



# General Terms and Conditions of Use

## ERS Registry

**Entry into force:** September 1, 2023

### 1. Company identity

ERS company ("**ERS**") is a simplified joint stock company registered with the RCS of Paris under the number 891 908 576, whose head office is located at 25 rue Frémicourt, 75015 Paris (France).

ERS can be contacted at the following e-mail address: [info@ers.org](mailto:info@ers.org)

### 2. Purpose

ERS operates a registry (the "**Registry**") which provides to the users (the "**Users**") an electronic tracking system to create, transfer, track, manage and retire certificates bearing a unique serial number and representing the environmental attributes associated with Ecosystem Restoration projects (the "**Certificates**").

Together the "**Services**".

### 3. Information about terms and conditions

The terms and conditions (the " <b>Terms and Conditions</b> ")	In the context of using the Registry, the Terms and Conditions constitute the document governing the ERS' contractual relationship with the Users and define: <ul style="list-style-type: none"><li>- the terms of use of the Registry and more specifically the Services,</li><li>- the respective obligations of the parties.</li></ul>
<b>Location of the Terms and Conditions</b>	The Users can find the Terms and Conditions via a direct link in the footer of ERS' Registry website: <a href="https://ers.org">ers.org</a> (the " <b>Registry Website</b> ").



<b>Terms and Conditions of acceptance</b>	<p>The Users agree to the Terms and Conditions by checking a box in the registration form. If the User does not agree to all of Terms and Conditions, it may not access the Registry and more generally the Services.</p> <p>They may be supplemented by special conditions which, in the event of contradiction, take precedence over the Terms and Conditions.</p>
---	--

In addition, when using the Services, the Users shall be subject to any rules, guidelines and/or operating procedures, including but not limited to the Standard procedure (the **"Operating Procedures"**), the applicable fee schedule, the Terms and Conditions and such other rules, guidelines and/or operating procedures, each as modified or restated from time to time (collectively, the **"Operative Documents"**) applicable to such use which may be posted on the Registry Website from time to time. All such Operative Documents are incorporated by reference into these Terms and Conditions.

If the Users do not agree to these Terms and Conditions, they may not access or otherwise use the Registry and more generally the Services.

#### 4. Conditions for access to the Services

The Services are provided to Users who comply with the following cumulative conditions:

- (i) The User is a legal person acting through a natural person who has the power or authority to enter into a contract in the name and on behalf of the User and,
- (ii) The User is a professional, understood as any individual or legal entity acting for business purposes, including when acting in the name of or on behalf of another professional,
- (iii) The User complies with the Operating Procedures.



## 5. Access to the Services

To access the Registry, the User must fill in the form provided for this purpose on the Registry Website. The User must provide ERS with all the information marked as mandatory.

Registration automatically opens an account in User's name (the "**Account**") which allows it to access the Services using its login and password. Once the Account has been created, the User may freely create accesses to the Registry for authorized participants within the limit of the number provided in the applicable agreement (the "**Authorized participants**").

The User is solely responsible for creating access for the Authorized participants and for their personal use of the Services and more specifically, the Registry.

## 6. Description of the Services

### 6.1 Services

Before accepting the Terms and Conditions, the User acknowledges having read the characteristics of the Services on the Registry Website.

The User recognize:

- that he is aware of the characteristics and constraints of the Services, in particular the technical ones,
- that the implementation of the Services requires a connection to internet and that the quality of the Services depends on this connection, for which ERS is not responsible.

As further described in the Operating Procedures, the data comprising the Registry include, but are not limited to:

- Ecosystem Restoration project information from project developers entered into the Registry as provided in the Operative Procedures and,
- Static information provided by the User or Authorized Participants.

The Registry is an assembly of data regarding Ecosystem Restoration projects and serves only for informational purposes. ERS reserves the right, in its sole discretion, to modify, augment, segment, reformat, reconfigure or otherwise alter at any time the



content or methods of transmission of the Registry, the Operative Documents or these Terms and Conditions and create new types or versions of the Registry, the Operative Documents or these Terms and Conditions.

ERS reserves the right to propose any other Service that it deems useful, in a format and according to the technical means that it deems the most appropriate for providing the said Services.

## 6.2 Additional Services

### **(i) Maintenance**

The User benefits from maintenance, in particular corrective and evolutive maintenance of the Registry, for the term of use of the Services. In this context, access to the Services may be limited or suspended.

Concerning corrective maintenance, ERS shall make its best efforts to provide the User with corrective maintenance to correct any malfunction or bug found on the Registry.

Concerning the evolutive maintenance and during the term of use of the Services, ERS may carry out evolutive maintenance automatically and without prior notice, which could include improvements of the functionalities and any updates of the Registry and/or technical facilities used within the framework of the Registry (aiming at introducing minor or major extensions).

Access to the Registry may also be limited or suspended for planned maintenance purposes, which may include the above-mentioned corrective and evolutionary maintenance operations.

### **(ii) Hosting**

ERS provides, under the terms of an obligation of means, the hosting of the Registry, as well as the data produced and/or entered by/on the Registry, through a professional hosting provider (APX).

### **(iii) Technical support**

In the event of any difficulty encountered while using our Services, the User can contact ERS at the contact details abovementioned in the article "Company identity".



## **7. Term of the Services**

The User has access to the Services for an indefinite period.

## **8. Financial conditions**

The price of Services depend on the quality of the User.

The price, invoicing and payment modalities of the Services are indicated in the agreement concluded between the project developer and/or the funder and/or ERS.

## **9. Intellectual property**

The Registry Website, the Registry and any all content of the Registry as are texts, image, visuals, logos, trademark, are protected by all intellectual property rights or database producers' rights in force. The licence grants to the User by ERS does not entail any transfer of ownership.

The User and the Authorized Participants shall benefit from a non-exclusive, personal, and non-transferable licence for the use of the Registry and especially the permission to access, retrieve and download data of the Registry for the duration set out in the article "Term of the Services".

## **10. Personal data**

The parties undertake, each as far as it is concerned, to comply with all the legal and regulatory obligations incumbent on them with regard to the protection of personal data, in particular the law 78-17 of January 6, 1978 in its latest version. amended, known as the Data Protection Act and EU Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016 (together the "Applicable Regulations").

For the purposes of managing the contractual relationship between the parties, each party processes the personal data of the interlocutors of the other party as data controller within the meaning of the applicable Regulations, and this for the duration hereof. This processing is necessary for the proper execution of these presents and only concerns the identification data (in particular surname, first name, email address, telephone number) of the interlocutors.

The staff of each party, their departments in charge of control (notably the auditor) and their subcontractors may have access to personal data.



This processing may give rise to the exercise by the interlocutors of the parties of their rights provided for by the applicable Regulations.

To find out more about the processing carried out by ERS, the User is invited to read the ERS' privacy policy available on the Registry Website.

## **11. Obligations and liability of the User**

The User is responsible for its own use of the Services and any information that it may share in connection therewith.

The User shall ensure that any of the Authorized participants to whom it has provided access to the Registry agree to comply with the Operative Documents and the Terms and Conditions. Thus, he is responsible for the use of the Services and any information shared by Authorized participants. He undertakes to ensure that the Services are used exclusively by him and/or the Authorized participants, who are subject to the same obligations as he is in their use of the Services.

Concerning the ownership of Certificates, the User will only hold, transfer, or retire Certificates for which it is the sole holder of all legal title and all Beneficial Ownership Rights. The "Beneficial Ownership Rights" with respect to any Certificate, means any contractual or other right (i) to the value or benefit of such Certificate or of the environmental attributes represented thereby or (ii) to direct or control the sale or other disposition of, or the retirement of, such Certificate.

The User may not hold, transfer and/or retire any Certificates on behalf of one or more third parties.

As an exception to the above, a User may retire Certificates on behalf of one or more third parties, provided that all legal title to and all Beneficial Ownership Rights in any Certificate retired on behalf of one or more third parties must be held by one or more individuals or organizations (collectively, a "Certificate Owner") that have authorized User in writing to retire such Certificate on their behalf and to provide any data or other information relating to such Certificate to ERS (except to the extent that User may be deemed to hold or share with the applicable Certificate Owner any legal title to or Beneficial Ownership Rights in such Certificate).



Moreover, the User may hold Certificates on behalf of one or more third parties, provided that:

- i. The User is a regulated person (a bank for example) and has provided ERS a signed regulated person attestation, available at the Registry Site; provided);
- ii. All legal title to and all Beneficial Ownership Rights in any Certificate so held by User is held by one or more Certificate Owners that have authorized the User in writing to hold Certificates on their behalf and to provide any data or other information relating to such Certificate to ERS (except to the extent that User may be deemed to hold or share with the applicable Certificate Owner any legal title to or Beneficial Ownership Rights in such Certificate);
- iii. The User complies with all applicable laws, regulations or other legally enforceable requirements;
- iv. The User maintains a customer identification program that contains reasonable procedures to verify the identity of any individual or organization on whose behalf the User is holding Certificates and maintains records of the information used to verify such identity, which records will be made available to ERS upon request.

Generally speaking, the User undertakes to comply with the applicable laws when using the Services. The User shall not misuse the Services for purposes other than those for which they were designed, and in particular for:

- practice illegal or fraudulent activity,
- harm public order and morality,
- infringe on third parties or their rights in any way whatsoever,
- violate any contractual, legislative or regulatory provision,
- carrying out any activity that may interfere with a third party's computer system, in particular for the purpose of violating its integrity or security,
- carry out any operation aimed at promoting its services and/or sites or those of a third party,
- assist or incite a third party to commit one or more of the acts or activities listed above.

The User shall use the Services in accordance with its intended purpose and shall not:

- disassemble, decompile or reverse engineer the Registry,
- copy, modify or misappropriate any of the ERS' property or concepts used by ERS in connection with the Services,
- adopt any conduct that interferes with or hijacks ERS' computer systems or breaches its computer security measures,



- infringe the ERS' financial, commercial or moral rights and interests,
- give any third party access to the Registry and the Services for any reason whatsoever,
- market, transfer or otherwise provide access to the Services, the information hosted on the Registry or any of the ERS' property.

Except as otherwise provided in the Operating Procedures, the User acknowledges that once the User transmits data to the Registry, such data becomes the property of ERS. Except in accordance with ERS' normal operating procedures, data in the Registry, including Confidential Information, cannot and will not be deleted, removed, or otherwise expunged or segregated, including in the event the User terminates its use of the Registry. To the extent any data submitted by or on behalf of the User is and remains Confidential Information, the User grants ERS' a irrevocable, worldwide, royalty-free and non-exclusive license to retain and use such data in the Registry for the entire duration of copyright, subject to the obligations set forth in these Terms and Conditions applicable to such Confidential Information.

The User acknowledges that the data transmitted by the Registry is derived from proprietary and public third-party sources, including but not limited to data from other Registry users.

The User must comply with the Operating procedures.

The User must not submit projects for certification with ERS that are currently registered under another carbon crediting program or if they have already received carbon credits or complete funding for the removal activities submitted for registration. ERS reserves the right to screen every Project submission for registration in other registries.

## 12. Obligations of ERS

ERS undertakes to provide the Services with due diligence, it being understood that ERS is bound by a provision of means.

### 12.1 Concerning the quality of the Services

ERS makes every effort to provide to the Users with quality Services. For this purpose, ERS carry out regular checks to verify the functioning and accessibility of the Registry and





Registry Website and may carry out scheduled maintenance under the conditions specified in the "Maintenance" section.

However, ERS is not responsible for any difficulties or temporary impossibility of access to the Registry due to:

- circumstances outside of its network (including partial or total failure of the User's servers),
- the failure of equipment, cabling, services or networks not included in the Services, or which are not under its responsibility,
- interruption of the Services by telecom operators or internet service providers,
- the User's intervention, in particular through an incorrect configuration applied to the Services,
- force majeure.

In particular, the User accepts that the Services are provided by ERS on an "as is" basis and without warranty of any kind, express or implied. ERS does not warrant to the User (i) that the Services, which are subject to constant research to improve performance and progress, will be completely free from errors, defects or deficiencies, (ii) that the Services, being standard and not offered solely for the User's own personal requirements, will specifically meet the User's needs and expectations.

## 12.2 Concerning the backup of data on the Registry

ERS will make its best efforts to back up any data produced and/or entered by/on the Registry.

However, except in cases of proven fault on ERS' part, ERS is not responsible for loss of User data during maintenance operations.

## 12.3 Concerning data storage and security

ERS provides to the User with sufficient storage capacity to operate the Services.

ERS makes its best efforts to ensure data security by implementing measures to protect the infrastructure and the Registry, to detect and prevent malicious acts and to recover data.



## 12.4 Concerning the use of subcontracting and the transfer of rights and obligations

ERS may use subcontractors in the performance of the Services, who are subject to the same obligations as ERS in the performance of their work. However, ERS shall remain solely responsible to the User for the proper performance of the Services.

ERS may substitute any person who will be subrogated to all its rights and obligations under its contractual relationship. ERS will inform the User of any such substitution by any written means.

## 13. Limitation of liability of ERS

The ERS' liability is limited to proven direct damages that the User suffers as a result of using the Services. Except for physical damage, death and gross negligence, and after sending a claim by registered letter with acknowledgement of receipt, ERS shall not be liable for an amount over 20 000 €.

The User acknowledges that neither the Registry nor ERS shall have any liability in connection with any misrepresentation by the User or another Authorized participant relating to the ownership of any Certificate (including without limitation the identity of the person(s) holding any legal title thereto or Beneficial Ownership Rights therein).

## 14. Confidentiality

Each party undertakes to keep strictly confidential all documents and information of a legal, commercial, industrial, strategic, technical or financial nature relating to the other party or held by it which comes to its knowledge in connection with the conclusion and performance of these Terms and Conditions and not to disclose them without the prior written consent of the other party.

This obligation does not extend to documents and information:

- (i) of which the party receiving them was already aware;
- (ii) which were already public at the time of their communication, or which would become public without breach of these Terms and Conditions;
- (iii) which would have been lawfully received from a third party;



- (iv) the communication of which is required by the judicial authorities, according to laws and regulations, or in order to establish the rights of a party under these Terms and Conditions.

This obligation of confidentiality extends to all employees, collaborators, trainees, managers, and agents of each party as well as their affiliated counsel and co-contractors, to whom confidential documents or information may be transmitted only if they are bound by the same obligation of confidentiality as provided herein.

This obligation of confidentiality shall continue to apply for a period of 3 years from the expiration or termination of the Subscription, whatever the reason for the termination.

## 15. Force majeure

In accordance with the provisions of article 1218 of the Civil Code, no party may be held liable for a failure to perform its contractual obligations if this failure is due to an event beyond the control of the Parties and constitutes force majeure.

Force majeure is understood to mean the occurrence of an event that has the characteristics of unpredictability, irresistibility and exteriority to the Parties that are usually recognised by French law and courts. This includes strikes, terrorist activities, riots, insurrections, wars, governmental actions, natural disasters or a defect attributable to a third-party telecommunication provider.

The party prevented from doing so must inform the other party as soon as possible, indicating the nature of the case of force majeure. The Parties shall meet in order to determine together the most appropriate means of mitigating, if possible, the consequences of the event(s) constituting force majeure.

If the case of force majeure lasts for more than one month, each party may terminate the contract, as of right, without any judicial formality, without prior notice and without any right to compensation of any kind whatsoever, by any written means with immediate effect.

If, as a result of a case of force majeure, the affected party is prevented from fulfilling only part of its contractual obligations, it shall remain responsible for the performance of



those obligations that are not affected by the case of force majeure, as well as for its payment obligations.

As soon as the case of force majeure ceases, the party prevented shall immediately inform the other party and resume performance of the affected obligations within a reasonable period.

## **16. Termination of the Services**

The User can unsubscribe the Services by sending ERS a request to the contact details mentioned in the article "Company identity". The termination shall be effective within 30 days of the request.

The User has no longer access to the Registry once the Services have ended.

The User undertakes to pay all the prices and taxes due under the agreement, even after the termination of the Services.

If the User denounces the ERS' general terms and conditions, this Terms and Conditions will end automatically.

## **17. Sanctions in the event of breach**

The payment of the price of the Services as well as the obligations set out in the article "Obligations of the User" are essential obligations.

In the event of a breach of these obligations, ERS:

- suspend or terminate the User access to the Registry and more generally, the Services,
- publish on the Registry Website any information message that ERS deems useful,
- send to the User a registered letter with acknowledgement of receipt to:
  - terminate the contractual relationship, the termination taking effect on the day of receipt or first presentation of this letter,
  - or to ask to the User to remedy the breach within a maximum of 15 calendar days. Termination will take effect at the end of this period if the breach is not remedied.



- notify and cooperate with any competent authority and provide it with any information relevant to the investigation and prosecution of illegal or unlawful activities,
- initiate any legal action.

These sanctions are without prejudice to any damages ERS may claim from the User.

## **18. Amendment of the Terms and Conditions**

ERS may change its Terms and Conditions at any time and will notify the User in writing (including by email) at least 1 month before they come into effect.

The modified Terms and Conditions are applicable as soon as they come into force.

If the User does not accept these modifications, it must unsubscribe the Services as specified in article 16.

If the User uses the Services after the amendment of the Terms and Conditions comes into effect, ERS will assume that the User has accepted them.

## **19. Applicable law and jurisdiction**

The Terms and Conditions are governed under French law.

In the event of a dispute between the User and ERS, and in the absence of an amicable settlement within 1 month of the first notification, the dispute shall be submitted to the exclusive jurisdiction of the courts of Paris (France), unless otherwise provided for by mandatory provisions.