

## **APPENDIX D**

### **KRONOS EQUIPMENT SUPPORT APPENDIX**

Kronos and Customer hereby agree that Kronos shall provide depot equipment repair support services (“Depot Support Services”) for Customer’s Kronos Equipment (“Product(s)”) specified on a Kronos order form (the “Order Form”) to and from locations within the United States and Puerto Rico pursuant to the following terms and conditions:

#### **1. TERM**

Depot Support Services for the Product(s) have a term of one (1) year commencing upon the expiration of the applicable warranty period, as specified in the Sales, Software License and Services Agreement entered into between Kronos and Customer. Customer may elect to renew Depot Support Services upon receipt of the renewal invoice.

#### **2. PAYMENT**

Customer agrees to pay the Support Charges for the initial term as set forth on the Order Form for each Product listed. Customer agrees that all Products of the same type that are owned by the Customer, including without limitation Customer’s “Spare Products” (as defined below), will be subject to this Appendix. Customer agrees that if Customer purchases, during the term of this Appendix, any Products of the same type as those specified on an Order Form, such additional Products shall be subject to this Appendix. Customer agrees to pay a prorated fee for such additional Products and agrees to pay the full annual fee for such additional Products, upon the renewal date.

Kronos will invoice Customer for the annual Support Charges each year in advance of the Renewal Date. Kronos shall not submit invoice to Customer earlier than forty-five (45) days prior to expiration date of current annual support period, unless specifically requested otherwise in writing by Customer. Customer will pay Kronos within thirty (30) days of receipt and approval of invoice. Customer will pay a late charge of one percent (1%) per month of any overdue amounts, but not in excess of the rate allowed by law.

#### **3. DEPOT SUPPORT SERVICE**

Upon the failure of an installed Product, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Product related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with an RMA for the failed Product if Customer is to return the failed Product to Kronos, as reasonably determined by Kronos. Customer must return the failed product with the supplied Return Material Authorization Number (RMA). Hours of operation, locations and other information related to Kronos’ Depot Repair Centers can be found at <http://customer.kronos.com/ContactUs.htm> and are subject to change. Return and repair procedures for failed Product 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 which may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> (“Support Policies”). In the event of a conflict between the Support Policies and the Agreement to which this Appendix is attached, the terms of the prevailing order of precedence shall be the Agreement, then the Appendix and then the Support policies.

(a) Depot Exchange: Kronos will provide a replacement for the failed Product at the FRU or subassembly level on an “advanced exchange” basis, utilizing a carrier of Kronos’ choice. Replacement Product will be shipped the same day, for next business day delivery to Customer’s location as further described in the Support Policies. REPLACEMENT PRODUCT(S) MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Product 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 Product from Kronos, shall package the defective Product in the materials provided by Kronos, with the RMA supplied and promptly return failed Products directly to Kronos using the carrier specified by Kronos.

(b) Depot Repair: It is Customer’s obligation to purchase and retain, at Customer’s location and at Customer’s sole risk and expense, a sufficient number of spare products (“Spare Products”) to allow Customer to replace failed Products at all Customer locations. Upon failure of an installed Product, Customer shall install a Spare Product to replace the failed Product. Customer shall also specify the address to which the repaired Product should be return shipped. Customer shall then return the failed Product, with the required RMA, to the applicable Kronos Depot Repair Center. Customer shall make every reasonable effort to return the failed Product using the same packing materials in which the original Product was sent. Upon receipt of the failed Product, Kronos shall repair the failed Product and return it, within ten (10) business days after receipt, to Customer. Kronos shall ship the repaired Product by regular surface transportation to Customer.

#### **4. RESPONSIBILITIES OF CUSTOMER**

Customer agrees that it shall return failed Products promptly as the failures occur and that it shall not hold failed Products and send failed Product to Kronos in “batches” which shall result in a longer turnaround time and surcharge to Customer. In addition, Customer agrees to:

- (a) Maintain the Products in an environment conforming to Kronos’ published specifications for such Products;
- (b) Deinstall all failed Products and install all replacement Products in accordance with Kronos’ published installation guidelines;
- (c) Ensure that the Product(s) are returned to Kronos properly packaged; and
- (d) Obtain an RMA before returning any Product to Kronos and place the RMA clearly and conspicuously on the outside of the shipping package. Customer may only return the specific Product authorized by Kronos when issuing the RMA.

## 5. SUPPORT EXCLUSIONS

Depot Support Service does not include the replacement of "consumables". In addition, Depot Support Service does not include the repair of damages, and Customer will not attempt to return damaged Product, resulting from:

- (a) Any cause external to the Products including, but not limited to, electrical work, fire, flood, water, wind, lightning, transportation, or any act of God;
- (b) Customer's failure to continually provide a suitable installation environment (as indicated in Kronos' published installation guidelines) including, but not limited to, adequate electrical power;
- (c) Customer's improper use, relocation, packaging, refinishing, management or supervision of the Product(s) or other failure to use Products in accordance with Kronos' published specifications;
- (d) Customer's use of the Products for purposes other than those for which they are designed or the use of accessories or supplies not approved by Kronos;
- (e) Government imposed sanctions, rules, regulations or laws preventing the shipment of the Products; or
- (f) Customer's repair, attempted repair or modification of the Products.

Professional services provided by Kronos in connection with the installation of any Software or firmware upgrades, if available, and if requested by Customer are not covered by Depot Support Services.

Firmware (including equipment service packs) which may be available to resolve a Product issue is not installed by the Kronos Depot Repair Center but is available for download at Kronos' customer web site provided Customer is maintaining the Product under an annual Depot Support Services plan with Kronos.

## 6. DELIVERY

All domestic shipments are FOB Destination to/from Customer and Kronos with the shipping party bearing all costs and risks of loss, and with title passing upon delivery to the identified destination.

## 7. WARRANTY

Kronos warrants that all repairs performed under this Agreement shall be performed in a professional and competent manner.

ALL OTHER WARRANTIES FOR THE REPAIR SERVICES PROVIDED HEREUNDER, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE AND MERCHANTABILITY, ARE EXCLUDED BY AGREEMENT OF THE PARTIES.

## 8. DEFAULT, SUSPENSION, AND TERMINATION

Under the Depot Exchange Support option, Kronos may suspend Depot Support Services if Customer does not ship Failed Product to Kronos within ten (10) business days of receipt of the Replacement Product. Kronos will restore Depot Support Services upon return of such Failed Product or upon payment at the then-prevailing Kronos list price for such unreturned Failed Product. The term of this Appendix shall not be extended or affected by any such suspension.

Customer may terminate Depot Support Services if Kronos is in default under this Appendix, and such default is not corrected within thirty (30) days after written notice. Kronos may terminate Depot Support Services if Customer defaults under this or any other agreement with Kronos, and such default is not corrected within thirty (30) days after written notice. In addition, this Appendix will terminate and all charges due hereunder will become immediately due and payable in the event that Customer ceases to do business as a going concern or has its assets assigned by law.

## 9. LIMITATION OF REMEDIES

The exclusive remedy of Customer and sole liability of Kronos shall be replacement of the repaired Product.

IN NO EVENT SHALL KRONOS OR ITS SUBSIDIARIES OR AFFILIATES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES.