



Last Updated: May 27, 2020

This ESCO Mobile Asset Management Dashboard Terms of Use (“*Terms*”) governs your access to and use of ESCO Mobile Asset Management Dashboard and related mobile applications, online products and services (collectively, our “*Services*”) provided by ESCO Group LLC (“*ESCO*” or “*we*”), to be used in connection with ESCO devices, tools, and products (“*ESCO Equipment*”).

BY CLICKING TO INDICATE YOUR ACCEPTANCE OF THESE TERMS OR OTHERWISE USING THE SERVICES, YOU AGREE TO THESE TERMS AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU ARE ACCESSING OR USING OUR SERVICES ON BEHALF OF ANOTHER PERSON OR ENTITY (SUCH AS USING THE SERVICES FOR A COMPANY’S PURPOSES), YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACCEPT THESE TERMS ON THAT PERSON OR ENTITY’S BEHALF AND THAT THE PERSON OR ENTITY AGREES TO BE RESPONSIBLE TO US IF YOU OR THE OTHER PERSON OR ENTITY VIOLATES THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT ACCESS OR USE THE SERVICES.

ESCO reserves the right to change any of the terms and conditions contained in these Terms at any time and in its sole discretion. If ESCO makes any changes, ESCO will provide you with notice of such changes, such as by sending an email notification, providing notice through the Services, or updating the “Last Updated” date above. Unless we say otherwise in our notice, the amended Terms will be effective immediately and your continued access to and use of our Services after we provide notice will confirm your acceptance of the changes. If you do not agree to the amended terms and conditions contained in these Terms or any additional terms incorporated by reference, you must stop using the Services.

If you have any questions about these Terms or our Services, please contact us at escoiq.support@escocorp.com.

1. Privacy

Please refer to our [Privacy Policy](#) for information about how we collect, use and disclose information about you.

As part of the registration procedure (see point 4 below), you will be granted access to our Privacy Policy informing you of the processing and transfer of the personal information you communicate to ESCO for the purposes described in the Privacy Policy. The Privacy Policy sets out the conditions under which ESCO, as data controller, processes your personal information as user and your rights and ESCO’s obligations in relation to such processing.

2. Our Services will not be accessible until you acknowledged you have read and understood this Privacy Policy by ticking the appropriate box. **Additional Terms**

In addition to these Terms, we may ask you to accept additional terms that apply to particular services, products or features. To the extent any additional terms conflict with these Terms, the additional terms govern with respect to your access to or use of the applicable service, product or feature.

3. Eligibility

The Services are not targeted towards, nor intended for use by, anyone under the age of 18 (or the age of majority in your jurisdiction of residence). By accepting these Terms, you represent and warrant that you (a) are 18 years of age or older (or have reached the age of majority in your jurisdiction of residence); and (b) have the



right, capacity, and authority to accept and be bound these Terms and that, in doing so, you will not violate any other agreement to which you are a party or by which you are bound.

4. **Registration; Account; Permitted Users**

4.1 In order to access and use the Services, you will be required to register for an account. When registering for an account, you must not create an account name that incorporates a trademark or service mark without authorization from the mark owner. ESCO reserves the right to reclaim account names, or to take other reasonable action as necessary, (a) on behalf of any business or individual that holds legal claim, including trademark and service mark rights, in a name, or (b) if the name is deemed objectionable by ESCO, in its sole discretion, for any other reason. In consideration of your use of the Services, you agree to (a) provide accurate, current and complete account information; (b) maintain and promptly update your account information; (c) maintain the security of your password and accept all risks of unauthorized access to your account and the information you provide to us; and (d) promptly notify us if you discover or otherwise suspect any security breaches related to the Services.

4.2 You may invite other users employed by your employer to access and use the Services ("**Permitted Users**"), provided that you are responsible for (a) identifying and authenticating all Permitted Users, (b) approving access by such Permitted Users to the Services, (c) controlling against unauthorized access or use by Permitted Users, (d) with respect to any Permitted Users you invite, notifying ESCO by email at escoiq.support@escocorp.com when such Permitted Users are no longer employed by your employer or otherwise cease to be a Permitted User, and (e) maintaining the confidentiality of user names, passwords and account information. ESCO is not responsible for any harm caused by your Permitted Users, including individuals who were not authorized to have access to the Services but who were able to gain access because user names, passwords or accounts were not terminated on a timely basis by you. You are responsible for all activities that occur under or in connection with your and your Permitted Users' user names, passwords or accounts or as a result of your or your Permitted Users' access to the Services.

5. **Equipment and Carrier**

You are responsible for providing and maintaining at your own expense all devices, equipment, software, services, and other items necessary to use the Services (including without limitation any batteries, computer or device hardware or software, modems, telephone service, and Internet access).

6. **Copyright and Limited License**

6.1 Unless otherwise indicated in these Terms, through the Services, or otherwise by ESCO, the Services and all content and other materials therein provided by ESCO or its third-party licensors, including, without limitation, the ESCO logo and all designs, text, graphics, pictures, information, data, software, sound files, other files and the selection and arrangement thereof (collectively, "**Content**"), are the proprietary valuable property of ESCO or our licensors, as applicable, and are protected by U.S. and international copyright and other applicable laws.

6.2 Subject to the terms and conditions of these Terms, ESCO grants you a limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Services and Content solely for your use with ESCO Equipment and in the regular course of your work.

6.3 Except as expressly provided herein, nothing contained in these Terms will be construed as conferring by implication, or otherwise any license or right under any patent, trademark or copyright of ESCO or any third party.

7. Acceptable Use

You agree that you will not violate any law, contract, intellectual property or other third party right or commit a tort, and that you are solely responsible for your conduct while accessing or using the Services. You agree that you will abide by these Terms and will not:

- (a) sell or resell access or use of the Services;
- (b) use or attempt to use another user's account without authorization from such user and ESCO;
- (c) modify or alter the Services in any way;
- (d) remove or alter any copyright, trademark, service mark or other proprietary notices on the Services;
- (e) use the Services other than for its intended purposes;
- (f) use any data mining, robots, scrapers, crawlers or other automated means or interface not provided by us to access the Services or extract data from the Services;
- (g) except as expressly permitted on the Services, in a separate agreement with ESCO, download, upload, post, transmit, use, print, copy, perform, reproduce, reverse engineer, display, publish, license, or distribute the Services, in whole or in part;
- (h) bypass or circumvent measures employed to prevent or limit access to any area, content or code of the Services;
- (i) develop any third party-party applications that interact with the Services without our prior written permission;
- (j) attempt to probe, scan, or test the vulnerability of any ESCO system or network or breach any security or authentication measures; or
- (k) use the Services for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates these Terms.

Any use of the Services other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will automatically terminate the license granted in these Terms. Such unauthorized use may also violate applicable laws including, without limitation, copyright and trademark laws and applicable communications regulations and statutes.

8. Data

8.1 Usage Data. ESCO may monitor and collect data relating to your access to and use of the Services, and any information associated with your use of the Services, including but not limited to information related to your access to and use of the Services, device, equipment, other computer or electronic devices, system and application software, and peripherals, that are gathered in connection with ESCO's provision of the Services, software updates, product support, and other services related to the Services (collectively, "**Usage Data**"). ESCO may use Usage Data and information about you in accordance with the Privacy Policy and in particular, to: (a) provide, maintain, and improve the Services and other products and services that may be



offered by ESCO, or on behalf of ESCO, from time to time; (b) communicate with you about products, services, offers, surveys, contests, promotions, rewards and events offered by ESCO and others, with your prior permission or where otherwise permitted by applicable law; (c) provide news and information ESCO determines may be of interest to you, with your prior permission or where otherwise permitted by applicable law; (d) monitor and analyze trends, usage, and activities in connection with the Services and tools and those of third parties; and (e) respond to your questions, comments and requests. If you do not wish for ESCO to communicate with you in regard to (b) and (c) above, you may opt-out of future communications by contacting ESCO at marketingglobal@escocorp.com or by clicking the “unsubscribe” link in any such communication. In some countries, you may have the right to opt-out of (d) and (e) above as well. To the extent that you provide us with any personal information relating to another individual, you must ensure that you have informed this individual and/or obtained the consent of this individual to the collection, use and/or disclosure of his/her personal information in accordance with the Privacy Policy and you represent and warrant to us that you have provided sufficient notice and obtained such consent prior to providing us with this personal information.

8.2 Sharing Usage Data. ESCO may share the Usage Data and any information associated with the Usage Data as follows, subject to the requirements of applicable law and the Privacy Policy: (a) with other entities within ESCO’s corporate family and their successors in interests and assigns, for the purposes outlined above; (b) with distributors, resellers, and channel partners in connection with our provision, maintenance, or improvement of the Services and other products and services offered by ESCO, or on behalf of ESCO, from time to time, with your prior permission or where permitted by applicable law; (c) with vendors, consultants, and other service providers who need access to such information to carry out work on ESCO's behalf; (d) in response to a request for information if ESCO believes disclosure is in accordance with any applicable law, regulation or legal process, or as otherwise required by any applicable law, rule or regulation; (e) if ESCO believes your actions are inconsistent with these Terms, or to protect the rights, property and safety of ESCO or others; (f) in connection with, or during negotiations of (including due diligence), any merger, sale of company assets, financing or acquisition of all or a portion of ESCO's business to another company, subject to our taking such further steps as may be required by applicable law; and (g) with your consent or at your direction or as otherwise permitted by law.

8.3 Aggregated Data. ESCO may aggregate all or any portion of the Usage Data and any information associated with the Usage Data or information about you (collectively, "**Aggregated Data**"). ESCO shall own exclusive rights, including without limitation all intellectual property rights, in and to the Aggregated Data and shall be entitled to the unrestricted use and sharing of the Aggregated Data for any purpose, commercial or otherwise, subject to compliance with applicable data protection and privacy law.

9. Trademarks.

"ESCO," "ESCO iQ," and the ESCO logo and any other ESCO product or service names, logos or slogans that may appear on the Services are trademarks of ESCO in the United States and in other countries, and may not be copied, imitated or used, in whole or in part, without the prior written permission of ESCO. Third-party trademarks appearing in the Services are owned by their respective companies and may not be used without permission of the applicable trademark holder. You may not use any metatags or other "hidden text" utilizing "ESCO" or any other name, trademark or product or service name of ESCO without our prior written permission. In addition, the look and feel of the Services, including all page headers, custom graphics, button icons and scripts, are the service mark, trademark and/or trade dress of ESCO and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned in the Services are the property of their respective owners. Reference to any products, services, processes or other information, by name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation by ESCO.



10. Feedback.

You may submit to ESCO questions, comments, suggestions, ideas, plans, notes, drawings, original or creative materials or other information or materials about ESCO or the Services (collectively, "**Feedback**"). Feedback, whether submitted through the Services or otherwise, is non-confidential and shall become the sole property of ESCO. ESCO shall own exclusive rights, including all intellectual property rights, in and to such Feedback and shall be entitled to the unrestricted use and dissemination of this Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

11. Indemnification

To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless ESCO, its subsidiaries, affiliates, officers, agents, partners, other members, employees, independent contractors, service providers and consultants, and each of their respective officers, directors, agents, partners and employees (individually and collectively, the "**ESCO Parties**") from and against any loss, liability, claim, demand, damages, expenses or costs ("**Claims**") arising out of or related to (a) your inappropriate or illegal access to or misuse of our Services; (b) your Feedback; (c) your violation of these Terms; (d) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights); or (e) your conduct in connection with our Services. You agree to promptly notify ESCO of any third party Claims, cooperate with ESCO in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys' fees). ESCO will have control of the defense or settlement of any third party Claims.

12. Disclaimers.

SUBJECT TO APPLICABLE LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT: (A) THE SERVICES MAY CONTAIN BUGS, ERRORS, AND DEFECTS; (B) USE OF THE SERVICES IS AT YOUR SOLE RISK; AND (C) THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. ACCORDINGLY, THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," WITH ALL FAULTS, DEFECTS AND ERRORS AND WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ESCO AND THE OTHER ESCO PARTIES DISCLAIM ALL WARRANTIES (EXPRESS, LEGAL, OR IMPLIED AND ARISING BY LAW OR OTHERWISE) REGARDING THE SERVICES AND THEIR PERFORMANCE OR SUITABILITY FOR YOUR INTENDED USE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TITLE, OR NON-INFRINGEMENT. EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED BY LAW, ESCO PARTIES SHALL HAVE NO LIABILITY OF ANY KIND FOR THE USE OF, OR INABILITY TO USE, THE SERVICES OR FOR ANY LOSS OF DATA, CORRUPTION OR OTHER LIMITATION OF ACCESS TO OR USE OF DATA. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ESCO DOES NOT WARRANT THAT THE SERVICES WILL BE DELIVERED FREE OF ANY INTERRUPTIONS, DELAYS, OMISSIONS OR ERRORS ("**FAULTS**") OR IN A SECURE MANNER OR THAT ANY FAULTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ESCO PARTIES OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE ANY WARRANTY. IN THE EVENT THAT SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

The laws of some states or jurisdictions do not allow the exclusion of implied warranties. To the extent that those laws apply, the exclusions set forth above may not apply to you.

13. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT WILL THE ESCO PARTIES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUE, INCOME OR PROFITS, LOSS OF USE OR DATA, LOSS OR DIMINUTION IN VALUE OF ASSETS OR SECURITIES, FOR DAMAGES FOR BUSINESS INTERRUPTION) ARISING OUT OF OR IN ANY WAY RELATED TO THESE TERMS OR THE USE OF OR INABILITY TO USE THE SERVICES (INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY ANY USER ON ANY INFORMATION OBTAINED FROM ESCO PARTIES, OR FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETIONS OF FILES OR EMAILS, ERRORS, DEFECTS, BUGS, VIRUSES, TROJAN HORSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO ESCO'S RECORDS, PROGRAMS OR SYSTEMS), REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, SIMPLE NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF ESCO OR OTHER ESCO PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE; AND (B) IN NO EVENT WILL THE MAXIMUM AGGREGATE LIABILITY OF THE ESCO PARTIES (JOINTLY), WHETHER IN CONTRACT, OR TORT, ARISING OUT OF OR IN ANY WAY RELATED TO THESE TERMS OR THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE LESSER OF (A) ANY COMPENSATION YOU PAY, IF ANY, TO ESCO FOR ACCESS TO OR USE OF THE SERVICES, OR (B) \$10.00.

14. Transfer and Processing of Data

In case of transfer of your personal information in and to the United States, we will take the appropriate measures that may be required under applicable law (including the GDPR) to ensure such transfer is carried out in compliance with the applicable data protection rules. Please refer to the Privacy Policy for more information on transfer and processing of personal information. By accessing and using the Services, you consent to the processing and transfer of your personal information in and to different jurisdictions, including the United States, Europe, and Australia.

15. Legal Compliance

You represent and warrant that (a) you are not located in a country that is subject to a U.S., UK, European, or Australian Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any governmental list of prohibited or restricted parties. You agree to comply with all applicable laws and regulations, including U.S. export control laws, and all applicable third-party terms or agreements in the use of the Services.

16. Modification to our Services

We reserve the right, without notice and in our discretion, to modify, suspend or discontinue, temporarily or permanently, the Services or any features or parts thereof at any time with or without notice to you.



17. Termination

You may terminate these Terms at any time by ceasing use of the Services. ESCO reserves the right to change, suspend, remove, discontinue, or disable access to the Services at any time, with or without notice, and to terminate your license to use the Services at any time, for any or no reason. In the event of termination, or when you leave your employer or otherwise cease to be a Permitted User, the licenses granted to you herein will automatically terminate and you must immediately cease all use of the Services.

18. Severability

If any provision or part of a provision of these Terms is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from these Terms and does not affect the validity and enforceability of any remaining provisions.

19. Survival

The following sections will survive the expiration or termination of these Terms and the termination of your account: Sections 2, 4.2, 6.1, 6.3, 8-22.

20. Dispute Resolution

PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH ESCO AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US. You and ESCO agree to arbitrate any dispute arising from these Terms or your use of the Services, except that you and ESCO are not required to arbitrate any dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents or any other intellectual property. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. You and ESCO agree that you will notify each other in writing of any dispute within thirty (30) days of when it arises. You and ESCO further agree: (a) to attempt informal resolution prior to any demand for arbitration; (b) that any arbitration will occur in Multnomah County, Oregon, USA; (c) that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and (d) that the state or federal courts in the Multnomah County, Oregon, USA have exclusive jurisdiction over any appeals of an arbitration award and over any suit between the parties not subject to arbitration. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. Any dispute between the parties will be governed by this Agreement and the laws of the California, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AND ESCO WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR REPRESENTATIVE ACTION OR PROCEEDING.

21. Governing Law; Jurisdiction

To the extent permitted by applicable law, these Terms are governed by the laws of the State of Oregon, USA, without regard to its choice or conflicts of law principles that might refer the interpretation or enforcement of these Terms to the laws of any other jurisdiction. You hereby irrevocably consent, and irrevocably waive any right to object, to the jurisdiction and venue of the state and federal courts located in Multnomah County, Oregon with respect to any proceeding regarding these Terms or the Services. You will not prosecute any action, suit, proceeding or claim arising under or by reason of these Terms or the Services except in such courts. The parties



ESCO Dashboard

Terms of Use



expressly exclude the application of the UN Convention on Contracts for the International Sale of Goods to these Terms.

22. **Miscellaneous.**

You may not assign these Terms or any of your rights under these Terms without the prior written consent of ESCO, which may be granted or conditioned in its absolute discretion, and any attempted assignment without such consent shall be void. Subject to the foregoing restriction, these Terms will be fully binding upon, inure to the benefit of, and be enforceable by ESCO and our respective successors and assigns. Any failure by ESCO to insist upon or enforce performance by you of any of the provisions of these Terms or to exercise any rights or remedies under these Terms or otherwise by law will not be construed as a waiver or relinquishment of any right to assert or rely upon the provision, right or remedy in that or any other instance; rather, the provision, right or remedy will be and shall remain in full force and effect. These Terms, and the terms and policies incorporated by reference, sets forth the entire agreement between you and ESCO with respect to your use of the Services.