

# KNOWCROSS SOFTWARE LICENSE AND SUPPORT TERMS AND CONDITIONS

**Last Updated: 14th February 2023**

Thank you for choosing Knowcross!

These terms and conditions (these “**Terms**”) apply to the provision of all services and software by **KNOWCROSS INC**, a Delaware corporation, having its registered office at 845, Third Avenue, Sixth Floor, NY 10022 (“**Knowcross**”). These Terms, together with each commercial quotation (“**Quotation**”) executed between Knowcross and each entity (“**Customer**”) purchasing services or the use of software from Knowcross form the agreement between Knowcross and Customer (the “**Agreement**”). Customer agrees that it has had an opportunity to review these Terms prior to executing the Quotation, and intends to and will be bound hereby. This Agreement commences on the Effective Date.

## 1. DEFINITIONS AND INTERPRETATION

**1.1.** “Agreement” means this Knowcross Software Licence and Support Agreement, its Schedules and any Quotations.

**1.2.** “Annual Software Fee” means the annual software fees set out in the Quotation.

**1.3.** “Business Day” means a day other than a Saturday, Sunday or bank or public holiday in the USA.

**1.4.** “Confidential Information” shall have the meaning set out in section 8.

**1.5.** “Configuration Software” means the software which may be installed on Customer Computers to enable connectivity and access to the Hosted Software.

**1.6.** “Customer Computers” mean those computers, equipment and devices, including but not limited to smartphones and tablets, which Customer will use to operate the Mobile Software or to access the Hosted Software, as jointly identified by the parties, either on a specific basis or by defining the Permitted Users of the Mobile Software and access to the Hosted Software (e.g., access permitted through Mobile Software or web browsers by Customer personnel from within a specific Customer network at Customer Site).

**1.7.** “Customer Data” means all data and information that Customer submits or uploads to the Software, and any other data, information or other material provided to Knowcross in connection with Customer’s use of the Software and the provision of the Services, whether for use in the Software or otherwise.

**1.8.** “Customer Site” means Customer facility at the address set forth in the Quotation.

**1.9.** “Effective Date” means the date on which the Customer signs the Quotation.

**1.10.** “Fees” means the Annual Software Fee, Professional Services Fees, and any other fees that the parties may agree from time to time in writing.

**1.11.** “Initial Term” means the period of time defined in the Quotation.

**1.12.** “Installation” means: configuring of Licensed Materials Or activating interfaces with other software systems as required Or importing Customer Data into the linked Licensed Materials; whichever is earlier.

**1.13.** “Intellectual Property Rights” means patents, petty patents, utility models, trademarks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, semi-conductor topography rights, trade or business names, domain names, website addresses whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions.

**1.14.** “Licensed Materials” means, collectively, the Software, as well as all technology, software, hardware, inventions, know-how, algorithms, processes, documentation, manuals, information and data in any form whatsoever relating to the Software and made available by Knowcross to Customer under this Agreement.

**1.15.** “Hosted Software” means that Software hosted by Knowcross which is accessed by Customer via the Internet and as specified in the Quotation.

**1.16.** “Mobile Software” means the mobile software application to be installed on mobile devices operated by Customer personnel in order to interact with the Hosted Software and as specified in the Quotation.

**1.17.** “Permitted Users” means those employees, agents and independent contractors of Customer who are authorized by Customer to use the Licensed Materials.

**1.18.** “Professional Services Fees” means the professional services and training fees set out in the Quotation.

**1.19.** “Quotation” means the quotation referred to in the recitals to this Agreement and any other quotations as described in Section 14.10.

**1.20.** “Renewal Term” means the period of time defined in the Quotation which commences the day after the Initial Term ends. Subsequent Renewal Terms shall commence the day after the preceding Renewal Term ends.

**1.21.** “Software” means the Configuration Software, Hosted Software and Mobile Software as may be specified in the Quotation and includes all corrections, modifications and enhancements to such Software provided to Customer by Knowcross under this Agreement.

**1.22.** Section, clause and Schedule headings shall not affect the interpretation of this Agreement.

**1.23.** Unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

(c) a reference to one gender shall include a reference to the other genders; and

(d) the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words, “without limitation”.

**1.24.** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.

**1.25.** The Schedules and Quotation form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and Quotation.

## **2. GRANT OF LICENCE AND RESTRICTIONS**

**2.1.** Subject to all of the terms and conditions of the Agreement, from the Activation Date, Knowcross grants Customer a limited, revocable, non-exclusive, non-sublicensable and non-transferrable licence for Permitted Users to access and use the Licensed Materials during the Term (as defined below) solely for Customer’s internal business purposes at Customer Site identified in the Quotation and expressly subject to any use limitations set forth in the Quotation.

**2.2.** Customer acknowledges that the Mobile Software shall be used only as an interface to the Hosted Software. In addition to the specific limitations on the use of the Software set forth in these terms, the Mobile Software shall be subject to the terms of the licence governing the use of the Mobile Software provided in connection with the acquisition of the Mobile Software from the relevant app store (e.g., Apple’s App Store or Google Play).

## **3. INSTALLATION, ACCEPTANCE, SERVICES**

**3.1.** Knowcross will complete the Installation as soon as reasonably practicable. The activation date shall be the earlier of the date of completion of Installation or six months from the date of execution of the Quotation (“Activation Date”).

**3.2.** Knowcross will provide training services (i.e. training of certain Customer personnel by Knowcross authorized person(s) regarding access and use of Licensed Materials) to Customer in the English language and in accordance with this Agreement (“Training Services”). Knowcross will provide support services (i.e. provision of support to Customer by Knowcross authorized person(s) regarding access and use of Licensed Materials) to Customer in accordance with this

Agreement (including Schedule 1 hereto) (“Support Services”). The Training Services and Support Services are collectively the “Services”.

#### **4. AVAILABILITY**

**4.1.** Knowcross will use commercially reasonable efforts to make the Licensed Materials available 24 hours a day, seven days a week (“Uptime Availability”) provided that Knowcross will have the right to suspend the availability of the Licensed Materials after prior notification to the Customer to the extent the same is necessary for maintenance, updates or upgrades. In calculating uptime, no deduction shall be made for downtime caused by (a) planned maintenance following notification to Customer; (b) unscheduled maintenance, provided Knowcross has used reasonable endeavours to give Customer at least 6 hours’ notice in advance; and (c) Customer-caused or third party-caused outages or disruptions, or outages or disruptions subject to Section 13.

**4.2.** Uptime Availability as described in Section 4.1 is measured at an access point on Knowcross’ hosting provider’s backbone network, and excludes the portion of the circuit that does not transit such Knowcross’ hosting provider’s backbone network, as Customer is responsible for its own internet access.

**4.3.** The “Annual Uptime Service Level” will be calculated separately for each product or service provided by Knowcross on an annual basis from the Activation Date for such product or service as the total available minutes divided by the total possible uptime minutes in that 12 month period (treating as uptime minutes any lack of availability due to the causes set out in Sections 4.1 and 4.2). If the Uptime Service Level falls below 99.9% then Knowcross will provide a service credit in the form of a term extension to Customer for the relevant product or service as follows:

##### **Annual Uptime Service Level Service Extension**

Between 99.9% and 99.0%	30 days
99% and below	90 days

**4.4.** The parties agree that the foregoing term extension will be the sole and exclusive right and remedy, whether under this Agreement or otherwise, that Customer will be entitled to exercise for Uptime Service Level below 99.9%.

#### **5. PROPRIETARY RIGHTS**

**5.1.** Except as expressly set forth in Section 2, Customer acquires or obtains no rights under this Agreement from Knowcross, and Knowcross reserves all rights in and to the Licensed Materials and the Services, including but not limited to any Intellectual Property Rights.

**5.2.** Customer will:

- (a) access and use the Licensed Materials and the Services in accordance with all applicable laws and regulations, this Agreement, and the policies, instructions and advice provided by Knowcross from time to time;
- (b) ensure that the Licensed Materials and Services are accessed, used and dealt with only by those of its personnel who have received Training Services directly from Knowcross or from personnel certified by Knowcross to provide Training Services;
- (c) ensure that any person receiving access to the Licensed Materials, Services and other Knowcross Confidential Information be bound by obligations consistent with the confidentiality and proprietary rights terms of this Agreement;
- (d) be solely responsible for any access, use or other act or omission with respect to the Licensed Materials and Services using the credentials/access rights allocated to Customer personnel, whether authorized or unauthorized;
- (e) promptly and diligently cooperate with Knowcross in connection with this Agreement, including providing access to all information, facilities and systems as required;
- (f) obtain and maintain any licences and permissions from Customer's software providers which are necessary for Knowcross, its affiliates, contractors and agents to perform their obligations under this Agreement; and
- (g) carry out all Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the provision of Customer's provision of such assistance as agreed by the parties, Knowcross may adjust any agreed timetable or delivery schedule as reasonably necessary.

**5.3. Customer will not attempt to, and will not allow others to:**

- (a) access or use any elements of the Licensed Materials or the Services except as expressly permitted by this Agreement;
- (b) modify or make derivative works of the Licensed Materials or the Services;
- (c) combine the Licensed Materials with any other program or service in any manner;
- (d) resell, sublicense, transfer or distribute in any manner all or any part of the Licensed Materials or the Services, or make any copies of the same;
- (e) access or use the Licensed Materials or the Services for the purpose of designing, modifying, or otherwise creating any service or software program, or any portion thereof, that performs functions similar to the functions performed by the Licensed Materials or for the benefit of competitor(s) of Knowcross;
- (f) use or access the Licensed Material for any fraudulent or unlawful purpose;

(g) use or access the Licensed Material to impersonate any person or entity, or to falsely state or otherwise misrepresent its affiliation with any person or entity;

(h) interfere with or disrupt the operation of the Licensed Materials or access to it;

(i) transmit or otherwise make available in connection with the Licensed Material or access to it any virus, worm, Trojan horse, time bomb, spyware, or other computer code, file, or programme that is harmful or invasive, or which may or is intended to, damage or hijack the operation of, or to monitor the use of, any hardware, software, or equipment;

(j) restrict or inhibit the ability of any other person to access or use the Licensed Materials;

(k) modify, adapt or translate any portion of the Licensed Materials;

(l) remove, obscure or modify any copyright, trade mark, or other proprietary rights notice from the Licensed Material;

(m) use any robot, spider, search/retrieval application or other manual or automatic device to retrieve, index, “scrape,” “data mine,” or in any way gather or reproduce the Licensed Materials or circumvent the navigational structure or presentation of the Licensed Materials. Knowcross reserves the right, without liability or prejudice to its other rights to Customer, to disable the Customer’s access to any material that breaches the provisions of this Section 5.3.

**5.4.** Customer shall not, nor permit others to, decompile, reverse engineer or disassemble the Licensed Material except that Customer may decompile the Licensed Material without Knowcross’ consent where this is indispensable to obtain the information necessary to achieve the interoperability of the Licensed Material with an independently created programme (the “Interoperability Information”) provided that:

(a) Customer has first requested such Interoperability Information from Knowcross, and has provided Knowcross with all information reasonably required by Knowcross to assess Customer’s request; and

(b) Knowcross has failed to provide Customer with the Interoperability Information within 60 days of Customer’s request (or delivery of the relevant information and details) unless such failure is due to Customer refusing to agree fair and non-discriminatory terms concerning the payment of any charge or fee for reimbursement of Knowcross’ reasonable costs and expenses incurred in connection with providing the Interoperability Information.

**5.5.** Customer acknowledges and agrees that as between Customer and Knowcross, the Licensed Materials and the Services and all rights therein, including but not limited to Intellectual Property Rights, belong exclusively to Knowcross. If Customer provides any feedback to Knowcross regarding the Licensed Materials or the Services, Customer hereby irrevocably assigns to Knowcross all rights, title and interest in and to such feedback, and agrees to provide Knowcross any assistance that Knowcross may require in the future to document, perfect and maintain its rights therein.

**5.6.** Knowcross acknowledges and agrees that as between Customer and Knowcross, the Customer Data and all rights therein, including but not limited to Intellectual Property Rights, belong exclusively to Customer. Customer, and not Knowcross, is solely responsible for the quality, integrity and legality of Customer Data. Customer expressly consents to the access, collection, use, processing, transfer and disclosure of Customer Data by Knowcross, its personnel, representatives, affiliates, subcontractors and other third parties directly or indirectly engaged by Knowcross for the purpose of the performance of this Agreement. Knowcross will use reasonable efforts to maintain the security of Customer Data, but is not responsible or liable for the loss or corruption or theft of any Customer Data.

## **6. CUSTOMER ACCOUNT**

**6.1.** In relation to the Permitted Users, Customer undertakes that:

(a) each Permitted User shall keep a secure password for his or her use of the Licensed Material and that each Permitted User shall keep his or her password confidential; and

(b) it shall be responsible for all activities that occur under its Permitted Users accounts, including use of the account by third parties.

## **7. FEE AND CHARGES**

**7.1.** Customer will pay all Fees and any other amounts due to Knowcross as specified in the Quotation and in accordance with the Agreement and as may be agreed by the parties in writing from time to time. All amounts are due and payable by Customer within ten (10) days of receipt of the invoice by Customer. If Customer disputes any invoice it must notify Knowcross in writing within five (5) days of receipt thereof, which notice must include a detailed explanation of the reasons for Customer's good faith determination of the defect in the invoice. The parties shall negotiate in good faith to attempt to resolve the disputed invoice. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date.

**7.2.** Without limiting any other rights or remedies available to Knowcross, payments to Knowcross overdue by more than thirty (30) days will accrue interest on a daily basis on such due amounts at an annual rate equal to one and half percent (1.5%) over the then current base rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment. Customer will also reimburse to Knowcross, within ten (10) days of receiving a written demand from Knowcross, any costs and expenses (including legal costs and expenses) incurred by Knowcross to collect any overdue amount from Customer. Knowcross may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Licensed Material and/or Services and Knowcross shall be under no obligation to provide any or all of the Licensed Material and/or Services while the invoice(s) concerned remain unpaid and overdue by more than thirty (30) days.

**7.3.** All amounts payable under this Agreement by Customer to Knowcross will be paid without setoff or counterclaim, and without any deduction or withholding, and exclusive of applicable taxes and duties including VAT and applicable sales tax (except for taxes that relate to the

income of Knowcross or Knowcross personnel). If any deduction or withholding is required by law, Customer will notify Knowcross in writing, deduct such withholding taxes from the total amount due to Knowcross, and pay such withholding taxes to the relevant government authority. Customer will promptly provide Knowcross with suitable documentation showing that the withheld and deducted amounts have been paid to the relevant authorities. Customer will also bear and pay all banking/remittance charges associated with any payments made by Customer to Knowcross.

## **8. CONFIDENTIALITY AND DATA PROTECTION**

**8.1.** “Confidential Information” means and includes without limitation:

(a) as to Knowcross’ confidential information, the Licensed Materials and Services and all information in whatever form and of whatsoever nature relating thereto;

(b) as to each party, all information in whatever form and of whatsoever nature directly or indirectly disclosed to the other party or any of its representatives in connection with or as a result of this Agreement which information (i) should reasonably be understood to be confidential or proprietary information given the nature of the information and the circumstances of disclosure or (ii) is or was disclosed in tangible or written form and is conspicuously marked “Confidential”, “Proprietary” (or the like) at the time of disclosure or it is identified as confidential or proprietary at the time of disclosure and is delivered in the appropriately marked form within thirty (30) days of disclosure; and

(c) Customer Data.

**8.2.** Information is not ‘Confidential Information’ if:

(a) it is or subsequently becomes public knowledge other than as a result of a breach of this Agreement;

(b) either party can establish to the reasonable satisfaction of the other party that the information was received from a source unrelated to the other party, which source is not under any obligation of confidence in respect of the information; or

(c) the parties agree in writing that it is not confidential.

**8.3.** Subject to the other provisions of this Agreement, each party shall hold the Confidential Information of the other in strictest confidence and limit its disclosure only to such persons and to such extent as is necessary for the due performance of this Agreement, including consultants, affiliates, subcontractors and other third parties engaged by a party in connection with the performance this Agreement. If either party discloses Confidential Information of the other party to anyone in accordance with this Agreement, the first-mentioned party will ensure that the said recipient is also bound by and fulfils the confidentiality obligations applicable to the first-mentioned party under this Agreement.

**8.4.** Each party may disclose Confidential Information of the other party to the minimum extent required by any order of any court, or other governmental or regulatory authority, of competent jurisdiction or applicable laws or regulations, provided that before either party so discloses any Confidential Information, it shall (to the extent permitted by law) use its best endeavours to: (a) inform the other party of the full circumstances of the disclosure and the information that will be disclosed; (b) cooperate with the other party to avoid or limit disclosure to the extent such avoidance or limitation does not cause significant adverse consequences to the first party; (c) gain assurances as to confidentiality from the body to whom the information is to be disclosed; and where the disclosure is by way of public announcement, agree on the wording with the other party in advance.

**8.5.** Each party shall comply with its obligations as set out in Schedule 2: Data Processing Agreement.

**8.6.** Knowcross shall, in providing the Licensed Materials and Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at <https://knowcross.com/privacy-policy/> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.

## **9. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS**

**9.1.** Knowcross warrants that the Licensed Materials, when used in the correct and proper way as instructed during Training Services and in accordance with this Agreement, on the Customer Computers, will provide the facilities and functions and perform substantially as described in the user guide provided by Knowcross. If the Licensed Materials do not conform to the foregoing warranty, Knowcross will at its expense, use all reasonable commercial endeavours to correct such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of the warranty set out in this sub-section 9.1. Knowcross further warrants that it has sufficient rights in the Licensed Materials to grant the rights granted to Customer herein.

**9.2.** Each party hereby represents and warrants to the other party that

(a) it has the legal right, power and authority to enter into this Agreement and perform its obligations hereunder; and

(b) the performance of its obligations hereunder will not violate any applicable laws or regulations, nor cause a breach of any agreements with any third parties; and

(c) this Agreement has been duly authorized, executed and delivered by such party and constitutes a valid and legally binding obligation of such party, enforceable in accordance with its terms.

**9.3.** Knowcross uses reasonable efforts to select reliable service providers in connection with its performance under this Agreement. However, Customer expressly acknowledges and agrees that due to the nature of the requirements of this Agreement, Knowcross may utilise third party hosting, cloud computing, communications networks, messaging systems, internet services providers and/or other applications platforms providers (such as Google and Apple) for the performance of certain obligations pursuant to this Agreement over which Knowcross may not be able to exercise control and accordingly Knowcross expressly disclaims any liability arising out of or based upon the acts and omissions whatsoever of such subcontractors and/or other third party(s).

**9.4.** Knowcross is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

## **10. INDEMNITY**

**10.1.** Customer agrees to defend, indemnify and hold harmless Knowcross, its affiliates and each of their respective directors, employees, agents and representatives from and against any third party claims, actions, proceedings, damages, losses, liabilities, costs and expenses (including without limitation court costs and reasonable legal fees) arising out of or relating to or threatened with respect to:

(a) the actions or omissions of Customer or its employees, contractors, agents or representatives in connection with this Agreement, including without limitation breach of this Agreement or violation of any applicable law or regulation;

(b) any claim or allegation by a Customer guest or customer relating to the subject matter of this Agreement, including without limitation the performance of the Licensed Materials; and

(c) any dispute between Customer and any party or person other than Knowcross; provided that:

(d) Customer is given prompt notice of any such claim;

(e) Knowcross provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(f) Customer is given sole authority to defend or settle the claim.

**10.2.** Knowcross will at its expense defend and indemnify and hold harmless the Customer, its affiliates and each of their respective directors, employees, agents and representatives from and against any third party claims alleging that the Software, as delivered by Knowcross and used within the scope of this Agreement, infringes any Intellectual Property Right ("IPR Claim"). In the event of such an IPR Claim, Knowcross may, at its sole option and expense:

(a) procure for the Customer the right to continue using the Software under the terms of this Agreement;

(b) replace or modify the affected Software so that it is non-infringing and substantially equivalent in function to the infringing Software; or

(c) if options (a) or (b) above cannot be accomplished despite Knowcross' reasonable efforts, then Knowcross may terminate this Agreement with respect to the affected Software and refund to the Customer a prorated portion of the Annual Software Fee paid in advance for the license of such Software, as of the date of termination.

**10.3.** Knowcross will have no liability for an infringement or misappropriation claim to the extent that it would not have occurred but for:

(a) modifications to the Licensed Materials made by a party other than Knowcross;

(b) the combination, operation or use of the Licensed Materials with equipment, devices, software or data not supplied or specified by Knowcross;

(c) Customer's failure to use updated or modified Licensed Materials provided by Knowcross;

(d) Customer's use of the Licensed Materials other than in accordance with this Agreement and the documentation provided by Knowcross; or

(e) Knowcross' compliance with designs, plans or specifications furnished by Customer, or on Customer's behalf.

**10.4.** Each party's indemnification obligations under this Section 10 are conditioned upon the party seeking indemnification:

(a) promptly notifying the indemnifying party in writing of the claim (provided that the indemnifying party shall only be excused from its obligations to the extent materially prejudiced by any delay in notice);

(b) granting the indemnifying party sole control of the defense and settlement of the claim; and

(c) providing the indemnifying party, at the indemnifying party's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

**10.5.** This Section 10 and Section 11.4 state Customer's sole and exclusive rights and remedies and Knowcross' (including Knowcross' employees', agents', affiliates' and sub-contractors') entire obligations and liability, for any IPR Claim.

## **11. DISCLAIMER, LIMITATION OF LIABILITY**

**11.1.** This Section 11 sets out the entire financial liability of Knowcross (including any liability for the acts or omissions of its employees, agents, affiliates and sub-contractors) to the Customer:

(a) arising under or in connection with this Agreement;

(b) in respect of any use made by the Customer of the Licensed Materials and Services or any part of them; and

(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

**11.2.** Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Licensed Materials and Services by the Customer, and for conclusions drawn from such use. Knowcross shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Knowcross by the Customer in connection with the Licensed Materials or Services, or any actions taken by Knowcross at the Customer's direction;

(b) all warranties, terms, conditions and undertakings, express or implied (including by statute, custom or usage, a course of dealing, or common law) are excluded to the fullest extent permitted by applicable law, including:

(i) that the Licensed Materials and Services will be available uninterrupted or error-free;

(ii) that the Licensed Materials or the computer server from which the Licensed Materials are made available, are free of viruses or other harmful components;

(iii) the accuracy, content, timeliness, completeness, reliability, quality or suitability of any content contained in or delivered via the Licensed Materials or Services or otherwise made available in connection with the Licensed Materials or Services; and

(iv) that any Confidential Information, Customer Data or other data whatsoever will be secure or not wrongly accessed, used and/or disclosed or not otherwise lost, damaged or modified;

(c) the Licensed Material and Services are provided to the Customer on an "as is" basis.

**11.3.** Notwithstanding any contrary provision in this Agreement, neither party limits or excludes its liability in respect of:

(a) any death or personal injury caused by its negligence; or

(b) fraudulent misrepresentation; or

(c) any other statutory or other liability that cannot be excluded or limited under applicable law.

**11.4.** Subject to section 11.2 and section 11.3:

(a) Knowcross shall not be liable whether in tort (including for negligence or breach of statutory duty), contract (including indemnity), misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data

or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

(b) Knowcross' total aggregate liability in contract (including indemnity), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall not exceed a total aggregate amount equal to:

(i) the total Fees actually paid by the Customer under this Agreement during the 12 months immediately preceding the date on which the claim arose; or

(ii) the sum of ten thousand pounds sterling (10,000 GBP),

whichever is greater.

## **12. TERM AND TERMINATION**

**12.1.** This Agreement will remain in force for the Initial Term unless terminated in accordance with its provisions, and thereafter shall automatically renew for successive Renewal Terms, unless either party provides a written notice to the other party, at least ninety (90) days before the expiry of the then current term, of its intent not to renew this Agreement (the "Term").

**12.2.** Either party may, without prejudice to any other rights and remedies available to it hereunder or otherwise, terminate this Agreement with immediate effect by giving written notice to the other party if the non-terminating party commits any material breach of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so, and / or goes into liquidation, or is the subject of any proceedings indicating insolvency as applicable.

**12.3.** Notwithstanding Section 12.2 Knowcross may, without prejudice to any other rights and remedies available to it hereunder or otherwise, terminate this Agreement with immediate effect by giving written notice to Customer if Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

**12.4.** Upon any expiration or termination of this Agreement:

(a) Customer shall immediately stop accessing and use of the Licensed Materials and the Services except for the limited purpose of exporting Customer Data from the Hosted Software under section 12.4(b), and shall return to Knowcross or destroy all copies of the Licensed Materials in Customer's custody or control, and upon request, shall provide Knowcross a written confirmation to this effect;

(b) subject to Schedule 2: Data Processing Agreement Knowcross shall allow Customer seven (7) days after termination or expiration to export the Customer Data from the Hosted Software, and thereafter Knowcross is not required to retain any Customer Data, and will destroy all

Customer Confidential Information in Knowcross' custody or control other than any Customer Confidential Information it may be required to keep under applicable law or regulation; and

(c) within fifteen (15) days from the expiration or termination of this Agreement, Customer shall pay to Knowcross all Fees and any other amounts due under this Agreement, which, unless Customer has terminated this Agreement for Knowcross' breach, will include all amounts that would have been payable to Knowcross if this Agreement had been in effect for the entire then-current Term. Sections 1, 5 through 11, 12.4 and 14 will survive any expiration or termination of this Agreement.

### **13. FORCE MAJEURE**

**13.1.** Knowcross shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Knowcross or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration. For the avoidance of doubt an event or circumstance or cause beyond its reasonable control includes without limitation an epidemic or pandemic or the virus: Covid-19 which affects a Party or any of such Party's suppliers, sub-contractors or other partners.

### **14. GENERAL**

**14.1.** Customer grants Knowcross the right, during the term of this Agreement and thereafter, to disclose and make public statements (including press releases and statements on Knowcross' web site) using Customer's name, logo and other details) that Customer is a Knowcross customer.

**14.2.** This Agreement and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and shall be construed in accordance with the laws of the State of New York, USA.

**14.3.** In the event of any dispute or difference arising out of or in connection with this Agreement, including with respect to its validity, effect and interpretation, Knowcross and Customer agree to use their best efforts to negotiate and amicably resolve the same.

**14.4.** The parties irrevocably agree that the Federal or State courts located in New York County, State of New York, USA shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**14.5.** Customer shall not sell, lease, assign, or otherwise transfer this Agreement nor any rights granted hereunder (including by operation of law), in whole or in part. Any such purported transfer will be void. This Agreement shall inure to the benefit of and bind successors and permitted assigns of the parties. Knowcross may at any time assign, transfer, charge, sub-contract, discharge through its affiliates or deal in any other manner with all or any of its rights or obligations under this Agreement.

**14.6.** Knowcross and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Knowcross and Customer. Neither Knowcross nor Customer will have the power to bind the other or incur obligations on the other's behalf.

**14.7.** To the extent notices can be delivered by the use of a designated feature of the user interface of the Hosted Software (e.g., changes in the terms of this Agreement or address changes), notice will be effective when delivered through such user interfaces. All other notices given under this Agreement shall be in writing, in the English language, and will be delivered personally, sent by internationally recognized express service and/or by email, addressed to the intended recipient at the address set forth in the Quotation. A notice hereunder shall be deemed to have been duly served as of actual delivery as suitably evidenced.

**14.8.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any provision of this Agreement shall for any reason be held illegal or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement, unless such omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate.

**14.9.** The Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior communications or agreements. Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, undertaking, representation or statement made (whether innocently or negligently) by any other party or any other person except as expressly set out in this Agreement, in respect of which its sole remedy shall be for breach of contract. Nothing in this Section 14.9 shall operate or be construed to exclude or limit any liability of any person for fraud, including fraudulent misrepresentation.

**14.10.** The parties may amend or supplement this Agreement by execution of a replacement or additional Quotation, by Customer acceptance of Knowcross' online terms for additional optional services or otherwise by express written agreement of the parties.

**14.11.** In the event of any conflict between the terms of this Agreement and any Quotation incorporated herein, the terms of the Quotation shall prevail. All quotations, purchase orders and other such documentation provided by Knowcross under which Customer receives any Licensed Materials or Services from Knowcross shall be subject to the terms of this Agreement, and shall be "Quotations" incorporated herein. Terms and conditions set forth in any purchase order or

other document provided by Customer to Knowcross that are not expressly incorporated into this Agreement shall not be part of any agreement between Knowcross and Customer.

**14.12.** This Agreement does not confer any rights on any person or party (other than the parties to this agreement and (where applicable) their successors and permitted assigns, and Knowcross' affiliates) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **SCHEDULE 1 – SUPPORT SERVICES**

**1.1.** Remote Consultation: “Remote Consultation” means rendering assistance to Customer during Remote Support Hours, via telephone and/or email, regarding the Licensed Materials. Knowcross will respond to telephone requests for Remote Consultation within four (4) hours if the requests are received during Remote Support Hours at the following telephone number: +44 8000885463/+1 (800) 819 3796/+91 989 912 3191. Knowcross will respond to email requests for Remote Consultation within twelve (12) hours if the requests are received at the following email address: support@knowcross.com. Such Remote Consultation will be provided 24 hours a day, 7 days a week, 365 days a year.

**1.2.** Remote Diagnosis: “Remote Diagnosis” means review of Software performance, subject to any technical constraints, though, inter alia, remote access facility provided by Customer (if applicable) and diagnosis of problem faced by Customer. If Customer is required to provide Knowcross with remote access facility to Customer Computers, Customer will do so at Customer's cost using standard remote connectivity software. Knowcross will disclose the username and password of such connection only to its authorized personnel / representative(s).

**1.3.** Knowcross will respond to Remote Diagnosis requests within forty eight (48) hours if the requests are received during Remote Support Hours at the following telephone number and/or email address respectively: +44 8000885463/+1 (310) 933 0189/+91 989 912 3191 and support@knowcross.com.

**1.4.** Fee, charges, expenses, etc.: Customer agrees to pay Knowcross all applicable Support Fees, charges, expenses and other sums associated with the Support Services and any other matter(s) referred to in this Schedule. In case of On-site Support, Customer will additionally, and at no cost to Knowcross, provide suitable accommodation to visiting Knowcross personnel/representative(s). Further, Customer will be charged additional fees/charges, over and above the usual Support Fees, charges, expenses and other sums, if Knowcross provides any Support Services and / other assistance to Customer:

(a) with respect to any error / malfunction in the Licensed Materials, the Training Services and / or the Support Services attributable to any wrongful act or omission of Customer, and / or due to any change in operating conditions at Customer Site without the approval of Knowcross; and / or

(b) outside Remote Support Hours and / or on an urgent / express basis, as the case may be.

**1.5.** Support Services will be provided only to those Customer personnel/representative(s) who have undergone Training Services provided by Knowcross.

**1.6.** Knowcross is not obliged, in its sole discretion, to provide Support Services with respect to:

(a) software, hardware and/or anything else not supplied by Knowcross;

(b) issues / interference in the Licensed Materials, the Training Services and / or the Support Services occurring after Activation Date and attributable to software, hardware and / or anything else not supplied by Knowcross; and / or

(c) corruption, modification, disruption, loss as well as unauthorized access and / or use of Customer's Confidential Information and other data and records whether or not uploaded / disclosed by Customer in connection with this Agreement.

**1.7.** The parties also agree that Support Services are neither intended to be nor will constitute a substitute for Training Services provided by Knowcross.

**1.8.** Customer will not, with respect to the Licensed Materials and/or any other aspect of this Agreement, avail of or use in any manner any service or assistance whatsoever other than that provided by Knowcross.

## **SCHEDULE 2 – DATA PROCESSING AGREEMENT**

### **DEFINITIONS**

“GDPR” means EU General Data Protection Regulation 2016/679

**1. Data Protection Legislation:** (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**2.** The words “data subject” and “processing” shall have the meaning attributed to them in Data Protection Legislation.

#### **1. DATA PROTECTION**

**1.1.** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 1.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**1.2.** Each party acknowledges that for the purposes of the Data Protection Legislation, the Customer is the data controller and Knowcross is the data processor (where “Data Controller” and “Data Processor” have the meanings as defined in the Data Protection Legislation). Annex 1 sets out the scope, nature and purpose of processing by Knowcross, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, “Personal Data”) and categories of data subject. Customer instructs Knowcross to process the Personal Data (including the Personal Data of Customer's guest, staff and contractors) for the purposes of and in accordance with the provisions of the Principal Agreement.

**1.3.** Without prejudice to the generality of clause 1.1, the Customer (a) will ensure that it has all necessary appropriate consents and notices in place and is properly authorised to enable lawful transfer of the Personal Data to Knowcross for the duration and purposes of the Principal Agreement which includes the transfer of Personal Data to any country or territory, as reasonably necessary for Knowcross to perform its obligations under the Principal Agreement; (b) confirms that it is and will at all relevant times remain duly and effectively authorised to give the instruction and authorisation set out in Clauses 1.2 and 1.3; and (c) will promptly inform Knowcross about any Right to Forget requests received from Customer's guests, staff, or contractors in relation to Personal Data that is passed to Knowcross software.

**1.4.** Without prejudice to the generality of clause 1.1, Knowcross shall, in relation to any Personal Data processed in connection with the performance by Knowcross of its obligations under the Principal Agreement:

(a) process that Personal Data only on the written instructions of the Customer unless Knowcross is required by the laws of any member of the European Union or by the laws of the European Union applicable to Knowcross to process Personal Data ("Applicable Laws"). Where Knowcross is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Knowcross shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Knowcross from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) may transfer any Personal Data outside of the European Economic Area in accordance with the consent provided in this Data Processing Agreement, or as otherwise consented to by the Customer in writing, provided that:

(i) the Customer or Knowcross has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) Knowcross complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) Knowcross complies with reasonable instructions notified to it in writing in advance by the Customer with respect to the processing of the Personal Data;

(e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Customer, delete, pseudonymize or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information that are necessary to demonstrate its compliance with this clause 1.4 and, at the Customer's cost, allow for audits of such records and information by the Customer or the Customer's designated auditor during normal business hours provided that Customer provides Knowcross with reasonable prior written notice of its intention to exercise its right to audit such information. Knowcross shall inform the Customer immediately if, in its opinion, an instruction to provide such information to Customer infringes Data Protection Legislation or other EU or local law.

**1.5.** The Customer consents to Knowcross appointing hosting service providers, SMS service providers, intergroup companies, email service providers, and other communications and technology solutions providers as classes of third-party processor of Personal Data under this agreement. Knowcross confirms that it has entered or (as the case may be) will enter with such classes of third-party processors into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this Schedule 2.

**1.6.** Knowcross will inform the Customer of any intended changes concerning the additional or replacement of the classes of third party processors from time to time. If Customer objects to any such change on reasonable grounds and within a reasonable timeframe, then acting in good faith, the parties will work together to resolve such objection.

## **Annex 1**

### **Processing, Personal Data and Data Subjects**

#### **1. Processing by Knowcross**

##### **1.1 Scope**

The subject matter and duration of the Processing of the Company Personal Data are set out in this Schedule 2.

## **1.2 Purpose of processing**

The purpose of the processing is to enable Knowcross and its agents, affiliates, and subcontractors to provide to the Customer and the Customer to receive the benefit of the Licensed Materials and/or Services in accordance with the terms of the Principal Agreement.

## **1.3 Duration of the processing**

Knowcross processes the Personal Data for (i) the duration of the Principal Agreement unless instructed to delete or return such personal Data before termination or expiry of the Principal Agreement, or (ii) for such period of time as Knowcross is otherwise required by Applicable Law to process the Personal Data.

## **2. Types of personal data**

The following sets out examples of the key fields of data that Knowcross receives from the Customer's Property Management System. These fields may vary by agreement with the Customer.

1. First Name
2. Last Name
3. Birthday
4. VIP
5. Nationality
6. Gender
7. Primary Email
8. Primary Phone Number
9. Primary Mobile Number
10. Primary Address
11. Job Title
12. Country Code
13. PAX
14. Booking Source
15. Rate Amount
16. Arrival Date
17. Departure Date

Knowcross also collects the following information about hotel staff/contractors or any other users of Knowcross' software:

1. First Name
2. Last Name
3. Official Email ID
4. Official Mobile Number
5. Job Title
6. Department
7. Language preference

## **3. Categories of data subject**

Hotel (Customer) guests, prospective guests, staff and contractors, other users of the Knowcross software.