

**COMMONWEALTH OF VIRGINIA  
MEMORANDUM OF AGREEMENT**

**THIS DOCUMENT, INCLUDING APPENDICES A, B, C AND D, INCORPORATED HEREIN BY REFERENCE CONSTITUTES THE AGREEMENT BETWEEN:**

**Kronos Incorporated**, 297 Billerica Road, Chelmsford, Massachusetts 01824, hereinafter referred to as **Contractor**;

**AND**

**The Department of Behavioral Health and Developmental Services, (DBHDS)**, P.O. Box 1797, Richmond, Virginia 23218, hereinafter referred to as **Contracting Agency or DBHDS**;

**AND IS DATED** September 9, 2010

In as much as DBHDS requires certain goods, services and maintenance the Contractor has agreed to provide such goods, services and maintenance, by result of negotiation between the parties, and for and in consideration of the respective undertakings of the parties to this contract, the following agreements are made:

**1.0 PURPOSE:**

The purpose of this agreement is to enter into a fixed price contract with Kronos Incorporated to furnish, install and maintain on an as needed basis Kronos labor management systems, to include hardware, software, annual maintenance and professional services to DBHDS and it's facilities.

**2.0 SCOPE OF WORK:**

The **Contractor** under the terms of this agreement shall:

- 2.1 Provide all materials, labor, supervision, tools, training, equipment and incidentals necessary to furnish and install and render operational an agreed upon automated labor management system to DBHDS facilities as required and specified through the issuance of an individual Agency/Facility eVA purchase order.
- 2.2 Plan and coordinate the performance of the work with the procuring facility's designated representative in order to expedite the work as to cause minimal disturbance of facility operations.
- 2.3 Guarantee that services shall be performed by competent technicians who are employees of the Contractor or equivalently qualified Kronos subcontractors who are knowledgeable and familiar with the specific Kronos equipment and services. As applicable and during project implementation, a competent full-time job individual shall be assigned to manage any project and coordinate all activities with Contractor's Application Consultants. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

- 2.4 The Contractor shall manage and provide guidance on all projects in accordance with Kronos' published electronic documentation (the "Specifications") taking into consideration all applicable Federal, State and local laws and regulations. The Contractor shall provide procuring facilities with all applicable installation specifications/directions and any other incidental items (mounting plates and hardware, etc.) necessary for installation of Kronos equipment and software.
- 2.5 The procuring facility will be responsible unless determined otherwise, for the installation of all network cabling for the file servers and workstations as well as the cabling for the direct connection of the badging terminals to the Ethernet communications network. In addition, the procuring facility will be responsible for supplying 120 VAC power to each clock station. The Contractor shall ensure operability (fully testing software) of the software and badging terminals on the procuring facility's network in accordance with the Acceptance Test in Section 9 of **Appendix B**.
- 2.6 Implement the entire installation of the labor management system with a phased in process and provided that DBHDS purchases the applicable products and services for the labor management software from Contractor for such implementation. The procuring facility will select the order of installation and coordinate the work with the Contractor. Because of this phase in approach, the Contractor shall use commercially reasonable efforts to adhere to mutually agreed upon implementation plan. The Contractor shall be on-site for the amount of time determined necessary by mutual agreement between the procuring facility and the Contractor as outlined in the project plan. In addition, there shall be mutually agreed upon Contractor/procuring facility meetings throughout the system implementation.
- 2.7 At the conclusion of any installation, the Contractor shall demonstrate to the procuring facility's representative that the work is fully operational and in compliance with the Specifications. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work. The parties agree the software and equipment are subject to the Acceptance Test in Section 9 of **Appendix B**.
- 2.8 Be aware that the Commonwealth of Virginia (COV) has in place software architectural standards that the Contractor be familiar with and to use commercially reasonable efforts to meet these standards, as amended. These standards can be found at <https://www.vita.virginia.gov/oversight/default.aspx?id=365>. Notwithstanding the foregoing, The Commonwealth agrees that if the products are required to be modified to meet any of such architectural standards, The Commonwealth of Virginia shall be responsible for any costs associated with such modification and as mutually agreed between the parties.
- 2.9 Contractor agrees to use commercially reasonable efforts to comply with all applicable Commonwealth of Virginia 501 Security Standards as amended in regards to the handling of personal, identifiable information (PII) provided to the Contractor. A copy of these standards can be located at: [http://www.vita.virginia.gov/uploadedFiles/Library/PSGs/IT\\_Security\\_Std\\_501\\_01\\_R5\\_1\\_02022010.pdf](http://www.vita.virginia.gov/uploadedFiles/Library/PSGs/IT_Security_Std_501_01_R5_1_02022010.pdf)

- 2.10 The Commonwealth of Virginia has provided accessibility standards to Contractor and Contractor acknowledges that its products are capable of modification to meet these standards. A copy of these standards can be located at [http://www.vita.virginia.gov/uploadedFiles/Library/AccessibilityStandard\\_GOV103-00\\_Eff\\_11-04-05.pdf](http://www.vita.virginia.gov/uploadedFiles/Library/AccessibilityStandard_GOV103-00_Eff_11-04-05.pdf) The Commonwealth agrees that if the products are required to be modified to meet such standards, The Commonwealth of Virginia shall be responsible for any costs associated with such modification and as mutually agreed between the parties.
- 2.11 The parties agree to use Contractor's remote access technology (e.g., Citrix Got To Assist technology) as the primary remote access tool. In the event that Contractor is not able to use such technology to support the DBHDS facility and after exhausting all reasonable methods under such technology to support such facility and Contractor is still unable to provide support, Contractor agrees to access DBHDS server utilizing a Client Virtual Private Network (VPN) solution provided by the Partnership (VITA/Northrop Grumman). Any equipment (excluding laptop or desktop pc) or software required to perform remote access to the infrastructure shall be provided by the Contracting Agency at no cost to the Contractor.
- 2.12 Contractor will make available for its customers on maintenance support all software updates including patches and bug fixes. In addition, Kronos will provide download instructions and a link to a website where authorized users may download and manage the updates.
- 2.13 Ensure that all systems offer remote diagnostic capabilities that allows central support center to troubleshoot the system and/or send or receive data files.
- 2.14 Provided it is set forth in the Specifications, make commercially reasonable efforts to ensure any system purchased under this Agreement has the capability of linking with the Contracting Agency's labor management software.
- 2.15 Provided it is set forth in the Specifications, ensure all systems be able to communicate in accordance with TCP/IP protocol as well as commercial standard protocol.
- 2.16 Provided it is set forth in the Specifications, ensure all badging stations be capable of direct communication through an Ethernet 10 Base T connection or current Contracted Agency's network without additional conversion devices, unless directed otherwise.
- 2.17 Provided it is set forth in the Specifications, sell badge terminals that provide various employee data collection and access options.
- 2.18 Provide "commercially available off-the-shelf" (COTS) hardware and software products, (i.e., the software and equipment purchased by the Contracting Agency or its facilities under this Agreement is not custom developed products made specifically for the Contracting Agency or its facilities).
- 2.19 If provided in the Specifications, ensure the software will generate reports that support DBHDS labor management processes. In the event the Contracting Agency or a procuring facility desires to modify a report or output currently available, a fee for these services will be mutually negotiated and invoiced to the Contracting Agency or procuring facility.
- 2.20 All equipments orders shall be FOB Destination, freight prepaid and added to invoice. DBHDS ordering facilities shall only pay actual freight charges. No handling charges shall be allowed.

The **Contracting Agency** under the terms of this agreement shall:

- 2.21 Require that any DBHDS facility procuring any new hardware, software and/or services, under this agreement that are in excess of \$100,000, obtain Agency Purchasing Request (APR) approval from Virginia Information Technologies Agency (VITA) prior to issuing a purchase order through the Commonwealth of Virginia eVA purchasing system. This requirement shall remain in effect until DBHDS receives notification in writing from VITA rescinding this requirement.
- 2.22 Require all DBHDS facilities procuring hardware/software/maintenance/services under this contract, issue a purchase order to the Contractor outlining all applicable information using the Commonwealth of Virginia eVA purchasing system. DBHDS facilities will include a reference to the applicable Kronos Order Form Quote number on its purchase order.

**3.0 Consideration, Compensation and Payment:**

- 3.1 The Contractor shall be paid by the individual procuring facility within 30 days after receipt and acceptance of all hardware and software and upon receipt and approval of a valid invoice. Payment of professional services, including training and/or and implementation services, shall be made within 30 days following completion of services and receipt and approval of a valid invoice.
- 3.2 All invoices submitted shall display in a prominent place the Agreement number assigned to this document, the approved APR number (if applicable) and any eVA generated purchase order.
- 3.3 Pricing for all hardware/software and all hardware/software support services purchased under this contract shall be fixed pricing for a period one (1) year. Pricing discount shall be at a minimum of thirty (30%) percent off most current published list price (July 14, 2010 for the initial term) as provided by Contractor at the initial term and each subsequent renewal period. Additional discounts or savings offered by the Contractor will be considered throughout the life of the contract. Prices for training and other implementation-related services will be obtained on a case-by-case basis upon evaluation of individual agency resources and infrastructure.
- 3.4 For an initial period of two (2) years from the effective date of this Agreement, the Contractor agrees to honor any and all pricing under this agreement for professional services and training to any DBHDS facility at a rate of \$187.50 per hour. These services include project managers and application, technical and educational consultants. Other services such as Kronos management and solution consultants shall be at a rate of \$200.00 per hour for the first two (2) years. These rates shall be reviewed every two (2) years prior to contract renewal (i.e., 2012 and 2014) and will either be extended or re-negotiated by the parties as mutually agreed upon.
- 3.5 The Contractor agrees to honor any and all pricing under this agreement for maintenance to any DBHDS facility currently having a Kronos labor management system. This shall include renewal of any maintenance agreements currently held at DBHDS facilities which may terminate or become renewable during the term of this contract. Maintenance pricing for subsequent renewal periods shall not exceed the contract price(s) of the previous contract increased/decreased by no more than the percentage increase/decrease of the "Other Services" category of the CPI-U section (Table 1) of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available at the time of each renewal. The Contractor agrees that any DBHDS facility maintenance pricing that has been increased by the above CPI-U on Kronos hardware/software/licenses currently owned by any DBHDS facility and that was purchased directly through Contractor and covered under an existing maintenance agreement shall not exceed the Contractor's current published maintenance pricing.

- 3.6 Any DBHDS facility reserves the right to cancel an existing annual maintenance support agreement. Facilities shall be required to provide to Contractor at least thirty (30) days prior written notice of cancellation. Any DBHDS facility canceling an existing maintenance agreement shall receive a refund from the Contractor for the unused prepaid portion of the maintenance support agreement within thirty (30) days of the cancellation effective date. For purposes of clarity, if a facility cancels maintenance support after 9 months, the facility is entitled to receive a refund of 3 months of the prepaid maintenance support.
- 3.7 All DBHDS facilities annual Kronos maintenance and support shall run on a Commonwealth of Virginia Fiscal Year Basis (July 1 through June 30), unless otherwise mutually agreed upon in writing. Maintenance costs on any DBHDS mid-year purchases of Kronos hardware or software shall be pro-rated beginning on mutually agreed upon date (on or about issue date of eVA purchase order) date though June 30 of any particular year. Kronos agrees to work with the Contracting Agency in an effort to eventually issue a single invoice for annual maintenance that consolidates all DBHDS facilities accessing Kronos's labor management software through a single production environment. Invoice shall identify and outline each facilities specific Kronos annual maintenance costs and other pertinent information. Payment of maintenance and support shall be prepaid and paid within thirty (30) days upon receipt and approval of a valid invoice. DBHDS reserves the right to prepay maintenance and support on either a quarterly or annual basis. DBHDS shall notify the Contractor no later than sixty (60) days prior to the expiration date of maintenance and support period if any change is required to existing prepay maintenance and support payment frequency. Contractor shall submit invoice for maintenance and support no earlier than 45 days prior to expiration term of the maintenance and support period.
- 3.8 The Contractor shall not be allowed to charge any DBHDS facility travel costs for meetings or marketing visits made prior to issuance of a facility issued eVA purchase order. The Contractor is required to spell out and estimate all travel costs related to the purchase and implementation of any new Kronos hardware/software in all written facility Scope of Work and price quotations. All reimbursable travel costs charged by the Contractor under this agreement shall be in accordance with Commonwealth of Virginia Travel guidelines at the time of travel relating to allowable reimbursements and reimbursement rates.

[http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335.pdf)

- 3.9 All quotes for services provided by the Contractor to DBHDS facilities shall be written as an estimated "not to exceed" amount. DBHDS and facilities shall only be responsible to pay for actual services provided by the Contractor, to include but not limited to educational, training, implementation, project management and professional services. Each DBHDS facility and the Contractor shall come to a mutual agreement as to what is the closest estimation for services to be provided prior to issuance of any eVA purchase order and shall be as set forth in the mutually agreed upon Statement of Work.
- 4.0 Deliverables:** The Contractor shall:
- 4.1 Make reasonable effort to communicate via e-mail to the designated DBHDS contract administrator any discussions that take place with DBHDS facilities at the time of initiation regarding any new software/hardware purchases or upgrades, excluding purchase of additional data input devices that mirror existing footprint and/or additional licenses.

4.2 All software provided by the Contractor to a Contracting Agency or procuring facility shall be subject to the software license terms set forth in **Appendix B**, attached hereto and incorporated by reference herein.

**5.0 Period of the Agreement:**

5.1 This Agreement shall commence upon final execution and continue through August 31, 2011, to include services beginning September 1, 2010.

5.2 If this Agreement is terminated, DBHDS shall be liable only for payment of expenses for services rendered and products delivered before the effective date of termination.

5.3 This Agreement may be renewed for five (5) additional 12-month periods upon mutual agreement of both parties

**6.0 General Terms and Conditions:**

6.1 **VENDOR'S MANUAL:** This agreement is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps) under "Vendor" tab." In the event of a conflict or inconsistency between the terms and conditions of the Vendor's Manual and this Agreement, the terms of this Agreement shall prevail.

6.2 **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia, § 2.2-4366*). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

6.3 **ANTI-DISCRIMINATION:** By signing this contract, the contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the contractor is a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia, § 2.2-4343.1E*).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

6.4 **ETHICS IN PUBLIC CONTRACTING:** By signing this contract, the contractor certifies that they have entered into this contract without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other contractor, supplier, manufacturer or subcontractor in connection with this contract, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6.5 **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By signing this contract, the contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

6.6 **DEBARMENT STATUS:** By signing this contract, the contractor certifies that they are not currently debarred from contracting with or submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.

6.7 **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

6.8 **PAYMENT:**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363). This subsection (e) shall only apply to good faith disputes by the procuring facilities.

2. To Subcontractors:

- a. The contractor (if applicable) under this contract is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

6.9 **PRECEDENCE OF TERMS:** Paragraphs 6.1 – 6.8 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

6.10 **TESTING AND INSPECTION:** The DBHDS reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the Specifications.

6.11 **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

6.11 **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth, which consent not to be unreasonably withheld.

6.12 **CHANGES TO THE CONTRACT:** Changes can be made to the Contract in any one of the following ways:

1. The parties may agree in writing to modify the scope of the contract. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The DBHDS may request changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as scope of services to be provided, reporting requirements or cost of services. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the DBHDS a credit for any savings. Said compensation shall be determined by one of the following methods:
  - a. By mutual agreement between the parties in writing; or
  - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the DBHDS's right to audit the Contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the Contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the DBHDS with all vouchers and records of expenses incurred and savings realized. The DBHDS shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the DBHDS within thirty (30) days from the date of receipt of the written order from the DBHDS. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia's *Vendor's Manual*. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the DBHDS or with the performance of the contract generally.

6.13 **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure the identical goods or services from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

6.14 **INSURANCE:** By signing this contract, the Contractor certifies it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Contractor further certifies that they and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence.

- 6.15 **DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- 6.16 **TOBACCO-FREE AND SMOKE FREE WORKPLACE:** During the term of this contract, the contractor and all employees of the contractor shall adhere to the facility's tobacco-free workplace policy. Tobacco use in any form is prohibited on facility grounds and structures, including all roads and parking lots within the facility. Contractor shall ensure its employees and all contractor's subcontractors remain tobacco-free while on facility grounds and in facility structures, including in their personal vehicles when located on facility grounds or roads within the grounds.
- 6.17 **NONDISCRIMINATION OF CONTRACTORS:** A contractor shall not be discriminated against in the award of this contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- 6.18 **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All Offerors must register in eVA; failure to register will result in the proposal being rejected. No award shall be made to an Offeror not registered in eVA.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
  - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
  - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
  - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

The eVA transaction fee will be invoiced approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases or decreases) will be handled through purchase order changes.

- 6.19 **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

## **7.0 Special Terms and Conditions:**

- 7.1 **ASBESTOS:** To the extent applicable, whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.
- 7.2 **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period and during normal business hours.
- 7.3 **CANCELLATION OF CONTRACT:** The Contracting Agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve either party of any respective contractual obligations accrued prior to the effective date of cancellation.

7.4 **CONFIDENTIALITY:** The Contractor assures that any information and data obtained as to personal facts and circumstances related to clients or staff will be held confidential, during and following the term of this agreement, and will not be divulged, except as required to legally meet mandatory requirements, without the individual's and the DBHDS's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by the DBHDS as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material, in the event it is identified as Governor's Working Documents, Attorney-Client Privileged, related to procurement and contracting processes, or is otherwise exempt from Code of Virginia, Freedom of Information statutes. Upon termination of this agreement and/or within 90 days of receipt of final payment for services, all materials and information in the possession of the Contractor, that may include but is not limited to patient medical and legal records, shall be restored or provided to the DBHDS and electronic information and data in possession of the Contractor shall be provided to the DBHDS in digital form upon media designated by the DBHDS and will be expunged from equipment and systems retained by the Contractor.

7.5 **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this agreement, I certify that this firm/individual and/or subcontractor is properly licensed for providing the goods/services specified.

Contractor Name: \_\_\_\_\_ Subcontractor Name: \_\_\_\_\_

License # \_\_\_\_\_ Type \_\_\_\_\_

7.6 **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for one hundred and twenty thousand dollars (\$120,000) or more, or if the total value of all such contracts undertaken by the Contractor within any 12-month period is seven hundred and fifty thousand dollars (\$750,000) or more, the Contractor is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars (\$7,500) or more but less than one hundred and twenty thousand dollars (\$120,000), or if the total value of all such contracts undertaken by the Contractor within any 12-month period is between one hundred and fifty thousand dollars (\$150,000) and seven hundred and fifty thousand dollars (\$750,000) or more, the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars (\$1,000) or more but less than seventy-five hundred dollars (\$7,500), or if the contractor does less than \$150,000 in business in a 12-month period, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors. The Contractor shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_  
Licensed Class B Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_  
Licensed Class C Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_

If the Contractor shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said contractor license number to the Commonwealth in writing when requested to do so before or after the opening of bids/proposals, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid/proposal will not be considered.

If the Contractor shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

- 7.7 **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
- 7.8 **DELIVERY AND STORAGE:** It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The owner will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space in the building during installation.
- 7.9 **EXTRA CHARGES NOT ALLOWED:** The pricing provided to the individual procuring facilities shall be for complete installation ready for the Commonwealth's use, and shall include all applicable freight and installation charges, professional, training and implementation-related services; extra charges will not be allowed, except as provided by a mutually agreed upon change in scope.
- 7.10 **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners' representative that the work is fully operational and in compliance with the Specifications. In accordance with Section 9 of **Appendix B**, any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.
- 7.11 **INSPECTION OF JOB SITE:** By signing this contract, if applicable the Contractor agrees to inspect all job site(s) and will become aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.
- 7.12 **INSTALLATION:** All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.
- 7.13 **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.
- 7.14 **PREVENTIVE MAINTENANCE:** The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.
- 7.15 **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

In addition, Contractor's then-current Professional and Educational Services Policies shall apply to all Professional and/or Educational Services purchased under the applicable statement of work and may be accessed at: <http://www.kronos.com/Support/ProfessionalServicesEngagementPolicies.htm>, ("Professional Services Policies"). The Professional Services Policies are attached hereto as **Appendix C**. In the event of a conflict between the Professional Services Policies and this Contract, the terms of this Contract shall prevail.

- 7.16 **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for five (5) additional one year (12 months) periods under the terms and conditions of the original contract except as stated in 1 through 4 below. Price increases shall only be considered at the time of renewal. Written notice of the Commonwealth's intention to renew will be given approximately 30 to 90 days prior to the expiration date of each contract period.
1. If the Contracting Agency elects to exercise the option to renew the contract for an additional one year period, the contract price(s) for hardware, software and maintenance and support of the hardware/software for the additional one year shall continue to be GSA like pricing with a minimum of 30% off most current published list price as provided by Contractor in effect at the time of renewal.
  2. If during any subsequent renewal periods, the Contracting Agency elects to exercise the option to renew the contract, the contract price(s) for hardware, software and maintenance and support of hardware/software for the subsequent renewal periods continue to be GSA like pricing with a minimum of 30% off most current published list price as provided by Contractor in effect at the time of renewal.
  3. If the Contracting Agency elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for annual hardware/software maintenance support at each facility for the additional one year shall not exceed the contract price(s) of the previous annual hardware/software maintenance support increased/decreased by more than the percentage increase/decrease of the "other services" category of the CPI-U section (Table 1) of the Consumer Price Index - of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available as of the date of renewal. It is understood by all parties that price increases/decreases at the time of contract renewal are not automatic. All contract renewal percentage (%) price increases/decreases will be negotiated and mutually agreed upon by all parties.
  4. If during any subsequent renewal periods, the Contracting Agency elects to exercise the option to renew the contract, the contract price(s) for annual hardware/software maintenance support at each facility for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the "other services" category of the CPI-U section (Table 1) of the Consumer Price Index - of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available as of the date of renewal. It is understood by all parties that price increases/decreases at the time of contract renewal are not automatic. All contract renewal percentage (%) price increases/decreases will be negotiated and mutually agreed upon by all parties.

- 7.17 **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written notification provided to the Contracting Agency. Upon request of the Contracting Agency, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- 7.18 **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the Contractor's commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished upon request.
- 7.19 **WORK SITE DAMAGES:** Any tangible property damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.
- 7.20 **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.
- 7.21 **LATEST SOFTWARE VERSION (Existing Kronos DBHDS Facility):** Provided that the existing Kronos DBHDS facility has continuously remained on software support with Contractor, any software product(s) provided under the contract shall be the latest version available to the general public as of the issue date of each individual agency purchase order. DBHDS facility shall make reasonable efforts to ensure that the VITA/Northrop Grumman Partnership maintains an environment that meets the minimum requirements set forth in the Specifications for all Software.
- 7.22 **LATEST SOFTWARE VERSION (New Kronos DBHDS Facility):** The parties agree that Contractor will sell to DBHDS the most current Kronos labor management software version being utilized by DBHDS through the single production environment and which software is supported through a valid maintenance contract.
- 7.23 **NEW EQUIPMENT:** Unless otherwise expressly stated in this agreement, any equipment furnished under the contract shall be new, unused equipment.
- 7.24 **OPERATIONAL COMPONENTS:** Unless otherwise requested in the agreement, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule. This also excludes Firmware updates to the equipment unless DBHDS has purchased and continuously remains on equipment support services with the Contractor.

- 7.25 **PRODUCT SUBSTITUTION:** During any term of this agreement, the vendor is not authorized to substitute any item for that product and/or software identified in the agreement to include the attachment, without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
- 7.26 **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this agreement as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Commonwealth reserves the right to require reasonable evidence of such qualifications prior to services being provided and at any time during the term of the contract.
- 7.27 **EQUIPMENT ENVIRONMENT:** Environmental Specifications for any equipment to be delivered under the resulting contract shall be provided to the procuring facility should any such requirements be applicable. These Specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in this agreement, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental Specifications provided.
- 7.28 **RELOCATION OF EQUIPMENT:** Should it become necessary to move equipment covered by the contract to another location, the Commonwealth reserves the right to do so at its own expense. If contractor supervision is required, the Commonwealth will provide prior written notice of the move at least thirty days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the Commonwealth. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties.
- 7.29 **REPAIR PARTS:** DBHDS may purchase support services for Equipment in accordance with the terms and conditions of the Contractor's standard Equipment Support Services Addendum attached as **Appendix D**, a non-amended copy of which is available upon request and is located at: <http://www.kronos.com/LegalEquipmentSupportAgr.aspx>.
- 7.30 **SERVICE PERIOD (ROUTINE):** To the extent DBHDS purchases support maintenance, Software Support shall be provided pursuant with **Appendix A**.
- 7.31 **SERVICE REPORTS:** Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.
- 7.32 **SOFTWARE UPGRADES:** Provided the Commonwealth has continuously remained on and is a current Kronos maintenance customer, the Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

- 7.33 **SOURCE CODE ESCROW:** Contractor has deposited in escrow the source code for the Workforce Central Software with Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"). If DBHDS wishes to enroll as a beneficiary to receive such source code in the event of a Release Condition (as defined in Kronos' escrow agreement with Iron Mountain), the parties shall execute Iron Mountain's standard Enrollment Form, and upon payment by DBHDS of the fees charged by Iron Mountain to Contractor's beneficiaries under such escrow agreement, which fees are charged annually by Iron Mountain, DBHDS shall be enrolled as a beneficiary. Release of said source code by Iron Mountain to DBHDS for the sole purpose of maintaining the Software shall be authorized only upon the occurrence of one or more of the Release Conditions. A copy of the escrow Agreement shall be provided to Customer upon request.
- 7.34 **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the contract, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any compatible equipment, by the number of users licensed by the Commonwealth, and for the purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred and provided such assignee agrees to be bound by the terms and conditions of this agreement.
- 7.35 **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The Contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
- 7.36 **TITLE TO SOFTWARE:** By signing this contract, the Contractor represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- 7.37 **LIMITATION OF USE:** The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment for which it is purchased and based upon number of licenses purchased; use of the software on a secondary system solely for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the Commonwealth's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable and subject to this contract; in the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the *Code of Virginia*.

- 7.38 **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
- 7.39 **WARRANTY OF SOFTWARE:** The contractor warrants that the software shall substantially operate in accordance with the Kronos published Specifications for so long as the Commonwealth maintains the software under a support plan with Kronos. During the warranty period, the contractor shall provide toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation within the service coverage period of the support service option selected by the DBHDS facility.

**IN WITNESS WHEREOF**, and as authorized representatives, the parties have caused this Agreement to be duly executed intending to be bound thereby.

Kronos Incorporated

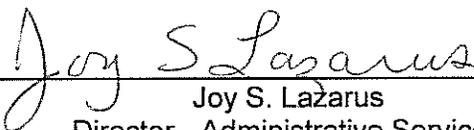
By:   
Signature

Name: Alice Moore  
Printed

Title: VP, General Counsel

Date: September 17, 2010

Department of Behavioral Health  
And Developmental Services

By:   
Joy S. Lazarus  
Director - Administrative Services

Date: 9/23/10