

**IN THE CIRCUIT COURT OF COOK COUNTY, STATE OF ILLINOIS
CHANCERY DEPARTMENT, FIRST DISTRICT**

ROBIN RAPAI,)
)
Plaintiff,)
)
v.)
)
HYATT CORPORATION d/b/a THE HYATT)
LODGE,)
)
Defendant/Third-Party Plaintiff,)
)
v.)
)
KRONOS INCORPORATED,)
)
Third-Party Defendant.)

7073531

Case No.: 2017 CH 14483

**HYATT'S THIRD PARTY COMPLAINT
AGAINST KRONOS**

Defendant/Counter-Plaintiff, Hyatt Corporation d/b/a The Hyatt Lodge ("Hyatt"), through its attorneys, Wilson Elser Moskowitz Edelman & Dicker, LLP, for its Third-Party Complaint against Third-Party Defendant, Kronos Incorporated ("Kronos"), states as follows:

The Parties

1. Kronos is incorporated in the State of Massachusetts and regularly conducts business in the State of Illinois.
2. Hyatt is incorporated in the State of Delaware and regularly conducts business in the State of Illinois.

3. Kronos is engaged in the business of providing to its customers services and time clock equipment and related software for the purpose of tracking, managing and controlling employee time and attendance of its customers' work forces.

Jurisdiction and Venue

4. Jurisdiction is proper because Kronos regularly transacts business in Cook County, Illinois.

5. Venue is proper because the transaction or some parts thereof all occurred in Cook County.

The Rapai Lawsuit

6. On or about October 30, 2017, Plaintiff Robin Rapai filed a Complaint against Hyatt ("the Rapai Lawsuit").

7. On or about January 30, 2018, Plaintiff filed a First Amended Complaint against Hyatt, which is the current operative pleading in the Rapai Lawsuit, a copy of which is attached as **Exhibit 1**.

8. The Rapai Lawsuit alleges that Hyatt fingerprinted its employees without properly obtaining the statutorily-required executed release, and without making the required disclosures concerning the collection, storage, use and/or destruction of biometric data.

9. The Rapai Lawsuit alleges that Hyatt's failure to provide a written policy regarding its schedule and guidelines for the retention and permanent destruction of its workforce' biometric information violates BIPA.

10. The Rapai Lawsuit alleges that Hyatt recorded, collected, stored and maintained data without consent as a result of Hyatt's failure to: (a) inform its employees in writing that the biometric data was being recorded, obtained, collected or stored; (b) inform employees in writing

of the specific purpose and length of term that the biometric data was being collected, stored and used; and (c) receive a written release executed by plaintiffs.

11. The Rapai Lawsuit alleges that Hyatt took Rapai's, fingerprints, and caused the biometrics to be captured, collected, recorded, and stored, without making publicly available the required policy that explains the purpose for which the data was collection, a retention schedule, and guidelines for permanently destroying the data.

12. Rapai alleges that she and putative class members suffer mental anguish when thinking about what may happen to their biometric data.

13. Hyatt moved to dismiss the First Amended Complaint in the Rapai Lawsuit, which the Court denied on September 26, 2019.

Biometric Information Privacy Act (BIPA)

14. Section 15(a) of BIPA requires a private entity in possession of biometric identifiers or biometric information to develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the earlier of: the initial purpose for collecting or obtaining such identifiers or information has been satisfied, or within three years of the individual's last interaction with the private entity.

15. Section 15(b) of BIPA prohibits a private entity from collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person's biometric identifier or biometric information unless it first informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored.

16. Section 15(b) of BIPA prohibits a private entity from collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person's biometric identifier or biometric information unless it first informs the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which the biometric identifier or biometric information is being collected or stored and used.

17. Section 15(b) of BIPA prohibits a private entity from collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person's biometric identifier or biometric information unless it first receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.

18. Section 20 of BIPA provides that, "any person aggrieved by a violation of this Act shall have a right of action . . . against an offending party[,] and recover damages against a private entity that negligently or intentionally violates a provision of this Act.

19. Section 10 of BIPA defines "private entity" in relevant part as "any individual, partnership, corporation, limited liability company, association, or other group, however organized."

Kronos' Obligations Under the Kronos-Hyatt Contract

20. On or about September 14, 2014, Hyatt and Kronos entered into a contract entitled, *Kronos Sales, Software, License and Services Agreement*, a copy of which is attached to this Third-Party Complaint as **Exhibit 2** and incorporated herein ("the Kronos-Hyatt Contract").

21. In accordance with the Kronos-Hyatt Contract, Kronos owns, controls, and/or licenses Software, Firmware, and Equipment, which comprises the time keeping system at issue in the Rapai Lawsuit.

22. Section 25(a) of “EXHIBIT B, APPLICATION HOSTING SUPPLEMENTAL TERMS AND CONDITIONS,” provides:

DATA PRIVACY AND PROTECTION REQUIREMENTS.

- (a) Kronos acknowledges and agrees that as part of its obligations hereunder, it or its authorized subcontractors or their respective Personnel will be required to Process (“Process” and its variants for purposes of this Section includes, without limitation, access, collect, record, organize, use, store, adopt, alter, retrieve, consult, transfer, disclose or destroy) information relating to an identified or identifiable natural person on behalf of Customer or its affiliates or subsidiaries of any Customer Hotel (collectively, “Personal Information”).

23. Section 12.3 of Exhibit B to the Kronos-Hyatt Contract provides:

12. DATA SECURITY

* * *

- 12.3 Customer will ensure that the transfer of any Personal Information to Kronos and Kronos’ storage thereof in the Hosting Environment complies with all Data Protection Laws, including, if applicable, any such laws requiring Customer to obtain consent from individuals for such transfer and storage.**

24. Section 17(a) of the Kronos-Hyatt Contract provides:

COMPLIANCE WITH LAWS.

- (a) Without limiting either party’s compliance obligations set forth herein, Kronos represents, warrants and agrees that it will perform its obligations under this Agreement in compliance with applicable Laws. . . . Kronos will obtain, before providing any Products or Services, and will maintain throughout the Term (as defined below) any and all necessary . . . consents for the proper and lawful conduct of its business or other activity of Kronos carried on, in or at any premises owned or operated by Customer.

25. Section 18 of the Kronos-Hyatt Contract provides:

INDEMNIFICATION.

- (a) **Kronos agrees to indemnify and defend Customer, its affiliates and subsidiaries, the Customer Hotels and their respective owners, officers, directors, Customer Personnel and agents (together, the “Customer Indemnitees”) and to hold them harmless from and against any and all claims, suits, causes of actions, fines, penalties (including any assessed by governmental agencies), costs, fees and expenses (including reasonable legal fees) (together with, “Claims”) alleged, asserted or brought against any of them or incurred by an of them as a result of such third-party Claims to the extent arising out of or related to:**

* * *

- (ii) **Damage to real or personal property, bodily injury to or death of any third-party (including Customer Personnel) arising out of Kronos’ breach of its obligations hereunder, or its negligence or willful misconduct or the negligent or willful misconduct of any Kronos Personnel;**
- (iii) **Kronos’ gross negligence or willful misconduct or the gross negligence or willful misconduct of any Kronos Personnel;**

* * *

- (vi) **Kronos’ breach of Section 17 (Compliance with Laws), excluding breach of its obligations to comply with Data Protection Laws (as defined below) which breach is addressed in sub-Section (c).**

* * *

- (c) **Kronos also agrees to indemnify Customer Indemnitees for the following Claims (including inter-party Claims) suffered or incurred by any one of them to the extent arising out of or relating to Kronos’ breach (including negligent or willful breach by Kronos Personnel) of its obligations (i) in Section 25 (Data Privacy Protection**

Requirements) or (ii) in Section 24 (Confidential Information).:

- * * *
- (v) **Legal fees and expenses associated with Customer's defense, investigation of and response to such Claim, provided that if Kronos assumes the defense of any Claim subject to this subsection (c), Kronos will only be responsible for those legal fees and expenses associated with Customer's defense, investigation of and response to such Claim incurred by Customer prior to Kronos' written assumption of the defense of the Claim.**

26. Pursuant to Section 25(a) of Exhibit B to the Kronos-Hyatt Contract, Kronos through its subcontractors or its subcontractors' authorized personnel were and are required to Process (defined as, without limitation, access, collect, record, organize, use, store, adopt, alter, retrieve, consult, transfer, disclose or destroy) information relating to an identified or identifiable natural person on behalf of Hyatt and referred to collectively as "Personal Information."

27. The data that Rapai and putative class members in the Rapai Lawsuit inputted into the software and/or a hosting system contained or embedded in or on time clock devices was the Personal Information that Kronos was required to access, collect, record, store, retrieve, use, and/or transfer on behalf of Hyatt.

28. Upon information and belief, the software and/or hosting system contained or embedded in or on the time clock devices scanned discrete points taken from fingerprints from which a numerical value was derived.

29. During the Kronos-Hyatt Contract, Hyatt never collected, captured, received, obtained, or transferred the data inputted into the software and/or hosting system contained or embedded in or on the time clock devices.

30. Pursuant to 2-406 of the Illinois Rules of Civil Procedure, this third-party proceeding is appropriately brought because Kronos collected, received, captured, obtained, and/or is in possession of the data at issue in the Rapai Lawsuit, and any liability found in favor of Plaintiff and the putative class in the Rapai Lawsuit was caused by and is the responsibility of Kronos.

Kronos Rejection of Hyatt's Tender

31. On or about November 7, 2017, Hyatt sent a letter to Kronos wherein Hyatt tendered the Rapai Lawsuit to Kronos for defense and indemnity, a copy of which is attached to this Third-Party Complaint as **Exhibit 3**.

32. On or about November 13, 2017, Kronos sent Hyatt a letter wherein Kronos rejected Hyatt's tender stating that it was unsupported by the Kronos-Hyatt Contract, a copy of which is attached to this Third-Party Complaint as **Exhibit 4**.

33. In Kronos' November 13, 2017 letter, Kronos supports the rejection of Hyatt's tender of its defense and indemnity of the Rapai Lawsuit by citing to and/or relying upon Section 12.3 of Exhibit B to the Kronos-Hyatt Contract entitled, *Application Hosting Supplemental Terms and Conditions*.

34. The data at issue in the Rapai Lawsuit included Personal Information collected, obtained, captured, and received directly by Kronos through its software application and/or hosting system contained or embedded in or on the time clock devices.

35. The data at issue in the Rapai Lawsuit was possessed at all times by or on behalf of Kronos.

36. Hyatt never collected, obtained, captured, received, obtained or possessed the data at issue in the Rapai Lawsuit.

37. In Kronos' November 13, 2017 letter, in support of its rejection of Hyatt's tender of its defense and indemnity of the Rapai Lawsuit, Kronos also cited to and/or relied upon Section 9 of Exhibit B to the Kronos-Hyatt Contract entitled, *Application Hosting Supplemental Terms and Conditions*.

38. Section 9 of Exhibit B to the Kronos-Hyatt Contract provides:

INDEMNIFICATION

In addition to Customer's indemnification obligations elsewhere in the Agreement, Customer shall indemnify, defend and hold Kronos harmless from and against any Claims brought, asserted or alleged by a third-party, or incurred by it as a result of such third-party Claims to the extent arising out of relating to * * * (c) infringement of any third-party intellectual property right, right of publicity or right of privacy by the Customer's Content; * * *

39. The term "Content" as used in Section 9 of Exhibit B to the Kronos-Hyatt Agreement is contained in Paragraph 1, "Definitions" of Exhibit B, and provides as follows:

"Content" means all content Customer, or others authorized by Customer, including Customer Personnel, posts or otherwise input into the Application Program, including but not limited to information, data (such as payroll data, vacation time, and hours worked), designs, Customer Trademarks, text, multimedia images (e.g., graphics, audio and video files), compilations, software programs, third party software, applications, or other materials, or any other Customer content shared or processed on equipment in the Hosting Environment.

40. The Rapai Lawsuit does not arise out of nor is it related to an infringement of any third-party intellectual property right, right of publicity or right of privacy by the Customer's Content.

COUNT I
(Breach of Contract)

41. Hyatt re-alleges Paragraphs 1-40 as though fully set forth herein.

42. Pursuant to Section 25(a) of Exhibit B to the Kronos-Hyatt Contract, Kronos agreed to Process (defined as, without limitation, accessing, collecting, recording, organizing, using, storing, adopting, altering, retrieving, consulting, transferring, disclosing or destroying) information relating to an identified or identifiable natural person on behalf of Hyatt and referred to collectively as “Personal Information.”

43. The allegations directed against Hyatt in the Rapai Lawsuit relate to and/or arise out of Kronos’ obligation under the Kronos-Hyatt Contract, and Kronos’ conduct taken in furtherance thereof, which included collecting, capturing, receiving and/or obtaining data, which Rapai alleges constitutes biometric identifiers or biometric information.

44. The allegations directed against Hyatt in the Rapai Lawsuit relate to and/or arise out of Kronos’ possession of data, which Rapai alleges constitutes biometric identifiers or biometric information.

45. The allegations directed against Hyatt in the Rapai Lawsuit fall within Kronos’ contractual responsibility to Process Personal Information as set forth in Section 25(a) of Exhibit B to the Kronos-Hyatt Contract.

46. Based upon the allegations in the Rapai Lawsuit, Kronos breached Section 17(a) of the Kronos-Hyatt Contract by failing to perform its contractual obligations in compliance with applicable law, including BIPA, and by failing to maintain any and all necessary consents for the proper and lawful conduct carried out by Kronos in or at any Hyatt owned or operated premises.

47. Pursuant to Section 18(c) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt for Claims suffered or incurred arising out of or relating to Kronos’ breach (including negligent or willful breach of its personnel) of its obligations in Section 25 (Data Privacy Protection Requirements).

48. Pursuant to Section 18(a)(ii) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt, and to hold Hyatt harmless from and against all Claims, including but not limited to suits and causes of action, brought against or incurred by Hyatt, by a third-party, which arise out of or relate to bodily injury of any third-party (including Hyatt's employees), and which arise out of Kronos' breach of its obligations, or the negligence or willful misconduct of Kronos or its personnel.

49. Pursuant to Section 18(a)(iii) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt, and to hold Hyatt harmless from and against all Claims, including but not limited to suits and causes of action, brought against or incurred by Hyatt, by a third-party, which arise out of or relate to the gross negligence or willful misconduct of Kronos or its personnel.

50. Pursuant to Section 18(a)(vi) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt, and to hold Hyatt harmless from and against all Claims, including but not limited to suits and causes of action, brought against or incurred by Hyatt, by a third-party, which arise out of or relate to Kronos' breach of Section 17 (Compliance With Laws).

51. Kronos breached the Kronos-Hyatt Contract in one or more of the following ways:

- (a) Kronos did not perform its obligations in compliance with applicable Laws;
- (b) Kronos wrongfully rejected Hyatt's tender of the Rapai Lawsuit.

52. As a result of Kronos' breaches of the Kronos-Hyatt Contract, Hyatt has sustained and continues to sustain extensive damages, including but not limited to all fees, costs and expenses incurred, and which continue to incur, in the Rapai Lawsuit.

WHEREFORE, the Defendant/Counter-Plaintiff, Hyatt Corporation d/b/a The Hyatt Lodge, requests that, judgment be entered against Kronos and in its favor.

COUNT II
(Declaratory Judgment)

53. Hyatt re-alleges Paragraphs 1-52 as though fully set forth herein.

54. Pursuant to Section 25(a) of Exhibit B to the Kronos-Hyatt Contract, Kronos agreed to Process (defined as, without limitation, accessing, collecting, recording, organizing, using, storing, adopting, altering, retrieving, consulting, transferring, disclosing or destroying) information relating to an identified or identifiable natural person on behalf of Hyatt and referred to collectively as “Personal Information.”

55. The allegations directed against Hyatt in the Rapai Lawsuit relate to and/or arise out of Kronos’ obligation under the Kronos-Hyatt Contract, and Kronos’ conduct taken in furtherance thereof, which included collecting, capturing, receiving and/or obtaining data, which Rapai alleges constitutes biometric identifiers or biometric information.

56. The allegations directed against Hyatt in the Rapai Lawsuit relate to and/or arise out of Kronos’ possession of data, which Rapai alleges constitutes biometric identifiers or biometric information.

57. The allegations directed against Hyatt in the Rapai Lawsuit fall within Kronos’ contractual responsibility to Process Personal Information as set forth in Section 25(a) of Exhibit B to the Kronos-Hyatt Contract.

58. Based upon the allegations in the Rapai Lawsuit, Kronos breached Section 17(a) of the Kronos-Hyatt Contract by failing to perform its contractual obligations in compliance with applicable law, including BIPA, and by failing to maintain any and all necessary consents for the proper and lawful conduct carried out by Kronos in or at any Hyatt owned or operated premises.

59. Pursuant to Section 18(c) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt for Claims suffered or incurred arising out of or relating to Kronos’ breach

(including negligent or willful breach of its personnel) of its obligations in Section 25 (Data Privacy Protection Requirements).

60. Pursuant to Section 18(a)(ii) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt, and to hold Hyatt harmless from and against all Claims, including but not limited to suits and causes of action, brought against or incurred by Hyatt, by a third-party, which arise out of or relate to bodily injury of any third-party (including Hyatt's employees), and which arise out of Kronos' breach of its obligations, or the negligence or willful misconduct of Kronos or its personnel.

61. Pursuant to Section 18(a)(iii) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt, and to hold Hyatt harmless from and against all Claims, including but not limited to suits and causes of action, brought against or incurred by Hyatt, by a third-party, which arise out of or relate to the gross negligence or willful misconduct of Kronos or its personnel.

62. Pursuant to Section 18(a)(vi) of the Kronos-Hyatt Contract, Kronos agreed to defend and indemnify Hyatt, and to hold Hyatt harmless from and against all Claims, including but not limited to suits and causes of action, brought against or incurred by Hyatt, by a third-party, which arise out of or relate to Kronos' breach of Section 17 (Compliance With Laws).

63. To date, Kronos has rejected Hyatt's requests to accept its tender of defense and indemnity in the Rapai Lawsuit.

64. Hyatt's legal interests are adverse to Kronos. There is a substantial controversy between Hyatt and Kronos warranting equitable relief in the form of a declaratory judgment.

65. Hyatt seeks a declaratory judgment finding, ordering and declaring that Kronos breached the Kronos-Hyatt Contract in one or more of the following ways:

- (a) Kronos collected, captured, obtained, received and/or possess(ed/es) Personal Information it processed in furtherance of the Kronos-Hyatt Contract;
- (b) The data at issue in the Rapai Lawsuit includes Personal Information as that term is used in the Kronos-Hyatt Contract;
- (c) Kronos did not perform its obligations in compliance with applicable laws, including BIPA, as required under Section 17(a) of the Kronos-Hyatt Contract;
- (d) Kronos did not maintain any and all necessary consents for the proper and lawful conduct carried out by Kronos in or at any Hyatt owned or operated premises as required under Section 17(a) of the Kronos-Hyatt Contract; and
- (d) Kronos wrongfully rejected Hyatt's tender of the Rapai Lawsuit.

WHEREFORE, the Defendant/Counter-Plaintiff, Hyatt Corporation d/b/a The Hyatt Lodge, requests that, judgment be entered against Kronos and in its favor.

COUNT III
(Implied Indemnity)

66. Hyatt re-alleges Paragraphs 1-65 as though fully set forth herein.

67. As of on or about September 14, 2014, Hyatt and Kronos entered into a relationship wherein Kronos provided to Hyatt biometric time clock systems as set forth in the Kronos-Hyatt Contract.

68. Pursuant to Section 25(a) of Exhibit B to the Kronos-Hyatt Contract, Kronos agreed to Process (defined as, without limitation, accessing, collecting, recording, organizing, using, storing, adopting, altering, retrieving, consulting, transferring, disclosing or destroying)

information relating to an identified or identifiable natural person on behalf of Hyatt and referred to collectively as “Personal Information.”

69. The allegations directed against Hyatt in the Rapai Lawsuit relate to and/or arise solely out of Kronos’ conduct of collecting, capturing, receiving and/or obtaining data, which Rapai alleges constitutes biometric identifiers or biometric information.

70. The allegations directed against Hyatt in the Rapai Lawsuit relate to and/or arise solely out of Kronos’ possession of data, which Rapai alleges constitutes biometric identifiers or biometric information.

71. The data at issue in the Rapai Lawsuit includes the Personal Information Kronos agreed to and actually did Process on behalf of Hyatt.

72. Hyatt never collected, obtained, captured, received, obtained or possessed the data at issue in the Rapai Lawsuit.

73. Based upon the allegations in the Rapai Lawsuit, Kronos did not perform its obligations under the Kronos-Hyatt Contract in compliance with applicable law, including but not limited to BIPA, and Kronos failed to maintain any and all necessary consents for the proper and lawful conduct carried out by Kronos in or at any Hyatt owned or operated premises.

74. As a result of Kronos’ conduct as described herein, Hyatt has sustained and continues to sustain extensive damages, including but not limited to all fees, costs and expenses incurred, and which continue to incur, in the Rapai Lawsuit.

76. An order should be entered directing Kronos to indemnify Hyatt for all amounts it has and will continue to incur in the defense and potential indemnity of the Rapai Lawsuit all of which was or will be incurred as a result of Kronos’ conduct.

WHEREFORE, the Defendant/Counter-Plaintiff, HYATT CORPORATION d/b/a THE HYATT LODGE, requests that, judgment be entered against KRONOS and in its favor.

Respectfully submitted,

**Hyatt Corporation d/b/a The Hyatt Lodge,
Defendant/Third-Party Plaintiff,**

By: /s/ Lisa Handler Ackerman
One of its attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2019, I electronically filed the aforesaid document with the Clerk of the Court using File & Serve Illinois system which will send notification of such filing to all parties of record in this case by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Nicole Born

[X]Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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 CIRCUIT COURT OF
 COOK COUNTY, ILLINOIS
 CHANCERY DIVISION
 CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 CHANCERY DIVISION

ROBIN RAPAI, individually and on
 behalf of all others similarly situated,

Plaintiff,

v.

HYATT CORPORATION,

Defendant.

No. 17 CH 14483

Hon. Anna H. Demacopoulos

Calendar 13

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Robin Rapai ("Rapai"), individually, and on behalf of all others similarly situated, for her Class Action Complaint against Defendant, Hyatt Corporation ("Hyatt" or "Defendant") for violations of the Illinois Biometric Information Privacy Act ("BIPA") 740 ILCS 14/1 *et seq.*, alleges the following upon information and belief, except as to the allegations within Plaintiff's personal knowledge, and states as follows:

NATURE OF ACTION

1. Hyatt is a Delaware corporation qualified to transact business in Illinois. Hyatt is a leading hotel chain that operates numerous hotels in Illinois.
2. Hyatt employees in Illinois have been required to clock "in" and "out" of their work shifts by scanning their fingerprints, and Hyatt's biometric computer systems then verify the employee and clock the employee "in" or "out."
3. Unlike traditional time clock punch cards which can be changed or replaced if lost or compromised, fingerprints are unique, permanent biometric identifiers¹ associated with each

¹ BIPA defines a "biometric identifier" as "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." 740 ILCS 14/10. BIPA defines "biometric information" as "any information, regardless of how it is captured, converted, stored, or shared, based on an

EXHIBIT

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employee. This exposes Defendant's workforce to serious and irreversible privacy risks. For example, if a fingerprint database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

4. BIPA expressly obligates Defendant to obtain an executed, written release from an individual, as a condition of employment, in order to capture, collect and store an individual's biometric identifiers, especially a fingerprint, and biometric information derived from it.

5. BIPA further obligates Defendant to inform its employees in writing that a biometric identifier or biometric information is being collected or stored; to tell its employees in writing for how long it will store their biometric information and any purposes for which biometric information is being captured, collected, and used; and to make available a written policy disclosing when it will permanently destroy such information.

6. BIPA makes all of these requirements a precondition to the collection or recording of fingerprints and associated biometric information. Under BIPA, no biometric identifiers or information may be captured, stored or recorded if these pre-capture, pre-collection requirements are not met.

7. The Illinois Legislature has found that "[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information." 740 ILCS 14/5(c). "For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions." *Id.*

individual's biometric identifier used to identify an individual. Biometric information does not include information derived from items or procedures excluded under the definition of biometric identifiers." *Id.* Plaintiff herein uses the terms "biometric information" and "biometric identifier" interchangeably.

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8. Defendant coercively required employees like Plaintiff to provide their fingerprint biometric identifiers, at its, job sites, without any voluntary, informed consent. Defendant did so without properly obtaining the above-described written executed release, in violation of Section 15(b)(3) of BIPA, and without making the required disclosures concerning the collection, storage and use or destruction of biometric identifiers or information in violation of Section 15 of BIPA, all to the injury of the privacy rights of Plaintiff, and those similarly situated to her.

9. Despite the requirements under BIPA and as alleged herein, Defendant's practice of collecting, storing and using its employees' biometric information without informed written consent violates its employees' statutorily protected privacy rights under BIPA. Furthermore, Defendant's failure to provide a written policy regarding its schedule and guidelines for the retention and permanent destruction of its workforces' biometric information violates §15(a) of BIPA.

10. Plaintiff seeks damages and injunctive relief for Defendant's BIPA violations, on behalf of herself and similarly situated employees in the State of Illinois.

PARTIES

11. Plaintiff is, and has been at all relevant times, a resident of Cook County Illinois.

12. Plaintiff was employed by Hyatt as a server from September 26, 2017 to October 30, 2017 working at one of Defendant's hotels known The Hyatt Lodge at McDonald's Campus in Oak Brook, Illinois.

13. Hyatt is a corporation organized under the laws of the State of Delaware, and is qualified to transact business in Illinois. Hyatt's principal address in Illinois is located at 71 S. Wacker Drive, Chicago, IL 60606.

14. Defendant conducts business throughout this County and the State of Illinois.

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JURISDICTION AND VENUE

15. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant transacts business in Cook County Illinois. Additionally, this Court has jurisdiction over Plaintiff because she is a resident of Cook County, Illinois.

16. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because Defendant's registered principal office is in this County and Defendant operates business in this County.

SUBSTANTIVE ALLEGATIONS

17. BIPA defines "biometric identifiers" or "biometric information" as fingerprints, a scan of hand geometry, and any "information" based on such "identifiers" that is used to identify an individual. 740 ILCS § 14/10.

18. The law is specifically designed to require a company that collects biometrics to meet certain conditions, prior to collecting biometric data in order to inform and protect the person whose biometrics it is taking for its own use, and requires signed, written consent attesting that the individual has been properly informed and has freely consented to biometrics collection.

19. BIPA provides valuable privacy rights, protections, and benefits to employees. These requirements ensure that the environment for taking or collecting biometrics is not forced or coerced so that employees are freely advised that by obtaining one's biometric data, the employer is capturing, extracting, creating and recording biometric data, and that individuals can monitor their biometric usage and history.

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20. BIPA provides statutory damages if an employer takes an employee's biometric information and invades an employee's privacy by circumventing BIPA's preconditions and requirements.

21. In the context of employment, BIPA requires express written consent, not only in order to capture or collect biometrics, but the employer is required to obtain "informed written consent," in the form of "a release executed by an employee", and further, the release must be executed "as a condition of employment." Those formalized protections enable employees to freely consent to the taking of their biometrics. (740 ILCS 14/10²)

22. In September of 2017, Defendant hired Plaintiff as a server.

23. Throughout the duration of Plaintiff's employment, Defendant required its employees, including Plaintiff, to provide Defendant with their fingerprint, and then, using biometrics, captured or converted Plaintiff and other employees' fingerprints as a means of identifying and tracking hours worked at the facilities Defendant was servicing.

24. Defendant subsequently scanned and stored Plaintiff's fingerprint data in its employee database as a part of the employee time-clocking process.

25. Each time Plaintiff began work, Defendant required her to scan her fingerprint before beginning her job functions. Defendant also required to scan her fingerprint at the end of her workday.

26. Plaintiff has never been informed of any biometric data retention policy developed by Defendant, nor was she ever informed of whether Defendant would ever permanently delete her biometric information.

² Defining "Written release" in the context of employment.

27. Plaintiff, and those employees similarly situated to her, were never provided with nor ever signed a written release allowing Defendant to collect or store her biometric information. Plaintiff, and those similarly situated to her, have never been made aware, in any meaningful way, by Defendant, that Defendant was unlawfully capturing and storing private biometric information. Plaintiff, and those employees similarly situated to her, have been continuously and repeatedly injured by exposure to the risks and harmful conditions created by Defendant's violations of the BIPA, as alleged herein.

CLASS ALLEGATIONS

28. Plaintiff brings this lawsuit pursuant to 735 ILCS 5/2-801 on behalf of herself and a class of similarly situated individuals, defined as follows (the "Class"):

All persons working for Defendant in Illinois at any time between October 30, 2012 and the present whom Defendant caused to be fingerprinted or finger-scanned when clocking in or out of work.

29. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

30. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but on information and belief exceeds 100, in which case, individual joinder is impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from over 100 employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

31. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and Class, and those questions predominate over any questions that may affect individual members, and frame issues for class-wide adjudication. Common

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questions for the Class include, but are not necessarily limited to the following:

- A. Whether Hyatt has a practice of capturing or collecting Class member biometrics;
 - B. Whether Hyatt developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and information when the initial purpose for collecting and obtaining such identifiers or information has been satisfied or within three years of the individual's last interaction with Hyatt, whichever occurs first;
 - C. Whether Hyatt obtained an executed written release from fingerprinted employees before capturing, collecting, or otherwise obtaining employee biometrics;
 - D. Whether Hyatt obtained an executed written release from fingerprinted employees, before capturing, collecting, converting, sharing, storing or using employee biometrics;
 - E. Whether, in order to collect biometrics, Hyatt provided a writing disclosing to employees the specific purposes for which the biometrics are being collected, stored and used;
 - F. Whether, in order to collect biometrics, Hyatt provided a writing disclosing to fingerprinted employees the length of time for which the biometrics are being collected, stored and used;
 - G. Whether Hyatt's conduct violates BIPA;
 - H. Whether Plaintiff and the Class are entitled to damages, and what is the proper measure thereof; and
 - I. Whether Plaintiff and the Class are entitled to injunctive relief.
32. **Adequate Representation:** Plaintiff will fairly and adequately represent and

protect the interest of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

33. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort and expense will be fostered and uniformity of decisions will be ensured.

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COUNT I
VIOLATIONS OF ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT
(Damages)

34. Plaintiff, individually and on behalf of all others similarly situated, repeats and realleges the preceding allegations as though fully set forth herein.

35. BIPA is a remedial statute designed to protect employees, by requiring consent and disclosures associated with the handling of biometrics, particularly in the context of fingerprint technology. 740 ILCS §§ 14/5(g), 14/10 and 14/15(b)(3).

36. The Illinois General Assembly's recognition of the importance of the public policy and benefits underpinning BIPA's enactment, and the regulation of biometrics collection, is detailed in the text of the statute itself. *E.g.*, 740 ILCS § 14/5(a), (c), (d), (f), (g).

37. Defendant has been a "private entity" in possession of Plaintiff's and other employees' biometrics, and collected and captured their biometric identifiers and biometric information within the meaning of the Act.

38. As more fully set forth above, at relevant times Defendant recorded, collected, and stored Plaintiff's and other employees' biometric identifiers and biometric information based on those identifiers as defined by BIPA, 740 ILCS § 14/10, through the imposition of biometric time clocks.

39. Section 14/15(a) of the BIPA provides:

A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

40. In violation of Section 14/15(a), Defendant failed to make such a written policy publicly available to Plaintiff and other Class members.

41. Section 14/15(b) of the BIPA provides that:

No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric

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information, unless it first: (1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and (3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.

42. In violation of Section 14/15(b), Defendant has collected, captured, stored or obtained Plaintiff's and other Class members' biometric identifiers and biometric information without:

- I. informing Plaintiff and the Class (including, where applicable, their legal authorized representatives), in writing, that the biometric identifiers or biometric information were being recorded, obtained, collected or stored;
- II. informing Plaintiff and the Class (including, where applicable, their legal authorized representatives), in writing, of the specific purpose and length of term which the biometric identifiers or biometric information were being collected, stored, and used; and
- III. receiving a written release executed by Plaintiff and the Class, and executed by them as a condition of employment.

43. Defendant coercively took Plaintiff and other Class members' fingerprints, and knowingly caused their biometrics to be captured, collected, recorded, and stored, without making publicly available the required policy that explains, for example, any purpose for which the biometric identifiers and information were collected, a retention schedule, and guidelines for permanently destroying biometric identifiers and information.

44. Defendant's above-described conduct is negligent. As a result of Defendant's above described acts and omissions, injury has been suffered by Plaintiff and the Class where

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Defendant has invaded their privacy; has unlawfully and coercively taken their biometrics; has failed to provide them with information required by BIPA; has deprived them of benefits, rights, opportunities and decisions conferred and required by the Illinois legislature via BIPA; and, has illegally recorded, possessed, converted and stored their fingerprints, biometrics and property.

45. Unlike a scenario where a consumer voluntarily provides his or her biometric information to access a consumer service, Defendant here unlawfully and coercively captured, collected, recorded, and stored Plaintiff's and the Class' biometric information as a condition of their employment. Defendant did so without affording their employees, the vast majority of whom are paid minimum wage, performing work that does not require a college education the right to refuse, without providing an alternative to using said biometric information and without complying with any of the safeguards imposed by the BIPA. Defendant's status as employer is highly coercive vis-a-vis Plaintiff's status as employee, making compliance with the BIPA safeguards all the more necessary.

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46. By collecting, storing, and using Plaintiff's and the Class' biometric identifiers and biometric information as described herein, Defendant violated the right of Plaintiff and each Class member to privacy in their biometric identifiers and biometric information.

47. Possibly no fact is more compelling to explain the fear Plaintiff and those similarly situated to her experienced than that Defendant, who is a sophisticated and well-funded corporation with ready access to highly skilled lawyers, elected to ignore the requirements of the BIPA which is expressly intended to protect the privacy of hourly employees.

48. As a result of Defendants' negligent conduct, Plaintiff, as would any other reasonable person, has experienced bodily injury in the form of mental anguish. Plaintiff, as would any reasonable person whose privacy rights have been violated as Defendant is alleged to

have done here, experiences mental anguish and injury when thinking about what would happen to her biometric data if Defendant went bankrupt, sold, merged or transferred their business operations; whether Defendant's biometric system is susceptible to hacking or other theft, including theft by a fellow employee; whether Defendant will ever delete Plaintiff's biometric information; and, whether (and with whom) Defendant will share Plaintiff's biometric information.

49. A consumer, voluntarily providing a biometric identifier in order to access a consumer service, who is then injured by a BIPA violation, rightfully suffers mental anguish caused by the risk of her biometric identifier being compromised. Plaintiff, and those employees similarly situated to her, suffers an even greater mental anguish because their biometric information, coupled with the entirety of other sensitive and specific information that Defendant has in its database as a result of being their employer (date of birth, social security number, legal name, home address, income tax information, etc.) exposes Plaintiff to a heightened risk of fraud and identity theft in the event Defendant's data system is voluntarily or involuntarily made available to others.

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50. Plaintiff, and those similarly situated to her, have suffered another injury: a loss of control over her personal identity. Before Plaintiff, and those similarly situated to her, became a victim of Defendants' negligence, they enjoyed an exclusivity of possession of their personal, unique, biological self. As a result of Defendants' above-described negligence, the exclusivity of Plaintiff, and those similarly situated to her, has been compromised. When coupled with the entirety of other sensitive and specific information that Defendants have in their database as a result of being Plaintiff's employer (date of birth, social security number, legal name, home address, income tax information, etc.), Plaintiff's loss of control over her personal identity, as

well as the loss of control suffered by those similarly situated to her, means that she has suffered injury by the loss of her ability to protect her privacy, namely her private biometric information.

51. Accordingly, Defendant has negligently violated the BIPA, and Plaintiff and the Class have been damaged and are entitled to damages available under the BIPA, including liquidated damages of \$1,000 or actual damages, whichever is greater. 740 ILCS § 14/20(1).

COUNT II
VIOLATIONS OF ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT
(Injunctive Relief)

52. Plaintiff, individually and on behalf of all others similarly situated, repeats and re-alleges the preceding allegations as though fully set forth herein.

53. BIPA provides for injunctive relief. 740 ILCS § 14/20(4).

54. Plaintiff and other Class members are entitled to an order requiring Defendant to make disclosures consistent with the Act and enjoining further unlawful conduct.

55. First, Plaintiff seeks an order requiring Defendant to publicly disclose a written policy establishing any specific purpose and length of term for which Plaintiff's and other employees' biometrics have been collected, stored, and used, as well as guidelines for permanently destroying such biometrics when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first, as required by 740 ILCS § 14/15(a).

56. Second, Plaintiff seeks an order requiring Defendant to disclose whether Defendant has retained Plaintiff's and other employees' biometrics in any fashion, and if, when, and how such biometrics were permanently destroyed, consistent with BIPA.

57. Third, due to the aforementioned facts, and Defendant's failure to make publicly available facts demonstrating BIPA compliance as BIPA requires, Defendant should be ordered

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to: (i) disclose if³ it has disseminated, sold, leased, traded, or otherwise profited from Plaintiff's and other fingerprinted employees' biometric information, which is strictly prohibited under BIPA; and (ii) disclose the standard of care that it employed to store, transmit, and protect such biometrics, as provided under BIPA. 740 ILCS § 14/15(c), (d), (e).

58. Fourth, Defendant should be enjoined from further BIPA non-compliance, and should be ordered to remedy any BIPA compliance deficiencies forthwith.

59. Plaintiff and other Class members' legal interests are adverse to Defendant. There is substantial controversy between Plaintiff and Defendant warranting equitable relief so that Plaintiff and the Class may obtain the protections that BIPA entitles them to receive.

60. Plaintiff and the Class do not know what Defendant has done (or intends to do) with their stored biometrics. Absent injunctive relief, Defendant is likely to continue their BIPA non-compliance and Plaintiff and other Class members will continue to be uninformed on their rights under BIPA.

61. For the reasons set forth above, Plaintiff is likely to succeed on the merits of her claims.

62. BIPA establishes the importance, value, and sensitive nature of biometrics, along with the need to protect and control it; Plaintiff is entitled to know what Defendant has done with it as set forth above, and to an affirmation and verification that it has been permanently destroyed as required by 740 ILCS § 14/15(a).

63. The gravity of the harm to Plaintiff and the Class, absent equitable relief, outweighs any harm to Defendant if such relief is granted.

64. As a result, Plaintiff requests commensurate injunctive relief.

³ And if, precisely how, and to whom.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays that the Court grant the following relief:

- a. Certify the Class, and designate Plaintiff as Class representative and her counsel as Class Counsel;
- b. Find that Defendant has violated the Biometric Information Privacy Act, and enter judgment in favor of Plaintiff and others similarly situated;
- c. Provide commensurate temporary, preliminary and permanent injunctive relief for Plaintiff and the Class as set forth above;
- d. Award all damages available to Plaintiff and the Class under applicable law, including statutory damages;
- e. Award Plaintiff and the certified class all costs and expenses incurred in this action, including reasonable attorneys' fees, and requiring defendant to pay the costs and expenses of class notice and claims administration; and,
- f. Award Plaintiff and the certified class such further and other relief the Court deems just and appropriate.

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ROBIN RAPAL, individually and on behalf of all
others similarly situated

By: /s/ Frank Castiglione
One of her attorneys

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KRONOS SALES, SOFTWARE LICENSE AND SERVICES AGREEMENT

Rev KR-022811.1

This Kronos Sales, Software License and Services Agreement ("SSLSA; together with all Order Forms, Statements of Work, Services Scope Statement(s), exhibits and other attachments, the "Agreement") is entered into by and between Hyatt Corporation, with offices at 71 S. Wacker Drive Chicago, IL 60606 ("Customer") and Kronos Incorporated, with offices at 297 Billerica Road Chelmsford, MA 01824 ("Kronos") and effective as of September 11, 2014. The parties agree that the terms and conditions set forth in this SSLSA shall apply to all Kronos Equipment, Software, Professional and Educational Services, Support Services, all as defined in this Agreement, and such other Kronos offerings, including, if applicable, any custom software development by Kronos as specified on an order form or other ordering document containing product-specific descriptions and payment terms signed by both parties (an "Order Form") (the "Products and Services," collectively) signed by the parties which expressly references this Agreement (or is signed contemporaneously hereto).

1. USE OF PRODUCTS AND SERVICES.

Kronos acknowledges and agrees that use of the Products and Services by Customer's affiliates and subsidiaries, as well as any hotel and resort properties owned or managed by Customer or its affiliates and subsidiaries located in those countries set forth in Exhibit A (the "Customer Hotels") ("Customer Group") is permitted under this Agreement as described in Exhibit A. Customer will cause each of the entities included in the Customer Group to comply with each of the provisions contained in this Agreement applicable to the Customer.

2. ORDERING PRODUCTS AND SERVICES; ADDITIONAL TERMS.

- (a) Kronos and Customer hereby agree that the terms and conditions of this SSLSA apply to any Order Form executed by Kronos and Customer which expressly references this Agreement (including any Order Form signed contemporaneously with this Agreement regardless of the appearance of any express reference to this Agreement). If Customer wants to order certain Products and Services, it will execute an Order Form generated by Kronos. Kronos may require additional terms and conditions for the sale or license of certain Products or services not contemplated by this SSLSA or in any Order Form executed contemporaneously with this SSLSA which will be provided to Customer in writing before an Order Form for such Products or Services are executed. Customer shall have an opportunity to negotiate any additional terms and conditions so provided. For clarity, no such additional terms and conditions shall be binding upon Customer without Customer's prior written consent. All Order Forms are subject to the approval of Kronos which will be indicated by its execution thereof and Kronos may determine, in its commercially reasonable discretion that certain Products and Services requested by Customer are not available and shall promptly notify Customer of such unavailability in writing. This Agreement and the Order Form shall supersede the pre-printed terms of any Customer purchase order or other Customer ordering document, and no such Customer pre-printed terms shall apply to the items ordered.
- (b) To the extent this SSLSA, any Order Form, or any statement of work (including Services Scope Statements) (each of the latter, a "SOW") conflict, terms shall govern over other terms as follows (i) SSLSA terms, including in any Exhibits, but excluding any terms and conditions incorporated by URL reference herein; (ii) SOW terms; (iii) Order Form terms; and (iv) terms and conditions incorporated by URL reference herein.

3. PAYMENT AND DELIVERY.

- (a) Unless otherwise set forth in an Order Form, payment of any amounts will be due within 30 days of the date of the applicable invoice. The foregoing notwithstanding, Customer may withhold payment of any amounts Customer, in good faith, disputes. Delivery terms are as stated on the Order Form ("Delivery"). Kronos will invoice Customer for Software and Equipment (as defined below) upon Delivery. Unless otherwise set forth on the Order Form, Professional and Educational Services are provided on a time and materials basis, invoiced monthly as rendered. Customer agrees to pay all undisputed applicable taxes levied or based on the purchase and sale of Products or Services, including state and local sales and excise taxes, and any similar taxes or amount in lieu thereof paid or payable by Kronos, exclusive of taxes based on net income or profits ("Taxes"). Taxes will be indicated on each invoice as a separate line item. Kronos will be solely responsible for remitting all Taxes to the correct taxation authorities. Customer agrees to pay a late charge of one percent (1%) per month, (but not in excess of the rate allowed by applicable Laws) (as defined below), on any amounts more than 60 days past due that are not the subject of a good faith dispute. If full payment of undisputed amounts is not made within 180 days of the payment due date, Kronos may retain a third-party to obtain payment and Customer will reimburse Kronos for all such third-party expenses, including legal fees, incurred by Kronos for collection.
- (b) Kronos will deliver or make available all technical specifications, documentation, Technical Data Sheets, users guides or manuals, instructions or related materials necessary for Customer to make full use of any applicable Products and Services (the "Documentation") contemporaneously with Delivery of Products and Services. Documentation will be delivered in hard copy or electronic format, or Kronos will provide Customer with any URLs necessary to access any of the foregoing online.
- (c) Once purchased, title to any Equipment shall pass to Customer free and clear of claims, liens and encumbrances.
- (d) For clarity, Kronos shall be solely responsible for payment of pay all costs and expenses related to salaries, benefits, employment taxes, and insurance for its staff and all Kronos Personnel; for payment of all accounts due to its suppliers and authorized subcontractors; and for payment of all taxes associated with its business, including without limitation all sales, use, or similar taxes and all taxes on its income and will pay any and all of the foregoing.

EXHIBIT2

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4. GENERAL LICENSE TERMS.

- (a) Kronos represents and warrants that it owns or has the right to license all software it provides to Customer that operates on one or more Customer devices and any Application Programs (as defined in Exhibit B (Application Hosting Supplemental Terms and Conditions, which is incorporated herein by reference (the "Software"), together, with the any equipment sold, licensed or otherwise provided by Kronos to Customer hereunder ("Equipment") (Software and Equipment together referred to as "Products") and any software provided by Kronos embedded or pre-loaded on or in Equipment ("Firmware") (Software and Firmware, together, the "Licensed Software"). The Licensed Software and accompanying Documentation are Kronos' Confidential Information (as defined below); provided, however, that to the extent Kronos considers use of the Licensed Software by Customer's employees, contractors and other personnel authorized by Customer to use the Products and Services ("Customer Personnel") to constitute "disclosure," Licensed Software and Documentation may be disclosed to those individuals provided that use of the Licensed Software and Documentation shall be solely on behalf of Customer and will terminate effective immediately upon termination of the relationship between Customer and such individual. For clarity, a breach of this license by any Customer Personnel shall be deemed a breach of this license by Customer. The Licensed Software contains proprietary trade secret technology. Certain use and copying of such Licensed Software is prohibited by applicable laws, rules, regulations, ordinances, orders, statutes, agency and court decisions and similar acts of governmental authority (together, "Laws"), including United States and foreign copyright Laws. The price Customer pays for a copy of Software constitutes a license fee ("License Fee") that entitles Customer to use the Software as set forth herein and in any Order Form. Kronos hereby grants to Customer a non-exclusive, nontransferable (except to permitted assigns), royalty free, and perpetual (except as provided herein) license to use the Licensed Software.
- (b) Kronos may terminate the foregoing license with respect to certain Licensed Software upon written notice to Customer, if Customer (i) fails to pay any undisputed License Fee for such Licensed Software when due and does not make payment in full of any such amounts within 45 days after receipt of Kronos' written notice demanding payment; or (ii) materially breaches the license terms applicable to that Licensed Software including without limitation Customer's confidentiality obligations with respect to such Licensed Software and any such material breach remains uncured for a period of thirty (30) days after receipt of written notice from Kronos reasonably specifying the nature of the breach. Upon such termination, by Kronos, Customer will have no further right to use the affected Licensed Software, the license will be deemed terminated, and Customer will return the Software media (if any) to Kronos and destroy all copies of the Software (and related Documentation) in Customer's possession or control. In addition, any Order Forms including the purchase of any Equipment Support Services or Services Offerings (as defined below) for any Licensed Software for which the licenses have been terminated as set forth in this Section will automatically terminate. For clarity, termination of the license with respect to certain Licensed Software will have no effect on the validity of the licenses with respect to any other Licensed Software.

5. OUTPUT/DELIVERABLES.

- (a) All reports, documents and other materials prepared or generated by Customer by or through use of the Software, Equipment or Application Programs will be referred to as the "Output." All Output shall be the property of Customer, except to the extent such Output contains Kronos' Confidential Information, ownership of which will remain with Kronos and Kronos grants Customer a perpetual license to use such Confidential Information contained in any Output, subject to the terms and conditions of this Agreement.
- (b) All deliverables, work product or similar materials created or developed by Kronos under this Agreement, including any such items identified as such in a SOW or SSS, but excluding any custom software created or developed as the result of any custom software development Services, shall be referred to as "Deliverables." If Customer wants to retain Kronos to perform custom software development Services, and Kronos is able to provide such Services, the parties shall execute an addendum setting forth any additional terms and conditions applicable to those Services and any custom software created as a result.

6. FEE BASED LIMITATIONS.

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the License Fee paid by Customer, as set forth in an Order Form. Limitations, which are set forth on the Order Form, may include the number of Customer Personnel, simultaneous or active users, Software Product modules, Software features, computer model and serial number and partition, and/or the number of telephone lines or terminals to which the Software is permitted to be connected. Customer agrees to: (a) use the Software in compliance with all such limitations stated in an Order Form and (b) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, partitions, terminals, Software modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable License Fee for such increase/upgrade. Customer may not sublicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos. For clarity, to the extent use of the Products and Services by Customer Personnel constitutes a sublicense under applicable Laws, Kronos agrees that Customer may sublicense its rights to such Customer Personnel.

7. OBJECT CODE ONLY: THIRD-PARTY SOFTWARE: ADDITIONAL SOFTWARE WARRANTY.

- (a) Customer may use the Software (including any components or modules thereof) in object code form only, and shall not reverse

compile, disassemble or otherwise convert the Software into uncompiled or unassembled code. The Software includes components owned by third parties and licensed to Kronos. Such third party components are deemed to be Software subject to this Agreement, including (a) Kronos' representation and warranty as to its right to grant the licenses granted herein and (b) Kronos' obligation to provide the Products and Services in accordance with the Specifications (as defined below). Customer shall not use any component or module of any Software (nor any data models therein) except solely as part of and in connection with the Software and as described in the Documentation or Specifications for such Software.

- (b) Kronos represents and warrants that: (i) the Software and Firmware do not and shall not include any open-source software or code, including any such software or code licensed to Kronos under a GPL or LGPL or similarly structured open-source license, which would require Customer or Kronos to disclose any of Customer's Confidential Information or any other information of or pertaining to Customer; and (ii) upon Delivery to Customer no copy of the Software or Firmware (including Updates thereto) provided contains (i) any virus, code or other routine that can disable, erase or otherwise harm the Software or Equipment, or Customer's other equipment, software or data; and (ii) any software routine, code, or instruction, hardware component or combination of the above which is designed to intentionally repossess the Customer's systems or network, or any component thereof, by electronic or other means (all such code, collectively, a "Virus").

8. PERMITTED COPIES.

Customer may copy the Programs as reasonably necessary to load and execute the Programs and for backup and disaster recovery and testing purposes only, except for additional copies of the Teletime Software and the Kronos iSeries (which must be licensed separately). All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this Agreement, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer. Customer may also make reasonable numbers of copies of any Documentation (other than certain training materials developed by Kronos which may require additional copy fees, all such fees and costs as set forth in the applicable Order Form or SOW) to the extent necessary to permit it to make full use of any accompanying Software.

9. UPDATES.

- (a) In the event that Kronos supplies Service Packs (as defined below), point releases, major releases (including legislative updates if available) and any bug fixes, patches or similar coding of or to the Software (collectively referred to as "Updates"), such Updates shall be part of the Software and the provisions of this Agreement shall apply to such Updates and to the Licensed Software as modified thereby. Kronos shall supply all Updates to Customer in accordance with the applicable Service Offerings, if any, purchased by Customer and set forth in an Order Form that it supplies to similarly situated customers. Provided Customer has registered for notification of release notes and Service Packs through Kronos' support portal, Kronos shall provide Customer with notification of any point and/or major releases upon release by Kronos. Customer must consent to the installation of such point and/or major releases before installation.
- (b) Kronos shall utilize industry standard methods to provide and release Updates, and otherwise maintain the Software and Firmware, to prevent Viruses or address other security issues therein.

10. EXPORT.

Customer acknowledges that the Equipment and Software may be restricted by the United States Government or by the country in which the Equipment or Software is installed from export to certain countries and certain organizations and individuals. Each party agrees to comply with such applicable export Laws. Kronos specifically represents and warrants that as of the Effective Date that (a) all Software and Equipment may be licensed, sold and exported to any country in the Region as further described in Exhibit A and (b) to the best of Kronos' knowledge, Kronos is not aware of any causes or applicable Laws that would prevent Customer's access to and use of the Application Programs in the Hosting Environment (as defined in Exhibit B), from such countries. Nothing set forth herein shall relieve either party of its obligations to comply with applicable Laws. Customer must obtain Kronos' prior written consent before exporting the Software outside of the Region.

11. FIRMWARE.

Customer may not download Firmware Updates for Equipment unless Customer has purchased Equipment Support Services (as defined below). If Customer has not done so, Kronos shall have the right to remotely verify Customer's Equipment to determine if Customer has downloaded any Firmware Updates to which Customer is not entitled, upon at least five business days' notice to Customer. If Customer has downloaded Firmware Updates for the Equipment to which Customer is not entitled, Customer shall pay Kronos for such Updated Firmware in accordance with Kronos' then-current support pricing.

12. TRAINING POINTS.

Training Points which are purchased by Customer via Order Form may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos (such training sessions and any other training or educational services provided by Kronos, the "Educational Services"). Available instructor-led sessions are listed at <http://customer.kronos.com> and each session has the Training Points value indicated. Training Points may be redeemed at any time within 12 months of the effective date of the applicable Order Form, after such 12 month period, the Training Points shall expire. Training Points may not be exchanged for other Products and/or Services. Kronos will invoice Customer for the Training Points identified in the Order Form upon execution of such Order Form with payment due as set forth herein. Notwithstanding to the contrary in this Agreement notwithstanding, Training Points will be provided for \$1.00 per Training Point through December 31, 2015. Thereafter, Kronos may increase the price if it chooses.

13. ACCEPTANCE.

- (a) When Customer purchases a unit of Equipment and/or Software (collectively the "Products"), Customer may conduct an acceptance test during an acceptance test period (the "Test Period") which commences after installation is completed. Installation shall be considered complete on the date on which all the following have occurred with respect to each applicable unit of Software or Equipment. For clarity, an acceptance test will not be available for purchases of additional licenses for Software or additional Equipment already successfully installed, tested and accepted:
- (i) the Software is installed on Customer's production server(s);
 - (ii) the Software has been configured in accordance with all applicable Documentation, and Customer's requirements (as attached as an exhibit to the Order Form) provided by Customer to Kronos that fall within the standard Software production parameters (together, the "Specifications");
 - (iii) the Software is interfaced, as applicable, with any Customer systems, networks, technology or equipment ("Customer System") so that all Software and production interfaces are transmitting data;
 - (iv) the Software is generating standard production application reports;
 - (v) Equipment, if any, has been mounted on the applicable premises and connected, integrated or interfacing with "Customer System";
 - (vi) Provided Customer has purchased Support Services, the most current version of the Software and/or Firmware set forth in the Order Form is installed, the later on all applicable Equipment. For clarity, when Customer orders Equipment from Kronos, the Equipment being shipped to Customer will contain the most current version of the Firmware for such Equipment; and.
 - (vii) implementation team training is complete.
- (b) During the Test Period, Customer shall determine whether the Software and Equipment meet the Specifications.
- (c) The Test Period shall be for 30 days or such other longer period of time mutually agreed to by the parties in writing. If Customer has not given Kronos a written deficiency statement specifying how the Products fail to meet the Specifications ("Deficiency Statement") within the Test Period, the Products are deemed accepted ("Acceptance"). If Products do not meet Specifications, Customer will provide Kronos a written deficiency statement reasonably specifying how the Products fail to meet the Specifications within the Test Period. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, including re-performing installation, if necessary, at no cost to Customer, and Customer shall have an additional 30 day Test Period to evaluate the corrected Products. If the Product does not meet the Specifications at the end of the second Test Period, either party may terminate the affected Order Form, and upon any such termination, Customer shall return all rejected Products that are the subject of such Order Form (and related Documentation) to Kronos, and Kronos shall refund any (a) License Fees; (b) installation fees (excluding any such fees for Training Services) and (c) Support Services Fees already paid by Customer to Kronos for the returned Products. Neither party shall then have any further liability to the other for the Products that were the subject of the terminated Order Form.

14. ON-PREMISES ACTIVITIES.

If Kronos and/or any of its employees, contractors, contractors' employees, agents or other personnel (together, the "Kronos Personnel") perform Services (including installation and Support Services and the removal of any Products) on any premises owned or operated by the Customer Group (a) Kronos will ensure that all such Kronos Personnel comply with any of the applicable Customer Group's policies and procedures applicable to Customer Group contractors providing Services on the premises and will notify all such Kronos Personnel of any such policies and procedures, including any security policies or procedures that may require the recording or observation of Kronos Personnel while on-premises; and (b) after performing such Services, Kronos will restore the applicable premises to the condition in which it was before the performance thereof, normal wear and tear and any mutually agreed to alterations excepted, which mutually agreed to alterations shall include any changes to any component of the Customer System made by Kronos in connection with providing its Services in accordance with this Agreement.

15. LIMITED WARRANTY.

- (a) Kronos warrants that all Software and Equipment shall be free from defects in materials and workmanship and shall conform to and will operate in accordance with the Specifications, for a period of two hundred seventy (270) days from Delivery ("Warranty Period"). The warranty made in this Section will have no effect on any other warranty in this Agreement. Kronos will promptly correct or replace the Software or Equipment if the Software or Equipment do not conform to the requirements of this Section 15. In addition, for as long as Customer purchases Support Services with Kronos for the Software and Equipment Kronos warrants that the Software and Equipment shall perform in compliance with the Specifications.
- (b) In the event of a breach of this warranty, Customer's exclusive remedy (excluding Customer's right to terminate this Agreement

for Kronos' uncured breach) shall be Kronos' prompt repair or replacement of the deficient Equipment and/or Software at Kronos' option and expense (including additional installation costs, if any) so that the deficient Product conforms with Specifications or a replacement conforming with Specifications is provided. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) or Software that does not meet Specifications to the extent consisting of or caused by:

- (i) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including modification or replacement of any components on any boards supplied with the Equipment), physical or electrical stress in excess of that permitted under any Specifications;
 - (ii) failure of Customer to provide and maintain a suitable installation environment, as specified in the Specifications; or
 - (iii) malfunctions resulting from the use of badges or supplies in connection with the Equipment or Software (if applicable) not approved by Kronos.
- (c) When using and applying the information generated by Products, Customer is responsible for ensuring that Customer complies with the applicable requirements of applicable Laws. If Customer is licensing Workforce Payroll Software or Workforce Absence Management Software: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using such Software, (ii) using such Software does not release Customer of any professional obligation it may have to any third-parties concerning the preparation and review of such reports and documents, (iii) Customer does not rely upon Kronos, Best Software, Inc. or such Software for any legal advice or guidance regarding compliance with applicable Laws or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using such Software and satisfy itself that those calculations are correct.

16. Reserved

17. COMPLIANCE WITH LAWS

- (a) Without limiting either party's other compliance obligations set forth herein, Kronos represents, warrants and agrees that it will perform its obligations under this Agreement in compliance with all applicable Laws. For clarity, Kronos will have no responsibility or liability for any use Customer makes of any Products or Services that itself does not comply with applicable Laws. In addition, and without limiting the foregoing, Kronos will obtain, before providing any Products or Services, and will maintain throughout the Term (as defined below) any and all necessary governmental license or permits or consents required for the proper and lawful conduct of its business or other activity of Kronos carried on, in or at any premises owned or operated by Customer. Kronos shall, at its sole expense, at all times comply with the requirements of each such license, permit or consent. Kronos further acknowledges that Customer is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor Laws.
- (b) Customer acknowledges and agrees that Kronos is not providing legal compliance Services hereunder.

18. INDEMNIFICATION

- (a) Kronos agrees to indemnify and defend Customer, its affiliates and subsidiaries, the Customer Hotels, and their respective owners, officers, directors, Customer Personnel and agents (together, the "Customer Indemnitees") and to hold them harmless from and against any and all claims, suits, causes of actions, fines, penalties (including any assessed by governmental agencies), costs, fees and expenses (including reasonable legal fees) (together, "Claims") alleged, asserted or brought against any of them or incurred by any of them as a result of such third-party Claims to the extent arising out of or relating to:
- (i) Infringement of third-party intellectual property rights (including patents, copyright, trademark and trade secret rights) by Kronos, the Products or Services it provides (including any third-party Software contained or provided therein), any Documentation, or any KnowledgePass Content, and any Deliverables, including in connection with Support Services, or Customer's or Customer Group's use thereof;
 - (ii) Damage to real or personal property, bodily injury to or death of any third-party (including Customer Personnel) arising out of Kronos' breach of its obligations hereunder, or its negligence or willful misconduct or the negligence or willful misconduct of any Kronos Personnel;
 - (iii) Kronos' gross negligence or willful misconduct or the gross negligence or willful misconduct of any Kronos Personnel;
 - (iv) Bodily injury to or death of any Kronos Personnel delivering Products or Services hereunder, however caused or

occasioned, excepting the gross negligence or willful misconduct of Customer;

- (v) Any materialmen, mechanicians or other liens or encumbrances asserted by Kronos' subcontractors, suppliers or creditors related to this Agreement or any labor, materials, Equipment, Products, or any other item provided for the benefit of Customer hereunder; and
 - (vi) Kronos' breach of Section 17 (Compliance with Laws), excluding breach of its obligation to comply with Data Protection Laws (as defined below) which breach is addressed in sub-Section (c).
- (b) Kronos also agrees to indemnify, defend and hold the Customer Indemnitees harmless for all Claims for tangible property damage caused by its, or the Kronos Personnel's negligent or wrongful acts or omissions while on any Customer, Customer Hotel or Customer affiliate or subsidiary's premises in connection with this Agreement.
- (c) Kronos also agrees to indemnify Customer Indemnitees for the following Claims (including inter-party Claims) suffered or incurred by any of them to the extent arising out of or relating to Kronos' breach (including negligent or willful breach by Kronos Personnel) of its obligations (i) in Section 25 (Data Privacy Protection Requirements) or (ii) in Section 24 (Confidential Information):
- (i) Customer's actual and reasonable costs to provide those notices of the security breach to the affected individuals that are required by applicable Laws, the parties acknowledging that express courier service is not reasonable in this context;
 - (ii) Customer's actual and reasonable cost to provide those notices of the security breach to government agencies, credit bureaus, and/or other required entities that are required by applicable Laws;
 - (iii) Customer's cost to provide individuals affected by the security breach with credit protection services designed to prevent fraud and identity theft for a specific period not to exceed 12 months, including call center or other communication procedures in response, provided such credit protection services are required by applicable Laws;
 - (iv) Any civil or criminal fines, penalties or other financial judgments brought or assessed against Customer by any governmental authority with jurisdiction over such matters; and
 - (v) Legal fees and expenses associated with Customer's defense, investigation of and response to such Claim, provided that if Kronos assumes the defense of any Claim subject to this subsection (c), Kronos will only be responsible for those legal fees and expenses associated with Customer's defense, investigation of and response to such Claim incurred by Customer prior to Kronos' written assumption of the defense of the Claim.
- (d) Customer will indemnify, defend and hold harmless Kronos from and against any Claims alleged, asserted or brought against any of them or incurred by any of them as a result of such third-party Claims to the extent arising out of or relating to (i) Customer's breach of the license granted to the Software or Firmware (including by Customer Personnel); and (ii) Customer's use of Products or Services outside of the Region.
- (e) A party seeking indemnification and defense pursuant to Sections 18(a), (b) or (d) will (i) give prompt written notice of any Claim to the other party and (ii) will permit the indemnifying party sole control over the investigation, preparation, defense and settlement of such Claim, except that the indemnifying party may not consent to the entry of any judgment or finally settle any Claim that (A) includes an admission of liability by the indemnified party or, if Customer is the indemnified party, any Customer Indemnitee, (B) requires any payment from the indemnified party or, if Customer, any Customer Indemnitee, and/or (C) if the Claim is settled, does not contain a complete and final release of the indemnified party (or, if Customer is the indemnified party, the Customer Indemnitees) with respect to the settled Claims, without the indemnified party's prior written consent; and, (iii) the indemnified party will reasonably cooperate (at the indemnifying party's expense) with the indemnifying party in connection with such Claim. A party's failure to comply with the foregoing obligation under (e) (i), above, will only excuse the other party from its indemnification obligations to the extent it is damaged or prejudiced by the delay in notification.
- (f) Kronos will have no obligation to indemnify Customer for Claims or portions of Claims under sub-Section (e)(i) to the extent any such Claim is based on the use of the Products (i) with software or equipment not supplied, recommended or approved by Kronos, including in any Documentation, where the Claim would not have been asserted but for the combination with such software or equipment; or (ii) not as permitted or authorized in any Specifications or (iii) not in substantial compliance with this Agreement. Should any or all of the Products become, or in Kronos' reasonable opinion be likely to become, the subject of any such Claim, Kronos may at its option: (iv) procure for Customer the right(s) to continue to use the affected Products without change; or (v) replace or modify the affected Products to make its use non-infringing, provided that the modifications do not result in any material loss of function or capability. Should such options not be available at reasonable expense, or should Kronos not be able to perform its obligations under (iv) or (v) within the stated time period, either party may terminate the Agreement upon thirty (30) days prior written notice to Customer. In such event of termination, Customer shall be entitled to a pro-rata refund of all License Fees and Equipment Fees and any other prepaid but unused fees for any services not yet performed (e.g. Support Service Fees or fees for Professional Services) for or in connection with the affected Product(s). The License Fees and Equipment Fees refund shall be calculated using a five year straight-line depreciation commencing with the date of the relevant Order Form.

19. INSURANCE

- (a) Kronos shall obtain and maintain insurance in the following types and with the following limits from providers reasonably acceptable to Customer and/or with an A.M. Best rating of A- or better. All policies shall be written on an occurrence basis, except for the Professional Liability insurance:
- (i) Worker's Compensation and Employers Liability insurance affording compensation benefits for all employees in an amount sufficient by virtue of the laws of the state or jurisdiction in which the work or any portion of the work is performed and employers' liability insurance with limits of not less than one million dollars (\$1,000,000) for each accident or disease;
 - (ii) Commercial General Liability Insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence for personal injury, bodily injury (including wrongful death), and property damage liability inclusive of coverage for all premises and operations, broad form property damage, independent contractors, contractual liability for this Agreement and product/completed operations coverage;
 - (iii) Automobile Liability Insurance with combined single limit of not less than one million dollars (\$1,000,000) per occurrence for injuries, including accidental death and property damage;
 - (iv) Umbrella or Excess Liability Insurance with limits not less than four million dollars (\$4,000,000) per occurrence which shall provide additional limits for employers' liability, general liability and automobile liability insurance; and
 - (v) Professional Liability Insurance or Errors and Omissions insurance shall be maintained with limits of not less than two million dollars (\$2,000,000) and such coverage shall apply to all forms of computer/cyber risks (Information Security & Privacy Liability including regulatory defense and penalties, privacy breach response services including credit monitoring services) and shall be maintained by Service Provider for a period of three (3) years after termination of this Agreement.
- (b) Kronos may and shall self-insure for coverage of intellectual property infringement claims.
- (c) Certificates (and any other appropriate documentation) evidencing such policies and indicating that Customer and its affiliates and their respective shareholders, officers, directors, employees and agents (the "Customer Parties"), as additional insureds thereunder shall be furnished to Customer and provide that such policies may not be changed or canceled until after thirty (30) days' prior written notice to Customer. Kronos hereby waives and shall cause Kronos' insurers to waive their rights of subrogation against the Hyatt Parties under such policies.
- (d) Kronos shall verify that all of its subcontractors are insured against claims arising out of or relating to their performance related to this Agreement in accordance with the foregoing. The foregoing insurance coverages shall be primary to and non-contributory with respect to any other insurance or self-insurance that may be maintained by the Customer Parties and shall contain a cross-liability or severability-of-interest clause where applicable. The fact that Kronos has obtained the insurance required in this Section will not affect its liabilities or obligations under this Agreement. Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the policies required under this Section shall be assumed by, for the account of, and at the sole risk of, Kronos. For clarity, in no event shall Kronos' liability be limited to the extent of the minimum limits of insurance required above.

20. PROFESSIONAL AND EDUCATIONAL SERVICES

- (a) **TRAVEL EXPENSES.**
Unless otherwise set forth in an Order Form, Customer agrees to reimburse Kronos for all pre-approved, reasonable and actual travel expenses incurred by Kronos by payment to a third-party in the performance of any professional Services ("Professional Services") and/or Educational Services. Travel expenses may include airfare, lodging, reasonable meal allowance and transportation to and from the airport nearest Customer (or such other airport as Customer designates). Customer will be billed by Kronos for such permitted travel expenses and payment thereof shall be due within 30 days after Customer's receipt of the applicable invoice accompanied by reasonable supporting documents.
- (b) **ENGAGEMENTS.**
Unless otherwise indicated on the Order Form, Professional and Educational Services shall be provided on a time and material basis at the rates set forth in the Order Form. If a dollar limit is stated in the Order Form or any SOW attached to any Order Form and incorporated therein by reference, Kronos will not exceed such dollar limit unless a change order or Schedule of Services or similar document (a "Change Order") for continuation of the Professional or Educational Services is signed by the parties.
- (c) **WARRANTY.**
Kronos warrants that all Professional and Educational Services performed under this Agreement shall be performed in a professional and competent manner by persons possessing the knowledge and skills necessary to perform the services. In the event that Kronos breaches this warranty, and Customer so notifies Kronos within 30 days of receipt of invoice for the applicable Services, excluding Customer's right to terminate for Kronos' uncured breach and unless Kronos' acts or failures to act that caused the

breach of warranty also result in the breach of any other provision of this Agreement, the Customer's sole remedy and Kronos' exclusive liability shall be to re-perform the Services which were deficient in a manner so as to conform to the foregoing warranty, at no additional cost to Customer. If after two repeated attempts Kronos is unable to correct the deficiency to conform to the foregoing warranty, (a) Customer may terminate the applicable SOW and seek damages as permitted under this Agreement and (b) Kronos shall promptly refund any pre-paid but unused fees for such Services not yet performed.

- (d) **KRONOS PROFESSIONAL/EDUCATIONAL SERVICES POLICIES.**
Unless otherwise set forth in an Order Form, Kronos' then-current Professional/Educational Services Policies shall apply to all Professional and/or Educational Services purchased under the applicable Order Form located at: <http://www.kronos.com/Support/ProfessionalServices/EngagementPolicies.htm> ("Professional Services Policies"). In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

21. **EQUIPMENT AND SOFTWARE SUPPORT SERVICES**

- (a) **GENERALLY.**
Language to the contrary in this Agreement notwithstanding, Kronos may not make changes to any Support Services that negatively and materially effect, diminish or decrease such services or Kronos' ability to deliver them without (i) providing written notice to Customer at least 60 days before the proposed change is to take effect and (ii) obtaining Customer's prior written consent. If Customer renews Support Services after Kronos announces any such change (i.e., Customer renews support for the subsequent renewal term), Customer's consent shall be deemed given. Kronos may, upon written notice to Customer, alter the Support Services at any time if such alteration improves the Support Services or Kronos' delivery of them. All references to Kronos' ability to change Support Services set forth herein will be subject to the restrictions of this Section. In addition, Kronos will continue to make Support Services available for purchase to Customer for as long as such Support Services are offered to Kronos' similarly situated customers and, in any case, for no less than five (5) years after the Effective Date. After such five (5) year period, Kronos may, upon 18 months' prior written notice to Customer, discontinue Customer's Support Services if Kronos is discontinuing Support Services for similarly situated customers generally.
- (b) **VOLUME DISCOUNT.**
If Customer increases the number or type of Software licenses and/or Equipment units purchased during the Term, Customer and Kronos will negotiate in good faith to determine a volume discount for Support Services for the applicable type of Software or Equipment. The parties will execute a written amendment setting forth the percent decrease and/or per-unit or license decrease as well as the effective date of such discount.
- (c) **EQUIPMENT SUPPORT.**
Customer may purchase support Services for Equipment ("Equipment Support Services") in accordance with the terms and conditions of Kronos' standard Equipment Support Services Agreement located at: <http://www.kronos.com/Legal/EquipmentSupportAgreement.aspx>. Without limiting Kronos' ability to make changes to Equipment Support Services as described above, and regardless of the content of the foregoing linked document (including modifications thereto), the terms and conditions set forth in Exhibit C are incorporated into this Agreement by reference and will control over the terms in the referenced document if there is a conflict or any ambiguity.
- (d) **SOFTWARE SUPPORT OPTIONS.**
Customer may select from the following Software support Services purchase options: Gold (or Gold Plus) and Platinum (or Platinum Plus) support ("Support Service Type"), each providing different service coverage periods and/or service offerings, as specified herein applicable to all Software and Application Programs ("Service Offerings") the Equipment Support Services and Service Offerings, together, the "Support Services"). Kronos will provide the designated Service Offerings for the designated Support Service Type as described herein and as indicated in any Order Form for the annual support service fee set forth in the applicable Order Form ("Support Fee"). Customer must purchase the same Service Type for all of the Software specified on any single Order Form (or if such subsequent Order Form is for additional capacity to Software already licensed and under a specific Service Type with Kronos), (however, if Customer is purchasing Service Offerings for Visionware Software, Customer may only purchase Gold Service Type for the Visionware Software). All Updates shall be provided via remote access.
- (e) **EXTENDED SUPPORT PROGRAM (DELL SERVERS).**
Customers purchasing the Extended Support Program (as indicated on an Order Form) for their Dell servers purchased from Kronos shall receive a specialized, bundled set of Support Services. Because of the specialized nature of these Services, the terms and conditions located at <http://www.kronos.com/Legal/SupplementalTerms.aspx> shall supersede the provisions of this Agreement for the Extended Support Program, unless otherwise agreed to by the parties in a written amendment to this Agreement.
- (f) **TERM OF SOFTWARE SUPPORT.**
Unless otherwise indicated on the Order Form, Service Offerings shall commence upon Delivery and shall continue for an initial term of one (1) year ("Initial Support Term"). Such Service Offerings shall automatically renew for additional one year terms on the anniversary date of its commencement date (each period a "Renewal Support Term;" the Initial Support and all Renewal Support Terms, the "Support Term"), unless (i) either party terminates the Support Service as permitted herein or (ii) Customer notifies Kronos in writing sixty (60) days prior to that anniversary renewal date of its intent not to renew the particular Support Service. After the Initial Support Term, the Service Offerings provided and the Service Coverage period are subject to change by

Kronos with sixty (60) days advance written notice to Customer. The foregoing notwithstanding, for the first three (3) Renewal Terms the annual Support Fee originally set forth in the applicable Order Form for the same Products and service type, will not increase by more than 2.5% over the prior year's annual Support Fee.

(g) **GOLD SUPPORT SERVICE TYPE SERVICE OFFERINGS.** Customer shall be entitled to receive and Kronos shall provide:

- (i) Updates (including all patches, Service Packs (as defined in Exhibit D (Additional Support Services Terms), upgrades and legislative Updates) for the Software for which Service Offerings have been purchased as set forth in an Order Form. If Customer requests Kronos to install such Updates or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' then-current time and materials rate in accordance with the Order Form executed by both parties addressing such matters. For clarity, Customer acknowledges and agrees that the Customer System must be configured in accordance with any Specifications to install Updates;
- (ii) Telephone and/or electronic access to the Kronos Global Support Center for the logging of requests for Support Service, technical issues or deficiencies in the Products (together, "Issues") during the Service Coverage Period. The "Service Coverage Period" for the Gold Service Offering is 8:00 a.m. to 8:00 p.m., local time (as further specified via the Customer Portal), Monday through Friday, excluding "Kronos Holidays," namely, New Year's Day, President's Day, Memorial Day, Independence Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.
- (iii) 24/7/365 access to the Customer Portal and e-case management, which enables complete Issue tracking and management from initial Customer request to Kronos resolution, as well as access to certain Software-related content and materials, including access to specialized content as and when made available by Kronos such as technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerforce and service case studies documentation, FAQ's, access to Kronos knowledge base, and Customer forums. Current offerings can be found at <http://www.kronos.com/services/helpdesk-services-detail.aspx>. The foregoing offerings may be modified by Kronos at any time in its sole discretion except that Kronos shall always maintain the Customer Portal and e-case management functions described herein.
- (iv) 24/7/365 remote Software and Firmware monitoring (Data Collection Terminals, if applicable, are excluded from monitoring) with web-based remote diagnostic technical assistance which may be utilized by Kronos to resolve Software functional problems and user problems during the Service Coverage Period;

(h) **PLATINUM SUPPORT SERVICE TYPE AND GOLD AND PLATINUM PLUS SERVICE TYPE SERVICE OFFERINGS:**

- (i) **Platinum:** In addition to the Service Offerings specified for the Gold Service Type above, the Service Coverage Period for the Platinum Service Offering is 24 hours a day, seven days a week, 365 days a year.
- (ii) **Plus option:**
 - (A) In addition to the Service Offerings specified for the Gold or Platinum Service Types above, as applicable, Customer shall receive the services of a dedicated, but not exclusive, Kronos Technical Account Manager ("TAM") for one production instance of the covered Software. The Gold-Plus option will permit Customer to designate up to one primary and one secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM, while the Platinum-Plus option shall permit Customer to designate up to two primary and three secondary backup Technical Contacts. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos' recommended Product training for the Software for which they are Technical Contacts, at a minimum, at Customer's expense and as indicated in a mutually executed Order Form.
 - (B) In addition to the foregoing, the Platinum-Plus option shall entitle Customer to receive a one day per year visit to one Customer location where the Software is installed. During this onsite visit, Kronos shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment. Customer must be utilizing the then-current version of the Software. Travel and expenses shall be paid by Customer as set forth herein.
- (i) **PAYMENT.**
Customer shall pay the annual Support Fee for the Initial Support Term in accordance with the payment terms on the Order Form and in this Agreement, and for any Renewal Support Term within 30 days after receipt of invoice. Unless otherwise clearly stated in an Order Form, Customer shall incur no additional charges or fees for any Support Service for which it is paying or has paid a Support Fee.
- (j) **ADDITION OF SOFTWARE**
Additional production instances of covered Software purchased by Customer during the Initial or any Renewal Support Term shall be added to the applicable Order Form 1 at the same Support Service Type as the covered Software. Customer agrees to pay the Support Charges for such addition, and any such addition shall be automatically renewed as provided in these terms.

(k) RESPONSIBILITIES OF CUSTOMER

Customer (i) grants Kronos a limited, revocable right to enter onto any premises on which Software is installed to the extent necessary to perform its Support Service obligations hereunder; (ii) grants Kronos a limited, revocable right and license to remotely access the Customer System to the extent necessary to perform its obligations hereunder, including use of Kronos' standard remote access technology, if required; provided that Kronos acknowledges and agrees that such limited license does not extend to any other part or component of the Customer System and that Kronos may not, under any circumstances, access any such parts or components (iii) agrees to maintain and operate the Software in an environment and according to procedures which conform to the Specifications; and (iv) will not to allow support of the Software by anyone other than Kronos without prior written authorization from Kronos. Failure to utilize Kronos' remote access technology may delay Kronos' response and/or resolution to Customer's reported Software issue. If Customer requires the use of a specific remote access technology not specified by Kronos, then Customer must purchase the Plus option to receive support. The foregoing license will extend to any Support Service provided under any Plus option. If, in Customer's reasonable opinion, the remote technology used by Kronos to access the Software/Equipment is posing an undue burden on the Customer System or is otherwise interfering with Customer's reasonable use thereof, the parties will cooperate in good faith to select or create a mutually acceptable remote access technology.

(l) DEFAULT.

Customer shall have the right to terminate any Support Services in the event that Kronos breaches its Support Service obligations (including the Support Services warranty set forth below and such breach is not cured within ten (10) days after written notice reasonably specifying the nature of the breach. In the event of such termination, Kronos shall refund to Customer on a pro-rata basis those pre-paid Support Fees associated with the unused portion of the support term. Kronos reserves the right to suspend Support Services in the event the Customer is in material default under this Agreement with Kronos and such default is not corrected within thirty (30) days after Customer's receipt of written notice reasonably specifying the nature of the material default.

(m) WARRANTY

Kronos warrants that all Support Services shall be performed in a professional and competent manner by persons possessing the knowledge and skills necessary to perform such services.

(n) KRONOS SUPPORT SERVICE POLICIES.

As indicated above, Kronos' Additional Support Services Terms are set forth in Exhibit D and incorporated herein by reference. In addition, Kronos' Support Services Policies, available at : <http://www.kronos.com/Support/SupportServicesPolicies.htm> shall apply to all Support Services purchased. Without limiting Kronos' ability to make changes to Support Services as described above, and regardless of the content of the foregoing linked document (including modifications thereto), the terms and conditions set forth in Exhibit D are incorporated into this Agreement by reference and will control over the terms in the referenced document if there is a conflict or any ambiguity.

22. KNOWLEDGEPASS EDUCATION SUBSCRIPTION:

The parties hereby agree that the following terms shall apply to Customer's purchase of the Kronos KnowledgePass Education Subscription only, if specified on the Order Form:

- (a) **Scope:** The KnowledgePass Education Subscription is available to customers who are licensing Kronos' Workforce Central and iSeries Timekeeper Software and who are maintaining such Products under Support Services with Kronos. The KnowledgePass Education Subscription provides access via the internet to certain educational offerings provided by Kronos (the "KnowledgePass Content"), including:
- Product and upgrade information for project teams and end users
 - Hands-on interactive instruction on common tasks
 - Self-paced tutorials covering a range of topics
 - Job aids
 - Knowledge assessment and reporting tools to measure progress
 - Webinars
- (b) **Term of Subscription:** The KnowledgePass Education Subscription shall run co-terminously with Customer's Support Term, provided Customer renews its KnowledgePass Education Subscription after the initial Support Term as provided below.
- (c) **Payment:** Customer shall pay an annual subscription charge for the KnowledgePass Education Subscription ("Subscription Charge") in accordance with the payment terms on the Order Form and/or this Agreement. Kronos will send Customer a renewal invoice for renewal of the KnowledgePass Education Subscription at least forty five (45) days prior to expiration of the Initial Support Term or then-current Renewal Term. KnowledgePass Education Subscription shall renew as described herein if Customer pays such invoice before the end of the Initial Term or any Renewal Term.
- (d) **Limitations:** Customer recognizes and agrees that the KnowledgePass Content is copyrighted by Kronos. Customer is permitted to make copies of the KnowledgePass Content provided in "pdf" form solely for Customer's internal use and may not disclose such KnowledgePass Content to any third party other than Customer Personnel. Customer may not edit, modify, revise, amend,

change, alter, customize or vary the KnowledgePass Content without the written consent of Kronos, provided that Customer may download and modify contents of Training Kits solely for Customer's internal use.

- (e) Train-the-Trainer Program (TTT): Certification under the Train-the-Trainer Program is valid only for the point release of the Software for which the TTT Program is taken, and covers only the Customer employee who completes the TTT Program.

23. TERM AND TERMINATION:

- (a) **SSLSA TERM.**
This SSLSA begins on the Effective Date and continues for one year, unless earlier terminated as permitted herein ("Initial Term"). Thereafter, the SSLSA will automatically renew for successive one-year periods unless (i) either party provides the other with written notice of its intent not to renew at least 90 days before the end of the Initial Term or then-current Renewal Term or (ii) the SSLSA is otherwise terminated as permitted herein (each a "Renewal Term;" the Initial Term and all Renewal Terms, the "Term"). The foregoing notwithstanding, the SSLSA will automatically renew, regardless of a party's provision of written notice of its intent not to renew, if any Order Forms are still in effect as of the applicable renewal date and shall remain in full force and effect for the terms of such Order Forms.
- (b) **ORDER FORM TERM.**
Order Forms shall become effective as of the date of both parties' signature thereto, or such other date as indicated on the applicable Order Form. The term of each Order Form will be (i) as described in this Agreement; or (ii) as otherwise set forth in any Order Form. For clarity, if any Professional or Educational, Support, Equipment Support or other Services are terminated as permitted in this Agreement, and if any Order Form addresses only such terminated Services, such Order Forms shall be deemed terminated upon termination of the applicable Services. If any Order Form is terminated for convenience as permitted in this Agreement, Customer shall pay Kronos for all Products and Services delivered prior to the effective date of such termination.
- (c) **SSLSA TERMINATION.** Without limiting any termination rights set forth elsewhere in this Agreement:
- (i) Customer may terminate this SSLSA if:
- (A) Kronos materially breaches any of its obligations hereunder (excluding breach of obligations in Confidential Information (Section 24) and Data Privacy and Protection (Section 25)) and fails to cure such breach within 30 days after receipt of written notice from Customer reasonably specifying the nature of the breach;
- (B) Kronos breaches its obligations in Section 24 and/or 25 and fails to cure such breach within five business days after receipt of written notice from Customer reasonably specifying the nature of the breach; or
- (C) Kronos has, at any time during the preceding twenty-four (24) months and notwithstanding that Kronos may have corrected or cured the original issue giving rise to Customer's notice of breach or non-compliance sent four (4) or more notices of material breach to Kronos or relating to this SSLSA or any and all Order Forms; termination to take effect within 30 days of Customer's provision of written notice to Kronos.
- (ii) Termination of this SSLSA shall automatically terminate any Order Forms (including any attached SOWs) still in effect as of the date of termination, except for any Order Forms solely for Software licensed perpetually to Customer and/or Equipment. If Customer terminates the SSLSA under this sub-section (i), Kronos shall promptly refund to Customer any prepaid but unused Support Fees, Support Charges, Monthly Services Fees and any other recurring fees or costs set forth in any Order Form for Professional Services not performed as of the date of such termination.
- (iii) Kronos may terminate this SSLSA if Customer breaches any of its obligations set forth in the SSLSA and fails to cure such breach within 30 days after receipt of written notice from Customer reasonably specifying the nature of the breach.
- (d) Either party may, by giving written notice to the other party, immediately terminate this SSLSA if (i) the other party's total long-term and short-term debt exceed the total value of the party's assets as may be established through the lesser of (A) book value, (B) going concern value or (C) liquidation value; (ii) the other party is unable to pay its monetary obligations on a day-to-day basis, within ordinarily established credit terms as the debts become due and owing, (C) the other party makes a general assignment for the benefit of creditors, (D) the other party commences any case proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property, or (E) the other party becomes the subject of any proceeding of a type described in item (D) of this Section and fails to obtain a dismissal of such proceeding within sixty (60) days of its filing or entry.
- (e) **EFFECT OF TERMINATION.** Upon termination or expiration of this SSLSA for any reason:
- (i) For a period of up to one-hundred eighty (180) days (the "Transition Period"), Kronos shall provide Transition Services. "Transition Services" means services to assist Customer in moving from the Products or Hosted Environment (as applicable) to a replacement system or environment, reasonably sufficient to ensure that services provided by a third party or

by Customer similar to the foregoing can continue uninterrupted, including, as applicable, the removal of the Software, the migration of all Customer Content from the Hosting Environment to the new environment, and/or the prompt return to Customer in the format agreed upon by the parties of all Customer Content and, as applicable, Confidential Information. Customer shall pay Kronos on a time and materials basis for the Transition Services at Kronos then-current rate. Any unused but pre-paid Support, Monthly or other recurring Fees or Charges paid by Customer for Professional Services not performed by Kronos shall be applied as a credit against any amounts required to be paid by the Customer for Transition Services. All Transition Services shall be subject to the warranty and other provisions of this Agreement applicable to Services; and

- (ii) Sections 14 (General License Terms), 15(a) (Output), 8 (Permitted Copies), 14 (On-Premises Activities), 18 (Indemnification), 19(a)(v) (Kronos' Professional Liability Insurance), 23 (c) (Effects of Termination), 24 (Confidential Information), 25(a)(ii) and (xii) (Data Privacy and Protection), 26 (Limitation of Liability), 27(b) (Governing Law), 27(c) (Invalidity/Severability), will survive termination or expiration of this SSLSA as will Exhibit B Sections 9-11 (Indemnification, Service Level Agreement and Limitation of Liability), all of Customer's payment obligations for Services received and all of Kronos' obligations to refund certain fees or portions of fees.

24. CONFIDENTIAL INFORMATION

- (a) "Confidential Information" is defined as information that is disclosed between the parties after the Effective Date that is (i) not generally available to the public; and (ii) identified as "confidential" at the time of disclosure, or would be obvious to a reasonable party in the receiving party's position to constitute confidential information because of legends or other markings, by the circumstances of disclosure or the nature of the information itself. Additionally the Software (and Documentation) shall be deemed to be Kronos' Confidential Information and (iv) all Customer Content (as defined in Exhibit B) shall be Customer's Confidential Information. Each party shall protect the Confidential Information of the other party from unauthorized use or disclosure, theft, loss or corruption with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such party utilizes for its own Confidential Information. Neither party shall disclose to third parties the other party's Confidential Information, except the parent company, or subsidiaries of the receiving party and the parties' respective Personnel who have a need to know such Confidential Information to allow a party to perform its obligations or, if Customer, to receive the full benefit of the Products and Services, provided all such entities and individuals are informed of the confidential nature of such Confidential Information. The obligation of confidentiality shall survive termination of this Agreement.
- (b) Each party may only use the other's Confidential Information to the extent necessary to (i) perform its obligations hereunder; or (ii) if Customer, to have the full benefit of the Products and Services (subject to the nondisclosure obligations stated in (a) above). In addition, each party shall be as liable for any unauthorized use or disclosure of the other's Confidential Information that it discloses to the permitted parties above as it would be for its own breach of this Section.
- (c) Confidential Information specifically excludes information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party; (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; or (d) is independently developed by the receiving party without use of the disclosing party's Confidential Information.
- (d) It will not be a violation of this Section if a party discloses the other's Confidential Information as required by applicable Laws (including a court order or subpoena); provided that the receiving party notifies the disclosing party of such requirement prior to disclosure sufficiently in advance to allow the receiving party to contest or seek to limit the disclosure or seek a protective order or similar instrument, and provided further that the receiving party only discloses the amount of Confidential Information required to be disclosed.
- (e) If notwithstanding a party's efforts to maintain the confidentiality of Confidential Information of the other Party, one or more of a party's Personnel or authorized subcontractors breach their respective confidentiality obligations, the party responsible for such Personnel or authorized subcontractor shall notify the other party and provide appropriate detail promptly after learning of same, and shall reasonably cooperate, at the responsible party's sole expense, in any resulting litigation against the breaching Personnel or contractor(s) or former Personnel or contractor(s).
- (f) Each party is and shall remain the sole owner of all right, title and interest in and to its Confidential Information, except for the limited permissions granted herein.
- (g) Each party acknowledges that its breach of the foregoing confidentiality obligations may cause great and irreparable injury for which there may be no adequate remedy at law. Accordingly, each party agrees that if such breach or threatened breach is proved by a party, such party shall be entitled to appropriate injunctive relief without the requirement to prove actual damages.

25. DATA PRIVACY AND PROTECTION REQUIREMENTS:

- (a) Kronos acknowledges and agrees that as part of its obligations hereunder, it or its authorized subcontractors or their respective Personnel will be required to Process ("Process" and its variants for purposes of this Section includes, without limitation, access, collect, record, organize, use, store, adapt, alter, retrieve, consult, transfer, disclose or destroy) information relating to an

identified or identifiable natural person on behalf of Customer or its affiliates or subsidiaries or any Customer Hotel (collectively, "Personal Information"). Kronos, in connection with this Agreement shall and shall cause its authorized subcontractors, and Kronos Personnel that Process such Personal Information to:

- (i) Comply with all data protection and privacy Laws in any relevant jurisdiction that are applicable to Kronos' Processing of Personal Information in accordance with this Agreement (together, the "Data Protection Laws");
 - (ii) agree that, as between the parties, all such Personal Information shall be deemed to be Confidential Information that is owned by Customer;
 - (iii) Process and retain that Personal Information only on the prior written instructions of Customer and only to the extent reasonably necessary for performance of this Agreement;
 - (iv) Implement reasonable technical and organizational measures to protect that Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access (including, without limitation, during disposal of such Personal Information), in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing;
 - (v) Implement measures to protect Personal Information in compliance with the SSAE 16 SOC 1 Type II and the AICPAAT101 SOC 2 Type II security standard in the Kronos Private Cloud environment for the security, availability and confidentiality criteria;
 - (vi) take reasonable steps to ensure the reliability of Personnel who have access to the Personal Information, including, without limitation that such Personnel are qualified to do so and have received proper training; and require such Personnel to comply with Kronos' obligations under this Data Privacy and Protection Requirements;
 - (vii) not disclose Personal Information to any person except: (i) as required or permitted by this Agreement; (ii) with the prior written consent of Customer; or (iii) pursuant to an order or requirement of a court of law, administrative agency, or other governmental body, provided that Kronos gives reasonable notice to Customer in contrast such order or requirement;
 - (viii) promptly notify Customer of: (A) requests for information or complaints about the Processing of Personal Information; (B) requests for access to Personal Information; or (C) requests for Personal Information to be deleted or corrected;
 - (ix) fully cooperate with Customer regarding any of the items referred in Sections (vii) and (viii) above and provide Customer with information Customer reasonably requires to respond to requests or complaints of that or a similar nature (whether made to Customer, Kronos or a third party);
 - (x) Inform Customer immediately in case the Personal Information may be at risk from seizure (including, without limitation, for purposes of satisfying a debt), insolvency or bankruptcy measures or any other activities of third parties. Kronos shall in such cases inform all third parties that the Personal Information is the sole property of Customer;
 - (xi) not transfer Personal Information across national borders except (A) between the United States and Canada and the Region; (B) with the prior written consent of Customer; (C) in response to a user's client device's request when such user is accessing the Application Program from any country (but only as necessary to provide the access and use of such Application Program as described herein; and (D) to the extent required for Kronos Personnel located in the European Union countries, China, India, Australia, and New Zealand to access such Personal Information for the purpose of performing Services hereunder; and
 - (xii) destroy or return to Customer all Personal Information in Kronos' control or possession within fifteen (15) days after expiration or termination of this Agreement.
- (b) Kronos shall also:
- (i) notify Customer within twenty four (24) hours should it become aware of any known breach of any of the foregoing subsections or any other breach of security or unauthorized disclosure of or access to any Personal Information of Customer has occurred (a "Breach");
 - (ii) perform an investigation to learn the cause of the Breach;
 - (iii) promptly take all steps necessary to remedy the event and prevent the Breach's recurrence; and
 - (iv) fully cooperate with Customer to comply with any notification requirements that may result from such Breach. Kronos shall document and maintain adequate retention processes and policies for all Breaches in accordance with all applicable legal and regulatory requirements.
- (c) Kronos shall provide, upon request of Customer, and at Kronos' own expense on at least an annual basis a copy of an

independent audit firm attestation, assurance and/or audit report covering Kronos's operations as a services organization providing Services and/or Products under this Agreement. Such reports shall include, but not be limited to, current SSAE 16, SOC 1 Type II and AICPA SOC 2 Type II Audit Reports for security, availability and confidentiality (or any successor or replacement reports hereafter provided for by the American Institute of CPAs (AICPA) or any successor organization.) If current reports are not available, an Assertion of Kronos Incorporated, signed by Kronos's senior management, that the controls and outcomes detailed in the most recent SOC 1 and SOC 2 reports, unless otherwise specified, remain in place and operating effectively and with no material change since the most recent report.

26. LIMITATION OF LIABILITY

- (a) EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED BY BOTH PARTIES.
- (b) EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 18(a)(i)-(v), 18(b) and 18(c), AND EXCEPT FOR KRONOS' BREACH OF SECTION 24 (CONFIDENTIALITY) NOT GIVING RISE TO A CLAIM FOR WHICH KRONOS' IS REQUIRED TO INDEMNIFY CUSTOMER UNDER 18(a) OR 18 (c) OF THIS AGREEMENT, CUSTOMER'S BREACH OF THE LICENSES GRANTED TO SOFTWARE AND FIRMWARE AND EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (the "EXCLUDED CLAIMS"), (1) IN NO EVENT SHALL EITHER PARTY OR ITS PARENTS, SUBSIDIARIES, AFFILIATES, OR, IF CUSTOMER, THE CUSTOMER HOTELS, LIABILITY TO THE OTHER, HOWEVER CAUSED, EXCEED THE SUM OF \$4,500,000 IN THE AGGREGATE, AND (2), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

27. GENERAL

- (a) By executing this Agreement, Kronos agrees that it will abide and be bound by Customer's Supplier Code of Conduct, located at <http://www.hyatt.com/SupplierCodeOfConduct>.
- (b) This Agreement shall be governed by Illinois law. The parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of this Agreement.
- (c) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.
- (d) Customer shall not assign this Agreement or the License to the Software to any party who is not an affiliate of Customer without the prior written consent of Kronos and any purported assignment, without such consent, shall be void; provided however that any such affiliate agrees in writing to be bound by this Agreement, and that Customer provides Kronos with written notice of such assignment. Kronos may assign this Agreement in connection with a merger, reorganization or sale of all or substantially all of its assets, provided that Customer is notified of the transaction as soon as possible around the closing of the transaction. Customer may terminate this Agreement without penalty or liability, upon receipt of notice of such assignment by providing written notice to Kronos or the designated assignee. If Customer does not terminate this SLSA for such assignment, Kronos agrees that the assignment shall require the surviving entity or purchaser to expressly assume this Agreement and Kronos' obligations hereunder and, if requested by Customer, acknowledge such assumption in writing. Any purported assignment, in contravention of these provisions shall be void. Kronos may use subcontractors to perform its obligations hereunder; provided, however, that Kronos shall be as liable to Customer for the acts or failures to act of such subcontractors as it would be for its own and, further, that the use of such subcontractors does not in any way relieve Kronos of its obligations hereunder. Liability among Kronos and such subcontractors shall be joint and several.
- (e) For clarity, each party acknowledges and agrees that nothing in this Agreement is intended or will be interpreted to prohibit or limit either of them from participating in similar business arrangements as those described herein with third-parties.
- (f) Neither party shall be liable for failures or delays in performance due to causes beyond its reasonable control making it illegal or impossible for a party to so perform or to timely perform, as applicable, including war, strikes, lockouts, fire, flood, storm or other acts of God (each a "Force Majeure Event"). Both parties agree to use their best efforts to minimize the effects of such failures or delays.
- (g) All notices given under this Agreement shall be in writing and sent postage pre-paid, if to Kronos, to the Kronos address on the Order Form, or if to Customer, to the billing address on the Order Form.
- (h) The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

- (i) The parties agree that if this Agreement is delivered via fax or electronically delivered via email it shall constitute a valid and enforceable agreement.
- (j) This Agreement and any information expressly incorporated herein (including information contained in any referenced URL), together with the applicable Order Form, constitute the entire agreement between the parties for the products and services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos may disclose to customers certain confidential information regarding general product development direction, potential future products and/or product enhancements under consideration, Customer is not entitled to any products or product enhancements other than those contained on the Order Form. Customer has not relied on the availability of any future version of the Software or Equipment identified on an Order Form, nor any other future product in executing this Agreement.
- (k) Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (c)(1)(2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, as applicable. Manufacturer/distributor is Kronos Incorporated, 297 Billerica Road, Chelmsford, MA.

DATED: 9/12/2014

ACKNOWLEDGED AND AGREED TO BY THE PARTIES AS OF THE EFFECTIVE DATE

CUSTOMER: HYATT CORPORATION

BY: Sam Larsen

NAME: SAM LARSEN

TITLE: IT PROCUREMENT MANAGER

KRONOS INCORPORATED

BY: 

NAME: John O'Brien

TITLE: Sr. Vice President, Global Sales

**EXHIBIT A
COUNTRIES**

Argentina*
Aruba
Brazil**
Canada
Chile*
Costa Rica
Mexico
Panama
Trinidad & Tobago
United States

*Depot Exchange Equipment Support Services option is not available in these countries.

**Equipment and Equipment Support Services are not available in this country.

(the "Region")

**EXHIBIT B
APPLICATION HOSTING
SUPPLEMENTAL TERMS AND CONDITIONS**

1. DEFINITIONS

"Application Hosting Program" or "Application Program" means (i) accessibility to all modules and components of the Kronos hosted Software, as set forth in the Cloud Services SOW, by means of access to the password protected Customer-dedicated area of the Kronos Hosting Environment, and (ii) all Hosting Related Services.

"Cloud Services Commencement Date" shall, except as otherwise provided in writing in a Cloud Services SOW or Order Form signed by the parties, mean the earlier of (a) the date the applicable Software is transferred to the Hosted Environment, as mutually agreed by the parties in writing or (b) 90 days after the Effective Date. Notwithstanding the foregoing, the Services Commencement Date for Software hosted in a Temporary Environment shall commence seven (7) days after the Effective Date.

"Cloud Services Term" has the meaning given it in Section 12 of this Exhibit.

"Content" means all content Customer, or others authorized by Customer, including Customer Personnel, posts or otherwise inputs into the Application Program, including but not limited to information, data (such as payroll data, vacation time, and hours worked), designs, Customer Trademarks, text, multimedia images (e.g. graphics, audio and video files), compilations, software programs, third party software, applications, or other materials, or any other Customer content stored or processed on equipment in the Hosting Environment.

"Customer Trademarks" means any trade name, trademark, logo, tagline or similar designation of the source or origin of goods and services provided to Kronos hereunder and including any such designation containing the word "Hyatt."

"Hosting Environment" means the servers, software, equipment, programs, cabling and any other technology used by Kronos (including by its Suppliers) to provide the Application Program.

"Hosting Related Services" means certain services set forth in a statement of work containing hosted related services (the "Cloud Services SOW") attached to the related Order Form, such as hosting infrastructure, equipment, bandwidth, server monitoring, backup services, reporting services, storage area network (SAN) services, load balancing services, security services, system administration, connectivity services, performance tuning, Service Pack installation and all Professional and/or cloud Services and maintenance services related to hosting if set forth therein.

"Initial Cloud Term" means the initial term for which Kronos shall provide the Application Program to Customer and as set forth in the applicable Cloud Services SOW executed by Customer.

"Internal Use" means the use of the Application Program: (i) by Customer Personnel solely for Customer's internal business purposes and (ii) by any such authorized Customer Personnel to process information relating to Customer Personnel assigned to, or potential employees of, Customer's business unit(s), solely for the internal business purposes of such business unit(s).

"Monthly Service Fee(s)" means the monthly fees described in the Cloud Services SOW and set forth on the applicable Order Form, which shall include all Hosting Related Services fees.

"Production Environment" means a permanent Hosting Environment established for the daily use and maintenance of the Application Program in a live Hosting Environment throughout the Cloud Services Term.

"Service Description" means the detailed service description (including any supplementary service terms) specified in the Cloud Services SOW which sets forth the specific Application Program to be provided to the Customer.

"SLA(s)" means a service level agreement offered by Kronos for the Production Environment and attached to this Addendum as Attachment A which contains key service maintenance standards and commitments that apply to the Application Program as detailed in the Service Description.

"SLA Credit" means the credit calculated in accordance with the SLA and offered by Kronos in the event of outages, interruptions or deficiencies in the delivery of the Application Program that result in a failure to meet the terms of the applicable SLA.

"Startup Fees" means the one time, Customer-specific startup fee as indicated on the Order Form that will be charged to Customer to enable access to the Application Program.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Hosting Environment.

"Temporary Environment" means a transient database environment created to serve limited purposes for a limited time period, and identified in the applicable Cloud Services SOW as a Temporary Environment.

2. CLOUD SERVICES STATEMENT OF WORK

The Services Description of the particular Program(s) ordered by the Customer, the Initial Cloud Term, the Monthly Service Fee, the Support Fees, the Startup Fees and other fees, if any, applicable to an Application Program will be set forth in their entirety in one or more applicable Cloud Services SOW and Order Forms. Kronos will not change the Monthly Service Fee it charges for the same Application Program, or change the SLA, during the Initial Cloud Term. Kronos may change such Monthly Service Fee to take effect at the beginning of any Renewal Term by notifying Customer at least sixty (60) days prior to the expiration of the then current term. SLAs are only available in a Production Environment and may not be modified for a period of five (5) years from the Effective Date. Unless the Cloud Services SOW indicates that an Application Program is to be implemented in a Temporary Environment, the Application Program will be implemented in a Production Environment.

3. AUTHORIZED USE

Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Application Program, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Exhibit.

4. UPDATES

Except for Service Packs to address security vulnerabilities (for which Kronos will provide 48 hours prior notice before automatically installing), all other Updates to Application Program will not automatically install; Kronos will notify Customer in advance of any such Updates and provide Customer the opportunity to delay installation or implementation until such time as Customer determines Updates can be installed or implemented provided however that Customer may not delay installation or implementation such that Kronos no longer supports the Point Release of the Application Program which is then currently installed.

5. MAINTENANCE ACCESS

If Kronos, its Suppliers, or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair the Application Program, Customer shall reasonably cooperate in a timely manner and provide such access in accordance with the license granted above.

6. SUSPENSION; CUSTOMER REPRESENTATIONS AND WARRANTIES; CUSTOMER OBLIGATIONS

6.1 Customer will make reasonable efforts to provide Content that: (a) does not infringe or violate any third-party right, including (but not limited to) intellectual property, privacy, or publicity rights; (b) is not abusive or profane, to a reasonable person; and (c) is not hate speech or threatening. If Kronos determines that any of Customer's Content violates the foregoing restrictions, it shall promptly notify Customer in writing thereof and the parties shall negotiate in good faith to determine whether or how such Content may be modified and whether it should be removed from the Hosting Environment. Without limiting the foregoing, if Kronos reasonably believes that Content provided in violation of the foregoing is likely to expose it to civil or criminal liability, it may, upon notice to Customer, temporarily suspend Customer's access to the Application Program and temporarily remove the objectionable Content at which point access will be restored while the parties cooperate in good faith as described herein.

6.2 Customer will, at its own cost and expense, provide all end user equipment, operating systems, and software (including a web browser) not provided by Kronos and needed to access and use the Program in accordance with the technical requirements set forth in the Cloud Services SOW. Customer will also provide, at its own cost and expense, all Internet connections from the Customer Systems to the Application Program, which shall include all related costs associated with Customer's connection to the Application Program, unless such connectivity services are purchased from Kronos as indicated on the Cloud Services SOW and Order Form.

6.3 Customer shall not, and shall not permit any Customer Personnel to: (a) recirculate, republish, distribute or otherwise provide access to the Application Program to any third party; (b) use the Application Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Application Program (provided that any materials resulting from Customer's use of the Application Program or its components as intended by this Agreement (e.g. the generation of reports, entry, storage and modification of Customer Content, etc. shall not be considered "derivative works" hereunder); (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Application Program or any Software components of the Application Program; (e) use, or authorize the use of, the Application Program in contravention of any federal, state, local, foreign or other applicable Laws; (f) intentionally introduce into the Application Program any virus or other code or routine intended to disrupt or damage the Application Program, alter, damage, delete, retrieve or record information about the Application Program or its users not permitted hereunder; or, (g) otherwise act in a fraudulent or malicious manner when using the Application Program.

7. INTERNET ACCESS

7.1 If Customer uses open Internet connectivity or Customer-supplied VPN Internet connections to access the Application Program, Customer acknowledges that the performance and throughput of the Internet connection cannot be guaranteed by Kronos, and variable connection performance may result in Application Program response variations.

7.2 Customer hereby acknowledges that the Internet is not owned, operated, managed by, or in any way affiliated with Kronos, its Suppliers or any of its affiliates, and that it is a separate network of computers independent of Kronos. Access to the Internet is dependent on numerous factors, technologies and systems, many of which are beyond Kronos' authority and control. Customer acknowledges that Kronos cannot guarantee that the Internet access services chosen by Customer will meet the level of up-time or the level of response time

that Customer may need. Customer agrees that its use of the internet access services and the Internet is solely at its own risk, except as specifically provided in this Exhibit, and is subject to all applicable local, state, national and international Laws.

8. FEES AND PAYMENT TERMS

8.1 In consideration of the delivery of the Application Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form. The Monthly Services Fee shall begin to accrue on the Cloud Services Commencement Date, and shall be invoiced monthly in advance. In addition, Customer shall be billed the Startup Fees and any additional fees set forth in the applicable Order Form monthly as they are accrued. Customer acknowledges that the Monthly Services Fee commencement date may not coincide with implementation completion, final configuration, or go-live.

8.2 All undisputed fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be net 30 days following receipt of invoice. All overdue payments shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. Customer is responsible for all Taxes relating to the Program pursuant to Section 3 of the Agreement.

8.3 SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Application Program shall be applied to the Monthly Service Fee invoice issued by Kronos for the month following the month in which the SLA Credits were earned if the applicable Order Form (i.e. for the Application Program) has not been terminated. If the applicable Order Form has been terminated for Kronos' unexcused breach, Kronos will issue Customer a refund in the amount of any uncredited SLA Credits. SLA Credits will appear on a credit memo to be applied against future invoices or refunded as provided herein.

9. INDEMNIFICATION

In addition to Customer's indemnification obligations elsewhere in the Agreement, Customer shall indemnify, defend and hold Kronos harmless from and against any Claims brought, asserted or alleged by a third-party, or incurred by it as a result of such third-party Claims to the extent arising out of or relating to (a) the configuration of the Application Hosting Program to meet Customer's requirements; (b) infringement of any third-party intellectual property right caused by Customer's modification or combination of the Application Program with other services, software or equipment not furnished, recommended or authorized by Kronos, provided that but for such modification and/or combination the Claim would not have been brought; or, (c) infringement of any third-party intellectual property right, right of publicity or right of privacy by the Customer's Content; or (d) obscene, defamatory, libelous, or slanderous content or any other content that violates applicable Laws contained within Customer's Content which was included in the Customer's Content. For clarity, the terms of section 18(e) of this Agreement shall apply equally to Claims for which Customer is required to indemnify Kronos hereunder.

10. SERVICE LEVEL AGREEMENT.

EXCLUDING KRONOS' INDEMNIFICATION OBLIGATIONS AND CUSTOMER'S RIGHT TO TERMINATE THIS AGREEMENT OR THE AFFECTED ORDER FORM AS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND/OR THE SLA, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) DESCRIBED IN AN SLA AND/OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.

11. LIMITATION OF LIABILITY

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE SSLSA, AND EXCEPT FOR LIABILITY ARISING OUT OF OR RELATING TO THE EXCLUDED CLAIMS, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED VIRUS, CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE OR SYSTEMS, OR MACHINE ERROR.

12. DATA SECURITY

12.1 Without limiting Kronos' obligations set forth elsewhere in the Agreement, as part of the Application Program, Kronos shall provide those security-related Services described in the Cloud Services SOW. Customer acknowledges that the security-related Services endeavor to mitigate breaches of security, unauthorized access to or use of Customer Content and unauthorized deletion, corruption or modification of the Customer Content (each a "Security Incident"), but such Security Incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular security-related Service as just one tool to be used as part of an overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy and data protection Laws governing their respective activities under the Agreement.

12.2 For clarity, Kronos shall have sole responsibility for maintaining the Hosting Environment as set forth herein, and otherwise in an appropriate environment in accordance with the AICPA SOC 2 Type II (or any successor or replacement reports hereafter provided for by the American Institute of CPAs (AICPA) or any successor organization) standard throughout the term. Without limiting any of Kronos' specific obligations with regard to the Hosting Environment set forth herein or in any Order Form, the Hosting Environment (or its physical environment) will contain (a) system redundancy to ensure against hardware failures; (b) power redundancy in the event of power failure; (c) a properly functioning HVAC system; (d) appropriate anti-virus software capable of protecting the system from Viruses; and (g) appropriate

firewall protection restricting all forms of network traffic other than what is necessary to access and use the Hosted Environment. Kronos shall notify Customer according to Section 25(b) of the SSLSA if it discovers (i) any unauthorized use of or access to the Hosting Environment; (ii) the recognition or introduction of any Virus; or (iii) any other similar security incident affecting Customer.

12.3 Customer will ensure that the transfer of any Personal Information to Kronos and Kronos' storage thereof in the Hosting Environment complies with applicable Data Protection Laws, including, if applicable, any such laws requiring Customer to obtain consent from individuals for such transfer and storage.

13. TERM AND TERMINATION

13.1 At the expiration of the Initial Cloud Term, the applicable Order Form shall automatically renew for successive one year periods unless (a) earlier terminated as permitted herein; or (b) either party provides notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term, if Customer, and ninety (90) days, if Kronos. Kronos may suspend Customer's access to the Application Program in the event of any breach by Customer of the terms of this Exhibit that remains uncured for 30 days after receipt of such notice reasonably specifying the nature of the breach. If Customer fails to cure such breach within an additional 30 days after access to the Application Program is suspended, Kronos may terminate the applicable Order Form upon written notice to Customer. No Application Program interruption shall be deemed to have occurred during, and no SLA Credits shall be owed for, any authorized suspension of the Application Program.

13.2 Customer may terminate the any Order Form for an Application Program by written notice at any time during the Term if Kronos materially breaches any provision of this Exhibit, and such default is not cured within ten (10) days after receipt of written notice from Customer. In the event of such termination by Customer, (a) Customer shall pay Kronos within thirty (30) days all Monthly Services Fee (if any) then due and owing for the Application Program prior to the date of termination; and (b) Kronos shall refund any pre-paid but unused Monthly Services Fee.

13.3 Customer may terminate any Order Form for an Application Program for convenience upon at least less than ninety (90) days prior written notice to Kronos.

13.4 In the event of termination of any Order Form for an Application Program by Customer for convenience or by Kronos For Cause during the Initial Cloud Term, Customer will pay to Kronos an early termination fee based on the following calculation: one (1) month of the then-current Monthly Services Fees for every twelve (12) month period (or portion thereof) remaining in the Initial Cloud Term. By way of example only, if Customer terminates the applicable Order Form for convenience with fifteen (15) months remaining in the Initial Term, Customer will be responsible to pay Kronos two (2) months of the then-current Monthly Services Fees.

13.5 If any Order Form for any Application Program is terminated, Kronos shall provide Transition Services as described in Section 23(e) of the Agreement.

14. ACCESS OUTSIDE OF THE REGION.

Kronos acknowledges and agrees that Customer Personnel may access and use the Application Program when located in countries outside the Region and that such access and use will not be considered a breach of the license granted to such Application Program.

15. USE OF CUSTOMER TRADEMARKS.

During the Cloud Services Term, Customer grants to Kronos a non-exclusive, non-transferable right to reproduce, publish, perform, display and distribute the Customer Trademarks within the Hosting Environment solely as necessary to perform its obligations under this Agreement and solely as provided by Customer as part of the Customer's Content. In addition, Kronos will use all such Customer Trademarks in accordance with any usage guidelines (including any modifications thereto) set forth by Customer if and when periodically disclosed to Kronos. All proposed uses shall be submitted to Customer for review and approval and no Customer Trademarks may be used in any manner prior to receiving written approval from Customer. All goodwill arising out of Kronos' use of any of the Customer Trademarks will inure exclusively to the benefit of Customer. If Customer reasonably objects to the manner and means in which Kronos uses any of the Customer Trademarks hereunder, Kronos will promptly take such action as Customer may reasonably direct to address and remedy any such objection(s).

**ATTACHMENT 1 TO EXHIBIT B
SERVICE LEVEL AGREEMENT (SLA)**

Service Level Types: SLAs are only applicable to Production Environments. The Program, in a Production Environment, as described in the Service Description is provided with the following service level ("Service Level"):

99.98% Application Availability

Service Levels/Credit Calculation: An Outage will be deemed to commence when Customer opens a case with Kronos Global Support via the Customer Portal or as otherwise set forth herein, or Kronos Cloud Services receives an automatically generated application availability alert. The Outage will be deemed to end when Availability of the Program has been restored. Failure to meet the above Service Level will entitle Customer to credits as follows ("Credits").

99.98% Application Availability SLA - Production Environment	
Uptime percentage (as measured in a calendar month)	Credit as Percentage of Monthly Hosting Fees
The amount of the Credit will be determined as follows:	
<99.90 to 99.90%	10%
<99.90% to 98.75%	15%
<98.75% to 98.25%	20%
<98.25% to 97.75%	35%
<97.75 to 96.75%	50%
<96.75	75%

$$\text{Application Availability} = ((MM-TM)*100) / (MM)$$

Definitions

"Available" or "Availability" means the Program is fully accessible and operating substantially in compliance with Specifications

"Emergency Maintenance" means Application Program/Hosted Environment maintenance that must be conducted by Kronos outside of the Scheduled Maintenance periods to prevent or mitigate clearly evidenced, significant and time-sensitive or urgent damage, risk or threat (or potential damage, risk or threat) to the Application Program or Hosted Environment.

"Excluded Event" means any event that adversely impacts the Program that is directly caused by: (a) the acts or omissions of Customer, or the Customer Personnel; (b) failure or malfunction of equipment, applications or systems not owned, controlled or operated on behalf of Kronos or Supplier; (c) Force Majeure Events; (d) Scheduled or Emergency Maintenance; (e) any suspension of Customer's access to the Program in accordance with the terms of the Agreement; (f) Customer's (including Customer Personnel's) use of the Application in a manner that violates any requirements in any Documentation provided by Kronos; or (g) any other exclusionary circumstance specified in the applicable Cloud Services SOW.

"Monthly Minutes (MM)" means total minutes in a calendar month which the Application Program was scheduled to be Available.

"Outage" means the accumulated time during which the Application Program is not Available for reasons other than any Excluded Events.

"Scheduled Maintenance (SM)" means scheduled maintenance periods as set forth below and established by Kronos to provide ample time to maintain and update the Application Program(s), when necessary. During these maintenance periods, the Application Program(s) are available to Kronos to perform periodic services, which include vital software Updates. Systems will generally continue to be available to Customer; however, some changes will require planned downtime. Kronos will provide notice for planned downtime via an email notice to our primary Customer contact at least one day in advance of such shutdown/restart so planning can be facilitated by Customer.

When application maintenance is required, current Scheduled Maintenance periods for the applications are:

Tuesday through Friday 4am - 6am
Saturday and Sunday 12am - 6am

- All times listed are U.S. Eastern Time.
- As indicated above, Outages to the extent caused by Kronos' utilization of the above Scheduled Maintenance windows shall not trigger Credits to Customer.

"Total Minutes Not Available" (TM) means the total number of minutes during the calendar month that the Program is not Available outside of scheduled maintenance windows.

Limitations and Additional Terms:

- Kronos shall provide Customer forty eight (48) hours advance notification of any Scheduled Maintenance.
- Kronos will provide industry standard efforts to schedule all Scheduled Maintenance at a mutually agreed time within the windows set forth above or as otherwise requested by Customer. Global environmental Updates that affect the entire hosting environment population will be scheduled according to standard process within the Scheduled Maintenance windows with 48 hour prior notification. Kronos will use industry standard efforts to minimize all Scheduled Maintenance that will conflict with Customer's business operations
- If Credits accrued in any calendar month exceed, in the aggregate across all service levels and events, one hundred (100%) of the invoice amount for the Monthly Hosting Fees for the affected Program, Kronos will credit such additional amounts to the next invoice.
- The Service Level Agreements in this Exhibit, and the related Credits listed, apply on a per Program basis. For the avoidance of doubt, Outages, delays, failures, etc. in one Program may not be added to Outages, delays, failures, etc. in any other Program for purposes of calculating Credits.

Right to Termination for Repeated Failure of Application Availability

If Kronos fails to achieve the Application Availability (99.90%) obligation two (2) times or more in any six (6) month period, then Customer may elect to terminate any or all of the Application Program Order Form and/or the Agreement for convenience without prior notice. Customer will not be entitled to a refund of any pre-paid monies if it terminates the Application Program Order Form and/or the Agreement under this Section. Nothing contained herein shall limit Customer's rights to terminate this Agreement for cause should Kronos breach any other obligation under this Agreement.

EXHIBIT C
Equipment Support Services Terms

(A) SELECTION.

Customer may select, as indicated on an Order Form and from the Equipment Support Services made available by Kronos (if any), Equipment Support Services. Kronos represents and warrants that Equipment Support Service shall be available for the Equipment in the Region as indicated in Exhibit A. Customer acknowledges and agrees that Equipment Support Services may not be available for all Equipment; Equipment for which Equipment Support Services are available will be so indicated on the applicable Order Form. Kronos shall provide Equipment Support Services offering as specified in this Agreement.

(B) TERM.

Equipment Support Services have a term of one (1) year commencing upon the expiration of the applicable Warranty Period, as specified in the Agreement ("Equipment Support Initial Term"). Equipment Support Services will be automatically extended for additional one year terms on the anniversary of their commencement date (each period an "Equipment Support Renewal Term;" the Equipment Support Initial and all Renewal Terms, together, the "Equipment Support Term"), unless (1) either party terminates the Equipment Support Services, the Agreement or any affected Order Form as permitted herein; or (2) but given the other at least thirty (30) days written notification of its intent not to renew, if Customer, and at least ninety (90) days if Kronos, before the end of the Equipment Support Initial Term or then-current Equipment Support Renewal Term. Kronos may change the annual Equipment Support Services charges ("Equipment Support Charges") effective at the end of the Equipment Support Initial Term or effective on the first day of the succeeding Equipment Support Renewal Term, by giving Customer at least sixty (60) days prior written notification.

(C) PAYMENT

- (1) Customer agrees to pay the Support Charges as set forth on the Order Form for each piece of Equipment listed. Customer agrees that all Equipment of the same type that are owned by the Customer, including without limitation Customer's "Spare Products" (as defined below), will be covered under any purchased Equipment Support Services. Customer agrees that if Customer purchases, via Order Form, during the applicable Equipment's Equipment Support Term, any Equipment of the same type as those specified on an existing Order Form for which Equipment Support Services have been purchased, such additional Equipment shall be covered by the existing applicable Equipment Support Services for the existing applicable Equipment Support Term. Customer agrees to pay prorated Equipment Support Charges for such additional Equipment during the Initial Term and agrees to pay the full Equipment Support Charges for such additional Equipment, during any Equipment Support Renewal Term.
- (2) Kronos will invoice Customer for the Equipment Support Charges each year. Equipment Support Charges invoiced after the beginning of the Equipment Support Initial Term will be invoiced sufficiently in advance of the start of the applicable Equipment Support Renewal Term to allow Customer to (a) make timely payment without lapse in coverage; and (b) determine whether Equipment Support Services will be renewed or terminated without Customer's incurring any liability for such charges. Customer will pay Kronos within thirty (30) days of receipt of invoice. In addition, each party shall be responsible for their respective freight charges as provided in Section D below.

(D) EQUIPMENT SUPPORT SERVICE

- (1) **Depot Exchange and Depot Repair.** Upon the failure of installed Equipment to comply with Specifications or as otherwise permitted hereunder, Customer shall notify Kronos of such failure, and Kronos will provide remote fault isolation Services at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the issue. Unless the Equipment is determined by Kronos in its reasonable discretion to be in conformity with Specifications (i.e. no failure to defect attributable to Equipment), the issue shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number ("RMA") for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and can be found at <https://customer.kronos.com/contact/contact-phone.aspx> and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies. Service packs for the Equipment (as described in subsection (b) below) are included in both Depot Exchange and Depot Repair Support Services.
 - (a) **Depot Exchange:** Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location identified by Customer as described below and as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

- (b) **Depot Repair:** Upon failure of installed Equipment as described above, Customer shall install a Spare Product to replace the failed Equipment. Customer shall then return the failed Equipment, with the required RMA (which will be provided to Customer as set forth above), to the applicable Kronos Depot Repair Center. Customer shall make reasonable efforts to return the failed Equipment using the same or substantially similar packing materials in which the original Equipment was sent. Customer shall also specify the address to which the repaired Equipment should be return shipped. Upon receipt of the failed Equipment, Kronos shall repair the failed Equipment and ship it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Equipment by regular surface transportation to Customer.
- (2) Kronos warrants that all repairs performed under this Exhibit shall be performed in a professional and competent manner. In the event of a breach of this warranty, the exclusive remedy of Customer and sole liability of Kronos shall be replacement of the repaired Equipment, excluding Customer's right to terminate for Kronos' unsecured breach, Kronos' indemnification obligations and remedy for breach of any other provision of this Agreement (if such acts or omissions also breach such provisions).
- (3) **Firmware Updates Only.**
- (a) Customer shall be entitled to receive as part of the Equipment Support Services (and covered by the Equipment Support Charges):
 - (a) Service Packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements, as such are made generally commercially available by Kronos to its similarly situated customers) available for download at the Customer Portal; and
 - (b) Access to the Kronos Support Services Center for the logging of requests for assistance downloading service packs for the Equipment.
 - (b) Service Packs for the Equipment are not installed by the Kronos Depot Repair Center but are available for download via the Customer Portal, provided Customer has purchased Equipment Support Services.
 - (c) Kronos warrants that all service packs and firmware updates provided under this Agreement shall materially perform in accordance with the Kronos published specifications for so long as the Equipment is covered by Support Services and for a period of ninety (90) days after download by Customer, whichever is longer. In the event of a breach of this warranty, Customer's exclusive remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the specifications.
- (E) **RESPONSIBILITIES OF CUSTOMER**
- It is Customer's responsibility to purchase and retain, in accordance with the terms of this Agreement, a sufficient number of spare products ("Spare Products") to allow Customer to temporarily replace failed Equipment at Customer's locations in order for Customer to continue its operations while repairs are being performed and replacement Equipment is being shipped to Customer. For each of the Depot Exchange and Depot Repair Equipment Support Services options, Customer agrees that it shall return failed Equipment promptly as the failures occur and that it shall not hold failed Equipment and send failed Equipment to Kronos in "batches" which shall result in a longer turnaround time to Customer. In addition, Customer agrees to:
- (1) Maintain the Equipment in an environment conforming to the Specifications for such Equipment;
 - (2) Not perform self-repairs on the Equipment (i.e., replacing components) without prior written authorization from Kronos;
 - (3) De-install all failed Equipment and install all replacement Equipment in accordance with Kronos' Documentation and/or Specifications;
 - (4) Ensure that the Equipment is returned to Kronos packaged as required hereunder; and
 - (5) Obtain an RMA before returning any Equipment to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Equipment authorized under that RMA by Kronos when issuing the RMA.
- (F) **EXCLUSIONS**
- Equipment Support Service does not include the replacement of "consumables" (i.e., batteries). In addition, Equipment Support Service does not include the repair of damage, and Customer will not attempt to return damaged Equipment, to the extent the damage causing the failure to conform with Specifications is resulting from any of the below. In addition, and for clarity, Professional Services provided by Kronos in connection with the installation of any Equipment or to update the Service Packs or Firmware, if requested by Customer, are not covered by Equipment Support Services:
- (1) Any cause in the external environment of the Equipment including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
 - (2) Customer's failure to continually provide a suitable installation environment (as indicated in the Specifications and/or Documentation) including, but not limited to, adequate electrical power;
 - (3) Customer's improper use, relocation, packaging, or refitting of the Equipment or other failure to use Equipment in accordance with the Specifications;
 - (4) Customer's use of the Equipment for purposes other than those for which they are designed or intended under the applicable Order Form, or the use of accessories or supplies not approved by Kronos;

- (5) Laws preventing the shipment of the Equipment; or
 - (6) Customer's repair, attempted repair or modification of the Equipment without Kronos' written authorization.
- (G) **DELIVERY** For the Depot Exchange Support option, Kronos bears all costs, duties, Taxes, and risks of loss, and with title passing upon delivery to the identified destination for all shipments to and from the Customer. For the Depot Repair Support option, Customer bears all costs and risks of loss, and with title passing upon delivery to the identified destination for all shipments to and from Kronos.
- (H) **DEFAULT, SUSPENSION, REINSTATEMENT TERMINATION.**
- (1) Under the Depot Exchange Support option, Kronos may suspend Equipment Support Services if Customer does not ship failed Equipment to Kronos within ten (10) business days of receipt of the Replacement Equipment. Kronos will restore Equipment Support Services upon return of such failed Equipment at no additional cost to Customer or upon payment at the then-prevailing Kronos list price for such unreturned failed Equipment, at Customer's option. The applicable Equipment Support Services Term shall not be extended or affected by any such suspension.
 - (i) In the event that Customer allows Equipment Support Services to lapse (but not if Kronos suspends such services, as described above) or if Customer did not originally purchase Equipment Support Services and wishes to procure such services, the parties will execute an Order Form to that effect. Unless otherwise set forth in the applicable Order Form Customer must pay (i) a pro-rated amount of the applicable Equipment Support Charges at list price for such lapsed or unprocured time period for when the Equipment was not on support; and (ii) the annual Equipment Support Charges at the then current list price for the applicable Equipment plus an additional twenty per cent (20%) of the Equipment Support Charges in order to reinstate or procure Equipment Support Services that have lapsed or which Customer did not purchase when executing the Order Form for the applicable Equipment.
 - (j) Customer may terminate Equipment Support Services if Kronos is in default under this Agreement with regard to such Equipment Support Services, and such default is not corrected within thirty (30) days after written notice. Kronos may terminate Equipment Support Services if Customer defaults under this Exhibit, and such default is not corrected within thirty (30) days after written notice.

EXHIBIT D
Additional Support Service Terms

For the purposes of this Exhibit, Kronos may be referred to as "we" and Customer as "you."

(A) Definitions. Version, Release, and Service Pack are defined as follows:

Version: A Software upgrade that includes major new features or functionality.

Release: A Software upgrade that includes minor new features or functionality.

Service Pack: One or more defect repairs bundled into a single Update. Service packs are cumulative - Service Pack N will, at minimum, include all of the changes delivered in Service Pack N-1.

The Software Update Hierarchy is: Version . Release . Service Pack

(B) Timekeeper Central, Kronos only provides "defect repairs" for the current release of the Software.

(C) Updates. Customers electing to undergo a major platform upgrade migration (i.e. from Timekeeper Central to Workforce Central suite or from OptiLink version 6 to OptiLink Plus version 7) are required to purchase the licenses to the new Version at the applicable license fees as set forth in the applicable Order Form(s).

(D) Support Exclusions. Support Service does not include Service to the Software for issues to the extent resulting from:

- (1) Any cause in the external environment of the Software including, but not limited to, electrical work, fire, flood, water, wind, lightning and transportation, or any act of God; or
- (2) Customer's failure to continually provide a suitable installation environment as specified in the Specifications; or
- (3) Customer's use of the Software not in accordance with this Agreement, the Documentation or the Specifications; or
- (4) Customer's repair, attempted repair or modification of the Software without prior authorization from Kronos; or
- (5) Customer's use of the Software for purposes other than those for which they are designed or permitted hereunder or the use of accessories or supplies not approved by Kronos; or
- (6) The Customer System's malfunctions; or
- (7) Services required for application programs and/or conversions from products or software not supplied by Kronos; or
- (8) Reprogramming, including reconfiguration of the Software or the rebuilding of Customer's database, unless reconfiguration or rebuilding is caused by Kronos' acts or failures to act.

(E) In addition to the Support exclusions above the Services are NOT covered by Support Services and must be purchased under a separate Order Form.

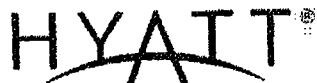
- (1) Configuration changes, reprogramming, new programming such as, but not limited to, work rules, pay rules, accrual rules, profiles, dashboards and fields
- (2) Creating new schedules
- (3) Terminal programming and cold start
- (4) Pay period changes
- (5) Programming, modifying, implementing, training or troubleshooting the following: (a) Data integration interfaces (i.e. Connect, Integration Manager, Analytics) (b) Custom reports (c) Custom application extensions
- (6) Editing process manager templates and creating new templates
- (7) Installing or reinstalling applications such as, but not limited to, (a) Adding a workstation (b) Moving the application (c) Reinstalling following a hard drive crash on the Customer System (d) Service Packs
- (8) Database administration maintenance or Services such as, but not limited to (a) Database maintenance scripts (b) Writing or customizing database scripts for data reporting and/or retrieval (c) Performance tuning (d) Strring (e) Disaster recovery (f) Database backup strategy and/or setup
- (9) Establishing a non-production environment such as, but not limited to, (a) Test environments, i.e., application servers, database servers (b) K-Demo
- (10) Troubleshooting environmental issues of or relating to the Customer System such as, but not limited to, (a) Operating system (b) Network issues (c) Firewalls (d) Servers (e) Workstations (f) Single sign on
- (11) Custom reports or custom application extensions
- (12) Implementation or configuration Services related to upgrading the applicable Software such as, but not limited to, (a) Software implementation (b) Porting custom Software (i.e., reports) (c) Change management (d) Training (e) New functionality deployment (f) Application interfaces
- (13) Service to Kronos custom Software is not provided, unless otherwise specified on the applicable Order Form for such custom Software.
- (14) Importing new data i.e. from acquisitions or purchasing of another company.
- (15) Load balancing configuration
- (16) Virtual server configuration

(F) Reinstatement of Support Services

In the event that Customer allows Support Services to lapse or if Customer did not originally purchase Support Services and wishes to reinstate or procure such services, the parties will execute an Order Form to that effect. Unless otherwise set forth in the applicable

Order Form. Customer must pay (i) a pro-rated amount of the applicable Support Charges at list price for such lapsed or unprocured time period for when the Software was not on support; and (ii) the annual Support Fee at the then current list price for the applicable Software plus an additional twenty per cent (20%) of the Support Fees in order to reactivate or procure Support Services that have lapsed or which Customer did not purchase when executing the Order Form for the applicable Software.

- (G) **Priority Based Support.** Kronos provides support on a "priority" basis. As such, customers with the most critical request(s) will be serviced first. Kronos Global Support has set up the following guidelines to assess the priority of each service request:
- (1) **High Priority:** A critical Issue with no available workaround where the Software or a module, Program or material component thereof may be down, experiencing major system degradation, data corruption or other related factors resulting in Customer not being able to process their payroll or utilize other material functionality:
 - (2) **Medium Priority:** A serious customer Issue which impacts ability to utilize the Software effectively such as:
 - (3) **Low Priority:** Non-critical issue generally use and usability issues and or "how to" questions



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Via FedEx Overnight Delivery

November 7, 2017

John O'Brien
Senior Vice President
Kronos Incorporated
297 Billerica Road
Chelmsford, MA 01824

Kronos Incorporated
900 Chelmsford Street
Lowell, MA 01851

Re: **Robin Rapai v. Hyatt Corporation**, Case No. 2017CH14483
Circuit Court of Cook County, Illinois, Chancery Division

Dear Mr. O'Brien:

The enclosed Class Action Complaint was filed by Robin Rapai against Hyatt Corporation ("Hyatt"), in the Circuit Court of Cook County, Illinois (the "Lawsuit") on October 30, 2017. Hyatt has not yet been served with the Lawsuit. Please accept this letter as Hyatt's formal tender of the Lawsuit to Kronos Incorporated ("Kronos") for defense and indemnity of Hyatt pursuant to Section 18 of the enclosed Kronos Sales, Software License and Services Agreement ("Agreement"), and the terms contained therein.

The enclosed Agreement provides, in relevant part:

18. INDEMNIFICATION

(a) Kronos agrees to indemnify and defend Customer, its affiliates and subsidiaries, the Customer Hotels, and their respective officers, directors, Customer Personnel and agents (together, the "Customer Indemnitees") and to hold them harmless from and against any and all claims, suits, causes of actions, fines, penalties (including any assessed by governmental agencies), costs, fees, and expenses (including reasonable legal fees) (together, "Claims") alleged, asserted or brought against any of them or incurred by any of them as a result of such third-party Claims to the extent arising out of or relating to:



(iii) Kronos' gross negligence or willful misconduct or the gross negligence or willful misconduct of any Kronos Personnel;

(vi) Kronos' breach of Section 17 (Compliance with Laws), excluding breach of its obligation to comply with Data Protection Laws (as defined below) which breach is addressed in sub-Section (c).

...

(c) Kronos also agrees to indemnify Customer Indemnitees for the following Claims (including inter-party Claims) suffered or incurred by any of them to the extent arising out of or relating to Kronos' breach (including negligent or willful breach by Kronos Personnel) of its obligations (i) in Section 25 (Data Privacy Protection Requirements) or (ii) in Section 24 (Confidential Information):

...

(iv) Any civil or criminal fines, penalties or other financial judgments brought or assessed against Customer by any governmental authority with jurisdiction over such matters; and

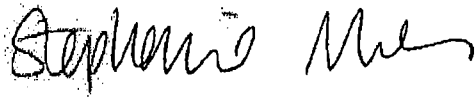
(v) Legal fees and expenses associated with Customer's defense, investigation of and response to such Claim, provided that if Kronos assumes the defense of any Claim subject to this subsection (c)

The Lawsuit filed by Ms. Rapai alleges violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 ("BIPA") in connection with the use of the finger-scan function of Kronos timeclocks at Hyatt hotels in Illinois. Specifically, the Lawsuit asserts failures to: (1) provide employees using the Kronos timeclocks with required disclosures concerning the collection, storage or use and destruction of biometric information; and (2) maintain a written policy regarding the schedule and guidelines for retention and permanent destruction of the biometric information, in accordance with BIPA. However, at all relevant times, Kronos has collected and stored the biometric information of Hyatt employees that clock and in and out with Kronos timeclocks.

Accordingly, please confirm your acceptance of this tender of defense and indemnity by responding to this letter on or before **November 14, 2017**. If Hyatt does not receive a response to this letter by November 14, Hyatt will retain its own counsel to defend its interests in this matter, and pursue

indemnification against Kronos for any damages and reasonable attorneys' fees arising out of this litigation
in accordance with the terms of the Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie McAlister". The signature is fluid and cursive, with the first name "Stephanie" written in a larger, more prominent script than the last name "McAlister".

Stephanie McAlister
Corporate Counsel

Encl.

With email copies to: John DiGrazio, john.digrazio@kronos.com
Laura Secore, laura.secure@kronos.com

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

ROBIN RAPAI, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

HYATT CORPORATION,

Defendant.

No.

2017CH14483
CALENDAR/ROOM 13
TIME 00:00
Class Action

CLASS ACTION COMPLAINT

Plaintiff Robin Rapai ("Rapai"), individually, and on behalf of all others similarly situated, for her Class Action Complaint against Defendant, Hyatt Corporation ("Hyatt" or "Defendant") for violations of the Illinois Biometric Information Privacy Act ("BIPA") 740 ILCS 14/1 et seq., alleges the following upon information and belief, except as to the allegations within Plaintiff's personal knowledge, and states as follows:

NATURE OF ACTION

1. Hyatt is a Delaware corporation qualified to transact business in Illinois. Hyatt is a leading hotel chain that operates numerous hotels in Illinois.
2. Hyatt employees in Illinois have been required to clock "in" and "out" of their work shifts by scanning their fingerprints, and Hyatt's biometric computer systems then verify the employee and clock the employee "in" or "out."
3. Unlike traditional time clock punch cards which can be changed or replaced if lost or compromised, fingerprints are unique, permanent biometric identifiers¹ associated with each

¹ BIPA defines a "biometric identifier" as "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." 740 ILCS 14/10. BIPA defines "biometric information" as "any information, regardless of how it is captured, converted, stored, or shared, based on an individual's

employee. This exposes Defendant's workforce to serious and irreversible privacy risks. For example, if a fingerprint database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

4. BIPA expressly obligates Defendant to obtain an executed, written release from an individual, as a condition of employment, in order to capture, collect and store an individual's biometric identifiers, especially a fingerprint, and biometric information derived from it.

5. BIPA further obligates Defendant to inform its employees in writing that a biometric identifier or biometric information is being collected or stored; to tell its employees in writing for how long it will store their biometric information and any purposes for which biometric information is being captured, collected, and used; and to make available a written policy disclosing when it will permanently destroy such information.

6. BIPA makes all of these requirements a precondition to the collection or recording of fingerprints and associated biometric information. Under BIPA, no biometric identifiers or information may be captured, stored or recorded if these pre-capture, pre-collection requirements are not met.

7. The Illinois Legislature has found that "[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information." 740 ILCS 14/5(c). "For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse,

biometric identifier used to identify an individual. Biometric information does not include information derived from items or procedures excluded under the definition of biometric identifiers." *Id.* Plaintiff herein uses the terms "biometric information" and "biometric identifier" interchangeably.

is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions." *Id.*

8. Defendant fingerprinted employees like Plaintiff, at its facilities, without properly obtaining the above-described written executed release in violation of Section 15(b)(3) of BIPA, and without making the required disclosures concerning the collection, storage and use or destruction of biometric identifiers or information in violation of Section 15 of BIPA.

9. Despite the requirements under BIPA and as alleged herein, Defendant's practice of collecting, storing and using its employees' biometric information without informed written consent violates its employees' statutorily protected privacy rights under BIPA. Furthermore, Defendant's failure to provide a written policy regarding its schedule and guidelines for the retention and permanent destruction of its workforces' biometric information violates §15(a) of BIPA.

10. Plaintiff seeks damages and injunctive relief for Defendant's BIPA violations, on behalf of herself and similarly situated employees in the State of Illinois.

PARTIES

11. Plaintiff is, and has been at all relevant times, a resident of Cook County Illinois.

12. Plaintiff was employed by Hyatt as a server from September 26, 2017 to October 30, 2017 working at one of Defendant's hotels known The Hyatt Lodge at McDonald's Campus in Oak Brook, Illinois.

13. Hyatt is a corporation organized under the laws of the State of Delaware, and is qualified to transact business in Illinois. Hyatt's principal address in Illinois is located at 71 S. Wacker Drive, Chicago, IL 60606.

14. Defendant conducts business throughout this County and the State of Illinois.

JURISDICTION AND VENUE

15. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant transacts business in Cook County Illinois. Additionally, this Court has jurisdiction over Plaintiff because she is a resident of Cook County, Illinois.

16. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because Defendant's registered principal office is in this County and Defendant operates business in this County.

SUBSTANTIVE ALLEGATIONS

17. BIPA defines "biometric identifiers" or "biometric information" as fingerprints, a scan of hand geometry, and any "information" based on such "identifiers" that is used to identify an individual. 740 ILCS § 14/10.

18. The law is specifically designed to require a company that collects biometrics to meet certain conditions, prior to collecting biometric data in order to inform and protect the person whose biometrics it is taking for its own use, and requires signed, written consent attesting that the individual has been properly informed and has freely consented to biometrics collection.

19. BIPA provides valuable privacy rights, protections, and benefits to employees. These requirements ensure that the environment for taking or collecting biometrics is not forced or coerced so that employees are freely advised that by obtaining one's biometric data, the employer is capturing, extracting, creating and recording biometric data, and that individuals can monitor their biometric usage and history.

20. BIPA provides statutory damages if an employer takes an employee's biometric information and invades an employee's privacy by circumventing BIPA's preconditions and requirements.

21. In the context of employment, BIPA requires express written consent, not only in order to capture or collect biometrics, but the employer is required to obtain "informed written consent," in the form of "a release executed by an employee", and further, the release must be executed "as a condition of employment." Those formalized protections enable employees to freely consent to the taking of their biometrics. (740 ILCS 14/10²)

22. In September of 2017, Defendant hired Plaintiff as a server.

23. Throughout the duration of Plaintiff's employment, Defendant required its employees, including Plaintiff, to provide Defendant with their fingerprint, and then, using biometrics, captured or converted Plaintiff and other employees' fingerprints as a means of identifying and tracking hours worked at the facilities Defendant was servicing.

24. Defendant subsequently scanned and stored Plaintiff's fingerprint data in its employee database as a part of the employee time-clocking process.

25. Each time Plaintiff began work, she was required to scan her fingerprint before beginning her job functions. She was also required to scan her fingerprint at the end of her workday.

26. Plaintiff has never been informed of any biometric data retention policy developed by Defendant, nor was she ever informed of whether Defendant would ever permanently delete her biometric information.

27. Plaintiff was never provided with nor ever signed a written release allowing Defendant to collect or store her biometric information.

² Defining "Written release" in the context of employment.

CLASS ALLEGATIONS

28. Plaintiff brings this lawsuit pursuant to 735 ILCS 5/2-801 on behalf of herself and a class of similarly situated individuals, defined as follows (the "Class"):

All persons working for Defendant in Illinois at any time between October 30, 2014 and the present whom Defendant caused to be fingerprinted or finger-scanned when clocking in or out of work.

29. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

30. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but on information and belief exceeds 100, in which case, individual joinder is impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from over 100 employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

31. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and Class, and those questions predominate over any questions that may affect individual members, and frame issues for class-wide adjudication. Common questions for the Class include, but are not necessarily limited to the following:

- A. Whether Hyatt has a practice of capturing or collecting Class member biometrics;
- B. Whether Hyatt developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and information when the initial purpose for collecting and obtaining such identifiers or information has been satisfied or within three years of the individual's last interaction with Hyatt, whichever occurs first;

- C. Whether Hyatt obtained an executed written release from fingerprinted employees before capturing, collecting, or otherwise obtaining employee biometrics;
- D. Whether Hyatt obtained an executed written release from fingerprinted employees, before capturing, collecting, converting, sharing, storing or using employee biometrics;
- E. Whether, in order to collect biometrics, Hyatt provided a writing disclosing to employees the specific purposes for which the biometrics are being collected, stored and used;
- F. Whether, in order to collect biometrics, Hyatt provided a writing disclosing to fingerprinted employees the length of time for which the biometrics are being collected, stored and used;
- G. Whether Hyatt's conduct violates BIPA;
- H. Whether Plaintiff and the Class are entitled to damages, and what is the proper measure thereof; and
- I. Whether Plaintiff and the Class are entitled to injunctive relief.

32. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interest of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

33. **Appropriateness:** This class action is appropriate for certification because class

proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economics of time, effort and expense will be fostered and uniformity of decisions will be ensured.

COUNT I
VIOLATIONS OF ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT
(Damages)

34. Plaintiff, individually and on behalf of all others similarly situated, repeats and re-alleges the preceding allegations as though fully set forth herein.

35. BIPA is a remedial statute designed to protect employees, by requiring consent and disclosures associated with the handling of biometrics, particularly in the context of fingerprint technology. 740 ILCS §§ 14/5(g), 14/10 and 14/15(b)(3).

36. The Illinois General Assembly's recognition of the importance of the public policy and benefits underpinning BIPA's enactment, and the regulation of biometrics collection, is detailed in the text of the statute itself. *E.g.*, 740 ILCS § 14/5(a), (c), (d), (f), (g).

37. Defendant has been a "private entity" in possession of Plaintiff's and other

employees' biometrics, and collected and captured their biometric identifiers and biometric information within the meaning of the Act.

38. As more fully set forth above, at relevant times Defendant recorded, collected, and stored Plaintiff's and other employees' biometric identifiers and biometric information based on those identifiers as defined by BIPA, 740 ILCS § 14/10, through the imposition of biometric time clocks.

39. Section 14/15(a) of the BIPA provides:

A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

40. In violation of Section 14/15(a), Defendant failed to make such a written policy publicly available to Plaintiff and other Class members.

41. Section 14/15(b) of the BIPA provides that:

No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first: (1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and (3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.

42. In violation of Section 14/15(b), Defendant has collected, captured, stored or obtained Plaintiff's and other Class members' biometric identifiers and biometric information without:

- I. informing Plaintiff and the Class (including, where applicable, their legal authorized representatives), in writing, that the biometric identifiers or biometric information were being recorded, obtained, collected or stored;
- II. informing Plaintiff and the Class (including, where applicable, their legal authorized representatives), in writing, of the specific purpose and length of term which the biometric identifiers or biometric information were being collected, stored, and used; and
- III. receiving a written release executed by Plaintiff and the Class, and executed by them as a condition of employment.

43. Defendant took Plaintiff and other Class members' fingerprints, and knowingly caused their biometrics to be captured, collected, recorded, and stored, without making publicly available the required policy that explains, for example, any purpose for which the biometric identifiers and information were collected, a retention schedule, and guidelines for permanently destroying biometric identifiers and information.

44. Defendant's above-described conduct is negligent. As a result of Defendant's above described acts and omissions, Defendant has invaded the privacy of Plaintiff and the Class; it has unlawfully and coercively taken their biometrics; it has failed to provide them with information required by BIPA; it has deprived them of benefits, rights, opportunities and decisions conferred and required by the Illinois legislature via BIPA; and it illegally recorded, possessed, converted and stored their fingerprints, biometrics and property.

45. By collecting, storing, and using Plaintiff's and the Class' biometric identifiers and biometric information as described herein, Defendant violated the right of Plaintiff and each Class member to privacy in their biometric identifiers and biometric information.

46. Accordingly, Defendant has negligently violated the BIPA, and Plaintiff and the Class have been damaged and are entitled to damages available under the BIPA, including liquidated damages of \$1,000 or actual damages, whichever is greater. 740 ILCS § 14/20(1).

COUNT II
VIOLATIONS OF ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT
(Injunctive Relief)

47. Plaintiff, individually and on behalf of all others similarly situated, repeats and re-alleges the preceding allegations as though fully set forth herein.

48. BIPA provides for injunctive relief. 740 ILCS § 14/20(4).

49. Plaintiff and other Class members are entitled to an order requiring Defendant to make disclosures consistent with the Act and enjoining further unlawful conduct.

50. First, Plaintiff seeks an order requiring Defendant to publicly disclose a written policy establishing any specific purpose and length of term for which Plaintiff's and other employees' biometrics have been collected, stored, and used, as well as guidelines for permanently destroying such biometrics when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first, as required by 740 ILCS § 14/15(a).

51. Second, Plaintiff seeks an order requiring Defendant to disclose whether Defendant has retained Plaintiff's and other employees' biometrics in any fashion, and if, when, and how such biometrics were permanently destroyed, consistent with BIPA.

52. Third, due to the aforementioned facts, and Defendant's failure to make publicly available facts demonstrating BIPA compliance as BIPA requires, Defendant should be ordered to: (i) disclose if³ it has disseminated, sold, leased, traded, or otherwise profited from Plaintiff's

³ And if, precisely how, and to whom.

and other fingerprinted employees' biometric information, which is strictly prohibited under BIPA; and (ii) disclose the standard of care that it employed to store, transmit, and protect such biometrics, as provided under BIPA. 740 ILCS § 14/15(c), (d), (e).

53. Fourth, Defendant should be enjoined from further BIPA non-compliance, and should be ordered to remedy any BIPA compliance deficiencies forthwith.

54. Plaintiff and other Class members' legal interests are adverse to Defendant. There is substantial controversy between Plaintiff and Defendant warranting equitable relief so that Plaintiff and the Class may obtain the protections that BIPA entitles them to receive.

55. Plaintiff and the Class do not know what Defendant has done (or intends to do) with their stored biometrics. Absent injunctive relief, Defendant is likely to continue their BIPA non-compliance and Plaintiff and other Class members will continue to be uninformed on their rights under BIPA.

56. For the reasons set forth above, Plaintiff is likely to succeed on the merits of her claims.

57. BIPA establishes the importance, value, and sensitive nature of biometrics, along with the need to protect and control it; Plaintiff is entitled to know what Defendant has done with it as set forth above, and to an affirmation and verification that it has been permanently destroyed as required by 740 ILCS § 14/15(a).

58. The gravity of the harm to Plaintiff and the Class, absent equitable relief, outweighs any harm to Defendant if such relief is granted.

59. As a result, Plaintiff requests commensurate injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays

that the Court grant the following relief:

- a. Certify the Class, and designate Plaintiff as Class representative and her counsel as Class Counsel;
- b. Find that Defendant has violated the Biometric Information Privacy Act, and enter judgment in favor of Plaintiff and others similarly situated;
- c. Provide commensurate temporary, preliminary and permanent injunctive relief for Plaintiff and the Class as set forth above;
- d. Award all damages available to Plaintiff and the Class under applicable law, including statutory damages;
- e. Award Plaintiff and the certified class all costs and expenses incurred in this action, including reasonable attorneys' fees, and requiring defendant to pay the costs and expenses of class notice and claims administration; and,
- f. Award Plaintiff and the certified class such further and other relief the Court deems just and appropriate.

ROBIN RAPAI, individually and on behalf of all
others similarly situated

By: 
One of her attorneys

Frank Castiglione
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KRONOS SALES, SOFTWARE LICENSE AND SERVICES AGREEMENT

Rev KR-022811.1

This Kronos Sales, Software License and Services Agreement ("SLSA"; together with all Order Forms, Statements of Work, Services Scope Statement(s), exhibits and other attachments, the "Agreement") is entered into by and between Hyatt Corporation, with offices at 71 S. Wacker Drive Chicago, IL 60606 ("Customer") and Kronos Incorporated, with offices at 297 Billerica Road Chelmsford, MA 01824 ("Kronos") and effective as of September 11, 2014. The parties agree that the terms and conditions set forth in this SLSA shall apply to all Kronos Equipment, Software, Professional and Educational Services, Support Services, all as defined in this Agreement, and such other Kronos offerings, including, if applicable, any custom software development by Kronos as specified on an order form or other ordering document containing product-specific descriptions and payment terms signed by both parties (an "Order Form") (the "Products and Services," collectively) signed by the parties which expressly references this Agreement (or is signed contemporaneously hereto).

1. USE OF PRODUCTS AND SERVICES.

Kronos acknowledges and agrees that use of the Products and Services by Customer's affiliates and subsidiaries, as well as any hotel and resort properties owned or managed by Customer or its affiliates and subsidiaries located in those countries set forth in Exhibit A (the "Customer Hotels") ("Customer Group") is permitted under this Agreement as described in Exhibit A. Customer will cause each of the entities included in the Customer Group to comply with each of the provisions contained in this Agreement applicable to the Customer.

2. ORDERING PRODUCTS AND SERVICES: ADDITIONAL TERMS.

- (a) Kronos and Customer hereby agree that the terms and conditions of this SLSA apply to any Order Form executed by Kronos and Customer which expressly references this Agreement (including any Order Form signed contemporaneously with this Agreement regardless of the appearance of any express reference to this Agreement). If Customer wants to order certain Products and Services, it will execute an Order Form generated by Kronos. Kronos may require additional terms and conditions for the sale or license of certain Products or services not contemplated by this SLSA or in any Order Form executed contemporaneously with this SLSA which will be provided to Customer in writing before an Order Form for such Products or Services are executed. Customer shall have an opportunity to negotiate any additional terms and conditions to provided. For clarity, no such additional terms and conditions shall be binding upon Customer without Customer's prior written consent. All Order Forms are subject to the approval of Kronos which will be indicated by its execution thereof and Kronos may determine, in its commercially reasonable discretion that certain Products and Services requested by Customer are not available and shall promptly notify Customer of such unavailability in writing. This Agreement and the Order Form shall supersede the pre-printed terms of any Customer purchase order or other Customer ordering document, and no such Customer pre-printed terms shall apply to the items ordered.
- (b) To the extent this SLSA, any Order Form, or any statement of work (including Services Scope Statements) (each of the latter, a "SOW") conflict, terms shall govern over other terms as follows: (i) SLSA terms, including in any Exhibits, but excluding any terms and conditions incorporated by URL reference herein; (ii) SOW terms; (iii) Order Form terms; and (iv) terms and conditions incorporated by URL reference herein.

3. PAYMENT AND DELIVERY.

- (a) Unless otherwise set forth in an Order Form, payment of any amounts will be due within 30 days of the date of the applicable invoice. The foregoing notwithstanding, Customer may withhold payment of any amounts Customer, in good faith, disputes. Delivery terms are as stated on the Order Form ("Delivery"). Kronos will invoice Customer for Software and Equipment (as defined below) upon Delivery. Unless otherwise set forth on the Order Form, Professional and Educational Services are provided on a time and materials basis, invoiced monthly as rendered. Customer agrees to pay all undisputed applicable taxes levied or based on the purchase and sale of Products or Services, including state and local sales and excise taxes, and any similar taxes or amount in lieu thereof paid or payable by Kronos, exclusive of taxes based on net income or profits ("Taxes"). Taxes will be indicated on each invoice as a separate line item. Kronos will be solely responsible for remitting all Taxes to the correct taxation authorities. Customer agrees to pay a late charge of one percent (1%) per month, (but not in excess of the rate allowed by applicable Laws) (as defined below), on any amounts more than 60 days past due that are not the subject of a good faith dispute. If full payment of undisputed amounts is not made within 180 days of the payment due date, Kronos may retain a third-party to obtain payment and Customer will reimburse Kronos for all such third-party expenses, including legal fees, incurred by Kronos for collection.
- (b) Kronos will deliver or make available all technical specifications, documentation, Technical Data Sheets, users guides or manuals, instructions or related materials necessary for Customer to make full use of any applicable Products and Services (the "Documentation") contemporaneously with Delivery of Products and Services. Documentation will be delivered in hard copy or electronic format, or Kronos will provide Customer with any URLs necessary to access any of the foregoing online.
- (c) Once purchased, title to any Equipment shall pass to Customer free and clear of claims, liens and encumbrances.
- (d) For clarity, Kronos shall be solely responsible for payment of pay all costs and expenses related to salaries, benefits, employment taxes, and insurance for its staff and all Kronos Personnel; for payment of all amounts due to its suppliers and authorized subcontractors; and for payment of all taxes associated with its business, including without limitation all sales, use, or similar taxes and all taxes on its income and will pay any and all of the foregoing.

4. GENERAL LICENSE TERMS.

- (a) Kronos represents and warrants that it owns or has the right to license all software it provides to Customer that operates on one or more Customer devices and any Application Programs (as defined in Exhibit B (Application Hosting Supplemental Terms and Conditions, which is incorporated herein by reference (the "Software"), together with the any equipment sold, licensed or otherwise provided by Kronos to Customer hereunder ("Equipment") (Software and Equipment together referred to as "Products") and any software provided by Kronos embedded or pre-loaded on or in Equipment ("Firmware") (Software and Firmware together, the "Licensed Software"). The Licensed Software and accompanying Documentation are Kronos' Confidential Information (as defined below); provided, however, that to the extent Kronos considers use of the Licensed Software by Customer's employees, contractors and other personnel authorized by Customer to use the Products and Services ("Customer Personnel") to constitute "disclosure," Licensed Software and Documentation may be disclosed to those individuals provided that use of the Licensed Software and Documentation shall be solely on behalf of Customer and will terminate effective immediately upon termination of the relationship between Customer and such individual. For clarity, a breach of this license by any Customer Personnel shall be deemed a breach of this license by Customer. The Licensed Software contains proprietary trade secret technology. Certain use and copying of such Licensed Software is prohibited by applicable laws, rules, regulations, ordinances, orders, statutes, agency and court decisions and similar acts of governmental authority (together, "Laws"), including United States and foreign copyright laws. The price Customer pays for a copy of Software constitutes a license fee ("License Fee") that entitles Customer to use the Software as set forth herein and in any Order Form. Kronos hereby grants to Customer a non-exclusive, nontransferable (except to permitted assigns), royalty free, and perpetual (except as provided herein) license to use the Licensed Software.
- (b) Kronos may terminate the foregoing license with respect to certain Licensed Software upon written notice to Customer, if Customer (i) fails to pay any undisputed License Fee for such Licensed Software when due and does not make payment in full of any such amounts within 45 days after receipt of Kronos' written notice demanding payment; or (ii) materially breaches the license terms applicable to that Licensed Software including without limitation Customer's confidentiality obligations with respect to such Licensed Software and any such material breach remains uncured for a period of thirty (30) days after receipt of written notice from Kronos reasonably specifying the nature of the breach. Upon such termination, by Kronos, Customer will have no further right to use the affected Licensed Software, the license will be deemed terminated, and Customer will return the Software media (if any) to Kronos and destroy all copies of the Software (and related Documentation) in Customer's possession or control. In addition, any Order Forms including the purchase of any Equipment Support Services or Services Offerings (as defined below) for any Licensed Software for which the licenses have been terminated as set forth in this Section will automatically terminate. For clarity, termination of the license with respect to certain Licensed Software will have no effect on the validity of the licenses with respect to any other Licensed Software.

5. OUTPUT/DELIVERABLES.

- (a) All reports, documents and other materials prepared or generated by Customer by or through use of the Software, Equipment or Application Programs will be referred to as the "Output." All Output shall be the property of Customer, except to the extent such Output contains Kronos' Confidential Information, ownership of which will remain with Kronos and Kronos grants Customer a perpetual license to use such Confidential Information contained in any Output, subject to the terms and conditions of this Agreement.
- (b) All deliverables, work product or similar materials created or developed by Kronos under this Agreement, including any such items identified as such in a SOW or SSS, but excluding any custom software created or developed as the result of any custom software development Services, shall be referred to as "Deliverables." If Customer wants to retain Kronos to perform custom software development Services, and Kronos is able to provide such Services, the parties shall execute an addendum setting forth any additional terms and conditions applicable to those Services and any custom software created as a result.

6. FEE BASED LIMITATIONS.

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the License Fee paid by Customer, as set forth in an Order Form. Limitations, which are set forth on the Order Form, may include the number of Customer Personnel, simultaneous or active users, Software Product modules, Software features, computer model and serial number and partition, and/or the number of telephone lines or terminals to which the Software is permitted to be connected. Customer agrees to: (a) use the Software in compliance with all such limitations stated in an Order Form and (b) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, partitions, terminals, Software modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable License Fee for such increase/upgrade. Customer may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos. For clarity, to the extent use of the Products and Services by Customer Personnel constitutes a sublicense under applicable Laws, Kronos agrees that Customer may sublicense its rights to such Customer Personnel.

7. OBJECT CODE ONLY: THIRD-PARTY SOFTWARE; ADDITIONAL SOFTWARE WARRANTY.

- (a) Customer may use the Software (including any components or modules thereof) in object code form only, and shall not reverse

example, disassemble or otherwise convert the Software into uncompiled or unassembled code. The Software includes components owned by third parties and licensed to Kronos. Such third party components are deemed to be Software subject to this Agreement, including (a) Kronos' representation and warranty as to its right to grant the licenses granted herein and (b) Kronos' obligation to provide the Products and Services in accordance with the Specifications (as defined below). Customer shall not use any component or module of any Software (nor any data models therein) except solely as part of and in connection with the Software and as described in the Documentation or Specifications for such Software.

- (b) Kronos represents and warrants that: (i) the Software and Firmware do not and shall not include any open-source software or code, including any such software or code licensed to Kronos under a GPL or LGPL or similarly structured open-source license, which would require Customer or Kronos to disclose any of Customer's Confidential Information or any other information of or pertaining to Customer; and (ii) upon Delivery to Customer no copy of the Software or Firmware (including Updates thereto) provided contains (i) any virus, code or other routine that can disable, erase or otherwise harm the Software or Equipment, or Customer's other equipment, software or data; and (ii) any software routine, code, or instruction, hardware component or combination of the above which is designed to intentionally reprogram the Customer's systems or network, or any component thereof, by electronic or other means (all such code, collectively, a "Virus").

8. PERMITTED COPIES

Customer may copy the Programs as reasonably necessary to load and execute the Programs and for backup and disaster recovery and testing purposes only, except for additional copies of the Teleline Software and the Kronos Series (which must be licensed separately). All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this Agreement, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer. Customer may also make reasonable numbers of copies of any Documentation (other than certain training materials developed by Kronos which may require additional copy fees, all such fees and costs as set forth in the applicable Order Form or SOW) to the extent necessary to permit it to make full use of any accompanying Software.

9. UPDATES

- (a) In the event that Kronos supplies Service Packs (as defined below), point releases, major releases (including legislative updates if available) and any bug fixes, patches or similar coding of or to the Software (collectively referred to as "Updates"), such Updates shall be part of the Software and the provisions of this Agreement shall apply to such Updates and to the Licensed Software as modified thereby. Kronos shall supply all Updates to Customer in accordance with the applicable Service Offerings, if any, purchased by Customer and set forth in an Order Form that it supplies to similarly situated customers. Provided Customer has registered for notification of release notes and Service Packs through Kronos' support portal, Kronos shall provide Customer with notification of any point and/or major releases upon release by Kronos. Customer must consent to the installation of such point and/or major releases before installation.
- (b) Kronos shall utilize industry standard methods to provide and release Updates, and otherwise maintain the Software and Firmware, to prevent Viruses or address other security issues therein.

10. EXPORT

Customer acknowledges that the Equipment and Software may be restricted by the United States Government or by the country in which the Equipment or Software is installed from export to certain countries and certain organizations and individuals. Each party agrees to comply with such applicable export Laws. Kronos specifically represents and warrants that as of the Effective Date that (a) all Software and Equipment may be licensed, sold and exported to any country in the Region as further described in Exhibit A and (b) to the best of Kronos' knowledge, Kronos is not aware of any causes or applicable Laws that would prevent Customer's access to and use of the Application Programs in the Hosting Environment (as defined in Exhibit B), from such countries. Nothing set forth herein shall relieve either party of its obligations to comply with applicable Laws. Customer must obtain Kronos' prior written consent before exporting the Software outside of the Region.

11. FIRMWARE

Customer may not download Firmware Updates for Equipment unless Customer has purchased Equipment Support Services (as defined below). If Customer has not done so, Kronos shall have the right to remotely verify Customer's Equipment to determine if Customer has downloaded any Firmware Updates to which Customer is not entitled, upon at least five business days' notice to Customer. If Customer has downloaded Firmware Updates for the Equipment to which Customer is not entitled, Customer shall pay Kronos for such Updated Firmware in accordance with Kronos' then-current support pricing.

12. TRAINING POINTS

Training Points which are purchased by Customer via Order Form may be redeemed for an equivalent value of instructor-led training sessions offered by Kronos (such training sessions and any other training or educational services provided by Kronos, the "Educational Services"). Available instructor-led sessions are listed at <http://customer.kronos.com> and each session has the Training Points value indicated. Training Points may be redeemed at any time within 12 months of the effective date of the applicable Order Form, after such 12 month period, the Training Points shall expire. Training Points may not be exchanged for other Products and/or Services. Kronos will invoice Customer for the Training Points identified in the Order Form upon execution of such Order Form with payment due as set forth herein. Language to the contrary in this Agreement notwithstanding, Training Points will be provided for \$1.00 per Training Point through December 31, 2015. Thereafter, Kronos may increase the price if it chooses.

13. ACCEPTANCE

- (a) When Customer purchases a unit of Equipment and/or Software (collectively the "Products"), Customer may conduct an acceptance test during an acceptance test period (the "Test Period") which commences after installation is completed. Installation shall be considered complete on the date on which all the following have occurred with respect to each applicable unit of Software or Equipment. For clarity, an acceptance test will not be available for purchases of additional Licenses for Software or additional Equipment already successfully installed, tested and accepted:
- (i) the Software is installed on Customer's production server(s);
 - (ii) the Software has been configured in accordance with all applicable Documentation, and Customer's requirements (as attached as an exhibit to the Order Form) provided by Customer to Kronos that fall within the standard Software production parameters (together, the "Specifications");
 - (iii) the Software is interfaced, as applicable, with any Customer systems, networks, technology or equipment ("Customer Systems") so that all Software and production interfaces are transmitting data;
 - (iv) the Software is generating standard production application reports;
 - (v) Equipment, if any, has been mounted on the applicable premises and connected, integrated or interfacing with "Customer Systems";
 - (vi) Provided Customer has purchased Support Services, the most current version of the Software and/or Firmware set forth in the Order Form is installed, the latter on all applicable Equipment. For clarity, when Customer orders Equipment from Kronos, the Equipment being shipped to Customer will contain the most current version of the Firmware for such Equipment; and
 - (vii) implementation team training is complete.

- (b) During the Test Period, Customer shall determine whether the Software and Equipment meet the Specifications.

- (c) The Test Period shall be for 30 days or such other longer period of time mutually agreed to by the parties in writing. If Customer has not given Kronos a written deficiency statement specifying how the Products fail to meet the Specifications ("Deficiency Statement") within the Test Period, the Products are deemed accepted ("Acceptances"). If Products do not meet Specifications, Customer will provide Kronos a written deficiency statement reasonably specifying how the Products fail to meet the Specifications within the Test Period. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, including re-performing installation, if necessary, at no cost to Customer, and Customer shall have an additional 30 day Test Period to evaluate the corrected Products. If the Product does not meet the Specifications at the end of the second Test Period, either party may terminate the affected Order Form, and upon any such termination, Customer shall return all rejected Products that are the subject of such Order Form (and related Documentation) to Kronos, and Kronos shall refund any (a) License Fees; (b) installation fees (excluding any such fees for Training Services) and (c) Support Services Fees already paid by Customer to Kronos for the returned Products. Neither party shall then have any further liability to the other for the Products that were the subject of the terminated Order Form.

14. ON-PREMISES ACTIVITIES

If Kronos and/or any of its employees, contractors, contractors' employees, agents or other personnel (together, the "Kronos Personnel") perform Services (including installation and Support Services and the removal of any Products) on any premises owned or operated by the Customer Group (a) Kronos will ensure that all such Kronos Personnel comply with any of the applicable Customer Group's policies and procedures applicable to Customer Group contractors providing Services on the premises and will notify all such Kronos Personnel of any such policies and procedures, including any security policies or procedures that may require the recording or observation of Kronos Personnel while on-premises; and (b) after performing such Services, Kronos will restore the applicable premises to the condition in which it was before the performance thereof, normal wear and tear and any mutually agreed to alterations excepted, which mutually agreed to alterations shall include any changes to any component of the Customer System made by Kronos in connection with providing its Services in accordance with this Agreement.

15. LIMITED WARRANTY

- (a) Kronos warrants that all Software and Equipment shall be free from defects in materials and workmanship and shall conform to and will operate in accordance with the Specifications, for a period of two hundred seventy (270) days from Delivery ("Warranty Period"). The warranty made in this Section will have no effect on any other warranty to this Agreement. Kronos will promptly correct or replace the Software or Equipment if the Software or Equipment do not conform to the requirements of this Section 15. In addition, for as long as Customer purchases Support Services with Kronos for the Software and Equipment Kronos warrants that the Software and Equipment shall perform in compliance with the Specifications.
- (b) In the event of a breach of this warranty, Customer's exclusive remedy (excluding Customer's right to terminate this Agreement

for Kronos' uncurbed breach) shall be Kronos' prompt repair or replacement of the deficient Equipment and/or Software at Kronos' option and expense (including additional installation costs, if any) so that the deficient Product conforms with Specifications or a replacement conforming with Specifications is provided. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) or Software that does not meet Specifications to the extent consisting of or caused by:

- (i) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including modification or replacement of any components on any boards supplied with the Equipment), physical or electrical stress in excess of that permitted under any Specifications;
 - (ii) failure of Customer to provide and maintain a suitable installation environment, as specified in the Specifications; or
 - (iii) malfunctions resulting from the use of badges or supplies in connection with the Equipment or Software (if applicable) not approved by Kronos.
- (e) When using and applying the information generated by Products, Customer is responsible for ensuring that Customer complies with the applicable requirements of applicable Laws. If Customer is Meaning Workforce Payroll Software or Workforce Absence Management Software: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using such Software, (ii) using such Software does not release Customer of any professional obligation it may have to any third-parties concerning the preparation and review of such reports and documents, (iii) Customer obligation is may have to any legal advice or guidance regarding compliance with applicable Laws or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using such Software and satisfy itself that those calculations are correct.

16. Reserved

17. COMPLIANCE WITH LAWS

- (a) Without limiting either party's other compliance obligations set forth herein, Kronos represents, warrants and agrees that it will perform its obligations under this Agreement in compliance with all applicable Laws. For clarity, Kronos will have no responsibility or liability for any use Customer makes of any Products or Services that itself does not comply with applicable Laws. In addition, and without limiting the foregoing, Kronos will obtain, before providing any Products or Services, and will maintain throughout the Term (as defined below) any and all necessary governmental license or permits or consents required for the proper and lawful conduct of its business or other activity of Kronos carried on, in or at any premises owned or operated by Customer. Kronos shall, at its sole expense, at all times comply with the requirements of each such license, permit or consent. Kronos further acknowledges that Customer is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (39 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor Laws.
- (b) Customer acknowledges and agrees that Kronos is not providing legal compliance Services hereunder.

18. INDEMNIFICATION

- (a) Kronos agrees to indemnify and defend Customer, its affiliates and subsidiaries, the Customer Hotels, and their respective owners, officers, directors, Customer Personnel and agents (together, the "Customer Indemnitees") and to hold them harmless from and against any and all claims, suits, causes of actions, fines, penalties (including any assessed by governmental agencies), costs, fees and expenses (including reasonable legal fees) (together, "Claims") alleged, asserted or brought against any of them or incurred by any of them as a result of such third-party Claims to the extent arising out of or relating to:
 - (i) Infringement of third-party intellectual property rights (including patents, copyright, trademark and trade secret rights) by Kronos, the Products or Services it provides (including any third-party Software contained or provided therein), any Documentation, or any KnowledgePlus Content, and any Deliverables, including in connection with Support Services, or Customer's or Customer Group's use thereof;
 - (ii) Damage to real or personal property, bodily injury to or death of any third-party (including Customer Personnel) arising out of Kronos' breach of its obligations hereunder, or its negligence or willful misconduct or the negligence or willful misconduct of any Kronos Personnel;
 - (iii) Kronos' gross negligence or willful misconduct or the gross negligence or willful misconduct of any Kronos Personnel;
 - (iv) Bodily injury to or death of any Kronos Personnel delivering Products or Services hereunder, however caused or

occasioned, excepting the gross negligence or willful misconduct of Customer;

- (v) Any intellectual, mechanical or other liens or encumbrances asserted by Kronos' subcontractors, suppliers or creditors related to this Agreement or any labor, materials, Equipment, Products, or any other item provided for the benefit of Customer hereunder; and
 - (vi) Kronos' breach of Section 17 (Compliance with Laws), excluding breach of its obligation to comply with Data Protection Laws (as defined below) which breach is addressed in sub-Section (e).
- (b) Kronos also agrees to indemnify, defend and hold the Customer Indemnitees harmless for all Claims for tangible property damage caused by its, or the Kronos Personnel's negligent or wrongful acts or omissions while on any Customer, Customer Hotel or Customer affiliate or subsidiary's premises in connection with this Agreement.
- (c) Kronos also agrees to indemnify Customer Indemnitees for the following Claims (including inter-party Claims) suffered or incurred by any of them to the extent arising out of or relating to Kronos' breach (including negligent or willful breach by Kronos Personnel) of its obligations (i) in Section 25 (Data Privacy Protection Requirements) or (ii) in Section 24 (Confidential Information):
- (i) Customer's actual and reasonable costs to provide those notices of the security breach to the affected individuals that are required by applicable Laws, the parties acknowledging that express courier service is not reasonable in this context;
 - (ii) Customer's actual and reasonable cost to provide those notices of the security breach to government agencies, credit bureaus, and/or other required entities that are required by applicable Laws;
 - (iii) Customer's cost to provide individuals affected by the security breach with credit protection services designed to prevent fraud and identity theft for a specific period not to exceed 12 months, including call center or other communication procedures in response, provided such credit protection services are required by applicable Laws;
 - (iv) Any civil or criminal fines, penalties or other financial judgments brought or assessed against Customer by any governmental authority with jurisdiction over such matters; and
 - (v) Legal fees and expenses associated with Customer's defense, investigation of and response to such Claim, provided that if Kronos assumes the defense of any Claim subject to this subsection (c), Kronos will only be responsible for those legal fees and expenses associated with Customer's defense, investigation of and response to such Claim incurred by Customer prior to Kronos' written assumption of the defense of the Claim.
- (d) Customer will indemnify, defend and hold harmless Kronos from and against any Claims alleged, asserted or brought against any of them or incurred by any of them as a result of such third-party Claims to the extent arising out of or relating to (i) Customer's breach of the license granted to the Software or Firmware (including by Customer Personnel); and (ii) Customer's use of Products or Services outside of the Region.
- (e) A party seeking indemnification and defense pursuant to Sections 18(a), (b) or (d) will (i) give prompt written notice of any Claim to the other party and (ii) will permit the indemnifying party sole control over the investigation, preparation, defense and settlement of such Claim, except that the indemnifying party may not consent to the entry of any judgment or finally settle any Claim that (A) includes an admission of liability by the indemnified party or, if Customer is the indemnified party, any Customer Indemnitee, (B) requires any payment from the indemnified party or, if Customer, any Customer Indemnitee, and/or (C) if the Claim is settled, does not contain a complete and final release of the indemnified party (or, if Customer is the indemnified party, the Customer Indemnitees) with respect to the settled Claim, without the indemnified party's prior written consent; and, (iii) the indemnified party will reasonably cooperate (at the indemnifying party's expense) with the indemnifying party in connection with such Claim. A party's failure to comply with the foregoing obligation under (e) (i), above, will only excuse the other party from its indemnification obligations to the extent it is damaged or prejudiced by the delay in notification.
- (f) Kronos will have no obligation to indemnify Customer for Claims or portions of Claims under sub-Section (e)(i) to the extent any such Claim is based on the use of the Products (i) with software or equipment not supplied, recommended or approved by Kronos, including in any Documentation, where the Claim would not have been asserted but for the combination with such software or equipment; or (ii) not as permitted or authorized in any Specifications or (iii) not in substantial compliance with this Agreement. Should any or all of the Products become, or in Kronos' reasonable opinion be likely to become, the subject of any such Claim, Kronos may at its option: (iv) procure for Customer the right(s) to continue to use the affected Products without charge; or (v) replace or modify the affected Products to make its use non-infringing, provided that the modifications do not result in any material loss of function or capability. Should such options not be available at reasonable expense, or should Kronos not be able to perform its obligations under (iv) or (v) within the stated time period, either party may terminate the Agreement upon thirty (30) days prior written notice to Customer. In such event of termination, Customer shall be entitled to a pro-rata refund of all License Fees and Equipment Fees and any other prepaid but unused fees for any services not yet performed (e.g. Support Service Fees or fees for Professional Services) for or in connection with the affected Product(s). The License Fees and Equipment Fees refund shall be calculated using a five year straight-line depreciation commencing with the date of the relevant Order Form.

19. INSURANCE

- (a) Kronos shall obtain and maintain insurance in the following types and with the following limits from providers reasonably acceptable to Customer and/or with an A.M. Best rating of A- or better. All policies shall be written on an occurrence basis, except for the Professional Liability Insurance:
- (i) Worker's Compensation and Employers Liability Insurance affording compensation benefits for all employees in an amount sufficient by virtue of the laws of the state or jurisdiction in which the work or any portion of the work is performed and employers' liability insurance with limits of not less than one million dollars (\$1,000,000) for each accident or disease;
 - (ii) Commercial General Liability Insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence for personal injury, bodily injury (including wrongful death), and property damage liability inclusive of coverage for all premises and operations, broad form property damage, independent contractors, contractual liability for this Agreement and product/completed operations coverage;
 - (iii) Automobile Liability Insurance with combined single limit of not less than one million dollars (\$1,000,000) per occurrence for injuries, including accidental death and property damage;
 - (iv) Umbrella or Excess Liability Insurance with limits not less than four million dollars (\$4,000,000) per occurrence which shall provide additional limits for employers' liability, general liability and automobile liability insurance; and
 - (v) Professional Liability Insurance or Errors and Omissions Insurance shall be maintained with limits of not less than two million dollars (\$2,000,000) and such coverage shall apply to all forms of computer/cyber risks (Information Security & Privacy Liability including regulatory defenses and penalties, privacy breach response services including credit monitoring services) and shall be maintained by Service Provider for a period of three (3) years after termination of this Agreement.
- (b) Kronos may and shall self-insure for coverage of intellectual property infringement claims.
- (c) Certificates (and any other appropriate documentation) evidencing such policies and indicating that Customer and its affiliates and their respective shareholders, officers, directors, employees and agents (the "Customer Parties"), as additional insureds thereunder shall be furnished to Customer and provide that such policies may not be changed or canceled until after thirty (30) days' prior written notice to Customer. Kronos hereby waives and shall cause Kronos' insurers to waive their right of subrogation against the Hyatt Parties under such policies.
- (d) Kronos shall verify that all of its subcontractors are insured against claims arising out of or relating to their performance related to this Agreement in accordance with the foregoing. The foregoing insurance coverages shall be primary to and non-contributory with respect to any other insurance or self-insurances that may be maintained by the Customer Parties and shall contain a cross-liability or severability-of-interest clause where applicable. The fact that Kronos has obtained the insurance required in this Section will not affect its liabilities or obligations under this Agreement. Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the policies required under this Section shall be assumed by, for the account of, and at the sole risk of, Kronos. For clarity, in no event shall Kronos' liability be limited to the extent of the minimum limits of insurance required above.

20. PROFESSIONAL AND EDUCATIONAL SERVICES

- (a) **TRAVEL EXPENSES.**
Unless otherwise set forth in an Order Form, Customer agrees to reimburse Kronos for all pre-approved, reasonable and actual travel expenses incurred by Kronos by payment to a third-party in the performance of any Professional Services ("Professional Services") and/or Educational Services. Travel expenses may include airfare, lodging, reasonable meal allowances and transportation to and from the airport nearest Customer (or such other airport as Customer designates). Customer will be billed by Kronos for such permitted travel expenses and payment thereof shall be due within 30 days after Customer's receipt of the applicable invoice accompanied by reasonable supporting documents.
- (b) **ENGAGEMENTS.**
Unless otherwise indicated on the Order Form, Professional and Educational Services shall be provided on a time and material basis at the rates set forth in the Order Form. If a dollar limit is stated in the Order Form or any SOW attached to any Order Form and incorporated therein by reference, Kronos will not exceed such dollar limit unless a change order or Schedule of Services or similar document (a "Change Order") for continuation of the Professional or Educational Services is signed by the parties.
- (c) **WARRANTY.**
Kronos warrants that all Professional and Educational Services performed under this Agreement shall be performed in a professional and competent manner by persons possessing the knowledge and skills necessary to perform the services. In the event that Kronos breaches this warranty, and Customer so notifies Kronos within 30 days of receipt of invoice for the applicable Services, excluding Customer's right to terminate for Kronos' uncured breach and unless Kronos' non or failure to act that caused the

breach of warranty also result in the breach of any other provision of this Agreement, the Customer's sole remedy and Kronos' exclusive liability shall be to re-perform the Services which were deficient in a manner so as to conform to the foregoing warranty, at no additional cost to Customer. If after two repeated attempts Kronos is unable to correct the deficiency to conform to the foregoing warranty, (a) Customer may terminate the applicable SOW and seek damages as permitted under this Agreement and (b) Kronos shall promptly refund any pre-paid but unused fees for such Services not yet performed.

- (d) **KRONOS PROFESSIONAL/EDUCATIONAL SERVICES POLICIES.** Unless otherwise set forth in an Order Form, Kronos' then-current Professional/Educational Services Policies shall apply to all Professional and/or Educational Services purchased under the applicable Order Form located at <http://www.kronos.com/Support/ProfessionalServices/ProfessionalServicesPolicies.htm> ("Professional Services Policies"). In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

21. EQUIPMENT AND SOFTWARE SUPPORT SERVICES

- (a) **GENERALLY.** Language to the contrary in this Agreement notwithstanding, Kronos may not make changes to any Support Services that negatively and materially affect, diminish or decrease such services or Kronos' ability to deliver them without (i) providing written notice to Customer at least 60 days before the proposed change is to take effect and (ii) obtaining Customer's prior written consent. If Customer receives Support Services after Kronos announces any such change (i.e., Customer receives support for the subsequent renewal term), Customer's consent shall be deemed given. Kronos may, upon written notice to Customer, alter the Support Services at any time if such alteration improves the Support Services or Kronos' delivery of them. All references to Kronos' ability to change Support Services set forth herein will be subject to the restrictions of this Section. In addition, Kronos will continue to make Support Services available for purchase to Customer for as long as such Support Services are offered to Kronos' similarly situated customers and, in any case, for no less than five (5) years after the Effective Date. After such five (5) year period, Kronos may, upon 18 months' prior written notice to Customer, discontinue Customer's Support Services if Kronos is discontinuing Support Services for similarly situated customers generally.
- (b) **VOLUME DISCOUNT.** If Customer increases the number or type of Software licenses and/or Equipment units purchased during the Term, Customer and Kronos will negotiate in good faith to determine a volume discount for Support Services for the applicable type of Software or Equipment. The parties will execute a written amendment setting forth the percent decrease and/or per-unit or license decrease as well as the effective date of such discount.
- (c) **EQUIPMENT SUPPORT.** Customer may purchase support Services for Equipment ("Equipment Support Services") in accordance with the terms and conditions of Kronos' standard Equipment Support Services Agreement located at <http://www.kronos.com/Legal/EquipmentSupportAgreement.aspx>. Without limiting Kronos' ability to make changes to Equipment Support Services as described above, and regardless of the content of the foregoing linked document (including modifications thereto), the terms and conditions set forth in Exhibit C are incorporated into this Agreement by reference and will control over the terms in the referenced document if there is a conflict or any ambiguity.
- (d) **SOFTWARE SUPPORT OPTIONS.** Customer may select from the following Software support Services purchase options: Gold (or Gold Plus) and Platinum (or Platinum Plus) support ("Support Service Type"), each providing different service coverage periods and/or service offerings, as specified herein applicable to all Software and Application Programs ("Service Offerings") the Equipment Support Services and Service Offerings, together, the "Support Services". Kronos will provide the designated Service Offerings for the designated Support Service Type as described herein and as indicated in any Order Form for the annual support service fee set forth in the applicable Order Form ("Support Fee"). Customer must purchase the same Service Type for all of the Software specified on any single Order Form (or if such subsequent Order Form is for additional capacity to Software already licensed and under a specific Service Type with Kronos), (however, if Customer is purchasing Service Offerings for VMware Software, Customer may only purchase Gold Service Type for the VMware Software). All Updates shall be provided via remote access.
- (e) **EXTENDED SUPPORT PROGRAM (DELL SERVERS).** Customers purchasing the Extended Support Program (as indicated on an Order Form) for their Dell servers purchased from Kronos shall receive a specialized, bundled set of Support Services. Because of the specialized nature of these Services, the terms and conditions located at <http://www.kronos.com/Legal/SupportExtendedTerms.aspx> shall supersede the provisions of this Agreement for the Extended Support Program, unless otherwise agreed to by the parties in a written amendment to this Agreement.
- (f) **TERM OF SOFTWARE SUPPORT.** Unless otherwise indicated on the Order Form, Service Offerings shall commence upon Delivery and shall continue for an initial term of one (1) year ("Initial Support Term"). Such Service Offerings shall automatically renew for additional one year terms on the anniversary date of its commencement date (each period a "Renewal Support Term"; the Initial Support and all Renewal Support Terms, the "Support Term"), unless (i) either party terminates the Support Service as permitted herein or (ii) Customer notifies Kronos in writing sixty (60) days prior to that anniversary renewal date of its intent not to renew the particular Support Service. After the Initial Support Term, the Service Offerings provided and the Service Coverage period are subject to change by

Kronos with sixty (60) days advance written notice to Customer. The foregoing notwithstanding, for the first three (3) Renewal Terms the annual Support Fee originally set forth in the applicable Order Form for the same Products and service type, will not increase by more than 2.5% over the prior year's annual Support Fee.

(g) **GOLD SUPPORT SERVICE TYPE SERVICE OFFERINGS.** Customer shall be entitled to receive and Kronos shall provide:

- (i) Updates (including all patches, Service Packs (as defined in Exhibit D (Additional Support Services Terms), upgrades and legislative Updates) for the Software for which Service Offerings have been purchased as set forth in an Order Form. If Customer requests Kronos to install such Updates or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' then-current time and materials rate in accordance with the Order Form executed by both parties addressing such matters. For clarity, Customer acknowledges and agrees that the Customer System must be configured in accordance with any Specifications to install Updates;
- (ii) Telephone and/or electronic access to the Kronos Global Support Center for the logging of requests for Support Service, technical issues or deficiencies in the Products (together, "Issues") during the Service Coverage Period. The "Service Coverage Period" for the Gold Service Offering is 8:00 a.m. to 8:00 p.m., local time (as further specified via the Customer Portal), Monday through Friday, excluding "Kronos Holidays," namely, New Year's Day, President's Day, Memorial Day, Independence Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.
- (iii) 24/7/365 access to the Customer Portal and e-case management, which enables complete issue tracking and management from initial Customer request to Kronos resolution, as well as access to certain Software-related content and materials, including access to specialized content as and when made available by Kronos such as technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerlines and service case studies documentation, FAQ's, access to Kronos knowledge base, and Customer Forum. Current offerings can be found at <http://www.kronos.com/services/helpline-services-detail.aspx>. The foregoing offerings may be modified by Kronos at any time in its sole discretion except that Kronos shall always maintain the Customer Portal and e-case management functions described herein.
- (iv) 24/7/365 remote Software and Firmware monitoring (Data Collection Terminals, if applicable, are excluded from monitoring) with web-based remote diagnostic technical assistance which may be utilized by Kronos to resolve Software functional problems and user problems during the Service Coverage Period;

(h) **PLATINUM SUPPORT SERVICE TYPE AND GOLD AND PLATINUM PLUS SERVICE TYPE SERVICE OFFERINGS:**

- (i) **Platinum:** In addition to the Service Offerings specified for the Gold Service Type above, the Service Coverage Period for the Platinum Service Offering is 24 hours a day, seven days a week, 365 days a year.
- (ii) **Plus option:**
 - (A) In addition to the Service Offerings specified for the Gold or Platinum Service Types above, as applicable, Customer shall receive the services of a dedicated, but not exclusive, Kronos Technical Account Manager ("TAM") for one production instance of the covered Software. The Gold-Plus option will permit Customer to designate up to one primary and one secondary backup technical contacts ("Technical Contacts") to be the sole contacts with the TAM, while the Platinum-Plus option shall permit Customer to designate up to two primary and three secondary backup Technical Contacts. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos' recommended Product training for the Software for which they are Technical Contacts, at a minimum, at Customer's expense and as indicated in a mutually executed Order Form.
 - (B) In addition to the foregoing, the Platinum-Plus option shall entitle Customer to receive a one day per year visit to one Customer location where the Software is installed. During this onsite visit, Kronos shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment. Customer must be utilizing the then-current version of the Software. Travel and expenses shall be paid by Customer as set forth herein.

- (i) **PAYMENT.** Customer shall pay the annual Support Fee for the Initial Support Term in accordance with the payment terms on the Order Form and in this Agreement, and for any Renewal Support Term within 30 days after receipt of invoice. Unless otherwise clearly stated in an Order Form, Customer shall incur no additional charges or fees for any Support Service for which it is paying or has paid a Support Fee.

- (i) **ADDITION OF SOFTWARE** Additional production instances of covered Software purchased by Customer during the Initial or any Renewal Support Term shall be added to the applicable Order Form at the same Support Service Type as the covered Software. Customer agrees to pay the Support Charges for such addition, and any such addition shall be automatically renewed as provided in these terms.

(k) RESPONSIBILITIES OF CUSTOMER

Customer (i) grants Kronos a limited, revocable right to enter onto any premises on which Software is installed to the extent necessary to perform its Support Service obligations hereunder; (ii) grants Kronos a limited, revocable right and license to remotely access the Customer System to the extent necessary to perform its obligations hereunder, including use of Kronos' standard remote access technology, if required; provided that Kronos acknowledges and agrees that such limited license does not extend to any other part or component of the Customer System and that Kronos may not, under any circumstances, access any such parts or components (iii) agrees to maintain and operate the Software in an environment and according to procedures which conform to the Specifications; and (iv) will not in allow support of the Software by anyone other than Kronos without prior written authorization from Kronos. Failure to utilize Kronos' remote access technology may delay Kronos' response and/or resolution to Customer's reported Software issue. If Customer requires the use of a specific remote access technology not specified by Kronos, then Customer must purchase the Plus option to receive support. The foregoing license will extend to any Support Service provided under any Plus option. If, in Customer's reasonable opinion, the remote technology used by Kronos to access the Software/Equipment is posing an undue burden on the Customer System or is otherwise interfering with Customer's reasonable use thereof, the parties will cooperate in good faith to select or create a mutually acceptable remote access technology.

(l) DEFAULT.

Customer shall have the right to terminate any Support Services in the event that Kronos breaches its Support Service obligations (including the Support Services warranty set forth below and such breach is not cured within ten (10) days after written notice reasonably specifying the nature of the breach. In the event of such termination, Kronos shall refund to Customer on a pro-rata basis those pre-paid Support Fees associated with the unused portion of the support term. Kronos reserves the right to suspend Support Service in the event the Customer is in material default under this Agreement with Kronos and such default is not corrected within thirty (30) days after Customer's receipt of written notice reasonably specifying the nature of the material default.

(m) WARRANTY

Kronos warrants that all Support Services shall be performed in a professional and competent manner by persons possessing the knowledge and skills necessary to perform such services.

(n) KRONOS SUPPORT SERVICE POLICIES.

As indicated above, Kronos' Additional Support Services Terms are set forth in Exhibit D and incorporated herein by reference. In addition, Kronos' Support Services Policies, available at : <http://www.kronos.com/Support/SupportServicesPolicies.htm> shall apply to all Support Services purchased. Without limiting Kronos' ability to make changes to Support Services as described above, and regardless of the content of the foregoing linked document (including modifications thereto), the terms and conditions set forth in Exhibit D are incorporated into this Agreement by reference and will control over the terms in the referenced document if there is a conflict or any ambiguity.

22. KNOWLEDGEPASS EDUCATION SUBSCRIPTION:

The parties hereby agree that the following terms shall apply to Customer's purchase of the Kronos KnowledgePass Education Subscription only, if specified on the Order Form:

- (a) **Scope:** The KnowledgePass Education Subscription is available to customers who are licensing Kronos' Workforce Central and iSeries Timekeeper Software and who are maintaining such Products under Support Services with Kronos. The KnowledgePass Education Subscription provides access via the internet to certain educational offerings provided by Kronos (the "KnowledgePass Content"), including:
- Product and upgrade information for project teams and end users
 - Hands-on interactive instruction on common tasks
 - Self-paced tutorials covering a range of topics
 - Job aids
 - Knowledge assessment and reporting tools to measure progress
 - Webinars
- (b) **Term of Subscription:** The KnowledgePass Education Subscription shall run co-terminously with Customer's Support Term, provided Customer renews its KnowledgePass Education Subscription after the initial Support Term as provided below.
- (c) **Payment:** Customer shall pay an annual subscription charge for the KnowledgePass Education Subscription ("Subscription Charge") in accordance with the payment terms on the Order Form and/or this Agreement. Kronos will send Customer a renewal invoice for renewal of the KnowledgePass Education Subscription at least forty five (45) days prior to expiration of the Initial Support Term or then-current Renewal Term. KnowledgePass Education Subscription shall renew as described herein if Customer pays such invoice before the end of the Initial Term or any Renewal Term.
- (d) **Limitations:** Customer recognizes and agrees that the KnowledgePass Content is copyrighted by Kronos. Customer is permitted to make copies of the KnowledgePass Content provided in .pdf form solely for Customer's internal use and may not disclose such KnowledgePass Content to any third party other than Customer Personnel. Customer may not edit, modify, revise, amend,

change, alter, customize or vary the KnowledgeBase Content without the written consent of Kronos, provided that Customer may download and modify contents of Training Kits solely for Customer's internal use.

- (e) Train-the-Trainer Program (TTT)-Certification under the Train-the-Trainer Program is valid only for the point release of the Software for which the TTT Program is taken, and covers only the Customer employee who completes the TTT Program.

23. TERM AND TERMINATION:

- (a) **SSLSA TERM.**
This SSLSA begins on the Effective Date and continues for one year, unless earlier terminated as permitted herein ("Initial Term"). Thereafter, the SSLSA will automatically renew for successive one-year periods unless (i) either party provides the other with written notice of its intent not to renew at least 90 days before the end of the Initial Term or then-current Renewal Term or (ii) the SSLSA is otherwise terminated as permitted herein (each a "Renewal Term;" the Initial Term and all Renewal Terms, the "Term"). The foregoing notwithstanding, the SSLSA will automatically renew, regardless of a party's provision of written notice of its intent not to renew, if any Order Forms are still in effect as of the applicable renewal date and shall remain in full force and effect for the terms of such Order Forms.
- (b) **ORDER FORM TERM.**
Order Forms shall become effective as of the date of both parties' signature thereon, or such other date as indicated on the applicable Order Form. The term of each Order Form will be (i) as described in this Agreement; or (ii) as otherwise set forth in any Order Form. For clarity, if any Professional or Educational, Support, Equipment Support or other Services are terminated as permitted in this Agreement, and if any Order Form addresses only such terminated Services, such Order Forms shall be deemed terminated upon termination of the applicable Services. If any Order Form is terminated for convenience as permitted in this Agreement, Customer shall pay Kronos for all Products and Services delivered prior to the effective date of such termination.
- (c) **SSLSA TERMINATION.** Without limiting any termination rights set forth elsewhere in this Agreement:
- (i) Customer may terminate this SSLSA if:
- (A) Kronos materially breaches any of its obligations hereunder (excluding breach of obligations in Confidential Information (Section 24) and Data Privacy and Protection (Section 25)) and fails to cure such breach within 30 days after receipt of written notice from Customer reasonably specifying the nature of the breach;
- (B) Kronos breaches its obligations in Section 24 and/or 25 and fails to cure such breach within five business days after receipt of written notice from Customer reasonably specifying the nature of the breach; or
- (C) Kronos has, at any time during the preceding twenty-four (24) months and notwithstanding that Kronos may have corrected or cured the original issue giving rise to Customer's notice of breach or non-compliance sent four (4) or more notices of material breach to Kronos of or relating to this SSLSA or any and all Order Forms; termination to take effect within 30 days of Customer's provision of written notice to Kronos.
- (ii) Termination of this SSLSA shall automatically terminate any Order Forms (including any attached SOWs) still in effect as of the date of termination, except for any Order Forms solely for Software licensed perpetually to Customer and/or Equipment. If Customer terminates the SSLSA under this sub-section (i), Kronos shall promptly refund to Customer any prepaid but unused Support Fees, Support Charges, Monthly Services Fees and any other recurring fees or costs set forth in any Order Form for Professional Services not performed as of the date of such termination.
- (iii) Kronos may terminate this SSLSA if Customer breaches any of its obligations set forth in the SSLSA and fails to cure such breach within 30 days after receipt of written notice from Customer reasonably specifying the nature of the breach.
- (d) Either party may, by giving written notice to the other party, immediately terminate this SSLSA if (i) the other party's total long-term and short-term debt exceeds the total value of the party's assets as may be established through the lesser of (A) book value, (B) going concern value or (C) liquidation value; (ii) the other party is unable to pay its monetary obligations on a day-to-day basis, within ordinarily established credit terms as the debts become due and owing, (C) the other party makes a general assignment for the benefit of creditors, (D) the other party commences any case proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property, or (E) the other party becomes the subject of any proceeding of a type described in item (D) of this Section and fails to obtain a dismissal of such proceeding within sixty (60) days of its filing or entry.
- (e) **EFFECT OF TERMINATION.** Upon termination or expiration of this SSLSA for any reason:
- (i) For a period of up to one-hundred eighty (180) days (the "Transition Period"), Kronos shall provide Transition Services. "Transition Services" means services to assist Customer in moving from the Products or Hosted Environment (as applicable) to a replacement system or environment, reasonably sufficient to ensure that services provided by a third party or

by Customer similar to the foregoing can continue uninterrupted, including, as applicable, the removal of the Software, the migration of all Customer Content from the Hosting Environment to the new environment, and/or the prompt return to Customer in the format agreed upon by the parties of all Customer Content and, as applicable, Confidential Information. Customer shall pay Kronos on a time and materials basis for the Transition Services at Kronos then-current rate. Any unused but pre-paid Support, Monthly or other recurring Fees or Charges paid by Customer for Professional Services not performed by Kronos shall be applied as a credit against any amounts required to be paid by the Customer for Transition Services. All Transition Services shall be subject to the warranty and other provisions of this Agreement applicable to Services; and

- (ii) Sections 4 (General License Terms), 5(a) (Output), 8 (Permitted Copies), 14 (On-Premises Activities), 18 (Indemnification), 19(a)(v) (Kronos' Professional Liability Insurance), 23 (e) (Effects of Termination), 24 (Confidential Information), 25(a)(ii) and (iii) (Data Privacy and Protection), 26 (Limitation of Liability), 27(b) (Governing Law), 27(c) (Invalidity/Severability), will survive termination or expiration of this SSLSA as will Exhibit B Sections 9-11 (Indemnification, Service Level Agreement and Limitation of Liability), all of Customer's payment obligations for Services received and all of Kronos' obligations to refund certain fees or portions of fees.

24. CONFIDENTIAL INFORMATION

- (a) "Confidential Information" is defined as information that is disclosed between the parties after the Effective Date that is (i) not generally available to the public; and (ii) identified as "confidential" at the time of disclosure, or would be obvious to a reasonable party in the receiving party's position to constitute confidential information because of legends or other markings, by the circumstances of disclosure or the nature of the information itself. Additionally the Software (and Documentation) shall be deemed to be Kronos' Confidential Information and (iv) all Customer Content (as defined in Exhibit B) shall be Customer's Confidential Information. Each party shall protect the Confidential Information of the other party from unauthorized use or disclosure, theft, loss or corruption with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which each party utilizes for its own Confidential Information. Neither party shall disclose to third parties the other party's Confidential Information, except the parent company, or subsidiaries of the receiving party and the parties' respective Personnel who have a need to know such Confidential Information to allow a party to perform its obligations or, if Customer, to receive the full benefit of the Products and Services, provided all such entities and individuals are informed of the confidential nature of such Confidential Information. The obligation of confidentiality shall survive termination of this Agreement.
- (b) Each party may only use the other's Confidential Information to the extent necessary to (i) perform its obligations hereunder, or (ii) if Customer, to have the full benefit of the Products and Services (subject to the nondisclosure obligations stated in (a) above). In addition, each party shall be as liable for any unauthorized use or disclosure of the other's Confidential Information that it discloses to the permitted parties above as it would be for its own breach of this Section.
- (c) Confidential Information specifically excludes information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party, (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; or (d) is independently developed by the receiving party without use of the disclosing party's Confidential Information.
- (d) It will not be a violation of this Section if a party discloses the other's Confidential Information as required by applicable Laws (including a court order or subpoena); provided that the receiving party notifies the disclosing party of such requirement prior to disclosure sufficiently in advance to allow the receiving party to contest or seek to limit the disclosure or seek a protective order or similar instrument, and provided further that the receiving party only discloses the amount of Confidential Information required to be disclosed.
- (e) If notwithstanding a party's efforts to maintain the confidentiality of Confidential Information of the other Party, one or more of a party's Personnel or authorized subcontractors breach their respective confidentiality obligations, the party responsible for such Personnel or authorized subcontractor shall notify the other party and provide appropriate detail promptly after learning of same, and shall reasonably cooperate, at the responsible party's sole expense, in any resulting litigation against the breaching Personnel or contractor(s) or former Personnel or contractor(s).
- (f) Each party is and shall remain the sole owner of all right, title and interest in and to its Confidential Information, except for the limited permissions granted herein.
- (g) Each party acknowledges that its breach of the foregoing confidentiality obligations may cause great and irreparable injury for which there may be no adequate remedy at law. Accordingly, each party agrees that if such breach or threatened breach is proved by a party, such party shall be entitled to appropriate injunctive relief without the requirement to prove actual damages.

25. DATA PRIVACY AND PROTECTION REQUIREMENTS:

- (a) Kronos acknowledges and agrees that as part of its obligations hereunder, it or its authorized subcontractors or their respective Personnel will be required to Process ("Process" and its variants for purposes of this Section includes, without limitation, access, collect, record, organize, use, store, adapt, alter, retrieve, consult, transfer, disclose or destroy) information relating to us

identified or identifiable natural person on behalf of Customer or its affiliates or subsidiaries or any Customer Hotel (collectively, "Personal Information"). Kronos, in connection with this Agreement shall and shall cause its authorized subcontractors, and Kronos Personnel that Process such Personal Information to:

- (i) Comply with all data protection and privacy Laws in any relevant jurisdiction that are applicable to Kronos' Processing of Personal Information in accordance with this Agreement (together, the "Data Protection Laws");
 - (ii) agree that, as between the parties, all such Personal Information shall be deemed to be Confidential Information that is owned by Customer;
 - (iii) Process and retain this Personal Information only on the prior written instructions of Customer and only to the extent reasonably necessary for performance of this Agreement;
 - (iv) Implement reasonable technical and organizational measures to protect this Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access (including, without limitation, during disposal of such Personal Information), in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing;
 - (v) implement measures to protect Personal Information in compliance with the SSAE 16 SOC 1 Type II and the AICPA/ATITF SOC 2 Type II security standard in the Kronos Private Cloud environment for the security, availability and confidentiality criteria;
 - (vi) take reasonable steps to ensure the reliability of Personnel who have access to the Personal Information, including, without limitation that such Personnel are qualified to do so and have received proper training; and require such Personnel to comply with Kronos' obligations under this Data Privacy and Protection Requirements;
 - (vii) not disclose Personal Information to any person except (i) as required or permitted by this Agreement; (ii) with the prior written consent of Customer; or (iii) pursuant to an order or requirement of a court of law, administrative agency, or other governmental body, provided that Kronos gives reasonable notice to Customer in context such order or requirement;
 - (viii) promptly notify Customer of: (A) requests for information or complaints about the Processing of Personal Information; (B) requests for access to Personal Information; or (C) requests for Personal Information to be deleted or corrected;
 - (ix) fully cooperate with Customer regarding any of the items referred in Sections (vii) and (viii) above and provide Customer with information Customer reasonably requires to respond to requests or complaints of that or a similar nature (whether made to Customer, Kronos or a third party);
 - (x) Inform Customer immediately in case the Personal Information may be at risk from seizure (including, without limitation, for purposes of satisfying a debt), insolvency or bankruptcy measures or any other activities of third parties. Kronos shall in such cases inform all third parties that the Personal Information is the sole property of Customer;
 - (xi) not transfer Personal Information across national borders except (A) between the United States and Canada and the Region; (B) with the prior written consent of Customer; (C) in response to a user's client device's request when such user is accessing the Application Program from any country (but only as necessary to provide the access and use of such Application Program as described hereto; and (D) to the extent required for Kronos Personnel located in the European Union countries, China, India, Australia, and New Zealand to access such Personal Information for the purpose of performing Services hereunder; and
 - (xii) destroy or return to Customer all Personal Information in Kronos' control or possession within fifteen (15) days after expiration or termination of this Agreement.
- (b) Kronos shall also:
- (i) notify Customer within twenty four (24) hours should it become aware of any known breach of any of the foregoing subsections or any other breach of security or unauthorized disclosure of or access to any Personal Information of Customer has occurred (a "Breach");
 - (ii) perform an investigation to learn the cause of the Breach;
 - (iii) promptly take all steps necessary to remedy the event and prevent the Breach's recurrence; and
 - (iv) fully cooperate with Customer to comply with any notification requirements that may result from such Breach. Kronos shall document and maintain adequate retention processes and policies for all Breaches in accordance with all applicable legal and regulatory requirements.
- (c) Kronos shall provide, upon request of Customer, and at Kronos' own expense on at least an annual basis a copy of an

independent audit firm attestation, assurance and/or audit report covering Kronos's operations as a services organization providing Services and/or Products under this Agreement. Such reports shall include, but not be limited to, current SSAE 16, SOC 1 Type II and AICPA SOC 2 Type II Audit Reports for security, availability and confidentiality (or any successor or replacement reports hereafter provided for by the American Institute of CPAs (AICPA) or any successor organization.) If current reports are not available, an Assertion of Kronos Incorporated, signed by Kronos's senior management, that the controls and outcomes detailed in the most recent SOC 1 and SOC 2 reports, unless otherwise specified, remain in place and operating effectively and with no material change since the most recent report.

26. LIMITATION OF LIABILITY

- (a) EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED BY BOTH PARTIES.
- (b) EXCEPT FOR KRONOS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 18(a)(i)-(v), 18(b) and 18(c), AND EXCEPT FOR KRONOS' BREACH OF SECTION 24 (CONFIDENTIALITY) NOT GIVING RISE TO A CLAIM FOR WHICH KRONOS' IS REQUIRED TO INDEMNIFY CUSTOMER UNDER 18(a) OR 18 (c) OF THIS AGREEMENT, CUSTOMER'S BREACH OF THE LICENSES GRANTED TO SOFTWARE AND FIRMWARE AND EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (the "EXCLUDED CLAIMS"), (1) IN NO EVENT SHALL EITHER PARTY OR ITS PARENTS, SUBSIDIARIES, AFFILIATES, OR, IF CUSTOMER, THE CUSTOMER HOTELS, LIABILITY TO THE OTHER, HOWEVER CAUSED, EXCEED THE SUM OF \$4,500,000 IN THE AGGREGATE, AND (2) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

27. GENERAL

- (a) By executing this Agreement, Kronos agrees that it will abide and be bound by Customer's Supplier Code of Conduct, located at <http://www.fvmt.com/SupplierCodeOfConduct>.
- (b) This Agreement shall be governed by Illinois law. The parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of this Agreement.
- (c) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.
- (d) Customer shall not assign this Agreement or the license to the Software to any party who is not an affiliate of Customer without the prior written consent of Kronos and any purported assignment, without such consent, shall be void; provided however that any such affiliate agrees in writing to be bound by this Agreement, and that Customer provides Kronos with written notice of such assignment. Kronos may assign this Agreement in connection with a merger, reorganization or sale of all or substantially all of its assets, provided that Customer is notified of the transaction as soon as possible around the closing of the transaction. Customer may terminate this Agreement without penalty or liability, upon receipt of notice of such assignment by providing written notice to Kronos or the designated assignee. If Customer does not terminate this SLSA for such assignment, Kronos agrees that the assignment shall require the surviving entity or purchaser to expressly assume this Agreement and Kronos' obligations hereunder and, if requested by Customer, acknowledge such assumption in writing. Any purported assignment, in contravention of these provisions shall be void. Kronos may use subcontractors to perform its obligations hereunder provided, however, that Kronos shall be so liable to Customer for the acts or failures to act of such subcontractors as it would be for its own and, further, that the use of such subcontractors does not in any way relieve Kronos of its obligations hereunder. Liability among Kronos and such subcontractors shall be joint and several.
- (e) For clarity, each party acknowledges and agrees that nothing in this Agreement is intended or will be interpreted to prohibit or limit either of them from participating in similar business arrangements as those described herein with third-parties.
- (f) Neither party shall be liable for failures or delays in performance due to causes beyond its reasonable control making it illegal or impossible for a party to so perform or to timely perform, as applicable, including war, strikes, lockouts, fire, flood, storm or other acts of God (each a "Force Majeure Event"). Both parties agree to use their best efforts to minimize the effects of such failures or delays.
- (g) All notices given under this Agreement shall be in writing and sent postage pre-paid, if to Kronos, to the Kronos address on the Order Form, or if to Customer, to the billing address on the Order Form.
- (h) The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

- (i) The parties agree that if this Agreement is delivered via fax or electronically delivered via email it shall constitute a valid and enforceable agreement.
- (j) This Agreement and any information expressly incorporated herein (including information contained in any referenced URL), together with the applicable Order Form, constitute the entire agreement between the parties for the products and services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos may disclose to customers certain confidential information regarding general product development direction, potential future products and/or product enhancements under consideration, Customer is not entitled to any products or product enhancements other than those contained on the Order Form. Customer has not relied on the availability of any future version of the Software or Equipment identified on an Order Form, nor any other future product in executing this Agreement.
- (k) Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (c)(1)(2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, as applicable. Manufacturer/distributor is Kronos Incorporated, 237 Billerica Road, Chelmsford, MA.

DATED: 9/12/2014

ACKNOWLEDGED AND AGREED TO BY THE PARTIES AS OF THE EFFECTIVE DATE

CUSTOMER: HYATT CORPORATION

BY: Sam Larsen

NAME: SAM LARSEN

TITLE: IT PROCUREMENT MANAGER

KRONOS INCORPORATED

BY: [Signature]

NAME: John O'Brien

TITLE: Sr. Vice President, Global Sales

**EXHIBIT A
COUNTRIES**

Argentina*
Aruba
Brazil**
Canada
Chile*
Costa Rica
Mexico
Panama
Trinidad & Tobago
United States

* Depot Exchange Equipment Support Services option is not available in these countries.

** Equipment and Equipment Support Services are not available in this country.

(the "Region")

**EXHIBIT B
APPLICATION HOSTING
SUPPLEMENTAL TERMS AND CONDITIONS**

I. DEFINITIONS

"Application Hosting Program" or "Application Program" means (i) accessibility to all modules and components of the Kronos hosted Software, as set forth in the Cloud Services SOW, by means of access to the password protected Customer-dedicated area of the Kronos Hosting Environment, and (ii) all Hosting Related Services.

"Cloud Services Commencement Date" shall, except as otherwise provided in writing in a Cloud Services SOW or Order Form signed by the parties, mean the earlier of (a) the date the applicable Software is transferred to the Hosted Environment, as mutually agreed by the parties in writing or (b) 90 days after the Effective Date. Notwithstanding the foregoing, the Services Commencement Date for Software hosted in a Temporary Environment shall commence seven (7) days after the Effective Date.

"Cloud Services Term" has the meaning given it in Section 12 of this Exhibit.

"Content" means all content Customer, or others authorized by Customer, including Customer Personnel, posts or otherwise inputs into the Application Program, including but not limited to information, data (such as payroll data, vacation time, and hours worked), designs, Customer Trademarks, text, multimedia images (e.g. graphics, audio and video files), compilations, software programs, third party software, applications, or other materials, or any other Customer content shared or processed on equipment in the Hosting Environment.

"Customer Trademarks" means any trade name, trademark, logo, tagline or similar designation of the source or origin of goods and services provided to Kronos hereunder and including any such designation containing the word "Hydri."

"Hosting Environment" means the servers, software, equipment, programs, cabling and any other technology used by Kronos (including by its Suppliers) to provide the Application Program.

"Hosting Related Services" means certain services set forth in a statement of work containing hosted related services (the "Cloud Services SOW") attached to the related Order Form, such as hosting infrastructure, equipment, bandwidth, server monitoring, backup services, reporting services, storage area network (SAN) services, load balancing services, security services, system administration, connectivity services, performance tuning, Service Pack installation and all Professional and/or cloud Services and maintenance services related to hosting if set forth therein.

"Initial Cloud Term" means the initial term for which Kronos shall provide the Application Program to Customer and as set forth in the applicable Cloud Services SOW executed by Customer.

"Internal Use" means the use of the Application Program: (i) by Customer Personnel solely for Customer's internal business purposes and (ii) by any such authorized Customer Personnel to process information relating to Customer Personnel assigned to, or potential employees of, Customer's business unit(s), solely for the internal business purposes of such business unit(s).

"Monthly Service Fee(s)" means the monthly fees described in the Cloud Services SOW and set forth on the applicable Order Form, which shall include all Hosting Related Services fees.

"Production Environment" means a permanent Hosting Environment established for the daily use and maintenance of the Application Program in a live Hosting Environment throughout the Cloud Services Term.

"Service Description" means the detailed service description (including any supplementary service terms) specified in the Cloud Services SOW which sets forth the specific Application Program to be provided to the Customer.

"SLA(s)" means a service level agreement offered by Kronos for the Production Environment and attached to this Addendum as Attachment A which contains key service maintenance standards and commitments that apply to the Application Program as detailed in the Service Description.

"SLA Credit" means the credit calculated in accordance with the SLA and offered by Kronos in the event of outages, interruptions or deficiencies in the delivery of the Application Program that result in a failure to meet the terms of the applicable SLA.

"Startup Fee" means the one time, Customer-specific startup fee as indicated on the Order Form that will be charged to Customer to enable access to the Application Program.

"Supplier" means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Hosting Environment.

"Temporary Environment" means a transient database environment created to serve limited purposes for a limited time period, and identified in the applicable Cloud Services SOW as a Temporary Environment.

2. CLOUD SERVICES STATEMENT OF WORK

The Services Description of the particular Program(s) ordered by the Customer, the Initial Cloud Term, the Monthly Service Fee, the Support Fees, the Startup Fees and other fees, if any, applicable to an Application Program will be set forth in their entirety in one or more applicable Cloud Services SOW and Order Forms. Kronos will not change the Monthly Service Fee it charges for the same Application Program, or change the SLA, during the Initial Cloud Term. Kronos may change such Monthly Service Fee to take effect at the beginning of any Renewal Term by notifying Customer at least sixty (60) days prior to the expiration of the then current term. SLAs are only available in a Production Environment and may not be modified for a period of five (5) years from the Effective Date. Unless the Cloud Services SOW indicates that an Application Program is to be implemented in a Temporary Environment, the Application Program will be implemented in a Production Environment.

3. AUTHORIZED USE

Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Application Program, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Exhibit.

4. UPDATES

Except for Service Packs to address security vulnerabilities (for which Kronos will provide 48 hours prior notice before automatically installing), all other Updates to Application Program will not automatically install; Kronos will notify Customer in advance of any such Updates and provide Customer the opportunity to delay installation or implementation until such time as Customer determines Updates can be installed or implemented provided however that Customer may not delay installation or implementation such that Kronos no longer supports the Point Release of the Application Program which is then currently installed.

5. MAINTENANCE ACCESS

If Kronos, its Supplier, or the local access provider, as applicable, requires access to Customer sites in order to maintain or repair the Application Program, Customer shall reasonably cooperate in a timely manner and provide such access in accordance with the license granted above.

6. SUSPENSION; CUSTOMER REPRESENTATIONS AND WARRANTIES; CUSTOMER OBLIGATIONS

4.1 Customer will make reasonable efforts to provide Content that: (a) does not infringe or violate any third-party right, including (but not limited to) intellectual property, privacy, or publicity rights; (b) is not abusive or profane, is a reasonable person; and (c) is not hate speech or threatening. If Kronos determines that any of Customer's Content violates the foregoing restrictions, it shall promptly notify Customer in writing thereof and the parties shall negotiate in good faith to determine whether or how such Content may be modified and whether it should be removed from the Hosting Environment. Without limiting the foregoing, if Kronos reasonably believes that Content provided in violation of the foregoing is likely to expose it to civil or criminal liability, it may, upon notice to Customer, temporarily suspend Customer's access to the Application Program and temporarily remove the objectionable Content at which point access will be restored while the parties cooperate in good faith as described herein.

4.2 Customer will, at its own cost and expense, provide all end user equipment, operating systems, and software (including a web browser) not provided by Kronos and needed to access and use the Program in accordance with the technical requirements set forth in the Cloud Services SOW. Customer will also provide, at its own cost and expense, all Internet connections from the Customer Systems to the Application Program, which shall include all related costs associated with Customer's connection to the Application Program, unless such connectivity services are purchased from Kronos as indicated on the Cloud Services SOW and Order Form.

4.3 Customer shall not, and shall not permit any Customer Personnel to: (a) retransmit, republish, distribute or otherwise provide access to the Application Program to any third party; (b) use the Application Program on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (c) alter, enhance or make derivative works of the Application Program (provided that any materials resulting from Customer's use of the Application Program or its components as intended by this Agreement (e.g. the generation of reports, entry, storage and modification of Customer Content, etc. shall not be considered "derivative works" hereinafter); (d) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Application Program or any Software components of the Application Program; (e) use, or authorize the use of, the Application Program in contravention of any federal, state, local, foreign or other applicable Laws; (f) intentionally introduce into the Application Program any virus or other code or routine intended to disrupt or damage the Application Program, alter, damage, delete, retrieve or record information about the Application Program or its users not permitted hereunder; or, (g) otherwise act in a fraudulent or malicious manner when using the Application Program.

7. INTERNET ACCESS

7.1 If Customer uses open Internet connectivity or Customer-supplied VPN Internet connections to access the Application Program, Customer acknowledges that the performance and throughput of the Internet connection cannot be guaranteed by Kronos, and variable connection performance may result in Application Program response variations.

7.2 Customer hereby acknowledges that the Internet is not owned, operated, managed by, or in any way affiliated with Kronos, its Suppliers or any of its affiliates, and that it is a separate network of computers independent of Kronos. Access to the Internet is dependent on numerous factors, technologies and systems, many of which are beyond Kronos' authority and control. Customer acknowledges that Kronos cannot guarantee that the Internet access services chosen by Customer will meet the level of up-time or the level of response time

that Customer may need. Customer agrees that its use of the Internet access services and the Internet is solely at its own risk, except as specifically provided in this Exhibit, and is subject to all applicable local, state, national and international Laws.

2. FEES AND PAYMENT TERMS

2.1 In consideration of the delivery of the Application Program, Customer shall pay Kronos the Monthly Services Fee as defined in the applicable Order Form. The Monthly Services Fee shall begin to accrue on the Cloud Services Commencement Date, and shall be invoiced monthly in advance. In addition, Customer shall be billed the Startup Fee and any additional fees set forth in the applicable Order Form monthly as they are incurred. Customer acknowledges that the Monthly Services Fee commencement date may not coincide with implementation completion, final configuration, or go-live.

2.2 All undisputed fees payable hereunder shall be paid in United States Dollars and sent to the attention of Kronos as specified on the invoice. Payment terms shall be net 30 days following receipt of invoice. All overdue payments shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. Customer is responsible for all Taxes relating to the Program pursuant to Section 3 of the Agreement.

2.3 SLA Credits, if any, which are due and owing to a Customer under an SLA for a particular month of the Application Program shall be applied to the Monthly Service Fee invoice issued by Kronos for the month following the month in which the SLA Credits were earned if the applicable Order Form (i.e. for the Application Program) has not been terminated. If the applicable Order Form has been terminated for Kronos' unexcused breach, Kronos will issue Customer a refund in the amount of any uncredited SLA Credits. SLA Credits will appear as a credit memo to be applied against future invoices or refunded as provided herein.

3. INDEMNIFICATION

In addition to Customer's indemnification obligations elsewhere in the Agreement, Customer shall indemnify, defend and hold Kronos harmless from and against any Claims brought, asserted or alleged by a third-party, or incurred by it as a result of such third-party Claims to the extent arising out of or relating to (a) the configuration of the Application Hosting Program to meet Customer's requirements; (b) infringement of any third-party intellectual property right caused by Customer's modification or combination of the Application Program with other services, software or equipment not furnished, recommended or authorized by Kronos, provided that but for such modification and/or combination the Claim would not have been brought; or, (c) infringement of any third-party intellectual property right, right of publicity or right of privacy by the Customer's Content; or (d) obscene, defamatory, libelous, or slanderous content or any other content that violates applicable Laws contained within Customer's Content which was included in the Customer's Content. For clarity, the terms of section 18(e) of this Agreement shall apply equally to Claims for which Customer is required to indemnify Kronos hereunder.

4. SERVICE LEVEL AGREEMENT.

EXCLUDING KRONOS' INDEMNIFICATION OBLIGATIONS AND CUSTOMER'S RIGHT TO TERMINATE THIS AGREEMENT OR THE AFFECTED ORDER FORM AS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND/OR THE SLA, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY SERVICE OUTAGE, INTERRUPTION OR DEFICIENCY OF SERVICE(S) DESCRIBED IN AN SLA AND/OR FAILURE BY KRONOS TO MEET THE TERMS OF AN APPLICABLE SLA, SHALL BE THE REMEDIES PROVIDED IN THE SLA. KRONOS DISCLAIMS ANY AND ALL OTHER LIABILITIES OR REMEDIES FOR SUCH OUTAGES, INTERRUPTIONS OR DEFICIENCIES OF SERVICES.

5. LIMITATION OF LIABILITY

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE SLSA, AND EXCEPT FOR LIABILITY ARISING OUT OF OR RELATING TO THE EXCLUDED CLAIMS, KRONOS DISCLAIMS ANY AND ALL LIABILITY AND SERVICE CREDITS, INCLUDING SUCH LIABILITY RELATED TO A BREACH OF SECURITY OR DISCLOSURE, RESULTING FROM ANY EXTERNALLY INTRODUCED VIRUS, CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT OR SOFTWARE OR SYSTEMS, OR MACHINE ERROR.

6. DATA SECURITY

12.1 Without limiting Kronos' obligations set forth elsewhere in the Agreement, as part of the Application Program, Kronos shall provide those security-related Services described in the Cloud Services SOW. Customer acknowledges that the security-related Services endeavor to mitigate breaches of security, unauthorized access to or use of Customer Content and unauthorized deletion, corruption or modification of the Customer Content (each a "Security Incident"), but such Security Incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular security-related Service as just one tool to be used as part of an overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy and data protection Laws governing their respective activities under the Agreement.

12.2 For clarity, Kronos shall have sole responsibility for maintaining the Hosting Environment as set forth herein, and otherwise in an appropriate environment in accordance with the AICPA SOC 2 Type II (or any successor or replacement reports hereafter provided for by the American Institute of CPAs (AICPA) or any successor organization) standard throughout the term. Without limiting any of Kronos' specific obligations with regard to the Hosting Environment set forth herein or in any Order Form, the Hosting Environment (or its physical environment) will contain (a) system redundancy to ensure against hardware failures; (b) power redundancy in the event of power failure; (c) a properly functioning HVAC system; (d) appropriate anti-virus software capable of protecting the system from Viruses; and (e) appropriate

firewall protection restricting all forms of network traffic other than what is necessary to access and use the Hosted Environment. Kronos shall notify Customer according to Section 23(b) of the SLA if it discovers (i) any unauthorized use of or access to the Hosting Environment; (ii) the recognition or introduction of any Virus; or (iii) any other similar security incident affecting Customer.

12.3 Customer will ensure that the transfer of any Personal Information to Kronos and Kronos' storage thereof in the Hosting Environment complies with applicable Data Protection Laws, including, if applicable, any such laws requiring Customer to obtain consent from individuals for such transfer and storage.

13. TERM AND TERMINATION

13.1 At the expiration of the Initial Cloud Term, the applicable Order Form shall automatically renew for successive one year periods unless (a) earlier terminated as permitted herein; or (b) either party provides notice of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term, if Customer, and ninety (90) days, if Kronos. Kronos may suspend Customer's access to the Application Program in the event of any breach by Customer of the terms of this Exhibit that remains uncured for 30 days after receipt of such notice reasonably specifying the nature of the breach. If Customer fails to cure such breach within an additional 30 days after access to the Application Program is suspended, Kronos may terminate the applicable Order Form upon written notice to Customer. No Application Program interruption shall be deemed to have occurred during, and no SLA Credits shall be owed for, any authorized suspension of the Application Program.

13.2 Customer may terminate the any Order Form for an Application Program by written notice at any time during the Term if Kronos materially breaches any provision of this Exhibit, and such default is not cured within ten (10) days after receipt of written notice from Customer. In the event of such termination by Customer, (a) Customer shall pay Kronos within thirty (30) days all Monthly Services Fee (if any) then due and owing for the Application Program prior to the date of termination; and (b) Kronos shall refund any pre-paid but unused Monthly Services Fee.

13.3 Customer may terminate any Order Form for an Application Program for convenience upon at least less than ninety (90) days prior written notice to Kronos.

13.4 In the event of termination of any Order Form for an Application Program by Customer for convenience or by Kronos For Cause during the Initial Cloud Term, Customer will pay to Kronos an early termination fee based on the following calculation: one (1) month of the then-current Monthly Services Fee for every twelve (12) month period (or portion thereof) remaining in the Initial Cloud Term. By way of example only, if Customer terminates the applicable Order Form for convenience with fifteen (15) months remaining in the Initial Term, Customer will be responsible to pay Kronos two (2) months of the then-current Monthly Services Fee.

13.5 If any Order Form for any Application Program is terminated, Kronos shall provide Transition Services as described in Section 23(e) of the Agreement.

14. ACCESS OUTSIDE OF THE REGION.

Kronos acknowledges and agrees that Customer Personnel may access and use the Application Program when located in countries outside the Region and that such access and use will not be considered a breach of the license granted to such Application Program.

15. USE OF CUSTOMER TRADEMARKS.

During the Cloud Services Term, Customer grants to Kronos a non-exclusive, non-transferable right to reproduce, publish, perform, display and distribute the Customer Trademarks within the Hosting Environment solely as necessary to perform its obligations under this Agreement and solely as provided by Customer as part of the Customer's Content. In addition, Kronos will use all such Customer Trademarks in accordance with any usage guidelines (including any modifications thereto) set forth by Customer if and when periodically disclosed to Kronos. All proposed uses shall be submitted to Customer for review and approval and no Customer Trademarks may be used in any manner prior to receiving written approval from Customer. All goodwill arising out of Kronos' use of any of the Customer Trademarks will inure exclusively to the benefit of Customer. If Customer reasonably objects to the manner and means in which Kronos uses any of the Customer Trademarks hereunder, Kronos will promptly take such action as Customer may reasonably direct to address and remedy any such objection(s).

ATTACHMENT 1 TO EXHIBIT B SERVICE LEVEL AGREEMENT (SLA)

Service Level Types: SLAs are only applicable to Production Environments. The Program, in a Production Environment, as described in the Service Description is provided with the following service level ("Service Level"):

99.90% Application Availability

Service Levels/Credit Calculation: An Outage will be deemed to commence when Customer opens a case with Kronos Global Support via the Customer Portal or as otherwise set forth herein, or Kronos Cloud Services receives an automatically generated application availability alert. The Outage will be deemed to end when Availability of the Program has been restored. Failure to meet the above Service Level will entitle Customer to credits as follows ("Credits").

99.90% Application Availability SLA - Production Environment	
Uptime percentage (as measured in a calendar month)	Credit as Percentage of Monthly Hosting Fees
The amount of the Credit will be determined as follows:	
<99.90 to 99.90%	10%
<99.90% to 99.75%	15%
<99.75% to 99.50%	20%
<99.50% to 99.25%	35%
<99.25% to 99.00%	50%
<99.00%	75%

$$\text{Application Availability} = ((MM - TM) * 100) / (MM)$$

Definitions

"Available" or "Availability" means the Program is fully accessible and operating substantially in compliance with Specifications

"Emergency Maintenance" means Application Program/Hosted Environment maintenance that must be conducted by Kronos outside of the Scheduled Maintenance periods to prevent or mitigate clearly evidenced, significant and time-sensitive or urgent damage, risk or threat (or potential damage, risk or threat) to the Application Program or Hosted Environment.

"Excluded Event" means any event that adversely impacts the Program that is directly caused by: (a) the acts or omissions of Customer, or the Customer Personnel; (b) failure or malfunction of equipment, applications or systems not owned, controlled or operated on behalf of Kronos or Supplier; (c) Force Majeure Events; (d) Scheduled or Emergency Maintenance; (e) any suspension of Customer's access to the Program in accordance with the terms of the Agreement; (f) Customer's (including Customer Personnel's) use of the Application in a manner that violates any requirements in any Documentation provided by Kronos; or (g) any other exclusionary circumstances specified in the applicable Cloud Services SOW.

"Monthly Minutes (MM)" means total minutes in a calendar month which the Application Program was scheduled to be Available.

"Outage" means the accumulated time during which the Application Program is not Available for reasons other than any Excluded Events.

"Scheduled Maintenance (SM)" means scheduled maintenance periods as set forth below and established by Kronos to provide ample time to maintain and update the Application Program(s), when necessary. During these maintenance periods, the Application Program(s) are available to Kronos to perform periodic services, which include vital software Updates. Systems will generally continue to be available to Customer; however, some changes will require planned downtime. Kronos will provide notice for planned downtime via an email notice to our primary Customer contact at least one day in advance of such shutdown/restart so planning can be facilitated by Customer.

When application maintenance is required, current Scheduled Maintenance periods for the applications are:

Tuesday through Friday 4am - 6am
Saturday and Sunday 12am - 6am

- All times listed are U.S. Eastern Time.
- As indicated above, Outages to the extent caused by Kronos' utilization of the above Scheduled Maintenance windows shall not trigger Credits to Customer.

"Total Minutes Not Available" (TM) means the total number of minutes during the calendar month that the Program is not Available outside of scheduled maintenance windows.

Limitations and Additional Terms:

- Kronos shall provide Customer forty eight (48) hours advance notification of any Scheduled Maintenance.
- Kronos will provide industry standard efforts to schedule all Scheduled Maintenance at a mutually agreed time within the windows set forth above or as otherwise requested by Customer. Global environmental Updates that affect the entire hosting environment population will be scheduled according to standard process within the Scheduled Maintenance windows with 48 hour prior notification. Kronos will use industry standard efforts to minimize all Scheduled Maintenance that will conflict with Customer's business operations.
- If Credits accrued in any calendar month exceed, in the aggregate across all service levels and events, one hundred (100%) of the invoice amount for the Monthly Hosting Fees for the affected Program, Kronos will credit such additional amounts to the next invoice.
- The Service Level Agreements in this Exhibit, and the related Credits listed, apply on a per Program basis. For the avoidance of doubt, Outages, delays, failures, etc. in one Program may not be added to Outages, delays, failures, etc. in any other Program for purposes of calculating Credits.

Right to Termination for Repeated Failure of Application Availability

If Kronos fails to achieve the Application Availability (99.90%) obligation two (2) times or more in any six (6) month period, then Customer may elect to terminate any or all of the Application Program Order Form and/or the Agreement for convenience without prior notice. Customer will not be entitled to a refund of any pre-paid monies if it terminates the Application Program Order Form and/or the Agreement under this Section. Nothing contained herein shall limit Customer's rights to terminate this Agreement for cause should Kronos breach any other obligation under this Agreement.

EXHIBIT C
Equipment Support Services Terms

- (A) **SELECTION.** Customer may select, as indicated on an Order Form and from the Equipment Support Services made available by Kronos (if any), Equipment Support Services. Kronos represents and warrants that Equipment Support Service shall be available for the Equipment in the Region as indicated in Exhibit A. Customer acknowledges and agrees that Equipment Support Services may not be available for all Equipment; Equipment for which Equipment Support Services are available will be so indicated on the applicable Order Form. Kronos shall provide Equipment Support Services offering as specified in this Agreement.
- (B) **TERM.** Equipment Support Services have a term of one (1) year commencing upon the expiration of the applicable Warranty Period, as specified in the Agreement ("Equipment Support Initial Term"). Equipment Support Services will be automatically extended for additional one year terms on the anniversary of their commencement date (each period an "Equipment Support Renewal Term"; the Equipment Support Initial and all Renewal Terms, together, the "Equipment Support Term"), unless (1) either party terminates the Equipment Support Services, the Agreement or any affected Order Form as permitted herein; or (2) both given the other at least thirty (30) days written notification of its intent not to renew, if Customer, and at least ninety (90) days if Kronos, before the end of the Equipment Support Initial Term or then-current Equipment Support Renewal Term. Kronos may change the annual Equipment Support Services charges ("Equipment Support Charges") effective at the end of the Equipment Support Initial Term or effective on the first day of the succeeding Equipment Support Renewal Term, by giving Customer at least sixty (60) days prior written notification.
- (C) **PAYMENT**
- (1) Customer agrees to pay the Support Charges as set forth on the Order Form for each piece of Equipment listed. Customer agrees that all Equipment of the same type that are owned by the Customer, including without limitation Customer's "Spare Products" (as defined below), will be covered under any purchased Equipment Support Services. Customer agrees that if Customer purchases, via Order Form, during the applicable Equipment's Equipment Support Term, any Equipment of the same type as those specified on an existing Order Form for which Equipment Support Services have been purchased, such additional Equipment shall be covered by the existing applicable Equipment Support Services for the existing applicable Equipment Support Term. Customer agrees to pay prorated Equipment Support Charges for such additional Equipment during the Initial Term and agrees to pay the full Equipment Support Charges for such additional Equipment, during any Equipment Support Renewal Term.
 - (2) Kronos will invoice Customer for the Equipment Support Charges each year. Equipment Support Charges invoiced after the beginning of the Equipment Support Initial Term will be invoiced sufficiently in advance of the start of the applicable Equipment Support Renewal Term to allow Customer to (a) make timely payment without lapse in coverage; and (b) determine whether Equipment Support Services will be renewed or terminated without Customer's incurring any liability for such charges. Customer will pay Kronos within thirty (30) days of receipt of invoice. In addition, each party shall be responsible for their respective freight charges as provided in Section D below.
- (D) **EQUIPMENT SUPPORT SERVICE**
- (1) **Depot Exchange and Depot Repair.** Upon the failure of installed Equipment to comply with Specifications or as otherwise permitted hereunder, Customer shall notify Kronos of such failure, and Kronos will provide remote fault isolation Services at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the issue. Unless the Equipment is determined by Kronos in its reasonable discretion to be in conformity with Specifications (i.e. an failure to defect attributable to Equipment), the issue shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number ("RMA") for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos; Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and can be found at <https://customer.kronos.com/contact/contact-phone.aspx> and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies. Service packs for the Equipment (as described in subsection (b) below) are included in both Depot Exchange and Depot Repair Support Services.
 - (a) **Depot Exchange:** Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location identified by Customer as described below and as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

- (b) **Depot Repair:** Upon failure of installed Equipment as described above, Customer shall install a Spare Product to replace the failed Equipment. Customer shall then return the failed Equipment, with the required RMA (which will be provided to Customer as set forth above), to the applicable Kronos Depot Repair Center. Customer shall make reasonable efforts to return the failed Equipment using the same or substantially similar packing materials in which the original Equipment was sent. Customer shall also specify the address to which the repaired Equipment should be return shipped. Upon receipt of the failed Equipment, Kronos shall repair the failed Equipment and ship it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Equipment by regular surface transportation to Customer.
- (2) Kronos warrants that all repairs performed under this Exhibit shall be performed in a professional and competent manner. In the event of a breach of this warranty, the exclusive remedy of Customer and sole liability of Kronos shall be replacement of the repaired Equipment, including Customer's right to terminate for Kronos' uncurbed breach, Kronos' indemnification obligations and remedy for breach of any other provision of this Agreement (if such acts or omissions also breach such provisions).
- (3) **Firmware Updates Only.**
- (a) Customer shall be entitled to receive as part of the Equipment Support Services (and covered by the Equipment Support Charges):
- (a) Service Packs for the Equipment (which may contain system software updates, firmware updates, security updates, and feature enhancements, as such are made generally commercially available by Kronos to its similarly situated customers) available for download at the Customer Portal; and
 - (b) Access to the Kronos Support Services Center for the logging of requests for assistance downloading service packs for the Equipment.
- (b) Service Packs for the Equipment are not installed by the Kronos Depot Repair Center but are available for download via the Customer Portal, provided Customer has purchased Equipment Support Services.
- (c) Kronos warrants that all service packs and firmware updates provided under this Agreement shall materially perform in accordance with the Kronos published specifications for so long as the Equipment is covered by Support Services and for a period of ninety (90) days after download by Customer, whichever is longer. In the event of a breach of this warranty, Customer's exclusive remedy shall be Kronos' repair or replacement of the deficient service pack(s) or firmware update(s), at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the specifications.
- (2) **RESPONSIBILITIES OF CUSTOMER**
- It is Customer's responsibility to purchase and retain, in accordance with the terms of this Agreement, a sufficient number of spare products ("Spare Products") to allow Customer to temporarily replace failed Equipment at Customer's locations in order for Customer to continue its operations while repairs are being performed and replacement Equipment is being shipped to Customer. For each of the Depot Exchange and Depot Repair Equipment Support Services options, Customer agrees that it shall return failed Equipment promptly as the failures occur and that it shall not hold failed Equipment and send failed Equipment to Kronos in "batch" which shall result in a longer turnaround time to Customer. In addition, Customer agrees to:
- (1) Maintain the Equipment in an environment conforming to the Specifications for such Equipment;
 - (2) Not perform self-repairs on the Equipment (i.e., replacing components) without prior written authorization from Kronos;
 - (3) De-install all failed Equipment and install all replacement Equipment in accordance with Kronos' Documentation and/or Specifications;
 - (4) Ensure that the Equipment is returned to Kronos packaged as required hereunder; and
 - (5) Obtain an RMA before returning any Equipment to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Equipment authorized under that RMA by Kronos when issuing the RMA.
- (F) **EXCLUSIONS**
- Equipment Support Service does not include the replacement of "consumables" (i.e., batteries). In addition, Equipment Support Service does not include the repair of damage, and Customer will not attempt to return damaged Equipment, to the extent the damage causing the failure to conform with Specifications is resulting from any of the below. In addition, and for clarity, Professional Services provided by Kronos in connection with the installation of any Equipment or to update the Service Packs or Firmware, if requested by Customer, are not covered by Equipment Support Services:
- (1) Any cause in the external environment of the Equipment including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
 - (2) Customer's failure to continually provide a suitable installation environment (as indicated in the Specifications and/or Documentation) including, but not limited to, adequate electrical power;
 - (3) Customer's improper use, relocation, packaging, or refurbishing of the Equipment or other failure to use Equipment in accordance with the Specifications;
 - (4) Customer's use of the Equipment for purposes other than those for which they are designed or intended under the applicable Order Form, or the use of accessories or supplies not approved by Kronos;

- (5) Laws preventing the shipment of the Equipment; or
 - (6) Customer's repair, attempted repair or modification of the Equipment without Kronos' written authorization.
- (G) **DELIVERY** For the Depot Exchange Support option, Kronos bears all costs, duties, Taxes, and risks of loss, and with title passing upon delivery to the identified destination for all shipments to and from the Customer. For the Depot Repair Support option, Customer bears all costs and risks of loss, and with title passing upon delivery to the identified destination for all shipments to and from Kronos.
- (H) **DEFAULT, SUSPENSION, REINSTATEMENT TERMINATION.**
- (1) Under the Depot Exchange Support option, Kronos may suspend Equipment Support Services if Customer does not ship Failed Equipment to Kronos within ten (10) business days of receipt of the Replacement Equipment. Kronos will restore Equipment Support Services upon return of such Failed Equipment at no additional cost to Customer or upon payment at the then-prevailing Kronos list price for such unreturned Failed Equipment, at Customer's option. The applicable Equipment Support Services Term shall not be extended or affected by any such suspension.
 - (I) In the event that Customer allows Equipment Support Services to lapse (but not if Kronos suspends such services, as described above) or if Customer did not originally purchase Equipment Support Services and wishes to procure such services, the parties will execute an Order Form to that effect. Unless otherwise set forth in the applicable Order Form Customer must pay (i) a pro-rated amount of the applicable Equipment Support Charges at the price for such lapsed or unprocured time period for which the Equipment was not on support; and (ii) the actual Equipment Support Charges at the then current list price for the applicable Equipment, plus an additional twenty per cent (20%) of the Equipment Support Charges in order to reinstate or procure Equipment Support Services that have lapsed or which Customer did not purchase when executing the Order Form for the applicable Equipment.
 - (J) Customer may terminate Equipment Support Services if Kronos is in default under this Agreement with regard to such Equipment Support Services, and such default is not corrected within thirty (30) days after written notice. Kronos may terminate Equipment Support Services if Customer defaults under this Exhibit, and such default is not corrected within thirty (30) days after written notice.

EXHIBIT D
Additional Support Service Terms

For the purposes of this Exhibit, Kronos may be referred to as "we" and Customer as "you."

- (A) **Definitions.** Version, Release, and Service Pack are defined as follows:
Version: A Software upgrade that includes major new features or functionality.
Release: A Software upgrade that includes minor new features or functionality.
Service Pack: One or more defect repairs bundled into a single Update. Service packs are cumulative - Service Pack N will, at minimum, include all of the changes delivered in Service Pack N-1.

The Software Update Hierarchy is: Version . Release . Service Pack

- (B) **Timekeeper Central.** Kronos only provides "defect repairs" for the current release of the Software.
- (C) **Updates.** Customers electing to undergo a major platform upgrade migration (i.e. from Timekeeper Central to Workforce Central suite or from OptiLink version 6 to OptiLink Plus version 7) are required to purchase the licenses to the new Version at the applicable license fees as set forth in the applicable Order Form(s).
- (D) **Support Exclusions.** Support Service does not include Service to the Software for issues to the extent resulting from:
- (1) Any cause in the external environment of the Software including, but not limited to, electrical work, fire, flood, water, wind, lightning and transportation, or any act of God; or
 - (2) Customer's failure to continuously provide a suitable installation environment as specified in the Specifications; or
 - (3) Customer's use of the Software not in accordance with this Agreement, the Documentation or the Specifications; or
 - (4) Customer's repair, attempted repair or modification of the Software without prior authorization from Kronos; or
 - (5) Customer's use of the Software for purposes other than those for which they are designed or permitted hereunder or the use of accessories or supplies not approved by Kronos; or
 - (6) The Customer System's malfunctions; or
 - (7) Services required for application programs and/or conversions from products or software not supplied by Kronos; or
 - (8) Reprogramming, including reconfiguration of the Software or the rebuilding of Customer's database, unless reconfiguration or rebuilding is caused by Kronos' acts or failures to act.
- (E) In addition to the Support exclusions above the Services are NOT covered by Support Services and must be purchased under a separate Order Form.
- (1) Configuration changes, reprogramming, new programming such as, but not limited to, work rules, pay rules, accrual rules, profiles, dashboards and fields
 - (2) Creating new schedules
 - (3) Terminal programming and cold start
 - (4) Pay period changes
 - (5) Programming, modifying, implementing, training or troubleshooting the following: (a) Data integration interfaces (i.e. Connect, Integration Manager, Analytics) (b) Custom reports (c) Custom application extensions
 - (6) Editing process manager templates and creating new templates
 - (7) Installing or reinstalling applications such as, but not limited to, (a) Adding a workstation (b) Moving the application (c) Reinstalling following a hard drive crash on the Customer System (d) Service Packs
 - (8) Database administration maintenance or Services such as, but not limited to (a) Database maintenance scripts (b) Writing or customizing database scripts for data reporting and/or retrieval (c) Performance tuning (d) Sizing (e) Disaster recovery (f) Database backup strategy and/or setup
 - (9) Establishing a non-production environment such as, but not limited to, (a) Test environments, i.e., application servers, database servers (b) K-Demo
 - (10) Troubleshooting environmental issues of or relating to the Customer System such as, but not limited to, (a) Operating system (b) Network issues (c) Firewalls (d) Servers (e) Workstations (f) Single sign on
 - (11) Custom reports or custom application extensions
 - (12) Implementation or configuration Services related to upgrading the applicable Software such as, but not limited to, (a) Software implementation (b) Porting custom Software (i.e., reports) (c) Change management (d) Training (e) New functionality deployment (f) Application interfaces
 - (13) Service to Kronos custom Software is not provided, unless otherwise specified on the applicable Order Form for such custom Software.
 - (14) Importing new data i.e. from acquisitions or purchasing of another company.
 - (15) Load balancing configuration
 - (16) Virtual server configuration
- (F) **Reinstatement of Support Services**
 In the event that Customer allows Support Services to lapse or if Customer did not originally purchase Support Services and wishes to reinstate or procure such services, the parties will execute an Order Form to that effect. Unless otherwise set forth in the applicable

Order Form Customer must pay (i) a pro-rated amount of the applicable Support Charges at list price for such lapsed or unprocessed time period for which the Software was not on support; and (ii) the annual Support Fee at the then current list price for the applicable Software plus an additional twenty per cent (20%) of the Support Fees in order to reinstate or procure Support Services that have lapsed or which Customer did not purchase when executing the Order Form for the applicable Software.

- (G) **Priority Based Support.** Kronos provides support on a "priority" basis. As such, customers with the most critical request(s) will be serviced first. Kronos Global Support has set up the following guidelines to assess the priority of each service request:
- (1) **High Priority:** A critical issue with no available workaround where the Software or a module, Program or material component thereof may be down, experiencing major system degradation, data corruption or other related factors resulting in Customer not being able to process their payroll or utilize other material functionality;
 - (2) **Medium Priority:** A serious customer issue which impacts ability to utilize the Software effectively such as:
 - (3) **Low Priority:** Non-critical issue generally use and usability issues and or "how to" questions



Kronos Incorporated
900 Chelmsford Street
Lowell, MA 01851

url: www.kronos.com

By Federal Express

November 13, 2017

Stephanie McAllister
Corporate Counsel
Hyatt Corporation
150 N. Riverside Plaza
Chicago, IL 60606

Re: Rapai v. Hyatt Corporation

Dear Attorney McAllister:

I am counsel to Kronos Incorporated and your letter to John O'Brien dated November 7, 2017 was forwarded to my attention. Thank you for bringing the above lawsuit ("Lawsuit") to our attention. We have carefully reviewed your letter and the enclosed complaint as well as the contract you referenced in the letter ("Agreement"). For the reasons noted below, we must decline your tender of the Lawsuit for defense and indemnity of Hyatt pursuant to the Agreement.

Your letter indicates that the claims in the Lawsuit relate to certain failures to comply with requirements of the Illinois Biometric Information Privacy Act (BIPA), namely to:

provide [Hyatt's] employees using the Kronos timeclocks with required disclosures concerning the collection, storage or use and destruction of biometric information; and (2) maintain a written policy regarding the schedule and guidelines for retention and permanent destruction of biometric information, in accordance with BIPA.

Leaving aside for purposes of this letter whether BIPA is applicable to the Kronos timeclocks (this issue has not yet been determined by any court, to our knowledge), Kronos does not regard the above requirements as within its scope of responsibility as vendor of the timeclocks. In its third party vendor role, Kronos is not able to make disclosures to Hyatt's employees, obtain written consents from them or publish policies for their information. As you know, Kronos has no means, opportunity or authorization

EXHIBIT

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to interact directly with Hyatt employees at large. Nor has Hyatt ever enabled, or asked Kronos, to undertake such tasks, as they clearly fall within its ambit of employer activity.

In fact, the Agreement expressly points out that these types of obligations are within the customer's responsibility. Section 12.3 of the Application Hosting Supplemental Terms and Conditions, attached to the Agreement as Exhibit B, states that "Customer will ensure that the transfer of any Personal Information to Kronos and Kronos' storage thereof in the Hosting Environment complies with applicable Data Protection Laws, including, if applicable, any such laws requiring [Hyatt] to obtain consent from individuals for such transfer and storage." Making the disclosures and obtaining the consents required under BIPA, if applicable to the use of the Kronos timeclocks, would clearly be Hyatt's responsibility.

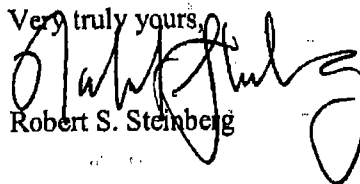
Similarly, Kronos has no control over the employee finger scan data that is generated by Hyatt's use of the timeclocks. As per the Agreement, such data is owned by Hyatt and the retention and destruction of such data is controlled by Hyatt. For information regarding Kronos' policy regarding customer employee finger scan data, our policy is publicly available at <https://www.kronos.com/privacy-policy>.

Moreover, the provisions in the Agreement that you have cited in your letter are not applicable to the claims in the Lawsuit and do not support claims against Kronos for defense or indemnification. The Agreement specifically excludes data protection compliance from the general indemnification provision in Section 18(a) and provides a separate indemnity in Section 18(c) that specifically limits indemnifiable claims to those involving "security breach" and seeking reimbursement of the costs of notification and credit protection services or involving enforcement actions by governmental authorities. The Agreement further states, in Section 17(a), that "Kronos will have no responsibility or liability for any use Customer makes of any [Kronos] Products or Services that itself does not comply with applicable Laws." This clearly prohibits any claim for indemnification of claims that arise out of Hyatt's own alleged failure to comply with BIPA in using the Kronos timeclocks.

In our view, the only indemnification provision in the Agreement that may be potentially relevant is the one found in Section 9 of the Application Hosting Supplemental Terms and Conditions attached as Exhibit B to the Agreement. That section provides that Hyatt "shall indemnify, defend and hold Kronos harmless from and against any Claims brought, asserted or alleged by a third-party, or incurred by it as a result of such third-party Claims to the extent arising out of or relating to... (c) infringement of any third-party... right of privacy by the Customer's Content..." The finger scan data that is at issue in the underlying action meets the definition of Customer Content in Section 1 of Exhibit B, and it is Hyatt's provision of that data to Kronos through its use of the timeclocks, without ensuring BIPA compliance as required under the Agreement, that allegedly has infringed its employees' right of privacy under BIPA.

Therefore, to reiterate Kronos' position, tendering the Lawsuit to Kronos is unsupported by the Agreement and therefore unwarranted. I am more than happy to discuss this further with you by phone. Thank you.

Very truly yours,



Robert S. Steinberg

Cc: John O'Brien, Senior Vice President
Alyce Moore, Vice President and General Counsel