

Terms of Use (SaaS)

These are the KLERQ SaaS terms, relevant for those wishing to create an account and utilize the services provided by KLERQ.

Effective starting May 1, 2023

Please read this Agreement carefully and immediately cease using the Services if you do not agree to it.

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Section 1: Acceptance

These Terms and Conditions, and any other terms and policies referred to in these Terms and Conditions, form the agreement between **KLERQ**, a subsidiary of BlueKnows, with its registered office at **Burgemeester Brokxlaan 12, 5041 SB Tilburg, The Netherlands**, and registered with the Dutch Chamber of Commerce under number **KvK: 88431614** (referred to as “SaaS Provider,” “we,” or “us”), and the user (referred to as “Customer” or “you”), collectively referred to as the Parties or each a Party, (Agreement).

The SaaS Provider owns, or holds the relevant rights to, the KLERQ software platform and will license the use of the Software as a service to the Customer.

The Customer wishes to license the SaaS Services available from the SaaS Provider at <https://klerq.app/> (site).

This Agreement sets out the terms upon which the SaaS Provider has agreed to grant a license to the Customer to use the SaaS Services. This Agreement is binding on any use of the Services. It applies to the Customer from when the SaaS Provider provides the Customer with an account (**Customer’s account**) to access and use the Services (**Effective Date**).

By accessing and/or using the Services you:

1. Warrant to us that you have reviewed this Agreement, including our Website Terms of Use (available on the Site) and our Privacy Policy (available on the Site), with your parent or legal guardian (if you are under 18 years of age), and you understand it;
2. warrant to us that you have the legal capacity to enter into a legally binding agreement with us or (if you are under 18 years of age) you have your parent’s or legal guardian’s permission to access and use the Site, and they have agreed to the Terms on your behalf; and
3. agree to use the Services in accordance with this Agreement.

By using our Services and subscribing on our Site, you acknowledge that you have read, understood, and accepted this Agreement, you have the authority to act on behalf of any person or entity for whom you are using the Services, and you are deemed to have agreed to this Agreement on behalf of any entity for whom you use the Services.

Section 2: Services

- (a) On or from the Effective Date and during the Term, the SaaS Provider agrees to provide the Services in accordance with the terms of this Agreement.
- (b) The Customer agrees the SaaS Provider owns or holds the applicable licenses to all Intellectual Property Rights, including but not limited to copyright in the Software and SaaS Services and any documentation provided with the Services by the SaaS Provider to the Customer, including any Customer configuration documentation.
- (c) The SaaS Provider reserves the right to change or remove features of the SaaS Services from time to time, after a notice of default which remained uncured by customer. Where there is any material alteration to the SaaS Services in accordance with this clause, the SaaS Provider will provide the Customer with 20 Business Days' notice, and the Customer agrees that any material alteration is at the SaaS Provider's discretion.
- (d) The Parties agree that the SaaS Provider:
 - i) will supply the Services on a non-exclusive basis;
 - ii) does not make any warranty or representation as to the ability of the facilities or services of any third-party suppliers; and
 - iii) is not liable for any failure in, fault with, or degradation of the Services if that failure, fault, or degradation is exclusively attributable to or caused by any failure of the Customer Environment or the facilities or services of any third party.
- (e) The SaaS Provider reserves the right to refuse any request concerning the Services deemed inappropriate, unreasonable, or illegal.
- (f) The SaaS Provider is committed to providing high-quality support to the Customer. Our availability and response times are as follows:
 - Availability: Support is accessible via phone, in-app chat, and email during working days, 9:00 – 17:00 local (Amsterdam(time), excluding official bank holidays.
 - Response Time: We aim to respond to inquiries within 3 business days.

While the SaaS Provider strives to meet these service levels, no guarantees can be made that these targets will always be achieved. The SaaS Provider shall not be held liable for any consequences resulting from the failure to meet these service levels.

Section 3: SaaS Service Licence

- (a) In consideration for payment of the Fees, the SaaS Provider grants to the Customer a non-exclusive, non-transferable (except as otherwise permitted under this Agreement), personal, revocable, license to access and use the SaaS Services in accordance with the Service Provider's intended purpose for the SaaS Services (**SaaS License**).

(b) The Customer agrees that the SaaS Licence:

- i) commences from the Effective Date or the day the Customer is granted access to the SaaS Services by the SaaS Provider, whichever occurs first;
- ii) permits the Customer to use the SaaS Services in accordance with the SaaS Services' normal operating procedures; and
- iii) Permits the Customer to provide access and use of the SaaS Services to Authorised Users by embedding them into Customer's services to its customers, as applicable.

Section 4: License Restrictions

(a) The Customer must not access or use the SaaS Services except as permitted by the SaaS Licence and may not do or authorize the commission of any act that would or might invalidate or be inconsistent with the SaaS Provider's Intellectual Property Rights in the SaaS Services or Software. Without limiting the foregoing provisions, the Customer agrees and acknowledges that it must not and will not permit any person to:

- i) resell, assign, transfer, distribute, or provide others with access to the SaaS Services;
- ii) "frame," "mirror," or serve any of the SaaS Services on any web server or other computer server over the Internet or any other network;
- iii) copy, alter, modify, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile, or enhance the SaaS Services or Software; or
- iv) alter, remove, or tamper with any trademarks, patent or copyright notices, confidentiality legend or notice, numbers, or other means of identification used on or concerning the SaaS Services or Software.

(b) The Customer must not use the SaaS Services in any way that breaches any statute, regulation, law, or legal right of any person within the jurisdiction in which the Customer or its Personnel are located.

Section 5: Data

(a) The Customer grants to the SaaS Provider a limited license to copy, transmit, store, and back up or otherwise access, use, or make reference to any Intellectual Property Rights in the Data:

- i) To supply the Services, including to enable the Customer, its Personnel, and any Authorised Users to access and use the Services;

- ii) to analyze for the purposes of predictive safety analytics, industry guideline production, and other construction safety-related uses, provide such Data is re-identified;
- iii) for diagnostic purposes;
- iv) to test, enhance and otherwise modify the Services whether requested by the Customer or not;
- v) to develop other Services; and
- vi) as reasonably required to perform the SaaS Provider's obligations under this Agreement.

(b) The Customer represents and warrants that:

- i) any and all Data supplied by the Customer or otherwise accessed by the SaaS Provider through the provision of the Services is the sole and exclusive property of the Customer, or the Customer has secured any and all authorisations and rights to use the Data as applicable;
- ii) its Data, to the best of its knowledge, does not breach any relevant laws, regulations, or codes;
- iii) its Data does not infringe the Intellectual Property Rights of any third party;
- iv) it will comply with all applicable laws and regulations in the jurisdiction where the Customer accesses and publishes content using the SaaS Services; and
- v) to the extent that the Data contains personal data, it has obtained the necessary consent to transfer or permit access to this Data in accordance with applicable privacy and data protection laws.

(c) The Customer acknowledges and agrees that:

- i) Any collation, conversion, and analysis of Data performed as part of the Services, whether by the Services or otherwise, may be subject to human input errors, machine errors, omissions, delays, or the loss of Data. The SaaS Provider is not liable for such errors, omissions, delays, or losses. The Customer acknowledges and agrees that it is responsible for implementing reasonable measures to mitigate the impact of such loss or error;
- ii) The SaaS Provider may relocate the Data to another jurisdiction. In each case, the SaaS Provider will give the Customer 15 Business Days' notice and use all reasonable endeavors to minimize the effect of such change on the Customer's access and use of the Services;
- iii) The SaaS Provider is not responsible for any corruption or loss of any Data if such corruption or loss is due to an act or omission by the Customer, its Personnel, its Related Bodies Corporate or any Authorised Users; and
- iv) The SaaS Provider is not responsible for the integrity or existence of any Data on the Customer's Environment, network, or any device controlled by the Customer or its Personnel.

Section 6: Support and Service Levels

During the Term, the SaaS Provider will provide the Support Services in accordance with the Service Levels during the Support Hours provided that:

- (a) The Customer provides the SaaS Provider with notice for applicable Services in accordance with any applicable system and processes as set out on the Site, as applicable; and
- (b) Where required, the Customer assists with investigating and ascertaining the cause of the fault and provides to the SaaS Provider with all necessary information relevant to the fault (including but not limited to what the Customer or their Personnel has done concerning the fault).

Section 7: SaaS Provider Additional Responsibilities and Obligations

The SaaS Provider must maintain industry best security measures to protect all Confidential Information in its possession or control, or in the possession or control of its Personnel, from unauthorized access, use, copying, or disclosure.

Section 8: Customer Responsibilities and Obligations

- (a) The Customer will provide all required materials as required by the SaaS Provider from time to time for the SaaS Provider to perform the Services.
- (b) The Customer must, at the Customer's own expense:
 - i) provide all reasonable assistance and cooperation to the SaaS Provider to enable the SaaS Provider to supply the Services in an efficient and timely manner, including but not limited to obtaining from Authorised Users any consents necessary to allow the Customer and its Personnel to engage in the activities described in this Agreement and to allow the SaaS Provider to provide the Services;
 - ii) use reasonable endeavors to ensure the integrity of the Data;
 - iii) permit the SaaS Provider and its Personnel to have reasonable access to the Customer Environment to supply the Services;
 - iv) ensure that only Customer Personnel and Authorised Users will access and use the SaaS Services and such use and access will be in accordance with the terms and conditions of the SaaS Licence; and
 - v) make any changes to its Customer Environment that may be required to support the delivery and operation of any Services.
- (c) The Customer is responsible for its use of the Services and must ensure that no person uses the Services:

- i) to break any law or infringe any person's rights, including but not limited to Intellectual Property Rights;
- ii) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing, or unwanted; or
- iii) in any way that damages interferes with, or interrupts the supply of the Services.

(d) The Customer acknowledges and agrees that:

- i) it is responsible for all users using the Services, including its Personnel and any Authorised Users;
- ii) its use of the Services will be at its own risk;
- iii) It is responsible for maintaining the security of its account and password. The SaaS Provider cannot and will not be liable for any loss or damage from the Customer's failure to comply with this security obligation;
- iv) the SaaS Provider may alter or update the Customer's account logins and passwords and the logins and passwords of any Authorised Users at any time throughout the Term;
- v) the Customer is responsible for all content posted and activity that occurs under their account. This includes content posted by others who have logins or accounts associated with the Customer's account;
- vi) if they operate a shared Customer account, make (or allow any third party to make) material available through the Services (including shareable links and SCORM objects), the Customer is entirely responsible for the content of, and any harm resulting from, that content. That is the case regardless of what form the content takes, which includes, but is not limited to, text, photo, video, audio, or code;
- vii) the technical processing and transmission of the Service, including the Customer's content, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices;
- viii) if the SaaS Provider wishes to alter the delivery of the SaaS Services which requires a change to the Customer Environment (including reconfigurations or interface customizations to the extent necessary to access or use the SaaS Services), the Customer will give any assistance to the SaaS Provider or make any such changes to the Customer Environment, that the SaaS Provider reasonably requires.
- ix) The SaaS Provider may pursue any available equitable or other remedies against the Customer due to a breach by the Customer of any provision of this Agreement.

Section 9: Prohibited Use

- (a) The Customer acknowledges and agrees that this Agreement incorporates by reference the terms of any acceptable use policy as set out on the SaaS Provider's website or as provided to the Customer occasionally.
- (b) The Customer acknowledges and agrees that it must not, and will ensure each Authorised User does not:
 - i) use the SaaS Services to violate any legal rights of any person, the Customer, or other entity in any jurisdiction;
 - ii) use the SaaS Services in relation to crimes such as theft and fraud;
 - iii) use the Services in breach of laws relating to the protection of copyright, trade secrets, patents, or other intellectual property and laws relating to spam or privacy;
 - iv) make any unauthorized copy of any copyrighted material owned or licensed by the SaaS Provider;
 - v) introduce malicious programs into the SaaS Provider System (e.g., viruses, worms, trojan horses, e-mail bombs);
 - vi) reveal the Customer's account password to others or allow use of the Customer's account to those who are not the Customer's Personnel or Authorised Users;
 - vii) use the SaaS Services to make fraudulent offers of goods or services;
 - viii) use the SaaS Services to carry out security breaches or disruptions of a network. Security breaches include but are not limited to, accessing data of which the Customer is not an intended recipient, logging into a server or account that the Customer is not expressly authorized to access, or corrupting any data. For the purposes of this paragraph, "security breaches" includes, but are not limited to, network sniffing/monitoring, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes;
 - ix) use any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any person's use of the SaaS Services;
 - x) send any unsolicited email messages through or to users of the SaaS Services in breach of the *Dutch Telecommunications Act (Telecommunicatiewet)* or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages; use the SaaS Services in breach of any person's privacy (such as by way of identity theft or "phishing") is strictly prohibited; and
 - xi) use the SaaS Services to circumvent user authentication or security of any of the Customer's hosts, networks, accounts, or customers or suppliers.

Section 10: Communication

Each Party will appoint and maintain at all times a relationship manager who will be responsible for the management of this Agreement.

Section 11: Payment

- (a) The Customer must pay the SaaS Provider:
 - i) the Fee; and
 - ii) any other amount payable to the Provider under this Agreement,
- (b) Payment for the services provided by KLERQ shall be made monthly. The customer can provide a valid credit card for automatic monthly payments. KLERQ will issue an invoice for the previous month's services if a credit card is not provided.
- (c) The customer agrees to make payment within 14 days from the invoice date. The invoice will include the amount due for the services rendered during the previous month.
- (d) If the customer chooses to pay by credit card, the provided credit card will be automatically charged for the monthly service fee on the designated payment date.
- (e) In the case of invoice payment, the customer is responsible for ensuring that the payment is made in full within the specified payment term. Any additional costs incurred by KLERQ due to late payment or non-payment shall be the customer's responsibility.
- (f) KLERQ reserves the right to suspend or terminate the provision of services if payment is not received within the specified payment term and after a notice of default which remained uncured by customer. Services will be reinstated once full payment is made.
- (g) All fees are in the specified currency and are exclusive of applicable taxes or duties unless otherwise stated.
- (h) By utilizing the services provided by KLERQ, the customer agrees to comply with these payment terms and ensure timely payment for the services rendered.

Section 12: Confidentiality

- (a) Subject to clause 12.2, each Party must (and must ensure that its Personnel does):
 - i) keep confidential; and
 - ii) not use or permit any unauthorized use of,
 - iii) all Confidential Information.
- (b) Clause 12.1 does not apply where:

- i) the information is in or comes into, the public domain (other than by a breach of this clause 12 by the relevant Party);
 - ii) the relevant Party has the prior written consent of the Party that disclosed the Confidential Information;
 - iii) the disclosure is required by law;
 - iv) the disclosure is required to comply with this Agreement, provided that the Party disclosing the Confidential Information ensures the recipient complies with the terms of this clause 12; and
 - v) the disclosure is to a professional adviser to obtain advice concerning matters arising in connection with this Agreement and provided that the Party disclosing the Confidential Information ensures the adviser complies with the terms of this clause 12.
- (c) Each Party acknowledges and agrees that monetary damages may not be an adequate remedy for a breach of this clause 12. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 12.
- (d) This clause 12 will survive the termination or expiry of this Agreement.

Section 13: Intellectual Property Rights

- (a) A Party's ownership of, or any right, title, or interest in, any Intellectual Property Rights in an item that exists before the Effective Date (**Pre-Existing Material**) will not be altered, transferred, or assigned under this Agreement.
- (b) The Customer grants to the SaaS Provider a non-exclusive, royalty-free, non-transferable, and revocable license to use any of the Customer's Intellectual Property Rights, including any Pre-Existing Material as reasonably required for the SaaS Provider to provide the Services to the Customer.
- (c) We do not screen content uploaded onto the SaaS Service. Still, we have the right (but not the obligation) in our sole discretion to refuse or remove any content that is available via the Service that we deem inappropriate, illegal, offensive, threatening, libelous, defamatory, pornographic, obscene, or otherwise objectionable or violate any party's Intellectual Property Rights or this Agreement.
- (d) We have the discretion (but not obligation) to terminate a Customer's access to and use of the Services if, we determine that Customer or its Authorised Users are repeat infringers of the Intellectual Property Rights of us or third parties.
- (e) This clause 13 will survive the termination or expiry of this Agreement.

Section 14: Privacy

- (a) Each Party and its Personnel agree to comply with its obligations under the *Dutch Personal Data Protection Act (Algemene Verordening Gegevensbescherming or AVG)* and any other applicable legislation or privacy guidelines as amended from time to time concerning personal information collected, used, or disclosed by that Party or its Personnel in connection with the Services and this Agreement.
- (b) Details on how the SaaS Provider complies with the *Dutch Personal Data Protection Act (Algemene Verordening Gegevensbescherming or AVG)* and how it collects, discloses, holds, or uses personal information is available in the SaaS Provider's Privacy Policy as set out on the SaaS Provider's website at <https://klerq.io/privacypolicy/> or as provided to the Customer from time to time. The SaaS Provider reserves the right to amend its Privacy Policy as required occasionally.
- (c) This Agreement supplements and incorporates the Privacy Policy and, to the extent, the European Union General Data Protection Regulation (Regulation (EU) 2016/679) (**GDPR**) applies to this Agreement.
- (d) The SaaS Provider will take all reasonable steps to notify the Customer in writing if it becomes aware of any actual, threatened, or suspected breach of Data where such breach involves personal information.
- (e) The Customer must ensure that any collection, processing, use, disclosure, and transfer by the Customer and its Personnel of personal information concerning the performance of its obligations under this Agreement complies with all applicable privacy laws and the Customer's privacy policy.
- (f) The Customer must take all necessary steps to ensure that the personal information held or accessed by it in connection with this Agreement is protected against misuse, interference, and loss, and from unauthorized access, modification, and disclosure (Data Breach). The Customer will promptly notify the Service Provider of any actual or suspected Data Breach and will provide information, assistance, and other cooperation as requested by the Service Provider regarding the Data Breach.
- (g) The Customer must cooperate with any reasonable requests or directions of the Service Provider relating to the security, use, disclosure, and transfer of personal information, the Service Provider's legal obligations relating to the personal information, complaints relating to the personal information, and the rights of individuals to access and correct the personal information or opt out of receiving any communications from or on behalf of the Customer.
- (h) The Service Provider will retain the Customer's information for as long as the Customer account is active or as needed to provide Customer services. The Service Provider will retain and use information as necessary to comply with legal obligations, resolve disputes, and enforce agreements.
- (i) This clause 14 will survive the termination or expiry of this Agreement.

Section 15: Representations and Warranties

15.1 General

Each Party represents and warrants to each other Party:

- (a) it has full legal capacity and power to enter into this Agreement, to perform its obligations under this Agreement to carry out the transactions contemplated by this Agreement, to own its property and assets, and to carry on its business;
- (b) no Insolvency Event has occurred in respect of it;
- (c) this Agreement constitutes legal, valid, and binding obligations, enforceable in accordance with its terms; and
- (d) the execution and performance by it of this Agreement and each transaction contemplated by it does not conflict with any law, order, judgment, rule, or regulation applicable to it or any document binding on it.

15.2 SaaS Provider

- (a) The SaaS Provider warrants that to the best of its knowledge, the Services do not infringe the Intellectual Property Rights of any third party, and there are no actual or threatened proceedings for any intellectual property infringements concerning the SaaS Services.
- (b) The SaaS Provider does not warrant that the Services will be error-free or will operate without interruption or that, except as set out in this Agreement, the Services will be performed in the manner intended by the Customer or that the Services will meet the requirements of the Customer.

15.3 Repetition

Each Party makes the representations and warranties in Section 15.1 on each day on which it is a Party.

Section 16: Indemnity and liability

16.1 The SaaS Provider is liable for the acts and omissions of all its Personnel as if the SaaS Provider did them.

16.2 Despite anything to the contrary (but subject to clause 16.3), to the maximum extent permitted by the law:

- i) The SaaS Provider's maximum aggregate Liability arising from or in connection with this Agreement (including the Services or the subject matter of this Agreement) will be limited to, and must not exceed, in any Contract Year, the total amount of Fees paid to SaaS Provider in the prior Contract Year or, if the damaging event occurs in the first Contract year, the total amount of fees stated in the contract proposal; and
- ii) the SaaS Provider will not be liable to the Customer for: (i) any loss of profit (including anticipated profit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings),

loss of reputation, loss of use and/or loss or corruption of data); (ii) lack of access to or use of or inability to access or use the Service; (iii) any conduct or content of any third party on the Services; (iv) any content obtained from the Services; nor (v) unauthorized access, use or alteration of your transmissions or content, whether under the statute, contract, equity, tort (including negligence), indemnity, or otherwise.

- iii) Clause 16.2 will not apply to the SaaS Provider's Liability to the Customer under this Agreement for any liability which cannot be excluded or limited by applicable law, including:
 - i) fraud or criminal conduct; or
 - ii) death or personal injury.
- iv) Despite anything to the contrary, to the maximum extent permitted by the law, the SaaS Provider will have no liability, and the Customer releases and discharges the SaaS Provider from all Liability, arising from or in connection with any:
 - i) breach of this Agreement **by the Customer or its personnel**; or
 - ii) misuse of the Services **by the Customer or its personnel**.

(b) The SaaS Provider uses third-party Service Providers to host the Services. The SaaS Provider will not be liable for any interruption to the Services, unavailability or outage, or any interruption, unavailability, or outage of the Customer's Systems, caused by any such third-party service provider.

(c) The Customer agrees that, to the maximum extent permitted by the law, this Agreement excludes all terms, conditions, and warranties implied by statute, in fact, or on any other basis, except to the extent such terms, conditions, and warranties are fully expressed in this Agreement.

(d) Each party (the "Indemnifying Party") agrees to indemnify and hold harmless the other party (the "Indemnified Party") against all Liabilities and Claims arising out of or in connection with:

- i) Any unauthorized use of the SaaS Service by the Indemnifying Party or its Authorized Users;
- ii) Access to or use of the Services by the Indemnifying Party or its Authorized Users;
- iii) Injury to or death of any person caused by any act or omission of the Indemnifying Party or its Personnel;
- iv) Damage to any real or tangible property caused by any act or omission of the Indemnifying Party or its Personnel; and
- v) Any breaches of applicable laws or regulations by the Indemnifying Party in relation to the Services.

(e) Section 16 will survive the termination or expiry of this Agreement.

Section 17: Term

- (a) The Term of this Agreement takes effect on and from the Effective Date. It continues for the Initial Term if specified, and any Renewal Term, or otherwise indefinitely, unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- (b) **Applicable to Initial Terms and any Renewal Term:** At least 30 Business Days before the expiry of the current Contract Year or Month, either Party may notify the other that it does not wish for the Term to be renewed, and in such event, this Agreement will expire at the end of the then-current Contract Year. If a Party has not given notice according to this clause, this Agreement is automatically renewed for another 12-month period (**Renewal Term**).
- (c) **Applicable to Initial Terms and any Renewal Term:** If a Party wishes to vary any of the Terms of this Agreement, it must give at least 30 Business Days' notice before the expiry of the current Contract Year to enable the Parties to meet to discuss any proposed variation.

Section 18: Termination

- (a) Where there is no Initial Term or Renewal Term, Customer may terminate this Agreement by giving SaaS Provider at least 30 days prior written notice, such termination will take effect at the expiry of the then-current billing cycle.
- (b) The Customer may terminate this Agreement by giving at least 30 Business Days' notice to the SaaS Provider, or if the SaaS Provider is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and, where the breach is capable of remedy, the SaaS Provider has failed to remedy the breach within 30 Business Days of receipt of written notice from the Customer describing the breach and calling for it to be remedied.
- (c) The SaaS Provider may terminate this Agreement by giving at least 30 Business Days' notice to the Customer if the Customer is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and, where the breach is capable of remedy, the Customer has failed to remedy the breach within 30 Business Days of receipt of written notice from the SaaS Provider describing the breach and calling for it to be remedied.
- (d) The SaaS Provider may terminate this Agreement immediately by giving written notice to the Customer where:
 - i) the Customer undergoes a Change of Control to a competitor of the SaaS Provider as determined by the SaaS Provider;
 - ii) an Insolvency Event occurs concerning the Customer;
 - iii) the Customer commits a breach of this Agreement not capable of remedy; or
 - iv) breaches clause 4 (License Restrictions) or clause 9 (Prohibited Use).

(e) The SaaS Provider may suspend overdue accounts without notice to the Customer.

Section 19: Events Following Termination

- (a) Upon termination of this Agreement, the SaaS Provider will:
- i) Immediately stop performing the Services;
 - ii) immediately stop placing orders for supplies or services required in connection with the performance of the Services; and
 - iii) promptly return to the Customer or destroy all property, including Confidential Information, Intellectual Property, and Data in its possession that belongs to the Customer.
- (b) Upon termination of this Agreement, the Customer will immediately:
- i) cease and desist from any use of the Services;
 - ii) return to the SaaS Provider all property, including Confidential Information and Intellectual Property, in its possession that belongs to the SaaS Provider;
 - iii) pay the Fees for all Services completed; and
- (c) Where Customer has terminated due to a major failure of the Services as such term is defined under the Dutch Consumer Law, the Service Provider will refund the Customer that portion of the Service Fee directly relating to the period of the major failure.
- (d) The expiry or termination of this Agreement for any reason will be without prejudice to any rights or liabilities which have accrued before the date of expiry or termination of this Agreement.

This Section 19 will survive the termination or expiry of this Agreement.

Section 20: Dispute Resolution

20.1 Disputes

- (a) A Party must not commence court proceedings relating to any dispute arising from, or in connection with, this Agreement (**Dispute**) without first complying with this clause 20 unless:
- i) that Party is seeking urgent interlocutory relief; or
 - ii) the Dispute relates to compliance with this clause.
- (b) Notwithstanding the existence of a Dispute, the Parties must continue to perform their obligations under this Agreement.

20.2 Negotiation

- (a) In the event of a Dispute, the Party claiming there is a Dispute must give written notice to the other Party or Parties to the Dispute setting out the details of the Dispute and proposing a resolution (**Dispute Notice**).
- (b) Within 10 Business Days after receipt of the Dispute Notice, each relevant Party must (if applicable by its senior executives or senior managers who have authority to reach a resolution on its behalf) meet at least once to attempt to resolve the Dispute in good faith. All aspects of every such conference, except for the occurrence of the conference, will be privileged.

Section 21: Subcontracting

The Parties agree the SaaS Provider may engage subcontractors to perform the Services on its behalf.

Section 22: Non-Solicitation

- (a) The Customer will not solicit or entice away, any person or organization that was an actual or prospective, client, employee, contractor, representative, agent of, or developer to, the SaaS Provider, during the Term of this Agreement.

This Section 22 will survive the termination or expiry of this Agreement.

Section 23: Goods and Services Tax (GST)

23.1 Taxable supply

If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement, and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

23.2 Adjustment events

Suppose an adjustment event arises regarding any supply made under this Agreement. In that case, a corresponding adjustment must be made between the supplier and the recipient regarding any amount paid by the recipient under this clause, an adjustment note must be issued (if required), and any payments to effect the adjustment must be made.

23.3 Payments

If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

This Section 23 will survive the termination or expiry of this Agreement.

Section 24: General

24.1 Notices

- (a) A notice or other communication given under this Agreement must be:
 - i) in writing, in English, and signed by the sender; and
 - ii) addressed and delivered to the intended recipient by hand, prepaid post, or email in accordance with the notice details last notified by the recipient to the Parties.
 - iii) The Customer's notice details are set out in the Customer's account. The SaaS Provider's notice details are set out on the Site. A Party may change its notice details by written notice to the other Parties, which, for the Customer, is by updating their Account, and for SaaS Provider, is by updating the Site.
 - iv) A notice or communication is taken as having been given:
 - a) when left at a Party's current address for notices;
 - b) if mailed, on the third Business Day after posting (if delivered to an address within the same country) or on the tenth Business Day after posting (if delivered to an address within another country); or
 - c) If sent by email, if sent before 5 pm on a Business Day in the place of receipt, then on the Business Day when it is sent, otherwise on the following Business Day.
 - v) This subclause will survive the termination or expiry of this Agreement.

24.2 Force Majeure

If the performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by reasons of Force Majeure and the affected party, unable to carry out its obligations, gives the other party prompt written notice of such event, then the obligations of the affected party invoking this provision shall be suspended to the extent necessary by such event. The affected party shall use reasonable efforts under the circumstances to remove such prevention, restriction, or interference or to limit the event's impact on its performance. It must continue to perform with reasonable dispatch when the Force Majeure is removed.

24.3 Waiver

Any failure or delay by a Party in exercising a power or right (either wholly or partially) concerning this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing.

24.4 Powers, rights, and remedies

Except as provided in this Agreement or permitted by law, the powers, rights, and remedies of

a Party under this Agreement are cumulative and in addition to any other powers, rights, and remedies the Party may have.

24.5 Consents or approvals

Except as provided in this Agreement, a Party may give, attach conditions to, or withhold any consent or approval under this Agreement at its sole and absolute discretion. A Party is not obliged to give reasons for giving or withholding its consent or approval or for giving its consent or approval subject to conditions.

24.6 Assignment

No Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Any purported dealing in breach of this clause 24.6 is of no force or effect.

24.7 Further assurance

Each Party must promptly do all things and execute all further documents necessary to give full force and effect to this Agreement and its obligations under it. This subclause will survive the termination or expiry of this Agreement.

24.8 Costs and expenses

Each Party must pay its own costs and expenses (including legal costs) in connection with the negotiation, preparation, and execution of this Agreement and any document relating to it.

24.9 Relationship of Parties

- (a) This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
- (b) Nothing in this Agreement gives a Party authority to bind any other Party in any way.

24.10 Links to Third Parties

The Services may contain links to third-party websites or services that are not owned or controlled by the SaaS Provider.

The SaaS Provider has no control over and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites or services. The Customer further acknowledges and agrees that the SaaS Provider shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such web sites or services.

24.11 Independent legal advice

Each Party acknowledges and agrees that it has had an opportunity to read this Agreement, it agrees to its terms, and, before executing it, it has been provided with the opportunity to seek independent legal advice about its terms.

24.12 Severance

- (a) Suppose a provision of this Agreement is held to be void, invalid, illegal, or unenforceable. That provision must be read down as narrowly as necessary to allow it to be valid or enforceable.

- (b) If it is impossible to read down a provision (in whole or in part), that provision (or that part of that provision) is severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

24.13 Entire agreement

The Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments, and agreements concerning its subject matter.

24.14 Amendment

This Agreement may only be amended by a written document executed by all Parties.

24.15 Cumulative Rights

- (a) The rights arising out of this Agreement do not exclude any other rights of either Party.
- (b) Each indemnity in this Agreement is a continuing obligation that is separate and independent from the other obligations of the Parties under this Agreement.
- (c) Party is not obliged to take any action or incur any expense, before enforcing any indemnity under this Agreement.

24.16 Governing law and jurisdiction

Dutch law governs this Agreement. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts in the Netherlands, as well as to any courts authorized to hear appeals from those courts, and waives any right to object to proceedings being brought in those courts.

Section 25: Definitions and Interpretation

Definitions

In this Agreement, unless the context otherwise requires:

Additional Costs means any additional costs, expenses, damages, or losses suffered or incurred by the SaaS Provider.

Authorized User means the user(s) permitted to use the SaaS Services and the content, including Data, generated by, or the output of, the SaaS Services as a part of the Customer's services to its customers.

Business Day is when banks are open for general banking business in The Netherlands, excluding Saturdays, Sundays, and public holidays.

Business Hours means 9:00 to 17:00 on a Business Day.

Claim means any actual, contingent, present or future claim, demand, action, suit, or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance, or any other remedy of whatever nature and however arising, whether

direct or indirect and whether in contract, tort (including but not limited to negligence) or otherwise.

Confidential Information includes information or documentation which:

- (a) is disclosed to the recipient in connection with this Agreement (whether before or after the Effective Date);
 - (i) is prepared or produced under or in connection with this Agreement (whether before or after the Effective Date); or
 - (ii) Relates to:
 - a) The business, assets, or affairs of a Party or any of its affiliates;
 - b) the business, assets, or affairs of a company in a group of companies to which the Customer belongs, or any client of that company in the group; or
 - c) the subject matter of, the terms of, and/or any transactions contemplated by this Agreement, whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential,” and whether it is disclosed to the recipient or received, acquired, overheard or learned by the recipient in any way whatsoever.

Contract Year means a 12-month period commencing on (i) the Effective Date; and (ii) each subsequent anniversary of the Effective Date, of this Agreement during the Term.

Customer Environment means the customer’s computing environment, including all hardware, software, information technology, and telecommunications services and Systems.

Data means all of the information, documents, and other data provided by the Customer or their Personnel to the SaaS Provider, any content uploaded by the Customer or Personnel to the SaaS Provider’s System, or otherwise accessed by the SaaS Provider in providing the Services.

Fee means the fee set out on the Site for the Customer account.

Force Majeure means any event or circumstances beyond the reasonable control of a Party, including any fire, lightning strike, flood, earthquake, natural disaster, sabotage, nuclear contamination, terrorism, war, or civil riot that occurs to the extent that it:

- (a) would be unreasonable to expect the affected Party to have planned for, avoided, or minimized the impact of such circumstance by appropriate risk management, disaster recovery, or business resumption plan; and
- (b) results in a Party being unable to perform an obligation under this Agreement on time.

Initial Term means the initial term set out in the Customer account.

Insolvency Event means the occurrence of any one or more of the following events concerning a Party:

- (a) The Party is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
- (b) an application or order is made for the winding up, bankruptcy, or dissolution of the Party, or a resolution is passed, or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator, or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Party, or any action is taken to appoint any such person, and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of the Party's property;
- (e) The Party is deregistered under the Dutch Companies Act 2002 (BW 2:201) or other legislation, or it is given notice of its proposed deregistration.
 - i) a distress, attachment, or execution is levied or becomes enforceable against the Party or any of its property;
 - ii) the Party enters into or takes action to enter into an arrangement, composition, or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
 - iii) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of the Party or its property;
 - iv) a petition for the making of a sequestration order against the estate of the Party is presented, and the petition is not stayed, withdrawn, or dismissed within 10 Business Days, or the Party presents a petition against itself; or
 - v) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Party.

Intellectual Property Rights means all present and future rights to:

- (a) copyright;
- (b) registered or unregistered designs, patents, trademarks;
- (c) trade, business, company, or domain names;
- (d) know-how, inventions, processes, and trade secrets;
- (e) circuit layouts, databases, or source codes; and
- (f) any similar rights in any part of the world,

Including any application, or right to apply, for registration of, and any improvements, enhancements, or modifications of, the foregoing.

Liability means any expense, charge, cost, liability, loss, damage, claim, demand, or proceeding (whether under the statute, contract, equity, tort (including negligence), indemnity, or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

Page View means any time Customer's account loads a page (website) with SaaS Services embedded.

Party means a party to this Agreement occasionally, and **Parties** means all of them.

Payment Method is by credit card, Wire Transfers, or Bank Deposit.

Payment Terms means 14 days from the date of the invoice.

Personnel means concerning a Party, any employee, contractor, officer, and agent of that Party.

Products mean hardware or software.

Related Body Corporate has the meaning given in section 9 of the *Dutch Civil Code (Burgerlijk Wetboek)*

SaaS Licence is defined in clause 3.1.

SaaS Services means the KLERQ Software as a service described on the Site.

Service Level means any service levels set out on the Site.

Services means the SaaS Services and Support Services, to be provided or licensed by the SaaS Provider to the Customer on the terms and conditions set out in this Agreement.

Software means the software used to provide the Services. It includes any instructions in hard copy or electronic form and any update, modification, or release of any part of that software after the Parties enter into this Agreement.

Support Hours means:

- (a) the hours the SaaS Provider will provide the Support Services as set out on the Site; or
- (b) if such hours are not specified, Business Hours in the Netherlands.

Support Services are set out on the Site.

System means a combination of Products or a combination of Products and services which are integrated and operate together, including a network.

Term means the term of this Agreement as set out in clause 17.

Variation means a change to the SaaS Licence after the date of this Agreement.

Variation Fee means any variation to the Fee as a consequence of the Variation.

Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) Headings are for convenience only and do not affect interpretation;

- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule, or annexure, as the case may be, of this Agreement;
- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day, then the act must be done on or by the next Business Day;
- (e) a reference to any legislation or law including subordinate legislation or law and all amendments, consolidations, replacements, or re-enactments from time to time;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a natural person includes a corporate body, partnership, joint venture, association, government or statutory body or authority, or other legal entity and vice versa;
- (h) includes and similar words mean includes without limitation;
- (i) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (j) a reference to a party to a document includes that party's executors, administrators, successors, permitted assigns, and persons substituted by novation from time to time;
- (k) a reference to this Agreement or any other document includes the document, all schedules, and all annexures as novated, amended, supplemented, varied, or replaced from time to time;
- (l) a reference to a covenant, obligation, or agreement of two or more persons that binds or benefits them jointly and severally;
- (m) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a reference to time is to local time in Amsterdam, Netherlands;