



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-13957

Upon motion of Supervisor Parker, seconded by Supervisor Salinas and carried by those members present, the Board of Supervisors hereby:

- a. Authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute a five year agreement with Kronos Inc. including one (1) Amendment, to the Kronos Agreement, for software support and professional services at NMC for an amount not to exceed \$1,439,000 with an agreement term July 1, 2018 through June 30, 2023; and
- b. Authorized the Deputy Purchasing Agent for NMC or his designee to execute up to one (1) future amendment to the agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) (143,900) of the original cost of the agreement per the amendment.

PASSED AND ADOPTED on this 12th day of June 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Salinas, Parker and Adams

NOES: None

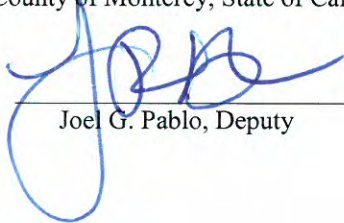
ABSENT: Supervisor Phillips

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 81 for the meeting June 12, 2018.

Dated: June 26, 2018
File ID: A 18-190

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By


Joel G. Pablo, Deputy

WORKFORCE CENTRAL - SOFTWARE AS A SERVICE TERMS AND CONDITIONS

County of Monterey, DBA Natividad Medical Center (“Customer”) and Kronos 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 County of Monterey, DBA Natividad Medical Center’s permitted access to the Kronos infrastructure hosting such Applications.

Kronos and County of Monterey, DBA Natividad Medical Center hereby further agree that Kronos and/or its direct and indirect majority owned subsidiaries may enter into orders with County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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 “County of Monterey, DBA Natividad Medical Center” shall be references to the applicable County of Monterey, DBA Natividad Medical Center entity entering into the order.

1. 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> . The then-current policy is attached as Exhibit B.

“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 County of Monterey, DBA Natividad Medical Center to use under the terms of this Agreement.

“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 County of Monterey, DBA Natividad Medical Center after the date of this Agreement which are incremental to County of Monterey, DBA Natividad Medical Center’s then-existing Services shall be the date the applicable Order Form is executed by Kronos and County of Monterey, DBA Natividad Medical Center.

“Cloud Services” means those services related to County of Monterey, DBA Natividad Medical Center’s cloud environment as further described at: <http://www.kronos.com/products/workforce-central-cloud/cloud-guidelines.aspx> The then-current policy is attached as Exhibit C.

“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.

“County of Monterey, DBA Natividad Medical Center Content” means all content County of Monterey, DBA Natividad Medical Center, or others acting on behalf of or through County of Monterey, DBA Natividad Medical Center, 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. County of Monterey, DBA Natividad Medical Center 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.

“Minimum Contract Value” means the total of all Monthly Service Fees to be invoiced during the Initial Term or a Renewal Term, as applicable.

“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 County of Monterey, DBA Natividad Medical Center setting forth the items ordered by County of Monterey, DBA Natividad Medical Center and to be provided by Kronos, including without limitation the prices and fees to be paid by County of Monterey, DBA Natividad Medical Center. The Order Form for the conversion from perpetual on-premise licensing to SaaS is attached hereto as Exhibit 1.

“Personally Identifiable Data” means information concerning individually identifiable employees of County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center area of a Kronos website, and all such services, items and offerings accessed by County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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 five (5) year Term or until terminated in accordance with the provisions of the Agreement. At the expiration of the Initial five (5) year Term, the parties may agree to enter into an additional one (1) year Renewal Term by way of an amendment to this Agreement.

2.2 County of Monterey, DBA Natividad Medical Center may terminate the Services and this Agreement for convenience upon sixty (60) days prior written notice subject to County of Monterey, DBA Natividad Medical Center’s payment of the Minimum Contract Value. Kronos may terminate the Services and this Agreement to be effective at the expiration of the then current Term upon no less than sixty (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 thirty (30) 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 ten (10) business 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) County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center terminates for material breach of the Agreement by Kronos, Kronos shall refund County of Monterey, DBA Natividad Medical Center any pre-paid fees for Services not delivered by Kronos;

(b) County of Monterey, DBA Natividad Medical Center'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) County of Monterey, DBA Natividad Medical Center agrees to timely return all Kronos-provided materials related to the Services to Kronos at County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center Content shall be available to County of Monterey, DBA Natividad Medical Center to retrieve at any time and at no additional charge throughout the Term and for no more than thirty (30) 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 County of Monterey, DBA Natividad Medical Center Content and will securely delete all County of Monterey, DBA Natividad Medical Center Content without liability of any kind.

2.7 Customer's payments to Kronos under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued to allow for County of Monterey, DBA Natividad Medical Center to acquire the indicated quantity of Services on the applicable Order Form, then County of Monterey, DBA Natividad Medical Center may give written notice of termination in accordance with Section 2.2 without being subject to pay the Minimum Contract Value, and the obligations of the parties under this Agreement shall terminate, unless in the meanwhile the parties enter into a written amendment modifying this Agreement. In the event Customer invokes this right of termination, Customer agrees to pay for all goods delivered and services provided prior to the date of termination. Notwithstanding the foregoing, Customer agrees that it shall not execute an Order Form to acquire goods and services unless it has the funding allocated to pay for such items listed on the applicable Order Form.

3. FEES AND PAYMENT

3.1 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center, unless otherwise indicated on an Order Form. Kronos shall submit such invoice periodically or some services will be prepaid in advance of completion of services, but in any event, invoices need to be submitted no later than 30 days after completion of services. The invoice shall set forth the amounts claimed by Kronos for the invoice period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice, it is understood that some services are billed annually in advance and any professional or implementation services are billed monthly in arrears. "). If County of Monterey, DBA Natividad Medical Center disagrees with Kronos on the amount of an invoice, County of Monterey, DBA Natividad Medical Center shall work with Kronos in good faith to correct the invoice. Pending settlement or resolution of the dispute, County of Monterey, DBA Natividad Medical Center non-payment of such disputed items shall not constitute default by County of Monterey, DBA Natividad Medical Center

All payments not under a under a good faith dispute 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. County of Monterey, DBA Natividad Medical Center 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 thirty (30) or more days overdue, Kronos may, without limiting Kronos' rights or remedies, suspend Services until such amounts are paid in full. Kronos will provide at least seven (7) days' prior written notice that County of Monterey, DBA Natividad Medical Center'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 four percent (4%). The increased Monthly Service Fees will be reflected in the monthly invoice following the effective date of such increase without additional notice.

3.4 County of Monterey, DBA Natividad Medical Center agrees that except if County of Monterey, DBA Natividad Medical Center terminates for material breach of the Agreement by Kronos, if County of Monterey, DBA Natividad Medical Center has not paid the Minimum Contract Value to Kronos prior to the expiration or termination of the Initial five (5) year Term, as applicable, County of Monterey, DBA Natividad Medical Center shall pay within thirty (30) days of the date of such expiration or termination, the difference between the total Monthly Service Fees then paid by County of Monterey, DBA Natividad Medical Center for the Initial five (5) year Term, as applicable, and the Minimum Contract Value, less SLA Credits, if any, that have been earned previously by County of Monterey, DBA Natividad Medical Center but not yet credited.

4. RIGHTS TO USE

4.1 Subject to the terms and conditions of the Agreement, Kronos hereby grants County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center shall not reverse compile, disassemble or otherwise convert the Applications or other software comprising the Services into uncompiled or unassembled code. County of Monterey, DBA Natividad Medical Center 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. The then-current policy is attached as Exhibit D. County of Monterey, DBA Natividad Medical Center acknowledges that execution of separate third party agreements may be required in order for County of Monterey, DBA Natividad Medical Center to use certain add-on features or functionality, including without limitation tax filing services.

4.2 County of Monterey, DBA Natividad Medical Center acknowledges and agrees that the right to use the Applications is limited based upon the amount of the Monthly Service Fees paid by County of Monterey, DBA Natividad Medical Center. County of Monterey, DBA Natividad Medical Center agrees to use only the modules and/or features for the number of employees and users as described on the Order Form. County of Monterey, DBA Natividad Medical Center agrees not to use any other modules or features nor increase the number of employees and users unless County of Monterey, DBA Natividad Medical Center pays for such additional modules, features, employees or users, as the case may be. County of Monterey, DBA Natividad Medical Center may not license, relicense or sublicense the Services, or otherwise permit use of the Services (including timesharing or networking use) by any third party. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center may authorize its third party contractors and consultants to access the Services through County of Monterey, DBA Natividad Medical Center's administrative access privileges on an as needed basis, provided County of Monterey, DBA Natividad Medical Center: 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 County of Monterey, DBA Natividad Medical Center acknowledges and agrees that, as between County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center, County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by County of Monterey, DBA Natividad Medical Center through the Services.

4.5 When using and applying the information generated by the Services, County of Monterey, DBA Natividad Medical Center is responsible for ensuring that County of Monterey, DBA Natividad Medical Center complies with applicable laws and regulations. If the Services include the Workforce Payroll Applications or Workforce Absence Management Applications: (i) County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center of any professional obligation concerning the preparation and review of any reports and documents, (iii) County of Monterey, DBA Natividad Medical Center 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) County of Monterey, DBA Natividad Medical Center will review any calculations made by using these Applications and satisfy itself that those calculations are correct.

5. ACCEPTABLE USE

5.1 County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center is responsible for all activities undertaken under the auspices of its passwords and other login credentials to use the Services.

5.2 County of Monterey, DBA Natividad Medical Center represents and warrants to Kronos that County of Monterey, DBA Natividad Medical Center has the right to publish and disclose the County of Monterey, DBA Natividad Medical Center Content in connection with the Services. County of Monterey, DBA Natividad Medical Center represents and warrants to Kronos that the County of Monterey, DBA Natividad Medical Center Content will comply with the Acceptable Use Policy.

5.3 County of Monterey, DBA Natividad Medical Center 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

County of Monterey, DBA Natividad Medical Center acknowledges that County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under the Agreement. County of Monterey, DBA Natividad Medical Center will make all necessary arrangements as may be required to provide access to County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center. 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. The initial SOW for Consulting Services, Implementation of Workforce Advanced Scheduler and the Upgrade to Version 8.1 are attached hereto as Exhibits 2-A, 2-B, and 2-C. Implementation Services described in the Services Implementation Guideline are provided on a flat fee basis. If County of Monterey, DBA Natividad Medical Center requests additional Implementation Services beyond those described in the Services Implementation Guideline, Kronos will create a change order for County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center during the discovery portion of the implementation. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center's location during the implementation, County of Monterey, DBA Natividad Medical Center agrees to pay any travel expenses, such as airfare, lodging, meals and local transportation, of the amount of such travel expenses, incurred by Kronos in accordance with the Monterey County Travel Policy describe in the Exhibit E, which Kronos shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by Kronos for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.. If County of Monterey, DBA Natividad Medical Center disagrees with Kronos on the amount of an invoice, County of Monterey, DBA Natividad Medical Center shall work with Kronos in good faith to correct the invoice. Pending settlement or resolution of the dispute, County of Monterey, DBA Natividad Medical Center non-payment of such disputed items shall not constitute default by County of Monterey, DBA Natividad Medical Center. County of Monterey, DBA Natividad Medical Center upon request. Kronos shall invoice Customer for such travel expenses and payment thereof shall be due net thirty (30) days from the date of the 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> The then-current policy is attached as Exhibit F. ("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. County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center may log questions online via the Kronos County of Monterey, DBA Natividad Medical Center Portal. As part of such support, Kronos will make updates to the Services available to County of Monterey, DBA Natividad Medical Center at no charge as such updates are released generally to Kronos' County of Monterey, DBA Natividad Medical Centers. County of Monterey, DBA Natividad Medical Center 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> The then-current policy is attached as Exhibit G. ("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 County of Monterey, DBA Natividad Medical Center 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) County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center has selected Depot Exchange or Depot Repair Equipment Support Services, the following provisions shall apply: Upon the failure of installed Equipment, County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if County of Monterey, DBA Natividad Medical Center is to return the failed Equipment to Kronos, as reasonably determined by Kronos. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center's location as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center, 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, County of Monterey, DBA Natividad Medical Center shall install a Spare Product (as defined below) to replace the failed Equipment. County of Monterey, DBA Natividad Medical Center shall then return the failed Equipment, with the required RMA, to the applicable Kronos Depot Repair Center. County of Monterey, DBA Natividad Medical Center shall make reasonable efforts to return the failed Equipment using the same or substantially similar packing materials in which the original Equipment was sent. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center. Kronos shall ship the repaired Equipment by regular surface transportation to County of Monterey, DBA Natividad Medical Center.

(ii) Device Software Updates Only. If County of Monterey, DBA Natividad Medical Center has selected Device Software Equipment Support Services, County of Monterey, DBA Natividad Medical Center 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' County of Monterey, DBA Natividad Medical Center portal. Service packs for the Equipment are not installed by the Kronos Depot Repair Center but are available for download at Kronos' County of Monterey, DBA Natividad Medical Center portal, provided County of Monterey, DBA Natividad

Medical Center 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 County of Monterey, DBA Natividad Medical Center. In the event of a breach of this warranty, County of Monterey, DBA Natividad Medical Center's exclusive remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that County of Monterey, DBA Natividad Medical Center's use, installation and maintenance thereof have conformed to the specifications.

(c) *Responsibilities of County of Monterey, DBA Natividad Medical Center.* It is County of Monterey, DBA Natividad Medical Center's responsibility to purchase and retain, at County of Monterey, DBA Natividad Medical Center's location and at County of Monterey, DBA Natividad Medical Center's sole risk and expense, a sufficient number of spare products ("**Spare Products**") to allow County of Monterey, DBA Natividad Medical Center to replace failed Equipment at County of Monterey, DBA Natividad Medical Center's locations in order for County of Monterey, DBA Natividad Medical Center to continue its operations while repairs are being performed and replacement Equipment is being shipped to County of Monterey, DBA Natividad Medical Center. For each of the Depot Exchange and Depot Repair Equipment Support Services options, County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center. In addition, County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center are DAP (Incoterms 2010) to the applicable County of Monterey, DBA Natividad Medical Center location, and are DDP (Incoterms 2010) to the applicable Kronos Depot Repair Center when County of Monterey, DBA Natividad Medical Center is shipping to Kronos, and with title passing upon delivery to the identified destination. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center with the KnowledgePass Education Subscription for a period of one (1) year from execution of the Order Form. Kronos will send County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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**"). County of Monterey, DBA Natividad Medical Center recognizes and agrees that the KnowledgePass Content is copyrighted by

Kronos. County of Monterey, DBA Natividad Medical Center is permitted to make copies of the KnowledgePass Content provided in *pdf form solely for County of Monterey, DBA Natividad Medical Center's internal use. County of Monterey, DBA Natividad Medical Center may not disclose such KnowledgePass Content to any third party other than County of Monterey, DBA Natividad Medical Center's employees. County of Monterey, DBA Natividad Medical Center may not edit, modify, revise, amend, change, alter, customize or vary the KnowledgePass Content without the written consent of Kronos, provided that County of Monterey, DBA Natividad Medical Center may download and modify contents of training kits solely for County of Monterey, DBA Natividad Medical Center's internal use.

7.6 Training Points. "Training Points" are points which are purchased by County of Monterey, DBA Natividad Medical Center 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 twelve (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 County of Monterey, DBA Natividad Medical Center, County of Monterey, DBA Natividad Medical Center'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. The then-current policy is attached as Exhibit H.

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 County of Monterey, DBA Natividad Medical Center.

7.8 Technical Account Manager. County of Monterey, DBA Natividad Medical Centers 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. County of Monterey, DBA Natividad Medical Center will designate up to two primary and three secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM. Upon request, County of Monterey, DBA Natividad Medical Center may designate a reasonable number of additional and/or backup Technical Contacts. County of Monterey, DBA Natividad Medical Center is required to place all primary Technical Contacts through Kronos training for the Applications covered under this Agreement at County of Monterey, DBA Natividad Medical Center's expense.

8. COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER CONTENT

County of Monterey, DBA Natividad Medical Center shall own all County of Monterey, DBA Natividad Medical Center Content. Kronos acknowledges that all of the County of Monterey, DBA Natividad Medical Center Content is deemed to be the Confidential Information of County of Monterey, DBA Natividad Medical Center. County of Monterey, DBA Natividad Medical Center will ensure that all County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center Content from time to time to provide the Services and to ensure compliance with this Agreement and applicable law. County of Monterey, DBA Natividad Medical Center is solely responsible for any claims related to County of Monterey, DBA Natividad Medical Center Content and for properly handling and processing notices that are sent to County of Monterey, DBA Natividad Medical Center regarding County of Monterey, DBA Natividad Medical Center Content.

9. EQUIPMENT

If County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center shall relieve County of Monterey, DBA Natividad Medical Center from County of Monterey, DBA Natividad Medical Center's obligations under the Agreement.

(c) Location/Replacement. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center's premises to inspect the Equipment during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to County of Monterey, DBA Natividad Medical Center, 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. County of Monterey, DBA Natividad Medical Center shall not sell or otherwise encumber the Equipment. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center the Equipment support services described in Section 7.

(f) Return of Equipment. Upon termination of the Agreement or the applicable Order Form, County of Monterey, DBA Natividad Medical Center shall return, within thirty (30) days of the effective date of termination and at County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center fails to return Equipment within this time period, upon receiving an invoice from Kronos, County of Monterey, DBA Natividad Medical Center shall pay Kronos the then list price of the unreturned Equipment.

9.2 Purchased Equipment. The following terms apply only to Equipment County of Monterey, DBA Natividad Medical Center purchases from Kronos:

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

(b) Equipment Support. Kronos shall provide to County of Monterey, DBA Natividad Medical Center the Equipment support services described in this Agreement if purchased separately by County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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. COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER'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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center's sole and exclusive remedy for any breach of the foregoing warranty is limited to Kronos' reasonable commercial efforts to correct the non-conforming Services at no additional charge to County of Monterey, DBA Natividad Medical Center. 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, County of Monterey, DBA Natividad Medical Center shall be entitled to terminate the then remaining Term of the Agreement as County of Monterey, DBA Natividad Medical Center's sole and exclusive remedy. Kronos' obligations hereunder for breach of warranty are conditioned upon County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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, County of Monterey, DBA Natividad Medical Center's sole and exclusive remedy shall be Kronos' repair or replacement of the deficient Equipment, at Kronos' option, provided that County of Monterey, DBA Natividad Medical Center's use, installation and maintenance thereof have conformed to the Documentation for such Equipment. This warranty is extended to County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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.

12.0 DATA SECURITY

12.1 As part of the Services, Kronos shall provide those administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of County of Monterey, DBA Natividad Medical Center data as described at: <http://www.kronos.com/products/workforce-central-cloud/cloud-guidelines.aspx>

County of Monterey, DBA Natividad Medical Center acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. County of Monterey, DBA Natividad Medical Center should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of County of Monterey, DBA Natividad Medical Center's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under the Agreement.

12.2 As between County of Monterey, DBA Natividad Medical Center and Kronos, all Personally Identifiable Data is County of Monterey, DBA Natividad Medical Center's Confidential Information and will remain the property of County of Monterey, DBA Natividad Medical Center. County of Monterey, DBA Natividad Medical Center represents that to the best of County of Monterey, DBA Natividad Medical Center's knowledge such Personally Identifiable Data supplied to Kronos is accurate. County of Monterey, DBA Natividad Medical Center 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, County of Monterey, DBA Natividad Medical Center agrees to provide notice to Kronos of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to County of Monterey, DBA Natividad Medical Center's industry and which could be imposed on Kronos as a result of provision of the Services. County of Monterey, DBA Natividad Medical Center 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) County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center and its respective directors, officers, and employees (collectively, the "**County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center of the Monthly Service Fees paid by County of Monterey, DBA Natividad Medical Center for the infringing elements of the Services covering the period of their unavailability.

13.2 Kronos shall have no liability to indemnify or defend County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center other than in accordance with the terms of the Agreement

13.3 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center's configuration of the Services; (b) County of Monterey, DBA Natividad Medical Center's modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such County of Monterey, DBA Natividad Medical Center modification or combination is the cause of such infringement and was not authorized by Kronos; or, (c) a claim that the County of Monterey, DBA Natividad Medical Center Content infringes in any manner any intellectual property right of any third party, or any of the County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center will have sole control of the defense of any such action and all negotiations for its settlement or compromise. Kronos will cooperate fully at County of Monterey, DBA Natividad Medical Center's expense with County of Monterey, DBA Natividad Medical Center 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.

13.5 Kronos shall indemnify, defend, and hold harmless the County of Monterey, DBA Natividad Medical Center its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to tangible property and bodily injuries or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying onsite work, services, materials, or supplies in connection with the performance of this Agreement for Implementation Services, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for tangible property damage, bodily injury, or death arising out of or connected with the Kronos' performance of this Agreement for Implementation Services, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County of Monterey, DBA Natividad Medical Center. "Kronos' performance includes Kronos' action or inaction and the action or inaction of Kronos' officers, employees, agents and subcontractors.

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 COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER AND/OR ANY THIRD PARTY IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES PROVEN BY COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER, SUCH DIRECT DAMAGES NOT TO EXCEED TWO MILLION DOLLARS (\$2,000,000).

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 COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER 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), COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER'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 five (5) years after the return of such Confidential Information to the disclosing party or five (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. Each party understand the agreement is subject to the California PUBLIC RECORDS ACT

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.

- a. **No Publicity.** During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Kronos shall not make any media release or other public announcement relating to or referring to this Agreement (not included a public approval of the agreement by the Board of Supervisors) without County of Monterey, DBA Natividad Medical prior written consent. Kronos shall acquire no right to use, and shall not use, without County of Monterey, DBA Natividad Medical prior written consent, the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials, of County of Monterey, DBA Natividad Medical, its related or affiliated companies, its employees, and assigns: (a) in any advertising, publicity, press release, County of Monterey, DBA Natividad Medical list, presentation or promotion; (b) to express or to imply any endorsement of Kronos or Kronos' software or services; or (c) in any manner other than expressly in accordance with this Agreement.

16. EXPORT

County of Monterey, DBA Natividad Medical Center understands that any export of the Equipment may require an export license and County of Monterey, DBA Natividad Medical Center assumes full responsibility for obtaining such license. County of Monterey, DBA Natividad Medical Center 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 California 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 Neither Kronos Ins and County of Monterey, DBA Natividad Medical Center shall not assign the Agreement or the rights to use the Services without the prior written consent by both parties 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**") Parties agree to make best efforts to perform under the agreement.

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 County of Monterey, DBA Natividad Medical Center, to the billing address on the Order Form.

17.6 [Intentionally 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 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, 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. County of Monterey, DBA Natividad Medical Center understands and acknowledges that while Kronos may disclose to County of Monterey, DBA Natividad Medical Centers certain confidential information regarding general Service or product development direction, potential future Services, products or product enhancements under consideration, County of Monterey, DBA Natividad Medical Center is not entitled to any Services, products or product enhancements other than those contained on the Order Form. County of Monterey, DBA Natividad Medical Center 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.

17.10. At all times during the provision of on-site Services to Customer, Kronos will maintain insurance with policy limits in accordance with the certificate provided to the Customer and will deliver to Customer from time-to-time, within a reasonable time after Customer's written request, evidence of such insurance. At the request of Customer, Kronos shall name Customer as an additional insured.

18. General Changes; Covers all Guidelines/Policies.

The parties agree that Kronos may modify from time to time the hyperlinks and the web-based content, i.e., the policies and guidelines attached hereto as exhibits to the Agreement. In the event Kronos makes a material change to a policy or guideline, Kronos agrees to provide Customer with at least ninety (90) days prior written notice of such change. If such change materially diminishes the Customer's rights or obligations under the Agreement, Customer will advise Kronos immediately and the parties will work in good faith on a resolution or compromise. If the parties are unable to come to a mutually agreed upon resolution or compromise after good faith negotiations, Customer may terminate this Agreement with thirty (30) days written notice and without being subject to the payment of the Minimum Contract Value under [Section 3.4] of the Agreement.

COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER AGREES TO THESE TERMS AND CONDITIONS FOR ALL ORDER FORMS FOR THE SERVICES. THE INDIVIDUAL ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO CONTRACTUALLY BIND COUNTY OF MONTEREY, DBA NATIVIDAD MEDICAL CENTER.

DATED: [Click here to enter text.](#)

COUNTY OF MONTEREY,

DBA NATIVIDAD MEDICAL CENTER:

BY: _____

NAME: _____

TITLE: CEO 6/13/18

KRONOS:

BY: _____

NAME: _____

TITLE: _____

COUNTY OF MONTEREY,
DBA NATIVIDAD MEDICAL CENTER:

BY: _____

NAME: _____

TITLE: _____

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Dep Low
5-8-18

Reviewed as to fiscal provisions

[Signature]

Auditor-Controller
County of Monterey

5-16-18

DBA NATIVIDAD MEDICAL CENTER:

BY: _____

NAME: _____

TITLE: CEO 6/13/18

KRONOS:

Lauren Coffey
OM Specialist
Jun 14 2018 2:50 PM

BY: Lauren Coffey

NAME: _____

cosign

TITLE: _____

COUNTY OF MONTEREY,
DBA NATIVIDAD MEDICAL CENTER:

BY: _____

NAME: _____

TITLE: _____

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5-8-18

Reviewed as to fiscal provisions

[Signature]

Auditor-Controller
County of Monterey

5-16-18

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 County of Monterey, DBA Natividad Medical Center's signature of Kronos' Go Live Acceptance Form for County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center in County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center to a credit as follows:

Actual Application Availability % (as measured in a calendar month)	Service Credit to be applied to County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center, its employees, County of Monterey, DBA Natividad Medical Centers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Kronos, including without limitation County of Monterey, DBA Natividad Medical Center Content, failures or malfunctions resulting from circuits provided by County of Monterey, DBA Natividad Medical Center, any inconsistencies or changes in County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center 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.

County of Monterey, DBA Natividad Medical Center Specific Maintenance Period

1. County of Monterey, DBA Natividad Medical Center 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. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center Specific Maintenance, excluding any County of Monterey, DBA Natividad Medical Center requested Application updates. Downtime in excess of these six (6) hours will be deemed to be an Outage.
4. County of Monterey, DBA Natividad Medical Center Specific Maintenance will occur between 12am-6am during County of Monterey, DBA Natividad Medical Center's selected time zone.
5. Excluding any County of Monterey, DBA Natividad Medical Center requested Application updates, Kronos will provide notice for planned downtime via an email notice to the primary County of Monterey, DBA Natividad Medical Center contact at least seven (7) days in advance of any known downtime so planning can be facilitated by County of Monterey, DBA Natividad Medical Center.
6. County of Monterey, DBA Natividad Medical Center Specific Maintenance Windows also include additional maintenance windows mutually agreed upon by County of Monterey, DBA Natividad Medical Center and Kronos.
7. In absence of instruction from County of Monterey, DBA Natividad Medical Center, Kronos will by default perform Maintenance in the time zone where the Data Center is located.

Non-County of Monterey, DBA Natividad Medical Center Specific Maintenance Period

Kronos anticipates non-County of Monterey, DBA Natividad Medical Center Specific Maintenance to be performed with no or little (less than three hours per month) County of Monterey, DBA Natividad Medical Center downtime. If for any reason non-County of Monterey, DBA Natividad Medical Center 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-County of Monterey, DBA Natividad Medical Center 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) County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center with an Application Availability report on a monthly basis for each prior calendar month. Within sixty (60) days of receipt of such report, County of Monterey, DBA Natividad Medical Center must request the applicable Service Credit by written notice to Kronos. County of Monterey, DBA Natividad Medical Center 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 County of Monterey, DBA Natividad Medical Center 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.

County of Monterey, DBA Natividad Medical Center acknowledges that Kronos manages its network traffic in part on the basis of County of Monterey, DBA Natividad Medical Center'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 County of Monterey, DBA Natividad Medical Center significantly changes its utilization of the Services than what is contracted with Kronos and such change creates a material and adverse impact on the traffic balance of the Kronos network, as reasonably determined by Kronos, the parties agree to co-operate, in good faith, to resolve the issue.

Exhibit B - Acceptable Use Policy

This Acceptable Use Policy (this “Policy”) describes prohibited uses of the Services. The examples described in this Policy are not exhaustive. Kronos may modify this Policy at any time upon written notice to Customer of a revised version. By using the Services, Customer agrees to the latest version of this Policy. If Customer violates the Policy or authorizes or helps others to do so, Kronos may suspend use of the Services until the violation is corrected, or terminate the Agreement for cause in accordance with the terms of the Agreement.

(a) No Illegal, Harmful, or Offensive Use or Content

Customer may not use, or encourage, promote, facilitate or instruct others to use, the Services for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive. Prohibited activities or content include:

Illegal Activities. Any illegal activities, including advertising, transmitting, or otherwise making available gambling sites or services or disseminating, promoting or facilitating child pornography.

Harmful or Fraudulent Activities. Activities that may be harmful to others, Kronos’ operations or reputation, including offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming), or engaging in other deceptive practices.

Infringing Content. Content that infringes or misappropriates the intellectual property or proprietary rights of others.

Offensive Content. Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts.

Harmful Content. Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

(b) No Security Violations

Customer may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a “System”). Prohibited activities include:

Unauthorized Access. Accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measures used by a System. Customer will not perform any security integrity review, penetration test, load test, denial of service simulation or vulnerability scan on any System.

Interception. Monitoring of data or traffic on a System without permission.

Falsification of Origin. Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route. This prohibition does not include the use of aliases or anonymous remailers.

No Use of Robots. Customer will not use any tool designed to automatically emulate the actions of a human user (e.g., robots)

(c) No Network Abuse

Customer may not make network connections to any users, hosts, or networks unless Customer has permission to communicate with them. Prohibited activities include:

Monitoring or Crawling. Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled.

Denial of Service (DoS). Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.

Intentional Interference. Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.

Operation of Certain Network Services. Operating network services like open proxies, open mail relays, or open recursive domain name servers.

Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

(d) No E-Mail or Other Message Abuse

Customer will not use the Service to distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like “spam”), including commercial advertising and informational announcements. Customer will not alter or obscure mail headers or assume a sender’s identity without the sender’s explicit permission. Customer will not collect replies to messages sent from another internet service provider if those messages violate this Policy or the acceptable use policy of that provider.

(e) Monitoring and Enforcement

Kronos reserves the right, but does not assume the obligation, to investigate any violation of this Policy or misuse of the Services. Kronos may:

investigate violations of this Policy or misuse of the Services; or

remove, disable access to, or modify any content or resource that violates this Policy.

Kronos may report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Kronos’ reporting may include disclosing appropriate customer information. Kronos also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.

(f) Reporting of Violations of this Policy

If Customer becomes aware of any violation of this Policy, Customer will immediately notify Kronos and provide Kronos with assistance, as requested, to stop or remedy the violation.

Exhibit C - Cloud Services

The following guidelines and services apply to Workforce Central and Workforce Telestaff applications that are deployed in the Kronos Cloud:

Cloud Services

Environments:

One standard Production and one Non-Production (Development) environment.

Included.

Additional non-production environments are available for additional fees.

Environment restoration:

Services to restore Production environment to one Non-Production environment up to one time per week, if requested.

Included.

More frequent restores or additional environments will be subject to additional time and material fees.

Customer is responsible for requesting data to be moved from the Production environment to the Non-Production environment and for the contents of the data moved from the Production environment to the Non-Production environment.

Connectivity to Service:

Customer's users connect to application via secure SSL/TLS connection over the internet. Cooperative efforts with customer IT staff may be required to enable access. Kronos will assist with validating site connectivity but assumes no responsibility for customer internet connection or ISP relationships. Kronos related Internet traffic cannot be filtered by proxy or caching devices on the client network. Exclusions must be added for the fully qualified domain names and public IP addresses assigned to the environments in the Kronos Cloud.

Included

Device Initiated Terminal Connectivity:

All terminals that are compatible with Device Initiated communication mode must use this mode of communication. With the Device Initiated mode of communication, the Kronos terminal initiates all communications with the Device Manager Server at the Kronos Cloud over the internet. In cases where Network Address Translation is required for terminals, the customer is responsible for applying the translations on their network. Kronos Cloud does not support terminals prior to Kronos 4500 series and does support certain models released thereafter. Please see product documentation support matrix for details.

Included

Note: Server Initiated terminal communication, if permitted, requires a VPN and is not the preferred communication method when connecting terminals to the Kronos Cloud.

Remote Access to Non-Web Kronos Applications:

2 named users included

Remote access to non-web Applications (e.g. Kronos Workforce Integration Manager) using a remote access tool such a Citrix® Receiver. Limited Kronos Applications require the use of these remote access accounts.

SFTP Accounts:

2 logins included

SFTP accounts are provided to customers to push files to the Kronos Cloud and to pull files from the Kronos Cloud for designated integration points (e.g. Kronos Workforce Integration Manager input/output folders). The Kronos SFTP folder location is not designed for long-term storage and files stored longer than 30 days may be deleted. Kronos Cloud SFTP does not initiate connections, thus SFTP file transfers must be a customer initiated process.

Operating System and Database Software Management:

Included

Includes the required O/S and SQL Server licenses, as well as services for Kronos to apply critical security patches, service packs and hot-fixes for the software running in Kronos Cloud.

Server Maintenance:

Included

All server maintenance, including repair and replacement of defective or failed hardware and the installation of hardware upgrades for the software running in Kronos Cloud.

Kronos Application Updates:

Included

Services to perform technical tasks required to apply application service packs, legislative updates (if applicable), point releases and version upgrades.

Backup:

Included

Customer data is backed up daily. Database backups are replicated via encrypted connections to a second Kronos Cloud datacenter. Backups are retained for the prior 28 days on a rotating basis. All historical employee and configuration data is stored in the rotating backups.

Security:

Included

For customers that choose datacenters in the United States of America:

Kronos maintains a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts SSAE 16 (i.e. SOC 1) and the AICPA Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). The Kronos Private Cloud (KPC) is evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The Kronos Private Cloud is located in data centers that undergo SSAE 16 examinations. Management access to the KPC is limited to authorized Kronos support staff and customer authorized integrations. The security architecture has been designed to control appropriate logical access to the KPC to meet the Trust Services Principles of Security, Availability and Confidentiality. The Applications provide the customer with the ability to configure application security and logical access per the customer's business processes.

In the event the customer identifies a security issue, the customer agrees to notify Kronos.

For security purposes customers are restricted from directly accessing the desktop, file systems, databases and operating system of the environments. Thus, WIM integrations cannot initiate connections to push or pull data from on premise or other cloud based data sources including but not limited to external databases, and remote file shares.

Customer agrees not to upload payment card information, as the service is not certified for PCI DSS.

Customer agrees not to upload health information that falls under the United States HIPAA law.

For customers that choose in datacenters outside the United States of America:

For any outsourced (subcontracted) infrastructure (e.g. co-location provider, public cloud provider) Kronos will provide Customer a copy of its subcontractor's AICPA SSAE 16 SOC 1 Type II and/or AT101 SOC 2 Type II reports, published and attested to by an independent third party auditing firm, if applicable. Kronos is not required to utilize any outsourced (subcontracted) infrastructure (e.g. co-location provider, public cloud provider) as part of this agreement to deliver services. If Kronos does not use outsourced (subcontracted) infrastructure (e.g. co-location provider, public cloud provider) customer will be entitled to receive a copy, if made available from Kronos at a future date, of a Kronos published AICPA SSAE 16 SOC 1 Type II and AT101 SOC 2 Type II reports published and attested to by an independent third party auditing firm, if made available.

The Kronos applications provide the customer with the ability to configure application security and logical access per the customer's business processes.

In the event the customer identifies a security issue, the customer agrees to notify Kronos.

For security purposes customers are restricted from directly accessing the desktop, file systems, databases and operating system of the environments. Thus, WIM integrations cannot initiate connections to push or pull data from on premise or other cloud based data sources including but not limited to external databases, and remote file shares.

Customer agrees not to upload payment card information as the service is not certified for PCI DSS.

Customer agrees not to upload health information that falls under the United States HIPAA law.

Read-Only ODBC Access:

If selected on Order Form

Kronos will provide customer with read-only ODBC access into customer's Production and Non-Production databases for Timekeeper/HRMS over secure connection (e.g. VPN). Customer is responsible for establishing this secure connection to the Kronos Cloud and for any additional fees for that connection that may apply. Kronos may, but is not obligated to, limit or block customer's database read-only ODBC queries in order to prevent failure of the database due to overload. Kronos will not pay SLA credits for any Outage that is the result of overloading the database during read-only ODBC access. Customer understands that overall performance may be reduced during peak processing periods, and customer may need to limit resource intensive read-only ODBC queries to off-peak periods. Customer acknowledges that read-only ODBC access over a long distance secure connection is not a reliable protocol, as it does not have built-in retry logic to handle connectivity issues. Kronos is not responsible for any changes that may be required to customer's internal systems due to read-only ODBC access.

Disaster Recovery Services:

Included

Basic Disaster Recovery services are provided to all hosted customers at no additional fee and include:

Customer environment and all customer data in the Kronos Cloud are replicated to a secondary Kronos Cloud data center. Disaster Recovery Services provide for a Recovery Point Objective (RPO) of 24 hours and Kronos strives to restore application availability in a commercially reasonable timeframe. The customer will be down until the Production environment is restored in the primary or secondary data center, if needed, as an application environment is not readily available at the alternate site to process data. Customers are expected to use fully qualified domain names (FQDNs) to access the service given that IP address of the service may change.

Any issues arising out of the disaster recovery event due to customer configuration/customization and/or customer third party software outside of the Kronos Cloud is the responsibility of the customer to resolve.

Disaster Recovery Services (fee-based):

If selected on Order Form

Kronos offers enhanced Disaster Recovery services at an additional fee, as they provide for a secondary environment at a secondary Kronos datacenter to be used for customer recovery. With this offering the Customer environment and all customer data in the Kronos Cloud are replicated to a secondary Kronos Cloud datacenter. This service provides for a RPO (Recovery Point Objective) of 24 hours and a RTO (Recovery Time Objective) of 72 hours.

In the unlikely event that Kronos declares a disaster in the primary datacenter, Kronos will notify the customer and activate the Disaster Recovery steps necessary to restore application availability within the RTO defined. As part of this enhanced service, Kronos will conduct an annual Disaster Recovery Process test, which has the objectives to 1) test backups 2) train Kronos employees 3) verify and improve internal Kronos procedures. The annual Disaster Recovery Process test may be live or simulated. Customers are expected to use fully qualified domain names (FQDNs) to access the service given that IP address of the service may change.

Any issues arising out of the disaster recovery event due to customer configuration/customization and/or customer third party software outside of the Kronos Cloud is the responsibility of the customer to resolve.

The following services are not included in this service, but they may be purchased from Kronos on a time and material basis, and are subject to additional fees: a customer specific DR plan with annual review.

*Note that Workforce Analytics, Workforce Record Manager, Enterprise Archive, Workforce TeleStaff, Workforce TeleTime IP and all non-Production environments are excluded from the RTO.

Temporary Environments:

Temporary Environments are designed for classroom training for no more than 40 people and/or functional application testing for approximately five to ten simultaneous users. Temporary environments are only available to those customers whose Production environment is hosted in the Kronos Cloud in a United States datacenter.

If selected on Order Form

Third Parties:

If Customer uses a third party to configure and/or implement Customer's applications, the following applies:

If Customer uses 3rd party resources to configure/implement Kronos applications

The third party must be authorized by Kronos as part of the Kronos Connect Partner Program prior to accessing Customer's development and testing environments in the Kronos Cloud. Third parties will not be granted access to Customer's Production environment for purposes of configuring the applications. Customer understands that although Kronos Connect Partners are subject to Kronos policies and procedures, such Partners are not subject to SOC audits by Kronos or its representatives. As such, Kronos' SSAE16 SOC 1 and AT101 SOC 2 reports are applicable to the Production environment only and are not applicable to third parties' activities.

Applicable to customers that choose datacenters in the United States of America only.

Encryption at rest of Customer Content at storage level

For each of the customer's production and non-production environments in a data center in the United States of America, Customer Content will be encrypted at rest at the storage level. Encryption at rest is defined as Customer Content is made unreadable on disk via encryption technology when the Kronos Cloud computing environment hardware is powered off.

If selected on Order Form

Guidelines and Assumptions:

Category

Assumption

Estimated availability of production server hardware is approximately 30 days after the Order Form is processed.

Customer agrees to receive automatic updates to the applications.

Use of the Workforce Central translation toolkit requires a Kronos Professional Services engagement to import/export the translation file(s) into a test environment and into the Production environment.

Connecting modem clocks to the Kronos Cloud is not supported.

Applications will support English only unless stated on the Order Form.

Customer agrees not to conduct security testing, which includes, but is not limited to penetration testing and vulnerability scanning.

Customer agrees not to conduct any sort of automated or manual performance testing of the Service.

Offering includes system resources to process the equivalent of five WIM interfaces using up to 10 links with a maximum of five megabytes of data per link. In addition, systems resources for the integration between Workforce Central and Workforce TeleStaff for People, Punch, and Accrual interfaces are included assuming product documentation is followed for setup and run-time scheduling. Additional processing requirements may incur additional fees associated with corresponding system resources. Custom developed functionality outside of WIM that runs in the Kronos Cloud may incur additional fees.

Retention policies must be configured in the application(s). Setting retention policies will ensure that unnecessary system data (e.g. temp files, deleted records, empty rows, etc.) is routinely purged from the system and will help in managing database growth. Retention policies do not apply to configuration and/or historical data. Historical employee data can be maintained for the duration of the agreement and renewal periods, per customer business requirements.

Sizing considerations are based on a three year growth projection of the Production database environment. After three years, an archiving strategy may be reviewed with the customer for Service performance.

Custom reports for Workforce Central are created using Microsoft Visual Studio. HR/Payroll reports are created using Crystal Reports. If made available from the vendors, the free versions of these tools will be made available to the customer in their development environment. Customer will have read-only ODBC access to their development database for modifying and/or creating reports. Customer is limited to two named users for report creation, as access requires the use of one of the two included user licenses for remote access to non-web applications (e.g. Citrix Receiver). Note that Customer created reports for Workforce HR and Payroll may have reduced functionality from Kronos product documentation due to security restrictions in Kronos Cloud.

Customer will be required to sign a go live milestone document confirming customer has completed their testing and is ready to go live with the Workforce Central application(s) and/or TeleStaff.

Product Specific Considerations

Workforce Record Manager/ Kronos Enterprise Archive (if included on order form):

If Workforce Record Manager or Kronos Enterprise Archive is included, note that Setup Data Manager will only support import and export of configurations via XML file transfers between Production and Non-Production environments, as a direct connection between Production and Non-Production environments is not provided.

If an environment is available for the use of archiving functionality, compared to the used of just Setup Data Manager, this additional environment for archiving will be noted on the order form if it is included.

Workforce TeleTime IP:

Customer is responsible for procuring the phone lines (SIP trunks) required for their Workforce TeleTime IP system. Customer should work with their ISP/telco provider to procure a private circuit (specifically MPLS) with adequate bandwidth to support the number of SIP trunks (phone lines) needed for their use case, SIP calls per second required, along with a router and cross-connects to terminate the circuit in the Kronos Cloud. Kronos will provide detailed information to Customer on Kronos Cloud connectivity requirements. Cross-connects can be also purchased directly from Kronos, and would be indicated on order form if included.

This offering is only available to customers who chose Kronos datacenters in the United States.

Upgrade Services

The Service includes services for Kronos to execute tasks to apply point releases and version upgrades to customer's Kronos Applications in the Kronos Cloud. Services are limited to those tasks which apply these updates to the Applications.

The table below reflects the included upgrade tasks.

Project Coordination:	Included
Project Manager to coordinate the upgrade project.	
Up to eight 30-minute weekly status calls (one per week)	
Coordinate Kronos resources	
Send meeting invites	
Provide Project Timeline and expected customer commitment at the start of the project	

Provide initial Project Schedule and communicates progress during weekly status calls

Provide Communication Plan and Contact List

Planning Phase

Customer/ Kronos Introduction Call – up to one hour Included

Technical readiness & architecture review – Kronos Cloud Environment Included

Assessment Phase

Assessment of WIM interfaces to be upgraded Included

Assessment of new features or changes to configurations Not included

Assessment of customs and custom reports and development activities related thereto Not included

Solution Upgrade / Build Phase

One (1) restore of Production database to NON-Production environment for the purpose of upgrade testing. Additional restores, if requested, shall be subject to additional time and material fees. Included

Upgrade Non-Production and Production environments to new point release or version. Included

Upgrade of Workforce Integration Manager (WIM) interfaces due to product changes introduced as part of the technical upgrade, as defined in product documentation. For Workforce Central this includes XML export/imports and database views as defined in the "Workforce Central Import User Guide" and "Workforce Central Data View Reference Guide". Included

Upgrade of non-WIM interfaces in Non-Production environment and Production environment. Not Included

Upgrade of customs and custom reports. This includes upgrade of Workforce Integration Manager (WIM) interfaces that use table import batch functionality, read/write directly to database tables or require changes due to new/changed customer requirements. Not Included

Upgrade of interfaces and reports created or provided by customer Not Included

Update of terminal firmware managed by Kronos	Not Included
Configuration of new features or functionality or changes to existing configuration	Available for Purchase
Test & Certify Phase	
System test upgraded environments by verifying a user can log in	Included
User acceptance testing (UAT) of upgraded environments, interfaces, custom reports, new features, etc.	Not Included
Develop customer-specific test cases	Not Included
Sign-off on upgraded Non-Production and Production Environments	Customer
Deploy & Support Phase	
Deployment Readiness Call – up to one hour	Included

Note that new feature configuration, project management services, other Professional, Managed and Educational Services and training are not included as part of Upgrade Services, but may be purchased independently, if desired.

Project coordination lasts for no more than eight weeks. At the end of this time, Kronos will complete the production upgrade. If for any reason Kronos cannot complete the technical upgrade steps within eight weeks due to a Kronos caused delay, project coordination will continue proportionally to cover the Kronos caused delay. For example if Kronos causes a two week delay due to Kronos resource unavailability, project coordination will last no more than 10 weeks.

If not specifically noted, the customer should assume responsibility of the task and/or deliverable.

Additional Polices:

<https://www.kronos.com/policies/legal-hold>

<https://www.kronos.com/policies/acceptable-use>

Exhibit D - JBoss® Enterprise Middleware End User License Agreement

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TRAVEL AND BUSINESS EXPENSE REIMBURSEMENT POLICY

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I. PURPOSE

The purpose of this policy is to establish uniform travel and business expense reimbursement policies, rules and claim procedures for persons authorized to conduct County business.

II. SCOPE

The County travel and business expense reimbursement policy applies to all County employees, members of legislative bodies established by the Board (salaried or not), non-County employees (such as contractors who receive travel and/or business expense reimbursements) and volunteers traveling on County business.

III. DEFINITIONS

Unless the context otherwise requires, the definitions contained in this part govern the construction of this policy. They do not necessarily apply in other County contexts.

A. Accountable Expense Reimbursement Plan

Reimbursements of travel and other business expenses to a County employee, contractor or volunteer will be considered to be made under an "Accountable Expense Reimbursement Plan" if the following three requirements are met:

- The person substantiates his or her expenses by submitting an expense report with
 - 1) the amount of the expenditure,
 - 2) the time and place of the travel or business entertainment,
 - 3) the business purpose of the expenditure, and
 - 4) the names and business relationship of any persons entertained.
- The person documents the expenses with supporting receipts, paid bills, etc. within 60 days after the expense is paid or incurred, and
- Excess advances, if any, are repaid to the County within 120 days after the expense is paid or incurred.

"County" means the County of Monterey.

B. County Business

"County business" means the activity directly related to the ordinary, necessary and/or required business functions of the County of Monterey ("County"). It does not include travel or expenses related to an employee's participation in the County's Educational Assistance Program or commuting expenses (a non-reimbursable expense).

C. County Employee

"County employee" means any County officer or employee, whether elected or appointed, filling a budgeted position approved by the Board of Supervisors.

Independent contractors and their employees are not County employees.

D. County Traveler

"County traveler" means any County employee, authorized non-County employee (such as a contractor) or volunteer traveling on County business. Agency temporary employees are not covered by this policy and are not reimbursable for travel.

E. County Volunteer

"County volunteer" means a person, other than a County employee, who performs volunteer work authorized by a department or the Board of Supervisors for the County, such as a department volunteer, a commissioner or a member of an interview panel. It does not include agency temps, inmates, wards or probationers working for the County.

F. Home

"Home" means the actual dwelling place of the County traveler without regard to any other legal or mailing address.

G. Main or Regular Place of Work

"Main or regular place of work" means the principal place of business for the County employee or the principal location to which the County volunteer/contractor is assigned to work for the County. This may be the place at which s/he spends the largest portion of his/her regular County workday or working time or, in the case of field workers, the assigned location/headquarters to which s/he returns upon completion of regular or special assignments.

H. Meals

Meals that are 1) directly related or associated with bona fide County business matters and 2) approved for reimbursement by a member of the Board of Supervisors or a department head (or his or her designee) will be considered a reimbursable County business expense, if incurred in connection with out-of-County business travel or while conducting in-County business. Also, reimbursement for the provision of in-kind meals to employees on the business premises of the County will only be allowed if there is a substantial non-compensatory business reason for providing such meals to employees.

I. Temporary Work Location

"Temporary work location" means the place where the County employee, volunteer or contractor is assigned on an irregular or short-term basis. If an employee is assigned to a work location for no more than 35 work days during a calendar year, then the location is considered temporary. Attending conferences, meeting or training sessions away from the main or regular place of work by County employees or volunteers, or field

workers conducting fieldwork at off-site locations, does not normally constitute assignment to another site. If the employee is assigned for more than 35 work days during the calendar year, the new location has become the main or regular place of work.

J. Vehicle

"Vehicle" means a motor vehicle, which can be legally operated on public highways.

IV. AUTHORIZATION TO TRAVEL

A. General Conditions

1. Travel will be authorized only when the travel is necessary and in the best interest of the County.
2. Advance authorization is required for all County travel, as specified in B & C.
3. Advance written authorization from the County Administrative Officer is required for all County travel by County volunteers, except as follows:
 - a) Travel by appointed members of County boards, commissions, or advisory committees to and from the official meetings of their respective boards.
 - b) Travel to and from the County for members of personnel interview panels, subject to authorization by the Human Resources Department.
 - c) Travel to and from meetings, conferences and training covered by the County MHSA plan, subject to authorization by the Behavioral Health Program Manager or designee.

B. In-County Travel

County employees are authorized to travel within the County when said travel is required by the department and is considered a part of the routine, day-to-day official duties of the employee as defined and authorized by the department head or his/her designee. All other in-County travel requires advance authorization by the department head or his/her designee.

C. Out-of-County Travel

1. All travel outside of the County, but within the State of California, requires advance authorization by the department head, or his/her designee. Travel by immediate staff of a member of the Board of Supervisors requires the advance authorization of the respective Board member.

2. All travel outside of the State of California requires advance written authorization by the department head, or his/her designee. Travel by immediate staff of a member of the Board of Supervisors requires the advance authorization of the respective Board member.
3. Authorization for out-of-state travel by current members of the Board of Supervisors is subject to the guidelines established by the Board.

D. Travel Requests

Travel requests that require department head authorization shall be submitted to the department head pursuant to department policy. If the traveler is requesting a travel advance, an approved "County of Monterey Travel Request" form (usually in the form of a "white claim" or "GAX"), accompanied by all documentation relative to the request, shall be forwarded to the Auditor-Controller.

V. TRAVEL EXPENSES

A. General Conditions

1. County travelers are entitled to submit a claim for actual and necessary expenses for transportation, meals, lodging, and incidentals for authorized travel, subject to the conditions set forth in this Travel and Business Expense Reimbursement Policy ("Policy"), whenever the expenses are incurred as part of his/her official duties and authorized because the County traveler is required to work, attend a school, training, meeting or convention overnight at a location sufficiently distant from main or regular place of work to qualify under this policy for meal per diem and overnight lodging.
2. Notwithstanding Section 1 above, claims shall be paid subject to the rules set forth in this Policy and statutory law. Eligibility to submit a claim does not automatically entitle the claimant to reimbursement for any and all expenses.
3. County travelers receiving reimbursement from an outside source for travel on County time shall forward said reimbursement to the County Auditor-Controller for handling and deposit if the traveler intends to submit an expense claim to the County or use County resources to travel. Said travelers shall then be entitled to submit a claim for actual and necessary expenses for transportation, meals, lodging, and incidentals, subject to the conditions set forth in this travel policy.
4. Arrangements for transportation, lodging or registration fees that have cancellation or change penalties shall be carefully monitored by the department. If cancellation/change occurs due to direction by the County traveler's department head, or his/her designee, or the County Administrative Officer, the County department will cover the penalty cost. If the cancellation/change occurs due to a traveler's personal request or obligations, the traveler will be required to pay the

penalty. Exceptions shall be made when a traveler is unable to travel because of hospitalization, serious sickness or death of self or an immediate family member or when the department head certifies that the reason for the employee's absence was legitimate and authorized.

B. Transportation Expenses

1. General Conditions

- a) Transportation expenses are the direct costs related to movement of the County traveler from authorized point of departure to destination of travel and back to the authorized point of return.
- b) All transportation expenses incurred shall be based upon the most efficient, direct, and economical mode of transportation required by the occasion.
- c) Whenever a time frame is established as criteria for eligibility for claiming, such as the requirements set forth for meals in Section V, subsection C. 1. d., estimated travel time shall be based upon legal vehicle speed limits, volume of traffic, and weather conditions in effect at the time of travel.

2. Vehicle Transportation

Vehicle use (both County-owned and private) by authorized County travelers during the conduct of official County business is subject to the County Vehicle Use Policy.

a) Private Vehicle

- (1) Travel by private vehicle will be reimbursed at the IRS rate for business use of a personal vehicle in effect in the County at the time of travel.
- (2) Authorized County travelers who travel in a vehicle other than their own may not claim mileage for business use of a private vehicle but may claim reimbursement of actual fuel expenses necessary for the trip and expended by the traveler. Receipts are required and should be claimed by the employee actually paying the expense.
- (3) Authorized County travelers may not claim mileage for business use of a private vehicle in the following instances:
 - (a) when the County traveler is riding with someone who will be claiming reimbursement for the vehicle's use from the County or another source;
 - (b) when the County traveler is traveling in a County or other government

agency vehicle;

- (c) when the County traveler is traveling in a rented vehicle (paid by County);
 - (d) when the County traveler has been assigned a County Vehicle for home retention, is receiving an allowance or lump sum for mileage, unless specifically provided for in the terms of their agreement or contract with the County or by Board resolution.
- (4) County employee mileage to the regular or main place of work from home, and back, is considered commuting and may not be claimed.
 - (5) County employee mileage to the temporary work location from home, and back, is considered commuting and may not be claimed except in the following cases:
 - (a) if the County employee is required to report to the regular or main place of work before reporting to the temporary work location, s/he is eligible for mileage from the regular or main place of work to the temporary work location;
 - (b) if the County employee is required to report to the regular or main place of work after working at the temporary work location and before going home, s/he is eligible for mileage from the temporary work location to the regular or main place of work.
 - (6) Mileage in conjunction with authorized County travel to and from a school, training, convention or meeting shall be based on the distance to the destination from the traveler's home or the regular or main place of work, whichever is less, except in the following cases:
 - (a) if the traveler is required to report to his/her work location before leaving, s/he is eligible for mileage to the school, training, convention/meeting from the work location.
 - (b) if the traveler is required to report to his/her work location before returning home, s/he is eligible for mileage based on the distance from the school, training, convention/meeting to the work location.
 - (7) Appointed volunteer members of County boards, commissions, or advisory committees may claim mileage to the official meetings of their respective boards from home, and back.
 - (8) Members of personnel interview panels may claim mileage to the panel location from their regular or main place of work, and back.

- (9) When two or more County travelers from the same department are traveling to the same site by vehicle, they should use only as many vehicles as are required to accommodate the number of travelers and business needs of the County. If a County traveler chooses to use a separate private vehicle because of personal preferences or obligations, h/she shall not be eligible for mileage or fuel reimbursement for the travel unless the department head determines that reimbursement is appropriate and justified.
- (10) If a County traveler chooses to use a private vehicle instead of an alternative mode of transportation chosen by the department head because of personal preferences or obligations, his/her mileage reimbursement shall not exceed the cost of using the alternative mode of transportation unless the department head determines that the additional reimbursement is appropriate and justified.

b) County Vehicle Transportation

- (1) County travelers using a County vehicle for traveling shall not be eligible for reimbursement for mileage.
- (2) County travelers required to fuel a County vehicle at their own expense should claim the actual fuel costs expended by them. Receipts must accompany the claim. Vehicle license number and the odometer reading should be written on the receipts.
- (3) If the County vehicle experiences mechanical failure, the County traveler shall follow the rules set forth in the "Mechanical Failure" section of the "Vehicle Operator's Handbook" located in the glove compartment of each County vehicle.

c) Rental Vehicle Transportation

- (1) Vehicles may be rented for transportation at the destination point when the County traveler travels to the destination via commercial common carrier and the cost of the rental will be less than the charge for shuttle or taxi service to and from the carrier termination point to the function or hotel accommodations.
- (2) Vehicles may be rented for transportation to the destination point when the cost of the rental will be less than other reasonable and available modes of transportation.
- (3) If more than one County traveler from the same department is traveling to the same function, only one rental vehicle may be claimed and then only if

it is available for use by all of the County travelers.

- (4) The County traveler shall choose the least expensive size and mileage limits appropriate to the use required. Rental expenses for luxury cars, motorcycles and recreational vehicles may not be claimed.
- (5) Rental cars shall be refueled prior to return to the rental agency to reduce cost to the County. Rental cars should be returned to the renting location and on time to avoid additional charges.
- (6) When traveling domestically the County traveler shall waive additional vehicle insurance (except for additional driver and coverage for drivers under 25 years of age), provided that the employee has his/her own vehicle insurance coverage. When traveling internationally additional insurance should be accepted if the traveler lacks other similar coverage.
- (7) An original car rental receipt showing the number of days and type of vehicle rented is required for vehicle rental claims. A copy of the receipt or a credit card receipt alone is insufficient.

d) Commercial Carrier Transportation

- (1) County travelers shall seek and attempt to use the lowest rates available for the type of commercial carrier service being utilized. Whenever possible, travelers should take advantage of flight arrangements that minimize County cost (for example, purchasing a round trip ticket may be less expensive than two one-way tickets). Reservations should be made as far in advance as possible to take advantage of available discounts and special offers. Travel agents that have added ticket handling charges should be avoided.
- (2) Claims for travel via commercial carrier shall be limited to the cost of travel at economy rates for the same day and time of travel or actual cost, whichever is less. County travelers may upgrade tickets, provided that the traveler and not the County pay for the difference in cost for such upgrade. The County will not reimburse any type of travel insurance unless the Department Head requests the traveler to purchase cancellation coverage. Reasonable baggage charges, if imposed by the airline, on the first checked bag are reimbursable.
- (3) Claims for commercial carrier tickets shall be substantiated by an original ticket document (such as an e-ticket or passenger receipt ticket copy) showing the price, date, date/time of travel and class of travel. A copy of the credit card receipt or statement from a travel agency alone is insufficient.

- (4) County business traveler may retain frequent flyer/hotel rewards and similar program benefits. However, participation in these programs must not influence flight/hotel/etc. selection, which would result in incremental cost to the County beyond the lowest available airfare/hotel cost unless the difference is paid by the traveler. Free tickets or cash allowances for volunteering to be denied timely boarding may be retained by the traveler but no additional cost to the County or interruption of County work is allowed and any additional time required to complete the trip is to be personal time.
- (5) Should a Saturday night stay reduce the cost to the County of a ticket more than the total of any additional hotel/meal/parking cost, the costs to do so are reimbursable to the traveler but should be well-documented with a clear savings to the County.

e) Private Aircraft Transportation

- (1) Traveling by private aircraft which is flown by a County employee may be authorized if it will be the most efficient means of travel and the flight is incidental to the purpose of the County travel. Said use shall require the advance written approval of the County Administrative Officer. If approved, the following must be provided to the Auditor-Controller's Office in advance of the travel:
 - (a) a copy of the pilot's Federal Aviation Administration (FAA) pilot's certificate and instrument rating for the category and class of aircraft to be flown and the type of flying to be performed;
 - (b) a copy of the pilot's current medical certificate;
 - (c) a copy of the FAA Pilot Proficiency Award Program certificate issued to the pilot within the twelve months prior to the flight;
 - (d) a copy of the pilot's flight log showing a minimum of 250 hours of flight time within the twelve months prior to the flight;
 - (e) a certificate of public liability and property damage insurance of not less than \$1,000,000 naming the County as an additional insured.
- (2) Traveling by private aircraft, which is flown by a non-County employee, except for flights conducted by members of the Sheriff's Air Squadron in the performance of their official duties, is normally prohibited.
- (3) County travelers who operate a private aircraft in connection with approved County travel may be reimbursed the actual cost paid by the

traveler for fuel used by the aircraft on the trip or the County's mileage rate for each air mile at the travelers option.

f) Other Transportation Expenses

(1) The following necessary transportation expenses may be claimed at actual cost (receipt required) when directly related to transporting the County traveler to and from the business destination point:

- (a) taxi, shuttle, or public transit fares;
- (b) parking fees (airport long-term parking is required for travel exceeding 24 hours);
- (c) bridge, road or ferry tolls;
- (d) other actual transportation expenses determined to be reasonable and necessary by the department head and the Auditor-Controller.

(2) The following transportation expenses may not be claimed:

- (a) traffic and parking violations;
- (b) emergency repairs or non-emergency repairs on non-County vehicles;
- (c) personal travel while at an out-of-County location;
- (d) other actual transportation expenses determined to be unreasonable or unnecessary by the department head or the Auditor-Controller.

C. Meal Expenses

1. Eligibility for Meals

- a) County employees, contractors and volunteers may be reimbursed for in-County meal costs that are 1) ordinary (not extravagant) and necessary, 2) directly related or associated with bona fide County business matters and 3) approved by a member of the Board of Supervisors or a department head (or his or her designee). County business discussions associated with a meal must be conducted in a “clear business setting”.
- b) County travelers involved with in-County travel that does not require an overnight stay away from their home are not eligible to claim for meals taken outside the County, unless the requirements of paragraph a) above are met, or unless provided for in a Board of Supervisor-approved written County policy.

- c) County travelers on out-of-County business travel that requires an overnight stay away from their home are eligible to claim for meals taken out-of-County.
- d) County travelers are eligible to claim the meal reimbursements noted below for travel requiring overnight lodging if the total travel time (work time, plus the lunch period plus round-trip travel time) is estimated to equal or exceed 12 hours.
 - (1) Breakfast may be claimed if the County traveler must reasonably be away from home because of County business travel at or before 7:00 a.m.
 - (2) Lunch may be claimed if the County traveler must reasonably be away from home because of County business travel at or before Noon.
 - (3) Dinner may be claimed if the County traveler must reasonably be away from home because of County business travel at 7:00 p.m. or after.
- e) Snacks are a personal expense, not reimbursable.
- f) Claims for meals purchased by a County employee or volunteer on behalf of federal, state or local public officials or employees is prohibited, including any other Monterey County employees, unless provided for under other Board of Supervisor approved written County policies.
- g) County travelers are not eligible to claim meals or other expenses for those persons who are not otherwise eligible to file a claim themselves for County reimbursement.
- h) County travelers are not eligible to keep or claim per diem allowances for anyone other than themselves.

2. Meal Claims

- a) The County maximum full day meal and incidental expenses rate shall be equal to the maximum federal per diem meal and incidental expenses (M&IE) rate established by the GSA. Said maximums include taxes and gratuities.
- b) Meal expense amounts shall be calculated by the Auditor-Controller for first and last partial days of travel based on the maximum federal per diem meal rate for the appropriate meal(s).
- c) Claims for out-of-County meals taken in conjunction with travel that includes an overnight stay away from the traveler's home shall be reimbursed in the form of a "per diem allowance", which means the traveler is eligible to be reimbursed at the maximum rate allowed and receipts are not required (except for Board of

Supervisor Members). Partial days shall be reimbursed at the appropriate meal rate.

- d) Allowable meal costs may only exceed the prescribed per diem rates if the meal is being served at a conference or workshop and the costs of the speaker, conference, and/or registration are included in the price. The agenda/brochure or other documentation describing the event and the price must accompany the claim to the Auditor-Controller's Office.
- e) A County traveler may not claim a per diem allowance or reimbursement for any meal which is provided, or otherwise available, to the County traveler with the lodging or function, whether or not there is an actual charge for the meal. For example, if lunch is provided at the function or breakfast is included in the cost of lodging, the traveler may not claim a per diem allowance or request reimbursement for eating elsewhere. For purposes of this section, continental breakfast and meals provided during airline or other commercial carrier travel do not constitute provided meals and do not need to be deducted from the per diem allowance. A County traveler may not claim a per diem allowance for a meal that was paid for by someone else.
- f) If a breakfast is included in the cost of lodging, the traveler may not claim for a breakfast meal; however, s/he may apply the next day's breakfast allowance amount towards the maximum lodging amount. For example, if the maximum lodging amount is \$79.00 and the breakfast allowance is \$8.00, the employee may claim up to a maximum of \$87.00 for lodging which includes a continental breakfast. (For purposes of this section, continental breakfast does not constitute a provided breakfast meal.)
- g) Claiming for alcoholic beverage expenses are prohibited in all cases.
- h) As required by California Government Code 53232.2 Board of Supervisors members must provide receipts for all meals and will be reimbursed at the lower of the appropriate per diem amount or the actual expense.

D. Lodging Expenses

1. Eligibility for Lodging

- a) County travelers are not eligible to claim for lodging for in-County functions.
- b) For out-of-County business that is conducted on one business day, if the County traveler's actual time for the day is estimated to equal or exceed 12 hours (including work time, the lunch period and round-trip travel time), then the County traveler will have the option of securing one night's lodging at either the

front-end or back-end of the trip. Illustration: A member of the County Board of Supervisors who resides in Monterey County is required to attend a one-day business meeting in Sacramento. The Board member estimates that his total time for the day without obtaining lodging would be 14 hours (8 hours of meetings, 1 hour for lunch and 5 hours for round-trip travel). The Board member will have the option of securing one night's lodging in Sacramento, either the night before the meeting, or after conclusion of the meeting.

- c) For out-of-County business that requires multiple business days, if County travelers are eligible to claim lodging for the first and last evenings of an out-of-County trip, they are also eligible to claim lodging for any evenings that fall in between the first and last evenings of the trip.
- d) County travelers are not eligible to claim reimbursement of lodging costs when staying overnight as a guest of friends or relatives.

2. Lodging Claims

- a) Lodging expenses shall be claimed at either the actual cost of the lodging (limited to the single occupancy rate for a single room) or the County's maximum lodging rate (Federal Per Diem Rate), whichever is less. Receipts are required. Taxes are in addition to the Federal Per Diem Rate.
- b) Lodging costs may exceed the County's maximum lodging rate only when a conference, meeting or convention is being sponsored by an organization of which the County, the department or employee is a member, the lodging may be claimed at the actual cost if seminars or meetings are to be held at the particular hotel and/or events are scheduled for evening hours, and the department head has given advance written authorization.
- c) An original room folio receipt, showing the number of days and the number of occupants, is required for lodging claims. A copy of the receipt, travel agency statement or a credit card receipt alone is insufficient.
- d) When a room is shared with a fellow County traveler, the expense may either be prorated, and the prorated amount claimed by each County traveler, or one County traveler may claim the total expense at the multiple occupancy rate.
- e) When a room is shared with a person other than a County traveler and said person will also be claiming reimbursement from the County or another source, the amount shall be prorated between the two travelers.
- f) Lodging expense may not be claimed for guests of the County traveler. Where expense for a family member or friend is included in the receipt, the claim must not exceed the single occupancy rate.

- g) Special lodging, such as accommodations in apartments, RV parks, campgrounds or other semi-permanent lodgings, shall require advance written authorization of the County Administrative Officer and the Auditor-Controller.
- h) County travelers should inquire when making lodging arrangements whether the County is exempt from Transient Occupancy Taxes (TOT) in the locale where they are staying and should provide the necessary form to the lodging facility, if required to do so to obtain the waiver.
- h) Except when registering for lodging at a pre-arranged group rate in conjunction with a conference or meeting, County travelers shall request the government rate or lowest available eligible rate when making lodging arrangements.
- i) Travelers are responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Travelers will not be reimbursed for “no-show” hotel charges unless there are unavoidable reasons for not canceling the room.
- j) When multiple county travelers are traveling together and the rooms are put on one invoice, one traveler may take care of the invoice but should provide the details on who stayed in each room on the invoice.

E. Registration Fees

Conference, convention and seminar registration and tuition fees may be claimed at the actual cost, provided that the agenda/brochure or other documentation describing the event, including the price, accompanies the approved claim to the Auditor-Controller's.

F. Other Travel Expenses

1. County travelers are eligible to claim a per diem incidental allowance, limited to the maximum federal per diem incidental rate established by the IRS, for each day of travel requiring an overnight stay away from the traveler's home. Said allowance covers fees and gratuities for persons who provide services, such as food servers and luggage handlers, and does not require receipts (Except for Board of Supervisors Meals). If applicable (such as a Board of Supervisor meal), gratuities are limited to not exceed 15% of the service costs unless billed by a provider's standard policy at a higher rate.
2. County travelers are eligible to claim the following expenses at actual cost, even if they also qualify for a per diem incidental allowance. Receipts are required.
 - a) County business calls (traveler must annotate purpose of call on the bill)
 - b) fax machine charges incurred to send or receive documents for County use.

- c) copy machine charges incurred to copy documents for County use.
- d) Internet access connection and/or usage fees away from home not to exceed \$15.00 per day, if Internet access is necessary for county related business.
- e) other business related expenses determined to be reasonable and necessary by the department head and the Auditor-Controller.

VI. OTHER COUNTY BUSINESS EXPENSES

A. General Guidelines

In the course of conducting County business, employees, contractors or volunteers may incur business expenses (including meal expenses pursuant to Section V.C) on behalf of the County. Such expenses will be approved for reimbursement if the disbursement meets the following requirements:

- The disbursement is for an ordinary (not extravagant) and necessary expense of conducting County business, or is an expense that is required by the County,
- The expense is approved by a member of the County Board of Supervisors, or a County department head (or his or her designee), and
- The payee accounts for the expense in accordance with the rules for a “Accountable Expense Reimbursement Plan”, as set forth in the Internal Revenue Code and related regulations.

B. Taxation of Business Expense Reimbursements

If a reimbursement to an employee, contractor or volunteer meets the requirements of an “Accountable Expense Reimbursement Plan”, then such reimbursement will not be reportable for federal or California income tax purposes.

VII. CLAIMING PROCEDURES FOR OUT-OF-COUNTY TRAVEL

A. Travel Advance Claims

1. Authorizations and Eligibility

- a) Travel advances are strongly discouraged and are only available to County employees. The issuance of travel advances creates double work for departmental and auditor-controller staff and should only be used if a County travel card cannot be used or the employee does not have a personal credit card. Board of Supervisors Members are not eligible for travel advances.

The first choice is for travelers to use their personal credit cards to pay for their

travel expenses and be reimbursed before their monthly statement arrives. Secondly, the County has arranged for the use of the Travel Card to pay many travel related expenses. Departments may use their Travel Cards to pay for airline tickets and conference registration expenses for all of their employees, not just the cardholder. Commercial carrier and conference registration expenses should not be considered in the advance calculation. The third choice would be a cash advance, if necessary.

- b) Travel advances require the authorization of the department head or his/her designee, and the Auditor-Controller or his/her designee.
- c) The net amount of the travel advance shall not exceed the following:
 - (1) 75% of the total estimate for the following travel expenses, exclusive of payments made payable directly to the vendor:
 - (a) lodging (documentation, including at least the confirmation number and hotel name should be provided), including hotel parking
 - (b) rental vehicle transportation;
 - (c) per diem meal allowances;
 - (d) long-term airport parking;
 - (e) other out-of-pocket expenses deemed necessary and reasonable by the Auditor-Controller.
 - (2) 50% of the total estimate of reimbursement for mileage for business use of a private vehicle.
- d) A travel advance shall not be issued for a net amount less than \$100.00 nor more than \$2,000.00.
- e) A travel advance shall not be issued more than thirty (30) calendar days in advance of the commencement of travel.
- f) Travelers are not eligible for an additional travel advance if they have an unsettled advance, unless the advances are for travel taken consecutively. In such case, the sum total of the travel advances shall not exceed \$2,000.00.

2. Travel Advance Requests

- a) Requests for travel advances involving travel shall be submitted by the department head to the Auditor-Controller's Office on a completed and signed

"County of Monterey Travel Request" form, accompanied by all documentation relative to the request, at least ten (10) working days in advance of the commencement of travel.

- b) After a completed and approved "County of Monterey Travel Request" form is received by the Auditor-Controller's Office, a warrant payable to the County traveler for the amount requested shall be issued, up to the 100% maximum amount allowed pursuant to this County travel policy.

3. Travel Advance Settlements

- a) Within five (5) working days of completion of travel, the County traveler shall submit all receipts for allowable travel expenses to the Department and within fifteen (15) working days of completion of travel to the Auditor-Controller's Office on a completed County claim form. Credit for the travel advance shall be subtracted from the amount owed to the County traveler.
- b) In the event that allowable expenses are less than the amount of the travel advance, the County traveler shall submit the difference in the form of a check or money order made out to the "County of Monterey" with the claim form.
- c) County travelers who cannot provide a required receipt shall reimburse the County for the amount of the money advanced to them for that expense.
- d) Travelers who do not submit the required documentation by the time frames set forth above may lose their eligibility for future travel advances.
- e) Department heads are responsible for ensuring that their employees settle their travel advance claims within the time frames set forth in subsection a) above. Non-compliance may jeopardize advances for the entire department.

B. Prepaid Vendor Claims

1. Vendor Claim Requests

- a) Once travel has been authorized, claims to the vendor may be submitted for lodging and registration fees when there is sufficient time for the check to be processed before the authorized County traveler commences travel.
- b) If the travel requires a "County of Monterey Travel Request" form, the approved form shall be submitted with the claim. If the original has been submitted with a previous claim, then that shall be noted on the claim form and a copy of the form attached.
- c) Whenever possible, the County shall be named as registrant for events to allow

transfer of attendance privilege when conflicts prevent the original registrant from attending.

- d) The County will mail the warrant directly to the vendor unless the traveler requests that the warrant be returned to them to hand carry to the vendor.

2. Vendor Claim Settlements

- a) Each vendor claim must have an original receipt attached in order to settle the claim. The required receipts for vendor claims that have been prepaid shall be forwarded to the Auditor-Controller's Office within thirty (30) calendar days after completion of travel.
- b) Claims paid directly to vendors that are not substantiated by receipts within thirty (30) calendar days of the completion of travel shall be considered to be unsettled travel advances to the County traveler.
- c) Department heads are responsible for ensuring that their employees return their receipts within the time frames established by this policy. Non-compliance may jeopardize the department's ability to have travel expenses paid in advance.
- d) In the event that all or a portion of the prepaid cost to a vendor is reduced after the check has been processed, the County traveler is responsible for ensuring that the entire difference is returned to the County within the time frames established for settling the claim.

C. **Travel Reimbursement Claims**

1. After completion of travel, the County traveler shall submit a completed County claim form to the department head for authorization. After review and authorization, the department head shall submit the authorized claim, together with any required receipts, to the Auditor-Controller's Office. Said claim shall be received by the Auditor-Controller's Office within thirty (30) calendar days of the completion of travel.
2. The traveler shall not be reimbursed until s/he has signed the certification for the claim that is required by the Auditor-Controller's Office.
3. The Auditor-Controller's Office shall review the claim for compliance with applicable County policies and procedures. If approved by the Auditor-Controller's Office, the claim shall be processed and a check sent to the claimant within ten (10) working days. If denied, or denied in part, the department's contact person will be notified immediately. The Auditor-Controller has the final decision on allowable expenses.
4. No reimbursement for travel shall be paid to the employee until all required receipts

for the travel claim have been filed with the Auditor-Controller's Office.

5. Travel reimbursements are to be paid via checks and not to be paid via petty cash.

D. Mileage Claims

1. Whenever travel requires advance authorization of the department head, or his/her designee, the resulting mileage expense shall be claimed on the same claim form as the other expenses that apply to that travel. The only exception is if mileage is the only expense of the trip, in which case the traveler may claim the mileage on the monthly "Mileage Reimbursement" claim form.
2. Whenever travel does not require advance authorization of the department head, or his/her designee, the resulting mileage expense shall be claimed on the "Mileage Reimbursement" claim form.
3. Mileage claims shall be submitted monthly, unless the total for the month is less than \$50.00, in which case the claim may be held for an additional month. However, the claim must not be held over to the next month more than twice, regardless of the dollar amount.
4. All mileage claims for the last month of the fiscal year must be processed by year-end close.
5. Mileage Claims are to be paid via warrants and not to be paid via petty cash.

E. Reimbursement by Outside Source

1. County travelers receiving reimbursement from an outside source for travel on County time shall forward said reimbursement to the Auditor-Controller for handling and deposit if the traveler intends to submit an expense claim to the County or use County resources, including a County vehicle, to travel. In such cases, the traveler shall then be entitled to submit a claim for actual and necessary expenses for transportation, meals, lodging, and incidentals, subject to the claiming conditions set forth in this travel policy. Said reimbursement shall be delivered to the Auditor-Controller's Office within thirty (30) days of the receipt of the funds.
2. If a County volunteer or non-employee will be receiving a per diem or other reimbursement of travel expenses from a source outside of the County, the volunteer shall not be eligible to claim or receive any additional reimbursement from the County for the same expenses.

F. Late Claims

If a claim for reimbursement or settlement of a travel claim is submitted after the allowed time frames, the payment to the employee shall not be made until the claim has