

## **TERMS OF SERVICE – BES PLUS TECH, LLC**

PLEASE READ THESE TERMS AND CONDITIONS (THE "AGREEMENT") CAREFULLY BEFORE USING THE SERVICES. BY SIGNING INTO OUR WEBSITE WITH YOUR USERNAME AND PASSWORD YOU, OR THE ENTITY OR COMPANY THAT YOU REPRESENT, ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. YOUR USE OF THE SITE AND THE SERVICES OFFERED BY BUILDING ENERGY SCIENCES AND BES PLUS TECH SHALL ALSO CONSTITUTE CONSENT TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THIS AGREEMENT, YOU WILL HAVE NO RIGHT TO USE THE SITE OR THE SERVICES DESCRIBED HEREIN.

The Web pages available at [www.besplustech.com](http://www.besplustech.com), and all linked pages ("Site"), are owned and operated by Building Energy Sciences, LLC ("BES") and its subsidiary BES Plus Tech, LLC ("BES+Tech"), and are accessed by you ("User") under the following terms and conditions. Any reference to BES+Tech throughout this agreement shall also refer to and be applicable to its parent company BES.

BES+Tech reserves the right, at its discretion, to modify the Agreement or Services (as defined below) or Content (as defined below) at any time by posting a notice on the Site, or by sending User a notice via email or postal mail. User shall be responsible for reviewing and becoming familiar with any such modifications. Use of the Services by User following such notification constitutes User's acceptance of the terms and conditions of this Agreement as modified.

### **1. ACCESS TO AND USE OF OUR SERVICES.**

Subject to the terms and conditions of this Agreement, BES+Tech may offer to provide certain services and content, as described more fully on the Site, and which are selected and managed by User through the process provided on the Site ("Services"). Services shall include but not be limited to the specifically named Services: "Performance Plus", "Systems Plus", "Commissioning Plus". Services shall include, but not be limited to, any services BES+Tech performs for User, as well as the offering of any materials displayed or performed on the Site (including, but not limited to diagrams, text, graphics, also known as the "Content") on the Site. User understands that the Content provided as part of the Services is the sole responsibility of the person from which such content originated. BES+Tech may change, suspend or discontinue the Services including any Content for any reason, at any time, including the availability of any feature, database, or content. BES+Tech may also impose limits on certain features and services or restrict User's access to parts or all of the Services without notice or liability.

User certifies to BES+Tech that it is legally permitted to use the Services and access the Site, and takes full responsibility for the selection and use of the Services and access of the Site. This Agreement is void where prohibited by law, and the right to access the Site is revoked in such jurisdictions.

User agrees not to intentionally interfere with our Services or try to access them using a method other than the interface and the instructions provided by BES+Tech. Use of our Services are only as permitted by law, including applicable export and re-export control laws and regulations. We may suspend or terminate our Services to you if you do not comply with our terms or policies or if we are investigating suspected misconduct. These terms do not grant you the right to use any branding or logos used in our Services without specific authorization to do so. User may not remove, obscure, or alter any legal notices displayed in or along with our Services.

Some of the Services provided are available or accessible on mobile devices. User agrees not to use such Services in a way that distracts and prevents from obeying traffic or safety laws.

### **2. SITE CONTENT, DATA, AND SERVICES.**

User should be aware that Content or Services presented to you as part of the Services may be protected by intellectual property rights which are owned by the third parties who provide that Content or Services to BES+Tech (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) or Services unless you have been specifically told that you may do so by BES+Tech or by the owners of that Content, in a separate agreement.

The Site is protected by copyright as a collective work and/or compilation, pursuant to U.S. copyright laws, international conventions, and other copyright laws. User may not modify, publish, transmit, participate in the transfer or sale of, reproduce (except as provided in this section of the Agreement), create derivative works based on, distribute, perform, display, or in any way

exploit, any of the Content (except as expressly permitted), software, materials, or Services in whole or in part. User shall abide by all copyright notices, information, and restrictions contained in any Content accessed through the Services.

BES+Tech does not claim ownership rights in any Content or Data that User chooses to post to the Site ("User-generated Content") or which is automatically uploaded to the site by receipt of User's Electronic Data. After posting User-generated Content to the Site, User continues to retain all ownership or license rights in such Content. BES+Tech claims no intellectual property rights over the material User provides to the Service. All User-generated Content uploaded by User to the site remain the property of User. User can remove its User-generated Content from the Site at any time. You confirm and warrant to BES+Tech that you have all the rights, power and authority necessary to grant the above licenses to the User-generated Content you post to the Site. BES+Tech agrees to create hourly back-ups of the User-generated Content and to maintain these back-ups for a reasonable period of time.

### **3. SUBSCRIBER WARRANTY.**

As a condition of use, User promises not to use the Services for any purpose that is unlawful or prohibited by this Agreement, or any other purpose not reasonably intended by BES+Tech.

By way of example, and not as a limitation, User agrees not to use the Services:

- a. to abuse, harass, threaten, impersonate or intimidate other BES+Tech users;
- b. to contribute any Content that is infringing, libelous, defamatory, obscene, pornographic, abusive, offensive or otherwise violates any law or right of any third party;
- c. for any illegal or unauthorized purpose. If you are an international user, you agree to comply with all local laws regarding online conduct and acceptable content;
- d. to post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private information from any BES+Tech user;
- e. interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Services;
- f. breach or otherwise circumvent any security or authentication measures;
- g. sell the Services or Services accounts via unauthorized channels;
- h. to modify, adapt or hack the Site or modify another website so as to falsely imply that it is associated with the Site;
- i. to create or submit unwanted email ("Spam") to any other BES+Tech users or any URL;
- j. to violate any laws in your jurisdiction (including but not limited to copyright laws);
- k. User will not use any robot, spider, scraper or other automated means to access the Site for any purpose without our express written permission. Additionally, User agrees that it will not: (i) take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure; (ii) interfere or attempt to interfere with the proper working of the Site or any activities conducted on the Site; or (iii) bypass any measures we may use to prevent or restrict access to the Site.

BES+Tech may remove any Content and BES+Tech accounts at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content), or for no reason at all. To report Terms of Service abuse, please email: [support@BES+Tech.com](mailto:support@BES+Tech.com). User, not BES+Tech, remains solely responsible for all Content that User uploads, posts, e-mails, transmits, or otherwise disseminates using, or in connection with, the Services. User acknowledges that all Content that User accesses using the Services is at User's own risk and User will be solely responsible for any damage to any party resulting therefrom.

### **4. TRANSMISSION OF ELECTRONIC DATA.**

User understands that the technical processing and transmission of User's electronic data is fundamentally necessary to use of certain aspects of the Service. User expressly consents to BES+Tech's receiving and storage of User's Electronic Data and User

acknowledges and understands that use of the User's Electronic Data will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by BES+Tech. User further acknowledges and understands that Electronic Data may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. BES+Tech is not responsible for any Electronic User Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by BES+Tech, including, but not limited to, the Internet and User's local network.

## **5. RESTRICTIONS.**

User is responsible for all of its activity in connection with the Services and accessing the Site. User may not post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private information from any BES+Tech user. User shall not use any part of the Site or Services to violate the security of any computer network, crack passwords or security encryption codes, transfer or store material that is deemed threatening or obscene, or engage in any kind of illegal activity. User will not run any form of auto-responder, or "spam" on the Site, or any processes that run or are activated while the User is not logged in.

## **6. FEES / PAYMENT / CANCELLATION.**

Some of the Services on the Site require payment of fees. User shall pay all applicable fees, as described on the Site in connection with such Services selected by User. Any fees paid hereunder are non-refundable. BES+Tech reserves the right to change its prices and to institute new charges at any time, upon prior notice to User, which may be sent by email or posted on the Site. User authorizes BES+Tech, directly or through third parties, to make any inquiries it considers necessary to validate User's account and financial information.

Subject to the terms of this Agreement, User may cancel any Service at any time by submitting a cancellation request at [support@besplustech.com](mailto:support@besplustech.com). Since BES+Tech Services are invoiced monthly after being provided we reserve the right to charge the User for a prorated amount based on the number of days in the month for which Services were available to the User whether or not the Services were accessed during that period.

BES+Tech will be entitled to rely on a cancellation request that appears legitimate and cancel the Service on that basis. BES+Tech responsibility for improper cancellation is limited to reinstating User's access to the Service upon User's request. BES+Tech accepts no obligation with respect to refunds of fees paid for Services due to the dissatisfaction of the User. Should the Services be unavailable for a significant portion of an invoice period then BES+Tech shall make a refund to the User prorated based on the amount of time the Services were not available to the User.

The fees for Services provided in the month prior to the invoice are due upon receipt of the invoice. BES+Tech reserves the right to suspend Service to the User should the User's account not be paid within 30 days of the date on the invoice. If the User fees remain unpaid after 90 days then the User's account shall be terminated. User agrees that following termination of User's account and/or use of the Service, BES+Tech may immediately deactivate User's account and that following a reasonable period of not less than 90 days shall be entitled to delete User's account from BES+Tech's "live" site. During this 90 day period and upon User's request, BES+Tech will grant User limited access to the Service for several days for the sole purpose of permitting User to retrieve User Data, provided that User has paid in full all good faith undisputed amounts owed to BES+Tech. User further agrees that BES+Tech shall not be liable to User nor to any third party for any termination of User access to the Service or deletion of User Data,

## **7. WARRANTY DISCLAIMER.**

User acknowledges that BES+Tech has no control over, and no duty to take any action regarding: which users gain access to the Site; what Content User accesses via the Site; what effects the Content may have on User; how User may interpret or use the Content; or what actions User may take as a result of having been exposed to the Content. User releases BES+Tech from all liability for User having acquired or not acquired Content through the Site. BES+Tech makes no representations concerning any content contained in or accessed through the Site, and BES+Tech will not be responsible or liable for the accuracy, copyright compliance or legality of material contained in or accessed through the Site.

THE SERVICES, CONTENT, SITE AND ANY SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE OR NON-INFRINGEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

## **8. REGISTRATION AND SECURITY.**

As a condition to using Services, User may be required to register with BES+Tech and enter an email address and password ("BES+Tech User ID"). User shall provide BES+Tech with accurate, complete, and updated registration information. Failure to do so shall constitute a breach of this Agreement, which may result in immediate termination of User's account. BES+Tech reserves the right to refuse registration of, or cancel a BES+Tech User ID at its discretion. User shall be responsible for maintaining the confidentiality of User's BES+Tech password. User grants BES+Tech the right to include User's name on the Site and other promotional material used in relation to the Site and Services.

BES+Tech is determined to maintain the security of access to our Services and thereby the security of access to User-generated Content. To do so BES+Tech creates and maintains a digitally and physically secure Service using all means deemed commercially feasible to do so however BES+Tech cannot guarantee that unauthorized third parties will not be able to defeat our security measures. The User will notify BES+Tech immediately of any suspected compromise or unauthorized use of the User's username and password or account.

## **9. INDEMNITY.**

User will indemnify and hold BES+Tech, its parents, subsidiaries, affiliates, officers and employees, harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of User's access to the Site, use of the Services, the violation of this Agreement by User, or the infringement by User, or any third party using the User's account, of any intellectual property or other right of any person or entity.

## **10. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL COMPANY BE LIABLE WITH RESPECT TO THE SITE OR THE SERVICES (I) FOR ANY AMOUNT IN EXCESS OF THE AGGREGATE FEES PAID BY SUBSCRIBER FOR SUCH SERVICES WITHIN THE LAST 90 DAYS; OR (II) FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO SUBSCRIBER. IN ALL CASES, BES+TECH, BUILDING ENERGY SCIENCES, AND ITS REPRESENTATIVES, WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.

## **11. MODIFICATION OR TERMINATION.**

BES+Tech is constantly changing and improving its Services and Content and may add or remove functionalities or features or may suspend or stop a service altogether. The User may stop using our Services at any time and BES+Tech may also stop providing service to the User or add or create new limits to our Services at any time. BES+Tech believes that the User owns the content and data which has been uploaded to our site and preserving this data and the User's access is important. If a Service is discontinued, where reasonably possible, BES+Tech will give the User reasonable advance notice and the opportunity and method to remove the User-generated content and data from the Service.

Either party may terminate the Services at any time by notifying the other party by any means. BES+Tech may also terminate or suspend any and all Services and access to the Site immediately, without prior notice or liability, if User breaches any of the terms or conditions of this Agreement. Upon termination of the User's account, User's right to use the Services, access the Site and any Content will immediately cease. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

## **12. MISCELLANEOUS.**

The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. BES+Tech shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond BES+Tech's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated

to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sub-licensable by User except with BES+Tech's prior written consent. BES+Tech may transfer, assign or delegate this Agreement and its rights and obligations without consent. If the User is a paid User, the User grants BES+Tech the right to include the User's name as a User on BES+Tech's website and other promotional material in relation to the Software. Within thirty (30) days of the User's written request, BES+Tech will remove the User's name from its website User list and will make no further reference to the User in any future material promoting the Software. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida without regard to the conflict of laws provisions thereof. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. No agency, partnership, joint venture, or employment is created as a result of this Agreement and User does not have any authority of any kind to bind BES+Tech in any respect whatsoever.

## **END OF TERMS OF SERVICE.**