITY OF JACKSON  
145 BROADWAY ST  
JACKSON  
OH 45640  
United States

FOB Shipping Point  
Ship Method

License Contact Wendy Sexton  
License Email wsexton@jacksonohio.us

SPECIAL INSTRUCTIONS:  
Platform upgrade from TKC to WFC.

**Kronos Leasing**

Lease Term: 36 Months Purchase Option: \$1.00 Lease Schedule # \_\_\_\_\_  
# of Payments: 36 Lease Billing Period: Monthly  
Total Periodic Lease Charges: \$1,755.87  
Advance Payment: \$3,511.74 to be applied to the FIRST AND LAST payment.  
Security Deposit: N/A

Lease Commencement Date (60 days after shipment) 04/01/2006

NOTE:  
This Lease Schedule is hereby amended by the Addendum to Lease Schedule \_\_\_\_\_.

CONTACT INFO:

Acct #6003299  
Wendy Sexton  
740.286.2423  
wsexton@jacksonohio.us

Line	Product	Product Description	Units	Qty	License Capacity/ Billing Role	Unit Price Selling (USD)	Total Price Selling (USD)
1.2	8800036-000	WORKFORCE TK v5	EA	1	125	6,250.00	6,250.00
1.2.1	SILVER-WFC	Silver Support Service	CON	1		2,812.50	2,812.50
Duration: 3 YR							
1.3	8800039-000	WORKFORCE MANAGER v5	EA	1	9	2,268.00	2,268.00
1.3.1	SILVER-WFC	Silver Support Service	CON	1		1,026.60	1,026.60
Duration: 3 YR							
1.4	8800037-000	WORKFORCE ACCRUALS v5	EA	1	125	2,500.00	2,500.00
1.4.1	SILVER-WFC	Silver Support Service	CON	1		1,125.00	1,125.00
Duration: 3 YR							
1.6	8700474-001	SW KIT,WF TIMEKEEPER v5.1	EA	1		0.00	0.00



# Kronos Lease Schedule to Master Lease Agreement

Quote# : 37174 - 1  
Date : 07-FEB-2006  
Page : 2 / 8

Kronos Incorporated  
297 Billerica Road  
Chelmsford, MA 01824  
Telephone: 1-978-250-9800

# \_\_\_\_\_

Line	Product	Product Description	Units	Qty	License Capacity/ Billing Role	Unit Price Selling (USD)	Total Price Selling (USD)
2.0	9990002-ONL	MOMENTUM ONLINE	HR	29	Project Manager	187.50	5,437.50
3.0	9990002-ONL	MOMENTUM ONLINE	HR	148	Application Consultant	187.50	27,750.00
4.0	TRAINPTS	Training Points	PTS	5900		1.00	5,900.00
5.0	8602590-777	CEG,WTK5.1 ENTERING TIME,TUTRL	EA	1		500.00	500.00
6.0	8602589-777	CEG,WTK5.1 MNGTCD&SCH JAVA,TUT	EA	1		1,000.00	1,000.00
7.0	8602591-777	CEG,WTK5.1 CREAT&MNT SCHED,TUT	EA	1		1,000.00	1,000.00
<b>Total Amount Financed</b>							<b>57,569.60</b>

Article 2.2 of Master Lease # \_\_\_\_\_ is hereby superseded by the following terms: "Title to all Equipment listed on this schedule shall pass to Customer upon shipment, subject to the retention of a security interest as set forth in Article 10.10 and subject to Kronos' right of repossession as set forth in Article 7." Customer agrees that this Lease Schedule is deemed part of and incorporated by reference into Master Lease Agreement # \_\_\_\_\_.

<b>CITY OF JACKSON</b>	<b>Kronos Incorporated</b>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Effective Date: _____	

[COUNSEL LETTERHEAD]

**OPINION OF COUNSEL**

Kronos Incorporated  
Leasing Division  
300 Billerica Road  
Chelmsford, MA 01824

RE: Kronos Master Lease Agreement # \_\_\_\_\_ between Kronos Incorporated,  
as Kronos, and \_\_\_\_\_, as Customer ("Agreement"), Lease Schedule  
("Schedule") and Addendum to Lease Schedule ("Addendum").

Gentlemen:

As legal counsel to \_\_\_\_\_ ("Customer"), I have examined the  
Kronos Master Lease Agreement # \_\_\_\_\_ ("Agreement"), the Lease Schedule  
("Schedule") and the Addendum ("Addendum") attached thereto, all by and between  
Kronos and Customer, which, among other things provides for the lease with option to  
purchase by Customer certain Hardware listed in the Schedule, the license by Customer  
of certain Software listed in the Schedule, and the maintenance of such Hardware and  
Software.

Based on the foregoing, I am of the following opinions:

1. Customer is a public body, corporate and politic, duly organized and existing under the laws of the State of \_\_\_\_\_ and has the power and authority to enter into the Agreement and Schedule and has complied with all bidding requirements.
2. The execution, delivery and performance of the Agreement, Schedule and Addendum have been duly authorized, executed and delivered by Customer, and constitute a legal, valid and binding obligation, contract and agreement of Customer enforceable in accordance with their terms.
3. \_\_\_\_\_ is duly authorized to execute and deliver in the name of and on behalf of Customer the Agreement, Schedule, and Addendum and other related agreements.

Very Truly Yours,

By \_\_\_\_\_  
Counsel

