

EATRIS GENERAL TERMS AND CONDITIONS

EATRIS General Terms and Conditions govern the discussions, interaction and the exchange of information between EATRIS and CLIENT during the Matchmaking Service (as hereinafter defined) and during the evaluation of CLIENT's interest for translational Projects (hereinafter referred to as "EATRIS General Terms").

1. Definitions

For the purposes of EATRIS General Terms the following definitions shall have the following meanings:

- 1.1. **EATRIS:** European Advanced Translational Research Infrastructure, located at De Boelelaan 1118, 1081 HZ Amsterdam, The Netherlands, established and construed as a legal entity under European Community law as a European Research Infrastructure Consortium (ERIC).
- 1.2. **EATRIS Institution:** a research institution which is a part of the EATRIS research infrastructure through signing of the EATRIS Framework Agreement.
- 1.3. **CLIENT:** party requesting performance of Matchmaking Service by EATRIS with a view of possible initiation of Project agreement (s) with EATRIS Institution(s).
- 1.4. **Agreement:** contract between EATRIS and CLIENT consisting of Letter of Engagement and EATRIS General Terms.
- 1.5. **Letter of Engagement:** a legal document signed by the CLIENT and EATRIS to perform the Matchmaking Service against a fee which, together with and subject to the EATRIS General Terms, constitutes an agreement between EATRIS and CLIENT.
- 1.6. **Matchmaking Service:** means services performed by EATRIS based on the request by CLIENT regarding matchmaking between the CLIENT's need and the available capacity of EATRIS Institution(s) for translational research. These services may include i.) identifying possible experts and identifying suitable institutional partners for Projects; ii.) assessing and optimizing translational feasibility of Projects; iii.) investigating potential collaborations and facilitating the establishment of collaboration between CLIENT and EATRIS Institution(s).
- 1.7. **Matchmaking Report-** final document compiled by EATRIS as a result of Matchmaking Service consisting of the CLIENT's request and a list of EATRIS Institution(s) identified.
- 1.8. **Party/ies:** EATRIS or CLIENT individually or EATRIS and CLIENT collectively.
- 1.9. **Project:** translational research project conducted by one or more EATRIS Institutions based on a Project agreement concluded between the CLIENT and EATRIS Institutions.

2. Goal and Scope

- 2.1. EATRIS General Terms govern the discussions, interaction and the exchange of information between EATRIS and CLIENT during the Matchmaking Service and during the evaluation of CLIENT's interest for translational Project(s).
- 2.2. EATRIS General Terms shall take precedence over any general conditions that may be relied on by CLIENT and/or any third party to the express exclusion of any general or other terms and conditions of CLIENT, howsoever described.
- 2.3. Any translational research collaboration or concluded research Project is subject to agreement between CLIENT and EATRIS Institution(s) and these EATRIS General Terms shall not be applicable or have any effect thereto.
- 2.4. EATRIS General Terms bind the Parties unless and insofar as any express, written exception to them has been agreed upon.

3. Matchmaking Service

- 3.1. In order to require EATRIS to perform a feasibility assessment of the request made by the CLIENT or Matchmaking Service, CLIENT needs to sign Letter of Engagement which together with EATRIS General Terms constitutes and establishes the Agreement between CLIENT and EATRIS. By signing of the Letter of Engagement CLIENT agrees to be bound by the EATRIS General Terms.

3.2. Matchmaking Service will be performed within the maximum of sixty (60) days from the last signature of the Letter of Engagement, unless this proves not to be possible. If it is foreseeable that this period will be exceeded, then EATRIS will notify CLIENT as soon as possible. If this period is to be exceeded, then EATRIS will consult with CLIENT to agree further period within which Matchmaking Service will be performed. EATRIS will not be in breach of the Agreement by reason alone of this period being exceeded without any notice of default.

3.3. Only if and when the result of the performed Matchmaking Service will lead to a Project by signature of the Project agreement between CLIENT and EATRIS Institution(s), CLIENT will pay to EATRIS an agreed upon overhead percentage over the Project budget/Project cost, and EATRIS will invoice CLIENT accordingly.

3.4. EATRIS has right to issue an invoice for the Matchmaking Service to the CLIENT within fourteen (14) days from the signature of a Project agreement between EATRIS Institution and CLIENT, and based on Project budget/Project cost provided by the CLIENT to EATRIS.

3.5. The scope and the subject of the Matchmaking Service is determined by the request submitted by the CLIENT including all changes that are subsequently made by agreement of both Parties.

3.6. CLIENT may also require other services or additional Matchmaking Service from EATRIS in the course of an already initiated translational Project, which is then subject to a new Agreement between Parties or to be covered by specific agreement.

3.7. CLIENT cannot derive any rights from any Letter of Engagement prior to its signature, unless agreed upon otherwise in writing.

3.8. EATRIS may additionally claim the full amount of damages and costs incurred as a result of noncompliance by CLIENT after CLIENT has accepted and signed Letter of Engagement.

3.9. Any amendments or additions to the Letter of Engagement or EATRIS General Terms will only be binding if agreed in writing between CLIENT and EATRIS.

4. Performance of Projects

4.1. EATRIS is only responsible for the Matchmaking Service as specified herein. It is the EATRIS Institution(s) responsibility to perform the translational research (in compliance with applicable EU legislation, best practices and quality standards) and to agree upon the terms of a Project agreement after the results of Matchmaking Service has been delivered to CLIENT.

4.2. EATRIS shall have no responsibility whatsoever, and CLIENT and EATRIS Institution indemnify EATRIS for the performance or (non)compliance of any research performed or to be performed by EATRIS Institution(s) subject to separate Project agreement between CLIENT and EATRIS Institution.

5. Confidentiality

5.1. Parties agree that all information, which is disclosed in connection with the Matchmaking Service ("Purpose") and which has been explicitly marked as "confidential" is confidential information (hereinafter "Confidential Information") and EATRIS and CLIENT are obliged to keep such information confidential. Each Party will allow the other access to such information as is reasonably necessary or desirable for the purpose of the Matchmaking Service. Each Party will in good faith use reasonable endeavor to ensure that the Confidential Information provided to the other is accurate and not misleading.

5.2. EATRIS shall not disclose Confidential Information of CLIENT to any third party without prior CLIENT's written consent, except to such EATRIS employees, EATRIS national coordinators, experts, advisors/consultants to whom it is necessary to disclose Confidential Information for the Purpose and who are bound by equivalent confidentiality obligation whether by employment agreement or otherwise.

5.3. Matchmaking Report is to be treated as Confidential Information. However, part of the Matchmaking Report consisting of a list of EATRIS Institution(s) is not considered confidential as such and EATRIS may use it for other purposes and for the benefit of third parties.

5.4. Parties may or will disclose Confidential Information during preliminary non-binding discussions or during the assessment period after submission of request by the CLIENT and before a Letter of Engagement is signed, which is then subject to a confidentiality agreement.

5.5. In respect of confidential information disclosed during the Matchmaking Service, the obligation of confidentiality will last for a period of five (5) years from the date of last signature of the Letter of Engagement.

5.6. The duty of confidentiality does not apply to:

- i.) information that is already in the possession of a Party at the moment when it is supplied by the disclosing Party to receiving Party;
- ii.) information that is, or becomes, general knowledge other than as a result of any act or omission on the part of the receiving Party;
- iii.) information that is lawfully acquired by a Party from a third party or from research carried out by the disclosing party without any use thereby being made of such Confidential Information;
- iv.) if any misunderstandings arise as a result of disclosure by CLIENT of the Matchmaking Service results, this shall release EATRIS from such duty of confidentiality in respect of such disclosure as is reasonably necessary to explain the Matchmaking Service results to third parties.
- v) if it contravenes any statutory tasks or obligations upon EATRIS or, if and insofar as EATRIS anticipates any danger to person or property. In the latter case, EATRIS will consult with CLIENT where possible before notifying the persons who are, or whose property is, in danger and/or the competent authorities of such dangerous situation.

5.7. CLIENT acknowledges that in the course of Matchmaking Service or preliminary discussions Confidential Information from third parties or from EATRIS Institutions, experts, advisors/consultants might be engaged, which is subject to confidentiality and/or the conclusion of confidentiality agreements, for which EATRIS cannot hold any responsibility for the third-party information being accurate or being subject to confidentiality or not infringing other third parties' rights.

5.8. CLIENT undertakes to preserve the confidentiality of all knowledge/know-how of EATRIS of which it learns pursuant to this Article.

5.9. EATRIS is at liberty to accept request from any third party in the same field during the performance of the Matchmaking Service for CLIENT, unless the Parties have agreed otherwise in writing.

6. Rights to the results

6.1. Knowledge which was already owned by a Party before conclusion of the Agreement remains the ownership of that Party.

6.2. CLIENT acknowledges that EATRIS has reached and established certain copyrighted material and intellectual property rights for the purpose of providing and carrying out services and Matchmaking Service. These proprietary materials include, but are not limited to EATRIS registered or unregistered trademarks, EATRIS name, EATRIS logo and EATRIS documents. CLIENT may not use, modify, alter or apply these proprietary materials and/or name/logo/trademarks including suggesting sponsorship or endorsement by EATRIS, or otherwise in any way that confuses EATRIS with another party/trademark without the permission of EATRIS.

6.3. Matchmaking report cannot have the purpose of transferring any intellectual property right to, or vesting it in, CLIENT.

6.4. EATRIS is entitled to use the list of EATRIS Institutions contained in Matchmaking Report for the benefit of third parties and to allow use by third parties of:

- i.) the knowledge and experience possessed by EATRIS at the time of signing the Letter of Engagement;
- ii.) the knowledge and experience acquired whilst performing the Matchmaking Service that is outside the field covered by the Letter of Engagement;

6.5. Reports, drawings and other physical materials that are the result of the Matchmaking Service belong to EATRIS subject to copyright held by EATRIS.

7. Disclosure and publication

7.1. CLIENT acknowledges that it is the policy of EATRIS to encourage publishing the results of research and reports and to present these results at academic symposia, departmental meetings and in journals, and to otherwise publish them in written form or otherwise. Publication by EATRIS is possible at any time without the prior consent of CLIENT, however publications will not include any Confidential Information or information which may harm any patent application or the business interests of CLIENT. Names of CLIENTS shall not be considered as Confidential Information.

7.2. Parties may publish parts of Matchmaking Report drawn up by EATRIS after having obtained the approval of the other Party, which approval will be granted within a review period of thirty (30) days. If one of the Parties notices that the publication could or may harm its Confidential Information, business interest or any patent filing, the review period may be extended with an additional sixty (60) days to allow that Party to take necessary measures.

7.3. CLIENT will promote EATRIS and refer to EATRIS with third parties after the Project or when the results of the Matchmaking Service are being further used.

8. Price and payment

8.1. If the Letter of Engagement specifies a 'fixed fee' including a percentage over a Project budget/Project cost, then this fee is deemed to be the Matchmaking Service fee. If the Letter of Engagement contains no 'fixed fee,' then the amount payable by CLIENT to EATRIS will be based on a subsequent calculation.

8.2. CLIENT must pay invoices in a currency that is legal in The Netherlands within thirty (30) days from the invoice date. If CLIENT fails to pay within this term, then EATRIS is entitled to charge interest on the outstanding debt at the statutory rate plus 3% and to recover all enforcement costs.

8.3. EATRIS retains ownership of all property it supplies to CLIENT in the context of Matchmaking Service, up to the moment that the sums owed by CLIENT to EATRIS are paid in full.

9. Liability

9.1. The total liability of EATRIS due to an attributable failure in the performance of the EATRIS General Terms, Matchmaking Service, or on any legal basis whatsoever shall be limited to compensation for direct damage or loss not exceeding 100% of the price owed by CLIENT (excluding VAT) under the Agreement.

9.2. In case of death, bodily injury or material damage exceeding the aforementioned limit and which is covered under the business liability insurance taken out by EATRIS, the liability of EATRIS shall be limited to the amount paid out by EATRIS' insurer.

9.3. The liability of EATRIS for indirect damage or loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss arising from the use of items, materials or data prescribed by the CLIENT to EATRIS, and loss arising from corruption, destruction or loss of data or documents is excluded. In particular, EATRIS accepts no liability for loss arising from the results/Matchmaking Report being unsuitable for any use or any commercial application, and/or the results not being capable of being subject to copyright, patent or plant production rights, and/or the application of the results infringing any third-party rights.

9.4. CLIENT indemnifies EATRIS or third parties engaged by EATRIS for the performance of the Matchmaking Services from third-party claims based on loss arising from the application or use of the results of Matchmaking Service by CLIENT or party to which CLIENT has supplied the results/Matchmaking Report.

9.5. Neither Party can invoke any limitation of liability in case of intent or deliberate recklessness (bewuste roekeloosheid) of such Party, its personnel or any third party engaged by such Party.

10. Miscellaneous provisions

10.1. If either CLIENT or EATRIS is in breach of any essential obligation under the Agreement, the other Party will serve the Party in breach with the written notice specifying a reasonable period not being longer than thirty (30) days within which the Party in breach should comply with its obligations. If the Party in breach still fails to comply with its obligations within this period, it will forfeit its rights under the Agreement and the other Party is no longer obliged to comply with any of its contractual obligations. The non-breaching Party can terminate the Agreement with immediate effect by a written notice to the breaching Party.

10.2. Any claim by CLIENT against EATRIS arising from or connected with the performance of any Matchmaking Services by EATRIS and/or any EATRIS' employee or third party engaged by EATRIS in the performance of the Matchmaking Services, will entirely lapse unless the claim is expressly made within three (3) months following the date of the final Matchmaking Service invoice issued by EATRIS.

10.3. In the event that one or more of these EATRIS General Terms clauses is proved to be, or declared to be, invalid, the Agreement and the remaining General Terms clauses shall remain in force. In such an event, any invalid provision will be replaced by a provision that is valid and that is as close as possible in content, scope and consequence as the invalid provision.

11. Force Majeure

Force Majeure shall mean any situation for which a Party cannot be held responsible and which does not give another Party any right to terminate the Agreement or to claim compensation. In case of Force Majeure, the concerning Party is allowed to suspend the obligations for the duration and extent of Force Majeure, provided that the other Party has been notified in writing of the occurrence of Force Majeure within fourteen (14) days from such occurrence. Examples of Force Majeure include, but are not limited to war, mobilization, riot, flood, obstructions in transport, restrictions in supply by public utilities, lack of coal, gas, natural gas or other products needed for the supply of energy, fire, damage to machinery or other accidents, strikes, lock-outs, trade union action, export restrictions, other governmental measures, non-supply of essential materials and half-finished goods by third parties and similar situations.

12. Assignment of rights and obligations

CLIENT is not entitled to assign its rights and obligations under the Agreement to any third party without the prior written consent of EATRIS which shall not be unreasonably withheld. For the avoidance of doubt, the foregoing does not refer to Project agreement(s) or other contracts to which EATRIS is no party to.

13. Disputes

13.1. The Agreement between CLIENT and EATRIS and these EATRIS General Terms are governed by and subject to Dutch law.

13.2. Any disputes arising from the Agreement, or in connection with the activities/services provided by EATRIS and/or the legal relationship with the CLIENT or other third party are subject to exclusive jurisdiction and will be exclusively decided by the competent court in Amsterdam, The Netherlands.

Version 3.0. *EATRIS General Terms and Conditions* applicable as of 16th October 2017.