

## Energy Service Center Beheer B.V. General Conditions of Use

Version: October 2019

### Article 1: Definitions

- 1.1 **ESCB** is the private limited liability company Energy Service Center Beheer B.V., registered according to its Articles of Association in 's-Hertogenbosch and registered in the Commercial Register of the Chamber of Commerce under number 73735175;
- 1.2 **ESC Platform** is the Energy Service Center web application, including all adjustments and updates of the Energy Service Center web application;
- 1.3 **License Agreement** is the contract between ESCB and Licensee, on the basis of which a Licensee may make use of the ESC Platform;
- 1.4 **Licensee** is the natural person or legal entity that makes use of the ESC Platform.

### Article 2: Scope

- 2.1 These General Conditions of Use apply for all use of the ESC Platform by Licensee and all legal relationships resulting from or relating to this between ESCB and Licensee, unless the parties explicitly agree otherwise in writing.
- 2.2 ESCB reserves the right to change these General Conditions of Use at all times. ESCB explicitly rejects any conditions applied by Licensee.
- 2.3 The nullity or annulment of one or more provisions of these General Conditions of Use is without prejudice to the applicability of the other provisions. In that case, ESCB and Licensee will open talks with the aim of replacing provisions that are null and void or annulled with provisions that are as consistent as possible with the objectives and purport of the null and void or annulled provisions.
- 2.4 In the event of a conflict between the provisions of the License Agreement and these General Conditions of Use, the provisions of the License Agreement take precedence.

### Article 3: Membership/account

- 3.1 In order to access the ESC Platform, Licensee must log in with its account.
- 3.2 Licensee is responsible for the use of its account and for the use and protection of the confidentiality of its password. Licensee undertakes to notify ESCB of suspected use of its account by a third party at the earliest opportunity. ESCB is not liable for any damage arising from the use, improper or otherwise, of the password by third parties.
- 3.3 ESCB has the right to deny Licensee access to the ESC Platform with immediate effect and to block the account if Licensee fails to comply with the provisions of the License Agreement or of these General Conditions of Use or if Licensee harms the reputation of ESCB in any way whatsoever. Licensees who are denied access are not permitted (any longer) to open a (new) account.

### Article 4: Right of use

- 4.1 ESCB grants Licensee a non-exclusive and non-transferable right of use in relation to the data and information provided via the ESC Platform.
- 4.2 The data and information provided may be used and processed for the purposes laid down in the License Agreement concluded with Licensee and in these General Conditions of Use. Without the consent of ESCB, Licensee may not use the data and information provided via the ESC Platform for purposes other than for those for which they are provided.
- 4.3 Licensee may reproduce the data and information only for use within his or her own organisation and for back-ups and security purposes.

### Article 5: Payments

- 5.1 Licensee is required to pay the price agreed in the License Agreement in accordance with the ordering procedure on the website and the payment methods prescribed by ESCB. The payment methods are offered at ESCB's discretion and it may also change these from time to time.

- 5.2 Licensee is not granted access to the ESC Platform until it has met its payment obligations in full.
- 5.3 Payments shall at all times be made without any discount, settlement or suspension by Licensee on any grounds whatsoever.
- 5.4 ESCB has the right at all times to settle its obligations to Licensee, partially or in full, with any current or future receivables of ESCB from Licensee, whether these are due and payable, conditional or time-bound or otherwise.

#### **Article 6: Intellectual property rights**

- 6.1 All intellectual property rights relating to the ESC Platform are held solely by ESCB or, if applicable, by its licensor(s) or supplier(s). 'Intellectual property rights' include, but are not limited to copyrights and database rights and all rights and claims to all data, information and documents provided by ESCB to Licensee via the ESC Platform arising from such rights.
- 6.2 Licensee acquires only the rights of use awarded under these General Conditions of Use and the License Agreement. Without the explicit written consent of ESCB, Licensee is not permitted to take over, reproduce or disclose the ESC Platform in any way whatsoever, other than for the purposes for which the rights of use are made available to Licensee.

#### **Article 7: Guarantees & liability**

- 7.1 ESCB cannot guarantee that the data and information provided via the ESC Platform are accurate, complete and/or up to date. ESCB therefore issues no implicit or explicit guarantees relating to the information and data provided via the ESC Platform.
- 7.2 ESCB cannot guarantee that the ESC Platform will be available and function correctly at all times.
- 7.3 ESCB is not liable for any direct or indirect damage or loss of Licensee, explicitly including but not limited to direct trading loss, loss of profit, consequential loss, personal injury, all other forms of financial loss and all possible claims of third parties, except in the event of intent or wilful recklessness on the part of ESCB.
- 7.4 In all cases, ESCB's liability is limited to the net invoice value of the License Agreement through which or in connection with which damage is caused or, if the damage is covered by any insurance policy of ESCB, to a maximum of the amount that is actually paid out to ESCB by the relevant insurer in the case concerned.
- 7.5 Licensee must notify ESCB in writing of damage that it suffers at the earliest opportunity and in any event within two weeks of the occurrence or detection of the damage. Damages that are not notified within this term do not qualify for compensation. In any event, every claim of Licensee against ESCB, except claims explicitly accepted by ESCB, lapses on the expiration of a 12-month period after it arises.
- 7.6 Licensee indemnifies ESCB against all third party claims resulting (directly or indirectly) through the use of the ESC Platform. Licensee hereby waives any rights of recourse against ESCB.

#### **Article 8: Force majeure**

- 8.1 If ESCB is temporarily unable to execute the License Agreement due to *force majeure*, it is authorised to partially or fully suspend the execution of the License Agreement for as long as the situation of *force majeure* persists. If ESCB is permanently unable to execute the License Agreement due to *force majeure*, it has the right to terminate the License Agreement, partially or in full, with immediate effect. '*Force majeure*' in any event includes strikes, excessive sickness absences of ESCB personnel, fire, government measures and operational breakdowns, such as (partial) unavailability or (partial) malfunctioning of servers at ESCB or suppliers of ESCB, as well as default by the aforementioned suppliers as a result of which ESCB is unable to meet its obligations.
- 8.2 If the situation of *force majeure* persists for more than 90 days, Licensee has the right to cancel the License Agreement in writing. Payment for the services already provided pursuant to the License Agreement must be made on a proportional basis.

#### **Article 9: Security**

- 9.1 The ESC Platform is provided with a form of information security. ESCB does not guarantee that the security of information is effective under all circumstances. The security will comply with a level that is not unreasonable in view of the state of the art, the sensitivity of the data and the costs associated with the provision of the security.
- 9.2 Licensee is responsible for installing effective security and antivirus software on the systems on which it uses the ESC Platform.

**Article 10: Termination**

- 10.1 Without prejudice to its statutory powers, ESCB has the right to suspend execution of the License Agreement or to dissolve the License Agreement, partially or in full, without notice of default or the intervention of a court and without liability for any compensation for damage or guarantee commitments, if Licensee fails to comply with any obligation pursuant to the License Agreement concluded with ESCB or these General Conditions of Use, or fails to do so properly or in a timely manner, as well as if there are serious doubts concerning whether Licensee is able to meet its contractual obligations to ESCB and if Licensee is declared bankrupt, is granted a moratorium on payments or is dissolved or wound up.
- 10.2 The provisions of these General Conditions of Use remain in effect in full in the event of the dissolution or termination of the License Agreement.

**Article 11: Disputes and choice of law**

- 11.1 All contracts and legal relationships between Licensee and ESCB concerning the ESC Platform are governed solely by Dutch law unless explicitly agreed otherwise. The application of the United Nations Convention on Contracts for the International Sale of Goods is explicitly ruled out.
- 11.2 Any disputes that may arise in relation to or as a result of the License Agreement and/or the General Terms and Conditions of Use applying to this shall be submitted to the competent section of the District Court of Oost-Brabant, 's-Hertogenbosch location.