

EPLABEL Online Terms and Conditions

Please read these terms and conditions (“Agreement”) carefully, as they constitute a legal agreement between you and EPES Ltd (“EPES”) and govern your use of the EPLABEL Online software (“Software”) and associated documentation (“Documentation”).

By logging in to the software you agree to the terms and conditions set out in this Agreement. If you do not agree you must discontinue use of this Software.

EPES may refuse access to the Software to you in the event of non-compliance with any part of this Agreement.

Licence. In consideration of you agreeing to abide by this Agreement EPES hereby grants to you, and you accept, a non-exclusive, non-transferable licence for the Term to use the Software and the Documentation within the Territory (as defined below). The licence allows you limited access and use of the Software depending on the category of user to which you belong. The foregoing licence only allows you access to the Software and Documentation and not any other person. You agree that you will not assign, sub-license, transfer, pledge, lease, rent or share your rights with any other party. You further acknowledge and agree that all right, title and interest in and to the Software and Documentation (or any of their components) are and shall remain the property of EPES or its suppliers (as appropriate). The foregoing license does not convey an interest in or to the Software or the Documentation to you, but only a limited revocable right of use. Further, you may be required to enter into separate agreement(s) with your Accreditation Scheme and/or your employer and you hereby undertake to comply with the terms and conditions of such agreements and to perform any and all obligations resulting from said agreements.

EPES undertakes that the Software will perform substantially in accordance with the Software Specification. This undertaking shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to EPES instructions or modification or alteration of the Software by any party other than EPES or EPES’ agents. If the Software does not conform with the foregoing, EPES will, at its expense, use all reasonable commercial efforts to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in this clause. Notwithstanding the foregoing, EPES does not warrant that your use of the Software and the Services will be uninterrupted or error-free.

Term. The licence granted under this Agreement shall take effect from the moment that you login to the software for the first time. It shall continue in full force until terminated in any of the following circumstances: (a) EPES gives you 30 days notice in writing of termination (including notice published online by EPES) provided that, subject to the following, EPES will not terminate the licence before 31 March 2010 or (b) EPES gives written notice with immediate effect if you are in breach of any of your security, confidentiality or conduct obligations under this Agreement.

Unless otherwise agreed in writing, all right to use or access the Software or Documentation or any information obtained through using the same shall immediately cease upon termination of this Agreement (howsoever arising).

Exclusion of Warranties. Except as provided in this Agreement, all warranties whether express or implied are hereby excluded to the maximum extent permitted by law, and in particular there are expressly excluded all warranties of satisfactory quality and fitness for a particular purpose. EPES does not warrant that the operation of the software will be error free or uninterrupted. It is your responsibility to make sure the software and/or documentation is suitable for your needs.

Limitation of Liability. In no event will either EPES or its suppliers be liable for any results obtained from using the Software or the accuracy, completeness or reliability of any content or any information provided through the Software or Documentation, or for any loss of profit, loss of sales, loss of revenue, loss of data, wasted time, loss of business opportunity or for any consequential or incidental, or special damage however caused and whether arising under contract, tort (including negligence) or otherwise.

EPES does not exclude or limit liability, for (a) death or personal injury resulting from an act of negligence, or (b) in respect of fraudulent acts or statements, or (c) where that exclusion or limitation of liability is not permitted by law. Subject to the foregoing, EPES's total aggregate liability in relation to any cause of action either in contract, tort (including negligence), misrepresentation or otherwise in connection with the Software shall not exceed the lesser of £50,000 (fifty thousand pounds sterling) or the aggregate of fees paid by you to EPES in respect of your use of the Software in the 12 months preceding the date on which the claim arose.

Security. You agree not to modify the Software that is provided by EPES to access the Software in any manner or form, or to use modified versions of the Software, for any purposes including obtaining unauthorised access to the Software. You agree not to violate or attempt to violate any element of the security systems built into the Software. Save as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, you agree not to attempt to, or encourage or assist any other person to, circumvent, modify, reverse-engineer, decompile, disassemble, or otherwise tamper with any part of the Software security systems, or any other technology or Software that is part of the Software or used to administer the Software for whatever reason. Violations of system or network security may result in civil or criminal liability.

Further, you accept and acknowledge that the internet is publicly available and may be liable to failures or delays and that therefore EPES cannot guarantee the delivery of any message over the internet or other telecommunications medium, nor the security of the Software. EPES shall not be liable for any third party software used by you in relation to the Software nor for any problems with telecommunications networks or equipment, viruses, worms, trojans, unauthorised access or any other issue relating to your security arrangements.

Access to data. EPES shall be entitled to access and copy data and records input by you into the Software for the purpose of quality control, audits, training, records keeping and for statistical analysis and EPES shall be entitled to allow your Accreditation Scheme access to such data and records (including Display Energy Certificates and Advisory Reports generated by the Software and any data provided by you for that purpose) and the right to copy such data for the purpose of quality control and audits and in order to perform its legal duties.

EPES acknowledges that any Data entered by you into the software is your property and you retain all intellectual property rights which may, at any time, subsist in such Data.

EPES shall store and maintain your Data, and shall follow its archiving procedures for your Data. In the event of any loss or damage to your Data, your sole and exclusive remedy shall be for EPES to use reasonable commercial efforts to restore the lost or damaged Data from the latest back-up of such Data maintained by EPES in accordance with its archiving procedure. EPES shall not be responsible for any loss, destruction, alteration or disclosure of your Data caused by any third party (except those third parties sub-contracted by EPES to perform services related to your Data maintenance and back-up).

On termination of this Agreement, EPES agrees to make available to you a copy of all energy and building related data entered by you relating to the DEC's that may have been produced by you during your legitimate use of the Software. Any such data shall be made available to you in electronic form in the standard file format approved by Government for the storage of data relating to the production of Display Energy Certificates and associated Advisory Reports.

Use and availability of the Software. You agree that you are solely responsible for ensuring that your computer and telecommunications equipment are properly secure and configured to receive the Software. You agree to use the Software in accordance with the guidance contained in the Documentation, as well as with any recommendation that EPES may make from time to time.

You agree that EPES shall not be held liable for any reduced performance, damage or loss (including loss of data or interruption) which may be due to your accessing the Software whether in conjunction with any other system, software, data or equipment or otherwise.

Access to Software. While EPES endeavours to ensure that the Software and any information supplied are normally available 24 hours a day, EPES shall not be liable if for any reason the Software information (or any part thereof) is unavailable at any time or for any period. Access to the Software or information (or any part thereof) may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons beyond EPES' control.

Conduct. You are prohibited from transmitting any material, information or data using the Software:

(i) that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of this agreement, in breach of privacy or which may cause annoyance or inconvenience; or

(ii) for which you have not obtained all necessary licences and/or consents if they are required; or

(iii) which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or

(iv) which is technically harmful (including, without limitation, computer viruses, logic bombs, trojans, worms, harmful components, corrupted data or other malicious software or harmful data); or

(v) that may interfere with the use of the Software or any services by others or undertake any course of action, whether by use of the website, telephone or any other means, which would cause a disproportionate level of activity.

You warrant and confirm that any information you will provide or have provided to EPES through the Software or in connection with your intended use of the Software or the Documentation is true, complete and not misleading.

You may not misuse the Software, Documentation or any information supplied by EPES (or its suppliers) in any way.

EPES shall fully co-operate with any law enforcement authorities or court order requesting or directing it to disclose the identity or locate anyone posting any material in breach of this clause and breach of this clause shall entitle EPES to immediately terminate this Agreement and the Software upon giving you written notice.

Territory. The Software is currently applicable only in England, Wales and Northern Ireland and is not applicable in any other location. You agree not to apply or attempt to apply the Software for the assessment of buildings outside of the applicable territory, and that EPES may verify your compliance.

Intellectual Property

Acknowledgement of Ownership. You acknowledge that the Software contains proprietary information and material that is owned by EPES, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary information or materials in any way whatsoever except for use of the Software in

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You agree and accept that EPES has the right, but not the obligation, to monitor any information submitted by you or otherwise available on the Software, to investigate any reported or apparent violation of this Agreement, and to take any action that EPES in its sole discretion deems appropriate.

Trademarks. The EPLABEL Online logo, graphics, and logos used in connection with the Software are trademarks of EPES in the UK and/or other countries. Other trademarks, service marks, graphics, and logos used in connection with the Software may be the trademarks of their respective owners. You are granted no right or licence with respect to any of the aforesaid trademarks or graphics and any use of such trademarks.

Miscellaneous

Changes. EPES reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Agreement and to impose new or additional rules, policies, terms, or conditions on your use of the Software. Such updates, revisions, supplements, modifications, and additional rules, policies, terms, and conditions (collectively referred to in this Agreement as "Additional Terms") will be communicated to you and, if accepted, will be effective immediately and will be incorporated into this Agreement. In the event that you refuse to accept such Additional Terms, EPES will have the right to terminate the Agreement and prevent further access to the Software.

Assignment. You shall not be entitled to assign or otherwise transfer or dispose of this Agreement (in whole or in part) without EPES' prior written consent.

Severability and Waiver. If any part of this Agreement is held by a Court of competent jurisdiction to be unenforceable, the validity of the remainder of the Agreement will not be affected. If EPES fails, at any time during the term of this Agreement, to insist on strict performance of any of your obligations under this Agreement, or if EPES fails to exercise any of the rights or remedies to which it is entitled under this Agreement or under applicable law, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations or restrict EPES from seeking such remedies. A waiver by EPES of any default shall not constitute a waiver of any subsequent default. No waiver by EPES of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

Third Party Rights. No term of this Agreement shall be enforceable by any third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

Notices. EPES may send you notices with respect of the Software by sending an email message to the email address specified in your account contact information.

Governing Law. This Agreement and your use of the Software and Documentation is governed by English law and the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

Entire Agreement. This Agreement constitutes the entire agreement between you and EPES in relation to your use of the Software and supersedes any prior agreements or arrangements between you and EPES. You acknowledge and represent to EPES that you have not relied on or been induced to enter this Agreement by any representation other than those expressly set out in this Agreement and you agree that (save in the case of fraud or fraudulent misrepresentation) EPES will not be liable to you for any representation which is not set out in this Agreement.

About EPES: EPES Ltd is a company registered in England and Wales with company number 4991396 whose registered office is at Overmoor Farm, Neston, Corsham, Wiltshire, SN13 9TZ. Should you have a query about this contract or any Software or Documentation please send an e-mail to **eplabel@camcoglobal.com** or use the link to "Support" under "Contact Us" at www.camcoglobal.com/EPLabel. Alternatively you can call us on **0870 8034822** between 0900-1730 Monday to Friday, or leave a voicemail at other times.