

TERMS AND CONDITIONS OF USE

The terms and conditions contained in this Subscription Agreement (Agreement) constitute a legally binding contract between BESS Auto Pty Ltd ACN 677 591 230 (BESS Auto, We, Us, Our and other similar terms) and the Subscriber (Subscriber, You, Your and other similar terms) for Your use of Our Software.

Each of BESS Auto and the Subscriber are a “Party” to this Subscription Agreement and collectively they are the “Parties”.

1 Acceptance and Contact Details

1.1 By ticking “I Accept”, You:

- (a) acknowledge and agree to having had sufficient opportunity to read and understand the terms and conditions contained in this Subscription Agreement and that You are legally able to bind the Subscriber to this Agreement.
- (b) acknowledge that these terms and conditions were brought to your attention prior to accepting them.
- (c) in agreeing to these terms and conditions, You warrant that:
 - (i) the information provided regarding your contact information is accurate; and
 - (ii) We may contact You to confirm the information in relation to Your Order.

1.2 Contact Details

- (a) Addressee: BESS Auto Pty Ltd
- (b) Postal address: C/- Arche Energy Pty Ltd, 1024 Ann Street, Fortitude Valley Qld 4006, Australia
- (c) Phone: +61 7 3523 3337
- (d) Email: info@bessauto.com

2 Definitions

2.1 Meanings shall apply to capitalised terms used in this Agreement as specified in this clause, unless the context otherwise requires:

- (a) **Agreement** means the terms and conditions contained in this Subscription Agreement.
- (b) **Annual Fee** means the amount of money that an Annual Subscriber agrees to pay for access to the Software and generate the Report on the Software during the Term.

- (c) **Annual Subscriber** means a Subscriber that has elected to pay the Annual Fee for the right to access the Software for the Term.
- (d) **Business Day** means:
 - (i) for receiving a Notice, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is received; and
 - (ii) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Queensland, Australia.
- (e) **Cancellation Notice** means at least seven (7) days' notice prior to anniversary of the Subscription Date.
- (f) **Charge Date** means the date that the Subscriber obtains an Annual Subscription and the right to access the Software by paying the Annual Fee.
- (g) **Confidential Information** means the confidential information of BESS Auto which relates to the subject matter of this Agreement and includes information relating to:
 - (i) the design, specification and Content of the Software and Report;
 - (ii) the specific project or technical or commercial information that the Subscriber uploads to the BESS Auto database;
 - (iii) the personnel, policies or business strategies of BESS Auto; and
 - (iv) the terms upon which the Software is being given access and supported pursuant to this Agreement.
- (h) **Content** means Resource including Data, music, speech or other sounds, text, visual images (animated or otherwise) in any form, or in any combination of forms as defined in Schedule 7 of Broadcasting Services Act 1992 (Cth), including but not limited to, data files, graphics images, messages, photographs, sounds, videos, written text, and any other like materials.
- (i) **Commencement Date** means the date that a Subscriber agrees to the terms and conditions contained in this Subscription Agreement and pays the Annual Fee or a Per Report Fee.
- (j) **Data** means any information including Content that BESS Auto publishes on the Website and makes available to the Subscriber to access and use.
- (k) **Fee** means the Annual Fee or the Per Report Fee payable by the Annual Subscribers or Pay As You Go Subscribers respectively.
- (l) **GST** means any Tax under any GST Law.
- (m) **GST Law** has the meaning defined in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (n) **Intellectual Property** means all industrial and intellectual property rights anywhere in the world, whether registered or unregistered, including:
 - (i) copyright, trade mark rights, design rights, patent rights, concept rights, rights in relation to inventions, trade names, indications of origin, Confidential Information, knowhow, semiconductor or circuit layout rights;

- (ii) any right of registration of, or provisional applications for, claim of priority from, continuation of or division of such rights; and
 - (iii) all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.
- (o) **Moral Rights** means the right of integrity of authorship, the right of attribution of authorship, and the right not to have authorship falsely attributed, more particularly as described in the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing presently or which may in the future come into existence.
- (p) **Pay As You Go Subscriber** means a Subscriber that elects to pay the Per Report Fee instead of the Annual Fee for their Subscription.
- (q) **Per Report Fee** means an amount of money payable by a Pay As You Go Subscriber for the right to access an individual Report on the Software on the terms shown on Our Website.
- (r) **Report** or **Reports** means reports in the format of PDF, a spreadsheet in CSV and a CAD drawing file generated by the Software.
- (s) **Restraint Period** means the period of 12 months, during which the Subscriber must refrain from soliciting for employment any person who is employed or contracted by BESS Auto or its related or associated entities.
- (t) **Software** means the location on the Website (including any enhancement, modification, update or new release of the Software or part thereof), which generate the Report from a set of geographical and technical parameters inputted by the Subscriber to calculate the optimal plant layout, losses and load flows, and the number of different types of major equipment required for the Subscriber's project.
- (u) **Subscriber** means a Pay As You Go Subscriber or an Annual Subscriber.
- (v) **Subscription** means the right of an end user to access the Software and generate the Report by paying the Annual Fee or by paying the Per Report Fee.
- (w) **Subscription Date** means the date that the terms and conditions contained in this Agreement commence.
- (x) **Tax** includes any tax, duty, charge, or rate imposed or assessed under any legislation, together with any associated interest, penalty, fine, fee or other charge.
- (y) **Term** means the period of time that an Annual Subscriber obtains the right to access the Software and generate the Report – being twelve (12) months from the Commencement Date.
- (z) **Website** means the website located at go.bessauto.com where the Software can be accessed.

2.2 Interpretation

- (a) In this Agreement reference to:
 - (i) one (1) gender includes the others;

- (ii) the singular includes the plural and the plural includes the singular;
- (iii) a person includes a body corporate;
- (iv) a Party includes the Party's executors, administrators, successors and permitted assigns;
- (v) to an amount of money, to \$, \$A or dollar is a reference to the currency of Australia;
- (vi) a statute, regulation or provision of a statute or regulation (a Statutory Provision) includes:
 - A that Statutory Provision as amended or re-enacted from time to time; and
 - B a statute, regulation or provision enacted in replacement of that Statutory Provision;
- (vii) including and similar expressions are not words of limitation;
- (viii) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (ix) headings are for convenience only and do not form part of this Agreement or affect its interpretation;
- (x) a provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision in it.

3 Commencement and Renewal of the Term

3.1 Commencement Date

- (a) The terms and conditions in this Agreement commence on the Commencement Date by the Subscriber:
 - (i) ticking the "I accept" to agree to be bound by these terms and conditions; and
 - (ii) paying the amount of the Annual Fee associated with the Term of its Subscription; or
 - (iii) the amount associated with one (1) Per Report Fee; and
 - (iv) continues for the Term unless terminated in accordance with this Agreement.

3.2 Annual Subscribers

- (a) After the expiry of the Term, the right to access the Software continues on a year-to-year basis in exchange for the payment of a further Annual Fee on the same terms unless agreed otherwise.

3.3 Pay As You Go Subscribers

- (a) For Subscribers that elect to pay the Per Report Fee, there is no option to renew their Subscription and the right to continue to access the Report paid for applies only for the duration shown on our Website.

3.4 Rights Granted to Annual Subscribers

- (a) On the Commencement Date, We grant the Annual Subscriber a:
 - (i) non-exclusive;
 - (ii) non-transferrable; and
 - (iii) non-sublicensable right to access the Software and generate the Report during the Term.

3.5 Rights Granted to Pay As You Go Subscribers

- (a) On the Commencement Date, We grant the Pay As You Go Subscriber a:
 - (i) non-exclusive;
 - (ii) non-transferrable;
 - (iii) non-sublicensable; right to access the Software and pay the Per Report Fee to generate the Report paid for as described on our Website.

3.6 Use of the Software

- (a) All Subscribers acknowledge and agree:
 - (i) to use the Report only for concept level design;
 - (ii) that the Report is not suitable and cannot be used for construction, procurement, or any other uses besides part of (but not all of) concept level engineering;
 - (iii) for the Report to be interpreted only by a suitably qualified engineer, who agrees to take professional responsibility for implementing the design in the Report, and, if not, then the Subscriber agrees to indemnify Us for any usage of the designs in the Report;
 - (iv) to indemnify Us for any misuse of the Report in accordance with clause 6;
 - (v) to access the Software in accordance with Our directions;
 - (vi) to pay the Fees as required depending on the type of their Subscription;
 - (vii) not to share their username and access credentials to the Software with any other person;
 - (viii) that We are not obliged to support the Software, whether by providing advice, training, error-correction, modifications, updates, new releases or enhancements or otherwise; and
 - (ix) to comply in all respects with its obligations contained in this Agreement.

3.7 Payment of the Fee

- (a) Annual Subscribers agrees to pay the amount of the Annual Fee in exchange for the right to access the Software for the Term.

- (b) Pay As You Go Subscribers agree to pay the amount of the Per Report Fee in exchange for the right to access the selected Report and access the Software.
- (c) All Subscribers agrees to pay Fees in the manner We reasonably require.

3.8 GST

- (a) The Annual Fee and Per Report Fee are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply of the right to access the Software and generate the Report (the Supply).
- (b) Each Party agrees that the Supply has been agreed on the mutual assumption that the supply is GST taxable, subject to this clause.
- (c) The Subscriber must increase the tax exclusive payment by any additional amount, sufficient that the total amount payable by the Subscriber, after discounting for the amount of any GST liability of BESS Auto on that total, is equal to the tax exclusive payment. Without limiting the foregoing, the Subscriber shall be liable for any new taxes, duties or charges imposed subsequent to the Agreement Date in respect of the goods and services which are the subject of this Agreement.
- (d) Each Party must at any time comply with any GST Law in performing this Agreement.
- (e) We will, upon request by You, issue to You tax invoices in proper form and in compliance with any GST Law connected with any supply by Us under this Agreement.
- (f) BESS Auto must at any time perform any action, including provision of any copy invoice and other documents, information and assistance in form and content sufficient to enable You to verify or calculate any input tax credit or other fact relating to any supply or acquisition of any right, property, or services under or connected with this Agreement.

3.9 Refunds

- (a) If You believe that You are entitled to a refund, You must send a request to Us at the contact details set out in clause 1.2 and We will consider Your request and determine if you qualify for a refund on a case-by-case basis.

3.10 Renewal or Extension of the Term – Annual Subscribers

- (a) One (1) month prior to the expiry of the Term, We will notify the Annual Subscriber that the Term of their Subscription is about to expire;
- (b) If We do not hear from the Subscriber, We will then invoice the amount of the Fee or automatically charge the credit card previously provided on the anniversary of the Commencement Date for the cost of the Annual Subscription for a further Term;
- (c) If the Subscriber fails to contact us agreeing to enter into a further Term (or fails to notify us that they want to cancel), or if the credit card provided is unable to be charged, We will advise the Subscriber of this and the right to access the Software and generate the Report will cease; and

- (d) The Subscriber's right to access the Software continues in accordance with clause 3.4.

3.11 Technical Requirements to Access the Software

- (a) The Subscriber must have:
 - (i) an ADSL internet access account or greater; and
 - (ii) a modern internet browser.
- (b) Otherwise, the Software is able to be accessed from all systems that have an internet connection.

4 Rights in Relation to Intellectual Property and Confidentiality

4.1 Intellectual Property

- (a) The Subscriber agrees that:
 - (i) the Subscriber does not obtain any express or implied Intellectual Property rights or Moral Rights, in the Software and the Report beyond the right to use it for the Term as described in this Agreement;
 - (ii) We retain ownership of the Intellectual Property in the Report and for the Software;
 - (iii) the Subscriber must not copy, alter, modify, or reproduce the Software except to the extent authorised by this Agreement or as expressly authorised under Part III, Division 4A of the Copyright Act 1968 (Cth);
 - (iv) in addition to any other remedies available to Us under this Agreement, or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Software will entitle Us to any available equitable remedy against the Subscriber; and
 - (v) the Subscriber must not modify, alter, reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Software.

4.2 Confidentiality

- (a) The Subscriber shall not, without the prior written approval of Us, disclose the Confidential Information.
- (b) You shall not be in breach of clause 4.2(a) in circumstances where You are legally compelled to disclose the Confidential Information.
- (c) You shall take all reasonable steps to ensure that your employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the Confidential Information.
- (d) We shall not make public or disclose any Confidential Information that you upload to the BESS Auto database

- (e) Notwithstanding any other provision of this clause, We may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers.
- (f) This clause shall survive the termination of this Agreement.

5 Employees and Contractors

- 5.1 During the Restraint Period, the Subscriber must not solicit for employment, either directly or indirectly, any person who is employed or contracted by BESS Auto or its related or associated entities.
- 5.2 The Subscriber must promptly advise BESS Auto if a person who is employed or contracted by BESS Auto seeks to be employed or contracted by the Subscriber prior to the expiration of the Restraint Period.
- 5.3 In the event that an employee of BESS Auto or its related or associated entities takes employment with the Subscriber or their related or associated entities during the Term and Restraint Period, the Subscriber agrees to pay BESS Auto an introduction fee of 35% of the starting gross annual remuneration package of that employee.

6 Warranties in Relation to the Software

- 6.1 We warrant that the Software will be free of defects during the Term and able to be used as anticipated.
- 6.2 You expressly acknowledge and agree that, to the maximum extent permitted by law subject to Our compliance with the obligations contained in the Competition and Consumer Act 2010 (Cth)(ACL) its officers, employees, agents, expressly disclaim all warranties of any kind, whether express or implied, except the warranties that the Application are provided with clear title, are of acceptable quality, are fit for the particular purpose for which they were supplied and that they comply with their description (Non-Excludable Provisions);
- 6.3 We make no warranty that:
 - (a) the Software and Report will meet Your exact requirements;
 - (b) the Report will meet the standards required by any professional bodies, including any engineering boards; and
 - (c) the Report and performance of the Software will meet your expectations.

7 Subscriber's Warranties

- 7.1 The Subscriber warrants that:
 - (a) the Subscription to the Software has been obtained at the Subscriber's own discretion and risk;
 - (b) it will use the Software and Report strictly as required by any guidelines or recommendations provided by Us; and

- (c) it has made its own investigations into the suitability of the Report, including their compliance with any standards, and they are not relying on any representation that We have not expressly made.
- (d) We have not provided any advice or information, whether orally or in writing, in relation to the Subscribers compliance (or non-compliance) with the standards mandated by any engineering boards or any other professional bodies for the use of the Report.

8 Limitation of Liability

8.1 Subject to any claims made because of a breach of a Non-Excludable Provision available under the Australian Consumer Law, We are not liable for any loss or damage, including, but not limited to, direct, Consequential Losses, or personal injury or death, however suffered or sustained in connection with:

- (a) any inaccurate or incorrect information contained in the Report;
- (b) the Subscribers use of the Software;
- (c) any failure or delay including, but not limited to, the use or inability to access the Software or to generate the Report; and
- (d) any interference with or damage to Subscribers computer systems which occurs in connection with use of the Software.

8.2 Agreed Liability

- (a) Nothing in this Agreement attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law.
- (b) In Australia, Our Software comes with guarantees which cannot be excluded under the Australian Consumer Law. Subscribers may be entitled to remedies under the Consumer Law.
- (c) For claims that cannot be excluded or restricted under Australian Consumer Law, the liability of the Company for such a claim will (at Our option and to the extent permitted by law) be limited to:
 - (i) in the case of access to the Software by the Subscriber during the Term:
 - A replacement of access to the Subscription for an equivalent Term;
 - B the cost of a replacement Subscription;
 - C the amount paid for the Subscription with Us; or
 - D whichever is the greater.
- (d) Nothing in this Agreement attempts to limit or exclude Our liability in compliance with section 64 of Schedule 2 of the Australian Consumer Law.

9 Indemnity

- 9.1 The Subscriber indemnifies, and must keep indemnified, BESS Auto, its employees officers and agents, against any action, liability, claim, loss, damage, proceeding, expense (including legal costs) suffered or incurred, arising from or in connection with, either directly or indirectly the Subscriber's breach of any of its obligations contained in this Agreement, including but limited to the making of a warranty that is inaccurate or incomplete, and for the following actions by the Subscriber:
- (a) using the Software and/or Report for a purpose other than those allowed under clause 3.6; and
 - (b) allowing the Report to be used for any reason, by any person, who is not a suitably qualified engineer (with appropriate coverage for professional indemnity) and who does not agree to take responsibility for implementing the designs in the Report.

10 Termination

10.1 Our Right to Terminate

- (a) Without limiting the generality of any other clause in this Agreement, We may terminate this Agreement immediately by notice in writing if:
 - (i) the Subscriber is in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of notification by Us;
 - (ii) the Subscriber becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - (iii) the Subscriber, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - (iv) the Subscriber, being a natural person, dies; or
 - (v) the Subscriber ceases or threatens to cease conducting its business in the normal manner.

10.2 Effect of Termination

- (a) If notice is given to the Subscriber pursuant to clause 10.1, We may, in addition to terminating the Agreement:
 - (i) repossess any copies of the Report in Your possession, custody or control;
 - (ii) retain any moneys You paid; and
 - (iii) be regarded as discharged from any further obligations under this Agreement; and pursue any additional or alternative remedies provided in this Agreement or by law.

11 General Provisions

11.1 Third Parties

- (a) This Agreement shall confer rights only upon a person expressed to be a Party, and not upon any other person.

11.2 Pre-Contractual Negotiation

- (a) This Agreement:
 - (i) expresses and incorporates the entire agreement between the Parties in relation to its subject-matter, and all the terms of that agreement; and
 - (ii) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the Parties in relation to that subject-matter or any term of that agreement.

11.3 Assignment

- (i) We may assign our rights and obligations under this Agreement by notifying the Subscriber of the terms of such an assignment.
- (ii) The rights granted to the Subscriber are personal and may not be assigned.

11.4 Counterparts

- (i) This Agreement may be executed by the Parties in any number of identical counterparts.
- (ii) Each counterpart is deemed to be validly executed if it is signed by a Party and sent by electronic mail to the other Party.
- (iii) It comes into effect when all identical counterparts have been validly executed.
- (iv) For executing this Agreement or any document required by it, the Parties agree that any signature is valid, and the document is validly executed if it is produced by an electronic communication as provided by the Electronic Transactions Act 2001 (Qld).

11.5 Entire Agreement

- (a) This document contains the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements and understandings except as otherwise provided herein.

11.6 Further Assurances

- (a) Each Party must do anything (including execute any document) and must ensure that its personnel do anything (including execute any document), the other Party may reasonably require to give full effect to this Agreement.

11.7 Governing Law and Jurisdiction

- (a) This Agreement is governed by the laws of Queensland, Australia and each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia.

11.8 Severance

- (a) If anything in this Agreement is unenforceable, illegal, or void then it is severed, and the rest of this Agreement remains in full force and effect.

11.9 Survival

- (a) Any clause which is expressed to survive, or which by its nature is intended to survive termination of this Agreement, survives termination.

11.10 Variation

- (a) An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

11.11 Waiver

- (a) A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) A waiver is not effective unless it is in writing and signed by the Party giving it.

11.12 Continuing Performance

- (a) The provisions of this Agreement shall not merge with any action performed or document executed by any Party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement shall survive the execution of any document for the purposes of, and continue subsequent to, performance of this Agreement.
- (c) Any indemnity agreed by any Party under this Agreement shall:
- (d) constitute an obligation of that Party separate and independent from any other liability of that Party under this Agreement or any other agreement; and
- (e) survive and continue subsequent to performance of this Agreement.

11.13 Remedies

- (a) The rights of a Party under this Agreement are cumulative and not exclusive of any rights provided by law.