

**FRANCHISE DISCLOSURE DOCUMENT**  
**IHG FRANCHISING, LLC**  
**A Delaware Limited Liability Company**  
**Three Ravinia Drive, Suite 100**  
**Atlanta, Georgia 30346**  
**(770) 604-2000**  
**<https://development.ihg.com>**



The licensee will establish and operate a hotel under the Kimpton® Hotels & Restaurants brand.

The total investment necessary to begin operation of a typical 200-room hotel under the Kimpton® Hotels & Restaurants brand, excluding land costs and other matters, ranges \$65,070,400 to \$91,517,000 (or \$325,352 or \$457,585 per guest room) or more (see Item 7), including between \$607,000 and \$1,097,000 or more that must be paid to IHGFL or an affiliate (see Item 5).

This disclosure document summarizes certain provisions of your license agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, IHGFL or an affiliate in connection with the proposed license sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Jenny Tidwell, IHG Franchising, LLC, at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346 and (770) 604-2135.

The terms of your contract will govern your license relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a license is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: March 28, 2024, as amended June 28, 2024

**FOR USE IN ALL STATES EXCEPT HAWAII, MINNESOTA, RHODE ISLAND and VIRGINIA.**

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit F.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibits G1 and G2 includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Kimpton Hotel in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Kimpton franchisee?</b>	Item 20 or Exhibit F lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit E.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

- 1. Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by alternative dispute resolution (mediation and, if not resolved through mediation, arbitration), or with respect to claims arising from misuse of the system, Marks or Confidential Information, litigation. You are not required to sue the franchisor only in the state of Georgia, but the franchisor can sue you in the state of Georgia. Out-of-state litigation may force you to accept a less favorable settlement for disputes. It may also cost more to litigate with the franchisor in the state, county and judicial district in which the franchisor's principal place of business is then located than in your own state.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

## **ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE MICHIGAN FRANCHISE INVESTMENT LAW**

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN LICENSE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE LICENSE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

- (a) A prohibition on the right of a licensee to join an association of licensees.
- (b) A requirement that a licensee assent to a release, assignment, novation, waiver or estoppel which deprives licensee of rights and protections provided in this act. This shall not preclude a licensee, after entering into a license agreement, from settling any and all claims.
- (c) A provision that permits IHGFL to terminate a license prior to the expiration of its term except for good cause. Good cause shall include the failure of the licensee to comply with any lawful provision of the License Agreement and to cure such failure after being given written notice thereof and a reasonably opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits IHGFL to refuse to renew a license without fairly compensating the licensee by repurchase or other means for the fair market value at the time of expiration of the licensee's inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to IHGFL and inventory, supplies, equipment, fixtures and furnishings not reasonably required in the conduct of the licensed business are not subject to compensation. This subsection applies only if (i) the term of the license is less than 5 years and (ii) the licensee is prohibited by the license or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the license or the licensee does not receive at least 6 months advance notice of IHGFL's intent not to renew the license.
- (e) A provision that permits IHGFL to refuse to renew a license on terms generally available to other licensees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the licensee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits IHGFL to refuse to permit a transfer or ownership of a license, except for good cause. This subdivision does not prevent IHGFL from exercising a right of first refusal to purchase the license. Good cause shall include, but is not limited to

(i) The failure of the proposed transferee to meet IHGFL's then current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is a competitor of IHGFL or subfranchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the licensee or proposed transferee to pay an sums owing to IHGFL or to cure any default in the License Agreement existing at the time of the proposed transfer.

(h) A provision that requires the licensee to resell to IHGFL items that are not uniquely identified with IHGFL. This subdivision does not prohibit a provision that grants to IHGFL a right of first refusal to purchase the assets of a license on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants IHGFL the right to acquire the assets of a license for the market or appraised value of such assets if the licensee has breached the lawful provisions of the License Agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits IHGFL to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the licensee unless provision has been made for providing the required contractual service.

(j) No statement, questionnaire, or acknowledgement signed or agreed to by a licensee in connection with the commencement of the license relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by IHGFL, franchise seller, or other person acting on behalf of IHGFL. This provision supersedes any other term of any document executed in connection with the license.

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE ATTORNEY GENERAL.

ANY QUESTIONS REGARDING THIS NOTICE SHOULD BE DIRECTED TO THE OFFICE OF THE ATTORNEY GENERAL, CONSUMER PROTECTION DIVISION, ATTN.: FRANCHISE, 670 LAW BLDG., LANSING, MICHIGAN 48913, (517) 373-7117.

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**ITEM 1****THE LICENSOR, ANY PARENTS, PREDECESSORS AND AFFILIATES**

This disclosure document refers to the licensor, IHG Franchising, LLC as “IHGFL” and to the licensee as “you”. If you are a corporation, partnership or other entity, the word “you” may also include owners or partners of the licensee.

IHGFL was incorporated in Delaware on March 5, 2004. Except as set forth in this disclosure document, IHGFL does business only under its corporate name. IHGFL’s principal business address is Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346, and its telephone number is (770) 604-2000.

IHGFL has offered licenses for Kimpton Hotels & Restaurants since September 2018 (though its affiliates, predecessors operated hotel businesses and offered licenses for hotel businesses starting in approximately 1953).

IHGFL’s agents for service of process in the states whose franchise laws require IHGFL to name a state agency as agent for service are shown on Exhibit D.

**IHGFL’S BUSINESS:**

IHGFL offers and grants licenses under the terms of a license agreement (the “License”). The License described in this disclosure document provides for the establishment and operation of a Kimpton® Hotels and Restaurants guest lodging facility (“Hotel”).

The Hotel you operate will be part of the Kimpton Hotels & Restaurants system (the “Brand System”). The Brand System is designed to provide distinctive, high quality hotel service to the public, and includes, among other things, those service marks and copyrights, trademarks and similar intellectual property rights that IHGFL designates; rights to domain names and other identifications or elements used in electronic commerce made available to licensees of the Brand System by the License; access to a reservation system operated in accordance with specifications that IHGFL establishes from time to time; advertising distribution, publicity and other marketing programs and materials; architectural drawings and architectural works, training programs and materials; confidential or proprietary information, standards, specifications and policies for construction, furnishing, operation, appearance, and guest service; programs for inspecting the Hotels, measuring and assessing service, quality and consumer opinion and consulting with you; and other requirements referred to in the License, or in IHGFL’s Standards for the Kimpton Hotels & Restaurants brand (collectively, the “Standards”) and in other communications. IHGFL may add elements to the Brand System or modify or delete elements of the Brand System.

As the industry pioneer that first introduced the boutique concept to the United States, Kimpton Hotels & Restaurants are design-led hotels with locally loved restaurants and bars with a distinctly genuine level of service.

Kimpton Hotels & Restaurants are typically over 150 rooms, include meeting and event(s) spaces, a fitness center, and multiple food and beverage offerings. Kimpton Hotels & Restaurants are typically located in major markets, important secondary cities, and resort destinations. Kimpton Hotels & Resorts room count, food and beverage outlets, and amenities may vary to align with market conditions. Kimpton Hotels & Restaurants are full-service facilities targeted to high-end leisure travelers, corporate business, and group events.

**IHGFL’S PARENT, PREDECESSOR AND AFFILIATES:**

IHGFL’s ultimate corporate parent is InterContinental Hotels Group PLC. InterContinental Hotels Group PLC does not maintain a principal place of business in the United States. Its principal place



of business is in the United Kingdom at 1 Windsor Dials, Arthur Road, Windsor, Berkshire, SL4 1RS UK.

IHGFL's direct corporate parent is Six Continents Hotels, Inc. ("SCH") (formerly known as Bass Hotels & Resorts, Inc. and Holiday Hospitality Corporation). SCH's principal business address is Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346. Certain fees paid by licensees (other than royalties and related fees), are payable to SCH in exchange for services furnished by SCH, and either SCH or IHGFL may collect those amounts from licensees.

The Kimpton Hotels & Restaurants brand was founded in 1981 by IHGFL's predecessor, Kimpton Hotel & Restaurant Group, LLC ("KHRG"). KHRG's principal business address is 222 Kearny Street, San Francisco, California 94108. KHRG was acquired by an affiliate of IHGFL on January 16, 2015. Under a Master License Agreement which was amended and restated most recently on January 1, 2024, (the "Kimpton Master License"), KHRG granted IHGFL the right to use and license the use of marks associated with the Brand System for a constantly renewing 25-year term.

IHGFL is an affiliate of Holiday Hospitality Franchising, LLC ("Holiday") (which entity is also a subsidiary of SCH). Holiday's principal business address is Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346. Through one or more license agreements with SCH, Holiday offers licenses for various hotel brands in the United States and Canada, including the following: (i) the Holiday Inn and Holiday Inn Express brand groups (which licenses it has offered since 1990); (ii) Crowne Plaza (which licenses it has offered since 1990); (iii) Candlewood Suites (which licenses it has offered since 2003); (iv) Staybridge Suites (which licenses it has offered since 1997); (v) Hotel Indigo (which licenses it has offered since 2004); (vi) EVEN® Hotels (which licenses it has offered since 2014); (vii) avid® hotels (which licenses it has offered since 2017); (viii) Atwell Suites® (which licenses it has offered since 2019); (ix) voco® hotels (which licenses it has offered since 2020); (x) Vignette Collection™ hotels (which licenses it has offered since 2021); and Garner™ hotels (which licenses it has offered since 2023).

As of December 31, 2023, in the United States, there were 2,846 licensed (of which 5 are managed) and 1 company-owned Holiday Inn, Holiday Inn Express and Holiday Inn Resort brand group hotels; 85 licensed (of which 2 are managed) and 0 company-owned Crowne Plaza hotels; 370 licensed and 0 company-owned Candlewood Suites hotels; 278 licensed (of which 1 is managed) and 0 company-owned Staybridge Suites hotels; 68 licensed (of which 5 are managed) and 0 company-owned Hotel Indigo hotels; 19 licensed (of which 5 are managed) and 0 company-owned EVEN Hotels; 20 licensed (of which 14 are managed) and 1 company-owned InterContinental Hotels & Resorts; 63 licensed and 0 company-owned avid hotels; 9 licensed and 0 company-owned voco® hotels; 2 licensed and 0 company-owned Atwell Suites; 1 licensed and 0 company-owned Vignette Collection™ hotels and 3 licensed and 0 company-owned Garner hotels. These figures do not include branded Army lodging facilities which are managed by affiliates of Holiday for the U.S. government. This disclosure document contains information related only to Kimpton Hotels & Restaurants hotels (see below in this Item 1).

Certain trademarks associated with the various hotel brands disclosed in this disclosure document are owned by SCH's affiliate, Six Continents Limited ("SCL"). Pursuant to various license agreements, SCL has granted SCH the exclusive license in the United States and Canada to use and sublicense use of all such trademarks (the "SCL License Agreements"). SCL's principal business address is in the United Kingdom at 1 Windsor Dials, Arthur Road, Windsor, Berkshire, SL4 1RS UK. InterContinental Hotels Group (Asia Pacific) Pte Ltd, a Singapore company with a registered business address of 230 Victoria Street #13-00 Bugis Junction Towers, Singapore 188024, Singapore and IHG Japan Management LLC, a Japanese company with a registered business address of 20th Floor, Toranomom Kotohira Tower, 2-8, Toranomom 1-chome, Minato-ku, Tokyo, Japan.

IHGFL's affiliate, IHG Hotels Limited, an English company, with its principal place of business located at 1 Windsor Dials, Arthur Road, Windsor, Berkshire, SL4 1RS UK, has offered licenses for the voco® and Regent brand group hotels on a regional basis outside of the Americas since 2018. As of the date of this disclosure document, there are 51 voco® hotels in the United Kingdom, Middle East, Australia, and Asia and 10 Regent Hotels in Europe and Asia which are open for business.

IHGFL's affiliate, IHG Franchising Brasil LTDA, a Brazilian company, with its principal place of business located at Alameda Jau 536 #3S-E, Sao Paulo, Brazil, has offered licenses for the Holiday Inn, Holiday Inn Express, Candlewood Suites, Staybridge Suites, InterContinental Hotels & Resorts, Crowne Plaza, and Hotel Indigo brand groups since 2007, for EVEN Hotels since 2015, for avid® hotels since 2019, for Atwell Suites® and voco® hotels since 2020 and for Vignette Collection hotels since 2021. As of the date of this disclosure document, there are 3 licensed Holiday Inn hotels and 3 licensed Holiday Inn Express hotels open in Brazil.

IHGFL's international affiliates disclosed above also offer InterContinental Hotels & Resorts licenses on a regional basis, outside of the Americas. As of the date of this disclosure document, IHC has 49 licensed InterContinental Hotels & Resorts hotels in Europe, the United States, Mexico, Latin America and the Asia/Pacific region, of which 5 hotels are co-branded under licensing agreements in Mexico with "Grupo Presidente" and 3 are co-branded in Central America with Real Hotels & Resorts.

While IHGFL has not itself owned, managed or leased any hotels, its affiliates do. As of the date of this disclosure document, IHGFL's parents and affiliates operate (own, lease or manage) 82 Kimpton Hotels, Holiday Inn, Holiday Inn Express, Crowne Plaza, InterContinental Hotels & Resorts, Staybridge Suites, Candlewood Suites, EVEN Hotels and Hotel Indigo brand hotels in the United States, Puerto Rico and Canada, and 72 United States Army lodging facilities across the United States. Some of these US Army lodging facilities are branded as Holiday Inn Express or Candlewood Suites hotels.

Except as set forth above, neither IHGFL nor any of its parents nor affiliates has offered licenses for any other line of business.

IHGFL's affiliate, Six Continents Hotels, Inc., operates the IHG Commission Services<sup>SM</sup> program (see Item 6, Note 8), and its address is c/o Holiday Hospitality Franchising, LLC, Three Ravinia Drive, Suite 100, Atlanta, GA 30346.

IHGFL's affiliate provides services related to (see below).

#### **PROPERTY MANAGEMENT, RESERVATION, & PAYMENT CARD PROCESSING SYSTEMS:**

SCH owns or licenses (in the case of certain software) and administers a computerized reservation network, the "Reservation System," a revenue management system, and a cloud-based network. Components of the Reservation System, revenue management system, and cloud-based network operate under the name of IHG Concerto™ ("IHG Concerto™"). All hotels must be linked to the aforementioned central Reservation System, including all system enhancements and upgrades such as the revenue management system ("RMS", which is fully integrated with IHG Concerto™) or such successor systems as SCH may designate. Hardware, software and network systems required to connect to the Reservation System must be fully operational when the hotel opens, with appropriate management and staff trained and competent to operate the Reservation System at all times.

SCH requires each Kimpton Hotel to obtain and install an approved Property Management System ("PMS"). As of the date of this disclosure document, the Oracle America, Inc. Opera solution is the only approved PMS. The Opera PMS Software is supplied by Oracle America, Inc. ("Oracle"). In addition, a front office protection service (FastConnect SD-WAN, currently provided by AT&T) is

required as part of the PMS deployment (see Items 8 and 11 of this disclosure document for a detailed description of the systems.)

You must enter into the Master Technology Services Agreement (“MTSA”) with (attached as Exhibit C to this disclosure document) in order to access and communicate with the Reservation System; an Opera license or hosting agreement (which are available upon request) with Oracle for the software, installation, training, use and maintenance of the PMS software; and, a contract with AT&T for the FastConnect SD-WAN service (see Exhibit H-14).

In June 2022, SCH entered into an Equipment Refresh and Integration Services Agreement with Hewlett-Packard Inc. (“HP”) for deployment and procurement services for the Hotel PMS. Pursuant to that agreement, HP will provide PMS hardware, software and deployment services at your Hotel. In September 2021, SCH entered into a NextGen Payments (NGP) Installation Services Agreement with HP for the procurement and installation services of a credit card solution. Pursuant to that agreement, HP will provide components of the hardware, software, and installation services at your hotel. You must enter into HP Joinder Agreements in order to obtain the PMS hardware, software and deployment services, and the NGP solution at your Hotel. Copies of the HP Joinder Agreements can be found within Exhibit C to this disclosure document.

SCH may install one or more “private network” connecting services, security services or another solution as specified, for use in communicating with the Reservation System or PMS.

IHG Concerto™ is a technology platform designed to enable many capabilities, such as reservations, digital check-in, stay enhancements, guest complaints, other front desk capabilities, rate management, inventory management and yielding and interactive homepage. The IHG Concerto™ platform is also designed to support effective management of Hotel Content and quick response to Guest Relations issues.

SCH administers a computerized payment card processing program, NextGen Payments (“NGP”). NGP is a data security process designed to remove certain credit card information from our systems. Using PCI certified payment terminals, credit card data will be encrypted and converted to tokens before entering the PMS. SCH has contracted with FreedomPay to provide the tokenization application services. All hotels are required to use NGP or such successor payments program as may be implemented by SCH. Each licensee will be required to enter into a merchant processing application and agreement with Fiserv, the SCH-approved merchant service provider, and a participation agreement with SCH (see Exhibit H-4 to this disclosure document).

### **CONDOMINIUM AND TIMESHARING PROJECTS:**

IHGFL may consider granting a license in connection with a condominium or timeshare hotel development project. Because such projects are complex and unique, each project must be considered by IHGFL individually. IHGFL will determine, according to the unique facts of each proposed development, to what extent variations and additions to the License terms and provisions, including without limitation additional royalties and other fees, are warranted. Therefore, it is probable that IHGFL License terms and provisions will vary materially for condominium or timesharing hotel developments, but at this time there is no formal program or guidelines with general applicability.

### **THE MARKET:**

The market for hotel services is highly developed. The lodging industry is very competitive. You will compete with a wide range of facilities offering various types of lodging and related services (including other hotel brands that IHGFL or its affiliates franchise or manage). These facilities include various other types of operations, some of which belong to large national and international

companies. You will offer services to a broad range of the traveling public. Your ability to compete in your market will depend upon factors such as geographic area, specific site location, general economic conditions, and the capabilities of your management and service team.

### **INDUSTRY-SPECIFIC REGULATIONS:**

You must comply with a number of federal, state and local laws which apply generally to hotel businesses. These include laws affecting zoning and construction, public accommodations, accessibility by persons with disabilities, service of alcoholic beverages, health and safety, food storage and preparation, labor, data security and privacy. Many of these laws vary from jurisdiction to jurisdiction. We do not represent that you will have the ability to procure any required license, permit certificate or other governmental authorization that may be necessary or required for you to carry out the activities contemplated by the License Agreement. It is your responsibility to learn about and comply with all applicable laws.

These laws include (among others) the following:

**Health and Sanitation.** Most states have regulations or statutes governing the lodging business and related services. Many state and local authorities require licensing of lodging businesses to assure compliance with health and sanitation codes. Health related laws affect the use of linens, towels, and glassware and food preparation and service, among other things.

It is your sole responsibility to research and comply with all applicable laws, rules, and orders of any government authority concerning health and sanitation. IHGFL reserves the right to make any adjustments to our services as it may determine necessary, in its sole judgement, from time to time in order to protect health and safety. These adjustments may include, by way of example but without limitation, suspending in-person gatherings such as training, meetings, and conferences; instead, such events may be conducted virtually.

**Facility Operations.** Lodging facilities are subject to state innkeepers' laws that may (i) allow innkeepers to impose liens against the possessions of guests who do not pay their bills; (ii) limit the liability of innkeepers regarding guests' valuables; (iii) require posting of house rules and room rates in each room or near the registration area; (iv) require registration of guests and proof of identity at check-in and retention of records for a specified period of time; (v) limit the right of innkeepers to refuse lodging to certain guests; and (vi) limit the right of innkeepers to evict guests in certain circumstances. Applicable federal and state civil rights laws prohibit discrimination in hotels on the basis of race, creed, color, or national origin. Some states prohibit "overbooking" and require innkeepers to find other accommodations if the guest has paid a deposit. Some states and municipalities have also enacted laws and regulations governing non-smoking areas and guest rooms.

**Persons with Disabilities.** The Americans With Disabilities Act ("ADA") requires hotels located in the United States that are newly constructed or altered on or after March 15, 2012 to be compliant with the provisions of the ADA (28 CFR Part 36) and all of the requirements of the 2010 ADA Standards for Accessible Design contained in 28 CFR Part 36, Subpart D and 36 CFR Part 1191, Appendices B and D (the "2010 Standards"). Hotels constructed or altered between September 15, 2010 and March 15, 2012 may comply with either the 2010 Standards or the prior 1991 ADA Standards for Accessible Design ("1991 Standards"), but a hotel must use the selected standards for all elements in the entire facility. If elements in hotels existing before September 15, 2010 already comply with corresponding elements in the 1991 Standards and are not being altered, hotels are not required to make changes to those elements to bring them into compliance with the 2010 Standards until such time as those elements are altered. The ADA, 2010 Standards and 1991 Standards contain certain specific criteria for accessibility of public spaces and elements in hotels as well as room design, auxiliary equipment in rooms, and distribution of rooms designated

as accessible for guests with disabilities. The ADA, 2010 Standards and 1991 Standards also set forth various operational requirements for hotels and reservation systems requirements. These reservation systems requirements have been incorporated into the Reservation System and the Standards. You are responsible for on-going compliance with the ADA, applicable design standards, and related local, state and federal laws and regulations at your Hotel. The entire text of the ADA, the 2010 Standards, and the 1991 Standards are available through IHG Merlin, the internet-based information delivery service for Brand System hotels, as well as [www.ada.gov](http://www.ada.gov). Note that ADA compliance is not included in the Intercontinental rooms plan review process.

**Telephone Charges.** Federal and state laws and regulations affect the re-offering of local, intrastate, and long-distance telephone services in hotel guest rooms and at coin box telephones. Surcharges on local and intrastate calls are regulated or prohibited in some states.

## ITEM 2

### **BUSINESS EXPERIENCE**

**Chief Executive Officer, InterContinental Hotels Group, PLC-Elie W. Maalouf:**

Chief Executive Officer, InterContinental Hotels Group, PLC (since July 2023); Chief Executive Officer, Americas (January 2015-June 2023).

**Chief Executive Officer, Americas-Jolyon Bulley:**

Chief Executive Officer, Americas (since July 2023); Chief Executive Officer, Greater China (January 2018-June 2023).

**Chief Development Officer, Americas-Julienne Smith:**

Chief Development Officer, Americas (since July 2022); Senior Vice President, Development (August 2019-June 2022); Senior Vice President Development and Owner Relations, Hyatt Hotels Corp, Chicago, IL (July 2014-April 2019).

**Chief Operating Officer, Americas-Jason M. Caiafa:**

Chief Operating Officer, Americas (since February 2020); Senior Vice President, Hotel Life Cycle and Growth Initiatives (February 2018-January 2020).

**Chief Customer & Marketing Officer-Heather Balsley:**

Chief Customer & Marketing Officer (since April 2024); Chief Customer Officer (since November 2023-April 2024) Senior Vice President, Global Loyalty & Partnerships (November 2019-November 2023); Senior Vice President, Global Marketing, Mainstream Brands (February 2018-October 2019).

**Senior Vice President and Managing Director, Americas-Leanne Harwood:**

Senior Vice President and Managing Director, Americas (since March 2024); Senior Vice President and Managing Director, Japan, Australasia, and Pacific (January 2018-March 2024).

**Senior Vice President, Global Marketing, Mainstream Brands-Jennifer Gribble:**

Senior Vice President, Global Marketing, Mainstream Brands (since November 2019); Vice President, Global Holiday Inn Express, avid hotels & Mainstream Growth (April 2018-October 2019).

**Senior Vice President, Global Marketing, Luxury Brands-Jane Mackie:**

Senior Vice President, Global Marketing, Luxury Brands (since March 2019).

**Senior Vice President and General Counsel, Americas-Nimesh Patel:**

Senior Vice President and General Counsel, Americas (since September 2020); Vice President and Associate General Counsel, Americas (October 2011-September 2020).

**Senior Vice President and Chief Financial Officer, Americas-Geoffrey Blake Longstaff:**

Senior Vice President and Chief Financial Officer, Americas (since March 2023); Vice President, Americas FP&A and Investment Analysis (July 2021-March 2023); Vice President, Capital Investments & Transactions (March 2020-July 2021); Senior Director, Capital Investments & Transactions (November 2018-March 2020).

**Senior Vice President, Capital Investments and Transactions-Robert J. Chitty:**

Senior Vice President, Capital Investments and Transactions (since February 2018).

**Senior Vice President, Hotel Lifecycle and Growth, Americas-Chris Bagnato:**

Senior Vice President, Hotel Lifecycle and Growth, Americas (since February 2020); Vice President, Franchise Lifecycle (April 2018-February 2020).

**Senior Vice President, Development, LLP, US & Canada-Matt Frankiewicz:**

Senior Vice President, Development, LLP, US & Canada (since July 2022); Vice President, Transactions & Asset Management (May 2017-July 2022).

**Senior Vice President, Franchise Sales and Development, Mainstream Brands-Kevin Schramm:**

Senior Vice President, Franchise Sales and Development, Mainstream Brands (since July 2022); Vice President, Franchise Sales and Development, Mainstream Brands (October 2019-July 2022); Regional Vice President, Franchise Sales and Development, West Core Brands (December 2013-September 2019).

**Vice President, Development & Owner Support-Eric Frye:**

Vice President, Development & Owner Support (since January 2021); Vice President, Full Service Development, Marriott International, Bethesda, MD (January 2011-September 2020).

**VP Transactions & Asset Management-Michael Wernet:**

VP Transactions & Asset Management (since July 2022), SVP Asset Management, JLL, Chicago, IL (August 2021-June 2022); VP Finance, RLJ Lodging Trust, Bethesda MD (February 2018-July 2021).

**Director, Transactions & Asset Management-Josh Josephson:**

Director, Transactions & Asset Management (since January 2015).

**Director, Transactions & Asset Management-Kevin M. Winkowski:**

Director, Transactions & Asset Management (since March 2018).

**Director, Transactions & Asset Management-Rogier Ten Lohuis:**

Director, Transactions & Asset Management (since March 2022); Manager, Transactions & Asset Management (February 2019-March 2022).

**Director, Owner & Franchise Services, Americas-David Comai:**

Director, Owner & Franchise Services, Americas (since September 2009).

**Vice President, Upscale Development-Arik Kono:**

Vice President, Upscale Development (since January 2016).

**Vice President, Luxury and Upscale Development-Alex Kuhl:**

Vice President, Luxury and Upscale Development (since April 2020); Vice President, Upscale Development (January 2011-March 2020).

**Vice President, Luxury, Lifestyle, Premium Development-West, Catie Cramer:**

Vice President, Luxury, Lifestyle and Premium Development, West (since October 2021); Vice President, Lifestyle Development & Owner Relations, Hyatt Corporation, San Francisco, CA (January 2019-October 2021).

**Regional Vice President, Franchise Sales and Development, Northeast Mainstream Brands-Mitchell Salaman:**

Regional Vice President, Franchise Sales and Development, Northeast Mainstream Brands (since September 2016).

**Regional Vice President, Franchise Sales and Development, East Mainstream Brands-Shawn P. Siemers:**

Regional Vice President, Franchise Sales and Development, West Mainstream Brands (since October 2019); Regional Director, Franchise Sales and Development (June 2004-September 2019).

**Regional Vice President, Franchise Sales and Development, West Mainstream Brands-Mark Zach:**

Regional Vice President, Franchise Sales and Development, West Mainstream Brands (since January 2024); Regional Director, Franchise Sales and Development (July 2013-January 2024).

**Regional Director, Franchise Sales and Development-David Bingham:**

Regional Director, Franchise Sales and Development (since January 2011).

**Regional Director, Franchise Sales and Development-Dan Duenas:**

Regional Director, Franchise Sales and Development (since November 2019); Business Development Manager, Franchise Sales & Development, West Core Brands (July 2017-October 2019).

**Regional Director, Franchise Sales and Development-Cooper Gantt:**

Regional Director, Franchise Sales and Development (since November 2019); Business Development Manager, Franchise Sales and Development, West Core Brands (June 2016-October 2019).

**Regional Director, Franchise Sales and Development-John D. Faught:**

Regional Director, Franchise Sales and Development (since 1997).

**Regional Vice President, Franchise Sales and Development-Alex Moeckel:**

Regional Vice President, Franchise Sales and Development (since July 2022); Regional Director, Franchise Sales and Development (August 2016-July 2022).

**Regional Director, Franchise Sales and Development-Silas K. Simpson:**

Regional Director, Franchise Sales and Development (since 1999).

**Regional Director, Midwest Development-Lauren Kroymann:**

Regional Director, Midwest Development (since January 2024); Business Development Manager (May 2022-January 2024); Transact Campus Inc., Territory Representative (September 2020-May 2022); CDW, Account Manager (June 2016-September 2020).

**Regional Director, Development, Franchise Sales and Development-David Self:**

Regional Director of Development, Franchise Sales and Development, Atlanta, GA (since April 2022); Business Development Manager-West Region, Franchise Sales and Development, Atlanta, GA (September 2021-March 2022); Regional Vice President of Development, Choice Hotels International, Rockville, MD (January 2020-March 2020); Director of Development, Choice Hotels International, Rockville, MD (April 2006-December 2019).

**Regional Director, Franchise Development-Kyle Krumwiede:**

Regional Director of Franchise Development, Lakewood Ranch, FL (since October 2021); Director of Franchise Development, Wyndham Hotels & Resorts, Lakewood Ranch, FL (March 2021-Oct. 2021); Director of Franchise Development, Wyndham Hotels & Resorts, Nashville, TN (June 2018-April 2021); Affiliate Broker, Marcus & Millichap, Nashville, TN (May 2020-Aug. 2021); Director of Franchise Development, La Quinta Inn & Suites, Nashville, TN (April 2016-June 2018).

**Vice President, Development-Canada-Scott T. Duff:**

Vice President, Development-Canada (since June 2022); Vice President, Hotel Acquisitions & Business Development, Freed Corp., Toronto, ON Canada (March 2021-January 2022); Vice President, Franchise Sales & Development, Wyndham Hotels & Resort, Toronto, ON Canada (August 2019-February 2021); Vice President, Hotels, CBRE Limited, Toronto, ON Canada (August 2016-July 2019).

**Vice President, Architecture & Design L&L Brands-Ave Bradley:**

Vice President, Architecture & Design L&L Brands (Since January 2023); Creative Director/Senior VP Design-Kimpton (April 2013-January 2023).

**Vice President, Operations AMER L&L Brand Experience and Delivery-Nick Gregory:**

Vice President Operations, AMER L&L Brand Experience and Delivery (since May 2023); Senior Vice President Hotel Operations for Kimpton (April 1991-July 2023).

**Vice President of Food and Beverage L&L-Scott Gingerich:**

Vice President Food and Beverage L&L (since April 2023); Senior Vice President, Restaurant and Bars Kimpton (January 2018-April 2023).

**Regional Director, Franchise Development, Canada-Anto Vrdoljak:**

Regional Director, Franchise Development (since August 2022); Manager, Business Development, Canada (July 2016-August 2022).

**Director of Development-Carolyn Hervert:**

Director of Development, Atlanta, GA (since January 2022); Senior Director of Investments, NuovoRE, Denver, CO (January 2019-January 2022).

**Director, Upscale Development-Madison Schlieve:**

Director, Upscale Development (since July 2019); Development Manager, Upscale Development, North America (January 2018-June 2019).



**Business Development Manager, Upscale Development-Misty E. Roe:**

Business Development Manager, Upscale Development (since October 2016).

**Business Development Manager, Luxury, Lifestyle & Premium-Deepshikha Sinha:**

Business Development Manager, Luxury, Lifestyle & Premium (since October 2021); Senior Manager Valuations, Americas Finance (September 2019-September 2021); Manager Feasibility, Americas Finance (March 2018-September 2019).

**Business Development Manager, Franchise Sales & Development, Mainstream Brands-Marcus Linden:**

Business Development Manager, Franchise Sales & Development, Mainstream Brands (since March 2018).

**Director Business Development-Jimmy Bae:**

Director, Business Development (since July 2022); Development Manager, Upscale Development (August 2020-July 2022); Business Development Manager, Franchise Sales and Development, West Core Brands (July 2019-August 2020); Director, Investment Analysis, Americas (January 2015-June 2019).

**Business Development Manager, US & Canada-Celina N. Hargrove:**

Business Development Manager, US & Canada, Atlanta, GA (since July 2021); Lead Manager, Franchise Licensing and Compliance, Atlanta, GA (June 2014-July 2021).

**Regional Director of Development-Normann Hauck:**

Regional Director of Development, August 2023 to present; Business Development Manager (June 2022-August 2023); Manager, Investment Analysis (July 2019-June 2022); Associate, Hotel Investment Sales, Newmark, Atlanta, GA (October 2015-June 2019).

**Business Development Manager-Northeast and Mid-Atlantic Core Brands-Justin Shapiro:**

Business Development Manager-Northeast and Mid-Atlantic Core Brands (since August 2023); Director of Finance & Operations, Themis, New York, NY (November 2022-August 2023); Senior Customer Success Manager, MANTL, New York, NY (March 2021-November 2022); Senior Consultant, Cognizant, Teaneck, NJ (August 2019-March 2021); MBA Candidate, Emory University, Atlanta, GA (April 2018-August 2019).

**Regional Director, Development, NW-Michael Castro:**

Regional Director, Development, NW (since July 2022); SVP-Franchise Development, Sonesta Hotels & Resorts, Spokane, WA (June 2021-July 2022); RVP-Franchise Development, Choice Hotels International, Spokane, WA (April 2019-June 2021); VP-Franchise Development, Red Lion Hotels Corporation, Spokane, WA (August 2010-April 2019).

**Director, Franchise Development-Essential Brands-Nicolas Petrone:**

Director, Franchise Development-Essential Brands (since August 2022); Director-Franchise Development, Wyndham Hotels and Resorts, Davie, FL (January 2021-August 2022); Regional VP-Development, Choice Hotels International, Davie, FL (March 2013-January 2021).

**Regional Director, Franchise Sales-Amy Schimmel:**

Regional Director, Franchise Sales (since August 2022); Franchise Sales, Best Western, Denver, CO (March 2022-August 2022); Franchise Sales, Wyndham Hotels & Resorts, Denver, CO (March 2021-March 2022); Business Development Manager-Franchise Sales (January 2020-June 2020); Sr. Regional Manager-Property Improvements (September 2015-January 2020).

**Regional Director, Openings & Renovation LLP– Tanya Sabelman:**

Regional Director Openings & Renovations LLP (since February 2023); Sonder, Inc-Senior Hotel Takeover Manager (October 2021-May 2022); Marriott International-Flex Staffing, Property Support (June 2021-October 2021); Mark-Taylor, Inc.-Manager of Community Operations-Multi-Property (July 2020-June 2021); Marriott International-Senior Manager, Openings, Europe (February 2019-July 2020).

**Regional Vice President, Architecture & Design L&L-Bryan Easter:**

Regional Vice President, Architecture & Design L&L Americas (since May 2023); Vice President of Development & Planning Kimpton (March 2022-May 2023); Powerstrip Studio, Senior Designer (November 2010-March 2022).

**Regional Director, Franchise Openings-Mitch Goldberg:**

Regional Director, Franchise Openings (since March 2015).

**Vice President, Franchise Licensing and Compliance-Jenny L. Tidwell:**

Vice President, Franchise Licensing and Compliance (since January 2009).

**Lead Manager, Franchise Licensing and Compliance-Baris Ozdiker:**

Lead Manager, Franchise Licensing and Compliance (since December 2022); Manager, Franchise Licensing and Compliance (May 2013-December 2022).

**Head of Global Hotel Indigo-Carol Hoeller:**

Head of Global Hotel Indigo (since May 2018); Director, Guest Experience, Crowne Plaza (June 2013-May 2018).

**Vice President, Global Upscale Brands– Ginger Taggart:**

Vice President, Global Upscale Brands (since August 2020); Vice President Global Luxury Brands (April 2018-August 2020).

**Vice President, Global Holiday Inn/Holiday Inn Resorts & EVEN Hotels-Raul Ortiz:**

Vice President, Global Holiday Inn/Holiday Inn Resort & EVEN Hotels (since September 2020); Vice President, Global Staybridge Suites, Candlewood Suites & EVEN Hotels (September 2019-September 2020); Vice President, Global Staybridge Suites & Candlewood Suites Brands (April 2018-September 2019).

**Vice President, Global Brand Management, avid hotels, Atwell Suites & Garner™ hotels– Karen Gilbride:**

Vice President, Global Brand Management, avid hotels, Atwell Suites & Garner™ hotels (since August 2023); Vice President, Global avid hotels & Atwell Suites (November 2019-August 2023); Head of avid hotels (January 2017-October 2019).

**Vice President, Mainstream Brands Global Holiday Inn Express, Staybridge Suites & Candlewood Suites-Justin Alexander:**

Vice President, Mainstream Brands Global Holiday Inn Express, Staybridge Suites & Candlewood Suites-Justin Alexander (since May 2023); Vice President, Global Staybridge Suites & Candlewood Suites (September 2020-May 2023); Director, Global Brand Design, Staybridge Suites & Candlewood Suites (November 2019-August 2020); Director, Global Brand Design, Candlewood Suites (October 2017-October 2019).

**Vice President, Franchise Performance Owner Support-Patrick Dwyer:**

Vice President, Franchise Performance Owner Support (since April 2018).

**Vice President, Operations, Extended Stay-Jimmy Taylor:**

Vice President, Operations, Extended Stay (since October 2015).

**Vice President, Franchise Performance Support, US & Canada-Kurt Weber:**

Vice President, Franchise Performance Support, US & Canada, Atlanta, GA (since April 2019); Chief Operating Officer, Account Management, Sales and Customer Support, Alliance Reservations Network, Orlando, FL (August 2017-April 2019).

**Vice President, Architecture & Design-Bryan Houser:**

Vice President, Architecture & Design (since October 2022); Head of Mainstream PIP/Plan Review (November 2019-October 2022); Director of Holiday Inn Express Design/PIP/Plan Review (March 2017-November 2019).

**Vice President, Architecture & Design-Gina Merz:**

Vice President, Architecture & Design (since October 2022); Head of Hotel Lifecycle (April 2021-October 2022); Direct Hotel Lifecycle (November 2018-April 2021); Franchise Performance Support Manager (October 2015-November 2018).

**Vice President, Hotel Lifecycle-Ingrid High:**

Vice President, Hotel Lifecycle (since August 2023); Head of Commercial Performance L&L Brands (January 2020-August 2023); Director, Commercial Performance (January 2019-January 2020).

**Director, Development-Charlotte Giovanni:**

Director, Development (since July 2022); Vice President, Development, Kimpton Hotels & Restaurants (October 2017-July 2022).

**Manager, Development & Owner Support-Andrew Hartman:**

Manager, Development & Owner Support, Atlanta, GA (since Nov. 2021); Manager, Finance Business Partner, Atlanta, GA (May 2019-Nov. 2021); Manager, Finance & Business Support (August 2015-May 2019).

**Manager, Transaction and Asset Management-Shan Shan:**

Manager, Transaction and Asset Management, Mississauga, ON, Canada (since Nov. 2022); Consultant, Independent Professional Services Inc., Mississauga, ON, Canada (April 2022–Nov. 2022); Consultant, Starwood Capital Group, Mississauga, ON, Canada (Nov. 2021–April 2022); InterContinental Hotels & Resorts Group, Manager-Finance; and Business Support, Mississauga, ON, Canada (July 2018–May 2021).

**Manager, Development and Owner Support-Aubrey Hiebert:**

Manager, Development and Owner Support, Atlanta, GA (Since June 2021); Analyst, Hotel Lifecycle, Atlanta, GA (Aug. 2019-June 2021); and Corporate Rotational Analyst, Hilton, Atlanta, GA (July 2018-Aug. 2019).

**Senior Executive, Luxury Brand Growth-Phil Keb:**

Senior Executive, Luxury Brand Growth (since March 2023); Gencom, Miami, FL, Executive Vice President (September 2017-March 2023).

**Manager Midwest Development-Lindsey Powers:**

Manager Midwest Development (since November 2022); Medix, Chicago, IL, Account Executive (March 2021-November 2022); Medix, Chicago, IL, Recruitment Advisor (August 2020-March 2021); SDI Innovations, Lafayette, IN, Sales Intern (February 2020-August 2020); Berkshire Hathaway, Chicago, IL, Sales and Marketing Intern (June 2019-August 2019); Student, Eastern Illinois University, Charleston, IL (August 2016-May 2019).

**ITEM 3****LITIGATION**

Note: Throughout Item 3, Six Continents Hotels, Inc. (f/k/a Bass Hotels and Resorts, Inc.) is referred to as "SCH" and Holiday Hospitality Franchising, LLC (f/k/a Holiday Hospitality Franchising, Inc. and Holiday Inns Franchising, Inc.) is referred to as "Holiday." Please see Item 1 for further detail on corporate history and corporate name changes.

**Pending Litigation:****A. Pending Litigation Relating Solely to the Kimpton Brand**

None.

**B. Pending Litigation Not Relating Solely to the Kimpton Brand**

Holiday Hospitality Franchising, LLC v. Momentum Fort Worth Investment LLC, Abdul Majid Hassanally and Shahnaz Majid Hassanally, State Court of DeKalb County, Georgia, Civ. Action No. 24A00417 (Jan. 24, 2024) Holiday filed this suit against the defendants seeking liquidated damages, unpaid franchise fees, and other amounts exceeding \$1.5 million arising from defendants alleged breach of a Holiday Inn license agreement and Holiday's subsequent termination of the license related thereto. On June 7, 2024, defendants filed an answer and counterclaim against Holiday asserting a breach of contract claim against Holiday which alleges that in connection with the lead up to the hotel opening in the Holiday Inn system, Holiday agreed to certain deviations from the scope of work required by the license agreement and then subsequently required those items to be corrected in a manner that delayed the opening of the Hotel and caused the defendants damages. Defendants seek "in excess of \$1,000,000" in damages plus additional losses of an unspecified amount, and its expenses of litigation including reasonable attorneys' fees. Holiday believes its claims are meritorious, the Defendants' counterclaims and defenses are not, and Holiday is prosecuting its case and defending against the counterclaims vigorously.

Atlanta Hospitality Investment, LLC, a Georgia limited liability company, and Mohammad Sarower Hossain, individually v. Holiday Hospitality Franchising, LLC, DeKalb County, Georgia Superior Court, Civ. Action No. 23-CV-9509 (October 31, 2023).

Plaintiffs are the licensee and guarantor with respect to a former Holiday Inn® & Suites branded hotel. Plaintiffs filed their initial petition for declaratory judgment on October 31, 2023 and an amended petition on December 7, 2023. The plaintiffs ceased operating the hotel as a Holiday Inn® & Suites branded hotel and de-identified the hotel without Holiday's permission long before the October 15, 2041 expiration date of the license agreement. The amended petition alleges that Holiday made certain misrepresentations to plaintiffs in advance of the execution of the license agreement but asserted no claim for damages. The amended petition seeks a declaratory judgment finding that Holiday's license agreement is unconscionable and unenforceable, that the

liquidated damages clause is an unenforceable penalty, and that the defendants are not liable to Holiday for ceasing to operate the hotel as a Holiday Inn® & Suites and de-identifying the hotel. On February 2, 2024, Holiday filed an answer and counterclaims against the plaintiffs, asserting claims for breach of the license agreement and associated guaranty related to licensee's ceasing operating the hotel as a Holiday Inn® & Suites branded hotel and deidentifying the hotel long before its scheduled expiration date. Holiday's counterclaims seek liquidated damages, other unpaid amounts owed under the license, interest and attorneys' fees, exceeding \$2.1 million total. Holiday believes plaintiffs are entitled to none of the relief sought in their petition for declaratory relief and that Holiday is entitled to judgment in the amounts sought in its counterclaims. On March 26, 2024, Plaintiffs filed a motion for summary judgment on their claims, and a "supplemental" motion for summary judgment on April 24, 2024. Holiday filed its response in opposition to the Plaintiffs summary judgment motion on June 21, 2024. Holiday believes the plaintiff's summary judgment motion has no merit and will file its own summary judgment motion at the appropriate time.

Ahijit Vasani a/k/a Andy Vasani, Bhavna Vasani a/k/a Becky Vasani, Innvite Hospitality Group, LLC v. Holiday Hospitality Franchising, LLC, Surati Investment, LLC, Raiyan Rab, Numarix Real Estate Services, LLC, Mark Wolfe, Equity Central Realty, LLC, Court of Common Pleas, Lucas County, Ohio, Case No. G-4801-CI-0202303085-000 (July 17, 2023)

Plaintiffs or entities associated with them purchased a Holiday Inn Express branded hotel in 2018. Plaintiffs claim that, in connection with the sale process related to the Hotel, they were misled into believing the scope of work required by the change of ownership license agreement for the hotel would be lighter in scope and less expensive than what it turned out to be. On July 17, 2023, Plaintiffs filed an initial complaint against Holiday asserting claims for breach of contract, promissory estoppel, unjust enrichment, fraud, and civil conspiracy and seeking compensatory and punitive damages, costs and attorneys' fees. The plaintiffs filed an amended complaint on October 12, 2023, which asserted the same claims against Holiday and sought the same relief as the initial complaint. On February 2, 2023, Holiday filed a motion to transfer for venue and motion to dismiss for failure to state a claim. On December 28, 2023, the Ohio court entered an order holding that the forum selection clause in the Holiday Inn Express license agreement required the case to be adjudicated in Georgia, and stayed the proceeding for sixty days to allow the plaintiffs to recommence the case in Georgia, ordering them to inform the Court when they did so. Holiday's motion to dismiss for failure to state a claim was held in abeyance for the same 60 day period. The plaintiffs filed a notice of appeal of the trial court's December 28, 2023 order on January 26, 2024. Appellate briefing is ongoing and the appeal remains pending. Holiday believes both the appeal, and the underlying claims asserted in the case, lack merit, and is defending vigorously.

Scion Hotels LLC vs. Holiday Hospitality Franchising, LLC, Case No. 2:21-cv-02276-MCA-MAH (D.N.J February 18, 2021)

Scion Hotels LLC ("Scion"), a New Jersey licensee of a Holiday Inn hotel, filed a civil complaint against Holiday to obtain damages for violation of the New Jersey Franchise Practices Act in allegedly wrongfully imposing unreasonable standards of performance upon Scion and then wrongfully refusing to renew its license agreement. Scion's allegations focus on the alleged concealment of Holiday's intent to convert a nearby 400-room Ramada Plaza to a full-service Holiday Inn (completed in January 2020), proposed licensing of a nearby Hampton Inn as a Holiday Inn Express, and purported refusal to extend the existing license agreement with Scion upon its expiration on April 21, 2021. Scion acquired the existing Holiday Inn and signed a remaining term (22-month) license agreement with IHG on June 4, 2019. Scion alleges that it would not have acquired the hotel had it known Holiday's intentions. On April 9, 2021, Scion filed

an amended complaint which removed the previously asserted allegations regarding alleged fraudulent concealment on the part of Holiday. The amended complaint asserts causes of action for Wrongful Non-Renewal under the New Jersey Franchise Practices Act, Constructive Termination under the New Jersey Franchise Practices Act, and Unreasonable Standards of Performance Under the New Jersey Franchise Practices Act. Scion alleges damages of no less than \$10 million. The parties have completed fact and expert discovery, and Holiday filed a motion for summary judgment on all claims on April 28, 2023, which has been fully briefed, and the parties are awaiting the Court's ruling. Holiday believes the allegations to be meritless and is defending vigorously.

Astoria Enterprises Ltd. v. Holiday Hospitality Franchising, Inc. and InterContinental Hotels Group PLC, The Queen's Bench Winnipeg Centre, File No. CI-07-01-54936 (December 21, 2007).

On December 21, 2007, Astoria Enterprises ("Astoria"), a former Licensee, filed suit against Holiday demanding \$541,000 in damages for failing to renew or extend an existing license beyond its original termination date and for loss of reputation. According to Astoria, Holiday's refusal to renew the License was wrongful and commercially unreasonable. Holiday filed an answer denying any liability, and discovery is ongoing. Holiday intends to defend the allegations vigorously.

Marina di Castello SpA v. IHG Hotels Limited, Court of Santa Maria Capua Vetere, Italy, Docket No. 4307/27 (November 22, 2013).

The former licensee of the Holiday Inn Resort Naples - Castel Volturno hotel and the Crowne Plaza Caserta hotel issued a claim against IHG Hotels Limited ("IHGHL"), brought in the Court of Santa Maria Capua Vetere, seeking to have the Court: 1) declare that the arbitration provisions in the license agreements are invalid; 2) determine whether or not IHGHL's conduct has resulted in damages to the licensee of circa €3,000,000; 3) determine that IHGHL owes the licensee €1,467,316 in respect of excess fees paid to IHGHL (plus interest) re: the Holiday Inn Castel Volturno hotel and €325,027 in respect of excess fees paid to IHGHL (plus interest) re: the Crowne Plaza Caserta hotel; and 4) award licensee's costs in respect of the claim. IHGHL terminated the license agreements for both hotels in March 2013 for non-payment of fees of €373,000 and an early termination payment of €800,000 under the license agreement for the Crowne Plaza Caserta hotel and fees of €190,000 and an early termination payment of €417,000 under the license agreement for the Holiday Inn Resort Naples - Castel Volturno hotel. A hearing was held on January 24, 2022 and IHG submitted its final brief on September 9, 2022. On September 11, 2023, the Court of Santa Maria Capua Vetere issued its decision which entirely supported IHGHL's objections to the former licensee's claims. Notably, the Court declared the validity and enforceability of the arbitration provisions and, consequently, the Court's lack of jurisdiction. On October 10, 2023 the former licensee filed an appeal which is now pending.

K.J. Harjani & Cia Ltda v. Six Continents Hotels, Inc., 3<sup>rd</sup> Civil Court of Manaus, Brazil, Case No. 0022145-55.2006.8.04.0001 (July 5, 2006).

The former licensee of the Holiday Inn® hotel in Manaus, Brazil filed a lawsuit seeking damages for alleged wrongful termination of the license agreement. The license agreement was terminated due to non-compliance with brand standards in 2002. This lawsuit was filed on July 5, 2006 and Six Continents Hotels, Inc. ("SCH") was served in 2014. SCH filed an answer denying the claims and requesting dismissal for failure to prosecute. SCH intends to defend against this claim vigorously.

Park 80 Hotels, LLC, PL Hotels, LLC, Mayur Patel, JSK Exton LLC, Jay Z. Kuber Hospitality, Inc., Parmattma Corporation and Synergy Hotels, LLC, individually and on behalf of all others similarly situated v. Holiday Hospitality Franchising, LLC and Six Continents Hotels, Inc. d/b/a InterContinental Hotels Group and IHG Technology Solutions, LLC, Case 1:22-cv-03709-LMM (N.D.Ga. Sep. 15, 2022)

The original complaint was filed in this action on September 15, 2022, and an amended complaint was filed on November 22, 2022. The putative class action lawsuit brought on behalf of putative classes of Holiday licensees relates to an unauthorized access to certain of IHG's systems by third party bad actors that resulted in a temporary disruption of certain services which plaintiffs allege had a negative impact on their businesses. The suit asserts causes of action for breach of contract, violations of the Georgia Uniform Deceptive Trade Practices Act, Negligence, Negligence *Per Se*, unjust enrichment, and seeks damages in an unspecified amount, expenses of litigation, and declaratory and injunctive relief. Holiday, SCH and IHG Technology Solutions, LLC believe the allegations to be meritless and are defending vigorously. Holiday, SCH and IHG Technology Solutions, LLC filed a motion to dismiss all claims on December 2, 2022. The Court ruled on the motion to dismiss on February 8, 2024, finding that Plaintiffs' complaint was a shotgun pleading and requiring Plaintiffs to replead their allegations within 21 days. The plaintiffs filed their second amended complaint on February 29, 2024 which did not materially change the relief sought. Holiday, SCH and IHG Technology Solutions, LLC filed a renewed motion to dismiss all claims on March 14, 2024.

TJM Columbus, LLC d/b/a Crowne Plaza-Columbus North and TJM Syracuse, LLC d/b/a Crowne Plaza Syracuse v. Holiday Hospitality Franchising, LLC and Six Continents Hotels, Inc. d/b/a InterContinental Hotels Group, DeKalb County, Georgia Superior Court, Civ. Action No. 22-cv-5181 (May 23, 2022)

Plaintiffs are Crowne Plaza® licensees (for the Crowne Plaza® Columbus North – Worthington and the Crowne Plaza® Syracuse, respectively). Plaintiffs assert a breach of contract claim against Holiday and SCH related to a proposed sale of the subject hotels to a developer that intended to convert the subject hotels out of the Crowne Plaza® system. The Plaintiffs assert that Holiday breached the Plaintiffs' license agreements by improperly interfering with the contemplated transaction, including by contacting the potential purchaser and informing the potential purchaser that Holiday would not approve the proposed conversion transaction. The plaintiffs also assert causes of action related to Holiday and SCH allegedly imposing required vendors on its licensees and receiving improper "kickbacks" from such vendors. Plaintiffs specifically assert causes of action under Georgia's RICO statute, breach of contract, declaratory judgment, fraud in the inducement and violations of the New York State Franchise Act (as to the Syracuse plaintiff) based on these theories. The lawsuit seeks actual damages, treble damages, rescission of the subject license agreements, declaratory judgment, interest, and expenses of litigation. On June 24, 2022, Holiday and SCH filed a notice of removal removing the case to the United States District Court for the Northern District of Georgia. The case was assigned case number 1:22-cv-2541-VMC. Holiday believes the allegations and the lawsuit to be meritless is defending vigorously. On July 1, 2022, Holiday and SCH filed a motion to dismiss all claims. On March 29, 2023, the Court granted the motion to dismiss as to the fraud and RICO claims. The Court remanded the action to the Georgia Superior Court without evaluating the remaining state law claims. On May 5, 2023, Holiday and SCH filed a motion to dismiss the remainder of the claims in the Georgia Superior Court, which the court denied on July 31, 2023. Holiday and SCH filed a motion for summary judgment with respect to all remaining claims on September 14, 2023. Before the court ruled on that motion, the defendants filed an amended complaint on December 6, 2023. The amended complaint asserts claims for breach of contract, declaratory judgment,

fraud in the inducement, and violations of the Georgia Uniform Deceptive Trade Practices Act, all premised on allegations related to the above-reference contemplated sale transaction and/or alleged misrepresentations contained in Holiday's Franchise Disclosure Documents and elsewhere related to vendors and suppliers and Holiday's procurement program generally. The amended complaint seeks actual and punitive damages, rescission of the subject license agreements, injunctive relief and the recovery of expenses and attorneys' fees. In light of the amended complaint and the new claims asserted therein, Holiday and SCH filed a notice of removal removing the case to the United States District Court for the Northern District of Georgia on January 4, 2024. The District Court case number is 1:24-cv-00055-VMC. The plaintiffs moved to remand the case back to Superior Court on January 8, 2024. Holiday and SCH moved to dismiss all claims in the amended complaint on January 11, 2024. The plaintiffs' motion to remand the case was granted on April 18, 2024 and the case is back in Superior Court. Holiday and SCH filed a renewed motion for summary judgment on all claims on May 23, 2024, which remains pending.

Holiday, SCH, and the IHG Owner's Association were named defendants in seven class action lawsuits filed in 2021 by putative classes of Holiday licensees in Connecticut, Louisiana, New Jersey, New Mexico, Ohio, Pennsylvania and Texas. Each of the lawsuits allege that Holiday and SCH engages in unlawful and otherwise improper franchise business practices, including, imposing unreasonable products, services and requirements and receiving improper kickbacks from required purchases. Specifically, the lawsuits assert causes of action including breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, declaratory judgment, violation of the Sherman Act, and a demand for an accounting. The New Jersey and Pennsylvania class action lawsuits have since been dismissed. Neither Holiday nor SCH paid any amounts in connection with the dismissal of these class action lawsuits. The five lawsuits that remain are:

1. Park 80 Hotels LLC, a Louisiana limited liability company, PL Hotels, LLC, a Louisiana limited liability company, individually, and on behalf of a class of similarly situated individuals and entities v. Holiday Hospitality Franchising, LLC, Six Continents Hotels, Inc. D/b/a Intercontinental Hotels Group and IHG Owners Association, Inc., United States District Court for the Eastern District of Louisiana, Civil Action No. 2:21-cv-974 (May 19, 2021) (this case was transferred to the Northern District of Georgia on November 9, 2021 and has been assigned Civil Action No. 1:21-cv-04650-ELR).
2. Aaron Hotel Group, LLC, a Connecticut limited liability company, individually, and on behalf of a class of similarly situated individuals and entities v. Holiday Hospitality Franchising, LLC, Six Continents Hotels, Inc. d/b/a Intercontinental Hotels Group and IHG Owners Association, Inc., United States District Court for the District of Connecticut, Civil Action No. 3:21-cv-00727 (May 27, 2021) (this case was transferred to the Northern District of Georgia on February 3, 2022 and has been assigned Civil Action No. 1:22-cv-00838-ELR).
3. PH Lodging Tomball, LLC, a Texas limited liability company, on behalf of itself and a class of similarly situated entities v. Holiday Hospitality Franchising, LLC, Six Continents Hotels, Inc. d/b/a Intercontinental Hotels Group and IHG Owners Association, United States District Court for the Southern District of Texas, Civil Action No. 4:21-cv-01803 (June 3, 2021) (this case was transferred to the



Northern District of Georgia on December 10, 2021 and has been assigned Civil Action No. 1:21-cv-05072-SDG).

4. Synergy Hotels, LLC, an Ohio Limited Liability Company, on behalf of itself and all those similarly situated v. Holiday Hospitality Franchising, LLC, Six Continents Hotels, Inc. D/b/a InterContinental Hotels Group and IHG Owners Association, Inc., United States District Court for the Southern District of Ohio, Civil Action No. 2:21-cv-03248-MHW-KAJ (June 7, 2021) (this case was transferred to the Northern District of Georgia on December 17, 2021 and has been assigned Civil Action No. 1:21-cv-05164-MHC).

5. 110 Sunport LLC, a New Mexico Limited Liability Company, individually and on behalf of all others similarly situated v. Holiday Hospitality Franchising, LLC, Six Continents Hotels, Inc. d/b/a Intercontinental Hotels Group, Civil Action No. 1:21-cv-00844 D.N.M. August 26, 2021) (this case was transferred to the Northern District of Georgia on February 3, 2022 and has been assigned Civil Action No. 1:22-cv-00456-ELR).

The foregoing five actions were transferred to the Northern District of Georgia and consolidated in Civil Action No. 1:21-cv-04650-ELR. The plaintiffs filed a single amended complaint in the consolidated action on March 31, 2022 asserting causes of action for breach of contract, violations of the Georgia Uniform Deceptive Trade Practices Act, Declaratory Judgment, Violation of the Sherman Act, a demand for an Accounting, recovery of litigation expenses, and seeking unquantified damages, including punitive damages. On May 23, 2022, Holiday and SCH filed a motion to dismiss all claims. On February 16, 2023, the Court granted the motion to dismiss in part, dismissing the majority of the claims asserted by the Plaintiffs. The surviving claims are (i) one breach of contract claim, (ii) one claim alleging that Holiday and SCH violated the Georgia Uniform Deceptive Trade Practices Act, and (iii) the demands for an accounting and attorneys' fees. Holiday believes the remaining claims and allegations to be meritless and continues to defend vigorously. On March 6, 2023, the Plaintiffs filed a motion for reconsideration of the Court's order dismissing the majority of the claims asserted by the plaintiffs, which the Court denied on August 4, 2023. The fact discovery period in the case has closed and the expert discovery period closed on February 7, 2024. Holiday and SCH filed a motion for summary judgment on all remaining claims on February 21, 2024. Plaintiffs filed a motion for class certification the same day. On March 13, 2024, Holiday and SCH filed their opposition to class certification and a motion to exclude Plaintiffs' expert, and Plaintiffs filed a response to Holiday and SCH's summary judgment motion. Both motions remain pending. Holiday and SCH believe the remaining claims and allegations are meritless and are defending vigorously.

Holiday Hospitality Franchising, LLC v. Niranjana Khatiwala, Nimesh D. Vesuwala and Mayur N. Khatiwala, State Court of DeKalb County, Georgia, Civil Action File No. 20A83898 (December 11, 2020).

On December 11, 2020, Holiday filed a lawsuit against the defendants seeking liquidated damages and unpaid system fees owed under a Crowne Plaza® license agreement that Holiday terminated as a result of the licensee's failure to pay amounts owed to Holiday under the agreement. On April 30, 2021, the defendants filed counterclaims against Holiday alleging Holiday imposed unreasonable renovation requirements on the licensee related to the subject hotel and required renovations outside the scope of the requirements of the applicable agreements. The defendants asserted claims for breach of contract, breach of quasi-contract, negligent

misrepresentation, promissory estoppel, and attorneys' fees. Holiday believes the allegations to be meritless and is defending vigorously. On June 1, 2021, Holiday filed a motion to dismiss all of the Defendants' counterclaims, which motion remains pending. On April 18, 2022, the State Court transferred the case, including Holiday's pending motion to dismiss, to the Superior Court of DeKalb, County Georgia because the Defendants' counterclaims include an equitable claim that requires Superior Court Jurisdiction. The case is currently pending in the Superior Court of DeKalb County, Georgia under Civil Action No. 22CV4560.

### **Litigation Against Licensees Commenced in the Last Fiscal Year**

#### **Litigation against Licensees and/or Guarantors for Unpaid Franchise Fees and/or other damages**

Holiday Hospitality Franchising, LLC v. Super Hospitality Owner, LLC, Pinu Patel, Ankur Patel, Sarina Patel, Roshni Patel, Ashwin Patel, Nilesh Patel, Daxaben Patel, Sheetal Patel, Vinood Patel, and Damayanti Patel, State Court of DeKalb County, Georgia, Civil Action File No. 23A00043 (Jan. 4, 2023).

Holiday Hospitality Franchising, LLC v. Rajmukesh Patel a/k/a Raj. M. Patel, State Court of DeKalb County, Georgia, Civil Action File No. 23A00714 (Feb. 15, 2023).

Holiday Hospitality Franchising, LLC v. Wilson LLC, James R. Wilson, III, and Marthie M. Wilson, State court of DeKalb County, Georgia, Civil Action File No. 2301064 (Mar. 9, 2023).

Holiday Hospitality Franchising, LLC v. Rick Q. Ly a/k/a Richard Quan Ly, Civil Action 23-cv-04138-MLB (N.D. Ga., originally filed in the State Court of DeKalb County, Georgia on May 31, 2023, removed by defendant to federal court on September 14, 2023).

Holiday Hospitality Franchising, LLC v. NBK, LLC, Chi Tsung Pong and Wen Chu Pong, State Court of DeKalb County, Georgia, Civil Action File No. 23A02398 (May 31, 2023).

Holiday Hospitality Franchising, LLC v. NBK, LLC, Chi Tsung Pong and Wen Chu Pong, State Court of DeKalb County, Georgia, Civil Action File No. 23A02400 (May 31, 2023).

Holiday Hospitality Franchising, LLC v. 559 Development, LLC, Hui Qing Li Qianquian Ba, Teddy Tiecheng Li, Yue Wang, and Zheng Chen, State Court of DeKalb County, Georgia, Civil Action File No. 23A05108 (Oct. 27, 2023).

Holiday Hospitality Franchising, LLC v. Pearl Hospitality, LLC, Zahid Hameed, Ulfat Tahseen, Farrukh Bagasrawala and Bimal Doshi, State Court of DeKalb County, Georgia, Civil Action File No. 23A05287 (Nov. 6, 2023).

Holiday Hospitality Franchising, LLC v. 72<sup>nd</sup> Street Hospitality, LLC, Edwin W. Leslie a/k/a Edwin W. Leslie-Kubat, Keith Huffman, LK Omaha I, LLC, and PJ Family, LLC, State Court of DeKalb County, Georgia, Civil Action File No. 23A05500 (Nov. 21, 2023).

#### **Concluded Litigation:**

##### **A. Concluded Litigation Relating Solely to the Kimpton Brand**

Lee Walters v. Kimpton Hotel & Restaurant Group, LLC, United States District Court, Northern District of California, Civil Action No. 3:16-cv-05387-VC (September 20, 2016).

On September 20, 2016, Lee Walters filed a class action suit against Kimpton Hotel & Restaurant Group, LLC alleging damages from a credit card breach. Lee Walters was voluntarily dismissed from the lawsuit, and Andrew Parsons was added as the sole named plaintiff. Following discovery and mediation on March 12, 2018, the parties reached agreement to resolve this matter on a class-wide basis, subject to court approval. The Court granted preliminary approval of the settlement on January 19, 2019. The third-party class action administrator has sent notice to all class members and is facilitating payment of claims.

Eric Zepeda v. Intercontinental Hotels Group, Inc. and Kimpton Hotel & Restaurant Group, LLC, Circuit Court of Cook County, Illinois County Department, Chancery Division Case No. 2018-CH-02140 (February 16, 2018).

On June 27, 2017, Eric Zepeda filed a class action suit against Intercontinental Hotels Group, Inc. and Kimpton Hotel & Restaurant Group, LLC, alleging violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, et seq., which Kimpton removed to U.S. District Court for the Northern District of Illinois. Intercontinental Hotels Group, Inc. was voluntarily dismissed from the action. Following mediation on January 29, 2018, the parties agreed to settle the matter on a class-wide basis, subject to court approval. As part of the agreement, Plaintiff dismissed the complaint pending in federal court and re-filed the Complaint in Cook County Circuit Court on February 16, 2018. The parties finalized details of the written settlement agreement and the court has granted preliminary approval. The court granted final approval on December 5, 2018. The third-party class administrator has notified all class members and is facilitating payment of claims. The court action is now closed.

Anderson, et al. v. Kimpton Hotel & Restaurant Group, LLC, United States District Court, Northern District of California, Civil Action Case No. 3:19-cv-01860-MMC (April 5, 2019).

On April 5, 2019, Plaintiffs filed a purported class action suit alleging that they were harmed by the compromise of personal information due to a data security breach affecting Kimpton Hotels during the period August 10, 2016 – March 9, 2017. This suit relates to the breach of the Sabre SynXis reservation system used by Kimpton during the referenced time frame. On August 8, 2019, the court granted Kimpton's motion to dismiss the complaint. Plaintiffs filed an amended complaint on August 30, 2019, adding two new named plaintiffs. On November 1, 2019, the court granted Kimpton's motion to dismiss the amended complaint. Plaintiffs filed a second amended complaint on December 16, 2019. In response to Kimpton's motion to dismiss the second amended complaint, Plaintiffs amended the complaint for the third time on February 11, 2020. Kimpton answered on August 7, 2020. The Plaintiffs' motion for class certification was denied on April 20, 2022. This matter has been resolved via settlement with the individual plaintiffs. On May 26, 2023, the parties signed a settlement agreement resulting in Kimpton Hotels making payment to plaintiffs. The case was dismissed with prejudice on May 26, 2023, after the parties filed a joint stipulation of dismissal with prejudice.

## **B. Other Concluded Litigation Not Relating Solely to the Kimpton Brand**

Tsemex Global Enterprise PLC & Tsemex Hotels and Business PLC ("Tsemex") v. IHG Hotels Limited and InterContinental Hotels Group, PLC ("IHG"), International Chamber of Commerce (March 13, 2020).

Claimant, owner of a proposed non-licensed hotel development project in Addis Abbaba, Ethiopia, filed a Statement of Claim with the International Chamber of Commerce alleging that IHG

misrepresented its rights to license the Crowne Plaza in Ethiopia, causing damages. The Claimant's memorial and witness statements were received on March 23, 2020. IHG served its responsive memorial on July 17, 2020. The Claimants served their second memorial on November 4, 2020 and IHG responded on January 13, 2021. The merits hearing is scheduled for July 5-14, 2021. A partial award was issued on December 2, 2022 awarding damages to Claimant. The amount is confidential pursuant to requirements of the London Court of International Arbitration.

Holiday Hospitality Franchising, LLC v. Jaimin Shah, Shreyas Patel and Mukesh Patel, Civil Action No. 1:22-cv-05026-LMM (N.D. Ga., originally filed in the State Court of Dekalb County on Aug. 30, 2022, removed by defendants to federal court on December 21, 2022).

Defendant Jaimin Shah entered into a Holiday Inn® License Agreement with Holiday that required Shah to complete a renovation plan for an existing building, prepare it to open as a Holiday Inn® hotel, and so open on the timeline set forth in the License Agreement. Shah, Shreyas Patel and Mukesh Patel personally guaranteed the License. Holiday terminated the License Agreement for Licensee's failure to complete the necessary renovations and open the hotel on the timeline required by the License Agreement, and Holiday filed suit seeking liquidated damages for breach of the License Agreement and Guaranty. On March 7, 2023, the Defendants filed their answer and asserted counterclaims against Holiday alleging, among other things, that they were led to believe by Holiday that they were on track to open in the hotel, and relied on Holiday's representations to their detriment by continuing to incur renovations costs. Defendants asserted counterclaims for fraud, violations of Georgia Uniform Deceptive Trade Practices Act, and breach of the implied covenant of good faith and fair dealing, and sought recovery of expenses of litigation, attorneys' fees, and punitive damages. The parties resolved the matter via a settlement that resulted in payments being made to Holiday and no payment made by Holiday. The parties filed a joint stipulation of dismissal with prejudice on October 30, 2023.

Holiday Hospitality Franchising, LLC v. 109454 Canada, Inc., Michael Rosenberg, and Louis Drazin, Province of Quebec, District of Montreal, Case No. 500-17-098388-179 (April 18, 2017).

On April 18, 2017, Holiday filed a lawsuit against the defendants seeking unpaid system fees and liquidated damages related to the termination of a Holiday Inn® hotel license agreement. On July 13, 2018, defendants filed a cross demand seeking damages for alleged misuse of the judicial process. The parties resolved the matter via a settlement that resulted in payments being made to Holiday and no payment made by Holiday. The litigation was dismissed on December 12, 2022.

Hotels Cote de Liessee, Inc. v. Holiday Hospitality Franchising, LLC, Chancery Court for the State of Tennessee, Davidson County, Case No. 19-145-I (January 30, 2019).

Plaintiff, licensee of a Holiday Inn® hotel in Montreal, originally brought suit in Montreal, Canada - - in the case Hotels Cote de Liessee, Inc. v. Holiday Hospitality Franchising, LLC, Province of Quebec, District of Montreal, Superior Court No. 500-17-100372 (September 22, 2017) - - alleging that Holiday breached the obligation of good faith with respect to the license agreement by allegedly failing to honor alleged oral representations concerning a nearby hotel. The Montreal Court dismissed the claims against Holiday on November 26, 2018; after which dismissal, the Plaintiff then filed this complaint in Tennessee on January 30, 2019 alleging breach of contract of the hotel license agreement. Plaintiff subsequently sold the hotel before the expiration of the license agreement in 2019, Holiday terminated the license agreement thereafter, and on April 10, 2020, Holiday asserted a counterclaim against Plaintiff and a third party claim against Michael

Rosenberg seeking unpaid system fees and liquidated damages arising from the early termination of the license agreement. The parties resolved the matter via a settlement that resulted in payments being made to Holiday and no payment made by Holiday. The litigation was dismissed on December 12, 2022.

Holiday Hospitality Franchising, LLC, f/k/a Holiday Hospitality Franchising, Inc. v. RD Secaucus, LP, RosDev Hospitality US, LLC, and Michael Rosenberg, State Court of DeKalb County, GA, Civil Action File No. 18A71055-7 (September 11, 2018).

On September 11, 2018, Holiday filed a lawsuit against the defendants seeking unpaid system fees and liquidated damages related to the termination of a Crowne Plaza® hotel license agreement. On November 27, 2018, defendants filed a counterclaim alleging breach of contract, failure to provide consultation and advice, and misrepresentation. The parties resolved the matter via a settlement that resulted in payments being made to Holiday and no payment made by Holiday. The litigation was dismissed on December 12, 2022.

Holiday Hospitality Franchising, LLC v. Stamford Plaza Hotel and Conference Center, L.P., RDCP Holdings and Michael Rosenberg, State Court of DeKalb County, GA, Civil Action File No. 20A78893 (January 30, 2020).

On January 30, 2020, Holiday filed a lawsuit against the defendants seeking more than \$2 million in unpaid system fees owed to Holiday under a Crowne Plaza® hotel license agreement. On August 6, 2020, defendants filed substantially the same counterclaim that was asserted in the RD Secaucus matter described above (the two hotels are owned by the same group), and a separate claim for fraudulent inducement. Holiday believes the counterclaims to be meritless and intends to defend against the claims vigorously. The defendants shut down operations of the subject hotel and Holiday terminated the license agreement on August 27, 2021, and Holiday subsequently filed an amended complaint on January 24, 2022 seeking unpaid system fees, liquidated damages, and other amounts in excess of \$5 million. The parties resolved the matter via a settlement that resulted in payments being made to Holiday and no payment made by Holiday. The litigation was dismissed on December 12, 2022.

Kensington Close Hotel Limited (“KCH”) v. IHG Hotels Limited (“IHG Hotels”), London Court of International Arbitration (December 23, 2019).

The licensee owner of the Holiday Inn London Kensington High Street hotel issued a Statement of Claim in the London Court of International Arbitration on December 23, 2019. Owners claim that they sustained losses due to the operation of a neighboring IHG branded hotel. IHG Hotels submitted its response in opposition on February 12, 2020 and a merits hearing was set for November 30, 2020. On November 27, 2020 the parties finalized a settlement agreement in respect of the dispute resulting in IHG Hotels making payment to KCH. The arbitration concluded in April 2021 after the parties resolved costs.

Holiday Hospitality Franchising, LLC v. Jamesburg Hospitality, LLC, Ashok Pancholi, Yogesh Pancholi, Hetal Pancholi, and Vishnu Dayal, State Court of DeKalb County, GA, Civil Action File No. 20A80648 (June 5, 2020).

On June 5, 2020, Holiday filed a lawsuit against the defendants seeking unpaid system fees under a terminated Crowne Plaza® license agreement. On August 21, 2020, the defendants filed a counterclaim against Holiday alleging breach of contract and breach of covenant of good faith. The parties resolved the matter via a settlement that resulted in payments being made to Holiday and no payment made by Holiday. The litigation was dismissed on February 10, 2021.

Holiday Hospitality Franchising, LLC v. South Boston Hospitality, LLC, Prakash N. Bhoola, Urjita P. Bhoola, Rajendra Jariwala, and Hemlata R. Jariwala a/k/a Hemlataben R. Jariwala, State Court of DeKalb County, GA, Civil Action File No. 18A69075 (April 30, 2018).

On April 30, 2018, Holiday filed a lawsuit against the defendants seeking unpaid system fees and liquidated damages related to the termination of a Holiday Inn Express® hotel license agreement. On July 20, 2018, defendants filed a counterclaim alleging breach of contract, breach of implied covenant of good faith and fair dealing, fraud, and fraudulent misrepresentation. The parties resolved this matter via a settlement that resulted in payments being made to Holiday and no payment made by Holiday. The litigation was dismissed on September 30, 2020.

David Orr v. InterContinental Hotels Group, PLC, Inter-Continental Hotels Corp., and InterContinental Hotels Group Resources, Inc., United States District Court, Northern District of Georgia, Civil Action No. 1:17-cv-01622-MHC (May 5, 2017).

Plaintiff filed a class action complaint on May 5, 2017 alleging breach of implied contract, negligence, and unjust enrichment regarding a payment card incident. Plaintiff alleges that the defendants failed to secure and safeguard customers' personal financial data. The court approved a motion for preliminary approval of settlement on May 18, 2020. On September 2, 2020, the court gave final approval and the case was dismissed with prejudice.

Jay Brodsky v. Hilton Worldwide Holdings, Inc., Hyatt Hotels Corporation, Marriott International, Inc., Wyndham Worldwide Corporation, InterContinental Hotel Group, John and Jane Doe, United States District Court for the Northern District of New Jersey, Case No. 2:18-cv-13045 (August 20, 2018).

Plaintiff filed suit against InterContinental Hotels Group ("IHG") and others alleging violations of federal antitrust law. The complaint alleged that the defendant hotel companies engaged in a scheme to restrict keyword bidding that resulted in Plaintiff being forced to pay higher hotel prices. The defendants resolved this matter with a total payment of \$7,000 (\$1,400 per defendant) to Plaintiff. The case was dismissed with prejudice on April 1, 2019.

Back Bay Resorts SWF, LLC and Edmund Shamsi v. Holiday Hospitality Franchising, LLC, United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 1:14-cv-02521-ELR (August 14, 2014).

A current licensee and guarantor who operate a Hotel Indigo hotel in Ft. Myers, Florida, filed suit seeking to terminate their license agreement. Plaintiffs sought actual damages they claimed to have suffered based on Holiday's alleged breaches of the license agreement, breach of the duty of good faith and fair dealing, and tortious interference with their contractual relationship with third-party vendors and prospective hotel guests. Plaintiffs also sought declaratory and injunctive relief. On March 2, 2015, the court granted Holiday's motion to dismiss but gave plaintiffs leave to amend the complaint. On April 1, 2015, Plaintiff filed an amended complaint alleging breaches of the license agreement, violations of the duty of good faith and fair dealing, and seeking declaratory relief. On November 20, 2015, the court granted in-part Holiday's motion to dismiss. The court dismissed Plaintiff's claims that Holiday breached the license agreement and duty of good faith and fair dealing by failing to use certain fees collected to confer certain benefits upon the hotel. The court also dismissed Plaintiff's request for declaratory judgment. The parties resolved this matter with no money paid by Holiday. This matter was dismissed with prejudice on July 11, 2018.

110 Sunport, LLC, 786 Sunport, LLC, Gibbs Master Tenant, LLC, Tajdin Gillani, Rashida Gillani, Tushar Patel, Sangita Patel, Jayesh Patel, Nanda Patel, Ashish Patel, Yamini Patel v. Holiday Hospitality Franchising, LLC, United States District Court, District of New Mexico, Case No. 1:17-cv-01097-KBM-SCY (October 5, 2017).

On October 5, 2017, the licensees of a Holiday Inn® Express & Suites hotel and a Staybridge Suites hotel located in Albuquerque, New Mexico and the licensee and guarantors of a former Hotel Indigo® hotel located in San Antonio, Texas filed suit against Holiday alleging tortious interference with prospective contract, misrepresentation, unfair and unconscionable trade practices, repudiation of contract, breach of implied fiduciary duty, and breach of contract for payment plan. Plaintiffs originally filed suit in the State Court of New Mexico. Holiday removed the action to federal court and filed a motion to dismiss the claims. The parties resolved this matter with no payment made by Holiday. The litigation was dismissed with prejudice on December 26, 2018.

Holiday Hospitality Franchising, LLC v. Omkar Rocklin, Inc., Bhavin Mehta, and Monali Mehta, State Court of DeKalb County, Civil Action File No. 18A70085-5 (July 3, 2018).

On July 2, 2018, Holiday filed a lawsuit against the defendants seeking unpaid system fees and liquidated damages related to the termination of a Holiday Inn Express® hotel license agreement. On August 13, 2018, defendants filed a counterclaim alleging breach of contract, wrongful termination of license agreement, and breach of the implied duty of good faith and fair dealing. The parties resolved this matter with no payment made by Holiday. The litigation was dismissed with prejudice on June 10, 2019.

Holiday Hospitality Franchising, LLC v. AE Hotels, LLC, Adel Shehata and Heba Shehata, State Court of DeKalb County, GA, Civil Action File No. 18A71043 (September 11, 2018).

On September 11, 2018, Holiday filed a lawsuit against the defendants seeking unpaid system fees and liquidated damages related to the termination of a Holiday Inn Express® hotel license agreement. On October 24, 2018, defendants filed a counterclaim alleging unjust termination of the license agreement. On July 10, 2019, Holiday obtained a judgment against defendants in the amount of \$950,145.90 plus attorneys' fees and prejudgment interest.

In the Matter of Foremost Hospitality HIEX GMBH and IHG Hotels Limited, London Court of International Arbitration (January 29, 2018).

On January 29, 2018, a party to a license agreement for a Holiday Inn Express® hotel to be located in Stuttgart, Germany, requested an arbitration proceeding in accordance with the terms of the license agreement. The Claimant alleged that that IHG Hotels Limited ("IHG Hotels") wrongfully terminated the agreement. An arbitration was held in April 2019, where the Claimant sought monetary damages and a declaratory judgment. On February 7, 2020, the arbitrator issued an award against IHG Hotels for damages, legal fees and costs, and interest. The amount of the award is confidential pursuant to requirements of the London Court of International Arbitration. IHG Hotels has never offered licenses in the United States.

Eric Washington v. Six Continents Hotels, Inc., United States District Court, Central District of California, Western Division, Civil Action No. 2:16-cv-03719 (May 27, 2016).

On May 27, 2016, Washington filed suit against Six Continents Hotels, Inc., ("SCH"), alleging that SCH sent him hundreds of text messages without his consent, in violation of the Telephone Consumer Protection Act (TCPA). The TCPA prohibits companies from using an automatic telephone dialing system (ATDS) to send text messages and prohibits certain text messages absent written consent. Washington seeks statutory damages. SCH filed a motion to dismiss Washington's claims. The parties agreed to resolve this matter with a payment made by SCH of \$175,000. This matter was dismissed with prejudice on February 26, 2019.

Lenexa Hotel, LP v. Holiday Hospitality Franchising, Inc., United States District Court, District of Kansas, Kansas City Division, KS, Case No. 12CV2775 (December 10, 2012), Case No. 15-9196 (August 4, 2015).

A lawsuit was filed by a Crowne Plaza® licensee in Lenexa, Kansas, initially on December 10, 2012 and later amended on January 17, 2013, alleging breach of contract, breach of the covenant of good faith and fair dealing and seeking declaratory relief as result of Holiday's alleged failure to meet its contractual obligations concerning the reservation system. Holiday filed a motion to dismiss on March 1, 2013, which was denied. Near the close of the discovery process, the parties jointly moved the Court to permit Plaintiff to voluntarily dismiss the lawsuit so that the parties could discuss a possible resolution. Under the dismissal, which was approved by the Court, plaintiff was permitted to re-file if the parties could not resolve the matter. Plaintiff re-filed the lawsuit on August 4, 2015 and filed for Chapter 11 bankruptcy protection on November 1, 2016. The hotel left the Crowne Plaza system on August 31, 2017. Holiday filed a counterclaim seeking unpaid fees and liquidated damages related to the termination of the license agreement. On April 26, 2018, Plaintiff amended the complaint to allege fraudulent inducement of contract. On August 31, 2018, Holiday moved for summary judgment on all claims. Following a mediation, the parties resolved this matter with no admission of liability by either party and Holiday making a payment to Plaintiff of \$10.9M. The matter was dismissed with prejudice on January 7, 2019.

Holiday Hospitality Franchising, LLC v. RP/OE Waikiki Beachcomber, LLC, State Court of DeKalb County, GA, Civil Action File No. 18A68410. (March 8, 2018).

On March 8, 2018, Holiday filed a lawsuit against the defendant seeking damages related to the termination of a Holiday Inn® Resort hotel license agreement. In response, on May 11, 2018, defendant filed a counterclaim against Holiday alleging breach of contract. The parties resolved this matter with no payment made by Holiday. The litigation was dismissed with prejudice on August 28, 2018.

NSD Hotel Associates, LLC v. MBA Architects, Inc. & Liberty International Underwriters, Inc. v. Galileo Consulting Group, LLC & Six Continents Hotels, Inc., State of Wisconsin, Circuit Court, La Crosse, Case No. 16-cv-597 (September 22, 2017).

On September 22, 2017, MBA Architects, Inc. filed a third -party complaint against SCH in an existing lawsuit brought against MBA Architects by the licensee of a Candlewood Suites® hotel in La Crosse, Wisconsin. In the underlying lawsuit, the licensee alleged claims for negligence and breach of contract against MBA Architects related to architectural design services provided in the construction of the hotel. MBA Architects alleges that if it is deemed liable to Plaintiff, SCH should be liable to MBA Architects on a theory of contribution or indemnification. The parties resolved this matter with no payment by SCH. This matter was dismissed with prejudice on August 27, 2018.

Holiday Hospitality Franchising, LLC v. Essag Canada and Eshri Singh, State Court, DeKalb County, GA, Civil Action File No.: 17A64721-1 (June 2, 2017).

On June 2, 2017, Holiday filed a lawsuit against the defendants seeking damages related to the termination of a Holiday Inn® hotel license agreement. In response, defendants filed a counterclaim against Holiday alleging breach of the duty of good faith and reasonableness. The parties resolved this matter with no payment made by Holiday. The litigation was dismissed with prejudice on February 23, 2018.

Holiday Hospitality Franchising, LLC v. Khan Hospitality, Inc., Reza Hussain a/k/a Mohammad R. Hussain, Asrar Khan, Baby Hussain Khan a/k/a Baby Hussain, Ripen Khan, Rowan Akther a/k/a Roshan Akther, and Mona Khan a/k/a Mona Shahnaz, United States District Court, Northern District of Georgia, Civil Action File No. 1:16-CV-3339-SCJ (June 20, 2016).

In response to a lawsuit filed by Holiday on June 20, 2016 seeking damages related to the termination of a Holiday Inn Express® hotel license agreement, defendants filed a counterclaim on September 8, 2016 against Holiday alleging bad faith and seeking attorneys' fees. The parties



resolved this matter with no payment made by Holiday. The litigation was dismissed with prejudice on October 5, 2017.

Jay Z. Dalwadi and Jay Shree Kapi Hospitality Franchising, LLC v. Holiday Hospitality Franchising, Inc., United States District Court, Southern District of Texas, Case No. 4:16-cv-02588 (August 24, 2016).

On August 24, 2016, former licensee Jay Shree Kapi Hospitality Franchising and former guarantor Jay Z. Dalwadi filed suit against Holiday Hospitality Franchising, LLC. The suit alleged breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud based upon Holiday's alleged failure to approve an application for relicensing of a Holiday Inn Express & Suites hotel. On July 5, 2017, the Court granted Holiday's motion to dismiss the complaint and dismissed the complaint with prejudice. Defendants appealed the ruling. The parties resolved this matter with no payment made by Holiday. The appeal was dismissed with prejudice on October 31, 2017.

Hospitality Marketing Concepts, Inc. v. Six Continents Hotels, Inc. & InterContinental Hotels Group, PLC, United States District Court, Central District of California, Southern Division, Civil Action No. 8:15-cv-01791 (November 2, 2015).

On June 12, 2015, Hospitality Marketing Concepts, Inc. ("HMC") filed suit against "InterContinental Hotels Group" in California Superior Court. Following an amended complaint and voluntary dismissal, HMC filed a new action in California federal court on November 2, 2015 against Six Continents Hotels, Inc. and InterContinental Hotels Group, PLC alleging breach of oral contracts, fraud, fraudulent inducement, breach of fiduciary duty, and unfair business practices related to a dining rewards program previously in existence in hotels outside the United States. On January 28, 2016, the court partially granted SCH's motion to dismiss, but gave HMC leave to amend its complaint. On March 4, 2016, HMC filed an amended complaint re-alleging the same claims. Following a partially successful motion to dismiss, SCH was the only remaining defendant and the remaining claims were breach of oral contract, fraud, and unfair business practices. Following a partially successful motion for summary judgment by SCH, the parties resolved this matter with SCH making a payment of \$699,000 to HMC. The litigation was dismissed with prejudice on December 14, 2017.

TCBH, Inc. v. Holiday Hospitality Franchising, Inc., United States District Court, District of Minnesota, Civil Action No. 12-CV-2813 SRN/TNL (November 5, 2012).

An existing Holiday Inn® licensee in Eagan, Minnesota filed suit against Holiday on November 5, 2012 alleging breach of contract, violation of the Minnesota Franchise Act and seeking an injunction to prevent the termination of the license agreement for licensee's failure to complete the property improvement plan in a timely manner. The parties resolved this matter with no payment made by Holiday. The litigation was dismissed without prejudice on November 2, 2015.

Holiday Hospitality Franchising, LLC v. 360 Global Venture Group, LLC, Ajay P. Shingal, and Mira Shingal, State Court of DeKalb County, Georgia, Civil Action No. 13A49466-3 (November 18, 2013).

On November 18, 2013, Holiday filed a lawsuit against the defendants seeking damages related to the termination of a Holiday Inn® hotel license agreement. In response, defendants filed a counterclaim against Holiday alleging breach of contract. The parties resolved this matter with no payment made by Holiday. The litigation was dismissed without prejudice on May 26, 2015.

Holiday Hospitality Franchising, LLC, Six Continents Hotels, Inc., IHG Management (Maryland) LLC, and InterContinental Hotels Group Resources, Inc. v. Flamingo Structures LLC, Halston Mikail, Farrah Mikail, Kevin Bral A/K/A Kaveh Bral, and Jackie Bral, United States District Court,

Northern District of Georgia, Atlanta Division, Civil Action No. 1:12-CV-03064-TCB (August 31, 2012).

Holiday Hospitality Franchising, LLC, Six Continents Hotels, Inc., IHG Management (Maryland) LLC, and InterContinental Hotels Group Resources, Inc. (collectively "IHG") filed a lawsuit in the United States District Court for the Northern District of Georgia against a former Holiday Inn® hotel licensee, Flamingo Structures LLC, as well as guarantors, Halston Mikail, Farrah Mikail, Kevin Bral A/K/A Kaveh Bral, and Jackie Bral, claiming an amount in excess of \$1,211,126 in damages for trademark infringement, trademark dilution, false designation of origin, unfair competition, breach of contract, and breach of guaranty resulting from default of a management agreement, default of a license agreement and indemnity for legal fees incurred defending a third -party lawsuit.

In response, the Defendants filed an answer on October 15, 2012, denying the allegations and asserting a counterclaim against Holiday and IHG Management (Maryland) setting forth causes of action for breach of the management agreement, negligence, breach of fiduciary duty, and breach of the license agreement. Defendants claim monetary damages of \$7,300,000 plus additional damages to be proven at trial as well as attorneys' fees and court costs. Defendants also asserted a third -party claim against the management entity, IHG Management (Maryland), for indemnity for any judgments entered against the Defendants which would constitute a duty, obligation or responsibility of IHG Management (Maryland) under the management agreement. Following discovery, the parties resolved this matter with neither Holiday nor IHG Management (Maryland) LLC making any payments. The case was dismissed with prejudice on June 19, 2014.

Holiday Hospitality Franchising, LLC v. Touch International, Ltd and Azhar Ali Malik, State Court of DeKalb County, Georgia, Civil Action No. 11A39504-5 (October 28, 2011).

On October 28, 2011, Holiday filed suit against the Defendants asserting a claim for breach of a Holiday Inn® hotel license agreement, breach of a guaranty of the license agreement and attorneys' fees. Holiday is seeking damages in the amount of \$421,336.39. On May 21, 2012 Defendants filed a counterclaim, which they later amended, asserting claims for breach of contract, tortious interference with contractual relations, tortious interference with business relations, attorneys' fees and punitive damages. The parties resolved this matter with no payment made by Holiday. This case was dismissed with prejudice on April 14, 2014.

Holiday Hospitality Franchising, LLC v. Heritage New London, LLC, Sunil Nayak and Vandana Nayak, State Court of DeKalb County, Georgia, Civil Action No. 13A40515 (November 21, 2013).

On November 13, 2013, Holiday filed suit against the Defendants asserting a claim for breach of a Holiday Inn® hotel license agreement, breach of a guaranty of the license agreement, and attorneys' fees. Holiday is seeking damages in the amount of \$421,336.39. On January 23, 2014, Defendants filed a counterclaim asserting claims for breach of contract, breach of the covenant of good faith and fair dealing, setoff and recoupment, punitive damages, and attorneys' fees. The parties resolved this matter with Holiday making no payments. The case was dismissed with prejudice on August 1, 2014.

Stayfield Hotels Corp. v. Holiday Hospitality Franchising, LLC, State Court of DeKalb County, Georgia, Civil Action No. 13A49556-5 (November 26, 2013).

On November 26, 2013, Stayfield Hotels Corp., a current Holiday Inn Express® Hotel & Suites licensee alleged claims against Holiday for breach of the license agreement and attorneys' fees. The parties resolved this matter with Holiday making no payments. The case was dismissed with prejudice on June 16, 2014.

Holiday Hospitality Franchising, LLC v. Coastal Hotel Properties, LLC, John W. Gandy, Bhupendra Patel, and Pradipkumar Patel, State Court of DeKalb County, Georgia, Civil Action No. 14A-51633-2, removed to United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 1:14-cv-02325-ODE (May 29, 2014).

In response to a lawsuit filed by Holiday on May 29, 2014 against the defendants seeking damages related to the termination of a Holiday Inn® hotel license agreement, defendants filed a counterclaim against Holiday alleging breach of contract and breach of the duty of good faith and fair dealing. This case was settled without any payment by Holiday to the Defendants which resulted in a dismissal with prejudice of all claims on March 5, 2015.

Holiday Hospitality Franchising, LLC v. Woodlawn Group, LLC, Sanjay Mundra, Dicky Walia, Harminder Singh, State Court of DeKalb County, Georgia, Civil Action No. 14A-51446-2 (May 15, 2014).

In response to a lawsuit filed by Holiday on May 15, 2014 against the defendants seeking damages related to the termination of a Holiday Inn® license agreement, defendants filed a counterclaim against Holiday alleging breach of contract, breach of the covenant of good faith and fair dealing, set off and recoupment, and seeking punitive damages and attorneys' fees for alleged wilful misconduct, malice, fraud, oppression, and want of care. This case was settled without any payment by Holiday to the Defendants which resulted in a dismissal of all claims on January 27, 2015.

Holiday Hospitality Franchising, LLC v. Warner Robbins Hospitality, LLC, Dhiru L. Patel, Piyush K. Patel, Nishit S. Desai, State Court of DeKalb County, Georgia, Civil Action No. 14A-50454-1 (April 6, 2014).

In response to a lawsuit filed by Holiday on April 6, 2014 against the defendants seeking damages related to the termination of a Holiday Inn® license agreement, defendants filed a counterclaim against Holiday alleging breach of Georgia's Fair Business Practices Act. This case was settled without any payment by Holiday to the Defendants which resulted in dismissal of all claims on March 13, 2015.

Holiday Hospitality Franchising, LLC v. Dreams Hospitality Group, LLC, Aman Patel, Sapna Patel a/k/a Sapna Bindal, Bhasker Patel, Nimish Patel, Devang Shah a/k/a Devang Mukund, Shah, Kirit Patel, a/k/a Kiritkumar Madan, Lal Patel, and Varsha Patel a/k/a Varshaben N. Patel, State Court of DeKalb County, Georgia, Civil Action No. 14A51131-6 (April 23, 2014).

In response to a lawsuit filed by Holiday against the defendants seeking damages related to the termination of a Holiday Inn Express® hotel license agreement, defendants filed a counterclaim against Holiday alleging breach of Holiday's obligations under the license agreement. This case was settled without any payment by Holiday to the defendants which resulted in a dismissal with prejudice of all claims on September 23, 2014.

Holiday Hospitality Franchising, LLC, f/k/a Holiday Hospitality Franchising, Inc. v. 404980 Alberta, Ltd., Sadnidin S.D. Suleman, Kariama Suleman, and Shahsultan Suleman, U.S. District Court, Northern District of Georgia, Atlanta Division, Civil Action File No. 1:16-CV-01773-CAP (June 1, 2016).

On June 1, 2016, Holiday filed a complaint in Georgia against 404980 Alberta, Ltd., a former Holiday Inn® licensee and guarantors Sadnidin S. D. Suleman, Karima Suleman and Shahsultan Suleman to recover unpaid system fees and liquidated damages from the former licensee (the "Georgia Matter"). In response to Holiday's suit, defendants filed a separate action in Alberta on December 22, 2016 styled 404980 Alberta Ltd. and Karima Suleman v. Holiday Hospitality Franchising, Inc. and Holiday Hospitality Franchising, LLC, Court of Queen's Bench of Alberta,

Calgary, Court File No. 1601-17271 (the “Alberta Matter”). There, the former licensee and guarantors sought a declaratory judgment under the Alberta Limitations Act and Guarantees Acknowledgement Act. Both matters were resolved with no payment by Holiday. The Georgia Matter was dismissed with prejudice on April 20, 2017. The Alberta Matter was discontinued on April 19, 2017.

Laura McCabe and Latroya Simpson v. Six Continents Hotels, Inc., United States District Court, Northern District of California, San Francisco Division, Case No. 3:12-cv-04818 (July 3, 2012).

On July 3, 2012, two plaintiffs filed a class action complaint alleging violations of California Penal Code 632.7, based upon the alleged improper recording of cellular phone calls originating from California to customer care centers. Plaintiffs amended the complaint twice, first to include Six Continents Hotels, Inc. as a defendant, and later to allege improper recordings at additional customer care centers. The case was removed to Federal Court and SCH filed motions to dismiss the complaint, which were denied. SCH filed an answer to the original complaint on January 9, 2013 and filed an answer to the amended complaint on February 18, 2014. Following discovery and mediation, the parties reached a preliminary agreement to resolve this matter. On February 4, 2015 the parties filed a Notice of Settlement and Request to Vacate Calendar Dates. Following a hearing on February 3, 2016, the Court issued an Order and Judgment approving the parties’ settlement. This matter was dismissed with prejudice on February 8, 2016.

The Generation Companies, LLC v. Holiday Hospitality Franchising, LLC and InterContinental Hotels Group Resources, Inc., United States District Court, Eastern District of North Carolina, Civil Action No. 5:15-cv-220, transferred to United States District Court, Northern District of Georgia, Civil Action No. 1:15-cv-4052-LMM (April 20, 2015).

On April 20, 2015, a licensee of a Staybridge Suites® hotel filed suit against Holiday and InterContinental Hotels Group Resources, Inc., and alleged that defendants intentionally interfered with contractual relations, committed slander, and violated North Carolina’s Unfair and Deceptive Trade Practices Act. Plaintiffs sought compensatory damages and unspecified punitive damages. The parties resolved this matter with no money paid by defendants and the lawsuit was dismissed with prejudice on January 6, 2016.

Jesta Hospitality CT, LLC v. Holiday Hospitality Franchising, LLC, Superior Court of Dekalb County, Georgia, Civil Action File No. 16cv5092-1 (May 26, 2016).

A former licensee of a Crowne Plaza® hotel filed suit against Holiday alleging breach of contract, breach of the implied duty of good faith and fair dealing, promissory estoppel, and seeking a declaratory judgment. Holiday filed a counterclaim seeking damages related to its termination of the license agreement and seeking unpaid fees. This matter was resolved with no payment by Holiday and dismissed with prejudice on December 27, 2016.

Other than these actions, no litigation is required to be disclosed in this Item.

#### **ITEM 4**

#### **BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

#### **ITEM 5**

#### **INITIAL FEES**

When you submit an application for a License – whether for a new development, conversion, change of ownership or re-licensing – you must pay IHGFL an initial application fee (the “Application Fee”) of \$500 per guest room, but not less than \$100,000.

See Item 6 for information relating to the requirements and fees for changes of ownership, licensee name changes, realignment of the licensee’s ownership and re-licensing.

**REFUNDABILITY:**

If IHGFL does not approve your application for a License, or if you withdraw the application before IHGFL approves or denies it, IHGFL will return the Application Fee to you, less \$15,000. If IHGFL approves the application subject to certain requirements, IHGFL may revoke its approval if you fail to meet those requirements. Once IHGFL approves the application (even if IHGFL subsequently revokes its approval), the Application Fee is nonrefundable.

**PIP:**

Before you submit an application for a conversion, change of ownership, re-licensing or brand change, you must arrange for IHGFL to conduct an inspection of the Hotel so that IHGFL can prepare written specifications for the upgrading, construction and furnishing of the Hotel in accordance with the Standards, in the form of a plan, called a “Property Improvement Plan” (“PIP”). There is a nonrefundable \$12,000 fee for the inspection of your Hotel and preparation of a PIP report (see Item 6). In the case of a conversion, IHGFL will not authorize your Hotel to open until you complete all PIP requirements, including submission of all plans before the start of construction in accordance with Kimpton’s Review and Approval Policy and the dates specified in your License, the PIP (as applicable) and the other attachments to your License (see Item 11). In the event the hotel fails its opening inspection or if an extension of the PIP milestones is required, SCH may charge you up to \$6,000 for each extension, re-evaluation and re-inspection.

**PRE-OPENING SUPPORT:**

The Hotel Openings program provides services and support, assistance and training required to open a Hotel in the Brand System (or in certain cases the support, assistance and training needed to convert from a Kimpton managed hotel to a licensed hotel). The Hotel related Preopening Support Fee ranges between \$20,000 and \$35,000, plus trainee/trainer expenses and the program will typically begin 14 days prior to anticipated opening of the Hotel in the Brand System. The final amount of the Hotel Preopening Support Fee will be determined based on the size of the Hotel, number of F&B outlets at the Hotel, and other factors as determined by IHGFL. This fee covers training programs, systems support, post-opening support and other pre-opening consultations. The amount of training and number of trainers may vary based on the size of your hotel, experience of your employees and other factors. Generally, training topics may include: the Standards, guest service skills, departmental performance standards, marketing and loyalty programs, service planning, quality measurement and the Reservation System. The training may also include management orientation and Hotel employee orientation. The Hotel must provide meeting space and lodging for the trainer and attendees. In the event additional onsite training is required at the hotel, additional costs may be incurred which currently range from \$1,500-\$6,000 depending on the scope of additional learning needs for the hotel.

**TRAINING, EQUIPMENT AND MATERIALS:**

You and your approved management company (“Hotel Operator”) must complete all of the required training as outlined in Item 11 and the Brand Standards.

Within sixty (60) days following execution of the License, and before your architect begins detailed architectural, interior design or construction plans, you and your management company are required to participate, and in some cases attend in-person, a Kimpton Orientation & Onboarding

meeting. The meeting will provide an overview of the Kimpton Brand, an overview of Kimpton's Standards, Kimpton's Review and Approval Policy and other requirements to become a Kimpton hotel. If the meeting is conducted in-person, the meeting may be held in San Francisco, CA or at another location designated by IHGFL and you and your participants must pay your and their own travel, lodging, and meals for the program. Throughout the development, or conversion process, you must provide IHGFL with the required submittals as outlined in our Review and Approval Policy.

The RAMP UP Program is an instructor-led training class that provides basic instruction on IHG Concerto, the reservation process and revenue management. There are no fees for your General Manager and your Hotel's designated system experts to attend this training. Participants from all hotels are responsible for their own expenses for travel, meals and lodging if they attend the workshop in person. Your General Manager and front office staff must have access to IHG Concerto™ and complete necessary web-based training including: Get to know IHG Concerto™, IHG Concerto Home Page Overview, and Digital Check-In Training, all available at no cost

During the Hotel opening process, you may be required to pay additional fees for pre-and post-opening training, consultation and coaching services provided by SCH or its designated representatives. These additional fees that are payable to SCH, and are associated with on-site visits, rescheduling of those visits or extensions of your hotel's opening date, will not exceed \$5,000 per visit, and you must also pay for the expenses of the trainers' travel, living and lodging expenses while conducting the visit.

The IHG Learning Program is a learner-centric approach designed to promote a positive culture of learning. Each Hotel must participate in the IHG Learning Program. The 2024 annual subscription fee for Kimpton Hotels & Restaurants hotels is \$5,500. The 2024 annual subscription fee for Kimpton Hotels & Restaurants will be prorated based on the month that your Hotel opens.

Your Hotel must hire a general manager and sales directors/managers with the qualifications as set forth in Item 15 at least six months prior to the Hotel's opening. Such individuals will be required to participate in pre-opening training and to prepare the Hotel for opening.

Prior to opening, or as otherwise specified by IHGFL, certain positions such as the General Manager-Hotel, the General Manager-Restaurants & Bars (if applicable) or equivalent role, Director of Sales, Executive Chef (if applicable), Director of Housekeeping and Director of People & Culture, and other positions as designated by IHGFL, are required to complete specific certification programs or training courses for its respective discipline. The total cost for all initial department-head certification training programs will range from \$40,000 to \$60,000. This certification cost may be less in the event certain programs can be delivered via a virtual option at a lower cost. For in-person classes, you must pay for your trainees' travel expenses or any training expenses incurred from any optional or supplemental courses that your trainees attend. Participants from all Hotels are responsible for their own airfare, lodging, meals and other miscellaneous expenses for any training programs which are located off-site. You must also purchase training materials for the training programs described in Item 11, which IHGFL estimates will cost no more than \$5,000 per hotel for all trainees combined. Other positions designated within the Training Program (as disclosed in Item 11) must participate and complete their designated certification program(s) or training courses within the specified periods of time. The training programs can range from a few hours (if online) to a 5-day period. The cost for each training program will range from \$395 to \$3,000 (see Item 11). Your participants must also pay their own airfare, lodging, meals and the fee for the workshop.

IHGFL currently designates Oracle America, Inc. as the Property Management System ("PMS") provider and requires you to operate on the Opera or Opera Xpress PMS software (see Items 1, 5, 6, 7, 8 and 11).

The estimated costs for the equipment configuration, installation, software and training will vary depending on the number of guest rooms and technology needs at your Hotel. We estimate that the cost for a premise-based PMS installation and the purchase of required hardware devices (i.e., workstations and printers) will range from \$64,000 to \$75,000 for a hotel with 1-100 rooms; \$83,000 to \$96,000 for a hotel with 101-175 rooms; \$97,000 to \$130,000 for a hotel with 176-250 rooms; \$124,000 to \$187,000 for a hotel with 251-350 rooms; and \$196,000 or greater for a hotel with 351 rooms or more. Once available, all new hotels, conversions and renovation properties must have their Property Management System (PMS) hosted in an SCH-approved data center or cloud facility. Once available, existing Hotels which need to replace hardware and upgrade software must also move to an SCH-approved Property Management System (PMS) that is hosted in a data center or cloud facility. This hosted option is priced differently from the premise-based option and requires each Hotel to pay for license/support fees directly to the PMS provider. We estimate that the cost for the hosted PMS installation and the purchase of required hardware devices (i.e., workstations and printers) will range from \$50,000 to \$57,000 for a hotel with 1-100 rooms; \$52,000 to \$66,000 for a hotel with 101-175 rooms; \$56,000 to \$80,000 for a hotel with 176-250 rooms; \$76,000 to \$95,000 for a hotel with 251-350 rooms; and \$96,000 or greater for a hotel with 351 rooms or more.

All Hotels will require a custom quote at the time the deployment process begins to better determine estimated costs. You must pay these costs before any goods or services are delivered to the Hotel. These cost estimates include: the basic hardware for the PMS and access to the Reservation System, the basic software, the installation of equipment and software and initial training for your employees on how to use the PMS with the Reservation System, and the purchase, installation of and training for the NGP, or such successor payments program as may be implemented by SCH, equipment and software. These estimated costs do not include other training, additional equipment, additional software, additional operational manuals, shipping and handling, taxes, insurance, or food, travel and lodging expenses of your employees, vendor employees, SCH employees or contractors who install the PMS and Reservation System equipment and software at your Hotel and train your employees to use them, or the cost of internal hotel cabling or infrastructure. SCH requires that you refresh PMS hardware/software every 48 months. In the future, a cloud-based PMS may be mandated by SCH.

**Kimpton Design and Concept Development Support:**

The Kimpton design and brand team will develop a design and overall concept for your Hotel following the execution of your License, which will drive the branding and positioning of your Hotel in the market. Prior to work commencing, a branding agency and an interior designer, approved by IHGFL in its sole discretion, must also be engaged for your Hotel. The fee for providing such design and concept development ranges from \$75,000 to \$150,000, which costs are payable to IHGFL. The final amount of the Kimpton Design and Concept Development Support Fee will be determined based on the size of the Hotel, number of F&B outlets at the Hotel, and other factors as determined by IHGFL.

**Restaurant & Bar Professional Brand Concept Development and Opening:**

The Restaurant & Bar Professional Concept Development costs include estimated amounts for a high-level market analysis, data driven market study, in-market analysis, concept presentation deck with the concept overview, target demographics, design description, culinary direction, sample menu and overall service style direction. These costs do not include travel and entertainment associated with the concept development. While these costs may be passed through IHGFL to IHGFL's approved suppliers, if IHGFL is engaged for the Restaurant & Bar concept development in connection with the same, you will be required to enter into a Concept Consulting Agreement in the form attached as Exhibit H-11 to this disclosure document. To the

extent IHGFL is engaged for the Restaurant & Bar concept development, the costs are outlined in the Luxury and Lifestyle Franchise Restaurant and Bar Approval Policy and are estimated to be \$75,000 for a single (i) 3-meal restaurant, (ii) “signature” dinner only restaurant or (iii) rooftop bar, and \$50,000 for each subsequent concept in this category, and \$35,000 for a single (i) Café, (ii) Grab n go, (iii) limited service bar, or (iv) pool bar. The total costs paid to IHGFL will depend on the number of food and beverage outlets at the Hotel and other factors as determined by IHGFL. Regardless of whether Kimpton or a third-party develops your Hotel’s R&B concept, IHGFL will approve the final concept and design. The Concept Development Costs do not include branding, collateral development, final menu development, staff recruitment, music creation, website development, photography, pre-opening marketing, pre-opening training, and promotions.

IHGFL can provide Restaurant & Bar Concept Implementation Services for an additional fee per venue as outlined in the Luxury and Lifestyle Franchise Restaurant and Bar Approval Policy. The fee ranges from \$5,000 to \$10,000 per outlet.

**Commercial, Digital & Communications Setup:**

In connection with the commercial, digital and communications setup at your Hotel, IHGFL may require you and your management company to participate in pre-opening Commercial Services provided by IHGFL or its affiliates. The services provide digital, communications, and social media support to open the Hotel. The pre-opening Commercial Services support can vary and cost up to \$31,000 depending on the number of programs utilized.

In addition, you may choose to participate in other optional pre-opening programs provided by IHGFL for an additional cost.

IHGFL may consider requests to alter the requirements described in this Item. IHGFL will only consider changes under special circumstances and any changes must comply with applicable laws.

**ITEM 6**

**OTHER FEES**

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
<b>Royalty Fee</b>			
Royalty	6% of Gross Rooms Revenue (“GRR”) plus 1% of Gross Food and Beverage Sales.	Monthly, payable on the 15 <sup>th</sup> of the following month (Payable to IHGFL)	Note 1



NAME OF FEE	AMOUNT	DUE DATE	REMARKS
Royalty in case of Casualty	2% of GRR based on average GRR for preceding 12 months.	Monthly, payable on the 15 <sup>th</sup> of the following month (Payable to IHGFL)	Note 2
<b>Marketing &amp; Reservations Related Fees</b>			
Services Contribution	3% of GRR in aggregate (see Remarks for breakout).	Monthly, on the 15 <sup>th</sup> of the following month (Payable to IHGFL)	Note 3
Initial Marketing Contribution for the Loyalty Program	\$10.00 per approved guest room.	At same time as 1st Royalty Payment (one-time Charge) (Payable to SCH)	Note 4
Loyalty Program Contribution	4.55% of Qualifying Full Folio Revenue from Loyalty Program members  1.365% of Qualifying Room and Meeting Revenue from Loyalty Program members	Monthly, payable on the 15 <sup>th</sup> of the following month (Payable to SCH)	Note 4
Local Marketing Programs	Varies depending on actual cost	Varies  (Payable to IHGFL or 3 <sup>rd</sup> party engaged by Licensee)	Note 4
Promotions; required and optional advertising materials	Varies	On request (Payable to IHGFL)	Note 4
<b>Third Party Distribution Connection Fees:</b>			
IHG Commission Services ("ICS") (Travel Agent Commissions)	10% (minimum) commission on total room rate.	Monthly (Payable to SCH)	Note 5
GDS Fees	\$6.40 per reservation	Monthly (Payable to service provider)	Note 5

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
Groups & Meetings Fee	4.0% fee for consumed or agreed room revenue sent to hotels via IHG MeetingBroker.	Monthly (Payable to SCH or intermediary)	Note 5
Groups & Meetings TMC Fee	2% globally for BCD M&E, CWT M&E and AMEX GBT. G&M TMC Revenue Programs are pay-for-performance marketing programs designed by SCH	Monthly (Payable to SCH or intermediary)	Note 5
IHG Ignite Digital Marketing Fees	2.25% commission on all consumed direct digital revenue booked.	Monthly (Payable to SCH or intermediary)	Participation in this program is optional, see Note 5
Commercial Services	Varies	Monthly/On demand (Payable to SCH or intermediary)	Participation in this program may be required as determined by IHGFL in certain circumstances, see Note 5
TMC (formerly known as BTA) Revenue Program	Hotels pay an override fee of 2.25% on qualifying consumed room nights only, with a maximum annual payment of \$20,000 USD (or equivalent local currency). For select hotels participating in the IHG Luxury & Lifestyle program, the maximum annual payment is \$25,000 USD (or equivalent local currency)	Monthly (Payable to SCH or intermediary)	Note 5
IHG Business Edge Program Booking Fees	4% of consumed transient revenue booked through the IHG Business Edge Program.	Monthly (Payable to SCH)	Opt-out program, see Note 5
IHG Voice Reservation Service	<p>\$7.65 per net booking, which may be changed once annually.</p> <p>All hotels must sign up and actively use this service for all room reservations.</p> <p>A commission of 10% may be applied to hotels who transfer hotel-direct calls to public IHG CRO toll-free numbers.</p>	Monthly (Payable to SCH)	Note 6

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
<b>Technology</b>			
Technology Services Fee	\$17.06 per room, per month.	Monthly (Payable to SCH)	Note 7
Revenue Management System: IHG Concerto™, Yielding & Price Optimization; or Revenue Analytics' N2 Pricing	Costs of between \$30 and \$120 may apply for competitive rate insight shopping. For hotels currently subscribing to RevenueStrategy360, these costs may be waived.	Monthly (Payable to SCH)	Note 8 & Item 11
PMS Software Maintenance:	The following are estimates for Opera and do not include all items, which may be reflected in your Hotel's contract with Oracle America, Inc. Maintenance and/or hosting fees may be increased up to 5% per year.  Costs will vary according to your technology needs.	Annually (Payable to Oracle America, Inc.)	Note 9 & Item 11
Opera PMS	\$17.60 per room, per year for Opera V5 Software Support \$2.86 per room, per year for Oracle Technology Foundation Support \$9.24 per interface, per year, within bundle for IFC8 Interfaces Annual Support \$440.00 per interface, per year, out of bundle for IFC8 Interfaces Annual Support \$4.40 per room per year for Opera Multi-property Profiles \$605.00 per year for Opera Exchange Two-Way interface (for Delphi FDC) \$968.00 per year for Opera HTNG interface (for HotSOS) \$0.03 each, for Opera Back Office Interface Support \$0.02 each, for Opera Export Files Support		Note 9

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
	\$0.63 per room, per year for Opera Web Services Support (OWS) \$110.00 per interface, per year for EFT Interface Support (NGP) \$0.09 per interface, per year for OXI-IHGWS – LARs Functionality Support An approved PMS Interface is required to support digital guest experience (IHG EDGE)		
Hot SOS Maintenance	After initial set-up cost, \$4,000 to \$9,000/year depending on components and number of mobile devices	Annually  (Payable to Amadeus)	Note 9
Kipsu SMS Guest Messaging	0-111 rooms: \$160 minimum/month  112-200 rooms: \$1.80 Room/Month  201-300 rooms: \$1.50 Room/Month  301-400 rooms: \$1.20 Room/Month  401-500 rooms: \$1.08 Room/Month	Monthly	Note 9
Delphi FDC	\$10,000 to \$20,000/year depending on components and number of licenses	Annually (Payable to Amadeus)	Note 9
FastConnect SD-WAN And Access Control Manager	\$168.00-\$300.00 for 6 devices and 10 users; plus \$22.00 per additional device and \$1.25 per additional user.	Monthly (Payable to AT&T)	Note 9
Email/O365 Online/ Yammer Licensing	\$2.53/month per user	Monthly (Payable to SCH)	Item 9
NextGen Payments (“NGP”) Program Fee (includes support, installation and hardware)	\$251 - \$801 (exact amount will be defined on hotel quote)	Monthly (Payable to SCH)	Note 9

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
Guest Internet Access – Bandwidth Service Subscription (IHG Connect)	\$1,000 to \$3,000 Pricing is estimated and varies based on regional service providers	Monthly (Payable to SCH for “Direct” model or to bandwidth provider for “Contracted Commercial” model)	Note 9
IHG Connect Hardware Software License Renewal	Varies but can range from \$3,000-\$200,000	Payable at the date which is five years of the original purchase claim date and every five—year period thereafter	Note 9
Guest Internet Access – Hardware Maintenance & Guest Support (IHG Connect)	\$1.50 per guest room  \$25.00 per meeting / conference room, plus \$20.00 per 2,000 sq. ft. of total meeting space, maximum of \$500.00 (meeting room support fees only apply if total meeting space exceeds 2,000 sq. ft.) SCH-approved hardware would need to be purchased from and installed by an SCH-approved integrator.	Monthly (Payable to SCH approved Integrator)	Note 9
Guest In-Room Entertainment– Hardware, Maintenance, Guest Support, & Content	\$3.75 per room, per month for software, maintenance, and guest support  \$7.20 per room, per month for content.	Monthly (Payable to SCH or approved integrator)  Monthly (Payable to SCH or approved integrator)	Note 9

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
	\$1.25 per room, per month for HBO (where required).	Monthly (Payable to SCH or approved integrator)	
Employee Safety Devices	Initial fee of \$125-\$150 per room in the first year of installation plus \$20.00 to \$25.00 per room, per year for software and maintenance support.	Annually (Payable to SCH approved supplier)	Note 9
Hotel Website Maintenance	Domain Renewal: Estimated \$250/year  Website Maintenance Retainer: \$850/month  Blog Posts: \$1,000/year	Annually (Payable to third party service provider)  Monthly (Payable to third party service provider)  Annually (Payable to third party service provider)	Note 9
Hotel Search Engine Optimization	Cost varies	Annually (Payable to third party service provider)	Note 9
Restaurant Digital – Website Maintenance and Search Engine Marketing	Domain Renewal: Estimated \$100/year  Website Maintenance Retainer: \$150/month  SEO Services: \$1,500 per year	Annually (Payable to third party service provider)  Monthly (Payable to third party service provider)  One-time (Payable to IHGFL)	Note 9

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
Kimpton Design Studio	\$500/month	Monthly (Payable to IHGFL)	Note 9
F&B POS Support	\$45.00 per workstation	Monthly (Payable to an approved supplier.)	Note 9
Security Software for Public Access Computers (Business Centers)	<p>\$495.00 to \$525.00 per workstation, per year for software, maintenance, and guest support</p> <p>\$315.00 to \$399.00 per printer, per year for the optional mobile printing feature</p>	Monthly (Payable to SCH or an approved supplier)	Note 9
<b>Ongoing Training</b>			
<p>Ongoing Management Training Fees IHG Learning Program: Core Subscription/Value Add and Specialist Training</p> <p>Training Workshops currently include:</p> <p>(a) New Hotel management training and certifications (b) Brand workshops (c) Sales Workshop(s) (d) Service Workshop(s) (e) Revenue Workshop(s) For example, Revenue Management Certification (as defined in the Standards). (f) Quality Workshop(s) (g) Food and Beverage Workshop(s) (h) Specialized Workshop(s)</p>	<p>Learning categorized as core is included within the subscription model and includes critical learning designed to effectively onboard team members, support the operational needs of a hotel, and comply with brand standards to deliver a branded guest experience. The cost is \$5,500/yr for Kimpton Brand. Prorated based on month your Hotel opens. For in-person classes you must pay trainees' travel and optional/supplemental training expenses.</p> <p>Hotels should allocate annual pre-determined amounts per full-time employee for optional value-add and specialist courses: Managers/Department Heads - \$650; Assistant Managers/Supervisors - \$450; Frontline colleagues - \$250.</p>	<p>Upon attending (Payable to IHGFL)</p> <p>Core Subscription fee is payable annually within 30 days from IHGFL's invoice. Value-add and specialist learning billed upon attending. (Payable to HHFL)</p>	Item 11
IHG® Luxury and Lifestyle Conference	Up to \$2,295 per attendee, not including travel, lodging or other expenses.	Invoiced at time of registration	Note 10

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
		(Payable to SCH)	
Subsequent Training Materials	\$0 - \$5,000 per hotel for all trainees combined	As incurred (Payable to IHGFL/SCH)	You may be required to purchase subsequent training materials to fulfill the ongoing training of new employees.
<b>Operational Fees</b>			
Audio Streaming Service Subscription	\$150/month/Hotel zone	Monthly (Payable to third party service provider)	Note 11
IHG Revenue Services and IHG Commercial Services	<p>\$2,499 - \$9,000 per month. Varies based on the program and level of service provided.</p> <p>(These fees apply until December 31, 2023, after which they may change.)</p> <p>Plus, one-time registration fee of \$800.</p> <p>Plus, out of pocket travel expenses for SCH personnel.</p> <p>(These fees are modifiable with 90 days written notice.)</p>	Monthly (Payable to SCH)	Participation in this program may be required as determined by IHGFL under certain circumstances, see Note 12
IHG® One Rewards Measured Standards	<p>Hotels are assessed for non-compliance to the measured loyalty standards as follows,</p> <p>Hotels with 300 rooms or less:</p> <ul style="list-style-type: none"> <li>• Fail first quarter = Cure (no assessment)</li> <li>• Fail second quarter = Assess \$1,000</li> <li>• Fail third quarter = Assess \$2,000</li> <li>• Fail fourth quarter = Assess \$3,000</li> <li>• Capped at \$3,000 per quarter</li> </ul> <p>Hotels with more than 300 rooms:</p>	Quarterly Assessment appears on Invoice (Payable to SCH)	Note 13



NAME OF FEE	AMOUNT	DUE DATE	REMARKS
	<ul style="list-style-type: none"> <li>• Fail first quarter = Cure (no assessment)</li> <li>• Fail second quarter = Assess \$1,000</li> <li>• Fail third quarter = Assess \$2,500</li> <li>• Fail fourth quarter = Assess \$5,000</li> <li>• Capped at \$5,000 per quarter</li> </ul>		
Refresh Hotel Photography	\$10,000-\$25,000	As required	Note 14
3 <sup>rd</sup> Party Secret Shopper (Hotel)  3 <sup>rd</sup> Party Secret Shopper (Restaurant)	\$900 for secret shopper service plus reimbursement for guestroom and meals.  \$110 for secret shopper service plus reimbursement for food and beverage.	Bi-annual (Payable to service provider)  Quarterly (Payable to service provider)	Note 15
Quality Programs for failure, default, non-compliance or termination status	Up to \$13,500 per visit.	Before follow up inspection and/or special inspection (Payable to IHGFL)	Note 15
Bi-Monthly “The Operator’s View” (TOV),	Escalating assessment of up to \$2,500	Upon demand (Payable to IHGFL)	Note 15
Corrective Action Plan (CAP), or Hotels that fall below the “Reputable guest satisfaction threshold	Escalating assessment of up to \$13,500	Upon demand (Payable to IHGFL)	Note 15
PIP/Soft Goods or Case Goods Renovation inspection/preparation fee  Plan and/or FF&E Extensions and Defaults	\$12,000 for a PIP (and \$6,000 for a re-inspection)  The PIP may include the need for a Brand Dashboard update for an additional fee  Up to \$5,000	Before application, or upon request for PIP (Payable to IHGFL)  Upon request due to extension and/or default	See Item 5  See Item 8 See Note 15

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
<p>PIP Extensions and Defaults and Extension Travel</p> <p>Custom Design Review</p> <p>Non-Compliance with Soft Goods and Case Goods Renovation Requirements</p>	<p>Up to \$5,000</p> <p>Up to \$25,000</p> <p>Up to \$10,000</p>	<p>(Payable to IHGFL)</p> <p>Upon request due to extension and/or default (Payable to IHGFL)</p> <p>Upon Request</p> <p>Upon request due to extension and/or default (Payable to IHGFL)</p>	<p>See Note 15</p> <p>See Note 15</p>
<p>Employee Engagement Survey</p>	<p>\$7 to \$12 per employee each year.</p>	<p>Annually (payable to designated third party provider)</p>	<p>Note 16</p>
<p>Clean the World</p>	<p>\$150-\$200/month</p>	<p>Monthly (Payable to third party provider)</p>	<p>Note 17</p>
<p>Tax on Sales/Gross Receipts</p>	<p>IHGFL's actual cost.</p>	<p>Upon notice from IHGFL</p>	<p>Note 18</p>
<p>Guest Relations Fees</p>	<p>Quality and Service contacts from Hotels will be handled by Guest Relations in the 'One Contact Resolution' process. Hotels will be charged a case management fee of \$150 per incident, plus the compensation amount of no greater than one night's room and tax.</p> <p>Non Service and Quality cases (such as billing or reservations issues) that are not resolved within 48 hours by the Hotel</p>	<p>On request (Payable to IHGFL)</p>	<p>Note 19</p>

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
	will be handled by Guest Relations with a case management fee of \$150 per incident.		
Capital Reserve	Up to 5% of Gross Revenue (see Paragraph 13.O of the License).	Monthly (If Required by IHGFL)	Note 20
Standard Fee for Room Additions	\$500 for each new approved guest room or suite.	With the room addition application (Payable to IHGFL)	Note 21
<b>Fees for Extensions of Construction Commencement (“CC”) Deadlines:</b>			
1. New Development or Conversions (Extensions >6 but less than or equal to 12 months from CC date included in original license)	\$10,000	With extension request (Payable to IHGFL)	Note 22
2. New Development or Conversions (Extensions resulting in a CC date that is >12 months from the CC date included in original license)	1/2 of Application Fee		Note 22
3. Room Additions (6-month extension)	1/2 of original room addition Application Fee.		Note 22
<b>Miscellaneous</b>			
Public Offering or Private Placement Processing Expenses	Reimbursement of IHGFL’s attorney fees in connection with its review of prospectus.	When you or any of your owners submits request for approval of private placement or public offering (Payable to IHGFL)	Note 23
Audit/Interest	Amount of deficiency, interest and \$3,000 (audit fee may be	Upon notice from IHGFL	Note 24

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
	increased on a System-wide basis).		
Re-licensing or Change of Ownership Application Fee	\$500 per guest room but not less than \$75,000. See Item 5.	Due with re-licensing application  (Payable to IHGFL)	See Note 25 & Item 5
Realignment/name change; brand conversion processing fee	\$5,000 for licensee name change, ownership realignment or brand conversion processing fee. Additional fees of \$75,000 - \$150,000 may apply for additional concept development and design if the Hotel or Restaurant must undergo a complete re-branding.	Due upon realignment, name change or brand conversion, if approved  (Payable to IHGFL)	Note 25
Indemnification	Varies	Upon demand	Note 26
Liquidated Damages Payment on premature termination before IHGFL authorizes you to use the system at the Hotel (includes termination resulting from failure to perform the construction, upgrading and renovation work described in the License) (see License, Par. 13.J)	A lump sum equal to the monthly average of all amounts that would have been payable to IHGFL under Paragraphs 3.B(3) through (6) of the License assuming the Hotel had collected GRR based on the average daily revenue per available room for all hotels in the Brand System in the United States for the previous twelve months, multiplied by the greater of (a) 6 or (b) the number of full and partial months from the Term Commencement Date to the termination date of the License.	Promptly upon Termination  (Payable to IHGFL)	Note 1, Item 17 f., g., h and Note 3 to Item 17
Liquidated Damages Payment on premature termination after IHGFL authorizes you to use the System at the Hotel (applicable only if License terminates before expiration, in accordance with License) (see License, Par. 11.B, 11.C, 11.E)	An amount equal to the total amounts required under License Paragraphs 3.B(3) through (6) during the 60 calendar months of operation preceding the termination or during the preceding number of months equal to the unexpired License Term at the time of termination (if less than	Promptly upon Termination  (Payable to IHGFL)	Item 17f, g., h. and i. and Note 4 to Item 17.

NAME OF FEE	AMOUNT	DUE DATE	REMARKS
	60 months); or if the Hotel has not been in operation in the Brand System for 60 months, an amount equal to the greater of (i) 60 times the monthly average of these amounts for the period during which the Hotel has been in operation in the Brand System, or (ii) 60 times these amounts as are due for the one month preceding the termination.		
Comfort Letter Processing Fee	\$2,500 for the preparation and processing of any mezzanine, replacement, or subsequent comfort letters after the initial senior lender letter.	Upon demand (Payable to Holiday)	IHG may waive this fee in its sole discretion

**Note 1. Payments, Gross Rooms Revenue:** IHGFL can require you to make any payments due to IHGFL to its parents, affiliates, subsidiaries or other designees. For example, many charges and fees shown on the table above are payable to SCH. Unless otherwise stated, all charges and fees on the table above are nonrefundable and uniformly applied to new Brand System licensees; however, in instances that IHGFL considers appropriate, IHGFL may waive some or all of these fees. The fees set forth in this Item 6 represent IHGFL’s current fees, but are subject to change as IHGFL, its parents, affiliates, subsidiaries and/or other designees may amend from time to time; at all times you are responsible for the then-current fees imposed.

“GRR” means the gross revenue and receipts of every kind attributable to or payable for rental of guest rooms/suites at the Hotel including, but not limited to, no-show revenue, early departure or late check-out fees, attrition or cancellation fees, any mandatory fee or surcharge charged to all or substantially all guests renting a room (including resort fees, although inclusion of such fees or surcharges does not constitute approval by IHGFL of such fees and surcharges, which may be limited or prohibited) any awards, judgments or settlements representing payment for loss of room sales and any other revenues allocable to rooms revenue under the Uniform System of Accounting for the Lodging Industry, Eleventh Revised Edition, 2014, as published by the American Hotel & Lodging Association Educational Institute, or any later edition, revision, or replacement that may be designated by IHGFL. No deductions shall be allowed for charge backs, credit card service charges, commissions, uncollectible amounts or similar items. Charges for any item, including telephone charges, entertainment, the cost of any food and beverage items, room service or other items provided or made available to a guest as an incident of a guest room/suite rental is not considered a deduction from GRR. IHGFL may require you to settle all outstanding obligations payable to IHGFL by direct account debit, electronic funds transfer, or other similar technology designed to accomplish the same purpose. IHGFL may also charge royalties on revenues from any activity that you provide at the Hotel by mutual agreement with IHGFL if such activity: (i) is not offered at Brand System Hotels generally (at the time you enter into the License) and is likely to benefit significantly from, or be identified significantly with, the Kimpton Hotels & Restaurants brand name or other aspects of the Brand System; or (ii) is designed by or developed by IHGFL. Certain fees paid by licensees, other than the royalties and related fees, are payable to SCH and either SCH or IHGFL may collect those amounts from licensees.

“Gross food and beverage sales” means all revenues and receipts of every kind that accrue from the sale of food and beverages associated with the Hotel (with no reduction for charge backs, credit card service charges, or uncollectible amounts). Gross food and beverage sales includes: (i) revenues from restaurants, bars, lounges, snack shops, and other food outlets (including within any health club, spa or golf course), room service, honor bar, or other food and beverage services provided in guestrooms, banquets, meetings, conventions or other catered events; (ii) revenues and commissions derived from supplying audiovisual equipment and services (whether the equipment is owned or rented by you), rentals of public meeting rooms, cover charges, service charges and other sales or rentals of services, products, and equipment allocable to food and beverage revenues, and supplying equipment and services (whether the equipment is owned or rented by you) for connecting public meeting rooms to the Internet; (iii) attrition or cancellation fees collected from unfulfilled reservations for food, beverage, and other services; (iv) the amount of all lost sales due to the non-availability of food, beverage, and other services in connection with a casualty event, whether or not you receive business interruption insurance proceeds; and (v) any awards, judgments or settlements representing payment for loss of food and beverage sales. Gross food and beverage sales excludes sales tax, value added tax, or similar taxes on such food, beverage and other services. You must account for gross food and beverage sales on an accrual basis.

**Note 2. Royalty in the case of Casualty:** If your Hotel is closed because of damage due to fire or other casualty, then during the time that your Hotel is closed, you will pay to IHGFL (instead of all other System fees under Paragraph 3 of the License) a royalty of 2% of GRR based on the average GRR for the 12 months preceding the date of closing. However, if your Hotel has not been operating in the System for 12 months, then for this purpose the GRR will be based on the average monthly GRR for the period that the Hotel has been operating in the System.

**Note 3: Services Contribution:** You must pay a Services Contribution of 3% of GRR (see Paragraph 3.B of the License). IHGFL will use these funds in its sole judgment for marketing, reservations and other related activities, which, in IHGFL’s business judgment as to the long-term interests of the Brand System, strengthen the brand such as awareness advertising, reservations, training programs, research, and the development of new or improved services, but may also include tactical marketing initiatives more focused on short term revenue enhancement and seasonal marketing programs. The Service Contribution cannot be used to cover the cost of maintenance, repair, modernization, renovation, or upgrading of the Hotel. The Services Contribution does not include costs that you incur in the acquisition, installation or maintenance of reservations services, equipment or training, or in your own marketing activities. IHGFL and its affiliates are not responsible for any of these costs. IHGFL may, on 30 days prior written notice, increase the Services Contribution by up to 1% of GRR per year. IHGFL’s designated internal franchise committee or subcommittee must approve any increase and must determine, in the exercise of its business judgment as to the long-term overall interests of the System, and that the increase was adopted in good faith and is consistent with the long-term overall interests of the System.

**Note 4: Loyalty Programs:** Your Hotel must participate in the loyalty program (the “Loyalty Program”) for as long as SCH chooses to market the Loyalty Program. As of the date of this disclosure document, the Loyalty Program is marketed to consumers under the names “IHG® One Rewards”, and “IHG® Business Rewards.” You must pay the Initial and Special Marketing Contribution to SCH for the Loyalty Program. The Initial Marketing Contribution is payable only when your Hotel first enters the System. SCH can change the Initial Marketing Contribution and/or the Loyalty Program Contribution. The Loyalty Program is an incentive program that rewards members for frequent qualifying stays at all Kimpton Hotels & Restaurants (and, as described in separate disclosure documents, for InterContinental® Hotels & Resorts, Holiday Inn®, Holiday Inn

Express<sup>®</sup>, Holiday Inn Resort<sup>®</sup>, Crowne Plaza<sup>®</sup>, Staybridge Suites<sup>®</sup>, Candlewood Suites<sup>®</sup>, EVEN<sup>®</sup> Hotels, avid<sup>®</sup> hotels, voco<sup>®</sup> hotels, Atwell Suites<sup>®</sup>, Hotel Indigo<sup>®</sup> and Vignette Collection<sup>™</sup>, as well as other hotels within the SCH hotel portfolio). The Loyalty Program includes alliances with airline frequent flyer programs and other hotel brands within the SCH hotel portfolio. Through these alliances, Loyalty Program members may choose to collect and convert their Loyalty Program points into airline miles or choose to collect points or miles automatically with each stay. SCH may add or delete airlines and alliances within other industries from the Loyalty Program.

SCH's Global Sales & Marketing department has established marketing relationships with airlines, rental car companies, banks and other types of companies, some of which include co-branding with IHG<sup>®</sup> Rewards. These alliances may produce revenue and income for SCH that do not result from any required purchases that you make.

The Loyalty Program Contribution to the Loyalty Program is currently 4.55% of Qualifying Full Folio Revenue and 1.365% of Qualifying Room and Meeting Revenue. SCH can change these percentages in its sole judgment.

Qualifying Full Folio Revenue includes: (a) Qualifying Room Rates (defined below), (b) charges for food and beverage, telephone, laundry and pay-per-view movies, including applicable taxes, when charged to the member's room regardless of whether a Qualifying Room Rate was paid, and (c) at the Hotel's discretion, any other items charged to the member's room not defined in the previous items (a) or (b). Property management systems certified as compatible by the SCH Information Technology department provide Full Folio Revenue data to the Loyalty Program through an automated interface.

Qualifying Room Rates include, for example: (1) non-discounted rates; (2) standard corporate rates; (3) leisure rates; (4) government rates; (5) Corporate Gold rates and worldwide sales negotiated rates; (6) conference and meeting rates; and (7) individual Hotel contract rates. If discounts on rates (6) and (7) exceed 30% of the Hotel's published rates, the Hotel may exclude the awarding of IHG<sup>®</sup> Rewards points for these discounted room rates. All negotiated group rates for business bookings are Qualifying rates. Guest rooms booked as part of a group, meeting or event block where the individual guest pays their own charges (room and incidentals) will qualify for points.

Qualifying Room and Meeting Revenue includes Hotel revenue from accommodation (room only booked on behalf of others) and/or Hotel revenue from rental of guest rooms, meetings, social, or catered events to include revenue from meeting room hire, food and beverage, and/or other revenue associated with the meeting or event at the hotels discretion. IHG<sup>®</sup> Business Rewards points are capped at 60,000 per Qualifying event, while the Hotel has sole discretion to award more than 60,000 points for any Qualifying event At three points per dollar payable at 1.365%, the amount contributed to the Loyalty Program is capped at \$273 per event; however, the Hotel has discretion to award more than 60,000 points at the same 1.365% assessment rate (\$0.00455 per point). In 2022, the Loyalty Program was extended until December 31, 2027 by a vote of all principal correspondents of IHG-licensed Hotels in good standing. Under this extension, Loyalty Program members can accumulate points through December 31, 2027, and may redeem them through June 30, 2028. If the Loyalty Program is extended beyond December 31, 2027, the foregoing dates will also be extended. Loyalty Program points will expire on a monthly basis for any Loyalty Program accounts which have been inactive during the prior rolling 12-month period.

Votes on changes to the Loyalty Program Contribution or other Loyalty Program elements requiring a vote of System licensees will be counted on a "negative option basis", which means

that those Hotels which do not respond by the specified voting deadline will have their votes counted as a vote for approval of the proposed change(s).

Hotels are required to allocate a certain percentage of their rooms inventory for reward night redemption by members of the Loyalty Program. The reimbursement amounts that Hotels will receive when members redeem their points for rewards stays is specified by the Loyalty Program. SCH reserves the right to modify the Loyalty Program at any time, including, without limitation, the costs, the reward night redemption reimbursement amounts and the calculation factors.

SCH's and its affiliates' revenue includes fees from strategic collaborations, including licensing fees from co-branded credit card issuers for use of SCH's and its affiliates' intellectual property rights, access to the Loyalty Program, and certain amounts earned from credit card member acquisition fees and the sale of Loyalty Program points to third parties.

The Raid the Bar program is mandatory for each high-level loyalty member who has Inner Circle, Platinum or Diamond Elite Status. The Inner Circle personalized amenity is mandatory for Inner Circle Members.

You may conduct local and regional marketing programs and related activities, but only at your expense and subject to IHGFL's requirements, such as proper usage of its trademarks. IHGFL may make reasonable charges for optional advertising materials that you order or use for these programs and activities.

To participate in certain other marketing programs and to comply with certain other standards, you may be required to buy advertising materials, products, services, equipment or supplies or other proprietary materials, and you may have to offer promotions or services to guests that may result in expenses or costs to you. Sometimes, these advertising and proprietary materials are available for purchase through IHGFL or its affiliates.

**Note 5: Third Party Distribution Connection Fees:** All Kimpton Hotels are required to participate in the IHG Commission Services<sup>sm</sup> ("ICS") program and the Global Distribution System ("GDS"). ICS was the first centralized commission payment program in the industry, and currently has approximately 165,000 participating travel agencies in 52 countries. SCH will provide you with a monthly invoice detailing all commissions and Distribution Connection fees that SCH pays for you. As a participant in ICS, you are automatically enrolled in GDS, which provides reservation linkage with the three current major GDSs – Travelport, Sabre, and Amadeus. You must pay a GDS fee for any reservation through the GDS that is not cancelled. The GDS Fee is currently set at \$6.40 per reservation and is subject to change. Additionally, alternative connections may be developed between SCH and vendors which may be subject to transaction fees. Alternative connection transaction fees (such as the Direct Connect Fee and the Travel Management Company ("TMC") Direct Connect Fee) are determined by the cost of maintaining the connections to the pertinent third-party distributors, including fees they charge. The Direct Connect Fee is currently set at \$1.75 per reservation and is subject to change. The TMC Direct Connect Fee is currently set at \$5.00 per reservation and is subject to change. The GDS fee and TMC Direct Connect fee are mutually exclusive. This means that a hotel can be charged one or the other, but not both. You may pay all travel agent commission program fees, including commissions, by direct debit through Onyx Commission Processing. If you decline this option, you must pay SCH \$2.00 per commissionable transaction billed in addition to the commission (unless you participate in IHG Secure Pay). Onyx rebates SCH 3.05% of commissions collected for their members and 3.50% of the total commission paid for most non-members, which is used to help offset the cost of operating the ICS program. These amounts are subject to change without notice. Additionally, ICS may be used as a mechanism to bill for other SCH programs such as IHG Voice Reservation Service cross-sell fees. The programs in which SCH uses ICS for billing may change from time to time.



**IHG Ignite Program:** All hotels are automatically enrolled in the IHG Ignite Program (“IHG Ignite”). However, Hotels can opt-out if they do not want to participate in IHG Ignite. If your Hotel opts out,, you will not be included in any of IHG Ignite’s marketing programs. IHG Ignite is designed to be a performance-based and self-funded Internet Marketing program that generates increased revenue potential for Hotels. IHG Ignite markets the Brand System through SCH direct digital channels (SCH branded web sites and the SCH Mobile App). Internet users can click on advertising placed by SCH and be linked to SCH’s Internet reservations page or the SCH Mobile App to make reservations. Participating Hotels must pay SCH a commission equal to 2.25% of the revenue from consumed direct digital bookings, excluding employee rates, IHG One Rewards nights and rooms booked under certain other rate codes. No GDS fee will be charged for these IHG Ignite transactions. A portion of the commissions paid by Hotels will be used by SCH to satisfy financial obligations to associated media companies and publishers which provided the advertising placements to SCH. Specific commission payment levels for each associated media company and publisher vary based on size, strategic value, and actual or potential revenue contribution.

**TMC Revenue Program:** Travel Management Company (“TMC”, formerly known as Business Travel Agency (“BTA”)) refers to a subset of agencies that account for a significant portion of all travel delivered to SCH Hotels via travel agencies. TMC Revenue Programs are pay-for-performance marketing programs designed by SCH to drive incremental revenue and improve market share with SCH travel agency partners. The key focus of these programs is to reward agencies for increasing market share by driving non-negotiated rate and/or corporate contracted business to Hotels. Hotels pay a 2.25% override fee (in addition to standard travel agency commission) for qualifying consumed room nights only over the base amount, up to a maximum of \$20,000 per year). Fees are paid through the ICS. SCH negotiates and executes a centralized global contract on behalf of all Hotels in the system. All hotels are automatically enrolled in TMC; however, hotels can opt-out if they do not want to participate in TMC prior to the start of the new program year.

**IHG Business Edge Program:** All hotels are automatically enrolled in the IHG Business Edge Program (“IHGBE”); however, hotels can opt-out if they do not want to participate in IHGBE. If they opt out, they will receive no bookings from IHGBE. The IHG Business Edge Program is designed to generate incremental revenue from mid-market and local accounts to IHG hotels by developing new accounts. Hotels agree to honor the discount percentage that is attached to the account. Discounts are based on the room revenue spend of the IHGBE client and calculated off the Best Flexible Rate (“BFR”). The Best Flexible Rate is the best and least restrictive publicly available rate for that room type at the time of reservation. Discounts range from 4.0% to 14.5% off BFR, and are subject to change. Hotels agree to pay a booking fee equal to 4% of the consumed transient room revenue for all IHGBE accounts booked at the IHGBE program rate. Hotels agree to pay any GDS or third-party fees associated with IHGBE clients.

**Groups & Meetings (“G&M”) Fee:** The 4% fee applies to definite room revenue sourced through MeetingBroker, even if the MeetingBroker status is not listed as “Definite”. If the “Definite” consumed revenue has not been updated in MeetingBroker at the time of billing, the fee will apply to the contracted or “presumed” room revenue (i.e., the number of room nights and room rate that were agreed upon when contracted). The funds collected through the Groups & Meetings Fee are reinvested into improving G&M tools and programs. Hotels agree to pay commissions due to third parties sourcing through MeetingBroker. There is a \$25,000 cap on the year-over-year increase in fees and a \$30,000 fee limit per booking. New hotels entering the system will have the fee cap applied after their first year as an IHG hotel.

**Groups & Meetings TMC (“G&M TMC”) Fee:** G&M TMC Revenue Programs are pay-for-performance marketing programs designed by SCH The fee applies to definite room revenue

sourced through MeetingBroker, even if the MeetingBroker status is not listed as “Definite”. If the “Definite” consumed or “actual” revenue is not updated in MeetingBroker at the time of billing, the fee will apply to the contracted or “agreed” room revenue. The fee percentage is 2%-4% globally for BCD M&E, CWT M&E and AMEX GBT. G&M TMC Revenue Programs are pay-for-performance marketing programs designed by SCH to drive incremental revenue and improve market share with SCH travel agency partners specifically in the Groups and Meetings space. The key focus of these programs is to reward agencies for increasing market share by driving groups and meetings business to Hotels. Hotels agree to pay the standard commissions due to third parties sourcing through MeetingBroker in addition to the G&M TMC Fee.

**Kimpton Commercial Services:** In addition to the IHG Revenue Services and Commercial Services Program, there are a variety of Commercial Services offerings that provide specific marketing, digital, social, public relations and other commercial support to a Hotel. Participation in this program is mandatory for at least the first two years of operation if this is your first time owning and operating a Kimpton Hotel. In other cases, certain components of the Commercial Services program may be required as determined by IHGFL. Beyond the consultative services mentioned above, the Commercial Services offering provides delivery of email marketing, campaigns, performance analytics and marketing assets. There are also additional optional commercial services provided through our Kimpton Tiered Services program that provide above-property, localized, commercial support to participating properties. The cost of these services will vary based on discipline, scope of services and property size.

**Note 6: IHG Voice Reservation Service:** Participation in the IHG Voice Reservation Service program is required. The IHG Voice Reservation Service program is a service whereby reservation calls to your Hotel will be referred to an offsite call center. Participation is defined as sending all rooms reservations calls to the IHG call center. Participation will be monitored for compliance to target benchmarks as available in IHG Voice Dashboard reports in the IHG Reporting platform. The offered services may include reservation services for all calls transferred from the Hotel including new reservations and modifications or cancellations of existing reservations; telephone connections between the Hotel and the reservation office; equipment, management and staffing for the reservation office; and monthly performance reports for the Hotel. These services will require you to pay additional fees (see Item 6 Table) and sign the IHG Voice Reservation Service Agreement, attached as Exhibit H-1 to this disclosure document.

**Note 7: Technology Services Fee:** IHGFL will use the Technology Services Fee to provide technology services, such as satellite communications services to the Hotel, including IHG Concerto™. IHGFL may increase the Technology Services Fee in an amount it judges to be reasonable, but not by more than 10% of the fee in effect at the beginning of the year. Except as specifically stated in the Master Technology Services Agreement, the Technology Services Fee does not include the costs of installation, maintenance or repair of technology equipment or training at the Hotel. IHG Concerto™ is a technology platform designed to enable many capabilities, including reservations, rate management, inventory management and yielding, guest relations and an interactive homepage. Your General Manager and front office staff must have access to IHG Concerto™ and complete necessary web-based training including; Get to know IHG Concerto™, IHG Concerto Home Page Overview, and Digital Check-In Training, all available at no cost.

**Note 8: Revenue Management System:** Hotels must use a Revenue Management System: either IHG Concerto™, Yielding & Price Optimization or Revenue Analytics' N2Pricing.

Both of the Revenue Management Systems use hotel historical data, future bookings and other leading indicator data sources to create a detailed forecast of future business for your Hotel over the next 50 weeks.

These systems help hotels determine the best daily prices and inventory controls. The system integrates the demand forecast, publicly available competitive rates, and price sensitivity to make optimal recommendations for its hotels.

These are used in the sales process from GRS or PMS and all direct (CRO, Brand Website) and indirect channels (such as GDS or online travel agencies (OTA)). Costs of between \$30 and \$120 per month may apply for competitive rate insight shopping. For Hotels currently subscribed to RevenueStrategy360, these costs may be waived.

**Note 9: Property Management System:** Kimpton Hotels must use the Opera PMS Software. You must also obtain ongoing maintenance and support for the required PMS software, including upgrades and new versions (see Items 8 and 11) and other software including operating system upgrades and endpoint protection software. The endpoint protection software is part of the Total Protection for Network (ToPS), which will be administered and managed by AT&T via the FastConnect SD-WAN solution. The PMS provider will bill you and collect the fee from you for the required PMS software support, and the PMS provider provides the support. You must also obtain ongoing equipment maintenance for the PMS hardware, as arranged through either SCH or an approved vendor. The costs will vary according to your technology needs, and the costs listed on the table are estimates.

The PMS Provider will provide you with a third-party license and/or hosting agreement for the use of the PMS software. Therefore, you must sign a third-party license and/or hosting agreement with Oracle America, Inc., the PMS provider for Opera, or with any other PMS provider designated by SCH (see Items 1, 8 and 11), which will be prepared for you after you complete the Oracle New Account Setup Form, the form of which is attached to this disclosure document as Exhibit H-7. This license agreement includes on-going maintenance and support for the PMS software. The PMS Provider will bill you annually for the support fee. The PMS Provider may not increase the maintenance and support fee more than once during any calendar year. The estimated license/support fees for the Hosted PMS will be \$4,500 to \$8,000 for a hotel with 1-100 rooms; \$8,000 to \$18,000 for a hotel with 101-175 rooms; \$14,500 to \$38,000 for a hotel with 176-250 rooms; \$38,000 to \$52,000 for a hotel with 251-350 rooms; and, \$52,000 or greater for a hotel with 351 rooms or more. You must also pay support fees for the other components of property-level systems, such as PMS equipment maintenance, and for other systems which interface to the Opera PMS system; such as the telecommunications system, the electronic door locking and keycard system, and the specialized sales software. Hardware and software maintenance fees may vary based on the number of rooms at the Hotel. The fees for local and long-distance telephone service and line charges are not included in the estimated fees on the chart. The costs will vary according to your technology needs, and the costs listed on the chart are an estimate.

**Next-Gen Solutions:** Upon activation of the NGP program at your Hotel, you will enter into a Next-Gen Payment Agreement with SCH (See Exhibit H-4). SCH will immediately bill you monthly and administer support for the hardware and software. All Hotels are required to use NGP or such successor payments program as may be implemented by SCH. Pursuant to the terms of the Next-Gen Payment Agreement, licensee will be liable for payment to IHG of an early termination fee for any reason equal to (x) 50% of the NGP monthly fee, multiplied by (y) the remaining monthly payments in the term.

Each licensee will be required to enter into a merchant processing application and agreement with Fiserv, the SCH-approved merchant service provider, and a participation agreement with - SCH (see Exhibit H-4). Your monthly NGP fee may increase according to the terms of the NGP agreement signed at install (no more than a 5% increase from your original quoted rate), based on increases in costs incurred by SCH to provide the service. The exact amount of the fee will be defined on the quote received prior to installation.

**Guest Internet Access:** For Guest Internet Access (“GIA”) Bandwidth (IHG Connect), a Hotel will be required to utilize an approved SCH-certified provider and enter into a participation agreement with an approved provider (see Item 8 and the form of agreement attached as Exhibit H-5 to this disclosure document). Monthly service fees will vary based on regional telecommunication or cable company sources. Hotels with existing contracts with bandwidth providers must allow such contracts to expire or terminate by their own terms and not allow them to renew, by giving appropriate notice as soon as the terms of those contracts permit. If the contract term will extend more than one year after the effective date of the respective Standard, and the Hotel has a right to terminate for convenience (without cause) and without payment of any fees, then the Hotel must exercise that right so that the contract terminates within that year. If a Hotel leaves the IHG Brand System while its IHG Connect Participation Agreement is still in effect, the licensee shall be liable for payments to IHG of an early termination fee equal to (X) the number of months remaining on the term of the IHG Connect Participation Agreement multiplied by (Y) the monthly fees due under the IHG Connect Participation Agreement. Such payment is due within 30 days following the termination date and all equipment must be returned to the vendor within 30 days of circuit disconnection or the hotel will be subject to hardware costs. It is recommended that all Participation Agreement are renewed on or before the expiration of the Participation Agreement to avoid any disruption in service or unexpected price increases. Price increases are determined by the provider. All vendor equipment must be returned to the vendor within 30 days of the circuit disconnection or the Hotel will be subject to fees covering the cost of such hardware (i.e., Managed Router, NIDS, etc.).

For Guest Internet Access (“GIA”) Hardware (IHG Connect), a hotel will be required to install approved Wi-Fi related equipment, use an approved SCH-certified integrator to install the equipment, and enter into a participation agreement with an approved integrator (see the form agreement attached as Exhibit H-6 and Item 8). Monthly service fees will include a base per-room fee for guest support and a variable fee for meeting room support based on the number of meeting rooms and the amount of meeting space that exceeds 2,000 square feet. Hotels with existing contracts with hardware providers must allow such contracts to expire or terminate by their own terms and not allow them to renew, by giving appropriate notice as soon as the terms of those contracts permit. If the contract term will extend more than one year after the effective date of the respective Standard, and the hotel has a right to terminate for convenience (without cause) and without payment of any fees, then the hotel must exercise that right so that the contract terminates within that year. Hotels will need to renew software licensing for Wi-Fi hardware within five years of the original purchase claim date, on a specified date and then every five years thereafter.

Software license renewal costs vary greatly and could range from \$3,000 to \$200,000. These costs are dependent on whether the existing equipment claimed at the location remains active at the time of renewal.

Hotels will be required to purchase new hardware equipment (MXs, Switch and APS) and any other auxiliary equipment) generally at the of the eighth year from the original purchased claim date. All equipment which has reached their End-of-Life (EOL) are required to be replaced immediately. Hardware refresh costs vary greatly and could range from \$110 to \$96,000. These costs are dependent on whether the existing equipment claimed at the location remains active at the time of the refresh.

**In-Room Entertainment:** All hotels are required to install and maintain In-Room Entertainment Hardware. Your Hotel will be required to install approved TV sets and/or Set Top Boxes (“STBs”) that are compatible with the Standards, use an approved SCH-certified integrator to install the equipment, connect guest room TVs to the data port behind the TV that connects to a switch using an ethernet cable, and must enter into an agreement with one of them. Monthly service fees will

include a base per-room fee for guest support. Hotels with existing contracts with In-Room Entertainment providers must allow such contracts to expire or terminate by their own terms and not allow them to renew, by giving appropriate notice as soon as the terms of those contracts permit. If the contract term will extend more than one year after the effective date of the Standards, and the Hotel has a right to terminate for convenience (without cause) and without payment of any fees, then the Hotel must exercise that right so that the contract terminates within that year.

**Employee Safety Devices:** Hotels are responsible for installing an alert system that enables employees to notify Hotel management of an emergency with the push of a button (“Employee Safety Devices”). The Employee Safety Devices must be available to all employees that work in guest rooms, must instantly signal guest room and guest floor location when activated, must continuously update guest room and guest floor location, must be tested every six months, and must be utilized in accordance with federal, state, and local laws. In addition, all new employees, including contract and temporary, must receive training on the Employee Safety Devices, within the first 14 days of employment. Employee Safety Devices must be procured and installed by an approved supplier and meet defined requirements set forth in the Standards. You may be required to sign a participation agreement with an approved vendor for these services.

**Public Access Computers:** Hotels are required to install designated workstations and a multi-function printer, providing complementary internet access to hotel guests, in the Business Center (“Public Access Computers”). The Public Access Computers must be available 24 hours a day, must utilize SCH-approved security protection software and must include enrollment in a 24x7 support program offered by an SCH-approved vendor. In addition, all Public Access Computers are required to be refreshed every four years, a minimum of one computer must have Microsoft Office, and all must operate at the same or greater bandwidth port speed as other internet enabled devices on the Guest Internet Access network. You may be required to sign a participation agreement with an approved vendor for these services.

**F&B POS:** Upon execution of an F&B Point of Sale (“POS”) system, you will pay to an approved vendor maintenance and support in the cloud environment and for the hardware. While the monthly fee is anticipated to be \$45.00 per month per workstation, this fee can vary depending on the approved vendor you select.

**Hot SOS:** Hot SOS is a highly recommended optional service optimization and incident response software that may be used by your Hotel for responding to guest requests. Your hotel must install HotSOS or an alternative service optimization solution approved by SCH. You must sign a participation agreement in the form attached as Exhibit H-10 to this disclosure document. Your Hotel must use the IHG Groups and Events program, or equivalent approved by SCH, for booking guest rooms and meeting space for group business and for processing group meeting requirements.

**Kipsu:** Kipsu is a SAAS provider that enables two-way guest communication via SMS text messaging on mobile devices. It is required that all Kimpton Hotels & Restaurants use Kipsu at their property to enable communication between staff and guests and (while not formalized as of the date of this disclosure document) enter into our then-current approved form of agreement with Kipsu in connection therewith, a copy of which is attached as H-13 to this disclosure document.

**Delphi FDC:** Delphi FDC sales and catering software, or equivalent approved software by SCH, must be utilized for booking rooms and meeting space for group business and for processing group meeting requirements. You may be required to sign a participation agreement directly with Delphi for such services, which is solely between you and Delphi or the approved software provider.

**Kimpton Hotel Website Maintenance:** All Kimpton Hotels & Restaurants must renew the domain for their property level website on an annual basis (the cost may vary) and perform monthly website maintenance, including regular updates of the Hotel's blog. All Kimpton Hotels are currently required to use approved vendors, as their website maintenance provider. You must sign a participation agreement with Stillwater Interactive in the form attached as Exhibit H-8 to this disclosure document in order to use these services. All Kimpton Restaurants (unless the Kimpton Restaurant is leased) must use an approved vendor, as their website maintenance provider. A minimum of 12-months of public relations support is required (typically 4-6 months prior to opening and 6-8 months post-opening) which will be provided by a third-party PR Agency approved by Kimpton.

**Kimpton Design Studio:** Kimpton Design Studio provides access to our in-house graphic design platform, including use of design templates and creative support. Use of the Kimpton Design Studio is mandatory for all Hotels and the monthly fee per outlet includes up to five items per month from the Studio. Any additional usage will be charged per item.

**Note 10: IHG Luxury and Lifestyle Conference:** The Licensee (or, if Licensee is not an individual, a representative of Licensee) and the General Manager must attend the IHG® Luxury and Lifestyle Conference and must pay the registration fee of up to \$2,295 per attendee regardless of attendance plus travel and expenses. These conferences are generally held biennially but are subject to adjustment. The Licensee (or, if Licensee is not an individual, a representative of Licensee) and General Manager must attend breakout sessions designated by Kimpton as relevant to their hotel(s).

**Note 11: Audio Streaming Service:** All Kimpton Hotels & Restaurants must use Playlist Generation or an approved equivalent provider of streaming music services. The cost is estimated to be \$150/month per hotel zone, which are identified as the lobby, restaurant, separate bar or other specific areas that require an individual music identity. The costs will vary depending on your Hotel's specific dashboard and music direction. You must sign a participation agreement in the form attached as Exhibit H-9 in order to use these services.

**Note 12: IHG Commercial Services and IHG Revenue Services:**

IHG Revenue Services is a service that includes but is not limited to (1) revenue management advisory services and (2) Yielding, Pricing & Inventory Management services performed in cooperation with your Hotel. IHG Commercial Services is a service that includes but is not limited to: (1) revenue management advisory services; (2) Yielding, Pricing & Inventory Management advisory services; (3) sales & property support advisory services; and (4) digital marketing and activation services performed in cooperation with your Hotel. This program combines IHG Revenue Services with additional commercial and field marketing services. From time to time, SCH may require that Kimpton Hotels participate in IHG Commercial and Revenue Services. These services will require you to pay additional fees and you must sign either the IHG Commercial Services Agreement, attached as Exhibit H-2 or the IHG Revenue Services Agreement attached as Exhibit H-2 to this disclosure document, as applicable. The agreement terminates 12 months from the effective date or either party may terminate the agreement upon 90 days advance written notice. The agreement will also terminate if the Hotel participates with an uncertified third-party intermediary. The term is automatically renewed for successive one-year terms unless at least 30 days written notice is given before the end of the term.

If a Hotel is operated by a first time Kimpton owner-operator or is converted from a competitor brand, the Hotel will be required to join IHG Commercial Services for a minimum of the first two years of operation of the Hotel. If a Hotel has applied for and received approval for a waiver, the waiver will be reviewed by IHGFL on an annual basis. Waiver approval is also subject to review in circumstances such as a change of ownership, management company or key personnel at the

Hotel. Hotels will still be required, at all times, to follow the applicable brand standards for Revenue Management Certification and Sales staffing. These requirements may vary for dual-brand Hotels.

**Note 13: HG One Rewards Measured Standards:** IHG One Rewards Measured Standards are measured and enforced by the Loyalty Program to ensure consistency in the delivery of the program to its members. Standards are based on calendar quarter thresholds. Hotels are measured at the end of each calendar quarter for compliance. If a Hotel fails to meet the threshold for a quarter, it will have one quarter to cure. If a Hotel that has 300 rooms or less fails to cure, it will move to assessment and will be assessed a fee of \$1,000 for each standard failed. If a Hotel fails in consecutive quarters, the assessment will escalate to \$2,000 for a failed third quarter and \$3,000 for a failed fourth quarter. The assessment is capped at \$3,000 per quarter per standard. If a Hotel that has more than 300 rooms fails to cure, it will move to assessment and will be assessed a fee of \$1,000 for each standard failed. If a Hotel fails in consecutive quarters, the assessment will escalate to \$2,500 for a failed third quarter and \$5,000 for a failed fourth quarter. The assessment is capped at \$5,000 per quarter per standard.

All measured standards are evaluated and assessed individually.

**Note 14: Kimpton Hotel Photography:** You must maintain a portfolio of professionally-rendered, high-resolution photographs of your Hotel. The photographs must be captured and processed by a Kimpton approved professional photographer. The photographs must be no more than five years old. Hotels which are converting into the System and newly renovated hotels would ideally complete the photo shoot prior to opening as a Kimpton but must complete a photo shoot by a Kimpton approved professional photographer within 30 days after conversion or completion of the renovation, as applicable.

**Note 15:**

**Secret Shopper:** Your Hotel will be required to participate in a third-party secret shopper service at bi-annual cost of \$900 plus reimbursement for room and meals. Your Restaurant and Bar will be required to participate in a third-party secret shopper service at a quarterly cost of \$110 plus reimbursement of meal.

**PIP/Soft Goods; Custom Design Review, Noncompliance; Quality Programs:** IHGFL may charge you for all quality non-compliance, re-evaluations, and re-inspections at your Hotel that occur as a result of your Hotel's failure of any previous quality evaluation, your Hotel's failure under the guest satisfaction measurement system, your failure to complete PIP requirements by the specified interim or final milestone dates, your failure to complete the Bi-Monthly "The Operator's View" ("TOV") as mandated, your failure to cure non-compliance with incident reports, your failure to cure non-compliance with submission of certificates of compliances, or your failure to complete the Corrective Action Plan ("CAP") as may be required following a quality evaluation.. You must pay an escalating assessment of up to \$13,500 for each quality re-evaluation and re-inspection and you must pay an escalating assessment of up to \$13,500 for each subsequent visit due to consecutive failures. In addition, you must pay for the room and board of IHGFL's inspector(s) on all quality evaluations, re-evaluations, action planning visits, and all other Quality-related visits, as well as room and board and travel for all PIP or Custom Design Review Managers.

You must complete the Bi-Monthly TOV every other month or as it may be assigned to you on a mandatory basis. Failure to do so in any assigned month will result in an escalating assessment of up to \$2,500 for each occurrence and may result in a visit from a Quality Department Representative. You must pay for the room and board of IHGFL's inspector(s) on all TOV-related visits.

You must complete all items in the Corrective Action Plan (“CAP”) that is created during a quality evaluation, action plan visits, re-evaluations and re-inspection at your Hotel. Failure to do so in the timeline defined within the CAP will result in an escalating assessment of up to \$13,500 and may result in a visit from a Quality Department Representative. In addition, you must pay the room and board of the Quality Department Representative(s) on all quality-related visits.

If your Hotel is subject to a PIP, it will be inspected after the required completion date to verify satisfactory completion of the PIP. You must pay an inspection fee of \$12,000. Your hotel will be inspected after the required completion date to verify satisfactory completion of the PIP. If the PIP is not completed to our satisfaction at the time of the inspection, you will be assessed a fee of \$6,000 for the first re-inspection and any subsequent re-inspections we perform until the PIP work is completed to our satisfaction. You must also provide complimentary lodging at the hotel for the inspector performing a re-inspection. Your Hotel may also be assessed a fee of up to \$5,000 in the event that any PIP milestones need to be extended

IHGFL may charge a fee of up to \$25,000 for any Custom Design Review, which consists of \$10,000 for guest room design review, \$10,000 for public area review and \$5,000 for exterior reviews. If your hotel is subject to a PIP, it will be inspected after the required completion date to verify satisfactory completion of the PIP.

Your hotel will receive communications about the scope of Soft Goods and Case Goods renovation requirements and their due dates. If you fail to timely complete a required Soft Goods or Case Goods renovation, we may charge a renovation non-compliance fee up to \$10,000. Your hotel will be inspected during and after the completion of the required renovation to verify satisfactory progress and completion. If your required renovation is not completed to our satisfaction at the time of inspection, the foregoing non-compliance fee will also be assessed for any extensions granted and any subsequent re-inspections we perform until the renovation work is completed to our satisfaction. You must also provide complimentary lodging at the hotel for the inspector performing an inspection or re-inspection of your renovation work.

**Note 16: Employee Engagement Survey:** IHGFL will require your Hotel to participate in the brand’s annual employee engagement survey, and you will be responsible for all charges associated with administering the program through the brand’s designated third-party provider.

**Note 17: Clean the World Program:** All Kimpton Hotels must participate in the Clean the World program for recycling soaps, shampoos and other recyclable bath products. The cost of the program is \$150-\$200 per month depending on the size of your Hotel.

**Note 18: Tax on Sales/Gross Receipts:** You must pay to IHGFL an amount equal to any sales, gross receipts or similar tax that may be imposed on IHGFL and calculated solely on payments required under the License, unless the tax is an optional alternative to an income tax otherwise payable by IHGFL.

**Note 19: Guest Relations:** One Contact Resolution is a Guest Relations process that allows for increased guest satisfaction by empowering Case Managers to handle calls quickly. Your Hotel is expected to resolve any guest relations issues of a service or quality nature during the guest’s stay. Post stay contacts of a service or quality nature will be resolved by Guest Relations Case Managers who will resolve contacts of this nature on behalf of the Hotel, compensating the guest with up to one night’s room fee and tax. You must pay a \$150 Case Management Fee per incident as well as any applicable compensation to the guest. Hotels can earn a quarterly fee waiver on service and quality cases by achieving a GR Index in the top third of the system. Any non-service or quality issues (such as billing or reservations issues) are referred to the Hotel for resolution; however, if they not resolved by the Hotel within 48 hours, they will be resolved by Guest Relations Case Managers and incur a case management fee of \$150 per incident.



**Note 20: Capital Reserve:** IHGFL may impose or change the capital reserve requirements for your Hotel from time to time. If IHGFL requires a capital reserve (the “Capital Reserve”), you must establish a Capital Reserve account of up to 5% of Gross Revenue annually for capital expenditures and upgrading of the hotel including renovation of public areas, guest rooms, guest room corridors and replacement of furniture, fixtures and equipment. The capital reserve, if required, must be funded monthly. Since the Capital Reserve may not be sufficient to maintain the Hotel as a first-class facility in accordance with the Standards, you must promptly provide any necessary additional funds to meet IHGFL’s product quality and consumer quality requirements. IHGFL will give you at least ninety days’ notice of any establishment or change in Capital Reserve requirements (see also 13.O of the License). As used above, “Gross Revenue” means all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation thereof, including without limitation room sales; food and beverage sales; telephone, fax and internet revenues; rental or other payments from lessees, subleases, concessionaires and others occupying or using space or rendering services at the Hotel (but not the gross receipts of such lessees, subleases or concessionaires); and the actual cash proceeds of business interruption, use, occupancy or similar insurance.

**Note 21: Standard Application Fee for Room Additions:** IHGFL charges a standard Additional Room Application Fee for applications for approval of any guest rooms to be added to the Hotel (presently, \$500 per additional guest room). If you withdraw the room addition application before IHGFL approves it, or if IHGFL denies the application, then IHGFL will refund the Application Fee, less direct expenses it incurred. IHGFL may require upgrading of your existing facility as a condition of approving a room addition application. You may apply for an extension of the deadline for completion of the room addition, but if IHGFL approves your request, you must pay an extension fee in connection with same. Fees for room additions and for extensions of room addition deadlines become non-refundable if IHGFL approves your request. IHGFL must approve your extension request in writing and such approval is not automatic. You will be responsible for any expenses incurred by IHGFL in processing the extension request.

**Note 22: New Development or Conversion Hotels: Extensions:** Your License and/or your PIP will require you to begin and complete construction by certain deadlines. You may apply for an extension of the deadlines, and you must pay an extension fee. IHGFL must approve your request in writing and such approval is not automatic. You must pay any expenses IHGFL incurs in processing the extension request.

**Note 23: Public Offering or Private Placement Processing Fee:** If you propose a securities offering requiring registration under any federal or state securities law, you must apply to IHGFL for approval of the offering and pay for reasonable attorneys’ fees, which may be incurred by IHGFL for the review of such securities offering.

**Note 24: Audit/Interest** If an audit by IHGFL discloses a deficiency in any payment and the deficiency is not offset by overpayment, you must immediately pay IHGFL the deficiency and an audit fee of \$3,000. If the audit does not result in a deficiency being assessed, then you will not pay an audit fee. Amounts not paid when due will accrue interest, beginning on the first day of the following month, at 1.5% per month or the maximum interest permitted by law.

**Note 25: Relicensing/Change of Ownership Application Fee:** If you apply for re-licensing or change of ownership, you must pay IHGFL a Re-licensing Application Fee or Change of Ownership Application Fee, as the case may be. If IHGFL denies the re-licensing or change of ownership application, IHGFL will retain \$15,000 and refund the balance of the Re-licensing Application Fee or Change of Ownership Application Fee to you. Fees vary for Licenses with terms of 60 months or less. If your license agreement requires amendment in order to change the

name of the Licensee entity or realignment of the ownership interests, you must pay IHGFL a Name Change Realignment Fee of \$5,000.

**Note 26: Indemnification:** You must indemnify IHGFL, its parent, subsidiaries and affiliates (including SCH) and their officers, directors, employees, agents, successors and assigns against, hold them harmless from, and promptly reimburse them for, all payments of money (including fines, damages, legal fees, and expenses) by reason of any claim, demand tax, penalty, or judicial or administrative investigation or proceeding whenever asserted or filed (even where negligence of IHGFL and/or its parents, subsidiaries and affiliates is alleged) arising from any claimed occurrence at the Hotel or any act, omission or obligation of yours or anyone associated or affiliated with you or the Hotel. At the election of IHGFL, you will also defend IHGFL and its parent, subsidiaries and affiliates and their officers, directors, employees, agents, successors and assigns against same. In any event, IHGFL will have the right, through counsel of its choice, to control any matter to the extent it could directly or indirectly affect IHGFL and/or its parent, subsidiaries or affiliates or their officers, directors, employees, agents, successors or assigns. You must pay IHGFL all expenses, including attorneys’ fees and court costs, incurred by IHGFL, its parents, subsidiaries, affiliates, and their successors and assigns as a result of any claimed occurrence or to remedy any defaults of, or enforce any rights under the License; to effect termination of the License; or collect any amounts due under the License.

**General:** IHGFL can require you to settle all outstanding obligations by electronic funds transfer, direct debit or other similar technology designed to accomplish the same purpose. Except as described above, all monthly payments must be made to IHGFL or SCH by the 15th day of the following month, in Atlanta, Georgia, in U.S. currency, unless otherwise specified by IHGFL or SCH.

IHGFL may consider requests to alter the requirements described in this Item. IHGFL will only consider proposed changes under special circumstances and any changes must comply with applicable laws.

**ITEM 7**

**ESTIMATED INITIAL INVESTMENT**

The following table provides an estimate of the initial investment for a 200-room Kimpton Hotel.

**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Estimate for a 200-room Kimpton Hotel</b>			
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment And When Due</b>	<b>To Whom Payment Is Made</b>
Application Fee (Note 1)	\$100,000	Lump sum with application	IHGFL
Property Improvement Plan (“PIP”) fee (Note 1)	\$0 - \$12,000	Before you submit your application for a conversion, re-licensing or change of ownership	IHGFL, as applicable
Land (varies) (Note 2)	Varies	As required	3rd parties
Building Construction (Note 2) (Note 3)	\$50,070,300 - \$69,542,200	As required	3rd parties

<b>Estimate for a 200-room Kimpton Hotel</b>			
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment And When Due</b>	<b>To Whom Payment Is Made</b>
Hotel Furniture, Fixtures & Equipment (Note 2)	\$6,344,900-\$7,430,900	As required by suppliers	Suppliers
Restaurant & Bar Furniture, Fixtures & Equipment (Note 2)	\$718,100 - \$1,660,500	As required by suppliers	Suppliers
Financing and Closing (Note 2)	Varies	As incurred	3 <sup>rd</sup> parties
Hotel Operating Supplies and Equipment (including uniforms, china, linens, supplies, paper goods, etc.) (collectively, "OS&E")	\$1,439,100 - \$1,906,300	As required by suppliers	Suppliers
Restaurant & Bar OS&E	\$430,400 - \$678,800	As required by suppliers	Suppliers
Kimpton Design and Concept Development Support Fee (Note 4)	\$75,000 - \$150,000	As required	IHGFL
Hotel Agency Brand Development (Note 4)	\$100,000 - \$200,000	As required by suppliers	Suppliers
Restaurant & Bar Professional Brand Concept Development (Note 4)	\$175,000 - \$400,000	As required by suppliers	IHGFL and/or Suppliers
Primary Identification Sign (including installation, freight, foundation and wiring)	\$84,800-\$265,000	As required by suppliers	Suppliers
PMS Equipment; Software; Installation & Training; IHG Concerto™ Equipment NGP / Payments Equipment; Software; Installation & Training (Note 5)	\$97,000-\$130,000 (Premise-Based) \$56,000-\$80,000 (Hosted)	Cash or commitment letter from SCH approved leasing or financing company before installation	SCH affiliates or 3 <sup>rd</sup> parties
Hot SOS (or similar approved provider) Maintenance (Note 5)	\$19,000 - \$22,000	As required by suppliers	Suppliers

<b>Estimate for a 200-room Kimpton Hotel</b>			
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment And When Due</b>	<b>To Whom Payment Is Made</b>
Delphi FDC Sales & Catering (Note 5)	\$36,800	As required by suppliers	Suppliers
In-Room Entertainment & Media– Hardware, Maintenance, Guest Support & Content (Note 5)	\$19,000-\$21,000	As required by suppliers	Suppliers
Keycard System (Note 5)	\$11,000 - \$22,000	As required by suppliers	Suppliers
Employee Safety Devices (Note 5)	\$25,000-\$30,000	As required by suppliers	Suppliers
Guest Internet Access – Hardware (Note 5)	\$30,000-\$75,000	Cash or commitment letter from SCH approved leasing or financing company before installation	3rd parties
Guest Internet Access –Bandwidth (IHG Connect) (Note 5)	\$500-\$3,000	As required by Suppliers	Suppliers
Technology Systems (Note 5)	\$95,000 - \$160,000	As required by suppliers	Suppliers
Commercial, Digital & Communications Setup (Note 6)	\$100,000 - \$150,000	As incurred	IHGFL or 3 <sup>rd</sup> parties
Market Feasibility Study	\$0 - \$50,000	As required by Service Provider	Service Provider
Hotel Openings and Renovations Preopening Support Fee (on-site consultation, materials & shipping); to be paid at the time of Ground Break(Note 7)	\$20,000 - \$35,000 plus trainer expenses	Lump sum within 30 days of invoice	SCH
Kimpton Restaurant and Bars Openings Services & Transitions (“RBOST”) Program (Note 7)	\$0 - \$50,000 plus trainee/trainer expenses	Before opening	IHGFL
IHG Learning Program	\$5,500	Before opening	IHGFL
Initial Certification Training Program (Note 7)	\$40,000 - \$60,000 plus travel expenses	Before and after opening	IHGFL
Opening Date Extension Fee (Note 8)	Up to \$6,000 plus expenses	Lump sum within 30 days of invoice	SCH

<b>Estimate for a 200-room Kimpton Hotel</b>			
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment And When Due</b>	<b>To Whom Payment Is Made</b>
License and Permits (Note 9)		As incurred	Local/State Authorities, 3 <sup>rd</sup> parties
Professional Fees (Note 10)	\$2,120,000 - \$3,710,000	As incurred	3 <sup>rd</sup> parties
Security Deposits (Note 11)	\$10,000 - \$50,000	As incurred	3 <sup>rd</sup> parties
Insurance (Note 12)	\$200,000 - \$625,000	Before opening	Carrier
Set-up costs (Note 13)	\$600,000 - \$1,000,000	As incurred	3 <sup>rd</sup> parties and Suppliers
Hotel Photography (Note 14)	\$45,000 - \$80,000	As required	Suppliers
Hotel Additional Funds and Prepaid Expenses during the initial Phase (first 3 months after opening) (Note 15)	\$1,500,000 - \$1,900,000	As incurred	Employees, suppliers, Utilities
Restaurant & Bar Additional Funds and Prepaid Expenses during the initial Phase (first 3 months after opening) (Note 15)	\$700,000 - \$1,100,000	As incurred	Employees, suppliers, Utilities
<b>TOTAL</b> (Note 16)	<b>\$65,070,400 to \$91,517,000 (or \$325,352 or \$457,585 per guest room)</b> (These estimates do not include real estate related costs or other items that IHGFL cannot estimate.)		

To IHGFL's knowledge, none of the expenditures described above are refundable, unless otherwise indicated.

IHGFL does not offer any formal program for direct or indirect financing. IHGFL, SCH or its affiliate, General Innkeeping Acceptance Corporation ("GIAC"), may furnish loans or guaranties to licensees (see Item 10).

Your total investment will vary depending on, among other things, size, land cost, construction costs, delays, contingencies, amenities and economic conditions.

These estimates do not include the cost of land or other items that IHGFL cannot estimate.

**Note 1:** Certain fees paid by licensees are payable to IHGFL and either SCH or IHGFL may collect those amounts from licensees.

**Note 2:** Since land values vary so dramatically, it is not possible for IHGFL to estimate the amount required to purchase or lease the land necessary to operate the Hotel. You can develop your own estimate by applying the acreage requirements to the local land sale or lease costs in the geographic area in which the Hotel will be situated. The cost estimates listed above for

construction of the building and for furniture, fixtures and equipment are for newly developed Kimpton Hotels & Restaurants rather than conversions. Your land acquisition costs will vary depending upon a multitude of factors including whether the property is purchased or leased, the size and location of the property, and the availability of financing on commercially reasonable terms.

**Note 3:** Building construction costs vary greatly from state to state and region to region depending upon material, labor costs, and other variables. Construction costs may also vary depending upon soil and environmental conditions, availability of utilities to the site, and the topography of the site. The estimate does not take into account special local requirements such as earthquake requirements or impact fees, or specific local aesthetic requirements or remedial work that may be required to bring a building into regulatory compliance or within the Standards. An architect approved by IHGFL must prepare plans for your specific site and construction type. You must commission and pay your architect directly. IHGFL may in the future require use of prototype plans, but IHGFL does not currently provide or mandate them. Before commencing your architectural plans and specifications, you must attend a kick-off meeting for consultation and coordination with IHGFL, and you must provide IHGFL with periodic milestone updates of your development progress as provided by IHGFL.

**Note 4:** As part of the Kimpton Design and Concept Fee, the Kimpton design and brand team will develop an initial design direction and concept for your Hotel following the execution of your License, which will drive the branding and positioning of your Hotel in the market. Prior to commencement of any design work, an interior designer approved by IHGFL in its sole discretion must be engaged for your Hotel, and you must follow the Kimpton Review and Approval policy during the design process. In addition, it is required that you engage an outside branding agency approved by IHGFL for development of your Hotel's name, branding, collateral development, dashboard, guest journey, sales & marketing materials, splash page design and standards guides.

Regardless of whether Kimpton or a third-party develops your Hotel's R&B concept, IHGFL will approve the final concept and design. The cost estimates in Item 7 assume one full-service 3-meal restaurant and a lobby bar. These costs will depend on the number of food and beverage outlets at the Hotel. The Restaurant & Bar Professional Concept Development costs include a high-level market analysis, data driven market study, in-market analysis, concept presentation deck with the concept overview, target demographics, design description, culinary direction, sample menu and overall service style direction. While these costs may be passed through IHGFL to IHGFL's approved suppliers, if IHGFL is engaged for the Restaurant & Bar concept development in connection with the same, you will be required to enter into a Concept Consulting Agreement in the form attached as Exhibit H-11 to this disclosure document and IHGFL may retain a portion of such total costs. Other costs that will be incurred to open a Restaurant & Bar include, but are not limited to, branding, collateral development, final menu development, staff recruitment, music creation, website development, photography, pre-opening marketing, pre-opening training, and promotions. The estimates provided in this item do not include pre-opening labor expenses.

If approved by IHG in its sole discretion, the Restaurant & Bar outlet may be operated by a third-party under a lease, operating agreement, license agreement or similar arrangement. The third-party will be required to meet the Hotel and Restaurant Brand Standards, which includes IHG's required beverage program, at all times as well as provide banquets & catering and in-room dining food & beverage for the Hotel to be documented in a separate letter agreement.

**Note 5:**

**PMS:** The estimated cost of the Opera or Opera Xpress PMS assumes you purchase the equipment from or through SCH and includes the cost of the basic equipment installation and configuration; training in the use of the PMS; and IHG Concerto™ revenue functionality and expenses for travel, meals and lodging related to IHG Concerto™ training. The cost range for a Hosted PMS solution, including license/support fees, is between \$54,500 and \$65,000. The cost range for a Premise based PMS solution is between \$64,000 and \$75,000. These ranges do not include additional IHG Concerto™ training, additional hardware or software, the cost of additional manuals (approximately \$50 each), shipping and handling, insurance premiums or taxes. Hardware warranties are purchased at the initial time of procurement. Food, lodging and transportation expenses of your employees and/or IHGFL employees and contractors are also not included and can range from \$500 to \$2,500 per person.

**NGP Solution:** The estimated cost of the NGP solution assumes you purchase the equipment from or through SCH and includes the cost of the basic equipment, installation and configuration; training in the use of the payment program devices and software, and expenses for travel, meals and lodging. Hardware warranties are purchased at the initial time of procurement.

**Guest Internet Access:** The Guest Internet Access (“GIA”) Hardware and Bandwidth (“IHG Connect”) estimates for infrastructure needs can vary greatly by location and building type. Actual costs for hardware can only be obtained once the Integrator service provider site surveys are completed. Final costs are based on individual unique building and construction circumstances of a given property. The site survey will help determine the sizing, number of switches, number of access points, etc. through a Wi-Fi heat map coverage diagram. You must purchase or lease all equipment from Integrators whose products and services meet Holiday’s specifications.

Actual costs for Bandwidth are determined by the cost provided in the IHG Marketplace. Hotels will select the circuit and access size based on the minimum requirements set forth in the Standards. Bandwidth circuits are installed and required prior to GIA Hardware installation. If the serviceability area of the Hotel requires special fiber construction beyond the budgeted construction, then the Hotel may have to pay a direct fee for the additional construction cost directly to a fiber vendor for your Guest Internet Access Bandwidth. Each Hotel is responsible for detailing the demark for installation of fiber and equipment for Bandwidth service at the start of the Bandwidth circuit order. If the fiber order and its Right of Way (on property) construction to the demark is delayed due to Hotel site readiness, the Bandwidth order may be subject to cancellation and the Hotel may be subjected to cancellation fees ranging from \$250 to \$2500 depending on the vendor. Upon circuit disconnection, all vendor equipment must be returned within 30 days or the Hotel will be subject to fees covering the cost of hardware (Managed Router, NIDS, etc.).

**Keycard System:** All Kimpton Hotels & Restaurants branded hotels must utilize an approved Keycard System that meets brand requirements. The estimated initial cost for the Keycard System solution purchase and installation will range from \$11,000 to \$16,500 for a hotel with up to 100 rooms; \$11,000 to \$22,000 for a hotel with up to 200 rooms; \$11,000 to \$27,500 for a hotel with more than rooms. This cost includes the server, key encoders, installation, and support. It does not include the cost of the locks for the doors themselves. You must obtain ongoing maintenance and support for the required Keycard System software, including upgrades and new versions. You must also obtain ongoing equipment maintenance for the Keycard System hardware. The Keycard System provider will bill and collect the fee from you for the required Keycard System hardware / software support. The costs will vary depending on the Hotel’s specific technology needs, including the number of key encoders and servers at the Hotel. The Keycard System must interface with the Property Management System (PMS).

**In-Room Entertainment:** The estimated costs for In-Room Entertainment will be driven by the number of guest rooms, NUC device, Chromecast devices, set top boxes, installation costs, etc.

**Employee Safety Devices:** The estimated costs for Employee Safety Devices will vary based on the number of hotel rooms at a range of approximately \$125 - \$150 per room. Employee Safety Devices must be procured and installed by a SCH-approved vendor and meet defined requirements.

**Other Technology Systems:** The estimated costs for Technology Systems include the costs of telephone switch and installation and the on-property technology hardware systems such as the public area audio visual and music system, optional service optimization and devices for the Hotel service management system, security/CCTV systems, and business center equipment (including public access computer workstations, multi-function printers and SCH-approved protection software). You may be required to pay the costs associated with certain components of the Technology Systems to SCH as a pass through, whereby SCH will collect the amount due from licensees on behalf of, and remit same to, the suppliers.

The estimated costs for public access computers will vary based on the number of workstations and multi-function printers installed, as well as the vendor chosen. Public access computers must utilize SCH-approved protection software and include enrollment in a 24x7 support program offered by a SCH-approved vendor. You may be required to pay the costs associated with the public access computers to SCH as a pass through, whereby SCH will collect the amount due from licensees on behalf of, and remit same to, the suppliers.

Kimpton Hotels & Restaurants branded hotels must also utilize an approved F&B POS solution. The estimated initial cost for the POS purchase and installation will range from \$45,000 to \$55,000 based on 5 outlets with 12 workstations & printers, 3 tablets & 5 kitchen/ bar printers, The pricing will increase with the installation of additional outlets & hardware. You must obtain ongoing maintenance and support for the application & all hardware. The costs will vary according to your technology needs.

**Delphi Sales and Catering Software:**

The estimate for Delphi FDC Sales & Catering includes what we reasonably believe the cost of your first year subscription, installation, training, licensing and configuration for a 200-room hotel and up to 8 users will be. The interface to the PMS is quoted separately as a component of the Opera PMS total.

**Hot SOS:** Hot SOS is a service optimization and incident response software that must be used by your Hotel for responding to guest requests. You must purchase and install HotSOS or an alternative service optimization solution approved by SCH. The estimated initial cost includes the installation, configuration and training of the Hot SOS software and assumes a total of 10 handheld staff devices.

**Note 6:** The cost estimated for the digital and communications setup includes an estimate for the buildout of the independent Hotel website (created by a Kimpton approved vendor), a minimum of 12 months of public relations support (typically from 4-6 months before opening until 6-8 months after opening) which will be provided by IHGFL, an approved third-party PR agency, Search Engine Optimization, which is optional through a Kimpton approved agency, and other digital and public relations costs as outlined in the Brand Standards. While the majority of these costs are currently intended to be passed through IHGFL to approved suppliers, in the event IHGFL requires you or your management company to participate in pre-opening Commercial Services, a portion of these costs could be paid to IHGFL. The services provide digital,



communications, and social media support to open a Hotel. The pre-opening Commercial Services support can vary and cost up to \$31,000 depending on the number of programs utilized. The low end of the range set forth in the table above (\$0) assumes that you are not required to participate in such pre-opening Commercial Services.).

**Note 7:** The Hotel Openings program provides services and support required to open a Hotel in the System (or convert an existing Hotel to a license location) including the RAMP UP Program, Key Programs Training, 2 weeks pre-opening support and other onsite consultations. The Pre-Opening Support Fee ranges from \$20,000 to \$35,000, plus trainee/trainer expenses. The Pre-Opening Support Fee covers pre-opening training, including instruction, materials and instructor expenses. The amount of the fee will be determined based upon the number of F&B outlets, amount of meeting space, training requirements and other factors as determined by IHGFL. You may request additional pre-opening support or services during the Pre-Opening Period beyond what we typically provide to other similar Kimpton Hotels. If agreed to by IHGFL, additional guidance and support may be provided during the pre-opening period for a fee. The fee will vary depending on the requested amount of additional support. You must also purchase training materials for the training programs described in Item 11, which IHGFL estimates will cost no more than \$5,000 per hotel for all trainees combined. You may be required to purchase subsequent training materials to fulfill the ongoing training of new employees.

In addition, if your Hotel's Restaurant and Bar will be managed by the Hotel Operator, and you request additional support to open your Hotel's Restaurant and Bar, or if Kimpton determines that additional support is necessary based on your Hotel operator's past experience, the Kimpton Restaurant and Bars Openings Services & Transitions ("RBOST") program will provide on-site services and training required to open a Restaurant and Bar in the System. The costs for the RBOST program will vary based upon the level of support and/or the number of outlets in a Hotel, trainers and training time required, but is estimated to be up to \$50,000. To the extent you request this additional support, the fee will be documented in either the License Agreement or a separate agreement with IHGFL.

Your General Manager-Hotel, General Manager (or equivalent) - Restaurants & Bars, Director of Sales, Executive Chef, Director of People & Culture, Director of Housekeeping, Director of Engineering and all other department heads must each complete an initial certification training program. The total cost for all initial department-head certification training programs is \$5,500/yr. Prorated based on month your hotel opens. For in-person classes, you must pay for your trainees' travel expenses or any training expenses incurred from any optional or supplemental courses that your trainees attend. Participants from all Hotels are responsible for their own airfare, lodging, meals and other miscellaneous expenses for any training programs which are located off-site.

The back of house of your Hotel must include artwork designed to improve the employee experience, while educating team members on the Kimpton Hotels & Restaurants brand, the IHG brand and their Hotel.

**Note 8:** These fees will only apply if it is necessary to reschedule your hotel's opening. In the event that you need to reschedule your opening, you may be charged a fee of up to \$6,000 per extension. IHGFL must approve your extension request in writing and you must pay any expenses IHGFL incurs in processing the extension request.

**Note 9:** The licenses and permits you must obtain to operate the Hotel vary depending upon the state, county or other political subdivision in which the Hotel is situated.

**Note 10:** The estimates for this category include charges imposed by your architects, designers, consultants, engineers, insurance carriers, attorneys, and accountants. The actual amount will depend solely upon arrangements you make.

**Note 11:** The security deposits you must pay to utilities, lessors, and vendors or suppliers of other products or services will vary from Hotel to Hotel.

**Note 12:** IHGFL's specifications for the amount and type of insurance coverage are in Paragraph 8.B of the License. If you fail to procure or maintain the insurance coverages and limits set forth in Paragraph 8.B, IHGFL will have the right and authority (but not the obligation) to procure such insurance at your cost, including any costs incurred by IHGFL for procurement and maintenance of such insurance. IHGFL currently requires that you obtain a liability insurance policy naming IHGFL, SCH and their parents, subsidiaries and affiliates as additional insureds in the amount of \$25,000,000 per occurrence for all Kimpton Hotels & Restaurants. In connection with all construction at the Hotel, you must require your general contractor to maintain commercial general liability insurance (including coverage for product liability, completed operations and contractual liability) and business automobile liability insurance (including hired and non-owned liability) with limits of at least \$25,000,000 per occurrence for personal and bodily injury and property damage naming IHGFL, its parents, subsidiaries and affiliates as additional insureds. IHGFL also requires you to maintain employment practices liability insurance naming IHGFL, SCH and their parents, subsidiaries and affiliates as additional insureds with a minimum limit in the aggregate of \$1,000,000 for all Kimpton Hotels & Restaurants. The holder of the liquor license must maintain liquor liability insurance with single limit coverage for personal and bodily injury and property damage of at least \$25,000,000 for each occurrence naming IHGFL, SCH and their parents, subsidiaries and affiliates, (and Licensee if applicable) as additional insureds. You must also obtain: (i) employer's liability with minimum limits of \$1,000,000 per occurrence; (ii) worker's compensation insurance; (iii) business interruption insurance to ensure the royalties, Service Contributions and any other sums payable to us (the policy should insure against 'all risks' of physical loss or damage, and be endorsed to provide for payments to be made directly to IHGFL). Liability insurance premiums for required coverages can range from \$200,000 to \$625,000 or higher depending on such factors as jurisdiction, exposures, type of Hotel, loss history, location, size of Hotel, payroll size, and other factors.

**Note 13:** A hotel will incur certain expenses for salaries and wages prior to opening, sales & marketing expenses and other standard operating costs.

**Note 14:** You will be responsible for contracting with a brand identified and Kimpton approved hotel photography supplier to produce a minimum number of brand specified hotel photographs for use in the brand and SCH sales and marketing materials. Additional photos may be required depending on room types, if rooms are sold with an attribute and for new room inventory types. Photographs should be completed in accordance with IHG photography guidelines prior to opening but in no event later than 2 weeks after opening, as well within 45 days after significant hotel renovations. The estimate for this cost does not include model room shoot or restaurant photography, which will vary.

**Note 15 :** This estimates your initial operating expenses for the first three months after opening. These figures include opening advertising programs, payroll costs, royalties, marketing fees, reservation fees, hardware/software support, utility charges, and other supply costs. The Restaurant & Bar costs represent all initial operating expenses for a three-meal restaurant, 5,000 – 7,000 square feet of meeting space, in-room dining and guestroom mini-bars, including labor, sales & marketing, and cost of goods. These figures are estimates and IHGFL cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how closely you follow IHGFL's methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for the Hotel brand's services; the prevailing wage rate; competition; and sales level reached during the initial period.

**Note 16:** IHGFL has collected data from its affiliates' managed Kimpton Hotels & Restaurants, as well as from its parents and affiliates company-owned, licensed and managed hotels and has also relied upon its parents and affiliates over 50 years of experience in the hotel franchise industry. The above chart may not reflect all of your expenses in opening the Hotel. There may be other items which IHGFL is unable to estimate. The total estimated initial investment does not include variables such as real estate costs, contingency fees, finance charges, interest or debt service obligations. You are encouraged to independently investigate the cost of such items and have such items reviewed carefully with business and legal advisors before purchasing the license.

## **ITEM 8**

### **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

Except as described below, you are not required to purchase or lease products or services from IHGFL or its affiliates, or from suppliers approved by IHGFL, or under IHGFL's specifications.

#### **Standards and Specifications:**

You must build, design, furnish, equip, decorate and supply the Hotel subject to IHGFL's approval of your plans as outlined in Kimpton's Review and Approval policy. You must equip the Hotel with products which meet IHGFL's standards and specifications, including those described in the License and Standards for the Kimpton Hotels & Restaurants brand. All modernization, renovation and upgrading of your Hotel must also meet IHGFL's Standards and specifications. IHGFL issues specifications by brand of product and in many instances by brand "or equivalent", by physical characteristics and by other methods, depending on the product, or service involved. IHGFL retains the right to make changes to the Standards. These changes will become binding on you as if originally set forth in the Standards. IHGFL will provide you with an explanation of any change, in writing, at least 30 days before it goes into effect.

IHGFL estimates that its standards and specifications will apply to 90% to 95% of your purchases and leases. If you purchase or lease any equipment or supplies not previously approved by IHGFL, IHGFL may require you or the manufacturer to submit a written request for its approval. IHGFL reserves the right to require removal of any non-approved product installed at the Hotel. While IHGFL has no obligation to respond within a certain time frame, it expects to do so within 45 to 60 days from receipt of your request. IHGFL may require certain information, tests, certifications and inspections, at no expense to IHGFL, as a condition of approval.

IHGFL requires you to hire qualified, licensed, professional advisors in the form of a project team, which may consist of, depending on complexity and scope of the work, an architect, interior designer, engineer or other related specialist when building or renovating a Hotel. Kimpton shall provide recommendations for, and have the right to approve the selection of, the architect, the interior designer for the Hotel, the interior designer for any Food and Beverage Outlet and the project manager in its sole discretion. Such Consultants shall have a professional reputation in the industry, be qualified to provide the services required for the Hotel project and maintain appropriate insurance coverages.

In some instances, IHGFL's affiliate, Holiday Hospitality Franchising, LLC, ("Holiday"), receives a small commission from vendors' sales to offset Holiday's costs of implementing a Standard Room Decor Program ("SRD Program"). These costs include professional design services for creating new décor schemes for Holiday's licensees, prototype room development and testing, specifications development, negotiating and contracting services for items that the licensee may buy through this program, web site updating and maintenance, and licensee support service expenses. The commission amounts to ½% to 3% for SRD items. The information below reflects operations as of

the date of this disclosure document and is subject to change. Standard Room Décor commissions for the year ending December 31, 2023, were \$5,660,000.

Any design work submitted by unqualified individuals hired by you will be rejected and your Hotel can be subject to Plan default, resulting in an assessment of fees under the terms of your License. The fee for such Plan default will be up to \$5,000. We have the right to require that you remove any product installed in your Hotel that has not been approved by Kimpton Plan Review explicitly in writing before installation.

At the time you and IHGFL sign a License, and before your Hotel opens, SCH may determine to purchase the required supplies for your Hotel from approved suppliers on your behalf and then invoice you. You must reimburse SCH for these purchases. If SCH advance these funds on your behalf, neither SCH nor IHGFL will receive any fees from approved suppliers and they will not retain any portion of your payments for the purchases.

**Suppliers:**

If IHGFL requires you to purchase equipment, furnishings, supplies or other products for the Hotel from a designated or approved supplier or service provider in the License, the Standards, or other communication to you, then you must purchase the mandated product unless you receive prior approval from IHGFL to purchase such products from another source whose products meet such specifications.

IHGFL can designate the designers, architects, contractors and suppliers who will perform Renewal Work and brand refresh work at your Hotel and who will provide brand specified products, such as fixtures or furniture, and services. You may otherwise purchase your equipment, furnishings and supplies for the Hotel from any source, provided that the products meet the specifications in the Standards, except for suppliers of certain components of the property-based technology and telecommunications systems and as may be noted elsewhere in this disclosure document. IHGFL may provide you with information and recommendations concerning firms which offer products and services (which the License and/or the Standards require you to use) which are necessary and useful to the operation of a Hotel, or which meet the Standards and specifications. However, IHGFL has no ongoing obligation to provide purchasing information to you, and IHGFL's practice and approach to this activity may change at any time. Your License does not require IHGFL to engage in or continue these voluntary activities. We cannot guarantee that any vendor will extend or maintain credit or payment terms (including us and any vendors that are our affiliates).

In furnishing supplier or service provider information and making recommendations, IHGFL uses its business judgment regarding the long-term interests of the Brand System as a whole, based on its information at that time concerning quality, performance, competitive pricing and similar factors. However, by identifying or recommending a supplier or service provider, IHGFL makes no warranty to you of these or any other factors. Your use of an identified or recommended supplier or service provider, selling products or services meeting the Standards and specifications may make it easier for you to comply with the Standards and specifications, but it is not a substitute for compliance.

While IHGFL may, from time to time, communicate with you or your suppliers/service providers regarding supply/service provider issues and take steps to improve performance or resolve complaints, IHGFL has no responsibility for the financial condition or performance of any supplier or service provider.

Suppliers may offer IHGFL the opportunity to take advantage of funds to support co-op marketing, training and other services that support the Brand System at national and hotel levels. When these options are available and selected, IHGFL uses these funds as designated, and to the extent possible to benefit the Brand System, and the systems of IHGFL's other brands which purchase

from suppliers. SCH and its affiliates may enter agreements with suppliers and receive revenue attributable to purchases by licensees and by SCH and its affiliates.

Nothing in your License prevents IHGFL from having an ownership interest in any other business, including firms providing products or services to you or providing procurement services to you. If IHGFL has, or later acquires, an ownership interest in a product or service provider, IHGFL has no obligation to maintain that interest or to refrain from disposing of it as IHGFL sees fit.

No officer of IHGFL currently owns any interest in an approved supplier or service provider.

SCH currently utilizes a mixed resource model for the supply chain management functions. In the future, the procurement program may be comprised solely of SCH employees. The procurement program develops and supports purchasing programs and provides Brand System licensees with several valuable services. You can contact the procurement program by mail c/o IHG Procurement Program, Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346 or by telephone during normal business hours of Monday – Friday 8:30AM – 5:00PM at its toll free support line 855-466-7877. Purchasing professionals will be available to assist you with any questions you may have regarding sourcing of products or services through the IHG Procurement Program.

IHG operates a procurement program, named the “IHG Procurement Program”, with the endorsement of the IHG Owners Association. The IHG Procurement Program seeks to leverage the scale of the IHG hotel system to identify and provide access to suppliers of goods and services to deliver value to its licensees by providing cost effective buying opportunities with standardized commercial terms. (“Programs”), including IHGFL’s licensees, as explained below. Except for certain Standards or SCH specifications, you are under no obligation to use the IHG Procurement Program.

If you become an IHG Procurement Program participant, you will purchase goods and services directly from suppliers at the IHG Procurement Program’s negotiated prices and commercial conditions. The relationship between licensee and supplier is that of buyer and seller. Unless IHGFL requires you to purchase a product from a designated or approved supplier in the License, the Standards or other communication to you, you are not required to purchase from the IHG Procurement Program’s suppliers or participate in the IHG Procurement Program in any way. You are free to purchase goods and services from any supplier, so long as the supplier fully complies with IHGFL’s and SCH’s specifications and Standards.

The IHG Procurement Program collects a fee from suppliers based on a percentage of the actual sales between the supplier and licensees to fund the operation of the Program. Suppliers only pay a fee after a contract with a supplier is in place. If no purchases are made by licensees, then no fee is paid by the supplier to the IHG Procurement Program. Prices paid by licensees for goods and services as a participant of the IHG Procurement Program and/or under a Brand Standard/Specification Program will include up to a 6% fee. These fees cover the resource, travel, overhead, technology, development, administration, management, maintenance and tracking of the Program, and Program-related costs for the IHG Procurement Program. The IHG Marketplace (technology buying program) receives contributions from suppliers based on a percentage of purchases made through negotiated contracts which IHG utilizes to manage the program and platform. The Technology Marketplace collects fees from two sources: (1) hotels for services such as IHG Connect, IHG Studio, and IHG Groups & Events, and (2) vendors that use the platform to offer products and services to IHG hotels. The majority of these funds is used to pay the service providers that support IHG-branded offerings and the remainder cover costs associated with the platform. Occasionally, when goods and services are provided by a distributor or group purchasing organization (“Distributors”) in connection with the IHG Procurement Program, service fees may be paid as a part of the price of the goods. The Distributors, on behalf of a supplier, may also pay a rebate or allowance to the licensee based on the volume of your purchases. Allowances and rebates are received by licensees directly from suppliers and will generally range from approximately 1% to

5% of the amount of the invoice price for the goods and services purchased by you from suppliers participating in the Programs.

Licensee buyers will have access to applicable rebate or allowance reporting information either through an authorized third-party reporting agency site or from the supplier. Such applicable allowances or rebates will be distributed to licensees either directly from suppliers or Distributors.

**Reservation System and Computerized Enhancements:**

You must purchase equipment, software and services for property-level technology and telecommunications systems from third-party vendors whom IHGFL designates or who meet IHGFL's specifications (see Item 11).

**"Private Network" Connecting Services:**

You must purchase "private network" connecting services, or another solution IHGFL specifies, for use in communicating with the Reservation System from IHGFL's designated vendor. Your Hotel's private network will be connected to a fully managed router service with a certified interface to SCH's proprietary systems.

**Property Management System:**

You must install the certified equipment specified for the PMS as required by SCH. You must request a waiver to use an alternative source. The PMS equipment is also used for accessing the Reservation System. PMS equipment, software and maintenance are described in the Master Technology Services Agreement (Exhibit C to this disclosure document). You must purchase PMS training, implementation and hardware and software support services (see Item 6). You must also enter into a Joinder Agreement (found within Exhibit C to this disclosure document) with Hewlett-Packard Inc. ("HP") in order to obtain the PMS system hardware, software and deployment services at your Hotel and for the procurement and installation of hardware, software, and installation services of a credit card solution at your Hotel.

Hotels will operate a computerized property management system (PMS) that has been certified by SCH and must maintain the PMS in conformance with the business and performance standards of SCH. The PMS must have a database schema and shell which is approved by SCH, in order for the interface from the PMS to the CRS to work correctly. Hotels will be responsible for establishing and maintaining proper application access control to align with Payment Card Industry Data Security Standards (PCI-DSS) and must provide a copy of their annual Attestation of Compliance (AOC) to IHGFL each year. Operating systems, database, and other programs must be maintained with current approved security patches that are fully supported by the software vendors. The PMS must be periodically updated and maintained to conform to SCH approved software versions, technology advancements and security requirements. This may require certain hardware and/or software components to be replaced or upgraded. At a minimum, the PMS-access hardware and software must be replaced at least every 48 months. PMS-access hardware includes server(s), workstations, printers, monitors, ups, back-up device, and associated network components.

In the twelve months ending December 31, 2023, SCH and its subsidiaries' gross revenue from license purchases of PMS and Reservation System equipment, software, training and support services ("information technology program purchases") was \$2,600,000, as indicated in the year-end financial statement of the Deployment - Profit and Loss Statement for the Global Technology division. SCH retains a portion of the project management charges from licensee information technology program purchases. SCH estimates that more than 95% of gross revenue from licensee information technology program purchases are paid over directly to the information technology program purchase vendors and are not retained by SCH or its affiliates. (The financial

information provided in the Profit and Loss Statement for the Global Technology division is not generally available to licensees).

SCH has selected Opera as the required property management system to interface with and access the Reservation System for Kimpton Hotels & Restaurants. You must enter into a license agreement with the supplier of the PMS. You must also obtain from the supplier of the PMS, for a fee, ongoing maintenance and support for all other PMS components, including software, PMS software upgrades and required brand standard system interfaces to the PMS (see Item 11). Oracle America, Inc. is the PMS Provider for the Opera property management system.

You must also pay support fees for the other components of property-level systems, such as PMS equipment maintenance, and for other systems which interface to the Opera PMS system; such as the telecommunications system, the electronic door locking system, and the specialized sales software. Hardware and software maintenance fees may vary based on the number of rooms at the Hotel.

SCH's criteria and procedures for approval of this required supplier of the PMS software and its ongoing maintenance and support are not readily available to Brand System licensees, but SCH will provide them at your request. SCH will notify you of any discontinuation of these services.

**NextGen Payments:**

SCH administers a computerized payment card processing program, NextGen Payments ("NGP"). All hotels are required to obtain and install NGP. NGP is a data security process designed to remove certain credit card information from IHGFL's systems. Using PCI certified payment terminals, credit card data will be encrypted and converted to tokens before entering the PMS. SCH has contracted with FreedomPay to provide the tokenization application services. All hotels are required to use NGP or such successor payments program as may be implemented by SCH. Hardware and software systems required to connect must be fully operational when the hotel opens, with appropriate management and staff trained and competent to operate NGP at all times. Each licensee will be required to enter into a merchant processing application and agreement with Fiserv, the SCH-Approved merchant service provider, and a participation agreement with SCH. (see Exhibit H-4 to this disclosure document).

**Guest Internet Access – Bandwidth (IHG Connect):**

For Guest Internet Access ("GIA") Bandwidth, a hotel will be required to use an approved SCH-certified provider and to sign an IHG Direct Hotel Participation Agreement with such provider as may be approved by SCH from time to time, the form of which is attached as Exhibit H-5 to this disclosure document. Estimates for infrastructure needs can vary greatly by location. Actual costs can only be obtained once vendor site surveys are completed, due to the unique building and construction circumstances of a given property.

**Guest Internet Access – Hardware (IHG Connect):**

For Guest Internet Access ("GIA") Hardware, a hotel will be required to install SCH approved Wi-Fi equipment and use an SCH approved integrator (an "Integrator") for the installation of Wi-Fi equipment. Estimates for infrastructure needs can vary greatly by location and building type. Due to unique building and construction of any given property, actual costs can only be obtained once Integrator site surveys are completed. The site survey will help determine the number and types of Wi-Fi equipment through a Wi-Fi heat map coverage diagram (see Item 6, Note 7)

**Televisions:**

Hotels are required to provide televisions that meet the technical specification requirements and minimal diagonal screen size for in-room and public spaces.

**Keycard System:**

Kimpton brand hotels must utilize an approved Keycard System that meets brand requirements. The estimated cost for the Keycard System will be \$11,000 to \$16,500 for a hotel with 100 rooms; \$11,000 to \$22,000 for a hotel with 200 rooms; \$10,000 to \$27,500 for a hotel with 300 rooms. This includes the server, key encoders, installation, and support. It does not include the cost of the locks for the doors themselves. You must obtain ongoing maintenance and support for the required Keycard System software, including upgrades and new versions. You must also obtain ongoing equipment maintenance for the Keycard System hardware. The Keycard System provider will bill and collect the fee from you for the required Keycard System hardware / software support. The costs will vary depending on the Hotel's specific technology needs, including the number of key encoders and servers at the Hotel.

**In-Room Entertainment (IHG Studio):**

Hotels are required to install and maintain approved TV sets and/or STBs that are compatible with IHG Studio, use an approved SCH-certified integrator to install the equipment, and must enter into an agreement with one of them. Monthly service fees will include a base per-room fee for guest support.

In the twelve months ending on December 31, 2023, SCH and its subsidiaries' net revenue from HBO service purchases was \$550,018.50.

**Employee Safety Devices:**

For Employee Safety Devices, a hotel is responsible for installing an alert system that enables employees to notify hotel management of an emergency with the push of a button. The Devices must be available to all employees that work in guest rooms, must instantly signal guest room and guest floor location when activated, must continuously update guest room and guest floor location, and must be tested every six months. In addition, all new employees, including contract and temporary, must receive training on the Employee Safety Devices, within the first 14 days of employment. Employee Safety Devices must be procured and installed by an approved IHG partner and meet defined requirements. A Participation Agreement with an approved supplier is required.

**Public Access Computers:**

It is recommended that Hotels install designated workstations and a multi-function printer, providing complementary internet access to hotel guests in the Business Center ("Public Access Computers"). If provided, the Public Access Computers must be available 24 hours a day, must utilize SCH-approved security protection software and must include enrollment in a 24x7 support program offered by an SCH-approved vendor. In addition, all Public Access Computers are required to be refreshed every four years, a minimum of one computer must have Microsoft Office, and all must operate at the same or greater bandwidth port speed as other internet enabled devices on the Guest Internet Access network. You may be required to sign a participation agreement with an approved vendor for these services.

**IHG Global Cable & Infrastructure Standards Basis of Design (BOD):**

Hotels are required to adhere to the IHG Cable and Infrastructure Standards Basis of Design (BOD), as it provides clear guidance on the Cable and Infrastructure requirements for all IHG



projects and properties. This BOD standard is a minimum requirement; however, it will still require project specific IT infrastructure Design Development (DD) and Construction Design (CD) packages to fully address the specific needs of each unique project and property. These designs must also fully comply with all areas of the BOD, and all other referenced and related IHG BOD documents and standards. The requirements of this IHG Cable and Infrastructure Basis of Design (BOD), shall apply as the design and build-out basis for all IHG projects and properties, unless specifically indicated otherwise with advance written approval. The infrastructure design, materials and installation for each project must adhere to and fully comply with the most current versions of all applicable referenced standards and specifications, laws, rules, standards, regulations, codes and ordinances of the country, federal, state, local and any other authorities having jurisdiction. Where the codes and standards requirements of any BOD areas conflict with each other, or are more stringent than other applicable codes, rules, regulations, and ordinances, the more stringent specifications shall apply. Deviations from any BOD Cable and Infrastructure design and performance requirements must be submitted in advance and require written approval from IHG, prior to any materials being purchased, or installed. Any failure or deviations to fully comply with all aspects of this Cable and Infrastructure BOD must be corrected at no additional cost to IHG.

### **IHG Merlin System:**

SCH has designed a communication service, (<http://ihgmerlin.com>) known as “IHG Merlin”, and its messaging tool, currently known as “Hotel Bulletin”, which are the primary means of sending information from IHGFL and SCH to licensees and in some cases, this may be the only manner in which IHGFL and SCH communicate with Hotels and licensees. IHG Merlin and Hotel Bulletin will require you to access the Internet via third-party computer network communications service (“Internet Service Provider” or “ISP”).

IHG Merlin is an electronic information library providing up-to-the-minute information and documentation from SCH at your fingertips. IHG Merlin was created solely for IHGFL and Holiday’s various brand group Hotels and their employees. In some cases, information may be distributed to Brand System hotels only through IHG Merlin. Information may include: the Standards, PMS Manual, newsletters and informational memos from IHGFL or SCH, Marketing Solicitations, etc.

To access IHG Merlin, you must select and pay a monthly fee for an ISP which meets the minimum specifications established by SCH. The monthly fee will include Internet access and support. This access will provide you with an e-mail account and access to sites on the Internet and World Wide Web. You may select an ISP from any source as long as it meets SCH’s exact specifications.

IHG Merlin requires a Microsoft Windows based (Windows 10 Professional or newer OS) PC and printer configured to SCH’s specifications. You may purchase the equipment from any source as long as it meets SCH’s exact specifications. SCH requires ongoing maintenance and support services of equipment that you may purchase from a third party.

IHG Merlin houses proprietary information to IHGFL and its brands. Information you receive from IHG Merlin may be used exclusively in performance of your rights and obligations under your License with IHGFL regarding a Kimpton Hotel only. All such information must otherwise be treated as confidential and proprietary to IHGFL and SCH. Your use and access will be limited in accordance with IHGFL’s or SCH’s express terms and conditions.

Other than as described above, neither IHGFL nor SCH derives any other income from your purchase or use of the above-described computer systems.

### **Food and Beverage Point of Sale (“POS”) System:**

All hotels must utilize an approved POS solution where appropriate, that meets brand Standards. You must obtain ongoing maintenance and support for the required POS software, including upgrades and new versions. You must also obtain ongoing hardware maintenance. The POS provider will bill and collect the fee from you for the required POS hardware / software support. Therefore, you must sign a third party license agreement with the approved provider or with any other provider designated by SCH.

**Long-Distance Telecommunications, Program Management Commissions and Miscellaneous Services:**

SCH has negotiated rates which are on file with the Federal Communications Commission with certain providers of long-distance telecommunication services to Brand System licensees, such as AT&T and Verizon, in consideration for assistance, program support or other services SCH renders to the providers in connection with their sales to licensees. You do not have to use these providers.

**Signage:**

You are responsible for sourcing a local signage vendor for your Hotel's primary signage. Your primary signage must be approved by Kimpton Plan and Construction. Neither SCH nor IHGFL derives income from your signage purchases.

**Insurance:**

IHGFL's specifications for the amounts and types of required insurance coverage are specifically described in Paragraph 8.B. of the License. If you fail to procure or maintain the insurance coverages and limits set forth in Paragraph 8.B., IHGFL will have the right and authority (but not the obligation) to procure such insurance at your cost, including any costs incurred by IHGFL for procurement and maintenance of such insurance. IHGFL currently requires that you obtain a general liability insurance policy naming IHGFL, SCH and their parents, subsidiaries and affiliates as additional insureds in the amount of \$25,000,000 per occurrence. In connection with all construction at the Hotel, you must require your general contractor to maintain commercial general liability insurance (including coverage for product liability, completed operations and contractual liability) and business automobile liability insurance (including hired and non-owned liability) with limits of at least \$25,000,000 per occurrence for personal and bodily injury and property damage naming IHGFL, its parents, subsidiaries and affiliates as additional insureds. IHGFL also requires that you to obtain employment practices liability insurance policy with a limit of \$1,000,000 per occurrence and in the aggregate. The holder of the liquor license must also maintain liquor liability insurance with single limit coverage for personal and bodily injury and property damage of at least \$25,000,000 per occurrence naming IHGFL and its parents, subsidiaries and affiliates, (and Licensee if applicable) as additional insureds. You must also obtain: (i) employer's liability with minimum limits of \$1,000,000 per occurrence; (ii) worker's compensation insurance; (iii) business interruption insurance to ensure the royalties, Service Contributions and any other sums payable to us (the policy should insure against 'all risks' of physical loss or damage, and be endorsed to provide for payments to be made directly to IHGFL). Insurance premiums for required coverages can vary depending on such factors as jurisdiction, exposures, type of Hotel, loss history, location and size of Hotel, payroll size and other factors.

**Coca-Cola® Agreement:**

Pursuant to the Standards, Hotels located within the 50 United States (including the District of Columbia) you are currently required to participate in the IHG | Coca-Cola® Beverage Program (the "Beverage Program"). You must sign a Participation Agreement with The Coca-Cola

Company (“TCCC”), a copy of which is attached as Exhibit H-3 to this disclosure document, unless a waiver is granted by IHGFL. Waivers may be granted by IHGFL if your Hotel has a pre-existing beverage agreement with another supplier. Under the Beverage Program, participating Hotels are subject to the standards and requirements summarized below.

All participating Hotels are required to make available to guests a core set of TCCC bottled/canned beverages (subject to availability) that consists of Coca-Cola®, Diet Coke®, Sprite® and Coke Zero Sugar™. Hotels that serve fountain beverages are required to include Coca-Cola®, Diet Coke®, Sprite® and Coke Zero Sugar™. In addition, Hotels are required to serve Simply® Orange (a TCCC juice product). All non-alcoholic bottled/canned beverages (including waters), fountain beverages, and juices offered, served, or sold by your Hotel must be TCCC beverages, unless a permitted exception in your Hotel’s Participation Agreement applies. All beverages displayed and offered in coolers and vending machines must be TCCC products, with limited exceptions for equipment owned by the Hotel. You may also be required to sign a lease agreement with TCCC for TCCC-provided equipment; a copy of which is included as part of Exhibit H-3 to this disclosure document. Hotels may not serve, offer, or display any products of PepsiCo.

All non-alcoholic beverages served at meetings or events hosted by your Hotel should be TCCC products, unless serving non-TCCC beverages was required by the client as a condition of booking the function. In such circumstances, serving competitive beverages is permitted; provided, that certain restrictions set forth in your Participation Agreement are followed. Third-party restaurant or bar outlets operating at the Hotel are not required to follow the Beverage Program but may do so at their discretion.

TCCC provides certain funding based on the volume of TCCC products sold in Brand System Hotels. Most of this funding is administered by a cross-functional Business Partnership Team with representatives from TCCC and SCH, who work to identify and execute opportunities to create value for TCCC and the Brand System. Some funding is received by SCH on behalf of the Brand System and utilized for the benefit of the Brand System and/or to promote the sale of TCCC beverages throughout the Brand System. In connection with such funding and as part of the Coca-Cola Beverage Program, Hotels are required to participate in various promotional programs and marketing activities as directed by SCH.

Additional requirements or restrictions in the Standards or the Participation Agreement may apply to your Hotel. Unless clearly covered by a permitted exception stated in your Participation Agreement, exemptions to the Standards relating to the Beverage Program or to requirements of the Hotel Participation Agreement require written approval from IHGFL or SCH pursuant to the waiver application process.

### **Groups360:**

We currently own an interest in Groups360 LLC (“Groups360”), which provides lead generation services, meeting advisory services, and marketing services to participating Hotels in our Brand System and other hospitality companies. Groups360 collects commissions from participating Hotels in our Brand System for providing such services. If participating Hotels meet certain thresholds, we will receive additional equity interests in the company. In 2023, IHGFL did not receive any distributions or additional equity interests from Groups360 as a result of licensed hotel purchases, but IHG did record its pro-rata share of Groups360’s losses in our financial statements.

### **Other Purchases:**

IHGFL or its affiliates may also offer you, on a non-exclusive basis, additional advertising materials, products, services, equipment or supplies. IHGFL may earn a profit from these sales,

but you are not obligated to purchase any of these products, services, equipment or supplies from IHGFL or its affiliates. IHGFL does not currently provide any material benefits (i.e. re-licensing or granting additional licenses) to a licensee based on its use of a designated or approved supply source.

## **ITEM 9 LICENSEE'S OBLIGATIONS**

This table lists your principal obligations under the License and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

<b>Obligation</b>	<b>Section In Agreement</b>	<b>Disclosure Document Item</b>
a. Site selection and acquisition/lease	License: 1.A, Attachment "A"	Items 7 & 11
b. Pre-opening purchases/leases	License: 3.A & 8.B and Attachment "B" MTSA: 4.3, 4.4 & Attachment 4-3 to Schedule 4	Items 5, 6 & 7
c. Site development and other pre-opening requirements	License: 13.J & Attachment "B" MTSA: 4.3, 4.4 & Attachment 4-3 to Schedule 4	Items 7 & 11
d. Initial and ongoing training	License: 3.A & 4.A MTSA: Attachments 4-1 and 4-3 to Schedule 4	Items 5, 6, 7, 8 & 11
e. Opening	License: 13.J & Attachments "A" & "B"	Items 5 & 11
f. Fees	License: 3.B and 3.C, Attachment "A" MTSA: 5.0 & Attachment 4-3 to Schedule 4	Items 5, 6 & 7
g. Compliance with the Standards and policies/ Operating Standards	License: 3.A, 4.E, 4.F & 5	Item 11
h. Trademarks and proprietary information	License; 3.A, 6 & 12.B MTSA: 4.2(h), 6.0	Items 13 & 14
i. Restrictions on products/services offered	License; 3.A MTSA: 3, 4, Schedules 2 and 3 & Attachments 4-1 and 4-3 to Schedule 4	Items 8 & 16
j. Warranty and customer service requirements	License; 3.A MTSA: 9.2.1	Item 11
k. Territorial development and sales quotas	None	
l. Ongoing product/ service purchases	License: 3.A, 8.B and 13.O MTSA: 4.3 & Attachment 4-1 to Schedule 4	Item 8
m. Maintenance, appearance and remodeling requirements	License: 3.A, 4.D, 4.E, 10, 13.J and 13.O and Attachment "B" MTSA: 4 & Attachments 4-1 and 4-2 to Schedule 4	Items 5, 6 & 11
n. Insurance	License: 8.B & 8.C MTSA: 2.1	Item 7
o. Advertising	License: 3.A & 3.B	Items 5, 6 & 11
p. Indemnification	License: 8.A MTSA: 2.1 & 8.1.5	Item 6
q. Owner's participation/	License: 9.H	Items 6, 11 & 15

management/staffing		
r. Records/reports	License: 7	Item 6
s. Inspections/audits	License: 3.A, 7.C & 13.J MTSA: 12 & 13.1	Items 6 & 11
t. Transfer	License: 9	Item 17
u. Renewal	None	Item 17
v. Post-termination obligations	License: 11.D & E MTSA: 8.1.3(iii), 8.1.3(iv), 13.1 & Attachment 4-1 to Schedule 4	Item 17
w. Non-competition covenants	License: 3.A (14)	Items 16 & 17
x. Dispute resolution	License: 13.A-E, H & I MTSA: 2.1	Item 17
y. Other: Capital Reserve <sup>1</sup>	License: 13.O and 3.A(7)(i)	Item 6
z. Other: Guaranty	Attached to the License	Item 17

**ITEM 10**

**FINANCING**

IHGFL does not offer any formal program for direct or indirect financing. IHGFL, SCH or its affiliate, General Innkeeping Acceptance Corporation (“GIAC”), may furnish loans or guaranties. IHGFL, SCH and GIAC consider making loans or guaranties under terms and conditions that would be negotiated on a case by case basis with the prospective licensee and any decision to make a loan or provide a guaranty would be made in the judgment of IHGFL, SCH or GIAC alone, and conditioned upon approval of the Executive Committee and Board of Directors. It is your responsibility alone to obtain adequate financing for all expenses related to the development, opening and operation of the hotel.

**ITEM 11**

**FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING**

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<sup>1</sup> In addition to your obligation to repair and maintain the hotel on an ongoing basis, and regardless whether Holiday has required you to establish a Capital Reserve, you must complete significant renovations of the Hotel, including but not limited to, the public areas, guestrooms and guest room corridors. These mandatory renovations include replacement of Soft Goods at least every seven (7) years after the date such Soft Goods were installed and replacement of Case Goods at least every fourteen (14) years after such Case Goods were installed, although earlier or more frequent renovations or replacements may be required to maintain compliance with the Standards, quality and guest satisfaction programs or to remove risk of injury to persons or property and to comply with legal requirements.

If the Hotel experiences a change of ownership, the dates of these obligations may be adjusted at the time a change of ownership License is signed. You must submit your plans for such upgrading and remodeling to Holiday for its review and approval before you start upgrading.

Except as listed below, IHGFL is not required to provide you with any assistance. IHGFL can perform any or all of its obligations to you directly or through its parents, affiliates, subsidiaries or other designees. For example, SCH performs many of the activities described in this disclosure document.

**Assistance Before the Hotel Opens:**

IHGFL is not responsible for acquiring the site for your Hotel. IHGFL's representative may make a personal inspection of the site and the surrounding area, but IHGFL does not grant or deny site approval. Conforming the site to federal, state and local laws, ordinances, and building codes and obtaining required permits (e.g. health, sanitation, building, driveway, utility and sign permits, etc.), is your responsibility.

If your Hotel will be a new development or a conversion, your License will require you to commence and complete construction by certain deadlines before the opening of the Hotel under the Brand System. You may apply for an extension of the development deadlines. IHGFL will consider various factors which may influence your extension request, including the ability to obtain financing or building permits, zoning and local ordinances, weather conditions, shortages or delayed installation of equipment, fixtures and signs. Approval of extension requests is not automatic. You will be responsible for any expenses incurred by IHGFL in processing the extension request (as Note 11 to Item 6 describes, there is a fee for extending construction commencement of new development Hotels).

**Kimpton Hotels & Restaurants Standards:**

Before you purchase a license, you will have the opportunity to review a copy of the Standards. Thereafter, IHGFL may make the Standards available to you in hard paper copy, or, at IHGFL's option, in digital, electronic or other computerized form. The Standards contain mandatory and suggested specifications, standards, and procedures. All Hotels in the Brand System are subject to the Standards. The Standards are confidential and remain the property of IHGFL (see Paragraph 4 of the License).

**Specifications:**

IHGFL provides written specifications in the Kimpton Standards for products and materials for you to use in the upgrading, construction and furnishing of the Hotel. For a conversion, IHGFL provides a summary of the conversion requirements in the form of a PIP, which will be an attachment to your License. The PIP provides: (i) specific renovations and alterations required to meet the requirements of the Standards and IHGFL's product quality requirements; (ii) specific dates by which you must submit plans and drawings; and (iii) beginning dates and interim milestone and completion dates for the construction of the hotel and for opening the Hotel for business. For new-builds, the License Agreement will include specific dates by which you must submit plans and drawings, and will provide milestones dates by which you must provide certain plan submittals for approval, begin and complete construction and open the Hotel. IHGFL does not supply prototype architectural plans. You must commission and pay your architect directly. Any design work submitted by unqualified individuals hired by you will be rejected and your Hotel can be subject to Plan default, resulting in an assessment of fees under the terms of your License. The fee for such Plan default will be \$5,000. You may be required to remove any non-approved product installed in your Hotel that has not been approved by Kimpton Plan Review before installation.

Before detailed construction, architectural or interior design documents are started by your architect or interior designer, representatives of your Hotel must attend a pre-construction

orientation, which could be in-person or via a virtual phone conference. Various members of the Kimpton Hotels & Restaurants team will provide an overview of Kimpton's Review and Approval process, expectations for submittals and scheduled timelines for the completion of these plans. IHGFL expects the following representatives of your Hotel to attend the pre-construction meeting: Principal Contact (licensee), General Manager-Hotel (if appointed), Interior Designer, Architectural Representative, General Contractor, and all other principals involved in the construction, development and marketing of the property. There is no charge for the pre-construction orientation if you are paying a Kimpton Design and Concept Development Support Fee. However, you must pay your representatives' travel, lodging and living expenses (if applicable).

IHGFL will review the construction working drawings to check for compliance with the standards of the Kimpton Hotels & Restaurants System. IHGFL does not review the drawings for compliance with any local, state and federal law, including any obligations imposed by the Americans with Disabilities Act since this legal compliance is your responsibility.

Using the same requirements applicable generally to Hotels under the Brand System in the same category as your Hotel, IHGFL may require substantial modernization, renovation and other upgrading of your Hotel at any time. IHGFL may make limited exceptions from those requirements based on local conditions or special circumstances.

#### **IHGFL's Inspection Before Opening:**

IHGFL inspects and approves your Hotel before IHGFL authorizes it to open to confirm that you have completed all of the requirements under Paragraph 13.J and/or Attachment "B" (The Work) of the License. In the event that you need to reschedule your opening date or any visits that have not yet been completed by IHGFL, you may be charged a fee of up to \$6,000. IHGFL must approve your extension request in writing and you must pay any expenses IHGFL incurs in processing the extension request.

IHGFL may authorize you to use the Brand System at the Hotel before completion of the construction, upgrading and renovation work, if you are in full compliance with the requirements of the License (Paragraphs 13.J and Attachment "B", The Work attachment to the License).

You may acquire the signage, furnishings, fixtures, opening inventory and supplies from any source that meets IHGFL's specifications and receives IHG approval prior to purchase or installation. For your convenience, IHGFL has approved certain suppliers meeting its specifications, but you do not have to use those suppliers except for suppliers of certain components of the property-based technology telecommunications systems, brand hallmarks and as noted elsewhere in this disclosure document (see Item 8).

#### **Time to Open:**

For new development hotels, IHGFL estimates that the length of time between signing of the License and completion of construction typically ranges from 18 to 24 months under normal circumstances. For conversion hotels, the length of time between the signing of the License and the completion of construction or upgrading typically ranges from 12 to 18 months. However, each license is subject to the agreed upon construction commencement and completion (otherwise known as opening) dates contained in that specific license.

Other than the computerized property management and reservation system equipment (see below in this Item 11), IHGFL and its affiliates do not deliver or install any of the construction items and/or furnishings. The factors that will affect the actual time needed include obtaining the financing, preparing final construction and site plans, securing necessary governmental

approvals, constructing and furnishing the hotel and participating in the necessary initial training programs.

**Access to IHG Merlin, Kimpton Yammer & Sharepoint:**

Through the IHG Merlin Site ([www.ihgmerlin.com](http://www.ihgmerlin.com)), Kimpton Yammer & Sharepoint, IHGFL’s affiliate SCH will provide documents, information and other materials including Brand Standards documentation; sales and marketing tools; information about operations; quality and brand initiatives; news and announcements that are pertinent to your brand, IHG and the hospitality industry; training tools and resources, and technology support information. Through this web portal, you will be able to access the forms and information that will assist you with opening and operating your Hotel. Your team will be able to access IHG Merlin, Kimpton Yammer & Sharepoint regularly to use the sales tools and information resources that support your Hotel. You must agree to keep all materials you receive from this program confidential.

**Training:**

IHGFL does not assist or make have any decision making authority regarding the hiring of your employees or any other employment practices at your hotel, but it will train certain Hotel employees either at your Hotel, at IHGFL’s headquarters in Atlanta, GA, or at various other major metropolitan locations which it may designate on compliance with the Standards and the Brand System. You must pay any travel and living expenses of your trainees, and IHGFL may charge you a fee to attend training workshops.

**TRAINING PROGRAM**

Subject	Time Held	Location	Instructional Material	Hours of Classroom Training	Hours of On Job Training	Instructor Training
Kimpton Orientation and Onboarding (Owner and Operator)	30-60 days post execution of the License	Atlanta, GA or other designated regional location or virtual	Kimpton new-deal orientation materials	Class lengths will vary	N/A	Senior Trainer & Brand Team
Hotel will complete a Pre-Opening Training Plan	6 months before opening	Atlanta, GA or other designated regional location and on-property	Management and Staff training materials	Class lengths will vary	On site 24 hours	Hotel Dedicated Trainer with assistance of Regional Trainers & Subject Matter Experts
Ramp Up Program	30-60 days before opening	Virtual or Atlanta	Participant materials classroom training	Up to 9 hours	N/A	Senior Trainer
Property Management System Training	Before and at opening	Your Hotel	Computer based pre-install e-learning and on-site classroom training just prior to opening	Opera 12-28 man-days	Opera 12-28 man-days	SCH PMS Vendor, or training contractor
Guest Internet Access (GIA) Hardware	Before and at opening	Your Hotel, virtual option, videos	Functionality, Usage & Support Procedures	Up to 4 hours	N/A	Integrator Lead Technician
In-Room Entertainment	Before and at opening	Your Hotel or virtual/video options	Functionality Usage & Support Procedure	Up to 4 hours	N/A	Lead Technician
Employee Safety Devices	Before and at opening	Your Hotel or virtual/video options	Functionality Usage & Support Procedure	Up to 2 hours	N/A	Lead Technician



Subject	Time Held	Location	Instructional Material	Hours of Classroom Training	Hours of On Job Training	Instructor Training
Public Access Computers	Before and at opening	Your Hotel or virtual/video options	Functionality Usage & Support Procedure	Up to 2 hours	N/A	Lead Technician
General Manager - Hotel (GM) Certification Program (Hotel) (See Note 1)	Within 90 days after hire date	Virtual, San Francisco, CA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	On site	Senior Trainer
GM - Restaurants & Bars Certification Program (See Note 1 & 3)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Executive Chef Certification Program (See Note 1 & 3)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Hotel Manager/Assistant GM or equivalent Certification Program (See Note 1)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Director of People & Culture (or equivalent – Director of HR) Certification Program	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location		Class lengths will vary	N/A	Senior Trainer
Front Office Operations/ Guest Service Manager Training (See Note 1)	Within 180 days after hire date	Virtual, Atlanta, GA or other designated regional location	Online Onboarding Learning Plans, Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Required IHG Concerto™ Training	Varies with build type	A designated regional location or virtual	Operations and Training materials	Class length will vary	N/A	Senior Trainer
On-site property consultations (Note 2)	Varies	Your Hotel	Varies with consulting & training visits	1-3 days	Varies	Franchise Performance Support
Director of Sales Certification Program (See Note 1)	Within 90 days after hire date	Virtual, San Francisco, CA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Director of Housekeeping or equivalent Certification Program (See Note 1)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer

Subject	Time Held	Location	Instructional Material	Hours of Classroom Training	Hours of On Job Training	Instructor Training
Director of Revenue / Revenue Manager or equivalent Certification Program (See Note 1)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Banquet Manager or equivalent Certification Program (See Note 3)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Banquet Chef or equivalent Certification Program (See Note 3)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Director of Catering or equivalent Certification Program	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Director of Engineering or equivalent Certification Program (See Note 1)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations Strategies and Action Plans	Class lengths will vary	N/A	Senior Trainer
Dedicated Trainer or equivalent Certification Program (See Note 1)	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Operations and training materials	Class lengths will vary	N/A	Senior Trainer
Brand Orientation and Cultural Cornerstone Classes	Before opening and ongoing	Your Property	Brand Training Materials	Class lengths will vary	N/A	Senior Trainer
Hotel Experience Champion or equivalent Certification Program	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Loyalty Program and Brand training materials	Class lengths will vary	N/A	Senior Trainer
Lead Bartender or equivalent Certification Program	Within 90 days after hire date	Virtual, Atlanta, GA or other designated regional location	Beverage program training materials	Class lengths will vary	N/A	Senior Trainer
Technical Support Training	Before and at Opening (with New Hotel Opening below)	Virtual, Atlanta or other designated regional location	Technology implementation materials	Class lengths will vary	Class lengths will vary	E-learning, on property, and classroom instruction by implementation team
F&B POS	Before and at opening	Your hotel or remote	On-site or remote training by vendor for configuration	18-23 days	Vendor Consultant	

Subject	Time Held	Location	Instructional Material	Hours of Classroom Training	Hours of On Job Training	Instructor Training
			set-up, training and Go Live support. Training materials will be provided.			

**Note 1:** IHGFL conducts initial certification training virtually, in Atlanta, GA, or at other designated regional locations. A portion of the training may occur at a comparable Kimpton hotel. The training focuses on leadership and areas of operation that are distinctive to the Brand System and to management functions. The designated positions set forth in the table above (if applicable) must satisfactorily complete the appropriate training (IHGFL will certify satisfactory completion) within the deadlines set forth above (or as otherwise specified in the Standards). The participant is responsible for paying all travel costs associated with the certification(s). Every General Manager-Hotel, General Manager-Food & Beverage or equivalent, and Executive Chef must be acceptable to IHGFL. If the incumbent General Manager or Executive Chef leaves the Brand System for 12 months or more and then returns to the Brand System, they must complete the initial certification training requirement again and pay the requisite fee (as well as all travel costs) associated therewith. These roles must also attend annual retraining seminar(s) when designated by IHGFL and must also attend an annual conference.

**Note 2:** IHGFL’s employees will provide on-site consulting and/or training visit(s) to your Hotel each year. Topics will include various operational items. Your Hotel must participate in the on-site consulting, with mandatory attendance and participation by the General Manager-Hotel, General Manager-Food & Beverage or equivalent, Executive Chef, designated department heads and designated staff and suggested attendance by a representative of Licensee. The General Manager-Hotel, General Manager-Food & Beverage, Executive Chef, department heads and other designated staff will develop strategies and action plans during the on-site visit; and you will receive these for review and follow-up with the General Manager-Hotel, General Manager-Food & Beverage and/or Executive Chef after each on-site visit. You must provide food, lodging, meeting room, and equipment expenses for IHGFL’s employees.

Hotels should allocate annual pre-determined amounts per full-time employee for optional value-add and specialist courses: Managers/Department Heads - \$650; Assistant Managers/Supervisors - \$450; Frontline colleagues - \$250. Where this amount exceeds 2% of your Hotel’s total salaries and wages budget, the Learning & Development allocation should be capped at 2% of the Hotel’s total salaries and wages budget. We have provided these figures only so that we can help provide an estimate of costs; however, you will always be the only party – even with any estimates reflected in this FDD – that sets your staff’s wages, salaries, and terms of employment, and we will not play any role in helping you set your staff’s wages, salaries, or terms of employment.

**Note 3:** For the Restaurant & Bar Division, all of the key discipline leads must complete the training as outlined in the Brand Standards. Key disciplines include, but are not limited to, front of house operations, back of house operations, beverage, culinary, and banquets (front and back of house).

**Note 4:** If you are required to purchase subsequent training materials for any of the training programs described in Item 11, IHGFL estimates that such subsequent training materials will cost no more than a total of \$5,000 per hotel for all trainees combined.

**Other Assistance During the Operation of the Hotel:**

After the opening of the Hotel (see Paragraph 4 of the License), IHGFL will:

(a) seek to maintain high standards of quality, cleanliness, appearance and service at all Hotels using the Brand System, to promote, protect and enhance the public image and reputation of the Kimpton Hotels & Restaurants name, and to increase the demand for services offered by the Brand System. IHGFL's judgment in these matters will be controlling in all respects, and IHGFL will have wide latitude in making its judgments;

(b) provide required and optional training programs at various locations, including IHGFL's headquarters;

(c) provide access to reservation services, if you are in compliance with your material obligations under the License;

(d) use the "Marketing and Reservation Contribution" (see Item 6) for marketing, reservations, and other related activities which, in IHGFL's sole business judgment as to the long-term interests of the Brand System, support marketing, reservations, and other related functions. IHGFL will make available and use Marketing and Reservation Contribution funds computed on the basis generally applicable to licensees of the Brand System. IHGFL has no obligation to spend more funds for marketing, reservations or related services than IHGFL receives from licensees using the Brand System and those funds made available by IHGFL as described above.

Advertising or promotional support or funding may become available to SCH, IHGFL or their affiliates from third parties on account of the totality of the activities of SCH, IHGFL and their affiliates, including Hotels operated under the Brand System. IHGFL, SCH or their affiliates can use or designate any of this support and/or funding to benefit their enterprises as a whole, in whatever proportion and manner as they decide reasonably promotes their enterprises as a whole, using reasonable, good faith business judgment. This advertising and promotional support does not include the revenues SCH and its affiliates earn from licensing their intellectual property rights to co-branded credit card issuers, from granting access to the Loyalty Program to co-brand credit card issuers, or to certain amounts earned from credit card member acquisition fees and the sale of Loyalty Program points to third parties;

(e) if IHGFL determines to do so, communicate to you improvements and developments in the Brand System, including developments in reservation services, marketing, operations, and administrative technical and support functions, facilities and programs. IHGFL may enter into arrangements with any other entity for developments to the Brand System and may use any of these facilities, programs, services or personnel in connection with the Brand System or in connection with any business activities of its parents, subsidiaries, divisions or affiliates; and

(f) make available to you consultation and advice pertaining to problems you encounter in operations, facilities and marketing.

**Marketing and Reservation Contributions; Advertising, Marketing and Promotion:**

Hotels that SCH or its affiliates own and manage and all Brand System licensees must pay the Marketing and Reservation Contribution specified in Paragraph 3.B and Attachment "A" of the License and summarized in Item 6 of this disclosure document, although the name and amount of the comparable fees could vary. Unless you participate in any other marketing programs that IHGFL may offer (such as Commercial Services), neither IHGFL nor its affiliates will receive payment from additional marketing contributions other than those mentioned in Paragraph 3.B of the License and Items 6 and 8 of this disclosure document.

IHGFL has no obligation to expend any amounts for marketing or reservation services greater than the amounts it receives from licensees using the Brand System, and any funds it may contribute.

You may conduct local and regional marketing programs and related activities, but only at your expense and subject to IHGFL's requirements, such as proper usage of its trademarks. IHGFL may make reasonable charges for optional advertising materials that you order or use for these programs and activities.

IHGFL may pool Services Contributions from Kimpton Hotels & Restaurants, together with the Services Contributions from hotels operating under one or more of IHGFL's and its affiliates' current and/or future portfolio of brands (including, without limitation, the following: avid hotels®; Candlewood Suites®; Crowne Plaza® Hotels & Resorts; EVEN® Hotels; Holiday Inn Express®; Holiday Inn® Resort; Holiday Inn®; Hotel Indigo®; InterContinental® Hotels & Resorts; Staybridge Suites®; voco®; and, Vignette Collection™) (collectively, the "IHG Portfolio Brands"). The Services Contributions will be distributed for marketing, reservations, and other related activities which, in IHGFL's and its affiliates' sole business judgment, support marketing, reservations and other related functions and/or purposes on a local, regional, national, continental or international basis or for all, or a group of, IHG Portfolio Brands. IHGFL has no obligation to spend any amounts on advertising in the vicinity of your Hotel. IHGFL does not use any Services Contributions to promote the sale of licenses. Services Contribution funds are not intended to benefit any specific market or hotel. IHGFL and its affiliates have no obligation to spend from Services Contribution funds, or otherwise, any amount fixed or proportionate to the amount of Services Contributions you pay, nor does IHGFL or any of its affiliates have any obligation to ensure that you, your hotel, the Kimpton Hotels and Restaurants Brand, or any other particular IHG Portfolio Brand or group of IHG Portfolio Brands benefit directly or proportionately from Marketing and Reservation Contributions paid or expenditures made from collected Services Contributions. Any distributions that IHGFL may make for marketing or related activities may be on a local, regional or national basis using any type of media as determined by IHGFL and may be sourced internally or using third party agencies. Any year end surplus or deficiency in funds from Services Contributions will be carried over to the following year.

Although the Services Contributions are not required to be audited, we currently expect to audit such contributions on an annual basis. Any such audited financials would not generally be available for review by licensees and IHGFL does not provide periodic accounting reports. During the fiscal year ended 2023, 55.5% of the marketing funds went for media, advertising, promotions and marketing programs, 20.1% for sales, 6.7% for hotel performance support, 6.7% for administration (e.g., corporate functions) and 11.0% for other for the Kimpton Hotels & Restaurants brand.

The Loyalty Program and the Status Program and your required contributions to the Loyalty Program and the Status Program are described in Item 6. IHGFL's Senior Vice President, Global Loyalty and Partnerships administers both the Loyalty Program and the Status Program. The financial information of the Loyalty Program and the Status Program is included within an audited Statement of Revenues and Expenses that is made available for review to the appropriate brand marketing committee under a confidentiality agreement and is not generally available for distribution. In the most recently concluded twelve-month period ended December 31, 2023, the Loyalty Program and Status Program contributions were used as follows: 80% on award costs, 14% on member communication/promotions, 4% on administrative expenses, and 2% on services from corporate allocations such as Information Technology and the Service Center. The audited Statement of Revenues and Expenses of the Loyalty Program will be prepared each year; however, it is not generally available for review by licensees, and IHGFL does not provide periodic accounting reports.

**Reservation System, Revenue Management, Telecommunications Systems and Property Management Technology:**

The property management system technology and telecommunications system include the following components, which you must purchase from designated third-party vendors or third-party vendors whose equipment and software meet IHGFL's specifications:

- Access to the Reservation System, IHG Concerto™, and the GDS
- Access to the Revenue Management System (RMS) functionality through IHG Concerto™
- Property Management System (PMS) hardware, software, training and support from PMS Provider
- PMS interface to SCH systems
- All required workstations and printers
- Local area network and wide area network connectivity
- HSIA for Hotel's operations (front office network)
- Access to IHG Merlin, the Internet-based information delivery service for Kimpton Hotels & Restaurants and for IHGFL's affiliate, Holiday's, various brand group hotels
- Presence on the Hotel brand internet sites
- Approved IHG Admin Program for personal computers and servers on the IHGFL network
- A computerized payment card processing program, NextGen Payments ("NGP") or such successor payments program as may be administered by SCH (see Item 8)

In connection with the PMS and IHG Concerto™ equipment and software, you must enter into the Master Technology Services Agreement ("MTSA") with (see Exhibit C). You must also purchase all private network connecting services equipment needed to communicate with the Reservation System for any vendor designated by IHGFL.

At the same time you enter into a MTSA (Exhibit C), you must also enter into certain third party license agreements under which you receive a license to use certain software, including the PMS software, from the PMS Provider. You must also enter into support agreements with certain technology support vendors or their designated agents and pay the fees described in Item 6 for maintenance and support services. You must also enter into a Joinder Agreement (can be found with Exhibit C) with Hewlett-Packard Inc. for the use of the PMS system for your Hotel.

Currently, Kimpton Hotels & Restaurants must use the Opera property management system. Oracle America, Inc. ("Oracle") of 7031 Columbia Gateway Drive, Columbia Maryland 21046-2289 (whose phone number is 443-285-8000) is the only supplier of Opera software licenses and support services. As you will use the Opera property management system, before it is installed and activated, certain members of your staff may participate in e-learning prior to trainers' arrival on-site at the Hotel. Once trainers arrive, the staff will receive on-site training and certification from Oracle America, Inc. in the use of the PMS. The staff that must be trained and certified varies with the size of your Hotel. The cost for this training and certification is included in the projected license fee and installation cost estimates – see estimated costs for the equipment, installation, software and training for the PMS and Reservation System in Item 5 of this disclosure document.

Through one or more “private network” connecting services, or another solution as specified, the PMS enables you to receive reservations from the Central Reservation Centers, or any other Kimpton® Hotel, travel agencies and your own Hotel. The Reservation System software is proprietary to SCH. You may install only computers, components or peripheral devices and equipment meeting SCH’s specifications for the PMS and Reservation System. You may obtain the hardware from SCH or any third -party vendor that meets SCH’s specifications. You must periodically upgrade the equipment to accommodate enhanced versions of PMS, as provided in the Master Technology Services Agreement. SCH will provide or arrange for training and implementation support, as described in the Master Technology Services Agreement, and has entered into agreements with service providers for maintenance for the PMS. SCH or the provider will bill you for these services. See Item 7 for expenses relating to travel and on-site support.

The PMS provides a computerized front desk operation, and is designed to increase speed and productivity of front desk operational tasks (i.e., Check-In, Check-Out, Night-Audit, Housekeeping, Management Reports, etc.).

The IHG Concerto™, Yielding & Price Optimization software is proprietary to SCH, and must be used only in conjunction with the operation of the Reservation System and PMS in your Hotel. SCH will install, maintain and provide training and implementation support for the IHG Concerto™, Yield & Price Optimization Program which performs a task called “forecasting.” Using data related to your Hotel from past years and a snapshot of your future bookings, the Program creates a detailed forecast of future business for your Hotel for the upcoming year. The system also produces inventory controls which are used in the sell process of your PMS and the Reservation System. The forecast and inventory controls are updated a minimum of once a day and sometimes more often depending on reservation activity. The Hotel has access to system data via a User Interface, and therefore may view or change data as necessary.

There are four types of IHG Concerto™, Yielding & Price Optimization database builds: Standard (12 months of 2-way data), Proxy (90 days of 2-way data), NHOP (day of opening) and Early (during pre-sale, inventory defined). A Standard build needs a minimum of one year of consecutive 2-way data before activation. A Proxy build needs a minimum of 3 months of consecutive 2-way data and 9 months of data from a comparable Hotel. A NHOP or Early build is available 1 – 60 days from the time the hotel’s inventory is fully activated and defined in the Reservation System.

IHG Concerto™, Yielding & Price Optimization creates pricing recommendations based on competitive pricing, hotel demand forecasting, and hotel booking activities. The integration of Competitive Data into the IHG Concerto™, Yield & Price Optimization may require a subscription fee to such competitive data. Costs of between \$30 and \$120 per month may apply for competitive rate insight shopping. For hotels currently subscribing to RevenueStrategy360, these costs may be waived.

No rights of ownership in or to the Reservation System, IHG Concerto™ or any component of the PMS, including all component software and design features (including any software or equipment owned by third parties) are transferred to you or a Hotel upon joining the Brand System. You will not acquire any rights to the Reservation System, IHG Concerto™, or any PMS component except a limited right to their access and use in accordance with the Master Technology Services Agreement and any third -party software licenses, and the License during your term as a licensee in good standing.

You may install only approved system components and software, and no other computer hardware or software.

IHGFL and SCH have the right, at any time, to require immediate upgrade, supplement or replacement of computers and/or peripheral equipment or software that they determine has become obsolete. Currently there are no contractual limitations on the frequency or cost of this upgrading, supplementing or replacement of equipment or software. SCH requires that you refresh PMS hardware/software every 48 months.

IHGFL and SCH have independent access to the information and data collected by the PMS and Reservation System. There are currently no contractual limitations, other than confidentiality of guest history information, on IHGFL's or SCH's right to access the information and data.

**IHG Communication to Brand System:**

IHG's online system, IHG Merlin, and its messaging tool, currently known as Hotel Bulletin, along with Kimpton Yammer, are the primary means of sending information from IHGFL and its parents and affiliates to licensees, and in some cases, this may be the only manner in which IHGFL and its parents and affiliates communicate with Hotels and licensees.

Secondary means of communication may include, for example, correspondence through email, Kimpton Yammer, either expedited or standard mail delivery, multimedia platforms such as Video, CD and DVD, fax service, regional meetings and conferences, and personal meetings.

**Web Sites:**

IHGFL will register and maintain a unique top-level domain for each Kimpton® Hotel. You are required to operate an independent website at your expense using templates that are designed and built by IHGFL-approved vendors. Any design changes or functionality enhancements you wish to make to the website template must be approved in writing by IHGFL before engaging a vendor to perform the work. Search Engine Optimization for your independent website is required at your expense, using only IHGFL-approved vendors. If you choose to engage in search engine marketing, you must use an IHGFL-approved vendor.

Other than as mentioned in this disclosure document, IHGFL is not bound by the License or related agreements to provide supervision, assistance or services to you before opening or during operation of your Hotel.

**ITEM 12**

**TERRITORY**

IHGFL does not typically grant licenses for exclusive areas or territories. The License will be for a specific site only and for the licensing of one Hotel. The License applies to the location specified in the License and to no other location. You will not receive an exclusive territory. You may face competition from other licensees, from hotels that IHGFL or its affiliates own, or from other channels of distribution or competitive brands that IHGFL or its affiliates control.

You may not promote, implement or be responsible for any web site relating to your Hotel without IHGFL's advance written approval. You may not register any of the Marks (defined in Item 13), as part of any domain name or Uniform Resource Locator ("URL"), and/or display or use any of the marks or other intellectual property rights related to the Brand System or to any of the other brands licensed by IHGFL in connection with any web site, without IHGFL's advance written approval. You must comply with all of IHGFL's web site requirements in connection with any web sites you develop and maintain relating to your Hotel. The License does not otherwise limit the channels through which you may solicit customers for your Hotel.



The License does not limit IHGFL's right or the rights of its parent, or any subsidiary or affiliate of IHGFL, to use or license the Brand System or any part of the Brand System, or to engage in or license any business activity (including business activities referenced in Item 1, which sell similar products and services) or to license any other hotels (or any other hotel brands). These rights include, for example, the licensing, franchising, ownership, operation and/or management of lodging facilities and related activities under the names and marks associated with the Brand System and/or any other names and marks. There is no restriction in the License on IHGFL's using any channel of distribution to solicit customers for IHGFL's and its affiliates' hotels, whether operating under the marks licensed to you or other marks. IHGFL and its affiliates are not restricted from establishing other licenses or company-owned outlets or other channels of distribution through which services or licenses under different trademarks might be offered. The License creates no rights of any kind for you in these other hotel brands and/or businesses at any other location. The License grants you no options, rights of first refusal or other rights to acquire additional licenses.

In special circumstances, when in IHGFL's sole judgment, special considerations warrant, IHGFL may grant exclusive or protected areas in which another Kimpton Hotel will not be licensed; however, in such cases the License would still be for a specific site only and for the Licensing of one hotel only.

Affiliates of IHGFL license numerous hotel brands – see Item 1. IHGFL and its affiliates may license other hotel brands in the future. There may currently be licensed, company-owned hotels or company-managed hotels operating under IHGFL's or its affiliates' brands situated in or near your area. IHGFL and its affiliates may establish new licensed, company-owned or company-managed hotels operating under their other brands in or near your area. You may compete with any other hotels operating under the IHG Portfolio Brands in or near your area. Hotels operating under the IHG Portfolio Brands (including the same brand as your Hotel) may solicit reservations from customers in your area for which you will receive no compensation.

IHGFL uses the same principal business address for its operation of all its affiliated hotel brands and IHGFL does not maintain physically separate offices for its various brands. IHGFL and its affiliates do offer some physically separate training facilities for some hotel brands. There is no mechanism for resolving any conflicts that may arise between your Hotel and other licensed, company-owned hotels or company-managed hotels operating under the IHG Portfolio Brands. Any resolution of conflicts regarding location, customers, support or services will be entirely within the business judgment of IHGFL and its affiliates.

### **ITEM 13**

#### **TRADEMARKS**

IHGFL grants you the right to operate a Hotel under the trade names, trademarks, service marks and logos used to identify your Hotel. In accordance with the Kimpton Master License (see Item 1), Kimpton Hotel & Restaurant Group, LLC ("KHRG") has granted to IHGFL, for a constantly renewing 25 year term, the right to use and license the use of marks associated with the Brand System, including the mark "Kimpton". If either IHGFL or KHRG elect not to renew the Kimpton Master License, expiration will take place 25 years from the date of the non-renewal notice.

The following trademarks, service marks, trade names, logotypes and other commercial symbols ("Marks") are currently registered on the Principal Register of the United States Patent and Trademark Office, and all required affidavits and renewals, if any, have also been filed. All registrations are on the Principal Register unless otherwise indicated.

#### **Registrations:**

Trademark	Registration No.	Registration Date
+ * **IHG One Rewards	3,544,074	December 9, 2008
*Kimpton	2905415	November 30, 2004
*Kimpton	3065302	March 7, 2006
Kimpton Karma	4825608	October 6, 2015
*Hotel Monaco	2505704	November 13, 2001
*Hotel Monaco	78837963	January 23, 2007
*Hotel Palomar	2384118	September 5, 2000
Palomar	5586464	October 16, 2018
A different way to stay	4708173	March 24, 2015
Raid the Bar	4547115	June 10, 2014
*Raid the Mini Bar	3777524	April 20, 2010
+ *Wines that Care	3815763	July 6, 2010
IHG CONCERTO	6048065	May 5, 2020
Stay Human	6,055,966	May 19, 2020
KIMPTON	7,202,465	October 24, 2023
IHG ONE REWARDS	79349823	September 15, 2022
IHG 1 ONE REWARDS	79344210	April 7, 2022
IHG HOTELS & RESORTS	97455478	June 13, 2022

\* Incontestable Registrations

\*\* Registration No. 3,544,074 is for the mark IHG alone but the full program name for IHG Hotels & Resorts' loyalty program is IHG One Rewards

+ Mark owned or licensed by Six Continents Hotels, Inc. and used by IHGFL under license. Registration No. 3,544,074 is for the mark "IHG" alone but the full program name for the Loyalty Program is "IHG One Rewards".

There are currently applications pending for the following trademark (the "Pending Mark") with the United States Patent and Trademark Office.

**Applications:**

Trademark	Application No.	Application Date
KIMPTON	90483064	January 22, 2022
KIMPTON	97097846	September 27, 2022
KIMPTON	90483203	January 22, 2022
GOOD THINGS COME TO THOSE WHO STAY	90772493	June 14, 2021
MASONWOOD	97443924	June 6, 2022
IHG HOTELS & RESORTS	98403931	February 13, 2024
IHG HOTELS & RESORTS	98411808	February 20, 2024
IHG HOTELS & RESORTS	98417739	February 23, 2024
KIMPTON	98135592	August 16, 2023
FAIRLIGHT	978200700	March 2, 2023

IHG LIFT	98144594	August 22, 2023
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The Marks also consist of other service marks, trademarks, trade names, slogans, commercial symbols, logos, trade dress, copyrighted material and intellectual property associated with the Brand System, including those which IHGFL may designate in the future and those which IHGFL does not designate as withdrawn from use.

Except with respect to the Pending Mark, there are no effective determinations of the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, the Trademark Administrator of any state or any court, and no pending interference, no known infringing use or opposition or cancellation proceedings or any pending material litigation involving the Marks that could materially affect your use of the principal trademarks except as stated in this Item 13.

Other than the Kimpton Master License (see Item 1) and the SCL License Agreements (see Item 1), there are no agreements in effect which limit the rights of IHGFL to use or license the Marks in any manner material to the license.

You may not register any of the marks as part of any internet domain name or Uniform Resource Locator (“URL”), and/or display or use any of the marks or other intellectual property rights related to the Brand System in connection with any web site (see Item 11).

The License restricts your use of the Marks, and you must use the Marks and all forms of identification that are seen by members of the consuming public or used to identify the Hotel to actual or prospective consumers only in compliance with IHGFL’s requirements. The restrictions and requirements that limit your use of the Marks and identifications apply to all formats (including print, electronic and other media) and include domain names, URL, and other identifications or elements used in electronic commerce.

You may use the Marks only in connection with the operation of the Hotel during the License Term, following opening of the Hotel in the Brand System or at any earlier time that IHGFL authorizes. You may use the Marks only in the manner that IHGFL authorizes, and in no way that would tend to allow the Marks to become generic, lose their distinctiveness, become liable to mislead the public or be detrimental to or inconsistent with the good name, good will or favorable reputation and image of the Marks or IHGFL. Under the License, any unauthorized or unpermitted use of the Marks will be considered infringement of IHGFL’s rights.

You must also notify IHGFL promptly of any objections, demands, controversies, allegations or actions asserted or taken by third parties involving any of the Marks or any part of the Brand System of which you become aware and of any potentially infringing or unauthorized uses of any of the Marks or any part of the Brand System of which you become aware. You must sign any documents IHGFL or its counsel consider necessary to protect the Marks or any part of the Brand System and obtain or maintain their continued validity and enforceability. However, the License does not require IHGFL to take action against infringers or to indemnify or defend you if you are a party to a proceeding involving the Marks.

KHRG, IHGFL and their affiliates have the right to control any administrative proceedings or litigation involving a trademark licensed by IHGFL to you. KHRG, IHGFL and their affiliates have the sole right and responsibility to handle disputes concerning use of all or any part of the Brand System, at their expense. You must cooperate fully with KHRG, IHGFL and their affiliates in these matters. Any sums KHRG, IHGFL or their affiliates recover as a result of disputes with third parties regarding use of the Brand System are theirs. You may not initiate litigation against infringers to enforce or protect the Brand System.

The naming of the Hotel is IHGFL's sole decision. Unless IHGFL otherwise agrees in writing, the name of the Hotel will be the name set forth at the beginning of the License. The name of the Hotel may not be changed except at IHGFL's sole decision.

**Modification or Discontinuation of Marks:**

If IHGFL modifies or discontinues use of any of the Marks licensed to you as a result of any proceeding or settlement, then you must comply with IHGFL's instructions in order to implement the modification or discontinuation. You will have no right to any compensation or other remedies from KHRG, IHGFL or any of its or their respective subsidiaries, affiliates or parents due to any modification or discontinuation of any of the Marks.

**ITEM 14**

**PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

IHGFL and/or its affiliates claim copyrights on the proprietary information in IHGFL's Standards, IHGFL's other manuals, and certain software, forms, advertisements, promotional materials, printed materials, slogans, displays and other written materials. If you learn of any unauthorized disclosure or use of IHGFL's proprietary or copyright information, you must inform IHGFL immediately. IHGFL and you must comply with IHGFL's reasonable requirements concerning confidentiality of information.

On September 19, 2019, the USPTO issued SCH a utility patent for a "Universal Redemption Vehicle" (which vehicle supports the "Redeem Anywhere" concept) under Patent No. 10,417,645. This patent is valid until April 20, 2026.

Except for the Master License, IHGFL's right to use or license the above copyrighted items is not materially limited by an agreement or known infringing use.

There are no currently effective determinations or proceedings pending in the Patent and Trademark Office, Copyright Office, or any court with respect to any copyright.

The obligations of IHGFL and you under the License to protect your respective rights to use the above-referenced copyrights parallel those described in Item 13 of this disclosure document pertaining to trademarks, service marks, trade names, logotypes and commercial symbols.

**ITEM 15**

**OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE LICENSED BUSINESS**

Whether you are an individual, corporation, partnership or other entity, IHGFL requires you to retain and exercise direct management control over the Hotel's business at all times unless otherwise approved by IHGFL. However, IHGFL does not require that you participate personally in the direct operation of the Hotel. IHGFL requires that you hire a duly qualified and experienced (i) management company acceptable to IHGFL; and (ii) General Manager-Hotel and Director of Sales each with at least three years prior experience in such position at a hotel in a similar brand segment as the Hotel (as defined by Smith Travel Research, Inc.) and a General Manager-Food & Beverage with at least three years of qualifying restaurant experience in a luxury hotel or an upscale independent restaurant. IHGFL may require you to submit the proposed candidate's identity and qualifications solely to evidence satisfaction of the minimum required experience to ensure compliance with the Standards. The General Manager-Hotel, General Manager-Food & Beverage (as applicable) and a Director of Sales must each work exclusively for your Hotel at all

times, and if you own more than one hotel, you must have a separate, qualified General Managers, Food & Beverage Director/Manager and Director of Sales for each hotel.

A General Manager-Hotel and General Manager-Food & Beverage (as applicable) who have successfully completed IHGFL's training program must directly supervise the business on the premises. IHGFL requires the General Manager-Hotel and department managers to devote full time and best efforts to managing the operation of the Hotel. In addition, if a hotel is owned or operated by a licensee who is new to the Kimpton Hotels & Restaurants brand, the hotel will be required to join the Revenue Services and Commercial Services Programs for a minimum for the first two years of operation. For a Hotel with more than 200-rooms, a dedicated revenue manager on site is required who has completed the appropriate level of IHG Revenue Management Certification. If your Hotel is not participating in the Revenue Services and Commercial Services programs, your Hotel must have a dedicated revenue manager who has completed the appropriate level of IHG Revenue Management Certification as further outlined in Item 11.

The General Manager-Hotel, General Manager-Food & Beverage and other department heads and staff, including Directors of Sales, must attend IHGFL's training programs (see Item 11 of this disclosure document).

You must obtain IHGFL's written consent before entering into any lease, management agreement, or other similar arrangement with any entity for the operation of the Hotel or any part of the Hotel (including the food and/or beverage service).

You must notify IHGFL in the designated timeframe before hiring or changing your management company for any reason. These conditions will be determined by IHGFL and contained in your License. IHGFL may reject a proposed management company if IHGFL determines that it is inexperienced in the hospitality business, generally unqualified to operate a Kimpton Hotel & Restaurant or unwilling or unable to: (1) comply with all requirements of IHGFL under the License and the Standards, (2) cease operating the Hotel as a Kimpton Hotel & Restaurant once the License terminates, or (3) treat the terms of the License as superior over any conflicting terms in the agreement between you and your management company. IHGFL requires that any management agreement between you and a management company be in writing, and that the agreement contain the following provisions: the management company accepts, abides and is subject to all rules, regulations, inspections and requirements of IHGFL; you and the management company must cease operating the Hotel as a Kimpton Hotel & Restaurant if the License terminates; you and the management company agree that License prevails over the terms of the management agreement in the event of any conflict in terms; you and the management company agree that IHGFL's consent to the management agreement or approval of the management company does not relieve you or any guarantor of any obligations under the License; and, that you and the management company will keep the confidentiality of trade secrets described in Item 14, and follow the covenants not to compete described in Item 17. IHGFL may request at any time a copy of your management agreement for review to determine compliance with requirements of the License.

Normally, IHGFL does not require that you engage it or one of its affiliates as the management company in order to obtain a License. Occasionally, because of the distribution of company managed hotels in a particular geographic area, or other factors, IHGFL may determine that the development or conversion of a Hotel is appropriate only if one of its affiliates manages the Hotel. In that case, IHGFL may condition the granting of a License on one of its affiliates managing the Hotel.

IHGFL may require that you enter into an IHG Voice Reservation Service, Revenue Services and Commercial Services contract with IHGFL's affiliate, SCH, if IHGFL's Franchise Approval

Committee determines its approval of your application should be conditioned upon one or more of those services being obtained (see Item 6, Notes 6 and 12 and Exhibits H-1 to H-2).

If you hire a management company to operate the Hotel for you, you and any of your guarantors remain liable to IHGFL and SCH under the terms of the License, the Master Technology Services Agreement and any Guaranty.

In addition, if you are a business entity, then, based on IHGFL's examination of your financial reports and the financial reports of any proposed guarantor, as well as your credit history; and the debt structure applicable to the Hotel, IHGFL may require your principals, shareholders, partners, members or affiliates to sign a "Guaranty" of the License, a copy of which appears as part of the License in Exhibit B to this disclosure document, or to provide to us alternative security in form and substance satisfactory to IHGFL. This document guarantees immediate payment and performance of each of your obligations under the License if you default.

IHGFL does not require the on-premises management company or General Manager to have an equity interest in the licensed business.

You or your management company, whichever may be applicable, will be the sole employer of the employees working at the Hotel. Neither IHGFL nor its affiliates direct or control employment policies, discipline, recruitment or termination. You or your management company will be solely responsible for all employment decisions, regardless whether you have received guidance with respect to such matters from IHGFL or its affiliates.

IHGFL does not impose restrictions, nor does it require you to impose restrictions on any of your employees. However, IHGFL and you agree to comply with IHGFL's reasonable requirements concerning confidentiality of information. In particular, you may not disclose, without IHGFL's written permission, information pertaining to IHGFL's marketing and reservation programs that have not been disclosed to the public.

Even though any management company must be acceptable to IHGFL, you remain solely responsible for the selection, conduct and performance of any required management company, General Manager-Hotel, General Manager-Food & Beverage, and all staff members and employees and IHGFL has no responsibilities or liability in connection with your selection and its, his or her conduct or performance.

## **ITEM 16**

### **RESTRICTIONS ON WHAT THE LICENSEE MAY SELL**

You must provide the Hotel services described in Attachment B to your License and must ensure that no part of the Hotel or the Brand System is used to facilitate or promote a competing business. There are no restrictions as to the customers to whom you may sell guest rooms or other goods or services that are related to your Hotel business.

## **ITEM 17**

### **RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**This table lists certain important provisions of the License and related agreements. You should read these provisions in the agreements attached to this disclosure document. See Exhibit B and Exhibit C.**

### **THE LICENSE RELATIONSHIP**

Provision	Section In Agreement	Summary
a. Length of the license Term	License: 11.A MTSA: 2.1	The term begins on the Term Commencement Date and expires 20 years from date Hotel opens in the Brand System for a new development; 10 years from date Hotel opens in the Brand System for a conversion; and 10 years from Term Commencement Date for a change of ownership or re-licensing.
b. Renewal or extension of term	License: 11.A	The License does not provide for renewal or term extensions.
c. Requirements for you to Renew or Extend	N/A	The License does not provide for renewal or term extensions. If we agree to Re-license, you may be asked to sign a contract with materially different terms and conditions than your original contract.
d. Termination by you	N/A	
e. Termination by IHGFL without Cause	License: N/A MTSA: 10.1	MTSA may be terminated by IHG Tech for convenience on 90 days' prior written notice to the licensee.
f. Termination by IHGFL with Cause (Notes 1 and 2)	License: 11.B, 11.C, 13.J & Attachment B MTSA: 10.2	IHGFL may terminate with cause. You pay liquidated damages if IHGFL terminates under Paragraphs 11.B, 11.C or 13.J.
g. "Cause" defined – defaults which can be cured (Note 2)	License: 11.B MTSA: 10.2	Any default other than those listed in h.
h. "Cause" defined – non-curable defaults	License: 10, 11.C, 13.I & Attachment B MTSA: 10.2	Non-curable defaults: bankruptcy; non-dismissed judgments exceeding \$50,000; trademark misuse, or if you contest Holiday's ownership of trademarks; loss of possession of the property; dissolution of the licensee entity; failure to identify or operate the Hotel as a Brand System; violation of Licensor's proprietary rights; unapproved transfers; conviction of felony; false books and records; failure to comply with safety, security or privacy of your guests or reputation standards; condemnation or casualty occurs and Hotel does not reopen when required; unauthorized use of Marks; and, refusal to allow inspection or audit.
i. Your obligations upon termination/ non-renewal	License: 11.D, 11.E, 13.J, & Attachment B	Obligations include de-identification and payment of amounts due.

Provision	Section In Agreement	Summary
	MTSA: 8.1.3(iii), 8.1.3(iv), 13.1 & Attachment 4-1 to Schedule 4	
j. Assignment of License by Holiday	License: 9.A MTSA: 13.10	IHGFL has rights of assignment to any person or legal entity.
k. "Transfer" by you-definition	License: 9.B MTSA: 13.10	Includes transfer of contract or assets (including real estate) or ownership changes.
l. Holiday's approval of transfer by you	License: 9 MTSA: 13.10	IHGFL has the right to approve all transfers.
m. Conditions for Holiday's approval of transfers	License: 9.C, 9.D, 9.E and 9.F	The prospective new owner of the Hotel or Licensee must submit an application and all fees to keep the Hotel in the Brand System. IHGFL will evaluate the application using then-current procedures and criteria such as credit, operational abilities, market feasibility, previous business dealings and other factors it considers relevant. If IHGFL approves the new owner, IHGFL will require upgrading, signing of a License using the then-current form of License and the signing of a Guaranty. You must pay IHGFL a non-refundable \$25,000 processing fee at least 60 days before public offering, private placement or other sale of securities.
n. Holiday's right of first refusal to acquire your business	License: 13.R	If you receive an offer to purchase the Hotel, then, if IHGFL requires it, you must give IHGFL written notice within 10 days of your receipt of the offer, and you must offer to sell the Hotel to IHGFL on the same terms and conditions as the offer. IHGFL will notify you within 30 days if it intends to accept the offer.
o. Holiday's option to purchase your business	Not applicable	See "n" above.
p. Your death or disability	License: 9.D	If adequate provision acceptable to IHGFL is made for the management of the Hotel, and IHGFL gives written consent, decedent's interest in the License may be transferred to decedent's spouse, parent, siblings, nieces, nephews, descendants or spouse's descendants and heirs or legatees if they promptly advise IHGFL



Provision	Section In Agreement	Summary
		and sign a new License, and Guaranty, if any, and decedent's executor or estate administrator signs a termination agreement of the License on Holiday's then current form.
q. Non-competition covenants during the term of the license	License: 3.A(14)	No part of the Hotel may be used to promote a competing business.
r. Non-competition covenants after the License is terminated or expired	Not applicable	
s. Modification of License	License: 4.E, 5 & 13.D MTSA: 13.12	No modifications generally but the Standards are subject to change.
t. Integration/Merger Clause	License: 13.D MTSA: 13.12	The integration/merger clause does not disclaim the representations in this Disclosure Document.
u. Dispute resolution by arbitration or Mediation	N/A	
v. Choice of forum	License: 13.B	Association with IHGFL in Georgia permits, but does not require, all suits to be filed in Georgia, subject to state law.
w. Choice of law	License: 13.B MTSA: 13.8	Georgia law applies, subject to state law.

**NOTES:**

**Note 1:** The term of the License begins on the Term Commencement Date. The standard term of a License for a new development or conversion Hotel expires twenty years from the date of the opening of your Hotel. The standard term of a License for a change of ownership or re-licensing expires twenty years from the Term Commencement Date.

**Note 2:** The Master Technology Services Agreement attached as Exhibit C may be terminated by SCH when the License is terminated, as well as for other reasons.

**Note 3:** Termination of License by IHGFL for Breach of Obligations Before IHGFL Authorizes You to Use the Brand System at your Hotel: If IHGFL terminates your License due to your breach of any of your obligations under the License before IHGFL authorizes you to use the Brand System at the Hotel (for example, due to your failure to perform the construction, upgrading and renovation work described in Attachment "B" of the License), then you must pay IHGFL a lump sum equal to the monthly average of all amounts that would have been payable to IHGFL under paragraphs 3.B(3) through (6) of the License assuming the Hotel had collected Gross Rooms Revenue based on the average daily revenue per available room for all "mature hotels" in the Brand System in the United States for the previous 12 months, as determined by IHGFL, multiplied by the greater of (a) 6 or (b) the number of full and partial months from the Term Commencement Date to the termination date of the License. For purposes of this paragraph, "mature hotels" means Hotels which were open for two full years or longer; were licensed or, alternatively, owned and/or managed by IHGFL or one of its affiliates; and, were not in financial or quality default of their applicable license or management agreement obligations as of the applicable date.

Termination of License by IHGFL for Breach of Obligations After IHGFL Authorizes You to Use the Brand System at your Hotel: If IHGFL terminates the License under paragraph 11.B or 11.C

(see table, sections g and h), you must promptly pay IHGFL (as liquidated damages for the premature termination only, and not as a penalty nor as damages for breaching the License or in lieu of any other payment) a lump sum equal to the total amounts required under paragraphs 3.B(3) through (6) of the License during the 60 calendar months of operation preceding the termination or during the preceding number of months equal to the unexpired License Term at the time of termination (if less than 60 months); or if the Hotel has not been in operation in the system for 60 months, an amount equal to the greater of (1) 60 times the monthly average of these amounts for the period during which the Hotel has been in operation in the Brand System, or (2) 60 times these amounts as are due for the one month preceding the termination.

## **ITEM 18**

### **PUBLIC FIGURES**

IHGFL does not use any public figures to promote the sale of licenses. Public figures may appear in consumer marketing for the System.

## **ITEM 19**

### **FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a licensor to provide information about the actual or potential financial performance of its licensed and/or franchisor-owned outlets if there is a reasonable basis for the information and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a licensor provides the actual records of an existing outlet you are considering buying, or (2) a licensor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

The following charts set forth certain historic performance information for Kimpton Hotels & Restaurants branded Mature Hotels operating in the United States, Canada, Mexico and the Caribbean for the 2023 fiscal year. "Mature Hotels", as used in this Item 19, means Hotels which were open two full years or longer as of December 31, 2023, in IHG's Americas Region; were managed by us or one of our affiliates; and, were not in financial or quality default of their applicable management agreement obligations as of December 31, 2023.

It is important that you read the footnotes following each table as well as the "Explanation/Important Notes" paragraph of this Item 19.

As of December 31, 2023, there were a total of 59 Kimpton Hotels & Restaurants open and operating in the United States of which 44 qualified as "Mature Hotels."

#### **Occupancy Rate, Daily Room Rate and RevPAR**

The chart below shows the average performance of the Mature Hotels for the year ended December 31, 2023 in the following categories: (i) average occupancy rate; (ii) average daily room rate ("ADR"); and, (iii) average revenue per available room ("RevPAR").

<b>2023 Performance of 44 Mature Hotels</b>
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*Average Occupancy Rate	70.1% (Note 1)
**Average Daily Room Rate (“ADR”)	\$280.42 (Note 2)
***Average RevPAR	\$196.47 (Note 3)

1. Of the 44 Mature Hotels, 24 hotels (or 54.5%) achieved an Average Occupancy Rate greater than 70.1%. The Average Occupancy Rate for the 44 Mature Hotels ranged from a high of 86.3% to a low of 37.5% and the median Occupancy Rate equaled 71.5%.
2. Of the 44 Mature Hotels, 11 hotels (or 25.0%) achieved an Average ADR greater than \$280.42. The Average ADR for the 44 Mature Hotels ranged from a high of \$942.58 to a low of \$144.92 and the median ADR equaled \$245.96.
3. Of the 44 Mature Hotels, 14 hotels or (31.8%) exceeded the Average RevPAR of \$196.47. The Average RevPAR of the 4 Mature Hotels ranged from a high of \$683.52 to a low of \$62.13 and the median Average RevPAR equaled \$170.26.

\* The “Average Occupancy Rate” is defined as the total rooms sold divided by the total available rooms.

\*\* The “Average ADR” is defined as the gross room sales divided by the total rooms sold.

\*\*\* The “Average RevPAR” is the gross room sales divided by total available rooms.

#### Average Enterprise Contribution

Kimpton Hotels & Restaurants receive reservations from the following channels and sources which combined make up the “Enterprise Contribution”: (i) IHG.com, including all international iterations of this site and IHGFL’s mobile apps (“Web”); (ii) IHGFL’s worldwide toll-free reservations phone numbers and hotel call-divert programs (“Voice”); (iii) global distribution systems that permit traditional travel agencies, as well as many third-party online travel websites, to reserve guestrooms (“GDS”); (iv) online travel agencies, such as Expedia, with which we have distribution agreements (“OTA”); (v) Global Sales Office business that books directly at a Hotel (GSO); (vi) IHG One Rewards members that book directly at a hotel (“Loyalty Direct”); and (vii) distribution partners that are directly connected to our Reservation System that are not included in the previous sources (“Direct Connect”).

The chart below shows the average Enterprise Contribution of the Mature Hotels for the year period ended December 31, 2023.

<b>2023 Performance of 44 Mature Hotels</b>	
*Average Enterprise Contribution	83.0% (Note 1)

1. Of the 44 Mature Hotels, 22 hotels (or 50.0%) exceeded the Average Enterprise Contribution of 83.0%; the Average Enterprise Contribution ranged from a high of 93.0% to a low of 69.2%; and the median Enterprise Contribution was 83.3%.

#### Loyalty Program Contribution

The chart below shows the average percentage of total rooms revenue attributable to members of our customer loyalty program, IHG One Rewards, who occupy and pay for guest rooms and are awarded IHG One Rewards points for their stays for the year ended December 31, 2023

(“Average IHG One Rewards Contribution”) as well as the average daily room rate attributable to reservations made by members of our customer loyalty program, IHG One Rewards, who occupy and pay for guest rooms and are awarded IHG One Rewards points for their stays (“Average IHG One Rewards Contribution ADR”). This chart also shows the average percentage of total occupied rooms attributable to IHG One Rewards members, who either (1) pay for guest rooms and are awarded IHG One Rewards points for their stay or (2) redeemed IHG One Rewards points to pay for the stay (“Average IHG One Rewards Room Nights Contribution”).

<b>2023 Performance of 44 Mature Hotels</b>	
Average IHG One Rewards Contribution	45.0%
Average IHG One Rewards Contribution ADR	\$304.49
Average IHG One Rewards Room Nights Contribution	46.8%

1. Of the 44 Mature Hotels, 23 hotels (or 52%) had an Average IHG One Rewards Contribution exceeding 45.0%; the Average IHG One Rewards Contribution ranged from a high of 73.2% to a low of 25.6%; and the median IHG One Rewards Contribution was 45.1%.
2. Of the 44 Mature Hotels, 10 hotels (or 22.7%) had an Average IHG One Rewards Contribution ADR of exceeding \$304.49; the Average IHG One Rewards Contribution ADR ranged from a high of \$1,120.79 to a low of \$183.65; and the median IHG One Rewards Contribution ADR was \$271.33.
3. Of the 44 Mature Hotels, 23 hotels (or 52%) had an Average IHG One Rewards Room Nights Contribution exceeding 46.8%; the Average IHG One Rewards Room Nights Contribution ranged from a high of 69.1% to a low of 31.3%; and the median IHG One Rewards Room Nights Contribution was 47.8%.

**IMPORTANT:** The charts above only set forth historic performance information for the 2023 fiscal year for existing Mature Hotels which were licensed or managed by us or one of our affiliates. Because your Hotel will not be a Mature Hotel, it is especially important for you not to rely on this information to project your future performance, which will likely differ from the results above. Even if you are acquiring a Mature Hotel through purchase or other transfer, your results will likely differ, due to the change of management, the passage of time, changed economic conditions and/or other factors. If you rely at all on the historic figures set forth in the tables above (and you are again cautioned not to utilize same to project your future performance), you must also accept the risk that your Hotel may not do as well.

**Explanation/Important Notes:**

In order to fully understand the tables set forth above, you must understand their limitations.

To begin with, it is vital that you understand that the information set forth in this Item 19 is not meant in any fashion to constitute projections of your performance. To the contrary, we do not furnish - - or authorize any of our or our affiliates’ officers, employees or salespersons to furnish - - any oral or written economic projections for any licensed hotel, and you are specifically warned that should you nevertheless be furnished with any such projections, you must not rely on them in any fashion in determining whether to become our licensee. The information set forth above conveys only historic performance information for Mature Hotels for the 2023 fiscal year.

Next, we can in no way warrant, represent, promise, predict or guarantee that you can or will attain any of the financial results set forth in the above tables. To the contrary, a new licensee's financial results will likely differ from the results set forth in these tables and charts and those differences may be material. Your results will vary from those set forth in the above tables depending on such factors as: the nature and extent of your competition; whether competitive hotels in your market are affiliated with any chains or other centralized reservation systems; the age and established customer base of competitive hotels; the in-room and common area facilities and amenities of your Hotel versus competitive hotels; whether your geographic area has a greater or lesser demand for hotel accommodations, which can turn on a number of factors; the frequency of business travel to/from your geographic area; whether your Hotel is situated at or near an airport; whether your Hotel is situated close to or remote from a central business district; whether your Hotel is situated in a geographic area that attracts vacation travelers; changed national, international, regional and local economic conditions; the type of Hotel you operate; whether your Hotel offers food, beverage and/or convention and meeting services; whether your Hotel is situated near a college, resort attraction, theme park or other venue that generates lodging demand; the length of time your Hotel has been open to the public; the length of time your Hotel has been affiliated with us; the skill, experience and business acumen of your management and staff; prevailing economic conditions in your geographic area; the room rates you establish; the climate and weather conditions of your Hotel's geographic location; seasonality factors influencing any of the foregoing; and, whether or not your market is (or may become) oversaturated with guest lodging facilities.

The figures set forth above represent averages and are necessarily limited to the markets and attributes of the hotels identified. We do not claim or expect, nor should you expect, that you can or will achieve the same average ADR; occupancy; RevPAR; or, percentages of occupancy derived from reservations made through our System, our IHG One Rewards, our and our affiliates' websites, our and our affiliates' central reservation offices or Global Distribution Systems.

**Some outlets have earned this amount. Your individual results may differ. There is no assurance that you'll earn as much.**

Further, you must understand that the information set forth in this Item 19 was largely derived from room rate, occupancy rate, number of available rooms and other data submitted to us by our managed hotels and that we have not independently verified or audited this information.

We will make available to you upon request the methodologies, data bases and assumptions utilized by Smith Travel Research and by us in arriving at the information contained in the tables above.

Written substantiation for this financial performance representation is available upon reasonable request.

However, we are under no obligation to disclose to you specific information for any particular hotel. Again, you must note that information concerning managed hotels is based on unaudited information collected and submitted by our hotel managers, and neither we nor our affiliates have audited or otherwise independently verified this information.

While the tables above show information concerning average room rates, you set your own room rates.

The only information we will furnish to you regarding historic (never projected) hotel performance is that set forth in this Item 19 and in any "supplemental financial performance representation" directed to a particular location or circumstance which we may (but need not) elect to separately furnish to you. None of our officers, directors, employees or other representatives, regardless of position, is otherwise authorized to furnish to you, in writing or orally, any information regarding

the historic, current, actual or potential sales, expenses, income or profits of licensed or non-licensed hotels other than the historic average information set forth above and any related supplemental financial performance representation we may elect to furnish to you. If you nevertheless receive any other such information from any individual purporting to act on our behalf, you are warned that you must not rely on it in any fashion whatsoever. Instead, we ask that you immediately contact us in writing at:

IHG Franchising, LLC  
 Attn: Financial Performance Representation Administrator  
 c/o Vice President, Franchise Operations  
 3 Ravinia Drive - Suite 100  
 Atlanta, Georgia 30346

## ITEM 20

### OUTLETS AND LICENSEE INFORMATION

**Table No. 1  
 Systemwide Outlet Summary  
 For Years 2021 to 2023**

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Company-Owned	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Managed*	2021	56	53	-3
	2022	53	49	-4
	2023	49	43	-6
Licensed	2021	5	8	+3
	2022	8	10	+2
	2023	10	16	+6
Total Outlets	2021	61	61	0
	2022	61	59	-2
	2023	59	59	0

\* Those outlets indicated as “managed” in tables 1-5 include hotels that affiliates of IHGFL manage but others own.

**Table No. 2(a)  
 Transfers of Managed Outlets to New Owners (Other than IHGFL)  
 For Years 2021 to 2023**

State	Year	Number of Transfers
California	2021	1
	2022	0
	2023	0
Colorado	2021	0
	2022	1
	2023	0
Florida	2021	0

	2022	0
	2023	5
Maryland	2021	0
	2022	1
	2023	0
Washington	2021	0
	2022	0
	2023	1
Total	2021	1
	2022	2
	2023	6

**Table No. 2(b)**  
**Transfers of Licensed Outlets to New Owners (Other than IHGFL)**  
**For Years 2021 to 2023**

State	Year	Number of Transfers
Florida	2021	0
	2022	1
	2023	0
Total	2021	0
	2022	1
	2023	0

**Table No. 3(a)**  
**Status of Managed Outlets**  
**For Years 2021 to 2023**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of Year
Arizona	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
California	2021	13	0	1	0	0	0	12
	2022	12	0	1	0	0	0	11
	2023	11	0	0	0	0	0	11
Colorado	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	1	1
	2023	1	0	1	0	0	0	0
Washington D.C.	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Florida	2021	10	0	0	0	0	0	10
	2022	10	0	0	0	0	0	10
	2023	10	0	0	0	0	5	5
Georgia	2021	1	0	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of Year
	2022	1	1	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Illinois	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Louisiana	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Maryland	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	1	0
	2023	0	0	0	0	0	0	0
Massachusetts	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	1	0	0	0	1
Montana	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
New York	2021	2	0	0	0	0	0	2
	2022	2	0	1	0	0	0	1
	2023	1	0	0	0	0	0	1
North Carolina	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Ohio	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Oregon	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Pennsylvania	2021	3	0	0	0	0	1	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Tennessee	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Texas	2021	2	0	0	0	0	0	2
	2022	2	0	1	0	0	0	1
	2023	1	0	0	0	0	0	1
Utah	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Vermont	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1



State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of Year
Virginia	2021	1	0	1	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	1
Washington	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
Wisconsin	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
<b>Total</b>	2021	56	0	2	0	0	1	53
	2022	53	1	3	0	0	2	49
	2023	49	1	2	0	0	5	43

**Table No. 3(b)**  
**Status of Licensed Outlets**  
**For Years 2021 to 2023**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of Year
Colorado	2021	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Washington D.C.	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Florida	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	5	0	0	0	0	6
Georgia	2021	1	1	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Maryland	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Massachusetts	2021	1	0	1	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
Nebraska	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
New York	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of Year
	2023	0	1	0	0	0	0	1
North Carolina	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Pennsylvania	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Texas	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
<b>Total</b>	2021	5	4	1	0	0	0	8
	2022	8	2	0	0	0	0	10
	2023	10	6	0	0	0	0	16

**Table No. 4  
Status of Company-Owned Outlets  
For Years 2021 to 2023**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Licensee	Outlets Closed	Outlets Sold to Licensee	Outlets at End of Year
All States	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0
<b>Total</b>	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0

**Table No. 5  
Projected Openings as of December 31, 2023**

State	License and Management Agreements Signed But Outlet Not Opened	Projected New Licensed or Managed Outlet in the Next Fiscal Year	Projected New Company-Owned Outlet in the Next Fiscal Year
California	2	0	0
Colorado	1	1	0
Georgia	1	0	0
Hawaii	1	0	0
Indiana	1	0	0
Missouri	2	0	0
Nevada	1	0	0
New York	2	0	0
North Carolina	1	0	0

<b>State</b>	<b>License and Management Agreements Signed But Outlet Not Opened</b>	<b>Projected New Licensed or Managed Outlet in the Next Fiscal Year</b>	<b>Projected New Company-Owned Outlet in the Next Fiscal Year</b>
Ohio	1	0	0
South Carolina	2	0	0
Texas	4	1	0
Utah	1	0	0
All Other States	0	0	0
<b>Total</b>	<b>20</b>	<b>2</b>	<b>0</b>

Please understand that you have the opportunity to contact existing and certain other former licensees and we urge you to do so.

Attached as Exhibit F-1 is a list of the names of all current Kimpton Hotels & Restaurants owners, operating pursuant to a license agreement with IHGFL and pursuant to a management agreement with IHGFL's affiliates, as of December 31, 2023, and the addresses and telephone numbers of all their hotels.

Also, attached as Exhibit F-2 is a list containing the name, city, state, current business telephone number or, if not available, the last known home telephone number, and principal correspondent of each Kimpton Hotels & Restaurants owner who, pursuant to their management agreement with IHGFL's affiliates, or pursuant to a license agreement with IHGFL, had an outlet terminated, canceled, not renewed or otherwise voluntarily or involuntarily ceased to do business as of December 31, 2023, or that has not communicated with IHGFL or IHGFL's affiliates within 10 weeks of the application date.

If you buy this license, your contact information may be disclosed to other buyers when you leave the license system.

## **ITEM 21**

### **FINANCIAL STATEMENTS**

Exhibit G-1 to this disclosure document includes IHGFL's audited financial statements for the fiscal years ended December 31, 2023, December 31, 2022, and December 31, 2021. Exhibit G-1 also includes IHGFL's unaudited financial statements for the period ended March 31, 2024.

Our parent, SCH, commits to perform certain post-sale obligations for us. Exhibit G-2 includes SCH's audited financial statements for the fiscal years ended December 31, 2023, December 31, 2022, and December 31, 2021. Exhibit G-2 also includes SCH's unaudited financial statements for the period ended March 31, 2024.

## **ITEM 22**

### **CONTRACTS**

The following copies of all proposed agreements regarding the license offering are attached and made a part of this disclosure document:

Exhibit A	Application Letter Form
Exhibit B	Kimpton License Agreement & State Addenda
Exhibit C	Master Technology Services Agreement & Joinder Agreements

Exhibits H	Ancillary Agreements
H-1	IHG Voice Reservation Service Agreement
H-2	Revenue Management and Commercial Services Agreement
H-3	Coca-Cola Participation Agreement
H-4	NGP Participation Agreements
H-5	Form IHG Direct Hotel Participation Agreement
H-6	Form IHG Wi-Fi Connect Agreement
H-7	Oracle New Account Setup Form
H-8	Website Maintenance Provider Participation Agreement (Stillwater Interactive)
H-9	Playlist Generation Streaming Music Service Participation Agreement
H-10	Hot SOS Participation Agreement
H-11	Form Concept Consulting Agreement
H-12	Kipsu Hotel Services Agreement
H-13	Merkle Master Services Agreement
H-14	AT&T Participation Agreement

**ITEM 23**

**RECEIPTS**

Exhibit K contains two copies of a detachable receipt.

# EXHIBIT A

# Kimpton Hotels Franchise Application

## Instructions For Submitting Franchise Application

- Sign and date the "Receipt" page at the end of the current Franchise Disclosure Document for the applicable brand and return it immediately to your Kimpton Hotels & Restaurants development representative. The Receipt should be signed and dated upon receipt by an authorized signer for the Applicant (see below).
- Complete the Application (please type or print) and have the authorized signer(s) for the Applicant sign and date the Application Letter.
- Attach the supporting documents and information requested in the Application and summarized on the attached checklist, and submit the entire package along with the Application Fee described below.

**NOTE: The Applicant should not sign or submit the Application or payment of the Application fee until at least the fourteenth (14th) day after the date the receipt of the Franchise Disclosure Document was signed and dated.**

### Authorized Signers

Authorized signers for the Receipt and Application Letter include the following:

#### Applicant Signer(s)

Individual(s):	Each individual
Corporation:	President, Vice President, or other Authorized Officer
General Partnership:	Each General Partner or Authorized General Partner
Limited Partnership:	Each General Partner or Authorized General Partner
Limited Liability Company:	Managing Member(s), Authorized Member(s), or Manager(s)
Trust:	Trustee(s)
Estate:	Executor/Executrix, Administrator/Administratrix

### Application Fee

Payment of the Application Fee must be made when you submit your Application. The Application Fee becomes non-refundable upon IHG approval of your Application.

For a **New Development, Conversion, Re-licensing, and Change of Ownership Application**, please calculate your Application Fee as follows (all fees are in US Dollars):

**Kimpton Hotels & Restaurants:** \$500 per guest room/suite but not less than \$100,000

## Application Checklist - Required Items

A complete Franchise Application package will expedite the Application Process. To ensure that your Franchise Application Package is complete, please use the following checklist:

- Franchise Disclosure Document Receipt signed and dated by an authorized signer for the Applicant on the day on which it was received.
- Application Letter signed and dated no earlier than the day after the 14th day following the date that the Applicant signs the Receipt contained in the Franchise Disclosure Document.
- A check or wire transfer for the Application Fee payable to IHG Franchising, LLC.
- Certified Personal Financial Statement for each sole proprietor, general partner, managing tenant in common, and/or major owner/shareholder (owners/shareholders owning beneficially 25% or more of the equity interest/stock) of the proposed licensee and any individual/entity who will serve as an additional guarantor of the proposed license.
- A copy of the deed, lease, sales contract, option agreement, or other instrument evidencing the proposed licensee's control of the proposed hotel site or property.
- A copy of a current resume for the primary the Applicant, the person who is in charge of the conversion/new hotel development process, and the person or management entity who will manage the day-to-day operations of the hotel.
- A copy of the proposed management agreement, if applicable, and information concerning the proposed management company.
- Description of all interests each individual and entity named herein has in other hotels/motels.
- Site plan, aerial, and location map with proposed hotel site identified. (not required for change of ownership or relicensing for an existing hotel.)
- Please enclose renderings or photographs of the hotel/site and a city area map with the site and competitive hotel facilities marked.
- Copies of Organizational Documents (including all amendments) for the Applicant entity and each of its principal entities, including general partner(s), managing member(s), controlling shareholders, or similar direct and indirect controlling interests, as follows:
 

Private Corporation:	Articles of Incorporation (with filing stamp or certification from the jurisdiction of incorporation)
Limited Liability Company:	Articles of Organization (with filing stamp or certification from the jurisdiction of formation) and signed Operating Agreement
Limited Partnership:	Certificate of Limited Partnership (with filing stamp from the jurisdiction of formation) and signed Partnership Agreement
General Partnership:	Signed Partnership Agreement
Trust:	Signed Trust Agreement
Estate:	Letters Testamentary/of Administration (where applicable)
- Completed Ownership Structure Form (see page 5) for the Applicant, its underlying ownership entities, and the fee title holder or lessor/sublessor of the Hotel/Hotel Site if related to the Applicant.
- A copy of the last two (2) Quality Assurance reports for all hotels not licensed by InterContinental Hotels Group but owned/managed by the Applicant within the last 12 months.
- Other pertinent project details (please attach as needed).

If proposed hotel is a conversion, please add:

- Conversion Indemnity Letter (if applicable)
- 3 Years' Hotel Operating Statistics (use table on page 11 if possible)

Note: This Application is to request a license to operate all brands licensed by IHG Franchising, LLC or Six Continents Hotels, Inc. Any reference to the InterContinental Hotels Group is considered to mean IHG Franchising, LLC and/or Six Continents Hotels, Inc., as appropriate. This Application is intended to obtain certain pre-qualifying information. Any offer to sell and any solicitation of an offer to buy a license (franchise) for all brands is made only by means of the Franchise Disclosure Document and only in states or jurisdictions where such offers and solicitations are permitted by law.



# Application Letter

IHG Franchising, LLC. (“IHGFL”):

The undersigned hereby applies for a license to operate a **Kimpton Hotels & Restaurants** licensed by the InterContinental Hotels Group to be located at:

\_\_\_\_\_ (Street)

\_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_ (Country)

The undersigned understand(s) that “IHGFL” relies on the information provided in the Application and all documents submitted by the undersigned and co-owners in connection with or in support thereof, including, but not limited to, all financial statements and this Application letter (all hereinafter referred to as the “Application”).

1. All information contained in this Application is true, correct and complete as of this date. The Application does not fail to include any fact which would be necessary in order to make the information furnished therein not misleading. The undersigned will inform IHGFL promptly of any material change in any of the information furnished in the Application.
2. The undersigned has/have the authority to make the Application and to enter into the other documents contemplated thereby, including, without limitation, a license agreement. Neither the making of the Application nor the execution of such other documents will conflict with the terms of any agreement to which the undersigned is/are a part or by which the undersigned is/are bound. The undersigned has/have not been induced by IHGFL to terminate or breach any agreement with respect to the above mentioned location.
3. Information concerning the system of the hotel brand being licensed, including, without limitation, the appropriate license agreement (the “License Agreement”), has been made available to the undersigned. The undersigned is/are familiar with the system of the hotel brand being licensed and its requirements. If the Application is approved the undersigned will execute and comply with the terms of the License Agreement.
4. The undersigned understand(s) and acknowledge(s) that:
  - (a) IHGFL does not enter into oral agreements or understandings with respect to licenses or matters pertaining to the granting of a license.
  - (b) A contract or agreement with respect to a proposed license shall come into effect only upon the execution of the License Agreement.
  - (c) As of this date, there are no oral agreements or understandings whatsoever between the undersigned and IHGFL with respect to any proposed license.
  - (d) The Applicant authorizes IHGFL and Six Continents Hotels, Inc. to check, at any time the credit history, references and other financial and background data of the Applicant, the proposed licensee, the undersigned and co-owners, including background checks for US OFAC compliance, and to answer questions about their credit history with IHGFL.
  - (e) An Application fee has been paid to IHGFL. Such Application fee may be invested, commingled with other funds of IHGFL, or otherwise used by IHGFL as it deems appropriate in its discretion.
  - (f) If the Application is not approved by IHGFL, or if the Application is withdrawn by the Applicant, the Application fee will be returned less the Application Processing Fee for expenses incurred by IHGFL, as solely determined by IHGFL, in the processing the Application. If the Application is approved, the Application fee will not be returned.
  - (g) IHGFL reserves the sole right to approve or disapprove the Application for any reason it may determine. In the event IHGFL disapproves the Application, it will have no liability to the undersigned other than to return the Application fee, less its expenses in processing the Application as hereinbefore provided.

The undersigned, jointly and severally (if applicable), agree(s) to indemnify IHGFL and its affiliates, directors and employees, agents, representatives, and assignees and to hold them harmless from all losses, consequently, directly or indirectly incurred (including legal and accounting fees and expenses) and arising from, as a result of or in connection with the breach of any representation or warranty contained in the Application or arising from, as a result of or in connection with IHGFL’s reliance on such representation or warranties. IHGFL shall have the right independently to take any action it may deem necessary in its sole discretion, to protect and defend itself against any threatened action subject to the undersigned’s indemnification, without regard to the expense, forum or other parties that may be involved. IHGFL shall have sole and exclusive control over the defense of any such action (including the right to be represented by counsel of its choosing) and over the settlement, compromise or other disposition thereof.

**For Individual:**

Signature: \_\_\_\_\_

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

Date (required): \_\_\_\_\_

**For Business Entity:**

Signature: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Date (required): \_\_\_\_\_

## Applicant

**Name of the Applicant :** First: \_\_\_\_\_ Middle: \_\_\_\_\_  
Last: \_\_\_\_\_

**Name of Entity:** \_\_\_\_\_

The Proposed Licensee      Existing Entity      To be formed as an entity after submitting this Application  
Other (explain) \_\_\_\_\_

**Entity Address :**

Address: \_\_\_\_\_ City: \_\_\_\_\_

State/Province: \_\_\_\_\_ Zip/Postal Code: \_\_\_\_\_ Country: \_\_\_\_\_

**Type :**

Corporation      Limited Partnership      General Partnership  
Limited Liability Company      Sole Proprietor      Trust  
Other (specify) \_\_\_\_\_

**Corporation / Entity Formation Information:**

Month/Day/Year: \_\_\_\_\_ State/Province: \_\_\_\_\_ Country: \_\_\_\_\_

## Principal Correspondent

**For Legal Notice**

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

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State/Province: \_\_\_\_\_ Zip/Postal Code: \_\_\_\_\_ Country: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## Management Information

The proposed hotel will be managed by:

A Management Company under a Management Agreement with the Applicant

Company Name: \_\_\_\_\_

Contact: \_\_\_\_\_

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

Address: \_\_\_\_\_ City: \_\_\_\_\_

State/Province: \_\_\_\_\_ Zip/Postal Code: \_\_\_\_\_ Country: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Attachments:**

1. List of Hotels owned or managed by the Management Company.

**Applicant** *continued*

**Hotel Experience**

*(attach additional pages if needed)*

Please complete the information below describing facilities operated, number of rooms, age of hotel, status, position held, dates purchased/sold if applicable, and level of involvement. Please attach additional pages if necessary.

**1. Current and prior InterContinental Hotels Group branded hotels owned/managed**

	Hotel Name	Loc# or HOLIDEX Code	# Rooms	Age of Hotel	Status (open or under construction)	Position	Other (include dates purchased/sold if applicable)	Percentage of Ownership
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								

**2. Most recent non-IHG branded hotels owned/managed**

	STR ID#	Hotel City	Hotel Name	Age of Hotel	Status (open or under construction)	Position	Other (inc. dates purch/sold if applicable)	Percentage of Ownership
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								

**Attachments:**

1. A copy of the last two (2) Quality Assurance reports for all hotels not licensed by IHG but owned/managed by the Applicant within the last 12 months.

Applicant *continued*

## Personal Information

The following questionnaire is intended to provide IHG with the information needed to evaluate your new business venture as a potential franchisee for the brand you selected. IHG is recognized as a global leader and offers one of the best franchise opportunities available in the lodging industry. Our successful heritage of quality and service is carried on around the globe by a unique group of entrepreneurial spirited people - our franchise owners and operators.

We welcome the opportunity to review your request to join the IHG portfolio of brands.

1. Do you own or have you ever owned, co-owned, or managed a hotel that was part of any IHG franchise system?

Yes       No

If yes, please provide details: \_\_\_\_\_

2. Have you ever applied for a franchise with IHG in the past?

Yes       No

If yes, please provide details: \_\_\_\_\_

3. What is your background in the hotel business? (attach resume)

\_\_\_\_\_

4. Please list all franchise/hotel licensing or affiliation agreements that you have ever entered.

\_\_\_\_\_

5. Who will be in charge of the conversion/new development process (development, construction, renovation)? (attach resume)

\_\_\_\_\_

6. Is or was the proposed licensee or any direct or indirect owner of the proposed license the subject of a voluntary or involuntary bankruptcy, receivership, foreclosure, or other insolvency proceeding either currently pending or filed within the three-year period immediately preceding this Application?

Yes If yes, please explain on a separate sheet.       No

7. Is or was the proposed hotel site or the current owner of the proposed hotel site the subject of any bankruptcy, receivership, foreclosure, or other insolvency proceeding either currently pending or filed with the three-year period immediately preceding this Application?

Yes If yes, please explain on a separate sheet.       No

8. Please list all pending or concluded litigation with a franchiser over the past five (5) years in which the Applicant, the proposed licensee or their respective principals, owners, affiliates, or guarantors have been a party.

9. Will any employee, officer or director, or one of their relatives, of any IHG company participate in management or ownership of the entity to be licensed or one of its affiliates? If yes, please explain, while providing detailed information.

Yes       No

If yes, please provide details: \_\_\_\_\_

Attachments: \_\_\_\_\_

1. Applicant's resume.
2. If applicable, resume of person in charge of development process and resume of person in charge of your hotel if other than General Manager.
3. If applicable, please provide details of voluntary or involuntary bankruptcy, receivership, foreclosure, or other insolvency proceeding.

## Ownership Structure Information

Each sole proprietor, general manager, managing tenant in common, and major owner/shareholder (owners/shareholders owning beneficially 25% or more of the stock) of the proposed licensee and any individual/entity who will serve as an additional guarantor of the proposed license is required to submit a Personal Financial Statement with this Application including a list of all hotels/motels in which the individual has an interest. Facility name, location, and the nature and percentage of the individual's interest must be indicated.

Please follow any of the examples provided below to help you complete your ownership structure on the following page.

### Example #1: Corporation

Licensee Name: CAPITAL HOSPITALITY, INC

Entity/Person's Name	Description of Interest	% Interest	Business Address & Telephone
Ideal Hospitality Inc. - Jane Smith, member 100%	Shareholder	35%	123 Brook Lane, Atlanta GA 30039 Tel: (123) 456-7890
George Williams, LLC - Paul Doe, member 50% - Lucy Doe, member 50%	Shareholder	28%	333 Cricket Drive, Atlanta GA 30346 Tel: (123) 456-7890
A. Moore	Shareholder	37%	50-51 Tree Street, Atlanta GA 30346 Tel: (123) 456-7890
	Total	100%	

#### Items Needed for Execution

- Proof of Current State Filing

### Example #2: Limited Partnership (LP)

Licensee Name: WEBSTER HOLDINGS, LP

Entity/Person's Name	Description of Interest	% Interest	Business Address & Telephone
Prestige Hotels, LLC - Mohammed Singh, member 100%	General Partner	1%	111 Court Ave, Atlanta GA 30039 Tel: (123) 456-7890
Capital Investments, Inc. - Jim Thomas, member 50% - Susan White, member 50%	Limited Partner	30%	23 Bird Street, Atlanta GA 30346 Tel: (123) 456-7890
Stanley Watson	Limited Partner	69%	345 Willow Road, Atlanta GA 30014 Tel: (123) 456-7890
	Total	100%	

#### Items Needed for Execution

- Executed Partnership Agreement
- Proof of Current State Filing

### Example #3: General Partnership

Licensee Name: GROUND HIGH HOLDINGS, GP

Entity/Person's Name	Description of Interest	% Interest	Business Address & Telephone
Wendy Jones	General Partner	32%	8241 Tree Lane Road, Atlanta, GA 30346 Tel: (123) 456-7890
Greg Finn	General Partner	38%	745 Auburn Court, Atlanta, GA 30313 Tel: (123) 456-7890
Kelly Price	General Partner	30%	2011 Lake Hearn Court, Atlanta, GA 30014 Tel: (123) 456-7890
	Total	100%	

#### Items Needed for Execution

- Executed Partnership Agreement
- Proof of Current State Filing

### Example #4: Limited Liability Corporation (LLC)

Licensee Name: TFB HOTELS, LLC

Entity/Person's Name	Description of Interest	% Interest	Business Address & Telephone
General Hospitality, LLC - Bruce Johnson, member 100%	Member	35%	1122 Big Road, Atlanta GA 30039 Tel: (123) 456-7890
Paul Moore, LLC - Pat Davis, member 50% - Ben Brown, member 50%	Member	28%	500 Brook Crossing, Atlanta, GA Tel: (123) 456-7890
Andrew Patel	Member	37%	56-78 Causeway Avenue Atlanta, GA Tel: (123) 456-7890
	Total	100%	

#### Items Needed for Execution

- Executing Operating Agreement
- Proof of Current State Filing

## Ownership Structure Information *continued*

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

### Ownership Structure

*(please provide additional pages if needed)*

Entity/Person's Name	Description of Interest	% Interest	Business Address & Telephone

**Attachments:**

1. Copies of recorded formation and governing documents of the Applicant and its controlling entities (e.g., Articles of Incorporation, Partnership Agreement, Operating Agreement, etc.)
2. Upon request, completed Individual or Business Entity Participant Information Forms

## Ownership Structure Information *continued*

### Loan & Financing Information

Do you have a loan or loan commitment for this project?  Yes  No

Name of proposed/existing lender(s): \_\_\_\_\_

	Debt	Equity
Source		
Amount		
% of Total Development Cost		

Do you have, or do you anticipate seeking Small Business Administration (SBA) backed financing?

Yes. Describe: \_\_\_\_\_  No

Is the loan (or will the loan be) cross-collateralized by other hotels/real estate assets or cross-defaulted to any other loan(s)?

Yes. Describe: \_\_\_\_\_  No

Please describe the existing or anticipated financing of this project:

\_\_\_\_\_

## Proposed Hotel Summary

**Street Address\*:** \_\_\_\_\_

*\*If no street address, provide coordinates or other location description*

**City:** \_\_\_\_\_ **State/Province:** \_\_\_\_\_ **Country:** \_\_\_\_\_ **Zip/Postal Code:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Development Type:**

New Development

Conversion

Room Adjustments

Change of Ownership

Relicensing

### Estimated Open Date

Projected Construction/Reno Start Date: \_\_\_\_\_

Projected Construction/Reno Completion Date: \_\_\_\_\_

### Hotel Facilities, Building, Site Information

Total Guest Units: \_\_\_\_\_

# Guest rooms: \_\_\_\_\_ # Guest suites: \_\_\_\_\_

Extended Stay Suite Mix: \_\_\_\_\_ Studio \_\_\_\_\_ 1-Bedroom \_\_\_\_\_ 2-Bedroom

# Floors: \_\_\_\_\_

Year Built: \_\_\_\_\_

Meeting Space:  Yes \_\_\_\_\_ total sq. ft. Total # Rooms: \_\_\_\_\_  No

Ballroom/Largest Room:  Yes \_\_\_\_\_ sq. ft.  No

Condominium Residences:  Yes # \_\_\_\_\_  No

Pool:  Yes \_\_\_\_\_ Indoor \_\_\_\_\_ Outdoor  No

Gym:  Yes  No

Other Amenities (please explain or attach): \_\_\_\_\_

Total square footage of site: \_\_\_\_\_

Zoned for hotel development?  Yes  No (if No, please provide details): \_\_\_\_\_

Maximum height allowed by zoning code: Feet: \_\_\_\_\_ Floors: \_\_\_\_\_



**Proposed Hotel Summary** *continued*

**Food & Beverage Facilities**

**Restaurants**

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

Capacity: \_\_\_\_\_

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

Capacity: \_\_\_\_\_

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

Capacity: \_\_\_\_\_

**Bars / Lounges**

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

Capacity: \_\_\_\_\_

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

Capacity: \_\_\_\_\_

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

Capacity: \_\_\_\_\_



**Hotel Affiliation**

Has there ever been a franchise, branded management, affiliation, or similar agreement pertaining to this hotel or site?

Explain:

\_\_\_\_\_

If the hotel is currently affiliated with a hotel chain, what chain?

\_\_\_\_\_

Hotel's current name: \_\_\_\_\_

Original open date: \_\_\_\_\_

**Proposed Hotel Summary *continued***

**Application Site Control**

- Owned by the Applicant
- Leased to the Applicant Lease Holder: \_\_\_\_\_
- Optioned to the Applicant Beneficial Holder: \_\_\_\_\_
- Under purchase agreement by the Applicant Option expires: \_\_\_\_\_
- Other. Explain: \_\_\_\_\_ Beneficial Holder: \_\_\_\_\_
- Option expires: \_\_\_\_\_



**Operating Projections**

Assumptions	Year 1	Year 2	Year 3	Year 4	Year 5
% Occupancy					
ADR*					
RevPAR*					

\* US Dollars

**Hotel Performance (If Existing Facility) Last 5 Years**

Please enter corresponding year.

Historical	20_____	20_____	20_____	20_____	20_____
% Occupancy					
ADR*					
Total Rooms Revenue*					

\* US Dollars

**Proposed Hotel Summary** *continued*

**Competitive Information**

Identify all hotels/motels in your market area that are/would be considered competitive to the proposed hotel/site. Specifically include those within a five-mile radius of the hotel/site area.

	STR ID#	Hotel Name	Distance from proposed site (miles)	Age of Property	Room Count	Rate Range
1.						
2.						
3.						
4.						
5.						

**If proposed hotel or hotel site is currently owned by anyone other than the Applicant, please indicate:**

Fee owner name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State/Province: \_\_\_\_\_ Zip/Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone: \_\_\_\_\_

Related to the Applicant?  Yes. Describe: \_\_\_\_\_  No

## Estimated Hotel Project Costs

### New Construction *(approximately)*

Land: \$US \_\_\_\_\_

Construction: \$US \_\_\_\_\_

FF&E: \$US \_\_\_\_\_

Other: \$US \_\_\_\_\_

TOTAL: \$US \_\_\_\_\_



### Conversion

Purchase price/current mkt. value (est.)\*: \$US \_\_\_\_\_

Renovation/upgrade\*: \$US \_\_\_\_\_

Other\*: \$US \_\_\_\_\_

TOTAL: \$US \_\_\_\_\_



Please use this section to provide any additional details about your project.

*Thank you for completing your Franchise Application with IHG. We look forward to the opportunity to review your information.*

# EXHIBIT B

**EXHIBIT B**

LOCATION: «HotelAddress1»  
«HotelAddress2»

LOCATION #: «LocNum»

DATE:

**IHG FRANCHISING, LLC**

**KIMPTON® HOTELS & RESTAURANTS**

**LICENSE AGREEMENT**

**WITH**

**«EntityAllCaps»**

**LICENSEE**

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**Holiday Hospitality Franchising, LLC  
Three Ravinia Drive, Atlanta, Georgia 30346**

**Kimpton® Hotels & Restaurants  
License Agreement**

This License Agreement (this "License"), dated as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), is between **HOLIDAY HOSPITALITY FRANCHISING, LLC**, a Delaware limited liability company ("IHG"), and **[LICENSEE NAME]**, a **[ENTITY STATE/TYPE OR AN INDIVIDUAL AND STATE OF RESIDENCE]** ("Licensee"), whose address is \_\_\_\_\_.

**RECITALS**

A. IHG owns and licenses the "Brand System" (as defined in paragraph 1.B. below). Licensee is the owner of the Hotel and has requested a license to use the Brand System to operate the Hotel as a Brand System Hotel (as defined in paragraph 1.B. below).

B. IHG shall grant to Licensee a non-exclusive license to operate the Hotel as a Brand System Hotel, subject to the terms of this License.

C. Guarantor(s) will provide the Guaranty.

D. In granting this non-exclusive license, IHG has relied upon the business skill, financial capacity, and character of Licensee and the Guaranty to be provided by the Guarantor(s).

NOW, THEREFORE, in consideration of the promise and covenants in this License, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, IHG and Licensee agree as follows:

**1. The License:**

The Brand System is designed to provide a distinctive, high quality hotel service to the public under the name Kimpton® Hotels & Restaurants. High standards established by IHG are the essence of the Brand System. Future investments may be required of Licensee under this License. Licensee desires to enter into this License in order to obtain a license to use the Brand System in the operation of a Kimpton® Hotel & Restaurant located at the "Location" identified on Attachment "A" and defined in paragraph 2.A. below (the "Hotel").

**A. The Hotel.**

The Hotel comprises all structures, facilities, appurtenances, furniture, fixtures, equipment, entry and exit rights, parking, pools, landscaping and other areas from time to time located on the land identified by Licensee to IHG in anticipation of this License, or located on any land from time to time approved by IHG for additions, signs or other facilities. The Hotel must include the facilities listed on Attachment "A" hereto. No change in the number of approved guest rooms or suites and no other significant change in the Hotel or in the manner in which the Hotel rooms and services are offered to the public (including timesharing and condominium hotel projects and other projects not involving short term stays by transient guests) may be made without IHG's written approval. Licensee represents that it is entitled to possession of the Hotel during the entire License Term without restrictions that would interfere with anything contemplated in this License. Throughout this License, the words "room" and "guest room" are intended to include the word "suites" unless otherwise indicated.

**B. The Brand System.**

The Brand System includes all elements which are designed to identify "Kimpton® Hotels & Restaurants" locations to the public or are designed to be associated with those hotels or to contribute to such identification or association and all elements which identify or reflect the quality standards and

business practices of such hotels, all as specified in this License or as designated from time to time by IHG. The Brand System at present includes, but is not limited to:

- (1) the principal trade and/or service mark “Kimpton<sup>®</sup> Hotels & Restaurants”, the service marks “IHG One Rewards” and “IHG Concerto<sup>™</sup>” and the other Marks (as defined in paragraph 6.B. (below) and intellectual property rights made available to licensees of the Brand System by reason of a license;
- (2) standards, specifications and policies for construction, furnishings, operation, appearance and service of the Hotel, standards and specifications for interior and exterior design and décor, and other requirements as stated or referred to in this License and from time to time in IHG’s brand standards for Brand System hotels (the “Standards”) or in other communications to Licensee;
- (3) registered and unregistered intellectual property, including without limitation copyrights, trademarks, service marks, logos, designs, know-how, confidential or proprietary information standards, specifications and policies for construction, furnishing, operation, appearance and service of hotels operating as Brand System hotels, and similar property rights;
- (4) all rights to the domain names and other identifications or elements used in electronic commerce as may be designated from time to time by IHG in accordance with IHG’s specifications to be part of the Brand System;
- (5) access through IHG to the technology systems, loyalty programs, sales and catering system and other related systems operated in accordance with specifications established by IHG;
- (6) access through IHG to multiple call centres and central reservations offices around the world handling reservations;
- (7) access through IHG to brand marketing services and distribution marketing services including global advertising and publicity and other marketing programs and materials;
- (8) training programs and materials;
- (9) a worldwide hotel distribution of Brand System hotels;
- (10) a guest loyalty program (currently named IHG<sup>®</sup> One Rewards);
- (11) a recognized presence on the internet;
- (12) an e-commerce team and presence for the given IHG brand and other IHG brands on the internet;
- (13) a global sales team;
- (14) global market coverage; and
- (15) programs for inspecting the hotel, measuring and assessing service and consumer opinion.

The Standards and all changes to the Standards may be presented in any format, including but not limited to print, electronic or other media. IHG has the right to periodically change the Brand System by adding, modifying, altering and/or deleting elements of the Brand System. “Brand System Hotel(s)” means the hotel(s) operated by IHG, an affiliate of IHG, or a licensee or franchisee of IHG under the Kimpton<sup>®</sup> Hotels & Restaurants brand in any of the fifty (50) states of the United States of America, the District of Columbia, or Canada, and does not include any other hotel operated under a different brand or any other business operation of IHG.

## 2. **Grant of License:**

IHG hereby grants to Licensee a limited, non-exclusive license to use the Brand System only at the Hotel, but only in accordance with this License and only during the “License Term” beginning with the Effective Date and terminating as provided under paragraph 11 hereof and Licensee accepts the right and obligation to operate the Hotel pursuant to the terms of this License. The License applies to the location of the Hotel specified in Attachment “A” hereof (the “Location”) and to no other location. Licensee acknowledges that IHG, its divisions, subsidiaries, affiliates and parents are and may in the future be engaged in other business activities, including, without limitation, activities involving transient lodging and related activities, and that Licensee is acquiring no rights hereunder other than the right to use the Brand System as specifically defined herein in accordance with the terms of this License.

This License does not limit IHG’s right, or the rights of any parent, subsidiary or affiliate of IHG, to use or license the Brand System or any part or element thereof or to engage in or license any business activity at any other location, including, without limitation, the licensing, franchising, ownership, operation and/or management of lodging facilities and related activities under the names and Marks associated with the Brand System and/or any other names and marks. Licensee acknowledges that IHG’s rights to use and/or license the Brand System, referenced immediately above, pre-date this License and are not limited or changed by the terms of this License. Licensee agrees that by acknowledging those rights, the parties do not intend to make IHG’s exercise of such rights subject to rules applicable to contractual performance or the exercise of contractual discretion under this License.

## 3. **Licensee’s Responsibilities:**

### A. **Operational and Other Requirements.**

Throughout the entire License Term, Licensee will at its sole cost and expense:

- (1) maintain a high moral and ethical standard and atmosphere at the Hotel;
- (2) maintain the Hotel in a clean, safe and orderly manner and in first class condition;
- (3) provide efficient, courteous and high-quality service to the public in a clean, safe and orderly manner, including, without limitation, maintaining minimum product and service quality standards and scores for quality assurance and guest survey programs established and maintained by IHG, as such programs may be modified by IHG from time to time;
- (4) operate the Hotel 24 hours a day every day in accordance with the Standards, except as otherwise permitted by IHG in writing based on special circumstances;
- (5) strictly comply in all respects with the Standards (as they may from time to time be modified or revised by IHG) and with all other policies, procedures and requirements of IHG which may be from time to time communicated to Licensee (which communication, at IHG’s option, may be in hard paper copy or digital, electronic or computerized form, and Licensee must pay any costs to retrieve, review, use or access such digital, electronic or computerized communication);
- (6) strictly comply with all of IHG’s standards and specifications for goods and services used in the operation of the Hotel and other reasonable requirements to protect the Brand System and the Hotel from unreliable sources of supply;
- (7) strictly comply with IHG’s requirements as to the:
  - (a) type of services and products that may be used, promoted or offered at the Hotel;
  - (b) type and quality of services and products that, to supplement services listed on Attachment “A”, must be used, promoted or offered at the Hotel;

- (c) use, display, style and type of signage and of all other forms of identification at or pertaining to the Hotel, including but not limited to any use of the Kimpton® Hotels & Restaurants name or any other of IHG's service marks, trademarks or copyrights (in all formats, including but not limited to print, electronic or other media) which are seen by members of the consuming public or used to identify the Hotel to actual or prospective consumers;
  - (d) directory and reservation service listings of the Hotel;
  - (e) training of Persons to be involved in the operation of the Hotel;
  - (f) participation in all marketing, reservation service, advertising, training and operating programs designated by IHG as Brand System-wide (or area-wide) programs in the best interests of hotels using the Brand System including, without limitation, all guest frequency or loyalty programs related to the Brand System;
  - (g) maintenance, repair, appearance and condition of, and customer service at, the Hotel, including, without limitation, participation in all guest complaint programs and quality assurance programs established and maintained by IHG, as such programs may be modified by IHG from time to time;
  - (h) quality and types of services offered to customers at the Hotel; and
  - (i) maintenance of a capital reserve and adherence to capital reinvestment and renovation cycles (as further specified in paragraph 13.O. hereof and as IHG may supplement from time to time by the Standards);
- (8) use all technology services required by IHG;
  - (9) adopt all improvements or changes to the Brand System as may be designated by IHG from time to time;
  - (10) with respect to all aspects of this License and the Hotel and its ownership, development and operation, strictly comply with all applicable laws, rules, regulations, requirements, codes, orders, ordinances and standards of all governmental jurisdictions in which the Hotel is located or that are otherwise applicable to Licensee or the Hotel, pay timely all taxes and other governmental fees, assessments and impositions, and timely obtain and maintain throughout the License Term all governmental licenses, authorizations and permits necessary to own (or lease, as may be applicable) and operate the Hotel in accordance with the Brand System;
  - (11) strictly comply with IHG's requirements as to guest satisfaction and guest compliant programs, as such programs may be modified by IHG from time to time;
  - (12) permit inspection of the Hotel by IHG's representatives at any time and give them free lodging for such time as may be reasonably necessary to complete their inspections; and take all such steps as are necessary to incorporate into the Hotel operations any corrections and modifications IHG requires to maintain the Standards, as quickly as is reasonably possible;
  - (13) promote the Hotel on a local or regional basis subject to IHG's requirements as to form, content and prior approvals;
  - (14) ensure that no part of the Hotel or the Brand System is used to further, promote, or divert business to a competing business or other lodging facility (including, without limitation, hotels, vacation or timeshare facilities or any similar product sold on a periodic basis), except as IHG may approve for businesses or lodging facilities owned, licensed, operated or otherwise approved by IHG or its parents, divisions, subsidiaries, and affiliates;

- (15) use every reasonable means to encourage use of Kimpton® Hotels & Restaurants facilities everywhere by the public;
- (16) in all respects use Licensee's best efforts to reflect credit upon and create favorable public response to the name "Kimpton® Hotels & Restaurants";
- (17) promptly pay to IHG all amounts due to IHG, its parents, subsidiaries and affiliates as royalties or charges, whether or not arising out of this License, or for goods or services purchased by Licensee for use at the Hotel; and
- (18) strictly comply with IHG's requirements concerning confidentiality of information; and, in particular, Licensee shall not disclose, without IHG's written permission, (i) information pertaining to IHG's marketing, reservations, quality assurance, guest loyalty and satisfaction, technology or other systems or programs that has not been intentionally disclosed to the public by IHG, (ii) any of the Standards, or (iii) any of the commercial terms or provisions of this License.

#### **B. Fees.**

For each month (or part of a month) during the License Term, Licensee will pay the fees set forth in this paragraph 3.B. to IHG, which shall be due to IHG by the "Due Date" (except as otherwise noted below including, without limitation, the Technology Services Fee which is payable monthly in advance). The term "Due Date" means the fifteenth (15<sup>th</sup>) day of the following month; but if the 15<sup>th</sup> day of the month falls on a weekend or bank holiday, then the Due Date shall be the next business day.

- (1) Application Fee. Licensee has paid IHG the nonrefundable Application Fee as set forth in Item 3 of Attachment "A").
- (2) Rooms Addition Fee. A standard application fee for additional guest rooms or suites, as set forth in IHG's then current franchise disclosure document for Brand System hotels, will be charged upon application for any guest rooms or suites to be added to the Hotel.
- (3) Royalty Fee. A monthly Royalty Fee in the amount set forth in Item 4 of Attachment "A". Licensee agrees and acknowledges that additional royalties may be charged on revenues from any activity if it is added at the Hotel by mutual agreement and it is not now offered at Brand System Hotels generally or it is designed or developed by or for IHG or its affiliates. The Royalty Fee is solely in consideration of our granting you the franchise conferred by this License and is not in exchange for any goods, services or assistance we may furnish you.
- (4) IHG System Fund Contribution. "IHG System Fund Contribution" means the assessments paid by Licensee, comprised of the Services Contribution and the Loyalty Program Contribution, for the IHG System Fund Activities (as defined in paragraph 4.G) to be provided by IHG and its Affiliates.
  - a. Services Contribution. A monthly Services Contribution in the amount set forth in Item 5 of Attachment "A". The Services Contribution will typically be invested by IHG in activities that, in IHG's sole business judgment as to the long-term interests of the Brand System, strengthen the brand such as awareness advertising, marketing, sales, guest services, reservations, standards, training programs, research, and the development of new or improved services, associated products and platforms, but may also include tactical marketing initiatives more focused on short term revenue enhancement and seasonal marketing programs. The Service Contribution cannot be used to cover the cost of maintenance, repair, modernization, renovation, or upgrading of the Hotel. The Services Contribution does not include costs that Licensee incurs in the acquisition, installation or maintenance of reservations services, equipment or training, or in Licensee's own marketing activities. IHG and its affiliates are not responsible for any of these costs.

The Services Contribution is subject to change by IHG from time to time. IHG may, on 30 days advance notice, at any time during the term of this License, and from time to time, increase the Services Contribution by up to 1% of Gross Rooms Revenue (as such term is defined on Attachment "A"). If IHG increases the Services Contribution in this way, then IHG cannot make another discretionary increase again for 24 months after the start of a prior increase. IHG may increase the Services Contribution by a maximum of 2% of Gross Rooms Revenue over the term of this License.

- b. Loyalty Program Contribution. An Initial Loyalty Marketing Contribution and a monthly Loyalty Program Contribution, currently known as the "IHG One Rewards Fee" (or other guest loyalty and frequency program fee as it may be re-characterized from time to time) at the prevailing rate of GRR (as such term is defined on Attachment "A") on qualifying room rates and other eligible hotel charges) for each night of a hotel stay on which IHG One Rewards points or frequency miles (related to an airline frequency alliance program) are required to be awarded by the terms of the IHG One Rewards program. The current prevailing rate is set forth in Item 5 of Attachment "A". IHG may modify the amounts or the terms and conditions of the Initial Loyalty Marketing Contribution and the Loyalty Program Contribution from time to time in its sole discretion.
- (5) Technology Services Fee. A monthly Technology Services Fee as set forth in Item 6 of Attachment "A". The Technology Services Fee will be used by IHG for provision of technology services, such as, but not limited to satellite communications services to the Hotel, plus such increases as IHG may judge reasonable, but in no case exceeding in any calendar year 10% of the fee in effect at the beginning of that year. The Technology Services Fee does not include the cost, installation, maintenance or repair of any technology equipment at the Hotel.
- (6) Travel Agent Commissions, Reimbursement and Additional Marketing Programs. All fees due for travel agent commission programs, including Electronic Commission Services and any Field Marketing Co-op programs attributable to the Hotel, and all fees due in connection with mandatory marketing, technology, guest satisfaction, quality assurance, training, new hotel opening and other systems and programs established by IHG, its parents, its subsidiaries or its affiliated entities relating to the Brand System; and an amount equal to any sales, trademark license, gross receipts or similar tax imposed on IHG and calculated solely on payments required hereunder, unless the tax is an optional alternative to an income tax otherwise payable by IHG.

Local and regional marketing programs and related activities may be conducted by Licensee, but only at Licensee's expense and subject to IHG's requirements and the Standards. Reasonable charges may be made for optional advertising materials ordered or supplied by IHG to Licensee for such programs and activities.

### **C. Additional Payment Terms.**

IHG may, at its election at any time during the License Term, require Licensee to pay all outstanding fees by electronic funds transfer, direct account debit, ACH or other similar technology designed to accomplish the same purpose as may be designated by IHG. If IHG requires you to make payments by any of the foregoing methods, Licensee agrees to make its payment in compliance with those requirements and also to deposit and maintain at all times sufficient funds to cover all fees and payments that Licensee owes to IHG and its Affiliates in a segregated bank account that Licensee forms and maintains for the Hotel.

Licensee will operate the Hotel so as to maximize Gross Rooms Revenue of the Hotel consistent with sound marketing and industry practice and will not engage in any conduct that reduces Gross Rooms Revenue of the Hotel in order to further other business activities. Charges may be made for optional products or services accepted by Licensee from IHG, either in accordance with current practice or as developed in the future.

Each payment under paragraph 3.B., except the Rooms Addition Fee or other fee not determined from Gross Rooms Revenue, shall be accompanied by the monthly statement referred to in paragraph 7.A. IHG may apply any amounts received under this License to any amounts due under this License. If any amounts under this License are not paid when due, such non-payment shall constitute a breach of this License and, in addition, such unpaid amounts will accrue interest beginning on the first day of the month following the due date at 1½% per month or the maximum interest permitted by applicable law, whichever is less.

IHG has the right, in its sole judgment, to require Licensee to tender all or any part of the payments due to IHG under this License to IHG or one or more of IHG's parents, subsidiaries, affiliated entities or other designees.

#### **4. IHG's Responsibilities:**

##### **A. Training.**

During the License Term, IHG will continue to specify and provide required and optional training services and programs at various locations and in various formats. A fee may be charged for certain required and optional training services. Travel, lodging and other expenses of Licensee and its employees will be borne by Licensee. Reasonable charges may also be assessed for training materials.

##### **B. Reservation Services.**

During the License Term, so long as Licensee is in full compliance with its obligations hereunder, IHG will afford Licensee access to reservation service for the Hotel on terms consistent with this License. However, IHG has no obligation to afford Licensee access to reservation service for the Hotel regarding reservations for any date after the expiration date of this License or for any date after the termination date established by IHG, following any applicable notice period or any applicable opportunity to cure.

##### **C. Consultation on Operations, Facilities and Marketing.**

During the License Term, IHG shall have the right (but not the obligation) to make available to Licensee consultation and advice in connection with operations, facilities and marketing. IHG may from time to time furnish to Licensee names of suppliers or recommend to Licensee suppliers of goods and services required or useful in the operation of the Hotel; however, IHG is not obligated to furnish any such names or to continue doing so, and Licensee is under no obligation to use any such supplier, unless expressly required to do so by the terms of this License, the Standards or otherwise. In identifying or recommending suppliers, IHG exercises its business judgment based on its information as of that date and its sense of the long-term interests of the Brand System. IHG's identification or recommendation of a supplier is not a warranty of the financial condition or performance of any supplier or of any other factor. Licensee's use of an identified or recommended supplier that sells products or services meeting IHG's standards and specifications may facilitate compliance with those standards and specifications, but it is not a substitute for Licensee's compliance obligations.

##### **D. Maintenance of Standards.**

IHG will seek to maintain high standards of quality, cleanliness, appearance, design and service at all hotels using the Brand System so as to promote, protect and enhance the public image and reputation of the Kimpton® Hotels & Restaurants name and to increase the demand for services offered by the Brand System. IHG's judgment in such matters shall be controlling in all respects, and it shall have wide latitude in making such judgments.

##### **E. Application of Standards.**

The Hotel and all other hotels operated under the Brand System will be subject to the Standards, as they may from time to time be modified or revised by IHG, including limited exceptions from compliance which may be made based on local conditions, type of hotel or special circumstances. The Standards and any modification to them can be delivered by IHG to Licensee in hard paper copy or, at IHG's option, be made available to Licensee in digital, electronic or other computerized form. If communicated in digital,

electronic or other computerized form, Licensee must pay any costs to retrieve, review, use or access the Standards. The Standards are confidential and remain the property of IHG.

**F. Other Arrangements for Marketing, Etc.**

IHG may enter into arrangements for development, reservation services, marketing, operations, administrative, training, technical and support functions, facilities, programs, services and/or personnel with any other entity, and may use any facilities, programs, services or personnel used in connection with the Brand System, in connection with any business activities of its parents, subsidiaries, divisions or affiliates.

**G. Use of Services Contribution.**

IHG will make available and use Services Contribution funds (as may be computed on the basis generally applicable to licensees of the Brand System) for various activities, including IHG System Fund Activities. IHG is not obligated to expend funds for marketing, reservations or related services in excess of the amounts received from licensees using the Brand System and those funds made available by IHG as set forth above. Services Contribution funds are not intended to benefit any specific market or hotel. IHG and its affiliates have no obligations to spend from Services Contribution funds, or otherwise, any amount fixed or proportionate to the amount of Services Contributions Licensee pays, nor do IHG or its affiliates have any obligation to ensure that Licensee benefits directly or proportionately from Services Contributions paid or expenditures made from collected Services Contributions. Local and regional marketing programs and related activities may be conducted by Licensee but only at Licensee's expense and subject to IHG's requirements. Reasonable charges may be made for optional advertising materials ordered or used by Licensee for such programs and activities.

"IHG System Fund Activities" means various activities and arrangements organized and operated by IHG and its affiliates (as they deem appropriate, in their sole discretion) for the provision of loyalty marketing services, distribution marketing services, brand marketing services and other such marketing and related programs and services for Brand System Hotels and the IHG Portfolio Brand Hotels (as hereinafter defined). These activities may be conducted on a local, regional, national, continental or international basis for all, or a group of, IHG Portfolio Brand hotels. IHG and its affiliates may modify, in their absolute discretion, the IHG System Fund Activities from time to time. IHG System Fund Activities may include (within IHG's and its affiliates sole discretion) any purposes that benefit or include Brand System Hotels, as a whole, groups of Brand System Hotels, or other IHG Portfolio Brand Hotels. IHG and its affiliates have no obligation to ensure that any particular IHG Portfolio Brand Hotel, or particular group of Brand System Hotels, including the Hotel, benefits from the IHG System Fund Activities on a pro-rata or other basis or that the Hotel will benefit from the IHG System Fund Activities proportionate to the contributions paid by Licensee. "IHG Portfolio Brand Hotel(s)" means any hotel, other lodging facility, chain, brand or hotel system, however named, that is constructed, converted to or operated under any brands owned, controlled or under the direction of IHG and its affiliates, as they may be added to, deleted from or changed from time to time.

**H. Performance of IHG's Obligations.**

Licensee understands and agrees that IHG shall have the right to perform any or all of its obligations under this License directly or through IHG's parents, affiliates, subsidiaries or other designees.

**5. Changes In The Standards:**

Each change in the Standards shall be communicated in writing to Licensee at least 30 days before it goes into effect (which communication may be in hard paper copy or, at IHG's option, in digital, electronic or other computerized form, and if such communication is in digital, electronic or other computerized form, Licensee must pay any costs to retrieve, review, use or access same). IHG's designated internal franchise committee or subcommittee, must approve any such change and must determine, in the exercise of its business judgment, that the change was adopted in good faith and is consistent with the long-term overall interests of the Brand System.



## **6. Proprietary Rights:**

### **A. Ownership of the Brand System.**

Licensee acknowledges and agrees: (a) not to contest, either directly or indirectly, IHG's and its subsidiaries', affiliates' and parents' unrestricted and exclusive ownership of and right to use the Brand System and any element(s) or component(s) thereof; (b) that IHG or any of its parents, subsidiaries or affiliated entities has the sole and exclusive right to grant licenses to use all or any element(s) or component(s) of the Brand System; and (c) that it will not take any action in derogation of such ownership and rights of IHG and any of its parents, subsidiaries or affiliated entities. Licensee specifically agrees and acknowledges that IHG owns or is licensed to use the name and mark "Kimpton<sup>®</sup> Hotels & Restaurants" and all other Marks, as defined in paragraph 6.B. below, and other elements associated with the Brand System or derived therefrom (including but not limited to domain names or other identifications or elements used in electronic commerce), together with the goodwill symbolized thereby, and that Licensee will not contest, directly or indirectly, the validity or ownership of the Marks or take any other action in derogation of such validity or ownership either during the term of this License or after its termination. All improvements, modifications and additions whenever made to or associated with the Brand System by the parties hereto or anyone else, and all service marks, trademarks, copyrights, and service mark, trademark, domain name or similar registrations at any time used, applied for or granted in connection with the Brand System, and all goodwill arising from Licensee's use of IHG's Marks and other intellectual property, including (without limitation) local goodwill, shall inure to the benefit of and become the property of IHG. Upon expiration or termination of this License, no monetary amount shall be assigned as attributable to any goodwill associated with Licensee's use of the Brand System or any element(s) or component(s) of the Brand System including any trademarks or service marks licensed hereunder.

### **B. Trademark Disputes.**

The "Marks" means the name and mark "Kimpton<sup>®</sup> Hotels & Restaurants", IHG One Rewards and IHG Concerto and their distinguishing characteristics and the other service marks, trademarks, trade names, slogans, commercial symbols, logos, trade dress, copyrighted material and intellectual property associated with the Brand System, including, without limitation, those which IHG may designate in the future for use and those which IHG does not designate as withdrawn from use. Licensee shall notify IHG immediately of (i) an infringement, or a challenge to Licensee's use of any of the Marks; (ii) any objections, demands, controversies, allegations or actions asserted or taken by third parties involving any of the Marks or any part of the Brand System of which Licensee becomes aware; and, (iii) any potentially infringing or unauthorized uses of any of the Marks or any part of the Brand System of which Licensee becomes aware. IHG, its parent or one of its affiliated entities will have the sole and exclusive right to handle disputes with third parties concerning use of all or any part of the Marks or Brand System, and Licensee will, at its reasonable expense, extend its full cooperation to IHG in all such matters. All recoveries made as a result of disputes with third parties regarding use of the Marks or Brand System or any part thereof shall be for the account of IHG. IHG need not initiate suit against alleged imitators or infringers, and may settle any dispute by grant of a license or otherwise. Licensee will not initiate any suit or proceeding against alleged imitators or infringers, or any other suit or proceeding to enforce or protect the Marks or Brand System.

### **C. Protection and Use of Name and the Marks.**

Both parties will make every effort consistent with the foregoing to protect and maintain the Marks. Licensee agrees to execute any documents deemed necessary by IHG or its counsel to obtain or maintain protection for the Marks or any part of the Brand System or to maintain their continued validity and enforceability. Licensee agrees to use the Marks associated with the Brand System (i) only in connection with the operation of the Hotel during the License Term following the opening of the Hotel in the Brand System or at such earlier time as is expressly and specifically authorized by IHG, (ii) only in the manner expressly authorized by IHG and (iii) in no way that would tend to allow the Marks to become generic, lose their distinctiveness, become liable to mislead the public or be detrimental to or inconsistent with the good name, goodwill or favorable reputation and image of the Marks or IHG. Licensee acknowledges that any unauthorized, unpermitted or prohibited use of any of the Marks shall constitute infringement of IHG's rights. The restrictions and requirements that limit Licensee's use of the Marks and identifications apply to all formats (including print, electronic and other media) and include domain names, URL, and other identifications or elements used in electronic commerce.

**D. Modification or Discontinuation of the Marks.**

If IHG modifies or discontinues use of any of the Marks licensed under this License as a result of any proceeding or settlement or for any other reason, then Licensee agrees to comply with IHG's instructions in order to implement such modification or discontinuation. Licensee further agrees that it will have no right to any compensation or other remedies from IHG or any of its parents, subsidiaries or affiliated entities as a consequence of any such modification or discontinuation.

**E. Architectural Modifications.**

If Licensee engages a third party, in compliance with the terms of this License to prepare modifications, additions, and/or improvements to any architectural drawings or architectural works which may be licensed to Licensee as part of the Brand System ("Architectural Modifications"), Licensee shall cause such third party (and all persons that work for or that provided services to that third party) to assign all copyrights in such Architectural Modifications to IHG in such form and manner as IHG may specify from time to time.

**F. Digital Marketing.**

IHG shall have the right (but not the obligation) to establish and operate websites, social media accounts, applications, keyword or ad word purchasing programs, or other means of digital advertising on the internet, any electronic communications network, and/or in any other digital format (collectively, "Digital Marketing"). IHG will have the right to control all aspects of any Digital Marketing, including those related to the Hotel. Licensee must engage a search engine optimization firm and search engine marketing firm as required by the Brand Standards. IHG will operate and maintain a website for IHG Portfolio Brand Hotels, which will include basic information related to the Hotel. Licensee further acknowledges that the www.ihg.com domain name is the sole property of IHG, and is one of the landing pages for other IHG Portfolio Brand Hotels. Licensee shall not, directly or indirectly, use, register, obtain or maintain a registration for any Internet domain name, address, social media or social network name or address, digital platform name, and/or any other designation that contains any Mark or any other mark that is, in IHG's sole opinion confusingly similar, to any of the Marks (including misspellings, abbreviations and initials). Upon IHG's request, Licensee must promptly take all steps to cancel or transfer to IHG or IHG's designee any such domain name, address, or other designation under its direct or indirect control, without payment of any compensation to Licensee. If IHG does permit Licensee to conduct any Digital Marketing, Licensee must comply with any policies, standards, guidelines, or content requirements established by IHG periodically and must immediately modify or delete any Digital Marketing that IHG determines, in its sole discretion, is not compliant with such policies, standards, guidelines, or requirements. IHG may withdraw its approval of any Digital Marketing at any time.

**7. Data, Records and Audits:****A. Data.**

As used in this paragraph 7.A., the following terms shall have the meanings set forth respectively after each:

"Excluded Personal Data" means any sensitive Personal Data (as defined by applicable Data Privacy Laws), government-assigned identifiers, health and/or medical data, and vehicle/parking data.

"Guest Data" means Personal Data of Hotel guests and other Hotel customers, including their reservations, purchases, preferences, and related information.

"IHG Marketing Data" means Personal Data in respect of any member of IHG's or its Affiliates' marketing or loyalty rewards program.

"IHG Personal Data" means IHG Marketing Data and any Personal Data, including Guest Data, collected by IHG or transmitted to IHG from Licensee.

“Licensee Personal Data” means any Personal Data collected by Licensee for which Licensee is an independent controller, Licensee employee Personal Data for which Licensee is the sole controller, and Excluded Personal Data for which Licensee is the sole controller. Licensee Personal Data does not include IHG Marketing Data.

(1) *Use of Personal Data.* “Personal Data” means that data, as defined by the Data Privacy Laws (as hereinafter defined), that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a natural living person or household. The term Personal Data also includes “*Personal Information*” as defined in applicable Data Privacy Laws. Personal Data is being disclosed only for the limited and specific purposes set forth in this License. Each party shall comply with its obligations and will provide the same level of privacy protection as required by the Data Privacy Laws and shall notify the other party if it makes a determination that it can no longer meet its obligations under the Data Privacy Laws with respect to its use of the other party’s Personal Data. Each party shall have the right to take reasonable and appropriate steps to help ensure that any Personal Data that is licensed by either party to the other is used in a manner that is consistent with each party’s respective obligations under the Data Privacy Laws and, upon written notice, may take reasonable and appropriate steps to stop and remediate unauthorized use of such licensed data. “Data Privacy Laws” means, to the extent applicable, the privacy and data protection laws and regulations applicable to the Personal Data about data subjects in the United States.

(2) *Use of Licensee Personal Data.* Licensee hereby grants to IHG and its affiliates a non-exclusive, worldwide, perpetual and royalty-free license to use (including the right to sublicense) the Licensee Personal Data (except for the Excluded Personal Data) free of charge, for the purposes of IHG’s performance of its obligations under this License, including, without limitation, the right to transfer Licensee Personal Data across national borders and to transfer Licensee Personal Data to third parties. IHG may retain a copy of Licensee Personal Data upon the termination or expiration of this License.

(3) *Use of IHG Personal Data.* Subject to the provisions of any applicable Data Privacy Laws, as between Licensee and IHG, all IHG Personal Data is the property of IHG, and IHG shall have the right to use and transfer such data on a worldwide basis during and after the License Term. During and after the License Term, Licensee shall have a non-exclusive, royalty-free license to use any Guest Data stored in the Hotel’s property management system only for purposes of operating the Hotel; provided, that: (i) Licensee shall have no right to use the IHG Marketing Data except for the purpose of operating the Loyalty Program during the License Term, and Licensee must remove, or IHG and its affiliates shall have the right, at Licensee’s cost, to remove all IHG Marketing Data from the Hotel’s property management system and other Hotel records upon expiration or termination of this License; (ii) Licensee shall retain, use and transmit (and procure that any agent or representative of Licensee that manages the Hotel after the termination of this License retain, use and transmit) such Guest Data only (a) in accordance with all Data Privacy Laws, and (b) to the extent permitted pursuant to any consents obtained from the relevant guests, employees or other individuals (the parties acknowledging that IHG provides no warranty or guaranty regarding any such consents); (iii) Licensee shall not sell or transfer the IHG Personal Data including, but not limited, to any affiliate or other hotel of Licensee and will not combine IHG Personal Data with the Personal Data of any other hotel brand, company or operator; and (iv) Licensee may not use IHG Personal Data for any marketing purpose. With respect to IHG Marketing Data, Licensee will act as IHG’s processor and is prohibited from (x) “selling” or “sharing” it (as defined by Data Privacy Laws), (y) processing it for any purposes other than as expressly permitted by IHG, including any commercial purposes, or outside of Licensee’s direct business relationship with IHG, or (z) combining it with Personal Data Licensee receives from others or that its collects from its own interactions with consumers. Licensee may not engage any subprocessors to process IHG Marketing Data.

(4) *Operating Data and Guest Data.* “Operating Data” includes all information concerning Gross Rooms Revenue and Gross Revenue, other revenues generated at the Hotel, occupancy rates, reservation data and other information required by IHG that may be useful (in IHG’s sole business judgment) in connection with marketing, reservations, guest loyalty and satisfaction and other functions, purposes or requirements of IHG and its affiliates. Operating Data and Guest Data may be used by IHG for its reasonable purposes, including without limitation for company and industry reporting purposes. Licensee agrees that any Operating Data and any Guest Data provided by it pursuant to this License, as well as any other reports, data, information or material provided to IHG pursuant to or in connection with this License, shall be true and correct and not misleading and shall comply with all Standards, policies and requirements of IHG with respect to privacy and security of Operating Data and Guest Data of the Hotel.

Licensee acknowledges and agrees that IHG may retrieve Operating Data, Guest Data, and Licensee Personal Data directly through the reservations system, via electronic transmission or automatic capture.

(5) *Data Privacy Laws.* Licensee will: (i) comply with all applicable Data Privacy Laws; (ii) comply with all of IHG's requirements regarding data protection contained in the Standards or otherwise; (iii) refrain from any action or inaction that could cause IHG or its Affiliates to breach any of the Data Protection Laws; (iv) do and execute, or arrange to be done and executed, each act, document and thing necessary or desirable to keep IHG in compliance with any of the Data Protection Laws; (v) reimburse IHG for any and all costs incurred in connection with the breach by Licensee of such Data Privacy Laws or Brand Standards; (vi) immediately report to IHG the theft or loss of Personal Data or Guest Data; and (vii) permit IHG and its Affiliates to use any data or other information each of them gathers concerning Licensee, its Affiliates and/or the Hotel in connection with the establishment and operation of Brand System Hotels by IHG and its Affiliates. Licensee will implement commercially reasonable physical, administrative, and technical security controls for its processing of IHG Personal Data that are appropriate to the context and the risk of the Personal Data being processed.

**B. Preparation and Maintenance of Records.**

Licensee will, in a manner and form satisfactory to IHG and utilizing accounting and reporting standards as reasonably required by IHG, prepare on a current basis (and preserve for no less than four years or IHG's record retention requirements, whichever is longer), complete and accurate records concerning Gross Rooms Revenue and all financial, operating, marketing and other aspects of the Hotel. Licensee will maintain an accounting system which fully and accurately reflects all financial aspects of the Hotel and its business. Such records shall include but not be limited to books of account, tax returns, governmental reports, register tapes, daily reports, and complete quarterly and annual financial statements (profit and loss statements, balance sheets and cash flow statements). The requirement to preserve records as set forth herein shall continue beyond the expiration or sooner termination of the License Term.

**C. Audit.**

IHG may require Licensee to have the Hotel's Gross Rooms Revenue and/or monies due hereunder computed and certified as accurate. During the License Term and for two years afterward, IHG and its authorized agents will have the right to verify information required under this License by requesting, receiving, inspecting and auditing, at all reasonable times, any and all records referred to above wherever they may be located (or elsewhere if reasonably requested by IHG). If any such inspection or audit discloses a deficiency in any payments due hereunder, and the deficiency in any payment is not offset by overpayment, Licensee shall immediately pay to IHG the deficiency and interest thereon as provided in paragraph 3.C. along with an audit fee of \$3,000, as such amount may be increased by IHG. No acceptance by IHG of any audit fee or deficiency payment shall be deemed to waive any right of IHG to pursue a default under the License by reason of such underpayment. If the audit does not result in a deficiency being assessed, then no audit fee will be assessed. If the audit discloses an overpayment, IHG will credit this overpayment, without interest, against future payments due from Licensee under this License or if this License has terminated promptly refund it, without interest to Licensee.

**D. Annual Financial Statements.**

If requested by IHG, Licensee will submit to IHG as soon as available but not later than 90 days after such request, and in a format as reasonably required by IHG, complete financial statements for the prior year. Licensee will certify them to be true and correct and to have been prepared in accordance with generally accepted accounting principles and the Uniform System, consistently applied, and any false certification will be a breach of this License.

**8. Indemnity and Insurance:**

**A. Indemnity.**

Licensee will indemnify IHG, its parents, subsidiaries and affiliated entities and each of their respective officers, directors, employees, agents, successors and assigns (collectively, the "Indemnitees") against, hold them harmless from, and promptly reimburse them for all payments of money (fines,

damages, legal fees, expenses, settlement amounts, judgments, etc.) by reason of any claim, demand, tax, penalty, or judicial or administrative investigation, arbitration action or proceeding whenever asserted or filed (even where negligence of any of the Indemnitees is alleged), regardless of whether any of the foregoing is reduced to judgment, arising from any claimed occurrence at or related to the Hotel or any act, error, neglect, omission or obligation of Licensee or anyone associated or affiliated with Licensee or the Hotel. Licensee agrees to give IHG written notice of any such judicial or administrative investigation or proceeding or any other event that could be the basis for a claim for indemnification by any Indemnitee within three days of Licensee's knowledge of it. At the election of IHG, Licensee will also defend IHG and/or the other Indemnitees against the indemnified matters. In any event, IHG will have the right, through counsel of its choice, to control any matter to the extent it could directly or indirectly affect IHG and/or any of the other Indemnitees. IHG will have the right, at any time it considers appropriate, to offer, order, consent or agree to settlements or take any other remedial or corrective actions it considers expedient with respect to any action, suit, proceeding, claim, demand, inquiry or investigation if, in IHG's sole judgment, there are reasonable grounds to do so. Under no circumstance will IHG or any of the other Indemnitees be required to seek recovery from third parties or otherwise mitigate its or their losses to maintain a claim against Licensee. Licensee agrees that any failure to pursue recovery from third parties or mitigate loss will in no way reduce the amounts recoverable by IHG or any of the other Indemnitees from Licensee. Licensee agrees to pay IHG all expenses, including attorneys' fees and court costs, incurred by IHG or any of the other Indemnitees, and their successors and assigns, to remedy any defaults of or enforce or defend itself or any rights under this License (including without limitation any claim, cross-claim or counter-claim brought by Licensee), to effect termination of this License or collect any amounts due under this License.

## **B. Insurance.**

During the License Term, Licensee will comply with all insurance requirements of any lease or mortgage covering the Hotel, and IHG's specifications for insurance as to the amount and type of coverage as may be reasonably specified by IHG from time to time in writing, and will in any event maintain on the Hotel as a minimum, the following insurance underwritten by a reputable insurer approved by IHG:

- (1) employer's liability with minimum limits of \$1,000,000 per occurrence;
- (2) worker's compensation insurance;
- (3) employment practices liability insurance (including coverage for harassment, discrimination and wrongful termination and covering defense and indemnity costs) with a limit of \$1,000,000 in the aggregate;
- (4) the holder of the liquor license will maintain liquor liability insurance with single limit coverage for personal and bodily injury and property damage of at least \$25,000,000 per occurrence naming IHG and its parents, subsidiaries and affiliates (and Licensee if applicable) as additional insureds; and
- (5) commercial general liability insurance (including coverage for product liability, completed operations, contractual liability, host liquor liability and fire legal liability) and business automobile liability insurance (including hired and non-owned liability) with single-limit coverage for personal and bodily injury and property damage of at least \$25,000,000 per occurrence, naming IHG and its parents, subsidiaries and affiliates as additional insureds. In connection with all construction at the Hotel during the License Term, Licensee will cause the general contractor to maintain commercial general liability insurance (including coverage for product liability, completed operations and contractual liability) and business automobile liability insurance (including hired and non-owned liability) with limits of at least \$25,000,000 per occurrence for personal and bodily injury and property damage underwritten with insurers approved by IHG. IHG and its parents, subsidiaries and affiliates will be named as additional insureds.
- (6) If multiple locations are insured on policies containing an aggregate limit, then the aggregate limit must apply on a per location aggregate basis.

- (7) Licensee will ensure the royalties, Services Contributions and any other sums payable to IHG are insured within the Licensee's business interruption insurance policy. The policy should insure against 'all risks' of physical loss or damage, and be endorsed to provide for payments to be made directly to IHG.
- (8) All policies must be written on a fully insured basis. Deductibles or self-insured retentions are subject to IHG's approval on an individual basis.

**C. Evidence of Insurance.**

At all times during the License Term, Licensee will furnish to IHG certificates of insurance evidencing the term and limits of coverage in force, names of applicable insurers and persons insured. Revised certificates of insurance shall be forwarded to IHG each time a change in coverage or insurance carrier is made by Licensee, and/or upon renewal of expired coverages. At IHG's option, Licensee may be required to provide certified insurance policy copies. If Licensee fails to procure or maintain the insurance coverages and limits set forth in paragraph 8.B., IHG will have the right and authority (but not the obligation) to procure such insurance at Licensee's cost, including any costs incurred by IHG for procurement and maintenance of such insurance.

**9. Transfer:**

**A. Transfer by IHG.**

IHG shall have the right to transfer or assign this License or any or all of IHG's rights, duties or obligations hereunder, in whole or in part, to any Person without requirement of prior notice to, or consent of, Licensee.

**B. Transfers by Licensee.**

Licensee represents, warrants and agrees (on behalf of itself and its owners, members, partners or stockholders of Licensee, if Licensee is a partnership, limited liability company, corporation or other legal entity (an "Entity")) that the ownership of Licensee set forth on Attachment "A" is current, complete and accurate. Without limiting IHG's rights or Licensee's obligations under this paragraph, upon the reasonable request of IHG, Licensee will submit to IHG evidence, in form and substance satisfactory to IHG, confirming the ownership information set forth on Attachment "A". Upon any Transfer under this Paragraph 10 or otherwise permitted by IHG, Licensee will provide a list of the names and addresses of any new owners, members, partners or stockholders of Licensee and update Attachment "A".

Licensee understands and acknowledges that the rights and duties set forth in this License are personal to Licensee, and that IHG has granted this License in reliance on the business skill, financial capacity, and personal character of Licensee (if Licensee is a natural person), and upon the owners, members, partners or stockholders of Licensee (if Licensee is an Entity). Accordingly, neither Licensee nor any immediate or remote successor to any part of Licensee's interest in this License, nor any Person which directly or indirectly owns an Equity Interest (as that term is defined below) in Licensee or this License, may sell, assign, transfer, convey, exchange, pledge, mortgage, encumber, lease or give away (each of the foregoing shall describe a "Transfer"), any direct or indirect interest in this License or Equity Interest in Licensee, except as expressly provided in this License. Any purported Transfer, by operation of law or otherwise, of any interest, collaterally or otherwise, in this License or any Equity Interest in Licensee not in accordance with the provisions of this License, shall be null and void and shall constitute a material breach of this License, for which IHG may terminate this License without opportunity to cure pursuant to paragraph 11. C of this License.

- (1) The term "Equity Interest" means all forms of ownership, membership, stock, partnership or any other form of equity interests in legal entities or property, both legal and beneficial, voting and non-voting, including stock interests, partnership interests, limited liability company interests, joint tenancy interests, leasehold interests, proprietorship interests, trust beneficiary interests, proxy interests, power-of-attorney interests, and all options, warrants, and any other forms of interest evidencing ownership or Control. References in this License to "publicly traded Equity Interests" shall mean any Equity Interests which are traded on any

securities exchange or are quoted in any publication or electronic reporting service maintained by the National Association of Securities Dealers, Inc. or any of its successors.

- (2) The term “Person” means an individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any national, provincial, state, county, tribal or municipal government or any bureau, office, department or agency thereof and any fiduciary acting in an agency capacity on behalf of any of the foregoing.
- (3) The term “Control” (and any form thereof, such as “controlling” or “controlled”) means, with respect to any Person, the possession, directly or indirectly, of the power or ability to direct or cause the direction of the management or policies of such Person.
- (4) If Licensee is an Entity, Licensee represents that the Equity Interests in Licensee are directly and (if applicable) indirectly owned, as shown in Attachment “A”.
- (5) In computing changes of Equity Interests pursuant to this paragraph 9, limited partners will not be distinguished from general partners, and IHG’s judgment will be final if there is any question as to the definition of Equity Interests or as to the computation of relative Equity Interests, including transfers of Equity Interests, the principal considerations being:
  - (a) direct and indirect power to exercise control over the affairs of Licensee;
  - (b) direct and indirect right to share in Licensee’s profits; and
  - (c) amounts directly or indirectly exposed at risk in Licensee’s business.

#### **C. Non-Control Transfers.**

If Licensee is in compliance with this License then, Licensee and/or any of its Owners may consummate any Transfer of a direct or indirect non-Controlling Equity Interest in Licensee, or effect a transaction that does not result in a direct or indirect change of Control in Licensee, without IHG’s consent, if: (a) Licensee notifies IHG in writing at least twenty (20) days before the Transfer’s effective date; (b) Licensee provides IHG with the identity of the proposed transferee and its owners, together with all other related information reasonably requested by IHG and the proposed transferee and its owners meet IHG’s then-current ownership criteria (including not being a Prohibited Person or a competitor of IHG); (c) such Transfer does not, whether in one transaction or a series of related transactions, result in the transfer or creation of a Controlling Equity Interest in Licensee; (d) such Transfer does not, whether in one transaction or a series of related transactions, result in the Transfer of all of Guarantor’s Equity Interests in Licensee; and (e) Licensee and its Owners sign those agreements that IHG shall have the right to require in order to implement this paragraph. In addition, at IHG’s request, Licensee and any such transferees shall execute (or re-execute) (x) a general release of any and all claims against IHG and its Affiliates, and their respective officers, directors, agents and employees and (y) an amendment to this License that updates the ownership information in Attachment “A”.

#### **D. Transfers for Estate Planning; Upon Death or Mental Incapacity.**

Licensee may, for estate planning, Transfer an Equity Interest in Licensee to a member of Licensee’s immediate family (i.e., a spouse, parent, sibling, son, daughter, niece or nephew), or to a trust for the benefit of such immediate family member, or to a Person in which Licensee owns and controls a majority of the Equity Interests and voting power; provided, however, that prior to such transfer the following requirements are met: (a) adequate provision acceptable to IHG is made for the management of the Hotel; (b) the obligations of Licensee under this License are satisfied pending the Transfer; (c) the transferee executes IHG’s then-current form of license agreement used to license Brand System Hotels for at least the unexpired portion of the Term (as determined by IHG), except that the fees charged thereunder shall be the same as those contained in this License (including any adjustments to such fees as may have been implemented from time to time in accordance with the terms of this License); (d) Licensee executes a termination agreement of this License on IHG’s then-current form (which shall contain a general release of any and all claims of Licensee (and any of Licensee’s Affiliates) against IHG and its Affiliates, and their respective officers, directors, managers, members, shareholders, agents and employees); and (e) each Guarantor acknowledges the Transfer and reaffirms its obligations under the Guaranty and, if required by IHG, Licensee provides additional guarantees, on IHG’s then-current form (which shall contain a general release of any and all claims against IHG and its Affiliates (including, IHG), and their respective officers,

directors, agents and employees), the performance of the new licensee's obligations under the newly executed license agreement.

Upon the death or mental incompetency of Licensee or any natural person with a Controlling Equity Interest in Licensee, such interest may be transferred in accordance with and subject to the terms of paragraph 9.F., provided that: (i) any such Transfer will be made within six (6) months of the date of death or mental incompetency, (ii) the obligations of Licensee under this License are satisfied pending the Transfer, and (iii) the Hotel will be continuously operated by Licensee or a management company approved by IHG.

#### **E. Registration of a Proposed Transfer of Equity Interests.**

Any public offering, private placement or other sale of securities in or by Licensee or the Hotel ("Securities") requires IHG's consent. All materials for the offer or sale of those Securities disseminated to any prospective purchaser thereof, filed with any governmental or quasigovernmental entity or intended for distribution to any form of media must be submitted to IHG for its review at least sixty (60) days before the date Licensee disseminates or distributes those materials or files them with any governmental agency, including any materials to be used in any offering exempt from registration under any securities laws. Licensee must submit to IHG a non-refundable Twenty-Five Thousand Dollar (\$25,000) processing fee with the offering materials and pay any additional costs IHG may incur in reviewing such materials, including reasonable attorneys' fees. Except as legally required to describe the Hotel in the offering materials, Licensee may not use any of the Marks or otherwise imply IHG's participation or that of its affiliates, officers, directors, members, managers and employees in such offering or its/their endorsement of any Securities or any Securities offering. IHG will have the right to approve any description of this License or Licensee's relationship with IHG, or any use of the Marks, contained in any prospectus, offering memorandum or other communications or materials used by Licensee in the sale or offer of any Securities. IHG's review of these documents will not in any way be considered IHG's agreement with any statements contained in those documents, including any projections, or IHG's acknowledgment or agreement that the documents comply with any applicable laws.

Licensee may not offer and/or sell any Securities unless Licensee clearly discloses to all purchasers and offerees in any and all Securities offer and/or sale materials that: (i) neither IHG, nor any of its affiliates, nor any of their respective officers, directors, managers, agents or employees, will in any way be deemed an issuer or underwriter of the Securities, as those terms are defined in applicable securities laws; (ii) neither IHG, its affiliates nor any of their respective officers, directors, managers, agents and employees will have any liability or responsibility for any financial statements, projections or other financial information contained in any prospectus, offering and solicitation material or similar written or oral communication; plays (or will play) any role in the offer or sale of Licensee's securities; has any responsibility for the creation or contents of any offering and/or solicitation materials (including any prospectus); in no fashion controls (or will control) Licensee's day-to-day business operations or any element or instrumentality thereof; that any individual or entity purchasing Securities must understand that its sole recourse for any alleged or actual impropriety relating to the offer and sale of such Securities and/or Licensee's operation of its business will be against Licensee (and/or, as may be applicable, the seller of such Securities); and, that in no event may such purchaser seek to impose liability arising from or related to such activity, directly or indirectly, upon any of IHG, its affiliates or any of their respective officers, directors, managers, agents or employees.

Licensee agrees that its obligations to indemnify and hold harmless IHG and the other indemnitees under paragraphs 8.A. and 13.K. of this License extends to and embraces liabilities arising from or relating to, directly or indirectly, any and every element of Licensee's offer and/or sale of Securities which Licensee may propose to or does engage in, including (without limitation) any statements, representations or warranties that Licensee and/or its affiliates may give to or receive from any proposed or actual purchaser of such Securities and/or any claim that Licensee, its affiliates and/or the officers, directors, managers, members, agents and employees of each of the foregoing, or Licensee's assignee, engaged in fraud, deceit, violation of securities laws or other illegality in connection with Licensee's proposed or actual offer and/or sale of Securities. As with all other indemnification obligations set forth in this License, this specific indemnification obligation will survive the termination or expiration of this License.

#### **F. Control Transfers.**



Notwithstanding any other term or provision of this License to the contrary, neither this License nor any right or interest herein is assignable or transferable by Licensee.

If Licensee (i) receives an offer to purchase or lease the Hotel or any portion thereof, (ii) desires to sell or lease the Hotel or any portion thereof, or (iii) wishes to convey the Hotel, Hotel site, or any interest in the Hotel or Licensee, Licensee shall give prompt written notice thereof to IHG, stating the identity of the prospective transferee, purchaser or lessee and the terms and conditions of the conveyance, including a copy of any proposed agreement and all other information with respect thereto, that IHG may reasonably require.

Any (i) transfer of Equity Interests in an Entity (other than a transfer expressly permitted hereunder) or (ii) transfer of all or a material part of the Hotel or Hotel site (if the Hotel or Hotel site is owned directly or indirectly by Licensee or by a natural person or Entity that owns any Equity Interest in Licensee), to a new owner shall constitute a change of ownership requiring submittal of an application for a new license.

- (1) IHG shall process such change of ownership application in accordance with IHG's then current procedures, criteria and requirements regarding fees, upgrading of the Hotel, financial capacity and guaranty requirements, curing of outstanding defaults, operational abilities and capabilities, prior business dealings, market feasibility and other factors deemed relevant by IHG. If such change of ownership application is approved by IHG, the new owner and IHG shall, upon termination of this License by IHG, enter into a new license agreement on IHG's then current form. The new license agreement shall contain IHG's then current terms (except for duration, which shall not be less than the remaining License Term but may be longer to reflect the new term agreed by IHG as part of the approval of the change in ownership of the Hotel), and if required by IHG, shall contain specified upgrading of the Hotel and other requirements.
- (2) Licensee must satisfy all of its accrued monetary obligations to IHG and its affiliates, including an amount equal to a reasonable estimate of the costs and fees not yet accumulated and/or invoiced, and will execute (on Licensee's behalf and on behalf of its affiliates), in a form prescribed by IHG, a general release of any and all claims against IHG and its affiliates, and their respective officers, directors, agents and employees.
- (3) If a change of ownership application for the proposed new owner is either (a) not submitted or (b) not approved by IHG, and the conveyance of the Hotel, Hotel site, or any Equity Interest in the Hotel or Equity Interest in Licensee to the proposed new owner occurs, then such transfer shall be considered an unauthorized transfer (an "Unauthorized Transfer"). If an Unauthorized Transfer occurs, it shall constitute a material breach of the License and an abandonment by Licensee of the franchise, and IHG shall be entitled to exercise all of its remedies under this License and applicable law, including, without limitation, its right to terminate this License pursuant to paragraph 11.C hereof.

#### **G. Transfer of Real Estate.**

If (i) the real property used in the operation of the Hotel is owned directly or indirectly by Licensee or by a natural person or an Entity that owns any Equity Interest in Licensee and (ii) Licensee or that natural person or Entity proposes to transfer all or a substantial part of such property to a third party, such transfer shall constitute a transfer under the provisions of this License requiring an application for a new license agreement, unless Licensee receives IHG's prior written consent for the transaction. Licensee may however, without IHG's consent, mortgage or otherwise grant a security interest in the real estate or other tangible assets of the Hotel (but specifically excluding this License or any right or interest herein) in connection with commercially reasonable financing for the Hotel with a third party bank or other commercial lending institution which is not a competitor of IHG or any of its parents, subsidiaries or affiliated entities. The selling, offering for sale, or establishment or registration of any condominium, cooperative, flat, timeshare, fractional interest, or interval ownership or regime or any similar type of ownership or regime relating to all or any part of the Hotel is prohibited.

#### **H. Management and Name of the Hotel.**

Licensee must at all times retain and exercise direct management control over the Hotel's business. Licensee shall not enter into any lease, management agreement, or other similar arrangement

for the operation of the Hotel or any part thereof (including, without limitation, retail, food and/or beverage service facilities) with any natural person or entity without the prior written consent of IHG in each instance. The approval by IHG of any such lease, management agreement or other similar arrangement for operation of the Hotel or any part thereof shall in no way relieve, reduce, mitigate or waive any of the responsibilities of Licensee under this License, it being understood that all such responsibilities shall at all times remain the obligation of Licensee. Licensee must provide IHG with all information requested by IHG from time to time regarding ownership, control and management of the Hotel and of Licensee.

Licensee must provide food and beverage service in the Hotel as required by the Standards. If Licensee, one of its affiliated entities or persons or a third party, operates a branded restaurant adjacent to or inside the Hotel to serve as the restaurant for the Hotel, in addition to all other requirements of this License, Licensee must ensure, regardless of any conflict between this License and the restaurant's brand standards or other obligations, that such affiliated entity or person or third party: (i) will operate the restaurant, with respect to guest life and safety standards, in compliance with the restaurant's brand standards, if any, and with all life and safety standards required by law or, if higher, by this License; (ii) will keep the restaurant open for meals during the hours required by IHG, (iii) will provide to Hotel guests all programs required by IHG, (iv) will allow Hotel guests eating in the restaurant or receiving room service from the restaurant to charge restaurant bills to their Hotel guest folio, (v) will not use or advertise any of the restaurant names, brands or trademarks together with the Marks unless specifically approved by IHG in writing, (vi) will honor at the restaurant all credit cards specified in the Standards and (vii) will include the restaurant in all guest satisfaction surveys and quality inspections and will allow IHG's inspection of the restaurant in accordance with this License and the Standards.

IHG has the exclusive right to name the Hotel, including, without limitation, the right to own and develop any trade name which would specifically and exclusively be used at the Hotel (a "Trade Name"). Licensee shall not change the name of the Hotel or the Trade Name (which names shall be determined by IHG in its sole discretion) without the express written consent of IHG and shall effectuate any change in the naming of the Hotel as may be required by IHG. IHG shall conduct search and clearance and maintain the trademark registration for the Trade Name and Licensee shall pay for all brand agency fees, search and clearance fees and maintenance costs and fees in connection with selecting, trademarking and creating a logo and identity for the Trade Name (the "Trade Name IP Costs").

**[Add for change of ownership licenses]** Licensee must honor existing guest contracts for guest rooms and/or meetings. If Licensee fails to honor an existing guest room contract and or meeting contract, Licensee must "walk" or relocate all impacted guests to another hotel acceptable to the guests and Licensee must pay for the entire difference in cost between the Hotel and the replacement hotel for the entire stay of the guests and/or meeting, including tax and any additional transportation and communication costs resulting from Licensee's failure to honor the existing guest contract.

#### **K. Employees of the Hotel.**

Licensee must ensure suitable, qualified individuals are employed at the Hotel in such number as is sufficient to staff all positions at the Hotel in accordance with the Standards. None of Licensee's employees will be considered to be IHG's employees. Licensee acknowledges and agrees that Licensee, or its management company engaged to operate the Hotel, as may be applicable, is the sole employer of the employees working at the Hotel and that IHG does not directly or indirectly control employment policies, discipline, recruitment or termination and that Licensee is solely responsible for all employment decisions, regardless of whether Licensee has received guidance with respect to such matters from IHG. Neither Licensee nor any of Licensee's employees whose compensation Licensee pays may in any way, directly or indirectly, expressly or by implication, be construed to be IHG's employee for any purpose, including but not limited to with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state or federal governmental agency. IHG will not have the power to hire or fire Licensee's employees. Licensee expressly agrees, and will never contend otherwise, that IHG's authority under this License to approve certain of Licensee's employees for qualification to perform certain functions for the Hotel does not directly or indirectly vest in IHG the power to hire, fire or control any such employee. Licensee further agrees that any such minimum requirements established by IHG are solely for the purpose of ensuring that the Hotel is at all times operated in accordance with the Standards and with the attributes of the Brand known to, and desired by, the consuming public and associated with the Marks. Moreover, Licensee agrees that any training provided by IHG for Licensee's employees is intended to impart to those employees, under Licensee's ultimate authority, the

various procedures, protocols, systems and operations of the Hotel and in no fashion reflects any employment relationship between IHG and such employees. Finally, should it ever be asserted that IHG is the employer, joint employer or co-employer of any of Licensee's employees in any private or government investigation, action, proceeding, arbitration or other setting, Licensee irrevocably agrees to assist IHG in defending said allegation, including, if necessary, appearing at any venue requested by IHG to testify on IHG's behalf and, as may be necessary, submitting itself to depositions, other appearances and/or preparing affidavits dismissive of any allegation that IHG is the employer, joint employer or co-employer of any of Licensee's employees.

## **10. Condemnation And Casualty:**

### **A. Condemnation.**

Licensee shall, at the earliest possible time, give IHG full notice of any proposed taking of all or any part of the Hotel by eminent domain. If IHG acknowledges that the Hotel or a substantial part thereof is to be taken, IHG will give due and prompt consideration, without any obligation by either party, to changing the site of the Hotel to a nearby location selected by Licensee, and approved by IHG, as promptly as reasonably possible and in any event within four months of the taking; provided, that Licensee has promptly filed an application to change the Location of the Hotel. Such application would not require payment to IHG of any additional franchise application fee. If the condemnation of all or any material part of the Hotel building occurs in the last two years of the License Term, the License shall automatically terminate effective upon the date of the taking. If the new location and Licensee's application are approved by IHG, Licensee shall promptly execute an addendum to this License substituting the new location, and Licensee shall open a new hotel at the new location in accordance with IHG's specifications within two years of the closing of the Hotel if the new hotel is a new development or within one year of the closing of the Hotel if the new hotel is a conversion of an existing building and the new hotel will thenceforth be deemed to be the Hotel licensed under this License. If a condemnation takes place and a new hotel is not, for whatever reason, going to become the Hotel under this License (or if it is reasonably evident to IHG that such will be the case), the License will terminate forthwith upon notice thereof by IHG to Licensee and Licensee shall have no liability for the liquidated damages set forth in paragraph 11.E. of this License.

### **B. Casualty.**

If the Hotel is damaged by fire or other casualty, Licensee will immediately notify IHG and expeditiously repair the damage; provided, however, if all or virtually all of the Hotel is destroyed by such fire or other casualty, either IHG or (unless caused by the intentional act of Licensee or its agent) Licensee may terminate this License by fifteen days prior notice to the other delivered within sixty days of the date of the fire or other casualty. If Licensee terminates this License in accordance with this provision, Licensee shall have no liability for the liquidated damages set forth in paragraph 11.E. of this License so long as neither Licensee nor any of its affiliates, principals, shareholders, members, partners or other owners, either directly or through another person or entity, develops, leases or operates the site as a hotel or other lodging or residential facility of any kind or sort for at least five years following the date of termination (or the originally scheduled termination date of this License, if earlier) other than pursuant to another license with IHG.

Unless the License is terminated properly pursuant to the foregoing provision, Licensee will close the Hotel if required by the extent of the damage or if otherwise required by IHG; will repair or rebuild the Hotel in accordance with IHG's Standards; will commence reconstruction within six months after the fire or other casualty; will expeditiously continue on an uninterrupted basis with such reconstruction; and will, if the Hotel was closed, reopen the Hotel for continuous business operations as soon as practicable (but in any event within twenty-four months after the fire or other casualty), giving IHG at least forty-five days advance notice of the date of reopening if the Hotel was closed. If the Hotel was closed, Licensee may not reopen the Hotel or promote or otherwise hold the Hotel out as a hotel in the Brand System unless and until IHG determines that the reconstruction is completed in accordance with IHG's then current Standards. If the Hotel is not required to be closed, all work to repair damage shall be conducted so as to minimize interference with the Hotel's operation and guests. If the damage is not repaired in accordance with this paragraph, the License will forthwith terminate upon notice thereof by IHG to Licensee and Licensee shall be responsible for full liquidated damages under paragraph 11.E. of this License. Notwithstanding anything else herein to the contrary, during the time the Hotel is closed, Licensee shall pay IHG a monthly royalty

of 2% of Gross Rooms Revenue based on the average monthly Gross Rooms Revenue for the preceding twelve months prior to the date of the fire or other casualty or, if the Hotel has not been in the Brand System for twelve months, based on the average monthly Gross Rooms Revenue for the period during which the Hotel has been in operation in the Brand System. Said payment shall be in lieu of all other Brand System fees under paragraph 3.B. of this License.

**C. No Extensions of Term.**

Nothing in this paragraph 10 will or is intended to extend the License Term.

**11. Termination:**

**A. License Term.**

The License Term is stated in Item 2 of Attachment "A". This License is not renewable, and Licensee acknowledges and agrees that this License confers upon Licensee absolutely no rights of license renewal following the expiration of the License Term. The parties recognize the difficulty of ascertaining damages to IHG resulting from premature termination of the License, and have provided for liquidated damages which represent their best estimate as to the damages arising from the circumstances in which they are provided. Before or on the expiration or earlier termination of this License, IHG may give notice that the Hotel is leaving the Brand System and take any other action related to guests, travel agents, suppliers and all other persons affected by such expiration or termination.

**B. Termination by IHG on Advance Notice.**

- (1) In accordance with notice from IHG to Licensee, this License will terminate (without any further notice unless required by law), provided that:
  - (a) the notice is mailed at least 30 days (or longer, if required by law) in advance of the termination date;
  - (b) the notice reasonably identifies one or more breaches of Licensee's obligations; and
  - (c) the breach(es) are not fully remedied within the time period specified in the notice.
- (2) If Licensee shall have engaged in a violation of this License, for which a notice of termination was given and termination failed to take effect because the default was remedied during the then preceding 12 months, the period given to remedy defaults will, if and to the extent permitted by applicable law, thereafter be 10 days instead of 30 (provided, however, if there have been two or more violations of the License in the preceding twelve months for which notices of termination were given, upon the next violation, if and to the extent permitted by applicable law, the License may be terminated by IHG immediately upon notice).
- (3) In any judicial proceeding in which the validity of termination is at issue, IHG will not be limited to the reasons set forth in any notice sent under this paragraph.
- (4) If Licensee fails to cure its breach of its obligations timely and in the manner required by IHG, IHG may in its sole discretion suspend the Hotel from access to the Brand System. IHG may also in its sole discretion remove the Hotel's listing from any website services and divert reservations previously made for the Hotel to other Brand System Hotels or IHG Portfolio Brand Hotels. Licensee must pay all costs arising from suspension from the Brand System. IHG's election to suspend the Hotel from said access rather than terminate this License will not: (i) constitute a waiver of any breach by Licensee or of any rights IHG otherwise has to terminate the License; (ii) actual or constructive termination of this License; (iii) constitute an abandonment by IHG of this License; or (iv) entitle Licensee to any compensation of any kind for any alleged losses Licensee might incur as a result of said suspension.

- (5) IHG's notice of termination or suspension of services shall not relieve Licensee of its obligations under this License.

**C. Immediate Termination by IHG.**

This License may be terminated by IHG immediately (or at the earliest time permitted by applicable law) if:

- (1)
  - (a) Licensee or any guarantor of Licensee's obligations hereunder shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors;
  - (b) Licensee or any such guarantor shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property;
  - (c) Licensee or any such guarantor shall take any corporate or other action to authorize any of the actions set forth above in paragraphs (a) or (b);
  - (d) any case, proceeding or other action against Licensee or any such guarantor shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action: (i) results in the entry of any order for relief against it which is not fully stayed within seven business days after the entry thereof or (ii) remains undismissed for a period of 45 days;
  - (e) an attachment remains on all or a substantial part of the Hotel or of Licensee's or any such guarantor's assets for 30 days; or
  - (f) Licensee or any such guarantor fails, within 60 days of the date of entry of a final judgment or tax lien against Licensee or a guarantor of this License in any amount exceeding \$50,000, to discharge, vacate or reverse the judgment or tax lien or to stay execution of it, or if appealed, to discharge the judgment within 30 days after a final decision in the appeal is rendered; or
- (2)
  - (a) Licensee voluntarily or involuntarily loses possession or the right to possession of all or a significant part of the Hotel, except as otherwise provided in paragraph 9;
  - (b) an Unauthorized Transfer, as that term is defined in paragraph 9.H.(6), occurs; or
  - (c) Licensee otherwise conducts itself in a manner than evidences an intent to abandon the franchise; or
- (3) Licensee, or any entity or individual having a direct or indirect ownership interest in it, contests in any court or proceeding IHG's ownership of the Brand System or any part of it, or the validity of any of the Marks or other trademarks, service marks or other intellectual property associated with any of IHG's businesses; or
- (4) A breach of paragraph 8 or paragraph 9 occurs; or
- (5) Licensee fails to continue to identify the Hotel to the public as a Brand System hotel, engages in any action that violates IHG's proprietary rights under paragraph 6 or ceases to operate the Hotel as a Brand System hotel; or

- (6) Any action is taken toward dissolving or liquidating Licensee or any guarantor hereunder, if it is an Entity, except for any such actions resulting from the death of a partner; or
- (7) Licensee (or any principal stockholder, owner, member or partner of Licensee as the case may be) is, or is discovered to have been, convicted of a felony (or any other offense if it is likely to adversely reflect upon or affect the Hotel, the Brand System or IHG in any way); or
- (8) Licensee maintains false books and records of account or submits false reports or information to IHG; or
- (9) Licensee knowingly fails to comply with the requirements of the License and/or the Standards on safety, security, or privacy for its guests at the Hotel or on the reputation of the management, employees or operation of the Hotel, and such failure may significantly adversely reflect upon or affect the Hotel, the Brand System or IHG, its parents, subsidiaries and/or affiliates in any way; or
- (10) A breach of paragraph 13.N. occurs; or
- (11) Licensee uses any of the Marks before being authorized to do so by IHG; or
- (12) Licensee uses any of the Marks in any manner prohibited, or not expressly authorized or permitted by this License; or
- (13) Licensee refuses to allow, or to cooperate with, IHG's inspection or audit of the Hotel following a reasonable attempt by IHG to schedule during normal business hours.

**D. De-Identification of Hotel Upon Termination.**

Upon expiration or other termination of this License, all rights granted under this License will immediately terminate and Licensee will take whatever action is necessary to assure that no use is made of any part of the Brand System at or in connection with the Hotel after the License Term ends. This will involve, among other things, returning to IHG the Standards and all other materials proprietary to IHG, ceasing the use of the Marks and any other of IHG's trademarks or service marks, physical changes of distinctive Brand System features of the Hotel, including, but not limited to, removal of the primary freestanding sign down to the structural steel, as well as removal of any brand-mandated artwork, signage, graphics, and paint schemes (whether on walls, ceilings or floors) and all other actions required to preclude any possibility of confusion on the part of the public and to ensure that the Hotel is no longer using all or any part of the Brand System or otherwise holding itself out to the public as a Brand System hotel. In addition, Licensee must cancel any fictitious, trade, or assumed name or equivalent registration that contains any Marks or any variations thereof, and Licensee must furnish IHG with evidence satisfactory to IHG of compliance with this obligation within thirty (30) days after termination or expiration of this License. Anything in this paragraph which is not done by Licensee within 30 days after expiration or termination of this License may be done at Licensee's expense by IHG or its agents who may enter upon the premises of the Hotel for that purpose.

**E. Payment of Liquidated Damages.**

The parties recognize the difficulty of ascertaining damages to IHG resulting from premature termination of this License, and have provided for liquidated damages, which liquidated damages represent the parties' best estimate as to the damages arising from the circumstances in which they are provided and which are only damages for the premature termination of this License, and not as a penalty or as damages for breaching this License or in lieu of any other payment. If the License is terminated pursuant to paragraphs 11.B. or 11.C. above, Licensee will promptly pay IHG, as liquidated damages, a lump sum equal to the total amounts required under paragraphs 3.B.(3) through 3.B.(6) during the 60 calendar months of operation preceding the termination, or such shorter period as equals the unexpired License Term at the time of termination, or, if the Hotel has not been in operation in the Brand System for 60 months, the greater of:

- (1) 60 times the monthly average of such amounts for the period during which the Hotel has been in operation in the Brand System, or
- (2) 60 times such amounts as are due for the one month preceding such termination.

IHG and Licensee acknowledge and agree that it would be difficult to determine the injury caused to IHG by termination of this License. IHG and Licensee therefore intend and agree the above liquidated damages calculation to be a reasonable estimate of IHG's probable loss and not a penalty or in lieu of any other payment.

**12. Relationship Of Parties:**

**A. No Agency Relationship.**

Licensee is an independent contractor. Neither party is the legal representative nor agent of, or has the power to obligate (or has the right to direct or supervise the daily affairs of) the other for any purpose whatsoever. IHG and Licensee expressly acknowledge that the relationship intended by them is a business relationship based entirely on and circumscribed by the express provisions of this License and that no partnership, joint venture, agency, fiduciary or employment relationship is intended or created by reason of this License. Licensee acknowledges and agrees, and will never contend otherwise, that Licensee alone will exercise day-to-day control over all operations, activities and elements of Licensee and the Hotel and that under no circumstance shall IHG do so or be deemed to do so. Licensee further acknowledges and agrees, and will never contend otherwise, that the various requirements, restrictions, prohibitions, specifications and procedures of the Brand System which Licensee is required to comply with under this License, whether set forth in the Standards or otherwise, do not directly or indirectly constitute, suggest, infer or imply that IHG controls any aspect or element of the day-to-day operations of Licensee or the Hotel, which Licensee alone controls, but only constitute standards Licensee must adhere to when exercising its control of the day-to-day operations of Licensee and the Hotel.

**B. Licensee's Notices to Public Concerning Independent Status.**

Licensee will take such steps as are necessary and such steps as IHG may from time to time reasonably request to minimize the chance of a claim being made against IHG for anything that occurs at the Hotel or for acts, omissions or obligations of Licensee or anyone associated or affiliated with Licensee or the Hotel. Such steps may, for example, include giving notice in guest rooms, public rooms and advertisements and on business forms and stationery, etc., making clear to the public that IHG is not the owner or operator of the Hotel and is not accountable for what happens at the Hotel. Unless required by law, Licensee will not use IHG's name, the Marks or any other trademarks, service marks or other intellectual property owned or licensed by IHG or any of its affiliates or any similar words in its corporate, partnership, entity or trade name, nor authorize or permit such use by anyone else. Licensee will not use IHG's name, the Marks or any other trademarks, service marks or other intellectual property owned or licensed by IHG or any of its affiliates to incur any obligation or indebtedness on behalf of IHG.

Licensee shall not register IHG's name, the Marks or any other trademarks, service marks or other intellectual property owned or licensed by IHG or any of its affiliates as part of any internet domain name or Uniform Resource Locator (URL), and may not display or use any of the Marks or other intellectual property rights related to the Brand System in connection with any web site. Licensee shall not promote, maintain, implement or be responsible for any web site in connection with the licensed Hotel without the prior written approval of IHG, and if approved by IHG, any such web site shall comply with all of IHG's web site requirements as set forth in the Standards or otherwise.

**13. Miscellaneous:**

**A. Non-Exclusive Remedies; Severability and Interpretation.**

The remedies provided in this License are not exclusive. In the event that all or any part of a provision of this License is held to be unenforceable, void or voidable as being contrary to the law or public policy of the United States or any other jurisdiction entitled to exercise authority hereunder, the affected provision of this License will be curtailed and limited only to the extent necessary to bring it within the requirement of Applicable Law; the court may declare a reasonable modification of this License (but not any of its payment provisions) and the parties agree to be bound by and perform this License as so modified; and all remaining terms and provisions shall nevertheless continue in full force and effect, unless deletion of the subject term(s) or provision(s) is deemed unenforceable, void or voidable, impairs the

consideration for this License in a manner which frustrates the purpose of the parties or makes performance commercially impracticable. In the event any term or provision of this License requires interpretation, such interpretation shall be based on the reasonable intention of the parties in the context of this transaction without interpreting any term or provision in favor of, or against, any party hereto by reason of the draftsmanship of the party or its position relative to the other party. Any action or proceeding to resolve a dispute shall be conducted on an individual basis, and not as part of a consolidated, common, representative, group, joint or class action.

**B. (1) Binding Effect, Consent to Jurisdiction and Forum Selection, Choice of Law.** This License shall become valid when executed and accepted by IHG in Atlanta, Georgia. It shall be deemed made and entered into in the State of Georgia. This License, all relations between the parties and, any and all disputes between the parties (and any of their respective affiliates, and/or owners, members, officers, directors or managers of each of the foregoing), whether based on contract, tort, statute or any other basis, shall be governed and construed under, and in accordance with, the laws and decisions (except any conflicts of law provisions) of the State of Georgia. In entering into this License, Licensee acknowledges that it has sought, voluntarily accepted and become associated with IHG, which is headquartered in Atlanta, Georgia. Licensee hereby expressly and irrevocably submits itself to the non-exclusive jurisdiction of the U.S. District Court for the Northern District of Georgia, Atlanta Division and the State and Superior Courts of DeKalb County, Georgia for the purpose of any and all disputes. Should Licensee initiate litigation against IHG, its parents, subsidiaries or one of its affiliated entities (a "Licensee Action"), Licensee must bring such Licensee Action in the U.S. District Court for the Northern District of Georgia, Atlanta Division or the State and Superior Courts of DeKalb County, Georgia, which shall be the sole and exclusive forums for any Licensee Action whether based on contract, tort, statute or any other basis; provided, however, the foregoing will not constitute a waiver of any of Licensee's rights under any applicable franchise law of the state in which the Hotel is located. Notwithstanding the foregoing, IHG shall be entitled to seek injunctive relief in the federal or state courts either of Georgia or of the state of the Hotel's Location or of IHG's principal place of business.

**(2) No Jury Trials.** TO THE EXTENT EITHER IHG OR LICENSEE INITIATES LITIGATION RELATING TO THIS LICENSE OR ANY MATTER RELATING TO THEIR RELATIONSHIP, IHG AND LICENSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RIGHTS TO A TRIAL BY JURY. THIS WAIVER WILL APPLY TO ALL CAUSES OF ACTION THAT ARE OR MIGHT BE INCLUDED IN SUCH ACTION, INCLUDING CLAIMS RELATED TO THE ENFORCEMENT OR INTERPRETATION OF THIS LICENSE, ALLEGATIONS OF STATE OR FEDERAL STATUTORY VIOLATIONS, FRAUD, MISREPRESENTATION, OR SIMILAR CAUSES OF ACTION, AND IN CONNECTION WITH ANY LEGAL ACTION INITIATED FOR THE RECOVERY OF DAMAGES BY EITHER PARTY.

**(3) No Punitive Damages.** IHG AND LICENSEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES IN ANY LITIGATION, ACTION, CLAIM, SUIT, ARBITRATION, MEDIATION OR PROCEEDING, AT LAW OR EQUITY, ARISING OUT OF, PERTAINING TO OR IN ANY WAY ASSOCIATED WITH THIS LICENSE, OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION WITH THIS LICENSE, AND THE PARTIES COVENANT NEVER TO ADVANCE OR PURSUE ANY SUCH CLAIM FOR PUNITIVE DAMAGES AND AGREE THAT, IN THE EVENT OF A DISPUTE, ONLY ACTUAL DAMAGES SHALL BE SOUGHT AS RELIEF TO THE EXCLUSION OF ALL OTHERS.

**(4) IHG's Right to Injunctive Relief.** Licensee explicitly affirms and recognizes the unique value and secondary meaning attached to the Brand System and the Marks. Accordingly, Licensee agrees that any noncompliance by it with the terms of this License, or any unauthorized or improper use of the Brand System or the Marks by Licensee, will cause irreparable damage to IHG. Licensee therefore agrees that if Licensee engages in this non-compliance, or unauthorized and/or improper use of the Brand System or Marks, during or after the period of this License, IHG will be entitled to both temporary and permanent injunctive relief against Licensee from any court of competent jurisdiction, in addition to all other remedies which IHG may have at law. Licensee consents to the entry of these temporary and permanent



injunctions, without IHG being required to prove the inadequacy of money damages as a remedy, without being required to post a bond and without waiving any other rights or remedies at law or in equity.

**(5) Licensee's Procurement of Consents.** Licensee represents and warrants that it has secured from each of its affiliates and the owners, members, partners, officers, directors or managers of Licensee and its affiliates who do not execute this License, his/her/its express consent and irrevocable confirmation of the provisions under this License, including, without limitation, this paragraph 13.B.

**C. Exclusive Benefit.**

This License is exclusively for the benefit of the parties hereto, and it may not give rise to liability to a third party. No agreement between IHG and anyone else is for the benefit of Licensee.

**D. Entire Agreement.**

This agreement and all exhibits to this agreement constitute the entire agreement between the parties related to the Hotel and supersede all previous negotiations between the parties pertaining to the licensing of the Hotel as a Brand System hotel. Nothing in this License or in any related agreement is intended, however, to disclaim any representations IHG made in the franchise disclosure document that IHG provided to Licensee. No change in this License will be valid unless in writing signed by both parties. No failure to require strict performance or to exercise any right or remedy hereunder will constitute a waiver of any rights hereunder or preclude requiring strict performance or exercising any right or remedy in the future.

**E. IHG Withholding Consent.**

- (1) In no event may Licensee make any claim for money damages based on any claim or assertion that IHG has unreasonably withheld, delayed and/or denied any consent or approval under this License. Licensee waives any such claim for damages. Licensee may not claim any such damages by way of setoff, counterclaim or defense. Licensee's sole remedy for such a claim will be an action or proceeding to enforce the subject License provision(s) for specific performance or for declaratory judgment.
- (2) IHG's consent, whenever required, may be withheld if any breach by Licensee exists under this License, without regard for any other basis for withholding such consent. Approvals and consents by IHG will not be effective unless evidenced by a writing duly executed on behalf of IHG.

**F. Guarantor(s).**

IHG shall require certain individuals or other entities (the "Guarantors") to guarantee all of Licensee's duties, requirements and obligations under this License, both financial and nonfinancial, by executing a guarantee substantially in the form attached hereto (the "Guaranty"). In the event of the death or bankruptcy of any Guarantor, IHG may require replacement guarantees sufficient in IHG's reasonable discretion to provide IHG with the same protection as IHG had originally bargained for. If Licensee is in breach or default under this License, IHG may proceed directly against each such individual and/or business entity Guarantor without first proceeding against Licensee and without proceeding against or naming in the action or proceeding any other such Guarantor. Licensee's obligations and those of each such Guarantor will be joint and several. Notice to or demand upon one such Guarantor will be considered notice to or demand upon Licensee and all such Guarantors. No notice or demand need be made to or upon all such Guarantors. The cessation of or release from liability of Licensee or any such Guarantor will not relieve Licensee or any other Guarantor, as applicable, from liability under this License, except to the extent that the breach or default has been remedied or money owed has been paid.

**G. Notices.**

Notices will be effective hereunder when and only when they are in writing and delivered personally or mailed by Federal Express or comparable overnight or express delivery service or by certified mail to

the appropriate party at its address (in the case of IHG, to the address stated in Item 7 of Attachment “A”; and in the case of Licensee, to the address stated in Item 8 of Attachment “A”) or to such person and at such address as may subsequently be designated by Licensee or IHG to the other. IHG may provide Licensee with electronic delivery of routine information, invoices, Brand Standards and other Brand System requirements and programs. IHG and Licensee will cooperate with each other to adapt to new technologies that may be available for the transmission of such information.

#### **H. Authority.**

Licensee represents and warrants to IHG that the entities and persons signing this License on behalf of Licensee are duly authorized to do so and to bind Licensee to enter into and perform this License. Licensee further represents and warrants to IHG that Licensee and the entities and persons signing this License on behalf of Licensee have obtained all necessary approvals and that their execution, delivery and performance of this License will not violate, create a default under or breach any charter, bylaws, agreement or other contract, license, permit, order or decree to which they are a party or to which they are subject or to which the Hotel is subject. If Licensee has not already done so prior to the execution of this License, Licensee agrees to submit to IHG by the date specified by IHG all of the documents and information that IHG required or requested in the license application and in connection with the licensing process. Licensee acknowledges that its breach of the representations and warranties in this paragraph; its failure to comply with IHG’s requirements for the submission of information and documents; or any omission or misrepresentation of any material fact in the information or documents submitted to IHG in connection with the license application and/or the licensing process will constitute a material breach of Licensee’s obligations under this License.

#### **I. General Release and Covenant Not to Sue.**

Licensee and its respective heirs, representatives, successors and assigns, hereby release, remise and forever discharge IHG and its parents, subsidiaries and affiliates and their directors, employees, agents, successors and assigns from any and all claims, whether known or unknown, of any kind or nature, absolute or contingent, if any there be, at law or in equity, from the beginning of time to, and including, the date of IHG’s execution of this License, and Licensee and its respective heirs, representatives, successors and assigns do hereby covenant and agree that they will not institute any suit or action at law or otherwise against IHG, directly or indirectly relating to any claim released hereby by Licensee; provided, however, that nothing contained in this release is intended to disclaim or require Licensee to waive reliance on any representation that IHG made in the Franchise Disclosure Document that it provided to Licensee. This release and covenant not to sue shall survive the termination of this License. Licensee shall take whatever steps are necessary or appropriate to carry out the terms of this release and covenant not to sue upon IHG’s request.

#### **J. Performance of the Work; Termination Prior to Authorization to Use Brand System.**

Licensee agrees to perform the construction, upgrading and renovation work, including, without limitation, the purchase of furniture, fixtures and equipment set forth on Attachment “B” attached hereto and incorporated herein by reference (the “Work”). Licensee acknowledges that its agreement to perform the Work is an essential element of the consideration relied upon by IHG in entering into the License and agrees that Licensee may be authorized, in IHG’s sole judgment, to use the Brand System at the Hotel prior to completion of the Work, but only during such time as Licensee is actively meeting its performance obligations in full compliance with the requirements of Attachment “B” of this License. Licensee shall not commence its operation of the Brand System, or any part thereof, at the Hotel unless and until it receives IHG’s written authorization to do so. Licensee’s failure to perform the Work in accordance with IHG’s requirements and specifications (including the progress, milestone, completion and other dates specified in Attachment “B” of this License) shall constitute a material breach of Licensee’s obligations under this License.

In order to complete the Work and as needed for any periodic renovations throughout the Term, Licensee will retain a qualified architect and interior designers and, based on the nature of the project, IHG may require that Licensee retain other specialty consultants. Licensee must obtain IHG’s prior written consent before retaining or engaging any architect, interior designer for the Hotel, interior designer for any food and beverage outlet at the Hotel, and the project manager or general contractor, which consent shall not be unreasonably withheld. Such consultants shall be qualified to provide the services required for the

Hotel project and maintain appropriate insurance coverages. IHG is not liable for the unsatisfactory performance of any such consultants or other persons retained by Licensee.

Licensee and IHG must mutually agree upon a brand agency to support the process for development the Hotel's positioning and concept, which serves as the foundation for the identity and operation of the Hotel in the market. Licensee will pay IHG a Brand Design and Concept Fee as outlined on Attachment "A". Licensee and IHG must also mutually agree upon a brand agency to support the Restaurant + Bar concept development process. In the event Licensee retains IHG's design and brand team to develop the Restaurant + Bar concept, Licensee will pay the Restaurant + Bar Concept Development Fee as outlined on Attachment "A".

In the event IHG terminates this License due to Licensee's breach of any of its obligations under the License prior to the time that Licensee is authorized to use the Brand System at the Hotel, Licensee shall pay to IHG, as liquidated damages, a lump sum equal to the monthly average of all amounts that would have been payable to IHG under paragraphs 3.B.(3) through 3.B.(6) of this License assuming the Hotel had collected Gross Rooms Revenue based on the average daily revenue per available room for all "mature hotels" in the Brand System in the United States for the previous twelve (12) months, as determined by IHG, multiplied by the greater of (a) six (6) or (b) the number of full and partial months from the Effective Date to the termination date of this License. For purposes of this paragraph, "mature hotels" means hotels which were open for two full years or longer; were franchised or, alternatively, owned and/or managed by IHG or one of its affiliates; and, were not in financial or quality default of their applicable franchise or management agreement obligations as of the applicable date.

IHG and Licensee acknowledge and agree that it would be difficult to determine the injury caused to IHG by termination of this License. IHG and Licensee therefore intend and agree the above liquidated damages calculations to be a reasonable pre-estimate of IHG's probable loss and not as a penalty or in lieu of any other payment.

**K. Reimbursement of Expenses.**

Licensee agrees to pay IHG all expenses, including reasonable attorneys' fees and court costs, incurred by IHG, its parents, subsidiaries, affiliated entities, and their successors and assigns to remedy any defaults of or enforce or defend itself or any rights under this License (including without limitation any claim, cross-claim or counter-claim brought by Licensee), effect termination of this License or collect any amounts due under this License.

**L. Business Judgment.**

IHG and Licensee recognize and agree, and any mediator or judge is affirmatively advised, that certain provisions of this License describe the right of IHG to take (or refrain from taking) certain actions in the exercise of its business judgment as to the long-term overall interests of the Brand System, and/or upon its determination that the change was adopted in good faith and is consistent with the long-term overall interests of the Brand System. Where such judgment has been exercised by IHG, neither a mediator, nor a judge, nor any trier of fact, shall substitute his, her or their judgment for the judgment so exercised by IHG.

**M. Descriptive Headings.**

The descriptive headings in this License are for convenience only and shall not control or affect the meaning or construction of any provision in this License. The parties agree that when the terms "include" or "includes" are used in this License, those terms shall be understood to mean "including, but not limited to" in each instance.

**N. Anti-Terrorism, Anti-Bribery and Trade Sanctions Compliance.**

- (1) Licensee represents, warrants and covenants that neither it nor any entity or individual having a direct or indirect ownership interest in it, any guarantor of Licensee's obligations under this License ("**Guarantor**") nor any of Licensee's affiliates nor any officer, director, employee, member, partner or shareholder of any of the foregoing, has been or is now:

- (a) directly or indirectly owned or controlled by the government of any nation subject to trade sanctions or embargoes imposed by any of the Sanctioning Bodies (as defined below in sub-paragraph (4));
  - (b) acting on behalf of any government of any nation subject to the trade sanctions or embargoes imposed by any of the Sanctioning Bodies;
  - (c) identified by any of the Sanctioning Bodies as a Prohibited Person; and
  - (d) in violation of any applicable law relating to anti-money laundering, anti-terrorism, anti-bribery, trade sanctions or embargoes, narcotics, illegal immigration or human trafficking, including without limitation, the UK Bribery Act 2010, the US Foreign Corrupt Practices Act, the US Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (US Patriot Act) and related regulations and executive orders related to the foregoing laws (the “**Relevant Laws**”).
- (2) Licensee further warrants and represents and covenants that:
- (a) Licensee, any Guarantor and any Person having a direct or indirect ownership in Licensee will comply with the Relevant Laws; and
  - (b) all individuals authorized to represent Licensee in carrying out its obligations under this License are eligible under applicable United States immigration laws to travel to the United States for training or any other purpose in carrying out Licensee’s obligations under this License.
- (3) For the purposes of this paragraph 13.N., “**Person**” means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any national, provincial, state, county or municipal government or any bureau, office, department or agency thereof and any fiduciary acting in an agency capacity on behalf of any of the foregoing. “**Prohibited Person**” means any person identified by Her Majesty’s Treasury of the United Kingdom (“**UK**”), by the Office of Foreign Assets Control of the Department of the Treasury of the United States (“**US**”) as a “specially designated national” or otherwise subject to sanction by the European Union (“**EU**”) and/or the United Nations (“**UN**”), (collectively, “**Sanctioning Bodies**”), or any other Person with whom IHG, or any of its affiliated companies, is otherwise prohibited from transacting business.

**O. Capital Reserve; Capital Reinvestment and Renovation Cycles.**

(1) IHG may require Licensee to establish a capital reserve (“Capital Reserve”) in an amount not in excess of 5% of Gross Revenue annually to be used for capital expenditures and the upgrading of the Hotel, including the renovation of public areas, guest rooms, guest room corridors, and the replacement of FF&E. IHG shall give Licensee no less than ninety (90) days’ notice of imposing such requirement to establish a Capital Reserve, as the same may be established or changed by IHG from time to time. In such event, Licensee must establish a Capital Reserve account funded monthly in a bank selected by Licensee. Licensee shall make expenditures from such account for the purposes hereinbefore specified in accordance with IHG’s requirements. Licensee acknowledges that the Capital Reserve may not be sufficient to maintain the Hotel as a first-class facility in accordance with the Standards, and Licensee shall promptly provide any necessary additional funds to meet IHG’s product quality and consumer quality requirements; as well as Licensee’s renovation obligations specified herein.

(2) Throughout the License Term, regardless of whether IHG has required Licensee to establish a Capital Reserve, Licensee must complete significant renovations of the Hotel, including, but not limited to, the public areas, guest rooms, and guest room corridors in order to maintain the Hotel as a first-class facility. These mandatory renovations include: (a) replacing Soft Goods at least every seven (7) years after such Soft Goods were installed and (b) replacing Case Goods at least every fourteen (14) years after such Case Goods were installed; and, if necessary replacing such Soft Goods and Case Goods more frequently in order to (i) maintain compliance with the Standards or IHG’s quality and guest satisfaction programs; (ii) remove risk of injury to persons or property; or (iii) ensure compliance with all applicable laws.

(3) Licensee must fund all ordinary and extraordinary maintenance and repair, capital improvements and renovations of the Hotel.

- (4) For purposes of this paragraph 13.O. the following definitions apply:
- (a) **“Gross Revenue”** means all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation thereof, including without limitation room sales; food and beverage sales; telephone, fax and internet revenues; rental or other payments from lessees, subleases, concessionaires and others occupying or using space or rendering services at the Hotel (but not the gross receipts of such lessees, subleases or concessionaires); and the actual cash proceeds of business interruption, use, occupancy or similar insurance.
  - (b) **“Soft Goods”** means textile, fabric, vinyl and similar products used in finishing and decorating the Hotel, including its public areas, guest rooms, and guest room corridors, such as wall and floor coverings, window treatments, cornice or valance coverings, carpeting, bedspreads, lamps, lamp shades, artwork, decorative items, pictures, wall decorations, upholstery and all other unspecified items of the same class.
  - (c) **“Case Goods”** means furniture and fixtures used in the Hotel, including its public areas, guest rooms, and guest room corridors, such as cabinets, shelves, chests, armoires, chairs, beds, headboards, desks, tables, mirrors, lighting fixtures and all other unspecified items of the same class.
  - (d) **“FF&E”** means Case Goods, Soft Goods, signage, including exterior signage, and equipment (including telephone systems, printers, televisions, vending machines and computer hardware) as well as other improvements and personal property used in the operation of the Hotel except for those items which are generally classified as “operating supplies” or “operating equipment”.
- (5) Licensee shall inform IHG of the dates of installation of Soft Goods and Case Goods in the Hotel, which dates IHG shall be entitled to verify.
- (6) Licensee must submit its renovation plans for the Hotel to IHG for IHG’s review and approval prior to starting any renovations. Licensee shall not start any renovations until IHG has approved the scope of the plans and the plans’ compliance with the Standards.
- (7) IHG shall have the right to require Licensee to make renovations to the Hotel to conform the Hotel’s FF&E to the then-current Standards and brand design criteria.

**P. Counterparts.**

This License may be executed in any number of counterparts, each of which will be deemed an original and all of which constitute one and the same instrument. IHG and Licensee hereby acknowledge and agree that electronic signatures, facsimile signatures or signatures transmitted by electronic mail in “pdf” format shall be legal and binding and shall have the same full force and effect as delivery of an original signed counterpart.

**Q. Right of First Refusal.**

Notwithstanding anything else to the contrary in this License, if Licensee receives an offer for, and wishes to sell the Hotel (including all or a portion of the Hotel, or the right, in any form other than a bona fide debt instrument, to receive income from the Hotel), Licensee shall give IHG written notice along with a complete copy of the offer (“ROFR Notice”) within ten (10) days of its receipt and shall offer to sell the Hotel to IHG on the same terms and conditions as the offer; provided however, that if any portion of the consideration contemplated by the offer is in a form other than cash, Licensee shall agree to accept a cash payment of equivalent value, based on the market value of the non-cash consideration in Licensee’s hands, in lieu of any non-cash consideration. IHG shall notify Licensee, within 30 days of its actual receipt of such notice, if it intends to accept Licensee’s offer. Any acceptance of the offer by IHG shall be subject to compliance with any applicable laws and regulations which are a pre-condition to consummation of the

transaction. IHG's acceptance may provide for preparation of a definitive agreement consistent with the offer and acceptance; however, such definitive agreement shall not be a condition precedent to an effective agreement between IHG and Licensee. If IHG has not given notice to Licensee that it intends to accept the offer, Licensee may proceed to sell the Hotel on the same terms and conditions contained in the offer notified to IHG without regard to this Right of First Refusal, but only if such sale is consummated within 150 days from the date of Licensee's notice to IHG. If such sale is not consummated within such 150-day period or if the terms of such sale differ materially from the terms and conditions presented in the ROFR Notice, then Licensee shall be required to deliver another ROFR Notice and again follow the process set forth above. In the event that IHG waives this Right of First Refusal in accordance with the terms set forth herein, then the sale of the Hotel to a purchaser other than IHG shall be subject to paragraph 9.H.

**R. Management Company Requirement.**

Notwithstanding Paragraph 9.J. of this License, the Hotel shall at all times be operated by a management company acceptable to IHG. IHG shall have the right to approve any proposed management company and to approve any contract with respect to the operation of the Hotel, and such management company's policies and procedures must comply with the Standards and the requirements of this License. The management of the Hotel by an acceptable management company must be continuous and uninterrupted during the term of the License. Licensee shall be in default under this paragraph if any of the preceding conditions are not met. Notwithstanding that the management company must be acceptable to IHG, Licensee acknowledges and agrees that it is solely responsible for the selection, conduct and performance of the management of the Hotel and IHG has no responsibility or obligation in connection with such selection, conduct or performance. The management contract between Licensee and the management company must be acceptable to IHG and executed at least 180 days prior to the opening of the Hotel in the Brand System. If any approved management company stops operating the Hotel for the Licensee for any reason, Licensee must notify IHG immediately.

If there is a change in control of the management company or if the management company becomes a competitor of IHG (or an affiliate of a competitor) or a Prohibited Person (or an affiliate of a Prohibited Person), or if the management company becomes the principal operator for a competitor or if there is a material adverse change to the financial condition or operational capacity of the management company, Licensee will promptly notify IHG of any such event together with such additional information that IHG may reasonably request. Based on these changed circumstances, IHG may require Licensee to terminate its agreement with such management company and retain a replacement management company that will be subject to IHG's consent. After IHG receives such notice and any such additional information IHG reasonably requests, IHG will respond to Licensee within thirty (30) days. Furthermore, if Licensee's management company becomes unsuitable or unqualified to operate the Hotel as determined by IHG, in our sole discretion, or if the Hotel is not operated in compliance with IHG's guest satisfaction program, you may be required to retain a new Management Company that is acceptable to us within ninety (90) days.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this License, as of the date first stated above.

**LICENSEE:**

«EntityAllCaps»

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

Name: «AuthorizedSignee»

Title: «Signee'sTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

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

Name: Jenny Tidwell

Title: Vice President, Franchise Licensing and Compliance

**Electronic Signature Acknowledgement:**

This License may, at IHG's option, be executed via electronic signature. In such event, Licensee acknowledges that conducting this transaction using electronic means is optional and is not a condition to executing this License. By electronically signing this paragraph, Licensee agrees to conduct this transaction using electronic means, which includes the transmittal of electronic communications and the execution of the agreement using an electronic signature. Licensee further agrees that the parties' electronic signatures are valid and create a binding and enforceable agreement. If Licensee does not agree to conduct the transaction electronically and does not agree to execute the agreement using an electronic signature, Licensee must promptly notify IHG and IHG will provide Licensee with a non-electronic License.

**Licensee Signature (or Initials):** \_\_\_\_\_

**Attachment “A”**

1. <u>Location</u> :	[insert address for approved location for the site of the Hotel]
Fee Owner:	[Insert Fee Owner name and address]
Leases (parties, terms, etc.) if any:	<p>[For Hotel Lease, add: (i) Fee Owner is the sole Location Owner of the Hotel, (ii) the Hotel is leased to Licensee under a lease between Licensee and Fee Owner; (iii) Licensee has all rights and authority relating to the Hotel for the performance of Licensee’s obligations under this License. If the lease provides for Fee Owner to perform any of Licensee’s obligations under this License, Licensee will cause Fee Owner to perform such obligations as required under this License. The existence of the lease and its terms that require Fee Owner to perform Licensee’s obligations are not an assignment of such obligations to Fee Owner and do not relieve Licensee of any obligation under this License. The lease will not limit or restrict IHG’s rights or remedies under this License in any way.]</p> <p>[If the Hotel or Location is not subject to a lease or ground lease add: ‘Not applicable’.]</p>
Separate parcels for signs:	
Number of Guest Rooms (including Suites)	
Hotel Facilities and Services:	<p>Restaurants and lounges (number, seating capacity, names and description):</p> <p>Gift shop:</p> <p>Other concessions and shops:</p> <p>Parking facilities (number of spaces, description):</p> <p>Swimming pool:</p> <p>Other facilities and services:</p>
2. <u>License Term</u> :	<p>The License Term begins on the Effective Date and will expire without notice [twenty years from the date of opening of the entire Hotel in the Brand System for a new development], [ten years from the date of opening of the entire Hotel in the Brand System for a conversion], [on the tenth (10<sup>th</sup>) anniversary of the Effective Date for a change of ownership or a re-licensing] subject to earlier termination as set forth in paragraph 11 of the License.</p>
3. <u>Application Fee</u> :	



<p>4. <u>Royalty Fee:</u></p>	<p>6% of Gross Rooms Revenue and 1% of Gross Food and Beverage Sales</p> <p>“Gross Rooms Revenue” or “GRR” means the gross revenue and receipts of every kind attributable to or payable for rental of guest rooms at the Hotel including, but not limited to, no-show revenue, early departure or late check-out fees, attrition or cancellation fees, any mandatory fee or surcharge charged to all or substantially all guests renting a room (including, but not limited to, resort fees, although inclusion of such fees or surcharges does not constitute approval by IHG of such fees and surcharges, which may be limited or prohibited) any awards, judgments or settlements representing payment for loss of room sales and any other revenues allocable to rooms revenue under the Uniform System of Accounting for the Lodging Industry, Eleventh Revised Edition, 2014, as published by the American Hotel &amp; Lodging Association Educational Institute, or any later edition, revision, or replacement that may be designated by IHG (the “Uniform System”). No deductions shall be allowed for charge backs, credit card service charges, commissions, uncollectible amounts or similar items. Charges for any item, including, but not limited to, telephone charges, entertainment, the cost of any food and beverage items, room service or other items provided or made available to a guest as an incident of a guest room/suite rental shall not be considered a deduction from Gross Rooms Revenue. Gross Rooms Revenue excludes sales tax, value added tax, or similar taxes on such revenues and receipts.</p> <p>“Gross Food and Beverage Sales” means all revenues and receipts of every kind that accrue from the sale of food and beverages associated with the Hotel, whether inside or outside the Hotel. Gross Food and Beverage Sales includes: (i) revenues from restaurants, bars, lounges, snack shops, and other food outlets (including within any health club, spa or golf course), room service, honor bar, or other food and beverage services provided in guestrooms, banquets, meetings, conventions or other catered events; (ii) revenues and commissions derived from supplying audiovisual equipment and services (whether the equipment is owned or rented by Licensee), rentals of public meeting rooms, cover charges, service charges and other sales or rentals of services, products, and equipment allocable to food and beverage revenues under the Uniform System, and supplying equipment and services (whether the equipment is owned or rented by Licensee) for connecting public meeting rooms to the internet; (iii) attrition or cancellation fees collected from unfulfilled reservations for food, beverage, and other services; (iv) the amount of all lost sales due to the non-availability of food, beverage, and other services, whether or not Licensee receives business interruption insurance proceeds; and (v) any awards, judgments or settlements representing payment for loss of food and beverage sales. No deductions shall be allowed for charge backs, credit card service charges, commissions, uncollectible amounts or similar items. Gross Food and Beverage Sales excludes sales tax, value added tax, or similar taxes on such food, beverage and other services.</p>
<p>5. <u>IHG System Fund Contributions:</u></p> <p>Services Contribution:</p>	<p>3% of Gross Rooms Revenue</p>

Initial Loyalty Program Marketing Contribution:	A one-time Initial Loyalty Program Marketing Contribution of \$10.00 per room payable at the same time as the first royalty payment
Loyalty Program Contribution:	4.55% of GRR on qualifying meeting rates and 1.365% of GRR on qualifying meeting revenue.
6. <u>Technology Services Fee:</u>	\$17.06 for each guest room at the Hotel
7. <u>IHG Notice Address:</u>	Holiday Hospitality Franchising, LLC Three Ravinia Drive, Suite 100 Atlanta, Georgia 30346 Attn: Vice President, Franchise Licensing and Compliance
8. <u>Licensee Notice Address:</u>	[Insert Licensee Notice Address]
9. <u>Kimpton Design &amp; Concept Fee:</u>	\$75,000 - \$150,000; the first 25% is due upon execution of this License and the remainder is payable in ___ equal monthly installments
10. <u>Kimpton Restaurant + Bar Design &amp; Concept Fee:</u>	[If elected] \$75,000 - \$150,000; the first 25% is due upon execution of this License and the remainder is payable in ___ equal monthly installments. Additional Restaurant and Bar Opening Support can be provided as agreed upon and for an additional fee.
11. <u>Kimpton Openings and Renovations Program Fee:</u>	\$20,000 - \$35,000 plus trainer expenses. Payment is due 60 days prior to the opening of the Hotel.

**Ownership of Licensee**

[Insert Licensee Ownership Chart]

**[FOR NEW DEVELOPMENT HOTELS ONLY]**

**ATTACHMENT "B"**

**THE WORK**

**A. BEFORE CONSTRUCTION BEGINS.**

Before starting construction of the Hotel (including any restaurants, bars or other components thereof), Licensee must (at Licensee's sole expense):

1. Submit to IHG evidence of insurance as required under this License.
2. Submit to IHG evidence that Licensee is entitled to possession of the premises on which the Hotel will be located, which documents shall be subject to IHG's approval.
3. Obtain any and all approvals, permits or licenses required for construction to begin. Submit a copy of the general building permit to IHG when acquired.
4. Submit to IHG the proposed construction schedule. The schedule should include critical path milestones and trade subdivisions in standard industry format.
5. Submit "Preliminary Plans" to IHG, for IHG's review and approval, before starting construction and in no event later than **[Insert DATE which should be at least two hundred and seventy (270) days before Ground Break]**, or such other date as IHG may agree with Licensee in writing. "Preliminary Plans" means site plans, building floor plans (all floor levels), enlarged guest room plans for all room types and exterior elevations with a color rendering as prepared by a qualified, licensed architect with knowledge of commercial building design and construction, including spatial relationships, and general quality of building systems, elements, products and materials, as is necessary to describe adequately the design of the Hotel. Licensee must also submit, for IHG's review and approval, the Pre-Design Requirements and Schematic Architectural Design and Programming pursuant to the Kimpton Review and Approval Policy.
6. Submit "Final Plans" to IHG, for IHG's review and approval, before final submittal to Licensee's local building authority and in no event later than **[Insert DATE which should be at least one hundred and eighty (180) days before Ground Break]**, or such other date as IHG may agree with Licensee in writing. "Final Plans" is also referred to as 100% Construction Documents and means final versions of construction documents used for permitting and associated specifications including architectural, civil, structural, mechanical, electrical, plumbing, fire protection, landscape, site plans with parking, all floorplans, exterior and interior elevations, enlarged plans, building sections, millwork detail and other specialty consultant design documents with such detail and containing such additional details and information as IHG may request. The Final Plans as submitted to IHG shall conform to then prevailing Standards, including the construction standards set forth in the Standards and address all revisions required by IHG's review and approval of the Preliminary Plans.
7. Submit to IHG a pre-construction disability compliance certification signed by an architect with professional experience applying the requirements of the Americans with Disabilities Act ("ADA") and the ADA Standards, in the form of Attachment "C" (the "ADA Certificate"). Such certification must confirm the qualifications of the architect and that the Final Plans, as designed, comply with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements.

8. Submit Preliminary Plans and Final Plans to IHG in Adobe Acrobat PDF format, in accordance with IHG's electronic submittal guidelines, as outlined on [www.ihgdesignconnect.com](http://www.ihgdesignconnect.com), along with hard copy samples for all finishes and fabrics. The Preliminary Plans, Final Plans and all other submittals required by IHG, including, without limitation schematics and a model room, must be completed in accordance with the Kimpton Review and Approval Policy. Any branding agencies engaged by Licensee for the design or concepting of the Hotel and/or restaurants or bars to be located at the Hotel must be approved by Kimpton in advance of any such engagement.
9. Preliminary Plans and Final Plans must be written in English. You must use architects and interior design firms with demonstrated luxury hospitality experience with a minimum of 3 to 5 completed projects in the past 5 years, and approved by IHG to design Brand System Hotels. Your design and construction team must attend a Design Immersion Session for training on the Brand System hallmarks, design philosophy and PIP/Plan Review process, before your architect and/or designer begins detailed construction and design plans. You must pay your travel, lodging and other miscellaneous expenses for these programs. Before your architect begins detailed construction plans, you must meet with your Openings Regional Director and submit preliminary plans to IHG for Plan Review comment. You, your architect and general contractor must also attend a kick-off meeting in Atlanta, Georgia, or other locations that IHG may designate. There are no fees for the kick-off meeting; however you must pay for your travel, lodging and miscellaneous expenses.

## **B. CONSTRUCTION.**

1. Construction shall not begin unless and until IHG has approved the Final Plans and IHG has received the properly executed pre-construction ADA Certificate from Licensee. Thereafter, no change shall be made to the Final Plans without the prior written consent of IHG. Notwithstanding the foregoing, after the Final Plans have been approved, if in the course of actual construction any change in the Final Plans occurs, Licensee shall notify IHG promptly, and in no event later than ten (10) days after Licensee becomes aware of or should have been aware of any such change.
2. Licensee must notify IHG when their contractor has mobilized on site and proceeded with site work.
3. Licensee must complete "Ground Break" of the Hotel by **[insert DATE]** and continuously construct and furnish the Hotel in accordance with the Final Plans and the Standards so that the Hotel opens in the Brand System by the Opening Deadline set forth in section B.9. below. "Ground Break" means the completion of the Hotel building foundation through ground-level or the completion of the finished ground floor slab. Licensee must provide photo documentation of Ground Break to IHG within one day thereafter.
4. Licensee must submit for IHG's review and approval any and all signage, shop drawings, guest room FF&E and Public Area FF&E plans and associated specifications as outlined in the submittal guidelines ("FF&E Specs") to IHG, as designed and prepared by a licensed or accredited design professional with commercial building design background, no later than thirty (30) days after Ground Break. Thereafter, no change shall be made to the FF&E Specs without the prior written consent of IHG. Notwithstanding the foregoing, after the FF&E Specs have been approved, if in the course of actual construction any change in the FF&E Specs occurs, Licensee shall notify IHG and submit changes, within ten (10) days of any such change, for IHG's review and approval.
5. Licensee must submit for IHG's review and approval any and all Life Safety shop drawings as outlined in the submittal guidelines (Fire Alarm and Sprinkler plans), as designed and prepared by a professional sub-contractor with AHJ approval, no later than thirty (30) days after Ground Break. Thereafter, no change shall be made to the fire alarm and sprinkler systems without the prior written consent of IHG. Notwithstanding the foregoing, after the Life Safety system drawings have been approved by IHG, if in the course of actual construction any change in the system design that occurs, Licensee shall, within ten (10) days of any such change, submit such changes for IHG's review and approval.

6. Licensee must submit shop drawings, color boards and specifications to IHG for its review and approval before purchasing and installing any FF&E Specs, including without limitation, any signage. Licensee shall submit the FF&E Specs to IHG, per the electronic submittal guidelines as outlined on www.ihgdesignconnect.com.
7. Licensee must notify IHG if it elects to use any product, design, or FF&E package which has not been pre-approved by IHG. Use of such non-preapproved products, design or FF&E package may require additional time and fees incurred by Licensee.
8. Once the construction has commenced, it shall continue without interruption (except for interruption by reason of events constituting force majeure) until construction is completed. Licensee must provide IHG monthly reports of construction progress in an approved format.
9. Notwithstanding the occurrence of any events constituting force majeure, or any other cause, construction shall be completed and the Hotel shall be furnished, equipped and shall otherwise be made ready to open for business in accordance with the License not later than **[Insert Opening DATE]** (or such other date as IHG and Licensee may agree in writing) (the "Opening Deadline").
10. Licensee shall cause the Hotel to be constructed according to the Final Plans and the FF&E Specs approved by IHG, and IHG shall determine at its election whether construction has been completed in accordance with the Final Plans and the FF&E Specs. Licensee must correct or replace any changes from the approved design as noted during construction.
11. Extension requests to the starting date of construction of a new development may be considered on a basis of monthly increments of at least a six (6) month period for any one extension. Requests for extensions greater than six (6) months, but less than or equal to twelve (12) months must be accompanied by an extension fee equal to \$10,000. Requests for more than a twelve (12) month extension must be accompanied by a sum equal to one half (1/2) of the then current standard minimum application fee for the proposed number of rooms for the Hotel. IHG's approval of extension requests must be delivered in writing and such approval is not automatic. Licensee will be responsible for any and all expenses that may be incurred by IHG in the processing of an extension request. Extensions beyond 12 months may require resubmittal of final plans, per IHG request.

**C. OPENING OF THE HOTEL.**

1. The Hotel shall not be opened for business under the Brand System unless and until:

- (a) IHG has approved and accepted, in advance, in writing:
  - (i) the construction of the Hotel in accordance with the Final Plans, the Standards, Life Safety systems, the FF&E Specs, the Kimpton Review & Approval Policy and IHG's requirements; IHG may require Licensee to deliver an architect's certification that the Hotel has been completed in accordance with the Final Plans and a copy of the certificate of occupancy for the Hotel; and,
  - (ii) the installation of all items of equipment, furniture, signs, computer terminals and related supplies and other items for opening the Hotel as a Brand System Hotel, and all is in working order; and
  - (iii) the staffing and training of such staff necessary to operate the Hotel in accordance with IHG's requirements;
- (b) no accounts of Licensee are past due to IHG, its parents, subsidiaries or affiliated companies;
- (c) Licensee is in full compliance with all of the terms of this License;

(d) Licensee has submitted to IHG all certificates of insurance (and copies of insurance policies if requested by IHG) as required under the License;

(e) Licensee has obtained all necessary governmental approvals, licenses and permits to possess, occupy and operate all areas of the Hotel, according to IHG's requirements, including specifically without limitation, a permanent certificate of occupancy; and

(f) Licensee has submitted to IHG a post-construction disability compliance certification signed by Licensee and an architect with professional experience applying the requirements of the ADA and the ADA Standards, in the form of Attachment "C" – ADA Certificate. Such certification must confirm the qualifications of the architect, the architect has inspected the as-built conditions of the Hotel and building site and that the Hotel and building site have been built in compliance with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements;

(g) Licensee has either (i) delivered a certification that verifies the Hotel complies with IHG's fire protection and life safety Standards and the fire protection and life safety systems of the Hotel are operational, or (ii) retained IHG and paid IHG the then-current testing and inspection fee to test and inspect the fire protection and life safety systems of the Hotel, and such testing and inspection verifies the Hotel complies with IHG's fire protection and life safety Standards and the fire protection and life safety systems of the Hotel are operational. Any such certification in (i) above must be issued by a third party licensed fire protection engineer, engineer, or recognized expert consultant on fire and life safety requirements that has been approved by IHG. IHG may require that such certification be issued by a party that has not participated in the design of the fire protection and life safety systems of the Hotel;

(h) Licensee has notified IHG in writing that all requirements for construction, furnishing and opening the Hotel have been completed and the Hotel is ready to open as a Brand System Hotel;

(i) Licensee has employed a general manager and department managers and they have successfully completed IHG's training programs; and

(j) IHG has granted written approval to open and operate the Hotel as a Brand System Hotel and established the Opening Date. If IHG establishes an Opening Date but the letter agreement provides for additional construction, upgrading, renovation, or training (the "Additional Work"), Licensee will be authorized to use the Brand System and identify the Hotel as a Brand System Hotel only for such time as Licensee is diligently completing the Additional Work. Failure to timely complete the Additional Work is a default under this License. IHG may review any Additional Work, and Licensee must ensure that the Hotel complies with all requirements of IHG following such review. Licensee, its contractors and subcontractors must cooperate fully with any inspections conducted by IHG. If any site visits and inspections are necessary to ensure the Hotel complies with the Additional Work requirements, IHG may charge its then-current fee for the additional time spent inspecting the Hotel plus travel costs. If IHG determines an additional test and inspection of the fire protection systems or life safety components of the Hotel is necessary, IHG may charge Licensee its then-current fee for such site visits and inspections.

2. Notwithstanding anything else herein to the contrary, IHG may, in its sole judgment, authorize Licensee to open and operate the Hotel as a Brand System Hotel, even though Licensee has not fully complied with the terms of this License, provided that Licensee agrees to fulfill all remaining terms of this License on or before the dates established by IHG as a condition to allowing opening of the Hotel when less than all of the required work has been completed.
3. Licensee acknowledges and agrees that: (a) IHG's review of Preliminary Plans, Final Plans, FF&E Specs, Life Safety systems or other materials, documents or items submitted to IHG for review and approval pursuant to this License (collectively "Licensee's Plans") is exclusively for

determination of compliance with the Standards, the requirements of the System and the terms of this License and not for compliance with all applicable law or adequacy or suitability for the purpose intended, (b) no approval of Licensee's Plans by IHG shall constitute, be deemed or construed in any way as, IHG's consent, approval, acknowledgment or recognition that Licensee's Plans comply with applicable law or are adequate or suitable for the purpose intended, (c) Licensee shall have the sole responsibility for compliance with applicable law and for the adequacy and suitability for the purpose intended and (d) nothing in this License, and no review and approval (or opportunity for review) by IHG of Licensee's Plans shall be deemed to create a duty on the part of IHG that could give rise to any cause of action by Licensee or any of its affiliated entities or persons, or any other person or entity against IHG or any of its parents, subsidiaries or affiliated entities nor their respective officers, directors or employees, based on any alleged deficiency in the adequacy, suitability or legality of Licensee's Plans.

4. IHG may provide an opening team to assist in the opening of the Hotel as a Brand System Hotel and to perform cultural training the Hotel employees in accordance with the Standards. The team members will remain at the Hotel for such time as IHG deems appropriate to open the Hotel as a Brand System Hotel. Licensee will pay IHG's costs associated with providing such assistance, including the Openings and Renovations Fee and travel costs.
5. Licensee will conduct an opening advertising and marketing campaign that complies with the Brand Standards.



**[CHANGES OF OWNERSHIP, CONVERSION LICENSES AND RE-LICENSINGS]**

**ATTACHMENT "B"**

**THE WORK**

**[Description of Specific Work, whether Property Improvement Plan ("PIP") or Deficiency List for the Hotel to be attached]**

IHG may authorize Licensee, in IHG's sole discretion, to open and operate the Hotel as a Brand System Hotel even though Licensee has not fully complied with the terms of the License, provided Licensee fulfills all remaining terms of this License on or before the date designated by IHG. Licensee may not commence operation of the Hotel as a Brand System Hotel without IHG's written authorization to do so. Notwithstanding any consent by IHG to the authorized conditional opening of the Hotel as Brand System Hotel, the construction, upgrading and renovation work more particularly described in paragraph 13.J. and in this Attachment "B" must be completed by Licensee on or before the dates set forth in this Attachment "B" and the Hotel must otherwise be in compliance with the License and must open as a Brand System Hotel on or before **{insert date}**.

**ATTACHMENT "C"**

**ACCESSIBILITY CERTIFICATION**



**Hotel Location Code:** \_\_\_\_\_

**Location #:** \_\_\_\_\_

**Hotel Name** (as it appears in the IHG Website): \_\_\_\_\_

**Hotel Address:** \_\_\_\_\_

**Licensee:** \_\_\_\_\_

This certification is intended to comply with the accessibility standards and/or the Travelers with Disabilities Section of the relevant brand standards as well as the InterContinental Hotels Group Design & Construction standards, all of which require compliance with Title III of the Americans with Disabilities Act (ADA), including the 1991 and/or 2010 ADA Standards for Accessible Design (ADA Standards), and all other applicable accessibility requirements. These standards require as follows:

- a. For newly constructed hotels: (1) a pre-construction certification of the final plans for the building and building site submitted prior to the commencement of construction by an architect with professional experience applying the requirements of the ADA and the ADA Standards; and (2) a post-construction certification submitted after an inspection of as-built conditions signed by Licensee.
- b. For renovations required for relicensing, conversions, brand changes or changes of ownership: a post-renovation certification submitted after an inspection of as-built conditions signed by Licensee.
- c. For voluntary renovations: a post-renovation certification submitted after an inspection of as-built conditions signed by Licensee.

Please select the option for which this Certification is submitted:

- Newly Constructed Hotel** (Must submit Certification Options A & B below)
- Renovation Required for Relicensing, Conversion, Brand Change or Change of Ownership** (Must submit Certification Option B below)
- Voluntary Renovation** (Must submit Certification Option B below)

Please select the Option(s) for which Licensee is submitting this Certification.

**Option A: Newly Constructed Hotel - Pre-Construction Certification**

The undersigned certifies that (1) he/she is an architect with professional experience applying the requirements of the ADA and the ADA Standards; and (2) the final plans for construction of this building and building site are in compliance with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements, to the best of his/her knowledge, information, and belief.

Name of Architect: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**Option B: Licensee Post-Construction or Post-Renovation Certification**

The undersigned Licensee, to the best of his/her knowledge, information, and belief, certifies that this building and building site have been built, renovated or altered in compliance with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements, including, but not limited to, any accessibility laws or requirements regarding the following:

- The appropriate number and distribution of accessible guest rooms
- Features in accessible guest rooms
- Parking and exterior accessible routes
- Public entrances and interior accessible routes
- Service counters
- Public and common restrooms
- Meeting rooms
- Food and beverage establishments
- Swimming pools, spas, and fitness centers

Name of Licensee Principal Correspondent: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**Electronic Signature Acknowledgement:**

This Certification may, at IHG's option, be executed via electronic signature. In such event, Licensee acknowledges that conducting this transaction using electronic means is optional and is not a condition to executing this License. By electronically signing this paragraph, Licensee agrees to conduct this transaction using electronic means, which includes the transmittal of electronic communications and the execution of the agreement using an electronic signature. Licensee further agrees that the parties' electronic signatures are valid and create a binding and enforceable agreement. If Licensee does not agree to conduct the transaction electronically and does not agree to execute the agreement using an electronic signature, Licensee must promptly notify IHG and IHG will provide Licensee with a non-electronic Certification.

Licensee Signature (or Initials): \_\_\_\_\_

*By receiving or accepting this Certification, IHG is not confirming that Licensee and/or Licensee's property are in compliance with all applicable federal, state, and local accessibility requirements. Per the relevant license agreement, Licensee is solely responsible for compliance with all applicable accessibility requirements, including the ADA and the 1991 and/or 2010 ADA Standards for Accessible Design.*

## GUARANTY

As an inducement to Holiday Hospitality Franchising, LLC (“IHG”) to execute the License dated { insert date } (the “Effective Date”) between IHG and { insert name }, (“Licensee”), for the Kimpton® Hotel & Restaurant located at { insert location address }, (“License”), the undersigned (sometimes referred to as the “guarantor(s)”), jointly and severally, hereby unconditionally warrant to IHG and its successors and assigns that all of Licensee’s representations in the License and the application submitted by Licensee to obtain the License are true, and guarantee that all of Licensee’s obligations under the License, including any amendments thereto whenever made (all hereafter collectively referred to as the “License”), will be punctually paid and performed.

Upon default by the Licensee and notice from IHG, the undersigned will immediately make each payment and perform each obligation required of Licensee under the License. Without affecting the obligations of the undersigned under this Guaranty, IHG may, without notice to the undersigned, extend, modify or release any indebtedness or obligation of Licensee or any of the guarantor(s), or settle, adjust or compromise any claims against Licensee or any of the guarantor(s). The undersigned waive notice of amendment of the License and notice of demand for payment or performance by Licensee.

Upon the death of an individual guarantor, the estate of such guarantor will be bound by this Guaranty but only for defaults and obligations hereunder existing at the time of death, and the obligations of the other guarantors will continue in full force and effect.

The Guaranty constitutes a guaranty of payment and performance and not of collection, and each of the guarantors specifically waives any obligation of IHG to proceed against Licensee or any money or property held by Licensee or by any other person or entity as collateral security, by way of set off or otherwise. The undersigned further agrees that (i) this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of the guaranteed obligations is rescinded or must otherwise be restored or returned by IHG upon the insolvency, bankruptcy or reorganization of Licensee or any of the undersigned, all as though such payment had not been made and (ii) the guaranteed obligations shall not be reduced, limited, terminated, discharged or otherwise affected by any such insolvency, bankruptcy, reorganization or similar proceedings affecting Licensee or its assets or the release or discharge of Licensee from any of its obligations under the License.

This Guaranty shall become valid as of the Effective Date. It shall be deemed made and entered into in the State of Georgia, and the undersigned agree that this Guaranty and the obligations provided for hereunder shall be governed and construed in all respects by the internal laws and decisions (except any conflicts of law provisions) of the State of Georgia, including all matters of construction, validity, enforceability and performance.

To the extent permitted by law, the undersigned (i) consent and submit, at IHG’s election and without limiting IHG’s rights to commence an action in any other jurisdiction, to the personal jurisdiction and venue of any courts (federal, superior or state) situated in the County of DeKalb, State of Georgia; (ii) waive any claim, defense or objection in any such proceeding based on lack of personal jurisdiction, improper venue, forum non conveniens or any similar basis; and (iii) expressly waive personal service of process and consent to service by certified mail, postage prepaid, directed to the last known address of the undersigned, which service shall be deemed completed within ten (10) days after the date of mailing thereof.

The undersigned agree to pay IHG all expenses, including reasonable attorneys’ fees and court costs, incurred by IHG, its parents, subsidiaries, affiliates, and their successors and assigns, to remedy any defaults of or enforce any rights under this Guaranty or the License, effect termination of this Guaranty or the License, or collect any amounts due under this Guaranty or the License.

**Electronic Signature Acknowledgement:**

This Guaranty may, at IHG's option, be executed via electronic signature. In such event, Guarantor acknowledges that conducting this transaction using electronic means is optional and is not a condition to executing this Guaranty. By electronically signing this paragraph, Guarantor agrees to conduct this transaction using electronic means, which includes the transmittal of electronic communications and the execution of the agreement using an electronic signature. Guarantor further agrees that the parties' electronic signatures are valid and create a binding and enforceable agreement. If Guarantor does not agree to conduct the transaction electronically and does not agree to execute the agreement using an electronic signature, Guarantor must promptly notify IHG and IHG will provide Guarantor with a non-electronic Guaranty.

Signature (or Initials): \_\_\_\_\_

**IN WITNESS WHEREOF**, each of the undersigned has signed this Guaranty under Seal, as of \_\_\_\_\_, 20\_\_.

Guarantors:

\_\_\_\_\_  
«Guarantor1»  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

\_\_\_\_\_  
«Guarantor2»  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

[ENTITY NAME]

\_\_\_\_\_  
By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

# EXHIBIT C

## MASTER TECHNOLOGY SERVICES AGREEMENT

This Master Technology Services Agreement (this “**Agreement**”) is effective upon execution by and between IHG Technology Solutions LLC, a limited liability company formed under the laws of Delaware, located at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346 (“**IHG Tech**”), and [Franchisee], a [entity type], located at [address] (“**Franchisee**”) (each, a “**Party**” and collectively, the “**Parties**”).

WHEREAS, IHG Tech is an Affiliate of Holiday Hospitality Franchising, LLC and Six Continents Hotels, Inc., which are companies that operate and license systems designed to provide distinctive, high quality hotel service as part of the InterContinental Hotels Group (IHG);

WHEREAS, an IHG Tech Affiliate and Franchisee are parties to that certain franchise license agreement dated [\_\_\_\_\_] (the “**Franchise Agreement**”), under which Franchisee operates the Hotel (as defined in the Franchise Agreement) as part of one of the IHG Portfolio Brands;

WHEREAS, an IHG Tech Affiliate has entered into agreements with certain external service providers not Affiliated with IHG Tech (each, a “**Service Provider**”) for the provision of Hardware, Software, and Services (each, an “**Enabling Agreement**”);

WHEREAS, IHG Tech will facilitate Franchisee’s access to Service Providers’ Hardware, Software, and Services, and Franchisee will pay for, receive, and use such Hardware, Software, and Services in accordance with the terms of this Agreement, the Enabling Agreements, the Franchise Agreement, and any applicable Participation Agreement or Order Form; and

NOW, THEREFORE, in consideration of the premises, mutual promises contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, IHG Tech and Franchisee agree as follows:

### 1.0 DEFINITIONS.

1.1 Definitions. Capitalized terms used in this Agreement without definition shall have the meanings ascribed to them in **Schedule 1 (Definitions)**.

### 2.0 LEGAL STRUCTURE.

2.1 Relation to Franchise Agreement. The provisions of this Agreement will be deemed to incorporate (a) the exhibits, schedules, and attachments to this Agreement, and (b) all of the terms, covenants, and conditions contained in the Franchise Agreement, as specified in the following sentence with such modifications as are necessary to make them applicable to this Agreement and the Parties as if fully set out in this Agreement. Such incorporated provisions include the Franchise Agreement’s provisions regarding term; proprietary intellectual property rights; notices; indemnification; insurance; compliance with laws; and dispute resolution.

2.2 Order of Priority. In the event of a conflict between:

- (a) a provision in this Agreement and a provision in an Order Form, the provision in the Order Form shall prevail;
- (b) a provision in this Agreement and a provision in the Participation Agreement, the provision in this Agreement shall control; or

- (c) a provision in this Agreement and a provision in the Franchise Agreement, the provision in this Agreement shall control for purposes of this Agreement only.

The foregoing order of priority shall be applied only after construing the applicable provisions to avoid any such conflict and/or to minimize the extent of such conflict.

### 3.0 SERVICE FRAMEWORK.

3.1 Core Services. IHG Tech or an IHG Tech Affiliate has entered into Enabling Agreements with Service Providers to provide certain Hardware, Software, and Services. IHG Tech will make available to Franchisee the Hardware, Software, and Services for the core technology solutions set forth on **Schedule 2 (Core Services)** (the “**Core Services**”). These Core Services are provided by IHG Tech, an IHG Tech Affiliate, or Service Providers and are required to operate a Hotel under an IHG Portfolio Brand. IHG Tech and/or its Service Provider may modify or cause to be modified the features and functionality of the Core Services in the ordinary course of technology development, and IHG Tech will notify Franchisee of any such material modification. In addition, IHG Tech reserves the right to add or remove Core Services or to replace any of the Core Services.

3.2 Additional Required Services. IHG Tech or an IHG Tech Affiliate has entered into Enabling Agreements with Service Providers approved by IHG Tech to provide certain Hardware, Software, and Services that are mandatory components of Franchisee’s technology configuration required for Hotel operations (“**Additional Required Services**”). IHG Tech will make available to Franchisee the Additional Required Services as set forth on **Schedule 3 (Additional Required Services)**, pursuant to an Order Form and/or a Participation Agreement. Franchisee is obligated to purchase each of the Additional Required Services. IHG Tech and/or its Service Provider may modify or cause to be modified the features and functionality of the Additional Required Services in the ordinary course of technology development, and IHG Tech will notify Franchisee of any such material modification. IHG Tech reserves the right (i) to change the Service Provider for any Additional Required Service, and (ii) to add or remove Core Services or to replace any of the Additional Required Services.

3.3 Optional Services. From time to time, IHG Tech or an IHG Tech Affiliate may enter into an Enabling Agreement with a Service Provider to provide optional Hardware, Software, and Services that are not included in the Core Services or the Additional Required Services (“**Optional Services**”). As determined by IHG Tech, Franchisee may receive the benefits of the negotiated terms, conditions, and pricing for the Optional Services obtained by IHG Tech in the Enabling Agreements with Service Providers, and may obtain the Optional Services, by entering into an Order Form and/or a Participation Agreement.

3.4 Supplemental Terms. The Core Services, Additional Required Services, and any Optional Services are provided subject to and in accordance with the supplemental terms set forth on **Schedule 4 (Supplemental Terms)** (the “**Supplemental Terms**”). IHG Tech may unilaterally modify or add any component to **Schedule 4 (Supplemental Terms)** upon ten (10) days written notice to Franchisee. Franchisee acknowledges that the Supplemental Terms are based in part upon the terms and conditions contained in the Enabling Agreements.

3.5 Curated Solutions. The Core Services, Additional Required Services, and such Optional Services as Franchisee may contract to receive, as such services may be in effect from time to time, are together referred to as the “**Curated Solutions**”.

3.6 New Technologies. From time to time by mutual agreement, IHG Tech will enable Franchisee’s access to new or enhanced technologies for use at the Hotel under a test, evaluation, pilot,



proof of concept, or other temporary use arrangement (“**Proof of Concept Projects**”). Franchisee acknowledges that such Proof of Concept Projects will entail the deployment of new technologies still under development, that such technologies are expected to contain bugs, imperfectly functioning features, and other defects inherent in the early stage of Software development, and that tolerating such defects is the cost of adopting and testing new and unproven technologies. Franchisee will provide feedback to IHG Tech on such Proof of Concept Projects so that the technologies may be further developed, refined, and enhanced to better serve Franchisee and the IHG Portfolio Brands. IHG Tech may terminate any such Proof of Concept Projects upon reasonable notice to Franchisee. IHG TECH HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, FOR THE PROOF OF CONCEPT PROJECTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. THE PROOF OF CONCEPT PROJECTS ARE PROVIDED “AS IS” AND “WHERE IS”.

#### 4.0 SERVICE TERMS.

4.1 Right to Use. Franchisee will have the non-exclusive right to access and use the Curated Solutions in accordance with and subject to this Agreement, the Supplemental Terms, and the Participation Agreements or Order Forms (as applicable).

4.2 Restrictions on Use of Curated Solutions. Franchisee will use the Curated Solutions solely for Franchisee’s internal business purposes at the Hotel and only as permitted by this Agreement. Franchisee will not:

- (a) transmit Curated Solutions to any third party or third party network, or permit any third party to access or use the Curated Solutions;
- (b) use the Curated Solutions, or any data derived from the Curated Solutions, in a service bureau, time-sharing, multiple CPU, or multiple user arrangement;
- (c) copy, reproduce, store, sell, assign, pledge, sublicense, convey, transfer, redistribute, transmit, grant other rights in, or permit any unauthorized use of the Curated Solutions;
- (d) prepare derivative works or incorporate the Curated Solutions, in whole or part, into any other system or work;
- (e) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Curated Solutions, in whole or in part;
- (f) bypass or breach any security device or protection used by the Curated Solutions or access or use the Curated Solutions other than by an authorized user through the use of his or her own then valid access credentials;
- (g) input, upload, transmit, or otherwise provide to or through the Curated Solutions, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code;
- (h) remove, delete, alter, or obscure any trademarks warranties or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Curated Solution, including any copy thereof;
- (i) access or use the Curated Solutions in any manner or for any purpose that infringes,

misappropriates, or otherwise violates any intellectual property right or other right of any third party, or that violates any applicable Law; or

- (j) otherwise access or use the Curated Solutions beyond the scope of the authorization granted under this Agreement, the Supplemental Terms, and the Participation Agreements or Order Forms (as applicable).

Each of the terms and conditions of this Section will apply to the Curated Solutions jointly as well as to each Curated Solution individually.

4.3 Minimum Configuration. IHG Tech will provide Franchisee with a list of Hardware, Software, and network connectivity and configurations required for Franchisee's use of the Curated Solutions ("**Minimum Configuration**"). IHG Tech will update the Minimum Configuration upon notice to Franchisee from time to time as required by evolving technology and security needs. Franchisee is solely responsible for ensuring its Hardware, Software, and network environment meet the requirements of the Minimum Configuration at Franchisee's cost.

4.4 Noncompliance with Minimum Configuration. Franchisee will be solely responsible for any installation and support of any Hardware and/or Software not listed as approved on the Minimum Configuration. All such Hardware and/or Software cannot be installed on the IHG Tech network and must be installed only on the Hotel's operations network. If IHG Tech determines that such Hardware and/or Software is adversely affecting the performance of the IHG Tech infrastructure, IHG Tech in its discretion may require such Hardware and/or Software to be removed or disconnected. IHG Tech will have no liability related to lost or damaged data of any kind arising from Franchisee's installation and use of such Hardware and/or Software or with respect to any removal or disconnection required by IHG Tech.

## 5.0 FEES, INVOICING, AND PAYMENTS.

5.1 For Core Services. Each month, IHG Tech or an IHG Tech Affiliate will invoice Franchisee for the fees associated with the Core Services provided to Franchisee in the preceding month in accordance with the Franchise Agreement. Franchisee will pay the fees for the Core Services in accordance with the payment terms set forth in the Franchise Agreement.

5.2 For Additional Required Services. The Service Provider will invoice Franchisee for the fees associated with the Additional Required Services in accordance with the Participation Agreement, or if the Additional Required Service has been contracted through an Order Form, IHG Tech or an IHG Tech Affiliate will invoice Franchisee for the fees associated with such Additional Required Service in accordance with the Order Form. Franchisee will timely pay the fees due to Service Providers and IHG Tech (or its Affiliates) for the Additional Required Services in accordance with the payment terms set forth in the applicable Participation Agreement or the Order Form.

5.3 For Optional Services. The Service Provider, IHG Tech, or an IHG Tech Affiliate (as applicable) will invoice Franchisee for the fees associated with the Optional Services provided to Franchisee in accordance with the Order Form or Participation Agreement. Franchisee will timely pay the fees due to Service Providers and IHG Tech (or its Affiliates) for Optional Services as provided in the applicable Order Form or Participation Agreement.

5.4 Optional Fees and Fee Increases. Franchisee acknowledges that the pricing for Curated Solutions is based on license, maintenance, and other fees and charges for the Curated Solutions, and that fees may change (including increase) based on factors, including: (a) the amount of use or number of users of the Curated Solutions; (b) changes to the fees charged by a Service Provider; and (c) restrictions

or other limitations set forth in an Enabling Agreement. Notwithstanding anything to the contrary in this Agreement or the Franchise Agreement, the fees paid to IHG Tech or an IHG Tech Affiliate for Additional Required Services and Optional Services are subject to revision by IHG Tech upon thirty (30) days' notice to Franchisee.

5.5 Taxes. All Taxes resulting from the provision of the Curated Solutions under this Agreement (except for taxes based solely on the net income of IHG Tech and its Affiliates) shall be the responsibility of Franchisee. If IHG Tech is required to pay any such Taxes or penalties or interest relating thereto, IHG Tech will provide an invoice for such amounts and Franchisee will pay such amounts within thirty (30) days of the date of the invoice.

5.6 Withholding Taxes. If any of the Curated Solutions, or any component thereof, is subject to withholding Tax, Franchisee will withhold and deduct from payments due to IHG Tech under the Agreement as required under any local Tax jurisdiction and/or applicable double Tax treaty, and Franchisee shall remit such withholding to the appropriate Tax authority and provide IHG Tech with an appropriate Tax certificate/invoice evidencing payment within thirty (30) days of payment. IHG Tech and Franchisee shall reasonably cooperate to claim withholding benefits or exemptions available under any applicable double Tax treaty.

## 6.0 CONFIDENTIAL INFORMATION.

### 6.1 Confidential Information.

6.1.1 Confidentiality Obligations. From time to time, IHG Tech or an IHG Tech Affiliate may disclose or make available to Franchisee, whether orally, electronically or in physical form, confidential or proprietary information of or in the possession of IHG Tech or the IHG Tech Affiliate (including confidential or proprietary information of a third party that is in IHG Tech's or the IHG Tech Affiliate's possession) in connection with the Curated Solutions or this Agreement. The term "Confidential Information" shall include all information and data which at the time of disclosure either:

- (a) is marked as "Confidential" or "Proprietary";
- (b) is otherwise reasonably identifiable as the confidential or proprietary information of IHG Tech or its Affiliate; or
- (c) should reasonably be understood to be confidential or proprietary information of IHG Tech or its Affiliate given the nature of the information and the circumstances surrounding its disclosure.

Franchisee shall not disclose any such Confidential Information to any third party without the prior written consent of IHG Tech and shall only access and use the Confidential Information as required to and for the limited purpose of performing its obligations under this Agreement; *provided that* Franchisee may disclose Confidential Information to its employees, contractors and professional advisors who need to know such information in order to perform their obligations related to this Agreement and who are contractually bound by confidentiality obligations that are at least as protective as those in this Agreement. Franchisee shall use commercially reasonable care and discretion to avoid unauthorized use, disclosure, publication, or dissemination of Confidential Information (which shall be no less than the standard of care used by Franchisee to protect its Confidential Information of a similar nature). For Confidential Information that does not constitute a "trade secret" under applicable Law, these confidentiality obligations will expire three (3) years after the termination or expiration of this Agreement. For Confidential Information that constitutes a "trade secret" under applicable Law, these confidentiality obligations will continue until such

information ceases to constitute a “trade secret” under such applicable Law. Franchisee will be responsible for any breach of this Section by Franchisee Agents and Franchisee’s Affiliates and any third party to whom it or they disclose Confidential Information in accordance with this Section (“**Recipients**”). Upon the request of IHG Tech, Franchisee shall deliver to IHG Tech or destroy all copies of Confidential Information. Franchisee agrees to certify in writing to IHG Tech that it and each of its Affiliates, Franchisee Agents, and Recipients have performed the foregoing.

6.1.2 Exclusions. Excluding Personal Data, which shall always be deemed to be Confidential Information, the term Confidential Information will not include any information that Franchisee can establish by convincing written evidence:

- (a) was independently and lawfully developed by Franchisee without use of or reference to any Confidential Information belonging to or received from IHG Tech or an IHG Tech Affiliate;
- (b) was lawfully acquired by Franchisee from a third party having the legal, unconditional right to furnish same to Franchisee; or
- (c) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public (through no fault of Franchisee).

6.1.3 Required Disclosures. These confidentiality obligations will not restrict any disclosure required by Law, *provided that* Franchisee gives prompt notice to IHG Tech of any such legal requirement and reasonably cooperates with IHG Tech at IHG Tech’s request and expense to resist such legal requirement or to obtain a protective order.

## 7.0 SECURITY PRACTICES.

7.1 Franchisee understands that IHG Tech and its Affiliates will have access to certain reports and information relating to the Hotel and generated through the use of the Curated Solutions, including information relating to revenues, room occupancy, and availability, as well as Personal Data. Franchisee and the Hotel shall, and Franchisee shall cause Franchisee Agents to, comply with:

- (a) all applicable Laws, including Laws related to data security, breach notification, and data privacy and contractual obligations, and any requirements of the credit card processing industry, including PCI DSS and any successor standard,
- (b) all Brand Standards, and
- (c) all IHG Tech policies, requirements, and requests concerning access to any Curated Solution, network connectivity, and transmission of data and reports to IHG Tech and its Affiliates.

Franchisee shall be responsible for ensuring adequate security and backup procedures to avoid unauthorized access to, use of, or inadvertent loss of data and shall, in its discretion, determine appropriate security, which shall be no less than the standard of care in the industry. Without limiting Franchisee’s obligations set forth in subparts (a)-(c) above, Franchisee will comply with any additional security and data protection practice requirements that IHG Tech will provide to Franchisee in writing, which may be updated from time to time (the “**Security Practices**”). IHG Tech may, in its sole discretion, amend the Security Practices at any time without prior notice (each, a “**Security Practices Update**”). A Security Practices Update may include additional terms and conditions, including the additional obligations of Franchisee. Franchisee will

comply with any Security Practices Update within thirty (30) days following the date of the Security Practices Update and will comply with any changes to applicable Laws, contractual obligations, and industry requirements (including PCI DSS and any successor standard) within the time period provided by such Law or industry requirement.

## 8.0 PRIVACY AND DATA PROTECTION.

8.1 Core Services and Optional Services. Unless otherwise stated in the Supplemental Terms, Participation Agreement, or Order Form, the following privacy and data protection terms will apply to the Core Services and the Optional Services.

8.1.1 IHG Tech Personal Data. Subject to the provisions of applicable Law, including Privacy Laws, as between Franchisee and IHG Tech, all IHG Tech Personal Data is the property of IHG Tech, and IHG Tech shall have the right to use and transfer such data on a worldwide basis during and after the effectiveness of this Agreement.

8.1.2 Franchisee Personal Data. To the extent Franchisee transfers Franchisee Personal Data or Guest Data to IHG Tech, its Affiliates, or the IHG guest reservations system, such data forms part of the IHG Tech Personal Data, and IHG Tech may use such data as permitted by applicable law. To the extent that Franchisee provides data to IHG Tech other than Personal Data or Guest Data, Franchisee hereby grants to IHG Tech and its Affiliates a non-exclusive, worldwide, perpetual and royalty-free license to use (including the right to sublicense) such data free of charge, including the right to transfer such data across national borders and to transfer it to third parties. Franchisee represents, warrants, and covenants that any Franchisee Personal Data transferred to IHG Tech or its Affiliates for the purposes of this Agreement has been collected, retained, used, and transmitted in compliance with applicable Privacy Laws.

8.1.3 Transfer of IHG Tech Personal Data. To the extent IHG Tech (and/or its Affiliates) transfers IHG Tech Personal Data to Franchisee:

- (i) IHG Tech Personal Data (excluding IHG Tech Marketing Data) that is transferred to Franchisee for inclusion in the Hotel's property management system and for the purpose of fulfilling the guest's reservation request forms part of the Franchisee Personal Data and may be used by Franchisee during and after the term of this Agreement for the purposes of operating the Hotel and in accordance with the restrictions and other terms of this Agreement;
- (ii) Franchisee shall have no right to use the IHG Tech Marketing Data except for the purpose of participating in and providing services to the Loyalty Program during the effectiveness of this Agreement;
- (iii) Franchisee must remove, or IHG Tech and its Affiliates shall have the right, at Franchisee's cost, to remove all IHG Tech Marketing Data from the Hotel's property management system and other Hotel records upon expiration or termination of this Agreement;
- (iv) Franchisee shall retain, use, and transmit (and procure that any agent or representative of Franchisee that manages the Hotel after the termination of this Agreement retain, use, and transmit) such IHG Tech Personal Data only (a) in accordance with all Privacy Laws, and (b) to the extent permitted pursuant to any consents obtained from the relevant

guests, employees, or other individuals (the parties acknowledging that IHG Tech provides no warranty or guaranty regarding any such consents);

- (v) Franchisee shall not sell or transfer the IHG Tech Personal Data including to any Affiliate or other hotel of Franchisee and will not combine IHG Tech Personal Data with the Personal Data of any other hotel brand, company, or operator; and
- (vi) Franchisee may not use IHG Tech Personal Data for any marketing purpose.

8.1.4 Operating Data and Guest Data. If Guest Data is not also IHG Tech Personal Data, then Operating Data and Guest Data may be used by IHG Tech for its business purposes, including for company and industry reporting purposes. Franchisee agrees that any Operating Data and any Guest Data provided by it pursuant to this Agreement, as well as any other reports, data, information, or material provided to IHG Tech pursuant to or in connection with this Agreement, shall be true and correct and not misleading and shall comply with all standards, policies, and requirements of IHG Tech with respect to privacy and security of Operating Data and Guest Data of the Hotel. Franchisee acknowledges and agrees that IHG Tech and IHG Tech Affiliates will retrieve Operating Data, Guest Data, and Franchisee Personal Data through the IHG reservation system and other relevant systems.

8.1.5 Privacy Laws. Franchisee will:

- (i) comply with all applicable Privacy Laws;
- (ii) comply with all of requirements regarding data protection as IHG Tech or an IHG Tech Affiliate may communicate to Franchisee from time to time;
- (iii) refrain from any action or inaction that could cause IHG Tech or its Affiliates to breach any of the Privacy Laws;
- (iv) do and execute, or arrange to be done and executed, each act, document, and thing necessary or desirable to keep IHG Tech and its Affiliates in compliance with any of the Privacy Laws;
- (v) in addition to Franchisee's indemnity and reimbursement obligations arising under the Franchise Agreement or otherwise, indemnify and reimburse IHG Tech for any and all costs and liabilities incurred in connection with the breach by Franchisee of such Privacy Laws;
- (vi) immediately report to IHG Tech the theft or loss of Guest Data or any analogous term defined by Privacy Laws; and
- (vii) permit IHG Tech and its Affiliates to use any data or other information concerning Franchisee, its Affiliates and/or the Hotel in connection with the establishment and operation of IHG Portfolio Brand system hotels by IHG Tech and its Affiliates.

8.1.6 Use of IHG Tech Personal Data. If IHG Tech provides IHG Tech Personal Data to Franchisee (i) for the purpose of performing a service on behalf of IHG Tech, or (ii) at the direction of the consumer, then the following restrictions shall apply to Franchisee's use of IHG Tech Personal Data. Franchisee shall not:

- (i) sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, IHG Tech Personal Data;
- (ii) retain, use, and disclose IHG Tech Personal Data for any purpose other than fulfilling the purpose for which it was provided; or
- (iii) retain, use, or disclose IHG Tech Personal Data outside of the direct business relationship between IHG Tech and Franchisee.

If IHG Tech provides IHG Tech Personal Data to Franchisee, Franchisee certifies that it understands and will comply with the restrictions and obligations under any applicable Laws on such IHG Tech Personal Data. If IHG Tech has provided IHG Tech Personal Data to Franchisee for the purpose of Franchisee providing a service on behalf of IHG Tech, upon IHG Tech's request, Franchisee shall, with respect to such data, (i) provide reasonable assistance to IHG Tech in complying with any request from a person to exercise rights under any applicable Privacy Law, and (ii) where instructed by IHG Tech and as required by applicable Privacy Law, Franchisee shall delete IHG Tech Personal Data that it maintains.

8.2 Additional Required Services. Privacy and data protection terms for Additional Required Services are stated in the applicable Participation Agreement, Order Form, or Supplemental Terms.

## 9.0 REPRESENTATIONS, WARRANTIES AND COVENANTS.

### 9.1 By Franchisee.

9.1.1 Access and Use of Curated Solutions. Franchisee will access and use each Curated Solution only in accordance with this Agreement, the Supplemental Terms, and if applicable, the Participation Agreement or Order Form.

9.1.2 Compliance with Laws. Franchisee will comply with (i) all Laws applicable to Franchisee and the Curated Solutions, and (ii) the policies, requirements, and procedures of IHG Tech that are made available to Franchisee from time to time.

9.1.3 Franchisee Responsibilities. Franchisee will, and will cause the Franchisee Agents to:

- (a) test the Curated Solutions in Franchisee's environment before use;
- (b) ensure that Franchisee's personnel are using the Curated Solutions correctly;
- (c) enter information into the Curated Solutions accurately and completely;
- (d) present information displayed by the Curated Solutions accurately; and
- (e) report any actual or suspected Software errors or Service failures discovered in the course of using any Curated Solution to IHG Tech and the applicable Service Provider.

### 9.2 By IHG Tech.

9.2.1 Disclaimer. IHG Tech is not the licensor or provider of any of the Curated Solutions made available to Franchisee hereunder and offers no warranties on any Services. In agreeing to the Supplemental Terms or Participation Agreement (as applicable), Franchisee is relying solely on the

Service Provider's warranties, if any, expressly passed through to Franchisee under such Supplemental Terms or Participation Agreement. IHG TECH HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, FOR THE SERVICES, NETWORK CONNECTIVITY, AVAILABILITY, SOFTWARE, HARDWARE, OR SYSTEMS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY PASS-THROUGH WARRANTY MADE BY A SERVICE PROVIDER OF SERVICES, ALL SERVICES, AND ALL SUPPORT MATERIALS AND OTHER DATA, SOFTWARE OR OTHER ITEMS MADE AVAILABLE BY A SERVICE PROVIDER OF SERVICES, ARE PROVIDED "AS IS" AND "WHERE IS".

## 10.0 TERMINATION.

10.1 Termination for Convenience. IHG Tech may terminate this Agreement, in whole or part, upon ninety (90) days' prior written notice to Franchisee, without any liability to Franchisee.

### 10.2 Termination for Cause.

10.2.1 If Franchisee defaults in the performance of any of its obligations under this Agreement and, if a non-monetary breach and such breach is capable of cure, does not cure such default within sixty (60) days after receipt of a written notice of default from IHG Tech, then IHG Tech may terminate this Agreement, in whole or in part, as of the termination date specified in such written notice.

10.2.2 If Franchisee breaches **Section 6 (Confidential Information)** or **Section 7 (Security Practices)** or defaults in the performance of any non-monetary obligation under this Agreement that is incapable of being cured within sixty (60) days, then IHG Tech may terminate this Agreement, in whole or in part, immediately upon written notice to Franchisee as of the termination date specified in the notice, without any cure period.

10.2.3 If Franchisee breaches the Franchise Agreement, and fails to cure such default within ten (10) days after receipt of a notice of default from IHG Tech or an IHG Tech Affiliate, then IHG Tech may terminate this Agreement, in whole or in part, immediately upon written notice to Franchisee as of the termination date specified in the notice, without any cure period.

10.2.4 If Franchisee voluntarily or involuntarily discontinues the operation of its Hotel under the Franchise Agreement, then IHG Tech may terminate this Agreement, in whole or in part, immediately upon written notice to Franchisee as of the termination date specified in the notice, without any cure period.

10.2.5 If Franchisee is in default of any of its obligations to IHG Tech with respect to any Curated Solution, then IHG Tech may terminate this Agreement, in whole or in part, immediately upon written notice to Franchisee as of the termination date specified in the notice, without any cure period.

10.2.6 If Franchisee fails to pay an invoice or other amount owed under this Agreement when due and does not cure such failure within ten (10) days after receipt of a notice of overdue payment from IHG Tech, then IHG Tech may terminate this Agreement upon written notice to Franchisee as of the termination date specified in the notice.

10.3 Termination for Expiration of the Franchise Agreement. In the event that the Franchise Agreement terminates or expires, then this Agreement shall automatically terminate.



10.4 Termination of a Participation Agreement. The termination of any Participation Agreement pursuant to its terms will not alone cause, or be interpreted as causing, termination of this Agreement.

10.5 Termination for Franchisee Bankruptcy Event. IHG Tech may terminate this Agreement, in whole or in part, immediately upon written notice to Franchisee in the event of a Franchisee Bankruptcy Event.

10.6 Other Remedies. If any of the above events set forth in **Section 10.1** through **Section 10.5** shall occur, IHG Tech may, in addition to or in lieu of exercising its termination or other, legal, equitable, or contractual rights, limit, reduce, suspend, or terminate Franchisee's use of or access to any or all of the Curated Solutions.

#### 11.0 DAMAGES.

11.1 IN NO EVENT SHALL IHG TECH BE LIABLE FOR THE FOLLOWING, REGARDLESS OF CAUSATION: INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING LOST BUSINESS, LOST PROFITS, INTEREST, PENALTIES OR ASSESSMENTS IMPOSED UNDER APPLICABLE LAWS OR OTHERWISE, THIRD PARTY CLAIMS BY AFFILIATES, PARTNERS OR CUSTOMERS OF FRANCHISEE OR OTHERWISE, OR DAMAGES WITH RESPECT TO WHICH FRANCHISEE CONTRIBUTED OR ACTED AS AN INTERVENING CAUSE, WHETHER FORESEEABLE OR NOT, EVEN IF IHG TECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 IHG Tech shall not be liable for any loss, cost, expense (including attorney fees), liability, damage, or claim (including strict liability in tort) (a) related to or arising from the Curated Solutions; or (b) for the selection, quality, condition, merchantability, suitability, fitness, operation, installation, repair, adjustment, or performance of the Curated Solutions or the adequacy, quality, delay or suitability of the maintenance or support services provided by a third party pursuant to this Agreement or for any interruption or loss of service or use of network connectivity or the Software. Such liability, if and to the extent it may exist, rests solely with the applicable Service Provider of the Curated Solution to IHG Tech and the Hotel.

#### 12.0 AUDITS.

12.1 Audit. During the effectiveness of this Agreement and for a period of two years following any expiration or termination of this Agreement, IHG Tech or its designated representative may enter upon the premises of the Hotel during regular business hours upon no less than twenty-four (24) hours' notice to audit and review Franchisee's (i) use of the Curated Solutions; (ii) verify compliance with this Agreement and the Enabling Agreements; and (iii) ensure compliance with Law and Security Practices. Franchisee will cooperate with any such audit at Franchisee's expense. Any fees or amounts determined to be due, or any remedial action to be undertaken, as a result of Franchisee's audited use of the Curated Solutions or Security Practices not in compliance with this Agreement shall be the sole responsibility of Franchisee. Nothing in this Section shall be deemed to limit IHG Tech's rights to perform monitoring of the Curated Solutions at any time.

#### 13.0 MISCELLANEOUS PROVISIONS.

13.1 Survival. **Sections 8 (Privacy and Data Protection), 9 (Confidential Information), 11 (Damages), 12 (Audits), and 13 (Miscellaneous)** and, to the extent necessary, **Schedule 1 (Definitions)** shall survive the expiration or termination of this Agreement.

13.2 Schedules, Attachments. All schedules, attachments or addenda hereto are incorporated herein by this reference. Any reference to this Agreement or the Franchise Agreement includes any schedules, attachments, exhibits, or addenda thereto, and any amendments thereof.

13.3 Headings. The headings and titles of the articles and sections hereof are inserted for convenience only and shall not affect the construction or interpretation of any provision.

13.4 Non-Exclusive Listings. Each occurrence of the words “include,” “includes”, and “including” in this Agreement shall be deemed to be followed by the phrase “without limitation”.

13.5 Severability. Should any part of this Agreement be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that portion shall be deemed null and void and severed for all purposes and the remainder of this Agreement shall remain in full force and effect.

13.6 Franchisee Agents. Franchisee will cause all Franchisee Agents to comply with the terms and conditions of this Agreement. Franchisee will be responsible for the acts and omissions of the Franchisee Agents, including any failure by a Franchisee Agent to comply with this Agreement.

13.7 Third Party Beneficiaries. This Agreement does not create any duties to or in persons or entities other than the Parties to this Agreement. No third party beneficiaries are intended or implied, and no parties other than IHG Tech, its Affiliates, or Franchisee may file suit or otherwise recover damages for breach of any of the provisions of this Agreement.

13.8 Governing Law. This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the governing Law specified in the Franchise Agreement, without giving effect to the principles thereof relating to the conflicts of Laws.

13.9 No Waiver. No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be signed by the Party waiving its rights.

13.10 Assignment. Neither this Agreement nor any right or interest herein is assignable or transferable by Franchisee. IHG Tech and its assignees shall have the right to assign or transfer this Agreement or any of IHG Tech’s rights, duties, or obligations hereunder, in whole or in part, to any person or legal entity without requirement of prior notice to, or consent of, Franchisee. This Agreement shall be binding on the Parties and their respective successors and permitted assigns.

13.11 Force Majeure. IHG Tech is not liable for failing to fulfill any of its obligations under this Agreement due to acts of God, acts of war, epidemic, failure of utility or communications infrastructure beyond that which would be avoided by reasonable use of back-up electricity supplies, or other causes beyond IHG Tech’s reasonable control.

13.12 Entire Agreement. In conjunction with the Franchise Agreement, this Agreement represents the entire agreement between the Parties with respect to its subject matter and supersedes all prior discussions and agreements between the Parties with respect to such subject matter.

13.13 Amendments. No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by both Parties.

13.14 Counterparts. This Agreement may be executed in one or more counterparts, which taken together shall form one legal instrument.

\* \* \* \*

IN WITNESS WHEREOF, IHG Tech and Franchisee, each through its duly authorized representative, hereby agree to the terms and conditions of this Agreement.

**IHG TECH:**

**FRANCHISEE:**

**IHG TECHNOLOGY SOLUTIONS LLC**

**[FRANCHISEE]**

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

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

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

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

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

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

**Electronic Signature Acknowledgement**

This Agreement may, at IHG Tech’s option, be executed via electronic signature. In such event, Franchisee acknowledges that conducting this transaction using electronic means is optional and not a condition to executing this Agreement. By electronically signing this paragraph, Franchisee agrees to conduct this transaction using electronic means, which includes electronic communications and the execution of the Agreement using an electronic signature. Franchisee further agrees that the Parties’ electronic signatures are valid and create a binding and enforceable agreement. If Franchisee does not agree to conduct the transaction electronically and does not agree to execute the Agreement using an electronic signature, Franchisee must promptly notify IHG Tech and IHG Tech will provide Franchisee with a non-electronic Agreement.

**Franchisee Signature (or Initials):** \_\_\_\_\_

## Schedule 1 Definitions

The following capitalized terms used in this Agreement shall have the respective meanings specified below:

- (1) “**Additional Required Services**” has the meaning set forth in **Section 3.2**.
- (2) “**Affiliate**” means, as to any entity, any other entity that, directly or indirectly, Controls, is Controlled by or is under common Control with such entity.
- (3) “**Agreement**” has the meaning set forth in the Preamble.
- (4) “**Brand Standards**” means all standards and specifications now or in the future identified by IHG Tech or its Affiliates in accordance with the Franchise Agreement concerning the design, construction, and operations of Hotels.
- (5) “**Confidential Information**” has the meaning set forth in **Section 6.1.1**.
- (6) “**Control**” means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.
- (7) “**Core Services**” has the meaning set forth in **Section 3.1**.
- (8) “**Curated Solutions**” has the meaning set forth in **Section 3.5**.
- (9) “**Enabling Agreement**” has the meaning set forth in the Preamble.
- (10) “**Franchise Agreement**” has the meaning set forth in the Preamble.
- (11) “**Franchisee**” has the meaning set forth in the Preamble.
- (12) “**Franchisee Agents**” means the employees, contractors, suppliers, subcontractors, and representatives of Franchisee.
- (13) “**Franchisee Bankruptcy Event**” means that Franchisee: (a) files a petition in bankruptcy for liquidation, (b) has an involuntary petition in bankruptcy filed against it which is not challenged within ten (10) days and dismissed within thirty (30) days, (c) becomes insolvent, (d) makes a general assignment for the benefit of creditors, (e) is unable to pay its debts as they mature, (f) has a receiver appointed for its assets, (g) has any significant portion of its assets attached, (h) receives a “going concern” explanation or qualification from its external auditor, or (i) experiences a material negative change in its net assets (*i.e.*, total assets minus total liabilities).
- (14) “**Franchisee Personal Data**” means any Personal Data (excluding any IHG Tech Marketing Data) that is held and processed locally at the Hotel, including (i) data contained in the Hotel’s property management system, and (ii) Personal Data relating to Hotel employees.
- (15) “**Guest Data**” means Personal Data of Hotel guests and other Hotel customers, including their preferences and related information. Guest Data may be IHG Tech Personal Data, Franchisee Personal Data, or both.
- (16) “**Hardware**” means computers, input and output devices, expansion cards, storage devices (including hard drives and installed and removable flash memory), portable computer and communications devices, other telecommunications devices, cables, wireless interfaces, and other computer peripherals.
- (17) “**Hotel**” has the meaning set forth in the Preamble.
- (18) “**IHG Portfolio Brand**” means any brand owned, controlled, or under the direction of IHG Tech or any of its Affiliates, as they may be added to, deleted from, or changed from time to time.
- (19) “**Law**” means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any legislature, administrative agency, court, or other governmental authority.
- (20) “**Loyalty Program**” means all loyalty, recognition, affinity, frequency, and other programs designed to promote stays at, or usage of, the Hotel, other IHG Portfolio Brand system hotels, and such other hotels designated by IHG Tech or its Affiliates, or any similar, complementary, or successor

programs. As of the effectiveness of this Agreement, such programs include the “IHG Rewards Club” and various programs sponsored by airlines, credit card, and other companies.

(21) “**Minimum Configuration**” has the meaning set forth in **Section 4.3**.

(22) “**IHG Tech**” has the meaning set forth in the Preamble.

(23) “**IHG Tech Marketing Data**” means Personal Data in respect of any member of the Loyalty Program.

(24) “**IHG Tech Personal Data**” means any Personal Data collected prior to or during the effectiveness of this Agreement by IHG Tech or its Affiliates in relation to the Hotel, including (i) IHG Tech Marketing Data, (ii) any Personal Data collected through any reservation channels operated by or at the direction of IHG Tech or its Affiliates, and (iii) any data that Franchisee transfers to IHG’s guest reservations system or other centrally managed IHG systems. For the avoidance of doubt, certain data may be both IHG Tech Personal Data and Franchisee Personal Data.

(25) “**Operating Data**” means all information concerning gross rooms revenue and gross revenue, other revenues generated at the Hotel, guestroom occupancy rates, reservation data, and other information required by IHG Tech or an IHG Tech Affiliate that may be useful (in the sole business judgment of IHG Tech or any such Affiliate) in connection with marketing, reservations, and guest loyalty and satisfaction, and other functions, purposes, or requirements of IHG Tech and its Affiliates.

(26) “**Optional Services**” has the meaning set forth in **Section 3.3**.

(27) “**Order Form**” means a binding contract created through an IHG Tech-approved order form submitted to IHG or an order through IHG Tech’s online portal, currently branded as IHG Marketplace, as such form or portal may be changed by IHG Tech from time to time, for Services and/or Hardware to be governed by this Agreement. The submitted order form or order placed through the portal, once accepted by IHG Tech, forms the binding contract and becomes part of this Agreement.

(28) “**Participation Agreement**” means a joinder, subscription, or participation agreement executed between Franchisee and a Service Provider to establish terms governing Hardware, Software, or Services provided by the Service Provider to Franchisee in connection with an Enabling Agreement.

(29) “**Party**” and “**Parties**” have the meaning set forth in the Preamble.

(30) “**Personal Data**” means any information (a) that, either individually or when combined with other information, can be used to identify a specific individual or derive information specific to a particular individual, and any information or data related to current, past or potential employees or customers, and (b) covered by Privacy Laws, including the following: (i) a first name and last name; (ii) a home or other physical address, including street name and name of city or town; (iii) an email address or other name, that reveals an individual’s email address; (iv) a telephone number; (v) a Social Security number; (vi) credit or debit card information; (vii) checking account information, account number and check number; (viii) a driver’s license, military or state identification number; (ix) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual; (x) human resources information, such as benefits plan information, member number, salary information, performance history, health history, and similar information; (xi) financial or transactional information; (xii) employee ID number; (xiii) government passport number or alien registration number, or (xiv) any other information that is identifiable to or identifies an individual, whether or not combined with any of (i) through (xiv) above.

(31) “**Privacy Laws**” means (a) the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA); (b) Gramm-Leach-Bliley Act of 1999, as amended (GLB); (c) all applicable Laws and non-governmental standards protecting Personal Data (including Payment Card Industry Data Security Standard (PCI-DSS) and Payment Application Data Security Standard (PA-DSS)) in effect from time to time; (d) all Laws concerning the protection, transport, storage, use and processing of data (including the General Data Protection Regulation ((EU) 2016/679), as amended (“GDPR”) and any national implementing Laws, regulations and secondary legislation, as amended from time to time, and any successor legislation to the GDPR in effect from time to time); and (e) all applicable Laws in effect from

time to time similar to those Laws listed in subsections (a) through (d) above or otherwise governing the transmission, storage, distribution, sale, or other use of Personal Data.

(32) “**Proof of Concept Projects**” has the meaning set forth in **Section 3.6**.

(33) “**Services**” means any services enabled under this Agreement, including the Core Services, Additional Required Services, and Optional Services.

(34) “**Software**” means utilities, operating systems, scripts, applications, system updates, add-ons, or other materials that can be installed on or used in connection with Hardware, whether in binary machine code or human-readable source code form.

(35) “**Supplemental Terms**” has the meaning set forth in **Section 3.4**.

(36) “**Tax**” means any federal, state, local, or non-U.S. income, gross receipts, franchise, sales, use, transfer, value-added, excise, customs, duties, property, withholding or any other tax, charge, or fee, including any interest, penalties, or other additions to tax, imposed by a governmental authority.

**Schedule 2**  
**Core Services**

**IHG Concerto™.** IHG Concerto is an IHG-proprietary, cloud-based computerized solution that provides key features needed to manage and operate a Hotel, including:

- Reservations system;
- Revenue management system;
- Content management system;
- Guest relations; and
- Hotel operations insights.

As part of the Core Services, IHG Tech provides network connectivity, system integration, and system interfaces between the Hotel, IHG Concerto, and other services comprising the IHG/Hotel ecosystem.

**Support Services.** Support services include remote support and on-site maintenance for approved Hardware and Software specified in the Minimum Configuration and required as part of Franchisee's use of the Core Services and the Additional Required Services.

**Hotel Opening Consultation Services** (required only for Hotels new to an IHG Portfolio Brand). Guidance and consulting on technology-related requirements for opening and operating an IHG Portfolio Brand Hotel, including use of property management system.

### Schedule 3 Additional Required Services

**Property Management System.** The property management system (“PMS”) is a comprehensive Software application used to coordinate the Hotel operational functions, e.g., front office, sales and planning, accounting, and reporting. The PMS may be integrated or interface with the Core Services or other solutions, including reservations systems, revenue management systems, guest in-room entertainment, housekeeping optimization, and payment card authorization.

**NextGen Payments.** NextGen Payments (“NGP”) is a computerized payment card processing program. It contains a data security process designed to remove certain credit card information from IT systems administered by IHG Tech or its Affiliates. Using PCI-certified payment terminals, credit card data is encrypted and converted to tokens before entering the PMS. Participation Agreements for tokenization services and for installation services are required. In addition, Franchisee will be required to enter into a merchant processing application and agreement with the IHG Tech-approved merchant service provider.

**Deployment, Installation, and Support.** A Service Provider will provide deployment, integration, and other support services for the Hotel PMS and SPS. A joinder or similar agreement is required in order to obtain these PMS/SPS Hardware, Software, and deployment services.

**FastConnect SD-WAN.** FastConnect SD-WAN is a service providing an approved virtual private networking and security platform for the Hotel’s LAN/network connectivity. FastConnect SD-WAN is the only approved network transport and security solution. A Participation Agreement is required.

**IHG Connect.** The IHG Connect program provides guest internet access and personalized guest internet experience, consisting of:

- IHG Connect Bandwidth – providing internet connectivity to the Hotel per Brand Standards; and
- IHG Connect WiFi – IHG-approved wifi solution, including required Hardware and Software infrastructure that enables the Hotel to take control of its guest wireless solutions;

IHG Connect is supported by IHG-certified technology service partners that provision internet, perform wifi integration, and provide ongoing support services. A Participation Agreement with both the internet service provider and the wifi systems integrator is required. Bandwidth is currently provided through an Order Form via IHG Marketplace.

**Employee Safety Devices.** This alert system enables employees to notify hotel management of an emergency with the push of a button. Employee Safety Devices must be procured and installed by one of several approved Service Providers and meet defined requirements. A Participation Agreement with Franchisee’s selected Service Provider is required.

**Public Access Computers.** Public Access Computers (or Business Center Computers) are designated workstations with a multi-function printer, providing complementary internet access to Hotel guests. Public Access Computers must utilize IHG Tech-approved protection Software and includes enrollment in a 24x7 support program offered by an approved Service Provider. A Participation Agreement with an approved Service Provider is required.

**In Room Entertainment and Media Solutions.** In Room Entertainment and Media Solutions is a digital guest experience platform that delivers guest services with advanced and connected technology to allow guests to access an interactive and personalized entertainment experience, through an in-room TV or mobile device, and access to a set of unique in-room guest services and brand content. In Room Entertainment and Media Solutions is supported by IHG-certified technology service partners that provision the platform and



provide ongoing support services. Media/entertainment content is secured through Service Providers engaged by IHG Tech or its Affiliate. A Participation Agreement with both the content Service Provider and the systems integrator is required.

**Schedule 4**  
**Supplemental Terms**

This Schedule contains the following Attachments:

Attachment 4-1 IHG Concerto Supplemental Terms

Attachment 4-2 Support Services Supplemental Terms

Attachment 4-3 Hotel Opening Consultation Services Supplemental Terms

**Attachment 4-1 to Schedule 4**  
**IHG Concerto Supplemental Terms**

1. **Implementation.** IHG Tech will use commercially reasonable efforts to assist Franchisee with the installation, implementation, and maintenance of IHG Concerto.

2. **Training.** IHG Tech or a Service Provider will provide training services for Franchisee's employees in the use of IHG Concerto at implementation and as new releases are available. Franchisee shall cause the staff who will use IHG Concerto to participate in and comply with the training. Instructor-led training (on-site or remote) is conducted prior to operations of IHG Concerto. As new releases are available IHG Tech will provide self-paced training to Hotel. Franchisee's hotel staff is required to attend and to demonstrate proficiency with IHG Concerto. Franchisee will provide adequate space for training during normal business hours.

3. **Denial of Access.** Franchisee acknowledges and agrees that IHG Tech may, at the sole discretion and election of IHG Tech and without prior notice to Franchisee, immediately disable, disconnect, or otherwise deny access to IHG Tech's infrastructure with respect to (i) any Hardware or Software specified as prohibited in the Minimum Configuration, and (ii) any Hardware containing prohibited Software. In addition, IHG Tech may immediately and without notice disconnect, disable, or otherwise prevent the use of Hardware and Software with the IHG Tech infrastructure if IHG Tech reasonably believes that a security incident related to such Hardware or Software, including an unauthorized disclosure of Guest Data, could occur, has occurred, or is occurring.

4. **Modifications to Franchisee Environment.** Franchisee will not operate its Hardware or Software, including making any modifications to its Hardware and Software, in any manner that may have a detrimental effect on Franchisee or IHG Tech operations. Such detrimental effects include rendering such Hardware or Software, or any IHG Tech Hardware or Software, inoperable or unresponsive, as determined by IHG Tech. In such cases, if Franchisee requests support from IHG Tech in trouble shooting or repairing these effects, Franchisee will be solely responsible for all related service, repair, or replacement costs, including all costs of IHG Tech or its Service Providers, which will be billed on a time-and-materials basis.

5. **Updates to the Minimum Configuration.** Within 90 days (or a shorter or longer period specified by IHG Tech in writing (email sufficient)) following any update to the Minimum Configuration by IHG Tech, Franchisee will (i) purchase and install then-current approved Software and approved Hardware described in the Minimum Configuration, and (ii) decommission any Hardware and Software that is no longer approved, as applicable, in each case at Franchisee's expense.

6. **WAN Hardware.** IHG Tech may install or cause to be installed a wide area network (WAN) and WAN Hardware for Hotel's use in communicating with IHG systems. IHG Tech shall have the right to determine the optimal method of access based upon the Software and Hardware located at the Hotel and the telecommunications and other services available to Franchisee. Franchisee acknowledges that Franchisee will not acquire any ownership interest in the Hardware related to or installed in connection with the WAN. Franchisee hereby irrevocably authorizes IHG Tech or its agents, or the agents of any WAN Hardware lessor or supplier, to enter upon the Hotel property for the purpose of installing, inspecting, maintaining, and removing the WAN Hardware. IHG Tech requires that Franchisee, at Franchisee's cost, purchase broadband Internet access at the Hotel in order to establish the primary WAN link. IHG Tech's WAN link will be used as a backup if the primary WAN link fails.

7. **WAN Hardware Installation.** Franchisee agrees that only WAN Hardware that meets IHG Tech's specifications and configurations will be installed or connected in any way to the reservation system.

IHG Tech will have the right to cause the installations of the WAN Hardware at the Hotel by a date specified by IHG Tech. Franchisee will, at Franchisee's expense and prior to the scheduled installation of the WAN Hardware, make available to IHG Tech and its vendors a suitable, readily accessible location for installation of the WAN Hardware. Franchisee will furnish the required electrical connections and any necessary cable installation and shall perform all work, including alterations, IHG Tech deems necessary to prepare the site for installation and operation of the WAN Hardware. Once installed, Franchisee shall not move, service, alter, or damage the WAN Hardware. Franchisee will procure that all WAN at the Hotel will (i) be installed in the Hotel's information technology room in a cabinet customarily used for such purposes and otherwise satisfying IHG Tech's reasonable requirements, (ii) be clearly labeled, and (iii) be connected to an uninterruptible power supply (UPS). Upon expiration of, termination of, or event of default under this Agreement or the Franchise Agreement, the WAN Hardware may be required to be de-installed from the Hotel by a Service Provider reasonably acceptable to IHG Tech and at Franchisee's sole expense.

**Attachment 4-2 to Schedule 4**  
**Support Services Supplemental Terms**

1. **Description.** Support for the Core Services will include the following:
  - Remote support service, includes technical support or break-fix services for approved Software, remote trouble-shooting, general assistance, and incident management. The service is provided 7 days a week, 24 hours/day via call center support calls, online, or other automated methods. Service problems identified or attributed to a Service Provider will be referred to the Service Provider.
  - Onsite maintenance service: break-fix services, including repair and exchange, for approved Hardware, with the following availability:
    - 7 days a week, 24 hours/day for critical Hardware, with a service level target of four hour response time on server equipment and network switch equipment.
    - Business days (Monday to Friday), with a service level target of next business day during business hours coverage, for workstations, UPS, monitors, and printers.
2. **Conditions.** IHG Tech will provide support services for so long as the following conditions are satisfied:
  - Franchisee maintains, or cause to be maintained, Hardware and Software in accordance with the Minimum Configuration and manufacturer specifications and under warranty;
  - Franchisee maintains virus protection and other data protection standards required under this Agreement; and
  - Franchisee performs routine maintenance on the Hardware/Software, including completing upgrades and enhancements required by IHG Tech, verifying that no warning lights are displayed, and maintaining the Hardware in appropriate environmental conditions.
3. **Preventive Maintenance.** Franchisee will regularly perform preventive maintenance on its Hardware, including the following:
  - Franchisee will verify all workstations have adequate and up to date virus protection.
  - Franchisee will ensure regular night backups are initiated and successful.
  - Franchisee has maintained, or caused to be maintained, its Hardware and Software in accordance with current manufacturer requirements stated in the manufacturer's manual.
  - Franchisee will perform a power down and reboot of the PMS server and workstations a minimum of once per week.
4. **Support Services Related to Non-Approved Software and Hardware.** IHG Tech will have no obligation to provide, or cause to be provided, support services with regard to any non-approved Software or non-approved Hardware, or for any failure related to, directly or indirectly, non-approved Software or non-approved Hardware, and Franchisee will be solely responsible for all costs related to the foregoing, including the cost of Support Services of approved Hardware or approved Software incurred because of non-approved Hardware or non-approved Software.

**Attachment 4-3 to Schedule 4**  
**Hotel Opening Consultation Services Supplemental Terms**

1. **Completion of Technology Purchases.** At least 120 days before the Hotel opening date, Franchisee will acquire the Hardware, Software, and communications capabilities specified in the Minimum Configuration. In addition, at least 120 days before the Hotel opening date, Franchisee will enter into the Participation Agreements for the Additional Required Services.

2. **Site Preparation.** Franchisee will make available prior to the scheduled installation date, at its own expense, a site for installation and operation of the Hardware in accordance with specifications, which, without waiving or modifying Franchisee's obligations under this Agreement, must be readily accessible to installation personnel. Franchisee will furnish the required electrical connections, power, outlets, air conditioning, patch panel, and local area network cable installation required by each manufacturer's installation instructions or other documentation, and shall perform all work, including alterations, that IHG Tech, in its sole discretion, deems necessary to prepare the site for installation and operation of the Hardware. In the event site preparation has not been completed to the reasonable satisfaction of IHG Tech in a timely manner, Franchisee will pay upon invoice from IHG Tech the amount of \$2,600 (as such charge may be modified by IHG Tech from time to time). Proper site preparation is essential to the performance of the Hardware and no Hardware will be installed unless and until site preparation has been completed to the reasonable satisfaction of IHG Tech.

3. **Installation.** IHG Tech will notify Franchisee of the projected Hardware installation date and will schedule it to be installed at the Hotel. Any Software or Hardware installation delay caused by Franchisee will not affect Franchisee's obligation to pay any fees or amounts due under this Agreement. Franchisee will be responsible for the time and expenses of its employees, if any, required to assist in the installation of the Software or Hardware and additional expenses incurred by IHG Tech or Service Providers resulting from delays in installation caused by Franchisee or its employees or agents. Franchisee will pay the travel and related expenses of, and shall provide lodging and meals to, IHG Tech's and/or the Service Provider's personnel (or a reasonable per diem meal allowance). Franchisee will be responsible for the costs of any site preparation work that must be performed by IHG Tech or Service Providers, as well as the costs associated with the installation of any Hardware or Software not part of the Minimum Configuration. Franchisee will obtain, coordinate, and notify IHG Tech of the services of any external parties whose products or services Franchisee desires to connect to or interface with the reservation system or property management system, such as telephone switches, point-of-sale devices, and in-room movie or entertainment services. Delay by any communications company or any Hardware supplier in performing its obligations to IHG Tech will, for the duration of the delay, excuse any delay by IHG Tech with respect to these installation obligations.

4. **Minimum Hardware Quantities.** IHG reserves the right in its sole discretion to identify the number of each of the Hardware items required for operations at the Hotel.

5. **WAN Installation Fee.** Franchisee will pay the fee for the wide area network (WAN) installation according to IHG Tech's or a Service Provider's standard rates. Such fee will be payable upon the WAN installation.

6. **PMS Training.** IHG Tech or a Service Provider will provide training services for Franchisee's employees in the use of the PMS. Franchisee shall cause the staff who will use the PMS to participate in and comply with the training according to the following table:

Installation			Man-days			
Platform	Type	Rooms	Configuration	Training	Cutover	Interface
Xpress	New Build or New Conversion	1-300	1	5	9	2
Opera	New Build or New Conversion	1-100	2	5	12	2
Opera	New Build or New Conversion	101-250	2	5	14	3
Opera	New Build or New Conversion	251-350	3	8	18	3
Opera	New Build or New Conversion	351+	3	10	21	4

Instructor-led training (on-site or remote) is conducted prior to operations of the PMS. The Hotel staff is required to attend and to demonstrate proficiency with the PMS, with class attendance of 80% or more and a passing score of 90% or greater on the final exam. Franchisee will provide adequate space for training during normal business hours.

7. PMS Training Fees. Franchisee will pay the fee for the PMS training according to IHG Tech's or a Service Provider's standard rates, as further specified on an Order Form. Such fee will be payable in advance upon completion of such Order Form. Training fees do not include the cost of travel, lodging, transportation, meals, or any other expenses of Franchisee's employees attending training, or IHG Tech employee or agent expenses relating to on-site support. Franchisee will also pay reasonable travel and related expenses, including lodging and meals for the training and implementation personnel, as well as such expenses for the employees of Franchisee participating in any training or other instruction.

8. Customization. If Franchisee requires any custom services for its particular location, IHG Tech reserves the right to decline to perform such services or to charge a fee related to the additional services required.

# EXHIBIT D



## EXHIBIT D

### AGENTS FOR SERVICE OF PROCESS

#### CALIFORNIA

California Commissioner Of The Department  
Of Financial Protection and Innovation  
320 West 4th Street, Suite 750  
Los Angeles, California 90013-2344  
(866) 275-2677

CT Corporation System  
818 West 7<sup>th</sup> Street  
Suite 1004  
Los Angeles, California 90017

#### HAWAII

Commissioner of Securities of the  
State of Hawaii  
Department of Commerce and Consumer Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722

#### INDIANA

Indiana Secretary of State  
201 State House  
200 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6531

#### ILLINOIS

Attorney General of the State of Illinois  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

#### MARYLAND

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, Maryland 21202-2020  
(410) 576-6360

#### MICHIGAN

Michigan Department of Commerce  
Corporations and Securities Bureau  
670 Williams Building  
525 W. Ottawa Street  
Lansing, Michigan 48913

#### MINNESOTA

Commissioner of Securities  
Department of Commerce  
85 7<sup>th</sup> Place East  
Suite 280  
St. Paul, Minnesota 55101-2198

#### NEW YORK

New York Department of State  
One Commerce Plaza,  
99 Washington Avenue, 6th Floor  
Albany, NY 12231  
(518) 473-2492

#### NORTH DAKOTA

Securities Commissioner, State of North Dakota  
600 East Boulevard, Fifth Floor  
Bismarck, North Dakota 58505

#### RHODE ISLAND

Director of Department of Business Regulation  
1511 Pontiac Avenue  
John O. Pastore Complex – Building 69-1  
Cranston, Rhode Island 02920

#### SOUTH DAKOTA

Department of Labor and Regulation  
Division of Insurance  
Securities Regulation  
124 S Euclid, Suite 104  
Pierre SD 57501  
(605) 773-3563

#### VIRGINIA

Clerk of the State Corporation Commission  
1300 East Main Street  
Richmond, Virginia 23219  
(804-371-9051)

#### WASHINGTON

Director of the Securities Division  
Department of Financial Institutions  
150 Israel Rd. SW  
Tumwater, WA 98501  
(360) 902-8760

#### WISCONSIN

Commissioner of Securities  
201 W. Washington Avenue – Third Fl.  
Madison, Wisconsin 53703

# EXHIBIT E

**EXHIBIT E**

**STATE FRANCHISE ADMINISTRATORS**

**CALIFORNIA**

California Commissioner Of The Department  
Of Financial Protection and Innovation  
320 West 4th Street, Suite 750  
Los Angeles, California 90013-2344

**HAWAII**

Commissioner of Securities of the  
State of Hawaii  
Dept. of Commerce and Consumer Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

**ILLINOIS**

Franchise Division  
Office of Attorney General  
State of Illinois  
500 South Second Street  
Springfield, Illinois 62706

**INDIANA**

Franchise Section  
Indiana Securities Commission  
302 West Washington Street, Room E-111  
Indianapolis, Indiana 46204

**MARYLAND**

Maryland Division of Securities  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202-2020

**MICHIGAN**

Consumer Protection Division  
Antitrust and Franchise Unit  
Michigan Department of Attorney General  
670 Williams Building  
525 W. Ottawa Street  
Lansing, Michigan 48913

**MINNESOTA**

Minnesota Department of Commerce  
Securities-Franchise Registration  
85 7<sup>th</sup> Place East, Suite 280  
St. Paul, Minnesota 55101-2198

**NEW YORK**

NYS Department of Law  
Investor Protection Bureau  
28 Liberty St. 21<sup>st</sup> Fl.  
New York, New York 10005

**NORTH DAKOTA**

North Dakota Securities Department  
600 East Boulevard, Fifth Floor  
Bismarck, North Dakota 58505

**RHODE ISLAND**

Division of Securities  
1511 Pontiac Avenue  
John O. Pastore Complex – Building 69-1  
Cranston, Rhode Island 02920

**SOUTH DAKOTA**

Department of Labor and Regulation  
Division of Insurance  
Securities Regulation  
124 S Euclid, Suite 104  
Pierre SD 57501  
(605) 773-3563

**VIRGINIA**

State Corporation Commission  
Division of Securities and Retail Franchising  
1300 East Main Street, 9th Floor  
Richmond, Virginia 23219

**WASHINGTON**

Securities Division  
Department of Financial Institutions  
150 Israel Rd. SW  
Tumwater, WA 98501  
(360) 902-8760

**WISCONSIN**

Securities and Franchise Registration  
Wisconsin Securities Commission  
201 W. Washington Avenue – Third Fl.  
Madison, Wisconsin 53703

# EXHIBIT F

**LIST OF FRANCHISEES OPERATING AS OF DECEMBER 31, 2023**

Brand Organization	Hotel Name	Legal Entity	Address	City	State	Postal Code	Country Name	PC Phone
Kimpton Hotels & Restaurants	Hotel Monaco Denver	GPIF KDEN Hotel Owner LLC	1717 Champa Street	Denver	CO	80202	United States	303-296-1717
Kimpton Hotels & Restaurants	Banneker Hotel	KWHP DC, LLC	1315 16th Street NW	Washington	DC	20036	United States	901-581-3365
Kimpton Hotels & Restaurants	Shorebreak Fort Lauderdale	DRH RIOMAR TENANT, LLC	2900 Riomar Street	Fort Lauderdale	FL	33304	United States	240-744-1150
Kimpton Hotels & Restaurants	Ella's Cottages	KHP IV Key West TRS LLC	811 Simonton Street	Key West	FL	33040	United States	305-296-3336
Kimpton Hotels & Restaurants	Fitch Lodge	KHP IV Key West TRS LLC	1030 Eaton Street	Key West	FL	33040	United States	305-294-3333
Kimpton Hotels & Restaurants	Lighthouse Hotel	KHP IV Key West TRS LLC	902 Whitehead Street	Key West	FL	33040	United States	305-294-9588
Kimpton Hotels & Restaurants	Ridley House	KHP IV Key West TRS LLC	601 Caroline Street	Key West	FL	33040	United States	305-294-6969
Kimpton Hotels & Restaurants	Winslow's Bungalows	KHP IV Key West TRS LLC	725 Truman Avenue	Key West	FL	33040	United States	305-296-2211
Kimpton Hotels & Restaurants	Overland Hotel Atlanta Airport	Acron 2 Porsche Drive, Atlanta, LLC	2 Porsche Drive	Atlanta	GA	30354	United States	470-466-3300
Kimpton Hotels & Restaurants	Brice Hotel	GPIF Brice Hotel Owner LLC	601 East Bay Street	Savannah	GA	31401	United States	912-238-1200
Kimpton Hotels & Restaurants	Hotel Monaco Baltimore	Jemal's B&O L.L.C.	2 N. Charles Street	Baltimore	MD	21201	United States	202-638-6300
Kimpton Hotels & Restaurants	Hotel Arras	MHG Asheville TR, LLC	7 Patton Avenue	Asheville	NC	28801	United States	770-534-3381
Kimpton Hotels & Restaurants	Cottonwood	BLACKSTONE HOTEL, LLC	302 S 36th Street	Omaha	NE	68131	United States	402-810-9500
Kimpton Hotels & Restaurants	Hotel Theta	RPH Hotels 48th Street Owner, LLC	790 8th Avenue	New York	NY	10019	United States	404-266-7001
Kimpton Hotels & Restaurants	Hotel Monaco Pittsburgh	Igloo Acquisition Owner LLC	620 William Penn Place	Pittsburgh	PA	15219	United States	414-905-1200
Kimpton Hotels & Restaurants	Harper Hotel	714 MAIN REAL ESTATE HOLDINGS, LLC	714 Main Street	Fort Worth	TX	76102	United States	901-312-2301

**LIST OF MANAGED OUTLET OPERATORS OPERATING AS OF DECEMBER 31, 2023**

Brand Organization	Hotel Name	Legal Entity	Address	City	State	Postal Code	Country Name	PC Phone
Kimpton Hotels & Restaurants	Hotel Palomar Phoenix	DiamondRock PHX Tenant, LLC	2 East Jefferson Street	Phoenix	AZ	85004	United States	602-253-6633
Kimpton Hotels & Restaurants	Shorebreak Resort	DiamondRock HB Tenant	500 Pacific Coast Hwy	Huntington Beach	CA	92648	United States	714-861-4470
Kimpton Hotels & Restaurants	Everly Hotel	Argyle Hotel LLC	1800 Argyle Ave	Los Angeles	CA	90028	United States	213-279-3532
Kimpton Hotels & Restaurants	Hotel Palomar Beverly Hills	RHCP Lessee LLC	10740 Wilshire Boulevard	Los Angeles	CA	90024	United States	310-475-8711
Kimpton Hotels & Restaurants	Hotel Wilshire	LA OSM Wilshire LLC	6317 Wilshire Boulevard	Los Angeles	CA	90048	United States	323-852-6000
Kimpton Hotels & Restaurants	Rowan Palm Springs	DTPS C-12 LLC	100 W. Tahquitz Canyon Way	Palm Springs	CA	92262	United States	760-325-3050
Kimpton Hotels & Restaurants	Sawyer Hotel	Sac MUB1 Hotel, LLC	500 J Street	Sacramento	CA	95814	United States	916-545-7100
Kimpton Hotels & Restaurants	Alma - San Diego	BSREP III SD Hotel TRS LLC	1047 5th Avenue	San Diego	CA	92101	United States	619-515-3000
Kimpton Hotels & Restaurants	Alton Hotel	DCP SF Columbus Ave Owner LLC	2700 Jones Street	San Francisco	CA	94133	United States	415-771-9000
Kimpton Hotels & Restaurants	Hotel Enso	KHP III SF Sutter LLC	1800 Sutter Street	San Francisco	CA	94115	United States	415-921-4000
Kimpton Hotels & Restaurants	Canary Hotel	XHR Santa Barbara TRS LLC	31 West Carrillo Street	Santa Barbara	CA	93101	United States	407-317-6950
Kimpton Hotels & Restaurants	La Peer Hotel	LaPeer Hotel Owner LLC	627 N. La Peer Drive	West Hollywood	CA	90069	United States	213-296-3038
Kimpton Hotels & Restaurants	George Hotel	DC Six Lessee, L.L.C.	15 E Street NW	Washington	DC	20001	United States	202-347-4200
Kimpton Hotels & Restaurants	Hotel Monaco Washington DC	Jayhawk Lessee LLC	700 F Street NW	Washington	DC	20004	United States	202-628-7177
Kimpton Hotels & Restaurants	EPIC Hotel	Epic Hotel, LLC	270 Biscayne Boulevard Way	Miami	FL	33131	United States	305-424-5226
Kimpton Hotels & Restaurants	Angler's Hotel South Beach	The Angler's Boutique Resort LLC	660 Washington Ave	Miami Beach	FL	33139	United States	305-534-9600
Kimpton Hotels & Restaurants	Hotel Palomar South Beach	Sobe Alton, LLC	1750 Alton Road	Miami Beach	FL	33139	United States	786-628-2000
Kimpton Hotels & Restaurants	Surfcomber Hotel	Chisholm Properties South Beach, In	1717 Collins Ave	Miami Beach	FL	33139	United States	305-532-7715
Kimpton Hotels & Restaurants	Vero Beach Hotel and Spa	Vero Hotel, LLC	3500 Ocean Drive	Vero Beach	FL	32963	United States	772-231-5666
Kimpton Hotels & Restaurants	Shane Hotel	MTU Hotel Owner, LLC	1340 W. Peachtree Street NW.	Atlanta	GA	30309	United States	404-446-3456
Kimpton Hotels & Restaurants	Sylvan Hotel	SOBU FLATS, LLC	374 East Paces Ferry Road NE	Atlanta	GA	30305	United States	404-614-5463
Kimpton Hotels & Restaurants	Gray Hotel	39 Chicago Master Tenant LLC	122 W. Monroe Street	Chicago	IL	60603	United States	312-750-9012

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Kimpton Hotels & Restaurants	Hotel Monaco Chicago	IA Lodging Chicago Wabash TRS, L.L.	225 N. Wabash Avenue	Chicago	IL	60601	United States	407-317-6950
Kimpton Hotels & Restaurants	Hotel Fontenot	In the Clear NOLA Propco, LLC	501 Tchoupitoulas St.	New Orleans	LA	70130	United States	512-539-3612
Kimpton Hotels & Restaurants	Marlowe Hotel	25 Edwin H. Land Boulevard, Cambrid	25 Edwin H. Land Blvd	Cambridge	MA	02141	United States	678-746-0017
Kimpton Hotels & Restaurants	Armory Hotel Bozeman	The Etha Hotel LLC	24 W. Mendenhall St.	Bozeman	MT	59715	United States	406-551-7700
Kimpton Hotels & Restaurants	Tryon Park Hotel	300 South Tryon Hotel LLC	303 S. Church Street	Charlotte	NC	28202	United States	704-445-2626
Kimpton Hotels & Restaurants	Cardinal Hotel	51 East Fourth Street Associates, L	51 4th Street East	Winston-Salem	NC	27101	United States	336-724-1009
Kimpton Hotels & Restaurants	Hotel Eventi	835 6th Ave Master LP	851 6th Avenue	New York	NY	10001	United States	212-564-4567
Kimpton Hotels & Restaurants	Schofield Hotel	Schofield Properties, LLC	2000 East Ninth Street	Cleveland	OH	44115	United States	216-696-5442
Kimpton Hotels & Restaurants	Hotel Vintage Portland	422 SW Broadway Associates LLC	422 S.W. Broadway	Portland	OR	97205	United States	503-228-1212
Kimpton Hotels & Restaurants	RiverPlace Hotel	XHR Portland TRS, LLC	1510 S Harbor Way	Portland	OR	97201	United States	407-317-6950
Kimpton Hotels & Restaurants	Hotel Monaco Philadelphia	Lafayette Hotel, LLC	433 Chestnut Street	Philadelphia	PA	19106	United States	215-925-2111
Kimpton Hotels & Restaurants	Hotel Palomar Philadelphia	XHR Philadelphia 17 TRS LLC	117 South 17th Street	Philadelphia	PA	19103	United States	407-317-6950
Kimpton Hotels & Restaurants	Aertson Hotel	VU2013 RRHG, LLC	2021 Broadway	Nashville	TN	37203	United States	615-340-6376
Kimpton Hotels & Restaurants	Pittman Hotel	Epic Dallas Hotel, LP	2551 Elm Street	Dallas	TX	75226	United States	469-498-2500
Kimpton Hotels & Restaurants	Hotel Monaco Salt Lake City	IA Lodging Salt Lake City TRS, L.L.	15 West 200 South	Salt Lake City	UT	84101	United States	407-317-6950
Kimpton Hotels & Restaurants	The Forum Hotel	UNIV OF VIRGINIA DARDEN SC FOUN	540 Massie Road	Charlottesville	VA	22903	United States	404-307-3383
Kimpton Hotels & Restaurants	Taconic Hotel	3835 Main LLC	3835 Main Street	Manchester	VT	05254	United States	802-362-0147
Kimpton Hotels & Restaurants	Hotel Monaco Seattle	Fourth Avenue Seattle Hotel, LLC	1101 Fourth Avenue	Seattle	WA	98101	United States	437-880-0104
Kimpton Hotels & Restaurants	Hotel Vintage Seattle	1100 5TH AVENUE ASSOCIATES, LLC	1100 Fifth Avenue	Seattle	WA	98101	United States	206-624-8000
Kimpton Hotels & Restaurants	Palladian Hotel	Palladian Master Tenant, LLC	2000 Second Avenue	Seattle	WA	98121	United States	206-902-7638
Kimpton Hotels & Restaurants	Journeyman	Chicago Street Holdings LLC	310 E. Chicago Street	Milwaukee	WI	53202	United States	414-291-3970

**SIGNED AGREEMENTS, BUT HOTELS NOT YET OPENED AS OF DECEMBER 31, 2023**

Brand Organization	Legal Entity	Hotel Name	Address Line 1	City	State	Postal Code
Kimpton Hotels & Restaurants	Investel Garden Resorts, LLC	Garden Grove (Anaheim)	S. Harbor Blvd. & Twintree Lane	Garden Grove	CA	92840
Kimpton Hotels & Restaurants	IC PG Property Owner, LLC	Kimpton Pacific Grove Hotel	157 Grand Avenue	Pacific Grove	CA	93950
Kimpton Hotels & Restaurants	DTC Hospitality Venture I, LLC	Claret Hotel	6985 E. Chenango Ave.	Denver	CO	80237
Kimpton Hotels & Restaurants	West Alley, LLC	Roswell GA	37 Magnolia Street	Roswell	GA	30075
Kimpton Hotels & Restaurants	RP 21 Coco Palms LLC	Kauai Coco Palms Resort	4-241 Kuhio Hwy	Kapa'a	HI	96746
Kimpton Hotels & Restaurants	1NP, LLC	Indianapolis	1 North Pennsylvania Street	Indianapolis	IN	46204
Kimpton Hotels & Restaurants	Monte Rosa LLC	Kansas City	Wyandotte St & W14 st	Kansas City	MO	64105
Kimpton Hotels & Restaurants	2601 Market Hotel Investors, LLC	St. Louis	2601 Market Street	St. Louis	MO	62207
Kimpton Hotels & Restaurants	Hillsborough Owner LLC	Raleigh NC	320 Hillsborough Street	Raleigh	NC	27603
Kimpton Hotels & Restaurants	CAI Reno Hotel Partners, LLC	Reno	219 Court Street	Reno	NV	89501
Kimpton Hotels & Restaurants	98 Montague LLC	Hotel Bossert	98 Montague Street	Brooklyn Heights	NY	11201
Kimpton Hotels & Restaurants	N47 Associates LLC	New York NY	32 West 48th Street	New York	NY	10036
Kimpton Hotels & Restaurants	Traction Partners LLC	Cincinnati	432 Walnut Street	Cincinnati	OH	45202
Kimpton Hotels & Restaurants	DSM Real Estate Partners, LLC	Charleston SC	860 Morrison Drive	Charleston	SC	29403
Kimpton Hotels & Restaurants	Greenville HKW, LLC	Greenville	100 North Markley Street	Greenville	SC	29601
Kimpton Hotels & Restaurants	Verde Way, LLC	Verde Square	Intersection of Bright Verde Way & Burnet Road	Austin	TX	78758
Kimpton Hotels & Restaurants	FBRG Hospitality Developers LP	Kimpton Fredericksburg	Intersection of 1201 and US Hwy 87	Fredericksburg	TX	78624
Kimpton Hotels & Restaurants	Supreme Bright Plano II, LLC	Plano TX	Intersection of Dallas North Tollway and	Plano	TX	75024
Kimpton Hotels & Restaurants	Sauto Hotel II, LLC	San Antonio	423 South Alamo Street	San Antonio	TX	78205
Kimpton Hotels & Restaurants	370 SOUTH WEST TEMPLE, LLC	Salt Lake City UT	370 South West Temple	Salt Lake City	UT	84101

# EXHIBIT F2



The following franchisees have had an outlet terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the License as of December 31, 2023, or who have not communicated with Holiday within 10 weeks of the application date.

Chain Description	State	Hotel Name	PC Name	PC Phone	Type2
Kimpton Hotels & Restaurants	CO	Hotel Born	Mark Falcone	303-573-0050	Termination_Expiration
Kimpton Hotels & Restaurants	FL	Ella's Cottages	Joe Long	415-868-4888	Transfer
Kimpton Hotels & Restaurants	FL	Fitch Lodge	Joe Long	415-868-4888	Transfer
Kimpton Hotels & Restaurants	FL	Lighthouse Hotel	Joe Long	415-868-4888	Transfer
Kimpton Hotels & Restaurants	FL	Ridley House	Joe Long	415-868-4888	Transfer
Kimpton Hotels & Restaurants	FL	Winslow's Bungalows	Joe Long	415-868-4888	Transfer
Kimpton Hotels & Restaurants	MA	Nine Zero Hotel	Shai Zelering	212-417-7000	Termination_Expiration
Kimpton Hotels & Restaurants	TX	Dallas	Thomas Morabito	214-369-6192	Term Not Open
Kimpton Hotels & Restaurants	WA	Hotel Vintage Seattle	Thomas Fisher	240-507-1300	Transfer

Between December 31, 2023 and March 15, 2024, the following franchisees have had an outlet terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the License, or who have not communicated with Holiday within 10 weeks of the application date.

Chain Description	State	Hotel Name	PC Name	PC Phone	Type2

# EXHIBIT G1

FINANCIAL STATEMENTS

IHG Franchising, LLC  
Years Ended December 31, 2023, 2022 and 2021  
With Report of Independent Auditors

# IHG Franchising, LLC

## Financial Statements

Years Ended December 31, 2023, 2022 and 2021

### Contents

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## **Report of Independent Auditors**

To the Management of IHG Franchising, LLC

### ***Opinion***

We have audited the accompanying financial statements of IHG Franchising, LLC (the "Company"), which comprise the balance sheets as of December 31, 2023 and 2022, and the related statements of operations, of member's equity and of cash flows for each of the three years in the period ended December 31, 2023, including the related notes (collectively referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023 in accordance with accounting principles generally accepted in the United States of America.

### ***Basis for Opinion***

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (US GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date the financial statements are available to be issued.

### ***Auditors' Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with US GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with US GAAS, we:



- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*PricewaterhouseCoopers LLP*

Atlanta, Georgia  
March 28, 2024

## IHG Franchising, LLC

## Balance Sheets

	<b>December 31</b>	
	<b>2023</b>	<b>2022</b>
<b>Assets</b>		
Current assets:		
Accounts receivable	\$ 1,098,921	\$ 645,341
Contract assets	1,170,643	918,663
Receivables from affiliates <i>(Note 5)</i>	20,754,482	19,933,816
Total current assets	<u>23,024,046</u>	<u>21,497,820</u>
Contract assets	15,448,061	16,575,177
Total assets	<u>\$ 38,472,107</u>	<u>\$ 38,072,997</u>
<b>Liabilities and member's equity</b>		
Current liabilities:		
Accrued expenses	\$ 44,000	\$ 41,000
Deferred revenue	201,714	950
Payables to affiliates <i>(Note 5)</i>	14,695,161	14,117,388
Total current liabilities	<u>14,940,875</u>	<u>14,159,338</u>
Deferred revenue	70,286	89,257
Total liabilities	<u>15,011,161</u>	<u>14,248,595</u>
Member's equity	23,460,946	23,824,402
Total liabilities and member's equity	<u>\$ 38,472,107</u>	<u>\$ 38,072,997</u>

*See accompanying notes.*

## IHG Franchising, LLC

## Statements of Operations

	Year Ended December 31		
	2023	2022	2021
Revenues:			
Franchise royalty fees <i>(Note 4)</i>	\$ (798,805)	\$ (665,217)	\$ (393,868)
Total revenues	<u>(798,805)</u>	<u>(665,217)</u>	<u>(393,868)</u>
Expenses:			
(Release) provision for expected credit losses	–	(45,256)	20,987
General and administrative expenses	49,542	50,771	35,994
Total expenses	<u>49,542</u>	<u>5,515</u>	<u>56,981</u>
Loss from operations	<b>(848,347)</b>	(670,732)	(450,849)
Other income (expense):			
Interest income from affiliates <i>(Note 5)</i>	822,009	496,112	141,822
Interest expense to affiliates <i>(Note 5)</i>	<b>(337,118)</b>	(65,364)	–
Net loss	<u>\$ (363,456)</u>	<u>\$ (239,984)</u>	<u>\$ (309,027)</u>

*See accompanying notes.*



## IHG Franchising, LLC

## Statements of Member's Equity

Balance at December 31, 2020	\$ 24,373,413
Net loss	<u>(309,027)</u>
Balance at December 31, 2021	24,064,386
Net loss	<u>(239,984)</u>
Balance at December 31, 2022	23,824,402
Net loss	<u>(363,456)</u>
Balance at December 31, 2023	<u><u>\$ 23,460,946</u></u>

*See accompanying notes.*

IHG Franchising, LLC  
Statements of Cash Flows

	Year Ended December 31		
	2023	2022	2021
<b>Operating activities</b>			
Net loss	\$ (363,456)	\$ (239,984)	\$ (309,027)
Reconciliation of net income to net cash used in operating activities:			
Contract assets deduction in revenue ( <i>Note 4</i> )	1,042,987	833,408	461,639
Accrued but unpaid interest on receivables from affiliates	(822,009)	(496,112)	(141,822)
Accrued but unpaid interest on payables to affiliates	337,118	65,364	-
(Release) provision for expected credit losses	-	(45,256)	20,987
Changes in operating assets and liabilities:			
Accounts receivable	(453,580)	(486,433)	(78,991)
Receivables from and payables to affiliates	241,998	350,285	(5,422,844)
Accrued expenses	3,000	5,000	-
Deferred revenue	13,942	13,728	8,688
Net cash used in operating activities	-	-	(5,461,370)
<b>Financing activities</b>			
Settlement of discount note due from affiliates	-	-	5,461,370
Net cash provided by financing activities	-	-	5,461,370
Net decrease in cash and cash equivalents	-	-	-
Cash and cash equivalents:			
Beginning of year	-	-	-
End of year	\$ -	\$ -	\$ -
<b>Supplemental disclosure of noncash operating activities</b>			
Payment for franchise agreements by an affiliate	\$ -	\$ 5,269,488	\$ 6,750,000

*See accompanying notes.*

# IHG Franchising, LLC

## Notes to Financial Statements

December 31, 2023

### 1. Description of the Business and Basis of Presentation

#### Organization

IHG Franchising, LLC (the “Company”) is a wholly owned subsidiary of InterContinental Hotels Group PLC (UK) (the “Parent”) through InterContinental Hotels Limited (UK), Six Continents Limited (UK), Six Continents Hotels International Limited (UK), InterContinental (PB) 3 Limited (UK), InterContinental Hotels Group Operating Corp. (Delaware), IHC United States (Holdings) Corp. (Delaware), IHC Inter-Continental (Holdings) Corp. (Delaware), Inter-Continental Hotels Corporation (Delaware), and Six Continents Hotels, Inc. (Delaware), its immediate parent.

The Company was formed in 2004. On January 1, 2022, the Company entered into the amended and restated master license agreement with Kimpton Hotel & Restaurant Group, LLC (“Kimpton”). The master license agreement (the “Agreement”) grants the Company the nonexclusive right to operate and license throughout the United States, US Territories, Canada and the Caribbean systems designed to provide distinctive, high-quality lodging services to the public under Kimpton’s brand names (the “Systems”). The Agreement has a constantly renewing 25-year term. Pursuant to the Agreement, the Company pays 95% of all royalty and royalty-related fees received by the Company and 100% of all services contributions and other fees received by the Company to Kimpton. In addition, pursuant to the Agreement, as amended, from January 1, 2022, the credit risk relating to royalty and royalty-related fees is attributable to the Company’s parent, Six Continents Hotels, Inc.

#### Basis of Presentation

The Company does not own or consolidate any other entity and is a wholly owned subsidiary of Six Continents Hotels, Inc. The Company’s ultimate parent and controlling party is InterContinental Hotels Group PLC (IHG or the Parent). The financial statements are not necessarily indicative of the financial position, results of operations, and cash flows that might have occurred had the Company been a stand-alone entity not integrated into IHG’s other operations.

The Company’s financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America. All assets, liabilities, revenues, and expenses in the accompanying financial statements have been derived from the separate records maintained by the Company.

## IHG Franchising, LLC

## Notes to Financial Statements (continued)

**2. Summary of Significant Accounting Policies****Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported year. Actual results could differ from those estimates.

**Cash and Cash Equivalents**

Cash and cash equivalents include short-term, interest-bearing securities with original maturities of less than three months.

**Allowance for Credit Losses**

Accounts receivable arise from sales to customers. Accounts receivable are recorded at their original amount. Pursuant to the Agreement, from January 1, 2022, the allowance for any expected lifetime credit losses is attributable to the Company's parent and is not included in the Company's financial statements. As such, the balance of the allowance for credit losses at December 31, 2021 of \$45,256 was released to the income statement in the year ended December 31, 2022.

<b>Allowance for credit losses at December 31, 2021</b>	<b>\$ 45,256</b>
Release for expected credit losses on January 1, 2022	<u>(45,256)</u>
<b>Allowance for credit losses at December 31, 2022 and 2023</b>	<b><u><u>\$ 0</u></u></b>

**Revenue Recognition**

Revenue is recognized at an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring goods or services to a customer.

## IHG Franchising, LLC

## Notes to Financial Statements (continued)

**2. Summary of Significant Accounting Policies (continued)*****Fee business revenue***

The Company's business comprises the franchising of hotels under the Kimpton brand. Under franchise agreements, the Company's performance obligation is to provide a license to use the Company's trademarks and other intellectual property. Franchise royalty fees are typically charged as a percentage of hotel gross rooms revenues and are treated as variable consideration, recognized as the underlying hotel revenues occur.

Application and re-licensing fees are not considered to be distinct from the franchise performance obligation and are recognized over the life of the related contract.

Under the Agreement, the Company is deemed to be acting as agent in the provision of these services and, as such, nets the license cost against revenue and reports a royalty fee equal to the 5% commission it earns through the Agreement.

The number of franchised hotels in operation during the year ended December 31, 2023, 2022 and 2021 is as follows:

	<b>2023</b>	<b>2022</b>	<b>2021</b>
	<i>(Unaudited)</i>		
Franchised hotels at beginning of year	<b>11</b>	7	5
New franchises	<b>6</b>	4	4
Franchises removed	-	-	(2)
Franchised hotels at end of year	<b>17</b>	11	7

***Contract Assets***

Amounts paid to hotel owners to secure franchise agreements ("key money") are treated as consideration payable to a customer. A contract asset is recorded which is recognized as a deduction to franchise royalty fee revenue over the initial term of the agreement.

## IHG Franchising, LLC

### Notes to Financial Statements (continued)

#### **2. Summary of Significant Accounting Policies (continued)**

Typically, contract assets are not financial assets as they represent amounts paid at the beginning of a contract, and so are tested for impairment based upon future cash flows rather than with reference to expected credit losses. Contract assets are reviewed for impairment when events or changes in circumstances indicate that the carrying value may not be recoverable. If the estimated undiscounted cash flows, before the payment of 95% of royalty and royalty-related fees under the Agreement, are less than carrying value, an impairment loss is charged to the income statement based on the difference between the carrying value and the estimated fair value. Fair value is based on estimated discounted future cash flows. No impairment loss was recognized in any of the years ended December 31, 2023, 2022 or 2021.

#### **Fair Value of Financial Instruments**

The carrying value of cash and cash equivalents, accounts receivable, and receivables from and payables to affiliates approximates fair value due to the nature and short-term maturities of these instruments. The revolving loan notes included within receivables from affiliates and payables to affiliates are interest-bearing. Interest is recognized in the statement of operations as it accrues, using the effective interest rate method. There are no fees or related costs received in respect of the loan note.

#### **3. Income Taxes**

The Company is not required to file a separate tax return as it is a limited liability company treated as a disregarded entity for federal and state income tax purposes with all income tax liabilities and/or benefits of the Company being passed through to the members. The Company is included in the consolidated federal income tax return of InterContinental Hotels Group Operating Corp., its ultimate U.S. parent company. As such, no recognition of federal or state income taxes for the Company has been provided for in the accompanying financial statements.

## IHG Franchising, LLC

## Notes to Financial Statements (continued)

**4. Franchise Royalty Fees**

The Company is deemed to be acting as an agent in the provision of services and, as such, nets the license cost against revenue and reports a franchise royalty fee equal to the 5% commission it earns through the Agreement (see note 2).

In some instances the Company will pay, via an affiliate (see note 5), amounts to hotel owners to secure franchise agreements. These assets are not subject to the Agreement, with 100% of the asset and revenue deduction being recorded within the Company. Franchise royalty revenue was reduced by \$1,042,987, \$833,408 and \$461,639 during the years ended December 31, 2023, 2022 and 2021 respectively.

A reconciliation of gross to net revenue is as follows:

	<i>Year ended December 31,</i>		
	<b>2023</b>	<b>2022</b>	<b>2021</b>
Royalty fees under franchise agreements	<b>\$ 4,883,656</b>	\$ 3,363,824	\$ 1,355,462
Amounts transferred to affiliate under the Agreement	<b>(4,639,474)</b>	(3,195,633)	(1,287,691)
Net revenue under the Agreement	<b>244,182</b>	168,191	67,771
Contract assets deduction in revenue	<b>(1,042,987)</b>	(833,408)	(461,639)
Franchise royalty fees	<b>\$ (798,805)</b>	\$ (665,217)	\$ (393,868)

**5. Related-Party Transactions**

Kimpton Hotel & Restaurant Group, LLC maintains certain marketing, reservation, and loyalty programs for the benefit of the Systems. Pursuant to the Master License Agreement, all Company assessments to franchisees relating to these programs are remitted to Kimpton Hotel & Restaurant Group, LLC. Such amounts are not reflected in the accompanying financial statements.

## IHG Franchising, LLC

### Notes to Financial Statements (continued)

#### **5. Related-Party Transactions (continued)**

Payables to affiliates of \$14.7 million and \$14.1 million, including \$4.2 million and \$10.9 million which are non-interest-bearing, were recorded in current liabilities at December 31, 2023 and 2022 respectively. A balance of \$10.5 million and \$3.2 million at December 31, 2023 and 2022 respectively was payable to Six Continents Hotels, Inc under a US Dollar Revolving Loan Facility for \$100 million entered into on March 1, 2022 and expiring on March 31, 2027. Related interest expense of \$0.3 million, \$0.1 million and \$0 was recognized during the years ended December 31, 2023, 2022 and 2021, respectively.

Receivables from affiliates, comprising a revolving loan note issued by InterContinental Hotels Group Operating Corp. is included in current assets in the balance sheets and amounts to \$20.8 million and \$19.9 million at December 31, 2023 and 2022 respectively. Interest income of \$0.8 million, \$0.5 million and \$0.1 million was recognized during the years ended December 31, 2023, 2022 and 2021, respectively.

The affiliates are both wholly owned subsidiaries of InterContinental Hotels Group PLC (“the Group”) and their credit risk is judged to be low on the basis of the funds available within the Group. The revolving loan note is considered to be fully recoverable.

#### **6. Financial Risk Management**

The Group’s exposure to credit risk arises from default of the counterparty, with the maximum exposure equal to the carrying amount of each financial asset. Credit risk is minimized by operating a policy on the investment of surplus cash that generally restricts counterparties to those with a BBB- credit rating or better or those providing adequate security. The Group uses long-term credit ratings from S&P’s, Moody’s and Fitch Ratings as a basis for setting its counterparty limits.

Information on the Group’s treasury management policies, including information on covenants and debt facilities; processes for managing its capital; its financial risk management objectives; details of its financial instruments and hedging activities; and its exposures to liquidity risk and credit risk is also given in the Annual Report and Form 20-F 2023.

#### **7. Commitments and Contingencies**

In the normal course of business, the Company is subject to certain claims and litigation, including unasserted claims. The Company, based on its current knowledge and discussions with its legal counsel, is of the opinion that such matters will not have a material adverse effect on the financial position or results of operations or cash flows of the Company.



## IHG Franchising, LLC

### Notes to Financial Statements (continued)

#### **8. Subsequent Events**

All subsequent events through March 28, 2024, the date these financial statements were available for issuance, have been evaluated.

Subsequent to the year-end, the Company entered into the second amended and restated master license agreement with Kimpton Hotel & Restaurant Group, LLC. The Agreement remains as described in Note 1, except for an amendment to the calculation of the licence fees payable by the Company. Pursuant to the Agreement, as amended, from January 1, 2024, the Company will deduct from the payment of royalty and royalty-related fees, 95% of all amortization of contract assets related to the Agreement which were previously recharged from Kimpton Hotel & Restaurant Group, LLC.

## **UNAUDITED INTERIM FINANCIAL STATEMENTS**

THESE INTERIM FINANCIAL STATEMENTS HAVE BEEN PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED, REVIEWED, EXAMINED OR COMPILED THESE INTERIM FINANCIAL STATEMENTS AND ACCORDINGLY HAS NOT EXPRESSED AN OPINION OR ANY OTHER FORM OF ASSURANCE ON THEM.

IHG Franchising, LLC  
Balance Sheet (unaudited)

	<b>March 31, 2024</b>
<b>Assets</b>	
Current assets:	
Accounts receivable	\$ 881,322
Contract assets	1,170,643
Receivables from affiliates	20,969,643
Total current assets	23,021,608
 Contract assets	 15,155,400
Total assets	\$ 38,177,008
 <b>Liabilities and member's equity</b>	
Current liabilities:	
Accrued expenses	\$ 44,000
Deferred revenue	202,218
Payables to affiliates	14,228,738
Total current liabilities	14,474,956
 Deferred revenue	 79,892
Total liabilities	14,554,848
 Member's equity	 23,622,160
Total liabilities and member's equity	\$ 38,177,008

## IHG Franchising, LLC

## Statement of Operations (unaudited)

	<b>Three months ended March 31, 2024</b>
Revenues:	
Franchise royalty fees	<u>\$ 43,203</u>
Total revenues	<u>43,203</u>
Expenses:	
General and administrative expenses	<u>(7,075)</u>
Total expenses	<u>(7,075)</u>
Income from operations	50,278
Other income (expense):	
Interest income from affiliates	215,160
Interest expense to affiliates	<u>(104,224)</u>
Net income	<u><u>\$ 161,214</u></u>

IHG Franchising, LLC

Statement of Member's Equity (unaudited)

	<u>2024</u>
Balance at January 1	\$ 23,460,946
Net income	<u>161,214</u>
Balance at March 31	<u><u>\$ 23,622,160</u></u>

## IHG Franchising, LLC

### Basis of Preparation

The following caveats apply to the attached set of IHG Franchising, LLC accounts for the three month period to March 31, 2024:

The accounts are unaudited.

A complete set of audited accounts for the three months to March 31, 2024 prepared in full compliance with US GAAP may be materially different to those presented on pages 1 to 3 of this document.

# EXHIBIT G2

CONSOLIDATED FINANCIAL STATEMENTS

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental  
Hotels Group PLC)  
Years Ended December 31, 2023, 2022 and 2021  
With Report of Independent Auditors



Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Financial Statements

Years Ended December 31, 2023, 2022 and 2021

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## **Report of Independent Auditors**

To the Management of Six Continents Hotels, Inc.

### ***Opinion***

We have audited the accompanying consolidated financial statements of Six Continents Hotels, Inc. and its subsidiaries (the "Company"), which comprise the consolidated balance sheets as of December 31, 2023 and 2022, and the related consolidated statements of net income, of comprehensive income, of changes in parent's investment and of cash flows for each of the three years in the period ended December 31, 2023, including the related notes (collectively referred to as the "consolidated financial statements").

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023 in accordance with accounting principles generally accepted in the United States of America.

### ***Basis for Opinion***

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (US GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Responsibilities of Management for the Consolidated Financial Statements***

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date the consolidated financial statements are available to be issued.

### ***Auditors' Responsibilities for the Audit of the Consolidated Financial Statements***

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with US GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial



likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with US GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*PricewaterhouseCoopers LLP*

Atlanta, Georgia  
March 28, 2024

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Balance Sheets  
(In Thousands)

	December 31	
	2023	2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 63,805	\$ 64,417
Restricted cash	2,210	2,185
Accounts receivable, less allowance for expected credit losses of \$44,963 and \$52,355 at December 31, 2023 and 2022, respectively	350,486	297,875
Receivables from affiliates	176,120	206,768
Pension assets (Note 10)	250	250
Contract assets	18,178	16,585
Contract costs	2,731	2,666
Net investment in subleases	1,463	–
Prepaid and other current assets	79,950	98,507
Total current assets	695,193	689,253
Investments in unconsolidated entities (Note 11)	181,087	160,649
Deferred compensation plan investments	249,969	216,407
Property and equipment, net (Note 4)	493,445	540,513
Operating lease right-of-use assets, net (Note 7)	52,209	59,408
Goodwill and intangible assets, net (Note 6)	1,703,043	1,708,415
Contract assets	254,176	195,859
Contract costs	49,357	42,412
Notes receivable (Note 12)	23,201	–
Net investment in sublease	4,359	–
Other assets	1,431	3,278
	\$ 3,707,470	\$ 3,616,194
<b>Liabilities and Parent's Investment</b>		
Current liabilities:		
Accounts payable	\$ 93,351	\$ 111,571
Accrued expenses	240,290	211,462
Loyalty program deferred revenue	648,855	583,899
Other deferred revenue	53,370	55,201
Accrued pension cost (Note 10)	4,437	4,502
Payables to affiliates	158,435	155,477
Operating lease liabilities (Note 7)	11,770	9,453
Other payables	45,484	56,954
Total current liabilities	1,255,992	1,188,519
Finance lease obligations (Note 7)	259,118	257,217
Operating lease liabilities (Note 7)	79,658	85,391
Accrued pension cost (Note 10)	43,370	43,624
Deferred compensation plan liabilities	249,969	216,407
Noncurrent deferred tax liabilities, net (Note 13)	289,101	320,901
Loyalty program deferred revenue	880,525	827,324
Other deferred revenue	163,094	167,898
Other long-term liabilities	3,578	252
Total liabilities	3,224,405	3,107,533
Parent's Investment	483,065	508,661
	\$ 3,707,470	\$ 3,616,194

See accompanying notes.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Statements of Net Income  
(In Thousands)

	Year Ended December 31		
	2023	2022 Re-presented <sup>1</sup>	2021 Re-presented <sup>1</sup>
<b>Revenues</b>			
Fee business	\$ 869,949	\$ 808,297	\$ 638,639
Hotel operations	88,417	78,787	51,402
Other	304,264	264,377	266,187
System Fund and reimbursable revenues	2,280,490	1,880,587	1,371,854
Total revenues	<u>3,543,120</u>	<u>3,032,048</u>	<u>2,328,082</u>
<b>Operating expenses</b>			
Bad debt (release) expense (Note 2)	(1,988)	(3,495)	1,958
Property and other taxes, insurance and leases	46,084	49,435	51,537
Maintenance and repairs	59,588	48,991	50,343
General and administrative expenses	563,909	414,334	401,189
Other hotel operations	7,798	7,397	3,723
Mark-up cost charged by affiliated companies	16,240	12,684	10,696
Allocation of expenses to affiliated companies	(168,690)	(134,560)	(134,214)
Depreciation and amortization of software	33,911	36,042	53,215
Amortization of finite-lived intangible assets	5,734	5,088	4,477
Impairment loss (Note 3)	-	-	24,698
System Fund and reimbursable expenses	2,267,068	1,988,196	1,386,709
Total operating expenses	<u>2,829,654</u>	<u>2,424,112</u>	<u>1,854,331</u>
Operating income	713,466	607,936	473,751
Interest expense – external	(24,680)	(25,519)	(24,385)
Interest income from affiliates, net	252,394	141,160	24,261
Interest income – external	3,546	2,567	2,169
Income (loss) from equity method investments (Note 11)	24,698	(43,614)	(6,817)
Other income (loss)	5,625	(5,205)	(650)
Foreign transaction loss	(3,922)	(3,065)	(2,109)
Income before income taxes	971,127	674,260	466,220
Provision for income taxes (Note 13)	229,264	183,172	111,722
Net income	<u>\$ 741,863</u>	<u>\$ 491,088</u>	<u>\$ 354,498</u>

<sup>1</sup> Re-presented to combine System Fund and reimbursables

See accompanying notes.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Statements of Comprehensive Income  
(In Thousands)

	Year Ended December 31		
	2023	2022	2021
Net income	\$ 741,863	\$ 491,088	\$ 354,498
Other comprehensive income, net of tax:			
Currency translation adjustments	2,321	2,576	(129)
Unrealized gains (losses) on securities	18,807	(40,576)	(1,338)
Pension liability adjustments	(1,660)	8,787	5,367
Total other comprehensive income (loss), net of tax	19,468	(29,213)	3,900
Comprehensive income	\$ 761,331	\$ 461,875	\$ 358,398

*See accompanying notes.*

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Statements of Changes in Parent's Investment  
(In Thousands)

Balance at December 31, 2020	\$ 707,027
Net income	354,498
Other comprehensive income	3,900
Share-based payment compensation	15,187
Change in balances with affiliates offset against Parent's Investment	(736,899)
Capital contributions related to income tax provisions	<u>136,671</u>
Balance at December 31, 2021	<u>480,384</u>
Net income	491,088
Other comprehensive loss	(29,213)
Share-based payment compensation	16,000
Change in balances with affiliates offset against Parent's Investment	(633,955)
Capital contributions related to income tax provisions	<u>184,357</u>
Balance at December 31, 2022	<u>508,661</u>
Net income	<b>741,863</b>
Other comprehensive income	<b>19,468</b>
Share-based payment compensation	<b>22,829</b>
Change in balances with affiliates offset against Parent's Investment	<b>(1,060,739)</b>
Capital contributions related to income tax provisions	<b><u>250,983</u></b>
Balance at December 31, 2023	<b><u><u>\$ 483,065</u></u></b>

*See accompanying notes.*

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Statements of Cash Flows  
(In Thousands)

	Year Ended December 31		
	2023	2022	2021
<b>Operating activities</b>			
Net income	\$ 741,863	\$ 491,088	\$ 354,498
Adjustments to reconciled net income to net cash provided by operating activities:			
Depreciation and amortization	39,645	41,130	57,692
System Fund depreciation and amortization	77,810	81,023	83,471
Impairment loss	-	-	24,698
System Fund impairment loss	-	-	400
Share-based compensation	22,829	16,000	15,187
(Income) loss from equity method investments	(24,698)	43,614	6,817
Contract assets deduction in revenue	19,399	16,507	15,553
Distributions from investments in unconsolidated entities	1,071	560	-
Other adjustments	31,277	(55,073)	1,750
Deferred income taxes	(38,915)	(13,605)	(30,775)
Changes in operating assets and liabilities:			
Accounts receivable	(52,611)	(41,730)	(72,315)
Contract costs	(6,842)	(3,865)	(619)
Prepaid and other assets	20,788	(33,600)	10,994
Operating lease right-of-use assets	1,121	2,569	8,004
Accounts payable and accrued expenses	9,813	47,685	116,375
Loyalty program deferred revenue	118,158	118,764	46,575
Other deferred revenue	1,737	(2,630)	(14,715)
Receivables from and payables to affiliates	284,575	60,934	164,585
Operating lease liabilities	(3,488)	(10,185)	(13,668)
Contract acquisition costs, net of repayments	(60,765)	(39,739)	(33,494)
Net cash provided by operating activities	<u>1,182,767</u>	<u>719,447</u>	<u>741,013</u>
<b>Investing activities</b>			
Purchases of property and equipment	(65,976)	(57,841)	(37,088)
Net proceeds from disposal of property and equipment	-	2,746	43,799
Contributions to investments in unconsolidated entities	(10,692)	(500)	(229)
Loan advances	(40,300)	-	-
Proceeds from disposals of investments	-	325	-
Payments for brand intangible	(1,466)	(469)	(1,192)
Net cash (used in) provided by investing activities	<u>(118,434)</u>	<u>(55,739)</u>	<u>5,290</u>
<b>Financing activities</b>			
Net settlements of Parent's Investment	(1,064,920)	(638,264)	(741,426)
Net cash used in financing activities	<u>(1,064,920)</u>	<u>(638,264)</u>	<u>(741,426)</u>
Net increase (decrease) in cash and cash equivalents and restricted cash	(587)	25,444	4,877
Cash and cash equivalents and restricted cash at beginning of year	66,602	41,158	36,281
Cash and cash equivalents and restricted cash at end of year	<u>\$ 66,015</u>	<u>\$ 66,602</u>	<u>\$ 41,158</u>
<b>Supplemental disclosure of noncash investing and financing activities</b>			
Capital contributions related to income tax provisions	<u>\$ 250,983</u>	<u>\$ 184,357</u>	<u>\$ 136,671</u>
<b>Supplemental disclosure</b>			
Cash paid for interest	\$ 22,998	\$ 20,370	\$ 17,921
Cash paid for interest from affiliates	<u>\$ 52,218</u>	<u>\$ 39,008</u>	<u>\$ 36,719</u>

See accompanying notes.



**Six Continents Hotels, Inc.**  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

**Notes to Consolidated Financial Statements**

December 31, 2023

**1. Description of the Business and Summary of Significant Accounting Policies**

**Organization**

Six Continents Hotels, Inc. (the “Company”) is a Delaware company and is a wholly owned subsidiary of InterContinental Hotels Group PLC (“IHG”) (the Parent) through InterContinental Hotels Limited (UK), Six Continents Limited (UK), Six Continents Hotels International Limited (UK), InterContinental (PB) 3 Limited (UK), InterContinental Hotels Group Operating Corp. (Delaware), IHC United States (Holdings) Corp. (Delaware), IHC Inter-Continental (Holdings) Corp. (Delaware), and Inter-Continental Hotels Corporation (Delaware), its immediate parent. The Company’s business comprises the ownership, leasing, managing and franchising of hotels and resorts primarily under the following brands: Crowne Plaza, Holiday Inn, Holiday Inn Express, Staybridge Suites, Candlewood Suites, Hotel Indigo, EVEN Hotels, Kimpton Hotels & Restaurants, InterContinental Hotels & Resorts, avid hotels, Atwell Suites, voco, Vignette and Garner. The Company also earns fees from a strategic partnership with Iberostar Hotels & Resorts. The Company’s principal assets are trademarks, franchise agreements, owned and leased hotels, management agreements, and equity-accounted investments. The InterContinental Hotels & Resorts brand is owned by the Company’s immediate parent, Inter-Continental Hotels Corporation (Delaware), which licenses the InterContinental Hotels & Resorts brand to one of the Company’s subsidiaries, Holiday Hospitality Franchising, LLC. The avid hotels, Atwell Suites, voco, Vignette and Garner brands are owned by Six Continents Limited, which licenses the brands to the Company. The Company in turn sub-licenses these brands to its subsidiary, Holiday Hospitality Franchising, LLC.

**Basis of Presentation**

The Company is a wholly owned subsidiary of the Parent. Accordingly, the Parent’s investment in the Company (Parent’s Investment on the consolidated balance sheets) is presented in lieu of stockholders’ equity. The financial statements are not necessarily indicative of the financial position, results of operations, and cash flows that might have occurred had the Company been a stand-alone entity not integrated into the Parent’s other operations.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

The financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S.”). All assets, liabilities, revenues and expenses in the accompanying consolidated financial statements have been derived from the separate records maintained by the Company except for the allocation of certain expenses incurred by affiliated companies (see Note 14). In certain cases, allocations do not represent the costs that would be or would have been incurred if the Company were a stand-alone operation.

**Principles of Consolidation**

The accompanying financial statements include the accounts of the Company and its wholly-owned and majority owned subsidiaries which are controlled by the Company. Investments in companies and partnerships in which the Company has an ownership interest and exercises significant influence are accounted for using the equity method of accounting. Under the equity method of accounting, the Company’s investment is recorded at cost and adjusted by the Company’s share of profits and losses. All significant intercompany accounts and transactions have been eliminated.

An impairment loss is recognized in relation to investments accounted for under the equity method of accounting when it is determined that there has been an ‘other than temporary’ decline in the investment’s estimated fair value compared with its carrying value.

**Parent’s Investment**

The Company is formed as a Corporation, in which the Parent wholly-owns all ten shares outstanding. Certain intercompany balances with the Parent and subsidiaries of the Parent have been included in Parent’s Investment in the accompanying consolidated balance sheets (see Note 14). These balances are typically long-term in nature and interest-bearing. Receivables from and payables to affiliated companies that are considered to be of a working capital nature, including inter-region chargebacks, are shown in the accompanying consolidated balance sheets as current assets (receivables from affiliates) and current liabilities (payables to affiliates). These working capital amounts are generally non-interest-bearing.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

The Company holds a 41.0% interest in an affiliate, IHG International Partnership (“the Partnership”). The investment is an entity under common control within the group of entities wholly owned by the Parent (“the IHG Group”) and is included at cost within Parent’s Investment in the consolidated balance sheets since the Company’s initial investment did not result in a change in its net assets.

**Variable Interest Entities**

If an entity is determined to be a variable interest entity (“VIE”), it must be consolidated by the “primary beneficiary”, being the enterprise that has the power to direct the activities of the VIE that most significantly impact the entity’s economic performance, and the obligation to absorb losses of the entity that could potentially be significant to the VIE or the right to receive benefits from the entity that could potentially be significant to the VIE.

The Company’s evaluation as it relates to its various forms of arrangements focuses primarily on a review of the key terms of its equity investment agreements, management and franchise agreements to determine if any of these arrangements qualify as VIEs. In general, a VIE represents a structure used for business purposes that either does not have equity investors with voting rights, has investors with disproportionately few voting rights, or that has equity investors that do not provide sufficient financial resources for the entity to support its activities.

The Company has evaluated the hotels in which it has a variable interest, generally in the form of investments, loans, guarantees, or equity. The Company determines if it is the primary beneficiary of the hotel by primarily considering qualitative factors; these include evaluating if the Company has the power to control the hotel and the obligation to absorb the losses and rights to receive the benefits that could potentially be significant to the entity. Variable interests generally exist when the Company has provided security deposits and/or performance guarantees to third party owners to secure management agreements. The Company has determined it is not the primary beneficiary of any entity in which it has a variable interest, with the exception of the Rabbi trust (see Deferred Compensation Plan Investments below), and therefore these entities are not consolidated in the Company’s financial statements.

**Six Continents Hotels, Inc.**  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

**Cash and Cash Equivalents**

Cash comprises cash on hand and demand deposits. Cash equivalents are short-term highly liquid investments with an original maturity of three months or less that are readily convertible to cash and subject to insignificant risk of changes in value.

**Restricted Cash**

Restricted cash comprises funds segregated in separate accounts to satisfy insurance claims.

**Accounts Receivable**

Accounts receivable arise from sales to a large number of customers. Accounts receivable are recorded at their original amount less an allowance for any expected lifetime credit losses. The lifetime credit losses are estimated by means of a provision matrix that is based on historical credit loss experience by region and number of days past due. For certain defined owner groups, for example those in financial distress, management may amend the historical credit loss period used to generate the credit loss percentage to better reflect the risk elements of that sub-category. Management also reviews relevant past events, current conditions and reasonable and supportable forecasts about the future in order to establish whether the loss rates implied by the provision matrix should be amended. In the normal course of business, the Company extends credit generally without requiring collateral.

**Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation and any impairment charges. Expenditures for replacements and major improvements are capitalized and depreciated.

Repair and maintenance costs are expensed as incurred. Land is not depreciated. Depreciation is recognized using the straight-line method over the estimated useful lives of the assets: buildings – 30 to 50 years, and furniture and equipment – 3 to 25 years. Leasehold improvements are amortized over the shorter of their estimated useful lives or the remaining lease term.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

**Sales of Real Estate**

Sales of real estate are recorded when control of the asset transfers to the buyer, generally at the time the sale closes.

**Recoverability of Property and Equipment**

The Company evaluates property and equipment and other long-lived assets for recoverability when changes in circumstances indicate the carrying value may not be recoverable; for example, when there are material adverse changes in projected revenues or expenses, significant underperformance relative to historical or projected operating results, and significant negative industry or economic trends. If indicators of impairment are present, estimated undiscounted future cash flows from related operations are compared with the current carrying values of the long-lived assets. If these assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds their fair value. Fair value is based on estimated discounted future cash flows.

**Software**

The Company capitalizes certain development costs associated with internal-use software, in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 350, *Internal-use software*, including external direct costs of materials and services and payroll costs for employees devoting time to a specially identified software project. Costs incurred during the preliminary project stage, as well as costs for maintenance and training, are expensed as incurred.

Capitalized software, which is included in property and equipment, is amortized to expense on a straight-line basis generally over a period of three to ten years depending on the useful life of the related asset.

The Company annually evaluates its software for recoverability and reassesses the ongoing value of its technology platform.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

**Deferred Compensation Plan Investments**

The Company provides certain compensation arrangements in the United States through a Rabbi trust. The Rabbi trust is considered a variable interest entity, which the Company consolidates because the Company is its primary beneficiary. The marketable securities held by the trust are recorded at market value in accordance with ASC 320, *Investments in debt and equity securities*, and as such, unrealized gains and losses are reported in other comprehensive income except for other than temporary movements which are recognized in the consolidated statements of net income. The fair value of investments quoted on exchanges is based on closing market prices for the last trading day of the year. Non-quoted investments are carried at cost. Unrealized gains (losses) of \$18.8 million, \$(40.6) million and \$(1.3) million net of tax, were recorded in other comprehensive income for the years ended December 31, 2023, 2022 and 2021, respectively.

The related deferred compensation plan liability is recorded in accordance with ASC 710, *Compensation*. The obligation is adjusted to reflect changes in the fair value of the amount owed to the employee, with the corresponding charge (or credit) recorded within the consolidated statements of net income.

**Leases**

On inception of a contract, the Company assesses whether it contains a lease. A contract contains a lease when it conveys the right to control the use of an identified asset for a period of time in exchange for consideration. The Company classifies a lease as a finance lease if it meets certain criteria or as an operating lease when it does not.

Lease contracts may contain both lease and non-lease components. The Company allocates payments in the contract to the lease and non-lease components based on their relative stand-alone prices and applies the lease accounting model only to lease components.

Assets held under finance leases are capitalized at the inception of the lease within 'property and equipment', with a corresponding liability being recognized for the fair value of the leased asset or, if lower, the present value of the minimum lease payments. Lease payments are apportioned between the reduction of the lease liability and interest in the consolidated statements of net income to achieve a constant rate of interest on the remaining balance of the liability. Assets held under finance leases are amortized over the shorter of the estimated useful life of the asset or the lease term.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

For assets held under operating leases, the right to use the asset and the obligation under the lease to make payments are recognized on the consolidated balance sheets as a right-of-use asset and a lease liability.

The right-of-use asset recognized at lease commencement includes the amount of lease liability recognized, initial direct costs incurred, and lease payments made at or before the commencement date, less any lease incentives received. Right-of-use assets are depreciated on a straight-line basis over the shorter of the asset's estimated useful life and the lease term. Right-of-use assets are also adjusted for any remeasurement of lease liabilities and are subject to impairment testing.

Where there are indicators of impairment, the recoverability of the related asset is reviewed by comparing the estimated future undiscounted cash flows to the net carrying value of the asset. If the asset is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value. Fair value is based on estimated discounted future cash flows.

The lease liability is initially measured at the present value of the lease payments to be made over the lease term. The lease payments include fixed payments (including 'in-substance fixed' payments) and variable lease payments that depend on an index or a rate, less any lease incentives receivable. In-substance fixed payments are payments that may, in form, contain variability but that, in-substance, are unavoidable. In calculating the present value of lease payments, the Company uses its incremental borrowing rate at the lease commencement date if the interest rate implicit in the lease is not readily determinable.

The lease term includes periods subject to extension options which the Company is reasonably certain to exercise and excludes the effect of early termination options where the Company is reasonably certain that it will not exercise the option. Minimum lease payments include the cost of a purchase option if the Company is reasonably certain it will purchase the underlying asset after the lease term.

After the commencement date, the amount of lease liabilities is increased to reflect the accretion of interest and reduced for lease payments made. The carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term or a change in the lease payments as a result of a rent review or change in the relevant index or rate.

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

For operating leases, lease expense related to fixed payments is recognized on a straight-line basis over the lease term within 'property and other taxes, insurance and leases' in the consolidated statements of net income.

Variable lease payments that do not depend on an index or a rate are recognized as an expense in the period over which the event or condition that triggers the payment occurs.

The Company has opted not to apply the lease accounting model to leases which have a term of less than twelve months. Costs associated with these leases are recognized as an expense on a straight-line basis over the lease term.

Sub-leases of the Company's assets are classified as operating leases when the risks and rewards of ownership are not substantially transferred to the sub-lessee. Rental income arising is accounted for on a straight-line basis in the consolidated statements of net income.

When a sub-lease is classified as a sales-type lease, the Company's interest in the lease is derecognized and replaced by a net investment in the lease receivable. Any difference between those amounts is recognized in the consolidated statements of net income. The net investment in the lease is presented within 'net investment in subleases' on the consolidated balance sheets and is initially recognized at the present value of lease payments receivable under the sublease, which is increased to reflect the accretion of interest and reduced for lease payments received.

**Goodwill and Intangible Assets with Indefinite Lives**

Goodwill and intangible assets with indefinite lives (trademarks) are not amortized but are tested for impairment at least annually and whenever events or circumstances occur to indicate that these intangible assets may be impaired.

Goodwill is assessed using a quantitative test, with any goodwill impairment recorded at the amount by which the reporting unit's carrying value exceeds its fair value and not to exceed the total amount of goodwill allocated to the reporting unit.

The Company has one reporting unit reflecting the level at which results are reviewed and the similarity (considered for both economic and other qualitative factors) between the underlying components.



Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

The Company evaluates the carrying value of intangible assets with indefinite lives for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If the carrying amount exceeds the fair value, an impairment loss is recognized in the consolidated statements of net income to the amount of the difference.

**Intangible Assets with Finite Lives**

The cost of acquiring management agreements as part of a business combination is capitalized and amortized on a straight-line basis over the period of the management agreement, including any extension periods at the Company's option.

The Company evaluates the carrying value of these assets for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If the estimated undiscounted cash flows are less than carrying value, an impairment loss is charged to the consolidated statements of net income based on the difference between the carrying value and the estimated fair value. Fair value is based on estimated discounted future cash flows.

**Revenue Recognition**

Revenue is recognized at an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring goods or services to a customer.

***Fee business revenue***

Under franchise agreements, the Company's performance obligation is to provide a license to use the Company's trademarks and other intellectual property. Franchise royalty fees are typically charged as a percentage of hotel gross rooms revenues and are treated as variable consideration, recognized as the underlying hotel revenues occur. Where the Company licenses brands from affiliates it is acting as agent and the license cost is deducted from the related fee revenue.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

Under management agreements, the Company's performance obligation is to provide hotel management services and a license to use the Company's trademarks and other intellectual property. Base and incentive management fees are typically charged. Base management fees are typically a percentage of total hotel revenues and incentive management fees are generally based on the hotel's profitability or cash flows. Both are treated as variable consideration. Like franchise fees, base management fees are recognized as the underlying hotel revenues occur. Incentive management fees are recognized over time when it is considered highly probable that the related performance criteria for each annual period will be met, provided there is no expectation of a subsequent reversal of the revenue.

Application and re-licensing fees are not considered to be distinct from the franchise performance obligation and are recognized over the life of the related contract.

The number of franchised hotels in operation during the years ended December 31, 2023, 2022 and 2021 is:

	<b>2023</b>	<b>2022</b>	<b>2021</b>
		<i>(Unaudited)</i>	
Franchised hotels at beginning of year	<b>4,160</b>	4,063	4,079
New franchises	<b>99</b>	127	155
Franchises removed	<b>(41)</b>	(30)	(171)
Franchised hotels at end of year	<b>4,218</b>	4,160	4,063

***Revenue from hotel operations***

At its owned and leased hotels, the Company's performance obligation is to provide accommodation and other goods and services to guests. Revenue includes rooms revenue and food and beverage sales, which are recognized when the rooms are occupied and food and beverages are sold. Guest deposits received in advance of hotel stays are recorded as deferred revenue on the consolidated balance sheets. They are recognized as revenue along with any balancing payment from the guest when the associated stay occurs, or are returned to the customer in the event of a cancellation.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

*Other revenue*

Franchise and management agreements also contain a promise to provide technology support and network services to hotels. A monthly technology fee, based on either gross rooms revenue or the number of rooms in the hotel, is charged and recognized over time as these services are delivered. Technology fee income is included in other revenue. Other revenue also includes license and service fee income from affiliates which are recognized over time.

*System Fund and reimbursable revenues*

System Fund and other co-brand revenues

The Company operates a System Fund (the “Fund”) to collect and administer cash assessments from hotel owners for specified purposes of use including marketing, reservations and the Group’s loyalty program, IHG One Rewards. The Fund also benefits from proceeds from the sale of loyalty points under third-party co-branding arrangements. The Fund is not managed to generate a surplus or deficit for the Company over the longer term, but is managed for the benefit of the IHG System (hotels/rooms operating under franchise and management agreements together with IHG owned, leased and managed hotels/rooms, globally) with the objective of driving revenues for the hotels in the IHG System.

The growth in the loyalty program, IHG One Rewards, means that, although assessments are received from hotels up front when a member earns points, more revenue is deferred each year than is recognized in the Fund. This can lead to accounting losses in the Fund each year as the deferred revenue balance grows. During 2023 the Company recognized \$554.0 million of revenues previously deferred as of December 31, 2022.

Under both franchise and management agreements, the Company is required to provide marketing and reservations services, as well as other centrally managed programs. These services are provided by the Fund and are funded by assessment fees. Costs are incurred and allocated to the Fund in accordance with the principles agreed with the IHG Owners Association (which represents the interests of more than 4,000 hotel owners and operators worldwide). The Company acts as principal in the provision of the services as the related expenses primarily comprise payroll and marketing expenses under contracts entered into by the Company. The assessment fees from hotel owners are generally levied as a percentage of hotel revenues and are recognized as those hotel revenues occur.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

Certain travel agency commission revenues within the Fund are recognized on a net basis, where it has been determined that the Company is acting as agent.

In respect of IHG One Rewards, the performance obligations are to arrange for the provision of future benefits to members on consumption of previously earned reward points and Milestone Rewards. Points are exchanged for reward nights at an IHG hotel or other goods or services provided by third parties. Milestone Rewards comprise points or other benefits such as upgrades and food and beverage vouchers.

Under its franchise and management agreements, the Company receives assessment fees based on total qualifying hotel revenue from IHG One Rewards members' hotel stays.

The Company's performance obligation is not satisfied in full until the member has consumed the relevant benefits. Accordingly, loyalty assessments are allocated between points and Milestone Rewards and deferred in an amount that reflects the stand-alone selling price of the future benefit to the member. Revenue is impacted by a "breakage" estimate of the benefits that will never be consumed. On an annual basis, the Company engages an external actuary who uses statistical formulae to assist in the estimate of the number of points that will never be consumed, which is adjusted to reflect actual experience up to the reporting date.

As materially all of the awards will be either consumed at IHG managed or franchised hotels owned by third parties, or exchanged for awards provided by third parties, the Company is deemed to be acting as agent on consumption and therefore recognizes the related revenue net of the cost of reimbursing the hotel or third party that is providing the benefit.

Performance obligations under the Company's co-brand credit card agreements comprise:

- a) arranging for the provision of future benefits to members who have earned points or free night certificates;
- b) marketing services; and
- c) providing the co-brand partner with the right to access the loyalty program.

Revenue from a) and b) are reported within 'System Fund and reimbursable revenues' and revenue from c) is recorded within 'fee business' revenue.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

Fees from these agreements comprise fixed amounts normally payable at the beginning of the contract, and variable amounts paid on a monthly basis. Variable amounts are typically based on the number of points and free night certificates issued to members and the marketing services performed by the Company. Total fees are allocated to the performance obligations based on their estimated stand-alone selling prices. Revenue allocated to marketing and licensing obligations is recognized on a monthly basis as the obligations are satisfied. Revenue relating to points and free night certificates is recognized when the member has consumed the points or certificates at a participating hotel or has selected a reward from a third party, net of the cost of reimbursing the hotel or third party that is providing the benefit.

Judgment is required in estimating the stand-alone selling prices which are based upon generally accepted valuation methodologies regarding the value of the license provided and the number of points and certificates expected to be issued. However, the value of revenue recognized and the deferred revenue balance at the end of the year is not materially sensitive to changes in these assumptions.

Reimbursable revenues

In a managed property, the Company acts as employer of the general manager and other employees at the hotel and is entitled to reimbursement of these costs. The performance obligation is satisfied over time as the employees perform their duties, consistent with when reimbursement is received. Reimbursements for these services are shown as revenue with an equal matching employee cost, with no profit impact. Certain other costs relating to both managed and franchised hotels are also contractually reimbursable to the Company and, where the Company is deemed to be acting as principal in the provision of the related services, the revenue and cost are shown on a gross basis.

With effect from 2023, revenues and expenses from the System Fund are presented together with reimbursable revenue and expenses in the consolidated statements of net income for clarity of presentation, consistency with industry practice and to reflect the fact that neither of these are reported to IHG's Chief Operating Decision Maker and do not generate a profit or loss for the Company over the longer term.

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

*Contract assets*

Amounts paid to hotel owners to secure management and franchise agreements ('key money') are treated as consideration payable to a customer. A contract asset is recorded which is recognized as a deduction to fee business revenue over the initial term of the agreement. These assets are presented as 'Contract assets' in the consolidated balance sheets. In respect of key money, \$84.4 million has been paid to owners and \$18.6 million recognized in revenue during the year.

In limited cases, the Company may provide performance guarantees to third-party hotel owners. The expected value of payments under performance guarantees reduces the overall transaction price and is recognized as a deduction to revenue over the term of the agreement. Performance guarantee assets of \$6.8 million and \$6.9 million are included in contract assets on the consolidated balance sheets at December 31, 2023 and 2022, respectively.

Typically, contract assets are not financial assets as they represent amounts paid by the Company at the beginning of a contract, and so are tested for impairment based upon estimated future cash flows rather than with reference to expected credit losses. Contract assets are reviewed for impairment when events or changes in circumstances indicate that the carrying value may not be recoverable. If the estimated undiscounted cash flows are less than carrying value, an impairment loss is charged to the consolidated statements of net income based on the difference between the carrying value and the estimated fair value. Fair value is based on estimated discounted future cash flows.

*Contract costs*

Certain costs incurred to secure management and franchise agreements, typically developer commissions, are capitalized and are amortized over the initial term of the related contract. These costs are presented as 'Contract costs' in the consolidated balance sheets.

Contract costs are reviewed for impairment when events or changes in circumstances indicate that the carrying value may not be recoverable with reference to the future expected cash flows from the contract. If the estimated undiscounted cash flows are less than carrying value, an impairment loss is charged to the consolidated statements of net income based on the difference between the carrying value and the estimated fair value. Fair value is based on estimated discounted future cash flows.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

**Advertising Costs**

Advertising costs are expensed as incurred related to short term agreements. Payments made for long-term deals are recognized within 'prepaid and other current assets' on the consolidated balance sheets and spread over the term of the related agreement and benefit. The Company recognized advertising costs of \$7.5 million, \$8.5 million and \$10.6 million for the years ended December 31, 2023, 2022 and 2021, respectively, within 'General and administrative expenses' on the consolidated statements of net income. Additional advertising costs of \$329.9 million, \$278.5 million and \$72.3 million have been charged to the System Fund in the years ended December 31, 2023, 2022 and 2021, respectively, and are included in 'System Fund and reimbursable expenses' on the consolidated statements of net income.

**Pension and Other Postretirement Benefits**

*Defined Benefit Plans*

The determination of the Company's obligation and expense for pension and other postretirement benefits is dependent on the selection of certain actuarial assumptions, as described in Note 10.

The Company defers actual results that differ from its assumptions and amortizes the difference over future periods. Therefore, the differences generally affect the recognized expense, recorded obligation and funding requirements in future periods.

*Defined Contribution Plans*

Expenses for defined contribution plans are charged to operating expenses as payments become due.

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

**Income Taxes**

The Company records the amounts of deferred tax liabilities and assets for the future tax consequences of events that have been recognized in its financial statements on its Parent's tax returns. Deferred income taxes are recorded based on the differences between the financial statement and tax bases of assets and liabilities and the tax rates in effect when these differences are expected to reverse. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in earnings in the period when the new tax rate is enacted. Interest and penalties are recognized on the 'interest expense – external' and 'other income (loss)' lines, respectively.

The Company reclassifies the amounts of taxes payable or refundable for the current year as non-shareholder capital contributions, which is shown as a component of the Parent's Investment.

The Company applies the provisions of ASC 740, *Accounting for Uncertainty in Income Taxes*, which prescribes criteria for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. Benefits resulting from uncertain tax positions that meet a "more likely than not" threshold at the effective date are recognized, based on measurement as the largest benefit which has a greater than fifty percent likelihood of being sustained upon examination by the tax authorities.

**Comprehensive Income**

Comprehensive income is the change in Parent's Investment during the year that results from transactions with parties other than the Parent. Other comprehensive income (comprehensive income less net income) includes the effects of foreign currency translation, pension liability adjustments, and unrealized gains and losses on equity securities held in the Rabbi trust. The Company's comprehensive income is presented on the consolidated statements of comprehensive income.

**Fair Value of Financial Instruments**

The aggregate fair value of cash and cash equivalents, accounts receivables, and accounts payable as of December 31, 2023, approximates their carrying value due to their relatively short-term nature. Deferred compensation plan investments are recorded at market value as described on page 13 above.



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Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

**Foreign Currency Translation**

Balance sheet accounts are translated at the exchange rates in effect at each year end and income and expense accounts are translated at the weighted-average rates of exchange prevailing during the year.

The functional currency of entities operating outside of the U.S. is the currency of the primary economic environment in which the respective entity operates, unless it is considered a highly inflationary economy in which case the functional currency of that entity is U.S. dollars. Gains and losses from foreign exchange and the effect of exchange rate changes on intercompany transactions of a long-term investment nature are generally included in other comprehensive income. Gains and losses from foreign exchange rate changes related to intercompany receivables and payables of a working capital nature are reported separately on the consolidated statements of net income and amount to a net loss of \$3.9 million, \$3.1 million and \$2.1 million in the years ended December 31, 2023, 2022 and 2021, respectively.

**Legal Contingencies**

The Company is subject to various legal proceedings and claims, the outcomes of which are subject to many uncertainties inherent in litigation. A loss contingency is accrued by way of a charge to income if it is probable that an asset has been impaired or a liability has been incurred and the amount of the loss /can be reasonably estimated. Disclosure of a contingency is required if there is at least a reasonable possibility that a loss has been incurred. The Company evaluates, among other factors, the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss. Changes in these factors could materially impact the Company's financial position or its results of operations or cash flows.

**Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported year. Actual results could differ from those estimates.

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**1. Description of the Business and Summary of Significant Accounting Policies (continued)**

**Impact of Recently Issued Accounting Pronouncements**

*Adopted Accounting Standards*

In 2019, the FASB revised the goodwill impairment testing guidance through its issuance of ASU 2017-04 to simplify impairment testing by eliminating the previous two step impairment process. Entities are required to apply a one-step quantitative test and record the amount of impairment as the excess of a reporting unit's carrying amount over its fair value. This guidance does not amend the optional qualitative assessment of goodwill impairment and the disclosure is effective for financial years beginning after December 15, 2022. There has been no effect on the consolidated balance sheets, consolidated statements of net income or financial statement disclosures.

*Future Adoption of Accounting Standards*

In March 2023, the FASB issued ASU No. 2023-01, *Leases (Topic 842): Common Control Arrangements*. This standard prioritizes monitoring and assisting stakeholders with the implementation of Topic 842 through its Post-Implementation Review (PIR) process, effective for financial years beginning after December 15, 2023. There are not expected to be any changes to the consolidated balance sheets, consolidated statements of net income or financial statement disclosures in future years.

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Notes to Consolidated Financial Statements (continued)

## 2. Credit Losses Related to Receivables

Change in expected credit loss allowance (in thousands):

	December 31	
	2023	2022
<b>Beginning balance in allowance for credit losses</b>	\$ 52,355	\$ 71,984
Current period (release) for expected credit losses	(1,988)	(3,495)
Current period (release) charge to System Fund	(1,608)	752
Write-offs charged against allowance	(4,127)	(10,413)
Reclassification to prepaid and other current assets <sup>(i)</sup>	-	(8,373)
Foreign exchange differences and other	331	1,900
<b>The ending balance in the allowance for credit losses</b>	<b>\$ 44,963</b>	<b>\$ 52,355</b>

- (i) In 2022, net receivables relating to finance charges on overdue receivables were reclassified to prepaid and other current assets. An allowance of \$8.4 million, associated with these receivables was removed from the reconciliation.

## 3. Impairment Loss

The following impairment losses were recognized in the years ended December 31, 2023, 2022 and 2021 (in thousands):

	December 31		
	2023	2022	2021
Investments in unconsolidated entities	\$ -	\$ -	\$ 3,609
Property and equipment	-	-	21,089
	\$ -	\$ -	\$ 24,698

No impairment losses were recognized in the years ended December 31, 2023 or 2022.

In the year ended December 31, 2021, three hotels were classified as held for sale and subsequently sold. An impairment loss of \$21.1 million was recognized, being the difference between expected disposal proceeds, net of selling costs, and the net book value of the hotels at the time of classification as held for sale.

The \$3.6 million impairment loss on investments in unconsolidated entities in 2021 related to the change in fair value on a put option over part of the Company's investment in the Barclay Operating Corporation associate.

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Notes to Consolidated Financial Statements (continued)

#### 4. Property and Equipment

Property and equipment which includes the hotels owned by the Company, related furnishings and capitalized software, is carried at cost less accumulated depreciation and impairment (if applicable), and consisted of the following at December 31, 2023 and 2022 (in thousands):

	December 31	
	2023	2022
Land	\$ 13,771	\$ 13,830
Building and improvements	65,074	67,047
Furniture, fixtures, and equipment (including computer software)	932,519	934,909
Assets held under finance leases	182,851	182,851
	<b>1,194,215</b>	1,198,637
Less accumulated depreciation and impairment	<b>(700,770)</b>	(658,124)
Property and equipment, net	<b>\$ 493,445</b>	\$ 540,513

Total depreciation and amortization expense was \$33.9 million, \$36.0 million and \$53.2 million for the years ended December 31, 2023, 2022 and 2021, respectively. Software amortization included in this expense for the years ended December 31, 2023, 2022 and 2021, was \$18.4 million, \$21.9 million and \$29.3 million, respectively. Additional depreciation expense of \$76.8 million, \$80.1 million, and \$82.4 million has been charged to the System Fund in the years ended December 31, 2023, 2022 and 2021, respectively, and is included in ‘System Fund and reimbursable expenses’ on the consolidated statements of net income.

The net book value of capitalized internal-use software at December 31, 2023 and 2022 is \$290.9 million and \$334.4 million, respectively. No impairment losses were recognized on individual software assets during any of the years ended December 31, 2023, 2022 and 2021.

In 2006, the Company entered into a 99-year finance lease on the InterContinental Hotel in Boston, Massachusetts, which is recorded in ‘property and equipment’ on the consolidated balance sheets. Assets capitalized related to this lease were \$120.3 million and \$124.0 million, net of \$62.5 million and \$58.9 million in accumulated amortization, at December 31, 2023 and 2022, respectively. The total depreciation expense includes \$3.7 million in each of the years ended December 31, 2023, 2022 and 2021, for this asset. See Note 7 for information relating to the finance lease obligation.

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Notes to Consolidated Financial Statements (continued)

**4. Property and Equipment (continued)**

There were no assets held for sale at December 31, 2023 or 2022.

**5. Insurance Receivable, Net**

Insurance receivable, net, represents the cash surrender value of key man life insurance policies reduced by outstanding loan amounts. These key man life insurance policy provisions allow for the right to offset outstanding loan amounts against the proceeds received on maturity or cancellation of the policy. Accumulated cash surrender value amounts of \$31.9 million and \$30.7 million were reduced by outstanding loan amounts of \$30.4 million and \$29.2 million at December 31, 2023 and 2022, respectively. These assets are included in ‘other assets’ in the consolidated balance sheets.

**6. Goodwill and Intangible Assets**

Goodwill and intangible assets consisted of the following at December 31, 2023 and 2022 (in thousands):

	<b>December 31</b>	
	<b>2023</b>	<b>2022</b>
Goodwill	\$ 940,998	\$ 940,998
Trademarks and Brands	709,475	709,475
Indefinite-lived intangible assets	1,650,473	1,650,473
Other intangible assets	107,840	109,152
Less accumulated amortization	(55,270)	(51,210)
Goodwill and intangible assets, net	\$ 1,703,043	\$1,708,415

No impairment of goodwill and indefinite-lived intangible assets (trademarks) was recorded for the years ended December 31, 2023, 2022 and 2021.

At December 31, 2023, the average remaining term for other intangible assets is twelve years.

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Notes to Consolidated Financial Statements (continued)

**6. Goodwill and Intangible Assets (continued)**

Amortization expense on finite-lived intangible assets recorded in the years ended December 31, 2023, 2022 and 2021, was \$5.7 million, \$5.1 million and \$4.5 million, respectively. Additional amortization expense of \$1.0 million, \$0.9 million and \$1.1 million has been charged to the System Fund in the years ended December 31, 2023, 2022 and 2021, respectively, and is included in 'System Fund and reimbursable expenses' on the consolidated statements of net income.

Estimated amortization for finite-lived intangible assets for the next five years is (in thousands):

2024	\$ 5,859
2025	4,859
2026	4,599
2027	4,376
2028	4,281

**7. Leases**

The Company leases certain real estate and equipment used in its operations, which are accounted for as operating leases. In addition to a specified minimum rental, some of these leases provide for variable lease rentals based on percentages of revenue.

Operating lease costs are included in property and other taxes, insurance and leases on the consolidated statements of net income.

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**7. Leases (continued)**

Lease costs for the years ended December 31, 2023, 2022 and 2021 were (in thousands):

	<u>2023</u>	<u>2022</u>	<u>2021</u>
Operating lease expense for fixed payments	\$ 11,451	\$ 11,926	\$ 12,575
Variable lease expense	528	344	254
Short-term lease cost	574	151	19
Sub-lease income	(2,967)	(2,275)	(591)
Sub-lease interest income	(118)	-	-
Finance lease expense:			
Depreciation of assets	3,657	3,658	3,658
Interest on lease liabilities	23,021	22,854	22,437

Additional operating lease expense of \$0.3 million, \$0.3 million and \$0.5 million has been charged to the System Fund in the years ended December 31, 2023, 2022 and 2021, respectively, and is included in 'System Fund and reimbursable expenses' on the consolidated statements of net income.

The future minimum rental commitments under non-cancelable operating leases at December 31, 2023, are (in thousands):

2024	\$ 14,898
2025	14,277
2026	14,527
2027	14,157
2028	13,887
Thereafter	32,748
	<u>\$ 104,494</u>
Less amount representing interest	(13,066)
Present value of net minimum lease payments	<u>91,428</u>

Minimum rental commitments exclude variable rentals which are payable based on percentages of revenue.

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**7. Leases (continued)**

The Company is party to certain operating sublease arrangements with the largest relating to the Company's corporate headquarters. Sublease income relating to the corporate headquarters is principally recognized in the System Fund. The net book value of the related right-of-use assets is \$1.9 million and \$2.1 million at December 31, 2023 and 2022, respectively.

In 2023, the Company entered into sublease arrangements with hotels for equipment which has been classified as a sales-type lease arrangement as the sublease agreement is concurrent with the expected useful life of the equipment. No gain or loss arose on the recognition of the sales-type leases.

	<u>2023</u>	<u>2022</u>	<u>2021</u>
	<i>(In Thousands)</i>		
Undiscounted cash flows for sales-type sub-leases	\$ 6,405	\$ -	\$ -
Interest income over the remaining lease term	(583)	-	-
Net investment in lease	<u>\$ 5,822</u>	<u>\$ -</u>	<u>\$ -</u>
Analyzed as:			
Current	\$ 1,463	\$ -	\$ -
Non-current	4,359	-	-
	<u>\$ 5,822</u>	<u>\$ -</u>	<u>\$ -</u>

As described in Note 4, the Company has a finance lease on the InterContinental Hotel in Boston, Massachusetts. The lease commenced on August 1, 2006, with the first lease payment due on August 1, 2007. Interest expense of \$23.0 million, \$22.9 million and \$22.4 million was incurred for the years ended December 31, 2023, 2022 and 2021, respectively. Accrued interest of \$76.3 million and \$74.2 million is included within 'finance lease obligations' on the consolidated balance sheets as of December 31, 2023 and 2022, respectively.



Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**7. Leases (continued)**

The future minimum lease payments required under the finance lease and the present value of the net minimum lease payments as of December 31, 2023, are (in thousands):

2024	\$ 21,120
2025	21,120
2026	21,120
2027	21,120
2028	21,120
Thereafter	<u>3,106,848</u>
Net minimum lease payments	3,212,448
Less amount representing interest	<u>(2,953,330)</u>
Present value of net minimum lease payments	<u><u>\$ 259,118</u></u>

The Company has the option to extend the term of the lease for two additional 20-year terms after 2105. The extension option is not included in the calculation of the lease asset and liability. Payments under the lease step up at regular intervals over the lease term.

No material restrictions or guarantees exist with respect to the Company's finance or operating lease obligations.

Supplemental balance sheet information related to leases as of December 31, 2023 and 2022 is:

	<u>2023</u>	<u>2022</u>
Weighted average remaining lease term:		
Operating leases	7.2 years	8.2 years
Finance leases	81.6 years	82.6 years
Weighted average discount rate:		
Operating leases	4.8%	4.6%
Finance leases	9.7%	9.7%

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**7. Leases (continued)**

For the years ended December 31, 2023, 2022 and 2021 cash outflows for leases were:

	<u>2023</u>	<u>2022</u>	<u>2021</u>
	<i>(In Thousands)</i>		
Operating cash flows			
Operating leases	\$ 14,968	\$ 18,186	\$ 22,766
Finance leases	21,120	18,560	16,000

**8. Share-Based Compensation**

Certain employees of the Company participate in share-based compensation arrangements that are granted by the Parent and result in the award of the Parent's stock. As the Parent is a UK-based company whose stock is traded in pounds sterling, some of the disclosures that follow are provided in pence. References to the "Board," "Executive Directors," and the "Remuneration Committee" relate to those of the Parent.

For awards that are classified as equity awards, the cost is recognized from the grant date over the requisite service period.

In 2023, the new Deferred Award Plan rules ("DAP") replaced the IHG Annual Performance Plan ("APP") and Long Term Incentive Plan ("LTIP") as a simplified, combined set of plan rules which govern the Company's discretionary incentive plans.

Awards granted under the DAP can consist of Deferred Annual Incentive ("DAI"), Long-Term Incentive ("LTI"), Restricted Stock Unit ("RSU") and other ad hoc awards.

The DAP rules were approved at the IHG Annual General Meeting on May 5, 2023, with all LTI and RSU awards granted after this date and DAI awards granted in respect of 2024 and future APP years being subject to the rules of the DAP. All previously granted awards will still be subject to the LTIP and APP rules respectively. In the transition to the DAP, there have been no changes to accounting for the awards.

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Notes to Consolidated Financial Statements (continued)

## 8. Share-Based Compensation (continued)

### Annual Performance / Deferred Annual Incentive Awards

Eligible employees (including Executive Directors) may receive all or part of their bonus in the form of deferred shares and/or receive one-off awards of shares. Deferred shares in relation to annual performance-related bonus plans are released on the third anniversary of the award date. Awards are conditional on the participants remaining in the employment of a participating company or leaving for a qualifying reason. The grant of deferred shares under the APP/DAP is at the discretion of the Remuneration Committee.

The number of shares is calculated by dividing a specific percentage of the participant's annual performance-related bonus award by the average of the middle market quoted prices on the three consecutive business days following the announcement of the IHG Group's results for the relevant financial year. A number of the Company's executives participated in the APP during 2023 and conditional rights over 125,496 (120,397 in 2022 and 48,081 in 2021) shares were awarded to participants. In 2023 this number included 52,109 (48,555 in 2022 and 48,081 in 2021) shares awarded as part of recruitment terms or for one-off individual performance-related awards.

### Long Term Incentive Plan and Restricted Stock Units

Executive Directors and eligible employees may receive conditional share awards, which normally have a vesting period of three years, subject to continued employment. In addition, certain LTI awards made to Executive Directors of IHG are normally subject to a further two-year holding period after vesting.

LTI awards are subject to performance-based vesting conditions set by the IHG Remuneration Committee, which are normally measured over the vesting period.

Awards are normally made annually and, except in exceptional circumstances, will not exceed 3.5 or 5 times salary for eligible employees under the LTIP or DAP rules respectively. During 2023, conditional rights over 563,515 (588,479 in 2022 and 400,718 in 2021) shares were awarded to employees of the Company under the plan, comprising 132,546 performance-related awards (139,803 in 2022 and 116,034 in 2021) and 430,969 restricted stock units (448,676 in 2022 and 284,684 in 2021).

Six Continents Hotels, Inc.  
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Notes to Consolidated Financial Statements (continued)

**8. Share-Based Compensation (continued)**

**Colleague Share Plan**

The Colleague Share Plan gives eligible corporate employees the opportunity to purchase shares up to an annual limit. After the end of the plan year, the participant will be awarded the right to receive one matching share for every purchased share (subject to continued employment). If the participant holds the purchased shares until the second anniversary of the end of the plan year, the conditional right to matching shares vests. The total fair value of the Colleague Share Plan is not significant.

**Compensation Disclosures**

The Company recognized share-based compensation expense of \$32.2 million, \$24.8 million and \$22.2 million in the years ended December 31, 2023, 2022 and 2021, respectively. The expense relates to employees who have contracted employment with the Company. In some instances, these employees provide their services to affiliated companies who pay their salaried remuneration.

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Notes to Consolidated Financial Statements (continued)

**8. Share-Based Compensation (continued)**

In 2023, 2022 and 2021, the Company used separate option pricing models and assumptions for each plan. The following tables set forth information about how fair value of each award is calculated:

	APP	LTIP
	Binomial	Monte Carlo Simulation, Binomial and Finnerty
<b>2023 valuation model</b>		
Weighted-average share price (British pence)	5,520.4	5,318.0
Expected dividend yield	-	2.5% to 2.8%
Risk-free interest rate	-	3.85%
Volatility <sup>(i)</sup>	-	29% to 30%
Term (years)	2.6	2.8
<b>2022 valuation model</b>		
Weighted-average share price (British pence)	4,926.6	4,875.0
Expected dividend yield	-	2.3% to 2.7%
Risk-free interest rate	-	1.3%
Volatility <sup>(i)</sup>	-	35% to 45%
Term (years)	1.5	3.0
<b>2021 valuation model</b>		
Weighted-average share price (British pence)	5,009.0	4,980.0
Expected dividend yield	-	1.1%
Risk-free interest rate	-	0.1%
Volatility <sup>(i)</sup>	-	43%
Term (years)	1.5	3.0

<sup>(i)</sup> The expected volatility was determined by calculating the historical volatility of the Parent's share price corresponding to the expected life of the share award.

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Notes to Consolidated Financial Statements (continued)

**8. Share-Based Compensation (continued)**

Movements in the awards outstanding under the plans for the year ended December 31, 2023, are:

	APP/DAP	LTIP/DAP Performance- related awards/LTI	LTIP/DAP Restricted stock units
	<i>(Number of Shares In Thousands)</i>		
Outstanding at December 31, 2022	<b>152</b>	<b>390</b>	<b>1,015</b>
Granted	145	133	431
Vested	(118)	(91)	(353)
Transfer from intergroup companies	19	101	1
Expired or canceled	(5)	(92)	(53)
<b>Outstanding at December 31, 2023</b>	<b>193</b>	<b>441</b>	<b>1,041</b>
Weighted-average remaining contract life (years) at December 31, 2023	1.5	1.1	1.3
Fair value of awards granted:			
<b>2023</b>	<b>\$ 68.63</b>	<b>\$ 31.96</b>	<b>\$ 61.55</b>
2022	\$ 60.67	\$ 37.69	\$ 56.41
2021	\$ 68.63	\$ 46.42	\$ 65.25

The above awards do not vest until the performance and service conditions have been met.

The weighted-average share price at the date of exercise for share awards vested during the year was 5,470.0 British pence. The closing share price on December 31, 2023 was 7,090.0 British pence and the range during the year was 4,832.0 British pence to 7,118.0 British pence per share.

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Notes to Consolidated Financial Statements (continued)

**8. Share-Based Compensation (continued)**

	<b>Year Ended December 31</b>		
	<b>2023</b>	<b>2022</b>	<b>2021</b>
	<i>(In Millions)</i>		
<b>Intrinsic value of awards and options exercised in the year</b>			
APP	\$ 7.4	\$ 7.9	\$ 3.6
LTIP – Performance-related awards	6.2	0.3	2.1
LTIP – Restricted Stock Units	24.1	16.5	17.6
	<u>\$ 37.7</u>	<u>\$ 24.7</u>	<u>\$ 23.3</u>
<b>Fair value of awards vested during the year</b>			
APP	\$ 6.2	\$ 7.4	\$ 3.3
LTIP – Performance-related awards	2.6	0.1	0.5
LTIP – Restricted Stock Units	14.8	14.4	15.6
	<u>\$ 23.6</u>	<u>\$ 21.9</u>	<u>\$ 19.4</u>

As of December 31, 2023, there was \$42.0 million of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the plans. That cost is expected to be recognized over a weighted-average period of two years.

No cash was received from option exercises under any of the share-based payment arrangements for the years ended December 31, 2023, 2022 and 2021. The actual tax benefit realized for the tax deductions from option exercise of the share-based payment arrangements totaled \$8.0 million, \$6.9 million and \$5.6 million for the years ended December 31, 2023, 2022 and 2021, respectively.

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Notes to Consolidated Financial Statements (continued)

**9. Other Comprehensive Income (Loss)**

A summary of the components of other comprehensive income (loss) for the years ended December 31, 2023, 2022 and 2021, is (in thousands):

	<b>Pre-Tax Amount</b>	<b>Tax</b>	<b>Net of Tax Amount</b>
<b>Fiscal 2023</b>			
Foreign currency translation adjustments	\$ 3,690	(1,369)	\$ 2,321
Unrealized gains (losses) on securities	25,109	(6,302)	18,807
Pension liability adjustments	(2,216)	556	(1,660)
Other comprehensive income (loss)	<u>\$ 26,583</u>	<u>(7,115)</u>	<u>\$ 19,468</u>
<b>Fiscal 2022</b>			
Foreign currency translation adjustments	\$ 599	\$ 1,977	\$ 2,576
Unrealized (losses) gains on securities	(54,174)	13,598	(40,576)
Pension liability adjustments	11,731	(2,944)	8,787
Other comprehensive (loss) income	<u>\$ (41,844)</u>	<u>\$ 12,631</u>	<u>\$ (29,213)</u>
<b>Fiscal 2021</b>			
Foreign currency translation adjustments	\$ (371)	\$ 242	\$ (129)
Unrealized (losses) gains on securities	(1,787)	449	(1,338)
Pension liability adjustments	7,165	(1,798)	5,367
Other comprehensive income (loss)	<u>\$ 5,007</u>	<u>\$ (1,107)</u>	<u>\$ 3,900</u>



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Notes to Consolidated Financial Statements (continued)

**9. Other Comprehensive Income (Loss) (continued)**

The following table provides information regarding the pre-tax amounts reclassified out of accumulated comprehensive income for the year ended December 31, 2023 (in thousands):

	<b>Foreign Currency Translation Adjustments</b>	<b>Unrealized Gains on Securities</b>	<b>Pension Liability Adjustments</b>	<b>Total</b>
<b>Fiscal 2023</b>				
Other comprehensive income (loss) before reclassifications	\$ 3,690	\$ 25,109	\$ (1,577)	\$ 27,222
Amounts reclassified to income (pension costs) from other comprehensive income	-	-	(639)	(639)
Other comprehensive income (loss)	<u>\$ 3,690</u>	<u>\$ 25,109</u>	<u>\$ (2,216)</u>	<u>\$ 26,583</u>

**10. Employee Benefit Plans**

**Defined Contribution Plans**

The Company maintains a defined contribution savings plan. Under the plan, participating employees who have completed six months of service may elect to make pretax contributions to the plan from 1.0% up to 75.0% of their eligible earnings. Subject to certain limitations, the Company will match 100.0% of the first 4.0% of compensation contributed (6.0% for a non-highly compensated corporate employee, a member of the hotel executive committee, a reservations center director, or a reservations center employee). Plan participants are immediately vested in the Company's matching contributions. The Company's matching contributions to the Plan were approximately \$12.1 million, \$11.2 million and \$10.3 million, for the years ended December 31, 2023, 2022 and 2021, respectively. Additionally, employees meeting certain eligibility requirements received supplemental contributions of \$5.4 million, \$4.8 million and \$4.3 million, for the years ended December 31, 2023, 2022 and 2021, respectively. Plan participants become fully vested in the Company's supplemental matching contributions after five years of credited service.

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Notes to Consolidated Financial Statements (continued)

**10. Employee Benefit Plans (continued)**

**Defined Benefit Plans**

During 2018, the Company completed a termination of the US funded Inter-Continental Hotels Pension Plan (the Plan), which involved certain qualifying members receiving lump-sum cash-out payments of \$20 million with the remaining pension obligations subject to a buy-out by Banner Life Insurance Company (Banner), a subsidiary of Legal and General America.

The Company continues to maintain the unfunded Inter-Continental Hotels Non-qualified Pension Plans and unfunded Inter-Continental Hotels Corporation Postretirement Medical, Dental, Vision and Death Benefit Plan, both of which are defined benefit plans. Both plans are closed to new members. A Retirement Committee, comprising senior Company employees and assisted by professional advisors as and when required, has responsibility for oversight of the plans.

The pension costs for the defined benefit plans are (in thousands):

	Non-qualified Pension Plans			Postretirement Programs		
	Year Ended December 31			Year Ended December 31		
	2023	2022	2021	2023	2022	2021
Service cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest cost	1,656	1,058	928	628	405	419
Amortization of unrecognized actuarial loss (gain)	-	478	571	(639)	(280)	-
Net periodic benefit cost (gain)	\$ 1,656	\$ 1,536	\$ 1,499	\$ (11)	\$ 125	\$ 419

The pension costs related to the defined benefit plans are settled with the Parent through the Parent's Investment account.

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Notes to Consolidated Financial Statements (continued)

**10. Employee Benefit Plans (continued)**

The major assumptions used in computing the benefit obligations were:

	Non-qualified Pension Plans			Postretirement Programs		
	Year Ended December 31			Year Ended December 31		
	2023	2022	2021	2023	2022	2021
Discount rate	4.7%	4.9%	2.4%	4.7%	4.9%	2.4%
Expected long-term rate of earnings increases	n/a	3.5%	3.5%	n/a	4.0%	4.0%

The assumed discount rates were determined by reference to published long-term bond indices at a maturity appropriate to the anticipated timing of expected benefit payments.

Mortality is the most significant demographic assumption. The current assumptions are based on rates from the Pri-2012 Mortality Study and Generationally Projected with Scale MP-[2021] mortality tables.

The assumed health care cost trend rates for medical and dental plans for 2023, 2022 and 2021 are:

	2023	2022	2021
Health care cost trend rate assumed for next year:			
Pre 65 (ultimate rate reached in 2031)	7.8%	6.9%	6.2%
Post 65 (ultimate rate reached 2031)	8.6%	7.3%	6.5%
Ultimate rate that the cost rate trends to	4.5%	4.5%	4.5%

A one-percentage point increase in assumed health care costs trend rate would increase the accumulated post-employment benefit obligation as of December 31, 2023, 2022 and 2021, by \$0.8 million, \$0.8 million and \$1.3 million, respectively.

A one-percentage point decrease in assumed health care costs trend rate would decrease the accumulated post-employment benefit obligations as of December 31, 2023, 2022 and 2021 by \$0.8 million, \$0.8 million and \$1.2 million, respectively.

The change in service and interest cost components of net post-employment cost from such an increase/decrease would be less than \$0.05 million in all years presented.

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Notes to Consolidated Financial Statements (continued)

**10. Employee Benefit Plans (continued)**

The following table sets forth movements in the projected benefit obligation (in thousands):

	Non-qualified Pension Plans		Postretirement Programs	
	Year Ended December 31		Year Ended December 31	
	2023	2022	2023	2022
<b>Change in benefit obligation</b>				
Benefit obligation at beginning of year	\$ 35,255	\$ 44,986	\$ 12,871	\$ 17,520
Interest expense	1,656	1,058	628	405
Employee contributions	-	-	328	335
Benefits paid	(3,331)	(3,426)	(1,177)	(1,219)
Actuarial loss (gain) arising in the year	1,015	(7,363)	562	(4,170)
Benefit obligation at end of year	\$ 34,595	\$ 35,255	\$ 13,212	\$ 12,871
Accumulated benefit obligation (all vested)	\$ 34,595	\$ 35,255	\$ 13,212	\$ 12,871

The fair value of plan assets was \$0.25 million at December 31, 2023 and 2022. Further information regarding the fair value of plan assets is included in Note 15.

The following table sets forth the amounts recognized in the financial statements (in thousands):

	Non-qualified Pension Plans		Postretirement Programs	
	Year Ended December 31		Year Ended December 31	
	2023	2022	2023	2022
Fair value of plan assets	\$ 250	\$ 250	\$ -	\$ -
Projected benefit obligation	(34,595)	(35,255)	(13,212)	(12,871)
Funded status	\$ (34,345)	\$ (35,005)	\$ (13,212)	\$ (12,871)
Recognized in the balance sheet as:				
Pension asset – current	\$ 250	\$ 250	\$ -	\$ -
Accrued pension cost – current	(3,337)	(3,425)	(1,100)	(1,077)
Accrued pension cost – noncurrent	(31,258)	(31,830)	(12,112)	(11,794)
	\$ (34,345)	\$ (35,005)	\$ (13,212)	\$ (12,871)
Amounts recognized in accumulated other comprehensive income:				
Unrecognized actuarial loss (gain)	3,380	2,364	(6,920)	(8,120)
	\$ 3,380	\$ 2,364	\$ (6,920)	\$ (8,120)

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Notes to Consolidated Financial Statements (continued)

**10. Employee Benefit Plans (continued)**

The net actuarial loss (gain) recognized in other comprehensive income for the years ended December 31, 2023, 2022 and 2021, was \$1.0 million, \$(7.3) million and \$(2.5) million, respectively, for the pension plans, and \$0.6 million, \$(4.2) million and \$(4.1) million, respectively, for the postretirement programs. (Losses) gains amortized from other comprehensive income and included in the net periodic pension cost in the years ended December 31, 2023, 2022 and 2021 were \$0, \$(0.5) million, and \$(0.6) million, respectively, for the pension plans, and \$0.6 million, \$0.3 million and \$0, respectively, for the postretirement program.

The Company estimates that of the amounts included in other comprehensive income at December 31, 2023, \$0 of the actuarial loss will be amortized for the pension plans and postretirement benefit programs in 2024, all on a pretax basis.

At December 31, 2023, the Company estimates that it will contribute \$3.3 million to the pension plans and \$1.1 million to the postretirement benefit programs in 2024.

The following benefit payments are expected to be paid (in thousands):

	<b>Non-qualified</b>	
	<b>Pension Plans</b>	<b>Postretirement Programs</b>
	<hr/>	
2024	\$ 3,337	\$ 1,100
2025	3,255	1,083
2026	3,166	1,086
2027	3,083	1,085
2028	2,983	1,078
After 2029	13,225	5,083

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Notes to Consolidated Financial Statements (continued)

**11. Investments in Unconsolidated Entities**

Investments in unconsolidated entities comprise the following (in thousands):

	<b>December 31</b>	
	<b>2023</b>	<b>2022</b>
Barclay Operating Corporation	\$ 150,402	\$ 141,328
111 East 48 <sup>th</sup> Street	1,910	-
Other Hotel Ownership Entities	23,766	14,776
Groups360 LLC	5,009	4,545
	<b>\$ 181,087</b>	<b>\$ 160,649</b>

*Barclay Operating Corporation*

The Company owns a 48.9% interest in Barclay Operating Corporation (“BOC”) which is accounted for under the equity method of accounting. In turn, BOC holds a 6.2% interest in 111 East 48<sup>th</sup> Street Holdings LLC (“111 East 48<sup>th</sup> Street”) which owns the InterContinental Barclay hotel located in New York. A wholly owned subsidiary of the Company, IHG Management MD Barclay Sub LLC (“IHG Management”), holds a further 13.7% interest in 111 East 48<sup>th</sup> Street. BOC and IHG Management, together the IHG Member, own a combined 19.9% interest in 111 East 48<sup>th</sup> Street and both account for it under the equity method of accounting; the Company’s effective interest is 16.7%. The InterContinental Barclay hotel is operated under a long-term management agreement with IHG Management (Maryland) LLC, a wholly owned subsidiary of the Company.

The Company’s investment in BOC had a net book value of \$150.4 million and \$141.3 million at December 31, 2023 and 2022, respectively.

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Notes to Consolidated Financial Statements (continued)

**11. Investments in Unconsolidated Entities (continued)**

The unaudited summarized balance sheet and income data of BOC were (in thousands):

	<b>December 31</b>	
	<b>2023</b>	<b>2022</b>
Receivables from affiliates	\$ 544,935	\$ 523,387
Equity accounted investment	234	-
	<b>545,169</b>	523,387
Total liabilities	<b>(235,765)</b>	(232,524)
Net assets (stockholders' equity)	<b>\$ 309,404</b>	\$ 290,863

BOC incurred net income (loss) of \$18.5 million, \$(3.9) million and \$1.9 million in the years ended December 31, 2023, 2022 and 2021, respectively. No revenue was reported in those years.

IHG Management's direct investment in 111 East 48<sup>th</sup> Street had a net book value of \$1.9 million, \$0 million and \$28.9 million at December 31, 2023, 2022 and 2021, respectively.

*Settlement agreement*

As part of an agreed settlement of a commercial dispute in relation to 111 East 48<sup>th</sup> Street, during the year ended December 31, 2022 the IHG Member was allocated expenses in excess of its actual percentage share which directly reduced its current interest in 111 East 48<sup>th</sup> Street. This resulted in \$60.0 million of additional expenses being allocated to the IHG Member during 2022 (of which \$41.2 million was allocated to IHG Management), with a current tax benefit of \$15.3 million (of which \$10.5 million was allocated to IHG Management) and, applying equity accounting to this additional share of expenses, reduced the IHG Member's investment to \$0. In addition, a liability of \$18.0 million was recognized by the IHG Member, of which \$12.4 million was recognized by IHG Management and was included in 'other payables' on the consolidated balance sheet at December 31, 2022. The value of the liability is linked to the value of the hotel; increases in property value are attributed first to the IHG Member and are reflected as a reduction of the liability until it is reduced to \$0. In 2023, the increase in fair value of the hotel (according to pricing opinions provided by a professional external valuer) resulted in a full reversal of the liability.

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Notes to Consolidated Financial Statements (continued)

**11. Investments in Unconsolidated Entities (continued)**

The change in the fair value of the liability of \$12.4 million is recognized within ‘income (loss) from equity method investments’ in the consolidated statements of net income.

*Security deposit*

Under the terms of the joint venture agreement, IHG Management (Maryland) LLC placed a \$25.0 million security deposit in an escrow account of 111 East 48<sup>th</sup> Street during the year ended December 31, 2018. The security deposit, presented within ‘cash and cash equivalents’, is held for the purpose of funding shortfalls in owner returns. \$3.5 million and \$15.5 million was withdrawn from the deposit during the years ended December 31, 2021 and 2020, respectively, to fund working capital requirements and, in 2020, in connection with the refinancing of the hotel’s senior bank loan. No amounts required release from the deposit during 2023 or 2022.

*Owner return settlement*

\$18.0 million was charged to general and administrative expenses during the year ended December 31, 2021 in relation to a settlement of a commercial dispute regarding owner returns during the pandemic. The related settlement was paid during the year ended December 31, 2022 and was included in ‘changes in accounts payable and accrued expenses’ in the consolidated statements of cash flows.

*Investments in other hotel ownership entities*

At December 31, 2023, the Company held the following interests in entities that own hotels which are managed by the Company:

<b>Common equity holding</b>	<b>Investment name</b>
17%	CDC San Francisco LLC (“CDC”)
27%	Carr Clark SWW Subventure, LLC (“Carr”)
5%	LRR Holdings LLC (“LRR”)
25%	NF III Seattle LLC and NF III Seattle Op Co, LLC (together “Seattle”)



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Notes to Consolidated Financial Statements (continued)

**11. Investments in Unconsolidated Entities (continued)**

The Company accounts for these investments, which had a combined net book value of \$11.7 million and \$11.4 million at December 31, 2023 and 2022, respectively, under the equity method of accounting.

The combined unaudited summarized balance sheets and income data of the above investments is (in thousands):

	<b>December 31</b>	
	<b>2023</b>	<b>2022</b>
Current assets	\$ 21,854	\$ 14,010
Non-current assets	267,197	279,003
	<b>289,051</b>	293,013
Total liabilities	<b>(259,453)</b>	(272,576)
Net assets	<b>\$ 29,598</b>	\$ 20,437

	<b>2023</b>	<b>2022</b>	<b>2021</b>
Revenue	\$ 96,630	\$ 87,616	\$ 37,668
Net income (loss)	\$ 9,019	\$ (7,970)	\$ (30,575)

The Company has recognized its proportionate share of net losses and income in the consolidated statements of net income for the years ended December 31, 2023, 2022 and 2021, respectively.

In addition to the above equity accounted investments, the Company also has preferred equity investments in EDG Alpharetta EH, LLC (“EDG”) and ASR JV One, LLC (“Aetna Springs”) with a combined net book value of \$12.1 million and \$3.4 million at December 31, 2023 and 2022, respectively.

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Notes to Consolidated Financial Statements (continued)

**11. Investments in Unconsolidated Entities (continued)**

*Aetna Springs*

In 2023, the Company entered into a LLC operating agreement alongside Weller Development Company and Pegasus Capital Partners for the acquisition of Aetna Springs retreat property in Napa County, California. The Company will invest up to \$9.5 million which is structured as preferred equity earning 5% per annum, with a five-year repayment term. At December 31, 2023, \$7.7 million has been invested.

*Groups360 LLC*

In August 2019, the Company contributed \$10 million for a 12.6% share of Groups360 LLC (“Groups360”), a joint venture formed to operate a comprehensive meetings and events marketplace for people planning meetings, events and group travel, and hoteliers. During 2023, the Company contributed a further \$3.0 million alongside other investors as part of a capital call.

Ongoing changes in the investment structure have changed the Company’s investment share to 11.8%. The investment, which had a net book value of \$5.0 million and \$4.5 million at December 31, 2023 and 2022, respectively, is accounted for under the equity method of accounting. The Company has recognized its proportionate share of losses of \$(2.5) million, \$(3.0) million and \$(2.6) million within ‘System Fund and reimbursable expenses’ in the consolidated statements of net income for the years ended December 31, 2023, 2022 and 2021, respectively. Additionally, a gain of \$2.3 million arising from a change in investment structure was recognized in ‘System Fund and reimbursable expenses’ in the year ended December 31, 2022. The Company has a commitment to invest up to an additional \$3 million in Groups360 as at December 31, 2023.

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Notes to Consolidated Financial Statements (continued)

**11. Investments in Unconsolidated Entities (continued)**

The unaudited summarized balance sheets and income data of Groups360 is (in thousands):

	December 31	
	2023	2022
Current assets	\$ 13,985	\$ 16,486
Non-current assets	3,637	6,250
	17,622	22,736
Total liabilities	(8,987)	(7,332)
Net assets	\$ 8,635	\$ 15,404

	2023	2022	2021
Revenue (net)	\$ 4,711	\$ 1,584	\$ (536)
Net loss	\$ (22,182)	\$ (26,665)	\$ (19,098)

**12. Notes receivable**

Notes receivable principally comprises a mezzanine loan.

In December 2023, the Company funded a mezzanine loan of \$40 million for a new Kimpton hotel in New York City. The loan term is three years with borrower one-year extension options and an interest rate of 0% for the first four years, rising to 20% during the extension period. Of the \$40 million investment, \$22.9 million (representing the fair value of the loan at December 31, 2023) is included in 'notes receivable' and \$17.1 million is included within 'contract assets' in the consolidated balance sheets.

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Notes to Consolidated Financial Statements (continued)

### 13. Income Taxes

The Company is not required to file a separate tax return but is included in the consolidated federal income tax return of InterContinental Hotels Group Operating Corp. (“IHGOP”), its ultimate U.S. parent company. The Company’s income tax provision and related tax asset and liability accounts are computed as if the Company filed a separate income tax return. The Company does not record inside basis differences on unconsolidated equity investments for C Corporations and instead evaluates the need to book the outside basis difference.

Under an intercompany agreement dated March 31, 2014, it was agreed that the Company's current income tax provisions as computed for these consolidated financial statements would be treated as non-shareholder capital contributions and shown as a component of the Parent's Investment. In accordance with the agreement, the Company’s current year income tax provisions of \$251.0 million, \$184.4 million and \$136.7 million for the years ended December 31, 2023, 2022 and 2021, respectively, have been recorded as non-shareholder capital contributions within Parent's Investment. These amounts are disclosed as 'Capital contributions related to income tax provisions' in the consolidated statement of changes in Parent's Investment for the years ended December 31, 2023, 2022 and 2021.

Federal income tax returns filed by the tax-paying parent of the Company are open for examination by the Internal Revenue Service for years 2020 through 2022. The Company’s state income tax returns are open for examination by various state taxing authorities for years 2014 through 2022.

The Company accounts for taxes on Global Intangible Low-Taxed Income (“GILTI”) as period costs within provision for income taxes on the consolidated statements of net income.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company’s deferred tax liabilities as of December 31, 2023 and 2022 are differences in book and tax bases of certain tangible and intangible assets, including trademarks and management agreements, together with deferred gains, pensions, deferred compensation plans, outside basis differences in investments and foreign tax credits. The net change during the year in the total valuation allowance is \$4.6 million related to foreign tax credits.

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Notes to Consolidated Financial Statements (continued)

**13. Income Taxes (continued)**

Deferred tax assets and liabilities at December 31, 2023 and 2022, are (in thousands):

	<b>2023</b>	<b>2022</b>
Deferred tax assets	\$ 213,159	\$ 193,751
Deferred tax liabilities	(483,885)	(500,872)
Valuation allowance	(18,375)	(13,780)
Noncurrent deferred tax liabilities, net	\$ (289,101)	\$ (320,901)

Significant components of the provision (benefit) for income taxes for the years ended December 31, 2023, 2022 and 2021, are (in thousands):

	<b>2023</b>	<b>2022</b>	<b>2021</b>
Current:			
U.S. federal	\$ 182,588	\$ 141,335	\$ 107,508
U.S. state	69,416	43,605	30,549
Foreign taxes	16,175	11,838	4,439
Total current	268,179	196,778	142,496
Deferred	(38,915)	(13,605)	(30,774)
Total	\$ 229,264	\$ 183,173	\$ 111,722

The Company's effective tax rate of 23.58 percent differs from the U.S. Federal Income Tax rate of 21 percent due to taxes imposed by various state and foreign jurisdictions, credits for taxes paid to foreign jurisdictions, valuation allowance on foreign tax credits, permanent tax adjustments, including FDII deduction and System Fund, deferred tax liability adjustments, and changes in uncertain tax positions.

The Company operates, manages, and franchises hotels in a significant number of countries and consequently, a wide range of matters of interpretation of tax law arise in the normal course of business. Although reliance is placed on generally available interpretations in these countries, there is no certainty that the relevant tax authorities will agree with the Company's interpretation or that the Company's interpretation will be upheld. Consequently, it is possible that certain matters will be resolved adversely resulting in additional liabilities and cash tax settlements. The Company provides against all quantifiable tax exposures based upon best estimates and management's judgment in accordance with the requirements of ASC 740-10 concerning uncertain tax positions as described above.

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Notes to Consolidated Financial Statements (continued)

**13. Income Taxes (continued)**

In addition to income taxes recognized in the consolidated statements of net income, in the years ended December 31, 2023, 2022, and 2021, respectively, the Company recognized tax expense (income) of \$7.1 million, \$(12.6) million and \$1.1 million in the consolidated statements of comprehensive income.

During the year ended December 31, 2023, the Company decreased its reserve for uncertain tax positions by \$0.3 million, while during the years ended December 31, 2022 and 2021, the Company decreased its reserve by \$1.4 million and increased by \$2.1 million respectively, for potential liabilities. The adjustment of these reserves affected the Company's effective tax rates by approximately 0.23%, 0.2% and 0.5% in the years ended December 31, 2023, 2022 and 2021, respectively. The Company does not expect any remaining uncertain tax positions will significantly increase or decrease within 12 months of the reporting date.

The Company has recorded \$0 for interest and penalties related to uncertain tax positions in each of the three years ended December 31, 2023, 2022 and 2021.

The Company has recorded a deferred tax asset of \$18.4 million related to foreign tax credit carryforwards, which expire in years 2029, 2032 and 2033. Realization is dependent on generating sufficient foreign source income while also not being limited by the foreign tax credit limitation prior to expiration of the credit carryforwards. The Company does not believe it is more likely than not that these deferred tax assets for foreign tax credit carryforwards will be fully realized in the future, therefore, a full valuation allowance is recorded. The deferred tax asset could be adjusted in the near term if estimates of future credit limitation changes during the carryforward periods.

In general, it is the Company's practice and intention to reinvest the earnings of its non-U.S. subsidiaries in those operations with the exception of certain subsidiaries under the Partnership. As of December 31, 2023, the Company estimates that it has an outside basis difference in non-U.S. subsidiaries of approximately \$240.9 million, which includes the cumulative undistributed earnings of the Company's non-U.S. subsidiaries. The Company continues to be permanently reinvested in \$18.2 million of the total outside basis difference and has recorded a deferred tax liability of \$2.3 million associated with the non-permanently reinvested earnings.

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Notes to Consolidated Financial Statements (continued)

**13. Income Taxes (continued)**

On August 16, 2022, the Inflation Reduction Act (“IRA”) was signed into law in the United States. Among other provisions, the IRA includes a 15% corporate minimum tax rate (“CAMT”) applied to certain large corporations but there would not be any additional tax at a consolidated level in 2023. A 1% excise tax on corporate stock repurchases made after December 31, 2022 was also enacted and the Company is waiting on further guidance to determine applicability.

**14. Related-Party Transactions**

Receivables from and payables to affiliated companies included in current assets and current liabilities in the consolidated balance sheets consist of the following at December 31, 2023 and 2022 (in thousands):

	<b>December 31</b>	
	<b>2023</b>	<b>2022</b>
Receivables from affiliates	<b>\$ 176,120</b>	\$ 206,768
Payables to affiliates	<b>158,435</b>	155,477

These current amounts are of a working capital nature and generally represent charge-backs between regions that are non-interest-bearing.

Other long-term receivables from and payables to affiliated companies which are generally interest-bearing are netted and included as an offset in Parent’s Investment in the consolidated balance sheets. Interest is paid on the balances with affiliates as due under the note agreements.

Interest income related to receivables from affiliates of \$325.7 million, \$193.8 million and \$61.4 million for the years ended December 31, 2023, 2022 and 2021, respectively and interest expense related to payables to affiliates of \$73.3 million, \$52.6 million and \$37.1 million for the years ended December 31, 2023, 2022 and 2021, respectively are presented on a net basis in the consolidated statements of net income.

As discussed in Note 8, certain employees of the Company participate in share-based compensation programs and are issued stock of IHG, the ultimate parent company of SCH, Inc.

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Notes to Consolidated Financial Statements (continued)

**14. Related-Party Transactions (continued)**

The Company made net allocations of overhead expenses to affiliated companies of \$168.7 million, \$134.6 million and \$134.2 million in the years ended December 31, 2023, 2022 and 2021, respectively. Additionally, the Company paid insurance expenses of \$28.8 million, \$19.3 million and \$10.5 million for the years ended December 31, 2023, 2022 and 2021, respectively, to SCH Insurance Company Inc., a wholly owned subsidiary of the Parent. This expense primarily represents assessments of premium charges and estimated losses for U.S. medical healthcare stop loss and workers' compensation insurance.

The Company recognized in other revenue \$54.0 million, \$46.5 million and \$53.7 million from affiliated companies in respect of service fee income in the years ended December 31, 2023, 2022, and 2021, respectively.

Net license fee expense charged by affiliated companies of \$16.7 million, \$15.7 million and \$9.0 million was recognized as a deduction to fee business revenue for the years ended December 31, 2023, 2022 and 2021, respectively.

On January 1, 2011, the Company entered into a ten-year license agreement, with successive ten-year renewal options, with an affiliated company for the right to use the 'IHG' trademark. This was superseded on January 1, 2019 by a one-year agreement with automatic one-year extension periods unless either party gives the other notice to terminate. The royalty payment under these agreements of \$3.0 million, \$2.8 million and \$2.2 million was recognized as a deduction to fee business revenue in the years ended December 31, 2023, 2022 and 2021, respectively.

The Company recognized mark-up cost charged by affiliated companies of \$16.2 million, \$12.7 million and \$10.7 million for the years ended December 31, 2023, 2022 and 2021, respectively.

Net guarantee fee costs charged by affiliated companies of \$0, \$0.2 million and \$1.2 million are included in 'other income (loss)' for the years ended December 31, 2023, 2022 and 2021, respectively.

As discussed in Note 13, amounts have been paid by IHGOP for the Company's current year income tax provisions of \$251.0 million, \$184.4 million and \$136.7 million for the years ended December 31, 2023, 2022 and 2021, respectively.



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Notes to Consolidated Financial Statements (continued)

**14. Related-Party Transactions (continued)**

These amounts are recorded in ‘receivables from and payables to affiliates’ within operating activities in the consolidated statements of cash flows . The ending balance in ‘payables to affiliates’ in the consolidated balance sheets is \$0 as the amounts are then recorded as non-shareholder capital contributions.

**15. Fair Value Measurements**

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (an exit price). A three-tier fair value hierarchy is used to define the inputs used in measuring fair value. These tiers are: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

As of December 31, 2023, 2022 and 2021, the Company held certain assets and liabilities that are required to be measured at fair value on a recurring basis. These are the defined benefit plans’ assets, preferred equity investments and the marketable securities and related liabilities of the Company’s Rabbi Trust.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**15. Fair Value Measurements (continued)**

The following tables present the Company's assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2023 and 2022 (in thousands):

<u>Description</u>	<u>Carrying Value</u>	<u>Fair Value</u>	<u>Fair Value Measurements Using</u>		
			<u>Quoted Prices in Active Markets for Identical Assets (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Unobservable Inputs (Level 3)</u>
<b>At December 31, 2023</b>					
Defined benefit plans' assets:					
Cash and cash equivalents	\$ 250	\$ 250	\$ 250	\$ -	\$ -
Marketable securities related to deferred compensation plans <sup>(i)</sup>	249,969	249,969	249,969	-	-
Preferred equity investments	8,529	8,529	-	-	8,529
Total	<u>\$ 258,748</u>	<u>\$ 258,748</u>	<u>\$ 250,219</u>	<u>\$ -</u>	<u>\$ 8,529</u>
<b>At December 31, 2022</b>					
Defined benefit plans' assets:					
Cash and cash equivalents	\$ 250	\$ 250	\$ 250	\$ -	\$ -
Marketable securities related to deferred compensation plans <sup>(i)</sup>	216,407	216,407	216,407	-	-
Total	<u>\$ 216,657</u>	<u>\$ 216,657</u>	<u>\$ 216,657</u>	<u>\$ -</u>	<u>\$ -</u>

<sup>(i)</sup> also the fair value of the deferred compensation plan liabilities.

The level 3 investment is an addition during the year. There were no material transfers into and out of Level 3 during the year.

**Six Continents Hotels, Inc.**  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

**Notes to Consolidated Financial Statements (continued)**

**16. Performance guarantees**

From time to time, the Company will grant a performance guarantee to encourage property owners to enter into a management agreement. The Company has three outstanding guarantees at December 31, 2023 (four at December 31, 2022 and five at December 31, 2021), all provided by wholly owned subsidiaries of the Company.

Under these guarantees, amounts will become payable if performance hurdles, as defined in the relevant management agreements, are not met. The Company's maximum exposure under such guarantees was \$13.1 million at December 31, 2023. Amounts will become payable if the performance hurdles are not met in future years.

**17. Commitments and Contingencies**

**Loans**

In limited cases, the Company may guarantee loans made to facilitate third-party ownership of hotels under franchise or management agreements with the Company. There were guarantees of \$50.2 million and \$49.7 million in place at December 31, 2023 and 2022, respectively. The likelihood of a payment under any of the guarantees is currently considered to be not probable. The largest guarantee is \$21.3 million at December 31, 2023 and 2022 and the underlying loan matures in 2029. Should the Company fund any amount under the guarantee, there is a cross-indemnity that the Company would seek to pursue for the other partners' share.

**Litigation**

In the normal course of business, the Company is subject to certain claims and litigation, including unasserted claims. The Company, based on its current knowledge and discussions with its legal counsel, is of the opinion that such matters will not have a material adverse effect on the financial position or results of operations or cash flows of the Company.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**17. Commitments and Contingencies (continued)**

**2022 criminal unauthorized access to technology systems**

On September 6, 2022, the Company announced that parts of the Group's technology systems had been subject to unauthorized activity causing disruption to IHG's booking channels and other applications. No evidence of unauthorized access to systems storing guest data was identified and precautionary regulatory notifications were filed and have been closed.

A class action has been filed, although alleged damages have not been specified. Given the uncertainty around the timing of the legal process and the quantum of any damages, it is not practicable to make a reliable estimate of the possible financial effect of any claims on the Company at this time.

The Company holds third-party insurance policies in respect of cyber risks. It is expected that any further payment of claims will be recoverable under insurance policies, subject to specific agreement with the insurance providers.

**Other**

The Company had outstanding letters of credit of \$20.1 million and \$17.1 million at December 31, 2023 and 2022, respectively, mainly relating to self-insurance programs. The letters of credit do not have set expiry dates but are reviewed and amended as required.

In relation to external bank funding provided to 111 East 48<sup>th</sup> Street Holdings LLC (see Note 11), the Company has provided certain guarantees to the lenders as additional security for the loans. These guarantees include a guarantee of recourse obligations and an environmental indemnity. The guarantees are joint and several with the joint venture partner and re-allocated under a cross-indemnity such that any liability would be shared in accordance with the respective membership interests in 111 East 48<sup>th</sup> Street Holdings LLC.

In relation to a \$40.0 mezzanine loan provided (see Note 11), if, as mezzanine lender, the Company forecloses on the borrower's ownership interests, the Company. (or a substitute) will need to provide a guarantee of completion, payment and recourse acts and have a specified net worth.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Notes to Consolidated Financial Statements (continued)

**17. Commitments and Contingencies (continued)**

The Company has provided a guarantee in favor of InterContinental Hotels Corporation, an affiliated company, regarding the payment of an amount of \$237.3 million owed by 111 East 48<sup>th</sup> Street Holdings LLC to InterContinental Hotels Corporation. There is a loan for the same amount from 111 East 48<sup>th</sup> Street Holdings LLC to another affiliate and the two loans are offset in the Parent's consolidated financial statements. As a result, no credit losses have been recorded related to this guarantee at December 31, 2023 and 2022.

In addition to the above, there are two other active guarantees which contain covenants. The company does not expect to breach any of these covenants.

**18. Concentrations**

The Company is required to disclose significant concentrations of its business consistent with the provisions of ASC 275, *Risks and Uncertainties*. The Company earned 39.2%, 38.1% and 42.5% of its management fee revenues from its five largest hotel owner group customers in the years ended December 31, 2023, 2022 and 2021, respectively.

During the years ended December 31, 2023, 2022 and 2021, the Company recognized revenues from foreign operations in the amounts of \$71.1 million, \$54.5 million and \$56.9 million, respectively. For the years ended December 31, 2023, 2022 and 2021, this represented 5.6%, 4.7% and 6.0%, respectively, of total revenues generated, excluding System Fund and reimbursables.

From time to time the Company has bank balances in excess of Federally Insured Deposit Limitations. The Company has not experienced any losses in such accounts.

**19. Subsequent Events**

All subsequent events through March 28, 2024, the date these financial statements were available for issuance, have been evaluated.

## **UNAUDITED INTERIM FINANCIAL STATEMENTS**

THESE INTERIM FINANCIAL STATEMENTS HAVE BEEN PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED, REVIEWED, EXAMINED OR COMPILED THESE INTERIM FINANCIAL STATEMENTS AND ACCORDINGLY HAS NOT EXPRESSED AN OPINION OR ANY OTHER FORM OF ASSURANCE ON THEM.

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Balance Sheet (unaudited)  
(In Thousands)

	<b>March 31, 2024</b>
<b>Assets</b>	
Current assets:	
Cash and cash equivalents	\$ 78,901
Restricted cash	2,215
Accounts receivable, less allowance for doubtful accounts of \$49,357 and \$44,963 at March 31, 2024 and December 31, 2023, respectively	394,751
Receivables from affiliates	156,772
Contract assets	17,890
Contract costs	2,717
Net investment in sublease	1,482
Prepaid and other current assets	131,130
Total current assets	785,858
Investments in unconsolidated entities	181,023
Deferred compensation plan investments	269,947
Property and equipment, net	478,031
Operating lease right-of-use assets, net	50,430
Goodwill and intangible assets, net	1,701,827
Contract assets	267,831
Contract costs	51,600
Notes receivable	41,416
Net investment in sublease	3,981
Prepaid and other non-current assets	18,292
	\$ 3,850,236
<b>Liabilities and Parent's investment</b>	
Current liabilities:	
Accounts payable	\$ 68,479
Accrued expenses	142,477
Loyalty program deferred revenue	661,491
Other deferred revenue	62,269
Accrued pension cost	4,437
Payables to affiliates	99,628
Operating lease liabilities	11,743
Other payables	42,603
Total current liabilities	1,093,127
Finance lease obligation	259,620
Operating lease liabilities	76,867
Accrued pension cost	43,090
Deferred compensation plan liabilities	269,947
Noncurrent deferred tax liabilities, net	289,124
Loyalty program deferred revenue	908,350
Other deferred revenue	159,770
Other long-term liabilities	2,086
Total liabilities	3,101,981
Parent's investment	748,255
	\$ 3,850,236

Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Statement of Income (unaudited)  
(In Thousands)

	<b>Three Months Ended March 31, 2024</b>
<b>Revenues</b>	
Fee business	\$ 193,541
Hotel operations	16,336
Other	66,119
System Fund and reimbursable revenues	534,216
Total revenues	810,212
<b>Operating expenses</b>	
Bad debt expense	1,466
Property and other taxes, insurance, and leases	3,778
Maintenance and repairs	14,773
General and administrative expenses	154,173
Other hotel operations	1,398
Mark-up cost charged by affiliated companies	2,797
Allocation of expenses to affiliated companies	(59,029)
Depreciation and amortization of software	8,040
Amortization of finite-lived intangible assets	1,159
System Fund and reimbursable expenses	518,301
Total operating expenses	646,856
Operating income	163,356
Interest expense – external	(6,519)
Interest income from affiliates, net	68,587
Interest income – external	2,148
Loss from equity method investments	(850)
Foreign transaction loss	(1,147)
Income before income taxes	225,575
Provision for income taxes	5,287
Net income	\$ 220,288



Six Continents Hotels, Inc.  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

Consolidated Statement of Changes in Parent's Investment (unaudited)  
(In Thousands)

		2024
<b>Balance at January 1</b>	\$	483,065
Net income		220,288
Other comprehensive income		16,335
Share-based payment compensation		11,532
Change in balances with affiliates offset against Parent's Investment		17,035
<b>Balance at March 31</b>	\$	748,255

**Six Continents Hotels, Inc.**  
(A Wholly Owned Subsidiary of InterContinental Hotels Group PLC)

**Basis of Preparation**

The following caveats apply to the attached set of SCH Inc. accounts for the three month period to March 31, 2024:

- 1) The accounts are unaudited.
- 2) The accounts have not been adjusted for the tax provision.
- 3) Adjustments from IFRS to US GAAP accounting have not been made for number of items, including the following:
  - Pension adjustments
  - Share based payments
  - Income/loss for equity method investments

Therefore a complete set of audited accounts for the three months to March 31, 2024 prepared in full compliance with US GAAP may be materially different to those presented on pages 1 to 3 of this document.

**Subsequent events**

On May 3, 2024, our ultimate parent company announced a change in the terms of its System Fund arrangements relating to the sharing of revenue from the sale of certain loyalty points between IHG and the System Fund. This will result in a change in classification of revenue recognized on a prospective basis. There will be no change to total revenues and the amount recognized within fee business revenues will be directly offset by a reduction in System Fund and reimbursable revenues. This change has had no impact on the previously reported financial information and has not resulted in a material impact to the interim numbers presented. It was also announced that IHG is lowering its standard loyalty assessment fee that owners pay into the Fund as well as other financial benefits to owners.

# EXHIBIT H

**EXHIBIT H-1  
TO DISCLOSURE DOCUMENT**

## IHG® VOICE RESERVATION SERVICE AGREEMENT

THIS IHG® VOICE RESERVATION SERVICE AGREEMENT (this “Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 (the “Effective Date”), by and between SIX CONTINENTS HOTELS, INC. (“SCH”), and \_\_\_\_\_ (“Hotel Owner”) (each a “Party,” and collectively the “Parties”).

### Background

- A. Hotel Owner is the owner of the hotel known as the \_\_\_\_\_ and located at \_\_\_\_\_ (the “Hotel”).  
Five letter inn code: \_\_\_\_\_. Number of Rooms: \_\_\_\_\_.
- B. Hotel Owner operates the Hotel as \_\_\_\_\_ brand hotel pursuant to the terms and conditions of a license agreement with Holiday Hospitality Franchising, LLC. (f/k/a Holiday Inns Franchising, Inc.), an Affiliate of SCH. [ or for IHG Managed Hotels *operates the Hotel as a \_\_\_\_\_ brand hotel pursuant to the terms and conditions of a management agreement between \_\_\_\_\_ [owning entity] and an affiliate of SCH.*
- C. SCH operates reservations offices located in various locations (the “Office(s)”) and has offered to have its Office(s) provide certain revenue and reservations services collectively known as the IHG Voice Reservation Service with respect to the Hotel and to certain other hotels operated under SCH brands, all subject to the terms and conditions of this Agreement. Hotel Owner wishes to accept and participate in IHG Voice Reservation Service with respect to the Hotel. As applicable throughout this Agreement, “SCH” includes affiliates of SCH.

### Statement of Agreement

For and in consideration of the premises, the mutual benefits and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SCH and Hotel Owner agree as follows:

1. Term and Termination of Agreement.
  1. The term of this Agreement shall commence on the Effective Date and shall continue until terminated as provided below in Section 1.2 (the “Term”).
  2. This Agreement may be terminated as follows:
    - (a) In the event Hotel leaves the SCH system, this Agreement shall terminate on the date Hotel does so;
    - (b) Either Party may terminate this Agreement at any time, without cause, upon thirty (30) days written notice to the other Party;

(c) This Agreement may be terminated in accordance with the provisions set forth in Section 11 below; or

(d) This Agreement may be terminated by Hotel upon thirty (30) days prior written notice in the event Hotel does not agree with the revised Fees as set forth in Section 4 below.

2.Office Visit Credit. SCH encourages Hotel representative responsible for the Service to visit the Office prior to launch, however, any visits to the Office by the Hotel made within ninety (90) days of the launch of IHG Voice Reservation Service at the Hotel, and on an annual basis thereafter, shall entitle the Hotel to a credit. Upon completion of the initial visit to the Office, and upon completion of any annual visit to the Office, Hotel shall receive a one thousand dollar (\$1,000) booking credit. Visits to the Office shall consist of certain activities. Such activities include, but are not limited to, a team meeting with the IHG Voice Reservation Service Team, listening to live IHG Voice Reservation Service and general reservations calls, a Hotel presentation to the agents and any applicable consultation.

3.Cost of Startup. Hotel Owner is responsible for any startup costs incurred at the Hotel level as described, but not limited to, the below content.

1. An operator assisted link, pursuant to which the Hotel's telephone operator will answer all incoming calls and, if appropriate, transfer calls concerning reservations only to the Office. All Hotel telephone operators shall be properly trained so that no non-reservation calls are transferred to the Office. Hotel Owner must apply to SCH for an unpublished toll free number for the Hotel. Hotel Owner shall program such number into the Hotel's PBX system. If such work is not completed by Hotel Owner within thirty (30) days following issuance of the number by the Office, SCH may revoke such number and Hotel Owner must re-apply. Hotel Owner shall be responsible for any monthly service fee charged by the local phone vendor and/or long distance carrier, as well as for any programming expenses associated with setting up the IHG Voice Reservation Service link and/or for subsequent maintenance/repair expenses incurred at the Hotel level.
2. In addition to the operator assisted link, an automated link may be established with the Hotel's selected long distance carrier, which automatically diverts to the Office all incoming reservations calls. Hotel must secure and maintain, at its cost, a dedicated, toll free reservation line with Hotel's long distance carrier.

4.Cost of Services. Hotel Owner shall pay to SCH, in consideration for the services provided by SCH pursuant to this Agreement, the amount of \$6.63 per net booking on all reservations booked by the Office for the Hotel ("Fee"). This Fee will also be applied to any net bookings made by the Office from Hotel-direct calls transferred to public InterContinental Hotels Group CRO telephone numbers. The Fee may be modified by SCH once per calendar year upon thirty (30) days prior written notice to Hotel Management. Any increases to the Fee will not exceed ten percent (10%) of the previous fee. SCH shall bill Hotel monthly for the Fees.

5.Description of Services. SCH shall, through the Office, provide to Hotel Owner and/or Hotel Owner's authorized representative the following services during the Term of this Agreement:

1. reservation services for all calls transferred to the Office from the Hotel;

2. telephone connections between the Hotel and the Office;
3. management and staffing of the Office by and with SCH employees;
4. furnishing the Office with office equipment, hardware, software and furnishings;
5. performance reports with respect to calls transferred from the Hotel to the Office. Reports will reflect number of calls handled, number of rooms sold with confirmation percentage, number of room nights sold with average daily rate, and revenue produced.

6. Use and Hours of Operation. SCH may use the IHG Voice Reservation Office for the purposes described in this Agreement as well as for other revenue and reservation producing efforts and customary ancillary uses. The initial hours of operation are represented below and are subject to change based on call volume needs. Calls outside listed hours of operation will be supported by SCH global operations to ensure 24 hour coverage in English, French and Spanish.

<b>Language</b>	<b>Hours (Eastern Time)</b>
English	24 hours a day, 7 days a week
French	24 hours a day, 7 days a week
Spanish	24 hours a day, 7 days a week
Portuguese	8:00 AM – 9:00 PM Monday - Friday 8:00 AM – 7:00 PM Saturday - Sunday

7. Information Provided by Hotel Owner. Hotel Owner or its authorized representative shall provide to SCH the following information:

1. Presentations to the staff of the Office which will include updating and providing information about the Hotel; brochures and other information that will enhance the Office's ability to sell Hotel rooms;
2. Monthly updates of Local Negotiated Rates (LNR) accounts, and any special rates that may apply thereto, Direct Bill Accounts information with all pertinent details, additional groups, special promotions and Hotel information loaded into HOLIDEX Plus and IHG Hotel Content Manager website. Any such information is used by SCH and the Office for customer service purposes only;
3. Updates, as appropriate, of Hotel staff changes and hotel contacts;
4. Access to Hotel facilities by the Office employees for the purpose of familiarizing them with the Hotel to enhance the ability to sell Hotel rooms;
5. Weekly updates to the Hotel's custom IHG® Hotel Content Manager internet site to include information on the above.

8. Office Staff. Hotel Owner acknowledges that all employees in the Office are employees of SCH and are subject to its hiring practices and policies of SCH.

9. IHG Voice Reservation Service Access and Authorization to Corporate Monitor

Hotel shall specifically grant SCH access, and authorizes SCH access, through SCH's Corporate Monitor program to Hotel's property management system and HolidexPlus to review and make changes to Hotel's inventory. SCH will use such Corporate Monitor access for activities designated by Hotel through the Hotel Content Manager Internet site and as otherwise needed to provide IHG Voice services to Hotel. Hotel shall sign any required documentation in order to grant SCH such access.

10. Disclaimer/Limitation of Liability

1. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SCH DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE OR RESULTS TO BE DERIVED FROM THE USE OF THE IHG VOICE SERVICE(S) PROVIDED UNDER THIS AGREEMENT.

2. SCH WILL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, DIRECT OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER INCIDENTAL, PUNITIVE, OR ECONOMIC DAMAGES, WHETHER ARISING FROM HOTEL'S USE (OR INABILITY TO USE) OF THE IHG VOICE SERVICES PROVIDED HEREUNDER, OR OTHERWISE, EVEN IF SCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

11. Force Majeure. Upon the occurrence of an emergency or other event beyond the reasonable control of a Party which causes a failure to perform or delay in performance (except with regard to payment obligations), the affected Party's time of performance shall be extended, or cancelled, if and to the extent reasonably necessary.

12. Miscellaneous Provisions.

1. All notices, communications, requests or demands required or permitted to be sent pursuant to this Agreement (**except for execution of this agreement which shall be handled as outlined in 12.2 below**) shall be sent (i) by certified or registered mail, return receipt requested or (ii) by personal delivery or delivery by recognized overnight courier service to the Parties as follows:

In the case of SCH:

InterContinental Hotels Group  
Three Ravinia Drive, Suite 100  
Atlanta, GA 30346 USA  
E-mail Address: [ihgvoicecontracts@ihg.com](mailto:ihgvoicecontracts@ihg.com)



In the case of HOTEL:

2. For execution and delivery of the Agreement please sign and e-mail Agreement to [ihgvoicecontracts@ihg.com](mailto:ihgvoicecontracts@ihg.com) and send an original copy, via postal mail to the address directly above.
3. This Agreement shall be governed by and construed under the laws of the State of Georgia, without application of the principles of conflicts of lawsthereof.
4. The captions and headings of the various sections of this Agreement are intended for convenience of reference only and do not limit the content of the sections themselves.
5. This Agreement represents the entire agreement of the Parties as to the subject matter hereof and supersedes any prior agreements or understandings, oral or written, between the parties.
6. If any provision of this Agreement is declared to be illegal or unenforceable, the remainder of the Agreement shall not be affected by such illegality or unenforceability.
7. Except as specified in Sections 4 above, this Agreement may not be amended or changed except by the written agreement of SCH and Hotel Management.
8. Hotel Owner shall not assign or otherwise transfer this Agreement or any of its interest in this Agreement without the prior written consent of SCH, which consent shall not be unreasonably withheld or delayed. The Parties agree that it shall be reasonable for SCH to withhold consent to any such requested assignment or transfer if, among other reasons, the proposed assignee or transferee is not of good business reputation, is not financially sound or is a competitor of SCH. Notwithstanding the foregoing, Hotel Owner may, without SCH's consent, assign this Agreement to an entity which is controlled by, in control of or under common control with Hotel Owner, provided that Hotel Owner gives SCH written notice of such assignment within thirty (30) days following the effective date hereto.
9. The provisions of Sections 10 and 12 hereof shall survive the expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, SCH and Hotel Owner have executed and delivered this IHG Voice Service Agreement as of the date first written above.

**HOTEL OWNER:**

Company Name: \_\_\_\_\_

Your Name: \_\_\_\_\_

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

Your Signature: \_\_\_\_\_

Your Mailing Address (street, city, state, zip):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

**PRIMARY CONTACT FOR IHG VOICE (at Hotel):**

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

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

Email address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

**SCH (for company use only):**

SIX CONTINENTS HOTELS, INC.

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

Name: Lia Balanag

Title: Director, Global Voice Programs  
Voice Commercial Optimization

**EXHIBIT H-2  
TO DISCLOSURE DOCUMENT**

## IHG REVENUE SERVICES AGREEMENT

**THIS AGREEMENT** is made effective as of [redacted] [date ] between [redacted] [redacted] ("Client") and Six Continents Hotels, Inc. ("SCH").

In the event of a conflict between the provisions of any attachments hereto and the provisions set forth in this Agreement, the provisions of such attachments shall govern.

### Background

- A. Client is the [redacted] (Ex: GM or Owner) of the hotel known as the [redacted] [redacted], located at [redacted] (Address) (the "Hotel"), and has the authority to enter into this Agreement on behalf of the owner of the Hotel.
- B. Client operates the Hotel as a [redacted] brand hotel pursuant to the terms and conditions of a license agreement with an affiliate of SCH.
- C. SCH operates an Americas Region Revenue Management Department located at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346 ("Department") and has offered to have the Department provide certain revenue management services with respect to the Hotel subject to the terms and conditions of this Agreement. Such services are hereinafter referred to as "Services." Client wishes to accept and participate in such Services with respect to the Hotel.

### 1. Services.

SCH agrees to perform for Client the services listed below.

Active participation from hotel management is required in order to maximize the benefit of IHG REVENUE SERVICES (RMH). Client agrees that SCH shall have ready access to Client's staff and resources as necessary to perform SCH's services provided for by this contract.

Your IHG REVENUE SERVICES (RMH), Portfolio Revenue Manager consulting schedule will be based on a 48-week year and will be determined by an IHG REVENUE SERVICES (RMH) Regional Director. During these calls we will establish short term strategies for the hotel.

If your hotel qualifies to move to another level of the IHG REVENUE SERVICES (RMH) program at any point during the agreement, you may do so one (1) time per agreement cycle.

With IHG REVENUE SERVICES (RMH), your Portfolio Revenue Manager will review rate and inventory opportunities on a more frequent basis and may decide that one or more rate changes is needed, or that multiple changes are needed on a given day. With this option you understand and agree that your Portfolio Revenue Manager will notify you of all recommended and implemented rate changes but will enter those changes into IHG's systems without waiting for your approval or confirmation. As a result, it is important that you remain engaged and attentive to their communications so that you can make changes to anything the Portfolio Revenue Manager recommends or implements, in the event that you decide to do so.

For hotels that are participating in the FedRooms Program, your Portfolio Revenue Manager will be alerted to any parity violations for the next 50 weeks and resolve the issue immediately, and then follow up with your hotel on the dates and action taken.

## **2. Rate of Payment for Services.**

Client agrees to pay SCH for Services in accordance with the schedule contained in either Exhibit A1 or A2, as applicable, attached hereto and incorporated herein by reference. At any time and without cause, SCH may modify the pricing and such modifications shall become effective upon ninety (90) days notice to Client.

## **3. Invoicing.**

Client shall pay the amounts agreed to herein upon receipt of invoices which shall be sent by SCH, and Client shall pay the amount of such invoices to SCH. Any fees or other amounts due under this Agreement not received by SCH on or before such invoice is due shall bear interest at the rate of one and a half percent (1.5%) per month, calculated on a daily basis, until paid in full.

## **4. Confidential Information.**

Neither party hereto shall disclose to any non-party to the Agreement, any confidential information of such other party. Confidential information is information which relates to the other party's research, development, trade secrets, marketing plans, or business affairs, but does not include information which is generally known or easily ascertainable by non-parties.

SCH hereby acknowledges that during the performance of this contract, SCH may learn or receive confidential Client information and therefore SCH hereby confirms that all such information relating to the Client's business will be kept confidential by SCH, except to the extent that such information is required to be divulged to SCH's clerical or support staff or associates in order to enable SCH to perform SCH's services under this Agreement or is required to be disclosed pursuant to a subpoena, court order or other applicable law.

## **5. Staff, Use and Hours of Operation.**

SCH is an independent contractor and neither SCH nor SCH's staff is or shall be deemed to be employed by Client. Client is hereby contracting with SCH for the Services described on above in Section 1 and SCH reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by SCH or SCH's staff, and Client shall not be required to hire, supervise or pay any assistants to help SCH perform the Services under this agreement.

SCH shall not be required to devote SCH's full time nor the full time of SCH's staff to the performance of the Services required hereunder, and it is acknowledged that SCH has other Clients within the SCH family of brands. The order or sequence in which the Services are to be performed shall be under the sole control of SCH. Except to the extent that SCH's Services must be performed on or with Client's computers or Client's existing software, and except to the extent specified in Exhibit A, all materials used in providing the Services shall be provided by SCH.

Each of the parties hereto agrees that, while performing Services under this Agreement, and for a period of three (3) months following the termination of this Agreement, neither party will, except with the other

party's written approval, solicit or offer employment to the other party's employees or staff engaged in any efforts under this Agreement.

SCH shall keep the Department staffed and open for business during normal business hours in the U.S. Eastern time zone, excluding holidays.

#### **6. Term of Agreement.**

1. The term of this Agreement shall commence as of **January 1, 2024**, and shall continue for an initial term of twelve (12) months, provided that this Agreement is not earlier terminated as more particularly described below ("Initial Term").
2. After the Initial Term, this Agreement shall automatically renew for additional one-year Terms, although either party may terminate this Agreement without cause (a) during a renewal Term, upon 90 days prior written notice to the other party, or (b) upon notice of non-renewal of at least 30 days prior to the end of a Term. If client terminates, client's agreement may continue and may continue to be billed for services for longer than 90 days if client is not meeting the Revenue Management Certification Standard and/or any other applicable IHG Brand Standard in an alternate, approved way.
3. Termination & Change of Control. In the event of a termination or expiration of the License Agreement, SCH may elect to terminate this Agreement immediately upon written notice to Client. In the event of a "Change of Control" (defined as a change in total or complete ownership of the Hotel and/or in an event when new partial or majority ownership of the Hotel, whether by merger, investment, or acquisition, results in involvement of another party to the License Agreement that places SCH in a disadvantage if the existing terms of this Agreement are maintained), SCH may elect to terminate this Agreement immediately upon written notice to Client. In the event of such termination by SCH only Sections 2, 3, 4, 7, 8, 9, 10, 11, 13, 14 and 18 herein shall survive such termination.
4. Either party may terminate this Agreement upon providing ninety (90) days prior written notice to the other party.
5. If Client is participating with a third party intermediary (TPI) that is not certified by SCH, even if Client has obtained a waiver to participate with said non-certified TPI, this agreement shall be terminated upon notice to Client.

#### **7. Default.**

Any party to this Agreement shall be deemed to be in default hereunder if (a) such party fails to pay any sum due hereunder on or before the fifteenth (15<sup>th</sup>) day after the invoice mailing date thereof, or (b) such party fails to perform any other obligation hereunder on or before the thirtieth (30<sup>th</sup>) day following mailing of written notice of such failure by the other party. If the default is not cured within thirty (30) days of the mailing of a termination notice, this Agreement will terminate. Provided, however, that if the non-monetary default at issue is not reasonably susceptible of being cured within such thirty (30) days, such thirty (30) day period shall be extended as reasonably necessary to allow the defaulting party to effect a cure, but in no event longer than a grace period of an additional thirty (30) days. If the defaulting party fails to cure its default within any applicable cure or grace period, the non-defaulting party may terminate this Agreement.

#### **8. Use of Work Product.**

Except as specifically set forth in writing and signed by both Client and SCH, all work product, whether or not copyrightable or patentable, developed for Client by SCH or utilized solely for Client while performing Services for Client pursuant to this Agreement, shall be the sole and exclusive property of SCH. Client is hereby granted a limited, revocable, nonexclusive license to use and employ such work product within the Client's business during the term of this Agreement.

#### **9. Client Representative.**

The following individual [REDACTED] shall represent the Client during the performance of this Agreement with respect to the services and deliverables as defined herein and shall have the authority to execute written modifications or additions to this contract pursuant to Section 15.

#### **10. Taxes.**

Any and all taxes, except income taxes of SCH, imposed or assessed by reason of this contract or its performance, including but not limited to sales or use taxes, shall be paid by Client. Client and SCH specifically agree that SCH is not an employee of Client. In the event foreign, federal, state or local taxes are assessed on the Services and SCH has paid for such taxes, Client shall promptly reimburse SCH for all such taxes except for those taxes based on the income of SCH, SCH employees, or personnel provided by SCH pursuant to this Agreement.

#### **11. Liability.**

SCH warrants to Client that the analysis, data, and services to be delivered or rendered hereunder, will be of the kind and quality described in Exhibit A and will be performed by qualified personnel.

**SCH MAKES NO OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTY OF FITNESS FOR PURPOSE OR MERCHANTABILITY. IN NO EVENT SHALL SCH BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES RELATED TO THE AMOUNTS OF THE CLIENT'S REVENUE OR PROFITS, EITHER IN CONTRACT OR TORT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO SCH IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SCH, AND IN THE EVENT THIS LIMITATION OF DAMAGES IS HELD UNENFORCEABLE THEN THE PARTIES AGREE THAT BY REASON OF THE DIFFICULTY IN FORESEEING POSSIBLE DAMAGES ALL LIABILITY TO CLIENT SHALL BE LIMITED TO ONE HUNDRED DOLLARS (\$100.00) AS LIQUIDATED DAMAGES AND NOT AS A PENALTY.**

#### **12. Complete Agreement.**

This agreement contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of SCH by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

### **13. Applicable Law.**

The parties shall each comply with all applicable federal, state and local employment and other laws, government regulations and orders. This Agreement shall be construed in accordance with the laws of the State of Georgia. Venue for any claim, suit, or action for enforcement of any provision of this Agreement shall lie in the state or federal courts located in the State of Georgia, Fulton or DeKalb County, to the exclusion of all others.

### **14. Scope of Agreement.**

If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

### **15. Additional Work.**

If the parties agree upon additional services to be performed for Client by SCH and upon the additional compensation to be paid to SCH for such additional services, the parties shall both execute a document confirming such terms and such document shall become an amendment to this Agreement.

### **16. Notices.**

(i). Notices to Client should be sent to (Address): (if other than hotel)

(ii). Notices to SCH should be sent to: InterContinental Hotels Group, Revenue Management Department, Attention Director of Revenue Management Services, 3 Ravinia Drive, Suite 100, Atlanta, GA 30346-2121, with a copy sent by fax to Legal Department (678-894-4128).

### **17. Assignment.**

Client shall not assign or otherwise transfer this Agreement or any of its interest in this Agreement without the prior written consent of SCH. Except for the prohibition on assignment contained in the



preceding sentence, this Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto.

**18. Illegality of Agreement.**

If any provision of this Agreement is declared to be illegal or unenforceable, the remainder of the Agreement shall not be affected by such illegality or unenforceability.

**19. Exclusivity.**

SCH may provide similar services to other hotel owners. Client does not have an exclusive right to receive the Services from SCH.

**20. Litigation Costs.**

In the event of any action, suit or proceeding related to this Agreement, the prevailing party, in addition to its rights and remedies otherwise available shall be entitled to receive reimbursement of reasonable attorney's fees and costs and court costs.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by an authorized person as of the date first above written.

SIX CONTINENTS HOTELS, INC.

By (signature): Stephanie Ochs

Name: Stephanie Ochs

Title: VP, Revenue Management, Franchise US

Date: December 15, 2023

Hotel Name:

By (Signature):

Name:

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

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

## Exhibit A1

### Compensation – Revenue Management for Hire Premium Revenue Services

This Comprehensive service level is offered at a cost of **\$3300 USD** per month.

Given the above statement...client shall compensate SCH at a rate of **\$3300 USD** per month. An invoice will be sent monthly to Client and shall be due fifteen (15) days from the date of such invoice mailing.

Hotels will be charged a one-time registration fee (**\$800 USD**) in the first month of service. This fee only applies to new hotels to IHG Revenue Services (RMH) (including NHOP).

SCH shall be reimbursed at actual cost for all travel related expenses (if travel is required or requested by Client) incurred by SCH personnel. This fee will be charged to the hotel once the visit has been completed.

#### Revenue Strategy Calls

- Your IHG REVENUE SERVICES (RMH) Portfolio Revenue Manager will have a standing revenue conference call with your hotel management team. At a minimum, hotels will receive up to 3 hours of dedicated call time per week, but frequency can vary based on hotel need, in accordance with schedule parameters detailed in Section 1 – Services.

### **Revenue Strategy, Performance Analysis & Activation**

- Evaluate Retail Pricing and Fences
- Competitive Rate Analysis and Room Type Benchmarking
- Proactive LNR and Group rate strategy activation
- Review and Implement Packages and Promotions
- Review of Future Pace and Pick Up
- Detailed Market Segmentation & Business Mix Analysis

### **Systems Management**

- IHG Concerto Pricing & Inventory Management Controls, Yielding & Price Optimization, Group Management & Evaluation (where applicable)
- Comprehensive System Audit and Management

### **Hotel Information:**

Hotel Inn Code

Primary Contact Name

Primary Contact Position

Primary Contact Phone Number

Primary Contact Email

General Managers Name

GM Phone Number

GM E-Mail

Secondary Contact Name

Secondary Contact Position

Secondary Contact Phone Number

Secondary E-Mail

## IHG PREMIUM COMMERCIAL SERVICES AGREEMENT

**THIS AGREEMENT** is made effective as of \_\_\_\_\_ between \_\_\_\_\_ ("Client") and Six Continents Hotels, Inc. ("SCH"). In the event of a conflict between the provisions of any attachments hereto and the provisions set forth in this Agreement, the provisions of such attachments shall govern.

### Background

- A. Client is the owner of the hotel known as the \_\_\_\_\_, located at \_\_\_\_\_ (Address) (the "Hotel"), and has the authority to enter into this Agreement on behalf of the owner of the Hotel.
- B. Client operates the Hotel as a \_\_\_\_\_ brand hotel pursuant to the terms and conditions of a license agreement with an affiliate of SCH.
- C. SCH operates an Americas Region Revenue Management Department and Field Marketing Department, located at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346 ("Departments"), and has offered to have the Departments provide certain revenue management and field marketing services with respect to the Hotel subject to the terms and conditions of this Agreement. Such services are hereinafter referred to as "Services." Client wishes to accept and participate in such Services with respect to the Hotel.

### 1. Services.

- 1.1. SCH agrees to perform for client the revenue management and field marketing services ("Services") listed in each order incorporated and attached hereto (each, an "Order"), and consistent with the terms of this Agreement, including the following:

- 1.1.1. Revenue Management: With respect to the revenue management services, Client understands and agrees that recommendations by the IHG Commercial Services team member/Revenue Manager may result in modifications to rates, inventory, yielding and content strategies in IHG Concerto. These recommendations will be discussed with Client's hotel managers, and on the instructions of the General Manager, Principal Correspondent, or other designated staff member, the IHG Revenue Manager will execute all changes in IHG Concerto systems within an agreed time frame. Therefore, active participation from hotel management is required in order to maximize the benefit of the IHG Premium Commercial Services. Client agrees that SCH shall have ready access to Client's staff and resources as necessary to perform SCH's Services provided for by this Agreement.

As with all our programs, regardless of any changes the IHG Commercial Services team member may make to hotel's rates, inventory, or similar settings, Client retains complete control over, and responsibility for, Client's hotel's rates, inventory and commercial

performance, and may at any time override any changes made by the IHG Commercial Services team members. Client is also responsible and retain control over its group business, and participating in this program does not change the fact that Client is responsible for the hotel's success, financially and otherwise.

To participate in Premium Commercial Services, all hotels are required to be active participants in IHG Ignite and remain active for the duration of their agreement. Should hotel opt out of IHG Ignite, hotel will no longer be eligible to participate in the Premium Commercial Services.

1.1.2. **Field Marketing:** With respect to the field marketing services included as part of the Services contemplated herein, and as more specifically set forth in the Order, Client understands and agrees that recommendations by the Field Marketing Department may include suggested modifications to content on or within IHG's content management system, marketing recommendations, and consultation and implementation of digital marketing services on the Hotel's behalf. These recommendations will be discussed with the Hotel team, and where agreed by the Agent specified below, the Field Marketing Department will execute agreed changes in IHG's systems (or otherwise, as applicable) within an agreed time frame. Active Hotel participation is required in order to maximize the benefit of field marketing. Client agrees that SCH shall have ready access to Client's staff and resources as necessary for SCH to perform its services as required by this Agreement. Regardless of any changes the Field Marketing Department may suggest or make to the Hotel's content, Client retains complete control over, and responsibility for, the Hotel's content and marketing, and may at any time override any changes the Field Marketing Department makes.

## **2. Rate of Payment for Services.**

Client agrees to pay SCH for Services in accordance with the applicable Order, attached hereto and incorporated herein by reference. At any time and for any reason it deems necessary, SCH may modify the pricing and such modifications shall become effective upon ninety (90) days' notice to Client.

## **3. Invoicing.**

Client shall pay the amounts agreed in each Order upon receipt of invoices which shall be sent by SCH, and Client shall pay the amount of such invoices to SCH consistent with the timing requirements set forth in the applicable Order. Any fees or other amounts due under this Agreement not received by SCH on or before such invoice is due shall bear interest at the rate of one and a half percent (1.5%) per month, calculated on a daily basis, or the maximum rate permitted by applicable law, whichever is lower, until paid in full.

## **4. Confidential Information.**

Neither party hereto shall disclose to any non-party to the Agreement any confidential information of such other party, except that SCH shall have the right to disclose relevant Client information as necessary to perform the Services or where required pursuant to a subpoena,

court order or other applicable law. Confidential information is information which relates to the other party's research, development, trade secrets, marketing plans, or business affairs, but does not include information which is generally known or easily ascertainable by non-parties.

## **5. Staff, Use and Hours of Operation.**

SCH is an independent contractor and neither SCH nor SCH's staff is or shall be deemed to be employed by Client. Client is hereby contracting with SCH for the Services described above in Section 1 and in each attached Order, and SCH reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by SCH or SCH's staff, and Client shall not be required to hire, supervise or pay any assistants to help SCH perform the Services under this Agreement.

SCH shall not be required to devote SCH's full time nor the full time of SCH's staff to the performance of the Services required hereunder, and it is acknowledged that SCH has other Clients within the SCH family of brands. The order or sequence in which the Services are to be performed shall be under the sole control of SCH. Except to the extent that SCH's Services must be performed on or with Client's computers or Client's existing software, and except to the extent specified in an Order, all materials used in providing the Services shall be provided by SCH.

Each of the parties hereto agrees that, while performing Services under this Agreement, and for a period of three (3) months following the termination of this Agreement, neither party will, except with the other party's written approval, solicit or offer employment to the other party's employees or staff engaged in any efforts under this Agreement.

SCH shall keep the Departments staffed and open for business during normal business hours in the U.S. Eastern time zone, excluding holidays.

## **6. Term of Agreement.**

6.1. Term of Agreement. This Agreement shall begin on \_\_\_\_\_ and shall continue until there are no Orders in effect (the "Term").

6.2. Order Term. The term of each Order shall be stated therein (the "Applicable Order Term").

6.3 Termination & Change of Control. In the event of a termination or expiration of the License Agreement, SCH may elect to terminate this Agreement immediately upon written notice to Client. In the event of a "Change of Control" (defined as a change in total or complete ownership of the Hotel and/or in an event when new partial or majority ownership of the Hotel, whether by merger, investment, or acquisition, results in involvement of another party to the License Agreement that places SCH in a disadvantage if the existing terms of this Agreement are maintained), SCH may elect to terminate this Agreement immediately upon written notice to Client. In the event of such termination by SCH only Sections 2, 3, 4, 7, 8, 9, 10, 11, 13, 14 and 18 herein shall survive such termination.

## **7. Default.**

Any party to this Agreement shall be deemed to be in default hereunder if (a) such party fails to pay any sum due hereunder on or before the fifteenth (15<sup>th</sup>) day after the invoice mailing date thereof, or (b) such party fails to perform any other obligation hereunder on or before the thirtieth (30<sup>th</sup>) day following mailing of written notice of such failure by the other party. If the default is not cured within thirty (30) days of the mailing of a termination notice, this Agreement will terminate. Provided, however, that if the non-monetary default at issue is not reasonably susceptible of being cured within such thirty (30) days, such thirty (30) day period shall be extended as reasonably necessary to allow the defaulting party to effect a cure, but in no event longer than a grace period of an additional thirty (30) days. If the defaulting party fails to cure its default within any applicable cure or grace period, the non-defaulting party may terminate this Agreement.

#### **8. Use of Work Product.**

Except as specifically set forth in writing and signed by both Client and SCH, all work product, whether or not copyrightable or patentable, developed for Client by SCH or utilized solely for Client while performing Services for Client pursuant to this Agreement, shall be the sole and exclusive property of SCH. Client is hereby granted a limited, revocable, nonexclusive license to use and employ such work product within the Client's business during the term of this Agreement.

#### **9. Client Representative.**

The following individual [REDACTED] shall be Client's expressly authorized agents ("Agent") hereunder, with authority to represent the Client in all matters during the performance of this Agreement with respect to the Services as set forth herein, and shall have the authority to execute written modifications or additions to this contract as agreed with SCH and pursuant to Section 15.

#### **10. Taxes.**

Any and all taxes, except income taxes of SCH, imposed or assessed by reason of this contract or its performance, including but not limited to sales or use taxes, shall be paid by Client. Client and SCH specifically agree that SCH is not an employee of Client. In the event foreign, federal, state or local taxes are assessed on the Services and SCH has paid for such taxes, Client shall promptly reimburse SCH for all such taxes except for those taxes based on the income of SCH, SCH employees, or personnel provided by SCH pursuant to this Agreement.

#### **11. Liability.**

SCH warrants to Client that the analysis, data, and services to be delivered or rendered hereunder, will be of the kind and quality described in each Order and will be performed by qualified personnel.

**SCH MAKES NO OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTY OF FITNESS FOR PURPOSE OR MERCHANTABILITY. IN NO EVENT SHALL SCH BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES RELATED TO THE AMOUNTS OF THE CLIENT'S REVENUE OR PROFITS, EITHER IN CONTRACT OR TORT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS**

**BEEN DISCLOSED TO SCH IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SCH, AND IN THE EVENT THIS LIMITATION OF DAMAGES IS HELD UNENFORCEABLE THEN THE PARTIES AGREE THAT BY REASON OF THE DIFFICULTY IN FORESEEING POSSIBLE DAMAGES ALL LIABILITY TO CLIENT SHALL BE LIMITED TO ONE HUNDRED DOLLARS (\$100.00) AS LIQUIDATED DAMAGES AND NOT AS A PENALTY.**

**12. Complete Agreement.**

This Agreement, together with the applicable Order in each case, contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of SCH by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

**13. Applicable Law.**

The parties shall each comply with all applicable federal, state and local employment and other laws, government regulations and orders. This Agreement shall be construed in accordance with the laws of the State of Georgia. Venue for any claim, suit, or action for enforcement of any provision of this Agreement shall lie in the state or federal courts located in the State of Georgia, Fulton or DeKalb County, to the exclusion of all others.

**14. Scope of Agreement.**

If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

**15. Additional Work.**

If the parties agree upon additional services to be performed for Client by SCH and upon the additional compensation to be paid to SCH for such additional services, the parties shall both execute a document confirming such terms and such document shall become an amendment to this Agreement.

**16. Notices.**

(i). Notices to Client should be sent to (Address): (if other than hotel)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(ii). Notices to SCH should be sent to: InterContinental Hotels Group, Revenue Management Department, Attention Director of Revenue Management Services, 3 Ravinia Drive, Suite 100, Atlanta, GA 30346-2121, with a copy sent by fax to Legal Department (678-894-4128).



**17. Assignment.**

Client shall not assign or otherwise transfer this Agreement or any of its interest in this Agreement without the prior written consent of SCH. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto.

**18. Severability.**

If any provision of this Agreement is declared to be illegal or unenforceable in a judicial proceeding, such provision shall be severed from this Agreement and shall be inoperative, and the remainder of the Agreement shall remain operative and binding on the Parties to the fullest extent permitted by applicable law.

**19. No Exclusivity.**

SCH may provide similar services to other hotel owners. Client does not have an exclusive right to receive the Services from SCH.

**20. Litigation Costs.**

In the event of any action, suit or proceeding related to this Agreement, the prevailing party, in addition to its rights and remedies otherwise available shall be entitled to receive reimbursement of reasonable attorney's fees and costs and court costs.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by an authorized person as of the date first above written.

\_\_\_\_\_

By (signature):

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

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

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

By (signature):

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

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

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

CLIENT: \_\_\_\_\_

By (Signature):

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

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

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

**Order No. 1****Premium Commercial Services - Scope**

This Order No. 1 ("**Order**") is made as of \_\_\_\_\_ ("**Order Effective Date**"), by and between Six Continents Hotels, Inc. ("**SCH**"); and \_\_\_\_\_ ("**Client**"). This Order sets forth details of SCH's provision of certain Services to Client as described herein, and incorporates the terms and conditions of the IHG Premium Commercial Services Agreement between SCH and Client dated \_\_\_\_\_ (the "**Agreement**"). Any terms or phrases defined in the Agreement shall have the same meanings where used in this Order.

If Client is currently participating in another Field Marketing Advisory Service and/or Revenue Management program, this agreement will supersede the original agreement(s) on the effective date of this agreement as outlined in section 3, below.

The Parties agree as follows:

**1.) Pricing.**

- a. Service Fee. The fee for IHG Premium Commercial Services is **\$5,300 USD** per month.
- b. Registration Fee. Hotels will be charged a one-time registration fee of **\$800 USD**, charged in the first month of service. This fee applies only to hotels that are new to IHG Commercial Services (including NHOP).
- c. Website Development/Migration Fee. A one-time website setup/migration fee **up to \$5,000** may be required for enhanced website development. Amount will vary based on complexity and will be communicated to Client following review of development requirements.
- d. Pricing Modifications. As permitted by the Agreement, SCH may modify the pricing and such modifications shall become effective upon ninety (90) days notice to Client.

**2.) Travel Expenses.** SCH shall also be reimbursed at actual cost for all necessary and reasonable out-of-pocket travel expenses for annual joint property visit and any additional travel as requested by the hotel and incurred by SCH personnel.

**3.) Invoicing.** An invoice will be sent to Client on a monthly basis and shall be due fifteen (15) days from the date of such invoice.

**4.) Scope of Services****a.) Revenue Management.**

The SCH Revenue Management Department shall provide revenue management and revenue strategy and activation services as part of the IHG Premium Commercial Services, including and subject to the following:

- Evaluation of Retail Pricing and Yield Strategies
- Market Segmentation & Business Mix Analysis
- Comprehensive Pricing Guidance
- Wish, Want, Walk completion & RFP Response
- Strategic focus on group & corporate segments based on hotel needs to include in depth analysis of Demand360 and Agency360
- Up to 3 Hours dedicated call time, customizable by hotel

Client's IHG Revenue Manager will have a standing revenue conference call with the hotel management team. At a minimum, hotels will receive up to 3 hours of dedicated call time per week, but frequency can vary based on hotel need. The schedule is based on a 48-week year and will be determined by the Commercial Regional Director. During the call we will establish short and long term commercial strategies for the hotel. Adjustments to the current strategy may be implemented at this time.

With Premium Commercial Services, Client's IHG Revenue Manager will review rate and inventory opportunities on a more frequent basis and may decide that one or more rate changes is needed, or that multiple changes are needed on a given day. With this option Client understands and agrees that the IHG Revenue Manager will notify Client of all recommended and implemented rate changes but will enter those changes into IHG's systems without waiting for approval or confirmation. As a result, it is important that Client remains engaged and attentive to the IHG Revenue Manager's communications so that Client can make changes if Client disagrees with anything the IHG Revenue Manager recommends or implements.

As a part of Premium Commercial Services, the IHG Revenue Manager may also respond to Request for Proposal (RFP) through the IHG RFP platform on behalf of the hotel.

For hotels that are participating in the FedRooms Program, the IHG Revenue Manager will be alerted to any parity violations for the next 50 weeks and resolve the issue immediately, and then follow up with the hotel on the dates and action taken.

## **b.) Field Marketing**

The SCH Field Marketing Department shall provide digital marketing activation services as part of the IHG Premium Commercial Services, including and subject to the following:

- Dedicated Marketing Advisor Supporting Strategic Marketing Planning & Implementation
- Online Content Management Including NEW Enhanced Hotel Website Customization Capabilities
- Robust Search Engine Optimization Activation for Hotel Website
- Local Marketing Support and 3<sup>rd</sup> Party Agency Consultation
- Comprehensive Paid Media Management Including (lite) Creative Development
- Social Media Guidance & Technology Platform

**c.) Combined Monthly Commercial Strategy Meetings**

**d.) Annual joint property visit (billed separately)**

**5.) Term of Service**

- a. The term of this Order shall commence as of \_\_\_\_\_ and shall continue for a period of \_\_\_\_\_ months, provided that this Order is not earlier terminated as more particularly described in the Agreement ("**Initial Term**"). For Initial Terms that exceed a twelve (12) month period, a one-time option to cancel will be honored after twelve (12) months of participation with ninety (90) days advance notice in advance of the end of the 12th month.
- b. After the Initial Term, this Order shall automatically renew for additional twelve (12) month (January-December) Terms, unless the Client provides notice of its intent not to renew this Order at least ninety (90) days prior to the end of the current Term, or as otherwise outlined in the Agreement. Each twelve (12) month Order term after the Initial Term is non-cancelable except as otherwise provided in the Agreement. If Client elects not to renew, this Order will continue to be billed for services throughout the entire Term.
- c. In the event of a termination or expiration of the License Agreement, this Order shall automatically and without further action or notice on the part of any party hereto, terminate.
- d. Should this Order be terminated, hotel website will return to its standardized state. This includes removal of all customized components and additional pages. Standard brand website components and content within will be retained and managed through HCM by the hotel.

**6.) Hotel Information and Key Contacts for Premium Commercial Services**

Hotel Inn Code \_\_\_\_\_

Primary Contact Name \_\_\_\_\_

Primary Contact Position \_\_\_\_\_

Primary Contact Phone Number \_\_\_\_\_

Primary Contact Email \_\_\_\_\_

Secondary Contact Name \_\_\_\_\_

Secondary Contact Position \_\_\_\_\_

Secondary Contact Phone Number \_\_\_\_\_

Secondary Contact Email \_\_\_\_\_

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by an authorized person as of the date first above written.

\_\_\_\_\_

By (signature):

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

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

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

By (signature):

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

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

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

CLIENT: \_\_\_\_\_

By (Signature): \_\_\_\_\_

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

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

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

**EXHIBIT H-3  
TO DISCLOSURE DOCUMENT**



**New Coca-Cola Agreement and Request for E-Signature**

In a continued effort to provide a best-in-class beverage program for guest and owners, IHG® has recently renegotiated the Master Services Agreement with Coca-Cola®:

**Agreement Highlights:**

- Lowers product costs for IHG® hotels by approximately 7% on average
- Secures access to equipment & unlimited service calls free of charge
- Provides incremental marketing capacity for IHG revenue-driving campaigns and F&B initiatives
- ***ALL applicable hotels are required to sign a NEW Coca-Cola Participation Agreement to receive the negotiated pricing & remain compliant with the existing brand standard (ID 55838).***

**NOTE: If your hotel has recently opened, you may have signed a previous agreement. Signing the December 2020 agreement IS REQUIRED.**

**Questions? Go to IHG Merlin and search Coca-Cola Beverage Program.** If your questions are not answered in the Merlin article, please email [CokeContracts@ihg.com](mailto:CokeContracts@ihg.com).

**Hotel Information**

Inn Code	
Hotel Brand	
Hotel Name	
Address	
City	
State	
Zip	
Phone	

(for Open hotels)



**COCA-COLA  
SIX CONTINENTS HOTELS, INC.  
HOTEL PARTICIPATION AGREEMENT**

**1. DEFINITIONS**

Capitalized terms not otherwise defined herein are defined in **Exhibit B**.

**2. SCOPE OF AGREEMENT**

This Hotel Participation Agreement (the "Agreement") is entered into in connection with the 2020 United States Beverage Marketing Agreement between The Coca-Cola Company and Six Continents Hotels, Inc. ("IHG"), an InterContinental Hotels Group company, dated January 1, 2020 (the "Beverage Marketing Agreement" or "BMA"), and is between (A) the undersigned owner or manager of the "Hotel" named herein (in the IHG hotel system), and (B) The Coca-Cola Company, acting by and through its Coca-Cola North America Group, ("Company"). Hotel desires to participate in certain programs as a "Hotel" under the BMA, which requires execution of this Agreement by Hotel and in connection therewith the purchase of certain Company products or equipment (Dispensers) pursuant to this Agreement for the Hotel named herein. With respect to those provisions relating to Bottler Bottle/Can Beverages, this Agreement will only apply to each Hotel that is located in the geographic territory in which a given Bottler is authorized to distribute, promote, market, and sell Bottler Bottle/Can Beverages. Subject to the further provisions of this Agreement, if any Hotel is eligible for an alternate marketing or funding program offered directly or indirectly by Company or any of its subsidiaries or Authorized Bottlers, Company in its sole discretion will determine which marketing or funding program will be made available to that Hotel. In no event will any Hotel be eligible for more than one marketing or funding program offered by Company, or any of its subsidiaries or Authorized Bottlers. Customer agrees to provide Company with written notice of the opening, acquisition, change in ownership, termination of license agreement, or closing of any Hotel as promptly as is consistent with Customer's business processes.

**3. EFFECTIVE DATE AND TERM**

This Agreement will become effective when signed by an authorized representative of each of Company and Customer (the "**Agreement Effective Date**"). The "**Term Effective Date**" will be January 1, 2020, provided this Agreement is signed on or before September 30, 2020; or (ii) if this Agreement is signed after September 30, 2020, the Term Effective Date will be the first day of the month in which this Agreement is signed by Customer. The term of the Agreement will continue from the Term Effective Date until the expiration or earlier termination of the beverage marketing agreement between Company and Six Continents Hotels, Inc. dated January 1, 2020 (the "**Term**").

**4. EXHIBITS**

This Agreement also consists of the following:

- i. **Exhibits A-1 through A-4** Program Terms and Conditions
- ii. **Exhibit B** Definitions
- iii. **Exhibit C** Standard Terms and Conditions
- iv. **Exhibit D** Dispensing Equipment Lease
- v. **Exhibit E** Additional Terms

**THE COCA-COLA COMPANY, acting by and through its COCA-COLA NORTH AMERICA GROUP**

Signature Krista L. Schulte \_\_\_\_\_

Date: December 3, 2020 \_\_\_\_\_

SVP Strategic Partnership  
Title: Marketing \_\_\_\_\_

**HOTEL: FRANCHISEE or MANAGEMENT COMPANY (on behalf of Owner)**

Franchisee Legal Business Name  
\_\_\_\_\_

Signed by: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

## EXHIBIT A-1 FOUNTAIN PROGRAM TERMS AND CONDITIONS

### 1. AVAILABILITY

#### 1.1 Company Fountain Beverages

The Hotels that serve Fountain Beverages will serve a core brand set of Company Fountain Beverages that consists of Coca-Cola®, Diet Coke®, Sprite® and Coke Zero™, and the remaining Company Fountain Beverages will be selected by Customer, subject to Company's approval, which shall not be unreasonably withheld. All Fountain Beverages served in the Hotels must be Company Fountain Beverages, except for the Fountain Beverage Permitted Exception. In addition, no Hotel may dedicate any valve on a Dispenser leased from Company to dispense tap water. For the avoidance of doubt, each Hotel shall be able to serve water on one valve per Dispenser through a Subtab Mechanism. Company will use its commercially reasonable efforts to make a line of Company Fountain Syrups that is as broad as possible (based on local geography) available to each Hotel in order to allow Customer to fulfill its obligations under this Agreement.

#### 1.2 Permitted Exception

Hotels in the State of Texas, subject to the Fair Share provisions described in Section 7 of this Exhibit A-1, may serve Dr Pepper®, but only on one valve per Dispenser per Hotel (the "**Fountain Beverage Permitted Exception**").

### 2. PRICING

During the Term, each Hotel will have the right to purchase Company Fountain Syrups from Company at Company's then-current published chain account prices, which prices are subject to change from time to time.

### 3. FOUNTAIN BEVERAGE PERFORMANCE CRITERIA

Customer agrees comply with all of the following performance criteria:

- i. As applicable, include approved renditions of Company brands, trademarks and/or logos on menus and merchandise at point of order at each Hotel.
- ii. Beginning in calendar year 2021, and each Year of the Term thereafter, execute a minimum of two (2) promotional programs featuring Company Fountain Beverages as agreed upon by the parties.
- iii. Provide regular access to Company Beverage sales data.
- iv. Perform those additional Company Fountain Beverage marketing activities as directed by IHG.

### 4. EQUIPMENT PROGRAM

Where permitted by law, Company will lease to Customer without any additional charge during the Term the Dispensers owned by Company as follows: (i) for Hotels existing as of the Agreement Effective Date, the Dispensers that are currently installed, without extending the equipment lease term length of any such currently installed Dispensers, and (ii) for each Hotel that becomes a Hotel during the Term, the Dispensers reasonably necessary to enable such Hotel to dispense a quality Fountain Beverage. With respect to new and/or acquired hotels that become Hotels during the Term, unless otherwise mutually agreed upon by the parties, Dispensers will be placed in such new or acquired Hotel only if such Hotel is forecast to purchase a minimum of 400 gallons of Company's Fountain Syrups per Year. Customer will use commercially reasonable efforts to assist in the conversion of any Hotels purchasing less than 400 gallons of Company's Fountain Syrups per Year to a Bottle/Can Program as described in **Exhibit A-3**. No ice makers or water filters will be provided to any Hotel under this Agreement. Equipment innovations that require a separate agreement (such as Coca-Cola Freestyle) will also not be provided without a separate agreement. No Hotel will alter or add to any Dispenser provided by Company without Company's prior written consent.

In any state where a lease without any additional charge is not permitted (e.g., in Wisconsin) or Customer elects to lease additional Dispensers, such Dispensers will be leased to Customer at an annual lease rate calculated by multiplying the total installed cost of the additional Dispensers by the then-current lease factor. The lease factor currently in effect for Dispensers is 0.24. Should the lease factor change during the Term, any Dispenser installed after the change goes into effect will be subject to the new lease factor. For the avoidance of doubt, if the ownership and/or management of a Hotel changes, the then-current lease factor will remain in effect for that Hotel. Charges will be invoiced. Any unpaid invoices will be handled as follows (the "**Unpaid Invoice Procedure**"): All unpaid invoices by a Hotel will be subject to Company's payment/credit terms and conditions applicable to such Hotel. Furthermore, Company may refuse to deliver further any Company Beverages to the affected Hotel until the unpaid invoice is satisfied.

All Dispensers provided by Company will at all times remain the property of Company and are subject to the terms and conditions of the Lease except as specifically changed by the Program Terms and Conditions or the Standard Terms and Conditions of this Agreement.

At a minimum, equipment provided pursuant to this Exhibit A-1 shall include, at no cost to Customer in a quantity reasonably necessary for each Hotel:

Fountain Equipment (except in portable bars)  
New Lines (as needed)  
Bar Guns

## **5. SERVICE PROGRAM**

Company will provide at no charge routine mechanical repair including line replacements and flavor changes/additions that are reasonable and necessary for Dispensers. Hotels must utilize Company's service network for such service. Any Special Service Calls are not considered routine service and will not be provided free of charge. Charges for Special Service Calls or for routine mechanical repair calls will be charged at Company's then current rates. Such charges will be invoiced. Charges will include labor, travel time, parts, and administrative costs. Any unpaid invoices by a Hotel will be handled in accordance with the Unpaid Invoice Procedure set forth above.

Company will not be obligated to provide service when it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the reasonable control of Company. Company will not be liable for damages of any kind arising out of delays in rendering service for such reasons. In such cases, the Hotels will continue to comply with the Agreement, but only to the extent reasonably possible under the circumstances.

## **6. FAIR SHARE**

If Customer desires to serve Dr Pepper as set forth above in the Permitted Exception, an additional annual fair share lease charge of \$300 for each one of those valves will be incurred. Charges will be invoiced to each Hotel. Any unpaid invoices by a Hotel will be handled in accordance with the Unpaid Invoice Procedure set forth above.

**EXHIBIT A-2  
JUICE AND FAIRLIFE MILK PROGRAM TERMS AND CONDITIONS**

**1. AVAILABILITY**

**1.1 TCCC Juice**

The Hotels will serve a core brand set of Company Fountain Juice and Bottler Bottle/Can Juice (collectively, “**TCCC Juice**”) products, as indicated below (or such substitute products that may become available and reasonably approved by Customer) for dispensing in the Hotels. All Juice served in the Hotels, with the exception of Juice Beverage Permitted Exceptions defined below, will be TCCC Juice. Company will use its commercially reasonable efforts to make TCCC Juice available to each Hotel as set forth below in order to allow Customer to fulfill its obligations under this Agreement. At a minimum, the Juice Beverages listed in Section 3.1 below must be available to Hotels at the pricing made available under this Agreement.

<b>Juice Product</b>	<b>Customer Brand Where Available</b>
Frozen Dispensed Juice (Minute Maid Frozen Concentrate Juice)	Mainstream Brands (Excluding Holiday Inn)
Not From Concentrate (Simply Orange)	Upscale & Luxury Brands and Holiday Inn

Subject to applicable law and agreements to which Customer is subject, Customer will use commercially reasonable efforts to facilitate Company access to the Hotels to present new products for consideration.

**1.2 Fairlife Milk**

The Hotels may serve Company’s Fairlife brand milk, and purchases of Fairlife will earn funding as set forth below.

**1.3 Permitted Exceptions**

Notwithstanding the foregoing, Hotels may serve the following Competitive Beverages that are Juice (the “Juice Beverage Permitted Exceptions”): (i) juice that is freshly-squeezed on the premises; (ii) Juice provided by Royal Cup at only those Hotels operated under the Holiday Inn Express tradename; and (iii) Competitive Juice Beverages that Company and Six Continents Hotels, Inc. mutually agree may be served in the Hotels. If any Juice Permitted Exception becomes a Product of PepsiCo at a later date, that Competitive Beverage will no longer be deemed a Juice Permitted Exception.

**2. PRICING**

Company agrees that during the Term, Customer will have the right to purchase Juice from Company at Company’s then-current published chain account prices, which prices are subject to change from time to time. Further, for Minute Maid Frozen Concentrate Juice (a/k/a “Frozen Dispensed”) (“**MMFD**”), Company agrees to provide certain deviated pricing, as set forth below.

**2.1 MMFD List Price Deviation**

For MMFD, the amount of deviation from list price is shown below and will be applied on each Physical Case of MMFD that each Hotel purchases. List price deviation will be available to Hotels only for purchases of MMFD from an Authorized Distributor of Company’s Juices. Deviation will be deducted from the MMFD invoices. List prices as of the date of this Agreement are as noted below and may fluctuate.

<b>Item</b>	<b>2020 List Price</b>	<b>Deviation from List Price (amount deducted from retail price)</b>
4/90 oz. Minute Maid® Orange Juice 5+1	\$129.77	\$29.68
4/90 oz. Minute Maid® Apple Juice 6+1	\$125.11	\$22.11
4/90 oz. Minute Maid® Orange Guava Passionfruit 5+1	\$94.72	\$13.25
4/90 oz. Minute Maid® Lemonade 6+1	\$67.38	\$14.95

## 2.2 Simply Juice Pricing

For Simply Juice, the current pricing for 6/52 oz. PET (bottled) packaging is \$24.15 per Physical Case. Simply Juice price is quoted "FOB Distributor." Notwithstanding that Simply Juice is quoted "FOB Distributor", Company acknowledges and agrees that it shall bear the incremental costs of redistribution necessary to deliver the product to distribution centers; estimated to be \$2.60 per Physical Case throughout the term.

### 3. JUICE BEVERAGE PERFORMANCE CRITERIA

To qualify for the program set forth in this Exhibit A-2, Customer must comply with all of the following performance criteria:

- i. As applicable, include approved renditions of Company Juice brands, trademarks and/or logos on menus and merchandising materials in each Hotel.
- ii. Perform those additional Company Juice marketing activities the parties mutually agree upon.

### 4. EQUIPMENT PROGRAM

For MMFD, Company will lease to Customer without any additional charge during the Term, the Company approved equipment reasonably necessary to enable such Hotels to dispense a quality Juice Beverage. Customer agrees that the only Beverages served on Company's Juice equipment provided by Company will be TCCC Juice brands. No ice makers or water filters will be provided to any Hotel under this Agreement. Equipment innovations that require a separate agreement (such as Coca-Cola Freestyle) will also not be provided without a separate agreement. No Hotel will alter or add to any equipment provided by Company without Company's prior written consent.

If Customer elects to lease additional equipment, such equipment will be leased to Customer at an annual lease rate calculated by multiplying the total installed cost of the additional equipment by the then-current lease factor. The lease factor currently in effect for equipment is 0.24. Should the lease factor change during the Term, any equipment installed after the change goes into effect will be subject to the new lease factor. For the avoidance of doubt, if the ownership and/or management of a Hotel changes, the then-current lease factor will remain in effect for that Hotel. Lease charges, if any, will be invoiced. Any unpaid invoices by a Hotel will be handled in accordance with the Unpaid Invoice Procedure defined in Exhibit A-1, Section 5. All equipment provided by Company will at all times remain the property of Company and are subject to the terms and conditions of the Lease except as specifically changed by any of the Program Terms and Conditions or Standard Terms and Conditions of this Agreement.

At a minimum, equipment provided pursuant to this Exhibit A-2 shall include at no cost to Customer in a quantity reasonably necessary for each Hotel:

#### Orange Juice Carafes

- Company will provide 2 cases (24 carafes) of Simply juice carafes to each Hotel in the Holiday Inn and Crowne Plaza brands in Year 1
- Company will provide a maximum of 1 additional case (12 carafes) for each Hotel in the Holiday Inn and Crowne Plaza brands in Year 2 through the remainder of the Term

### 5. SERVICE PROGRAM

Customer may use Company's service network without any additional charge for all ordinary course mechanical repairs reasonably needed for Juice equipment provided by Company. Service in respect of Juice equipment will be on the terms and conditions set forth in Section 6.1 of **Exhibit A-1** attached to this Agreement.

**EXHIBIT A-3**  
**BOTTLE/CAN PROGRAM TERMS AND CONDITIONS**

**1. AVAILABILITY**

Each Hotel will make available a core brand set of Bottler Bottle/Can Beverages, subject to availability from Bottler, that consists of Coca-Cola®, Diet Coke®, Sprite® and Coke Zero™, and the remaining Bottler Bottle/Can Beverages will be selected by Customer, subject to Company's approval, which shall not be unreasonably withheld. All Bottle/Can Beverages served in the Hotels will be Bottler Bottle/Can Beverages, except for the Bottle/Can Beverage Permitted Exceptions defined below. Company and Bottler will use their commercially reasonable efforts to make a line of Bottler Bottle/Can Beverages that is as broad as possible (based on local market) available to each Hotel in order to allow Customer to fulfill its obligations under this Agreement. At a minimum, the Beverages listed in Section 3 below must be available to Hotels at the pricing made available under this Agreement.

Notwithstanding the foregoing, Hotels may serve the following Competitive Beverages in Bottle/Can Beverage form (the "**Bottle Can/Beverage Permitted Exceptions**"): (i) Pellegrino bottled water; (ii) Fred brand bottled water at Kimpton hotels only; (iii) bottled water sold in a glass bottle, provided it is not a Product of PepsiCo, (iv) water offered to hotel guests on a complimentary basis, provided such water is not a Product of PepsiCo; and (v) up to 10% of the space allocated to Bottle/Can Beverages in Customer-owned Beverage coolers or displays may feature Competitive Beverages, provided that such brands are (i) not Products of PepsiCo, (ii) are not Sparkling Beverages, and (iii) are not Juice Beverages, except for those Beverages that are local, niche brands for which Company does not provide a product offering and may contain juice as an ingredient. If any Bottle/Can Beverage Permitted Exception becomes a Product of PepsiCo at a later date, that Competitive Beverage will no longer be deemed a Bottle/Can Beverage Permitted Exception, unless that Customer has an agreement with such Competitive Beverage supplier, in which such Competitive Beverage will be considered a Permitted Exception until the expiration of such agreement. Customer acknowledges that all Bottle/Can Beverages displayed in Bottler-owned Cold Drink Equipment must be a Bottler Bottle/Can Beverages.

**2. PRICING**

Effective during the time period commencing thirty (30) days after the date this Agreement is fully signed or the first day of the Term, whichever is later, and ending December 31, 2025, Bottler will charge no more than the price ceilings for the Bottler Bottle/Can Beverages identified in the table below. Price ceilings for all subsequent Years beyond what is set forth in the chart below, if any, will automatically increase 3% over the previous Year's price ceilings.

Product	# of Units/cs "as sold"	# of Units/ Std Phys cs	1/1/2020 - 12/31/2020	1/1/2021 - 12/31/2021	1/1/2022 - 12/31/2022	1/1/2023 - 12/31/2023	1/1/2024 - 12/31/2024	1/1/2025 - 12/31/2025	Total Variable Funding Applied Directly to Invoice
12 OZ CAN - KO CSD & NCB	24	24	\$11.46	\$11.81	\$12.16	\$12.53	\$12.90	\$13.29	\$1.00
12 OZ PET - KO CSD	24	24	\$16.62	\$17.12	\$17.64	\$18.17	\$18.71	\$19.27	\$1.00
1 LITER PET - KO CSD	12	12	\$15.53	\$16.00	\$16.48	\$16.97	\$17.48	\$18.01	\$1.00
2 LITER PET - KO CSD	8	8	\$17.12	\$17.63	\$18.16	\$18.71	\$19.27	\$19.85	\$1.00
20 OZ PET - KO CSD	24	24	\$24.08	\$24.80	\$25.55	\$26.31	\$27.10	\$27.92	\$1.00
8 OZ GLASS - CSD	24	24	\$20.14	\$20.74	\$21.36	\$22.00	\$22.66	\$23.34	\$1.00
8.5 OZ ALUMINUM BOTTLE - CSD	24	24	\$20.14	\$20.74	\$21.36	\$22.00	\$22.66	\$23.34	\$1.00
7.5 OZ CAN - KO CSD	24	24	\$14.33	\$14.76	\$15.20	\$15.66	\$16.13	\$16.61	\$1.00
20 OZ PET - MM REFRESHMENT	24	24	\$25.34	\$26.10	\$26.88	\$27.69	\$28.52	\$29.37	\$1.00
12 OZ CAN - KO CSD & NCB	24	24	\$24.70	\$25.44	\$26.20	\$26.99	\$27.80	\$28.63	\$1.00
16.9 OZ PET - FUZE	12	24	\$39.84	\$41.04	\$42.27	\$43.53	\$44.84	\$46.19	\$1.00
10 OZ PET - MMJTG	24	24	\$20.30	\$20.91	\$21.54	\$22.18	\$22.85	\$23.53	\$1.00
20 OZ PET - POWERADE	24	24	\$24.50	\$25.24	\$26.00	\$26.78	\$27.58	\$28.41	\$1.00
12 OZ PET - POWERADE	24	24	\$22.71	\$23.39	\$24.09	\$24.82	\$25.56	\$26.33	\$1.00
12 OZ PET - DASANI	24	24	\$15.30	\$15.75	\$16.23	\$16.71	\$17.22	\$17.73	\$1.00
20 OZ PET - DASANI	24	24	\$17.47	\$17.99	\$18.53	\$19.09	\$19.66	\$20.25	\$1.00
500 ML - DASANI	24	24	\$7.52	\$7.74	\$7.98	\$8.22	\$8.46	\$8.72	\$0.00
1 LITER PET - DASANI	12	12	\$16.19	\$16.68	\$17.18	\$17.69	\$18.22	\$18.77	\$1.00
16 OZ CAN - FULL THROTTLE BRANDS	24	24	\$50.04	\$51.54	\$53.08	\$54.68	\$56.32	\$58.01	\$1.00
16 OZ CAN - NOS	24	24	\$50.04	\$51.54	\$53.08	\$54.68	\$56.32	\$58.01	\$1.00
22 OZ PET - NOS	24	24	\$71.22	\$73.36	\$75.56	\$77.83	\$80.16	\$82.57	\$1.00
20 OZ PET - VITAMINWATER	24	24	\$37.90	\$39.04	\$40.21	\$41.42	\$42.66	\$43.94	\$1.00
32 OZ PET - VITAMINWATER	15	12	\$27.51	\$28.34	\$29.19	\$30.06	\$30.96	\$31.89	\$1.00
700 ML - SMARTWATER	24	24	\$36.24	\$37.32	\$38.44	\$39.60	\$40.78	\$42.01	\$1.00
16.9 OZ PET - HONEST TEA	12	24	\$36.68	\$37.78	\$38.91	\$40.08	\$41.28	\$42.52	\$1.00
20 OZ PET - SMARTWATER	24	24	\$26.27	\$27.05	\$27.86	\$28.70	\$29.56	\$30.45	\$1.00
1 LITER PET - SMARTWATER	12	12	\$23.10	\$23.80	\$24.51	\$25.25	\$26.00	\$26.78	\$1.00
16.9 OZ PET - VITAMINWATER	24	24	\$33.10	\$34.10	\$35.12	\$36.17	\$37.26	\$38.38	\$1.00
1.5 LITER PET - SMARTWATER	12	12	\$25.65	\$26.42	\$27.21	\$28.03	\$28.87	\$29.73	\$1.00
12 OZ PET - MMJTG	24	24	\$24.45	\$25.19	\$25.94	\$26.72	\$27.52	\$28.35	\$1.00
18.5 OZ PET - GOLD PEAK	12	24	\$28.38	\$29.23	\$30.10	\$31.01	\$31.94	\$32.90	\$1.00
13.7 OZ PET - DUNKIN RTD COFFEE	12	24	\$39.66	\$40.84	\$42.07	\$43.33	\$44.63	\$45.97	\$1.00
20 OZ PET - FUZE REFRESH	24	24	\$24.46	\$25.20	\$25.95	\$26.73	\$27.53	\$28.36	\$1.00

All price ceilings (i) are per standard Physical Case and do not include taxes, deposits, handling fees and recycling fees and any other government imposed fees or costs (ii) only apply to those Bottler Bottle/Can Beverages available to the Hotels as of the first day of the Term and (iii) apply only to the 48 contiguous states of the continental United States (i.e., excludes Hawaii and Alaska) and the District of Columbia.

All price ceilings quoted above are based on standard Physical Cases; however, some of the Bottler Bottle/Can Beverages may be sold in different case configurations. No matter how the Bottler Bottle/Can Beverages are sold to Customer, they are translated to the standard Physical Case equivalent for purposes of determining compliance with the price ceilings and funding amounts as well as for sales and financial reporting. For example, if a Bottler Bottle/Can Beverage that is 12 bottles to a standard Physical Case is sold to the Customer in a 15-count case, then the on-invoice 15 bottle case price would have to be divided by 15 and multiplied by 12 in order to determine if the price is in compliance with the applicable price ceiling quoted above.

Company or Bottler may at any time increase price ceilings by more than the amounts set forth above in the event of any substantial increase in a component of the cost of goods, manufacture or delivery of the Bottler Bottle/Can Beverages. Company will notify Customer thirty (30) days in advance prior to the date any such unscheduled price ceiling increases takes effect.

### 3. OWNER INCENTIVE FUNDING PROGRAM

#### 3.1 Owner Incentive Funding

Company will provide an Owner Incentive Fund in the amounts set forth in the table above for all purchases of Bottler Bottle/Can Beverages directly from Company or Bottler. No funding will be paid on purchases of Bottler Bottle/Can Beverages from other sellers, distributors or retailers. Customer agrees to accept the case sales records of Bottler for purposes of determining funding earned hereunder absent manifest error. Bottler may from time to time offer special prices that are Dead-Net. In any such event, funding provided hereunder will not cause the Dead-Net price charged to the Customer to fall below such Dead-Net price or trade letter Dead-Net price. Funding will be deducted from invoices submitted to Customer.

#### 3.2 Performance Criteria

To qualify for the pricing and funding set forth above, Customer must comply with the following performance criteria and all other material obligations applicable to Customer under this Agreement:

- i. Beginning in calendar year 2021, participate in a minimum of one (1) mutually agreed upon promotional activity each Year to promote the sale of Bottler Bottle/Can Beverages at the Hotels. Customer agrees not to unreasonably withhold its consent to Company's and Bottler's proposed promotional activities. Customer will use commercially reasonable efforts to conduct a promotion in Year One as well, but the parties acknowledge such a promotion may not be commercially reasonable.
- ii. Customer and Bottler will mutually agree upon the number, types, and locations of Cold Drink Equipment that are generally reasonably required for the exclusive display of Bottler Bottle/Can Beverages in each applicable Hotel, depending upon the size and the brand of the hotel. Cold Drink Equipment, if provided, will be placed in mutually agreed to high traffic locations, as defined by agreement of the parties. The specific location of such equipment will be subject to the agreement of Bottler and Customer.
- iii. Customer may also authorize the placement of (or maintain, if already in place) a mutually agreed upon number of Venders in any or all Hotels, depending upon the size and the brand of the hotel. The specific location of such equipment will be subject to the agreement of Bottler and Customer. All Venders placed at the Hotels may be operated on a full-service basis and serviced and stocked exclusively by Bottler in accordance with Bottler's standard full-service vending program for similarly-situated locations under similar competitive conditions in the applicable geographic area, or Venders may be serviced and stocked by a third party approved by Bottler, subject to the provisions of this Agreement.
- iv. Abide by any standard system minimum delivery size requirements established by Bottler.
- v. Perform those additional Bottler Bottle/Can Beverage marketing activities the parties mutually agreed upon.

### 4. EQUIPMENT

Bottler will provide each Hotel the Cold Drink Equipment described above at no cost to Customer, except as prohibited by law, rule or regulation, in which case the rent charged will be the lowest legal rate available from the Bottler. All Cold Drink Equipment will be identified by Bottler Bottle/Can Beverage trademarks and will remain the property of Bottler. Except where prohibited by law, all Cold Drink Equipment will exclusively dispense Bottler Bottle/Can Beverages and no items of any kind other than Bottler Bottle/Can Beverages may be stored, displayed or sold in, on or through the Cold Drink Equipment. Use of the Cold Drink Equipment will be in accordance with each Bottler's standard Equipment Placement Terms, and Customer agrees to abide by such terms. To the extent that such standard placement terms are inconsistent with the terms of this Agreement, the terms of this Agreement will control. Bottler will have the right to relocate or remove some or all of the Cold Drink Equipment from a Hotel if Bottler determines the volume of Bottler Bottle/Can Beverages sold through such equipment justifies relocation or removal. Electrical installation costs and utilities for the Cold Drink Equipment will be at the expense of Customer. Customer represents and warrants that electrical service at the Hotels is proper and adequate for the installation of the Cold Drink Equipment, and Customer agrees to indemnify and hold harmless Company and Bottler from any damages arising out of defective electrical services at Hotels.

### 5. SERVICE

Service for all the Cold Drink Equipment will be provided in accordance with the Equipment Placement terms.



**EXHIBIT A-4**  
**OPTIONAL SMOOTHIE AND GOLD PEAK TEA® FRESH BREWED TEA**  
**PROGRAM TERMS AND CONDITIONS**

**1. AVAILABILITY**

Each Hotel may, but is not obligated to, serve in the Hotels Smoothie flavors jointly selected by such Hotel and Company. If a Hotel elects to serve Company's Smoothies, Customer agrees that in no event will Customer serve any Smoothies that are a Product of PepsiCo in such Hotel.

Each Hotel may, but is not obligated to, serve in the Hotels Gold Peak® Fresh-Brewed Tea (and/or any other Tea brand that Company may make available). If Customer elects to serve Company's Tea, Customer agrees that in no event will Customer serve any Teas that are a Product of PepsiCo in its Hotels.

**2. PRICING**

Company agrees that during the Term, each Hotel will have the right to purchase Company Smoothies from Company at Company's then-current published chain account prices, which prices are subject to change from time to time.

Each Hotel will have the right to purchase Tea from Company at Company's then-current published chain account prices, which prices are subject to change from time to time.

**3. EQUIPMENT PROGRAM**

Customer is responsible for purchasing all Tea Dispensers and blending equipment for all applicable Hotels.

**4. SERVICE PROGRAM**

Any service on the Tea Dispensers or blending equipment will be at the cost and responsibility of Customer.

## EXHIBIT B DEFINITIONS

Capitalized words or phrases used throughout this Agreement have the following meanings:

1. **“Agreement”** means this agreement and all exhibits, addenda and attachments hereto.
2. **“Authorized Bottlers”** means those bottlers with special authorization from Company to sell certain Company Sparkling to Customer.
3. **“Authorized Distributors”** means authorized distributors with special authorization from Company to sell certain Company Beverages to Customer.
4. **“Beverage”** means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, or (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. For the avoidance of doubt, “flavor enhancers”, “liquid water enhancers”, brands and products of Beverage making systems (e.g., Soda Stream®) and non-alcoholic beverages sold as “shots” or “supplements” are considered Beverages. However, this definition does not include fresh-brewed coffee, fresh-brewed tea products, hot chocolate or hot cocoa, or water. Nothing in this definition is intended to limit or expand what a Hotel must serve under the Availability section of any of Exhibits A-1 through and including A-3.
5. **“Bottle/Can Beverage”** means any Beverage, including a pre-mix Beverage, in pre-packaged, ready-to-drink form in bottles, cans or other factory-sealed containers.
6. **“Bottlers”** means authorized bottlers of Company that elect to participate under this Agreement.
7. **“Bottler Bottle/Can Beverage”** means a Bottle/Can Beverage that is marketed under trademarks owned or controlled by or licensed for use to Company and purchased by Customer directly from Company or Bottler, for sale at the Hotels or sold through full service vending machines owned, stocked or serviced exclusively by Company or Bottler. For the avoidance of doubt, “Bottler Bottle/Can Beverages include (i) Monster, NOS and Full Throttle brand Bottle/Can Beverages purchased directly from a Bottler; and (ii) Bottle/Can Beverages purchased directly from a Bottler that has the rights to distribute Beverages that are marketed under trademarks owned by, licensed to, controlled by or distributed by Dr Pepper Snapple Group, Inc. (“DPSG”) or any of its subsidiaries, affiliates or bottlers, or any entity or joint venture in which DPSG or any of its subsidiaries, affiliates or bottlers, has at least a 50% ownership interest.
8. **“Cold Drink Equipment”** means Venders and Coolers.
9. **“Company”** means The Coca-Cola Company, acting by and through its Coca-Cola North America Group. When the term Company is applied to a product (such as Company Beverage) it means such a product that is marketed under (i) trademarks owned by Company and (ii) trademarks licensed by Company that are designated as a product of Company.
10. **“Competitive Beverage”** means any Beverage that is not a Company Beverage, and any Beverage marketed under Beverage trademarks that are not Company or Bottler trademarks.
11. **“Cooler”** means a device provided by Company or Bottler for keeping Bottle/Can Beverages cool that does not contain a payment mechanism.
12. **“Core Company Juice Beverage”** means Minute Maid Frozen Concentrate Orange Juice and Simply Orange.
13. **“Core Company Sparkling Beverage”** means Coca-Cola®, Diet Coke®, Sprite® and Coke Zero™ in Fountain Beverage and Bottle/Can Beverage form.
14. **“Hotels”** means hotels located in the 50 United States and the District of Columbia where Beverages are served that are owned or operated by Customer under an IHG Covered Brand and which are not subject to a pre-existing agreement with a beverage supplier other than Company, including any such hotels that are opened or acquired and serve Sparkling and Juice Beverages after this Agreement is signed during the Term of the Agreement (unless those acquired hotels are already governed by an agreement with Company and that agreement is validly assigned to Customer as part of the acquisition); provided, however, that if such hotels are at the time of acquisition under a pre-existing agreement with a beverage supplier other than Company, such hotels will come under this Agreement only after the applicable agreement with such beverage supplier is terminated or expires. The term “Hotels” includes all locations owned or managed by Customer within such hotels where Beverages are or can be served other than as set forth in Exhibit E, Section 2.
15. **“Covered Brand”** means any of the following brands and includes any new brands that may be added: Luxury (“Luxury”) brands InterContinental Hotels and Resorts (excluding InterContinental Alliance Resorts), Upscale (“Upscale”) brands Crowne Plaza Hotels and Resorts, Hotel Indigo, EVEN Hotels, and Mainstream (“Mainstream”) brands Holiday Inn,

Holiday Inn Resort, Holiday Inn Express, Holiday Inn Club Vacations, Kimpton Hotels, avid Hotels, Atwell Hotels, Staybridge Suites and Candlewood Suites.

16. "**Customer**" means the Franchisee or management company operating the Hotel for hotel owner identified on the signature page of this Agreement.
17. "**Dispenser**" means a piece of equipment that dispenses Beverages through a valve.
18. "**Fountain Beverages**" are those Beverages that are served through Dispensers.
19. "**Fountain Syrup**" means the Fountain Beverage syrup used to prepare Fountain Beverages, but does not include Frozen Fountain Syrup or other forms of concentrate, such as frozen concentrates used to prepare Juices, or liquid coffee concentrate.
20. "**Holiday Inn Express Hotels**" mean Participating System Hotels that are branded with the Holiday Inn Express brand group.
21. "**Juice**" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, or any concentrate of such liquids or purees, and includes 100% juice and drink products marketed or labeled as juice or juice drink, regardless of the percentage of natural juice contained in such drink products.
22. "**Lease**" means the terms and conditions set forth in the Dispensing Equipment Lease attached as **Exhibit D**.
23. "**Physical Case**" means a physical case of Company Beverage and/or Bottler Bottle/Can Beverage as then-currently packaged and whose case count is deemed as standard by Company and Bottler. Case counts are subject to change during the Term due to packaging reconfigurations.
24. "**Product of PepsiCo**" means any Beverage which has a trademark owned by, licensed to, controlled by or distributed by PepsiCo, Inc. or any of its subsidiaries, affiliates or bottlers, or any entity or joint venture in which PepsiCo, Inc. or any of its subsidiaries, affiliates or bottlers, has at least a 50% ownership interest.
25. "**Smoothie**" means a fruit or non-fruit based beverage mixer that is used to make a smoothie-type alcoholic or non-alcoholic drink, fruit smoothie, milkshake or another comparable drink.
26. "**Special Service Calls**" means any removal, remodel, relocation or reinstallation of Dispensers, installation or removal of ice makers, service caused by ice, flavor changes, summerize/winterize, line changes, or service necessitated by damage or adjustments to the equipment resulting from misuse, abuse, failure to follow operating instructions or service by unauthorized personnel, unnecessary calls (equipment was not plugged in, CO2 or Fountain Syrup container was empty), or calls that are not the result of mechanical failure.
27. "**Sparkling Beverages**" means carbonated soft drinks (e.g., Coke, Diet Coke, Sprite, etc.) in Fountain Beverage and Bottle/Can Beverage form.
28. "**Subtab Mechanism**" means an unbranded manually actuated tab on a Dispenser that allows for the dispensing of water.
45. "**Tea**" means beverages whether hot or cold that are made from tea in any form of preparation, including, but not limited to, post-mix tea, tea leaves or tea powder.
47. "**Vender**" means a Beverage vending machine provided by Bottler.
49. "**Year**" means each consecutive twelve month period during the Term, provided that the first Year shall begin on the Term Effective Date and end on December 31, 2020.

## EXHIBIT C

### STANDARD TERMS AND CONDITIONS APPLICABLE TO THIS AGREEMENT

#### 1. TERMINATION AND DAMAGES

1.1 This Agreement may be terminated before the scheduled expiration date only in the following circumstances: (i) either party may terminate the Agreement if the other party fails to comply with a material term or condition of the Agreement and does not remedy the failure within 60 days after receiving written notice specifying the non-compliance; (ii) Company may terminate the Agreement if at any time during the Term the beverage marketing agreement between Company and Six Continents Hotels, Inc. is terminated. Upon receipt of notice of expiration or termination, Customer will promptly make any equipment owned by Company and the Bottler available for pickup by Company and the Bottler and the marketing program will no longer be made available. In addition, if any piece of equipment other than Cold Drink Equipment is removed from a Hotel prior to 100 months from the installation date for that piece of equipment, other than Company removing a piece of Equipment without cause, Customer will pay Company the actual cost of removal (including standard shipping and handling charges) and remanufacturing of the equipment, as well as the unamortized portion of the costs of (i) installation and (ii) non-serialized parts (e.g., pumps, racks and regulators) and other ancillary equipment other than for any such equipment that is defective or otherwise needs replacement in accordance with Exhibit D to this Agreement. Furthermore, in the event of any early termination of this Agreement, Customer will pay Company or the Bottler's unamortized cost of installation and the entire cost of removal of all Cold Drink Equipment other than for any such equipment that is defective or otherwise needs replacement. Collectively, removal and remanufacturing costs and items (i) and (ii) and the unamortized cost of installation and entire cost of removal of all Cold Drink Equipment are referred to as "**unbundling costs**." Upon Customer's receipt of notice of expiration or termination of this Agreement, Customer will also pay, to the extent not paid within (45) days of being invoiced by Company and Bottler for any such unearned funding or unbundling costs, interest at the rate of 1%, compounded monthly, or such lesser percentage as required by law, accrued from the date unbundling costs were incurred through the date of repayment.

1.2 The parties acknowledge that in addition to the liquidated damages outlined above, either party may pursue other remedies or damages if the other party breaches the terms of the Agreement. Nothing herein will be construed as a waiver of any right of Company to prove consequential damages as a result of a breach by Customer.

2. **NON-COMPLYING HOTELS.** If any Hotel fails to comply with any terms of this Agreement applicable to such Hotel (including any applicable terms of the Equipment Lease), Customer will forfeit and not be entitled to any funding in respect of such Hotel for the period of non-compliance and Company may refuse to sell, or may limit the quantity of Beverages sold, to such Hotel. In the event the Hotel has not cured any non-compliance within 30 days from receipt of written notice of non-compliance from Company, all funding in respect of such Hotel for the then-current Year will be forfeited, and Company will have the option to terminate this program with respect to such Hotel on 30 days' additional written notice.

3. **GOVERNING LAW/ DISPUTE RESOLUTION.** This Agreement will at all times be governed by the laws of the State of Georgia. Should there be a dispute between Company and Customer relating in any way to the Agreement, the breach of the Agreement, or the business relationship of the parties, the parties agree that they will make a good faith effort to settle the dispute in an amicable manner. If the parties are unable to settle the dispute through direct discussions, at that time they will attempt to settle the dispute by mediation administered by the American Arbitration Association (the "AAA") as a condition precedent to either party's resort to litigation or other formal, binding means of dispute resolution. The prevailing party will be entitled to recover its reasonable attorneys' fees and other costs and expenses of litigation or other formal means of dispute resolution. If litigation is pursued, the exclusive venue for such litigation will be in the federal or state courts located in Atlanta, GA, and the parties agree to submit to the personal jurisdiction of the courts in the State of Georgia.

#### 4. REBRANDING AND ASSIGNMENT

4.1 The Agreement will not be assignable except to an affiliate without the express written consent of Company.

4.2 If any Hotel ceases to operate as a Covered Brand, it shall be relieved of its rights, duties and obligations under this Agreement that accrue after such cessation.

5. **TRADEMARKS.** Neither Customer nor Company will make use of the other's trademarks or logos (either alone or in conjunction with their or another party's trademarks or logos) without the prior written consent of that party, and Customer will not make use of any of the Bottler's trademarks or logos (either alone or in conjunction with their or another party's trademarks or logos) without the prior written consent of the Bottler, and all use of the other party's trademarks will inure to the benefit of trademark owner. For purposes of this Agreement, Company's and Customer's trademarks include trademarks owned, licensed to or controlled by an entity in which Company or Customer, respectively, has a 50% or more ownership interest. Each Party agrees that its approval will not be withheld or delayed unless (i) Customer determines that a Customer Mark has been used incorrectly for technical reasons (i.e., lack of trademark conformity) or (ii) Customer reasonably determines that the proposed activity or use would reflect negatively on Customer or the Participating System Hotels.

#### 6. ADVERTISING, MARKETING RIGHTS.

6.1 Customer grants Company the exclusive rights to advertise, market and promote Beverages at the Hotels and/or in connection with the Hotels. These rights include a Beverage-exclusive license to use, subject to Section 5 above, Customer's trademarks on a royalty free basis to promote Company's Beverages in promotions, including joint promotions with Company's other customers.

6.2 **NO COMPETITIVE ADVERTISING.** Except as otherwise permitted under the terms of this Agreement, Customer will not depict, advertise, promote or merchandise any Competitive Beverages anywhere in or in association with the Hotels. Customer will not enter into any agreement or relationship whereby any Competitive Beverages are associated in any advertising or promotional activity of any kind with Customer, the Hotels, or any of the trademarks of Customer.

7. **PRICING.** All prices quoted in this Agreement do not include, and each Hotel will be responsible for the payment of all applicable taxes, deposits, other government mandated fees, handling fees and recycling fees, as applicable.

8. **CONFIDENTIALITY.** Neither party will disclose to any third party without the prior written consent of the other party, any information concerning this Agreement or the transactions contemplated hereby, except for disclosure (i) to any attorneys, accountants and consultants involved in assisting with the negotiation and closing of the contemplated transactions, or (ii) to Six Continents Hotels, Inc. or (iii) to affiliates of Company including Company's bottlers, or (iv) as required by law. A party that makes a permitted disclosure must obtain assurances from the party to whom disclosure is made that such party will keep confidential the information disclosed.

9. **OFFSET.** If Customer owes any amounts to Company or Bottler under this or any other agreement, in addition to any other remedies it may have, Company may use funds due Customer to offset amounts due to Company under this or any other agreement.

10. **FORCE MAJEURE.** Either party is excused from performance under this Agreement to the extent and for so long as such nonperformance results from any act of God, strikes, war, terrorism, riots, acts of governmental authorities, other emergencies (including pandemics), or shortage of raw materials which specifically make it illegal or impossible to for either party to perform. The performance of such party shall be excused for such reasonable time as may be required to resume performance following cessation of such cause.

11. **WAIVER.** The failure of either party to seek redress for the breach of, or to insist upon the strict performance of any term, clause or provision of the Agreement, will not constitute a waiver, unless the waiver is in writing and signed by the party waiving performance.

12. **WARRANTIES.** Customer and Company each represent and warrant that they have the unrestricted right to enter into this Agreement and to make the commitments contained in this Agreement. In addition, each party represents that the person whose signature appears on the Agreement has the right to execute this Agreement on behalf of the party indicated. Customer represents and warrants that it complies with all applicable laws and regulations and all appropriate practices with respect to food safety including the storing, preparation and serving of food and potability of water. Customer acknowledges and agrees to comply with all equipment manufacturers' specifications and product dispensing and preparation instructions and specifications of which it is made aware in writing by Company and Bottler. Company agrees to comply with all applicable laws, regulations and industry standards, as well as its own internal policies and / or procedures, related to COVID-19. Company will provide Customer with reasonable notification if Company becomes aware that its employee(s) has/ have contracted COVID-19 and, through contact tracing, reasonably believes the employee(s) may have exposed the employees or guests of a Hotel to COVID-19. Notification of potential exposure will be conducted as permitted by any applicable statutory or contractual restrictions on sharing such information and notification will be done, where possible, to protect the identify of affected employee(s). Company and Customer agree to update the other, and amend this Agreement if necessary, related to continuing policies and efforts related to COVID-19.

13. **RESALE AND PACKAGING.** Customer will (i) properly dispose of all packaging (ii) not resell Company Beverages or Company Beverage components or ingredients (including packaging) or Bottler Bottle/Can Beverages to third parties except for the purpose of environmentally safe disposal and (iii) not directly or indirectly ship, distribute or sell any Bottler Bottle/Can Beverages outside of (a) the geographic scope of the Company's internally defined market unit in which such Beverages were sold to Customer (Company will make the geographic scope of any such market unit available to Customer upon request) with respect to such Beverages sold by Company and (b) with respect to products sold by a Bottler, the geographic territory in which the Bottler is authorized to distribute, promote, market, and sell Company Bottle/Can Beverages and (iv) sell finished Fountain Beverage only in cups or glasses and not in closed containers that retain carbonation, or in bottles or cans. Customer will reimburse Company and Bottler for all damages resulting from its failure to do so. For the avoidance of doubt, this section does not obligate Customer to act on behalf of Hotels.

14. **CLAIMS FOR REBATE, DISCOUNT OR ALLOWANCE DISCREPANCIES.** In no event will Company or Bottler accept any claims of discrepancies or errors in pricing or funding hereunder more than 1 year from the date of invoice with respect to pricing or payment with respect to funding. In support of any such claim, Customer will provide a detailed, written request specifying the particular product, the amount in dispute and

reason for dispute, along with a true copy of the original invoice or payment and all other documents in support of the claim. Company and Bottler will review each such claim in good faith and provide prompt responses to each properly made claim. Customer will not withhold payments owing to Company or Bottler regardless of the pendency of such a claim. If Customer withholds any payments, Company and Bottler reserve the right to withhold funding due Customer. Company and Bottler will work directly with the Customer to resolve any such claims, but will not interact with third-party auditors or contractors.

**15. CONSTRUCTION/ SEVERABILITY.** This Agreement and any accompanying documents constitute negotiated agreements between the parties, and the fact that one party or its counsel, or the other, will have drafted this Agreement, any document or particular provision hereof will not be considered in the construction or interpretation of this Agreement, the documents or any provision hereof. If any term or provision of this Agreement is found to be void or contrary to law, such term or provision will be deemed severable, but only to the extent necessary to bring this Agreement within the requirements of law, from the other terms and provisions hereof, and the remainder of this Agreement will be given effect as if the parties had not included the severed term herein, but only if each party continues to receive relatively the same benefits that it negotiated under this Agreement.

**16. THIRD PARTY BENEFICIARIES.** Customer and Company hereby expressly acknowledge and agree that this Agreement is for the sole exclusive benefit of the parties hereto and the Hotels, and no other third party is intended to or will have any rights hereunder, except that Customer and Company recognize and acknowledge that the Bottlers are third party beneficiaries of this Agreement.

**17. PRIVACY AND SECURITY REQUIREMENTS.** To the extent that either party collects, accesses, or processes the Personal Information (as defined below) of consumers in connection with the performance of this Agreement, each party represents and warrants that it shall comply with (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality, and/or security of protected personal information, as defined by applicable law (referred to herein as "**Personal Information**"), including, but not limited to, data protected under applicable state and federal data privacy law(s) and the California Consumer Privacy Act, as

amended or replaced from time to time; (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security including, if applicable, the Payment Card Industry Data Security Standard ("**PCI DSS**"); and (iii) applicable provisions of each party's respective written requirements, currently in effect and as they become effective relating in any way to the privacy, confidentiality, and/or security of Personal Information or applicable privacy policies, statements or notices (collectively, "**Privacy and Security Requirements**").

Neither party shall retain, use, disclose, or otherwise process Personal Information for any purpose other than for the specific purpose of performance under this Agreement, or as is otherwise permitted by applicable law, upon explicit agreement between the Parties, or with explicit permission from the individual to whom the Personal Information relates. Each party is prohibited from selling or otherwise receiving remuneration (absent explicit individual consent, as defined by applicable law) in exchange for any Personal Information, which either party collects, accesses, or otherwise processes pursuant to this Agreement.

**18. ADDITIONAL TERMS.** The terms and conditions of this Agreement will supersede all prior agreements between the parties relating to the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by authorized representatives of both parties. Company will not be bound by any standard or preprinted terms or conditions contained in Customer's purchase orders, acknowledgements, invoices, vendor allowance forms or other Customer forms, or counteroffers, that propose terms or conditions in addition to or differing from the terms and conditions set forth in this Agreement with respect to its subject matter. Customer will not be bound by any standard or preprinted terms or conditions contained in Company's acknowledgments, invoices, marketing program forms or other Company forms, or counteroffers, that propose terms or conditions differing from the terms and conditions set forth in this Agreement with respect to its subject matter. Any terms and conditions on any party's internet site to which agreement by either party is deemed or required in any manner, whether through an online electronic agreement, site use, or otherwise, that propose terms or conditions differing from the terms and conditions set forth in this Agreement will be null and void and of no legal effect on either Company or Customer.

## EXHIBIT D DISPENSING EQUIPMENT LEASE

**1. LEASE AGREEMENT AND TERM.** Company hereby leases to the PSH Owner of each Corporate Hotel (referred to as "Equipment Lessee" in this Exhibit D) all beverage dispensers provided to Equipment Lessee ("Equipment"), subject to the terms and conditions set forth in this Lease. Unless otherwise agreed in writing, the Equipment will also include, where applicable, all permanent merchandising, menu boards, refrigeration units, ice makers and water filtration equipment installed by Company on Equipment Lessee's premises. Each piece of Equipment is leased commencing on its installation date (the "**Commencement Date**"). Equipment Lessee may request the removal of any Equipment upon thirty (30) days prior written notice to Company, and in addition, Company may remove any piece of Equipment for any reason upon thirty (30) days prior written notice to Customer. Removal of Equipment will not affect the term of any agreement between the parties. If this Lease is terminated with respect to any piece of Equipment for any reason, other than Company removing a piece of Equipment without cause under this section, prior to 100 months from the Commencement Date for that piece of Equipment, Equipment Lessee will pay Company the actual cost of removal (including standard shipping and handling charges) and remanufacturing of that Equipment, as well as the unamortized portion of the costs of (i) installation, (ii) non-serialized parts (e.g., pumps, racks and regulators) and other ancillary equipment. Collectively, removal costs and items (i) and (ii) are referred to as "**unbundling costs.**" The terms of this Lease will continue in effect with respect to each piece of Equipment until the Equipment has been removed from Equipment Lessee's premises and will survive the expiration or termination of any agreement into which this Lease is incorporated.

**2. RENT FOR THE EQUIPMENT.** All equipment leased to Customer will be leased at an annual rate calculated by multiplying the total installed cost of equipment by the then-current lease factor, plus all applicable sales and use taxes, if any, as rent for the Equipment. Rent will be due monthly. At Company's discretion, Company may utilize funds due Customer to offset amounts due Company under this Lease. If Customer fails to pay, within 10 days of its due date, rent or any other amount required by this Lease to be paid to Company, Customer will pay to Company a late charge equal to five percent (5%) per month of such overdue payment, or such lesser amount that Company is entitled to receive under any applicable law.

**3. TITLE TO THE EQUIPMENT.** Title to the Equipment is, and will at all times remain, vested in Company. Equipment Lessee will have no right, title, or interest in or to the Equipment, except the right to quiet use of the Equipment in the ordinary course of its business as provided in this Lease. Equipment Lessee will execute such title documents, financing statements, fixture filings, certificates and such other instruments and documents as Company will reasonably request to ensure to Company's satisfaction the protection of Company's title to the Equipment and Company's interests and benefits under this Lease. Equipment Lessee will not transfer, pledge, lease, sell, hypothecate, mortgage, assign or in any other way encumber or dispose of any of the Equipment. **THE PARTIES AGREE, AND EQUIPMENT LESSEE WARRANTS, THAT THE EQUIPMENT IS, AND WILL AT ALL TIMES REMAIN, PERSONAL PROPERTY OF COMPANY NOTWITHSTANDING THAT THE EQUIPMENT OR ANY PART THEREOF MAY NOW BE, OR HEREAFTER BECOME, IN ANY MANNER AFFIXED OR ATTACHED TO, OR EMBEDDED IN, OR PERMANENTLY RESTING UPON, REAL PROPERTY OR IMPROVEMENTS ON REAL PROPERTY.** Equipment Lessee will not make any alterations, additions, or improvements to the Equipment without the prior written consent of Company. All parts added to the Equipment through alterations, repairs, additions or improvements will constitute accessions to, and will be considered an item of the Equipment and title to such will immediately vest in Company. Equipment Lessee agrees that Company may transfer or assign all or any part of Company's right, title and interest in or to any Equipment (in whole or in part) and this Lease, and any amounts due or to become due, to any third party ("**Assignee**") for any reason. Upon receipt of written notice from Company of such assignment, Equipment Lessee will perform all its obligations with respect to any such Equipment for the benefit of the applicable Assignee, and, if so directed, will pay any amounts due or to become due hereunder directly to the applicable Assignee or to any other party designated in writing by such Assignee.

**4. USE OF EQUIPMENT.** Equipment Lessee acknowledges that the rent does not fully compensate Company for its expenses concerning its research and development efforts designed to improve fountain equipment or in providing the Equipment to Equipment Lessee, and that Company provides the Equipment to Equipment Lessee for the purpose of dispensing products of The Coca-Cola Company. Therefore, Equipment Lessee agrees that if the Equipment is a dispenser, then the Equipment will be used for the purpose of dispensing fountain beverage products of The Coca-Cola Company, such as Coca-Cola®, diet Coke® and Sprite®, and in the State of Texas, the Permitted Exception set forth in Section 2.2 of Exhibit A-1. Customer further agrees not to dispense any product whose pungency could affect normal operation of the Equipment. In accordance with Company's Fair Share policy, Company will have the right to additional rent and charges for its costs of servicing such valve if any valve is used for a Competitive Beverage in accordance with Section 2.2 of Exhibit A-1 at a rate of not less than \$300 per Dispenser per year. If the Equipment is a pump for bag-in-box or similar container, such pump may be used only to dispense products of The Coca-Cola Company. If the Equipment is other than a dispenser or a pump, then it will be used only in a location where fountain beverage products of The Coca-Cola Company are served and where no Sparkling

or Juice is served that is a Product of PepsiCo. This Section 4 will not apply within the State of Wisconsin.

**5. INSPECTION AND NOTIFICATION.** Without disrupting Equipment Lessee's regular business operations, Company will have the right during Equipment Lessee's regular business hours to inspect the Equipment at Equipment Lessee's premises or wherever the Equipment may be located and to review all records that relate to the Equipment. Equipment Lessee will promptly notify Company of all details arising out of any change in location of the Equipment, any alleged encumbrances thereon or any accident allegedly resulting from the use or operation thereof.

**6. WARRANTY DISCLAIMER: CUSTOMER ACKNOWLEDGES THAT COMPANY IS NOT A MANUFACTURER OF THE EQUIPMENT AND THAT COMPANY HAS MADE NO REPRESENTATIONS OF ANY NATURE WHATSOEVER PERTAINING TO THE EQUIPMENT OR ITS PERFORMANCE, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES RELATING TO THE DESIGN, CONDITION, QUALITY, CAPACITY, MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR ITS PERFORMANCE, OR ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, OR ANY WARRANTY WITH RESPECT TO PATENT RIGHTS, IF ANY, PERTAINING TO THE EQUIPMENT. COMPANY WILL NOT BE RESPONSIBLE FOR ANY LOSS OF PROFITS, ANY DIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES, OR DAMAGES OF ANY NATURE WHATSOEVER, RESULTING FROM THE DELIVERY, INSTALLATION, MAINTENANCE, OPERATIONS, SERVICE OR USE OF ANY EQUIPMENT OR OTHERWISE. TO THE EXTENT THAT WARRANTIES EXIST FROM THE MANUFACTURERS OF THE EQUIPMENT AND TO THE EXTENT ALLOWED BY CONTRACT AND LAW, COMPANY WILL MAKE AVAILABLE TO EQUIPMENT LESSEE ANY APPLICABLE MANUFACTURER'S WARRANTY.**

**7. TAXES.** Company will process payment of all assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, imposed on Company as required by law, on or relating to the Equipment or the use, registration, rental, shipment, transportation, delivery, or operation thereof, and on or relating to this Agreement. As between Company and Participating System Hotel, Participating System Hotel bears the financial responsibility for all such charges, and Company retains the right to be reimbursed by Participating System Hotel for such charges.

**8. DAILY MAINTENANCE.** PSH Owner will, at its expense, keep the Equipment in good condition, and working order. PSH Owner will pay all costs incurred in connection with the daily maintenance and operation, and where required by law, ownership or possession of the Equipment during the term of this Lease. PSH Owner's sole recourse against Company with respect to service provided by Company or its agents to the Equipment is that Company will correct any defective workmanship at no additional charge to Customer, provided that Company is given prompt notification of any defective workmanship. Company will not be otherwise liable for negligent acts or omissions committed in regard to maintenance or repair of the Equipment and assumes no responsibility for incidental, consequential or special damages occasioned by such negligent acts or omissions.

**9. RISK OF LOSS.** All risk of loss, including damage, theft or destruction, to each item of Equipment will be borne by Equipment Lessee. No such loss, damage, theft or destruction of Equipment, in whole or in part, will impair the obligations of Equipment Lessee under this Lease, all of which will continue in full force and effect.

**10. INDEMNITY.** Equipment Lessee will indemnify The Coca-Cola Company and its affiliates and each of their officers, agents, employees, directors, shareholders, affiliates, successors, and assigns (hereinafter the "**Indemnified Parties**") against, and hold Indemnified Parties wholly harmless from, any and all claims, actions, suits, proceedings, demands, damages, and liabilities of whatever nature, and all costs and expenses, including without limitation Indemnified Parties' reasonable attorneys' fees and expenses, relating to or in any way arising out of (a) the ordering, delivery, rejection, installation, purchase, leasing, maintenance, possession, use, operation, control or disposition of the Equipment or any portion thereof; (b) any act or omission of Equipment Lessee, including but not limited to any loss or damage to or sustained by the Indemnified Parties arising out of Equipment Lessee's failure to comply with all the terms and conditions of this Lease; (c) any claims for liability in tort with respect to the Equipment, excepting only to the degree such claims are the result of the Indemnified Parties' negligent or willful acts. The provisions of this Section 10 will survive termination and expiration of this Lease.

Company will indemnify Customer and the owner and operator of each Participating System Hotel and their respective affiliates and each of their respective officers, agents, employees, directors, shareholders, affiliates, successors, and assigns (hereinafter the "**PSH Indemnified Parties**") against, and hold PSH Indemnified Parties wholly harmless from, any and all claims, actions, suits, proceedings, demands, damages, and liabilities of whatever nature, and all costs and expenses, including without limitation PSH Indemnified Parties' reasonable attorneys' fees and expenses, relating to or in any way arising out of (a) any act or omission of Company resulting in any loss or damage to or sustained by the PSH

Indemnified Parties arising out of Company's failure to comply with all the terms and conditions of this Lease.

11. **DEFAULT.** The occurrence of any of the following will constitute a "Default" by Equipment Lessee: (a) nonpayment by Equipment Lessee when due of any amount due and payable under this Lease; (b) failure of Equipment Lessee to comply with any provision of this Lease, and failure of Equipment Lessee to remedy, cure, or remove such failure within twenty (20) days after receipt of written notice thereof from Company; (c) any statement, representation, or warranty of Equipment Lessee to Company in this Lease that is untrue as of the date made; (d) Equipment Lessee's becoming insolvent or unable to pay its debts as they mature, or Equipment Lessee making an assignment for the benefit of creditors, or any proceeding, whether voluntary or involuntary, being instituted by or against Equipment Lessee alleging that Equipment Lessee is insolvent or unable to pay its debts as they mature; (e) appointment of a receiver, liquidator, trustee, custodian or other similar official for any of the Equipment or for any property in which Equipment Lessee has an interest; (f) seizure of any of the Equipment; (g) default by Equipment Lessee under the terms of any note, document, agreement or instrument evidencing an obligation of Equipment Lessee to Company or to any affiliate of The Coca-Cola Company, whether now existing or hereafter arising; or (h) Equipment Lessee taking any action with respect to the liquidation, dissolution, winding up or otherwise discontinuing the conduct of its business.

12. **REMEDIES.** Upon the occurrence of any Default or at any time thereafter during the continuance thereof, Company may terminate this Lease as to any or all items of Equipment, may enter Equipment Lessee's premises and retake possession of the Equipment at Equipment Lessee's expense, and will have all other remedies at law or in equity for breach of the Lease. Equipment Lessee acknowledges that in the event of a breach of Sections 4 or 5 or a failure or refusal of Equipment Lessee to relinquish possession of the Equipment in breach of this section 12 following termination or Default, Company's damages may be difficult or impossible to ascertain, and Equipment Lessee therefore agrees that Company will have the right to seek an injunction in any court of competent jurisdiction restraining said breach and granting Company the right to immediate possession of the Equipment.

13. **LIQUIDATED DAMAGES.** If Equipment Lessee acts in violation of the prohibitions described in Section 3 of this Lease, or is unable or unwilling to return the Equipment to Company in good working order, normal usage wear and tear excepted, at the expiration or termination of the Lease, Equipment Lessee will pay as liquidated damages the total of: (i) the amount of past-due lease payments, if any, discounted accelerated future lease payments, and the value of Company's residual interest in the Equipment, plus (ii) all tax indemnities associated with the Equipment to which Company would have been entitled if Equipment Lessee had fully performed this Lease, plus (iii) costs, interest, and attorneys' fees incurred by Company due to Equipment Lessee's violation of Section 3 or its failure to return the Equipment to Company, minus (iv) any proceeds or offset from the release or sale of the Equipment by Company.

15. **OTHER TERMS.** Equipment Lessee represents and warrants that it complies with all applicable laws and regulations and all appropriate practices with respect to food safety including the storing, preparation and serving of food. Furthermore, Equipment Lessee acknowledges and agrees to comply with all equipment manufactures specifications and product dispensing and preparation instructions and specifications. No failure by Company to exercise and no delay in exercising any of Company's rights hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or of any other rights. This Lease constitutes the entire agreement of the parties and supersedes all prior oral and written agreements between the parties governing the subject matter of this Lease; provided, however, that if Company and Equipment Lessee have entered into an agreement into which this Lease is incorporated, to the extent that any of the terms in this Lease conflict with the terms set forth in that agreement, the terms of that agreement will control. No agreement will be effective to amend this Lease unless such agreement is in writing and signed by the party to be charged thereby. Any notices permitted or required by this Lease will be in writing and mailed by certified mail or hand delivered, addressed to the respective addresses of the parties. All claims, actions or suits arising out of the Lease will be litigated in courts in either the State of Georgia or in the state of Equipment Lessee's principal place of business. Each party hereby consents to the jurisdiction of any local, state or federal court located within the State of Georgia and/or the state of Equipment Lessee's principal place of business, and designates the Secretary of State of the State as its agent for service of process. THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA. Time is of the essence to each and all of the provisions of this Lease.

**EXHIBIT E**  
**ADDITIONAL TERMS**

1. Notwithstanding anything in this Agreement to the contrary, Competitive Beverages may be served at individual events or functions at any Hotel if the party booking the event or function requires as a condition of booking the event that Competitive Beverages be served. In such case, Competitive Beverages may be made available only in connection with and during such event or function; provided, however, that: (i) such Competitive Beverages are sold or made available only within the area being used for the event or function, (ii) any advertisements for such Competitive Beverages at the relevant Hotel will be reasonable under the circumstances and generally de minimis in nature (preferably, only within the booked space) and will not suggest that such Competitive Beverages are associated in any manner with Customer or the Hotel. Either Customer or the party booking the event or function will be responsible for all expenses in any way related to the service of Competitive Beverages, including the provision of equipment, if necessary. Each Hotel shall use commercially reasonable efforts to minimize the incidence of Competitive Beverage services.
2. The parties acknowledge that there may be current or future third party tenants that are unaffiliated with Customer renting or leasing space at any Hotel and that elect to serve Competitive Beverages or are required to do so due to a binding agreement with a Competitive Beverage supplier (or another third party that has the authority to determine Beverage selection at such tenant's area). Such tenants' leased areas shall be excluded from the scope of this Agreement. Therefore, it shall not constitute a breach of this Agreement for such tenant(s) to serve or make available Competitive Beverages; provided, however, that: (i) such Competitive Beverages are sold or made available only within such tenant's leased space, (ii) any advertisements for such Competitive Beverages at the relevant Hotel will be reasonable under the circumstances and generally de minimis in nature (preferably, only within such tenant's leased space) and will not suggest that such Competitive Beverages are associated in any manner with Customer or the Hotel.
3. Notwithstanding anything in this Agreement to the contrary, if any practice in effect as of the Term Effective Date at any hotel that becomes a Hotel on or after the Term Effective Date is at variance with any practice proscribed by this Agreement (e.g., dispensing tap water out of a valve on a Dispenser), except if a Hotel is serving a Competitive Beverage, or any Competitive Beverage on a Company-owned Dispenser, such practice shall be grandfathered and permitted under this Agreement until such time as any associated equipment is replaced in accordance with this Agreement.



**EXHIBIT H-4  
TO DISCLOSURE DOCUMENT**



**NEXT-GEN PAYMENTS AGREEMENT**

This Next-Gen Payments Agreement (this “**Agreement**”) is entered into by and between Six Continents Hotels, Inc. d/b/a IHG Hotels & Resorts (“**IHG**”) and the hotel legal entity identified below (“**Hotel**”) (each, a “**Party**” and collectively, the “**Parties**”):

Legal Name:	
Hotel Address:	
Inncode:	

**NGP Solution.** Hotel will use IHG’s Next-Gen Payments Solution for Hotel’s processing of card payments.

**Term and Extension.** This Agreement is effective upon signing, and the term of 48 months will begin upon billing commencement for the Next-Gen Payments Solution at the Hotel (“**Term**”). At the end of the then-current Term, the Term will automatically extend for an additional 48 months, unless one Party gives written notice to the other Party at least 90 days prior to the end of the Term. IHG will provide one hardware refresh for each extension of the Term.

**Solution and Pricing.** Hotel will pay the following fees for the Next-Gen Payments Solution package deployed to the Hotel:

Number of large Payment Devices	
Number of small Payment Devices	
NGP Monthly Fee (estimated)*	\$[ ] plus applicable taxes
NGP Transaction Fee (billed by Fiserv)**	\$0.06 per Transaction

\*Upon implementation, IHG will confirm the NGP Monthly Fee to Hotel, which will not be 5% more or less than the fee stated in the table above. IHG may modify the NGP Monthly Fee by no more than 10% annually upon notice to Hotel.

\*\*IHG reserves the right to lower (but not to increase) the NGP Transaction Fee upon notice to Hotel.

(The above pricing is valid for 30 days from generation of this Agreement.)

**Termination/Casualty Loss Fee.** Upon termination of this Agreement before the end of the Term for any reason or if the NGP equipment provided by IHG to Hotel is damaged or destroyed while in Hotel’s care, custody, or control, Hotel will pay to IHG a fee equal to (i) 50% of the NGP Monthly Fee, multiplied by (ii) the remaining monthly payments in the Term.

**Agreement Components.** This Agreement consists of the following components, which are attached and made part of this Agreement:

- This cover page;
- The Next-Gen Payments Terms and Conditions beginning on the following page;
- Attachment 1: Third Party Terms – FreedomPay; and
- Attachment 2: Third Party Terms – Hewlett-Packard Financial Services.

**Binding Agreement.** By executing this Agreement in the space provided below, the Parties agree to be legally bound by the terms and conditions of this Agreement.

<b>AGREED BY IHG:</b>	<b>AGREED BY HOTEL:</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

## Next-Gen Payments Terms and Conditions

The Next-Gen Payments Solution replaces the secure payment solution previously in use by IHG and Hotel and is supported by key third party providers including FreedomPay, Inc. ("**FreedomPay**"), Oracle Corporation ("**Oracle**"), Hewlett-Packard, Inc. ("**HPI**"), Hewlett-Packard Financial Services Company ("**HPFS**"), Fiserv, Inc. ("**Fiserv**," together with FreedomPay, Oracle, HPI, and HPFS, the "**Third Party Providers**"). Hotel desires to procure from IHG, and IHG desires to provide to Hotel, the Next-Gen Payments Solution, pursuant to the terms of this Agreement, that will consist of hardware, software, and services including those provided by the Third Party Providers.

IHG and Hotel agree as follows:

1.0 **DEFINITIONS.** The following capitalized terms used in this Agreement shall have the respective meanings specified below:

"**Affiliate**" means, as to any entity, any other entity that, directly or indirectly, Controls, is Controlled by or is under common Control with such entity.

"**Control**" means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

"**Documentation**" means the operating manuals, user manuals, programmer manuals, training materials, product specifications, compatibility and configuration instructions, database schema, and supporting materials relating to the Next-Gen Payments Solution.

"**Hotel Agents**" means the employees, contractors, suppliers, subcontractors, and representatives of Hotel.

"**Hotel Bankruptcy Event**" means that Hotel: (a) files a petition in bankruptcy for liquidation, (b) has an involuntary petition in bankruptcy filed against it which is not challenged within ten (10) days and dismissed within thirty (30) days, (c) becomes insolvent, (d) makes a general assignment for the benefit of creditors, (e) is unable to pay its debts as they mature, (f) has a receiver appointed for its assets, (g) has any significant portion of its assets attached, (h) receives a "going concern" explanation or qualification from its external auditor, or (i) experiences a material negative change in its net assets (i.e., total assets minus total liabilities).

"**Hotel Agreement**" means the franchise, management or other agreement authorizing Hotel to operate under an IHG brand.

"**Intellectual Property**" or "**Intellectual Property Rights**" means any patents, copyrights, trademarks, trade secrets, and other proprietary or intellectual property rights.

"**Law**" means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any legislature, administrative agency, court, or other governmental authority.

"**Next-Gen Payments Solution**" means the solution enabled under the terms and conditions of this Agreement for Hotel and other IHG-branded hotels to process card payments integrated with IHG systems.

"**Payment Device**" means a card machine, pin entry device, or other electronic device used in a debit, credit, or smart card-based Transaction to accept and encrypt the cardholder's personal identification number.

"**Personal Data**" means any information (a) that, either individually or when combined with other information, can be used to identify a specific individual or derive information specific to a particular individual, and any information or data related to current, past or potential employees or customers, and (b) covered by Privacy Laws, including the following: (i) a first name and last name; (ii) a home or other physical address, including street name and name of city or town; (iii) an email address or other name, that reveals an individual's email address; (iv) a telephone number; (v) a Social Security number; (vi) credit or debit card information; (vii) checking account information, account number and check number; (viii) a driver's license, military or state identification number; (ix) a persistent identifier, such as a customer number held in a "cookie" or processor serial number, that is combined with other available data that identifies an individual; (x) human resources information, such as benefits plan information, member number, salary information, performance history, health history, and similar information; (xi) financial or transactional information; (xii) employee ID number; (xiii) government passport number or alien

registration number, or (xiv) any other information that is identifiable to or identifies an individual, whether or not combined with any of (i) through (xiii) above.

**“Privacy Laws”** means (a) the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”); (b) Gramm-Leach-Bliley Act of 1999, as amended (“**GLB**”); (c) all applicable Laws and non-governmental standards protecting Personal Data (including Payment Card Industry Data Security Standard (“**PCI-DSS**”) and Payment Application Data Security Standard (“**PA-DSS**”)) in effect from time to time; (d) all Laws concerning the protection, transport, storage, use and processing of data (including the General Data Protection Regulation ((EU) 2016/679), as amended (“**GDPR**”) and any national implementing Laws, regulations and secondary legislation, as amended from time to time, and any successor legislation to the GDPR in effect from time to time); and (e) all applicable Laws in effect from time to time similar to those Laws listed in subsections (a) through (d) above or otherwise governing the transmission, storage, distribution, sale, or other use of Personal Data.

**“Tax”** means any income, gross receipts, franchise, sales, use, transfer, value-added, excise, customs, duties, property, withholding or any other tax, charge, or fee, including any interest, penalties, or other additions to tax, imposed by a governmental authority.

**“Transaction”** means each of (i) an on-line authorization request, (ii) a captured request that does not have a corresponding on-line authorization (examples include verbal authorizations, below floor limit or offline requests), (iii) a return request, and (vi) a void request.

## 2.0 SERVICE FRAMEWORK.

2.1 Next-Gen Payments Solution. During the Term, IHG will provide to Hotel the Next-Gen Payments Solution pursuant to the terms of this Agreement.

2.2 Right to Use the Next-Gen Payments Solution. During the Term, IHG hereby grants Hotel a limited, personal, revocable, nonexclusive, and non-transferable right to access and use the Next-Gen Payments Solution solely for the internal business purposes of Hotel and subject to the terms of this Agreement, including the Third Party Terms.

2.3 Restrictions on Use. Except as expressly permitted by this Agreement, Hotel shall not, and shall not permit any third party to: (a) transmit the Next-Gen Payments Solution to any third party or third party network, or permit any third party to access or use the Next-Gen Payments Solution; (b) use the Next-Gen Payments Solution, or any data derived from the Next-Gen Payments Solution, in a service bureau, time-sharing, multiple CPU, or multiple user arrangement; (c) copy, reproduce, store, sell, assign, pledge, sublicense, convey, transfer, redistribute, transmit, grant other rights in, or permit any unauthorized use of the Next-Gen Payments Solution; (d) prepare derivative works or incorporate the Next-Gen Payments Solution, in whole or part, into any other system or work; (e) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Next-Gen Payments Solution, in whole or in part; (f) bypass or breach any security device or protection used by the Next-Gen Payments Solution or access or use the Next-Gen Payments Solution other than by an authorized user through the use of his or her own then valid access credentials; (g) input, upload, transmit, or otherwise provide to or through the Next-Gen Payments Solution, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code; (h) remove, delete, alter, or obscure any warranties or disclaimers, or any Intellectual Property Rights notices from the Next-Gen Payments Solution, including any copy thereof; (i) access or use the Next-Gen Payments Solution in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other rights of any third party, or that violates any applicable Law; or (j) otherwise access or use the Next-Gen Payments Solution beyond the scope of the authorization granted under this Agreement, including the Third Party Terms.

2.4 Third Party Terms. Hotel shall comply with the terms and conditions set forth in **Attachment 1 (Third Party Terms – FreedomPay)** and **Attachment 2 (Third Party Terms – HPFS)** to this Agreement (collectively, the **“Third Party Terms”**).

## 3.0 FEES, INVOICING, AND PAYMENTS.

3.1 Fees. The fees for the Next-Gen Payments Solution provided under this Agreement are set forth on the cover page of this Agreement. In addition, if a scheduled implementation is not completed and reserved resources are not utilized due to Hotel’s action or inaction, Hotel will pay a reschedule fee. The obligation of Hotel to pay all fees is absolute and unconditional and, except as expressly provided, shall not be subject to any abatement, deferment, reduction, defense, counterclaim, set-off, or recoupment.

3.2 Invoicing and Payment. IHG shall invoice Hotel each month for the fees associated with the Next-Gen Payments Solution set forth on the cover page of this Agreement. For most Transactions, the NGP Transaction Fee will be collected by merchant service provider Fiserv as part of the settlement reconciliation. Hotel shall pay the fees invoiced for payment within thirty (30) days after the date of the applicable invoice.

3.3 Interest on Late Payments. Hotel will pay interest on all amounts that become past due at the lesser of: (a) one and one half percent (1½%) per month; or (b) the highest rate allowed by Law.

3.4 Payment Default. If Hotel should default on any payment obligation owed under this Agreement, IHG shall have the right to suspend access to and use of the Next-Gen Payments Solution by Hotel. Additionally, Hotel will be responsible for all collection costs and attorney fees incurred by IHG to collect any delinquent amounts.

3.5 Taxes. All Taxes resulting from the provision of the Next-Gen Payments Solution under this Agreement shall be the responsibility of Hotel. If IHG is required to pay any such Taxes or penalties or interest relating thereto, IHG will provide an invoice for such amounts and Hotel will pay such amounts within thirty (30) days of the date of the invoice.

4.0 CONFIDENTIAL INFORMATION. From time to time, IHG or an IHG Affiliate may disclose or make available to Hotel, whether orally, electronically or in physical form, confidential or proprietary information of or in the possession of IHG or the IHG Affiliate (including confidential or proprietary information of a third party that is in the possession of IHG or the IHG Affiliate) in connection with the Next-Gen Payments Solution or this Agreement. The term “**Confidential Information**” shall include all information and data which at the time of disclosure: (a) is marked as “Confidential” or “Proprietary”; (b) is otherwise reasonably identifiable as the confidential or proprietary information of IHG or its Affiliate; or (c) should reasonably be understood to be confidential or proprietary information of IHG or its Affiliate given the nature of the information and the circumstances surrounding its disclosure. Hotel shall not disclose any such Confidential Information to any third party without the prior written consent of IHG and shall only access and use the Confidential Information as required to and for the limited purpose of performing its obligations under this Agreement; provided that Hotel may disclose Confidential Information to its employees, contractors and professional advisors who need to know such information in order to perform their obligations related to this Agreement and who are contractually bound by confidentiality obligations that are at least as protective as those in this Agreement. Hotel shall use commercially reasonable care and discretion to avoid unauthorized use, disclosure, publication, or dissemination of Confidential Information (which shall be no less than the standard of care used by Hotel to protect its Confidential Information of a similar nature). For Confidential Information that does not constitute a “trade secret” under applicable Law, these confidentiality obligations will expire three (3) years after the termination or expiration of this Agreement. For Confidential Information that constitutes a “trade secret” under applicable Law, these confidentiality obligations will continue until such information ceases to constitute a “trade secret” under such applicable Law. Hotel will be responsible for any breach of this Section by Hotel Agents and Hotel’s Affiliates and any third party to whom it or they disclose Confidential Information in accordance with this Section (“**Recipients**”). Upon the request of IHG, Hotel shall deliver to IHG or destroy all copies of Confidential Information. Hotel agrees to certify in writing to IHG that it and each of its Affiliates, Hotel Agents, and Recipients have performed the foregoing. Excluding Personal Data, which shall always be deemed to be Confidential Information, the term Confidential Information will not include any information that Hotel can establish by convincing written evidence: (a) was independently and lawfully developed by Hotel without use of or reference to any Confidential Information belonging to or received from IHG or an IHG Affiliate; (b) was lawfully acquired by Hotel from a third party having the legal, unconditional right to furnish same to Hotel; or (c) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public (through no fault of Hotel). These confidentiality obligations will not restrict any disclosure required by Law, provided that Hotel gives prompt notice to IHG of any such legal requirement and reasonably cooperates with IHG at IHG’s request and expense to resist such legal requirement or to obtain a protective order.

5.0 SECURITY PRACTICES. Hotel shall be responsible for ensuring adequate security and backup procedures to avoid unauthorized access to, use of, or inadvertent loss of data and shall, in its discretion, determine appropriate security, which shall be no less than the standard of care in the industry.

6.0 IHG INTELLECTUAL PROPERTY As between the Parties, IHG owns all Intellectual Property Rights in and to the Next-Gen Payments Solution and the Documentation, including all modifications, enhancements, and derivative works of the Next-Gen Payments Solution and the Documentation. IHG will own all right, title and interest (including all Intellectual Property Rights) in and to all ideas, concepts, plans, creations or work product developed in connection with the Next-Gen Payments Solution and the Documentation, including, without limitation, any writings, drawings, computer programs, source code, and object code (collectively, the “**Work Product**”). The Work Product are not works made for hire. Hotel hereby unconditionally and irrevocably grants, transfers, and assigns to IHG in perpetuity any and all worldwide right, title, and

interest (including all Intellectual Property Rights) in and to the Work Product. Hotel may, in its sole discretion and option, provide IHG with input, comments or suggestions regarding the business and technology of IHG or the possible creation, modification, correction, improvement or enhancement of the Next-Gen Payments Solution (“**Feedback**”). Hotel hereby grants IHG a perpetual, irrevocable, fully-paid worldwide, sublicensable, transferable license and right to use, copy, incorporate, distribute, perform, display, modify and exploit any Feedback without any compensation, obligation to report on such use, or any other restriction. Feedback will not be considered Confidential Information or a trade secret of Hotel.

## 7.0 REPRESENTATIONS, WARRANTIES AND COVENANTS.

7.1.1 Hotel Responsibilities. Hotel will, and will cause the Hotel Agents to: (a) test the Next-Gen Payments Solution in the environment of Hotel before use; (b) ensure that the personnel of Hotel are using the Next-Gen Payments Solution correctly; (c) enter information into the Next-Gen Payments Solution accurately and completely; and (d) report any actual or suspected software errors or failures discovered in the course of using the Next-Gen Payments Solution to IHG.

7.2 Disclaimer. IHG is not the licensor or provider of any third party solutions made available to Hotel under this Agreement and offers no warranties on the third party solutions. In agreeing to the Third Party Terms, Hotel is relying solely on the warranties of the Third Party Providers, if any, expressly passed through to Hotel under the Third Party Terms. EXCEPT AS EXPRESSLY STATED IN THIS **SECTION 7.0**, IHG HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, FOR NETWORK CONNECTIVITY, AVAILABILITY, SOFTWARE, HARDWARE, SYSTEMS, OR TRANSACTION PROCESSING OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY PASS-THROUGH WARRANTY MADE BY A THIRD PARTY PROVIDER OF SERVICES, ALL SERVICES, AND ALL SUPPORT MATERIALS AND OTHER DATA, SOFTWARE OR OTHER ITEMS ARE PROVIDED “AS IS” AND “WHERE IS”.

## 8.0 TERMINATION.

8.1 Termination for Cause. If Hotel defaults in the performance of any of its obligations under this Agreement and does not cure such default within twenty (20) days after receipt of a written notice of default from IHG, then IHG may terminate this Agreement, in whole or in part, as of the termination date specified in such written notice. If Hotel breaches the Hotel Agreement, and fails to cure such default within ten (10) days after receipt of a notice of default from IHG or an IHG Affiliate, then IHG may terminate this Agreement, in whole or in part, immediately upon written notice to Hotel as of the termination date specified in the notice, without any cure period.

8.2 Termination or Expiration of the Hotel Agreement. In the event that the Hotel Agreement terminates or expires, then this Agreement shall automatically terminate.

8.3 Termination for Hotel Bankruptcy Event. IHG may terminate this Agreement, in whole or in part, immediately upon written notice to Hotel upon a Hotel Bankruptcy Event.

8.4 Other Remedies. If any of the above events set forth in **Section 8.1** through **Section 8.3** shall occur, IHG may, in addition to or in lieu of exercising its termination or other, legal, equitable, or contractual rights, limit, reduce, suspend, or terminate Hotel’s use of or access to the Next-Gen Payments Solution.

## 9.0 INDEMNIFICATION.

9.1 Hotel Indemnity. Hotel will defend, indemnify, and hold harmless IHG, its Affiliates, and their respective officers, directors, employees, and agents against any claims, losses, liabilities, and damages arising out of or relating to a breach by Hotel of this Agreement, including the Third Party Terms.

## 10.0 DAMAGES.

10.1 Limitation on Types of Damages. IHG will not be liable to Hotel for any indirect, consequential, special, incidental, or punitive damages, loss of goodwill, loss of profits, personal injury or property damage or loss, corruption, or unauthorized access to or use of data, even if such damages were foreseeable.

10.2 Limitation on Amounts of Damages. IHG SHALL NOT BE LIABLE TO HOTEL UNDER THIS AGREEMENT FOR DAMAGES IN EXCESS OF THE FEES PAID BY HOTEL UNDER THIS AGREEMENT IN THE THREE (3) MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY.

## 11.0 MISCELLANEOUS PROVISIONS.

11.1 Compliance. Hotel will comply with (i) all Laws applicable to Hotel and the Next-Gen Payments Solution, including all applicable Privacy Laws; and (ii) the policies, requirements, and procedures of IHG that are made available to Hotel from time to time.

11.2 Assignment. Neither this Agreement nor any right or interest under this Agreement is assignable or transferable by Hotel. IHG and its assignees shall have the right to assign or transfer this Agreement or any of the rights, duties, or obligations of IHG under this Agreement, in whole or in part, to any person or legal entity without requirement of prior notice to, or consent of, Hotel. This Agreement shall be binding on the Parties and their respective successors and permitted assigns.

11.3 Notices. In any case where any notice, approval, agreement or other communication is required or permitted to be given under this Agreement, such notice, approval, agreement or communication shall be in writing and deemed to have been duly given and delivered: (a) if delivered in person, on the date of such delivery; or (b) if sent by overnight express or registered or certified mail (with return receipt requested), on the date of receipt of such mail. Such notice or other communication shall be sent to the address(es) set forth in the Hotel Agreement (or such other address(es) as a Party may designate from time to time in writing).

11.4 Changes and Modifications. The terms and conditions of this Agreement may not be amended, waived, or modified, except in a writing signed by both Parties.

11.5 Severability. To the fullest extent permitted by Law, if any provision of this Agreement, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, then (a) the court shall have the authority to modify and/or "blue pencil" this Agreement, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability.

11.6 Force Majeure. IHG is not liable for failing to fulfill any of its obligations under this Agreement due to acts of God, acts of war, epidemic, pandemic, failure of utility or communications infrastructure beyond that which would be avoided by reasonable use of back-up electricity supplies, or other causes beyond the reasonable control of IHG.

11.7 Negotiated Terms. This Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement or based on a Party's undertaking of an obligation under this Agreement.

11.8 Headings. The headings of sections of this Agreement are for convenience of reference only and will not affect the meaning or interpretation of this Agreement in any way.

11.9 Survival. The provisions contained in this Agreement that by their context are intended to survive termination or expiration will survive, including without limitation, **Sections 4.0 (Confidential Information); 5.0 (Security Practices); 6.0 (IHG Intellectual Property); 9.0 (Indemnification); 10.0 (Damages); and 11.0 (Miscellaneous Provisions).**

11.10 Governing Law; Sole and Exclusive Venue. This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the Laws of the State of Georgia, without giving effect to the principles thereof relating to the conflicts of Laws. Each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the state courts located in the County of Fulton, State of Georgia, and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party.

11.11 Electronic Signatures. The Parties agree that: (i) this Agreement may be executed by electronic signature initiated through any mutually agreed commercial electronic signature provider to a Party's authorized signatory's password-protected access email address identified to the other Party ("**Electronic Document**"); and (ii) an electronic signature appearing on an Electronic Document shall have the same force and effect and be considered for all purposes as an original ink signature.

11.12 Entire Agreement. This Agreement, and any other documents referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other communications, including but not limited to all prior agreements, between the Parties with respect to such subject matter.

11.13 Third Party Beneficiary. Except for the indemnified parties, the Parties do not intend to create rights for any person as a third party beneficiary of this Agreement. All actions, claims, demands and other disputes between such third party beneficiary and IHG related to this Agreement, shall be brought through Hotel acting in its individual capacity and/or as agent of the aggrieved third party beneficiaries.

\* \* \* \*



**Attachment 1 – Third Party Terms**  
**FreedomPay**

Hotel acknowledges that FreedomPay is the provider of the payment gateway services provided to Hotel through the Next-Gen Payments Solution. Hotel agrees to the following Third Party Terms required by FreedomPay:

1. WARRANTIES.

1.1. Relationship of Hotel, IHG, and FreedomPay. Hotel acknowledges that, although IHG will process the on-boarding of Hotel, administer payments related to the Next-Gen Payments Solution, and facilitate support for Hotel, FreedomPay is the provider of the payment gateway services. Hotel will be accessing a single hosted environment configured for IHG, and Hotel does not have the right or ability to customize the hosted environment for its individual needs. The payment of fees and requests for service, and other interaction with FreedomPay will be routed through IHG, acting as a facilitator. Hotel will direct requests for service to IHG.

1.2. PIM Compliance: Hotel shall be responsible for procuring and maintaining, at its sole cost, all hardware, software and data communication and connectivity required to connect to the FreedomPay system and services (the “**FreedomPay Solution**”). Delivery of PCI-Validated Point-to-Point Encryption Secure Switching is subject to Hotel's compliance with the FreedomPay P2PE Instruction Manual (the “**PIM**”) and Hotel's acknowledgement of such compliance in the form set forth on **Exhibit 1 to Attachment 1 (PIM Acknowledgement)** to this Attachment. In the event Hotel does not comply with any obligation under the PIM, IHG may, but shall not be obligated, to perform any such obligation or otherwise mitigate such non-compliance, in which event IHG may charge Hotel reasonable fees to compensate IHG for such mitigation, including, without limitation, charging the then current list price for the applicable IHG services. Further, a failure to comply with the PIM or the requirements of **Section 3** below will result in the disallowance of the benefits to Hotel described in the PIM.

1.3. Third Party Services. FreedomPay makes no representations or warranties, express or implied, as to any third-party services that FreedomPay enables or provides, including but not limited to fraud protection, 3-D Secure, DCC, loyalty or discount programs and/or any other ancillary services enabled or provided by FreedomPay in the future.

1.4. Hotel Products and Services. Hotel understands that the services are designed and provided for the sole purpose of facilitating the sale of Hotel's products and services and that FreedomPay is not responsible for the quality or quantity or other aspects of Hotel's products and services or those of any third party not under FreedomPay's control.

1.5. PIN keys and KSNs. Hotel shall be responsible for procuring from its acquiring bank any necessary PIN keys and KSNs needed to allow pin-debit payment card Transactions.

1.6. Transaction Settlement. Hotel agrees that FreedomPay shall have no liability or obligation to Hotel for any Transactions not submitted or reported to FreedomPay for settlement within sixty (60) days after the actual date of the Transaction. For Transactions submitted or reported after such time limit, FreedomPay will attempt to settle such Transactions if the data is available, but FreedomPay will have no liability to Hotel if it is unable to settle such Transactions.

1.7. Updates. FreedomPay may implement a hosted update on the FreedomPay Solution at such time as it determines, and Hotel shall have the flexibility to commence implementing non-hosted updates according to the schedule of IHG, which implementation shall be commenced no later than twelve (12) months after notice from FreedomPay and completed no later than twenty-four (24) months after such notice, unless such non-hosted update is required by Law, network requirements or PCI requirements, or other applicable authority, in such case Hotel shall implement such non-hosted update in accordance with the date required in such Law or requirement. If Hotel fails to implement any non-hosted update when required as set forth in this Section, FreedomPay reserves the right to terminate operational support for the prior release (even if Hotel continues to rely on the prior release) and will not be deemed in breach for doing so. Unless otherwise agreed in writing by IHG in its reasonable discretion, a FreedomPay update shall not degrade the performance, functioning or operation of the FreedomPay Solution and shall not cause the performance, functioning or operation of the FreedomPay Solution to fail to meet the requirements of this Agreement; provided, however, that the foregoing shall not apply to any FreedomPay updates that are

required by Law, network requirements, PCI requirements, acquirer requirements, or a change introduced by, any governmental authority, any regulatory body, a processor or card brand.

1.8. Status Alerts. FreedomPay maintains a status alerting system program to notify Hotel about any FreedomPay system status issues. It is strongly recommended that Hotel enroll at [freedompay.statuspage.io](https://freedompay.statuspage.io) in order to access FreedomPay system status alerts.

1.9. Customer Consents. Hotel acknowledges and agrees that it shall be solely responsible for obtaining any and all consumer consents needed in connection with the provision of any service offered by FreedomPay, including third-party services, as required by applicable Law.

1.10. SKU Level Data. The FreedomPay Solution requires full SKU level data to be transmitted with each Transaction, and accordingly, Hotel must configure its eCommerce system to pass through full SKU level data with each Transaction. Failure to provide such full SKU level data will adversely affect FreedomPay's systems and may result in suspension of Hotel's access to the FreedomPay Solution, unless Hotel remedies such failure within thirty (30) days.

1.11. Production Data. PCI rules prohibit the use of production data (i.e., live PANs) in testing and/or development. Accordingly, to the extent applicable, Hotel shall not use any production data in testing or development.

## 2. LIMITATION OF LIABILITY

2.1. DISCLAIMERS OF LIABILITY FOR CERTAIN ACTIONS. IF ANY OF THE FOLLOWING ACTIONS ARE TAKEN BY OR ON BEHALF OF HOTEL, OR HOTEL REQUESTS THAT FREEDOMPAY TAKE ANY OF THE FOLLOWING ACTIONS ON BEHALF OF HOTEL, CERTAIN NEGATIVE CONSEQUENCES WILL FOLLOW AND FREEDOMPAY'S LIABILITY WILL BE FURTHER LIMITED, ALL AS DESCRIBED BELOW:

2.1.1. OFFLINE MODE DISABLEMENT DISCLAIMER. IF OFFLINE MODE IS DISABLED, INTERNAL NETWORKING ISSUES IN HOTEL'S SYSTEMS WILL MAKE SUCH SYSTEMS UNABLE TO ACCEPT CREDIT CARD TRANSACTIONS. FURTHER, IF FREEDOMPAY'S GATEWAY IS OFF-LINE OR OTHERWISE UNAVAILABLE, HOTEL WILL NOT BE ABLE TO ACCEPT CREDIT CARD TRANSACTIONS AT ALL (I.E., IN OFF-LINE MODE). FREEDOMPAY IS NOT RESPONSIBLE FOR FREEDOMPAY'S SYSTEMS DOWNTIME RESULTING FROM OFFLINE MODE BEING DISABLED, OR FOR ISSUES THAT ARE CAUSED BY HOTEL'S INTERNAL NETWORK OR SYSTEMS, CAUSING SUCH SYSTEMS TO GO OFFLINE, AND FREEDOMPAY'S SERVICE LEVELS WILL BE DEEMED NOT IMPACTED IN ANY WAY BY SUCH DOWNTIME. FOR CLARITY, IF OFFLINE MODE IS DISABLED, HOTEL WILL NOT BE ELIGIBLE FOR ANY REFUNDS OF FEES, AND FREEDOMPAY'S WARRANTIES ARE VOIDED.

2.1.2. CVV DISABLEMENT DISCLAIMER IF PROMPTING FOR THE CARD VERIFICATION VALUE ("**CVV**") IS DISABLED (FOR MANUAL TRANSACTIONS ONLY), HOTEL ACKNOWLEDGES AND AGREES THAT ANY INTERCHANGE DOWNGRADES RESULTING FROM SUCH CVV DISABLEMENT, AND ANY LIABILITY FOR INCREASED INTERCHANGE CHARGES AND MERCHANT SERVICES CHARGES RESULTING FROM SUCH CVV DISABLEMENT ARE THE SOLE OBLIGATION OF HOTEL, AND FREEDOMPAY SHALL HAVE NO LIABILITY TO HOTEL FOR SUCH CHARGES.

2.1.3. PIN KEY DISCLAIMER. IF EITHER (a) HOTEL IS UNABLE TO OBTAIN THE PROPER KSN FROM THEIR ACQUIRING BANKS FOR ITS PIN KEY OR (b) FREEDOMPAY'S KEY INJECTION VENDOR DOES NOT HAVE THAT PIN KEY WITHIN ITS SYSTEM AND IT CANNOT BE OBTAINED PRIOR TO IMPLEMENTATION, ANY CONSUMER WHO PRESENTS A CHIP AND PIN CARD WILL BE REQUIRED TO UTILIZE CHIP AND SIGNATURE INSTEAD. CHIP AND SIGNATURE AND CHIP AND PIN ARE KNOWN AS "**CARD VERIFICATION METHODS**," OR "**CVMs**." EACH ISSUED CREDIT CARD HAS A PREFERRED CVM. IF THAT PREFERRED CVM IS NOT USED, THAT SPECIFIC TRANSACTION FALLS UNDER THE EMV LIABILITY SHIFT, MEANING IF THAT CONSUMER DISPUTES THE TRANSACTION THEN HOTEL MAY BE LIABLE FOR FRAUD OR CHARGEBACKS, EVEN THOUGH IT WAS AN EMV TRANSACTION. FREEDOMPAY IS NOT LIABLE FOR ANY FRAUD OR CHARGEBACKS TO HOTEL IF A PIN KEY IS BE AVAILABLE FOR HOTEL'S IMPLEMENTATION.

2.1.4. CVM DISABLEMENT DISCLAIMER. HOTEL HEREBY ACKNOWLEDGES THAT IT HAS BEEN INFORMED AND FULLY UNDERSTANDS THAT ANY DISABLEMENT OF THE PREFERRED CVM

REQUIREMENTS FOR CHIP CARDS; OR OTHER SUPPRESSING OF PREFERRED CVM REQUIREMENTS, IS AT HOTEL'S SOLE RISK AND FREEDOMPAY SHALL HAVE NO LIABILITY TO HOTEL OR ANY THIRD PARTY FOR FRAUD CLAIMS OR CHARGEBACKS; A FRAUD CLAIM WILL RESULT IN A LOST CHARGEBACK TO HOTEL DESPITE THE IMPLEMENTATION OF EMV BY FREEDOMPAY IN HOTEL'S SYSTEM, AND THAT AS SUCH, HOTEL ASSUMES ALL RISK THAT DISABLING PREFERRED CVM REQUIREMENTS ENTAILS, INCLUDING LIABILITY FOR THE CHARGEBACKS.

### 3. INTELLECTUAL PROPERTY RIGHTS

3.1. FreedomPay Technology. Hotel acknowledges that all right, title and interest in and to all Intellectual Property Rights in the FreedomPay Solution (other than third-party goods and third-party services), together with all modifications, improvements, enhancements, updates, localizations and translations thereof (collectively, "**FreedomPay Technology**"), are, and at all times will remain, the sole and exclusive property of FreedomPay. Nothing contained in this Agreement may directly or indirectly be construed to assign or grant to Hotel or any third party any license, right, title or interest in or to the FreedomPay Technology except as necessary to use the FreedomPay Solution or as otherwise expressly provided in this Agreement. The license granted to Hotel in this Agreement is limited to facilitating the sale of Hotel's products and services and does not include any other rights of any type. FreedomPay owns all Remaining Rights. "**Remaining Rights**" means, except for the limited license granted to Hotel under this Agreement, all other rights in the FreedomPay Technology, including but not limited to, improvements, modifications, alterations, additions and deletions to any trademark, logo, copyright or other notices, legends, symbols, labels, displays, sounds, other media or characteristics on or in the FreedomPay Technology.

**EXHIBIT 1 TO ATTACHMENT 1**  
**PIM Acknowledgement**

**ACKNOWLEDGMENT**

The undersigned merchant hereby acknowledges that it has received, read and understood the FreedomPay P2PE Instruction Manual ("**PIM**") and further acknowledges that continuing compliance with the FreedomPay PIM is a PCI requirement for SAQ P2PE-HW merchant scope reduction qualification. Capitalized terms in this Acknowledgment have the meanings set forth in the PIM.

Merchant acknowledges that: the PIM is provided solely for informational purposes and use as a program implementation guideline for PCI DSS scope reduction; the PIM is based on PCI P2PE and/or DSS guidelines in effect as of the date of this manual; nothing in the PIM is or may be construed as a representation or warranty of any nature whatsoever; that Freedom Pay, Inc. ("**FreedomPay**") disclaims liability for any errors or omissions in the PIM; FreedomPay does not validate or warrant merchant compliance with PCI DSS or merchant eligibility for any validation or other accreditation standards; review or approval by FreedomPay of merchant systems or processes does not constitute a representation or warranty by FreedomPay of merchant system effectiveness or suitability and shall not be deemed to transfer risk or liability to FreedomPay; the use of any POI device other than a FreedomPay-approved POI device is at merchant's sole risk; FreedomPay has no duty to inspect data transmitted by merchant for unencrypted cardholder data introduced by the use of POI devices not supplied by FreedomPay; data processing by FreedomPay does not constitute a warranty that merchant is within the scope of the FreedomPay P2PE Solution; and that FreedomPay makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose or otherwise.

ACKNOWLEDGED

Signature: \_\_\_\_\_

**Attachment 2 – Third Party Terms**  
**HPFS**

Hotel acknowledges that IHG is providing certain equipment (such as Payment Devices) to Hotel for use as part of the Next-Gen Payments Solution (the “**Equipment**”), and HPFS is leasing and financing such Equipment to IHG. IHG will make such Equipment available to Hotel under the terms of this Agreement. Hotel agrees to the following Third Party Terms required by HPFS:

1. **MISCELLANEOUS.**

1.1. **Equipment Use; Maintenance.** Hotel shall (a) ensure that the Equipment is kept in good and proper working condition, normal wear and tear excepted, (b) not make any alterations or improvements to the Equipment without the prior written approval of the manufacturer, and (c) operate and maintain the Equipment in accordance with the user manuals and documentation, and any instructions issued by the manufacturer from time to time.

1.2. **Equipment Location.** Hotel shall not locate or relocate any Equipment without IHG’s prior written consent. IHG’s consent may be conditioned upon Hotel’s execution of a waiver agreement pursuant to which, among other things, the entity controlling the new location shall have waived any rights to the Equipment and agreed to surrender the Equipment to IHG or HPFS upon an event of default. Hotel shall confirm the Equipment location in writing to IHG upon IHG’s request.

1.3. **Liens and Encumbrances.** Hotel covenants that it will not pledge or encumber any of the Equipment or the interest of HPFS in the Equipment in any manner whatsoever nor create or permit to exist any levy, lien or encumbrance thereof or thereon except those created by or through HPFS. The Equipment shall remain the personal property of HPFS (during the initial 48-month Term) whether or not affixed to realty and shall not become a fixture or be made to become a part of any real property on which it is placed without the prior written consent of HPFS.

1.4. **Risk of Loss; Insurance.** Hotel assumes any and all risk of loss or damage to the Equipment until such Equipment is returned to and received by HPFS or IHG in accordance with the terms and conditions of this Agreement or the IHG-HPFS agreement. Hotel agrees to keep the Equipment insured at the expense of Hotel against all risks of loss from any cause whatsoever, including without limitation, loss by fire (including extended coverage), theft and damage, and such insurance shall cover not less than the replacement value of the Equipment. Hotel shall name HPFS as a loss payee and an additional insured, as applicable, under such insurance policies.

1.5. **Performance of Obligations.** If Hotel fails to perform any of its obligations hereunder and the same constitutes an event of default, IHG (acting on behalf of HPFS) may, during the continuance of such default perform any act or make any payment that IHG deems reasonably necessary for the preservation of IHG’s or HPFS’s interests therein; provided, however, that the performance of any act or payment by IHG shall not be deemed a waiver or release of Hotel from the obligation at issue. All sums so paid by IHG shall be paid to IHG by Hotel immediately upon demand.

**PARTICIPATION AGREEMENT**  
**IHG Secure Payment Solution (FP)**

This Participation Agreement for the IHG Secure Payment Solution (FP), effective as of the date of last signature below, is entered into by and between Six Continents Hotels, Inc. ("IHG") and \_\_\_\_\_ for the hotel \_\_\_\_\_ located at \_\_\_\_\_, Inncode \_\_\_\_\_ ("Hotel").

By execution of this Participation Agreement, the parties hereto agree as follows:

1. Requirement for Participation Agreement. Hotel acknowledges that IHG and FreedomPay have entered into the Secure Payment Solution Agreement (the "SPS Agreement"), effective as of July \_\_, 2021. The SPS Agreement provides that an IHG-branded hotel or service company to such a hotel may, upon execution of a Participation Agreement, receive the benefit of the Secure Payment Solution services agreed by IHG and FreedomPay.
2. FreedomPay Services. FreedomPay will provide services in accordance with the terms of this Participation Agreement, including the FreedomPay Pass-Through Terms set forth on Attachment 1, which Hotel expressly agrees to and accepts. With respect to security, availability, and confidentiality, FreedomPay provides the statement set forth on Attachment 2. Hotel will sign the PIM Acknowledgement set forth on Attachment 3.
3. Relationship of Hotel, IHG, and FreedomPay. Hotel acknowledges that, although IHG will process the onboarding of Hotel, administer payments related to the services, and facilitate support for Hotel, FreedomPay is the provider of services. Hotel will be accessing a single hosted environment configured for IHG, and Hotel does not have the right or ability to customize the hosted environment for its individual needs. The payment of fees and requests for service, and other interaction with FreedomPay will be routed through IHG, acting as a facilitator. Hotel will direct requests for service to IHG.
4. Fees. Hotel will pay IHG a fee of \$0.06 per transaction, where "transaction" means each of (i) an on-line authorization request, (ii) a captured request that does not have a corresponding on-line authorization (examples include verbal authorizations, below floor limit or offline requests), (iii) a return request, and (vi) a void request. For most transactions, this fee will be collected by the merchant service provider as part of the settlement reconciliation. IHG reserves the right to lower (but not to increase) this transaction fee upon notice to Hotel. In addition, Hotel will pay IHG a support fee of \$140 per month. IHG may modify this support fee by no more than 10% annually upon notice to Hotel.
5. Equipment. Hotel will use IHG-approved equipment purchased for use with Secure Payment Solution. Pricing will be set forth in the equipment order form.
6. Use of Equipment. Hotel shall (a) ensure that the equipment is kept in good and proper working condition, normal wear and tear excepted, (b) not make any alterations or improvements to the equipment without the prior written approval of the manufacturer, and (c) operate and maintain the goods in accordance with the user manuals and documentation, and any instructions issued by the manufacturer from time to time.
7. Equipment Warranty Pass-Through. Equipment is manufactured by a third party and is subject to a warranty provided by that third party, and without limiting any other representations, warranties or covenants of IHG, IHG hereby assigns such warranty to Hotel or, if such warranty cannot be so assigned, IHG shall pass through the benefit of such warranties to Hotel, and otherwise cooperate with Hotel in this respect.
8. Acknowledgement of IHG Data Access. Hotel acknowledges and agrees that IHG will have full access to the transactions and data processed on behalf of Hotel by FreedomPay. Such information may include names, services purchased, usage, billings, payment status, payment card data, and other information related to IHG's management of the service relationship with FreedomPay.

9. Ownership of and Restrictions on Use of Hotel Data. Subject to the rights granted to IHG in the IHG-FreedomPay SPS Agreement, FreedomPay acknowledges and agrees that all data provided by or on behalf of Hotel to FreedomPay under this Participation Agreement ("Hotel Data"), as between FreedomPay and Hotel, is and shall remain the property of Hotel. Hotel Data, constitutes Confidential Information of Hotel, may only be used, stored, or copied by FreedomPay (a) for assisting in completing a card transaction, (b) for fraud control services, (c) as otherwise permitted by Hotel, (d) as otherwise permitted by IHG, or (e) to perform FreedomPay's obligations under this Participation Agreement. When reporting its total count of transactions processed for all customers FreedomPay may include in such total the transactions processed under this Participation Agreement as long as the data so included is limited to Hotel Aggregated Data.. Hotel hereby further authorizes FreedomPay's use of Hotel Aggregated Data to improve the Solution and as expressly provided in this Participation Agreement. "Hotel Aggregated Data" means data collected or generated by FreedomPay as a result of FreedomPay providing Services that meets each of the following requirements: (a) Hotel's transactions cannot be identified or associated with Hotel directly or indirectly; (b) no personally identifiable data is included; and (c) no individual can be identified, contacted, or marketed to, directly or indirectly, from such data.
10. Return of Hotel Data; License to Use Hotel Data. Upon termination, Hotel may request, but subject to PCI DSS rules and all applicable laws (including statutes of limitation), and FreedomPay shall: (a) promptly provide to Hotel, in the format and on the media reasonably requested by Hotel, a copy of all or any part of the Hotel Data; (b) promptly return to Hotel, in the format and on the media reasonably requested by Hotel, all or any part of the Hotel Data that has exceeded established retention policies; and (c) erase or destroy all or any part of the Hotel Data in FreedomPay's or FreedomPay agents' possession that has exceeded established retention policies, and certify in writing to the Hotel that it and each of its Affiliates has performed the foregoing, in each case to the extent so requested by Hotel. Any archival tapes containing Hotel Data shall be used by Supplier and Supplier Agents solely for back-up purposes. Hotel hereby grants FreedomPay a perpetual, non-exclusive license to store, copy and use Hotel Data to the extent necessary to perform its obligations under this Participation Agreement and comply with applicable law and to use and disclose Hotel Aggregated Data for FreedomPay's business purposes. Hotel further acknowledges and agrees that IHG shall have full access to the transactions and data processed on behalf of Hotel by FreedomPay, including the Hotel Data. Such data and information may include names, services purchased, usage, billings, payment status, payment card data, and other information related to IHG's management of the service relationship with FreedomPay.
11. Right to Suspend Service. IHG reserves the right to suspend the services if Hotel violates any material term of this Participation Agreement.
12. Warranty. Hotel acknowledges that FreedomPay has provided to IHG the following terms on warranties and associated remedies:
- 12.1 Performance Warranty. FreedomPay represents, warrants and covenants that the Services will be performed (a) in a professional and timely manner and in accordance with the generally accepted industry best practices and (b) by adequate numbers of personnel with the education, experience, training and qualifications required to perform the tasks to which they are assigned, and (c) shall satisfy the Specifications set forth in the IHG-FreedomPay SPS Agreement, and perform in accordance with the related documentation. IHG's sole and exclusive remedy for breach of clause (a) shall be re-performance of such Services or, if FreedomPay cannot substantially correct such breach and re-perform the Services in a commercially reasonable manner, a refund of the Fees paid to FreedomPay for the defective Service. Non-performance by FreedomPay shall be excused if and to the extent resulting from non-performance by IHG or wrongful acts or omissions of IHG.
- 12.2 No Implied Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN, FREEDOMPAY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY GOODS OR SERVICES OR THE SYSTEM. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ARE HEREBY DISCLAIMED. FREEDOMPAY FURTHER DISCLAIMS ANY LIABILITY

FOR LOSS, DAMAGE OR INJURY TO HOTEL OR THIRD PARTIES AS A RESULT OF ANY DEFECT, LATENT OR OTHERWISE, IN THE GOODS WHETHER ARISING FROM THE APPLICATION OF THE LAWS OF STRICT LIABILITY OR OTHERWISE. FREEDOMPAY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

13. No Indirect Damages. IHG SHALL HAVE NO LIABILITY WITH RESPECT TO THE PERFORMANCE OF THIRD-PARTY GOODS OR THIRD-PARTY SERVICES. THE LIABILITY OF IHG ARISING OUT OF OR RELATING TO THIS PARTICIPATION AGREEMENT AND THE DIRECT SERVICES SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY HOTEL TO IHG FOR THE SERVICES GIVING RISE TO SUCH DAMAGES DURING THE PRIOR SIX MONTHS. Notwithstanding anything to the contrary contained in this Participation Agreement, IHG shall have no liability under this Participation Agreement or in any way related to the Secure Payment Solution for any incidental, indirect, exemplary, punitive or consequential damages, or any lost data, lost business, lost revenue or opportunity cost or damage to reputation or goodwill, howsoever arising (whether foreseeable or not, or within the contemplation of either Party) whether arising in contract or tort (including negligence and breach of statutory or other duty) or other form of equitable or legal theory. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECT IN THE SYSTEM OR DEFECT IN OR FAILURE TO PERFORM OR TIMELY PERFORM SERVICES UNDER THIS PARTICIPATION AGREEMENT SHALL BE A CREDIT FOR SERVICE PAYMENTS DUE UNDER THIS PARTICIPATION AGREEMENT.
14. Compliance. Hotel shall at all times be in material compliance with all applicable laws, regulations, and PCI DSS requirements relating to data security and privacy.
15. Co-Terminous Agreement. Hotel acknowledges and agrees that, if/when this Participation Agreement, the SPS Agreement, or Hotel's right to operate a hotel under an IHG brand expires or terminates for any reason, this Participation Agreement shall terminate and Hotel shall no longer be eligible to receive services under this Participation Agreement.
16. Assignment. Hotel shall not assign its rights or delegate its obligations under this Participation Agreement to any third party without IHG's prior written consent. This Participation Agreement will be binding upon the parties' respective successors in interest and permitted assigns.
17. Governing Law. This Participation Agreement shall be governed by and construed in accordance with the laws of the state of New York, without giving effect to the principles thereof relating to the conflicts of laws.
18. Entire Agreement. This Participation Agreement represents the entire agreement between the parties with respect to its subject matter and supersedes all prior discussions and agreements between the parties with respect to such subject matter.

By executing this Participation Agreement in the space provided below, the parties agree to be legally bound by the terms and conditions of this Participation Agreement.

AGREED BY Six Continents Hotels, Inc.	AGREED BY Hotel:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____



## ATTACHMENT 1 FreedomPay Pass-Through Terms

Hotel acknowledges that FreedomPay, Inc. is the provider of the payment gateway services provided to Hotel under this Participation Agreement between IHG and Hotel. Hotel agrees to the following pass-through terms required by FreedomPay:

### 1. WARRANTIES

1.1. Hotel shall be responsible for procuring and maintaining, at its sole cost, all hardware, software and data communication and connectivity required to connect to the System. Delivery of PCI-Validated Point-to-Point Encryption Secure Switching is subject to Hotel's compliance with the PIM and Hotel's acknowledgement thereof in the form set forth on Attachment 3. In the event Hotel does not comply with any obligation under the PIM, IHG may, but shall not be obligated, to perform any such obligation or otherwise mitigate such non-compliance, in which event IHG may charge Hotel reasonable fees to compensate IHG therefor, including, without limitation, IHG's then current list price for the applicable services. Further, a failure to comply with the PIM or the requirements of Section 3 below will result in the disallowance of the benefits to Hotel described in the PIM.

1.2. FreedomPay makes no representations or warranties, express or implied, as to any third-party services that FreedomPay enables or provides, including but not limited to fraud protection, 3-D Secure, DCC, loyalty or discount programs and/or any other ancillary services enabled or provided by FreedomPay in the future.

1.3. Hotel understands that the services are designed and provided for the sole purpose of facilitating the sale of Hotel's products and services and that FreedomPay is not responsible for the quality or quantity or other aspects of Hotel's products and services or those of any third party not under FreedomPay's control.

1.4. Hotel shall be responsible for procuring from its acquiring bank any necessary PIN keys and KSNs needed to allow pin-debit payment card transactions.

1.5. Hotel agrees that FreedomPay shall have no liability or obligation to Hotel for any transactions not submitted or reported to FreedomPay for settlement within sixty (60) days after the actual date of the transaction. For transactions submitted or reported after such time limit, FreedomPay will attempt to settle such transactions if the data is available, but FreedomPay will have no liability to Hotel if it is unable to settle such transactions.

1.6. FreedomPay may implement a hosted update on the FreedomPay system at such time as it determines, and (b) Hotel shall have the flexibility to commence implementing non-hosted updates according to IHG's schedule, which implementation shall be commenced no later than twelve (12) months after notice from FreedomPay and completed no later than twenty-four (24) months after such notice, unless such non-hosted update is required by law, network requirements or PCI requirements, or other applicable authority, in such case Hotel shall implement such non-hosted update in accordance with the date required in such law or requirement. If Hotel fails to implement any non-hosted update when required as set forth herein, FreedomPay reserves the right to terminate operational support for the prior release (even if Hotel continues to rely on the prior release) and will not be deemed in breach for doing so.

1.7. Unless otherwise agreed in writing by IHG in its reasonable discretion, a FreedomPay update shall not degrade the performance, functioning or operation of the FreedomPay solution and shall not cause the performance, functioning or operation of the Services to fail to meet the requirements of this Participation Agreement; provided, however, that the foregoing shall not apply to any FreedomPay updates that are required by law, network requirements, PCI requirements, acquirer requirements, or a change introduced by, any governmental authority, any regulatory body, a processor or card brand.

1.8. FreedomPay maintains a status alerting system program to notify Hotel about any FreedomPay system status issues. It is strongly recommended that Hotel enroll at [freedompay.statuspage.io](https://freedompay.statuspage.io) in order to access FreedomPay system status alerts.

1.9. Hotel acknowledges and agrees that it shall be solely responsible for obtaining any and all consumer consents needed in connection with the provision of any Service offered by FreedomPay, including third-party services, as required by applicable law.

1.10. FreedomPay's systems require full SKU level data to be transmitted with each transaction, and accordingly, Client must configure its eCommerce system to pass through full SKU level data with each transaction. Failure to

provide such full SKU level data will adversely affect FreedomPay's systems and may result in suspension of Hotel's access to the FreedomPay system, unless Client remedies such failure within thirty (30) days.

1.11. Prohibition on Use of Production Data (live PANs) in Testing. PCI rules prohibit the use of production data (i.e., live PANs) in testing and/or development. Accordingly, to the extent applicable, Hotel shall not use any production data in testing or development.

## 2. LIMITATION OF LIABILITY

2.1. DISCLAIMERS OF LIABILITY FOR CERTAIN ACTIONS. IF ANY OF THE FOLLOWING ACTIONS ARE TAKEN BY OR ON BEHALF OF HOTEL, OR HOTEL REQUESTS THAT FREEDOMPAY TAKE ANY OF THE FOLLOWING ACTIONS ON BEHALF OF HOTEL, CERTAIN NEGATIVE CONSEQUENCES WILL FOLLOW AND FREEDOMPAY'S LIABILITY WILL BE FURTHER LIMITED, ALL AS DESCRIBED BELOW:

- 2.1.1. OFFLINE MODE DISABLEMENT DISCLAIMER. IF OFFLINE MODE IS DISABLED, INTERNAL NETWORKING ISSUES IN HOTEL'S SYSTEMS WILL MAKE SUCH SYSTEMS UNABLE TO ACCEPT CREDIT CARD TRANSACTIONS. FURTHER, IF FREEDOMPAY'S GATEWAY IS OFF-LINE OR OTHERWISE UNAVAILABLE, HOTEL WILL NOT BE ABLE TO ACCEPT CREDIT CARD TRANSACTIONS AT ALL (I.E., IN OFF-LINE MODE). FREEDOMPAY IS NOT RESPONSIBLE FOR FREEDOMPAY'S SYSTEMS DOWNTIME RESULTING FROM OFFLINE MODE BEING DISABLED, OR FOR ISSUES THAT ARE CAUSED BY HOTEL'S INTERNAL NETWORK OR SYSTEMS, CAUSING SUCH SYSTEMS TO GO OFFLINE, AND FREEDOMPAY'S SERVICE LEVELS WILL BE DEEMED NOT IMPACTED IN ANY WAY BY SUCH DOWNTIME. FOR CLARITY, IF OFFLINE MODE IS DISABLED, HOTEL WILL NOT BE ELIGIBLE FOR ANY REFUNDS OF FEES, AND FREEDOMPAY'S WARRANTIES ARE VOIDED.
- 2.1.2. CVV DISABLEMENT DISCLAIMER IF PROMPTING FOR THE CVV IS DISABLED (FOR MANUAL TRANSACTIONS ONLY), HOTEL ACKNOWLEDGES AND AGREES THAT ANY INTERCHANGE DOWNGRADES RESULTING FROM SUCH CVV DISABLEMENT, AND ANY LIABILITY FOR INCREASED INTERCHANGE CHARGES AND MERCHANT SERVICES CHARGES RESULTING FROM SUCH CVV DISABLEMENT ARE THE SOLE OBLIGATION OF HOTEL, AND FREEDOMPAY SHALL HAVE NO LIABILITY TO HOTEL FOR SUCH CHARGES.
- 2.1.3. PIN KEY DISCLAIMER. IF EITHER (a) HOTEL IS UNABLE TO OBTAIN THE PROPER KSN FROM THEIR ACQUIRING BANKS FOR ITS PIN KEY OR 2) FREEDOMPAY'S KEY INJECTION VENDOR DOES NOT HAVE THAT PIN KEY WITHIN ITS SYSTEM AND IT CANNOT BE OBTAINED PRIOR TO IMPLEMENTATION, ANY CONSUMER WHO PRESENTS A CHIP AND PIN CARD WILL BE REQUIRED TO UTILIZE CHIP AND SIGNATURE INSTEAD. CHIP AND SIGNATURE AND CHIP AND PIN ARE KNOWN AS "CARD VERIFICATION METHODS," OR CVMs. EACH ISSUED CREDIT CARD HAS A PREFERRED CVM. IF THAT PREFERRED CVM IS NOT USED, THAT SPECIFIC TRANSACTION FALLS UNDER THE EMV LIABILITY SHIFT, MEANING IF THAT CONSUMER DISPUTES THE TRANSACTION THEN HOTEL MAY BE LIABLE FOR FRAUD OR CHARGEBACKS, EVEN THOUGH IT WAS AN EMV TRANSACTION. FREEDOMPAY IS NOT LIABLE FOR ANY FRAUD OR CHARGEBACKS TO HOTEL IF A PIN KEY IS BE AVAILABLE FOR HOTEL'S IMPLEMENTATION.
- 2.1.4. CVM DISABLEMENT DISCLAIMER. HOTEL HEREBY ACKNOWLEDGES THAT IT HAS BEEN INFORMED AND FULLY UNDERSTANDS THAT ANY DISABLEMENT OF THE PREFERRED CVM REQUIREMENTS FOR CHIP CARDS; OR OTHER SUPPRESSING OF PREFERRED CVM REQUIREMENTS, IS AT HOTEL'S SOLE RISK AND FREEDOMPAY SHALL HAVE NO LIABILITY TO HOTEL OR ANY THIRD PARTY FOR FRAUD CLAIMS OR CHARGEBACKS; A FRAUD CLAIM WILL RESULT IN A LOST CHARGEBACK TO HOTEL DESPITE THE IMPLEMENTATION OF EMV BY FREEDOMPAY IN HOTEL'S SYSTEM, AND THAT AS SUCH, HOTEL ASSUMES ALL RISK THAT DISABLING PREFERRED CVM REQUIREMENTS ENTAILS, INCLUDING LIABILITY FOR THE CHARGEBACKS.

### 3. INTELLECTUAL PROPERTY RIGHTS

3.1. FreedomPay Technology. Hotel acknowledges that all right, title and interest in and to all patents, copyrights, trade secret, trademark and other intellectual property rights in the goods and services (other than third-party Goods and Third-Party services), together with all modifications, improvements, enhancements, updates, localizations and translations thereof (collectively, "FreedomPay Technology"), are, and at all times will remain, the sole and exclusive property of FreedomPay, the provider of the Secure Switching service. Nothing contained in this Participation Agreement may directly or indirectly be construed to assign or grant to Hotel or any third party any license, right, title or interest in or to the FreedomPay Technology except as necessary to use the goods or services or as otherwise expressly provided in this Participation Agreement. The license granted to Hotel to the software embedded in the Products and Secure Switching and granted to Hotel in its agreement with IHG is limited to facilitating the sale of Hotel's products and services and does not include any other rights of any type. FreedomPay owns all Remaining Rights. "Remaining Rights" means, except for the limited license granted to Hotel, all other rights in the software, including but not limited to, improvements, modifications, alterations, additions and deletions to any trademark, logo, copyright or other notices, legends, symbols, labels, displays, sounds, other media or characteristics on or in the FreedomPay Technology on the Products.

3.2. Restrictions. Hotel will only use the goods and services for its own business purposes and will not license, sell, resell, rent, lease, transfer, distribute or otherwise commercially exploit or make the goods and services available to any third party for any purpose or in any manner not authorized by IHG or FreedomPay. Hotel may not disassemble, decompile or reverse engineer any FreedomPay technology and shall not permit or enable any third party to do so. Hotel will use commercially reasonable efforts to prevent unauthorized access to or use of the goods or services and will notify FreedomPay immediately if it becomes aware of any unauthorized access to or use of the goods or services by any person and hereby permits IHG and FreedomPay to monitor the use of the goods and services by Hotel to confirm Hotel's compliance with this Participation Agreement and to assess the quality of the goods and services. Hotel agrees to comply with all applicable laws and regulations in using the goods and services, will not use the goods or services for any unlawful purpose, and will not engage in any activity that interferes with or disrupts the services.

3.3. Force Majeure. Except as otherwise provided herein, neither Hotel, IHG, nor FreedomPay is liable for failing to fulfill its obligations (except for payment obligations) due to acts of God, acts of war, failure of utility or communications infrastructure, or other causes beyond the non-performing party's reasonable control. FreedomPay will not be liable for failing to fulfill its obligations if it is prohibited from doing so by any security or other measures, imposed by Hotel, restricting access to any equipment.

## ATTACHMENT 2

### Security, Availability, and Confidentiality Statement

#### Overview

FreedomPay's commerce platform is designed to deliver transaction services to each of our customers. The FreedomPay infrastructure is physically located on servers in a dedicated or locked caged at one of the many data centers in the FreedomPay network. These data centers provide power, network and carrier services. FreedomPay owns, operates and is responsible for provisioning, monitoring, and managing the infrastructure, for providing support to FreedomPay customers.

#### Data Storage

Our platform was designed and optimized by us specifically to host transaction services and related applications and has multiple levels of redundancy built in. The applications and services themselves run on separate hardware nodes on which the data is stored. Application data that is collected is stored on separate storage devices with encryption employed for sensitive information.

#### Facilities

Access to the data centers is limited to authorized personnel only, as verified by identity verification measures. Physical security measures include: on-premises security guards, closed circuit video monitoring, and additional intrusion protection measures. Within the data centers, all equipment is stored securely with multiple security layers.

#### People and Access

Our support team maintains an account on all systems and applications for the purposes of maintenance and support. This support team accesses hosted applications and data only for purposes of application health monitoring and performing system or application maintenance, and upon customer request via our support system. Within FreedomPay, only authorized FreedomPay employees have access to application data. Authentication is done by only accepting incoming SSH connections from FreedomPay and internal data center IP addresses. Our transaction systems platform is designed to allow application data to be accessible only with appropriate credentials, such that one customer cannot access another customer's data without explicit knowledge of that other customer's login information. Customers are responsible for maintaining the security of their own login information.

#### Third Party Assurance

FreedomPay has successfully completed a SOC 2 Type II audit and has received an "unqualified" opinion from a third party attesting that FreedomPay's controls comply with the Trust Services Principles security, availability, and confidentiality framework issued by the American Institute of Certified Public Accountants (AICPA), and the Canadian Institute of Chartered Accountants (CICA). FreedomPay's SOC 2 report provides information and independent assurance about our controls that affect the security, availability, and the confidentiality of the information processed by the systems that drive our products. The SOC 2 Type 2 report is the most stringent SOC type and includes a detailed description of our system; the evaluation criteria applicable to the principle(s) being reported on; our controls designed to meet these criteria; a written assertion by our management regarding the description and the design and operation of the controls; and the service auditor's opinion on whether the description is fairly presented and the controls are suitably designed and operating effectively. The report also includes the service auditor's description of tests performed and results of the tests.

#### Service Provider Obligations

FreedomPay is responsible for the merchant cardholder data that it possesses, processes, stores, or transmits on behalf of the customer, and will maintain compliance with all applicable PCI DSS requirements. Customers and clients are still responsible for the components of PCI compliance related to their location and related systems. Further, FreedomPay transmits cardholder and other sensitive authentication data to the customer's credit card processing provider to process transactions through the card networks. Customers are requested to notify us in the event that they experience issues that may affect the security, availability or confidentiality of the FreedomPay services they are utilizing.

**ATTACHMENT 3**  
**PIM Acknowledgement**

**ACKNOWLEDGMENT**

The undersigned merchant hereby acknowledges that it has received, read and understood the FreedomPay P2PE Instruction Manual (PIM) and further acknowledges that continuing compliance with the FreedomPay PIM is a PCI requirement for SAQ P2PE-HW merchant scope reduction qualification. Capitalized terms in this Acknowledgment have the meanings set forth in the PIM.

Merchant acknowledges that: the PIM is provided solely for informational purposes and use as a program implementation guideline for PCI DSS scope reduction; the PIM is based on PCI P2PE and/or DSS guidelines in effect as of the date of this manual; nothing in the PIM is or may be construed as a representation or warranty of any nature whatsoever; that Freedom Pay, Inc. disclaims liability for any errors or omissions in the PIM; FreedomPay does not validate or warrant merchant compliance with PCI DSS or merchant eligibility for any validation or other accreditation standards; review or approval by FreedomPay of merchant systems or processes does not constitute a representation or warranty by FreedomPay of merchant system effectiveness or suitability and shall not be deemed to transfer risk or liability to FreedomPay; the use of any POI device other than a FreedomPay-approved POI device is at merchant's sole risk; FreedomPay has no duty to inspect data transmitted by merchant for unencrypted cardholder data introduced by the use of POI devices not supplied by FreedomPay; data processing by FreedomPay does not constitute a warranty that merchant is within the scope of the FreedomPay P2PE Solution; and that FreedomPay makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose or otherwise.

**ACKNOWLEDGED**

Merchant: \_\_\_\_\_

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

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

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

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

## MPA ADDENDUM FOR NEW PROPERTIES

### ADDENDUM TO MERCHANT PROCESSING APPLICATION AND AGREEMENT FOR NEW PROPERTIES

This Addendum to Merchant Processing Application and Agreement for New Properties ("**Addendum**") is entered into between FDS Holdings, Inc. ("**First Data**" or "**Processor**"), Bank of America, N.A. ("**Bank**") (collectively with First Data, "**Servicers**", "**us**", "**our**" or "**we**"), and the undersigned client ("**Client**", "**you**", or "**your**") as of the date signed by First Data and Client ("**Addendum Effective Date**"). Capitalized terms used but not defined in this Addendum are defined in the Terms and Conditions or elsewhere in the Agreement.

#### 1 Background

- 1.1 Client has been referred to First Data in connection with a Merchant Services Referral Agreement between First Data and Six Continents Hotels, Inc. ("**IHG**") dated October 16, 2014 (as amended from time-to-time, "**IHG Agreement**") pursuant to which IHG refers hotels and other establishments that are either owned, franchised, or operated by IHG or its Affiliates ("**Service Recipients**") to First Data for payment card processing services and other Services.
- 1.2 This Addendum, along with the Merchant Processing Application and Agreement ("**Application**"), Fee Schedule attached as Exhibit A ("**Fee Schedule**"), General Terms and Conditions attached as Exhibit B ("**Terms and Conditions**"), the Your Payments Acceptance Guide, and any other Schedules or other Contract Documents, as modified from time to time, collectively are the "**Agreement**" for Client's receipt of the Services.
- 1.3 This Addendum is part of the Agreement and modifies the Agreement, but does not affect the IHG Agreement.

#### 2 Fee Schedule

The Fee Schedule set forth in Section 7 of your Application is deleted in its entirety and replaced with the Fee Schedule attached as Exhibit A. For avoidance of doubt, in addition to the amounts set forth in the Fee Schedule, you are responsible for all amounts set forth or described in the Terms and Conditions or elsewhere in the Agreement.

#### 3 General Terms and Conditions

The Terms and Conditions, attached as Exhibit B, govern our relationship with you. The Terms and Conditions impact your and our legal rights and responsibilities; please read them carefully.

#### 4 Relationship to IHG

- 4.1 The Agreement is an independent agreement between First Data, Bank, and Client, separate and distinct from (and not an amendment to) the IHG Agreement.
- 4.2 Servicers acknowledge and agree that: (a) Client is solely liable for its obligations and liabilities under the Agreement; (b) Client does not have any liability or obligation on behalf of any other Service Recipient or IHG; and (c) IHG does not have any liability whatsoever (and is not deemed to assume any liability) to Servicers or any Third Party, directly or indirectly, for Client's acts, omissions, performance, or nonperformance under the Agreement.
- 4.3 Client acknowledges and agrees that First Data may disclose the Agreement and all personal information of Client collected under the Agreement to IHG. Information disclosed may include Client's name, services

purchased, monthly or annual usage, total billings, payment status, Transaction Data, and any other information Servicers may disclose under the Agreement or that is related to the Services.

**5 Entire Agreement**

This Addendum, together with the Application, the Fee Schedule, the Terms and Conditions, the Your Payments Acceptance Guide, and any other Schedules or other Contract Documents, as modified from time to time, collectively are the entire Agreement between the parties for the Services; together, they supersede and replace any other agreements between the parties for the Services.

**[Signature Page Follows]**

**AGREED AND EXECUTED:**

**No alterations or changes to the Agreement will be accepted; any alterations or changes made are null and void and have no force or effect. Processor's and Bank's signatures are effective as of the date Client signs this Addendum.**

**[Insert Client Name]  
("Client")**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FDS Holdings, Inc.  
("Processor")**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Bank of America, N.A.  
("Bank")**

**By FDS Holdings, Inc.  
pursuant to a Limited Power of Attorney**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A  
FEE SCHEDULE**

**1 Servicers Fees**

Client will pay First Data the fees described below for the Services ("**Servicers Fees**"). Servicers Fees are based on the Client's business methods and the types of transactions it will submit for processing that the Client disclosed to First Data. First Data may modify the Servicers Fees if the Client materially changes its business methods or the types of transactions that it submits for processing.

<b>Servicers Fees</b>	<b>Amount</b>	<b>Driver</b>
Authorization (Visa, Mastercard, Discover, DNP Card Types, American Express, and Debit Cards)	\$0.013 <sup>1</sup>	per Authorization attempt
Transaction (Visa, Mastercard, Discover, DNP Card Types, American Express, and Debit Cards) <sup>2</sup>	\$0.065 <sup>3</sup>	per transaction
Authorization (Voice) <sup>4</sup>	\$0.95	per call
Chargeback	Waived	per chargeback
ACH Deposit	Waived	per deposit
ACH Reject	\$25.00	per rejection
Additional Authorization Fee for Dial Transactions	\$0.005	per Authorization attempt via dial
Custom Development Fee	\$200	per hour of development / coding

<sup>1</sup> This Authorization Fee may be reduced to \$0.01 based upon terms in the IHG Agreement. Any reduction in this Authorization Fee does not give rise to a termination right under the Agreement.

<sup>2</sup> This amount is charged for each transaction. Please note that neither Bank nor Processor settles American Express transactions. Depending on your structure for accepting Discover Cards and other DNP Card Types, either Processor or Discover (but not Bank) settles your Discover and DNP Card Type transactions.

<sup>3</sup> Pursuant to the IHG Agreement, of the \$0.065 Transaction Fee paid to Servicers for a transaction, \$0.060 of such Transaction Fee is paid to IHG as the IHG Security Fee.

<sup>4</sup> This fee is in addition to the applicable Authorization Fee and the applicable Transaction Fee.

**2 Third Party Based Fees**

Client will pay Processor all fees, fines, assessments, penalties, obligations, liabilities, adjustments, and other charges and amounts a Card Organization, Issuer, or other Third Party imposes, establishes, or sets that are related to Client's transactions, and all related costs and expenses ("**Third Party Based Fees**"). Card Organizations and other Third Parties may modify their Third Party Based Fees during the Term of the Agreement. Modifications to Third Party Based Fees will be effective on the dates set by the Card Organizations or other third parties.

Third Party Based Fees are in addition to the Servicers Fees and include, without limitation, the following:

Interchange (including any amounts associated with downgraded transactions)

Chargebacks (you are responsible for all transactions, or portions of transactions, that are charged back and all related amounts)

Excessive Chargebacks

Dues and Assessments

Access Fees

Debit Network Fees

Card Organization Pass Through Fees

Other Fees and Amounts (including Data Compromise Losses and other amounts arising from a Compromised Data Event)

**[End of Exhibit A – Fee Schedule]**

**EXHIBIT B**  
**GENERAL TERMS AND CONDITIONS**

## GENERAL TERMS AND CONDITIONS

### 1 Overview Of Agreement

- 1.1 These General Terms and Conditions Contain Important Information and Affect Your Legal Rights.** Please read these General Terms and Conditions ("**Terms and Conditions**") carefully. They contain important information and affect your and our legal rights and responsibilities. Capitalized terms are defined in Section 20 or elsewhere in these Terms and Conditions.
- 1.2 Our Agreement.** Our agreement with you for the Services consists of: (a) your Application; (b) your MPA Addendum; (c) these Terms and Conditions; (d) the Your Payments Acceptance Guide; (e) the Fee Schedule any other Schedules (including Interchange Rate Schedules); and (f) any addenda, amendments, supplements, or Schedules to the foregoing, as each is modified and supplemented from time to time (each a "**Contract Document**" and collectively the "**Agreement**"). The Agreement governs your use of the Services. By signing the Application, you acknowledge and agree that you have read, and that you are bound by, the Agreement. No alterations to the Agreement will be accepted and, if made, any such alterations shall not apply.
- 1.3 Cards and Card Organizations.** Cards present risks of loss and non-payment that are different than those with other payment systems, including risks related to Chargebacks and other Cardholder disputes. In deciding to accept Cards, you should be aware that you are also accepting these risks and that you are agreeing to comply with the rules and requirements of Visa®, Mastercard®, Discover®, American Express®, and other Card Organizations. With respect to Chargebacks – we do not decide which transactions are charged back and we do not control the ultimate resolution of Chargebacks. While we can attempt to reverse a Chargeback to the Issuer, we can only do so only if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully chargeback a Card transaction even though you have provided your goods or services and otherwise are legally entitled to payment from your customer. While you still may be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions. You are responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.
- 1.4 Card Types.** Your Agreement indicates the types of payments you are enabled to accept. Depending on the equipment you are using to accept Card transactions, you may not be able to accept Debit Cards through use of a PIN.
- 1.5 Bank Responsibilities; Non-Bank Services.** Notwithstanding anything in the Agreement to the contrary, Bank only provides, and its obligations and liability are limited to, sponsorship, settlement, and related Bank services for certain Card transactions, which do not include Non-Bank Card transactions or Non-Bank Services. Bank is not responsible for, and has no liability to you in any way with respect to, Non-Bank Card transactions or Non-Bank Services. See Section 16.1 for additional details.

### 2 Services And Third Party Services

- 2.1 The Services.** The term "**Services**" means the activities we undertake to authorize, process, and settle Card transactions undertaken by Cardholders at your Locations, and all other equipment, products, and services we provide under the Agreement. Subject to Card Organization Rules, Services may be performed by Servicers, only Processor, our Affiliates, our agents, or our service providers. You may use the Services only for your own proper business purposes and only in accordance with the Agreement. You may not use the Services for personal, household, or non-commercial purposes.
- 2.2 Exclusivity.** During the term of the Agreement, you will use us as your exclusive provider of all Services within the United States of America except with respect to POS terminal transactions initiated at parking, spa, gift shop, restaurant, bars, and lounge locations.
- 2.3 Service Records.** We will retain legible copies of all transaction records in accordance with Applicable Law and Card Organization Rules. You must provide all Sales Drafts, Credit Drafts, and other transaction records requested by us within the time limits established by Card Organization Rules. We will provide all transaction records requested by you, to the extent such requests are reasonable, within the time limits established by Card Organization Rules.
- 2.4 Restrictions on Your Use of the Services.** You shall not, and you shall not permit any Third Party to, do or attempt to do any of the following:
- (a) Sell, distribute, lease, license, sublicense, assign, or otherwise transfer or disseminate any part of the Services, Software, or Intellectual Property, or otherwise permit any Third Party to access or use the Services, Software, or Intellectual Property.
  - (b) Copy, modify, enhance, translate, supplement, derive source code or create derivative works from, reverse engineer, decompile, disassemble, or otherwise reduce to human-readable form or attempt to reconstruct the Services, Software, or Intellectual Property (or any portion thereof or underlying ideas thereof).
  - (c) Use altered versions of the Services, Software, Intellectual Property, or any portion thereof; or use, operate, or combine any Services, Software, or Intellectual Property with other products, materials, or services in a manner

inconsistent with the Agreement.

- (d) Use the Services, Software, or Intellectual Property, or any portion thereof, as a standalone or non-integrated program or in any other manner not contemplated by the Agreement.
- (e) Perform or attempt to perform any actions that would interfere with the proper working of the Services, prevent access to or use of the Services by other users, or, in our reasonable judgment, impose an unreasonably large or disproportional load on any platform or infrastructure that is used in connection with providing the Services.
- (f) Remove, modify, or relocate any copyright notice or other legend(s) denoting our or any Third Party's proprietary interests in the Services, Software, Documentation, or any other Intellectual Property.
- (g) Access or attempt to access Services, Software, or other Intellectual Property (or any portion thereof) that we do not make available for your use pursuant to the Agreement.
- (h) In connection with your use of the Services, award any prizes or offer any incentives that would invoke state or federal regulations governing online gambling, online lottery, lottery, sweepstakes, or contests of chance.

**2.5 You Are Responsible for Your Merchant Account and Merchant Systems.** You are exclusively responsible for: (a) all activity and transactions (including fraudulent activity and fraudulent transactions) that occur in connection with your Merchant Account or through your Merchant Systems, regardless of whether such activity and transactions are undertaken by authorized personnel, unauthorized personnel, Merchant Providers, or other Third Parties; (b) ensuring that the Merchant Account and Merchant Systems, including any point-of-sale equipment, terminals, and gateways, are used in accordance with the Agreement and are secure; and (c) implementing appropriate controls to prevent your authorized personnel, your unauthorized personnel, and Third Parties from submitting credits, voids, and other transactions that are not bona fide transactions. For avoidance of doubt, you are exclusively responsible and liable for: (x) all transactions sent to us for processing through your Merchant Account or Merchant Systems (including fraudulent transactions); (y) all use of the Services; and (z) all related Servicers Fees, Third Party Based Fees, Chargebacks, and other amounts, whether arising from bona fide, unauthorized, or fraudulent activities or transactions.

## 2.6 Group Members.

- (a) **Group Owner Benefits.** We may provide you the Group Owner Benefits. Without prior notice to you, we may stop providing you the Group Owner Benefits if you cease being a Group Member, if the Group Owner Agreement is not in effect, or at the Group Owner's request.
- (b) **Providing Information about You to the Group Owner and Third Parties.** Subject to Card Organization Rules and Applicable Law, we may: (i) provide the Group Owner information we obtain about you, including information related to your business, owners, management, Card transactions (including Transaction Data), MID(s), and Merchant Account or related to the Services; and (ii) provide any such information to any Third Party at the Group Owner's request. You consent to our providing all such information to the Group Owner and to Third Parties, all of which may use such information for any lawful purpose.
- (c) **New Group Owner Benefits.** From time to time, the Group Owner and we may modify the Group Owner Agreement and the Group Owner Benefits in order to provide Group Members, including you, with new products or services ("**New Group Owner Benefits**") as part of the Group Owner program. You authorize us to modify the Services provided to you under the Agreement, and related fees and Agreement terms, upon notice to you, to the extent necessary to provide you any New Group Owner Benefits, and any such modifications shall not give rise to any termination right under Section 6.2 or under Section 19.7.
- (d) **Following Group Owner's Instructions.** From time to time, the Group Owner may ask or instruct us to provide the Services in a certain manner, in connection with certain communications, as part of a certain program, or as the Group Owner otherwise specifies ("**Group Owner Instructions**"). For example, Group Owner Instructions may ask us to follow certain Debit Card routing instructions or instruct us to set up Services in a certain manner. You consent to our providing you the Services in accordance with the Group Owner Instructions and you waive all claims you may have against us, and related losses, arising from our following the Group Owner Instructions.
- (e) **Remitting Fees to Group Owner.** Depending on our and your relationship with the Group Owner, certain fees that are assessed and collected pursuant to the Agreement may be assessed and collected on behalf of the Group Owner and remitted to the Group Owner. You authorize us to assess, collect, and remit to the Group Owner such fees.
- (f) **Waiver of Liability.** We are not responsible for determining whether you are a Group Member. We shall not have any liability to you in connection with any of our acts and omissions under this Section 2.6, regardless of whether you are or are not a Group Member. You waive all claims, suits, and causes of action against us, and all related losses, related to our acts and omissions under this Section 2.6.

**2.7 Third Party Services.** Third Party Services are not governed by the Agreement. We are not responsible for Third Party Services or for any provider of Third Party Services, even if we recommended them to you. With respect to Third Party Services, you are solely and exclusively responsible for: (a) determining whether Third Party Services can meet your needs

and requirements; (b) reviewing, understanding, and complying with all terms and conditions for Third Party Services; (c) all fees, charges, and other amounts arising from Third Party Services, including any amounts you owe to Third Parties and any amounts that Third Parties owe to us or Card Organizations; (d) the integration and interaction between Third Party Services and our Services; (e) all acts and omissions of providers of Third Party Services; and (f) all other obligations and risks related to Third Party Services. If you download, access, or obtain any content through Third Party Services, you do so at your own risk. Providers of Third Party Services may have their own websites; we have no liability for such websites and any privacy policy we may have is not in effect when you visit such websites.

- 2.8 Integration of Third Party Services.** You are solely responsible for obtaining any programming, technical support, and services needed for your systems to function with our systems, and for all related agreements, fees, and costs. This may include obtaining hardware, software, and internet data access from a Third Party. If a Service relies on online connectivity, you assume all risk, responsibility, and liability associated with transactions that you conduct while the Service is offline.

### 3 Card Organization Rules, Applicable Law, Your Payments Acceptance Guide, And Conflicts

- 3.1 Card Organization Rules.** You must comply with the Card Organization Rules, including the Payment Card Industry Data Security Standard (“**PCI DSS**”), applicable to the Card types you accept. You are responsible for staying up to date with all changes to Card Organization Rules and maintaining compliance with Card Organization Rules. Card Organization Rules may be available on websites such as <https://usa.visa.com>, <http://www.mastercard.com/us/merchant/support/rules.html>, [www.discovernetwork.com/en-us](http://www.discovernetwork.com/en-us), and [www.americanexpress.com/merchanttopguide](http://www.americanexpress.com/merchanttopguide), as links and their content may change from time to time.
- 3.2 Applicable Law.** Each party is responsible for determining all Applicable Law that is applicable to it and for complying with all such Applicable Law in connection with the Agreement.
- 3.3 Your Payments Acceptance Guide.** You agree to comply with the Your Payments Acceptance Guide, as it may change over time (“**Your Payments Acceptance Guide**”). The current Your Payments Acceptance Guide is available at [www.businessstrack.com](http://www.businessstrack.com). To the extent of any inconsistencies between these Terms and Conditions and the Your Payments Acceptance Guide, these Terms and Conditions will govern.
- 3.4 Conflicts.** For the avoidance of doubt, your use of the Services, the transactions you process, and all of your acts and omissions must comply with the Agreement, Applicable Law, and Card Organization Rules (including PCI DSS). If there is a conflict between Applicable Law, Card Organization Rules, and the Agreement, the conflict shall be governed in the following order of precedence: (1) Applicable Law; (2) Card Organization Rules; and (3) the Agreement.

### 4 Data Security and Third Parties Used by Client

**The following is important information regarding the protection of Cardholder data. Please review carefully as failure to comply can result in substantial liabilities and termination of the Agreement.**

#### 4.1 Payment Card Industry Data Security Standard.

- (a) **You Must Comply with PCI DSS.** As part of your obligation to comply with Card Organization Rules, you are required to comply with PCI DSS. PCI DSS compliance is focused on Merchant Systems where Cardholder data can be accessed, processed, stored, or transmitted, including external connections into your network, connections to and from the authorization and settlement environment (e.g., connections for employee access or for devices such as firewalls and routers), and data repositories outside of the authorization and settlement environment. Information about PCI DSS can be found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org). You also are solely responsible for ensuring that all Merchant Providers, Merchant Systems, Third Parties, Third Party Services, equipment, and software that you use in connection with Card transactions comply with Card Organization Rules, including PCI DSS.
- (b) **Non-Compliance.** The Card Organizations or we may impose fines or penalties, or restrict you from accepting Cards, if it is determined that you are not compliant with the applicable data security requirements. Subject to Section 4.3, we may in our sole reasonable discretion suspend certain or all Services under the Agreement if we reasonably believe in good faith and based on evidence that an actual or suspected data security compromise has occurred, provided that we will use reasonable efforts to provide you advance written notice of such suspension, unless such notice is prohibited by Applicable Law or Card Organizations Rules. We will use commercially reasonable efforts to implement a workaround that allows you to continue receiving Card processing services from us during the suspension and we will remove the suspension and restore Services promptly after the threat has been resolved. If we reasonably believe in good faith and based on evidence that actual data security compromise has occurred which creates liability exposure for us, we may terminate the Agreement upon written notice to you.
- (c) **We Must Comply with PCI DSS.** We, and the systems and service providers we use, also must comply with PCI DSS and any additional Card Organization Rules applicable to our Services.

- 4.2 Compliance Audits.** Each party may be subject to ongoing validation of its compliance with PCI DSS standards. Furthermore, if we suspect a breach of your compliance obligations under the Agreement, we retain the right to conduct an audit at your expense, performed by us or a Third Party designated by us to verify your compliance, or that of your

agents or Merchant Providers.

- 4.3 Immediate Notice Required.** If Transaction Data is known or suspected of having been accessed or retrieved by any unauthorized Third Party, you must contact us immediately and in no event more than 24 hours after becoming aware of such activity. If we become aware of any unauthorized access to the Transaction Data, we will contact you promptly after becoming aware of such activity, unless otherwise prohibited by Applicable Law or Card Organizations Rules.
- 4.4 Your Compromised Data Event.** If a Compromised Data Event (as defined in Section 4.8) occurs or is suspected to have occurred, you must, at your own expense: (a) perform or cause to be performed an independent investigation, including a forensics analysis performed by a certified forensic vendor acceptable to us and the Card Organizations in accordance with Card Organization standards, of any data security breach of Cardholder data or Transaction Data; (b) provide a copy of the certified forensic vendor's final report regarding the incident to us and the Card Organizations; (c) perform or cause to be performed any remedial actions recommended by any such investigation; and (d) cooperate with us in the investigation and resolution of any security breach. Notwithstanding the foregoing, if required by a Card Organization, we will engage a forensic vendor approved by a Card Organization at your expense. You must cooperate with the forensic vendor so that it may immediately conduct an examination of your equipment and other Merchant Systems, and your and Merchant Providers' procedures and records, and so that it may issue a written report of its findings.
- 4.5 Our Data Security Event.** If we are determined by a Card Organization to have breached our data security obligations under Applicable Law or the Card Organization Rules, resulting solely from our independent acts or omissions which results in the actual, unauthorized disclosure of personally identifiable consumer information, including but not limited to Cardholder data that is submitted to us by you hereunder, (a "**Data Security Event**"), we will be responsible for performing each of the actions set forth in subparts (a) and (c) of Section 4.4.
- 4.6 Merchant Providers.**
- (a) **Data Security Requirements Apply to Merchant Providers.** The data security standards set forth in this Section 4 also apply to Merchant Providers. Before you engage any Merchant Provider, you must provide to us in writing the Merchant Provider's legal name, contact information, and intended function. You acknowledge and agree that you will not use, or provide Cardholder data access to, any Merchant Provider until you receive our approval (which approval shall not be unreasonably withheld) and, if required, confirmation of our registration of that Merchant Provider with applicable Card Organizations.
  - (b) **Merchant Provider Compliance.** You must ensure that you and Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by us or a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Card Organization Rules, including without limitation, those requiring security of Cardholder data. You may allow Merchant Providers access to Cardholder data only for purposes authorized under and in conformance with the Card Organization Rules. You are responsible for all our costs and expenses associated with our review, approval, certification (and recertification as may be required by us or the Card Organization Rules) and registration of any Merchant Providers.
- 4.7 Data Security Measures; Fraud.** Security features such as CAPTCHA, velocity filters, the Address Verification Service, and requiring a Card Verification Code for Card Not Present Transactions can help combat fraud. Using AVS when submitting Authorization requests for Card Not Present Transactions can help you identify potentially fraudulent transactions and can help lower Card Organization interchange rates, but it does not guarantee a transaction is valid and the AVS response does not impact whether an Authorization request is approved or denied. We may charge you an AVS fee for any AVS request you submit, even if we are not able to provide a response to the request. You are responsible for all Chargebacks, Third Party Based Fees, Servicers Fees, and other amounts arising from fraudulent activity processed through your Merchant Systems and/or your Merchant Account (regardless of any AVS response that you receive).
- 4.8 Costs.** If you or a Merchant Provider (or other Third Party used by you) are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any loss, disclosure, theft or compromise of Cardholder data or Card transaction information or are determined to have caused Cardholder data to be put at risk (together, "**Compromised Data Events**") and regardless of your belief that you have complied with the Card Organization Rules or any other security precautions and are not responsible for the Compromised Data Event, you must promptly pay us for all related expenses, claims, assessments, fines, losses, costs, penalties, and Issuer reimbursements imposed by the Card Organizations against us (together, "**Data Compromise Losses**"). In addition to the foregoing, you must also pay us promptly for all expenses and claims made by Issuers against us alleging your responsibility for the Compromised Data Event, apart from any claim procedures administered by the Card Organizations. We agree not to pass through to you any amounts imposed upon us by the Card Organizations in connection with our Data Security Event.

## 5 Settlement

- 5.1 Settlement Generally.** We will be required to settle only Card transactions made using Cards of Card Organizations that (a) we support for full acquiring services and (b) you have elected to accept and we have approved. We will not be

obligated to settle with you for any such Card transaction before we have settled for it with the related Card Organization.

- 5.2 Net Settlement.** Unless otherwise agreed to in writing to the contrary, all Servicers Fees are deducted daily. All settlements to you for your transactions will be net of Credits, adjustments, Servicers Fees, Third Party Based Fees, Chargebacks, and any other amounts then due from you.
- 5.3 Payments to You Are Provisional.** All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct our fees provided no such amounts are disputed by you in good faith, our final audit, Chargebacks (including our related losses), and Third Party Based Fees (including fees, fines, and any other charges imposed on us by the Card Organizations due to your noncompliance with Card Organizations Rules). You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees, Servicers Fees, Third Party Based Fees, pending Chargebacks, and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to you from us, or our respective Affiliates for Services provided under the Agreement. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after your receipt of the invoice.
- 5.4 Good Faith Disputes.** Notwithstanding anything to the contrary in the Agreement, if any amounts debited, credited, or otherwise deducted by us are disputed by you in good faith, we will use good faith efforts to work with you to resolve the dispute in a timely manner and promptly return any such disputed amounts that are owed to you.
- 5.5 Funding Delays.** We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by you or any Third Party, including, without limitation, any delay in settlement funding for a Card transaction from a Card Organization to us.
- 5.6 Changes in Funding and Suspension of Funding.** In addition to any other remedies available to us under the Agreement, you agree that should any Event of Default by Client set forth in Section 12.3 (subject to any available cure periods set forth in Section 12.3) occur, we may, with or without notice, change processing timing or accelerate payment terms and/or suspend credits or other payments of any and all funds, money, and amounts now due or hereafter to become due to you pursuant to the terms of the Agreement, until we have had reasonable opportunity to investigate such event. Notwithstanding the foregoing, we will make reasonable efforts to notify you as promptly as practically possible of any such change or suspension.
- 5.7 Settlement Account Information.** You acknowledge and agree that transfers to and from the Settlement Account shall be based on the account number and routing number supplied by you. We are not responsible for detecting errors in any Settlement Account information you provide, including the account numbers and routing numbers, even if any of those numbers do not correspond to the actual account or financial institution identified by name.
- 5.8 Secured Financial Accommodations.** The Agreement is a contract whereby we are extending secured financial accommodations to you within the meaning of Section 395(c) of the U.S. bankruptcy code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, recoupment, setoff, lien, security interest and our rights to withhold settlement funds under the Agreement, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

## 6 Fees; Adjustments; Collection Of Amounts Due

### 6.1 Your Payment of Fees and Other Amounts.

- (a) **Servicers Fees, Card Organization Fees, and Other Third Party Based Fees.** You agree to pay us all Servicers Fees, Third Party Based Fees, Chargebacks, and other amounts arising in connection with the Agreement, including all fees and amounts described in the MPA Addendum, Fee Schedule, Interchange Rate Schedule, Card Organization program pricing schedules, or any other Schedule. For avoidance of doubt, this includes all fees and amounts imposed or established by any Card Organization related to your transactions.
- (b) **Errors, Shipping and Handling, Taxes, and Other Amounts.** As part of your obligations, you agree to pay and reimburse us for all funds and deposits erroneously credited to your Settlement Account or Merchant Account, all shipping and handling fees related to Equipment and Supplies, and all Taxes (and you authorize us, or our respective assigns, to increase the amount of any preauthorized payment to reflect any increases in Taxes, and you waive any requirement for notice of such increase). In addition, you are fully liable for any transactions that you accept from a Cardholder that are of a type, including a Card type, that you did not elect for your Merchant Account, and must pay us all related Servicers Fees, Third Party Based Fees, and Chargebacks.
- (c) **Sixty Day Limit for Certain Amounts.** The following amounts shall be deemed waived by us if not charged or deducted by us within 60 days of the respective transaction date: (i) reversal of deposit posted to your account in error; (ii) debit for adjustments not previously posted; (iii) reversal of Credit for deposit previously posted; and (iv) debit for Chargeback never posted to your account.
- (d) **Authorization Fees and Capture Fees.** All Authorization fees will be charged for each transaction that you



attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement. If you are being billed a combined fee for both the Authorization and capture of a transaction, the Authorization and capture must be submitted as a single transaction, otherwise the Authorization and the capture will each be charged separately. You are responsible for utilizing software or services that will correctly submit these transactions to achieve the combined billing

- (e) **Wire Fees.** If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire.
- 6.2 Changes to Third Party Based Fees.** The fees for Services set forth in the Agreement may be adjusted to reflect increases or new Third Party Based Fees. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change or addition is implemented by the applicable Card Organization or Third Party as specified in our notice to you.
- 6.3 ACH Debit and Credit Authorization.** To the extent the Automated Clearing House (“ACH”) settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your Settlement Account through the ACH network and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under the Agreement (including any amounts due under this Section 6) and under any agreements with us or our respective Affiliates for any product or services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. The ACH authorization under this Section 6.3 will remain in effect until (a) you have provided us at least 30 days’ prior written notice in accordance with Section 19.3 that you are terminating the authorization, and (b) either (i) all amounts due from you under the Agreement and under any other agreements you have with us or our Affiliates have been paid in full, or (ii) you have provided us an authorization to debit via ACH a replacement Settlement Account that is satisfactory to us in our sole discretion.
- 6.4 Our Obligations.** We agree not to pass through to you any fees, fines, or other charges imposed on us by any Card Organization resulting from our acts or omissions in breach of the Agreement, or as a result of acts or omissions of our agents or other Third Parties engaged by us in connection with the Services.
- 6.5 Excessive Chargebacks.** If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage, you shall, in addition to the Chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback percentages reported by Visa, Mastercard or Discover. Your Chargeback percentage will be calculated as the larger of (a) the total Visa, Mastercard and Discover Chargeback items in any line of business in any calendar month divided by the number of Visa, Mastercard and Discover transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, Mastercard and Discover Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, Mastercard and Discover transactions in that line of business submitted in that month.
- 6.6 Review of Statements and Notice of Errors.** You agree to promptly and carefully review statements or reports provided or made available to you (physically, electronically, or otherwise and whether provided by us or Third Parties on our behalf) reflecting Card transaction activity (including activity in the Merchant Account, Settlement Account, or Reserve Account), and our fees and charges for the Services and other amounts due to or from you. If you believe any discrepancies or errors exist, you must notify us in writing within ninety (90) days after the date of the related statement or reports. If you fail to notify us within such ninety (90) day period of any of such discrepancies or errors of which you are or reasonably should be aware, then we shall not have any obligation to investigate or effect any related adjustments, absent our gross negligence or willful misconduct. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation. We may adjust your Merchant Account for good cause after such 90 day period.
- 6.7 Electronic Communications.** With respect to any billing statements, reports, agreements, disclosures, notices, and other communications that you receive from us via electronic means, including via email or the internet (“**Electronic Communications**”), you are responsible for: (a) configuring Merchant Systems so that you can receive, access, and view Electronic Communications, including disabling spam filters and whitelisting domain names and email addresses; (b) the accuracy of, and all activity and communications under, your email addresses and accounts; (c) regularly monitoring and checking Electronic Communications; and (d) regularly monitoring and checking Business Track and any other websites, tools, and databases that contain information related to your Merchant Account. You are solely responsible for any disclosure, interception, or viewing of any Electronic Communication that has been transmitted from our server.
- 6.8 Test Messages and Automated Technology.** You understand and agree that by disclosing your cell phone number, our service providers, American Express, and other Card Organizations may contact you at that number, including through the use of automatic technology or text, in connection with your Merchant Account. Your phone plan charges may apply.

- 6.9 Additional Information Regarding Interchange.** The interchange rate schedule provides the most common interchange rates applicable to your transactions (“**Interchange Rate Schedule**”). Transactions may downgrade, resulting in higher interchange rates. You are responsible for all interchange fees as part of your responsibility for Third Party Based Fees. For more information on Visa’s and Mastercard’s interchange rates, please go to: [www.visa.com/merchants](http://www.visa.com/merchants) and [www.mastercard.us/merchants](http://www.mastercard.us/merchants).

## 7 Chargebacks

- 7.1 Chargebacks Generally.** You must reimburse us for all transactions you submit that are charged back and all related amounts, including: (a) all Chargebacks; (b) all fees, fines, penalties, assessments, and other amounts related to disputing or arbitrating a Chargeback or failing to produce records within applicable time limits; and (c) all Chargeback Fees set forth on the Fee Schedule or elsewhere in the Agreement, regardless of whether a Chargeback is settled in your favor or the Cardholder’s favor.
- 7.2 Disputing Chargebacks.** You may dispute a Chargeback as provided in the Card Organization Rules, including any requirements for timely submission. Our obligation to you respecting Chargeback disputes is limited to presenting your dispute to the appropriate Card Organization, to the limited extent required by Card Organization Rules. We will not engage in direct collection efforts against Cardholders on your behalf. The Your Payments Acceptance Guide contains additional details and requirements related to Chargebacks.

## 8 Representations; Warranties; Covenants; Limitations On Liability; Exclusion Of Consequential Damages

- 8.1 Your Representations and Warranties.** Without limiting any other warranties hereunder, you represent, warrant to, and covenant with us, and with the submission of each Sales Draft reaffirm that:

- (a) each Card transaction is genuine and arises from a bona fide transaction permissible under the Card Organization Rules by the Cardholder directly with you, represents a valid obligation for the amount shown on the Sales Draft, preauthorized order, or Credit Draft, and does not involve the use of a Card for any other purpose;
- (b) each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;
- (c) the amount charged for each Card transaction is not subject to any dispute, set-off or counterclaim;
- (d) each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge, except as required by Card Organization Rules) sold, leased, or rented by you pursuant to your business as indicated on the Application and, except for any delayed delivery or advance deposit Card transactions expressly authorized by the Agreement, that merchandise or service was actually delivered to or performed for the Cardholder entering into that Card transaction simultaneously upon your accepting and submitting that Card transaction for processing;
- (e) with respect to each Card transaction, you have no knowledge or notice of any fact, circumstance, or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder’s obligation arising from that Card transaction or relieve that Cardholder from liability with respect thereto;
- (f) each Card transaction is made in accordance with these Terms and Conditions, Card Organization Rules, the Your Payments Acceptance Guide, and Applicable Law;
- (g) each Sales Draft is free of any alteration not authorized by the related Cardholder;
- (h) you have completed one Card transaction per sale;
- (i) you are validly existing, in good standing, and free to enter into the Agreement;
- (j) each statement made on the Application or other information provided to us in support of the Agreement is true and correct;
- (k) you are not doing business under a name or style not previously disclosed to us;
- (l) you have not changed the nature of your business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different MCC under Card Organization Rules, in a way not previously disclosed to us;
- (m) you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Third Party (Note: Factoring is prohibited);
- (n) you have not filed a bankruptcy petition not previously disclosed to us;
- (o) you own and control the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction;
- (p) you will not at any time during the term of the Agreement, or until all amounts due under the Agreement have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account, or transaction proceeds to any Third Party without our consent; and

- (q) in performing your obligations hereunder, you will use commercially reasonable efforts to make sure that no viruses, spyware, malware, or similar items are introduced into our environment directly or indirectly by acts or omissions of yours or your agents.

- 8.2 Our Representations and Warranties.** Without limiting any other warranties hereunder, we represent, warrant to, and covenant with you, and with the processing of each Sales Draft reaffirm that:
- (a) we will perform our obligations hereunder, including the Services, in compliance with the terms of the Agreement, Applicable Laws, and Card Organization Rules in a timely and professional workmanlike manner;
  - (b) we are validly existing, in good standing, and free to enter into the Agreement;
  - (c) we have obtained and will continue to maintain the requisite certifications and permits required to perform the Services hereunder; and
  - (d) in performing our obligations hereunder and providing Services, we will use commercially reasonable efforts to make sure that no viruses, spyware, malware, or similar items are introduced into your environment directly or indirectly by acts or omissions of ours or our agents.
- 8.3 NO OTHER REPRESENTATIONS OR WARRANTIES.** THE AGREEMENT IS A SERVICE AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, EACH PARTY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.
- 8.4 EXCLUSION OF CONSEQUENTIAL DAMAGES.** SUBJECT TO SECTION 8.8(b), IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (THE "**DAMAGES EXCLUSION**").
- 8.5 LIABILITY CAP.** NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY AND SUBJECT TO SECTION 8.8(a), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES AND DAMAGES FOR ANY CAUSE(S) WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THE AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS, WHICHEVER IS LESS ("**LIABILITY CAP**").
- 8.6 SOLE REMEDY FOR FUNDING DELAY.** NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 15), IN THE EVENT OF ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 5 OR 19.1, OUR SOLE LIABILITY TO YOU WILL BE TO PAY YOU INTEREST COMPUTED FROM THE DATE THAT WE WOULD HAVE FUNDED THE TRANSACTION, AS DESCRIBED IN SECTION 5, TO THE DATE THAT WE ACTUALLY FUND THE TRANSACTION AT THE RATE OF THE LESSER OF THE PER ANNUM RATE EQUAL TO BANK'S THEN CURRENT PRIME RATE PLUS TWO PERCENT (2%), BASED ON A 360 DAY YEAR OR (II) THE MAXIMUM RATE.
- 8.7 BANK IS NOT LIABLE FOR NON-BANK CARD SERVICES.** NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, BANK IS NOT RESPONSIBLE, AND SHALL HAVE NO LIABILITY, TO YOU IN ANY WAY WITH RESPECT TO NON-BANK CARD SERVICES.
- 8.8 EXCEPTIONS TO LIABILITY CAP AND EXCLUSION OF CONSEQUENTIAL DAMAGES.**
- (a) **Liability Cap Exceptions.** The Liability Cap set forth in Section 8.5 shall not apply to the following: (i) claims and losses caused by our or our personnel's gross negligence, willful misconduct, or fraud; (ii) our obligations under Section 15.3; (iii) our breach of our obligations with respect to compliance with Applicable Laws or Card Organization Rules under the Agreement (excluding breaches involving our Data Security Event, which are subject to the Liability Cap); or (iv) our breach of our confidentiality obligations under the Agreement not involving personally identifiable consumer information (collectively, (i) through (iv) are the "**Excluded Amounts**").
  - (b) **Damages Exclusion Exceptions.** The Damages Exclusion set forth in Section 8.4 shall not apply to the following: (i) claims and losses caused by the gross negligence, willful misconduct, or fraud of either party or its personnel; (ii) our obligations under Section 15.3 and your obligations with respect to Excluded Claims; (iii) breaches by either party of its obligations with respect to compliance with Applicable Laws or Card Organization Rules under the Agreement (excluding breaches involving our Data Security Event, which are subject to the Damages Exclusion); or

(iv) breaches by either party of its confidentiality obligations under the Agreement not involving personally identifiable consumer information. For avoidance of doubt, amounts excepted from the Damages Exclusion (y) are not Excluded Amounts, and (z) are subject to the Liability Cap.

## 9 Confidentiality

- 9.1 Definition of Confidential Information.** The term “**Confidential Information**” means all information of a party and its Affiliates that is not publicly available, including any of their strategic business information and capabilities; financial information; business plans and marketing strategies; pricing of the Services; documentation and portals related to Services; information related to information technology systems and processes; technical specifications; designs; processes and procedures; reports; source code; databases; information used in connection with logging onto, accessing, or using the Services; customer information (not including Cardholder data); the terms of the Agreement; and information that must be maintained as confidential by Applicable Law, and whether in oral, written, graphic, electronic, or other form, including all copies and derivatives thereof.
- 9.2 Protecting Confidential Information.** The party receiving Confidential Information (“**Recipient**”) from the other party (“**Discloser**”) shall: (a) safeguard the Discloser’s Confidential Information using at least a reasonable degree of care; (b) limit access to the Discloser’s Confidential Information to the Recipient’s employees and service providers who (i) have an obligation of confidentiality to Recipient that is similar to Recipient’s confidentiality obligations to Discloser under this Section 9, and (ii) have a need to know the Discloser’s Confidential Information in connection with the Agreement; (c) not disclose or use the Discloser’s Confidential Information, except as permitted under Section 9.3 or elsewhere in the Agreement; and (d) at the Discloser’s request, return to Discloser or destroy all of Discloser’s Confidential Information in Recipient’s possession or control.
- 9.3 Permitted Use and Disclosure of Confidential Information.** Recipient may disclose the Discloser’s Confidential Information: (a) to Third Parties on a need to know basis as it reasonably deems appropriate to analyze, provide, support, improve, receive, or use the Services; (b) to its auditors and attorneys (internal and external) and regulators; (c) as required or permitted by law, regulation, or court order; or (d) to its respective Affiliates as it deems appropriate. In addition, we may disclose your Confidential Information: (x) as permitted under Section 2.6, Section 10.6, or elsewhere in the Agreement; (y) in connection with any customer service and support, whether provided by us or Third Parties, related to your Merchant Account; and (z) to any Card Organizations, which may use and share such information in any lawful manner and for any lawful purpose. Notwithstanding any contrary provisions in documents for any other accounts you have with Bank, you consent to Bank sharing and exchanging with us, our Affiliates, and our agents information about you and such other accounts (including relationship, credit, and confidential information) in connection with the Services and for any other lawful reason.
- 9.4 Use and Disclosure Exceptions.** The obligations set forth in Section 9.2 do not apply to information that: (a) enters the public domain through no fault of the Recipient; (b) was received from a Third Party free of any obligation of confidence and which Third Party, to Recipient’s knowledge, was not under an obligation to keep the information confidential; (c) was already in Recipient’s possession prior to receipt from Discloser; (d) is required to be disclosed by law, regulation, or court order after giving Discloser as much advance notice as practical of the possibility of disclosure; or (e) is independently developed by Recipient without use of or reference to Discloser’s Confidential Information.
- 9.5 Injunctive Relief.** Recipient acknowledges that breach of the restrictions on use or disclosure of Confidential Information could result in immediate and irreparable harm to Discloser, and money damages may be inadequate to compensate for that harm. Discloser shall be entitled to seek equitable relief, in addition to all other available remedies, to redress any such breach.
- 9.6 Cardholder Data and Transaction Data.** You must not use, disclose, store, sell, or disseminate any Cardholder data except: (a) to authorize, complete, and settle Card transactions; (b) to resolve Chargebacks; (c) to respond to requests for documentation related to Card transactions (such as a copy of a Sales Draft or other transaction source documents); or (d) as both required by valid court order, government agency order, or subpoena and compliant with Card Organization Rules. You acknowledge that you do not have and will not obtain ownership rights in any Cardholder data or Transaction Data.

## 10 Intellectual Property

- 10.1 Servicers’ Ownership.** As among Servicers and Client, Servicers exclusively own all right, title, and interest (under federal, state, local, and international laws and under the laws of any other country, territory, or jurisdiction) in and to the: (a) Intellectual Property; (b) Technology; (c) Services; (d) Software; and (e) Documentation. You shall not take any action that is inconsistent with, or that challenges, the rights, title, and ownership set forth in this Section 10.1.
- 10.2 Your Limited License.** We grant you a non-transferable, non-assignable, non-exclusive, limited, royalty-free, revocable license to access and use the Services, Software, and Documentation solely within the United States (excluding U.S. territories and possessions), solely for their intended purpose(s), solely for your business purpose(s) (not for any household or other non-commercial use), solely on systems that you own or license, and solely in accordance with the

terms of the Agreement (“**Limited License**”). For the avoidance of doubt: (a) other than the Limited License, nothing in this Section 10.2 or the Agreement assigns, transfers, or creates any right, title, or interest for you (whether express or implied, or by estoppel or otherwise) in or to the Intellectual Property, Technology, Services, Software, or Documentation; and (b) all right, license, title and interests that are not expressly granted pursuant to the Limited License are expressly withheld. You obtain no rights (license or otherwise) to any Marks, brand names, or logos associated with any Services, or associated with us or our service providers. The Limited License shall immediately terminate on the earlier of (y) termination of the Agreement, and (z) termination of the Services related to such Limited License.

- 10.3 Documentation and Software.** If Documentation is provided for a Service: (a) you must access and use such Service in accordance with such Documentation; and (b) you may use such Documentation only in connection with your access to and use of such Service. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software. You are bound by all Software and other Intellectual Property terms and conditions of use and other license terms, whether provided by a Third Party (such as an Equipment manufacturer or Software owner) or by us.
- 10.4 Marks.** You must comply with all Card Organization Rules, guidelines, and standards regarding Marks owned by any Card Organization, including those regarding use, display, and reproduction of Marks. Your use and display of any Card Organization Marks will terminate upon the earlier of: (a) termination of the Agreement; or (b) notice to you that the Card Organization has requested or required such termination. You may not use our Marks (or those of our Affiliates or Third Party service providers) in any manner, including in any advertisements, displays, or press releases, without our prior written consent. You shall not: (y) indicate that we or any Card Organization endorses your goods or services; or (z) use our Marks or the Marks of any Card Organization in any way that injures or diminishes the goodwill associated with the Marks.
- 10.5 Updates.** At any time we may release updates to Software or Services (“**Updates**”), which you must install and integrate with your systems within 30 days of receipt. Failure to install Updates timely may impair the Software or Services. We have no liability for your failure to properly install the most current version of Software or any Update, and we have no obligation to provide support or services for outdated versions.
- 10.6 Transaction Data.** You authorize us, our service providers, and our Third Party providers of payments products and services that are complementary to our services to use and disclose, within and outside of the United States, Transaction Data in connection with: (a) improving products and services; (b) making products and services (including analytics products and services) available to you, our other clients, and other merchants and Third Parties; and (c) for any other lawful reason. As part of our rights under this Section 10.6, we may in certain instances collect, aggregate, and use de-identified and aggregated Transaction Data. In addition, in the course of providing Services we may collect information related to activities on your network and Merchant Systems, including network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horse information. You permit us to use such information, or aggregations of it, for any lawful purpose.

## 11 Assignment; Material Changes

- 11.1 Assignment by Client.** If you transfer or assign the Agreement or any portion of it, or if you attempt to sublicense or otherwise transfer any licensed rights, in each case whether by operation of law or otherwise, without our prior written consent: (a) we may void such transfer, assignment, and/or sublicense; and (b) we may suspend the Services, declare an Event of Default, and exercise any of our other rights under the Agreement.
- 11.2 Material Changes.** You will provide us reasonable advance written notice of any material change in the nature of your business (“**Material Change**”). Material Changes include any change in control or merger; any liquidation; any transfer or sale of substantially all of your assets; and any change that could materially affect the products or services you sell, your procedures for payments acceptance, or your fulfillment of obligations to Cardholders. If a Material Change occurs to which we do not consent in writing, we may suspend the Services, declare an Event of Default, or exercise any of our other rights under the Agreement.
- 11.3 Responsibility for Transactions.** You are liable to us for all Chargebacks, Servicers Fees, Third Party Based Fees, and other liabilities arising in connection with: (a) any Card transactions submitted to us for processing by any assignee or transferee of the Agreement (or any part of the Agreement) not previously approved as such by us; and (b) any Card transactions submitted to us following any Material Change not previously approved by us in writing. We may collect amounts owed under this Section 11.3 by setting off or recouping against settlement funds, debiting your Settlement Account, debiting a Reserve Account, or in any other manner we are permitted to collect any other amounts under the Agreement.
- 11.4 Assignment of Right to Receive Settlement Proceeds by Client.** You may not enter into any agreement that would require the transfer of any payments or proceeds from Card transactions covered by the Agreement to the custody or control of any Third Party. You may not assign the right of payment under the Agreement to any Third Party. In the event that you make an assignment (or provide a security interest) of receivables covered by the Agreement, then we may, at

our option, elect to (a) refuse to acknowledge such assignment unless accompanied by an authorization to initiate both debits and credits to the bank account of the assignee, (b) terminate the Agreement immediately, or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

- 11.5 Assignment by Us.** Another Visa and Mastercard member may be substituted for Bank under whose sponsorship the Agreement is performed with respect to Visa and Mastercard transactions. Upon substitution, such other Visa and Mastercard member shall be responsible for all obligations required of Bank for Visa and Mastercard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules. Subject to Card Organization Rules, we may assign or transfer the Agreement and our rights, duties, and obligations hereunder and/or delegate or subcontract our rights, duties, and obligations hereunder, in whole or in part, to any Third Party, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without your consent; provided, however that in the event we so assign or subcontract the Agreement, in whole or in part, we agree to provide you written notice of such assignment or subcontract (as applicable) as promptly as practicable following such assignment or subcontracting by us.
- 11.6 Permitted Assignments are Binding.** Except as set forth elsewhere in this Section and as provided in the following sentence, the Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other Third Party charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign the Agreement.

## 12 Term; Termination; Events Of Default

- 12.1 When the Agreement Takes Effect.** The Agreement becomes effective only when approved by our Credit Department ("**Effective Date**"). We reserve the right to immediately suspend or terminate your account and the Agreement if you fail to meet our credit policies even if your account has been activated to submit transactions prior to your approval by our Credit Department.
- 12.2 Term of the Agreement.** The initial term of the Agreement begins on the Effective Date and continues for three (3) years ("**Initial Term**"), unless terminated earlier as provided herein. Thereafter, it shall continue on a month-to-month basis (each, an "**Extended Term**" and, together with the Initial Term, the "**Term**") until we or you terminate the Agreement upon written notice to the other as permitted under the Agreement. If you have an equipment lease, termination of the Agreement does not terminate that equipment lease. If you have rented equipment from us, termination of the Agreement does not relieve you of your obligation to make rental payments until the rented equipment is paid for in full or returned to us.
- 12.3 Events of Default.** Each event set forth below is an "**Event of Default**":
- (a) A material adverse change in your business, financial condition, or business prospects.
  - (b) Any assignment of the Agreement by you in violation of Section 11.1.
  - (c) Any Material Change we did not consent to in violation of Section 11.2.
  - (d) Irregular Card sales by you, excessive Chargebacks, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us.
  - (e) The occurrence of a Compromised Data Event (with respect to you) or a Data Security Event (with respect to us).
  - (f) Any of a party's representations, warranties, or covenants in the Agreement are breached in any respect.
  - (g) A party defaults in any material respect in the performance or observance of any term, condition, or agreement contained in the Agreement, including, without limitation, your default in the establishment or maintenance of funds in a Reserve Account, as detailed in Section 13.
  - (h) You default in the payment when due, of any material indebtedness for borrowed money.
  - (i) A party files a petition or have a petition filed by another party under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against a party in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of a party or of a substantial part of a party's property; or make a general assignment for the benefit of creditors; or take any action for the purpose of authorizing any of the foregoing.
  - (j) Your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries.
  - (k) A violation by a party of any Applicable Law or Card Organization Rules, including the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or a party's breach of Section 19.2.

- 12.4 Termination Due to an Event of Default.** Upon the occurrence of an Event of Default specified in subsections 12.3(b), 12.3(c), 12.3(d), 12.3(g) for any breach of Section 13, 12.3(i), or 12.3(k) (or for an Event of Default under Section 12.3(g) for failing to establish or maintain funds in a Reserve Account), the Agreement may be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full, provided that any disputed amounts shall be handled in accordance with Section 5. Upon the occurrence of any other Event of Default, the Agreement may be terminated by the non-breaching party by giving written notice to the breaching party if the Event of Default remains uncured for thirty (30) days from the time the breaching party was first notified of the Event of Default, and upon such notice all undisputed amounts payable hereunder shall be due and payable on demand. If any Event of Default occurs, regardless of whether such Event of Default has been cured, each party may, in its sole discretion, exercise all of its rights and remedies under Applicable Law, and the Agreement including, without limitation, exercising its rights under Section 13.
- 12.5 Termination Related to the IHG Agreement.** Processor and Six Continents Hotels, Inc. (“**IHG**”) are parties to that certain Merchant Services Referral Agreement dated October 16, 2014 (as supplemented and amended, the “**IHG Agreement**”). Upon expiration or termination of the IHG Agreement: (a) you may terminate the Agreement without penalty; and (b) you are entitled to receive Termination Assistance Services, unless the IHG Agreement is terminated by us for cause (in which case, we may choose whether to provide Termination Assistance Services in our discretion).
- 12.6 Effect of Termination.** Upon expiration or termination of the Agreement:
- (a) All obligations by a party to pay or reimburse the other party for any obligations associated with transactions you have submitted to us or disputed payments will survive termination of the Agreement until finally and irrevocably paid in full and settled.
  - (b) You shall continue to bear total responsibility for all Chargebacks, fees, and other amounts (including all Servicers Fees and Third Party Based Fees) associated with transactions submitted by you or by any assignee or transferee of the Agreement not previously approved by us, and for all activity under your Merchant Account, until all such Servicers Fees, Third Party Based Fees, Chargebacks, and other amounts have been paid in full (and regardless of whether such transactions were submitted and such activity occurred before or after termination).
  - (c) Your Limited License and any other license related to the terminated Service(s) immediately terminate and, within 5 days after termination, you must return to us or destroy all related Software and Documentation and, upon our request, certify the same to us in writing.
  - (d) In the event you file for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim.
- 12.7 MATCH Reporting.** The Card Organizations often maintain merchant lists, such as the Member Alert To Control High-risk (Merchants) (“**MATCH**”), who have had their merchant agreements or Card acceptance rights terminated for cause. If the Agreement is terminated for cause by us due to an Event of Default by you, you acknowledge that we may be required to report your business name and the names and other information regarding your principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, Mastercard or Discover. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.
- 12.8 Termination Assistance.** For up to ninety (90) days following the date of termination of the Agreement, and at your request, we will provide to you, at no additional charge (other than the Servicers Fees, Third Party Based Fees, and other amounts due under the Agreement), such assistance, including the continued performance of the Services, as may be reasonably required to transition you from us to an alternative service provider (the “**Termination Assistance Services**”). As part of such Termination Assistance Services, we will provide continued access to our reporting system for Chargeback retrieval. Notwithstanding the foregoing, we are not required to provide Termination Assistance Services if the Agreement is terminated due to: (a) a Compromised Data Event; (b) your breach of your obligations with respect to the Reserve Account in Section 13; (c) your failure to maintain sufficient funds in the Settlement Account; (d) fraud or excessive Chargebacks; or (e) the request or requirement of any Card Organization. For avoidance of doubt, all terms and provisions of these Terms and Conditions, the Fee Schedule, and the other components of the Agreement apply to any Termination Assistance Services.

### 13 RESERVE ACCOUNT; SECURITY INTEREST

- 13.1 Reserve Account Generally.** You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 13. The amount of such Reserve Account shall be set by us and may be adjusted by

us from time to time, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time.

### 13.2 Funding the Reserve Account.

- (a) **Timing.** The Reserve Account shall be fully funded: (i) immediately in instances of fraud, suspected fraud, the occurrence of an Event of Default, or any party providing notice of termination of the Agreement; or (ii) upon three days' notice if required for any other reason.
- (b) **Method.** The Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by either of us or any of our respective Affiliates, at any financial institution maintained in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) our collection of any payments or amounts (including settlement funds) otherwise due to you; or (iii) with our consent, your delivery to us of a letter of credit issued by a financial institution acceptable to us and in a form satisfactory to us.
- (c) **Holding and Return of Funds.** Any Reserve Account will be held by us for the greater of ten (10) months after termination of the Agreement or for such longer period of time as is consistent with our liability for your Card transactions and Chargebacks in accordance with Card Organization Rules, at which time, we will return all remaining amounts in the Reserve Account to you. We will hold funds pursuant to this Section 13.2 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in a Reserve Account.

**13.3 Payment of Amounts from Reserve Account; Deficiencies.** We may collect any Servicers Fees, Third Party Based Fees, Chargebacks, and other amounts (collectively in this Section 13.3, "**all such amounts**") arising in connection with the Agreement from the Reserve Account. If your funds in the Reserve Account are not sufficient to cover all such amounts, or if the funds in the Reserve Account have been released, you agree to promptly pay us all such amounts upon request. In addition, we may collect all such amounts in any manner we otherwise are permitted to collect amounts under the Agreement, including by net settling against your settlement funds, setting off against amounts owed to you, and debiting your Settlement Account.

**13.4 Security Interest.** To secure your obligations to us and our respective Affiliates under the Agreement, you grant to us a first priority lien and security interest in and to: (a) the Reserve Account; and (b) any of your funds pertaining to the Card transactions contemplated by the Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you from us. Any such funds, money, or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours.

**13.5 Set-Off.** In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any Third Party (any such notice and demand being hereby expressly waived), to set off, recoup, and to appropriate and apply any and all such funds against and on account of your obligations to us and our respective Affiliates under the Agreement and any other agreement with us our respective Affiliates for any related equipment or related services (including any check services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set-off, recoupment and subordination set forth in the Agreement.

## 14 FINANCIAL AND OTHER INFORMATION

**14.1 Providing Information.** Upon request, you will provide us and our Affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of the Agreement as we may reasonably request. You authorize us and our respective Affiliates to obtain from credit agencies and any trade references provided by you financial and credit information relating to you in connection with our determination of whether to accept the Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to us under the Agreement. Upon reasonable request, you shall provide, and/or cause to be provided, to us and our respective Affiliates, or our respective representatives, regulators, or forensic examiners (as well as those of the Card Organizations), reasonable access to your records for the purpose of performing any inspection and/or copying of books and/or records deemed appropriate.

## 15 INDEMNIFICATION

**15.1 Indemnification by Client.** You agree to indemnify us, our Affiliates, and our and their respective officers, directors, employees, successors, and permitted assigns (the "**FDSH Indemnitees**") from, and defend and hold the FDSH



Indemnitees harmless from and against, all third party claims brought against FDSH Indemnitees, and all related losses to the extent such claims result from or arise out of: (a) your breach of your representations, warranties, or obligations set forth in the Agreement; (b) any claims initiated by your Affiliates or agents asserting rights under the Agreement; or (c) gross negligence or willful misconduct of you or your agents. In addition, you agree to defend and hold FDSH Indemnitees harmless from and against third party claims to the extent covering Excluded Claims brought against the FDSH Indemnitees, and all related losses.

- 15.2 Indemnification by Us.** Subject to the Liability Cap and the Damages Exclusion, we agree to indemnify you from, and defend and hold you harmless from and against, any third party claims brought against you and all related losses to the extent such claims result from or arise out of: (a) our material breach of our representations, warranties, or obligations set forth in the Agreement; (b) any claims initiated by our Affiliates or agents asserting rights under the Agreement; or (c) gross negligence or willful misconduct by us or our agents. For avoidance of doubt, the obligations under this Section 15.2 shall not apply to Bank with respect to Non-Bank Services.
- 15.3 Intellectual Property Infringement Indemnification.** Processor will indemnify, defend, and hold you harmless from and against any third party claim alleging that the Services infringe or misappropriate any patent, copyright, trademark, service mark, trade secret, or other proprietary right (collectively for purposes of this Section 15.3, "**Intellectual Property Rights**") of such third party; provided that the foregoing indemnification under Section 15.3 shall not apply to that portion (and only that portion) of any third party claim that is caused by, results from, or arises out of: (a) your failure to use the Services as required under the Agreement; (b) your configuration, modification, or use of the Services in combination with other products or services (including software, equipment, or systems) that are not provided by Processor and that combination creates a process or method that is the causation for the infringement or misappropriation; (c) Processor's use of any designs, artwork, concepts, trademark specifications, or other copyrighted materials provided by you or on your behalf (including by IHG) in connection with the Agreement; or (d) Processor's custom development of the Services pursuant to a request by you or IHG and that development creates a process or method that is the causation for the infringement or misappropriation (the claims (or portions of claims) referred to in the foregoing clauses (a), (b), (c) and (d) are herein referred to collectively as the "**Excluded Claims**"). If any part of the Services is determined or reasonably suspected to be infringing, Processor, at its option and expense, shall: (w) procure for you the continued use of such Services; (x) replace such Services with non infringing Services that are a functional equivalent; (y) modify such Services so that they become non-infringing and remain functionally equivalent, provided that, if (x) or (y) is the option chosen by Processor, your intended use of such Services is not materially impaired; or (z) terminate such Services in their entirety upon written notice to you, and without further liability to you hereunder other than Processor's indemnification obligations hereunder and, subject to the Liability Cap, any direct damages incurred by you as a result of such termination.

## 16 SPECIAL PROVISIONS REGARDING NON-BANK CARDS

### 16.1 Services Provided by Bank, Conveyed Transactions, and Non-Bank Services.

- (a) **Services Provided by Bank.** Bank only provides, and its obligations and liability are limited to, sponsorship, settlement, and related Bank services for certain Card transactions, which do not include Non-Bank Card transactions or Non-Bank Services. For avoidance of doubt, Bank is not a party to the Agreement with respect to, and does not have any responsibilities or liability with respect to, transactions that Processor sponsors and settles under the Agreement or Conveyed Transactions.
- (b) **Non-Bank Services.** Non-Bank Services are provided to you by Processor, not by Bank. Bank is not responsible for, and has no liability to you in any way with respect to, Non-Bank Services. The provisions of the Agreement regarding Discover Card transactions, American Express Card transactions, and other Non-Bank Services are an agreement solely between you and Processor. Non-Bank Services are subject to all terms and provisions of these Terms and Conditions. To the extent terms specific to a Non-Bank Service directly conflict with another provision of the Agreement, the terms specific to the Non-Bank Service will control with respect to such Non-Bank Service.
- (c) **Conveyed Transactions.** The following terms apply to Conveyed Transactions: (a) Processor (not Bank) will provide an Authorization response to Authorization requests; (b) Processor and Bank do not have any responsibility or liability for funding, sponsoring, or settling Conveyed Transactions; (c) you must enter into, and comply with the terms of, a separate agreement with the Card Organization or Issuer that settles Conveyed Transactions ("**Issuer Agreement**"), and must pursue directly with such Card Organization or Issuer all related claims and disputes; (d) the Card Organization or Issuer that settles Conveyed Transactions may charge additional fees and amounts, for which you are exclusively responsible and liable; and (e) if the Issuer Agreement has been terminated, suspended, or is not in effect, Processor does not have any obligation to provide any Services for Conveyed Transactions.
- (d) **Fees.** You shall pay us the fees for Conveyed Transactions and other Non-Bank Services as set forth on your Application, MPA Addendum, Fee Schedule, and/or other Schedules, or as we otherwise disclose to you. Fees for Non-Bank Services may be charged and collected in any manner that other Servicers Fees, Third Party Based Fees, and other amounts may be charged and collected under the Agreement.

- (e) **Discover.** Services provided for transactions made with Cards branded by Discover, Diners Club International JCB, Union Pay, BCard, or any other Card Organizations subsequently designated by Discover (such Cards are “**DNP Card Types**” and such transactions are “**DNP Transactions**”) are Non-Bank Services. Depending on your Merchant Account, DNP Transactions may be sponsored and settled by either Processor or Discover. DNP Transactions that Discover sponsors and settles are Conveyed Transactions. DNP Transactions will be processed under and subject to Discover Card Organization Rules and the terms of the Agreement applicable to Discover Card acceptance and transactions, including, without limitation, the fees, rates, and interchange programs applicable thereto.
- (f) **American Express.** American Express transactions are funded by American Express. American Express will provide you with its own agreement that governs those transactions. We are not responsible for and assume no liability with regard to the funding and settlement of American Express transactions. American Express will charge additional fees for the services it provides.

## 17 DEBIT CARD TRANSACTIONS

- 17.1 Debit Card Transactions Generally; Debit Networks Used.** Your Debit Card transactions are subject to the terms of the Agreement, Card Organization Rules (including those of Debit Networks), and Applicable Law. Subject to Applicable Law, we may choose any available Debit Network, including a Debit Network affiliated with us, when routing your Debit Network Transactions. The Debit Network used may not be the lowest cost Debit Network available. We may change Debit Networks used based on various factors, including availability, features, functionality, and our own business considerations. The Your Payments Acceptance Guide contains additional details and requirements related to your acceptance of Debit Cards.
- 17.2 Accepting Debit Cards.** When a Debit Card is presented you must: (a) read the account number electronically from the magnetic stripe or chip for Debit Network transactions made via use of a PIN, and if the magnetic stripe or chip is unreadable for such a transaction you must request another form of payment; (b) honor all valid Debit Cards presented; and (c) not manually enter the Card account number for Debit Network transactions made via use of a PIN.

## 18 CHOICE OF LAW; VENUE; WAIVER OF JURY TRIAL

- 18.1 Choice of Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).
- 18.2 Venue.** The exclusive venue for any actions or claims arising under or related to the Agreement shall be in the courts of the State of North Carolina and the United States for the Western District of North Carolina, Charlotte Division, located in Charlotte, North Carolina. You irrevocably and unconditionally agree and submit to the jurisdiction of such North Carolina courts and waive any objection to the venue of such courts whether based on inconvenience of forum or other grounds.
- 18.3 Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING RELATING TO OR ARISING UNDER THE AGREEMENT.

## 19 OTHER TERMS

- 19.1 Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under the Agreement (excluding your obligation to pay us Servicers Fees, Third Party Based Fees, Chargebacks, and other amounts related to Services provided and transactions processed under the Agreement, which obligation is not subject to this Section 19.1) if and to the extent such default or delay is caused, directly or indirectly, by: (i) fire, flood, earthquake, elements of nature, or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a Third Party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunication or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.
- 19.2 Compliance with Laws.** Each party is responsible for determining all Applicable Law that is applicable to it and for complying with all such Applicable Law in connection with the Agreement. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers' compliance with Applicable Law, including without limitation the rules and regulations promulgated by OFAC and the USA PATRIOT Act. As part of your obligation to comply with Applicable Law, you agree not to use the Merchant Account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et. seq., as may be amended from time to time or for processing and accepting transactions in certain jurisdictions pursuant to 31 CFR Part 500 et. seq. and other laws enforced by OFAC.
- 19.3 Notices; Contact Information.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, and if to you, at your address appearing in the Application. Notices to Processor must be

sent to FDS Holdings, Inc., 4000 Coral Ridge Drive, MS/CON- MER-B, Coral Springs, FL 33065, Attn: Merchant Services. Notices to Bank must be sent to Bank of America, N.A., 9200 Shelbyville Road, Suite 200, KY6-225-0202, Louisville, KY 40222, Attention: Operations Manager. Notices shall be deemed to have been given (i) if sent by mail, upon the earlier of five (5) days after mailing or when actually received, (ii) if sent by courier, when delivered, and (iii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to your last known address, as indicated in our records, shall constitute effective notice to you under the Agreement. Processor's Customer Service phone number is 833-692-5687.

- 19.4 Headings; Rules of Interpretation.** The headings contained in these Terms and Conditions are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of these Terms and Conditions. Each definition used in the Agreement includes the singular and the plural, and reference to the neuter gender includes the masculine and feminine where appropriate. Reference to Applicable Law or regulation means such law or regulation as amended as of the time of determination and includes any successor laws and regulations. Except as otherwise stated, reference to "Section" or "Sections" means the sections of these Terms and Conditions. The words "including" or "includes" or similar terms used herein shall be deemed to be followed by the words "without limitation", whether or not such additional words are actually set forth herein. Text enclosed in parentheses has the same effect as text that is not enclosed in parentheses.
- 19.5 Severability.** The parties intend every provision of the Agreement to be severable. If any part of the Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.
- 19.6 Entire Agreement; Waiver.** The Agreement constitutes the entire Agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of the Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- 19.7 Amendment.** We may modify any provision of the Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. For purposes of this section, an electronic or "click-wrap" notice intended to modify or amend the Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute in writing as required herein. This Section 19.7 does not apply to changes to Third Party Based Fees, which are governed by Section 6.2, or to changes made pursuant to Section 2.6. For avoidance of doubt, you do not have any termination right with respect to any changes to Third Party Based Fees or with respect to any changes made in connection with our rights under Section 2.6
- 19.8 No Third Party Beneficiaries.** Our respective Affiliates and any Third Parties we use in providing the Services are third party beneficiaries of the Agreement and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in the Agreement, nothing in the Agreement is intended to confer upon any Third Party any rights or remedies and the parties do not intend for any Third Parties to be third party beneficiaries of the Agreement.
- 19.9 Reporting Information; Backup Withholding.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities (like Bank) and Third Party settlement organizations are required to file an information return reflecting all payment card transactions and Third Party network transactions occurring in a calendar year. In addition, the Internal Revenue Code may require us to undertake backup withholding if you do not provide Bank with the correct name and TIN that you use when filing your income tax return that includes the transactions for your business. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.
- 19.10 Card Organization Rules.** The parties acknowledge that the Visa, Mastercard, and Discover Card Organization Rules give Visa, Mastercard, and Discover certain rights to require termination or modification of the Agreement with respect to transactions involving Visa, Mastercard, and Discover Cards (including DNP Card Types) and the Visa, Mastercard and Discover Card systems, and to investigate you. The parties also acknowledge that Issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Card Organization Rules with respect to the Agreement's applicability to transactions involving such other Cards.

## 20 DEFINITIONS

- 20.1 Defined Terms.** As used in the Agreement, the following terms mean as follows:

**Acquirer:** Bank in the case of Visa, Mastercard and certain Debit Card transactions; Processor in the case of DNP Transactions and any other transactions that Processor sponsors and settles; and neither Bank nor Processor for Conveyed Transactions.

**Address Verification Service (AVS):** A service for verifying a Cardholder's address, primarily for Card Not Present Transactions.

**Affiliate:** A Third Party who, directly or indirectly, (i) owns or controls a party to the Agreement or (ii) is under common ownership or control with a party to the Agreement.

**Agreement:** See the meaning in Section 1.2.

**American Express:** American Express Company.

**Applicable Law:** All federal, state and local statutes, ordinances, laws, regulations and executive, administrative, and judicial orders applicable to the Agreement, the transactions or other matters contemplated under the Agreement (including, the rules and regulations promulgated by OFAC), and all amendments thereto.

**Application:** The Merchant Processing Application and Agreement that you submitted to us in connection with applying to receive the Services, including all additions and modifications thereto.

**Authorization:** Approval by, or on behalf of, the Issuer to validate a Credit Card or Debit Card transaction. Authorization indicates only the availability of credit or funds at the time the Authorization is requested; it does not indicate that the person presenting the Card is the rightful Cardholder and it does not guarantee that you will not be subject to a Chargeback, an adjustment, or other Servicers Fees and Third Party Based Fees with respect to the authorized transaction.

**Authorization Fee:** A fee we charge for each transaction that you submit for Authorization, regardless of whether the transaction is authorized or approved.

**Bank:** Bank of America, N.A. or its successors or assigns.

**Bankruptcy Code:** Title 11 of the United States Code, as amended from time to time.

**Business Day:** Monday through Friday, excluding Bank holidays.

**Card:** See either Credit Card or Debit Card.

**Cardholder:** The individual or entity whose name is embossed on a Card and any authorized user of such Card, including an individual or entity that has entered into an agreement establishing a Card account with an Issuer.

**Card Not Present Transaction:** A transaction that occurs when the Card is not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

**Card Organization:** Any entity formed to administer and promote Cards, including, without limitation, Visa, Mastercard, Discover, and any applicable Debit Networks.

**Card Organization Rules:** The rules, regulations, releases, interpretations, and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including, without limitation, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association.

**Card Validation Codes:** A three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa's Card Validation Code is known as CVV2; Mastercard's Card Validation Code is known as CVC2; and Discover's Card Validation Code is known as a CID.

**Chargeback:** A Card transaction (or disputed portion) that is returned to us by the Issuer. Client is responsible for payment to us for all Chargebacks.

**Client:** The party identified as "Client" on the Application. The words "Subscriber," "Customer", "you", "your", and "Merchant" refer to Client.

**Conveyed Transactions:** Transactions that Processor submits for Authorization, but that neither Processor nor Bank sponsors and settles.

**Credit:** A refund or price adjustment given for a previous purchase transaction, including, without limitation, for the return of merchandise by a Cardholder to you.

**Credit Card:** A Card authorizing the Cardholder to buy goods or services on credit.

**Credit Draft:** A document evidencing a Credit by you to a Cardholder, whether electronic, paper, or some other form, all of which must conform to Card Organization Rules and Applicable Law.

**Debit Card:** A Card that is tied to, and that authorizes the Cardholder to purchase goods and services using funds from, the Cardholder's bank account or prepaid account. A transaction made using a Debit Card is considered either a Debit Network Transaction or a Non-Debit Network Transaction.

**Debit Network:** The telecommunications and processing system of a shared electronic funds transfer network (such as Interlink®, NYCE®, or Star®) for processing and settling Debit Network Transactions.

**Debit Network Transaction:** A transaction made with a Debit Card that is routed through a Debit Network. A Debit Network Transaction made with use of a PIN may be referred to as a "**Debit Network PIN Transaction**" or as "**PIN Debit**". A Debit Network Transaction made without use of a PIN, as permitted under the rules and requirements of the applicable Debit Network, may be referred to as a "**Debit Network PINless Transaction**" or as "**PINless Debit**."

**Discover:** DFS Services LLC, its subsidiaries and affiliates, and each of its and their respective successors or assigns.

**Documentation:** The operational documents, technical integration requirements and documentation, user manuals, help files, and other implementation overviews, integration guidelines, sandbox guidelines, and other documentation that we

provide or make available, in written or electronic form, in connection with any Software or Service, as modified by us from time to time.

**Factoring:** The submission of Authorization requests and/or Sales Drafts by a merchant for Card sales or cash advances transacted by another business.

**Fee Schedule:** The portion(s) of your Agreement (including your MPA Addendum) that set forth certain fees and amounts that you will be charged for the Services, including Servicers Fees and certain Third Party Based Fees. The term Fee Schedule includes the Interchange Rate Schedule and the Debit Network Fee Schedule.

**Group Member:** A franchisee, licensee, association member, or other member associated with the Group Owner.

**Group Owner:** A franchisor, licensor, association, or other group level entity that has a relationship with us for the benefit of the Group Owner and the Group Members designated by or associated with the Group Owner.

**Group Owner Agreement:** The agreement that we have with the Group Owner to provide Group Owner Benefits to Group Members and/or the Group Owner.

**Group Owner Benefits:** The products and services, pricing, or other benefits provided to Group Members and/or the Group Owner pursuant to the Group Owner Agreement.

**Intellectual Property:** The Marks, Software, copyrights, patents, trademarks, service marks, trade dress, materials, web screens, layouts, processing techniques, computer programs, Documentation, procedures, processes, algorithms, methods, specifications, know-how, and other intellectual property that Servicers, Servicers' Affiliates, or any of their licensors, vendors, service providers, or contractors own, develop, or license prior to, during the term of, or after termination of the Agreement, or that Servicers use in connection with the Services, and all updates to, alterations to, and derivative works from any such intellectual property.

**Issuer:** The financial institution or Card Organization which has issued a Card to an individual, company, corporation, or other legal entity.

**Location:** A physical location, internet address, division, outlet, processing method, or business activity for which we have assigned a unique Merchant Account Number.

**Marks:** Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines, or other proprietary designations.

**Mastercard:** Mastercard International Incorporated, its subsidiaries and affiliates, and each of its and their respective successors or assigns.

**Merchant Account:** An account we establish for each of your Locations for accounting and billing purposes in connection with the Services.

**Merchant Account Number (MID):** A number that numerically identifies each Merchant Account.

**Merchant Provider:** Any Third Party engaged by you to provide services to you involving or relating to (i) access to Cardholder data, Transaction Data or information related to either Cardholder data or Transaction Data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs). "Merchant Provider" also includes any franchisor (including IHG) or other Third Party that provides or controls a centralized or hosted network environment, irrespective of whether Cardholder data is being stored, transmitted, or processed through it.

**Merchant Systems:** Any and all equipment, systems, telecommunication lines, wireless connections, software, computers, networks, point-of-sale terminals, card readers, merchandise, card scanners, printers, PIN pad devices, and other hardware, systems, and equipment (whether owned or licensed by you, any of your Affiliates, any Merchant Provider, or another Third Party) used in connection with your accepting, processing, clearing, settling, transmitting, and otherwise handling Card transactions, or otherwise used by you in connection with the Agreement.

**MPA Addendum:** The Addendum to Merchant Processing Application and Agreement for New Properties and/or Addendum to Merchant Agreement for Existing Properties entered into between you, us, and Bank. The MPA Addendum is a Contract Document and part of the Agreement.

**Non-Bank Services:** Products and Services provided pursuant to the Agreement, but not provided by Bank, including services for Cards ("**Non-Bank Cards**") and transactions that Processor sponsors and settles and Conveyed Transactions. Non-Bank Services are considered Services and are subject to the Agreement. For purposes of Non-Bank Services, the words "we", "our", and "us" refer only to Processor, not Bank

**Non-Debit Network:** A Card Organization through which a Non-Debit Network Transaction is processed.

**Non-Debit Network Transaction:** A transaction made with a Debit Card that is not routed through a Debit Network and that is processed and settled as a Credit Card transaction, against the Cardholder's bank account or prepaid account, as permitted by applicable Card Organization Rules.

**PIN:** A personal identification number entered by the Cardholder to submit a PIN Debit Transaction.

**Processor:** FDS Holdings, Inc. or its successors and assigns. Except for Services provided by Servicers, the words "we," "us" and "our" refer to Processor.

**Reserve Account:** An account established and funded at our request or on your behalf, pursuant to Section 13.

**Sales Draft:** Evidence of a purchase, rental, or lease of goods or services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise.

**Schedules:** The schedules, fee schedules, rate schedules, exhibits, attachments, enclosures, addenda, and other documents, including revisions thereto, which may be incorporated into or made part of the Agreement concurrently with or after the date of the Agreement.

**Services:** See the meaning in Section 2.1.

**Servicers:** For Visa and Mastercard transactions and Debit Card transactions, Bank and Processor collectively, in which case, subject to Applicable Law and Card Organization Rules, Bank and Processor shall be jointly, but not also severally, liable to Client. The words "we," "us" and "our" refer to Servicers for Services provided by Servicers; otherwise, those words refer to Processor.

**Servicers Fees.** Fees that Servicers impose, establish, or set, including Authorization Fees, Transaction Fees, Equipment-related fees, shipping and handling charges (if applicable), and any other amounts that Servicers impose, establish, or set.

**Settlement Account:** An account or account(s) at a financial institution designated by Client as the account to be debited and credited by Processor or Bank for Card transactions, Servicers Fees, Third Party Based Fees, Chargebacks, and other amounts due under the Agreement or in connection with the Agreement. If you have designated more than one Settlement Account, references to Settlement Account in the Agreement mean each of your Settlement Accounts.

**Software:** Any and all software, computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with Card authorization, clearing, completing, settling, transmitting or other related processing, whether equipment, PC, server or Internet based, or otherwise provided in connection with the Services.

**Taxes:** Any and all sales, use, excise, personal property, stamp, documentary, and ad-valorem taxes; license and registration fees; tariffs, levies, and assessments; fines and penalties; and similar charges, in each case however levied, designated, based, charged, or imposed. Taxes exclude taxes imposed on Servicers based on Servicers' net income.

**Technology:** The technology used in connection with the provision of Services to Client, including software, firmware, portals, processing systems, processing platforms, networks (in each instance, whether in object or source code font), reports, templates, documentation, and all derivative works of and modifications to such technology.

**Third Party (Third Parties):** Any third party individual(s) or entity(ies) other than Client, Processor, or Bank.

**Third Party Based Fees:** Fees, fines, assessments, penalties, obligations, liabilities, adjustments, and other charges and amounts a Card Organization, Issuer, or other Third Party imposes, establishes, or sets, and all related costs and expenses. Whenever used, the term "Third Party Based Fees" includes all Data Compromise Losses and all Chargebacks. Third Party Fees include Card Organization pass through fees and interchange fees, including any fees and amounts associated with any transaction downgrading to a different interchange category.

**Third Party Services:** Services, goods, equipment, products, promotions, software, applications, systems, materials, and other items provided by any Merchant Provider or other Third Party.

**Transaction Data:** Data collected as part of performing the Services, including Cardholder information, dates, amounts, and other transaction details.

**Transaction Fees:** Fees charged on a per transaction basis.

**Us, We and Our (us, we and our):** See Servicers or Processor.

**Visa:** Visa Inc., its subsidiaries and affiliates and each of its and their respective successors or assigns.

**You, Your (you; your):** See Client.

**CONFIRMATION PAGE**

Please read these Terms and Conditions and the other Contract Documents that make up the Agreement in their entirety. They describe the terms under which we will provide you the Services. Below we have summarized portions of these Terms and Conditions, to assist you with understanding certain key provisions and to answer some common questions.

- 1** **Services may debit your bank account(s)** (also referred to as your Settlement Account(s)) from time to time for amounts owed to them under the Agreement.
- 2** **There are many reasons a Chargeback** may occur. Services will debit the amount of Chargebacks from your settlement funds or Settlement Account, or from any Reserve Account. See Section 7 and the Your Payments Acceptance Guide.
- 3** **If you dispute any charge or funding**, you must notify Services within 90 days of the date of the statement where the charge or funding appears for Card processing. See Section 6.6.
- 4** **The Merchant Agreement limits liability to you.** For detailed descriptions of the limitations of liability see Section 8.
- 5** **Services have assumed certain risks** by agreeing to provide you the Services. Accordingly, they may take actions to mitigate their risk, including terminating the Agreement and/or holding monies otherwise payable to you. See Section 12 and Section 13.
- 6** **By executing the Application**, you authorize FDS Holdings, Inc., Bank of America, N.A., First Data Merchant Services LLC, and American Express Travel Related Services Company, Inc. to obtain financial and credit information regarding your business and the signer and guarantors of the Agreement until all your obligations to those parties are satisfied.

**7 Card Organization Disclosure****7.1 Important Visa and Mastercard Member Bank Responsibilities:**

- (a) The Visa and Mastercard Member Bank is Bank of America, N.A. The Bank's mailing address is 9200 Shelbyville Road, Suite 200, KY6-225-0202, Louisville, KY 40222.
- (b) The Bank is the only entity approved to extend acceptance of Visa and Mastercard products directly to you under the Agreement.
- (c) The Bank must be a principal (signer) to the Agreement.
- (d) The Bank is responsible for educating you on pertinent Visa and Mastercard rules with which you must comply; but this information may be provided to you by Processor.
- (e) The Bank is responsible for and must provide settlement funds to you.
- (f) The Bank is responsible for all funds held in reserve that are derived from settlement.
- (g) The Bank is the ultimate authority should you have any problems with Visa or Mastercard products (however, Processor also will assist you with any such problems).

**7.2 Important Client Responsibilities:**

- (a) Ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and Chargebacks below Card Organization thresholds.
- (c) Review and understand the terms of the Agreement.
- (d) Comply with Card Organization Rules.
- (e) Retain a signed copy of this Disclosure Page.
- (f) You may download Visa's Rules from its website: <https://usa.visa.com/>.
- (g) You may download Mastercard's rules from its website: <https://www.mastercard.us/en-us.html>

By its signature below, Client acknowledges that it has received and read, and Client agrees to, (1) the Application, (2) the MPA Addendum, (3) the Fee Schedule (including the Interchange Rate Schedule and Debit Network Fee Schedule), (4) the Your Payments Acceptance Guide, and (5) these Terms and Conditions.

**No alterations or changes to the Agreement will be accepted; any alterations or changes made are null and void and have no force or effect.**

Client's Business Principal: Signature (Please sign below):

X \_\_\_\_\_

\_\_\_\_\_ Title \_\_\_\_\_ Date

Please Print Name of Signer

**EXHIBIT H-5  
TO DISCLOSURE DOCUMENT**



## IHG DIRECT PARTICIPATION AGREEMENT

This Participation Agreement (“**Participation Agreement**”) is made between Six Continents Hotels, Inc., a Delaware corporation (“**IHG**”) and you (the “**Participating Property**”).

**WHEREAS**, IHG has negotiated contracts with certain suppliers of goods and services through relationship with group purchasing organizations and numerous other suppliers and distributors of goods and services (“**Supplier** or **Suppliers**”).

**WHEREAS**, IHG and Suppliers have agreed in certain instances that IHG may provide these goods and services to Participating Properties and the vehicle for doing so shall be entering into this Participation Agreement between IHG and the Participating Property.

**NOW, THEREFORE**, in consideration of the recitals above and the mutual covenants and obligations in this Participation Agreement, IHG and the Participating Property acknowledge and agree as follows:

1. **Services.** IHG shall facilitate the provision to the Participating Property of the services identified on **Exhibit 1** hereto (“**Services**”) and further described in this Participation Agreement in accordance with the terms of this Participation Agreement. Participating Property agrees that it shall use the Services only as explicitly set forth in this Participation Agreement, including but not limited to limiting the use of Services to the specific property or properties set out in **Exhibit 1**.
2. **Payments.** Following the installation and acceptance of the Services by the Participating Property, IHG shall delivery an invoice to the Participating Property for the charges due for the provision of such Services (which may include charges for installation and other required set up). Unless otherwise set forth on **Exhibit 1**, all invoiced amounts shall be due immediately upon receipt and payment shall be made to IHG within fifteen (15) days from the receipt of invoice. IHG reserves the right in its sole reasonable discretion to assess a fee up to [three percent (3%)] of all purchased made hereunder.
  - a. As it relates to payments that the Participating Property owes to IHG hereunder, the Participating Property acknowledges and agrees that it is solely responsible to promptly and fully communicate to IHG the expected date by which the Participating Property will be ready for fiber, equipment and other installation required in connection with the provision of Services (“**Site Ready Date**”). In the event that the Participating Property misses or changes the Site Ready Date after IHG has communicated the Site Ready Date to the Supplier or the Supplier cannot reasonably access the site for the installation (collectively “**Customer Not Ready** or **CNR**”), the Participating Property may be assessed a fee in connection thereto, and such fee shall be paid as a part of the payment obligation to IHG as described herein.
  - b. In addition, if the Participating Property cancels the required installation for the provision of Services hereunder (“**Site Cancellation**”), the Participating Property may be assessed a cancellation fee in connection with the Site Cancellation (“**Cancellation Fee**”), and the Participating Property shall be responsible for the payment of such Cancellation Fee to IHG when due.

- c. For the purposes of this Participation Agreement, “Customer Not Ready” or “CNR” is defined as when the Participating Property’s demarcation point (i) is not reasonably available or otherwise ready for fiber delivery from the Supplier; (ii) is still under construction; (iii) does not have permanent power sources; (iv) secured with a door and lock; or (v) does not have fiber panel or rack unit ready in the location previously communicated to IHG or to the Supplier. The location of fiber panel or rack unit described in (v) shall be determined at the time when the Participating Property and Supplier perform a walkthrough on the site of the Participating Property prior to any work that the Supplier performs (“Walkthrough”) in connection with this Participation Agreement. Any fee assessed by the Supplier in connection with a CNR situation shall be paid promptly and in full by the Participating Property.
  - d. Furthermore, in the event that the Participating Property’s demarcation point is moved from the location agreed to by the Participating Property and the Supplier during the Walkthrough, any request to change or move the location of the demarcation point may result in a direct charge to the Participating Property to cover any and all additional capital expenditure expenses arising from any additional construction. Participating Property shall promptly and in full pay such direct charge to IHG when due.
3. **Termination by IHG.** IHG may immediately terminate this Participation Agreement at any time and for any reason, including the following:
- a. Participating Property is in default of any provision of an IHG License Agreement;
  - b. There is any “Transfer” (as defined in the IHG License Agreement) by the Participating Property of the ownership of the Participating Property or change in ownership of the Participating Property that occurs without the prior written consent of IHG or is unauthorized under the IHG License Agreement;
  - c. Participating Property sells that Participating Property to a third party;
  - d. Participating Property fails to comply with and/or breaches the confidentiality obligations set forth in Section 6 below; or
  - e. Participating Property fails to make payments as required by the terms of this Participating Agreement or any agreement with a Supplier.

Upon any expiration or termination of this Participating Agreement for any reason whatsoever, the Participating Property shall immediately destroy or return all goods or documents in its possession that are the property of IHG or its affiliate, and any documents containing confidential information together with all copies thereof as may be deemed reasonable by both parties, except for such copies as shall be required for Participating Property’s taxation or accounting records or as otherwise required by law.

4. **Early Termination by Participating Property.** A property may be considered no longer a Participating Property when it is de-flagged in the IHG internal system or is otherwise a no longer an IHG-branded property (“Deflagged Property”). On the date that the Participating Property becomes a Deflagged Property (“Deflagged Date”), the Participating Property is subject to pay early termination fees (“ETFs”) in connection with the Services set forth in **Exhibit 1**. ETFs are calculated based on the number of months remaining under the Participation Agreement times the monthly rate for the Services. At IHG’s reasonable, sole discretion, IHG may directly debit the amount of ETFs on the Deflagged Date from the account that is associated with the Participating

Property at the time of Deflagged Date. ETFs fulfill the terms of the Participation Agreement and will be forwarded to the Participating Property's IHG Franchise Statement as such.

In addition, the Participating Property is responsible for the equipment in connection with the Services not returned to the Supplier after the Participating Property has been de-flagged. Once the Participating Property becomes a Deflagged Property, the Participating Property will be billed for the fees owed on the equipment within sixty (60) days from the de-flagged date in a manner that IHG chooses. Such fees will be returned to the Participating Property once IHG has confirmed that all of the associated equipment has been returned to the Supplier or to IHG.

Furthermore, if the Participating Property leaves the IHG System such that it is no longer an IHG-branded property while the Participation Agreement is still in effect, the Participating Property shall be liable for payment to IHG of ETFs equal to (X) the number of months remaining on the term of this Participation Agreement multiplied by (Y) the monthly fees due under the Participation Agreement. Such payment is due within thirty (30) days following the termination date.

5. **Obligations.** In the event of sale of the Participating Property to a third party, the seller of Participating Property shall take commercially reasonable efforts to ensure that the purchaser of the Participating Property understands and assumes the remaining term of this Participation Agreement, if any, for the Services that the Participating Property receives under **Exhibit 1**. In the event that the seller of the Participating Property fails to notify the purchaser or the purchaser does not agree to assume the remaining term of this Participation Agreement, if any, as a part of the sale of the Participating Property, the undersigned acknowledges and agrees to assume any and all charges and fees associated with early termination of this Participation Agreement as a result of the sale, which shall be no more than the prorated amount of fees remaining on the 36-month term of this Participation Agreement.
6. **Confidentiality.** In consideration of Supplier and Participating Property disclosing to each other the confidential information about the prices of goods and services negotiated by IHG with Supplier and other confidential information pertaining to this Participation Agreement, the Participating Property agrees:
  - a. Not to use, disclose, share, or otherwise disseminate any information related to this Participation Agreement, including the confidential price information, for any purpose whatsoever other than strictly for the purpose of this Participation Agreement;
  - b. To disclose the price information only to those of its personnel who need access to the same for the purpose of this Participation Agreement, and otherwise to keep the prices and all confidential information strictly confidential and not permit any person access thereto;
  - c. Not to make any copies of documentation relating to this Participation Agreement, including price information, except strictly for the purpose of and to the extent necessary for the purpose of this Participation Agreement;
  - d. Upon termination of this Participation Agreement to return to Supplier and IHG all documentation relating hereto, including pricing information, in the possession or control of the Participating Property (including recipient personnel) and any copies of the information except for such copies as shall be required for Participating

- Property's taxation or accounting records or as otherwise required by law;
- e. Participating Property shall ensure that its affiliated companies comply with the provisions of this Section 6. THE BREACH BY PARTICIPATING OWNER OF THIS SECTION 6 SHALL BE DEEMED A MATERIAL BREACH OF THIS PARTICIPATION AGREEMENT INCAPABLE OF REMEDY ON THE PART OF PARTICIPATING PROPERTY;
  - f. If Participating Property becomes aware of any breach of this Section 6, it shall immediately give formal notice to Supplier (and IHG, where applicable), giving all available details of the breach and shall at its own cost take such steps as Supplier (and IHG, where applicable) may at Supplier's discretion (or IHG's discretion, where applicable) decide in order to minimize the loss which Supplier (and/or IHG, where applicable) may otherwise suffer as a result of such breach.
7. **Intellectual Property.** Participating Property acknowledges that any intellectual property (both registered and unregistered) that is developed by IHG in the provision of the Services shall remain the exclusive and sole property of IHG and its affiliate and may not be used by the Participating Property without the prior written consent of IHG.
  8. **Assignment.** Participating Property may not assign this Participation Agreement, nor any of its rights and/or obligations under it, nor purport to do so, nor hold any such rights in trust for any other person except to the extent required under Section 5, "Obligations", above.
  9. **Release and Indemnity.** PARTICIPATING PROPERTY, ITS PARENT, SUBSIDIARIES, AND AFFILIATES, AND EACH OF THEIR RESPECTIVE HEIRS, REPRESENTATIVES, DIRECTORS, AGENTS, SUCCESSORS AND ASSIGNS HEREBY RELEASE, REMISE, AND FOREVER DISCHARGE IHG AND ITS PARENTS, SUBSIDIARIES AND AFFILIATES AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (EACH HEREINAFTER REFERRED TO AS AN "INDEMNIFIED PARTY") FROM ANY AND ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, OF ANY KIND OR NATURE, ABSOLUTE OR CONTINGENT, AT LAW OR IN EQUITY, IN ANY WAY RELATING TO THE SERVICES OR THIS AGREEMENT. PARTICIPATING PROPERTY SHALL INDEMNIFY THE INDEMNIFIED PARTIES AND HOLD THEM HARMLESS FROM ANY LOSS, LIABILITY, DAMAGE, COST OR EXPENSE, AND PROMPTLY REIMBURSE THEM FOR ALL PAYMENTS OF MONEY (FINES, DAMAGES, LEGAL FEES, COSTS, PENALTIES AND EXPENSES) BY REASON OF ANY CLAIM OR LEGAL PROCEEDINGS ARISING FROM ANY ACT, OMISSION OR OBLIGATION OF PARTICIPATING PROPERTY OR ANYONE ASSOCIATED OR AFFILIATED WITH PARTICIPATING PROPERTY. **THIS SECTION 9 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**
  10. **Defective Equipment.** Participating Property acknowledges and agrees that IHG and its parents, subsidiaries, and affiliates (individually and collectively "IHG") shall not be liable for any defective or deficient equipment or Services provided hereunder. Furthermore, Participating Property agrees to assert any warranty, liability, defect, injury, damages and/or indemnification claims directly against the applicable Supplier, manufacturer, vendor, or insurance company and not against IHG.
  11. **Warranties Disclaimed.** IHG DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES WITH RESPECT TO ANY ASPECT OF ANY PRODUCTS OR SERVICES DELIVERED HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY

WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IHG MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING AVAILABILITY, SERVICE QUALITY OR OTHERWISE. IHG IS NOT AN AGENT OF THE PARTICIPATING PROPERTY OR ANY SUPPLIER.

12. **No Other Promises.** PARTICIPATING PROPERTY ACKNOWLEDGES AND AGREES THAT IHG HAS NOT MADE ANY PROMISES, REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND WHATSOEVER TO PARTICIPATING PROPERTY OR ANYONE ACTING ON PARTICIPATING PROPERTY'S BEHALF.
13. **Compliance with Law.** Participating Property is responsible for complying with all federal, state, and local laws and regulations that may apply to this Participation Agreement and any product or service purchased hereunder.
14. **Choice of Law, Courts, and Dispute Resolution.** This Participation Agreement shall be construed under the laws of the State of Georgia, without application of the principles of conflicts of laws thereof, provided the foregoing shall not constitute a waiver of any of Participating Property's rights under any applicable franchise relationship laws. The parties agree to submit any disputes first to at least a Senior Vice President or equivalent leadership level of each party, then to non-binding mediation, and if unsuccessful to the exclusive jurisdiction of the state courts of DeKalb County, Georgia or the United States District Court for the Northern District of Georgia.
15. **Power to Execute.** The person signing this Participation Agreement on behalf of Participating Property has full power, authority, and legal right to execute, perform and timely observe all the provisions of this Participation Agreement to be performed and observed by Participating Property. Participating Property's execution, delivery and performance of this Participation Agreement have been duly authorized by all necessary action on the part of Participating Property.
16. **No Waiver.** The failure of either party to seek redress for the breach of, or to insist upon the strict performance of any term, clause, or provision of this Participation Agreement, shall not constitute a waiver, unless the waiver is in writing and signed by the party waiving performance.
17. **Severability.** If any provision of this Participation Agreement or the application of any provision hereof is held invalid, the remainder of this Participation Agreement and the application of such provision shall not be affected unless the provision held invalid shall substantially impair the benefits of the remaining portions of this Participation Agreement.
18. **Survival.** Except as otherwise specifically stated herein, any terms of this Participation Agreement that by their nature extend beyond its termination shall remain in effect until fulfilled after any such termination and shall apply to the parties' respective successors and assigns.
19. **No Effect on Other Documents.** This Participation Agreement does not modify or in any way amend any agreements between IHG and the Participating Property, including but not limited to any licensing agreement (including the IHG License Agreement) between thereto. This

Participation Agreement has no bearing on, and in no way supersedes or affects any current or future default and termination notice concerning any agreements between IHG and the Participating Property, including but not limited to any licensing agreement between thereto, if any, issued by IHG or any of its affiliated companies relative to any Participating Property, nor does it affect Participating Property's obligation to comply at all times with the minimum quality and service requirements of IHG.

20. **Publicity.** IHG may use the name of the Participating Property and may include such names in aggregate information in connection with materials released to the public and to other third parties in connection with this Participation Agreement and for other purposes without the prior approval of Participating Property.
21. **Entire Agreement.** This Participation Agreement comprises the entire understanding of the parties and supersedes and cancels any previous oral or written agreements between the parties with respect to the subject matter hereof. Further, any and all prior representations or agreements by any agent or representative of either party shall be null and void. Any waiver, modification or amendment to this Participation Agreement must be in writing and signed by officers of both parties. Any attempted waiver, modification or amendment not in writing and signed by officers of both parties shall be null and void.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

**IN WITNESS WHEREOF**, each Party, through its duly authorized representative, hereby agree to the terms and conditions of this Participation Agreement.

Signed for and on behalf of **Participating Property** by:

\_\_\_\_\_  
InnCode

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

Signed for and on behalf of **Six Continents**

**Hotels, Inc.** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

**EXHIBIT 1**

[INSERT ORDER DETAILS]



**EXHIBIT H-6  
TO DISCLOSURE DOCUMENT**

## PARTICIPATION AGREEMENT

This Participation Agreement is entered into as of this \_\_\_ day of \_\_\_\_\_ 202\_\_ (the “**Participation Effective Date**”), by and between \_\_\_\_\_ (the “**Hotel**”) and Supplier (“**Supplier**”) (each, a “**Party**” and collectively, the “**Parties**”), and is entered into pursuant to and governed by the terms and conditions of the Master Services Agreement entered into by and between Six Continents Hotels, Inc. (“**IHG**”) and Supplier dated \_\_\_\_\_, 202\_ (the “**Agreement**”). The capitalized terms used in this Participation Agreement without definition shall have the meanings ascribed to them in the Agreement.

The Parties acknowledge and agree that the terms and conditions of this Agreement are hereby incorporated into this Participation Agreement and shall be binding on the Hotel and Supplier and shall govern the Services purchased hereunder.

**PARTICIPATION AGREEMENT TERM.** Unless earlier terminated in accordance with this Agreement, this Participation Agreement shall commence on the Participation Effective Date and shall continue thereafter for a period of \_\_\_\_\_ (\_\_\_\_\_) months following installation and Acceptance of the Services provided hereunder.

**PROVISION OF SERVICES.** Supplier shall provide to Hotel the Services identified in a relevant Statement of Work and further described in this Agreement in accordance with the terms of this Participation Agreement and the delivery schedule set forth in the Services Addendum.

**INVOICING AND PAYMENT.** Following installation and Acceptance by the Hotel of the Services provided under this Participation Agreement, Supplier shall deliver an invoice to Hotel for the Charges due for such Services in accordance with **Section 3 (Charges)** of this Agreement.

**RIGHT TO VALIDATE INVOICES.** Hotel authorizes and Supplier agrees to provide IHG with a copy of the invoices for Services provided under this Participation Agreement in order to permit IHG to review and validate that the invoices provided are current, accurate and complete. In the event that IHG’s review of an invoice identifies an error or overcharge, Supplier will promptly correct the error or refund the amount of the overcharge to Hotel.

**AUTHORIZATION TO NOTIFY OF DEFAULT.** Hotel authorizes IHG to notify Supplier in the event that Hotel is in default of its obligations under this Agreement. Supplier shall use this information solely to evaluate the Hotel’s default and shall not disclose such information to any third party or use such information for any other purpose.

**WAIVER AND RELEASE.** Hotel and Supplier acknowledge and agree that IHG has no obligations under this Participation Agreement and hereby waive and release IHG from and against any and all present and future claims arising out of or related to this Participation Agreement.

**IN WITNESS WHEREOF**, each Party, through its duly authorized representative, hereby agree to the terms and conditions of this Participation Agreement.

Signed for and on behalf of <b>Hotel</b> by:		<hr/> Signature <hr/> Name <hr/> Position <hr/> Date	
Signed for and on behalf of <b>Supplier</b> by:		<hr/> Signature <hr/> Name <hr/> Position <hr/> Date	

**STATEMENT OF WORK**

This schedule outlines the Statement of Work (the “SOW”) that will be performed for Six Continents Hotels, Inc. (“IHG”) and Program Participants by \_\_\_\_\_ (the “Supplier”) as part of the Master Services Agreement dated \_\_\_\_\_:

**NOW THEREFORE IT IS HEREBY AGREED** as follows:

**1. INCORPORATION AND INTERPRETATION**

- 1.1.1** This SOW sets forth details of Supplier’s provision of certain Services to Program Participant as described herein. This SOW incorporates the Master Services Agreement between Six Continents Hotels, Inc. and Supplier dated [ ] (the “**Agreement**”) and sets forth the specific terms and conditions whereby Supplier shall provide IHG and Program Participants with Services set forth in this SOW.
- 1.1.2** Any terms or phrases defined in the Agreement shall have the same meaning in this SOW.

**2. SERVICES**

The Services to be performed by Supplier are:

- Site Survey
- Implementation of the approved solution including installation, configuration, integration and testing
- Ongoing support including:
  - Remote Call Center Support and Helpdesk Services
  - Remote Network Operation Center (NOC) services, including remote network monitoring, logs, maintenance and reports
  - On-site support if problem cannot be solved remotely
  - Remote and/or on-site MACD (Move, Add, Change, Delete) support
  - On-site pre-convention/meeting/conference support (optional service)

**3. CHARGES**

	Quantity	Cost
Access Point		\$
Switch		\$
<ul style="list-style-type: none"> <li>• 24 Port</li> <li>• 48 Port</li> </ul>		
Gateway/ Firewall/ Security Device		\$
UPS		\$
Heatmap / Final site survey		\$
Post-install documentation		\$
Training		\$
Post survey Tuning		\$
Project Management		\$
		\$

5. **Project Workflow.** The anticipated project workflow is attached as Exhibit E for reference.
6. **System Installation**

Program Participant shall provide the following at Program Participant's expense:

- a. **System Location.** The room in which the System is to be located shall be secure from unauthorized access and the location intended for the System shall have adequate rack provisioning. Adequate access must be available for moving the System from the delivery truck into the installation room. Access to a table of at least 0.6 meters by 0.6 meters is to be provided for use by staff during the term of this Agreement. (Typically Supplier would be able to share the Hotels Computer/PBX room facility, known as "Communications Center"). In the case of new-build properties, Supplier will review and approve the project Communications Center drawing, as and when requested by Program Participant. In the case of existing properties, Supplier will inspect the facility, then supply a diagram of requirements/layout and seek approval of Program Participant.]
- b. **Power Supply.** IHG Program Participant will provide power access plugs, supported by the property generator and protected with surge protection, in the Communications Center and the Risers assigned to the System at-least 14 days prior to installation of network equipment. In the case of New Hotels, IHG Program Participant will install UPS coverage for all computer components installed within the communications room and to all Floor Distributor locations. In the case of Existing Hotels, Supplier shall conduct a survey of both the Communications Center and all Riser locations as part of the Site Survey Report and submit recommendations to IHG Program Participant on the required enhancements for UPS coverage to meet Standards.
- c. **Civil Works.** Program Participant agrees to undertake at its cost any civil work related to the deployment of infrastructure not outlined in drawings, such as core drilling, returning ceiling tiles and making good of surfaces. Supplier shall document scope of civil work in advance to Program Participant as part of the Site Survey Report.
- d. **Billing Configuration(When Required).** Program Participant will define billing options for the configuration of the System to Supplier for initial configuration of billing options for the System. In accordance with IHG brand standards.
- e. **PMS.** Program Participant shall be liable for the installation fees of the PMS interface license and any ongoing maintenance or upgrade fees charged by the IHG Program Participant's PMS vendor. Program Participant will ensure that the record or folio description posted to the bill shall read: "IHG Connect"
- f. **Design.** Program Participant will provide timely input to the design of the property specific configuration of the system as required by Supplier. This includes, but is not limited to, system configuration, portal design and manufactured, printed or electronic instruction materials.
- g. **Access to Installed Locations.** Program Participant will ensure reasonable access to any installed rooms within the property for installation and maintenance purposes.

- h. **Status Updates.** Program Participant will inform Supplier at all times of any issues that may impact construction and/or the ongoing operation of the hotel
- i. **Delivery of hardware components.** In the event that the hardware components of the System are to be procured by a third party pursuant to the Bill of Materials Program Participant shall ensure that such hardware is delivered to the property by the date stated in the project timeline.
- j. **Internet Circuit/Bandwidth Provider.** Program Participant shall be responsible for contracting and paying for internet connectivity for the System on a timely basis (in no event lesser than five (5) days prior to the Scheduled Start Date from an IHG Approved ISP. Program Participant shall appoint Supplier as its authorized agent in managing the local internet Supplier and shall ensure that the local ISP shall have received sufficient directions and instructions (and vice versa) so that they will perform their services in accordance with the instructions provided by the Supplier. Without prejudice to the generality of the foregoing, Program Participant shall provide such assistance as may be reasonably required by the Supplier in working with the local ISP. Circuits will be installed and operational prior to Supplier's arrival for installation activities.
- k. **Cabling Network Responsibility.** Program Participant shall be responsible for premise wiring (horizontal and vertical cabling) unless included as part of this SOW. Based on the findings of the site-survey If Supplier is responsible for cable remediation; all cable remediation will be performed before installation of Guest Internet System. Cable infrastructure will be installed at a minimum CAT6 and terminated in patch panels in accordance with industry labeling standards.

### **Deliverable Materials**

The following items will be delivered to the property under this SOW.

#### Project Status Report

- a. Network Design and Site Survey Report
- b. Property Completion Report and System Acceptance Checklist (includes As Built documentation)
- c. Post-installation Site Survey Report
- d. Monthly Operations Report, specifically, Supplier system generated report will include the following information in an agreed-to format:
- e. LAN Interface Transmit Utilization
- f. LAN Interface Receive Utilization
- g. LAN Interface Transmit Traffic (Bytes, Packets)
- h. LAN Interface Receive Traffic (Bytes, Packets)
- i. LAN Interface Transmit Errors
- j. LAN Interface Receive Errors

### **Completion Criteria**

Supplier shall have fulfilled its installation obligations under this SOW when the Program Participant has signed the Acceptance Checklist indicating that the System is fully installed and

any outstanding items, if any, have been remediated or resolved. Until such time as the Acceptance Checklist is signed, the System **has not** been accepted and the Program Participant has the right to withhold any monthly payments due until the System has been accepted. Acceptance shall not be unreasonably withheld, delayed or conditioned. Acceptance shall also be deemed to have occurred ten (10) days after the first commercial use of the Services unless Supplier is provided notice that the System is not accepted.

1. Supplier shall provide the Services from the following locations:

[To be agreed between IHG Program Participant and Supplier on a case by case basis]

2. Supplier shall perform the Services and provide the Deliverables by the following dates:  
[To be agreed between IHG Program Participant and Supplier on a case by case basis]

If any Services provided by Supplier to IHG Program Participant under this Services Addendum have not been approved in writing by IHG Program Participant (by signature of this Services Addendum in the manner required below) before such Services commence, IHG Program Participant shall not be liable for any Charges, costs or expenses in relation to such Services.

The Parties signify their agreement to the terms of this Services Addendum and intention to be bound by the contents of it by signing below.

Signed for and on behalf  
of \_\_\_\_\_  
by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

Signed for and on behalf  
of **Supplier** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date



**EXHIBIT H-7  
TO DISCLOSURE DOCUMENT**

<b>Oracle America, Inc.</b>	<b>Salesperson:</b>	<b>Bill-To Taxpayer ID</b>
<b>Customer Account Set-up Form</b>	<b>DO NOT FILL IN</b>	<b>Number (TIN/EIN)</b>
	<b>*REQUIRED</b>	<b>DON'T FILL IN</b> <b>*REQUIRED</b>

**Business Profile**

<b>Legal / Bill-To Information – Required</b>	Dun & Bradstreet (DUNS) # DO NOT FILL IN
---	--

Full Legal Name of Company

**Business Type:**

Sole Proprietorship    Non-Profit    Partnership    Corporation    Subsidiary    Division    LLC    Management Company

Legal Entity Address\* (this will be used as the Bill To address unless an alternate address is provided)

City	County	State	Zip -	Business Phone ( ) -
------	--------	-------	----------	-------------------------

Accounts Payable Contact Name	Accounts Payable Contact Phone # ( ) - ext	Accounts Payable Contact email address:
-------------------------------	---	---

ALTERNATE Bill To Address: (i.e. PO Box)\* OPTIONAL – If not needed, leave blank

City	County	State	Zip -	Alternate Bill To Phone ( ) -
------	--------	-------	----------	----------------------------------

**Site Information - Required**

Site Name / Trade Name	Site Identifier (store #, inn code)
------------------------	-------------------------------------

SITE Address (Ship To Address - where support would be dispatched)

City	County	State	Zip -	Site Phone # ( ) -
------	--------	-------	----------	-----------------------

Site Contact Name (please select Mr., Ms., Mrs., Dr., ect...) Select One	Site Contact Title (i.e. Owner, General Manager, Controller, etc...)
---	--

Site Contact Phone # ( ) - ext	Site Contact email address:
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**Information Provided By:**

Name	Title	Date
------	-------	------

**EXHIBIT H-8  
TO DISCLOSURE DOCUMENT**

**EXHIBIT A**

**Participating Property**

Effective as of \_\_\_\_\_, Company shall provide Services and Deliverables to the Participating Property named below, pursuant to the schedule for services and deliverables as set out below and the terms and conditions of the MSA.

1. **Schedule of Services and Deliverables.**

Participating Property:

\_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

Company:

Stillwater Interactive Inc.

Signature: \_\_\_\_\_

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

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

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

**EXHIBIT H-9  
TO DISCLOSURE DOCUMENT**

# MUSIC SERVICES AGREEMENT

**Date of Agreement:**

**Service Commencement Date:**

**SUBSCRIBER NAME:** \_\_\_\_\_

**SUBSCRIBER ADDRESS (the "Premises"):**

**BILLING ADDRESS:**

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP CODE

\_\_\_\_\_  
CITY, STATE & ZIP CODE

\_\_\_\_\_  
TELEPHONE

\_\_\_\_\_  
TELEPHONE

\_\_\_\_\_  
EMAIL-All invoices will be sent to this email address

**1. SERVICES:** During the Initial Term and any subsequent Renewal Term(s) of this Agreement (the "Term"), The Playlist Generation ("TPG") will provide to Subscriber, at (and solely in the public areas of) the Premises, background music broadcasting services as follows (the "Services"): (i) TPG will lease to the Premises a single TPG music playback device. That device, including its hardware and software, is called the "Player". The Player is supplied along with its power and RCA cables and a 7-foot Ethernet cable. (ii) TPG will coordinate and secure all necessary licenses for public performances of musical compositions (including, as applicable, from ASCAP, BMI, GMR and SESAC in the USA and SOCAN in Canada) and sound recordings (including, as applicable, from SoundExchange in the USA and ReSound in Canada and from owners of master recordings). (iii) TPG will, via the Player, deliver music programming developed in consultation with Subscriber (the "Program"). From time to time during the Term, Subscriber may request by email one or more additional Players in order to deliver the Program to such additional premises of Subscriber as it identifies in that email request. Each party represents that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and has the corporate power and authority to execute, deliver and perform its obligations under this Agreement. Each party will perform its obligations under this Agreement promptly, in accordance with all applicable legal requirements, and consistent with industry standards. Notwithstanding the foregoing, the preceding sentence shall not be interpreted to add, remove or modify any material obligations of the parties hereunder.

**2. FEES:** In consideration of the Services, Subscriber shall pay TPG as follows:

a) Subscriber will pay (i) a startup fee ("Startup Fee") of \$899 per Player, payable on its receipt of each of the Programs, and (ii) a recurring monthly service charge ("Monthly Fee") of \$150 per music zone for the following Players/zones: \_\_\_\_\_.

b) If Subscriber subsequently orders any additional Players or additional Program feeds (i.e. one Player delivering two separate Program feeds), they will be charged the applicable Startup Fee and Monthly Service Fee for the second Program feed.

**3. ACCEPTANCE OF AGREEMENT:** The terms and conditions of this Agreement continue beneath the parties' signatures hereon. This Agreement will become binding on the parties and shall commence on the Service Commencement Date after both Subscriber and TPG have executed this Agreement.

**THE PLAYLIST GENERATION:**

**SUBSCRIBER:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Signature:

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

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

#### 4. TERM

The term of this Agreement shall be one (1) year from the Service Commencement Date ("Initial Term") and automatically renew for successive thirty (30) day periods (each a "Renewal Term"), until one party gives the other party thirty (30) days written notice of cancellation; provided that The Playlist Generation will have no right to cancel this Agreement during its first two (2) years, unless Subscriber breaches the terms and conditions of this Agreement and does not cure such breach within the period provided in Section 11 below. Upon termination of this Agreement by either party, Subscriber shall return the Player(s) within thirty days after such termination date. Upon the giving of such notice, this Agreement's term will expire as of the last day of the Initial Term or Renewal Term of the Agreement, as applicable ("Termination Date"). However, Subscriber's failure to return the Player(s) supplied by TPG no later than thirty days after the Termination Date, shall require Subscriber to pay TPG \$400 per unreturned Player.

#### 5. USE OF MUSIC PROGRAM

TPG acknowledges its obligations set forth in Section 1 above concerning the securing of licenses for public performance. Subscriber agrees that it shall not transmit or permit the transmission of the Program by others or amplify the Program so as to be audible outside the Premises (provided that Subscriber may nonetheless use the Program as the source of music content for any "music-on-hold" service [as that term is customarily understood from time to time in the U.S. music industry] operated by Subscriber for its telephone lines originating at the Premises). Subscriber's use of the Program is limited to those parts of the Premises that are non-residential and open generally to all members of the public to whom the Subscriber has granted access to said premises (e.g., if the Subscriber operates a hotel, then its license hereunder does not extend to any guest rooms or other private locations therein). Subscriber shall not dub, record, re-record, transcribe, re-transcribe or otherwise copy (including for archival or backup purposes) the Program in any manner or by any means or method. Subscriber understands that all or substantially all of the recordings included in the Program will be copyrighted works. Subscriber shall not permit the Program to be performed by a deejay. Subscriber shall not use the Program (i) to displace a live orchestra, (ii) as an accompaniment to dancing, skating, aerobics or other similar forms of physical activity or entertainment, (iii) in those areas, or during any period, for which an admission, membership, or entrance fee is charged in any premises, or (iv) in synchronization with video or other visual materials or media of any kind (including, e.g., in synchronization with programming or material of any kind displayed by means of a television screen, projection screen or computer monitor). Subscriber's use of the Program does not authorize it to use third-party commercial announcements in conjunction with the Program; except that Subscriber may use in conjunction with the Program its own public address announcements concerning the goods and/or services sold or offered to the public at the Premises, so long as Subscriber does not receive (directly or indirectly) any monetary or other compensation for those announcements. **SUBSCRIBER UNDERSTANDS THAT (A) THE RESTRICTED ACTIVITIES DESCRIBED ABOVE REQUIRE SEPARATE LICENSES FROM PERFORMING RIGHTS ORGANIZATIONS (ASCAP, BMI, GMR, SESAC) AND/OR OTHER PARTIES, AND (B) ITS VIOLATION OF ANY OF THE FOREGOING RESTRICTIONS MAY SUBJECT IT TO LIABILITY FROM THIRD PARTIES (INCLUDING THOSE ORGANIZATIONS).**

#### 6. MAINTENANCE AND CARE OF EQUIPMENT

Subscriber shall provide adequate electrical outlets and power for the Players. Subscriber is prohibited from opening, connecting a monitor, or in any other way tampering with the Players. TPG shall maintain the Players in good operating condition, via remote troubleshooting and support by phone or email, for the term of the Agreement. TPG strives for maximum uptime of the Services, and Subscriber agrees to cooperate with TPG and perform the necessary troubleshooting steps to re-establish the Player's connection to the Internet and diagnose any issues. Troubleshooting steps may include power cycling the player, checking for audio with headphones, reseating or replacing the SD card, and replacing any other cords or cables that TPG has provided to Subscriber. Required maintenance of the Players, resulting from ordinary and proper use, will be performed at TPG's expense; and TPG will use commercially reasonable efforts to perform any such required maintenance or to replace any defective equipment or parts within 3 business days after learning of the need therefor (whether from information provided by Subscriber or otherwise). Subscriber shall pay TPG's usual and customary repair charges for any maintenance, repair or replacement that does not result from ordinary and proper use of the equipment, including any due to accident, fire, theft, any misuse of or tampering with the equipment, or any force majeure events. Subscriber will pay a replacement charge of \$400 for any request to replace the entire Player, when TPG can resolve the issue with a replacement part alone (such as a power supply or SD card). Any charges that are not specified in this Agreement will be outlined by TPG to Subscriber, prior to the start of any repair or maintenance work. **TPG'S OBLIGATIONS UNDER THIS PARAGRAPH 6 ARE IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES RELATING TO THE EQUIPMENT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### 7. PROVISION AND REPLACEMENT OF EQUIPMENT

All Players and other equipment supplied hereunder will remain the property of TPG. Accordingly, Subscriber shall: (a) not directly or indirectly sell, mortgage, pledge or otherwise dispose of or encumber any TPG supplied equipment; (b) adequately insure supplied equipment against damage or loss and present evidence of such insurance to TPG upon request; and (c) upon expiration or earlier termination of this Agreement, return to TPG

(within the period specified in Section 4 above) all such equipment in good condition, reasonable wear-and-tear excepted (or pay a replacement charge of \$400 per missing, lost or damaged Player). Upon removal of the equipment, TPG shall not be required to repair, replace, or otherwise re-establish the Premises to their original condition. In the event that TPG provides Subscriber with a replacement for a particular Player (the "Retired Player") TPG will send a pre-paid return shipping label for Subscriber's use in returning the Retired Player, and Subscriber will ship it within 10 business days after receiving such shipping label. Subscriber's failure to do so within such period will result in the imposition of a \$400 charge. Subscriber shall pay \$75 to cover shipping and handling for any Players that are returned to TPG in working condition, after being reported as defective by Subscriber. When requested, TPG will provide Subscriber with the proper troubleshooting steps to determine if a Player is indeed defective and requires a replacement. Additionally, Subscriber is responsible for the cost of returning Players to TPG in the event of a Premises closure or after the Termination Date, as outlined in Section 4.

## **8. OTHER CHARGES AND FEES**

(a) TPG may at any time increase the monthly service charge after giving Subscriber written or email notice that an increase will become effective with the monthly invoice for the second full month following the date TPG gives such notice. TPG may impose such increases for any reason, including:

(1) to take account of increases in (i) licensing fees charged by music content providers (e.g., record companies as well as ASCAP, BMI, GMR, SESAC, SoundExchange, SOCAN, ReSound and other similar collecting entities) and (ii) sales, use, excise or other taxes or governmental charges arising hereunder (but excluding taxes on TPG's income); and

(2) in the event of increases in TPG's other costs of doing business.

Notwithstanding the forgoing sentence, TPG may not impose such an increase more than once in any consecutive 12 month period, and such increase may not exceed 5% of the then-applicable monthly service charge.

(b) All charges and fees due are payable within thirty (30) days of receipt of an invoice from TPG, and such invoices may be sent by TPG in advance of each monthly billing period under this Agreement. TPG will provide written notice to Subscriber of any late payments and Subscriber shall have ten (10) days from the date of receipt of such notice to cure. If no such payment is received within 10 days after receipt of such notice, then such late payments of fees and charges due hereunder will be subject to late payment and interest charges of 1.5% per month (or, if lower, the maximum rate permitted at the time by applicable law).

(c) Subscriber shall pay TPG's usual and customary charges (which may include service fees and delivery charges) for each requested change in any Program. TPG will periodically deliver to Subscriber a list of all charges applicable to requested changes in any Program (and in event will do so promptly after TPG shall increase or decrease such charges or shall add any new type of charge for such changes). Subscriber will not be liable for payment of any such charges of which it has not previously been notified.

(d) Subscriber shall pay all Internet installation, line, service and other charges (and related taxes and other governmental assessments) associated with the provision of the Program to Subscriber, if such charges are necessary.

## **9. INTERRUPTION OF SERVICE**

Each party shall not be liable for any failure to perform or in the case of TPG, interruption of service due to acts of God, strikes, power failures, emergencies, mechanical or electrical failure, internet failure, failure of telecommunications equipment or services, government action, action or inaction by the other party (or its employees, agents or invitees) or other cause beyond such party's control making it impossible to perform. Because TPG's delivery of Programs is dependent on underlying mechanical, electrical, internet, telecommunications and other equipment and services outside its control, TPG makes no guarantees that Programs will be delivered on a basis that is not subject to interruptions, delays, degraded transmission quality, outages or other malfunctions, errors or defects caused by services outside the control of TPG. Neither party shall be liable for any incidental, consequential, exemplary or punitive damages whatsoever. Notwithstanding the foregoing, TPG acknowledges its indemnification obligations as set forth in Section 14 below, and acknowledges that its indemnification obligation may extend to third-party Claims and Losses (as defined in Section 14 below) that involve consequential, exemplary, incidental or punitive damages to third parties, as set forth in Section 14 below.

## **10. SALE OR CHANGE OF SUBSCRIBER'S BUSINESS**

Sale, transfer, closure or change in location of Subscriber's business by the Subscriber herein designated shall not reduce, eliminate or otherwise affect its obligations under this Agreement. Neither party may assign this Agreement, without the other party's prior written consent, except to a successor to the business of the assigning party (whether by way of merger, consolidation, stock or equity purchase, sale of all or substantially all assets, or otherwise). Subscriber may also terminate this Agreement on 30 days notice upon sale or closure of its business.

## **11. REMEDIES UPON SUBSCRIBER DEFAULT**

Any default in payment, or any material breach of the terms and conditions of this Agreement, by Subscriber, if not fully cured within 30 days after TPG has given written notice to Subscriber of such default or material breach, will entitle TPG (at its election) to take one or more of the following actions (without limiting any other remedies then available to TPG hereunder or at law or in equity): (i) suspend the Services, with or without further notice to Subscriber (as TPG may elect), TPG's obligation hereunder to continue providing any Programs until such time when Subscriber has fully cured the default or material breach at issue; (ii) declare, in another written notice given to Subscriber, that TPG will terminate this Agreement and cease providing any Programs as of a date specified in such notice; and/or (iii) enter the Premises and remove all TPG supplied equipment but only provided that TPG will have provided at least 10 days' written notice of its intention to take such actions. Any written notice given by TPG pursuant to the preceding sentence will be given in accordance with the notice section herein.



## 12. DEFAULT/BREACH BY TPG

If TPG materially breaches its obligations under this Agreement, Subscriber may terminate this Agreement for cause upon 10 days prior written notice, unless such default is cured prior to the end of such 10-day period. The Fees shall be prorated to the date of such termination.

## 13. INSURANCE

TPG shall at all times carry and maintain, and cause its contractors and subcontractors to carry and maintain, at its sole cost and expense, the following types and limits of insurance: (a) Workers' compensation insurance covering TPG and its employees (Providers and its employees, subcontractor and its employees or contractor and its employees, as applicable) as required by law (and including a waiver of subrogation in favor of Client and Kimpton Hotel & Restaurant Group, LLC ("Kimpton")); (b) employer's liability insurance in limits not less than \$1,000,000 each accident/\$1,000,000 each employee/disease/ \$1,000,000 policy limit/disease; and (c) Commercial general liability insurance including contractual liability and liability for bodily injury or property damage, with a combined single limit of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. All policies other than workers' compensation (i) shall be (x) written on an occurrence and not on a claims made basis and (y) specifically endorsed to provide that the coverage obtained hereunder will be primary and that any insurance carried by Subscriber or Kimpton shall be excess and non-contributory; and (ii) shall name Subscriber and Kimpton as additional insureds. Prior to commencing Services, TPG shall deliver to Hotel/Restaurant certificates (and endorsements as required) of all policies and any renewals thereof. TPG shall immediately give written notice to Kimpton and Client of any claim or litigation that may result in liability to Client or Kimpton and shall give 30 days' prior written notice of cancellation or nonrenewal of any of the policies described above or in any applicable Addendum.

## 14. INDEMNIFICATION

Each Party ("Indemnifying Party") shall, at its sole cost and expense, indemnify, defend and hold harmless the other Party and its respective owners, members, officers, directors and employees (collectively, "Indemnified Party") from and against any third-party action, suit or proceeding ("Claim") and any reasonably and actually incurred loss, cost, liability or expense (including, without limitation, reasonable attorneys' fees and expenses) in connection with a Claim ("Loss") incurred by or asserted against the Indemnified Party by reason of (i) the Indemnifying Party's material breach of its obligations under this agreement or (ii) personal injury or property damage caused by TPG or its agents, contractors or subcontractors while they are on the Premises in connection with the provision of the Services, except to the extent that such Claim or Loss results from, in whole or in part, the grossly negligent acts, unlawful acts, willful misconduct or material breach of this Agreement by the Indemnified Party. For avoidance of doubt, Claims and Losses as defined herein may include those for consequential, punitive, exemplary, incidental or other damages suffered by third parties. This Section shall survive the termination or expiration of this Agreement. This indemnification obligation is subject to the following conditions: (i) receipt by the Indemnifying Party of notice from the Indemnified Party in accordance with the provision below within 30 days of any claim or action brought against the Indemnified Party for which the Indemnified Party seeks indemnification; (ii) the Indemnified Party's agreement that the Indemnifying Party may at its sole option take sole authority and control of the defense or settlement of any claims to be indemnified (except to the extent that settlement involves obligation to the Indemnified Party, in which case the Indemnified Party's consent must be obtained, which consent shall not be reasonably withheld); and (iii) full cooperation, information and assistance by the Indemnified Party to assist the Indemnifying Party in handling the defense or settlement of any claim. In no event shall the Indemnifying Party be liable for any consequential damages or lost profits under this provision, regardless of the legal theory under which such damages are sought and even if the Indemnifying Party has been advised in advance of the possibility of such damages or such damages could have been reasonably foreseen by TPG.

## 15. TRADEMARKS & CONFIDENTIALITY

TPG acknowledges that it has no interest in any trademark, service mark, trade name or logo associated with the Hotel/Restaurant (collectively "the Marks") and that the Marks are the exclusive property of Client or Kimpton (or their affiliated entities), as applicable. TPG shall not use of any of the Marks for any purpose without the prior written consent of Client or Kimpton, as applicable. During the Term and thereafter, TPG, its Providers, contractors, subcontractors shall hold confidential, and shall not use for any purpose other than to provide services under this Agreement, any information provided to TPG by Client or Kimpton that is not in the public domain, including but not limited to information concerning the business, strategies, customers or vendors of Client or Kimpton, and any information (including credit card information) belonging or relating to any Client customer or employee.

## 16. NOTICES

All communications under this Agreement shall be sent in writing to the addresses listed below via overnight courier, unless otherwise indicated herein.

Supplier Address: \_\_\_\_\_

The Playlist Generation, 1098 W. Willow St., Louisville, CO 80027

## **17. GENERAL**

TPG is an independent contractor and all persons engaged to furnish the Services are employees, agents, contractors or subcontractors of TPG and not of Supplier. When on the Premises, all TPG personnel, agents, subcontractors or contractors shall wear proper identification and conduct themselves in a manner consistent with the standards of the Hotel/Restaurant. Subscriber may require TPG to remove such personnel, as Subscriber deems objectionable. If either party brings any legal action to enforce the terms of this Agreement or declare rights hereunder, the prevailing party in any such action shall be entitled to its costs and reasonable attorneys' fees to be paid by the non-prevailing party as fixed by the court. This Agreement constitutes the sole and entire understanding between the parties with respect to the subject matter hereof and supersedes all prior oral or written conversations, representations and promises. No modification of this Agreement shall be valid unless made in writing and signed by each party. The provisions of this Agreement are severable; if any clause or provision shall be held invalid or unenforceable, in whole or in part, then such invalidity shall attach only to such clause or provision or part thereof and shall not affect any other clause or provision. TPG shall have the right to terminate this Agreement in the event that any license agreement applicable to TPG's provision of the Program (including those with collecting societies) is terminated.

## **18. GOVERNING LAW AND JURISDICTION**

This Agreement has been negotiated and executed in the State of New York and shall be governed as to all matters by the laws of the State of New York (regardless of the laws that might otherwise govern under such State's principles regarding conflict of law). In respect of any action or proceeding arising out of or relating to this Agreement or instituted hereunder or based upon any document subsequently delivered pursuant hereto, each party hereto irrevocably and unconditionally (i) consents to the exclusive jurisdiction of any state or federal court located within New York County, New York, and submits to the personal jurisdiction and venue of such courts for such purposes, and (ii) waives all claims (by way of motion, as a defense or otherwise) of improper venue, that any such court is an inconvenient forum, that this Agreement or its subject matter may not be enforced in or by such courts, and that such party is not subject personally to the jurisdiction of any such court.

[END OF AGREEMENT]

**EXHIBIT H-10  
TO DISCLOSURE DOCUMENT**



Date: May 4, 2018  
 Sales Rep: Adam Bermingham  
 Email: adam.bermingham@amadeus.com  
 Fax No: +1 603.436.1826

**AMADEUS HOSPITALITY AMERICAS, INC.**

**ORDER FORM**

This order form (the "Order Form") is executed by and between Amadeus Hospitality Americas, Inc., and its parents, affiliates and subsidiaries, with a principal office located at 75 New Hampshire Avenue, Portsmouth, New Hampshire 03801, USA ("Amadeus") and <Legal Entity Name> d/b/a <property name> ("Customer"), with a principal place of business at <property address>.

Acct. No: \_\_\_\_\_

No: \_\_\_\_\_

Qty	Unit	Product Code	Product Name	List Price	Discount	Sales Price	Total Price
<b>Services</b>							
			<b>Total:</b>				
<b>Subscription - Annual Fees</b>							
			<b>Total:</b>				
				<b>Grand Total:</b>			

*Pricing Expires in 90 Days*

**General Terms.** This Order Form is issued pursuant to the terms and conditions of the Master Software License Agreement ("Master Agreement") between Kimpton Hotel & Restaurant Group, LLC ("Kimpton") and Amadeus dated November 30, 2005, and the addendum to the Master Agreement ("Addendum") dated December 31, 2012 (collectively "Agreement"). The total price set forth herein does not include related travel and living expenses or applicable taxes which shall be invoiced in accordance with the terms of the Agreement.

In the event of a conflict between the terms of the Agreement and this Order Form, the terms of the Order Form shall prevail.

**Services Invoice Terms.** Amadeus shall invoice Customer for all the Services set forth in this Order Form on an incurred basis. After one year from the Effective Date, pricing for services becomes stale and may need to be re-quoted if not consumed due to Customer's delay in performance. Additionally, if any such services are not consumed after one year from the Effective Date, Amadeus shall have the right to close out the services under this Order Form.

**Subscription Invoice Terms.** Amadeus shall invoice Customer for the initial twelve (12) month subscription period (the "Initial Subscription Term") in the amount set forth on the Order Form upon Customer's first access to HRM Apps, SO Subscriptions or other subscriptions listed herein (collectively the subscription products). If applicable, the Initial Subscription Term for any Salesforce.com subscription products will be pro-rated to coincide with Customer's original purchase of the applicable Salesforce.com subscription product. Thereafter, the Subscription Fees will automatically renew for successive one (1) year terms (the "Renewal Subscription Term") as long as Customer (i) pays the applicable Subscription Fees when due and (ii) Customer does not terminate the subscription by providing Amadeus with at least sixty (60) days written notice prior to the expiration of the Initial Subscription Term or any subsequent Renewal Subscription Term, as applicable. Subscription fees for Renewal Subscription Term(s) are due and payable at the beginning of the Renewal Subscription Term, which shall be the anniversary date of first access.

**Integrations.** This Order Form does not include any integration-related fees that may be charged by 3<sup>rd</sup> party vendors for connecting their products, platform or solutions.

**Delivery Terms.** FOB Shipping Point.

**Payment Terms.** All invoices issued hereunder are due within thirty (30) days of receipt.

**Other Terms.** This Order Form is not effective unless and until the date Kimpton Hotel & Restaurant Group LLC takes over management of the hotel on or about \_\_\_\_\_, 2018. This Order Form shall be null and void unless and until the change in management occurs. The parties acknowledge and agree that in the event the Order Form does not become effective because the change in management does not materialize, Customer shall not be subject to any fees and penalties. However, Customer shall be responsible for all fees associated with services provide to Customer up to and until the date in which Customer provides notification to Amadeus that the change in management will not occur.

**Miscellaneous.**

**User Subscriptions.** If Service Optimization applications are being sold on this Services Schedule, the Service Optimization applications may only be used online at the applicable URL.

**Subscriber Data.** Each Service Optimization application provides for storage of subscriber data for up to 50GB, excluding HotSoS Mild, which contains 5GB. Additional storage is available for an additional charge. Amadeus reserves the right to revise or modify its general practices and procedures regarding storage of Subscriber Data.

IN WITNESS WHEREOF, the parties hereto have caused this Order Form to be executed by themselves, or their duly authorized representatives, as of the day and year last written below (the “**Effective Date**”).

**Amadeus Hospitality Americas, Inc.**

**<Legal Entity> d/b/a <Property Name>**

[[SertifiSStamp\_2]]

[[SertifiSStamp\_1]]

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

[[SertifiTitle\_2]]

[[SertifiTitle\_1]]

\_\_\_\_\_  
**Name & Title**

\_\_\_\_\_  
**Name & Title**

[[SertifiDate\_2]]

[[SertifiDate\_1]]

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

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

**VAT/Tax Exempt No.:** \_\_\_\_\_

**Purchase Order No.:** \_\_\_\_\_

**Bill To:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Ship To:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**EXHIBIT H-11  
TO DISCLOSURE DOCUMENT**

## FOOD AND BEVERAGE CONSULTING AGREEMENT

This **FOOD AND BEVERAGE CONSULTING AGREEMENT** (this “**Agreement**”) dated as of [REDACTED], 2022 (the “**Effective Date**”), by and between **KIMPTON HOTEL & RESTAURANT GROUP, LLC**, a Delaware limited liability company (“**Consultant**”) and **OWNERSHIP COMPANY, LLC**, a [REDACTED] **limited liability company** (“**Owner**”).

### RECITALS

The Agreement is entered into upon the basis of the following facts, understandings and intentions of parties:

- A. Owner owns the building located at **HOTEL/PROJECT ADDRESS** and will develop certain food and beverage improvements and facilities located thereon in connection with Owner’s development of the **HOTEL/PROJECT NAME** thereon (the “**Hotel**”). The restaurant and such other food and beverage outlets (if any) for which Owner is contracting Consultant for its services shall be located in the Hotel, are more particularly set forth on **Schedule 1**, and shall collectively be referred to herein as the “**F&B Outlet(s)**”.
- B. Consultant is in the business of developing, opening and managing restaurants, bars and other food and beverage outlets and providing food and beverage concept consulting services related thereto.
- C. Owner desires to engage Consultant, as more particularly set forth in this Agreement, to perform market analyses and advise on restaurant and food and beverage outlet concept, design, theme, and related services with respect to the F&B Outlets, as more particularly described below and on **Schedule 2** (collectively, the “**Consulting Services**”).

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and promises set forth herein, and the receipt of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Designation of Consultant.

1.01 Consulting; Representatives. Owner hereby retains Consultant as an independent contractor, to serve as a consultant with respect to the Consulting Services for the F&B Outlet(s), and Consultant hereby agrees to act as consultant to Owner, The following representatives of Owner, **OWNER REP NAME**, shall serve as Owner’s designated representatives under this Agreement.

1.02 Consulting Team. **PROJECT LEAD NAME (project lead email address)** shall serve as Consultant’s designated representative under this Agreement; provided that Consultant shall have the right to change its designated representative upon written notice to Owner

2. Consultant’s Requirements and Responsibilities.

2.01 Consulting Services: Consultant shall provide the Consulting Services as more particularly described on **Schedule 2**, pursuant to the terms and conditions contained in this Agreement. The Consulting Services shall be provided exclusively for the concept development of the F&B Outlets and integration into broader hotel operations that will be associated with the Hotel.

### 3. Fees and Out-of-Pocket Costs.

3.01 Fee. In consideration for Consultant's performance of the Consultant Services, Owner shall pay Consultant a fee in the amount of **FEE IN DOLLARS (\$000,000.00)** (the "**Consulting Fee**"). Owner shall pay Consultant an initial deposit equal to **INITIAL DEPOSIT IN DOLLARS (\$000,000.00)** upon signing this Agreement and the remaining **FEE IN DOLLARS (\$000,000.00)** is to be paid monthly, in equal installments of over the length of the pre-opening period (as anticipated at the time of agreement execution). The Consulting Fee shall be paid to Consultant at address set forth in Section 11.01.

3.02 Out-of-Pocket Costs. The Consulting Fee includes all of Consultant's personnel expenses and overhead, including, without limitation, the salary and benefits of Consultant's employees performing the Consulting Services. Owner will reimburse Consultant (at cost, with no profit or mark-up) only for Consultant's out-of-pocket expenses incurred by Consultant in performing the Consulting Services under this Agreement. Such expenses may include air and ground transportation, parking, meals, lodging, taxis, gratuities, computer and automation services, document reproduction, printing, promotional materials, express mail (such as FedEx and UPS) and similar items ("**Out-of-Pocket Costs**"). Such reimbursements of Out-of-Pocket Costs shall be made on a monthly basis by Owner, within thirty (30) days following Owner's receipt of request for such costs. Any and all costs and expenses reimbursed or otherwise paid by the Owner to Consultant must be reflected by legitimate documentation representing such cost or expense in a form deemed reasonably satisfactory to the Owner upon the Owner's review thereof. In no event shall Consultant submit more than one (1) request for Out-of-Pocket Costs per month.

### 4. Term and Termination.

4.01 Term. The term of this Agreement shall commence on the Effective Date, and unless sooner terminated in accordance the terms of this Agreement, shall expire on the earlier to occur of (a) the date that is thirty (30) months after the Effective Date, or (b) the date that is ninety (90) days after the Opening Date (as defined in the Management Agreement, as hereinafter defined) (the "**Term**").

4.02 Termination. If either party is in default of its obligations hereunder or such default continues for thirty (30) days after the defaulting party's receipt of written notice of such default, the non-defaulting party may terminate this Agreement by delivering written notice to the defaulting party prior to the cure of such default. In the event of any termination of this Agreement, Owner shall pay Consultant (i) all Out-of-Pocket Costs incurred by Consultant pursuant to this Agreement (provided that such costs have been approved by Owner in accordance with Section 3.02) up to the date of termination; and (ii) that portion of the Consulting Fee payable through the actual termination date. Upon termination of this Agreement pursuant to this Section 4.02, Consultant will have no further claim or right to compensation or other payment of any kind whatsoever under this Agreement, except for the payment of any Consulting Fee earned and Out-of-Pocket Costs properly incurred prior to the termination date in accordance with this Agreement or for any claims which survive the termination of this Agreement.

4.03 Effect of Termination. Upon expiration or earlier termination of this Agreement, provided that Owner has paid the sums due to Consultant pursuant to Section 4.02, Consultant shall deliver to Owner all Work Product (as defined below) for which Consultant was engaged hereunder to perform, including any work in progress at the time of such expiration or termination, and all property of Owner in Consultant's possession or under its control, including all documents, papers, records, computer discs, materials, equipment, and other property of Owner in its possession or under its control. The parties acknowledge that the foregoing expressly includes an obligation on Consultant to deliver, or to cause to be delivered, copies of any plans, drawings, studies, analyses, and like materials that Consultant or any has prepared, commissioned, or otherwise obtained in the course of Consultant's performance of the Consulting Services.



Notwithstanding anything herein to the contrary, to the extent any non-completed Work Product is provided to Owner, Consultant provides no representation or warranty as to the accurateness or completeness of such Work Product.

5. Indemnification.

5.01 Indemnity CONSULTANT SHALL INDEMNIFY OWNER AND ITS AFFILIATES, THEIR RESPECTIVE SUCCESSORS AND ASSIGNEES AND EACH PARTNER, MEMBER, DIRECTOR, MANAGER AND OFFICER OF THE FOREGOING AND DEFEND AND HOLD OWNER AND ITS AFFILIATES, THEIR RESPECTIVE SUCCESSORS AND ASSIGNEES AND EACH PARTNER, MEMBER, DIRECTOR, MANAGER AND OFFICER OF THE FOREGOING HARMLESS FROM ANY LIABILITY, LOSS, COST, CLAIM, OR DAMAGE, INCLUDING LEGAL AND OTHER EXPENSES AND REASONABLE ATTORNEYS' FEES, THAT OWNER INCURS ARISING FROM OR OUT OF CONSULTANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. OWNER SHALL INDEMNIFY CONSULTANT AND DEFEND AND HOLD HARMLESS CONSULTANT FROM ANY LIABILITY, LOSS, COST, CLAIM OR DAMAGE, INCLUDING LEGAL AND OTHER EXPENSES AND REASONABLE ATTORNEYS' FEES, RELATED TO THIS AGREEMENT OR THE PERFORMANCE HEREUNDER; PROVIDED, HOWEVER, THAT OWNER'S OBLIGATIONS UNDER THIS SECTION 5.01 SHALL APPLY ONLY TO THE EXTENT THAT SUCH LIABILITY IS NOT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CONSULTANT. The parties' obligations under this paragraph shall survive the termination of this Agreement, regardless of the reason for such termination.

5.02 Owner's Liability Insurance. Owner shall name Consultant as an additional insured under Owner's Commercial General Liability policy, and shall provide Consultant with certificates of insurance promptly after Consultant's request, following the Effective Date.

5.03 Consultant's Insurance. Consultant shall maintain or shall cause its affiliate to maintain throughout the Term, at its sole cost, the following insurance coverages: (i) worker's compensation insurance as required by applicable law, and (ii) commercial general liability insurance providing coverage of \$2,000,000 each occurrence and in the aggregate. Consultant shall provide Owner with a copy of a certificate of insurance evidencing the required coverage within ten (10) days after the Effective Date and thereafter upon request by Owner.

6. Force Majeure. Consultant shall be excused from the performance of its duties hereunder during the pendency of any one or more event or circumstance (a "Force Majeure Event") that alone, or in combination, directly or indirectly affects, prevents, hinders or delays the ability of Consultant to perform as a result of Force Majeure. "Force Majeure" means reasons beyond the reasonable control of Consultant such as, but not limited to, acts of war, acts of terrorism, insurrection, civil strife and commotion, labor unrest, strike, lockout, breakdown, accident, travel or transportation disruption, epidemic, pandemic, order or regulation of or by any governmental authority, failure of supply or inability, by the exercise of reasonable diligence, to obtain supplies, parts or employees necessary to perform such obligation, or other emergency, outbreaks of disease or environmental, chemical, radiological or biological contamination or similar incidents, or acts of God (such as hurricanes, earthquakes, fire or flood). Force Majeure shall not include financial hardship. Consultant shall provide Owner written notice of the occurrence of any Force Majeure Event promptly upon the occurrence thereof.

## 8. Intellectual Property Rights.

8.01 Ownership of F&B Outlets Name . Consultant acknowledges that it has no right, title, or interest in or to the concept, design, theme, trade dress, name, recipes, menus or service marks of the F&B Outlets), with the express exception of the Consultant IP (as defined in Section 7.02), current or as may be used in the future, including any variations.

8.02 Work Product; Consultant IP. As part of its performance of Consulting Services, Consultant will provide certain “look books,” reports, concept documents and related materials (the “**Work Product**”). Subject to the license granted to Owner as described below, Consultant (or its licensors) are and will remain the sole owner(s) of all right, title and interest in and to the Work Product and all other content, information, images and other materials protected by intellectual property rights incorporated therein and/or which Consultant otherwise provides to Owner hereunder and/or to which Owner otherwise has access (together, the “**Consultant IP**”). Consultant grants Owner a non-exclusive, limited, royalty-free, non-transferable, non-sublicensable, perpetual and irrevocable, worldwide license to copy and use all Consultant IP (i) solely for Owner’s internal (i.e. non-public) business use; and (ii) solely for the purpose intended and/or indicated by Consultant. The foregoing license will vest on Owner’s payment of the portion of the Consulting Fee applicable to the particular Work Product. The foregoing license includes the right to make written materials provided to Owner by Consultant available to subcontractors and vendors of Owner provided that such subcontractors and vendors may only use such materials for the benefit of Owner and such subcontractors and vendors agree to abide by the terms of Section 8 (as applicable).

8.03 Owner Responsible for Trademark Clearance. Without limiting any terms or conditions set forth elsewhere herein, Owner specifically acknowledges and agrees that any trademarks (including logos) contained within Work Product are suggestions only and that Consultant has not conducted and will not be required to conduct any trademark clearance searches and/or other trademark rights clearance activities on Owner’s behalf. Owner is and will remain solely responsible for ensuring that any trademarks it selects for use in connection with the F&B Outlets are available for such intended use and otherwise comply with applicable laws.

9. Confidentiality. Other than as permitted in Section 7.02, Owner shall and shall cause any subcontractor or vendor, both during and after the Term, to hold in confidence and shall not directly or indirectly use or disclose any information provided to Owner by Consultant or to which Owner otherwise has access hereunder. All Confidential Information has been and is to be received by Consultant in confidence, and Consultant agrees to retain all such information in confidence, disclosing it to no third party and making no use of that information for Consultant’s own benefit or for any purpose whatsoever except in direct connection to Consultant’s performance under this Agreement, unless Consultant (i) shall have received express prior written authorization from Owner to use Confidential Information for another purpose, (ii) shall be compelled to disclose Confidential Information by valid legal process (and in case (i), Consultant shall use Confidential Information only to the extent authorized by Owner, and in case (ii), Consultant shall disclose Confidential Information only for the purpose and to the extent so compelled) or (iii) shall have received information which is or becomes publically available or a matter of public knowledge, through no fault of Consultant. The terms of this Section 8 shall survive the termination of this Agreement, regardless of the manner of or reason for such termination. “**Confidential Information**” means any information, oral or written, that is not generally known outside of Owner or its affiliates that was learned by or communicated to Consultant during the Term. The terms of this Agreement constitute Confidential Information. Notwithstanding the foregoing, the Confidential Information may be disclosed by Consultant to Consultant’s employees, accountants, attorneys and other agents having a need to know such information; provided that such parties agree to the confidentiality provisions set forth in this Section 8.

9. Warranty; Disclaimer of Warranties; Limitation on Liability.

10.01 Warranty. Consultant warrants to Owner that it will provide the Consulting Services in a good and workmanlike manner using qualified personnel.

10.02 Disclaimer of Warranties. The foregoing warranty is the only warranty Consultant makes regarding the Consulting Services and Consultant hereby disclaims all other warranties hereunder, whether written or oral, express or implied, hereunder, including any warranty of fitness for a particular purpose or warranty of merchantability regarding the Consulting Services. The Consulting Services are provided and Owner accepts them “as-is” and “with all faults.” Without limiting the foregoing, Consultant does not warrant or guarantee any specific result, benefit or profit in connection with Owner’s use of the Consulting Services and/or Work Product. Owner is solely responsible for relying on its own judgment and analysis in regards implementation of any recommendations or strategies contained within the Work Product and/or Owner’s other use thereof.

10.03 Limitation on Liability; Waiver of Consequential damages. As additional consideration for and as an essential inducement to Consultant to enter into this Agreement, Consultant’s total liability for payment and satisfaction of all monetary claims, damages, liabilities, costs or expenses (including attorneys’ fees awarded under this Agreement) arising from or related to all breaches, defaults, indemnifications or other performance or failure to perform on the part of Consultant hereunder (collectively, “**Consultant Liabilities**”) shall be limited to a maximum aggregate amount equal to the amount of the Consulting Fee paid to Consultant pursuant to this Agreement (the “**Limit**”). The partners, shareholders, members, officers, directors, trustees, employees, agents, representatives and affiliates of Consultant shall never be personally liable for any Consultant Liabilities. None of Owner’s affiliates, partners, directors, officers, members, employees, agents or representatives has any personal liability for any amounts payable or obligations performable by Owner under this Agreement. In no event shall Owner or its affiliates or their respective officers, directors, partners, shareholders, employees or representatives be liable to Consultant pursuant to this Agreement for exemplary, punitive, consequential or other special damages of any nature, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based on negligence, strict liability, breach of contract, operation of law or otherwise.

10.04 This Section 9 shall survive any termination or expiration of this Agreement.

11. Independent Contractor. Consultant acknowledges for all purposes, including but not limited to any laws concerning Social Security, disability insurance, unemployment compensation, workers’ compensation, income-tax withholding and all other federal, state and local laws, rules and regulations relating to employees, that it is an independent contractor of Owner in the performance of each and every part of this Agreement and it is not acting as employee, partner, shareholder, agent, or joint-venturer of Owner or any affiliate of Owner. Accordingly, Consultant shall discharge all obligations imposed upon it as an independent contractor by all applicable federal, state or local laws, rules and regulations, including but not limited to those relating to income taxes and the filing of all returns and reports, payment of all assessments, taxes and other sums required by applicable law with respect to the amounts paid by Owner hereunder. Nothing in this Agreement shall be construed to constitute Consultant or its representatives (or Consultant's employees) as a partner, agent, or employee of Owner or any affiliate of Owner, or of the Hotel operator, or of any of their principals or partners. Consultant, nor any representatives, employees or affiliates of Consultant shall be eligible for or participate in any benefits, plans, or programs available to employees of Owner or the Hotel operator. Neither Consultant nor Owner shall assert its relationship with each other as anything other than an independent contractor relationship. Neither Consultant or Owner, nor any representatives, employees, partners, or managers of each, shall

identify themselves as employees of, or as representing or acting on behalf of each other, or, with respect to Consultant, on behalf of the Hotel. Consultant acknowledges that it is solely responsible for the payment of its own income and other applicable taxes.

12. Miscellaneous Provisions.

12.01 Notice. Any notice to be given to Consultant or Owner shall be given in writing at the address indicated below, unless the party giving such notice has been notified, in writing, of a change of such address:

**Owner:** OWNERSHIP ENTITY NAME  
Ownership Entity Address  
City, State Zip  
Attn: Ownership Rep

**with a copy to:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**Consultant:** Kimpton Hotel & Restaurant Group, LLC  
222 Kearny Street, Suite 200  
San Francisco, CA 94108  
Attention: Legal Department

All notices shall be sent only by any of the following means: (i) personal delivery, or (ii) Federal Express, or similar courier service, for overnight delivery. All notices shall be considered received: (a) if personally delivered, on the date of delivery; or (b) if sent by Federal Express for overnight delivery, one (1) business day after the delivery to Federal Express or said similar courier service. Any party may change its address for notices hereunder by giving five (5) days' advance written notice thereof to the other party in accordance with this paragraph.

12.02 Successors and Assigns. This Agreement and all the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided that Consultant shall not have the right to assign this Agreement or delegate duties hereunder to another party without the prior written consent of Owner, except in the normal course of business. Notwithstanding the foregoing, Consultant may assign or transfer its interests under this Agreement, without Owner's prior written consent, to any entity with or into which it is merged or consolidated or to which it transfers all or substantially all of its assets, or to any affiliate.

12.03 Severability and Survival. If any of the terms or provisions of this Agreement are determined to be invalid, such invalid provisions shall not affect or impair the remainder of this Agreement, but such remainder shall continue in full force and effect to the same extent as though the invalid terms or provisions were not contained herein.

12.04 State Name Law. This Agreement and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of State Name, without reference to its conflicts of laws provisions.

12.05 Attorney's Fees. In the event any arbitration, action or other legal proceeding is commenced to obtain a declaration of rights under this Agreement or to enforce any provision hereof, or any other relief contemplated herein, whether legal or equitable, the prevailing party in such action or proceeding shall be entitled to recover his or its reasonable attorney's fees, witness costs and other costs and expenses in connection with said action or proceeding.

12.06 Entire Agreement. This Agreement, together with the attached Schedules, contains the entire agreement between the parties and supersedes any prior written or oral agreements between the parties.

12.07 Amendments. Any amendment of this Agreement shall be of no force and effect unless it is in writing and signed by all the parties hereto.

12.08 No Waiver of Modification. Failure by any party to enforce any rights under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by any party of a default in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

12.09 Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed to be an original for all purposes, with pdf or electronic signature being sufficient.

**12.10 WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY.**

12.11 Time of Essence. Time is of the essence with respect to this Agreement.

12.12 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

12.13 No Third-Party Beneficiaries. Except as otherwise expressly set forth herein, Owner and Consultant do not intend, and this Agreement will not be construed, to create a third-party beneficiary status or interest in, nor give any third-party beneficiary rights or remedies to, any other person not a party to this Agreement.

*[Remainder of page left intentionally blank; signature page(s) follow immediately]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**OWNER:**

**COMPANY NAME**, a \_\_\_\_\_ limited liability company

By:

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

**CONSULTANT:**

**KIMPTON HOTEL & RESTAURANT GROUP, LLC**, a Delaware limited liability company

By:

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

**SCHEDULE 1**

**F&B OUTLETS**

1. OUTLET 1

2. OUTLET 2

3. OUTLET 3

4. OUTLET 4

## SCHEDULE 2

### CONSULTING SERVICES

#### **Preopening Cost Estimates (for planning and comparison purposes only)**

- Provide high level preopening cost estimates for the following:
  - OSE (Operating Supplies and Equipment)
  - Uniforms
  - Linens
  - IT and Restaurant and Bar Systems
  - PR and Marketing (to include branding and collateral)

#### **High-Level Market Analysis (remote)**

- Identify geographic and brand position competition set
- Competition set analysis
- Identify demand drivers
- Prizm data demographic traits
- Specific location analysis, hotel position analysis, office tenant composition analysis

#### **Deep Dive In-Market Analysis**

- Visit and validation of initial competition set
- Property site visit analysis
- Market intel gathering
- Market supply constraints vs. white space

#### **Preliminary Program and Conceptual Direction**

- Create directional restaurant/bar “look book” per public venue
- High level conceptual direction per public venue
- Highlight key design elements per public venue
- Overall program indication:
  - Final Outlet count
  - Forecasted approximate operating hours/intended meal periods per venue
  - Forecasted approximate square footages/seat counts per public venue

#### **Concept Articulation**

- Develop presentation of proposed Restaurant & Bar concepts, including:
  - Concept description
  - Target demographic
  - Look and feel, ambiance, persona
  - Floorplan direction
  - Aspirational imagery
  - Food and beverage style, scope and directional menus
  - Table top china, glassware and flatware direction
  - Service style
  - Uniform direction



- Operating program
- Check averages by meal period

### **Style and Concept Identity**

- Custom selection of all china, glassware, flatware, to-go ware, linen, and operating supplies (guest facing and non-guest facing), and creation of order guide for all venues, catering, and in-room dining
- Music styling for all food and beverage related public spaces
- Staff uniform design direction and assistance with procurement via specialty vendors

### **Interior Design**

- Interior Design (“ID”) is not included in Consultant’s scope however Consultant’s scope does include the following ID related support scope:
  - Work directly with ID to ensure operational function and overall concept congruence including but not limited to:
    - Space planning, programming & floorplan/layout review
    - Schematic development review
    - FFE specification review
    - Lighting standards and systems review
    - Service station, host stand, miscellaneous millwork direction and review
    - Interior and exterior signage package review

### **Drawings and MEP Review**

- Architectural, MEP and Kitchen Equipment Design is not included in Consultant’s scope, however Consultant’s scope does include the following related support scope:
  - Design drawings review
  - Kitchen equipment consultant (“KEC”) referral/recommendation
  - Equipment request lists and provision of standards
  - Equipment layout and specification review
  - MEP validation
  - Audio system mapping and components review
  - Data and low voltage plan review
  - Construction documents review

### **Branding**

- Branding/Trademark/Collateral Design and Production is not included in Consultant’s scope; however, Consultant’s scope does include the following Branding related support scope, based on engagement of branding agency to do creative and graphic production:
  - Inform RFP process and branding agency selection
  - Host Branding kickoff meeting
  - Drive naming process, development and selection
  - Drive logo process, development and selection
  - Manage brand aesthetic and collateral development
  - Inform interior and exterior signage package
  - Inform website development, SEO advisement, and digital marketing support

## Marketing

- Marketing Services are not included in Consultant’s scope, however Consultant’s scope does include the following Marketing related 3<sup>rd</sup> Party Marketing firm support scope, based on engagement of a 3<sup>rd</sup> Party Marketing firm:
  - Interface directly with property Marketing Team or Third Party Marketing agency (if on property marketing team is not in place)
  - Support selection of Third Party Marketing agency (if no on-property marketing team is in place)
  - Pre-opening marketing plan review
  - Local brand activation advisement
  - Photographer and shot list recommendations
  - Advise 3<sup>rd</sup> Party marketing firm on digital voice and presence
  - Advise 3<sup>rd</sup> Party marketing firm on web copy, imagery and content

## PR

- Public Relations (“PR”) Services are not included in Consultant’s scope, however Consultant’s scope does include the following PR related support scope, based on engagement of a 3<sup>rd</sup> Party Public Relations firm:
  - Support RFP process and PR agency selection (if applicable)
  - Advise on social media identity, voice, and best practices direction
  - Advise PR strategy development inclusive of partnerships
  - Advise pre-opening media relations
  - Inform pre-opening press releases
  - Advise on pre-opening events inclusive of media desk-sides, hard-hat tours, consumer pop-ups
  - Advise on media FAM stays
  - Inform social engagement
  - Inform content sourcing and planning

## Recruitment

- Coordinate with and assist R&B Operator on the following:
  - Establishing competitive pay rates per position
  - Establishing job descriptions and ad placement
  - Interviewing for property senior leadership positions
  - Development of general staffing strategy and property manning guide

## Menu Development

- Collaborate with R&B Operator on the following:
  - Culinary & Beverage Menu Development
    - Overall menu framework
    - Process for tastings and dish/drink approval
    - Final menu layout, item selection, pricing structure
    - Direction, quantity, and price points of all offerings

## IT Systems

- Advise on IT related operational needs (vendor, type, quantity, and location) including but not limited to the following:
  - Point of Sale (POS)
  - Reservation systems (Open Table, Resy, or other)

- Printer and collateral production needs
- Office work stations
- AV needs
- Business management solutions (Restaurant and Bar Analytics, Inventory, Labor Management, etc.)

### **Other Pre-opening Expenses**

- There are numerous pre-opening goods and services (and associated expenses) associated with the opening and launch of Restaurant and Bar venues that are not included in Consultant’s scope, however Consultant’s scope does include advisory services for the following (in addition to those mentioned above):
  - Operating Supplies & Equipment (OS&E)
  - Staff uniforms
  - Food and Beverage costs (recipe research & development, menu testing, training, opening inventory)
  - Trainer salaries, travel & related expenses
  - Physical menus and other collateral/printed material
  - Planning and execution of opening events and parties and other promotional efforts
  - Website Development and launch
  - Photography

### **Delivery of Physical Plant**

- Assist with walks of KEC related spaces
- Assist with punch walks of all areas, front and back of house
- Review functionality of all systems
  - Kitchen and bar equipment
  - POS
  - Reservations
  - HVAC
  - Lighting
  - Audio / video

### **Service Standard Guidelines**

- Conduct 2-3 weeks of on-property training for each job code
  - Food menu and food/cooking knowledge + tastings
  - Coffee, tea, liquor, beer, wine, and cocktail offerings + tastings
  - Service standards and steps of service
  - Practical on-the-floor training
  - Live action, full speed “test meal” shifts
- Conduct hospitality training
- On site review of training program process
- Review on-going training materials and outlines
- Review new hire training materials and timelines
- As outlined in Section 3.02, Travel and related expenses incurred by Trainers (Trainer’s “Out of Pocket Costs”) are not included in Consultant’s Fee

### **Multiple Discipline Coordination**

- Advise on communication, timelines and deliverables for both in-house and certain third-party partners
- Coordination between various inner-company disciplines and departments, IHG® and Kimpton
- Coordination with Outside Disciplines such as General Contractors, Architects, Designers, Kitchen Consultants, etc.

### **On-Going Support / Owner Deliverables**

- Conduct operational check-in at 30-, 60-and 90-day marks
- Facilitate the handover of OSE and uniform order guides, FFE maintenance and care guides, and kitchen equipment warranty and service materials to property team.

**SCHEDULE 3**

**CONSULTING SERVICES ESTIMATED TIMELINE**

See attached.

**EXHIBIT H-12  
TO DISCLOSURE DOCUMENT**

## MASTER KIPSU AGREEMENT

THIS MASTER KIPSU AGREEMENT (“**Agreement**”) is effective as of the date last executed below (the “**Effective Date**”), is by and between Kipsu, Inc., a Delaware corporation, located at 100 South 1<sup>st</sup> Street No. 583491 Minneapolis, MN 55458-3491 (“**Kipsu**”) and Six Continents Hotels, Inc., an InterContinental Hotels Group company, a Delaware corporation, located at Three Ravinia Drive, Suite 100, Atlanta, GA 30346 (“**IHG**”). Hereinafter, Kipsu and IHG are collectively the “**Parties**” and individually, a “**Party**”.

### DEFINITIONS

1. **Terms and Interpretation.** Certain capitalized terms used in this Agreement are defined in this Section or within the text of this Agreement. Terms other than those defined within this Agreement shall be given their plain English meaning. Unless the context otherwise requires, words importing the singular include the plural and vice-versa.
2. **Definitions.**
  - 2.1. “**Hotel**” means a hotel owned, managed or franchised by IHG that enters into the Hotel Services Agreement on or after the Effective Date of this Agreement.
  - 2.2. “**Hotel Services Agreement**” means the agreement entered into between a Hotel and the Kipsu for the purchase of Products and/or Services, as set forth on Exhibit A.
  - 2.3. “**Products**” means the products to be supplied by Kipsu and offered to the prospective Hotels, as more particularly set forth on Schedule As.
  - 2.4. “**Services**” means the services to be performed by Kipsu and offered to the prospective Hotels, as more particularly set forth on Schedule As.
  - 2.5. “**Affiliate**” means a subsidiary or parent company of IHG, Hotel or Kipsu.
  - 2.6. “**Agent**” means a party that is authorized to act on behalf of IHG, Hotel or Kipsu.
  - 2.7. “**Brand Group A**” brands where full suite of channels and capabilities are included in base price: Six Senses, Regent, InterContinental, Kimpton, Hotel Indigo, HUALUXE, EVEN, Crowne Plaza, voco, and Vignette Collection. New brands that fall within IHG’s definition of “Luxury & Lifestyle” or “Premium” would be included in this group unless mutually agreed.
  - 2.8. “**Brand Group B**” brands where premium channels and capabilities are not included in base price but are available for an additional fee: Holiday Inn, Holiday Inn Express, Holiday Inn Club Vacations, Avid, Atwell Suites, Staybridge Suites, and Candlewood Suites. New brands that fall within IHG’s definition of “Essentials” or “Suites” would be included in this group unless mutually agreed.

### GENERAL

3. **Price and Payment Terms.** Kipsu agrees to offer the Hotels the pricing as set forth in Schedule As. Each Hotel will be solely responsible for all payments for Products and/or Services performed under a Hotel Services Agreement and neither IHG nor any other Hotel shall be responsible for the acts or omissions of another Hotel. The prices paid for Kipsu’s Products or Services shown in Exhibit A shall be fixed for at least the first twelve (12)

months of this Agreement, or as otherwise agreed to in writing by the Parties, and shall not increase by more than three and one-half percent (3.5%) per year following the initial Term of this Agreement, unless Kipsu materially changes the services offered or demonstrates an increase in their cost of doing business to IHG and the Parties mutually agree to increase pricing above this amount. If a Hotel does not agree to such price increase, then the Hotel may terminate the Hotel Services Agreement upon 30 days written notice without incurring a penalty or late fee.

4. **Term.** This Agreement will commence on the Effective Date for a term of one year (the “**Term**”). Thereafter, this Agreement will automatically renew on the anniversary date of the Effective Date for successive annual periods, subject to earlier termination as set forth in this Agreement (each a “**Renewal Term**”).
5. **Provision of Products/Services by Kipsu.** Kipsu agrees to enter into a Hotel Services Agreement with a Hotel before providing any Products and/or Services under this Agreement. No services will be provided to any Hotel without a Hotel Services Agreement.

#### **DUTIES OF IHG**

6. **Recognize Kipsu as a Contracted and Preferred Supplier.** Provided Kipsu performs its duties hereunder, IHG will recognize Kipsu as a preferred provider of the Services outlined in this Agreement.
7. **Announcement.** The Parties will agree to an announcement of the appointment of Kipsu to the Hotels, with IHG having the final approval of such announcement.
8. **Lists; Meetings; Promotion.** IHG, in its sole discretion, may include Kipsu in listings of contracted and preferred suppliers it prepares. In IHG’s sole discretion, IHG may invite Kipsu to periodic meetings or conferences at which approved suppliers are invited to attend, if any. IHG will recognize Kipsu as a preferred partner to its properties.

#### **DUTIES OF KIPSU**

9. **The Products/Services.** Kipsu agrees to offer to each Hotel the opportunity to receive the Products and Services at the agreed pricing and economic terms, as more particularly set forth on Exhibit A and Schedule A to the Hotel Services Agreement.
10. **The Hotels.** Kipsu agrees to provide the Products/Services to the Hotels in accordance with this Agreement and the Hotel Services Agreement.
11. **Payment Terms.** Kipsu agrees that it is solely responsible for extending credit to the Hotels and that the owners of the Hotels are solely responsible for payment to Kipsu under this Agreement. Kipsu may deny credit to any Hotel using reasonable criteria and in accordance with its own policies so long as such criteria are the same as Kipsu uses for its other customers.
12. **Intellectual Property.**
  - 12.1. **IHG Intellectual Property.** Kipsu represents and warrants that it has rights to or has obtained all necessary licenses to perform its obligations under this Agreement. Kipsu acknowledges that IHG or the hotel owners are the owner of all trademarks, trade



names, service marks, copyrights and logos now or hereinafter used by IHG or its affiliates, subsidiaries, hotels or their owners or as provided to Kipsu in connection with this Services or Products (collectively “**IHG Marks**”). Kipsu does not have any ownership rights in the IHG Marks and may not use the IHG Marks in any fashion not described in this Agreement without the express written consent of IHG or its Hotels. Kipsu will use the IHG Marks in accordance with any guidelines and instructions provided by IHG. Further, IHG or the hotel owner (as applicable) grants to Kipsu a limited, revocable, non-transferable, non-sub licensable license to utilize and display IHG Marks solely to carry out its obligations under this Agreement. Any signage utilizing the IHG Marks must be pre-approved by IHG or its Hotels. Kipsu acknowledges that the Hotels own all data associated with IHG’s guests, including but not limited to content of text messaging, internet chat and social messaging (“**IHG Message Data**”). Any and all IHG Marks, IHG Message Data, copyrighted material and/or any other intellectual property including but not limited to any and all content provided by IHG or its Hotels (collectively “**IHG IP Data**”) that IHG or a Hotel provides Kipsu are solely for the limited purposes of promoting or providing the Services hereunder.

- 12.2. **Kipsu Intellectual Property.** Kipsu shall be the sole owner of and shall have exclusive rights to: (a) the copyrights and any other intellectual property rights in the Kipsu software associated with the Services (“**Software**”), and (b) the Kipsu technology, hardware and all other intellectual property utilized by Kipsu to provide the Services (“**Technology**”), and (c) all data and information collected in connection with the provision of the Services, but excluding the data associated with the text messages and its content including but not limited to IHG Data (“**Data**”). All alterations, translations, upgrades, enhancements, customizations or modifications of all or any portion of the software or hardware related to the performance of Services, (collectively, “**Alterations**”), now in existence or created by Kipsu, IHG or an individual Hotel, or any third party on behalf of Kipsu or IHG, shall become and remain the sole and exclusive property of Kipsu, excluding IHG IP Data. Upon written request by Kipsu and at Kipsu’s sole cost and expense, IHG will execute such reasonable assignments, bills of sale or other documents necessary to confirm, assign or transfer in favor of Kipsu any intellectual property rights in any Alterations, excluding IHG Marks and IHG Data. IHG acknowledges that Kipsu is the owner of all Kipsu trademarks, trade names, service marks, copyrights and logos now or hereinafter used by Kipsu, excluding IHG IP Data.
- 12.3. **Data.** IHG and Hotel hereby grants to Kipsu an irrevocable, perpetual, royalty-free transferable license to use Data and IHG Message Data in the ordinary course of its business to improve the services and features that Kipsu provides and as outlined in this Agreement. Data will not be shared or sold to unauthorized 3<sup>rd</sup> parties. Hotel shall own all user accounts established for use in connection with the Services, and shall have sole responsibility in managing user accounts including but not limited to establishment and termination of such accounts and all related Data. IHG and Hotel shall not disclose Software, Technology, or Alterations to any third party without Kipsu’s written consent.

13. **Data Restoration.** Kipsu provides its Services utilizing a Software as a Service model, restoration of any destroyed, lost or altered Data shall be performed by Kipsu. To the extent (i) Kipsu is operationally responsible for performing such restoration, or (ii) such destruction, loss or alteration is attributable to Kipsu's failure to comply with its obligations under this Agreement, Kipsu shall bear the cost of restoring such data.

### STANDARD TERMS AND CONDITIONS

14. **Parties Acknowledgements.** Parties acknowledge and agrees that:
- 14.1. they are duly organized, validly existing, in good standing and qualified to do business under applicable laws where formed;
  - 14.2. each has all requisite corporate power and authority to own and operate its assets, carry on its business and sign this Agreement;
  - 14.3. the individual signing on behalf of Party has the necessary authority and legal capacity to bind;
  - 14.4. Parties will not directly or indirectly pay, offer, give or promise to pay or authorize the payment of any money or other things of value to an official or employee of a government, public organization, other Party, any political party or candidate if any such payment, offer, act or authorization is for purposes of influencing official actions or decisions or securing any improper advantage in order to obtain or retain business, or engaging in acts or transactions otherwise in violation of any applicable anti-bribery legislation; and
  - 14.5. neither Party nor its owners, shareholders, officers nor directors, own or are knowingly controlled by a "**Restricted Person**", which is defined as (1) the government of any country subject to an embargo imposed by the United States government, (2) an individual or entity located in or organized under the laws of a country that is subject to an embargo imposed by the United States government, (3) individuals or entities permanently residing in any country subject to an embargo imposed by the United States government, (4) individuals or entities identified by any government or legal authority with whom dealings and transactions by Kipsu or IHG are prohibited or restricted (including persons designated under the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) List of Specially Designated Nationals and Other Blocked Persons, including terrorists and narcotics traffickers, or similar restricted party listings, including those maintained by any government pursuant to United Nations, regional or national trade or financial sanctions). Parties agree to notify other Party in writing immediately upon an occurrence of any events which results in the Party being designed as Restricted Person.
15. **Status.** Kipsu is an independent contractor and will not hold itself out as the employee, Agent, officer, director, or representative of IHG or a Hotel. Further, all persons engaged to furnish the Services are employees, Agents, contractors or subcontractors of Kipsu and not of IHG or the Hotels. Kipsu will be solely responsible for all payments related to its

business and employees, including all taxes, and will report all payments as an independent contractor.

16. **Publicity.** Kipsu may not issue public announcements or press releases relating to IHG or its Hotels without prior written consent.
17. **Confidentiality.** Parties will treat all information and materials received from Kipsu, IHG or the Hotels, including, but not limited to, the terms of this Agreement, any pricing or other financial information related to the Products and Services, and all Software, Technology, Alterations, Data, IHG IP Data, marketing, sales, business strategies, and Personally Identifiable Information (as defined below) (“**Confidential Information**”) as strictly confidential and with at least the same degree of care that it uses to protect its own confidential and proprietary information. Kipsu, IHG and Hotels may use Confidential Information only for the purpose of carrying out its obligations under this Agreement. Parties will disclose or permit access to Confidential Information only to its employees, contractors, subcontractors, Agents and representatives who have a need to know the Confidential Information in order to fulfill such party’s obligations under this Agreement and are aware of the confidentiality obligations set forth herein. Each Party will be strictly liable for any disclosure or unauthorized use of Confidential Information by any person to whom it discloses the Confidential Information. Confidential Information does not include: 1) information that is publicly available, 2) information that is obtained from independent sources free of any confidentiality obligation, other than through improper disclosure, 3) information that is used or disclosed by receiving Party with prior written consent of disclosing Party, 4) information that is developed independently of and without reference to the Confidential Information and 5) information that is required to be disclosed by law, rule, regulation or court order. If required by law, rule or regulation or court order to disclose any Confidential Information, the receiving Party will promptly notify the other Party prior to making any disclosure and will reasonably cooperate with any effort by the disclosing Party to obtain a protective order or other remedy. At the disclosing Party’s request and upon termination of this agreement, the receiving Party will a) promptly return or destroy all Confidential Information, excluding IHG Message Data, in its possession or control and certify the same, and b) in the case of IHG Message Data, the PII data component of the IHG Message Data will be deleted and Kipsu will certify the same. The Parties agree that should this confidentiality provision be breached money damages alone would be inadequate compensation. Accordingly, in addition to any other remedies available at law or in equity, the injured party shall be entitled to specific performance, injunctive or other equitable relief as remedy for any such breach or threatened breach of this Agreement and the other party agrees to waive, and to cause its representatives to waive, any requirement for proving damages or the securing or posting of any bond in connection with such remedy.
- 17.1. “**Personally Identifiable Information**” or “**PII**” means information of Hotel personnel, Kipsu personnel and Hotel guests, used or obtained by a Party in connection with the delivery or provision of Kipsu Products and Services that can be used to identify, contact, locate, or be traced back to the specific person to whom such information pertains, including, if applicable and without limitation, the person’s name, address, telephone number, email address and credit card or payment card information.

18. **Data Security.** Notwithstanding anything to the contrary contained in this Agreement, with respect to any information that Kipsu may receive or otherwise access that by itself or in connection with other information collected, stored or used by Kipsu or its Affiliates in connection with such Personally Identifiable Information which is capable of identifying an employee, guest, customer or other individual, Kipsu agrees as follows:
- 18.1. IHG owns and retains all rights in and to all such PII which shall be deemed to be IHG's Confidential Information;
  - 18.2. Kipsu shall access, collect, record, use, store, modify and disclose all such PII solely for the purposes of carrying out its obligations under, and as expressly set forth in, this Agreement or as otherwise expressly directed in writing by IHG and not for any other purpose;
  - 18.3. Kipsu shall implement and maintain an effective information security program to keep all such PII confidential and undertake appropriate administrative, technical and physical measures to secure and protect the confidentiality, integrity and availability of all such PII against unauthorized, unlawful or accidental access, disclosure, transfer, destruction, loss or alteration. In the event of any legal or regulatory obligation requiring Kipsu to disclose or otherwise make available any such PII (or any other third-party information stored on servers jointly hosting the PII), Kipsu shall promptly notify and cooperate with IHG, limit any disclosure to the minimum required by law and, to the extent possible, request that the PII remain confidential;
  - 18.4. Kipsu shall immediately notify IHG if (i) any such PII may be at risk from seizure, insolvency, bankruptcy or other third-party activity, (ii) Kipsu becomes aware of, or reasonably suspects, any breach of security or unauthorized disclosure or access of PII or (iii) Kipsu becomes the subject of any government or other enforcement or proceeding relating to its data handling practices;
  - 18.5. In the event Kipsu becomes aware of, or suspects, any security breach or other unauthorized disclosure or access of any such PII, Kipsu shall, in addition to immediately notifying IHG, (i) provide IHG with information that IHG may reasonably request, (ii) cooperate and assist IHG with any investigation into the breach, disclosure or access, (iii) fully cooperate and comply with IHG's determinations regarding Kipsu's and IHG's obligations to comply with any applicable notification or mitigation obligations associated with such breach, disclosure or access and (iv) take all reasonable steps necessary to remedy and prevent any further reoccurrences of such breach, disclosure or access;
  - 18.6. Kipsu shall provide IHG and its designated representatives access to Kipsu's or its authorized contractors' premises, records and personnel as may be reasonably required to (i) fulfill any legally enforceable request by (1) any individual legally entitled to access, modify or remove his or her PII or (2) regulatory, statutory or other government entity, committee or body that is legally entitled to supervise, regulate or investigate the transactions contemplated within this Agreement or (ii) confirm Kipsu's compliance with its obligations herein;

19. **Laws, Licenses and Regulations.** Each Party will comply with all applicable laws, regulations, codes, ordinances and rules (the “**Applicable Laws**”) in connection with this Agreement, including all data privacy, security and data transfer laws.
20. **Assignment.** Neither Party may assign its obligations under this Agreement, without the other Party’s prior written consent which shall not be unreasonably withheld; provided however, that each Party may, without the prior consent of the other Party, assign all of its rights under this Agreement to (i) a parent, subsidiary of Affiliate, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which the Party is participating. This Agreement will insure to the benefit of and be binding upon the Parties and their respective successors and assigns. Kipsu is jointly and severally liable for the actions of its assignees and contractors. Each Party will notify the other Party in the event of an assignment under this section within 30 days of the assignment.
21. **Indemnification.** Kipsu shall indemnify, defend and hold harmless IHG, its Hotels and their respective managers, Affiliates officers, directors, Agents , contractors, employees (collectively, the “Indemnitees”) against any and all third party non-Indemnatee claims, demands, cause of actions, debts, liabilities, damages and expenses and costs, including reasonable attorneys’ fees that 1) the Services, Software and/or Technology infringe upon, violate or misappropriate any patent, copyright, trade secret, trademark, contract or other right or interest of any third party, except to the extent such infringement is based upon content or material provided by an Indemnatee, 2) Kipsu breached its confidentiality obligations with respect to PII under Section 17 of this Agreement or data security obligations under Section 18, and 3) arising out of Kipsu, its managers, officers, directors, contractors’, subcontractors, Agents or Affiliates and employees’ gross negligence or willful misconduct. Kipsu’s indemnification obligations are conditioned upon: (a) Indemnitees notifying Kipsu promptly in writing of such action after Indemnitees receives notice of the same; (b) Indemnitees giving Kipsu sole control of the defense thereof and any related settlement negotiations; provided that any settlement intended to bind the Indemnitees shall not be final without Indemnatee’s written consent, not to be unreasonably withheld, to (i) any equitable remedies that result in an obligation owing by or a restriction of Indemnatee, (ii) any admissions against Indemnatee’s interest, (iii) any statement of Indemnatee’s intent, and/ or (iv) any modification to Kipsu’s indemnification obligations herein. Indemnitees may choose to be represented by its own counsel in such action at its own cost and expense; and Indemnitees cooperating with Kipsu in such defense (including, without limitation, by making available to Kipsu all necessary documents and information in Indemnatee’s possession or control that are relevant to the infringement or misappropriation claims, and by making Indemnatee’s personnel available to testify or consult with Kipsu or its attorneys in connection with such defense). Notwithstanding anything to the contrary in this Section, the indemnification and related obligations of Kipsu set forth in this Section shall not apply to the extent and percentage of Indemnatee’s: (i) material breach of this Agreement, (ii) violation of applicable law or regulation, or (iii) gross negligence or willful misconduct, which correlate to the claim invoking this indemnification provision.
22. **Limitation of Liability.** EXCEPT FOR KIPSU’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 21 OF THIS AGREEMENT PURSUANT TO A FINAL

DETERMINATION MADE BY A COURT OF LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR ANY ORDER OR THE OPERATION OR USE OF THE SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, AND DAMAGE TO EQUIPMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY A PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL MAKING IT IMPOSSIBLE TO PERFORM. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, BUT EXCLUDING ANY CLAIMS FOR INDEMNIFICATION UNDER SECTION 21, A PARTY'S LIABILITIES UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE GREATER OF THE CUMULATIVE AMOUNTS ACTUALLY RECEIVED BY KIPSU FROM IHG AND ALL HOTELS WITH AN EXECUTED HOTEL SERVICES AGREEMENT IN THE LAST 12 MONTHS PRIOR TO THE DATE OF THE ACTION GIVING RISE TO THE CLAIM AND ONE MILLION (\$1,000,000 USD).

23. **Insurance.** Kipsu will carry and maintain in full force and effect and at its own cost continuously throughout the Term and during any period in which Kipsu performs or provides the Products/Services for the Hotels the following types and limits of insurance: (a) Commercial General (Public) Liability insurance including contractual liability and liability for bodily injury or property damage, with a combined single limit not less than \$2,000,000 each occurrence, and \$2,000,000 general aggregate and \$1,000,000 products/completed operations aggregate covering liability arising from bodily injury, property damage, independent contractors, products-completed operations, advertising injury and liability assumed under an insured contract; (b) Professional Liability/Errors and Omissions insurance with a limit of not less than \$1,000,000, including Errors and Omissions or equivalent coverage for liability arising out of media activities, computer/cyber risks (Information Security & Privacy Liability including regulatory defense and penalties); (c) Worker's Compensation insurance covering Kipsu and all employees of Kipsu, as required by state law (including a waiver of subrogation in favor of IHG and its Hotels); employer's liability insurance in limits not less than \$1,000,000 each accident, \$1,000,000 each employee disease and \$1,000,000 policy limit per disease; and (d) if at any time during the course of this Agreement Kipsu will be visiting IHG's office or a Hotel, then Kipsu should use owned, employee non-owned or hired/rented autos in the performance of services of this Agreement, including sales calls, then Kipsu will procure Automobile liability insurance including all owned, non-owned, and hired vehicles used in conjunction with the Services for bodily injury or property damage with combined single limit of not less than \$1,000,000 each accident. All policies except for Workers Compensation and Professional Liability, IHG and each Hotel will be included as additional insureds on all policies. Further, all policies, other than workers' compensation, will be primary and any insurance carried by IHG or the Hotels shall be excess and non-contributory. Kipsu shall deliver to IHG certificates and endorsements as required of all

policies. Kipsu shall require that all of its contractors and subcontractors who perform Services under this Agreement carry, in full force and effect, all of the coverages on the same terms and limits as required by Kipsu under this Agreement.

24. **Termination.**

24.1. Either Party may immediately terminate this Agreement for cause in the event:

24.1.1. Either Party breaches this Agreement and fails to cure such breach within thirty (30) days' written notice;

24.1.2. Either Party ceases doing business;

24.1.3. There is a material adverse change in a Party's business or financial condition;

24.1.4. Applicable Laws may materially intervene with a Party's ability to perform hereunder and/or

24.1.5. A Party violates any of the Confidentiality, Privacy, or Laws, Licenses and Regulations provision of this Agreement.

24.2. Each party may terminate this Agreement without cause by providing thirty (30) days' prior written notice to the other party.

24.3. Upon termination or expiration of this Agreement, if requested, Kipsu will provide reasonable transition services, at no cost, to IHG and the Hotels, as applicable, including providing all Services, Products or deliverables, fully or partially completed, in the format reasonably requested by IHG, and cooperating with any successor service provider. Kipsu required transition services and products are limited to services and products that are commercially and technically feasible to be transferred.

25. **Notices.** All notices to be given under this Agreement must be in writing and sent to the address specified in this Agreement. Notices are effective the earlier of: (i) one business day after being sent by next day delivery service; or (ii) three business days after being sent by certified or registered mail. All notices will be sent to the receiving Party's address as set forth above. Either Party may change its notice information upon written notice to the other Party.

26. **Governing Law.** The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. All claims related to or arising under this Agreement will be brought in the state or federal courts located in Delaware, USA.

27. **Miscellaneous.** This Agreement contains the full and complete understanding of the Parties hereto as to the subjects contained herein and supersedes any and all prior written or oral agreements or understandings between the Parties hereto. This Agreement may only be modified by a subsequent writing executed by duly-authorized representatives of both Parties which expressly states that it is a modification of this Agreement. Neither Party hereto shall be deemed to be the drafter of this Agreement and, if this Agreement is construed in any court or arbitration proceeding, said court or arbitrator shall not construe this Agreement or any provision hereof against either Party as the drafter hereof. If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court or arbitrator of competent jurisdiction, such phrase, clause or provision shall be

deemed severed from this Agreement, but will not affect any other provision of this Agreement, which shall otherwise remain in full force and effect. If any restriction or limitation in this Agreement is deemed to be unreasonable, onerous or unduly restrictive by a court or arbitrator of competent jurisdiction, it shall not be stricken in its entirety and held totally void and unenforceable, but shall remain effective to the maximum extent possible within reasonable bounds. The terms and provisions of this Agreement that by their sense and context are intended to survive the performance thereof or hereof by either Party or both Parties hereto shall so survive the completion of performance and termination of this Agreement, including provisions concerning Intellectual Property, Confidential Information, Privacy, Indemnification, Insurance, and Governing Law and making of any and all payments due hereunder A failure of either party to enforce any term or provision or to exercise any right, option or remedy of the Agreement shall not be construed a waiver of any such term or provision.

- 28. **Counterparts.** This Agreement may be executed in counterparts and exchanged by facsimile or electronically scanned copy, with pdf and electronic signature being sufficient. Each such counterpart will be deemed to be an original and all such counterparts together will constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**KIPSU**

**IHG**

KIPSU, INC.,  
a Delaware corporation

Six Continents Hotels, Inc.

By: \_\_\_\_\_  
DocuSigned by:  
*Christopher C. Smith*  
B3CE21CAA535423...

By: \_\_\_\_\_  
DocuSigned by:  
*Steven Brooks*  
9190AFAD731A40A...

Name: Christopher Smith

Name: Steven Brooks

Title: Co-Founder & CEO

Title: Vice President, Corporate Procurement

Date 1/13/2022

Date 1/13/2022



**EXHIBIT A TO THE MASTER SERVICES AGREEMENT**  
**HOTEL SERVICES AGREEMENT - PRICING**

<b>2021 Proposed Global Pricing (USD) - Per Month</b>		
<u>Room Tier</u>	<u>Brand Group A</u>	<u>Brand Group B</u>
0 – 200	\$1.85	\$1.67
201 – 300	\$1.76	\$1.58
301 – 400	\$1.44	\$1.30
401 – 600	\$1.29	\$1.16
601 – 800	\$1.14	\$1.03
800+	\$1.01	\$0.91
Monthly Minimum	\$150.00	\$150.00
Setup Fee - USA/Canada	\$250.00	\$250.00
Setup Fee - All Other Locations*	\$1,000.00	\$1,000.00
Add'l Monthly SMS VMN Charge	\$20.00	\$20.00
Add'l SMS VMN Setup Fee:	\$100.00	\$100.00
<u>Channels Included:</u>		
SMS Text	Included	Included
WiFi Landing Page	Included	Included
Live Web Chat	Included	Included
Apple Business Chat	Included	Included
Google Business Messaging	Included	\$20.00
Line	Included	\$20.00
Facebook Messenger	Included	\$20.00
WeChat	Included	\$20.00
WhatsApp (limited)	\$0.00	\$20.00
Add'l Channel Setup Fee (one-time)	\$0.00	\$100.00

\*Hardware Gateway provided by Kipsu. Hotel responsible for procuring local SIM card and plan

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**EXHIBIT B TO THE MASTER SERVICES AGREEMENT**  
**HOTEL SERVICES AGREEMENT**

This Services Agreement (“Agreement”), between Kipsu, Inc., a Delaware corporation with its principal place of business at 100 S. 1<sup>st</sup> Street No. 583491, Minneapolis, MN 55458-3491 (“Kipsu”) and (Insert Name of Owner Entity), a (Insert type of Entity and State of Formation) d/b/a (Name of Property) with its principal place of business at (Address of Property) (“Hotel”), takes effect on \_\_\_\_\_, 20\_\_ (the “Effective Date”).

1. **Background.** Kipsu provides notification services utilizing SMS text messaging or other means of communication. Kipsu has developed and is the sole owner of proprietary software and all updates and associated documentation used in providing such services (the “Software”). Hotel wishes to procure services related to the Software from Kipsu, and Kipsu desires to provide such services to Hotel on the terms set forth in this Service Agreement (“Agreement”).
2. **Services.** Kipsu will provide its notification services utilizing SMS messaging or other means of communication on a “software as a service” basis and as specified in one or more Statements of Work (the “Services”). Hotel acknowledges that Kipsu and Six Continents Hotels, Inc. (“IHG”) have entered into a Master Kipsu Agreement (“IHG MSA”) regarding the scope and pricing of the Services offered to Hotel under this Agreement. In the event Kipsu and IHG amend the Services in the IHG MSA, the Services offered under this Agreement may be amended upon 30 days’ written notice to Hotel. Notwithstanding changes to the IHG MSA, Kipsu has agreed to offer Services described in Schedule A to this Agreement. Each Statement of Work (“SOW”) will be signed by both parties and become part of this Agreement. In the event of a conflict between any term of this Agreement and a Statement of Work, the terms of the Statement of Work will prevail. Each Statement of Work shall contain a description of the tasks to be performed by Kipsu, responsibilities of both parties, an estimated schedule of performance, any payment plans specific to the Statement of Work, and a statement of Kipsu’s rates.
3. **Changes to Scope.** Changes within the scope of the Services shall be made only in a writing executed by authorized representatives of both parties. Kipsu shall have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change is agreed upon by the parties in writing.
4. **Personnel.** Each party will appoint, for each applicable Statement of Work, a qualified person to act as project manager, whose duties shall be to act as liaison between Hotel and Kipsu. Kipsu reserves the right to determine which of its personnel shall be assigned to serve as project manager and facilitate the provision of Services, and to replace or reassign such personnel during the term hereof; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Hotel's request for specific individuals and that changing of personnel shall not hinder Kipsu providing Services to the Hotel in any manner. Kipsu is an independent contractor and will not hold itself out as the employee, Agent, officer, director, or representative of IHG or a Hotel. Further, all persons engaged to furnish the Services are employees, Agents, contractors or subcontractors of Kipsu and not of IHG or the Hotels. Kipsu is solely responsible for all employee benefits and payroll-related taxes related to the performance of the Services by Kipsu personnel, including but

not limited to, withholding or other taxes related to federal or state income tax, social security benefits or unemployment compensation.

5. **Subcontractors.** Kipsu may engage subcontractors to perform the Services provided that Kipsu identify the same to Hotel and provides Hotel with all such ownership and/or use rights in relation to such subcontractor's services as if the same were performed by Kipsu. Kipsu shall be fully and solely responsible for such subcontractors acts and omissions and for compliance with the terms and conditions contained herein, and for the supervision and payment of subcontractors and for all work performed by subcontractors.
6. **Term.** Unless earlier terminated under this Agreement and as described in this Section, this Agreement begins on the Effective Date and expires at the end of the twelfth (12th) month following the Effective Date ("**Term**"). Following the initial Term, this Agreement will automatically renew on an annual basis on the anniversary of the Effective Date ("**Renewal Term**"). Either Party may terminate this Agreement by providing a 30 day written notice to Kipsu prior to the end of the Term or Renewal Term in accordance with the terms of this Agreement. In the event of such termination, Hotel shall pay Kipsu for all Services rendered and expenses incurred by Kipsu prior to the date of termination. Either Party may terminate this Agreement immediately following written notice if the other party: (a) breaches this agreement and fails to cure within thirty (30) days after receipt of notice, (b) ceases to do business in the normal course, (c) becomes or is declared insolvent or bankrupt, (d) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) calendar days, (e) makes an assignment for the benefit of creditors, or (f) violates TCPA regulations.
7. **Hotel Responsibilities.** In connection with Kipsu's provision of the Services, Hotel will perform all tasks and assume all responsibilities specified in the applicable Statement of Work ("**Hotel Responsibilities**"). Hotel understands that Kipsu's performance is dependent on Hotel's timely and effective satisfaction of Hotel Responsibilities hereunder and timely decisions and approvals by Hotel. Kipsu shall be entitled to rely on all decisions and approvals of the Hotel in connection with the Services. In addition to any particular items which may be specified in a Statement of Work, Hotel will supply on-site Kipsu personnel with suitable facility access and support in connection with Kipsu's performance of the Services.

Hotel is solely responsible for all message content utilized by the Software and Services provided by Kipsu and viewable by Hotel guest, including SMS or text content. Hotel will obtain Hotel guest's affirmative consent ("Opt-in") to provide guest's mobile phone number and be enrolled in the Services. Hotel will monitor the Services between Hotel and Hotel guest during such guest's stay at Hotel. Hotels should not be using the Services provided by Kipsu for marketing purposes without written or digital consent from the guest.

8. **Fees and Payment.** Hotel will pay the set-up and ongoing fees and pre-approved expenses set forth in each SOW, which shall be consistent with the IHG MSA. Services invoices will be sent either annually or quarterly on December 1, March 1, June 1 and September 1 for Kipsu Services beginning on the calendar quarters beginning January 1, April 1, July 1 and October 1, respectively with prorated invoices if Services do not start at the beginning of the quarter. Hotel set up fees and initial service quarter will be invoiced upon execution of this Agreement. Hotel will pay the amounts

payable to Kipsu hereunder within net 60 days of receipt of invoices submitted by Kipsu, subject to good faith dispute. Any undisputed amount remaining unpaid for more than net 60 days from receipt of invoice shall accrue interest at a rate of the lesser of one and one-half (1.5%) percent per month. Unless provided otherwise in Schedule A, Kipsu shall be reimbursed by Hotel for all reasonable and necessary out-of-pocket expenses that have been pre-approved by Hotel and incurred by Kipsu in the performance of the Services. Kipsu will maintain complete and accurate accounting records, in a form in accordance with generally accepted accounting principles, to substantiate Kipsu's charges and expenses.

9. **Taxes.** Hotel is responsible to pay any and all applicable taxes incurred in connection with the Services, including without limitation state and local, privilege, excise, sales, and use taxes, but excluding taxes based upon the net income of Kipsu. Kipsu shall be responsible for determining the applicability of any sales, use, excise, or similar taxes which may be applicable to the performance of the Services, if any. Kipsu shall clearly and separately state any applicable taxes on Kipsu's invoice to Hotel. Hotel shall pay applicable taxes on the invoice or, in lieu of the payment of any such taxes, Hotel may provide Kipsu with a certificate acceptable to the taxing authorities exempting Hotel from payment of these taxes.
10. **Intellectual Property.** As agreed to between Kipsu and IHG in the "Kipsu – IHG Master Services Agreement 0920201", Kipsu shall be the sole owner of and shall have exclusive rights to: (a) the copyrights and any other intellectual property rights in the Kipsu software associated with the Services ("**Software**"), and (b) the Kipsu technology, hardware and all other intellectual property utilized by Kipsu to provide the Services ("**Technology**"), and (c) all data and information collected in connection with the provision of the Services, but excluding the data associated with the text messages and its content including but not limited to IHG Data ("**Data**"). All alterations, translations, upgrades, enhancements, customizations or modifications of all or any portion of the software or hardware related to the performance of Services, (collectively, "**Alterations**"), now in existence or created by Kipsu, IHG or an individual Hotel, or any third party on behalf of Kipsu or IHG, shall become and remain the sole and exclusive property of Kipsu, excluding IHG IP Data. Upon written request by Kipsu and at Kipsu's sole cost and expense, IHG will execute such reasonable assignments, bills of sale or other documents necessary to confirm, assign or transfer in favor of Kipsu any intellectual property rights in any Alterations, excluding IHG Marks and IHG Data. IHG acknowledges that Kipsu is the owner of all Kipsu trademarks, trade names, service marks, copyrights and logos now or hereinafter used by Kipsu, excluding IHG IP Data.
11. **Indemnification.** As agreed to between Kipsu and IHG in the "Kipsu – IHG Master Services Agreement 0920201", Kipsu shall indemnify, defend and hold harmless IHG, its Hotels and their respective managers, Affiliates officers, directors, Agents, contractors, employees (collectively, the "Indemnitees") against any and all third party non-Indemnitee claims, demands, cause of actions, debts, liabilities, damages and expenses and costs, including reasonable attorneys' fees that 1) the Services, Software and/or Technology infringe upon, violate or misappropriate any patent, copyright, trade secret, trademark, contract or other right or interest of any third party, except to the extent such infringement is based upon content or material provided by an Indemnitee, 2) Kipsu breached its confidentiality obligations with respect to PII under Section 17 of this Agreement or data security obligations under Section 18, and 3) arising out of Kipsu, its managers, officers, directors, contractors', subcontractors, Agents or Affiliates and employees' gross negligence or

willful misconduct. Kipsu's indemnification obligations are conditioned upon: (a) Indemnitees notifying Kipsu promptly in writing of such action after Indemnitees receives notice of the same; (b) Indemnitees giving Kipsu sole control of the defense thereof and any related settlement negotiations; provided that any settlement intended to bind the Indemnitees shall not be final without Indemnitee's written consent, not to be unreasonably withheld, to (i) any equitable remedies that result in an obligation owing by or a restriction of Indemnitee, (ii) any admissions against Indemnitee's interest, (iii) any statement of Indemnitee's intent, and/ or (iv) any modification to Kipsu's indemnification obligations herein. Indemnitees may choose to be represented by its own counsel in such action at its own cost and expense; and Indemnitees cooperating with Kipsu in such defense (including, without limitation, by making available to Kipsu all necessary documents and information in Indemnitee's possession or control that are relevant to the infringement or misappropriation claims, and by making Indemnitee's personnel available to testify or consult with Kipsu or its attorneys in connection with such defense). Notwithstanding anything to the contrary in this Section, the indemnification and related obligations of Kipsu set forth in this Section shall not apply to the extent and percentage of Indemnitee's: (i) material breach of this Agreement, (ii) violation of applicable law or regulation, or (iii) gross negligence or willful misconduct, which correlate to the claim invoking this indemnification provision.

12. **Confidentiality.** As agreed to between Kipsu and IHG in the "Kipsu – IHG Master Services Agreement 0920201", Parties will treat all information and materials received from Kipsu, IHG or the Hotels, including, but not limited to, the terms of this Agreement, any pricing or other financial information related to the Products and Services, and all Software, Technology, Alterations, Data, IHG IP Data, marketing, sales, business strategies, and Personally Identifiable Information (as defined below) ("**Confidential Information**") as strictly confidential and with at least the same degree of care that it uses to protect its own confidential and proprietary information. Kipsu, IHG and Hotels may use Confidential Information only for the purpose of carrying out its obligations under this Agreement. Parties will disclose or permit access to Confidential Information only to its employees, contractors, subcontractors, Agents and representatives who have a need to know the Confidential Information in order to fulfill such party's obligations under this Agreement and are aware of the confidentiality obligations set forth herein. Each Party will be strictly liable for any disclosure or unauthorized use of Confidential Information by any person to whom it discloses the Confidential Information. Confidential Information does not include: 1) information that is publicly available, 2) information that is obtained from independent sources free of any confidentiality obligation, other than through improper disclosure, 3) information that is used or disclosed by receiving Party with prior written consent of disclosing Party, 4) information that is developed independently of and without reference to the Confidential Information and 5) information that is required to be disclosed by law, rule, regulation or court order. If required by law, rule or regulation or court order to disclose any Confidential Information, the receiving Party will promptly notify the other Party prior to making any disclosure and will reasonably cooperate with any effort by the disclosing Party to obtain a protective order or other remedy. At the disclosing Party's request and upon termination of this agreement, the receiving Party will a) promptly return or destroy all Confidential Information, excluding IHG Message Data, in its possession or control and certify the same, and b) in the case of IHG Message Data, the PII data component of the IHG Message Data will be deleted and Kipsu will certify the same. The Parties agree that should this confidentiality provision be breached money damages alone would be inadequate compensation. Accordingly, in addition to any other remedies available at law or in equity, the injured party shall be entitled to

specific performance, injunctive or other equitable relief as remedy for any such breach or threatened breach of this Agreement and the other party agrees to waive, and to cause its representatives to waive, any requirement for proving damages or the securing or posting of any bond in connection with such remedy.

13. **WARRANTY.** KIPSU WARRANTS THAT ITS SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH APPLICABLE PROFESSIONAL STANDARDS AND IN ACCORDANCE WITH APPLICABLE LAWS, REGULATIONS AND ORDINANCES. THIS LIMITED WARRANTY IS, TO THE EXTENT PERMITTED BY LAW, IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED. KIPSU MAKES NO OTHER WARRANTIES OR REPRESENTATIONS EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, THE CONDITION, QUALITY OR FREEDOM FROM ERROR OF THE SOFTWARE OR SERVICES OR THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY EXCLUDED.
14. **LIMITATION OF LIABILITY.** EXCEPT FOR KIPSU'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 21 OF THIS AGREEMENT PURSUANT TO A FINAL DETERMINATION MADE BY A COURT OF LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR ANY ORDER OR THE OPERATION OR USE OF THE SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, AND DAMAGE TO EQUIPMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY A PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL MAKING IT IMPOSSIBLE TO PERFORM. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, BUT EXCLUDING ANY CLAIMS FOR INDEMNIFICATION UNDER SECTION 21, A PARTY'S LIABILITIES UNDER THIS AGREEMENT AND KIPSU'S CUMULATIVE LIABILITY TO IHG AND ALL HOTELS WITH AN EXECUTED HOTEL SERVICES AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY KIPSU FROM IHG IN THE LAST 12 MONTHS PRIOR TO THE DATE OF THE ACTION GIVING RISE TO THE CLAIM.
15. **Non-Solicitation of Employees.** During the Term of this Agreement and for a period of 1 year after termination, Hotel will not, knowingly, directly solicit employment of any employee of Kipsu directly involved in performing the Services unless prior written consent is received from Kipsu. Notwithstanding the foregoing, nothing in this *Section 15* shall prohibit Hotel from hiring an individual who applies for a position in response to a general employment advertisement.

16. **General.**

- 16.1 Survival. Sections 10, 11, 12, 13, 14, 15 and 16 survive the termination or expiration of this Agreement.
- 16.2 Amendment. Amendments, modifications, or supplements to this Agreement must be in writing signed by the authorized representatives of both parties.
- 16.3 Compliance with Laws. Each Party will comply with all applicable laws, regulations, codes, ordinances and rules (the “**Applicable Laws**”) in connection with this Agreement, including all data privacy, security and data transfer laws.
- 16.4 Governing Law and Forum. The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. All claims related to or arising under this Agreement will be brought in the state or federal courts located in Delaware.
- 16.5 Force Majeure. Neither party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control making performance impossible.
- 16.6 Independent Contractor. In connection with this Agreement each party is an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose. Further, all persons engaged to furnish the Services are employees, Agents, contractors or subcontractors of Kipsu and not of IHG or the Hotels.
- 16.7 No Construction against Drafter. The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.
- 16.8 Injunctive Relief. Each party acknowledges that a material breach of the confidentiality provisions of this Agreement could irreparably harm the other party and such party may be entitled to seek injunctive relief from a court of competent jurisdiction to prevent such material breach.
- 16.9 Waiver, Severability. The waiver of any breach or default does not constitute the waiver of any subsequent breach or default. If any provision of this Agreement is held to be illegal or unenforceable, it shall be deemed amended to conform to applicable laws or regulations, or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken and the remainder of this Agreement shall continue in full force and effect.



- 16.10 Notices. All notices, certificates, approvals, and payments provided for herein shall be sent as follows: (a) To Hotel: \_\_\_\_\_, Attn: [Contact Name], (b) To Kipsu: 100 S. 1<sup>st</sup> Street, No. 583491, Minneapolis, MN 55458-3491, Attn: President/Chief Manager; or (c) such other address as may be designated in writing by a party hereto.
- 16.11 Counterparts; Execution. This Agreement may be executed simultaneously in counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that transmission to the other party of this Agreement with its facsimile, digital image signatures or pdf shall suffice to bind the party transmitting same to this Agreement in the same manner as if an original signature had been delivered.
- 16.12 Entire Agreement. This Agreement, IHG MSA, the appendices, and subordinate documents referenced in this Agreement constitute the entire agreement between the parties with respect to the subject matter contained herein, superseding all previous agreements pertaining to such subject matter.

**The Parties:**

**Kipsu, Inc.**

**Hotel:** \_\_\_\_\_

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

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

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

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

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

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

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

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

**SCHEDULE A TO HOTEL SERVICES AGREEMENT**  
**BRAND GROUP A - USA & CANADA**

**STATEMENT OF WORK**

This SOW forms part of the Services Agreement by and between Kipsu, Inc. (“**Kipsu**”) and Hotel. Services provided by Kipsu adhere to current or subsequently amended under the IHG MSA.

**I. Description of the Services:**

Supplier to implement, monitor and maintain a SMS text messaging system for Hotel utilizing Supplier system on a software as a service basis (Supplier System or Program). The general requirements are that such Services enable Hotel to provide a service to Hotel guests that:

1. captures mobile phone text messages intended for Hotel staff sent by Hotel guests,
2. redirects such text messages to Hotel staff through a web-based user interface mobile application, text message or e-mail,
3. enables Hotel staff continuously to respond and to interact with guests via text messages directed via such web-based interface,
4. enables continuous Hotel monitoring of all Hotel staff and guest interactions via such Hotel web-based interface,
5. limits non-solicited guest interactions to the SMS text messages outlined herein or as subsequently directed by Hotel or IHG,
6. includes functionality in the Supplier System to de-identify guest mobile phone numbers,
7. Hotel guest telephone numbers entered into the Supplier System and stored in the Supplier Data Center shall be encrypted,
8. Supplier shall mask the content of text message communications between Hotel and guests at the user interface level and limit visibility to only system admins that have been authorized by Hotel. Supplier and Hotel hereby confirm their understanding that text message communications and content may be used in the following manners (a) data gleaned from the Program and authorized by Hotel is only anonymous and aggregated data reflecting summaries of the amount of text message communications activity via the Program at the Hotel in comparison to the amount of activity and other operating metrics of other parties utilizing the Supplier System (“**Anonymous Comparative Data**”), Supplier has assured Hotel that such Anonymous Comparative Data no other party will see, or be capable of seeing, unless authorized by Hotel, the specific name of Hotel, the names of guests, the guests’ actual telephone number, or the content of text message communications between Hotel and guests, (b) Supplier may share comparative data of Hotel’s usage, identified by Hotel’s name, of Supplier System only with other Hotels that are affiliated with IHG (“**Brand Shared Data**”), (c) Supplier may utilize message content only for its development of Supplier System functionality (“**Supplier System Data**”), and
9. Other features as mutually agreed upon by Parties in writing.

**II. Pricing:**

1. IHG MSA Base US SMS-Channel Pricing Per Room includes the following:
    - a. US SMS-Channel messaging - one SMS virtual line is included in the base pricing
    - b. Unlimited User Accounts
    - c. \$250.00 one-time Set up Fee, per each Hotel
    - d. No professional service fee charge for Initial or On-going training
    - e. Travel costs associated with onsite training billed at cost
    - f. No charge for Quarterly Advisory Call
    - g. A 3% service fee will be assessed if Hotel elects to pay with credit card
    - h. Supplier basic Hotel report, provided to Hotel at no charge, which shall include operational statistics such as activity levels, average response times and pulse check average responses. Any expanded reporting to be included in a future SOW.
  
  2. Additional messaging channels (e.g. WiFi landing page, live web chat and other social messaging such as WhatsApp, WeChat, Google Business Messaging, Line, Facebook Messenger, and Apple Business Chat) included at no additional cost.
- \*Additional fees may apply if WhatsApp channel makes up more than 50% of total messages.
3. Additional SMS lines may be available for an additional fee at Hotel's request.
  4. Prices based on property size as contracted in IHG MSA:

Number of Rooms at Hotel:	IHG MSA Base US SMS Channel Pricing Per Room Per Month and Total Monthly Rate (USD)  (IHG MSA RATE)
Rate Per Room per Month per IHG MSA	\$
Rate Per Month per IHG MSA	\$

5. Fees for Services may be subject to an annual increase of no more than three and one-half percent (3.5%) following the Term of this Agreement, subject to section 3 of the "Kipsu - IHG Master Services Agreement 09202021".

### III. Training and Business Review:

1. Hotel Training. Initial training offered by webinar at no cost. Onsite training is also available, billed at cost and with approval prior to booking. Supplier will provide recommendations to Hotel on training format during the onboarding process. Training webinar schedule posted on Supplier website. Training content includes a) overview of Supplier System and b) administrator and manager training including deployment approaches, and c) front office and PBX team training including best practices.
2. Ongoing Hotel Training. Ongoing training includes access to Supplier's training webinars as well as ancillary user manuals and other materials.
3. Quarterly Hotel Advisory Communication. Quarterly communication (calls, videos, emails, etc.) to include a) overview of past quarter Hotel usage of System, b) overview of new Supplier System channels, if any, c) overview of new Supplier System features, if any, and d) ongoing Supplier System best practices and deployment discussions.

### IV. Service Assurances and Service Contacts:

1. Hotel can request support by a) utilizing the chat window on Supplier System, b) texting or calling Supplier's support phone number, or c) emailing Supplier. Support contact information provided on Supplier System and Supplier website.
2. Supplier hereby confirms that the Supplier System and the Program shall be Operational at least 99.5% of the time in any given month during the term of the Agreement ("**Service Level Agreement**"). The "Operational Percentage" means the percentage of the total time during any given month that the System is not subject to an Outage. An "Outage" means that the Supplier System or the Program fails to enable a text interaction with a Hotel guest. Outage does not include service suspension during times of maintenance for which notice was provided or which were due to third party, bona fide and verifiable emergency situations. If a dispute arises about whether or not an Outage occurred, Supplier shall make a determination in good faith based on its system logs, monitoring reports and configuration records, which Supplier shall make available for auditing upon request by Hotel or Hotel's representative.
3. The Parties hereby confirm their understanding that the Program shall not be Operational due to Supplier maintenance of the Supplier System for four (4) consecutive hours commencing each Sunday during the Term at 11:00 PM (US Central Time) and continuing until the immediately following Monday at 3:00 AM (US Central Time).

Severity	Functionality Impact	Customer Impact	Urgency	Target First Response Time	Mean Longest Time to Resolution
Severity 1 (Critical)	0% usability	- Widespread - System down - Public safety concern	Immediate resolution is needed.	30 mins	8 hours
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Severity 3 (High)	75% usability	Interruption to core business processes; inconvenient workaround exists	Immediate resolution is not needed by the customer.	2 hour	3 weeks
Severity 4 (Normal)	90% usability	Moderate interruption to the Customer's work; workaround likely available	Immediate resolution is not needed by the customer.	2 hour	6 months
Severity 5 (Low)	95% < usability	Little to no hindrance to the Customer's work; workaround available	Immediate resolution is not needed by the customer.	2 hour	--

**The Parties:**

**Kipsu, Inc.**

**Hotel:** \_\_\_\_\_

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

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

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

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

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

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

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

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

**SCHEDULE A TO HOTEL SERVICES AGREEMENT**  
**BRAND GROUP A - PROPERTIES OUTSIDE OF USA & CANADA**

**STATEMENT OF WORK**

This SOW forms part of the Services Agreement by and between Kipsu, Inc. (“**Kipsu**”) and Hotel. Services provided by Kipsu adhere to current or subsequently amended under the IHG MSA.

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6. includes functionality in the Supplier System to de-identify guest mobile phone numbers,
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9. Other features as mutually agreed upon by Parties in writing.

## II. Pricing:

1. IHG MSA Base US SMS-Channel Pricing Per Room includes the following:
  - a. SMS-Channel messaging - one SMS line is included in the base pricing
  - b. Unlimited User Accounts
  - c. \$1,000.00 USD one-time Set up Fee per property
  - d. No professional service fee charge for Initial or On-going training
  - e. Travel costs associated with onsite training billed at cost
  - f. No charge for Quarterly Advisory Call
  - g. Bank wire fees are the responsibility of the Hotel
  - h. Supplier basic Hotel report, provided to Hotel at no charge, which shall include operational statistics such as activity levels, average response times and pulse check average responses. Any expanded reporting to be included in a future SOW.
  
2. IHG SMS-Channel Pricing Per Room does **not** include the following: local SMS phone plan/SIM card. Hotel will procure a local SMS phone plan/SIM card to support Service implementation. SIM card to be installed into SMS gateway hardware. SMS gateway hardware to be provided by Kipsu.
  
3. Additional SMS lines may be available for an additional fee at Hotel's request.
  
4. Additional messaging channels (e.g. WiFi landing page, live web chat and other social messaging such as WhatsApp, WeChat, Google Business Messaging, Line, Facebook Messenger, and Apple Business Chat) included at no additional cost. \*Additional fees may apply if WhatsApp channel makes up more than 50% of total messages.
  
5. Fees for Services may be subject to an annual increase of no more than three and one-half percent (3.5%) following the Term of this Agreement, subject to section 3 of the "Kipsu - IHG Master Services Agreement 09202021".
  
6. Prices based on property size:

Number of Rooms at Hotel:	IHG MSA Base US SMS Channel Pricing Per Room Per Month and Total Monthly Rate (USD) (IHG MSA RATE)
Rate Per Room per Month per IHG MSA	\$
Rate Per Month per IHG MSA	\$



### **III. Training and Business Review:**

1. Hotel Training. Initial training offered by webinar at no cost. Onsite training is also available, billed at cost and with approval prior to booking. Supplier will provide recommendations to Hotel on training format during the onboarding process. Training webinar schedule posted on Supplier website. Training content includes a) overview of Supplier System and b) administrator and manager training including deployment approaches, and c) front office and PBX team training including best practices.
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### **IV. Service Assurances and Service Contacts:**

1. Hotel can request support by a) utilizing the chat window on Supplier System, b) texting or calling Supplier's support phone number, or c) emailing Supplier. Support contact information provided on Supplier System and Supplier website.
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**The Parties:**

**Kipsu, Inc.**

**Hotel:** \_\_\_\_\_

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

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

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

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

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

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

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

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

**SCHEDULE A TO HOTEL SERVICES AGREEMENT**  
**BRAND GROUP B - USA & CANADA**

**STATEMENT OF WORK**

This SOW forms part of the Services Agreement by and between Kipsu, Inc. (“**Kipsu**”) and Hotel. Services provided by Kipsu adhere to current or subsequently amended under the IHG MSA.

**I. Description of the Services:**

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**II. Pricing:**

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5. Prices based on property size as contracted in IHG MSA:

Number of Rooms at Hotel:	IHG MSA Base US SMS Channel Pricing Per Room Per Month and Total Monthly Rate (USD) (IHG MSA RATE)
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**The Parties:**

**Kipsu, Inc.**

**Hotel:** \_\_\_\_\_

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

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

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**SCHEDULE A TO HOTEL SERVICES AGREEMENT**  
**BRAND GROUP B - PROPERTIES OUTSIDE OF USA & CANADA**

**STATEMENT OF WORK**

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**The Parties:**

**Kipsu, Inc.**

**Hotel:** \_\_\_\_\_

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

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

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

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

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

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

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

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

**EXHIBIT H-13  
TO DISCLOSURE DOCUMENT**

## MASTER SERVICES AGREEMENT

This Master Services Agreement (this "**Agreement**") is entered into and effective as of **DATE** (the "**Effective Date**") by and between Merkle Inc., a Maryland corporation with an address at 7001 Columbia Gateway Drive, Columbia, MD 21046 ("**Merkle**"), and **OWNER ENTITY**, a **Delaware limited liability company (update as needed)** with an address at **ADDRESS** ("**Client**"). The parties hereby agree as follows:

### 1. Services and Deliverables

- 1.1. **Statements of Work.** Merkle will provide services ("**Services**") and deliverables ("**Deliverables**") to Client pursuant to statements of work or other authorizations mutually agreed to by the parties (each, a "**Statement of Work**" or "**SOW**"). Certain Services and Deliverables will require the parties to execute additional addenda, schedules, and terms ("**Service Specific Terms**") and, once executed, Service Specific Terms will become a part of the applicable SOW and govern the provision of applicable Services and Deliverables. In the event of any conflict between this Agreement and any applicable Service Specific Terms, the Service Specific Terms shall control with regard to the applicable Services or Deliverables. In the event of any conflict between this Agreement and a SOW, the applicable SOW shall control.
- 1.2. **Provision of Services and Deliverables.** Merkle may use consultants or independent contractors (each, a "**Subcontractor**") in providing all or any portion of the Services or Deliverables hereunder, provided that Merkle shall remain responsible to Client for the provision of Services and Deliverables hereunder, and require each Subcontractor to agree to confidentiality obligations that are no less restrictive than those contained in this Agreement.
- 1.3. **Third-Party Materials.** Merkle may license directly and then sub-license to Client, and/or license on behalf of Client, certain third-party services and materials pursuant to an applicable SOW, including, without limitation, software created by a third party, hardware manufactured by a third party, data supplied by a third party, and media, ad serving, and other digital and non-digital advertising and publishing services and products ("**Third-Party Materials**"). Where Merkle procures Third-Party Materials as Client's agent, Merkle will be liable for payment of third party vendor invoices only following complete payment by Client to Merkle; Client shall otherwise be liable for such payment. Client agrees to permit Merkle to provide written confirmation of the agency relationship if asked by a vendor.
- 1.4. **Client Responsibilities.** Merkle's obligations under this Agreement are expressly conditioned upon Client's cooperation and timely performance of Client's responsibilities as set forth in this Agreement and any applicable SOW ("**Client Responsibilities**").

### 2. Fees and Payment

- 2.1. **Fees.** Client shall pay Merkle the fees ("**Fees**") and expenses in the applicable SOW. Fees are subject to annual increases on the anniversary date of the applicable SOW that are equal to the preceding twelve (12) month Consumer Price Index (CPI) for Washington, DC as published by the Bureau of Labor Statistics.
- 2.2. **Invoicing and Payment.** Merkle will submit invoices to Client. Each invoice will be deemed to be correct unless Client advises Merkle in writing (each, a "**Dispute Notice**") of the disputed items on the invoice (a "**Disputed Amount**") within twenty (20) days following Client's receipt of the applicable invoice. Any invoice or portion of an invoice with respect to which Merkle has not received a Dispute Notice or any Disputed Amount upon resolution of the dispute (collectively, the "**Undisputed Amount**") shall be paid by Client to Merkle within thirty (30) days following the receipt date of such invoice or resolution.
- 2.3. **Failure to Pay.** In the event that Client fails to pay the Undisputed Amount as required herein, Client shall be deemed to be in breach of this Agreement and Merkle shall have the right, at its sole option, without notice and in addition to any other remedies available under this Agreement, at law or in equity, to take any one or more of the following actions: (i) suspend provision of any Services and Deliverables until payment of such

Undisputed Amount has been received; (ii) charge interest on the unpaid amount at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less; (iii) terminate this Agreement; and/or (iv) recover all reasonable expenses and costs incurred in enforcing its rights hereunder.

### 3. Taxes

- 3.1. Fees are exclusive of, and Client is responsible for, applicable federal, state or local sales, use, excise, export or other applicable transaction based taxes. Merkle may add such taxes to invoices as applicable and Client shall pay or reimburse Merkle for any such taxes.

### 4. Term and Termination

- 4.1. **Term.** The term of this Agreement shall commence as of the Effective Date and shall continue until terminated by a party in accordance with this Section.
- 4.2. **Termination for Convenience.** Either party may terminate this Agreement or any SOW upon at least one hundred twenty (120) days written notice to the other party.
- 4.3. **Termination for Cause.** Either party may terminate this Agreement or any SOW if the other party breaches this Agreement, and the breaching party fails to cure such breach within thirty (30) days after receipt of written notice thereof from the non-breaching party specifying such breach.
- 4.4. **Effect of Termination or Expiration.** Upon termination or expiration of any SOW, Client shall be liable for and pay Merkle for completed Services and Deliverables, work in progress, and any approved incurred or committed non-cancelable expenses within thirty (30) days after receipt of the invoice. Upon termination of this Agreement for cause, all SOWs hereunder shall be terminated. To the extent that the term of a SOW extends, or any Services or Deliverables are to be provided, beyond the termination (if for convenience) of this Agreement, the Term shall continue until the expiration or termination of the last remaining SOW or the completion of the Services or Deliverables, as applicable.
- 4.5. **Survival.** The provisions concerning Limitation of Liability, Indemnification, Warranty, Confidentiality, Ownership, Payment, and Governing Law, in addition to any other provisions of this Agreement or SOW that would normally survive termination or expiration, shall survive termination or expiration of this Agreement or any SOW.

### 5. Ownership of Materials Related to Services and Deliverables

- 5.1. **Merkle and Third-Party Materials.** Merkle shall retain all right, title, and interest in and to, including all intellectual property rights therein and thereto, its information, tools, "know-how", ideas, techniques, concepts, technology, and other tangible or intangible materials (collectively, "**Merkle Materials**") that are: (i) pre-existing and used by Merkle in connection with the provision of the Services and Deliverables; and/or (ii) developed by or on behalf of Merkle independent of its performance of the Services and Deliverables. In addition, Merkle shall own all right, title, and interest in and to any and all improvements, enhancements, updates, upgrades, derivative works, or other modifications to any Merkle Materials. Except as expressly provided herein, nothing contained in this Agreement shall be interpreted to convey to Client any right, title or interest in the Merkle Materials or Third-Party Materials.
- 5.2. **Deliverables.** Except for any Merkle Materials or Third-Party Materials, Client will own all right, title, and interest in and to, and Merkle hereby assigns to Client Merkle's entire right, title, and interest in and to, all Deliverables. To the extent that any Deliverables contain any Merkle Materials, Merkle hereby grants to Client a limited, revocable, royalty-free, non-transferable right and license, without the right to grant or authorize sublicenses, to use and reproduce such Merkle Materials only to the extent necessary for Client's use of the applicable Deliverable for its internal business purposes. To the extent that any Deliverables contain any Third-Party Materials, Merkle hereby grants to Client the rights that Merkle procured for Client from such third-party. Client shall not directly or indirectly reverse engineer, transfer to any third party, or

prepare derivative works from the Merkle Materials or Third-Party Materials.

- 5.3. **Client Materials.** Client shall own all right, title, and interest in and to, including all intellectual property rights therein and thereto, all Client Confidential Information, works of authorship, methods, processes, or means provided by Client to Merkle.

## 6. Confidential Information

- 6.1. **Confidential Information.** Each party will have access to Confidential Information of the other. For the purposes of this Agreement, "**Confidential Information**" shall mean any written or oral information, whether or not created by or for the other party, disclosed by either party during performance under this Agreement or an SOW.
- 6.2. **Exclusions.** Confidential Information shall not include information which (i) was in or enters the public domain through no breach of this Agreement by the receiving party; (ii) was lawfully in the receiving party's possession prior to such disclosure and without obligation of confidentiality; (iii) was received by the receiving party from a third party not known by the receiving party to be under an obligation of confidentiality; (iv) was independently developed by the receiving party without any use of Confidential Information; or (v) has been specifically approved by the disclosing party in writing for disclosure.
- 6.3. **Non-Use and Non-Disclosure.** Neither party shall use or disclose the other party's Confidential Information except as required by applicable law or to perform its obligations under this Agreement. Each party will employ the same measures that it uses to protect its own Confidential Information, which shall not be less than reasonable, to protect the Confidential Information of the other party from unauthorized or inadvertent use or disclosure. In the event that the receiving party receives a request from a third party requiring the production of information pertaining to the disclosing party, the receiving party will give the disclosing party prompt notice, to the extent permitted by law. The disclosing party will hold the receiving party harmless from, and also assumes responsibility for, any expenses (including without limitation attorney's fees, court costs, data retention costs, e-discovery costs, costs incurred by outside advisors and any other cost imposed whether by way of penalty or otherwise) incurred by the receiving party as a result of such request.

## 7. Representations and Warranties

- 7.1. **Mutual Representations and Warranties.** Each party hereby represents and warrants that it has in place reasonable precautions to prevent unauthorized system access and to avoid the spread of malware from its systems and networks, and shall promptly notify the other party of any suspected security incident related to its use of the other party's systems and networks.
- 7.2. **Representations and Warranties of Client.** Client hereby represents and warrants that it has all necessary permissions and rights to disclose the information it provides or otherwise makes available to Merkle ("**Client Inputs**") and that the Client Inputs and Merkle's use thereof as permitted by this Agreement or by a SOW will not infringe or misappropriate any intellectual property; violate any moral, literary, privacy, publicity or other right of any individual or entity; or violate Client's own policies, or any applicable law, rule, or regulation.
- 7.3. **Representations and Warranties of Merkle.** Merkle hereby represents and warrants that it will perform its Services in a competent and professional manner consistent with the customs and practices of its industry, and that the Deliverables will conform to the specifications in the applicable SOW.
- 7.4. **Warranty Disclaimers.** This is a contract for services. Except as otherwise specifically provided in this Agreement, MERKLE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AND MERKLE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, GUARANTEES, OR REPRESENTATIONS.

8. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES TO BUSINESS REPUTATIONS, LOST BUSINESS, LOST PROFITS, OR LOSS OF GOODWILL), REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING BUT NOT LIMITED TO CLAIMS ARISING FROM A PARTY'S NEGLIGENCE), EVEN IF SUCH PARTY KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, EACH PARTY'S LIABILITY FOR DIRECT DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING BUT NOT LIMITED TO CLAIMS ARISING FROM A PARTY'S NEGLIGENCE), SHALL BE LIMITED TO FEES PAID, EXCLUDING AMOUNTS PAYABLE BY MERKLE TO A THIRD PARTY ON BEHALF OF CLIENT, BY CLIENT UNDER THE APPLICABLE SOW FOR THE SERVICES OR DELIVERABLES THAT ARE THE SUBJECT OF THE ALLEGED BREACH DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE ALLEGED BREACH FIRST OCCURRED.

9. **Indemnification**

9.1. **By Merkle.** Merkle will defend and indemnify Client, its affiliates and their respective officers, directors, and employees (each a "**Client Indemnified Party**") from and against any and all sums finally awarded (or paid pursuant to a final settlement agreement) to a third party arising from a claim, action, or demand by such third party, and reasonable outside attorneys' fees and court costs incurred by Client Indemnified Party in connection with such claim, whether based in whole or in part in contract, tort, negligence, statute or otherwise, to the extent that such claim, action, or demand arises from copyright infringement occurring in the course of Client's use of the Services or Deliverables in accordance with this Agreement. Merkle's obligations with respect to infringement shall not apply to the extent that any such infringement results from: (i) Services or Deliverables designed in accordance with Client's specifications, where the alleged infringement relates to such specifications; (ii) Services or Deliverables that have been modified after delivery by Merkle; (iii) the combination of Services or Deliverables with other services, data, products, processes or materials where the alleged infringement relates to such combination; (iv) where Client continues allegedly infringing activity after being notified thereof; (v) Third-Party Materials; or (vi) where Client's use of the Services or Deliverables is not as permitted by this Agreement.

9.2. **By Client.** Client shall defend and indemnify Merkle, its affiliates and their respective officers, directors, and employees (each a "**Merkle Indemnified Party**") from and against any and all sums finally awarded (or paid pursuant to a final settlement agreement) to a third party arising from a claim, action, or demand by such third party, and reasonable outside attorneys' fees and court costs incurred by Merkle Indemnified Party in connection with such claim, whether based in whole or in part in contract, tort, negligence, statute or otherwise, to the extent that such claim, action, or demand arises out of Client's (i) use of the Services or Deliverables (subject to Merkle's indemnification obligations); or (ii) breach of any representation and warranty.

9.3. **Procedures.** A Client Indemnified Party or a Merkle Indemnified Party seeking indemnification ("**Indemnified Party**") shall promptly provide written notice to the party responsible for indemnification ("**Indemnifying Party**"). Failure to timely provide such notice shall not diminish the Indemnifying Party's indemnification obligation except to the extent the Indemnifying Party's ability to defend an applicable claim is materially prejudiced by such failure or delay. The Indemnified Party shall provide the Indemnifying Party with such information and cooperation as the Indemnifying Party may reasonably request at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall have (a) sole control of the defense and settlement of any claim and (b) no obligation to indemnify the Indemnified Party under any settlement made without the Indemnifying Party's written consent.

9.4. **Other Remedies.** Subject to Client performing Client Responsibilities, if the Services or Deliverables, or any part thereof, are held to infringe a copyright or other intellectual property right, or in Merkle's sole judgment, are likely to infringe a copyright or other intellectual property right, Merkle (at Merkle's sole option) shall (i)

procure for Client the right to continue the applicable Services for the term specified in the applicable SOW; (ii) replace or modify the Services or Deliverables with alternative, non-infringing products or services; or (iii) cease providing the Services and refund to Client a pro-rata portion of any pre-paid Fees for the affected Services. The rights of Client in this Indemnification Section shall be Client's sole and exclusive remedies and Merkle's sole and exclusive liability for any claims of infringement.

## 10. Miscellaneous

**10.1. Modification.** This Agreement and any SOW may be modified only by written agreement of the parties.

**10.2. Assignment.** Neither party may assign this Agreement or any SOW without the written consent of the other party; provided, however, a party may assign this Agreement or any SOW to an Affiliate or successor of such party or pursuant to a merger, consolidation, reorganization, or sale of all or substantially all of the assets of the business to which this Agreement or any SOW relates if such successor or Affiliate agrees in writing to be bound by all of the terms and provisions of this Agreement. Any purported assignment in contravention of this section shall be null and void.

**10.3. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**10.4. Force Majeure.** In no event will a party be liable to the other party for any delay or failure to perform under this Agreement or any SOW, which delay or failure to perform is due to causes beyond the control of such party.

**10.5. Governing Law; Forum; Enforcement.** This Agreement will be governed by and construed in accordance with the laws of State of Maryland, without giving effect to conflict of law rules. Each party irrevocably consents and submits to the exclusive personal jurisdiction of the state courts located in Baltimore, Maryland, and the federal court located in Baltimore, Maryland, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts, such personal jurisdiction shall be nonexclusive.

**10.6. Independent Contractor.** Except for limited and specific agency authority granted by Client to Merkle in this Agreement or in a specific SOW, Merkle is an independent contractor in the performance of its duties under this Agreement and nothing contained in this Agreement shall be deemed to create a partnership, joint venture, or agency relationship between the parties.

**10.7. Notices.** Any notice required or permitted by this Agreement shall be in writing and addressed to the other party's primary contact with a copy to the other party's legal department. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable). These notice requirements do not apply to legal service of process, which is instead governed by applicable law. Subject to the Modification Section, communications under this Agreement in the ordinary course of business may be sent by email.

**10.8. Use of Name.** Neither party will use the name or marks of the other party in any promotional materials without the written consent of the other party, except for promotional materials that identify Client as a client of Merkle.

**10.9. Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

**10.10. Waiver.** The waiver by either party of any right hereunder, the failure to perform, or a breach by the other party shall not be deemed a waiver of any other right hereunder, failure to perform, or breach by said other party whether of a similar nature or otherwise.

**10.11. Entire Agreement.** This Agreement, including any SOW hereunder, constitutes the entire



agreement between the parties relating to the subject matter thereof, represents the complete understanding of the parties, either oral or written, and supersedes any prior written or oral agreements, representations, and discussions between the parties related thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MERKLE INC.

**OWNER ENTITY NAME**

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

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

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

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

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

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

**Statement of Work– SEM and SEO (Hotel Name)**

This Statement of Work (“SOW”) is made effective as of **DATE** (the “Effective Date”) between Merkle Inc. (“Merkle”) and **OWNER ENTITY**, (“Client” or “Franchisee”), pursuant to the Service Specific Terms as set out below and the terms and conditions of the Master Services Agreement between the parties effective **DATE** (the “Agreement”). To the extent that there is any conflict or inconsistency between this SOW and the Agreement, this SOW shall prevail solely with regards to items covered by this SOW. To the extent that there is any conflict or inconsistency between this SOW and any other preceding solution presentation or representation included but not limited to RFP Response, proposed solution or solution presentations, this SOW shall prevail. Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Agreement.

**1. Service Specific Terms.**

Under this SOW Merkle will provide the services (“Services”) specified below:

**A. Paid Search Engine Marketing (“SEM”):**

Set-Up Phase Services	
<b>Fees / Hours</b>	<b>\$6,150 to be paid in first month of Set-Up Phase services, up to and not exceeding twenty-two (22) total hours</b>
Campaign Set-Up	Includes kick-off call, initial engine set up of new account in Google, keyword research, landing page selection, ad copy and Google Ad Extension creation, URL tracking (via Kenshoo, as provided by Client), Kenshoo reporting setup.
Campaign Launch	Initial launch of SEM campaigns for Client hotel, including activation and auditing.
Requirements	Client owns Google account and pays engine directly. Client adheres to specific Kimpton SEM Keyword Governance Policy (e.g., which specific keywords or keyword sets are permitted to be bid on and by which party, ad positions/multiple ad serving in multi-property market.)

Standard SEM Services	
<b>Fees / Hours</b>	<b>\$1,250.00/month (annually \$15,000), to be invoiced immediately in month following completion of Set-Up activities, up to and not exceeding eight (8) total hours per month</b>
Branded Campaigns	Bid/budget management, campaign optimization, monthly search query reports for campaigns established during Set-Up phase. Branded keywords adhere to Kimpton SEM Keyword Governance policy.
Non-Branded Campaigns	Bid/budget management, campaign optimization, monthly search query reports for campaigns established during Set-Up phase <i>*Available NB campaigns include the following keyword themes:</i> -Location: Looking for hotels near/in a specific location (e.g. near SoHo, in downtown), -Accommodation: Looking for specific accommodations (e.g. suites, pool) -Descriptor: Looking for specific type of hotel (e.g. Luxury, modern, pet friendly, resort; does NOT include boutique) -Attractions: Looking for hotels by an attraction (e.g. near Rainey St., by Dolby theatre) See Kimpton SEM Keyword Governance Policy for more detail.
Ad Copy	Evergreen: Change up to two (2) times per year Promotional: Change of promo ad copy one (1) time per quarter
Reporting	Automated report delivered monthly via email
Communication	Monthly Status Call to discuss monthly report and program performance, campaigns in progress, strategic next steps

Incremental Services	
<b>Fees</b>	<b>Work beyond what is listed above for Standard SEM Services, including more than twenty-two (22) total hours for Campaign Set Up, will be scoped separately, approved in writing by Client (email acceptable), and will incur incremental fees at the rate of \$200/hour.</b>
Examples of Incremental Services (including but not limited to this list)	Additional ad copy changes
	Sitelink or other Ad Extension creation or changes
	New campaign creation or promo support
	Landing page updates
	New keyword research
	Launching in Bing or other engines
	Additional ad hoc requests that would exceed Merkle SEM's maintenance monthly hours

SEM Keyword Governance			
BRAND			
Keyword / Keyword Theme	Examples	Owner (i.e. who can buy)	Requirements
Kimpton	kimpton, kimpton hotels, kimptonhotels.com, etc.	Kimpton	Franchisee must add these terms as negative keywords
Kimpton Monaco/Palomar	kimpton monaco, kimpton palomar, etc	Kimpton	Franchisee must add these terms as negative keywords
Kimpton (insert franchisee hotel name)	kimpton hotel arras, kimpton arras	Franchisee	
Kimpton (insert non-franchisee Kimpton hotel name)	kimpton seafire resort and spa, kimpton van zandt, kimpton charlotte square	Kimpton	
Kimpton (insert city name)	kimpton hotel ashville (city of franchisee)	Kimpton	Funded via Kimpton Home Office budget
NON-BRAND			
Keyword / Keyword Theme	Examples	Owner (i.e. who can buy)	Requirements
Non-Brand Boutique Sets			
Boutique - Dense Market	Markets with more than 1 Kimpton hotel; i.e. boutique hotel chicago	Kimpton	Franchisee understands that other Kimpton hotels or Kimpton Brand may bid on keyword set
Boutique - Single Market with Kimpton Hotel	Markets with only 1 Kimpton hotel; i.e. boutique hotel savannah	Kimpton	Respective Kimpton hotel owns the keyword set
Boutique - Single Market w/franchisee Hotel	Markets with more than 1 Kimpton franchisee hotel; i.e. boutique hotel asheville	Franchisee	Franchisee owns the keyword set
All Other Non-Brand Sets			
Other Non-Brand keyword sets eligible for bidding on by all parties follow below:			
Location	Looking for hotels near/in a specific location (e.g. near SoHo, in downtown)	All	Franchisee understands that other Kimpton hotels may bid on keyword set
Accommodations	Looking for specific accommodations (e.g. suites, pool)	All	Franchisee understands that other Kimpton hotels may bid on keyword set
Descriptor	Looking for specific type of hotel (e.g. Luxury, modern, pet friendly, resort)	All	Franchisee understands that other Kimpton hotels may bid on keyword set
Attraction	Looking for hotels by an attraction ( e.g. near Rainey St., by Dolby theatre)	All	Franchisee understands that other Kimpton hotels may bid on keyword set
Citywide Non-Brand support	Non-Brand campaigns supported with budget by all hotels within a dense market	Kimpton	Franchisee understands that other Kimpton hotels may bid on keyword set

**B. Organic Search Engine Optimization (“SEO”):**

Set-Up Phase Services	
<b>Fees / Hours</b>	<b>\$6,125.00 to be paid in first month of this SOW for Set-Up Phase Services, up to and not exceeding thirty-five (35) total hours.</b>  <b>\$1,650.00 annual fee for BrightEdge reporting service applicable and invoiced during month one (1) of Services, and again in January for each subsequent year.</b>
<b>SEO Set Up</b>	Includes kick-off call, keyword research, primary/secondary keywords for up to fifty (50) pages, meta recommendations (H1, Page Title, Meta Description) for up to fifty (50) pages, content consulting and auditing for up to fifty (50) pages, competitor tracking of up to three (3) competitors in BrightEdge, reporting set up in BrightEdge, Google Search Console (“GSC”) and Bing Webmaster Tools (“BWT”) set up for hotel domain, post-launch site audit to implement meta recommendations, Google My Business (“GMB”) and Bing Places local listing verification, addition of any relevant photos of property to GMB, submission of XML sitemap to GSC and BWT, and hotel schema file in JSON-LD.
<b>BrightEdge Services</b>	Required for keyword/placement tracking. Includes tracking up to three (3) competitors, with one (1) change to the competitive set per year.

Standard SEO Services	
<b>Fees / Hours</b>	<b>\$834/month (annually \$10,000), to be invoiced beginning in month one (1) of Services, up to and not exceeding eight (8) total hours per month</b>
<b>Maintenance</b>	Includes one (1) keyword research refresh per year to look for any new/additional keyword opportunities, content consulting and auditing for additional keywords added in to content, monitoring of competitor tracking in BrightEdge, GMB and Bing Places name/address/phone number maintenance, review of BrightEdge monthly report in Monthly Status Call, and one (1) ad hoc request per month as needed discussed during the Monthly Status Call.
<b>Reporting</b>	Provided monthly via automated BrightEdge tool.
<b>Communication</b>	Monthly status call to discuss program performance, monthly report and strategic next steps

Incremental Services	
<b>Fees</b>	<b>Work beyond what is listed above for Standard SEO Services will be scoped separately, approved in writing by Client (email acceptable), and will incur incremental fees at the rate of \$200/hour.</b>
<b>Examples of Incremental Services (including but not limited to this list)</b>	Local citation management in a separate platform beyond GMB or Bing Places, such as MozLocal or RioSEO
	Review management/Responding to reviews in GMB or Bing Places
	Technical SEO consulting for items such as site latency, redirects, migrations, backlinking, crawl errors, schema
	Market Strategy - analysis on region in which the hotel competes in
	Additional ad hoc requests that would exceed Merkle SEO's maintenance monthly hours

**2. Fees and Invoice Procedures:**

- Merkle will provide the resource hours for the fees (“Fees”) as specified in Section 1. Invoices for the Fees will be processed on a monthly basis at the beginning of each calendar month based on the monthly Fees above. The Fees will be listed on invoices as single line item. Travel, expenses, and taxes will be billed as separate line items on the invoice. All Merkle travel for this SOW is subject to Client pre-approval (as applicable and email suitable). For all pre-approved travel by Merkle, Client will reimburse Merkle for actual expenses incurred in executing this SOW.
- This SOW is not deliverables-based, so even though Merkle may provide Deliverables to the Client, payments or SOW completion will not be subject to any solution or Deliverable acceptance.

3. Merkle will bill Client directly at the address listed below. Client must maintain accurate point of contact information for billing purposes. Any changes to billing contact must be submitted to Merkle's Finance Department.
4. Payment for all invoices will be due thirty (30) days following invoice date and payable pursuant to the terms of the Agreement.
5. If this SOW is terminated prior to the SOW End Date, Client will pay for all Services performed up through the effective date of termination, including work in progress, plus any other non-cancelable or committed expenses incurred by Merkle in performance of the Services.

3. **Responsibilities**

1. Client will make appropriate personnel available to assist Merkle in the performance of Merkle's responsibilities.
2. Client will arrange for and provide secure building access and adequate office space, meeting rooms, training facilities, and utilities for services Merkle will perform at Client's facilities.
3. Client will ensure access to allow Merkle to use or license any third-party materials including software, firmware, hardware, or other products used are in place with applicable vendors for those products and services upon which Merkle is relying to provide the services described herein.
4. Client is responsible for the identification and implementation of any applicable laws, rules, and regulations that affect the Client's existing systems that Merkle will have access to during the Term. Client is responsible to assure that the systems and programs meet the requirements of those laws, rules, and regulations.
5. Client will designate a Client point of contact who will:
  - a. Establish and maintain communications through the Merkle point of contact.
  - b. Manage Client resources.
  - c. Specify and authorize the work performed by Merkle resources.
  - d. Prioritize work assignments to Merkle resources to stay within the available resource capacity
  - e. Have the authority to act for the Client.
  - f. Coordinate all Client personnel who have responsibilities for performing tasks or providing information to Merkle.
  - g. Provide, in a timely manner, applicable information, data consents, decisions and approvals as required by Merkle.
  - h. Follow the change management process.
  - i. Help resolve issues and escalate issues within the Client's organization as necessary.
  - j. Facilitate access to the existing Client applications and technical environments as applicable.

4. **General Conditions**

**A. Change Management**

Either party may initiate a request for a change order ("CO" or "Change Order") using a mutually agreeable Change Order form. The CO will describe the rationale for the change and any change in scope of services. Merkle will determine the effect that the implementation of the CO will have on pricing, schedule and other terms and conditions of the SOW. Once fully documented, the CO must be signed by both parties prior to implementation of the CO.

**B. Work Hours**

Merkle will perform the Services under this SOW on Business Days during Business Hours. A "Business Day" is Monday through Friday except for holidays observed by Merkle. "Business Hours" are the customary eight (8) consecutive business hours in the location where the Services are being performed.

**C. General**

All Services provided by Merkle resources under this SOW are based on data and information provided by Client. All Services are recommendations provided to Client by Merkle and the ultimate decision regarding implementation of any such recommendations rests solely with Client. Merkle makes no express or implied representations or warranties with respect to results achieved from implementation of the recommendations.

5. **Term:**

The initial term of this Statement of Work for hotel Services is from the SOW Effective Date through **DATE (should be 2 years from effective date)** (the "SOW End Date").

**IN WITNESS WHEREOF**, the Parties have caused their duly authorized representatives to execute this Statement of Work as of the Effective Date.

Client:

Owner Entity Name

Signature: \_\_\_\_\_

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

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

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

Merkle Inc.

Signature: \_\_\_\_\_

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

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

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

**EXHIBIT H-14  
TO DISCLOSURE DOCUMENT**



**Participation Agreement  
AT&T Network Integration Services  
(U.S.)**

Kimpton - Amended 2024 FDD (495)

**AT&T Participation Agreement**

MA Reference No.: \_\_\_\_\_  
AT&T Network Integration Tracking ID: GBS15200-52.1  
Document Version #: v-1.0

<b>Eligible Participant Legal Name ("Eligible Participant")</b>	<b>AT&amp;T Corp. ("AT&amp;T") (designate other entity if signing entity other than AT&amp;T Corp)</b>	<b>AT&amp;T Branch Sales Contact Name</b>
	AT&T	Name: Christine Huntzinger
<b>Eligible Participant Address</b>	<b>AT&amp;T Corp. Address and Contact</b>	<b>AT&amp;T Branch Sales Contact Information</b>
	One AT&T Way Bedminster, NJ 07921-0752 Contact: Master Agreement Support Team Email : <a href="mailto:mast@att.com">mast@att.com</a>	1057 Lenox Park Blvd NE 4 <sup>th</sup> FL Atlanta, GA USA 30319 USA Email : <a href="mailto:ch0261@att.com">ch0261@att.com</a> 404-735-7698 Sales Manager: Chad Spillerman SCVP Name Michael Jenkins
<b>Eligible Participant Contact</b>	<b>AT&amp;T Address and Contact</b>	<b>AT&amp;T IS Contact Information</b>
Name: Title: Telephone: Fax: Email:	Name: Theresa Wong Title: Program Manager Telephone: 770.750.7537 1057 Lenox Park Blvd NE Atlanta, GA 30319 USA	Name: Scott Hullett 410 W Magnolia Ave Knoxville, TN USA 37917 Telephone: 770.750.7537 Email: <a href="mailto:sh0704@att.com">sh0704@att.com</a>
<b>Eligible Participant Billing Address</b>		

This Managed Fortinet Participation Agreement ("Participation Agreement"), effective as of **[INSERT DATE]** ("Effective Date"), is entered into by and between AT&T Corp. ("AT&T") and **[INSERT OWNER'S LEGAL ENTITY NAME]** d/b/a **[INSERT NAME OF HOTEL]** located at **[INSERT ADDRESS OF HOTEL]** (the "Eligible Participant"). This Participation Agreement is entered into pursuant to the certain Master Agreement Ref. No. 101513UA dated 11/26/2003, as maybe amended, (the "Customer Agreement") between AT&T and IHG ("Customer").

AT&T and Eligible Participant hereby agree as follows:

1. Eligible Participant may purchase certain Services made available under the Customer Agreement pursuant to this Participation Agreement. Additional project-specific terms are set forth in Attachments as agreed by the parties. Capitalized terms used but not defined in this Participation Agreement shall have the same meaning as in the Master Agreement which, along with the relevant Pricing Schedules, may be obtained by the Eligible Participant from Customer.
2. Eligible Participant hereby represents and warrants that, upon execution of this Participation Agreement, it is a Property under the Customer. If Customer notifies AT&T that an Eligible Participant has ceased to be a Property, AT&T shall notify the Eligible Participant that this Participation Agreement is terminated. AT&T shall have the right, prior to accepting an order from Eligible Participant, to confirm in AT&T's sole discretion Eligible Participant's creditworthiness, that Eligible Participant is current and up to date in its undisputed payment obligations to AT&T under any existing agreement between AT&T and such entity, and require security for non-payment as reasonably requested by AT&T.



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3. Eligible Participant may purchase the following Services and Vendor Software made available under the Customer Agreement:
  - (a) AT&T Managed Fortinet Solution;
  - (b) CrowdStrike Complete Vendor Software;
  - (c) AT&T Deployment and Management of security components per the full Scope of Work;
  - (d) AT&T Deployment and Management of the MSS for the front office ("FO") environment (also referred to as the Property Management System (PMS) network);
  - (e) AT&T Deployment and Management of the Covered Devices in the FO environment to which Base Pricing applies consists of one (1) server and five (5) workstations (described in pricing tables below);
  - (f) AT&T Active Directory (AD) Services as part of the AT&T FastConnect set of services;
  - (g) AT&T Managed Token Remote Access Services & Managed Back-up Services (One Safe Place).
  - (h) Other such AT&T services may not be purchased here under
4. Eligible Participant agrees to be bound by the terms and conditions of this Participation Agreement, including the terms and conditions in Attachment 1 and Attachment 2. If AT&T and Customer amend any provisions of the Customer Agreement that are to be applicable to Eligible Participant, Eligible Participant agrees to be bound by such modifications.
5. If the Customer Agreement ceases to be in effect, AT&T may at its option terminate all Services under this Participation Agreement.
6. This Participation Agreement may not be assigned by Eligible Participant without the written consent of AT&T, which consent shall not be unreasonably withheld, delayed, or conditioned. Any assignment in contravention of the foregoing shall be null and void.
7. Notices relating to Eligible Participant's performance of its obligations under this Participation Agreement shall be delivered to Eligible Participant at the following address:  
Property Name: **[INSERT]**  
Street Address: **[INSERT]**  
City: **[INSERT]**  
State Zip Code: **[INSERT]**
8. Customer shall not be responsible for Eligible Participant's performance under this Participation Agreement, and this Participation Agreement is to be considered by both Eligible Participant and AT&T as an independent agreement between Eligible Participant and AT&T. For purposes of clarification, Eligible Participant shall be solely liable for its own obligations and liabilities under this Participation Agreement.
9. AT&T shall disclose Eligible Participant's Information to Customer upon Customer's request. Such disclosures may include Eligible Participant's name, services purchased, monthly or annual usage, total billings, and payment status. AT&T may not disclose Customer's Information to Eligible Participant without Customer's consent. Such disclosures may include Customer's name, services purchased, monthly or annual usage, total billings and payment status. The terms of this Participation Agreement shall be deemed AT&T, Customer, and Eligible Participant's Information pursuant to the terms of the Customer Agreement.
10. If Eligible Participant, any collection of Eligible Participants and/or Customer bring separate actions against AT&T for substantially similar claims, AT&T may bring an application to consolidate, coordinate, or relate such actions, as appropriate, in a single proceeding or pending action, and Eligible Participant agrees that it shall not contest any such motion to consolidate, coordinate, or relate such actions in a single proceeding.
11. THIS PARTICIPATION AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THIS PARTICIPATION AGREEMENT SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS, REPRESENTATIONS, STATEMENTS OR UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, CONCERNING THE SERVICES. THIS PARTICIPATION AGREEMENT SHALL NOT BE MODIFIED OR SUPPLEMENTED BY ANY WRITTEN OR ORAL STATEMENTS, PROPOSALS, REPRESENTATIONS, ADVERTISEMENTS, SERVICE DESCRIPTIONS OR PURCHASE ORDER FORMS NOT EXPRESSLY SET FORTH IN THIS PARTICIPATION AGREEMENT.





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IN WITNESS WHEREOF, AT&T and Eligible Participant have caused this Participation Agreement to be executed by their duly authorized representatives as of the date written below. This Participation Agreement is effective on the date of the last party's signature hereon.

Eligible Participant (Owner's Legal Entity Name) (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Name :	Name :
Title :	Title :
Date :	Date :



## Attachment 1

### Eligible Participant Master Agreement Terms

#### 1. INTRODUCTION

**1.1 Overview of Documents.** The Participation Agreement, these Eligible Participant Master Agreement Terms, and the following additional documents (collectively, the "Agreement") shall apply to all products and services AT&T provides Eligible Participant pursuant to this Agreement ("Services") and shall continue in effect so long as Services are provided under this Agreement:

- (a) **Pricing Schedules.** A "Pricing Schedule" means the Pricing Schedule excerpts in Attachment 2 to this Participation Agreement. A Pricing Schedule includes the Services and the pricing (including discounts and commitments, if applicable). A Statement of Work ("SOW") is attached to a Pricing Schedule, which includes the SOW term ("SOW Term").
- (b) **Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to (i) Services provided over or accessing the Internet and (ii) wireless (*i.e.*, cellular) data and messaging Services. The AUP can be found at [att.com/aup](http://att.com/aup) or other locations AT&T may designate.
- (c) **Service Guides.** The descriptions, pricing and other terms and conditions for a Service may be

**1.2 Priority of Documents.** The order of priority of these Eligible Participant Master Agreement Terms and the documents identified above: the applicable Pricing Schedule; these Eligible Participant Master Agreement Terms; the AUP; and Service Guides.

**1.3 Revisions to Documents.** Subject to Section 8.2(b) (Materially Adverse Impact), AT&T may revise Service Publications at any time.

#### 2. AT&T DELIVERABLES

**2.1 Services.** AT&T will either provide or arrange to have an AT&T Affiliate provide Services to Eligible Participant and its Users, subject to the availability and operational limitations of systems, facilities, and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider. If an applicable Service Publication expressly permits placement of an order for a Service under this Agreement without the execution of a Pricing Schedule, Eligible Participant may place such an order using AT&T's standard ordering processes (an "Order"), and upon acceptance by AT&T, the Order shall otherwise be deemed a Pricing Schedule under this Agreement for the Service ordered.

**2.2 AT&T Equipment.** Services may be provided using equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Eligible Participant must provide adequate space and electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Eligible Participant will bear the risk of loss or damage to the AT&T Equipment (other than ordinary wear and tear), except to the extent caused by AT&T or its agents.

**2.4 License and Other Terms.** Software, Purchased Equipment and Third-Party Services may be provided subject to the terms of a separate license or other agreement between Eligible Participant and either the licensor, the third-party service provider or the manufacturer. Eligible Participant's execution of the Pricing Schedule for or placement of an Order for Software, Purchased Equipment or Third-Party Services is Eligible Participant's agreement to comply with such separate agreement. Unless a Service Publication specifies otherwise, AT&T's sole responsibility with respect to Third-Party Services is to place Eligible Participant's orders for Third-Party Services, except that AT&T may invoice and collect payment from Eligible Participant for the Third-Party Services.

#### 3. ELIGIBLE PARTICIPANT'S COOPERATION

**3.1 Access Right.** Eligible Participant will, during its regular business hours, allow AT&T access as reasonably required for the Services to property and equipment that Eligible Participant controls and will obtain at Eligible Participant's expense for AT&T as reasonably required for the Services to property controlled by third parties such as Eligible Participant's landlord. AT&T will coordinate with and, except in an emergency, obtain Eligible Participant's written consent to enter upon Eligible Participant's property and premises, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, replace, and remove access lines and network facilities and the right to use ancillary equipment space within a building for Eligible Participant's connection to AT&T's network. Eligible Participant must provide AT&T timely information and access to Eligible Participant's facilities and equipment as AT&T reasonably requires for the Services, subject to Eligible Participant's reasonable security policies. Eligible Participant will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items as AT&T reasonably requires for the Services and will obtain any necessary licenses, permits and

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consents (including easements and rights-of-way). Eligible Participant will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

**3.2 Safe Working Environment.** Eligible Participant will ensure that the location at which AT&T installs, maintains, or provides Services is a safe and suitable working environment, free of known Hazardous Materials and reasonably suitable for the Services. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, to protection of air, water, or soil or to health and safety. AT&T shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

**3.3 Users.** "User" means anyone who uses or accesses any Service provided to Eligible Participant. Eligible Participant will cause Users to comply with this Agreement and is responsible for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

**3.4 Resale of Services.** Eligible Participant may not resell the Services or rebrand the Services for resale to third parties without AT&T's prior written consent.

#### **4. PRICING AND BILLING**

**4.1 Pricing and SOW Term; Terms Applicable After End of SOW Term.** The prices listed in the Pricing Schedule are stabilized until the end of the SOW Term and will apply in lieu of the corresponding prices set forth in the applicable Service Publication. No promotion, credit, discount, or waiver set forth in a Service Publication will apply. Unless Pricing Schedule states otherwise, at the end of the SOW Term, Eligible Participant may continue Service (subject to any applicable notice or other requirements in a Service Publication for Eligible Participant to terminate a Service Component) under a month-to-month service arrangement at the prices, terms, and conditions in effect on the last day of the SOW Term. Under the month-to-month services arrangement, any change in price and/or terms or conditions will be mutually agreed to with an amendment to Pricing Schedule.

**4.2 Additional Charges and Taxes.** Prices set forth in the Pricing Schedule are exclusive of and Eligible Participant will pay all taxes (excluding those on AT&T's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from Eligible Participant's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Eligible Participant provides a valid exemption certificate prior to the delivery of Services. To the extent required by law, Eligible Participant may withhold or deduct any applicable taxes from payments due to AT&T, provided that Eligible Participant will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

**4.3 Billing.** Unless a Service Publication specifies otherwise, Eligible Participant's obligation to pay for a Service Component begins upon availability of the Service Component to Eligible Participant. Eligible Participant will pay AT&T without deduction, setoff, or delay for any reason (except for withholding taxes as provided in Section 4.2 - Additional Charges and Taxes or in Section 4.5 - Delayed Billing; Disputed Charges). At Eligible Participant's request, but subject to AT&T's consent (which may not be unreasonably withheld or withdrawn), Eligible Participant's Affiliates may be invoiced separately, and AT&T will accept payment from such Affiliates. Eligible Participant will be responsible for payment if Eligible Participant's Affiliates do not pay charges in accordance with this Agreement. AT&T may require Eligible Participant or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Eligible Participant or its Affiliates are not creditworthy, and AT&T may apply such deposit to any charges owed.

**4.4 Payments.** Payment is due within 30 days after the date of the invoice and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Eligible Participant will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees. AT&T may charge late payment fees at the lower of (a) 1.5% per month (18% per annum), or (b) the maximum rate allowed by law for overdue payments.

**4.5 Delayed Billing; Disputed Charges.** Eligible Participant will not be required to pay charges for Services initially invoiced more than twelve (12) months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. Separate from the preceding sentence, if Eligible Participant disputes a charge, Eligible Participant will provide notice to AT&T specifically identifying the charge and the reason it is disputed within twelve (12) months after the date of the invoice in which the disputed charge initially appears, or Eligible Participant waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until AT&T completes its investigation of the dispute but Eligible Participant may incur late payment fees in accordance with Section 4.4 (Payments). Following AT&T's notice of the results of its investigation to Eligible Participant, payment of all properly due charges and properly accrued late payment fees must be made within



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ten (10) business days. Bona fide disputes concerning invoices shall be addressed by the appropriate AT&T billing dispute center pursuant to AT&T's established methods and procedures, after the dispute is referred to the billing dispute center by either Eligible Participant or Eligible Participant's account team. Following AT&T's notice of the results of its investigation to Eligible Participant, payment of all properly due charges must be made within ten (10) business days and AT&T will reverse any late payment fees that were invoiced in error.

**4.6 Credit Terms.** AT&T retains a lien and purchase money security interest in each item of Purchased Equipment and Vendor Software until Eligible Participant pays all sums due. AT&T is authorized to sign and file a financing statement to perfect such security interest.

## **5. CONFIDENTIAL INFORMATION**

**5.1 Confidential Information.** Confidential Information means: (a) information the parties or their Affiliates share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement (including pricing or other proposals), but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement.

**5.2 Obligations.** A disclosing party's Confidential Information will, for a period of three (3) years following its disclosure to the other party (except in the case of software, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5) or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating proposals for new services or performing this Agreement (including in the case of AT&T to detect fraud, to check quality and to operate, maintain and enhance the network and Services).

**5.3 Exceptions.** The restrictions in this Section 5 will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

**5.4 Privacy.** Each party is responsible for complying with the privacy laws applicable to its business. AT&T shall require its personnel, agents and contractors around the world who process Eligible Participant Personal Data to protect Eligible Participant Personal Data in accordance with the data protection laws and regulations in the jurisdiction, territory or region in which the Services are provided to or consumed by Eligible Participant that are applicable to AT&T's business. If Eligible Participant does not want AT&T to comprehend Eligible Participant data to which it may have access in performing Services, AT&T strongly recommends that Eligible Participant encrypt such data so that it will be unintelligible. Eligible Participant is responsible for obtaining consent from and giving notice to its Users, employees and agents regarding Eligible Participant's and AT&T's collection and use of the User, employee, or agent information in connection with a Service. Eligible Participant will only make accessible or provide Eligible Participant Personal Data to AT&T when it has the legal authority to do so. Unless otherwise directed by Eligible Participant in writing, if AT&T designates a dedicated account representative as Eligible Participant's primary contact with AT&T, Eligible Participant authorizes that representative to discuss and disclose Eligible Participant's proprietary network information to any employee or agent of Eligible Participant without a need for further authentication or authorization.

**5.5 Upon Termination.** Upon termination or expiration of the Agreement for whatever reason, or upon request by the other party, each party shall immediately cease to handle such other party's Confidential Information and shall promptly return to the other party all such Confidential Information, or destroy the same, in accordance with such instructions as may be given by the other party at that time. The obligations set out in this section shall remain in force notwithstanding termination or expiration of the Agreement. The parties agree that each party has and shall maintain ownership of any intellectual property rights in its Confidential Information and no such rights will transfer in the absence of an appropriate license or other written agreement signed by both parties.

## **6. LIMITATIONS OF LIABILITY AND DISCLAIMERS**

### **6.1 Limitation of Liability.**

- (a) EITHER PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR DAMAGES ON ACCOUNT OF ANY CLAIM ARISING OUT OF AND NOT DISCLAIMED UNDER THIS AGREEMENT SHALL BE:



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- (i) FOR BODILY INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY A PARTY'S NEGLIGENCE, DIRECT DAMAGES;
  - (ii) FOR BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity) OR SECTION 10.2 (Trademarks), PROVEN DIRECT DAMAGES;
- FOR ANY THIRD-PARTY CLAIMS, THE REMEDIES AVAILABLE UNDER SECTION 7 (Third Party Claims);
- (iv) FOR CLAIMS ARISING FROM THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVEN DAMAGES; OR
  - (v) FOR CLAIMS OTHER THAN THOSE SET FORTH IN SECTION 6.1(a)(i)-(iv), PROVEN DIRECT DAMAGES NOT TO EXCEED, ON A PER CLAIM OR IN THE AGGREGATE BASIS DURING ANY NINE (9) MONTH PERIOD, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES INCURRED BY ELIGIBLE PARTICIPANT FOR THE AFFECTED SERVICE IN THE RELEVANT COUNTRY DURING THE NINE (9) MONTHS PRECEDING THE MONTH IN WHICH THE CLAIM AROSE
- (b) EXCEPT AS SET FORTH IN SECTION 7 (Third Party Claims) OR IN THE CASE OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS.
  - (c) THE LIMITATIONS IN THIS SECTION 6 SHALL NOT LIMIT ELIGIBLE PARTICIPANT'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

**6.2 Disclaimer of Liability.** AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY ELIGIBLE PARTICIPANT OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS AGREEMENT); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF ELIGIBLE PARTICIPANT'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

**6.3 Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. In addition, AT&T SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO ELIGIBLE PARTICIPANT'S DATA AND INFORMATION.

**6.4 Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages and will apply so as to limit the liability of each party and its Affiliates and their respective employees, directors, subcontractors and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

## 7. THIRD PARTY CLAIMS

**7.1 AT&T's Obligations.** AT&T agrees at its expense to defend and indemnify or and either to settle any third-party claim against Eligible Participant, its Affiliates and its and their respective employees, and directors or to pay all damages that a court finally awards against such parties for a claim alleging that a Service, provided to Eligible Participant under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from: (a) Eligible Participant's, its Affiliate's or a User's content; (b) modifications to the Service by Eligible Participant, its Affiliate or a third party, or combinations of the Service with any non-AT&T services or products by Eligible Participant or others; (c) AT&T's adherence to Eligible Participant's or its Affiliate's written requirements; or (d) use of a Service in violation of this Agreement.

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**7.2 Eligible Participant's Obligations.** Eligible Participant agrees at its expense to defend and either to settle any third-party claim against AT&T, its Affiliates and its and their respective employees, directors, subcontractors and suppliers or to pay all damages that a court finally awards against such parties for a claim that: (a) is in connection with Eligible Participant's, its Affiliate's or a User's access to or use of the Services and the claim is not the responsibility of AT&T under Section 7.1; (b) alleges a material breach by Eligible Participant, its Affiliate or a User of a Software license agreement.

**7.3 Infringing Services.** Whenever AT&T is liable under Section 7.1, AT&T may at its option either procure the right for Eligible Participant to continue using, or may replace or modify, the Service so that it is non-infringing.

**7.4 Notice and Cooperation.** The party seeking defense or settlement of a third-party claim under this Section 7 will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced by the delay. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the defending party under this Section 7.

## **8. SUSPENSION AND TERMINATION**

**8.1 Termination of Agreement.** This Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases to be a Property (in the case of Eligible Participant), is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding or makes an assignment for the benefit of its creditors.

**8.2 Termination or Suspension.** The following additional termination provisions apply:

- (a) **Material Breach.** If either party fails to perform or observe any material warranty, representation, term or condition of this Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of notice, the aggrieved party may terminate (and AT&T may suspend and later terminate) the affected Service Components and, if the breach materially and adversely affects the entire Agreement, terminate (and AT&T may suspend and later terminate) the entire Agreement.
- (b) **Materially Adverse Impact.** If AT&T revises a Service Publication, the revision has a materially adverse impact on Eligible Participant and AT&T does not affect revisions that remedy such materially adverse impact within thirty (30) days after receipt of notice from Eligible Participant, then Eligible Participant may, as Eligible Participant's sole remedy, elect to terminate the affected Service Components on thirty (30) days' notice to AT&T, given not later than ninety (90) days after Eligible Participant first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.
- (c) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service or Service Component and, if the activity materially and adversely affects the entire Agreement, terminate or suspend the entire Agreement, immediately by providing Eligible Participant with as much advance notice as is reasonably practicable under the circumstances if Eligible Participant, in the course of breaching the Agreement: (i) commits a fraud upon AT&T; (ii) uses the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses AT&T's network or Service; or (v) interferes with another customer's use of AT&T's network or services.
- (d) **Infringing Services.** If the options described in Section 7.3 (Infringing Services) are not reasonably available, AT&T may at its option terminate the affected Services or Service Components without liability other than as stated in Section 7.1 (AT&T's Obligations).
- (e) **Hazardous Materials.** If AT&T encounters any Hazardous Materials at the Site, AT&T may terminate the affected Services or Service Components or may suspend performance until Eligible Participant removes and remediates the Hazardous Materials at Eligible Participant's expense in accordance with applicable law.

### **8.3 Effect of Termination.**

- (a) Termination or suspension by either party of a Service or Service Component does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Service or Service Component.
- (b) If a Service or Service Component is terminated, Eligible Participant will pay all amounts incurred prior to the effective date of termination.



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- (c) In the event Eligible Participant ceases to a Property, Eligible Participant and AT&T may enter into their own independent agreement for AT&T's products and/or services.

#### **8.4 Termination Charges.**

- (a) If Eligible Participant terminates this Agreement or an affected Service or Service Component for cause in accordance with the Agreement or if AT&T terminates a Service or Service Component other than for cause, Eligible Participant will not be liable for the termination charges set forth in this Section 8.4.
- (b) If Eligible Participant or AT&T terminates a Service or Service Component with fewer than forty-five (45) days prior to Cutover, Eligible Participant (i) will pay any pre-Cutover termination or cancellation charges set out in a Pricing Schedule or Service Publication, or (ii) in the absence of such specified charges, will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.
- (c) In the event Eligible Participant terminates the Managed Fortinet Solution at any given Site after Cutover and prior to the end of the Minimum Payment Period for any reason other than for AT&T's material breach, Eligible Participant must provide AT&T at least ninety (90) days' prior written notice and is responsible to pay for all Services rendered, expenses incurred hereunder, termination charges equal to the total Monthly Recurring Charges for the AT&T Equipment and AT&T MSS and Managed Fortinet Solution and for any applicable charges associated with early termination multiplied by the number of months remaining in the Minimum Payment Period, at the time of termination.

### **9. IMPORT/EXPORT CONTROL**

Neither party will use, distribute, transfer, or transmit any equipment, services, software, or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions, and regulations.

### **10. MISCELLANEOUS PROVISIONS**

**10.1 Publicity.** Neither party may issue any public statements or announcements relating to the terms of this Agreement or to the provision of Services without the prior written consent of the other party.

**10.2 Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

**10.3 Independent Contractor.** Each party is an independent contractor. Neither party controls the other, and neither party nor its Affiliates, employees, agents or contractors are Affiliates, employees, agents or contractors of the other party.

**10.4 Force Majeure.** Neither. Except for payment of amounts due (unless Customer is unable to pay is caused because of a Force Majeure event), neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, pandemic, civil unrest, acts of a public enemy, acts or omissions of carriers or suppliers, unanticipated acts of regulatory or governmental agencies or other causes beyond such party's reasonable control. If the force majeure event continues to prevent the performance of any Service Component for more than ninety (90) days, Eligible Participant may, upon notice to AT&T during the continuance of the force majeure event, terminate such Service Component so affected without liability for any termination fees, shortfall charges or cancellation charges.

**10.5 Amendments and Waivers.** Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

#### **10.6 Assignment and Subcontracting.**

- (a) Eligible Participant may, without AT&T's consent but upon notice to AT&T, assign in whole or relevant part its rights and obligations under this Agreement to an Eligible Participant Affiliate. AT&T may, without Eligible Participant's consent but upon notice to Eligible Participant, assign in whole or relevant part its rights and obligations under this Agreement to an AT&T Affiliate. In no other case may this Agreement be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). In the case of any assignment, the assigning party shall remain financially responsible for the performance of the assigned obligations.



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- (b) AT&T may subcontract to an Affiliate or a third party work to be performed under this Agreement but will remain responsible for all work performed by such subcontractor and shall ensure that such subcontractor complies with the obligations of this Participation Agreement.
- (c) In countries where AT&T does not have an Affiliate to provide a Service, AT&T may assign its rights and obligations related to such Service to a local service provider, but AT&T will remain responsible to Eligible Participant for such obligations. In certain countries, Eligible Participant may be required to contract directly with the local service provider, in which case, AT&T agrees to provide reasonable assistance to Eligible Participant in identifying and contracting with such local service provider.

**10.7 Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.11 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

**10.8 Injunctive Relief.** Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.

**10.9 Legal Action.** Any legal action arising in connection with this Agreement must be filed within five (5) years after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

**10.10 Notices.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.

**10.11 Governing Law and Forum Selection.** This Agreement will be governed by the law of the State of Delaware, without regard to its conflict of law principles, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply. Any action arising from or relating to this Agreement or its claimed breach shall be commenced and prosecuted only in the Supreme Court of the State of New York located in New York County, New York, and the parties consent to the exercise of personal jurisdiction by and exclusive venue in such court,

**10.12 Compliance with Laws.** Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

**10.13 No Third Party Beneficiaries.** This Agreement is for the benefit of Eligible Participant and AT&T and does not provide any third party (including Users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

**10.14 Survival.** The respective obligations of Eligible Participant and AT&T that by their nature would continue beyond the termination or expiration of this Agreement, including the obligations set forth in Section 5 (Confidential Information), Section 6 (Limitations of Liability and Disclaimers) and Section 7 (Third Party Claims), will survive such termination or expiration.

**10.15 Agreement Language.** The language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.

**10.16 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter. Except as provided in Section 2.4 (License and Other Terms), this Agreement supersedes all other agreements, proposals, representations, statements, and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

**11. CODE OF CONDUCT**

AT&T maintains a Code of Conduct and a Code of Business Ethics ("Codes") and requires that its employees participate in annual compliance training. The Codes are generally consistent with IHG's Supplier Code of Conduct. AT&T shall maintain the Codes throughout the term of the Agreement and adhere to such Codes.

**12. FCPA AND BRIBERY ACT**





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AT&T maintains a Foreign Corrupt Practices Act and Anti-Bribery Compliance Policy, as well as an Anti-Money Laundering Policy ("Policies") and requires that its employees participate in annual compliance training. The Policies are consistent with and reflective of the United States Foreign Corrupt Practices Act of 1977, as amended and the UK Bribery Act of 2010. AT&T shall maintain the Policies throughout the term of the Agreement and adhere to such Policies.

### 13. OFAC AND OTHER SANCTIONS

**13.1** In performing the obligations set forth in this Agreement, Eligible Participant and AT&T each shall at all times comply with the economic and trade sanctions administered by the United States Office of Foreign Assets Control ("OFAC"), including all Executive Orders and implementing regulations.

**13.2** Eligible Participant and AT&T each represents and warrants that it is not controlled by any person or entity identified by OFAC's Specially Designated Nationals and Blocked Persons List ("OFAC Blocked Persons") or organized under the laws of a jurisdiction subject to comprehensive OFAC sanctions.

**13.3** Eligible Participant and AT&T each represents and warrants that in fulfilling its obligations under this Agreement it shall not allow, facilitate, or effect any transactions or services, including without limitation provision of any travel, hospitality, or ancillary services, to any persons in violation of any United States economic and trade sanctions.

**13.4** No part of any payments made under this Agreement will constitute funds obtained: (i) on behalf of any OFAC Blocked Persons, directly or indirectly, in connection with any investments, transactions, dealings, or contact with any OFAC Blocked Persons, or (ii) in violation of any United States economic sanctions and/or embargo unless AT&T is specifically authorized by OFAC to engage in transaction or dealings with such OFAC Blocked Persons or exempted by OFAC from complying with such United States economic sanctions and/or embargo.

### 14. DEFINITIONS

**"Affiliate"** of a party means any entity that controls, is controlled by or is under common control with such party.

**"API"** means an application program interface used to make a resource request from a remote implementer program. An API may include coding, specifications for routines, data structures, object classes, and protocols used to communicate between programs.

**"AT&T Software"** means software, including APIs, and all associated written and electronic documentation and data owned by AT&T and licensed by AT&T to Eligible Participant. AT&T Software does not include software that is not furnished to Eligible Participant.

**"Baselining"** means bringing the Microsoft (MS) operating system and Internet Explorer of the Covered Devices (defined below) to a mutually agreed upon, known, current state of patching and security policies as defined in the Proof of Concept project that preceded this scope of work.

**"Covered Devices"** means Eligible Participant Equipment generally consisting of one (1) server and five (5) workstations (which would constitute six Covered Devices) attached to the front-office network. AT&T will not provide the Security Services on any third party maintained equipment such as VoIP servers, Call Accounting Systems, etc.

**"Customer"** means IHG

**"Eligible Participant Personal Data"** means information that identifies an individual that Eligible Participant directly or indirectly makes accessible to AT&T and that AT&T collects, holds or uses in the course of providing the Services.

**"Cutover"** means the date Eligible Participant's obligation to pay for Services begins.

**"Effective Date"** of this Agreement means the date on which the last party signs the Agreement unless a later date is required by regulation or law.

**"Eligible Participant"** has the meaning set forth in the Master Agreement.

**"Managed Security Services"** or **"MSS"** means security-related Services provided by AT&T to Eligible Participants as defined in the scope of work below.

**"Minimum Payment Period"** or **"MPP"** means the **sixty (60) months** an Eligible Participant is required to pay recurring charges for the MSS. The Minimum Payment period for an Eligible Participant begins on the commencement date of the applicable MSS term.

**"Minimum Retention Period"** or **"MRP"** means the Minimum Retention Period identified for a Service Component in the Pricing Schedule or Service Publication during which Eligible Participant is required to maintain service to avoid the payment (or repayment) of certain credits, waived charges or amortized charges.

**"Property(ies)"** means any hotel(s), resort(s), and other temporary lodging facility(ies) that is/are either (i) owned or controlled by Customer (or Customer affiliate), (ii) operated or managed by Customer (or a Customer affiliate) pursuant

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to a property management agreement (or similar contractual arrangement) with the owner(s) thereof, (iii) the subject of a franchise or similar agreement with Customer (or a Customer affiliate) pursuant to which Customer (or a Customer affiliate) has authorized the site or facility to operate under one of Customer's (or a Customer affiliate's) trademarks or trade names, or (iv) subject to a joint venture arrangement whereby Customer (or a Customer affiliate) maintains an ownership interest of twenty percent (20%) or higher in such joint venture.

**"Purchased Equipment"** means equipment or other tangible products Eligible Participant purchases under this Agreement, including any replacements of Purchased Equipment provided to Eligible Participant. Purchased Equipment also includes any internal code required to operate such Equipment. Purchased Equipment does not include Software but does include any physical media provided to Eligible Participant on which Software is stored.

**"Service Component"** means an individual component of a Service provided under this Agreement.

**"Service Publications"** means Service Guides and the AUP.

**"Site"** means a physical location, including Eligible Participant's collocation space on AT&T's or its Affiliate's or subcontractor's property, where AT&T installs or provides a Service.

**"Software"** means AT&T Software and Vendor Software.

**"SOW Term"** means the five (5) year period after the Effective Date of this Participation Agreement until all Services provided hereunder expire or are otherwise terminated according to the terms herein. Each new Eligible Participant must execute a Participation Agreement with an initial minimum term.

**"Third-Party Service"** means a service provided directly to Eligible Participant by a third party under a separate agreement between Eligible Participant and the third party.

**"Third Party Software"** means Software that Customer and or Eligible Participant licenses from a third party.

**"Vendor Software"** means software, including APIs, and all associated written and electronic documentation and data AT&T furnishes to Eligible Participant, other than AT&T Software.



**Attachment 2**  
PS Excerpts

**Statement of Work**

**1. Scope**

AT&T will provide a managed Fortinet solution to Eligible Participant. In addition, AT&T will resell the CrowdStrike Complete Third-Party Software ("CrowdStrike Complete") to Eligible Participant and will provide management of the Third-Party Software as Customer requires. AT&T will provide other managed security components per the full Customer scope of work detailed on Customer's portal Merlin and is incorporated herein by reference. In order to access the full scope of work for this project, login to Customer's portal Merlin and type "AT&T SOW" in the search box. Any changes and associated pricing changes will require execution via the Change Control process described in Section 7 below. AT&T will deploy and manage the MSS for the Eligible Participant's front office ("FO") environment (also referred to as the Property Management System (PMS) network); the Covered Devices in the FO environment to which Base Pricing applies consists of one (1) server and five (5) workstations (described in pricing tables below). AT&T shall optionally provide Active Directory (AD) Services as part of the AT&T FastConnect set of services, as detailed in the full scope of work to meet Customer's requirement for access control services and high-quality support for the access control management solution. AT&T shall optionally provide the Managed Token Remote Access Services & Managed Back-up Services (One Safe Place) as defined in the full scope of work.

**2. AT&T Responsibilities**

The full scope of work for this project which details AT&T responsibilities is located on Customer's portal Merlin. In order to access the full scope of work for this project, login to Customer's portal Merlin and type "AT&T SOW" in the search box.

**3. Service Level Objectives**

The full scope of work for this project which details Service Level Objectives is located on Customer's portal Merlin. In order to access the full scope of work for this project, login to Customer's portal Merlin and type "AT&T SOW" in the search box.

**4. Service Hours**

The Services provided hereunder shall be performed Monday through Friday, 9:00 a.m. to 5:00 p.m., local time, excluding designated AT&T holidays ("Normal Business Hours" or "NBH"), unless otherwise noted herein.

<b>AT&amp;T Designated Holidays in the US</b>	<b>Date Observed</b>
New Year's Day	January 1
Martin Luther King Jr. Day	January 17
Presidents' Day	February 21
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Day	December 25

Hourly rates for Services provided after NBH ("aNBH") are set forth below; AT&T will invoice Customer at this rate for any such Services requested in writing by Customer.

**5. Eligible Participant & Customer Responsibilities**

To manage the activities outlined in this Participation Agreement that are related to the Customer's project on time and within financial limitations, Customer and Eligible Participant assigned roles and responsibilities must be fulfilled in an effective and efficient manner. Customer is responsible for providing required information to enable AT&T to complete this project. Customer should assure that all Sites are in compliance with Customer's Corporate IT Standards and are capable of accepting and operating properly with the AT&T MSS.

- (a) Customer will provide AT&T with reasonable access to Customer premises, or arrange Eligible Participants to provide access, during Normal Business Hours as needed and shall provide office space to include desks, chairs, as well as access to printers, copiers, and phone lines while on-site at no charge. In addition, AT&T



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may conduct the research and other work from a remote location. Customer or Eligible Participant will provide authorized personnel on-site during any software installation and Testing.

- (b) For each Eligible Participant Site to be deployed, Customer will provide Local Site Contact name, telephone number, address, and email for both a primary and backup local Site Contact to facilitate local scheduling issues, Equipment delivery confirmation, and other Site-specific details.
(c) Eligible Participant will perform all Site preparation activities including, but not limited to, power, core drilling, ventilation, proper environmental as per the Equipment manufacturer's specifications.
(d) Eligible Participant will provide to AT&T the login and password information to all equipment that is related to the MSS provided in this SOW, including both basic access and modification access.
(e) Eligible Participant will assume responsibility for the network infrastructure upon completion of the Services provided in this SOW.
(f) Eligible Participant is responsible to reboot the Covered Device after the system receives patches from the patching application. AT&T cannot be held responsible for the Service performance if the Covered Devices are not rebooted after a patch is loaded.
(g) Eligible Participant will provide IP connectivity to the primary interfaces of the software at all other locations.

6. Project Governance

6.1 Change Control Process

- (a) AT&T, Customer, and Eligible Participant will manage all changes to this SOW through a written change request process ("Change Control Process"). Either party must submit change requests via email, and the other party respond via email.
(b) The party requesting the change must submit a written request (email is acceptable) to the other party and the receiving party shall issue a written response (email is acceptable) within five (5) business days of the receipt of the request, including whether the receiving party accepts or rejects the request and/or any changes to the terms and conditions. Once mutually agreed, the parties must document such agreement via email.

6.2 Engagement Contacts

- (a) Customer:
- Malvin Eanes
- Manager Network & Security Operations
- Three Ravinia Drive Atlanta GA 30346
- 678-746-0069 (malvin.eanes@ihg.com)
(b) AT&T:
- Scott Hullett
- Network Integration Engagement Manager
- 410 W. Magnolia Ave, Knoxville, TN 37917
- 404-281-2942 (sh0704@att.com)

7. Charges

7.1 Schedule of Charges

AT&T will invoice the MRC listed in Schedule 1, for the Minimum Payment Period.

Table with 5 columns: Schedule 1, # of Servers & Workstations, Term (Months), Platform/Services, Pricing Monthly Recurring Charge. Rows include Fortinet 61F, Base Rate (1-6 Devices), and Additional PC's or Servers\*\*.



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<b>FastConnect Consolidated Billing Charge</b>		60 mos/ per Site	<ul style="list-style-type: none"> <li>Consolidated custom billing of multiple FastConnect suite of services on a single invoice presented to each Site on a monthly basis</li> </ul>	\$5.00 USD per Site
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<b>Set-up Charges (Non-Recurring)</b>	<b>Set-up Charges for New Managed Fortinet Locations</b>		<b>Pricing One Time Charges</b>
	<ul style="list-style-type: none"> <li>Managed Fortinet Enablement Charge</li> </ul>		\$1,200.00 USD per location

**Optional Managed Active Directory Services:**

<b>Active Directory (AD) (1-6 Devices)</b>	Up to: - 1 Server - 5 PC's -10 Users	60 mos/ per Site	<ul style="list-style-type: none"> <li>Active Directory Deployment</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> <li>Tier 2/3 Helpdesk Support</li> </ul>	\$17.75 per Site
<b>Additional AD PC's or Servers</b>		60 mos/ per Site	<ul style="list-style-type: none"> <li>Per device over 6 devices</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> </ul>	\$2.00 per device
<b>Add'l Active Directory Users</b>		60 mos	<ul style="list-style-type: none"> <li>Per User over 10 Users per Site</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> </ul>	\$1.25 per User

**Optional Managed Token Subscription Fee (Remote Access):**

<b>Remote Access Charges</b>	<b>Remote Access Charges</b>	<b>Pricing Monthly Charges</b>
	<ul style="list-style-type: none"> <li>Managed Token Subscription Charge</li> </ul>	\$4.95 USD per month, per User
	<ul style="list-style-type: none"> <li>Managed FortiClient</li> </ul>	\$7.95 USD per month, per User

**Optional Managed Remote Back-up Services (One-Safe Place):**

<b>One Safe Place</b>	<b>Data Size (GB)</b>	<b>Term (Months)</b>	<b>Platform/Services</b>	<b>Pricing (Monthly Recurring Charge (MRC))</b>
	5-20	60 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$29.00 per Site
	21-49	60 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$32.00 per Site
	50-89	60 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$38.00 per Site
	90-110	60 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$62.00 per Site
	111-140	60 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$68.00 per Site
	Add'l 100 GB		<ul style="list-style-type: none"> <li>Add'l GB (per 100GB)</li> </ul>	\$35/per each add'l 100GB
<b>Optional Pricing</b>			<b>Services</b>	<b>Pricing (Non-Recurring Charge (NRC))</b>



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<b>USB Restore</b>		<ul style="list-style-type: none"> <li>Unreturned USB Drive</li> </ul>	\$170.00
<b>USB Shipping</b>		<ul style="list-style-type: none"> <li>Shipping – Same Day (Next available flight)</li> <li>Shipping – Next Day (by 9AM)</li> </ul>	\$300.00 \$60.00
<b>Data Return upon Termination</b>		<ul style="list-style-type: none"> <li>Data Return on Termination</li> </ul>	\$400.00

**Additional Charges:**

<b>Set-up Charges</b>	<b>Set-up Charges per event</b>	<b>Pricing One Time Charges</b>
	<ul style="list-style-type: none"> <li>Broadband Support Registration</li> </ul>	\$50.00 per location
	<ul style="list-style-type: none"> <li>Security Set-up and Configuration Fee</li> </ul>	\$89.00 per Site

<b>Other Charges</b>	<b>Other One Time Charges per event</b>	<b>Pricing One Time Charges</b>
	<ul style="list-style-type: none"> <li>Time and Materials Pricing/Hourly (Normal Business Hours)</li> </ul>	\$200.00 per Hour
	<ul style="list-style-type: none"> <li>Time and Materials Pricing/Hourly (Outside of Normal Business Hours)</li> </ul>	\$275.00 per Hour

<b>Description</b>	<b>Pricing Monthly Charges</b>
<ul style="list-style-type: none"> <li>Additional Hourly Rate – On-Site – NBH – billed in 15 min increments ( US)</li> </ul>	\$115.00 USD/hour
<ul style="list-style-type: none"> <li>Site Reschedule/Customer Not Ready</li> </ul>	\$300.00 USD/incident
<ul style="list-style-type: none"> <li>Site Revisit</li> </ul>	\$335.00 USD/incident
<ul style="list-style-type: none"> <li>Site installation expedite – less than 5 business days</li> </ul>	\$200.00 USD
<ul style="list-style-type: none"> <li>Next Business Day – On-site support 2 hours (US)</li> </ul>	\$500.00 USD
<ul style="list-style-type: none"> <li>Next Business Day – On-site support hourly beyond 2 hours (US)</li> </ul>	\$250.00 USD/hour

**7.2 Pricing Terms and Conditions**

- (a) AT&T will charge the rates in the Schedules above for a maximum of twenty (20) additional PC's or servers for up to seventy-five (75) additional Covered Devices per Eligible Participant. If an Eligible Participant has more than seventy-five (75) additional Covered Devices, then, upon request, AT&T will provide a custom MRC for that Eligible Participant. Any such custom MRC shall be mutually agreed upon, require a Change Order to this Addendum and upon effective will apply for the remainder of the Minimum Payment Period.
- (b) Installation and Baselining will be performed during Normal Business Hours. If these Services are needed after Normal Business Hours, the Eligible Participant will pay the outside of Normal Business Hours rate on a Time and Materials basis for all such Services.
- (c) AT&T has developed "Base Rate", described in Schedule 1 herein, based on the number of Covered Devices at each Eligible Participant Site. AT&T estimates that each new Eligible Participant (NHOP) Site will take 2 hours to install, configure and baseline. Any deviation (i.e. more than 1 hour over estimates) will be invoiced in fifteen (15) minute increments to each Eligible Participant at the Time and Material rates set forth above.
- (d) All prices are in U.S. dollars.
- (e) Pricing is based on the currently defined SOW. Any additions or changes to this SOW will necessitate changes in pricing. It is also assumed that no project delays occur that would require AT&T to stop work. AT&T will not be held financially responsible for project delays outside of its control.
- (f) Travel and related expenses: The Eligible Participant is responsible for all travel related expenses associated with the SOW and POC that will be invoiced to the Eligible Participant at cost as a separate line item on the invoice. AT&T personnel will incur travel expenses only after receiving permission from the Eligible Participant's authorized Project Manager.



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- (g) AT&T will begin invoicing the Monthly Recurring Charges to each Eligible Participant upon completion of the installation. AT&T will invoice monthly thereafter.

**8. Engagement Assumptions**

This SOW, including but not limited to the rates and charges, is based on the following assumptions.

- (a) AT&T may use proprietary tools and software in the course of providing this Service. Pricing provided herein does not include the sale, licensing, or transfer of any such tools and software to Eligible Participant and no such sale, licensing or transfer shall occur.
- (b) AT&T is not responsible for any other third party applications which may be impacted by the security software or this MSS.

**10. CrowdStrike Pass-Through Terms and Conditions**

AT&T shall pass through to Customer any warranties for third-party software available from the manufacturer or licensor. The manufacturer or licensor, and not AT&T, is responsible for any such warranty terms and commitments. ALL SOFTWARE IS OTHERWISE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. Warranties are revised from time to time.

**11. Disclaimer**

Eligible Participant acknowledges and agrees that any virus-scanning process and any security software -- including the CrowdStrike Third Party Software -- are reactive measures, and further, acknowledges and understands that CrowdStrike Third Party Software is not one hundred percent effective in preventing business impact from viruses and other security attacks. In the event a virus or other security attack penetrates Eligible Participant's network, Eligible Participant is solely responsible for repair of all infected computer systems.



IHG CrowdStrike End  
User Agreement.pdf



**AT&T NETWORK INTEGRATION SERVICES  
 PRICING SCHEDULE  
 LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

<b>Customer</b>	<b>AT&amp;T</b>
Six Continents Hotels, Inc. Street Address: Three Ravinia Dr City: Atlanta State: GA Zip Code: 30346	AT&T Corp.
<b>Customer Contact (for Notices)</b>	<b>AT&amp;T Contact (for Notices)</b>
Name: Peter Pallil Title: SVP, Global Hotel and Owner Solutions Street Address: Three Ravinia Dr City: Atlanta State: GA Zip Code: 30346 Telephone: 770-604-5481 Email: peter.pallil@ihg.com	Name: Scott Hullett Street Address: 410 W Magnolia Ave City: Knoxville State: TN Zip Code: 37917 Telephone: 404-281-2942 Email: sh0704@att.com <b><u>With a copy (for Notices) to:</u></b> AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: <a href="mailto:mast@att.com">mast@att.com</a>
<b>Customer Billing Address</b>	<b>AT&amp;T Branch Sales Contact</b>
Street Address: Three Ravinia Dr City: Atlanta State: GA Zip Code: 30346	Name: Christine Huntzinger Street Address: 2180 Lake Blvd City: Atlanta State: GA Zip Code: 30339 Telephone: Email: Sales/Branch Manager: Chad Spillerman SCVP Name: Racquel Roy
<b>AT&amp;T NI Contact Information</b>	
Name: Scott Hullett Street Address: 410 W Magnolia Ave City: Knoxville State: TN Zip Code: 37917 Telephone: 404-281-2942 Email: sh0704@att.com	

This Pricing Schedule is part of the Agreement between AT&T and Customer referenced above.

Documents attached to this Pricing Schedule:

- Exhibit 1: Order for Licensed Space

<b>Six Continents Hotels, Inc.</b> (by its authorized representative)	<b>AT&amp;T</b> (by its authorized representative)
By: eSigned - Peter Palli	By: eSigned - AT&T Accepted
Name:	Name:
Title: SVP	Title:
Date: 09 Dec 2022	Date: 09 Dec 2022



**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**1. PROVISION OF LICENSED SPACE AND SERVICES.** AT&T will provide Licensed Space (defined below) and Services as detailed herein.

**2. FEES AND CHARGES**

Fees and Charges will accrue from the Billing Commencement Date and Customer will be liable for Fees and Charges for the full Term specified in each Order. AT&T will invoice monthly in advance for all recurring Charges and in arrears for usage-based and any non-recurring Fees. Fees and Charges will be as specified in the Order(s) and are exclusive of applicable taxes, which shall be Customer's responsibility.

Notwithstanding anything in this Pricing Schedule to the contrary during the Term and for every Extended Term thereafter, AT&T may modify the pricing for Services in the event AT&T's subcontractor has modified AT&T's costs for such Services.

**3. ACCESS TO AND USE OF THE LICENSED SPACE**

**3.1.** Subject to the terms and conditions hereof, Customer will have access to the Licensed Space 24 hours per day, every day of the year.

**3.2.** Customer will comply with the policies set out at the internet website <https://www.equinix.com/resources/product-documents/lbx-policies/> which are incorporated herein by reference (Policies). The Data Center owner may modify the Policies at any time(s) and Customer will be notified of such modifications to the Policies by making available the latest updated Policies on the said internet website, upon which such modification will be effective. Customer may terminate an Order for a Licensed Space if the Data Center owner modifies the Policies in a way that materially adversely affects Customer's use of the Services in such Licensed Space and Customer provides written notice of termination within seven (7) days from the date of the notice of modification of the Policies.

**3.3.** Customer will be responsible and liable for all acts or omissions of Customer's Authorized Persons, Accompanying Persons, and Associated Entities for any equipment or services not provided by AT&T. In turn, AT&T will be responsible and liable for all acts or omissions of its Authorized Persons, Accompanying Persons, and Associated Entities for the Services that AT&T provides to Customer.

**3.4.** This Pricing Schedule is not intended to and does not constitute a lease of any real or personal property or a grant of any other real property interest. Customer acknowledges and agrees that it is only granted permission to access and use the Licensed Space in accordance with this Pricing Schedule. This Pricing Schedule is subject and subordinate to the leases for the building(s) in which the Licensed Space is located and all superior instruments to such leases. Customer's Equipment will not be construed as fixtures or fittings. As between Customer and AT&T, AT&T retains title to all parts and materials used or provided by AT&T in providing the Licensed Space and the performance of the Services.

**3.5.** AT&T shall endeavor to provide that the term of any lease under which AT&T holds Licensed Space does not expire or terminate prior to the last day of the applicable Order issued pursuant to this Pricing Schedule (Expiry Date). Without prejudice to any other right accrued or accruing to Customer under the terms hereof or at law, if AT&T's lease is terminated on a date earlier than the Expiry Date mentioned above, AT&T shall, at its sole cost, use commercially reasonable efforts to acquire such extensions from the landlord of the lease (Landlord) as are necessary to enable Customer to use the Licensed Space pursuant to these terms. If AT&T is unable to obtain such extensions, nothing in this Pricing Schedule shall prevent Customer from seeking to obtain or obtaining any extension of any such lease directly from the Landlord, and AT&T will be bound to any agreement with the Landlord to which AT&T and Customer mutually agree.

**3.6.** If AT&T's lease is terminated at any time prior to the Expiry Date noted in subsection 3.5. above, AT&T shall give Customer at least three (3) months' written notice prior to Customer being required to vacate the Licensed Space or as much notice as reasonably possible and shall:

**3.6.1.** At AT&T's sole expense, use all commercially reasonable efforts to assist Customer in finding a suitable alternative space for the housing of Customer Equipment in another space which is acceptable to Customer in its absolute discretion (New Premises);

**3.6.2.** At AT&T's sole expense, use commercially reasonable efforts to ensure that Customer's relocation from the Licensed Space to the New Premises shall cause minimum possible disruption to the functioning of Customer Equipment and to any Services;

**3.6.3.** Pay all reasonable, actual out of pocket costs and expenses incurred by Customer in relation to the moving of the Customer Equipment to the New Premises (which costs shall include, without limitation, the cost of hardware, circuit provisioning and labor costs).

**3.7.** Customer shall not sublicense the Licensed Space.

**4. INDEMNIFICATION**

**4.1.** Customer will indemnify, defend and hold harmless AT&T from any and all liability, loss, damages, costs and expenses (including reasonable attorneys' fees and expenses) for third-party claims for personal injury or damage to tangible property arising from or related to the gross negligence or willful misconduct of Customer's Authorized Persons, Accompanying Persons or Associated Entities. AT&T will indemnify, defend and hold harmless Customer from any and all liability, loss, damages, costs and expenses (including reasonable attorneys' fees and expenses) for claims brought by third parties for personal injury or damage to tangible property resulting from the gross negligence or willful misconduct of AT&T.

**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
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4.2. The Agreement will govern as to the indemnification process.

**5. WARRANTY AND LIMITATION OF LIABILITY**

5.1. AT&T shall provide the Services in a professional and workmanlike manner and the Licensed Space shall be provided on an "as is" basis.

5.2. For purposes of this Pricing Schedule and Orders placed hereunder, any limit or cap on liability contained in the "Limitations of Liability" article of the Agreement is superseded by the following: EACH PARTY'S LIABILITY UNDER THIS PRICING SCHEDULE SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED ON A PER CLAIM OR AGGREGATE BASIS DURING ANY 12 MONTH PERIOD, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES INCURRED BY CUSTOMER FOR THE LICENSED SPACE DURING THE 9 MONTHS PRECEDING THE MONTH IN WHICH THE CLAIM AROSE. This shall not limit Customer's responsibility for the payment of all charges properly due under the Pricing Schedule.

**6. INSURANCE**

6.1. Customer agrees to maintain the following insurance, at its expense, during the Term, with insurers having a minimum AM Best rating of A-VII or S&P rating of A: (i) Commercial General Liability or Public Liability Insurance with a limit of US\$2,000,000 per occurrence, US\$4,000,000 in the aggregate (or the local currency equivalent), provided these limits may be achieved through a combination of primary and excess policies. Such insurance will include coverage for bodily injury and property damage; (ii) Workers' Compensation and Employer's Liability insurance where required by local statute; and (iii) All Risk Property Insurance on a replacement cost basis with limits adequate to cover the value of Customer's Equipment.

6.2. Customer will furnish AT&T with certificates of insurance upon request that evidence the minimum levels of insurance set forth herein, include AT&T as an additional insured or interested party on the Commercial General Liability or Public Liability policy and designate that Customer's required insurance is primary and non-contributory. Customer waives its insurers rights of subrogation on all policies referenced above. If not replaced, Customer will provide at least 30 days' prior written notice to AT&T of any non-renewal or cancellation of the policies referenced above. At Customer's option, Customer may provide the coverages required under this subparagraph through blanket policies of insurance.

6.3. The Parties agree that:

6.3.1. The failure of AT&T to demand such certificate of insurance or failure of AT&T to identify a deficiency will not be construed as a waiver of Customer's obligation to maintain the insurance required hereunder.

6.3.2. the insurance required hereunder does not represent that coverage and limits will necessarily be adequate to protect Customer, nor shall it be deemed as a limitation on Customer's liability to AT&T hereunder.

6.3.3. Customer may meet the required insurance coverages and limits with any combination of primary and Umbrella/Excess liability insurance; and

6.3.4. Customer is responsible for any deductible or self-insured retention.

**7. TERM, TERMINATION AND SUSPENSION**

7.1. This Pricing Schedule will commence on the Effective Date and will terminate on the date the last Order hereunder expires or is terminated.

7.2. After notice and cure periods specified below, AT&T may suspend the use of Licensed Space and/or provision of the Services if (i) Customer or Customer's Equipment interferes with the operation or maintenance of the Licensed Space or with one or more other customers' use thereof, and within a reasonable time, not to exceed four hours (or such shorter time if necessary in the event of an emergency which threatens the life or physical safety of persons in the Licensed Space) after being notified by email or phone, Customer fails to (a) cease such interference; (b) provide a plan that adequately ceases such interference; or (c) authorize AT&T to take action to cease such interference (billed at Smart Hands rates); or (ii) in AT&T's reasonable judgment, Customer or Customer's Equipment has the potential to interfere with AT&T's or the Data Center owner's operation or maintenance of the Licensed Space or with one or more of its other customers' use thereof, and within a reasonable time, not to exceed 48 hours after being notified by e-mail or phone, Customer fails to (1) resolve such potential interference; (2) provide a plan that adequately resolves such potential interference; or (3) authorize AT&T to take action to resolve such potential interference (billed at Smart Hands rates). If AT&T suspends the use of Licensed Space and Services pursuant to this Section 6.2., unless AT&T has subsequently terminated this Pricing Schedule as permitted hereunder, AT&T will reinstate use of Licensed Space and resume the discontinued Services as soon as reasonably practical after it is reasonably satisfied that Customer has cured the breach(es) which gave rise to the suspension; and AT&T may charge a reinstatement fee. Further, AT&T may terminate this Pricing Schedule if Customer's breach referred to above continues for at least five (5) days or occurs more than 3 times in any 12-month period.

**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
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7.3. Either Party may terminate this Agreement by giving written notice to the other Party if the other Party breaches any material term or condition and fails to cure within fifteen (15) days after receipt of notice.

#### 8. REMOVAL OF CUSTOMER'S PROPERTY

8.1. Customer may remove all of Customer's Equipment and/or Customer Owned Materials on or before the expiry or termination of the applicable Order. Unless AT&T otherwise agrees in writing, failure to remove Customer's Equipment within fifteen (15) days from the termination of the applicable Order, or within thirty (30) days if the Order is terminated due to AT&T's material breach, will constitute abandonment of Customer's Equipment as that term is defined under the laws of the jurisdiction where the abandoned property is located, and AT&T will be entitled to pursue all available legal remedies, including without limitation and at Customer's risk and expense: (i) immediately removing Customer's Equipment and storing it at Customer's expense at an on-site or off-site location; (ii) shipping it to Customer; or (iii) upon twenty (20) days' prior written notice to Customer, liquidating it, and retaining the proceeds.

8.2. Subject to Section 7.1., while Customer has no right to use the Licensed Space or Services after an Order expires or terminates; if AT&T permits Customer to do so in its reasonable discretion, Customer will remain bound by the terms of the Order and this Pricing Schedule, including, without limitation, all payment obligations, and such continued use may be terminated by AT&T immediately upon notice.

#### 9. MISCELLANEOUS

9.1. **Force Majeure.** If a Force Majeure event prevents AT&T from providing the Licensed Space or any Service for at least ten (10) consecutive days, either Party may terminate any of such Licensed Space or Services by providing five (5) days written notice to the other, provided such notice is given before the resumption of such Licensed Space or Services after the Force Majeure event.

9.2. **Order of Priority.** All Orders are subject to the terms and conditions of this Pricing Schedule. In the event of ambiguity, conflict or inconsistency among the documents, the documents shall be given a descending order of precedence as follows (i) the Order including any attachments or Exhibits thereto; (ii) the Pricing Schedule; (iii) the Policies; and (iv) the Agreement.

9.3. **Contact Data.** Customer acknowledges that AT&T will, by providing the Licensed Space and Services, come into possession of Contact Data. Customer acknowledges and agrees that AT&T may use, process and/or transfer Contact Data (including intra-group transfers and transfers to the United States): (i) in connection with the provision of Licensed Space and Services; (ii) to incorporate Contact Data into databases controlled by AT&T for the purpose of account administration, billing and reconciliation, operational maintenance and support activities, fraud detection and prevention; and (iii) to communicate to Customer by voice, letter, fax or email regarding products and services of AT&T, its supplier (Equinix) or third parties through the Equinix Marketplace. Customer may withdraw consent for such use, processing or transfer of Contact Data as set out in subsection 9.3.(iii) above by sending written notice to AT&T.

#### 10. DEFINITIONS

**Accompanying Person:** Each person accompanied by an Authorized Person while at the Licensed Space.

**Associated Entity:** Means (i) each individual, company, partnership or other entity of any type which employs, contracts with, or is otherwise associated or affiliated with Customer, Authorized Persons or Accompanying Persons, (ii) any of Customer's end users.

**Authorized Person:** Each person included on the most recent list of Authorized Persons given to AT&T by Customer in accordance with AT&T's then-current form and procedures, who may be authorized by Customer to, for example, access a Licensed Space, place Orders or act as Customer's shipping contact.

**Billing Commencement Date:** For Licensed Space and Services, the date designated in the Order as the Billing Commencement Date or if there is no date designated in the Order, then the date on which the Licensed Space is provided, or the Services are delivered (Billing Commencement Date).

**Contact Data:** Business contact data (including but not limited to CRM databases and data that is set out on access lists at any Licensed Space from time to time) containing personal and/or private information of a Party, its agents, employees or any authorized user of the Licensed Space and Services and its agents, employees, consultants, contractors, or partners provided to or obtained by the other Party by virtue of the performance hereof and whose use, processing or transfer of such data is regulated by law or regulation as "personal data".

**Cross-Connect:** A physical or wireless interconnection within a Licensed Space that (i) exits Customer's Licensed Space or (ii) connects Customer to another AT&T customer.

**AT&T NETWORK INTEGRATION SERVICES  
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**Customer Equipment:** All network, computer and other equipment provided, owned or controlled by Customer, its Affiliates, Authorized Persons, Accompanying Persons (including wiring and connections between such equipment and Customer's demarcation equipment) excluding Cross-Connects or AT&T's demarcation equipment.

**Fees:** Charges and fees for Licensed Space and Services charged to Customer by AT&T, exclusive of Taxes.

**Licensed Space:** The areas which are licensed by Customer and are made available to Customer with permission to access and use, in each case hereunder and the Orders, and as identified in the Orders as to the amount of space or cabinets. For each Licensed Space, AT&T will determine at all times the exact location where the Licensed Space will be located, and AT&T will notify Customer accordingly.

**Order:** An order for Licensed Space or Services prepared by AT&T, or an amendment thereto that is incorporated into this Pricing Schedule by reference which describes the Licensed Space and/or Services. Orders are not valid until signed by both Parties. AT&T is under no obligation to accept an Order but shall provide a written response accepting or rejecting an Order as soon as reasonably possible.

**Policies:** The procedures, rules, regulations, security practices and policies for the Licensed Space, as amended from time to time.

**Services:** All services provided by AT&T under an Order pursuant hereto.

**Smart Hands:** AT&T's onsite technical assistance which may include following Customer's express instructions relating to remote management, installation or troubleshooting of Customer's Equipment or any other assistance agreed to by AT&T in an Order.

**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**EXHIBIT 1: ORDER FOR LICENSED SPACE**

This Order for Licensed Space between AT&T Corp. (AT&T) and **Six Continents Hotels, Inc.** (Customer) is attached to the Pricing Schedule and made a part thereof upon execution. AT&T reserves the right to withdraw the Order or modify the prices and any other terms and conditions, including, but not limited to, any section of the Pricing Schedule if: (i) the Pricing Schedule/Order is not signed by Customer and AT&T by December 9, 2022 and/or (ii) the engagement does not commence within thirty (30) calendar days of the Effective Date.

### 1. INTRODUCTION

AT&T will provide co-location private suite/cage data center space according to the specifications as further detailed in this Order (Licensed Space) at the following address in the data center building: (hereinafter, Data Center Building).

West: SV5 – 9 Great Oaks Blvd, San Jose, CA 95119

East: DC2 – 21715 Filigree Ct, Ashburn, VA 20147

Cage and Cabinet Layout is described in Appendix C (attached).

Appendix B (attached) describes Customer-owned Materials to be removed upon Termination or expiration of an Order by Customer.

AT&T is providing Customer with an initial limited deployment of its AT&T Licensed Space, Services & Cloud Exchange service ("Trial") as further defined below.

### 2. TERM

#### 2.1 INITIAL TERM

AT&T will provide the Licensed Space for the Fees and Charges identified below for a period of sixty (**60**) months and consists of the Trial Term and the Production Term ("Term") commencing from the Billing Commencement Date for Licensed Space (Initial Term). After the Initial Term, the Licensed Space will automatically renew for additional terms of twelve (12) months each (each an Extension Term), unless either Party provides written termination notification to the other Party at least ninety (90) days prior to the end of the then-current term, in which event this Order will terminate at the end of then-current term. The Initial Term and any Extension Term shall be referred to collectively as Term.

### 3. AT&T RESPONSIBILITIES

AT&T will be responsible for executing the following activities. Activities not expressly included in this Order are outside the scope.

#### 3.1. AT&T Client Executive (CX). In support of the Licensed Space, AT&T will:

- Assign a CX to interface directly with Customer Project Manager and serve as the primary interface to Customer organization.
- Conduct a formal kick-off meeting.
- Participate and provide status and planning meetings as mutually agreed.
- Develop and maintain the contact list, communication plan, and track and monitor prioritized action items and issues lists, as needed.
- Provide Customer expected completion dates for infrastructure deployment or addition of cross connects, rack/cabinet, space, or power.
- Submit Service Requests, via tickets into the portal, on behalf of Customer for:
  - Notification of incoming shipments, based on shipment information provided by Customer
  - Smart Hands requests
  - Cross connect requests
  - Use of conference room
  - Temporary and permanent Data Center Building access
  - Updates to permanent Data Center Building access list
- Support Customer with billing inquiries.
- Shall provide Services during normal in-region business hours, which are Monday through Friday, 8:00am-6:00pm at the Site location. During non-business hours, Customer will contact the AT&T provider's Help Desk directly.
- Communicate with Customer will be via email, phone, conference call or webinar.
- Develop action plans to resolve Customer's colocation service issues rapidly.
- During outages that require onsite support:
  - The CX will monitor the status of the outage and communicate with the AT&T provider's Help Desk during normal business hours to obtain Customer updates until resolved.
  - During non-business hours, Customer will contact the AT&T provider's Help Desk directly.
- Provide RFO/RCA summary (Reason For Outage/Root Cause Analysis).

**AT&T NETWORK INTEGRATION SERVICES  
 PRICING SCHEDULE  
 LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**EXHIBIT 1: ORDER FOR LICENSED SPACE**

**4. CUSTOMER RESPONSIBILITIES**

To manage the activities outlined herein on time and within the pricing provided, Customer assigned roles and responsibilities must be fulfilled effectively. Customer is responsible for the following:

- Assigning a single point of contact (SPOC) as the Customer’s project manager for the AT&T CX to work with during the engagement.
- Determining the amount of Licensed Space and Power needed as well as the design of any cage build out.
- Installation, configuration, management, and maintenance of the Customer Equipment that will be located in the Licensed Space are solely the responsibility of Customer.
- Coordinating appropriate personnel for conference calls, interviews or to provide information as reasonably requested and applicable by AT&T.
- Participating in meetings and arrange for other relevant business unit personnel to be reasonably available for such meetings.
- Reviewing and providing information to assist in completing activities in a timely manner.
- Keeping AT&T informed of any information or changes which may affect AT&T’s performance or require a change request in the scope.

**5. Trial Definition, Engagement Approach and Deliverables**

The scope of the Trial will be limited to licensed space and network connectivity in two (2) Data Center Buildings as defined in Section 1.

- (a) The Trial Term will expire sixty (60) days after deployment of the Service (“Trial Period”).
- (b) Unless Customer provides a written notification of Termination to AT&T at least five (5) business days before the end of the Trial Term, AT&T will continue to provide the Service for the remainder of the Term.
- (c) If Customer has not provided written notification per (b) above, at the end of the Trial Period AT&T will invoice Customer for all non-recurring and monthly recurring charges accrued during the Trial Period and begin invoicing for Services monthly as defined below.

**6. PROJECT GOVERNANCE**

**6.1. Change Control Process**

Either Party must submit change requests to contractual documents in writing via Appendix A to this Order. The Party requesting the change must submit a written request to the other Party and the receiving party shall issue a written response within five business days of the receipt of the request, including whether the receiving Party accepts or rejects the request and/or any changes to the terms and conditions. Once mutually agreed, both Parties must execute the document in Appendix A.

**6.2. Telecommunications**

Customer may use any telecommunications provider it chooses to provide WAN and/or LAN services at the Licensed Space, provided however, the charges associated with connecting that capability to Customer’s License Space will vary based upon Customer handoff required. Customer will be responsible for any and all inter-cabinet cabling.

**6.3. Contacts**

	<b>Customer PM</b>	<b>AT&amp;T Client Executive</b>
<b>Name</b>	Peter Pallil	Scott Hullett
<b>Title</b>	SVP, Global Hotel and Owner Solutions	Integrated Solutions – Engagement Manager
<b>Phone</b>		404-281-2942
<b>Email</b>	peter.pallil@ihg.com	sh0704@att.com

**7. CHARGES**

Customer shall be responsible to pay Non-Recurring Charges (NRC) and Monthly Recurring Charges (MRC) detailed below. Notwithstanding anything in this Pricing Schedule to the contrary during the Term and for every Extended Term thereafter, AT&T may modify the pricing for Services in the event AT&T’s subcontractor has modified AT&T’s costs for such Services.

**7.1. Initial Pricing**

AT&T shall commence invoicing for the Services and/or materials on the Billing Commencement Date. If Customer orders additional Cross Connects, Smart Hands, or miscellaneous materials AT&T shall invoice for same upon delivery.

**AT&T and Customer Confidential Information**

**AT&T NETWORK INTEGRATION SERVICES  
 PRICING SCHEDULE  
 LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**EXHIBIT 1: ORDER FOR LICENSED SPACE**

AT&T shall commence invoicing MRC listed below on the Billing Commencement Date. For the avoidance of doubt, AT&T shall commence billing on the Billing Commencement Date even if the cage/cabinet build out has not commenced or been completed. Notwithstanding anything in this Order to the contrary, after the first twelve (12) months of the Initial Term and for every twelve (12) months thereafter, AT&T will uplift the MRC for all Licensed Space at a rate of three percent (3%) each year.

Term: 60 Months, 90 Day Notice				
IBX: SV5, 9 Great Oaks Blvd, San Jose, CA 95119				
<b>Product</b>	<b>Qty</b>	<b>UoM</b>	<b>NRC</b>	<b>Year 1 MRC</b>
Locking Cabinet installed with KVA Based Power				
Cabinet Equivalents -Maximum Power Draw- 3 kVA				\$ 6,941.00
Cabinets - Installation Fee	1	2	\$ 5,700.00	
AC Power - 3 kVA Max draw	6	kVA		Included
AC Circuit - Installation Fee- 208v - 30-amp - 1 Phase - Primary & Redundant	2	Pair	\$ -	Included
Intra-Customer Cross Connect - MMF	6	Each	\$ 3,675.00	Included
EC - Minimum Bandwidth Commit - 2G	1	Each	\$ 2,670.00	\$ 1,135.00
CX Support	1	Each		\$ 175.00
<b>Sub Total</b>			<b>\$ 12,045.00</b>	<b>\$ 8,251.00</b>
<b>NOTE - Cross Connects, Ports and Virtual Circuits for Layer 2 or Layer 3 must be added as need and priced per the</b>				

Term: 60 Months, 90 Day Notice				
IBX: DC2 – 21715 Filigree Ct, Ashburn, VA 20147				
<b>Product</b>	<b>Qty</b>	<b>UoM</b>	<b>NRC</b>	<b>Year 1 MRC</b>
Locking Cabinet installed with KVA Based Power				
Cabinet Equivalents -Maximum Power Draw- 3 kVA				\$ 5,806.00
Cabinets - Installation Fee	1	2	\$ 5,700.00	
AC Power - 3 kVA Max draw	6	kVA		Included
AC Circuit - Installation Fee- 208v - 30-amp - 1 Phase - Primary & Redundant	2	Pair	\$ -	Included
Intra-Customer Cross Connect - SMF	6	Each	\$ 3,675.00	Included
EC - Minimum Bandwidth Commit - 2G	1	Each	\$ 2,670.00	\$ 1,135.00
CX Support	1	Each		\$ 175.00
<b>Sub Total</b>			<b>\$ 12,045.00</b>	<b>\$ 7,116.00</b>
<b>NOTE - Cross Connects, Ports and Virtual Circuits for Layer 2 or Layer 3 must be added as need and priced per the</b>				

**7.2. Lifecycle Pricing**

Lifecycle Pricing options to the existing base scope to facilitate orders through the EQX Portal.

<b>PRICING FOR LIFECYCLE SERVICES (All Lifecycle Services increase 3% each year)</b>		<b>NRC</b>	<b>MRC</b>
Year 1 Cross Connects SMF, Copper, POTS	Each	\$ 666.66	\$ 279.93
Year 1 Smart Hands (billed in 30 min increments, 7am to 7pm M-F)	Per Hour	\$ 267.00	
Year 1 Lifecycle Monthly Smart Hands Support Plan (2-10)	Per Hour		\$ 215.33
Year 1 Lifecycle Monthly Smart Hands Support Plan (11-15)	Per Hour		\$ 192.67
Year 1 Lifecycle Monthly Smart Hands Support Plan (16-25)	Per Hour		\$ 181.33
Year 1 Lifecycle Monthly Smart Hands Support Plan (26-120)	Per Hour		\$ 170.00
Year 1 Lifecycle Monthly Smart Hands Support Plan (121+)	Per Hour		\$ 158.67

**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**EXHIBIT 1: ORDER FOR LICENSED SPACE**

<b>LIFECYCLE CLOUD EXCHANGE PORT PRICING</b>				
(All Lifecycle Services increase 3% each year)				
Product	Port	UoM	Rates	
			NRC	MRC
Equinix Fabric	1G	Each	\$633.34	\$107.66
Equinix Fabric	10G	Each	\$2,533.33	\$215.67
Equinix Fabric	100G	Each	\$6,333.34	\$1,076.66
Fabric Connection - Unlimited 1G	1G	Each	\$666.67	\$810.33
Fabric Connection - Unlimited 10G	10G	Each	\$4,000.00	\$1,615.00
Fabric Connection - Unlimited 100G	100G	Each	\$6,666.67	\$10,766.67

<b>LIFECYCLE CLOUD EXCHANGE CONNECTION PRICING</b>				
(All Lifecycle Services increase 3% each year)				
Product	VC	NRC	Rates	
			Local MRC	Remote MRC
Fabric Connection - Layer 2 or Layer 3	50MB	\$0	\$85.00	\$ 283.33
Fabric Connection - Layer 2 or Layer 3	200MB	\$0	\$113.33	\$ 538.33
Fabric Connection - Layer 2 or Layer 3	500MB	\$0	\$170.00	\$ 736.67
Fabric Connection - Layer 2 or Layer 3	1G	\$0	\$226.67	\$ 1,020.00
Fabric Connection - Layer 2 or Layer 3	2G	\$0	\$311.67	\$ 1,331.67
Fabric Connection - Layer 2 or Layer 3	5G	\$0	\$425.00	\$ 1,785.00
Fabric Connection - Layer 2 or Layer 3	10G	\$0	\$566.67	\$ 2,550.00

<b>LIFECYCLE METRO CONNECT PRICING</b>				
(All Lifecycle Services increase 3% each year)				
Product	Port	UoM	Rates	
			NRC	MRC
Metro Connect (Protected) 1G	1G	Each	\$666.67	\$566.67
Metro Connect (Protected) 10G	10G	Each	\$1,333.33	\$850.00
Metro Connect (Unprotected) 10G	10G	Each	\$1,333.33	\$566.67
Metro Connect (Unprotected) 100G	100G	Each	\$5,333.33	\$3,400.00
Metro Connect (Dual Diverse) 10G	10G	Each	\$2,666.67	\$1,076.67
Metro Connect (Dual Diverse) 100G	100G	Each	\$5,333.33	\$6,233.33

### 7.3. Power Limitations

Customer may not draw more than the kVA amount set out in the tables in Section 6. above (Power Cap). In the event the power draw exceeds the Power Cap, AT&T may provide written notification to Customer and/or require Customer to reduce the power draw to the Power Cap within seventy-two (72) hours. If Customer does not resolve the situation with a mutually agreeable plan, AT&T may suspend Customer's power until the power draw is equal to or less than the Power Cap. Alternatively, the Parties may agree to amend the Order to increase the Power Cap. Notwithstanding anything to the contrary stated above, in the event Customer's Power Capacity requirements increase, Customer agrees to execute a Change Order for the applicable increase in Power MRC based on Customer's actual power usage.

### 7.4. Additional Pricing Terms and Conditions

**7.4.1. Defined Scope.** Pricing is based on the information in this Order. Any additional Licensed Space and Services ordered by Customer on a subsequent order shall be subject to the then current rate for such Licensed Space and Services. The amount of Licensed Space and Power provided hereunder is based on information provided by Customer to AT&T. Any additions or changes to this Order will necessitate changes in pricing. Pricing herein assumes no project delays will occur that would require AT&T to stop work. AT&T will not be held financially responsible for project delays outside of its control.

**7.4.2. Invoicing.** For the first sixty (60) days from the effective date of this Order, AT&T will not invoice the Customer any Fees and Charges as defined herein. If Customer does not exercise Early Termination clause as defined in Section 8, AT&T will invoice the Fees and Charges as defined herein on a monthly basis including NRC and MRC charges (which includes any Services provided, the Licensed Space and associated power) along with any incurred NRC and MRC charges during the initial sixty (60) day period.



**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**EXHIBIT 1: ORDER FOR LICENSED SPACE**

**7.4.3. Travel and related Expenses.** Pricing does not include expenses for AT&T travel to Customer's facilities. Standard business expenses (e.g., transportation, food, lodging) incurred by AT&T in connection with delivery of the Services will be billed at cost as a separate line item on Customer's invoice. AT&T personnel will book or incur travel expenses only after receiving permission from Customer's SPOC.

**7.4.4. CX Time and Material (T&M) Rate.** In the event that Customer specifically requests additional services not covered by this Order, AT&T will bill Customer at a T&M rate of two hundred-twenty dollars (\$220.00) per hour per AT&T consultant for the services requested. All such out of scope matters will be handled via the Change Control process outlined herein.

**8. COVERAGE HOURS**

For operation, support and maintenance of the Data Center Building, personnel will be available 7x24x365.

**9. TERMINATION**

**9.1 Trial Term Termination**

During the Trial Term, Customer may terminate this Order without cause at any time by providing at least five (5) business days advance written notice of termination to AT&T. In such event, AT&T will cease performance of the Trial Services and will make arrangements with Customer to terminate the Service. In the event Customer terminates under this provision, Customer will not be responsible to pay any charges incurred prior to such termination date.

**9.2 Production Term Termination**

During the Production Term, Customer will have the right to terminate this Order without cause within the first sixty (60) days of the effective date of this Order. Customer must notify AT&T by providing at least five (5) business days advance written notice of termination to AT&T. In such event, AT&T will cease performance of the Production Services and will make arrangements with Customer to terminate the Service. In the event Customer terminates under this provision, Customer will not be responsible to pay any charges incurred prior to such termination date.

Customer may not terminate this Order for any reason other than for AT&T's uncured material breach. In the event that (i) Customer terminates this Order or any portion hereof for any reason other than AT&T's uncured material breach, or (ii) AT&T terminates this Order for cause, Customer shall be responsible to provide AT&T with sixty (60) days written notice and to pay termination charges equal to the total monthly recurring charges multiplied by the number of months remaining in the Term of the applicable Order as well as any expenses and other charges incurred up until the date of termination.

**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**APPENDIX A: SAMPLE CHANGE ORDER FORM**

Type of Request:	
Initiator (Company):	
Change Request Received by:	
Price Impact:	
AT&T Additional Resources Req'd:	

Task Description:

Other information related to Change:

**Impact of Change**  
*Provide a description of the impact of the change (increase in duration, delay in start, cut-over date change, added dependency, additional resources required change to design, change to baseline solution, other).*

Customer (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

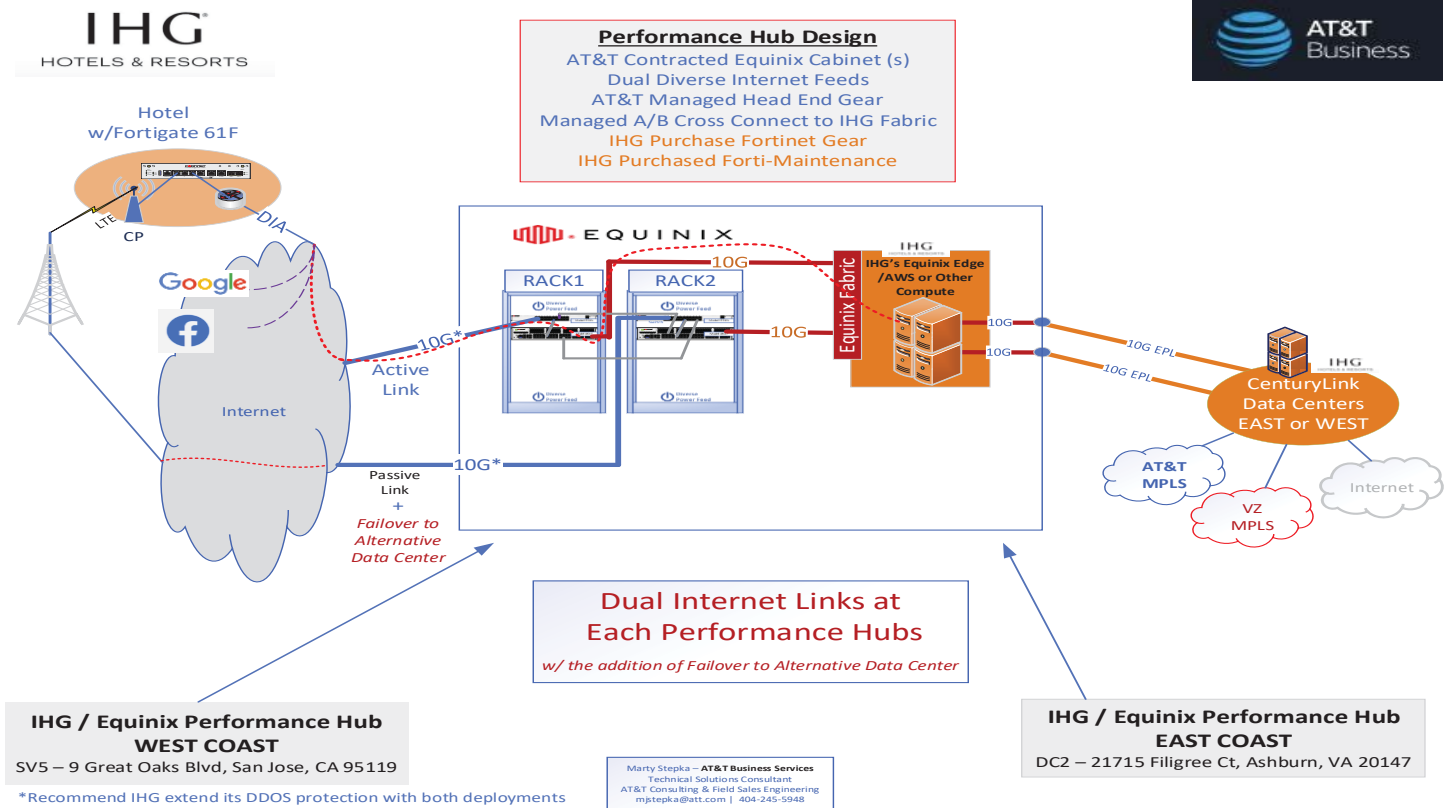
AT&T NETWORK INTEGRATION SERVICES  
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APPENDIX B TO THE ORDER: CUSTOMER OWNED MATERIALS  
TO BE REMOVED AT TERMINATION OR EXPIRATION OF THE ORDER BY CUSTOMER

MATERIALS LIST	TO BE REMOVED BY CUSTOMER	DESCRIPTION
FortiSwitch-424E		Layer 2 switch
FortiGate-1800 Hardware		Fortigate Firewall

### AT&T NETWORK INTEGRATION SERVICES PRICING SCHEDULE LICENSED SPACE, SERVICES & CLOUD EXCHANGE

#### APPENDIX C: RACK, CAGE, CABINET LAYOUT



**AT&T NETWORK INTEGRATION SERVICES  
PRICING SCHEDULE  
LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**APPENDIX D: CLOUD EXCHANGE SERVICE**

This Cloud Exchange Appendix (Appendix) supplements and sets forth additional terms and conditions governing the use and resale to Customer of the Ethernet Exchange (Cloud Exchange Service) by the Customer if ordered via Exhibit 1.

**1. Description of the Cloud Exchange Service**

AT&T will provide Customer access to an Ethernet switching infrastructure (individually and cumulatively, the Switch) and certain ports (Ports) on the Switch as specified on the Order (Exhibit 1 hereto) to allow Customer to interconnect its ethernet networks via an External Network to Network Interface (ENNI). The ENNI provides Customer the capability to exchange Ethernet frames with other customers.

The Cloud Exchange Service provides Customer the ENNI and a virtual circuit (Virtual Circuit) which is a logical Ethernet connection between two or more Ports on the Switch. Service fees will be listed on the Order, and if Customer requires additional Services, then the parties will utilize the Change Control process to contract for additional Services. Equinix shall at all times retain all title to and ownership of the Cloud Exchange Service. Customer will also have access to the Ethernet web portal for a variety of tasks, including the management of virtual network circuits.

This Appendix will apply to Customer's use of the Cloud Exchange Service and if Customer violates anything set forth herein, AT&T may take reasonable action to correct any problem such violation may cause, including suspending or, upon ten (10) days prior written notice, terminating Customer's use of the Cloud Exchange Service.

**2. Customer Responsibilities**

Customer must: (i) provide and maintain 24 hours each day, an email address and phone number for a primary contact, and an email address and phone number for an operations contact, which should include a role account e-mail address (e.g., for a network engineer or routing engineer); (ii) complete the Configuration Requirements Document (CRD) as soon as possible following execution of its first Order; (iii) comply with all reasonable technical specifications and applicable policies for the use of the Cloud Exchange Service as provided by AT&T from time to time and (iv) only connect equipment owned by Customer to the Switch.

Customer must not: (a) conduct any illegal activities through the Switch; (b) conduct any activity that interferes with or impairs the equipment or connectivity of any other customer on the Switch; (c) obtain or attempt to obtain unauthorized access to the Switch, or circumvent or attempt to circumvent any applicable security features; (d) connect any equipment that is not owned or controlled by Customer; or (e) reverse assemble, reverse compile or reverse engineer the Cloud Exchange Service, or otherwise attempt to discover any Cloud Exchange Service source code or underlying proprietary information.

Additionally, Customer is responsible for negotiating and executing its own interconnection agreements to exchange Ethernet frames with other customers and AT&T is not responsible for establishing or monitoring such relationships, whether bilateral or multilateral.

**3. Disclaimer of Third-Party Actions and Control**

AT&T does not and cannot control the flow of Ethernet frames beyond the Port or ENNI. Such flow depends in large part on the performance of Ethernet services provided or controlled by other customers. At times, actions or inactions caused by these other customers can produce situations in which some or all Customer's virtual circuits may be impaired or disrupted. Although AT&T will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, AT&T cannot guarantee that they will not occur. Accordingly, AT&T disclaims any and all liability resulting from or related to such events. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS AGREEMENT); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

**4. Service Level Objective**

The purpose of this Service Level Objective (SLO) is to define the measurable performance levels for Cloud Exchange Service. The SLO is met when each individual Port and Virtual Circuit is available to pass ethernet frames 99.999% of the time during a billing month (SLO Threshold). For the purpose of this SLO, and subject to the last paragraph of this section, "Unavailability" is defined as the duration of unexcused or unplanned time in which any Port or Virtual Circuit prevents delivery of Customer's Ethernet frames, as measured from the time when AT&T receives Customer's notification of the incident, to the time the Service is no longer Unavailable as confirmed by AT&T.

**AT&T NETWORK INTEGRATION SERVICES  
 PRICING SCHEDULE  
 LICENSED SPACE, SERVICES & CLOUD EXCHANGE**

**APPENDIX D: CLOUD EXCHANGE SERVICE**

In the event of a Chronic Outage, which is defined as five (5) SLO failure events within a thirty (30) day period, Customer may terminate the affected Cloud Exchange Service, without liability provided such termination notice is delivered to AT&T within thirty (30) days of the qualifying event. Notwithstanding anything to the contrary, the SLO shall not apply if the Unavailability is considered an "Excused Unavailability", which means it: (a) is caused by circumstances beyond AT&T's reasonable control; or (b) is caused by Customer's act or omission, or in the case of a virtual circuit, the act or omission of the customer or partner to whom the Customer connects; or (c) occurs during a scheduled maintenance window. Customer will be notified at least fourteen (14) days prior to any regularly scheduled maintenance and will be notified as soon as practicable before any emergency maintenance.

Monthly Availability	Cumulative Minutes of Unavailability per Calendar Month
99.999% - 99.99%	26 seconds to <4 minutes
99.99% - 99%	4 minutes to <44 minutes
99 - 97%	7 hours to <21.6 hours
<97%	>21.6 hours



GBS15200-52.1

AT&T Network Integration Services  
Change Request

MA Reference No.: 101513

AT&T Network Integration Tracking ID: GBS15200-52.1  
November 12, 2022 Version 1.0

PCS ID: 20221208-128

CUSTOMER Legal Name (Customer)	AT&T Corp. (AT&T) (designate other entity if signing entity other than AT&T Corp)	AT&T Branch Sales Contact Name
Six Continents Hotels, Inc.	AT&T	Name: Christine Huntzinger
CUSTOMER Address	AT&T Corp. Address and Contact	AT&T Branch Sales Contact Information
Street Address: Three Ravinia Drive City: Atlanta State / Province: GA Country: USA Domestic / Intl / Zip Code: 30346	One AT&T Way Bedminster, NJ 07921-0752 Contact: Master Agreement Support Team Email : <a href="mailto:mast@att.com">mast@att.com</a>	Address: 2180 Lake Blvd City: Atlanta State / Province: GA Country: USA Domestic / Intl / Zip Code: 30339 Fax: Sales/Branch Mgr: Chad Spillerman SCVP Name: Racquel Roy
CUSTOMER Contact	AT&T Address and Contact	AT&T NI Contact Information
Name: Peter Palli Title: SVP, Global Hotel and Owner Solutions Telephone: Fax: Email: <a href="mailto:Peter.Palli@IHG.com">Peter.Palli@IHG.com</a>	Name: Title: Telephone: Street Address: City: State / Province: Country: Domestic / Intl / Zip Code:	Name: Scott Hullett Address: 410 W Magnolia Ave City: Knoxville State / Province: TN Country: USA Domestic / Intl / Zip Code: 37917 Telephone: (404)281-2942 Email: <a href="mailto:sh0704@att.com">sh0704@att.com</a>
CUSTOMER Billing Address		
Street Address: Three Ravinia Drive City: Atlanta State / Province: GA Country: USA Domestic / Intl / Zip Code: 30346		

The AT&T Network Integration Change Order Request (Change Request) is an attachment to the **AT&T Network Integration Addendum to Comprehensive Service Order Attachment** dated 07/24/09 (NI Addendum).

The AT&T Network Integration Services provided under this Change Request shall be governed by the terms and conditions of the NI Addendum, which are incorporated herein by reference. To the extent any terms set forth in this Change Request conflict with those of the NI Addendum, the terms of this Change Request shall prevail with respect to the AT&T Network Integration Services provided hereunder.

**Summary of Exhibits:**

- Exhibit 1: AT&T Network Integration Services Statement of Work (SOW) (aka FastConnect Enhanced)
- Exhibit 2: AT&T Network Integration Active Directory Services SOW (aka FastConnect AD)
- Exhibit 3: AT&T Network Integration Remote Access Services SOW (aka One Safe Place)
- Exhibit 4: AT&T Network Integration Hosted Security CPE SOW (aka FastConnect Infrastructure)
- Exhibit 5: AT&T Remote Access Services Description (aka Gemalto Remote Access)
- Exhibit 6: AT&T Network Integration Services Managed Fortinet Solution SOW (aka FastConnect Next Generation)

This Change Request is effective on the latter of the dates signed by both Customer and AT&T (Effective Date).

**AGREED:**  
**CUSTOMER: Six Continents Hotels, Inc.**

**AGREED:**  
**AT&T**

By: eSigned - Peter Palli  
(Authorized Agent or Representative)

By: eSigned - BRANDON TROTTER  
(Authorized Agent or Representative)

(Typed or Printed Name)

(Typed or Printed Name)

(Title) SVP

(Title) Contract Specialist, as signatory for AT&T

(Date) 09 Dec 2022

(Date) 09 Dec 2022

pd170n

attuid: sh0704



## AT&T NETWORK INTEGRATION SERVICES CHANGE REQUEST

Change Request Number: 52.1 Original NI Addendum dated: <u>07/24/2009</u>			
AT&T Requestor:	Scott Hullett	NI Tracking #:	GBS15200-52.1
Title:	Engagement Manager	Date of Request:	3/20/2022
<b>Nature of the Change Request:</b>			
<b>DESCRIPTION: Managed Fortinet Solution an enhancement of FastConnect Enhanced</b>			
<p>This Change Request upon execution will extend the terms, conditions, and rates as defined in <b>Change Order GBS15200-48 executed December 28, 2021</b> unless detailed below.</p> <ol style="list-style-type: none"> <li>1. <b>Exhibit 1 – Managed Security Solution executed December 28, 2021, (eGBS15200-48) is hereby modified as follows:</b> <ol style="list-style-type: none"> <li>i. AT&amp;T is updating the term from thirty-six (36) months to sixty (60) months</li> <li>ii. Updating CrowdStrike license subscription commit</li> <li>iii. Modifying rates in Exhibit 1 and moving many rates into new Exhibit 6</li> </ol> </li> <li>2. <b>Exhibit 2 – Active Directory Services executed December 28, 2021, (eGBS15200-48) is hereby modified as follows:</b> <ol style="list-style-type: none"> <li>i. AT&amp;T is updating the term from thirty-six (36) months to sixty (60) months</li> <li>ii. Updating termination language</li> </ol> </li> <li>3. <b>Exhibit 3 – Remote Backup Services executed December 28, 2021, (eGBS15200-48) is hereby modified as follows:</b> <ol style="list-style-type: none"> <li>i. AT&amp;T is updating the term from thirty-six (36) months to sixty (60) months</li> <li>ii. Updating termination language</li> </ol> </li> <li>4. <b>Exhibit 4 – Hosted Security CPE executed December 28, 2021, (eGBS15200-48) is hereby modified as follows:</b> <ol style="list-style-type: none"> <li>i. AT&amp;T is updating the term from thirty-six (36) months to sixty (60) months</li> </ol> </li> <li>5. <b>Exhibit 5 – Remote Access Services executed December 28, 2021, (eGBS15200-48) is hereby modified as follows:</b> <ol style="list-style-type: none"> <li>i. No changes to this Exhibit</li> </ol> </li> <li>6. <b>Exhibit 6 – Managed Fortinet Solution</b> <ol style="list-style-type: none"> <li>i. AT&amp;T is adding a Managed Fortinet Solution</li> </ol> </li> </ol>			
<p><b>SCOPE:</b> This Change Request adds a new Exhibit 6 to define a Managed Fortinet Solution provided by AT&amp;T. In addition, the Change Request addresses changes to existing exhibits that will occur at Eligible Participants transition to the new Managed Fortinet Solution. Eligible Participant locations on the existing solution will continue to operate under Change Order GBS15200-48 executed December 28, 2021.</p>			
<p><b>IMPACT ON PRICING:</b> The overall pricing an Eligible Participant pays monthly for FastConnect Enhanced plus a Base Rate for Active Directory remains unchanged. Pricing at the individual component level has been modified in specific situations and that is captured in the Exhibits herein. Each Eligible Participant will be required to sign an individual Participation Agreement for the new Managed Fortinet Solution. All pricing not detailed as being modified by this Change Request will remain in effect as defined in Change Order GBS15200-48 executed December 28, 2021.</p>			
<p><b>EXPIRATION:</b> AT&amp;T reserves the right to withdraw this Change Request or modify the prices and any other terms and conditions, including, but not limited to, any section of this Change Request, if this Change Request is not signed by Customer and AT&amp;T by <b>December 9, 2022</b>. This engagement must commence within thirty (30) calendar days of the Effective Date, or AT&amp;T reserves the right to modify the pricing, terms and/or conditions herein. Extension terms will not be permitted unless mutually agreed between the parties via the Change Request Process. Section 6.1 of the Amendment # 2 to Master Agreement and Supplemental &amp; Superseding Terms &amp; Conditions, executed February 28, 2019 does not apply.</p>			
<p><b>IMPACT ON THE PROJECT TIMELINE AND SCHEDULED DELIVERY DATE:</b> The AT&amp;T Equipment has been quoted in partnership with Fortinet. Fortinet has notified AT&amp;T that the rates currently reflected in this Change Request will incur a rate increase if the AT&amp;T Change Request GBS15200-52.1 is not executed prior to December 9, 2022.</p>			





## 1.0 AT&T EQUIPMENT

Services may be provided using equipment owned by AT&T that is located at the Site (AT&T Equipment), but title to the AT&T Equipment will remain with AT&T. Customer must provide adequate space and electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to the AT&T Equipment (other than ordinary wear and tear), except to the extent caused by AT&T or its agents.

### 1.1. Location of AT&T Equipment

AT&T Equipment shall be delivered to and thereafter kept at the location specified in the applicable SOW and shall not be removed without AT&T's prior written consent, such consent which shall not be unreasonably withheld.

### 1.2. Use of AT&T Equipment

Customer, at its expense, shall take care of the AT&T Equipment in accordance with any AT&T-provided guidelines and make all repairs and replacements necessary to maintain and preserve the AT&T Equipment and keep it in working order. If Customer does not obtain maintenance services under this Change Request, Customer shall, at its own expense, enter into and maintain in force a contract with the manufacturer or other maintenance organization approved by AT&T covering maintenance of each unit of AT&T Equipment; upon request, Customer shall furnish AT&T with a copy of such maintenance contract. Customer shall not make any alterations, additions, or improvements, or add attachments to the AT&T Equipment without the prior written consent of AT&T, except for (i) additions or attachments consisting solely of telephone terminal equipment, and (ii) additions or attachments purchased or provided hereunder. AT&T Equipment, if any, provided to Customer hereunder may have additional license terms and/or other requirements or restrictions imposed by the manufacturer, supplier or publisher. Customer is solely responsible for ensuring its adherence to any and all such license terms and other requirements or restrictions and is deemed to accept them upon receipt of the AT&T Equipment in connection with the use of the AT&T Equipment by Customer.

### 1.3. Return of AT&T Equipment

Unless otherwise specified in the applicable SOW, Eligible Participant shall return, at AT&T's expense, the AT&T Equipment at the expiration or termination of this Change Request. Prior to return, Customer shall restore the AT&T Equipment to Return Condition, and Customer agrees that any addition, alteration, improvement or attachment shall belong to and become a part of the property of AT&T. "Return Condition" means Eligible Participant shall return, at AT&T's expense, the AT&T Equipment to AT&T in working order, with with no known defects which affect the operation or performance of the AT&T Equipment, normal wear and tear excepted. Return Condition as defined by AT&T herein also indicates that the AT&T Equipment will be eligible on expiration or termination of this Change Request for acceptance by the manufacturer, or a manufacturer certified third party maintenance organization. Any software upgrade will become the property of AT&T. AT&T shall have the right, upon reasonable prior notice to Customer and during normal business hours, to inspect the AT&T Equipment at its location.

### 1.4. Casualty Loss

If the AT&T Equipment, in whole or in part, is lost, stolen, damaged or destroyed, or is taken in any condemnation or similar proceeding (Event of Loss), Customer shall promptly notify AT&T. Customer shall, at its option: (i) immediately repair the affected AT&T Equipment such that it is in good condition and working order, (ii) replace the affected item with like equipment of equal or greater value, in good condition, and transfer clear title thereto to AT&T, or (iii) to the extent permitted by law, pay to AT&T, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value (SLV) (as hereinafter defined) for such affected AT&T Equipment, plus any other unpaid amounts due under the applicable SOW. If an Event of Loss occurs as to part of the AT&T Equipment for which the SLV is paid, a prorata amount of each Monthly Recurring Charge shall abate from the date the SLV payment is received by AT&T. The SLV shall be an amount equal to the sum of all future Monthly Recurring Charges from the last Monthly Recurring Charge date to the end of the Minimum Payment Period (defined in the attached SOW).

### 1.5. Default

Customer shall be in default hereunder upon the occurrence of any one or more of the following events (Event of Default): (i) failure by Customer to pay any Monthly Recurring Charges or other amounts payable under the applicable SOW for a period of thirty (30) days or more, (ii) Customer dissolves or ceases to exist or transfers a major part in value of its assets, (iii) Customer becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition or has an involuntary petition filed or action commenced against it under the United States Bankruptcy Code or any similar federal or state law, (iv) an adverse change in Customer's or any guarantor's financial condition as will, in the good faith judgment of AT&T, impair the AT&T Equipment or increase the credit risk involved, (v) failure by Customer to obtain or maintain proper insurance on the AT&T Equipment provided for hereunder, or (vi) Customer fails to return the AT&T Equipment within fifteen (15) days of expiration or termination of this Change Request.

Property and/or Commercial General Liability insurance carried by Customer must include AT&T as an additional insured under the policy/ies.

### 1.6. Remedies

**1.6.1.** Upon the occurrence of an Event of Default in accordance with sub-section 1.5. above, AT&T may, at its option do any or all of the following: (i) retake immediate possession of the AT&T Equipment, wherever located, in prior consultation with the Customer on how and when to take possession of the AT&T Equipment, (ii) cause Customer, and Customer hereby agrees, to return the AT&T



Equipment to AT&T as provided herein, (iii) recover from Customer, as liquidated damages for loss of a bargain and not as a penalty, all sums owing hereunder and/or all Monthly Recurring Charges immediately due and payable, or (iv) by notice in writing to Customer, cancel this Change Request whereupon all right and interest of Customer in or to the possession or use of the AT&T Equipment shall absolutely cease.

Upon the occurrence of an Event of Default, AT&T may be entitled to recover from Customer: (i) damages which AT&T can directly link to such default or breach by Customer, and (ii) such expenses as may be expended or incurred by AT&T in the seizure, rental, storage, transportation, sale of AT&T Equipment, or enforcement of any right or privilege hereunder or collection of any sums due hereunder.

### 1.7. Assignment

Notwithstanding anything to the contrary specified in the Agreement, Customer acknowledges AT&T is entitled sell, transfer, and assign to a third party (Assignee), all right, title and interest of AT&T in and to the AT&T Equipment and the Monthly Recurring Charges (Assigned Assets). Customer consents to the Assignment of the Assigned Assets by AT&T to Assignee. Such assignment does not relieve AT&T of its performance obligations under the applicable SOW. Customer further acknowledges and agrees that the Assigned Assets may be further sold, transferred, and assigned by Assignee to any other person or entity without notice to or the consent of Customer. Customer shall not be entitled to assign its rights and obligations under the Agreement without the express written consent of Assignee.

## 2.0 PURCHASED EQUIPMENT

- 2.1 "Purchased Equipment" means equipment to which title transfers from AT&T to Customer. Purchased Equipment includes any internal code required to operate such Equipment.
- 2.2 Orders for Purchased Equipment shall be submitted by Customer to AT&T in written format and shall contain all information required for AT&T to fulfill such Order and shall contain a reference to this Change Request and the applicable AT&T quote. Any information, terms and/or conditions, or other language contained in any document(s) or purchase order(s) furnished by Customer to AT&T in excess of or outside of such information or in conflict with any terms and conditions contained in this Change Request and/or the applicable attachment(s) are void. AT&T will notify Customer by email whether it has accepted the Order after validation within five (5) business days after receipt of the Order. AT&T reserves the right not to accept an Order.
- 2.3 Customer acknowledges and agrees that AT&T's ability to deliver Purchased Equipment is contingent upon the supply and delivery schedules of each of the manufacturers. AT&T shall have no liability for delays in any delivery schedule. Title and risk of loss to Purchased Equipment shall pass to Customer upon, delivery to the Customer, upon which date AT&T will have no further obligations of any kind with respect to that Purchased Equipment, except as set forth in this Change Request. Customer is responsible for all shipping-related charges, which AT&T shall invoice to Customer at two percent (2%) of the total purchase price of the Order or actual cost, whichever is greater, except that for Orders requiring expedited shipment, in which case it will be the greater of four (4%) percent of Customer's total purchase price or actual cost; and charges incurred, if any, for storage of Purchased Equipment following delivery to the agreed location are the sole responsibility of Customer and are not included in shipping charges.
- 2.4 AT&T shall pass through to Customer any warranties for Purchased Equipment and Vendor Software available from the manufacturer or licensor. The manufacturer or licensor, and not AT&T, is responsible for any such warranty terms and commitments. ALL VENDOR SOFTWARE AND PURCHASED EQUIPMENT IS OTHERWISE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.
- 2.5 Customer shall import, export or otherwise distribute Purchased Equipment in strict compliance with export, import, and re-export control laws and regulations of the United States, any Origination Country, and any Project Country. Customer represents and warrants that, when and where required by applicable law, it shall obtain all licenses, permits, and approvals required by Project-Country law for the importation and use of dual-use technology, including cryptography, and is compliant with all other measures imposed by said applicable law. Customer represents and warrants that once received, Customer will not re-export the Purchased Equipment from the Project Country. To avoid ambiguity, "compliance" includes the record-keeping and reporting obligations.
- 2.6 The Purchased Equipment shall be delivered to and thereafter kept at the location specified in any SOW and shall not be removed without AT&T's prior written consent, such consent which shall not be unreasonably withheld.
- 2.7 AT&T shall have a continuing security interest in the Purchased Equipment for the purpose of securing Payments and obligations of Customer arising under any SOW. Customer shall keep the Purchased Equipment free and clear of all levies, liens and security interests, and shall give AT&T immediate notice of any attachment or other judicial process affecting any item of Purchased Equipment.
- 2.8 At its expense, and as a part of Customer's normal acquisition of insurance, Customer shall keep the Purchased Equipment insured against all risks of loss and damage for an amount equal to the original cost of the Purchased Equipment. Upon receipt of the Purchased Equipment, Customer assumes all risk of loss or damage to the Purchased Equipment from any cause whatsoever. If the Purchased Equipment, in whole or in part, is lost, stolen, damaged or destroyed, or is taken in any condemnation or similar proceeding (Event of Loss), Customer shall promptly notify AT&T. Customer shall, at its option: (a) immediately place the affected Purchased Equipment in good condition and working order, or (b) to the extent permitted by law, pay to AT&T, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value (SLV) for such affected



Purchased Equipment, plus any other unpaid amounts then due under any SOW. The SLV shall be an amount equal to the sum of all future Payments from the last Payment date to the end of the Term.

- 2.9 Customer shall execute and deliver to AT&T, upon AT&T's request, such instruments and documents as AT&T deems necessary or advisable for the confirmation or perfection of any SOW and AT&T's rights hereunder.
- 2.10 AT&T may, without notice or Customer's consent, assign in whole or in part AT&T's right to payments due under any SOW to an Affiliate or third party. Such assignment does not relieve AT&T of its performance obligations under any SOW.

### 3.0 EXPORT SERVICES

If the applicable Attachment so requires, AT&T will facilitate the shipment of Purchased Equipment from an AT&T facility in the U.S. to Customer sites in Project Countries (Export Services). Export Services are subject to the following:

- 3.1 Export Services are conditioned upon Customer (1) identifying to AT&T the authorized person who, in writing and on Customer's behalf, will provide to AT&T the correct name, address, and contact information for the ultimate consignee authorized to receive the Purchased Equipment at each location; (2) providing all other information requested by AT&T to facilitate the export of Purchased Equipment, including a completed commercial invoice; (3) informing AT&T any time the sale price of the Purchased Equipment from AT&T to Customer differs from the transfer price between Customer and its Project Country Affiliate; (4) providing all documents reasonably requested by AT&T from time to time, such as powers of attorney and agency agreements necessary for AT&T to act on Customer's behalf; (5) assuming responsibility for all aspects of importing the Purchased Equipment including, but not limited to, the payment of customs duties, compliance with import laws and regulations, and the obtaining of required licenses to import into, and use, the Purchased Equipment in that country; and (6) identifying the broker or other party responsible for importing the Purchased Equipment, and the person to be contacted when the Purchased Equipment is ready for export.

### 3.2 AT&T DISCLAIMS ALL LIABILITY FOR:

- 3.2.1 Delayed, errant, or failed Purchased Equipment shipments caused by incorrect ultimate-consignee information provided to AT&T by the Customer, or Customer's failure to pay freight forwarder invoices;
- 3.2.2 Delays or failures to ship caused by AT&T's compliance with U.S. export controls;
- 3.2.3 Damages arising out of or relating to incorrect ultimate-designee and/or Purchased Equipment end-use information that Customer provides to AT&T, and which AT&T provides to U.S. authorities in connection with its U.S. export-control compliance, and/or to the authorities of the Project Country;
- 3.2.4 Importation of Purchased Equipment into the Project Country, including, but not limited to, the payment of Customs duties, compliance with import laws and regulations, and the obtaining of required licenses to import into, and use, the Purchased Equipment in that country;
- 3.2.5 Delays or delivery failures caused by, or Charges incurred on account of, Customer's compliance with import laws and regulations of the Project Country; and
- 3.2.6 Customer's re-export of Purchased Equipment from the Project Country.

### 4.0 LICENSES AND THIRD PARTY MAINTENANCE

Purchased Equipment, Vendor Software and maintenance resold to Customer hereunder may be subject to additional license terms and/or other requirements or restrictions imposed by the manufacturer, supplier or publisher. Customer is solely responsible for ensuring its adherence to such terms, requirements, and restrictions, and is deemed to have accepted them upon receipt of the Purchased Equipment or Vendor Software, or on commencement of the maintenance.

### 5.0 FORTINET WARRANTY; LICENSE; RMA PROCEDURES

For Purchased Equipment manufactured by Fortinet, Customer is deemed to accept the below-referenced software license, warranty and RMA process upon receipt of the Purchased Equipment:

Additionally, the applicable warranty passed through hereunder with respect to such Purchased Equipment is included in the Equipment package; a sample of the Fortinet limited warranty passed through to Customer hereunder is located at: <https://www.fortinet.com/content/dam/fortinet/assets/legal/EULA.pdf>

The terms and conditions applicable to the Fortinet RMA process passed through to Customer is located at: <https://www.fortinet.com/content/dam/fortinet/assets/solution-guides/sb-forticare-technical-support-and-rma-services.pdf>

### 6.0 FORTINET MAINTENANCE SERVICES

Fortinet maintenance services provided hereunder is provided directly to Customer by Fortinet pursuant to the terms of the Fortinet End User License Agreement (EULA) located at: <https://www.fortinet.com/content/dam/fortinet/assets/legal/EULA.pdf>. The EULA is a separate agreement between Fortinet and Customer and Customer is solely responsible for compliance with its terms and conditions. By Customer assenting to the terms and conditions of this Change Request, Customer is also bound to the terms and conditions of the EULA, as if the terms and conditions of the EULA were fully set forth herein. AT&T will invoice Customer for the charges associated with Fortinet maintenance services purchased hereunder. Fortinet shall be solely responsible for the provision of the Fortinet maintenance services and Customer releases AT&T from any loss, damages or other claims relating to the Fortinet maintenance services.



# EXHIBIT 1: AT&T NETWORK INTEGRATION SERVICES SOW – MANAGED SECURITY SOLUTION

Unless detailed below, all remaining sections and content in Exhibit 1 of Change Order GBS15200-48 executed December 28, 2021 remain in effect.

“Minimum Payment Period” means the sixty (60) months. All existing executed Participation Agreements require execution of a Change Request to purchase Managed Fortinet Solution as defined in Exhibit 6. The Minimum Payment Period for an Eligible Participant begins on the commencement date of Site Acceptance of the Managed Fortinet Solution.

“SOW Term” means the sixty (60) months period after the Effective Date of this Change Request until all Services provided hereunder expire or are otherwise terminated according to the terms herein. Each new Eligible Participant will execute a Participation Agreement with an initial minimum term.

### 1.0 Minimum Site Commitment

Customer is responsible for a minimum order of CrowdStrike Complete third Party Software licenses for **at least four thousand (4000)** Eligible Participants located in the United States (Minimum Site Commitment). Existing Eligible Participants using CrowdStrike Complete third Party Software will contribute to minimum order. AT&T will monitor the relevant security activity, log files with remote visibility, and review end-point protection as allowed via the CrowdStrike Complete Third Party Software.

### 2.0 Service Hours

The Services provided hereunder shall be performed Monday through Friday, 9:00 a.m. to 5:00 p.m., local time, excluding designated AT&T holidays (Normal Business Hours or NBH), unless otherwise noted herein.

AT&T Designated Holidays in the US	Date Observed
New Year’s Day	January 1
Martin Luther King Jr. Day	January 17
Presidents’ Day	February 21
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Day	December 25

AT&T designated holidays in Canada vary by province and region, and AT&T will adhere to the holiday schedule for the applicable province in Canada.

Hourly rates for Services provided after NBH (“aNBH”) are set forth below; AT&T will invoice Customer at this rate for any such Services requested in writing by Customer.

### 3.0 Schedule of Charges

For existing Eligible Participants, the following pricing tables in Change Order **GBS15200-48** executed **December 28, 2021** will be replaced with the pricing tables in Section 23 of Exhibit 6 herein. The pricing tables in GBS15200-48 will remain in effect until a Eligible Participant has completed Site Acceptance to the new Managed Fortinet Solution.

For NHOPs, pricing for AT&T MSS and Managed Fortinet Solution and AT&T Equipment will be effective as defined in Exhibit 6 upon Site Acceptance.

Schedule 1	# of Servers & Workstations	Term (Months)	Platform/Services	Pricing Monthly Recurring Charge
<b>Base Rate</b> <b>(1-6 Devices)</b>	Up to: - 1 Server - 5 PC’s	36 mos/ per Site	AT&T MSS <ul style="list-style-type: none"> <li>Assumes up to 1 Server and 5 Workstations</li> <li>Baselining/Conversion</li> </ul>	\$99.00 per Site



<b>Additional PC's or Servers**</b>		36 mos/ per Site	AT&T MSS – over 6 devices <ul style="list-style-type: none"> <li>Per device over 6 devices</li> <li>Baselining/Conversion</li> </ul>	\$20.00 per device
<b>FastConnect Consolidated Billing Charge</b>		36 mos/ per Site	<ul style="list-style-type: none"> <li>Consolidated custom billing of multiple FastConnect suite of services on a single invoice presented to each Site on a monthly basis</li> </ul>	\$8.00 per Site

For existing Eligible Participants, the following pricing tables in Exhibit 1 of Change Order **GBS15200-48** executed **December 28, 2021** will be replaced with the new pricing tables as defined herein. The pricing tables in GBS15200-48 will remain in effect until a Eligible Participant has completed Site Acceptance to the Managed Fortinet Solution.

For new NHOPs, pricing for AT&T MSS and Managed Fortinet Solution and AT&T Equipment will be effective as defined in Section 23 of Exhibit 6 upon Site Acceptance.

**Managed Active Directory (AD) Services (replaced):**

Schedule 1	# of Servers & Workstations	Term (Months)	Platform/Services	Pricing Monthly Recurring Charge
<b>Active Directory (AD) (1-6 Devices)</b>	Up to: - 1 Server - 5 PC's -10 Users	36 mos/ per Site	<ul style="list-style-type: none"> <li>Active Directory Deployment</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> <li>Tier 2/3 Helpdesk Support</li> </ul>	\$17.75 per Site
<b>Additional AD PC's or Servers</b>		36 mos/ per Site	<ul style="list-style-type: none"> <li>Per device over 6 devices</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> </ul>	\$2.00 per device
<b>Add'l Active Directory Users</b>	N/A	36 mos	<ul style="list-style-type: none"> <li>Per User over 10 Users per Site</li> <li>FastConnect Resources to assist with initial infrastructure deployment, security policies and managed security conversion/baselining activities</li> </ul>	\$1.25 per User

**Managed Active Directory (AD) Services (new):**

Schedule 1	# of Servers & Workstations	Term (Months)	Platform/Services	Pricing Monthly Recurring Charge
<b>Active Directory (AD) (1-6 Devices)</b>	Up to: - 1 Server - 5 PC's -10 Users	60 mos/ per Site	<ul style="list-style-type: none"> <li>Active Directory Deployment</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> <li>Tier 2/3 Helpdesk Support</li> </ul>	\$17.75 per Site
<b>Additional AD PC's or Servers</b>		60 mos/ per Site	<ul style="list-style-type: none"> <li>Per device over 6 devices</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> </ul>	\$2.00 per device
<b>Add'l Active Directory Users</b>	N/A	60 mos	<ul style="list-style-type: none"> <li>Per User over 10 Users per Site</li> <li>FastConnect Resources to assist with initial infrastructure deployment, security policies and managed security conversion/baselining activities</li> </ul>	\$1.25 per User

**Optional Managed Remote Back-up Services (One-Safe Place): (replaced)**

*One Safe Place	Data Size (GB)	Term (Months)	Platform/Services	Pricing (Monthly Recurring Charge (MRC))
	5-20	36 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$29.00 per Site
	21-49	36 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$32.00 per Site
	50-89	36 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$38.00 per Site
	90-110	36 mos/ per Site	<ul style="list-style-type: none"> <li>AT&amp;T Managed Remote Back-up Services</li> </ul>	\$62.00 per Site



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	111-140	36 mos/ per Site	• AT&T Managed Remote Back-up Services	\$68.00 per Site
	Add'l 100 GB		• Add'l GB (per 100GB)	\$35/per each add'l 100GB

**Optional Managed Remote Back-up Services (One-Safe Place): (new)**

*One Safe Place	Data Size (GB)	Term (Months)	Platform/Services	Pricing (Monthly Recurring Charge (MRC))
	5-20	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$29.00 per Site
	21-49	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$32.00 per Site
	50-89	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$38.00 per Site
	90-110	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$62.00 per Site
	111-140	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$68.00 per Site
	Add'l 100 GB		• Add'l GB (per 100GB)	\$35/per each add'l 100GB

**4.0 Termination**

Termination for Exhibit 1 will be replaced with termination per Section 21 of Exhibit 6 herein.



## EXHIBIT 2: AT&T NETWORK INTEGRATION ACTIVE DIRECTORY SERVICES SOW

Unless detailed below, all remaining sections and content in Exhibit 2 of Change Order GBS15200-48 executed December 28, 2021 remain in effect.

“**Minimum Payment Period**” means the sixty (60) months Customer or an Eligible Participant is required to pay recurring charges for the Service. The Minimum Payment period for an Eligible Participant begins on the commencement date of the applicable initial minimum term.

“**SOW Term**” means sixty (60) months after the Effective Date of this Change Request until all Services provided hereunder expire or are otherwise terminated according to the terms herein. Each new Eligible Participant will execute a Participation Agreement with an initial minimum term.

### 1. Scope of Services

No changes to Exhibit 2 from Change Order GBS15200-48 executed on December 28, 2021.

### 2. Schedule of Charges:

The pricing in tables below will replace the pricing in Exhibit 2 of Change Order **GBS15200-48** executed **December 28, 2021**. Pricing in the table will become effective once an Eligible Participant has completed Site Acceptance to the Managed Fortinet Solution. For NHOPs, pricing for Active Directory will be effective as defined in Exhibit 6 upon Site Acceptance.

Pricing not detailed below remain the same from Change Order GBS15200-48 executed on December 28, 2021.

Schedule 1	# of Servers & Workstations	Term (Months)	Platform/Services	Pricing Monthly Recurring Charge
Base Rate (1-6 Devices)	Up to: - 1 Server - 5 PC's -10 Users	60 mos/ per Site	<ul style="list-style-type: none"> <li>Active Directory Deployment</li> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> <li>Tier 2/3 Helpdesk Support</li> </ul>	\$17.75 per Site
Additional PC's or Servers			<ul style="list-style-type: none"> <li>Managed MS Active Directory</li> <li>Automated Password Reset</li> </ul>	\$2.00 per device
Add'l Users	N/A		<ul style="list-style-type: none"> <li>FastConnect Resources to assist with initial infrastructure deployment, security policies and managed security conversion/baselining activities</li> </ul>	\$1.25 per User

### 3. Termination for Eligible Participants

Termination for Exhibit 1 will be replaced with termination per Section 21 of Exhibit 6 herein.



## EXHIBIT 3: AT&T NETWORK INTEGRATION REMOTE BACK-UP SERVICES SOW

Unless detailed below, all remaining sections and content in Exhibit 3 of Change Order GBS15200-48 executed December 28, 2021 remain in effect.

“Minimum Payment Period” means the sixty (60) months. All existing executed Participation Agreements would require execution of a Change Order to purchase Managed Fortinet Solution as defined in Exhibit 6. The Minimum Payment period for an Eligible Participant begins on the commencement date of Site Acceptance of the Managed Fortinet Solution.

“SOW Term” means sixty (60) months after the Effective Date of this Change Request until all Services provided hereunder expire or are otherwise terminated according to the terms herein. Each new Eligible Participant will still execute a Participation Agreement with an initial minimum term.

### 1.0 Service Hours

The Services provided hereunder shall be performed Monday through Friday, 9:00 a.m. to 5:00 p.m., local time, excluding designated AT&T holidays (“Normal Business Hours” or “NBH”), unless otherwise noted herein.

AT&T Designated Holidays in the US	Date Observed
New Year’s Day	January 1
Martin Luther King Jr. Day	January 17
Presidents’ Day	February 21
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Day	December 25

AT&T designated holidays in Canada vary by province and region, and AT&T will adhere to the holiday schedule for the applicable province in Canada.

Hourly rates for Services provided after NBH (aNBH) are set forth below; AT&T will invoice Customer at this rate for any such Services requested in writing by Customer.

### 2.0 Schedule of Charges

The pricing in tables below will replace the pricing in Exhibit 3 of Change Order **GBS15200-48** executed **December 28, 2021**. Pricing in the table will become effective once an Eligible Participant has completed Site Acceptance to the Managed Fortinet Solution. For NHOPs, pricing for Active Directory will be effective as defined in Exhibit 6 upon Site Acceptance.

Pricing not indented as being impacted are unchanged from Change Order GBS15200-48 executed on December 28, 2021.

Schedule 1	Data Size (GB)	Term (Months)	Platform/Services	Pricing (Monthly Recurring Charge (MRC))
	5-20	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$29.00 per Site
	21-49	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$32.00 per Site
	50-89	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$38.00 per Site
	90-110	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$62.00 per Site
	111-140	60 mos/ per Site	• AT&T Managed Remote Back-up Services	\$68.00 per Site
Optional Pricing			Services	Pricing (Non-Recurring Charge (NRC))





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<b>USB Restore</b>			<ul style="list-style-type: none"><li>Unreturned USB Drive</li></ul>	\$170.00
<b>USB Shipping</b>			<ul style="list-style-type: none"><li>Shipping – Same Day (Next available flight)</li><li>Shipping – Next Day (by 9AM)</li></ul>	\$300.00 \$60.00
<b>Data Return upon Termination</b>			<ul style="list-style-type: none"><li>Data Return on Termination</li></ul>	\$400.00



## EXHIBIT 4: AT&T NETWORK INTEGRATION HOSTED SECURITY CPE SOW

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Unless detailed below all existing sections and content in Exhibit 4 of Change Order GBS15200-48 executed December 28, 2021 remain in effect.

“**Minimum Payment Period**” means the sixty (60) months. All existing executed Participation Agreements would require execution of a Change Order to purchase Managed Fortinet Solution as defined in Exhibit 6. The Minimum Payment period for an Eligible Participant begins on the commencement date of Site Acceptance of the Managed Fortinet Solution.

“**SOW Term**” means sixty (60) months after the Effective Date of this Change Request until all Services provided hereunder expire or are otherwise terminated according to the terms herein. Each new Eligible Participant will execute a Participation Agreement with an initial minimum term of sixty (60) months.



## EXHIBIT 5: AT&T REMOTE ACCESS SERVICES DESCRIPTION

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No changes to Exhibit 5 from Change Order GBS15200-48 executed December 28, 2021.



## EXHIBIT 6: AT&T NETWORK INTEGRATION SERVICES MANAGED FORTINET SOLUTION SOW

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### 1. Introduction

This SOW between **AT&T Corp.** (AT&T) and **Six Continents Hotels, Inc.** (Customer) is attached to the Change Request and made a part thereof upon execution.

AT&T reserves the right to withdraw this SOW or modify the prices and any other terms and conditions, including, but not limited to, any section of this SOW if: (i) the SOW is not signed by Customer and AT&T by **December 9, 2022** and/or (ii) the engagement does not commence within thirty (30) calendar days of the Effective Date.

### 2. Scope of Work

#### 2.1 Services

AT&T will deploy and manage a Fortinet solution including providing AT&T Equipment to Eligible Participant sites to locations designated by Customer ("Site(s)") located in the US and Canada (Managed Fortinet Solution). Services and/or Equipment not specifically provided for hereunder are outside the scope of this SOW.

#### 2.2 Purchased Equipment

Upon execution hereof, Customer shall purchase the Purchased Equipment listed in Appendix A (Purchased Equipment List).

Customer or its Affiliate may issue Customer Purchase Orders to place a subsequent Order based on a quote provided by AT&T hereunder (AT&T Quote). The following language (with the appropriate purchasing entity and dates filled in) must be added in order for AT&T to accept Customer's Purchase Order:

*"This PO is issued by XXX (Customer) pursuant to the Change Request dated XXX."*

### 3. Term

This SOW shall have a term of **sixty (60) months** (Term). The Project will commence thirty (30) calendar days after Effective Date of this Change Request.

### 4. Minimum Site Commitment

Customer will commit to installing a minimum of **four-thousand** (4,000) Eligible Participants (Minimum Site Commitment) deployed with AT&T Equipment as defined herein, within twenty-four months (24) from the Effective Date of this Change Request. At the end of the twenty-four months (24), should Customer not achieve the Minimum Site Commitment, AT&T will charge Customer the delta between Minimum Site Commitment and the actual number of installed Eligible Participants locations multiplied by AT&T Equipment monthly rate and sixty (60) months.

### 5. Project Management

In support of the Services provided to Customer, AT&T will:

- a. Assign a designated AT&T Project Manager (AT&T PM) to interface directly with Customer Project Manager and serve as the primary interface to Customer organization.
- b. Conduct a formal project kick-off meeting to include:
  1. Introduction of project participants;
  2. Discuss project team roles and responsibilities;
  3. Review the project objectives;
  4. Provide an overview of methodology;
  5. Confirm the scope of services and data sources;
  6. Establish escalation process for project delays;
  7. Develop a preliminary schedule of activities.
- c. Provide a Project Timeline draft for Customer review. Customer and AT&T will mutually agree to the Project Timeline.
- d. Participate and provide status and project planning meetings as mutually agreed.
- e. Develop, manage and track project schedules and all Change Control events.
- f. Develop and maintain any contact list, communication plan as well as track and monitor prioritized action items and issue lists as needed.
- g. Coordinate scheduling with Customer.

### 6. Solution Engagement

AT&T's engagement team will work closely with Customer designated points of contact to implement the Service (Solution Engagement). During this Solution Engagement phase, AT&T and Customer will finalize team members, review the scope of the Service, and mutually agree upon the engagement roles, goals, objectives, requirements, deliverables, timelines, and



responsibilities. AT&T's engagement team will be available during Normal Business Hours (as defined in Section 19) via telephone and e-mail. AT&T will deliver engagement activities from US-based Security Operations Center facilities.

Solution Engagement activities will include the following:

- a. Knowledge Transfer
  1. Meet (by telephone conference) with Customer stakeholders to review system and installation documentation, made available by Customer or the applicable manufacturer, to facilitate knowledge transfer and managed services deployment.
  2. Document operational processes and Customer institutional knowledge into a Customer specific Operational Readiness Document (ORD). For purposes of this SOW, ORD means the initial operational readiness document prepared by AT&T with Customer's assistance, as amended and supplemented from time to time by Customer and AT&T and includes all knowledge-based documents and other supporting documents created by AT&T with respect to the Service.
- b. Confirm AT&T Equipment (Eligible Participant locations) and Purchased Equipment (Customer Data Centers).

#### 7. AT&T Equipment Configuration and Shipping Services

AT&T will organize configuration efforts to stage and ship AT&T Equipment according to the deployment schedule developed by AT&T and Customer. The configuration team will oversee and validate the automated application of device configurations as provided by the Customer FortiManager process.

AT&T Equipment Configuration and Shipping Services are as follows:

- a. The required information for devices targeted for configuration the following week will be validated.
- b. Internal orders are created to move the devices to the configuration department according to the deployment schedule.
- c. Each piece of AT&T Equipment will be connected to an internet facing network switch prior to initial power on.
- d. Each piece of AT&T Equipment will be powered and given an appropriate time to complete the FortiManager process.
- e. Update each device to current AT&T approved firmware.
- f. Each piece of AT&T Equipment will be accessed via a defined management interface to validate that the expected configuration has been applied.
- g. AT&T will validate IP addressing and serial number per device against Customer provided documentation.
- h. AT&T will apply an AT&T provided asset label at the completion of configuration ahead of shipping.
- i. AT&T will re-package each configured, asset tagged device in original packaging and then box and label for shipping to sites.
- j. AT&T will perform a final validation of Serial Number, Asset Tag, Physical Address, and IP Address before each device is sent to shipping for delivery to Eligible Participant locations.
- k. Orders will be shipped via 3–5-day ground, with deliveries on Monday through Saturday of each week.

#### 8. Advance Replacement

- a. If the AT&T Security Operations Center or Customer determines AT&T Equipment requires replacement as a defective device, AT&T will initiate an Advance Replacement process, at its sole expense, that require the following information to process the request:
  - i. Site Address;
  - ii. Defective Device Serial Number;
  - iii. Replacement Device Serial Number.
- b. After AT&T initiates the Advance Replacement process where necessary, AT&T will perform the following activities, at its sole expense, to prepare a new piece of AT&T Equipment for configuration and shipment:
  - i. AT&T will create an order to pull a new piece of AT&T Equipment from inventory and send device for configuration.
  - ii. AT&T will apply the last known configuration for the impacted piece of AT&T Equipment.
  - iii. AT&T will apply an asset label and prepare the device for shipping.
  - iv. Requests received by 12:00 (Noon) EST (NBH) will be shipped the following business day by 6:00 PM.
  - v. Requests received after 12:00 (Noon) EST (NBH) will be shipped on the 2nd business day by 6:00 PM.
  - vi. Advanced Exchange requests will be shipped via Overnight delivery.
  - vii. AT&T will provide a pre-printed return label for the Eligible Participant location to return the defective device.
  - viii. Once the defective device is received from the Eligible Participant location, AT&T will coordinate the appropriate return process with Fortinet to replenish inventory.

#### 9. Installation Support – AT&T Equipment

AT&T will complete the following on-site and remote installation activities for the Eligible Participant location:

- a. AT&T Project Management will confirm that the shipment of AT&T Equipment has arrived at the Eligible Participant site before scheduling an AT&T Field Services technician. AT&T Equipment for this scope of this SOW includes one (1) Fortinet 61F or equivalent device.



- b. Unpack, inventory and inspect AT&T Equipment.
- c. Install/rack mount/place and connect the AT&T Equipment.
  - 1. Customer must ensure installation location of the AT&T Equipment is located at the agreed upon demarcation points.
- d. Patch cord placement.
- e. AT&T Field Technican will confirm Serial Number on AT&T Equipment before starting site migration.
- f. AT&T Field Technican will work with AT&T Security Operations Center (SOC) which will provide remote technical support to complete configuration installation process for one (1) piece of AT&T Equipment including:
  - 1. Validating AT&T Equipment is connected to Customer provided circuits and the AT&T Equipment can be reached by the SOC.
  - 2. Set up managed services alerting for the AT&T Equipment based on defined thresholds set forth in the ORD.
  - 3. Test and verify AT&T Equipment visibility and access from the SOC.
  - 4. Troubleshoot and replace hardware failures relating to the installation of the AT&T Equipment as provided.
  - 5. AT&T Field Technican and SOC will confirm Customer defined Eligible Participant migration criteria are met via Site Acceptance process as defined in Section 22.
    - i. Customer site will be transitioned back to existing AT&T VPN Gateway (ANIRA) solution if Eligible Participant applications do not function per defined migration criteria.
  - 6. AT&T Field Technican will deliver existing ANIRA device to Manager on Duty (MOD).
    - i. AT&T standard disconnect and return process for existing ANIRA device will be followed.
- b. AT&T has included a minimum of two (2) hours of on-site Field Technican support.
  - 1. If additional hours are required to complete installation, AT&T will charge an Additional Hourly Rate billed in fifteen (15) minute increments as defined in Section 23.
- c. On-site installation must be scheduled five (5) days in advance of AT&T Field Technican resources arriving at Customer location.
- d. AT&T on-site installation support has been scoped to occur during Normal Business Hours. If installation support is required outside of Normal Business, AT&T would seek to define scope with Customer and capture via Change Order process.

#### 10. AT&T Security Operations Center

After an Eligible Participant site has completed Site Acceptance, AT&T will transition the location to proactive monitoring and management support. The services will be provided by the SOC and are available and accessible as follows:

- a. Availability and Accessibility
  - 1. SOC resources are available 24x7x365 via email and telephone at the AT&T email addresses and SOC telephone number specified in the ORD.
  - 2. SOC resources will support technical resources within the Customer environment, such as systems administrators, network architects, and service desk technicians.
- b. Support Requests
  - 1. Customer must provide the following information to open a trouble ticket with the SOC:
    - i. Contact name and telephone number of the person making the request.
    - ii. Device name and location.
    - iii. Site location address of AT&T Equipment and/or Purchased Equipment to be serviced.
    - iv. Description of the problem.
- c. Upon detection of an event causing an alarm or a ticket, AT&T will:
  - 1. Create a ticket in ticketing system.
  - 2. Provide electronic and/or verbal notification to Customer's defined contact, as provided in the ORD.
  - 3. Conduct diagnostic tests to investigate failure.
  - 4. Depending on the event type, AT&T may refer the event to Customer's defined contact, which will either contact the maintenance provider or track the problem to resolution and update the AT&T ticket status.
  - 5. Provide remote assistance and coordinate any remote activity with Customer's on-site technical resources, such as system administrators, network architects, and service desk technicians.
  - 6. Once notified by Customer that the AT&T Equipment or Purchased Equipment problem is repaired, test for visibility, monitor for stability, and verify with Customer that the AT&T Equipment or Purchased Equipment is up and running before closing a ticket.
  - 7. The following steps outline the process for receiving tickets from Customer:
    - i. Customer creates one or more email addresses within the Customer environment associated with the Services, for actions such as requests, changes, incidents, and problems.
    - ii. The final process is mutually agreed upon by AT&T and Customer in the ORD during the Solution Engagement phase.
    - iii. Customer configures its ticketing system to allow email-to-ticket creation and updates.
    - iv. Create corresponding addresses in its systems that map to the addresses created by Customer.
    - v. AT&T will open, update, and close tickets for which AT&T is responsible via email. AT&T will not be responsible for integrating with Customer's ticketing tool to the extent it cannot integrate as a result of limitations in Customer's or AT&T's respective systems.



8. AT&T's standard integration to Customer ticketing services is accomplished by email services and ticket field mapping. Any other integration required or requested by Customer, such as via API, is not within the scope of this SOW and must be scoped separately. Applicable Professional Services costs will be calculated and charged separately and will require a Change Order.

**11. Managed AT&T Equipment (FortiGate 61F or equivalent)**

AT&T will provide administration, maintenance, and support for the management of AT&T Equipment at Eligible Participant locations as follows:

- a. Availability Monitoring
  1. Provide 24 x 7 x 365 fault and availability monitoring.
  2. Hardware failures.
  3. Loss of visibility.
  4. Failure to respond.
  5. Change in status.
  6. Send requests to AT&T Equipment for response.
- b. Basic Change Administration
  1. Support basic changes to AT&T Equipment configurations for normal day-to-day operations (Basic Changes), upon request including:
    - i. Firewall Policy modifications and deletions.
    - ii. IP address changes.
    - iii. Static Route changes.
    - iv. SNMP, NTP, and DNS changes to network devices.
    - v. Device level password changes to allow login or administration of the device.
    - vi. Interface modifications for bandwidth or circuit changes to the device.
  2. The quantity of Basic Changes per month included and covered by this SOW shall be based on the total number of AT&T Equipment devices in service during such month. The quantity of Basic Changes per month included and covered by this service shall be five (5) percent based on the total number of AT&T Equipment devices in service during such month.
  3. The quantity of Global Changes per month included and covered by this service shall be one (1) Global change per month. A Global Change is defined as change in policy or configuration which is made to all AT&T Equipment devices in service at the time of the request.
  4. Changes not listed above, or are more than two hours in duration (Advanced Changes), are considered out of scope and will be scoped and delivered via Advanced Security and Change Engineering services in Section 15 of Exhibit 6 herein.
- c. Incident Response

"Incident" for the purposes of this Change Request is a Customer or Eligible Participant reported or AT&T monitored activity which could include a security event like malware, ransomware or some other event that might impact the Customer's or Eligible Participant's ability to perform normal operating functions such as guest check-in/check-out, room reservations, and any and all other relevant functions.

1. Investigate reported attacks per Customer request.
  2. Provide recommendations for containment and remediation efforts.
- d. Identify and troubleshoot issues and track resolutions.
  - e. Confirm that all components are configured, running, and operating as needed.
  - f. Monitor and respond to alerts generated by AT&T Equipment devices.
  - g. Track and administer changes in accordance with the Customer change control process set forth in the ORD.
  - h. Proactive Threat Blocking
    1. AT&T will provide to Customer a curated threat feed populated with known malicious indicators of compromise, including IP addresses and domain names.
    2. Threat feed shall be in a format compatible with the firewall data sources for which Customer has purchased CyGuard™ Firewall Security service.
    3. Firewall data sources must have a "dynamic/external block list" feature.
    4. Customer must take the following actions to activate proactive threat blocking service:
      - i. Connect AT&T provided threat feed to subscribed firewalls;
      - ii. Create firewall policies to utilize threat feed;
      - iii. If required, Customer can tailor policies to allow connectivity to specific indicators of compromise included in the AT&T threat feed.
  - i. Handle platform upgrades as follows:
    1. If Customer experiences problems due to a manufacturer defect or a failure to operate substantially in accordance with the manufacturer's specifications, or the manufacturer discontinues support, and Customer has services or



applications impacted due to a version of a software platform running on the Service, AT&T will perform Customer-requested available upgrades.

2. If Customer wants to add features and functionality as enabled by a new version of a software platform, Customer will engage AT&T through the Change Management Procedure and Customer's internal network architecture team to collectively review possible design impact, risk mitigation, and the overall installation plan.
3. AT&T will not proactively upgrade the software platform, as this may inject problems into an otherwise stable platform. However, as major software platform hot fixes, patches, and upgrades to address security vulnerabilities are released, AT&T will notify Customer regarding the hot fix, patch, or upgrade. Customer is the ultimate "owner" of (i.e., is solely responsible for) all software platform upgrade decisions and must approve all upgrade plan implementation.
4. AT&T assumes no responsibility for, and makes no representations or warranties regarding, any vendor-provided patches, updates, hot fixes, or security content.

## 12. Managed Customer Data Centers

AT&T will provide administration, maintenance, and support for the management of Purchased Equipment located in AT&T or Customer provided data centers devices as follows:

- a. Availability Monitoring
  1. Provide 24x7x365 fault and availability monitoring for the following:
    - i. Hardware failures.
    - ii. Loss of visibility.
    - iii. Failure to respond.
    - iv. Change in status.
    - v. Send requests to Purchased Equipment for response.
- b. Monitor performance
  1. Baseline, monitor, and trend critical error and performance monitoring metrics and generate alerts when predefined thresholds are exceeded.
  2. Alert Areas - based on capability and scope (i.e., Hard Drive Health, RAM Health, Memory Utilization, Fan Management).
  3. Alert Types - based on capability and scope (i.e., Memory/Available Mbytes, Processor % Processor Time, Bytes total/sec).
- c. Change Administration
  1. Support changes to device configurations for normal day-to-day operations, upon request including:
    - i. Firewall Policy modifications and deletions;
    - ii. IP address changes;
    - iii. Static Route changes;
    - iv. SNMP, NTP, and DNS changes to network devices;
    - v. Device level password changes to allow login or administration of the device;
    - vi. Interface modifications for bandwidth or circuit changes to the device.
- d. Incident Response
  1. Investigate reported attacks.
  2. Provide recommendations for containment and remediation efforts.
- e. Identify and troubleshoot issues and track resolutions.
- f. Confirm that all components are configured, running, and operating as needed.
- g. Monitor and respond to alerts.
- h. Track and administer changes in accordance with the Customer change control process set forth in the ORD.
- i. Standard Reporting for this service:
  1. Monthly Reporting
    - i. Incident Ticket Volume;
    - ii. Change Request Volume;
    - iii. Open and Close summary;
    - iv. Compliance to Service Level Objectives.
  2. Quarterly Reporting
    - i. Incident Ticket Volume Trend Analysis;
    - ii. Change Request Volume Trend Analysis;
    - iii. Open and Close summary Analysis;
    - iv. Compliance to Service Level Objectives on monthly basis;
    - v. Summary of Root Cause Analysis in Previous Quarter;
    - vi. Technology Recommendations;
    - vii. Security Summary Analysis and Recommendations.
- j. Proactive Threat Blocking
  1. AT&T will provide a curated threat feed populated with known malicious indicators of compromise, including IP addresses and domain names.





2. Threat feed shall be in a format compatible with the firewall data sources for which Customer has purchased CyGuard™ Firewall Security service.
  3. Firewall data sources must have a "dynamic/external block list" feature.
  4. Customer must take the following actions to activate proactive threat blocking service:
    - i. Connect AT&T provided threat feed to subscribed firewalls;
    - ii. Create firewall policies to utilize threat feed;
    - iii. If required, Customer can tailor policies to allow connectivity to specific indicators of compromise included in the AT&T threat feed.
- k. Handle platform upgrades as follows:
1. If Customer experiences problems due to a manufacturer defect or a failure to operate substantially in accordance with the manufacturer's specifications, or the manufacturer discontinues support, and Customer has services or applications impacted due to a version of a software platform running on the Service, AT&T will perform Customer-requested available upgrades.
  2. If Customer wants to add features and functionality as enabled by a new version of a software platform, Customer will engage AT&T through the Change Management Procedure and Customer's internal network architecture team to collectively review possible design impact, risk mitigation, and the overall installation plan.
  3. AT&T will not proactively upgrade the software platform, as this may inject problems into an otherwise stable platform. However, as major software platform hot fixes, patches, and upgrades to address security vulnerabilities are released, AT&T will notify Customer regarding the hot fix, patch, or upgrade. Customer is the ultimate "owner" of (i.e., is solely responsible for) all software platform upgrade decisions and must approve all upgrade plan implementation.
  4. AT&T assumes no responsibility for, and makes no representations or warranties regarding, any vendor-provided patches, updates, hot fixes, or security content.

### 13. Hosted Infrastructure Service

The following will be the scope provided as part of Hosted Infrastructure Service:

- A. AT&T will install and provide secure protected data center environment that includes rack, power, and space to host all Purchased Equipment related to this environment.
1. For this SOW, Hosted Infrastructure Services will install and provide support for a pair of Purchased Equipment devices, FortiManager, and FortiAnalyzer. All design services will include support for High Availability design for all devices identified. Pricing in Section 23.
- B. Data center hardware and software will be monitored 24x7x365 for hardware and software faults.
- C. Data center hardware and software will be managed 24x7x365.
- D. There will be a thirty (30) minute response to received critical alerts.
- E. There will be a four (4) hour response to received non-critical alerts.
- F. Supplier will provide twenty-four (24) hour next business day resolution to any Supplier provided hardware failures.

### 14. Managed FortiAnalyzer/FortiManager

For this SOW, FortiManager and FortiAnalyzer will be considered Purchased Equipment.

AT&T will provide Hosted Infrastructure Services as defined in Section 13 for FortiAnalyzer and FortiManager.

#### AT&T will co-manage with Customer FortiManager and FortiAnalyzer as follows:

- a. Perform general tools administration to manage the software platforms in support of the UTM Management scope.
- b. Confirm data sources are configured in AT&T Equipment or Purchased Equipment.
- c. Tune alerts from data sources as part of the onboarding process defined in the ORD.
- d. Support Customer investigation requests by providing raw event information as available within AT&T Equipment or Purchased Equipment.
- e. Produce an after-action report for investigated incidents to the extent of the available data within AT&T Equipment or Purchased Equipment, upon Customer's written request to AT&T's ticketing system within ten (10) business days of the completion of the incident ticket.
- f. Correlate alerts between Data Sources:
  - i. Compliance & Log Management.
- g. Notify Customer contact specified in the ORD with event information and investigation details pertaining to alerts detected by AT&T Equipment or Purchased Equipment. AT&T and Customer will define the Customer escalation contact during the onboarding process and document it in the ORD.
- h. Perform patch management to update managed software to manufacturer recommended version to support managed estate of devices.
- i. Encrypt and store all logs for archive data, per the capabilities and configuration of the AT&T Equipment or Purchased Equipment. For purposes of this SOW, "archive data" means data that AT&T must restore from archive and then retrieve.



**15. Advanced Security and Change Engineering Service**

Advanced Security and Change Engineering service includes the design, engineering, development, scripting, or writing of Advanced Changes by AT&T on behalf of Customer.

Advanced Configuration Design and Change Engineering are included based upon block(s) of hours determined by Customer and/or Customer as defined in the chart below. Monthly pre-paid rates are based on Normal Business Hours (NBH). Additional charges apply if hours are used after Normal Business Hours (aNBH) or on AT&T designated holidays.

Advanced Security and Change Engineering – Monthly Prepaid Block of Hours	Monthly Pre-Paid Block Charge	Additional Charge per Hour - AFTER NORMAL SERVICE HOURS & ON WEEKENDS	Additional Charge per Hour – Holiday Hours
20 Hours	\$5,500.00	\$140.00	\$275.00
40 Hours	\$10,500.00	\$130.00	\$260.00

Advanced Security and Change Engineering Hours purchased must be used within a twelve (12) month period from the month of purchase. Unused hours will expire at the end of each month after 12 months. AT&T will provide Customer with a monthly report documenting the number of hours used in the previous calendar month and the remaining hours in the block. Buyer may purchase additional 20 hour blocks on an as-needed basis. Advanced Change Engineering hours are performed during Normal Business Hours.

- A. Advanced Changes included in the hours per month per above consist of:
  - 1. Creation of new configurations for devices.
  - 2. Advanced firewall changes, network re-addressing:
    - i. New Global Policy Creation;
    - ii. Global enablement of new UTM features (Example: content filtering);
    - iii. Advanced Routing and Software Defined Network architecture and changes;
    - iv. Other advanced network design and configuration to the global deployed infrastructure.
  - 3. Reconfigurations include any situation where AT&T is required to create new configurations (i.e. new technology roll out, network upgrade or network reconfiguration).
  - 4. Hardware upgrades.
  - 5. New hardware installation (not including warranty replacement).
  - 6. Other complex changes requiring off-hours support, changes estimated to take greater than 2 hours, or project management.
  
- B. For Advanced Configuration change requests, AT&T will:
  - 1. Request all change requests are submitted to the SOC Service Manager;
  - 2. Ensure all Advanced Changes will be made only upon Customer authorization;
  - 3. Attend, but not coordinate, mutually agreed upon change board meetings;
  - 4. Verify that all required information and approvals to successfully complete the change are included with the change request. If there are any deficiencies, AT&T will request the missing information from the change requestor.
  - 5. Upon acceptance of a change request, AT&T will:
    - a. Perform change engineering, configuration design and development to include:
      - i. Review the request and identify the necessary technical information for the requested change.
      - ii. Develop configuration files required for the change.
      - iii. Develop necessary implementation plans.
      - iv. Develop necessary test plans.
      - v. Complete risk assessments.
      - vi. Complete required Customer documentation to adhere to the Customer’s change control process.
      - vii. Schedule the change according to the Customer’s change management windows.
      - viii. Attend change meetings to discuss and coordinate changes.
      - ix. Implement change during the Customer’s change management windows.
      - x. Update the relevant configuration inventory information and contact the Customer to give notice of successful completion.
      - xi. Implement the changes during the Customer’s change windows.

**16. Service Level Objectives (SLOs)**

Beginning on the Site Acceptance date, AT&T will support with the SLOs set forth in the following table. SLO reports will be delivered monthly to Customer.



Network Monitoring and Management Operations Service Level Objectives

PRIORITY LEVEL	SERVICE LEVEL RESPONSE TIME OBJECTIVES	OBJECTIVE DESCRIPTION	DEFINITION
(P1) Critical	85% < 30 Minutes	Detect and respond to Priority 1 (P1) events on AT&T Equipment and Purchased Equipment	An urgent situation in which the Managed Fortinet Solution is inoperable or fails catastrophically, causing a critical impact on Customer's operations and for which there is no workaround. SOC shall continue to work on the problem while it remains unresolved and no workaround has been provided. AT&T and Customer are willing to commit full-time resources around the clock to resolve the situation.
(P2) High	85% < 60 Minutes	Detect and respond to Priority 2 (P2) events on AT&T Equipment and Purchased Equipment	A serious situation in which the Managed Fortinet Solution is not fully operational, causing a major impact on a portion of Customer's business operations (e.g. severe performance degradation or loss of some functionality). AT&T and Customer are willing to commit full-time resources during business hours to resolve the situation.
(P3) Medium	85% < 4 hours	Detect and respond to Priority 3 (P3) events on AT&T Equipment and Purchased Equipment	A non-critical situation in which Managed Fortinet Solution produces incorrect results, or a feature is inoperative, causing a minor impact on Customer's business operations (e.g., some performance degradation or network functionality is impaired but most business operations continue). AT&T shall make reasonable efforts to resolve the problem or provide a workaround as agreed upon between the parties.

Change Administration Service Level Objectives

Service Area	Service Level Name	Service Level Description	Minimum Service Level Performance	Measurement Period
Managed Security	Change Requests - Emergency	Completion within 60 minutes per device or per console in case of a group of assets managed under a single console, following approval.	>=95%	Monthly
Managed Security	Change Requests - High Priority	Completion of high priority incident prevention change request within 24 hours following approval	>=95%	Monthly



Managed Security	Change Requests - Standard	Completion of standard incident prevention change request within 3 business days following approval	>=95%	Monthly
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**Service Level Objective Exceptions**

AT&T will not be responsible for failure to meet any SLO metric to the extent that the failure is affected or caused in whole or in part by (a) Customer's failure to perform its material obligations, as set forth in this SOW, or (b) any other cause beyond AT&T's reasonable control. The period of time that services are interrupted due to the conditions listed below will be excluded from SLO performance calculations for relevant cases:

1. Customer's material failure to meet its obligations set forth in this SOW for the applicable Service;
2. Problems resulting from non-AT&T provided components (hardware/software/network/maintenance) for which Customer or any other party is responsible.
3. Problems caused by the actions or inactions of Customer's personnel, other third party providers to Customer, or Customer's infrastructure, including, but not limited to, misconduct, negligent acts or omissions, inaccurate or incomplete information, modifications made to the Services, AT&T Equipment, Purchased Equipment, or data sources, or any unauthorized modifications made to any managed hardware or software devices by Customer or any of its agents, employees, contractors, consultants, end users, or any other third parties acting on behalf of Customer.
4. Customer's material impediment to meet the SLOs including but not limited to disabling AT&T's access to Purchased or AT&T Equipment managed by AT&T or providing incorrect information to AT&T creating delays in responsiveness.
5. Scheduled maintenance, alteration, or implementation.
6. Customer tool latency issues or planned or unplanned outages.
7. Software manufacturer "bug" related problems requiring third-party involvement.
8. Data restoration.
9. Virus attacks unrelated to the fault or negligence of AT&T.
10. Customer provides inaccurate or incomplete information such as incorrect location or IP addresses or machine names, etc., or does not provide the required information that was previously agreed upon and defined in the ORD.
11. All Hands-on-Deck type of incidents, which are defined as events where all or a substantial portion of AT&T staff is required to handle a Customer emergency issue.
12. Any transport or appliance faults.

**17. Customer Responsibilities:**

To manage the activities outlined herein on time and within the pricing provided, Customer assigned roles and responsibilities must be fulfilled effectively. Customer is responsible for the following:

- a. Provide overall Customer Project contact and contact information to act as the primary interface for the AT&T Project contact.
- b. Provide local site contact name, telephone number, address, and email for both a primary and backup local site contact. This information is to be provided to the AT&T resource each Site.
- c. Keep AT&T informed of any information or changes that may include but not exclusive to contact information by Eligible Participant, network design modifications, network IP information, security policy, etc. which may affect AT&T's performance of Services
- d. Provide AT&T with reasonable access to Customer premises at normal business hours or at predetermined time and place.
- e. Customer shall provide office space to include desks, chairs, as well as access to printers, copiers and phone lines while on-site at no charge, if needed AT&T may conduct the research and other work from a remote location, if required.
- f. Provide a mutually agreed upon sign-off format as concurrence of Site Acceptance as defined in Section 22 for each Eligible Participant location where AT&T has provided services under this SOW.
- g. The Customer Project contact/Single Point of Contact shall have decision-making authority regarding day-to-day management of the project.
- h. Provide AT&T Project contact a minimum of five (5) business day notice for scheduling AT&T Equipment installations and cancellation/rescheduling with less than five (5) business days.



- i. Identify desired AT&T Equipment placement. Customer must ensure appropriate AT&T Equipment racks are located at the agreed upon demarcation points.
- j. As specified for each Eligible Participant location, ensure that proper environmental conditions specified by product manufacturer are in place. Customer assumes sole responsibility for the condition and/or readiness of cable plant in place prior to the beginning of the work or installed by a Customer partner other than AT&T in support of the work covered by this SOW. This includes its ability to transport or sustain proper electrical and optical data signals as required by the operational specification requirements for the AT&T Equipment. Verify all distance and interference limitations of interface cables to be used.
- k. Interface with Customer's network vendors to make network changes required to make the data/voice network operational.
- l. Assume sole responsibility for all existing data files and/or file structures, their storage, backup, and recoverability.
- m. If Customer chooses to provide the Purchased Equipment configurations, AT&T must receive them at least ten (10) business days prior to an agreed Purchased Equipment installation date at Customer Site.
- n. Customer takes full responsibility and liability for the accuracy of all relevant information supplied to AT&T by Customer and/or its representatives.
- o. Provide AT&T with access rights and passwords to AT&T Equipment and Purchased Equipment covered within this service;
- p. Identify authorized nominee(s) to request Configuration Design and Change Engineering Management action or information.
- q. Coordinate and attend all change board meetings.

**18. Project Governance**

Either party must submit change requests to contractual documents in writing via the sample at Appendix B to this SOW. The party requesting the change must submit a written request to the other party and the receiving party shall issue a written response within five (5) business days of the receipt of the request, including whether the receiving party accepts or rejects the request and/or any changes to the terms and conditions. Once agreed both parties must execute the document in Appendix B.

**19. Normal Business Hours**

The Services provided hereunder shall be performed Monday through Friday, 9:00 a.m. to 5:00 p.m., local time, excluding designated AT&T holidays (Normal Business Hours or NBH), unless otherwise noted herein.

AT&T Designated Holidays in the US	Date Observed
New Year's Day	January 1
Martin Luther King Jr. Day	January 17
Presidents' Day	February 21
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Day	December 25

AT&T designated holidays in Canada vary by province and region, and AT&T will adhere to the holiday schedule for the applicable province in Canada.

Hourly rates for Services provided after NBH (aNBH) are set forth within Section 23 AT&T will invoice Customer at this rate for any such Services requested in writing by Customer.

**20. Customer Advocacy**

Customer Advocacy Services are normally provided Monday through Friday, 8:00 a.m. to 5:00 p.m. ET time on each Business Day (Normal Business Hours).

Standard Customer Advocacy Services
<b>BusinessDirect, Business Center / eBus / Portal / eTools</b>
• BusinessDirect/Business Center registration & Customer education
<b>Provisioning/Service Delivery</b>
• Order escalations
<b>Service Assurance - Maintenance (Trouble Ticket/Service Impacting)</b>
• Routine trouble ticket management
• Exception trouble ticket escalation management
• Chronic escalation management



<ul style="list-style-type: none"> <li>• Post incident review / reason for outage</li> <li>• Planned maintenance notification</li> </ul>
<b>Billing</b>
<ul style="list-style-type: none"> <li>• Billing dispute escalation</li> </ul>
<b>Account Management</b>
<ul style="list-style-type: none"> <li>• Customer Advocacy - Develop strategic relationship &amp; offer recommendations to achieve Customer's business goals in conjunction with sales teams.</li> <li>• Customer Service Guide (CSG) - develop initial CSG, provide updates and share with Customer on an 'as needed' basis as changes occur</li> <li>• Stewardship material / meeting support - Conduct stewardship reviews with Customer at regular scheduled intervals</li> <li>• Executive business reviews / quarterly business reviews</li> <li>• Develop and maintain Service improvement/action plans, if applicable, to help manage systemic issues</li> </ul>

**21. Termination**

In the event Customer or an Eligible Participant terminates the Managed Fortinet Solution at any given Site prior to the end of the Minimum Payment Period for any reason other than for AT&T's uncured material breach, Customer or an Eligible Participant must provide AT&T at least ninety (90) days' prior written notice and Eligible Participant is responsible to pay for all Services rendered, expenses incurred hereunder, termination charges equal to the total Monthly Recurring Charges for the AT&T Equipment and AT&T MSS and Managed Fortinet Solution and for any applicable charges associated with early termination multiplied by the number of months remaining in the Minimum Payment Period, at the time of termination.

**22. Site Acceptance**

AT&T shall validate the process steps to achieve Site Acceptance of the Services in consultation with Customer during the start-up period for the Project. During this process, the Site Acceptance criteria defined below will be reviewed with Customer and updated accordingly.

AT&T shall perform the site activation activities below and confirm with the Eligible Participant upon completion of the work to confirm Site Acceptance. Once an Eligible Participant has approved Site Acceptance, AT&T will submit the non-recurring and monthly charges as defined herein for invoicing.

**22.1 Site Acceptance Testing Criteria is as follows:**

- a. AT&T Equipment is in agreed upon physical condition;
- b. AT&T Equipment connects to AT&T monitoring and management system;
- c. Site contact confirms Customer defined applications function and Eligible Participant can perform standard operations;
- d. Customer will be transitioned to Site when it is live and under management.

**23. Charges Schedule**

The charges in the table below will be effective when a Customer location completes Site Acceptance as defined in Section 22. Charges are in USD.

Schedule 1	# of Servers & Workstations	Term (Months)	Platform/Services	Pricing Monthly Recurring Charge
Fortinet 61F		60 mos/per site	AT&T Equipment – Fortinet 61F	\$42.57 USD (US) per Site \$44.79 USD (CAN) per site
Base Rate (1-6 Devices)	Up to: - 1 Server - 5 PC's	60 mos/per Site	AT&T MSS and Managed Fortinet Solution • Assumes up to 1 Server and 5 Workstations • Baselining/Conversion	\$102.00 USD per Site
Additional PC's or Servers**		60 mos/per Site	AT&T MSS – over 6 devices • Per device over 6 devices Baselining/Conversion	\$20.00 USD per device
FastConnect Consolidated Billing Charge		60 mos/per Site	• Consolidated custom billing of multiple FastConnect suite of services on a single invoice presented to each Site on a monthly basis	\$5.00 USD per Site

Set-up Charges (Non-Recurring)	Set-up Charges for New Managed Fortinet Locations	Pricing One Time Charges
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	<ul style="list-style-type: none"> <li>Managed Fortinet Enablement Charge – US</li> </ul>	\$1,200.00 USD per location
	<ul style="list-style-type: none"> <li>Managed Fortinet Enablement Charge – CAN</li> </ul>	\$1,274.00 USD per location

**Optional Managed Token Subscription Charge (Remote Access):**

Remote Access Charges	Remote Access Charges	Pricing Monthly Charges
	<ul style="list-style-type: none"> <li>Managed Token Subscription Charge – See Services Description in Exhibit 5</li> </ul>	\$4.95 USD per month, per User
	<ul style="list-style-type: none"> <li>Managed FortiClient</li> </ul>	\$7.95 USD per month, per User

**Additional Charges**

Description	Pricing Monthly Charges
<ul style="list-style-type: none"> <li>Additional Hourly Rate – On-Site – NBH – billed in 15 min increments ( US)</li> </ul>	\$115.00 USD/hour
<ul style="list-style-type: none"> <li>Additional Hourly Rate – On-Site – NBH – billed in 15 min increments (CAN)</li> </ul>	\$156.00 USD/hour
<ul style="list-style-type: none"> <li>Site Reschedule/Customer Not Ready</li> </ul>	\$300.00 USD/incident
<ul style="list-style-type: none"> <li>Site Revisit</li> </ul>	\$335.00 USD/incident
<ul style="list-style-type: none"> <li>Site installation expedite – less than 5 business days</li> </ul>	\$200.00 USD
<ul style="list-style-type: none"> <li>Next Business Day – On-site support 2 hours (US)</li> </ul>	\$500.00 USD
<ul style="list-style-type: none"> <li>Next Business Day – On-site support hourly beyond 2 hours (US)</li> </ul>	\$250.00 USD/hour
<ul style="list-style-type: none"> <li>Next Business Day – On-site support 2 hours (CAN)</li> </ul>	\$400.00 USD
<ul style="list-style-type: none"> <li>Next Business Day – On-site support hourly beyond 2 hours (CAN)</li> </ul>	\$200.00 USD/hour
<ul style="list-style-type: none"> <li>US Cold Spare – Fortinet 61F (monthly)</li> </ul>	\$10.00 USD
<ul style="list-style-type: none"> <li>Canada Cold Spare – Fortinet 61F (monthly)</li> </ul>	\$13.75 USD

**Purchased Equipment**

Description of Charges	Non-Recurring Charges	Monthly Charges
<b>Hardware</b>	\$1,568,205.00	N/A
<b>Installation (Professional Services)</b>	\$15,500.00	N/A
<b>Monthly Mointoring and Management</b>	N/A	\$13,000.00



**23.1 Additional Pricing Terms and Conditions**

- (a) **Defined Scope.** Pricing is based on the currently defined scope. Any additions or changes to this SOW will necessitate changes in pricing. Pricing herein assumes no project delays will occur that would require AT&T to stop work. AT&T will not be held financially responsible for project delays outside of its control.
- (b) **Invoicing.** AT&T will invoice the Service Charges upon completion as defined herein. AT&T will invoice Services monthly and will cover any one-time charges or expenses incurred during the previous calendar month.

The AT&T Affiliate in each jurisdiction in which the Services are provided under this Change Request, shall invoice the Customer (subject to any operational tax / legal / regulatory impediments). Customer agrees to make payment to the AT&T entity producing the invoice in the specified invoice currency.

Customer acknowledges that invoicing of Services on a cross border basis may result in unrecoverable taxes or tax exposures for the Customer Affiliate invoiced.

Project Country	AT&T Billing Affiliate / Country	Customer Billed Entity	Customer Billed Entity Address	Contract Currency
USA	AT&T Corp.	Six Continents Hotels, Inc.	Three Ravinia Drive Atlanta, GA USA 30346	USD
Canada	AT&T Global Services Canada Co.	Six Continents Hotels, Inc.	Three Ravinia Drive Atlanta, GA USA 30346	USD





**APPENDIX A: PURCHASED EQUIPMENT LIST**

Hardware - Software	SKU	Qty
FortiGate-1800F Hardware plus 24x7 FortiCare and FortiGuard Enterprise Protection	FG-1800F-BDL-950-60	6
FortiSwitch-1024E	FS-1024E	8
FortiSwitch-1024E 24x7 FortiCare Contract	FC-10-S1E24-247-02-60	8
FortiManager - VM License Upgrade license for adding 1,000 Fortinet devices/VirtualDomains; allows for total 10 GB/Day of Logs and 4 TB storage capacity.	FMG-VM-1000-UG	4
FortiManager - VM Support 24x7 FortiCare Contract (1 - 1010 devices/Virtual Domains)	FC4-10-M3004-248-02-60	4
FortiAnalyzer-3000G Hardware plus 24x7 FortiCare and FortiCare BPS	FAZ-3000GBDL-466-60	2
FortiSwitch-1048E	FS-1048E	2
FortiSwitch-1048E FortiCare Premium Support	FC-10-1E48F-247-02-60	2



**APPENDIX B: SAMPLE CHANGE REQUEST FORM**

Type of Request:	
Initiator (Company):	
Change Request Received by:	
Price Impact:	
AT&T Additional Resources Req'd:	

Task Description:

Other information related to Change:

Impact of Change  
Provide a description of the impact of the change (increase in duration, delay in start, cut-over date change, added dependency, additional resources required change to design, change to baseline solution, other).

**AGREED and ACCEPTED:**  
**CUSTOMER:**  
By: \_\_\_\_\_  
(Authorized Agent or Representative)

**AGREED and ACCEPTED:**  
**AT&T**  
By: \_\_\_\_\_  
(Authorized Agent or Representative)

(Typed or Printed Name)

(Typed or Printed Name)

(Title)

(Title)

(Date)

(Date)

----- End of Document -----

# EXHIBIT I

**EXHIBIT I  
STATE ADDENDA**

**CALIFORNIA ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

OUR WEBSITES HAVE NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of California:

1. California Business and Professions Code, Sections 20000 through 20043, provide rights to the franchisee concerning termination, transfer or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.
2. The License Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq).
3. The License Agreement contains a provision requiring application of the laws of Georgia. This provision may not be enforceable under California law.
4. The License Agreement requires venue to be limited to Georgia. This provision may not be enforceable under California law.
5. California Corporations Code, Section 31125, may require that we give you a disclosure document approved by the Department of Financial Protection and Innovation before we ask you to consider a material modification of your License Agreement.
6. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE LICENSE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.
7. California Corporations Code, Section 31119, states that it is unlawful to sell any franchise/license in California that is subject to registration under this law without first providing to the prospective licensee, at least 14 days prior to the execution by the prospective licensee of any binding license or other agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the offering circular, together with a copy of all proposed agreements relating to the sale of the license.
8. Neither Holiday nor any person or franchise broker disclosed in Item 2 of the Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.
9. Prospective licensees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a License Agreement restricting venue to a forum outside the State of California.
10. The License Agreement contains a provision requiring you to waive your right to punitive damages against Holiday any of its representatives, limiting your recovery to actual damages.

Under California Corporations Code Section 31512, this provision may not be enforceable in California for any claims you may have under the California Franchise Investment Law.

11. To the extent mandated under California law, no statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of Holiday. This provision supersedes any other term of any document executed in connection with the franchise.
12. This California addendum applies only if the California Franchise Investment Law and the California Franchise Relations Act would apply on their own, even if Holiday did not provide this addendum.

## HAWAII ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

**THESE FRANCHISES WILL BE OR HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.**

**THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

**THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.**

- A. This proposed registration is exempt from the registration requirements of the states of California, Illinois, Indiana, Maryland, New York, North Dakota, Rhode Island, and Washington.
- B. This proposed registration is or will shortly be on file in the states of Hawaii, Michigan, Minnesota, Virginia and Wisconsin.
- C. No states have refused, by order or otherwise, to register these franchises.
- D. No states have revoked or suspended the right to offer these franchises.
- E. The proposed registration of these franchises has not been withdrawn in any state.
- F. No release language set forth in the License Agreement will relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Hawaii.
- G. Hawaii Administrative Rule Chapter 37 §16-37-4 (7) requires that we notify you that: “THESE FRANCHISES WILL BE/HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF REGULATORY AGENCIES OR A FINDING BY THE DIRECTOR OF REGULATORY AGENCIES THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING. THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE OFFERING CIRCULAR, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE. THIS OFFERING CIRCULAR CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.”
- H. This Hawaii addendum applies only if the Hawaii franchise law would apply on its own, even if Holiday did not provide this addendum.

## ILLINOIS ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

Notwithstanding anything to the contrary set forth in the Franchise disclosure document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Illinois:

### ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

1. Notice Required By Law

THE TERMS AND CONDITIONS UNDER WHICH YOUR FRANCHISE CAN BE TERMINATED AND YOUR RIGHTS UPON NON-RENEWAL MAY BE AFFECTED BY ILLINOIS LAW, 815 ILCS 705/19 AND 705/20.

2. The provisions of the License Agreement and all other agreements concerning governing law, jurisdiction, venue and choice of law will not constitute a waiver of any right conferred upon Franchisee by the Illinois Franchise Disclosure Act. The Illinois Franchise Disclosure Act will govern the Franchise Agreement with respect to Illinois franchisees.
3. Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void".
4. This Illinois addendum applies only if the Illinois Franchise Disclosure Act would apply on its own, whether or not you received this addendum.

**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO  
THE MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the Franchise Disclosure Document for use in the State of Maryland shall be amended as follows:

1. The general release language contained in the License Agreement shall not relieve the Licensor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Maryland.
2. The License Agreement provides that it may be terminated immediately upon, among other things, the Licensee commencing any case, proceeding or other action seeking reorganization, etc. under any law relating to bankruptcy, etc. This provision may not be enforceable under federal law relating to bankruptcy.
3. The laws of the State of Maryland may supersede the License Agreement, including the areas of termination and renewal of the License.
4. Any claims arising under the Maryland Franchise Registration and Disclosure Laws must be brought within three years after the grant of the License.
5. Pursuant to the Interpretive Opinion “Adopting NASAA Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgments” dated January 23, 2023 (the “Interpretive Opinion”), issued by the State of Maryland Office of the Attorney General Securities Division (the “Division”), the Division requires franchisors selling franchises that are subject to the Maryland Franchise Registration and Disclosure Law to include the following statement in their franchise agreements: “No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.” Accordingly, any statement, questionnaire, or acknowledgment in the License Agreement that is not permitted under the Interpretive Opinion is deleted in its entirety and shall have no force or effect.
6. This Maryland addendum applies only if the Maryland Franchise Registration and Disclosure Law would apply on its own, even if Holiday did not provide this addendum.



## MINNESOTA ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document or Franchise Agreement, the following provisions will supersede and apply:

### **ITEM 13 - TRADEMARKS**

The Minnesota Department of Commerce requires that the Licensor (i.e., Holiday) indemnify Minnesota licensees against liability to third parties resulting from claims by third parties that the Licensee's use of Holiday's trademark infringes trademark rights of the third party. Holiday does not indemnify against the consequences of Licensee's use of the Holiday's trademark except in accordance with the requirements of the License, and, as a condition to indemnification, Licensee must provide notice to Holiday of any such claim within ten (10) days and tender the defense of the claim to Holiday. If Holiday accepts the tender of defense, Holiday has the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

### **ITEM 17 - RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit the Franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the disclosure document or agreement(s) can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

No release language set forth in the franchise disclosure document, in Section 13.I. of the License Agreement or anywhere else in the License Agreement will relieve Holiday or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Minnesota.

With respect to franchises governed by Minnesota law, Holiday will comply with Minnesota Statutes, Section 80C.14, subdivisions 3, 4, and 5 which require, except in certain specified cases, that a licensee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the License.

Liquidated damages and termination penalty provisions are deleted from Licenses issued in the State of Minnesota.

None of the explanatory statements made in Item 19 are meant to disclaim the credibility of the financial performance representations set forth therein or diminish licensee's right to rely on Item 19's representations, data and bases.

The term "licensee" is a term of art. Holiday's use of the term "licensee" throughout this disclosure document is not meant to (nor does it in any way) diminish the licensee's standing as a "franchisee" as that term is defined under Minnesota franchise law. Licensees are entitled to all rights and protections afforded to franchisees under Minnesota franchise law.

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

This Minnesota addendum applies only if the Minnesota franchise law, Minn. Stat. §80C.01, would apply on its own, even if Holiday did not provide this addendum.

## NEW YORK ADDENDUM TO DISCLOSURE DOCUMENT

Notwithstanding anything to the contrary set forth in the Disclosure Document or Franchise Agreement, the following provisions will supersede and apply to all franchises offered and sold under the laws of the State of New York:

### ITEM 2. BUSINESS EXPERIENCE

Item 2 of the Disclosure Document lists the directors, principal officers and other executives who will have management responsibility in connection with the operation of the Holiday's business relating to the licenses offered by this disclosure document, with a statement for each regarding his principal occupations over the past five years.

### ITEM 3. LITIGATION

Except as disclosed in Item 3 of the FDD, neither Holiday, its affiliates nor any person named in Item 2 above has pending any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) alleging a violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

Neither Holiday, its affiliates nor any person named in Item 2 above has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten year period immediately preceding the application for registration, has been convicted of a misdemeanor or pleaded nolo contendere to a misdemeanor charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding, if such misdemeanor conviction or charge or civil action, complaint or other legal proceeding involved violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

Except as disclosed in Item 3 of the FDD, neither Holiday, its affiliates, nor any person named in Item 2 above is subject to any currently effective injunctive or restrictive order or decree relating to franchises in general or the license offered or under any federal or state franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency.

### ITEM 4. BANKRUPTCY

Neither Holiday nor any predecessor, affiliate, officer or general partner of Holiday has, during the ten year period immediately preceding the date of this disclosure document, (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after the officer or general partner of Holiday held this position in the company or partnership.

### ITEM 17. RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

1. You may utilize whatever legal rights you may possess to suspend or discontinue operations due to a breach by the Franchisor and you may terminate the Agreement on any grounds available by law.
2. The requirements of Section 13.B of the License Agreement that you consent to the entry of an injunction are modified in the State of New York to provide only that you consent to the seeking of such an injunction.

This New York addendum applies only if the New York General Business Law would apply on its own, even if Holiday did not provide this addendum

## NORTH DAKOTA ADDENDUM TO DISCLOSURE DOCUMENT

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of North Dakota:

1. The laws of the State of North Dakota supersede any provisions of the License Agreement or Georgia law if such provisions are in conflict with North Dakota law. The License Agreement will be governed by North Dakota law, rather than Georgia law, as stated in Item 17(w) of the Franchise Disclosure Document, Paragraph 13.B of the License Agreement (“Binding Effect, Choice of Law, Consent to Jurisdiction and Forum Selection, No Jury Trials, No Punitive Damages and IHG’s Right to Injunctive Relief”).
2. Any provision in the License Agreement which designates jurisdiction or venue or requires the Licensee to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from License Agreements issued in the State of North Dakota.
3. No release language set forth in the License Agreement shall relieve Holiday or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of North Dakota.
4. Item 17(i) of the Franchise Disclosure Document, Paragraph 11.E (“Payment of Liquidated Damages” of the License Agreement may require licensee to pay liquidated damages. This requirement is deleted from all License Agreements used in the State of North Dakota.
5. Item 17(v) of the Franchise Disclosure Document and Paragraph 13.B.1 of the License Agreement (“Binding Effect, Consent to Jurisdiction and Forum Selection, Choice of Law”) each require that the License agreements used in the State of North Dakota.
6. Paragraphs 13.B.2 and 13.B.3 of the License Agreement (“No Jury Trial and Punitive Damages”) requires the licensee to consent to a waiver of trial by jury and punitive damages. This requirement is deleted from all License Agreements used in the State of North Dakota.
7. This North Dakota addendum applies only if the North Dakota Franchise Law would apply on its own, even if Holiday did not provide this addendum.

## **RHODE ISLAND ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Rhode Island.

### **ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

§19-28.1.-14 of the Rhode Island Franchise Investment Act provides that "A provision in a License Agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

Any provision in the License which designates the governing law as that of any state other than the State of Rhode Island is deleted from Licenses issued in the State of Rhode Island.

This Rhode Island addendum applies only if the Rhode Island Franchise Investment Act would apply on its own, even if Holiday did not provide this addendum

## **VIRGINIA ADDENDUM TO THE DISCLOSURE DOCUMENT**

In recognition of the restrictions contained in Article 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure: The following statements are added to Item 17. h

Pursuant to Article 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the franchise agreement do not constitute "reasonable cause" as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

This Virginia addendum applies only if the Virginia Retail Franchising Act § § 13.1-557-13.1-574 would apply on its own, even if Holiday did not provide this addendum

**WASHINGTON ADDENDUM TO THE DISCLOSURE DOCUMENT**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Washington:

1. If any of the provisions in the franchise disclosure document or license agreement are inconsistent with the relationship provisions of RCW 19.100.180 or other requirements of the Washington Franchise Investment Protection Act, the provisions of the Act will prevail over the inconsistent provisions of the franchise disclosure document and franchise agreement with regard to any license sold in Washington.
2. In any arbitration or mediation involving a license purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
3. A release or waiver of rights executed by a licensee will not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the Franchise Agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, and rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
4. The state of Washington has a statute, RCW 19.100.180 which may supersede the License Agreement in your relationship with Holiday including the areas of termination of your franchise. There may also be court decisions which may supersede the License Agreement in your relationship with the Franchisor including the areas of termination of your franchise.
5. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.
6. Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.
7. Holiday will have no obligation upon the expiration of your License Agreement to offer the licensee a continued right to operate its Hotel, and the licensee may be required at that time to stop operating its Hotel and to comply with all post-termination obligations.
8. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.
9. RCW 49.62.060 prohibits Holiday from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

10. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

This Washington addendum applies only if the Washington franchise law, would apply on its own, even if Holiday did not provide this addendum

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The California Franchise Investment Law**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of California:

1. In accordance with the provisions under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: "Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."

2. California Business and Professions Code Sections 20000 through 20043 provide rights to the Licensee concerning termination or non-renewal of a License. If the License contains a provision that is inconsistent with the law, the law will control.

3. The License contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable,

4. The License and Guaranty require application of the laws of Georgia. In accordance with 5050.23 Sec. 310.114.1(c)(5)(B)(v), this provision may not be enforceable under California law.

5. With respect to franchises sold in California, a franchisor is prohibited from modifying a franchise agreement, or requiring a general release, in exchange for any assistance related to a declared state or federal emergency.

6. To the extent mandated under California law, no statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

7. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

8. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable

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

**Licensee:**

**«EntityAllCaps»**

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

«AuthorizedSignee»

«SigneesTitle»



**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**California Amendment**

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
Section 482E-3 Of The Hawaii Revised Statutes**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provision shall supersede and apply to each License for a Kimpton® Hotel issued in the State of Hawaii:

1. Section 13.I of the License is amended to include the following: "The general release language contained in the License shall not relieve IHG or any other person, directly or indirectly, from liability imposed by the laws concerning franchising in the State of Hawaii."

2. In accordance with the provision under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: "Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."

3. Hawaii Revised Statutes Section 482E-1 provides rights to the Licensee concerning termination or non-renewal of a License. If the License contains a provision that is inconsistent with the law, the law will control.

4. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise

5. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

6. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable.

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

**Licensee:**

**«EntityAllCaps»**

By: \_\_\_\_\_  
«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**Hawaii Amendment**

**Amendment To The  
Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement  
Pursuant to the Illinois Franchise Disclosure Act**

Notwithstanding anything to the contrary set forth in the above License Agreement (“License”), the following provisions shall supersede and apply to this License for a Kimpton® Hotel issued in the State of Illinois:

1. Notice Required By Law: The terms and conditions under which your License can be terminated and your rights upon non-renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.

2. Under this License, there is no requirement that litigation between the parties take place in Georgia. You may institute litigation against us in Illinois or in any other court having jurisdiction over the parties and the dispute. The provisions of the License concerning jurisdiction and the application of Georgia law do not deprive you of any rights and/or causes of action established by the Illinois Franchise Disclosure Act, 815 ILCS 705/4 and 41, which, for reference, are reproduced at the bottom of this page.<sup>1</sup> In addition, if any of the provisions of this License are inconsistent with any other applicable Illinois statutes, then such Illinois statutes shall apply to the extent such application is constitutional and valid as applied.

3. In accordance with the provision under federal bankruptcy law (11 U.S.C.A. sec. 101, et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: “Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction.”

4. Licensee must pay IHG Rewards Club Marketing Contributions equal to a monthly charge of 4.75% of Qualifying Full Folio Revenue and 1.425% of Qualifying Room and Meeting Revenue from IHG Rewards Club members. IHG can change these percentages. All enrolling stays will be assessed a flat rate of \$4.75 to the enrolling hotel and a flat 1,000 points will be issued to the member regardless of their qualified stay revenue. There is also a one-time charge of \$10.00 per room with the first Royalty payment.

5. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

6. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable.

(Signatures on following page)

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<sup>1</sup> 705/4 JURISDICTION AND VENUE. §4. Any provision in a franchise agreement that designates jurisdiction or venue in a forum outside of this State is void, provided that a franchise agreement may provide for arbitration in a forum outside of this State.

705/41 WAIVERS VOID. §41. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void. This Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of this Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.

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

**Licensee:**

**«EntityAllCaps»**

By: \_\_\_\_\_  
«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**Illinois Amendment**

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The Maryland Franchise Registration And Disclosure Law**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of Maryland:

1. In accordance with the provision under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: "Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."

2. The provisions of the License which permits all suits to be filed in Georgia is hereby deleted for residents of the State of Maryland and/or franchises to be operated in the State of Maryland.

3. Any claims arising under the Maryland Franchise Registration and Disclosure Laws must be brought within three years after the grant of the License.

4. Pursuant to the Interpretive Opinion "Adopting NASAA Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgments" dated January 23, 2023 (the "Interpretive Opinion"), issued by the State of Maryland Office of the Attorney General Securities Division (the "Division"), the Division requires franchisors selling franchises that are subject to the Maryland Franchise Registration and Disclosure Law to include the following statement in their franchise agreements: "No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise." Accordingly, any statement, questionnaire, or acknowledgment in the License Agreement that is not permitted under the Interpretive Opinion is deleted in its entirety and shall have no force or effect.

5. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

6. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable.

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

**Licensee:**

**«EntityAllCaps»**

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

«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**Maryland Amendment**

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The Minnesota Franchise Act**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License") the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of Minnesota:

1. The following language will appear at the end of paragraph 13.B of the License:

"Pursuant to Minn. State. Sec. 80C.21, this paragraph shall not in any way abrogate or reduce any rights of the Licensee as provided for in the Minnesota Statutes 1987, Chapter 80C, including, but not limited to, the right to submit matters to the jurisdiction of the courts of Minnesota.

Minnesota law provides licensees with certain termination and non-renewal rights. Minnesota Statutes, Section 80C.14 subdivisions 3, 4, and 5 require, except in certain specified cases, that a licensee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the License."

2. Section 6 of the License is amended by adding the following language:

"The Minnesota Department of Commerce requires that IHG indemnify Minnesota licensees against liability to third parties resulting from claims by third parties that the Licensee's use of IHG's trademark infringes trademark rights of the third party. IHG does not indemnify against the consequences of Licensee's use of IHG's trademark except in accordance with the requirements of the License, and, as a condition to indemnification, Licensee must provide notice to IHG of any such claim within ten (10) days and tender the defense of the claim to IHG. If IHG accepts the tender of defense, IHG has the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim."

3. Liquidated damages and termination penalty provisions are deleted from Licenses issued in the State of Minnesota.

4. In accordance with the provision under Federal Bankruptcy Law (11.U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: "Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."

5. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the disclosure document or agreement(s) can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

6. No release language set forth in Section 13.I. of the License or anywhere else in the License Agreement will relieve IHG or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Minnesota.

7. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

8. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

9. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable

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

**Licensee:**

**«EntityAllCaps»**

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

«AuthorizedSignee»

«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

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

Jenny Tidwell

Vice President

Franchise Licensing and Compliance

**Minnesota Amendment**



**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The New York Franchise Act**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of New York:

1. The requirements of Section 13.B of the License Agreement that you consent to the entry of an injunction are modified in the State of New York to provide only that you consent to the seeking of such an injunction.

2. Section 13.I of the License is amended to provide that no release language set forth in Section 13.I. of the License or anywhere else in the License Agreement will relieve IHG or any other person, directly or indirectly, from liability imposed by the laws concerning franchising in the State of New York.

3. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

4. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable.

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

**Licensee:**

**«EntityAllCaps»**

By: \_\_\_\_\_  
«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**New York Amendment**

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The North Dakota Investment Franchise Law**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of North Dakota:

1. The laws of the State of North Dakota supersede any provisions of the License, or Georgia law, if such provisions are in conflict with such North Dakota laws.

2. Liquidated damages and termination penalty provisions are deleted from Licenses issued in the State of North Dakota.

3. Section 13.1 of the License is amended to include the following: "The general release language contained in the License shall not relieve IHG or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of North Dakota."

4. In accordance with the provision under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: "Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."

5. Any provision in the License which designates jurisdiction or venue or requires the Licensee to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from Licenses issued in the State of North Dakota. The site of any arbitration will be agreeable to all parties.

5. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

6. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

7. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable

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

**Licensee:**

**«EntityAllCaps»**

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

«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**North Dakota Amendment**

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The Rhode Island Franchise And Distributorship Act**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of Rhode Island:

1. In accordance with the provision under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: "Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."

2. Section 19-28.14 of the Rhode Island Franchise Investment Act provides that: "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act." This provision will also apply to the Guaranty.

3. Any provision in the License which designates the governing law as that of any state other than the State of Rhode Island is deleted from Licenses issued in the State of Rhode Island.

4. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

5. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

6. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable

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

**Licensee:**

**«EntityAllCaps»**

By: \_\_\_\_\_  
«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**Rhode Island Amendment**

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The Virginia Retail Franchising Act**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of Virginia:

1. In accordance with the provision under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License Agreement shall be amended to include the following language: "Enforceability of this provision is a matter governed by Federal Bankruptcy Law and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."

2. The Virginia Code Sections 13.1-557-574-13.1-564 provide: "It shall be unlawful for a franchisor to cancel a franchise without reasonable cause or to use undue influence to induce a franchisee to surrender any right given to it by any provision contained in the franchise." If any ground for default or termination stated in the License does not constitute "reasonable cause," as that term may be defined in the Virginia Code, that provision may not be enforceable.

3. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise

4. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

5. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable.

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

**Licensee:**

**«EntityAllCaps»**

By: \_\_\_\_\_  
«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**Virginia Amendment**

**Amendment To  
The Holiday Hospitality Franchising, LLC  
Kimpton® Hotels License Agreement Pursuant To  
The Washington Franchise Investment Protection Act**

Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton® Hotel issued in the State of Washington:

1. If any of the provisions in the franchise disclosure document or franchise agreement are inconsistent with the relationship provisions of RCW 19.100.180 or other requirements of the Washington Franchise Investment Protection Act, the provisions of the Act will prevail over the inconsistent provisions of the franchise disclosure document and franchise agreement with regard to any franchise sold in Washington.
2. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
3. A release or waiver of rights executed by a Franchisee will not include rights under the Washington Franchise Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the Franchise Agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, and rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
4. The state of Washington has a statute, RCW 19.100.180 which may supersede the Franchise Agreement in your relationship with the Franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor including the areas of termination and renewal of your franchise.
5. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
6. Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.
7. The Licensor will have no obligation upon the termination of the License Agreement to offer the Franchisee a continued right to operate its Kimpton® Business, and the Franchisee may be required at that time to stop operating its hotel as a Kimpton® Hotel and to comply with all post-termination obligations.
8. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

9. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.
10. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.
11. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the License Agreement void or unenforceable.

The undersigned does hereby acknowledge receipt of this Amendment.

Date:

**Licensee:**

**«EntityAllCaps»**

By: \_\_\_\_\_  
«AuthorizedSignee»  
«SigneesTitle»

**IHG:**

**HOLIDAY HOSPITALITY FRANCHISING, LLC**

**By: Six Continents Hotels, Inc.,  
its sole managing member**

By: \_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**Washington Amendment**

# EXHIBIT J



### **State Effective Dates**

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<b>State</b>	<b>Effective</b>
California	March 28, 2024, <i>as amended</i> _____
Hawaii	June 4, 2024, <i>as amended</i> _____
Illinois	March 28, 2024, <i>as amended</i> _____
Indiana	March 28, 2024, <i>as amended</i> _____
Maryland	April 2, 2024, <i>as amended</i> _____
Michigan	April 1, 2024, <i>as amended</i> _____
Minnesota	May 10, 2024, <i>as amended</i> _____
New York	March 28, 2024, <i>as amended</i> _____
North Dakota	April 9, 2024, <i>as amended</i> _____
Rhode Island	March 31, 2024, <i>as amended</i> _____
South Dakota	March 29, 2024, <i>as amended</i> _____
Virginia	March 28, 2024, <i>as amended</i> _____
Washington	April 30, 2024, <i>as amended</i> _____
Wisconsin	March 29, 2024, <i>as amended</i> _____

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

# EXHIBIT K

**EXHIBIT K  
RECEIPT  
KIMPTON HOTELS & RESTAURANTS**

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If IHG Franchising, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If IHG Franchising, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580 and the state agency listed on Exhibit E. The franchisor is IHG Franchising, LLC, located at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346. Its telephone number is (770) 604-2000.

Issuance date: March 28, 2024, as amended June 28, 2024

The franchise seller for this offering is [name]\_\_\_\_\_, [title]\_\_\_\_\_, IHG Franchising, LLC, Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346, (770) 604-2000.

IHG Franchising, LLC authorizes the respective state agencies identified on Exhibit D to receive service of process for it in the particular state.

I received a disclosure document dated March 28, 2024, as amended June 28, 2024 that included the following Exhibits:

- A Application Letter Form
- B License Agreement and State Addenda
- C Master Technology Services Agreement & Joinder Agreements
- D Agents for Service of Process
- E State Franchise Administrators
- F List of Franchisees
- G1 Financial Statements of IHG Franchising, LLC
- G2 Financial Statements of Six Continents Hotels, Inc.
- H Ancillary Agreements
  - H1 IHG Voice Reservation Service Agreement
  - H2 Revenue Services and Commercial Services Agreement
  - H3 Coca-Cola Participation Agreement
  - H4 NGP Participation Agreements
  - H5 Form IHG Direct Hotel Participation Agreement
  - H6 Form IHG WiFi Connect Agreement
  - H7 Oracle New Account Setup Form
  - H8 Website Maintenance Provider Participation Agreement (Stillwater Interactive)
  - H9 Playlist Generation Streaming Music Service Participation Agreement
  - H10 Hot SOS Participation Agreement
  - H11 Form Concept Consulting Agreement
  - H12 Kipsu Hotel Services Agreement
  - H13 Merkle Master Services Agreement
  - H14 AT&T Participation Agreement
- I State Addenda to Disclosure Document
- J State Effective Dates Page
- K Receipts

Dated: \_\_\_\_\_

**PROSPECTIVE FRANCHISEE:**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title with Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

Please return the signed receipt by completing all of the blanks above and mailing it to Attn. Franchise Sales, IHG Franchising, LLC, Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346, (770) 604-2000.

March 28, 2024, as amended June 28, 2024 ( \_\_\_\_\_ )  
*Location # - Internal Use Only*

**EXHIBIT K  
RECEIPT  
KIMPTON HOTELS & RESTAURANTS**

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If IHG Franchising, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If IHG Franchising, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580 and the state agency listed on Exhibit E. The franchisor is IHG Franchising, LLC, located at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346. Its telephone number is (770) 604-2000.

Issuance date: March 28, 2024, as amended June 28, 2024

The franchise seller for this offering is [name]\_\_\_\_\_, [title]\_\_\_\_\_, IHG Franchising, LLC, Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346, (770) 604-2000.

IHG Franchising, LLC authorizes the respective state agencies identified on Exhibit D to receive service of process for it in the particular state.

I received a disclosure document dated March 28, 2024, as amended June 28, 2024, that included the following Exhibits:

- A Application Letter Form
- B License Agreement and State Addenda
- C Master Technology Services Agreement & Joinder Agreements
- D Agents for Service of Process
- E State Franchise Administrators
- F List of Franchisees
- G1 Financial Statements of IHG Franchising, LLC
- G2 Financial Statements of Six Continents Hotels, Inc.
- H Ancillary Agreements
  - H1 IHG Voice Reservation Service Agreement
  - H2 Revenue Services and Commercial Services Agreement
  - H3 Coca-Cola Participation Agreement
  - H4 NGP Participation Agreements
  - H5 Form IHG Direct Hotel Participation Agreement
  - H6 Form IHG WiFi Connect Agreement
  - H7 Oracle New Account Setup Form
  - H8 Website Maintenance Provider Participation Agreement (Stillwater Interactive)
  - H9 Playlist Generation Streaming Music Service Participation Agreement
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  - H13 Merkle Master Services Agreement
  - H14 AT&T Participation Agreement
- I State Addenda to Disclosure Document
- J State Effective Dates Page
- K Receipts

Dated: \_\_\_\_\_

**PROSPECTIVE FRANCHISEE:**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title with Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

Please return the signed receipt by completing all of the blanks above and mailing it to Attn. Franchise Sales, IHG Franchising, LLC, Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346, (770) 604-2000.

March 28, 2024, as amended June 28, 2024 ( \_\_\_\_\_ )  
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