

# **Certified B-COMM for PeopleSoft Time and Labor License Agreement**

**Prepared Exclusively for:**

CITY OF OVERLAND PARK, KANSAS

**July 17, 2006**

**Kaba Benzing America, Inc.**

**North American Corporate Headquarters**

3015 North Commerce Parkway, Miramar, Florida 33025 USA

Corporate 954.416.1720 • Facsimile 954.416.1721



# Master Agreement

This BINDING SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT is made between

1 Kaba Benzing America Inc. (“**Kaba**”), a company incorporated in Florida, USA with registered no 980661 and whose registered office is at 3015 North Commerce Parkway, Miramar Florida 33025 USA

And

2 The City of Overland Park, Kansas (“**Customer**”), a company incorporated in Kansas and whose registered office is at City Hall 8500 Santa Fe Drive Overland Park, Kansas 66212 USA

**The parties hereto agree as follows:**

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Agreement**” means this Software License and Services Agreement, including any and all schedules and [appendices] hereto.

“**Documentation**” means any on-line help files, instruction manuals, operating instructions, user manuals or specifications provided by Kaba, which describe the use of the Software, or Hardware and which either accompany the Software or Hardware or are provided to Customer by Kaba at any time.

“**Effective Date**” means the date of this Agreement.

“**Hardware**” means the items of hardware to be supplied by Kaba set out in Schedule A.

“**Kaba**”, and “**Customer**” have the meanings ascribed to them hereinabove.

“**License Fee**” and “**Maintenance Fee**” mean the respective fees set out in Schedule A (as updated in accordance with that Schedule from time to time).

“**Maintenance**” means the maintenance service to be provided (if taken by the Customer) in accordance with the terms of the Maintenance Agreement set out in Schedule B.

“**Services**” means the Professional Services referred to in section 10 and Schedule A.

“**Site**” means the physical location of the computer on which the Software will be installed as set forth in Schedule A.

**“Software”** means the computer software set out in Schedule A to be provided to Customer by Kaba in object form only (not the Source Code).

**“SOW”** or “Statement of Work” means the statement of work set out in Schedule C.

**“Specification”** means the functional overview set out in the Kaba document “B-COMM – Time and Labor Management System – White paper” as set out in Appendix 1.

**“Term”** means in perpetuity but subject always to termination in accordance with section 12.

**“User(s)”** means the person(s) at the Site who access the computer system to use the data provided by the Software.

**“White Paper”** means firm definition of functionality, integration, operating, and technical environment(s) associated with the Software.

1.2 The headings of these terms and conditions are for convenience only and shall not affect the interpretation thereof.

## **2. SOFTWARE LICENSE**

2.1 GRANT OF LICENSE: Kaba grants to Customer for the Term the non-exclusive and non-transferable right to use the Software at the Site.

2.2. OWNERSHIP: Kaba shall remain as exclusive owner of the Software and Documentation. This license transfers to Customer neither title nor any proprietary or intellectual property rights to the Software, Documentation, or any copyrights, patents, or trademarks embodied or used in connection therewith, except for the rights as expressly granted herein.

2.3 USE OF SOFTWARE. Customer agrees to use the Software for its own internal business purposes. Customer may not make available to third parties access to the Software, including but not limited to access through terminals, processors or communication networks owned, controlled or operated by Customer, without Kaba’s prior written consent.

2.4. COPIES. Kaba will deliver to Customer one copy of the Software and related materials described in Schedule A. Customer will be entitled to make a reasonable number of machine-readable copies of the Software for backup or archival purposes only. Save for back up and archival purposes Customer may not make or permit the making of any copies of the Software. Customer shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform Kaba in writing of such location(s). All copies of the Software will be subject to all terms and conditions of this Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software, all titles, trademark symbols, copyright symbols and legends, and other proprietary markings must be reproduced.

2.5. RESTRICTION: Customer agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) sell, lease, license or sub-license the Software or the Documentation; (b) decompile, disassemble or reverse engineer the Software; (c) in any way modify or prepare derivative works of the Software; or (d) provide, disclose, divulge, or make available to, or permit use of the Software by any unauthorized party without Kaba’s prior written consent.

## **3. INSTALLATION**

3.1 SITE. Customer agrees to install the Software and to use the Software and related materials solely at the Site and for only that amount of Users as are set out in Schedule A.

3.2 SPECIFICATIONS. Customer agrees to install the Software only on equipment that meets the minimum hardware requirements and specifications set forth in the White Paper.

#### **4. UPGRADES, ENHANCEMENTS**

4.1 UPGRADES, ENHANCEMENTS. For the period of one year from the Effective Date Kaba will promptly inform the Customer of any upgrades or enhancements which are made as a result of bug fixes, patches or product enhancements. Upgrades and enhancements are defined as an improvement to the functionality of an existing software program and identified by a change in the number to the right of the decimal point of the number appearing after the product name. Customer is not entitled to new modules priced separately on Kaba's standard price list, but Customer may purchase new modules upon the terms and price listed in the Standard Price List, which is published by Kaba. Any costs associated with installation and implementation of enhancements and upgrades is Customer's responsibility.

#### **5. PAYMENTS AND TAXES**

5.1 FEES. Customer shall pay Kaba the fees set out in Schedule A in accordance with the terms set out in that Schedule.

5.2 TAXES. In addition to the amounts set out in Schedule A, Customer agrees to pay or reimburse Kaba, as the case may be, for any and all applicable sales, use, withholding, VAT or excise taxes imposed by any Federal, State, Dominion, Provincial or local tax authority in connection with the licenses granted to Customer pursuant to this Agreement or the provisions for Services or Maintenance hereunder.

5.3 Invoices for hardware and software will be submitted to the City upon installation by Kaba Benzing America, Inc. and acceptance by City, and will be paid within 30 days of receipt.

Invoices for maintenance and consulting services will be submitted to the City monthly, and will be paid within 30 days of receipt.

5.4 Kaba reserves the right to suspend further supplies of goods and/or Services in the event of any payments under the Agreement not being made when due.

5.5 NO OFFSET. Customer may not offset any amounts owed or allegedly owed by Kaba to Customer against fees due from Customer under this Agreement.

#### **6. ESCROW OF SOURCE CODE**

6.1 MASTER SOURCE CODE ESCROW AGREEMENT. A Master Source Code Escrow Agreement with respect to the Software may be established within thirty (30) days of the Effective Date at Customer's expense and subject to Customer's written notification to subscribe to same. Customer shall have the right to become a beneficiary of the Escrow Agreement provided that Customer agrees to be bound by the terms of such Escrow

Agreement. If the subscription to an Escrow Agreement is agreed to by the Customer, Kaba will escrow the source code with an independent third party escrow agent of its choosing and its sole discretion. The Escrow Agreement is attached as Schedule E.

## **7. CONFIDENTIALITY**

- 7.1 **PROPRIETARY INFORMATION.** All information (regardless of its form, manifestation or how it is known to the other party) concerning either party to this Agreement, including without limitation the source code for the Software, technology, data, business, financial affairs and operations of each respective party hereto, is hereby deemed to be for the purposes of this Section 7.0 as confidential and proprietary to each such respective party (“Confidential Information”). Confidential Information shall not include information defined as Confidential Information above which the receiving party can establish before a competent jurisdiction: (i) was in the possession of the receiving party at the time of disclosure; (ii) prior to or after the time of disclosure becomes part of the public domain without the act or omission of the party to whom it was disclosed; (iii) is disclosed to the receiving party by a third party under no legal obligation to maintain the confidentiality of such information; or (iv) was independently developed by the receiving party. All such Confidential Information shall be treated as strictly confidential by the receiving party and its employees, contractors and agents and shall not be disclosed by the receiving party without the disclosing party’s prior written consent. However, the receiving party may disclose Confidential Information of the disclosing party in accordance with the provisions of KSA 45-216 et seq the KS Open Records Act or subject to provisions or the judicial or other governmental order, provided the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or the equivalent.
- 7.2 **TREATMENT OF CONFIDENTIAL INFORMATION.** Neither party shall in any way duplicate all or any part of the other party’s Confidential Information, except in accordance with the terms and conditions of this Agreement. Each party shall have an appropriate agreement with its employees, contractors and agents having access to the other party’s Confidential Information sufficient to enable that party to comply with all the terms of this Agreement. Each party agrees to protect the other’s Confidential Information with a fiduciary duty and shall adopt or maintain procedures to protect such Confidential Information commensurate with such duty.
- 7.3 **FURTHER TREATMENT OF PROPRIETARY INFORMATION.** Subject to provisions of KSA 45-216 et seq the KS Open Records Act, each party agrees not to disclose any such Confidential Information without the prior written consent of the other to anyone other than that party’s employees, contractors and agents who have a need to know same to carry out the rights granted hereunder. Each party shall use its reasonable efforts to protect all such Confidential Information from material harm, damage, theft, tampering, sabotage, interference or unauthorized use, during the term of this Agreement and during such time as Confidential Information remains in the possession of the other party.
- 7.4 **ACTION TO PROTECT.** Each party shall promptly report to the other any actual or suspected violation of the terms of this Section 7.0, and shall take all reasonable steps to prevent, control or remedy such violation.
- 7.5 **EQUITABLE RELIEF.** In recognition of the unique and proprietary nature of the information disclosed by the parties, it is agreed that each party’s remedies for a breach by the other of its obligations under this Section 7.0 shall be inadequate and the disclosing party shall, in the event of such breach and be entitled to seek equitable relief,

including without limitation, injunctive relief and specific performance in addition to any other remedies provided hereunder or available at law.

## **8. HARDWARE**

8.1 **TERMS OF SALE.** If Customer purchases Hardware from Kaba it purchases subject to the terms and conditions of sale of this Agreement.

## **9. MAINTENANCE**

9.1 If requested and subject to the payment of the annual Maintenance Fee Kaba will provide maintenance of the Kaba Hardware (but not third party manufactured hardware) and/or Software, in accordance with the terms set out in Schedule B.

9.2 **LIMITATIONS.** Kaba shall have no obligation to support (a) altered, damaged or modified software (except as authorized by Kaba) or any portion of the Software incorporated into other software; (b) Software that is not the then current or immediately previous sequential release; (c) problems caused by Customer's negligence, abuse or misapplication, or use of the Software other than as specified in Kaba's User Guide or any other cause beyond Kaba's control; or (d) Software installed on a system that is not supported by Kaba. Kaba shall have no liability for any changes in Customer's hardware, which may be necessary to use the Software.

9.3 **TECHNICAL SUPPORT.** Kaba reserves the right to change its technical support guidelines and procedures upon at least thirty (30) days prior written notice of such changes to Customer and provided that Kaba's overall technical support obligations to Customer shall not be less than provided prior to the change and this for as long as the Agreement and Maintenance Agreement (Schedule B), if applicable, is in effect.

## **10. PROFESSIONAL SERVICES**

10.1 **SERVICES.** Kaba provides consulting services for the implementation of Software. Kaba shall render these services and deliver the required reports in accordance with the Statement of Work attached hereto as Schedule C, if applicable.

10.2 **CUSTOMER LIAISON.** Customer will advise Kaba individuals to whom Kaba's personnel will report for purpose of coordinating Kaba's activities for Customer. Customer and Kaba will develop appropriate administrative procedures to apply to such personnel, and which will be provided for in the SOW (Schedule C).

## **11. SOFTWARE USE CONTROL**

Kaba shall have the right to undertake a Software user audit every three months to determine the number of Customer employees using the Software. This will be carried out using a programme (schemer) reading the Customer B-COMM Database. Customer agrees that it shall cooperate in such audit and to promptly pay for any employees for whom it does not have a License. Kaba warrants that the schemer software does and shall not enable Kaba to gain access to any information of the Customer and that Kaba will not use the schemer software for any purpose other than the said headcount check.

## **12. TERM AND TERMINATION**

- 12.1 This Agreement commences on the Effective Date and will remain in force until it is terminated in accordance with this section 12.
- 12.2 This Agreement may be terminated: -
- 12.2.1 by the Customer or Kaba by giving not less than 90 days' notice to the other provided such notice shall not expire before the date being 12 months after the Effective Date;
- 12.2.2 forthwith by Kaba if the Customer fails to pay any sum due hereunder within 30 days of the due date therefore;
- 12.2.3 forthwith by either party if the other commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
- 12.2.4 Forthwith by either party if the other ceases its business activities or becomes insolvent, admits in writing to an inability to pay its debts as they mature, makes an assignment for the benefit of creditors, is adjudged bankrupt by a competent authority, voluntarily files a petition under any bankruptcy or similar law providing for its reorganization, dissolution or liquidation, or becomes subject to direct control of a trustee, receiver or similar authority or in respect of the customer anything analogous to such matters in the jurisdiction of the Customer.
- 12.3 Termination will become effective immediately or on the date set forth in the written notice of termination and any payment obligations under this Agreement shall immediately become due and owing. Termination of this Agreement will not affect the provisions regarding Customer's or Kaba's treatment of Confidential Information, provisions relating to the payments of amounts due, provisions limiting or disclaiming Kaba's liability regarding applicable law, which provisions will survive termination of this Agreement.
- 12.4 Upon termination, all licenses granted hereunder shall cease to be effective and Customer shall immediately cease all use of any affected Software, Documentation and Kaba Confidential Information.
- 12.5 Within fourteen (14) days of the date of termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return the Software, derivative works and all copies thereof, in whole or in part, all related Documentation and all copies thereof, and any other Confidential Information in its possession. Customer shall furnish Kaba with a certificate signed by an executive officer of Customer verifying that this has been done.
- 12.6 Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

## **13. WARRANTY AND REPRESENTATIONS**

- 13.1 **GENERAL WARRANTY.** Kaba warrants that it is the owner of the entire right, title and interest in and to the Software, and that it has the right to grant licenses hereunder, and that it has not knowingly entered into another agreement with another party that would restrict the rights granted hereunder unless otherwise stated herein.

- 13.2 SOFTWARE WARRANTY. Kaba represents and warrants to Customer that the Software, when properly installed on the proper equipment and used according to the System Administrator and User Guides provided by Kaba, as such user guides may be amended, supplemented, or modified by Kaba, will conform in all material respects to the Specification for a period of 90 days from the date the Software is made available to Customer (“Warranty Period”). If, within the Warranty Period, the Customer notifies Kaba of any defect or fault in the Software in consequence of which it fails to conform in all material respects with the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it for a purpose or in a context other than the purpose or context for which it was designed, Kaba shall, at Kaba’s option, do one of the following:
- (i) repair the Software; or
  - (ii) replace the Software
- 13.3 LIMITATION TO SOFTWARE WARRANTY. Notwithstanding the warranty provisions set forth in Section 13.2 above, Kaba shall have no warranty obligations with respect to any failures of the Software which may result from accident, abuse, tampering, unauthorized modification, misapplication, extreme power surge or extreme electromagnetic field where failure and where same is caused by any party other than Kaba.
- 13.4 LIMITED LIABILITY. Except as set forth in Sections 13.1 and 13.2, Kaba makes no warranties or representations, express or implied, written or verbal, relating to the Software, the Documentation, the Hardware or the Services furnished or provided to Customer under this Agreement. Specifically, Kaba does not warrant that the Software will be error free or will perform in an uninterrupted manner. To the maximum extent allowed by law, Kaba specifically disclaims all implied warranties of satisfactory quality and fitness for a particular purpose (even if Kaba were informed of such purpose) with respect to the Software, the Hardware and the Services provided hereunder.
- 13.5 SUBJECT TO SECTION 13.8 IN NO EVENT WILL KABA OR ITS SUBCONTRACTORS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SAID SERVICES WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF KABA HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 13.6 SUBJECT TO SECTION 13.8 KABA’S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT OR ANY OTHER FORM OF LIABILITY) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM KABA’S NEGLIGENCE, SHALL IN NO EVENT BE GREATER THAN (A) IN THE EVENT SUCH DAMAGE IS NOT RELATED TO SERVICES, THE LICENSE FEE SPECIFIED IN SCHEDULE A RELATED TO THE PARTICULAR LICENSED SOFTWARE PROGRAM WHICH CAUSED THE DAMAGE OR LOSS, OR (B) IN THE EVENT SUCH DAMAGE OR LOSS IS RELATED TO SERVICES, THE SERVICES FEES PAID BY CUSTOMER FOR SUCH SERVICES.
- 13.7 NO EMPLOYEE, AGENT, REPRESENTATIVE OR AFFILIATE OF CUSTOMER HAS AUTHORITY TO BIND KABA TO ANY ORAL REPRESENTATIONS OR WARRANTY NOT EXPRESSLY CONTAINED IN THIS AGREEMENT.



- 13.8 Kaba's liability to Customer for death or injury resulting from its own or its employees or sub-contractors' negligence shall not be limited.

## **14. INFRINGEMENT**

- 14.1 Notwithstanding any other provision hereof, this Section 14.0 shall govern the parties' rights in the event of third party intellectual property infringement claims asserted against a party and provides for the exclusive remedy in the event of such claims.

- 14.2 INFRINGEMENT. Subject to the conditions set out in section 14.2.1-4, Kaba will, at its expense, defend or settle any claim, action or allegation brought against Customer that the Software infringes any patent, copyright, trade secret or other proprietary right of any third party based solely on any Software or Documentation or any part thereof, furnished by Kaba under this Agreement and Kaba will defend, or settle at Kaba's option, any such claim:

- 14.2.1 Customer gives prompt written notice to Kaba of any such claim, action or allegation of infringement; and

- 14.2.2 Customer gives Kaba the authority, information and reasonable assistance (at Kaba's expense) to handle the claim or the defense of any such suit or proceeding. Kaba shall not be responsible for any cost or expenses incurred without Kaba's prior written consent; and

- 14.2.3 Customer shall not make any admissions or settle any claims whatsoever without Kaba's prior written approval; and

- 14.2.4 Kaba will have sole control of such defense or settlement.

- 14.3 In the event any such infringement, claim, action, or allegation is brought or threatened, Kaba may, at its sole option and expense:

- (i) Procure for Customer the right to continue use of the Software or the infringing portion thereof;
- (ii) Modify, amend or replace the Software or infringing part thereof with other software having substantially the same or better capabilities;

If neither of the foregoing is commercially practicable, Kaba shall refund the unused portion of the License Fee, which may have been paid in advance, as specified on Schedule A and related to the infringing part thereof. In the event that such refund is made, Customer shall immediately cease using the infringing portion of the Software and will remove the same from its system and so certify to Kaba. If, as a result of having ceased using the infringing Software due to an infringement claim Customer is not reasonably able to continue using the other components of the Software licensed hereunder, Customer will be permitted to return those other Software components on the same terms as set forth above for infringing Software. The foregoing states the entire

liability of Kaba and Customer's exclusive remedy with respect to infringement of any patent, copyright, trade secret or other intellectual property right.

- 14.4 THE FOREGOING OBLIGATIONS SHALL NOT APPLY TO THE EXTENT THE INFRINGEMENT ARISES AS A RESULT OF (A) MODIFICATIONS TO THE SOFTWARE MADE BY ANY PARTY OTHER THAN KABA OR KABA'S AUTHORIZED

REPRESENTATIVE, OR (B) FAILURE OF CUSTOMER TO INSTALL AN UPDATE, UPGRADE, MAINTENANCE RELEASE, PATCH, ETC., WITHIN A REASONABLE TIME OF BEING PROVIDED ACCESS TO SAME BY KABA IF SUCH INFRINGEMENT WOULD HAVE BEEN AVOIDED BY SUCH INSTALLATION. THIS SECTION 14 STATES THE ENTIRE LIABILITY OF KABA WITH RESPECT TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

**15. ASSIGNMENT AND SUBLICENSE**

15.1 Neither this Agreement nor any rights under this Agreement may be assigned, sublicensed, or transferred by Customer, in whole or in part, including by way of merger, acquisition or sale of all or substantially all of the voting rights in one or more related transactions, without Kaba's prior written consent. Kaba has the right to require any proposed transferee to execute any documents or follow any procedures established by Kaba as a condition precedent to any proposed transfer, and a transfer fee may be applicable as established by Kaba from time to time.

**16. GENERAL TERMS**

16.1 PUBLICITY. Kaba may make a press release concerning the execution of this Agreement.

16.2 NOTICES. All notices provided for in this Agreement shall be effective when they are received by personal delivery or telefax; or one business day after they are received by courier or by registered or certified airmail at the following address:

If to Kaba: Kaba Benzing America, Inc.  
3015 North Commerce Parkway  
Miramar, Florida 33025 USA  
Attn: President & CEO  
Phone: 954.416.1720  
Facsimile: 954.416.1721

If to Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

or such other address as either party shall hereafter designate in writing to the other pursuant to the terms of this Section.

16.3 ACQUISITION. In the event of acquisition of Customer resulting in transfer of control of a majority of equity interest, the rights under this Agreement shall be restricted to Customer and its affiliates as constituted prior to the acquisition.

16.4 FORCE MAJEURE. Except for payment of money, neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in

part, by events, occurrences, or causes beyond the control and not caused by the negligence of the non-performing party.

Such events, occurrences, or causes include but are not limited to, acts of God, strikes, lockouts, riots, acts of war, acts of terrorism, earthquakes, fires and explosions.

- 16.5 SURVIVAL. The provisions of Sections...7.0,and. shall survive any termination of this Agreement until expressly waived in writing by the party for whom they are of benefit or terminated by a further written agreement of the parties.
- 16.6 WAIVER. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed to be deemed a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice and such party's right to take subsequent action.
- 16.7 SEVERABILITY. If any term, condition or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendment that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.
- 16.8 ENTIRE AGREEMENT. This Agreement (including the Schedules and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.
- 16.9 STANDARD TERMS OF LICENSE. No terms, provisions or conditions of any purchase order, acknowledgment or other business form that Customer may use in connection with the acquisition or licensing of the Software will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Kaba to object to such terms, provisions, or conditions.
- 16.10 INDEPENDENT CONTRACTORS. The parties to this Agreement are independent contractors. No relationship of principal to agent, master to servant, employer to employee or franchisor to franchisee is established hereby between the parties. Neither party has the authority to bind the other or incur any obligation on its behalf.
- 16.11 COUNTERPARTS. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same Agreement.

- 16.12 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.
- 16.13 APPLICABLE LAW/JURISDICTION. This Agreement will be interpreted and construed pursuant to the laws of KS. The Uniform Law on the International Sale of Goods shall not apply to this Agreement. The parties submit to the exclusive jurisdiction of the KS Courts of KS.

**17. NON-DISCRIMINATION / OTHER LAWS**

Kaba agrees that:

- 17.1. Kaba shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin ancestry or age;
- 17.2. in all solicitations or advertisements for employees, Kaba shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 17.3. if Kaba fails to comply with the manner in which Kaba reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Kaba shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
- 17.4. if Kaba is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Kaba shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- 17.5. Kaba shall include the provisions of subsections (A) (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by a contractor:

- (a) who employs fewer than four employees during the term of such contract; or
  - (b) whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 17.6. Kaba further agrees that Kaba shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

**18. FUNDING OUT**

18.1. Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that Customer is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the Customer's then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should Customer fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then

current budget year for which appropriations were received without penalty or expense to the Customer of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. Customer agrees to notify Kaba Benzing of such termination, which shall not constitute a default under the Agreement, as least sixty (60) days prior to the end of the Customer's then current budget year. This paragraph shall not be construed so as to permit Customer to terminate the Agreement in order to acquire any other functionally similar Service or to allocate funds directly or indirectly to perform essentially the same application for which the Service under the agreement is intended.

**19. INSURANCE REQUIREMENTS**

19.1 General -

Kaba shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Consultant shall provide certificates of insurance and renewals thereof on forms provided or approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

19.2 Notice of Claim Reduction of Policy Limits -

Kaba, upon receipt of notice of any claim in connection with the Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Kaba shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Agreement) in excess of \$10,000.00, whether or not such impairment came about as a result of this Agreement.

In the event the City shall determine that Kaba's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the work, Kaba shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

19.3 General Liability -

The Commercial General Liability insurance coverage that is to be provided by Consultant shall comply with the Hold Harmless section of this Agreement. Such insurance shall specifically insure the contractual liability that is controlled by Consultant and assumed by Kaba under this Agreement.

**MINIMUM INSURANCE REQUIREMENTS**

**COMMERCIAL GENERAL LIABILITY POLICY**

(Complete Certificate "Form B")

|                                             |            |
|---------------------------------------------|------------|
| General Aggregate:                          | \$ 500,000 |
| Products-Completed<br>Operations Aggregate: | \$ 500,000 |
| Personal & Advertising<br>Injury:           | \$ 500,000 |
| Each Occurrence:                            | \$ 500,000 |

Policy must include the following conditions:

- a) Broad Form Contractual/Contractually Assumed Liability
- b) Independent Contractors
- c) Broad Form Property Damage

19.4 Automobile Liability -

Policy shall protect Kaba against claims for bodily injury and/or property damage arising from the ownership or use of all owned, if any, and hired and/or non-owned vehicles and must include protection for either:

(A) Any Auto

OR

(B) All Owned Autos, if any:  
Hired Autos; and  
Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by Kaba.

(e) Workers' Compensation and Employer's Liability -

This insurance shall protect Kaba against all claims under applicable state Workers' Compensation laws. Kaba shall also be protected against claims for injury, disease or death of employees, which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

|                               |                         |
|-------------------------------|-------------------------|
| <u>Workers' Compensation:</u> | Statutory               |
| <u>Employer's Liability:</u>  |                         |
| Bodily Injury by Accident     | \$100,000 each accident |
| Bodily Injury by Disease      | \$500,000 policy limit  |
| Bodily Injury by Disease      | \$100,000 each employee |

(f) Industry Ratings –

The City will only accept coverage from an insurance carrier who offers proof that if:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of B+ or better; and
- (3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Consultant?

(g) Subcontractors Insurance-

If a part of the Agreement is to be sublet, Kaba shall either:

- (1) Cover all subcontractors in its insurance policies if allowed to by Consultant's insurance carrier, or
- (2) Require each subcontractor not so covered to secure insurance, which

will

protect subcontractor against all applicable hazards or risks of loss as

and in the

minimum amounts designated.

harmless

- (3) Whichever option is chosen, Consultant shall indemnify and hold

the City as to any and all damages, claims or losses, including attorney's fees, for bodily injury, physical property damage and/or death that arises out of a subcontractor's or any of its agents, servants, and/or employees' negligent acts, and or failure to act in the performance of this Agreement arising out of the acts or omissions of its subcontractors.

(h) Professional Liability Insurance-

This insurance shall protect Kaba against claims for damage arising from the work performed by Consultant as specified in Section I. The limits of protection shall be \$1 million.

IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties by signing below:

"Customer"

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Kaba Benzing America, Inc.

"Kaba"

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

|  |                                          |
|--|------------------------------------------|
|  | Schedule A: Pricing and Payment terms    |
|  | Schedule B: Annual Maintenance Agreement |
|  | Schedule C: Statement of Work            |

Schedule A

| <b>Kaba Benzing ERP Certified (for PeopleSoft) Solution-<br/>Per Employee Pricing</b> | <b>Quantity</b> | <b>Price<br/>Each</b> | <b>Total</b>    |
|---------------------------------------------------------------------------------------|-----------------|-----------------------|-----------------|
| <b>B-COMM for PeopleSoft Software License:</b>                                        |                 |                       |                 |
| B-COMM for PeopleSoft Time and Labor Versions 8.3, 8.8, 8.9                           | 1               |                       | \$2,000         |
| XML Thin Client – Licensed per PC                                                     | 1               | \$125                 | TBD             |
|                                                                                       |                 |                       |                 |
| <b>Subtotal (Software)</b>                                                            |                 |                       | <b>\$2,000</b>  |
| <b>Professional Services:</b>                                                         |                 |                       |                 |
| Project Management / Implementation (hours)                                           | 80              | \$125                 | \$10,000        |
| Customer required Modifications (hours)                                               | (TBD)           | \$165                 |                 |
| <b>Subtotal (Professional Services)</b>                                               |                 |                       | <b>\$10,000</b> |
| <b>Kaba Benzing OEM Data Collection Terminals:</b>                                    |                 |                       |                 |
| B-Net 95 40 with Ethernet and Infrared Barcode Reader                                 | 20              | \$2,483               | \$49,660        |
| External CCD Barcode Scanner with Trigger with custom cable                           | 1               | \$198                 | TBD             |
|                                                                                       |                 |                       |                 |
| <b>Subtotal (Data Collection Terminals)</b>                                           |                 |                       | <b>\$49,660</b> |
| <b>Annual (Elective) Maintenance:</b>                                                 |                 |                       |                 |
| Net cost of Software (per year)                                                       | \$2,000         | .20                   | \$400           |
| Net cost of Data Collection Terminals / Peripherals (per year)                        | \$49,660        | .10                   | \$4,966         |
|                                                                                       |                 |                       |                 |
| <b>Subtotal (Annual Maintenance)</b>                                                  |                 |                       | <b>\$5,366</b>  |
| <b>Educational Classes:</b>                                                           |                 |                       |                 |
| <i>At City of Overland Park, KS:</i>                                                  |                 |                       |                 |
| Configuration and Using                                                               | Class           | Included              | \$0             |
|                                                                                       |                 |                       |                 |
| <b>Subtotal (Training Classes)</b>                                                    |                 |                       | <b>\$0</b>      |
|                                                                                       |                 |                       |                 |
| <b>Total: Year 1 Cost of Acquisition</b>                                              |                 |                       | <b>\$67,026</b> |



**Note 1: Software License Fee**

- (1) B-COMM license pricing is based upon the count of all employees (hourly, salary, contract, and temporary) in the employee master table. Pricing does not include any Business Analysis Gaps that may be indicated by Kaba's Engineering Site Survey. The Customer has the right to add employees at the above rates in blocks of 100 for a period of one year as long as the license agreement and the annual maintenance and Support agreement are in effect.

**Note 2: Professional Services**

Kaba shall bill for all Professional Services provided in direct relation to the project, including travel time, at \$125 per hour, up to the estimated amount of time provided in Schedule C and for all travel, meal and lodging expenses incurred during the Site Survey, Planning and Implementation phases of the project at Kaba's actual cost. The abovementioned hourly rate shall remain in effect for a period of one year from date of execution of the Agreement. The hourly rate is subject to change each year thereafter at the sole discretion of Kaba. Development of Modifications in accordance with Customer's requirements is billed at \$165 per hour.

**Note 3: Hardware (Kaba Benzing OEM Data Collection Terminals / Peripherals)**

Price does not include installation and setup and is shipped FOB destination. If the bit pattern used by Customer is not a standard HID bit pattern, there will be a one time set up charge of \$5,625.

**Note 4: Annual Maintenance Fee**

Hardware Support is set in the Maintenance Agreement of Schedule B. Kaba provides software maintenance at twenty (20) percent of the cost of the B-COMM software license and software modifications. The initial maintenance period shall be for one year and three months from the date of this Agreement and thereafter shall automatically renew each year ninety (90) days after the anniversary date of this Agreement for an additional one year term in accordance with the terms of this Agreement unless Customer notifies Kaba in writing of its intent not to renew at least ninety (90) days prior to the renewal date. Procedures for software maintenance are set forth in the Kaba Maintenance Agreement (Schedule B).

## **Payment Terms**

### **1 License Fee:**

- 100 percent of B-COMM License Fee (inclusive of any ADD-ON MODULES) and first year's annual maintenance are due upon execution of this Agreement.

### **2 Professional Services:**

- Customer Modification fees are due as follows:
  - 50% due upon Customer approval
  - 50% due, net 30 days, after delivery and receipt of a valid invoice
- Payment for all professional services fees and training fees shall be invoiced every two weeks and is due, net 30 days, from receipt of a valid invoice.

### **3 Hardware (Kaba Benzing OEM Data Collection Terminals / Peripherals)**

- Hardware is due in full, net 30 days, upon receipt of a valid invoice
- Cancellation of a Hardware Order is subject to a 25 percent restocking fee.

### **4 Annual Maintenance**

In addition the terms and conditions set out in section 5 of the Agreement apply.

## SCHEDULE B

### ANNUAL MAINTENANCE AGREEMENT

Kaba Benzing America Inc.  
3015 N. Commerce Parkway  
US-FL 33025 Miramar  
("Kaba")

City of Overland Park, Kansas  
8500 Santa Fe Drive  
Overland Park, Kansas 66212 USA  
("Customer")

The parties entered into a license agreement ("License") on [] in respect of certain software. Subject to the payment of the annual Maintenance Fee (as set out in Schedule A to the License), Kaba shall provide the following maintenance and support in respect of the Software and/or Hardware (as set out in Schedule A to the License) ("Kaba Components").

#### 1 MAINTENANCE

The Kaba Software and Hardware Support set out under clauses 1.1 and 1.2 shall be deemed to be "**Covered Maintenance**".

**1.1 Kaba Software Support.** For a period of one (1) year, Kaba shall provide Customer with the following support services for the Kaba application software ("**Software**"):

1.1.1 Kaba will provide 24 hours/seven days per week support within four hours from notice by Customer of any problems Customer may encounter relating to the use of the Software.

1.1.2 If Customer notifies Kaba that it suspects an error in the program; Kaba will use its best efforts to confirm the existence of such as error. If Kaba confirms that error, Kaba will use all commercially reasonable efforts to cure it provided that the Software has not been modified.

1.1.3 Customers will receive any new enhancements of the program that Kaba may issue. Enhancements are defined as an improvement to the functionality of an existing software program. Installation or implementation of any new enhancements are not included and if required would be Billable Maintenance under clause 1.3.

1.1.4 Kaba shall provide no support for any third party software.

**1.2 Kaba Hardware Support.** Kaba provides a one (1) year warranty on all Kaba Hardware from the date of shipment to the Customer ("**Hardware Warranty Period**"). If a unit is defective, Kaba shall repair or replace the unit within thirty (30) days of receipt of the unit. In addition to this warranty and both during and after the Hardware Warranty Period, Kaba shall if requested and subject to the payment of the following fees provide depot hardware maintenance for Kaba terminals at the rate of twelve percent (12%) of the Hardware Purchase Price for three (3) day turnaround, ten percent (10%) of the Hardware Purchase Price for seven (7) day turnaround, and eight percent (8%) of the Hardware Purchase Price for thirty (30) day turnaround (days from time of receipt at Kaba), per annum.

**1.3** Any maintenance or support additional to Covered Maintenance shall be deemed to be "**Billable Maintenance**" and shall include, but not be limited to, the following: -

- a. Work resulting from corrections or fixes for difficulties or defects resulting from Customer errors or system changes;
- b. Work requested by Customer for rearrangement, such as additional wiring, moving other equipment or cables or relocating the Kaba Components;

- c. Adding or removing accessories, attachments or other devices to the Kaba Components;
- d. Work on Kaba Components caused by maintenance or repair performed by other than Kaba personnel, or resulting from improper operation by Customer's personnel;
- e. Repair of damage not caused by Kaba including, without limitation, damage resulting from accident, transportation, misuse, lightning, failure or fluctuation of electrical power, air conditioning or humidity control, telephone equipment or communication line failure, or failure of foreign interconnect equipment; and
- f. Specific requests from Customer for maintenance in addition to Covered Maintenance requirements.

#### 2 MAINTENANCE FEES

2.1 The annual maintenance fees and payment terms for Covered Maintenance of the Software and/or the Hardware are set out in Schedule A to and clause 5 of the License. All the provisions of Schedule A and clause 5 of the License shall be deemed to be incorporated herein.

2.2 **CHARGES FOR BILLABLE MAINTENANCE.** The applicable rates for Billable Maintenance\* are the then current Billable rates in effect for the hour of day such service is performed (including, where applicable, night, weekend and holiday rates). In addition, Customer shall pay for travel time and travel expenses in connection with Billable Maintenance. Travel time will be charged to Customer at the hourly Billable Rate in effect for the hour of the day the travel is performed. Travel expenses will be charged as incurred and includes tolls, parking and other out-of-pocket costs plus mileage at the then current rates. All charges shall be paid net 30 days from date of receipt of invoice. *\*Billable Maintenance will require prior customer approval and Purchase Order.*

#### 3 ACKNOWLEDGMENT

Customer hereby acknowledges that it has read, understood and agreed to be bound by the terms and conditions of the License. Customer agrees that the terms and conditions of the License, which grants Customer the right to use the Software, are included herein by reference as an integral part of this Agreement. Customer agrees that any Software, updates, or other materials provided by Kaba pursuant to this Maintenance Agreement shall continue to be owned by Kaba. Customer

has a limited license to use the Software only subject to all of the terms and conditions of the License.

**4 CUSTOMER RESPONSIBILITIES**

Customer shall (i) maintain the Kaba Components in accordance with the latest System Administrator and User Guides; (ii) keep computer room free of dust and moisture; (iii) assure and maintain proper dedicated AC circuits and grounding, including appropriate transient and surge protection devices and to promptly correct any deviation from manufacturer's specifications; (iv) provide AC outlets/circuits marked for terminal use only, and assure that any other electrical device such as motor driven and/or blinking lights are not plugged into the same outlet/circuit. Customer undertakes to perform these duties, and the performance of which by Customer's employees shall be deemed to be authorized maintenance for purposes thereof.

**5 DISCLAIMER OF WARRANTY. KABA MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE MAINTENANCE TO BE PERFORMED BY KABA PURSUANT TO THE TERMS HEREOF OR ANY PARTS BE SUPPLIED HEREUNDER.**

**6 LIMITATION OF LIABILITY**

**6.1** Subject to section 6.2, Customer agrees that Kaba's total liability hereunder for damages from any cause whatsoever, and regardless of the form of action, whether in contract or tort including negligence, shall not exceed the amount paid for Covered Maintenance by Customer for the one (1) year immediately preceding the occurrence giving rise to any claim by Customer.

**6.2** Kaba's liability to Customer for death or injury resulting from its own or its employees' or sub-contractors' negligence shall not be limited.

**7 FORCE MAJEURE**

Kaba shall not be liable for any delay or failure by Kaba to perform its obligations under this Agreement or otherwise if such delay or failure arises from any cause or causes beyond the reasonable control of Kaba, including but not limited to labor disputes, strikes, other labor or industrial disturbances, acts of God, flooding, lightning, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of public enemy, riots, embargoes, blockages, actions, restrictions, regulations or order of any government, agency or subdivision thereof.

**8 TERMINATION**

- 8.1 This Agreement may be terminated: -
  - 8.1.1 by either party giving not less than 90 days' notice to the other;
  - 8.1.2 forthwith by Kaba if the Customer fails to pay any sum due hereunder within 30 days of the due date therefore;
  - 8.1.3 forthwith by either party if the other commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
  - 8.1.4 forthwith by either party if the other terminates its business activities or becomes insolvent, admits in writing to an inability to pay its debts as they mature, makes an assignment for the benefit of creditors, is adjudged bankrupt by a competent authority, voluntarily files a petition under any bankruptcy or similar law providing for its reorganization, dissolution or liquidation, or becomes subject to direct control of a trustee, receiver or similar authority or in respect of the customer anything analogous to such matters in the jurisdiction of the Customer.

**9 LAW/JURISDICTION**

This Agreement will be interpreted and construed pursuant to the laws of KS. The Uniform Law on the International Sale of Goods shall not apply to this Agreement. The parties submit to the exclusive jurisdiction of the KS.

**Kaba Benzing America, Inc.**

**Signed:** \_\_\_\_\_

**Name:** John C. Edwards

**Title:** President & CEO

**Date:** \_\_\_\_\_

**Customer Name:** City of Overland Park, Kansas

**Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_

## **SCHEDULE C**

### **Statement of Work Issued (DATE TBD)**

#### **Between**

**Kaba Benzing America, Inc.  
And  
City of Overland Park, Kansas**

#### **Project Name: Kaba Benzing B-COMM for PeopleSoft Time and Labor Data Collection**

This Statement of Work ("SOW") describes the Services to be provided to (Customer) in support of the Project (as defined below) at the rates listed in Schedule A of this SOW, which is hereby incorporated by reference. The SOW is governed by the terms and conditions of the Master Service Agreement by and between the parties dated as of xxxxxxxx (the "Agreement"). Capitalized terms used herein and not otherwise defined will have the meanings given to them in the Agreement.

#### **1) Scope**

- a) (Customer) requires Kaba Benzing America ("KBA") professional consulting services for (B-COMM for PeopleSoft Time and Labor) implementation support of (B-COMM for PeopleSoft Time and Labor) hereinafter referred to as the "Project". The KBA consultant(s) assigned to this Project will assist (Customer) with the implementation and training.
- b) The Project will start on xx/xx/xxxx, and has an estimated completion date of xx/xx/xxxx ("Duration"). Kaba will work on the Project during this time, and provide support as specified by (Customer) during the productive stage of the Project according to the project plans.

#### **2) Project Assumptions**

- a) (Customer) is owner of the Project and is responsible for and controls the implementation, scope, costs, resources and targeted solutions. (Customer) shall designate a (Customer) Project Manager to work with the KBA Consultant Project Manager to facilitate the provision of the Services. It is mutually understood that business requirements, resources and dates may change. (Customer) is responsible for revising the estimated project plans and requesting changes to the requirements for KBA Services. The KBA Project Manager will assist in planning the project, selecting resources and quality checking the activities and progress.
- b) For the Project the following individuals will fill Project Management roles:
  - i) (Customer) Project Manager –
- c) (Customer) agrees to provide appropriate project resources, including but not limited to equipment, data, information and workspace, to facilitate the performance of the Services, as follows:
  - i) Workspace "war room" for consultant with pc's, printers, phone lines and project infrastructure.
  - ii) Login to (Customer)'s software development.
  - iii) Conference rooms to conduct meetings/interviews.
- d) *Consultants will have access to (Customer) subject matter experts to facilitate the completion of the Deliverables.*
- e) *(Customer) will provide training of (Customer) quality management program. No additional time is included in this Project to support the program.*
- f) *This Statement of Work includes no modifications to the system.*
- g) *If there are additional requirements that arise, and additional days are required, a change order to this SOW will be created to address the needs.*
- h) *(Customer) agrees that any change to or (Customer)'s failure to fulfill any of the Project Assumptions set forth above may affect KBA's ability to provide Services hereunder and that KBA's fees and the timeline may be subject to change.*

### 3) Approach

The Project strategy will include the step-by-step approach as outlined in the Project Plan and Implementation checklist. Training will be incorporated during the implementation process.

### 4) Deliverables

The purpose of the Project is to create the Project strategy, which is detailed documentation that defines the milestones; task and resource list that effectively meets (Customer) 's business requirements.

| Deliverable                               | Description                                                               | Designated Acceptor |
|-------------------------------------------|---------------------------------------------------------------------------|---------------------|
| <b>(B-COMM PeopleSoft) software</b>       | Software that includes all the functionality                              |                     |
| Documentation and Training                | System documentation and training to successfully support the application |                     |
| Terminals and documentation               | Terminals and documentation for installation and support                  |                     |
| Project Plan and Implementation checklist | Project deliverables, roles and timeframes required to implement product  |                     |

### 5) Project Workplan

The hours estimated for each of the deliverables are not to be considered an exact quantity of time required to complete each task.

| Task                                                          | Start | End | (Customer) Roles                     | KBA Roles                                         |
|---------------------------------------------------------------|-------|-----|--------------------------------------|---------------------------------------------------|
| Planning/Business Requirement Gathering/Configuration         |       |     | IT Representative<br>PeopleSoft SME  | Project Manager<br>Director of Technical Services |
| Server requirements, procurement and installation             |       |     | Project Manager<br>IT Rep            | Director of Technology                            |
| Terminal and Badge requirements, procurement and installation |       |     | IT Representative<br>Project Manager | Director of Technical Services                    |
| Terminal Functionality Configuration                          |       |     | IT Representative                    | Project Manager                                   |
| Configure Database                                            |       |     | IT Representative                    |                                                   |
| B-COMM installation/testing                                   |       |     | IT Representative<br>PeopleSoft SME  | Project Manager                                   |
| Assist in setting up Production environment                   |       |     | IT Representative<br>Project Manager | Project Manager                                   |
| Support Go-Live                                               |       |     | IT Representative<br>Project Manager | Project Manager<br>Director of Technical Services |

### 6) KBA Responsibilities

KBA will lead the implementation and training to meet the Deliverables for the Project.

**7) (Customer) Project Team Resource Requirements**

| Role                      | Name | Skills                                                | Commitment |
|---------------------------|------|-------------------------------------------------------|------------|
| HR Lead and PM            |      | Project Management                                    | 50%        |
| Time and Labor Management |      | Time entry and evaluation business definitions        | 10%        |
| Development (e-Learning)  |      | Define learning and development processes/train users | 10%        |
| IT Representative         |      | Install and support DB, application and terminals     | 50%        |
| PeopleSoft SME            |      | Assist in setting up PeopleSoft                       | 20%        |

**8) Assigned KBA Consultants**

KBA will support the Project implementation by providing consultants to support implementation and training. (Customer) agrees and understands that the assigned KBA Consultant(s) will occasionally perform Services on the Project implementation from a KBA office.

| Role                                        | Skill                       | Name | Start Date |
|---------------------------------------------|-----------------------------|------|------------|
| Project Manager                             | Implementation/training     |      |            |
| Director of Technology                      | Technical environment       |      |            |
| Director of Technical Services              | Terminal/badge requirements |      |            |
| Director of Project Implementation Services | Project management          |      |            |

**9) Non-Solicitation/No-Hire**

Neither party shall solicit or hire, in any capacity whatsoever, any of the other party's employees involved in this SOW during the term of this SOW and for a period of six (6) months from the termination hereof, without the express written consent of the other party.

**IN WITNESS WHEREOF, the parties have so executed this Agreement.**

Accepted By:  
Kaba Benzing America, Inc.

Accepted by:  
City of Overland Park, Kansas

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

\_\_\_\_\_  
Carl Gerlach, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

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Marian Cook, City Clerk

Approved as to form:

---

Jane Neff-Brain  
Senior Assistant City Attorney