



END USER TERMS OF USE

Please read these terms of use carefully as they comprise a legally binding document and form part of the Contract between the Client and ESP for the ESP Hub (as those terms are defined below). By registering to use the ESP Hub you confirm that you accept these End User Terms of Use and agree to be bound by them on your own account or on behalf of a company or other organisation. Where you are registering on behalf of a company or other organisation, you represent to us that you have the necessary authority to bind that company or other organisation.

1. DEFINITIONS

1.1. The following definitions apply to these End User Terms of Use:

“Acceptable Use Policy” means the content of clause 4.

“Client” means the individual, partnership, company, or organisation specified in the Contract who is the client of ESP or who ESP otherwise permits to access and use the ESP Hub.

“Client Information” means the information (including Personal Information) and data input by Client or its Users, into the ESP Hub, or by us on Client’s behalf, including data about the organisation of Client’s business, Client’s buildings and their locations, vehicles, staff headcount, and their energy usage and carbon emissions, including Data collected about the Client.

“Content” means all information and material contained on the Site, including data, text, photographs, pictures, graphics, questionnaires, and reports, but excluding Client Information.

“Contract” means the legally binding agreement agreed in writing between the Client and ESP confirming the terms and conditions of the monitoring, analysis, reporting and/or targeting services provided by ESP to the Client that incorporates these End User Terms of Use.

“Deliverables” means a report or other output resulting from the use of the Software.

“Data” means, as relevant, data relating to the consumption of electricity, gas and/or water usage, carbon emissions, and production inputs/outputs, including sensor data.

“End User Terms of Use” means these terms of use, as amended from time to time in accordance with clause 9 or as otherwise agreed in writing between the parties.

“ESP”, “we”, “our” or “us” means Energy Solution Providers Limited (company number 1142487), of 20-22 Gundry St, Newton, Auckland 1010.

“ESP Hub” means the service provided by us via the Site, which provides access to the Software, the Content and Client Information.

“Hosting Provider” means the provider of hosting infrastructure for the ESP Hub, including Amazon Web Services (AWS) where relevant.

“Intellectual Property Rights” means all copyright, design right, registered designs, patents, trade and service marks, rights in relation to databases, know-how, rights in confidential information and all other intellectual property rights recognised throughout the world no matter what such rights may be known as in any particular country in the world, whether registered or unregistered and including all rights to applications, pending registrations, renewals and reversions.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including viruses, worms, time bombs and Trojan horses, or security vulnerabilities.

“Personal Information” has the meaning given to that term in the New Zealand Privacy Act 2020.



“**Software**” means ESP’s and its licensors’ software applications, including for the storage, analysis and display Content and Client Information and any API.

“**Site**” means our website espHQ.com or any other website notified to the Client by us from time to time.

“**Term**” means the term of the subscription Client has to access the ESP Hub, as determined under the Contract.

“**User**”, “**you**”, “**your**” means authorised employees, contractors and consultants of the Client registered to access use the ESP Hub in accordance with these End User Terms of Use.

2. RELATIONSHIP BETWEEN ESP AND CLIENT

Note that the Contract sets out further terms and conditions that apply to Client’s use of the ESP Hub. For example, Client is responsible for procuring and maintaining hardware, software and telecommunication links to enable Users’ access to and use of the ESP Hub and Client is responsible for the acts and omissions of the Users and those accessing the ESP Hub through Client and its Users.

3. YOUR PRIVACY

Any Personal Information that we collect from you to access the ESP Hub will be used in accordance with our privacy policy which is available at <https://esphq.com>. Please read our privacy policy carefully. If you do not agree with its terms, please do not register to access the ESP Hub.

4. YOUR OBLIGATIONS

Acceptable use policy

- 4.1. Subject to your compliance with these End User Terms of Use, you are permitted to use the ESP Hub. If you breach any provision of these End User Terms of Use, you are not permitted to use the ESP Hub and must cease using the ESP Hub.
- 4.2. You will:
 - 4.2.1. keep a unique, secure and confidential password for use of the ESP Hub;
 - 4.2.2. use the ESP Hub during the Term for Client’s internal business operations only and will not use the service for the benefit of third parties; and
 - 4.2.3. notify us immediately if (i) you discover that your security credentials have been compromised, so that they can be replaced, (ii) you become aware of any error or defect in the ESP Hub, or (ii) you discover any violation of the Acceptable Use Policy.
- 4.3. You will not:
 - 4.3.1. submit Customer Information to the ESP Hub that (i) is defamatory, (ii) violates any third party’s rights of privacy or confidentiality, (iii) contains, or comprises, an infringement of any third party Intellectual Property Rights, (iv) contain any Malicious Code, or (v) contains any objectionable (in the reasonable opinion of ESP) or illegal content;
 - 4.3.2. use the ESP Hub in any way that is illegal;
 - 4.3.3. attempt to copy, modify, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the ESP Hub, except



- as expressly permitted by ESP or attempt to derive the source code, source files, or structure of the software contained in the ESP Hub;
- 4.3.4. access the ESP Hub to build a product or service which competes with all or any part of ESP's business;
- 4.3.5. interfere with or cause interruption, loss, damage or unintended effects to or through the ESP Hub, including its software, computing systems, networks or data or introduce any Malicious Code into or through the ESP Hub or otherwise undermine the security of the ESP Hub;
- 4.3.6. do anything that would incur any liability on our behalf or that could bring our name or reputation or that of the ESP Hub into disrepute;
- 4.3.7. permit any third party to access or use the ESP Hub (except as expressly permitted by ESP) or permit or encourage anyone else to commit any of the actions above.
- 4.4. You may not transfer your rights or obligations under these End User Terms of Use to another person.

5. OUR RIGHTS AND OBLIGATIONS

- 5.1. We do not guarantee that the ESP Hub will be free from errors, interruptions, or Malicious Code.
- 5.2. We may suspend your access to the ESP Hub with immediate effect if (i) you or another User breaches the Acceptable Use Policy or suspension is necessary to protect other users, clients, suppliers, or third parties, ESP's IT infrastructure, or the reputation of ESP, (ii) suspension is required by ESP's third party service providers (including the Hosting Provider), (iii) ESP or its third party service providers (including the Hosting Provider) is undertaking defect rectification, maintenance, updates or upgrades, (iv) suspension is required by any applicable law, or (v) where suspension is necessary or desirable in ESP's opinion (including where permitted under the Contract).
- 5.3. We may transfer our rights and obligations under these End User Terms of Use to another organisation, but this will not affect your rights or our obligations under these End User Terms of Use.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. You acknowledge and agree that we (or our licensors) own all Intellectual Property Rights in the ESP Hub, including the Content, the Software and Deliverables, but excluding the Client Information. Except as expressly stated in these End User Terms of Use, nothing in these End User Terms of Use shall be interpreted so as to grant you any rights to the Intellectual Property Rights or any other rights. If you access, use or copy any part of the ESP Hub in breach of these End User Terms of Use, without limiting any other right or remedy available to us under these End User Terms of Use or at law, your right to use and access the ESP Hub will cease immediately and you must destroy any copies of the materials you have made.
- 6.2. You may use the Deliverables for Client's internal business operations only and must not use the ESP Hub for the benefit of third parties. You may make copies of, and derivative works from, any Deliverables for Client's internal purposes (other than the provision of services to third parties), including for the purpose of reporting to interested third parties in relation to Client's business relating to energy efficiency and carbon emissions reduction (including shareholders, bankers, potential investors or the Energy Efficiency and Conservation Authority), provided that you include an attribution to ESP and ESP's copyright, confidentiality and disclaimer notices. However, you must not use the ESP Hub or the Deliverables to compete with ESP or disclose them to any ESP competitor.



- 6.3. Where you provide any feedback to ESP, ESP shall be entitled to use that feedback, without restriction or acknowledgement, and ESP shall be the sole owner of any resulting Intellectual Property Rights. You warrant that any feedback you provide does not infringe the rights, including the Intellectual Property Rights, of any third party.

7. CONFIDENTIAL INFORMATION

You must hold the Confidential Information of ESP (including ESP's licensors or suppliers) in confidence and not disclose it other than as expressly permitted by ESP.

8. LIMITATION OF LIABILITY

Except in relation to ESP's obligation to comply with the New Zealand Privacy Act 2020 or in relation to any liability that cannot be excluded or limited by law, you will have no claim against ESP and we shall have no liability to you in relation to the ESP Hub, including in relation to anything that ESP does or doesn't do. However, we may have obligations to the Client under the Contract.

9. CHANGES TO THESE END USER TERMS OF USE

We may revise these End User Terms of Use from time to time, including if there are changes to relevant laws, changes to our business practices or where required by our third party providers. We will post revised End User Terms of Use on the Site or otherwise notify you of the change. Your access to and use of the ESP Hub will be subject to the most recent version of the End User Terms of Use. Otherwise, these End User Terms of Use shall not be varied except by written agreement between the parties.

10. GENERAL TERMS

If there is any inconsistency between these End User Terms of Use and the Contract, the Contract shall prevail. A reference to a document or law includes all amendments, supplements or replacements to that document or law. The words "including", "particularly", "such as" and similar expressions are do not limit the general interpretation of the surrounding words. These End User Terms of Use supersede all previous communications, representations, agreements or understandings, verbal or written, with respect to the ESP Hub. If at any time any provision of these End User Terms of Use is or becomes illegal, invalid or unenforceable it may be severed and shall be replaced with a provision that best meets the original intention of the parties and neither the legal validity nor enforceability of the remaining provisions shall in any way be affected or impaired. No failure or delay by either party in exercising any power or right under these End User Terms of Use shall be deemed to be a waiver of any such power or right. These End User Terms of Use and any non-contractual obligations arising out of them shall be governed by and construed in accordance with applicable New Zealand law. The courts of New Zealand shall have exclusive jurisdiction for the purpose of hearing and determining any claim arising out of or in connection with these End User Terms of Use.