

## General Terms and Conditions of ERC International

### 1. Definitions

1.1 Throughout these general terms and conditions (hereinafter: the General Terms) the following terms shall have the following meaning attached to them:

**ERC: ERC International B.V.**, a private limited company incorporated and existing under Dutch law, whose registered office is in Amsterdam, the Netherlands;

**Licensee:** the private individual or legal entity visiting ERC's website, with whom ERC has made a contract for the supply or making available by ERC of Services and/or Products and/or the carrying out of work, or who otherwise uses the Services and/or Products offered by ERC;

1.2 Throughout these General Terms the following terms shall have the following meaning attached to them:

**Agreement:** Any agreement and/or any other provision or statement made validly applicable to the legal relationship between the Parties;

**Authorized User:** Any person within the organization of Licensee for whom Licensee has obtained a Right of Use for a Service or Product by virtue of the Agreement.

**Copyright Owner:** A third party from whom ERC has obtained the right to make available to Licensee, as part of ERC's Services and/or Products, goods or products (or any part thereof) that are subject to Intellectual Property Rights;

**Database:** ERC's database of information, including but not limited to legislation, case law, literature and news items;

**Data Processing Agreement:** the agreement, which ERC makes available to Licensee, with regard to the processing of personal data;

**Defect:** A demonstrable flaw in a Service or a Product when compared to the properties agreed by contract;

**Developer's Manual:** a manual containing information about the Database, ERC's application programming interface and the options to develop connectivity of Licensee's software with ERC's application programming interface;

**General Terms:** these General Terms and Conditions;

**Intellectual Property Rights:** All intellectual property rights and related rights such as copyrights, trademark rights, patents rights, trade name rights, database rights and neighbouring rights, as well as rights arising from know how and performance on a par with a patentable invention, and claims arising from slavish imitation;

**Information:** any data contained in the Database;

**Party:** Any party to an Agreement;

**Privacystatement:** the statement in which ERC explains to data subjects, how ERC handles the processing of personal data.

**Product:** All goods or products, including Software, that ERC is to make available, supplies or has supplied under the Agreement;

**Right of Use:** A right granted by ERC to Licensee and/or Authorized Users to use a Service and/or Product under the terms of the Agreement;

**Service:** The making available to Licensee and/or Authorized Users by ERC of access to Information and any functionalities ERC provides in relation to such Information, as well as any activity to be carried out or having been carried out by ERC under an Agreement, as well as all materials and results ensuing there from, designated for Licensee;

**Software:** computer programs and procedures made available by ERC that perform tasks on a computer system;

**Website:** Any and all virtual locations on the World Wide Web or similar means of disclosing or making available information, by means of which by or on behalf of ERC Services and/or Products or information on the same is made available;

**Written Notice:** a notification in writing, which includes ordinary mail, registered mail, fax and email, for the addressed Party to the address provided for that purpose within an Agreement;

**User ID:** a unique identification for an Authorized User, required to use the Services and/or Products.

### 2. Scope of Application

2.1 The General Terms apply to all Agreements and all (legal) acts between ERC and Licensee, even if these (legal) acts were not to result in or are not related to an Agreement.

2.2 The General Terms also apply to all use by Licensee of the Website.

2.3 The applicability of any other general terms and conditions is hereby excluded.

2.4 If the specific nature of an individual Agreement so requires, variation from one or several provisions of these General Terms may be agreed by that Agreement.

### **3. Communication**

3.1 Communication between ERC and Licensee may take place by electronic means (e.g. through a website, by e-mail, by texting or via similar technological means) or in writing (by fax or by letter), save if the General Terms and/or the Agreement and/or the law provide otherwise.

3.2 The communication version stored by ERC constitutes evidence thereof, save for any evidence to the contrary submitted by Licensee.

3.3 Electronic communication is considered having been received on the date of sending unless the recipient submits proof to the contrary. If the communication is not received as a result of delivery and/or availability problems pertaining to the mailbox of Licensee, such shall be at the risk of Licensee, even if the mailbox is located at a third party.

### **4. Conclusion of Agreements**

4.1 Statements, quotes and offers made by ERC with respect to making available Services and/or Products do not bind ERC.

4.2 Statements, quotes and offers not addressed to a specific person and made by ERC with respect to making available Services and/or Products, constitute an invitation to Licensee to make an offer. In such event, the Agreement will be constituted by the acceptance of ERC of the offer made by Licensee.

4.3 Statements, quotes and offers addressed to a specific person and made by ERC with respect to making available Services and/or Products shall be valid for thirty days. After acceptance by Licensee, ERC shall be entitled to revoke the offer made in the statement, quote or offer within three business days of receipt of acceptance.

### **5. Delivery, Suspension and Retention of Title**

5.1 Unless a specific date is agreed in writing, ERC will render the Services and/or deliver or make available the Products as soon as possible after the conclusion of the Agreement.

5.2 All delivery dates stated by ERC shall be target dates and therefore not deadlines.

5.3 ERC shall be entitled to suspend the performance of all its obligations and/or the rights of Licensee pertaining to the use of a Service or Product for the term that Licensee is in default of its performance of any obligation to ERC under the Agreement.

5.4 If an Authorized User acts in breach of the Agreement, ERC shall be entitled to deny this Authorized User access to the Service or Product at issue. Licensee hereby acknowledges this right of ERC and shall allow the denial of the access to the Product or the Service and take appropriate measures to effect the denial of access for the Authorized User. Denial of access for an Authorized User under this article is without prejudice to Licensee's obligation of payment in respect of the Right of Use of the Authorized User at issue.

5.5 ERC will grant to Licensee and/or Authorized Users only a Right of Use with respect to the Services and/or Products as defined in article 6 of these General Terms; no transfer of title shall be constituted or effected. If any transfer of title does take place, all goods delivered by ERC shall remain the property of ERC or its suppliers until the payment due under the Agreement has been made in full, including interest and costs of debt collection, if any.

5.6 ERC will make Services available by providing authentication information. Delivery of Products will be made electronically to the extent possible, the Products being considered having been delivered as soon as received in the mailbox of Licensee, even if this mailbox is located at a third party.

### **6. Right of Use with respect to the Services and/or Products**

6.1 As regards Software and all other Services and Products that are eligible for this, ERC grants to Licensee and any Authorized User a non-exclusive Right of Use that cannot be transferred/assigned, on the condition precedent of payment by Licensee of all payments it is due under the Agreement.

6.2 Each request for Information contained in the Services and/or Products shall disclose the Authorized User for which the Information is requested.

6.3 The Right of Use granted to an Authorized User is meant for that individual Authorized User only. Licensee and Authorized Users are not allowed to disseminate Information to third parties or to employees of Licensee that are not Authorized Users. In the event Licensee wishes to use Information for further internal dissemination or for external use, it shall seek prior written consent from ERC, and ERC may impose conditions – including payment of a separate fee – to

such consent.

6.4 Authorized Users have access to Information contained in the Services and/or Products, subject to a fair use limit. ERC may determine the fair use limit at its own discretion and/or apply a specific use limit for certain Services and/or Products. ERC will inform Licensee of such use limit in the Developer's Manual, by Written Notice and/or on the Website. If ERC determines at its own discretion that the use of Information by an Authorized User is excessive, ERC may require the Authorized User to moderate its usage and/or ERC shall be entitled to deny this Authorized User access to the Service or Product at issue. Licensee hereby acknowledges this right of ERC and shall allow the denial of the access to the Product or the Service and take appropriate measures to effect the denial of access for the Authorized User. Denial of access for an Authorized User under this article is without prejudice to Licensee's obligation of payment in respect of the Right of Use of the Authorized User at issue.

6.5 Licensee is allowed to store requested Information, e.g. in connection to profiles of Authorized Users, provided that such storing shall take place within the Services and/or Products only. Apart from that, Licensee may store Information solely for caching purposes, enabling more efficient use of the Services and/or Products. The maximum retention period for such cached Information is one day, after which Licensee is obliged to erase the Information.

6.6 Licensee is not permitted to multiply (access to) the Services, Products, Developer's Manual and/or other technical information provided by ERC or to modify the same (other than by adding information in the way offered by ERC) or have the same used by third parties who are not Authorized Users.

6.7 Upon breach of the provisions of paragraphs 6.3, 6.4, 6.5 and/or 6.6, Licensee shall forfeit to ERC a penalty of 20% of the annual rate payable by Licensee for the relevant Service or Product, as well as € 1.000 for each day of multiplication, for each modification, for each user who is not an Authorized User, for each day Licensee fails to take appropriate measures to effect the denial of access for the Authorized User and/or for each day Information is stored in a manner not permitted under the Agreement, without prejudice to ERC's right to claim performance of Licensee's obligations and ERC's right to full compensation.

6.8 In order to be able to use Services and/or Products, Licensee and/or Authorized Users may need to meet certain requirements, including the use of certain third party (browser) software, software settings and a valid e-mail address. ERC may determine such requirements at its own discretion. ERC makes available electronic Services and Products to Licensee in a version and in a way set out in the specifications that ERC will provide to Licensee, all of which will be accepted upon conclusion of the Agreement. ERC shall be entitled to modify Products eligible for modification, both in terms of content and features. Such modifications do not affect the obligations of the Parties under the Agreement.

6.9 If Licensee is granted the right to develop its own software to use the Services, including a direct connection between ERC's application programming interface and Licensee's own software and/or filters and functionalities, ERC will provide Licensee a Developer's Manual and, at its own discretion, other (technical) information to facilitate such development.

6.10 ERC may update and/or change its Services and/or Products at its own discretion. If Licensee is granted the right to develop its own software to use the Services, as set forth in paragraph 6.9, Licensee may need to update its software from time to time at its own risk and expense in order to connect with the latest version of the Services. After such update and/or change, ERC may require Licensee to implement a new version of the software it uses to connect with ERC's application programming interface. ERC will not be responsible nor liable if Licensee would not be able to use the Services after such update and/or change, regardless of whether the contract period of the Agreement is still in force or has been renewed.

6.11 In the event Licensee retains a third party to implement the Services and/or Products and such third party shall have access to the Services, Products and/or Developer's manual and/or other technical information from ERC, the involvement of the third party is subject to prior written consent of ERC, which consent shall not unreasonably be withheld. Licensee warrants that such third party shall enter into a written agreement with Licensee and shall comply with the restrictions set forth in paragraphs 6.7, (Penalty Clause) 14 (Intellectual Property Rights) and 18 (Confidentiality). At the request of ERC, Licensee shall provide ERC with a copy of the relevant parts of such written agreement. Licensee shall be liable towards ERC for any use by such third party outside the scope of this Agreement, and Licensee shall keep ERC harmless from any claims in this respect.

6.12 Licensee has the obligation to use electronic Services and/or Products, as well as any hardware on which the electronic Services and/or Products have been recorded or by which the same can

be used, with due care. Licensee shall comply with ERC's instructions on the management and use of electronic Services and Products and the hardware.

6.13 If installation and implementation of the electronic Services and/or Products is required, Licensee itself shall arrange for this. If ERC has provided documentation for this purpose, installation and implementation must be carried out in accordance with such documentation.

6.14 ERC shall not be liable for any loss sustained by Licensee or a third party arising from improper installation and/or implementation of electronic Services and/or Products, unless such loss resulted from improper information on the part of ERC or from an intentional act or omission (*opzet*) or wilful recklessness (*bewuste roekeloosheid*) on the part of ERC.

## **7. Services**

7.1 ERC undertakes to render or have rendered the Services with due care and with due observance of the written arrangements made with Licensee.

7.2 If ERC and Licensee have agreed that the Service is to be rendered in stages, ERC may suspend the performance of work at a specific stage until the time when Licensee has approved in writing the results of the preceding stage.

7.3 In performing the Services, ERC shall be entitled to use the services of third parties. ERC shall be free to select any such third party and shall be free also to replace a third party engaged by ERC by another third party in the course of the performance of the Services.

7.4 Even if the Agreement provides that a Service will be performed by a specific person, being an employee or a third party, ERC will still be entitled to replace this person by one or several other persons during the performance of the Service, provided that they have the same or similar qualifications to do the job.

7.5 ERC shall not be required to honour a request by Licensee to carry out extra work outside the Services agreed in the Agreement. If, however, ERC does honour such request, ERC's General Terms shall apply.

7.6 If at the request or approval of Licensee ERC carries out extra work this may affect the target dates provided in the Agreement, to be set by ERC.

## **8. Altering or supplementing the Agreement**

8.1 ERC shall be entitled to alter the terms of an Agreement. Alterations will be announced by Written Notice. In that event, Licensee shall be entitled to object by Written Notice to the new terms within four weeks from the date of notice. In such case and to ERC's discretion: (a) the remaining term of the Agreement will not change and the terms initially agreed upon shall continue to be in effect during the remaining term of the Agreement, or (b) ERC is entitled to terminate the Agreement by Written Notice within a reasonable period and with a termination period of 4 weeks. Other alterations and/or supplements to such Agreement shall bind the Parties only if explicitly agreed upon. This constitutes an Agreement pertaining to evidence and evidence to the contrary is excluded.

8.2 The nullity of one or several provisions of the Agreement shall not mean that the Agreement as a whole is void. If one or several provisions of the Agreement are void, any such provision shall be replaced by a provision that is as close to the void provision as possible, in terms of the purpose and meaning of the original provision.

## **9. Prices and Term of Payment**

9.1 The prices and rates that ERC charges for the Services and/or Products at the moment of conclusion of an Agreement are yearly prices, shall apply to such Agreement and shall be payable each year during the term of the Agreement. Unless ERC explicitly states otherwise, prices and rates shall not be inclusive of VAT and other official levies.

9.2 Each year, ERC shall be entitled to change the prices and rates for Services and/or Products of which the term is automatically renewed. ERC will notify Licensee by Written Notice. If the increase exceeds 5%, ERC will so notify Licensee in advance. In that event, Licensee shall be entitled to object by Written Notice within four weeks from the date of notice. Subsequently, ERC will have the options for continuation or termination described in paragraph 9.1.

9.3 If at the request or prior approval of Licensee ERC carries out extra work outside the Services agreed in the Agreement, ERC's standard rates shall apply.

9.4 Licensee must pay ERC's invoices within 30 days from invoice date. Invoices sent by post are considered received within 2 (two) days from postmark date in the Benelux and within 5 (five) days from postmark date in other countries, unless the recipient proves otherwise.

9.5 As of 30 days from invoice date, Licensee shall be due interest for late payment at a rate equal

to the Dutch statutory trade interest rate, without any notice of default or other notice being required. From then on and after having sent a notice of default, ERC shall be entitled also to assign its claim to a third party for debt collection purposes.

9.6 The Party who by final court ruling was ordered to pay the costs of the action must also pay the extrajudicial costs incurred by the other Party in the context of the dispute, such costs to be calculated on the basis of the rates set by the Dutch judiciary. Moreover, the unsuccessful Party shall be due to the other Party all court fees and related costs of legal assistance.

9.7 Any defect pertaining to the Products or Services shall never entitle Licensee to suspend any of its obligations of payment to ERC.

9.8 Without the explicit written approval of ERC, Licensee shall not be entitled to set off any of the amounts payable by it to ERC against any claim that Licensee may have on ERC, on any account whatsoever.

## **10. Term and Termination**

10.1 The Agreement will be entered into for a fixed term to be defined in the Agreement. After the expiry of each term, the term of the Agreement will be renewed automatically each time by a term identical to the initial term, save for written notice of termination by either Party with due observance of a notice period of three months prior to the end of a term.

10.2 Each individual Right of Use for Authorized Users will last until the end of the term of the Agreement, regardless of the date at which such Right of Use was implemented. Payment will be pro rata for the actual duration of such Right of Use. If the term of the Agreement is renewed, each Right of Use will be renewed accordingly.

10.3 In the event of any serious, demonstrable and culpable failure on the part of either Party, the other Party will send the failing Party a written notice, including a detailed description of the failure and demanding the remedy of the failure within a reasonable and specific term. If the serious, demonstrable and culpable failure is not remedied upon the expiry of the term set, the other Party will be entitled to terminate the Agreement with immediate effect and in writing, without being liable to any damages. This paragraph 10.3 does not apply to Defects in Services and/or Products, which shall be dealt with in accordance with paragraph 11.2

10.4 In the event of a (preliminary) moratorium on payments, bankruptcy, closing down or windingup/liquidation of the business of Licensee, ERC shall be entitled to terminate the Agreement either in part or as a whole, without prejudice to its other rights and without being required to pay any compensation. In the event of termination in accordance with this paragraph, all payments due by Licensee to ERC will become immediately payable in full. Licensee must take all measures necessary to enable ERC to exercise/enforce its rights.

## **11. Warranties**

11.1 For the term of the Right of Use, ERC warrants that the Services and/or Products are free of Defects. This warranty applies also to the updates made available.

11.2 Defects in Services and/or Products, must be reported in writing by Licensee to ERC, including a detailed description of the Defect. Defects in Services and/or Products in respect of which no limited term for the Right(s) of Use was set, must be reported within a term of 30 (thirty) days from receipt of the Services and/or Products. ERC will, at its own discretion, either repair the Services and/or Products showing Defects at no cost or replace the same, unless the occurrence of these Defects can be attributed to Licensee or unless another specific solution for the problem is provided by the Agreement. If a Service or Product is replaced, the cost of return shall be for the account of Licensee.

11.3 Flaws that do not substantially restrict the normal use of Services and Products do not qualify as Defects and are not covered by the warranty.

11.4 Defects which:

- cannot be reproduced, or;
- are caused by interruptions of or blocked access to Services and/or Products, the Internet, or power voltage as well as damaging acts by other Users, or;
- are caused by improper use of the Service or Product by Licensee or an Authorized User, or;
- are caused by non-compliance with the instructions or documentation provided by ERC pertaining to the installation, implementation or the use of the Service or Product, or;
- are caused by the use of a Service or Product on or in combination with equipment and/or software that do not comply with the specifications provided by ERC or on or in combination with equipment and/or software that do not function properly (unless supplied by ERC), or;
- are the result of damage to or loss of data, or;

- are the result of other causes that cannot be attributed to ERC, are not covered by the warranty.

11.5 For work that ERC carries out at the request of Licensee for the purpose of repairing Defects or other flaws in Services and/or Products, which work is not covered by the warranty, ERC will charge its standard rates or the rates of the third parties ERC has engaged for such work.

11.6 Although ERC undertakes to observe the utmost care with respect to the content of its Services and Products, inaccuracies or incompleteness as regards the content of the Services and/or Products, including but not limited to the late or non-incorporation of the latest versions of documents in the Services and/or Products, do not qualify as Defects and do not fall within the scope of the warranty set out in this article.

## **12. Liability and Indemnification**

12.1 ERC shall be liable for loss only if such loss arises from an intentional act or omission (*opzet*) or wilful recklessness (*bewuste roekeloosheid*) on the part of ERC itself or on the part of persons entrusted with the management of its business.

12.2 ERC shall not be liable, on any account whatsoever, for indirect or consequential loss, including loss of business or profits, loss of files, business interruption or intangible loss.

12.3 ERC shall not be liable, on any account whatsoever, for loss resulting from any inaccuracy or incompleteness of the content of the Services and/or Products, including but not limited to the late incorporation or non-incorporation into the Services and/or Products of the latest versions of documents. ERC emphasizes that the Services and/or Products solely serve as a source of information and that no rights can be derived from the Services and/or Products and their content.

12.4 ERC's liability, on whatever account, for each event (a series of events considered to be a single event) shall in no event exceed the payments actually made by Licensee in the then current calendar year, not including VAT.

12.5 Licensee may invoke the liability for loss sustained by Licensee or by third parties, regardless of its nature or cause, only after Licensee has sent written notice of default to ERC and ERC continues its default after the expiry of the reasonable term set in said notice. The notice of default shall state the details of the default so as to enable ERC to provide a proper response.

12.6 Licensee shall indemnify ERC for all claims by third parties, on any account whatsoever, as regards compensation for loss, costs or interest relating to or arising from the Agreement or the use of the Services and/or Products.

12.7 Licensee warrants that the Authorized Users it designated shall comply with the provisions of this Agreement. As soon as Licensee becomes aware of any abuse or unauthorized use, it will promptly report the same to ERC.

12.8 Licensee undertakes and imposes the same on its Authorized Users to comply with all applicable laws and regulations as well as to comply with the generally accepted standards of proper taste and decency in using the Services and/or Products, and will refrain from posting or having posted any offensive or otherwise inappropriate texts, ideas or other materials on the parts of the Services and/or Products on which these can be posted, such as forums, or to otherwise violate the rights of others. Licensee and the Authorized Users shall not be permitted to advertise themselves, their organization or third parties in the Services and/or Products.

12.9 Licensee commits to make reasonable efforts to keep its (LAN) network and systems clean from malicious software, including but not limited to viruses, bugs, trojans and spyware, so that such software cannot attack or damage the Services and/or Products or frustrate their functioning in any way whatsoever.

## **13. Force Majeure**

13.1 Without prejudice to the other provisions of the Agreement, the Parties are not held to satisfy one or several obligations, other than the obligation of payment, if they are unable to satisfy them on account of an event of force majeure. Force majeure is considered to include a nonculpable failure by third parties engaged or by suppliers, as well as any situation outside the (decisive) control of either Party.

13.2 If it is clear that the situation of force majeure will exceed 3 (three) months, the other Party will be entitled to terminate the Agreement in writing, without being liable to damages.

## **14. Intellectual Property Rights**

14.1 The Intellectual Property Rights in all Services, Products, Software, Developer's Manuals as well as any (technical) information that ERC makes available in the context of the Agreement shall

remain with ERC and/or the Copyright Owner. The Intellectual Property Rights in all contributions and/or adjustments to the Services and/or Products made by Licensee or Authorized Users, including profiles and mapping information, shall accrue to ERC. ERC shall have the right to use such contributions and adjustments, in anonymous form, at its own discretion.

14.2 Without the prior written consent of ERC or the Copyright Owner, Licensee shall not be entitled to copy or disclose, either in part or as a whole, any Product/Service supplied or made available or any information or Software made available in that context by ERC to Licensee. If required, this paragraph is additional to the Intellectual Property Rights of ERC or the Copyright Owner.

14.3 Save if mandatory law so permits, Licensee shall not be allowed to reproduce or decompile the Software or to apply reverse engineering to the same; nor is it permitted to remove or circumvent safety devices or technical (user) restrictions from the Software. Licensee shall be permitted to make a backup copy of the Software made available, which copy shall be identical to the original, meaning that it must carry the same copyright notices on Intellectual Property Rights and confidentiality as the original copy

14.4 No provision in the Agreement or any subsequent agreement made between ERC and Licensee constitutes full or partial transfer to Licensee of Intellectual Property Rights of ERC or a Copyright Owner.

14.5 Licensee recognizes the Intellectual Property Rights of ERC and en Copyright Owners and shall refrain from any form of direct or indirect infringement of these rights.

14.6 If Licensee notices that third parties infringe the Intellectual Property Rights of ERC or Copyright Owners, Licensee must promptly notify ERC in writing of this. If ERC decided to take legal or other action against the infringing parties, Licensee shall grant its full cooperation to this as requested by ERC, the costs of which shall be borne by ERC.

14.7 Licensee is not permitted to remove any notice of ERC or Copyright Owners regarding Intellectual Property Rights from any information, Service or Product. The same applies to notices stating that specific information is confidential.

14.8 Licensee warrants that, if it provides materials or data to ERC in the context of the Agreement, Licensee is authorized to do so and that these materials and data – and the use thereof by ERC as envisaged by the Parties – do not infringe the rights of third parties.

14.9 If Licensee becomes aware of claims by third parties that the Products or Services made available under the Agreement would infringe the Intellectual Property Rights or would otherwise be considered wrongful, Licensee must promptly notify ERC of the existence and purport of such claims. In this situation, Licensee will give ERC absolute freedom to conduct negotiations and/or to make a settlement and/or to raise a defence in a legal action, if any. If and where necessary, Licensee will hereby grant irrevocable power of attorney to ERC to raise a defence against these claims in or out of court and to make a settlement. Licensee will grant full cooperation to ERC upon its request. The obligations arising from this paragraph do not apply if the claims are made against Licensee and/or Authorized User and if according to the claim made, the infringement would have been caused by the wrongful use or modification of the Products or Services made available by or on behalf of Licensee or an Authorized User.

## **15. Privacy**

Licensee is considered having studied the content of ERC's privacy statement.

It is possible for Licensee to enter a Data Processing Agreement with ERC regarding the processing of personal data.

## **16. Miscellaneous**

16.1 In performing the Agreement, ERC shall be entitled to engage the services of third parties at its own discretion, unless these third parties process personal data. In that case, this will be coordinated with Licensee in accordance with the Data Processing Agreement.

16.2 ERC shall be entitled to transfer/assign its rights and obligations arising from the Agreement to third parties and will so notify Licensee. If the transfer/assignment of obligations to a third party is unacceptable to Licensee, the latter shall be entitled to give written notice of termination of the Agreement within 5 (five) days from receipt of said notification.

16.3 Without the prior written consent of ERC, Licensee shall not be entitled to transfer or assign the Agreement or the access to Services and/or Products to third parties.

16.4 For the term of the Agreement and one year thereafter, ERC shall be entitled to name Licensee as a client in its statements, including but not limited to the Website, using Licensee's company name, logo and other features.

## **17. Audit rights**

17.1 ERC, or its appointed agents, shall be entitled to verify at Licensee's location at any given time during the term of the Agreement and one year after its termination whether the provisions of the Agreement are complied with in all respects, including security and payment obligations as well as limitation of usage to Rights of Use granted to Licensee and Authorized Users. Licensee shall provide all reasonable assistance with such inspection, which shall be subject to all necessary confidentiality requirements.

17.2 Licensee shall at the reasonable advance request of ERC make available to ERC, or its appointed agents, for inspection or audit, all records, information and systems relevant to such compliance.

17.3 In the event that such inspection reveals:

a. underpayment of amounts due to ERC, then Licensee shall remit the amounts outstanding within 7 days together with any applicable interest calculated in accordance with paragraph 9.5 above, together with the reasonable costs of such audit; and

b. failures to comply with the obligations under this Agreement, then Licensee shall use its commercially reasonable efforts promptly to correct any such failures at its own cost.

The consequences set out in this clause 17.3 are without prejudice to ERC's right to claim penalties under paragraph 6.7, to claim performance of Licensee's obligations and to full compensation.

17.4 ERC will exercise restraint in using its audit right under this paragraph 17 and exercise it only if ERC reasonably presumes that wrongful acts are being or have been committed.

## **18. Confidentiality**

18.1 If and to the extent that in performing the Agreement confidential information of either Party comes to the knowledge of the other Party, the latter shall keep this information confidential and use the same only in the context of performing the Agreement and restrict access to such information to persons on a need-to-know basis. Such confidential information specifically includes information in the Developer's Manual and any other (technical) information that ERC may provide to Licensee regarding its Services, Products, Software and Database. The Parties warrant that by employment contract or confidentiality agreement, the obligation of keep the information confidential is imposed on these persons.

18.2 This duty of confidentiality continues to be in effect after termination of the Agreement.

18.3 Confidential information shall not mean to include information that was available to the general public at the time it became known to the recipient Party, that became available to the general public later without the recipient Party's fault, or that the recipient Party received from a third party without the imposition of a duty of confidentiality and that third party not having a duty of confidentiality either.

## **19. Disputes**

19.1 Dutch law governs this Agreement. The statutory rules on general terms and conditions as defined in the Dutch Civil Code (*Burgerlijk Wetboek*) shall not apply to the relationship with Licensees who have their place of business or residence outside the Netherlands. The applicability of the Vienna Sales Convention 1980 (*CISG*) is hereby explicitly excluded.

19.2 The provisions of the General Terms and the Agreement together define the legal relationship between the Parties and supersede all agreements made earlier or statements made by ERC pertaining to the subject of the Agreement and shall constitute conclusive evidence of the same.

19.3 The Parties will attempt to resolve between them in proper consultation any dispute arising from the performance of the Agreement. If they fail to do so, they hereby agree that all disputes related to this Agreement will be submitted in the first instance to the competent court in Amsterdam, the Netherlands.

19.4 Save if unacceptable according to the standards of reasonableness and fairness (*redelijkheid en billijkheid*), the text and terms used in the Agreement shall be decisive for the interpretation thereof. If the terms and text, taken together, do not result in a reasonable interpretation under the circumstances given, the reasonable (commercial) intentions of the Parties shall be taken as a basis for interpretation of the Agreement. Evidence to the contrary against phrasing that is not *prima facie* unclear, as well as evidence based on other sources of explanation than the reasonable (commercial) intentions of the Parties, is not permitted.