

**GROUND ENERGY SUPPORT, LLC (GES)
GENERAL TERMS OF USE**

THESE GENERAL TERMS OF USE (THESE “TERMS OF USE”) ARE THE LEGALLY BINDING TERMS AND CONDITIONS GOVERNING YOUR (EITHER AS AN INDIVIDUAL OR AS AN ENTITY) USE OF THE SITE (AS DEFINED BELOW) AND OF THE GES SERVICES (AS DEFINED BELOW) PROVIDED BY GROUND ENERGY SUPPORT, LLC (“GES”) THROUGH THE SITE. PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE ACCESSING OR USING THE SITE AND THE GES SERVICES THROUGH THE SITE.

By accessing and using the Site and/or the GES Services, including Your (as defined below) GES Account (as defined below), through the Site, You (as defined below) agree to be bound by the terms and conditions of these Terms of Use, including any terms and conditions, policies and guidelines referenced herein and/or available by hyperlink, along with any amendments thereto and you represent and warrant that, if acting on behalf of an entity, you are authorized to legally bind such entity to these Terms of Use. You should review these Terms of Use regularly. If at any time You do not agree with these Terms of Use, or you do not agree to any modified Terms of Use, then you must immediately stop using the Site and the GES Services, including Your GES Account (if any).

SECTION 1 - SERVICES; DEFINITIONS

1.1 Services. GES provides an online platform, through the Site, which provides data transmission and uploading services for uploading Data (as defined below) from Gateway (as defined below) registered to a GES Account for purposes of processing, analyzing, presenting and storing the Data on the Site (the “GES Services”).

1.2 Definitions. As used in these Terms of Use, the following terms have the following meanings, and other capitalized terms shall have the meaning ascribed to them herein:

“Alert” means an automated notification sent to you via email and shown on your data dashboard at the Site when monitored data indicate that your system is operating outside of specified bounds. These bounds are specified by you during the online registration process at the Site and can be changed when you wish.

“Confidential Information” means any non-public information pertaining to GES or that is received by or for GES in confidence from a third party, and includes, without limitation, (a) technical specifications, source and executable code, data structures, database content, business plans, financial information, know-how, marketing and sales information, (b) the identity of and information relating to customers, prospects, vendors, investors, or employees, and (c) any information that has been marked “confidential”, “proprietary”, or with a like designation; provided, however, Confidential Information does not include any information that (i) is voluntarily disclosed to the public by GES or by the third party providing the information in confidence to GES, (ii) is independently developed and disclosed by others, or (iii) otherwise enters the public domain through lawful means.

“Content” means any trademarks, photographs, graphics, artwork, videos, sound clips, text, and other content or materials that are submitted, posted or displayed on the Site by any individual or entity other than GES.

“Data” means data collected from a Gateway connected to sensors and transmitted from the Gateway to the Site.

“Gateway” means the GES data processing and transmission equipment that is programmed by GES to automatically post Data from sensors and is referred to as the “Gateway.”

“GES” means Ground Energy Support, LLC.

“GES Account” means a subscription fee based account with GES created by users of the GES Services through the online registration process on the Site and linked to the users’ Gateway.

“Product” means any Data processed on the Site for Your internal use.

“Site” means, collectively, the GES website (www.groundenergy.com) and other distribution channels, mobile applications or other types of electronic sales owned, controlled or operated by GES whether existing now or in the future.

“You”, “Your” and any grammatical variants thereof, whether in upper or lower case, shall mean the individual or entity bound by these Terms of Use.

“Your Content” means any Content that You submit, post or display on the Site.

Other capitalized terms used herein shall have the meanings ascribed to such terms herein.

SECTION 2 – USER ELIGIBILITY AND GES ACCOUNT

- 2.1 The Site and the GES Service are made available to you for your personal use only. You must be at least eighteen (18) years of age to access and use the Site and or the GES Services. If you are between the ages of thirteen (13) and eighteen (18) years of age You may only access and use the Site and or the GES Services under the supervision and with the consent of Your parent(s) or legal guardian. If GES learns that anyone under the age of thirteen (13) seeks to access and use the Site or the GES Services, GES may require verified parental consent, in accordance with the requirements of the Children’s Online Privacy Protection Act of 1998, as amended. Certain GES Service offerings may not be available to children under thirteen (13) years of age under any circumstances.
- 2.2 Generally. Certain of the GES Services require You to have a valid GES Account. Without a GES Account, You will still be able to access and use portions of the Site, but certain GES services will be unavailable to You.
- 2.3 GES Account. In order to use and access certain GES Services, You must first purchase a Gateway and create a GES Account through the online registration process on the Site. Your GES Account will, among other things, allow You to transmit Data from Your Gateway to the Site, review Products prepared from your Data provide and receive updates, contact and other information pertaining to Your relationship with GES. You are solely responsible for maintaining the confidentiality and security of Your GES Account and for all activities that occur on or through Your GES Account, including without limitation, any Gateways that are linked to Your GES Account.
- 2.4 Additional GES Account Use and Access Requirements.
 - (a) You agree to provide GES with true, accurate, current, and complete information when You create Your GES Account, including, without limitation, a valid email address. You shall promptly update Your profile information in your GES Account (including, without limitation, Your email address and mailing address) to keep it accurate, current, and complete. If GES issues You a password or requires You to establish a password, You shall not reveal it to any other party. You may not use a password belonging to any third party. You are responsible for maintaining the confidentiality of Your accounts and passwords. You agree to immediately notify GES of any unauthorized use of Your passwords or accounts or any other breach of security. You also agree to exit from Your accounts at the end of each session. GES will not be responsible for any loss or damage (including unauthorized usage of the GES Services) that may result if You fail to comply with these requirements.
 - (b) If You choose a username that, in GES's sole discretion, is obscene, indecent, abusive or that might otherwise subject GES to public disparagement or scorn, GES reserve the right, without prior notice to You, to automatically change Your username, delete Your posts from GES's sites, deny Your access to GES's Site, or any combination thereof.

- (c) In addition to the other rights set forth herein, GES reserves the right to refuse service and/or access to the Site and/or GES Services at any time without notice for any reason. You represent that You are of legal age to form a binding contract and have full power, capacity and authority to accept these Terms of Use. If you are accepting these Terms of Use on behalf of your employer or another entity, you represent that you have full legal authority to bind your employer or such entity to these Terms of Use.

SECTION 3 - FEES AND PAYMENT TERMS

- 3.1 **Fees.** In the event You purchase a Gateway and establish a GES Account, You shall pay to GES a monthly subscription fee for the use of the GES Services equal to GES' then current subscription fee as set forth on the [GES Fee Schedule](#) (the "Subscription Fee"). The subscription fee may be zero.
- 3.2 **Payment Terms.** Terms of payment for the Subscription Fee and Refund Fees are net fifteen (15) days from the date of GES' invoice and payments shall be made in U.S. Dollars. Such invoice, which will occur no more than once per month, will be emailed to the email account linked to Your GES Account. All payments are final, and GES offers no partial or full refunds (except as otherwise specifically set forth herein). It is Your obligation to review all charges on Your invoices for accuracy. GES reserves the right, in its sole discretion, to change the amount of the Subscription Fee, upon thirty (30) days notice to You.
- 3.3 **Late Fees.** A late payment charge of one percent (1%) per month shall be assessed on all overdue amounts. You agree to reimburse GES for costs of collection any amounts due under these Terms of Service including, but not limited to, expenses and reasonable attorneys' fees.

SECTION 4 - CONTENT AND UNSOLICITED SUBMISSIONS

- 4.1 **Content Not Screened or Error Free.** You acknowledge and agree that (a) by accessing and using the Site and the GES Services, you may be exposed to Content that is offensive, indecent or objectionable, (b) the Site and the Content may contain errors or omissions, and (c) GES does not screen or review Content published on or through the GES Site to determine whether it contains false or defamatory material, or material which is offensive, indecent, objectionable, or which contains errors or omissions. UNDER NO CIRCUMSTANCES WILL GES BE LIABLE IN ANY WAY FOR ANY USER OR OTHER THIRD PARTY CONTENT, INCLUDING, BUT NOT LIMITED TO, FOR ANY DEFAMATION, FALSEHOODS, ERRORS OR OMISSIONS IN ANY SUCH CONTENT, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OR PUBLICATION OF ANY SUCH CONTENT POSTED, EMAILED OR OTHERWISE TRANSMITTED VIA THE SITE OR GES SERVICES. GES does not guarantee that any Content will be to Your satisfaction.
- 4.2 **Your Content.**
- (a) GES does not own any of Your Content. You (not GES) shall have sole responsibility for the creation, accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Your Content, and GES shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Your Content. GES has the right to require that Your Content meet certain quality and size standards, and upon request by GES, You must bring Your Content within such requested quality and size standards. All of Your Content is subject to review and approval by GES in its sole discretion. GES reserves the right to refuse to publish any of Your Content that GES determines, in its sole discretion, does not meet these Terms of Use or is otherwise unacceptable to GES. However, GES assumes no duty to review Your Content. You are responsible for reviewing and ensuring that Your Content submitted to the Site is displayed as You intended. Upon termination of these Terms of Use, Your right to access or use Your Content provided to GES immediately ceases, and GES shall have no obligation to maintain or return to You any of Your Content.
- (b) You hereby grant GES a non-exclusive, worldwide, transferable, irrevocable, royalty free and sub-licensable license to use, copy, distribute, reproduce, create derivative works of, display and perform Your

Content in any and all media or formats in connection with GES's fulfillment of its rights and obligations under these Terms of Use and to provide the GES Services.

- (c) You acknowledge and agree that GES (i) may, but has no obligation to, monitor Your Content, and (ii) may disclose any of Your Content necessary or appropriate to satisfy GES's legal obligations, to protect GES or its customers or members, or to operate the GES Services properly. GES, in its sole discretion, may refuse to post, remove, or refuse to remove, any of Your Content, in whole or in part, alleged to be unacceptable, undesirable, inappropriate, or in violation of these Terms of Use.

- 4.3 Unsolicited Idea Submission Policy. GES does not solicit or accept unsolicited ideas, suggestions, notes, drawings, concepts or other information (collectively, "Unsolicited Submissions") for new advertising, marketing or business strategies, new or improved products, technologies, services, processes, materials, or new product names. To avoid any potential disputes or misunderstandings in the event that an element in any of GES's business activities is coincidentally similar to any Unsolicited Submissions offered to GES, You hereby agree not to submit or offer, in any manner or form, any Unsolicited Submissions to GES or anyone of its employees, agents or representatives. Notwithstanding the forgoing, in the event You submit or otherwise provide Unsolicited Submission to GES, in spite of GES's policy not to accept or consider Unsolicited Submissions, and regardless of any terms or conditions You included with Your submission of such Unsolicited Submissions to GES, the following terms shall apply to Your Unsolicited Submissions: (a) Your Unsolicited Submissions will automatically become the exclusive property of GES, without any compensation or credit to You; (b) GES shall have no obligation to review Your Unsolicited Submissions, return Your Unsolicited Submissions to You, or otherwise respond to You in any way; (c) GES shall have no obligation to keep Your Unsolicited Submission confidential, and GES shall not be liable for any use or disclosure of any Unsolicited Submissions; and (d) GES may copy, sublicense, adapt, modify, transmit, distribute, publicly performed publish, display, delete, or otherwise use Your Unsolicited Submissions for any purpose and in any way; and (e) You waive the right to make any claim against GES or affiliates relating to Your Unsolicited Submissions, including, without limitation, unfair competition, breach of implied contract or breach of confidentiality.

SECTION 5 – ALERTS; DATA LICENSE; GATEWAY USE

- 5.1 Alerts. If You have a GES Account, You may have the option of setting up Alerts through your GES Account. Alerts are not intended to replace regular maintenance by a qualified professional nor should they be relied upon as the sole means for home energy system maintenance and troubleshooting. The ability of the Site to issue alerts depends on the continuity of Data and the proper installation and configuration of the sensors for Your Gateway. Alerts are for informational purposes only and are not intended to automate controls. GES assumes no liability for any losses or damages incurred that may, directly or indirectly, result from either issuing Alerts or failing to issue Alerts.
- 5.2 Data License. If You have a Gateway transmitting Data to the Site, You hereby grant GES a non-exclusive, worldwide, transferable, irrevocable, royalty free and sub-licensable license to use, copy, distribute, reproduce, create derivative works of, display, and analyze Data transmitted to the Site in any and all media or formats in connection with GES's fulfillment of its rights and obligations under these Terms of Use, to provide the GES Services and for GES internal business purposes. As noted in Section 1.2, Data does not include personal information. YOU HEREBY RELEASE GES FROM ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND LIABILITIES ARISING FROM OR RELATED TO THE ABOVE PERMITTED USE BY GES OF YOUR DATA.
- 5.3 Gateway Use. If You have a Gateway transmitting Data to the Site, You hereby acknowledge and agree that: (a) the Gateway is intended for the sole purpose of uploading Data to the Site; (b) neither the Gateway nor the Products obtained from the Site may be used in a manner that requires continuity of service, such as but not limited to, control of switches, valves, or alarms; and (c) GES shall not be liable for any claim, loss and damages suffered by You or any third party arising from the function or malfunction of the Gateway, the Site or related sensors.

SECTION 6 - TERM; SUSPENSION AND TERMINATION

- 6.1 **Term.** These Terms of Use are effective as of the date on which You first visit the Site, and, subject to GES's right to modify or revise these Terms of Use as provided for herein, shall remain in effect until terminated in accordance with the provision of these Terms of Use.
- 6.2 **Termination of Your GES Account.** Except as otherwise set forth herein, if You have a GES Account, You may cancel Your GES Account and terminate these Terms of Use, with respect to Your GES Account only, at anytime by emailing support@groundenergysupport.com. GES will process your termination request within 30 days of receiving your email. Upon cancellation of Your GES Account, Your right to access and/or use any GES Services which require a GES Account will immediately cease, but these Terms of Use will continue in full force and effect with respect to all other GES Services and Your use and access of the Site.
- 6.3 **Termination by GES.** In the event You violate any term or condition of these Terms of Use, GES shall be entitled to terminate these Terms of Use immediately, block your access to the Site, and pursue all other remedies available to it under applicable law.
- 6.4 **Effect of Termination.** Upon termination of these Terms of Use, and/or termination or suspension of Your GES Account: (a) GES may delete any of Your Content, Your Data or other materials relating to Your use of the GES Services immediately after such termination; (b) Your right to access and/or use the GES Service will immediately cease. You agree that GES shall not be liable to You or any third party for any termination or suspension of Your access to and use of the Site, the GES Services or any portion thereof.
- 6.5 **Survival.** The following Sections of these Terms of Use shall survive termination of these Terms of Use: Sections 2.4(a), 2.4(c), 3, 4.1, 4.2, 4.3, 5.1, .2, 5.3, 6.4, 6.5, 7, 8, 9, 10, 11, 12 and 13.

SECTION 7.0 - OTHER RIGHTS AND OBLIGATIONS

- 7.1 **Usage Restrictions.** You may not: (a) reverse engineer, decompile or disassemble the technology and the software underlying the Site or the GES Services; (b) copy, alter, modify, adapt, translate or create derivative works from the technology and the software underlying the Site or the GES Services; (c) make any of the GES Services available for third-party use; (d) remove or alter any copyright, trademark or other proprietary notices from Site; (e) intentionally interfere with the functionality of the technology and the software underlying the Site or the GES Services by (i) uploading, storing, e-mailing, posting, linking, transmitting or otherwise disseminating any material that contains software viruses, Trojan horses, worms, time bombs, or any other computer code, file or program designed to interrupt, destroy or limit functionality; or (ii) modifying, interfering or attempting to interfere with the proper operation of the Site, the GES Services or their use by other customers, including through the use of any device, software or routine; or (f) violate (any applicable law or regulation, including, but not limited to, laws regarding the transmission through the Site of technical data or software exported from the United States, and all laws and regulations regarding online conduct and acceptable content.
- 7.2 **Internet Access and Equipment.** You acknowledge and agree that in order to receive and use the Site and the GES Services, You must obtain and maintain Your own access to the internet, including, without limitation, purchasing and maintaining all hardware, software and other equipment (including, without limitation, a Gateway), and paying all utility, licensing and servicing fees, necessary for You to establish a connection to the internet. You shall be solely responsible for the installation, operation, maintenance, use and compatibility of all hardware, software or other equipment (including, without limitation, Your Gateway) necessary for You to receive and/or use the GES Services and GES shall have no responsibility or liability in connection therewith. You shall ensure that the hardware, software and other equipment used by You for such purpose (collectively, "**Your Equipment**") can receive, and does not interfere with or cause technical problems in relation to, the GES Services. GES makes no representation or warranty regarding the compatibility of any of Your Equipment with the GES Services.

- 7.3 Internet Delays. THE SITE AND THE GES SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. GES IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS OR LIMITATIONS.
- 7.4 Third Party Services. The Site and/or GES Service may incorporate, or direct You to, websites, software or services owned or operated by third parties ("Third Party Services"). GES has not reviewed the Third Party Services and GES has no control over such Third Party Services. You acknowledge and agree that GES has no control over and is not responsible for (a) the content and operation of such Third Party Services, or (b) the privacy policies, terms of use, or other policies or practices of such Third Party Services. You are responsible for the costs associated with such Third Party Services, including, without limitation, any applicable license fees and service charges, and You shall comply with the privacy policies, terms of use, or other policies or practices of such Third Party Services. YOU AGREE THAT YOUR USE OF THIRD PARTY SERVICES, INCLUDING WITHOUT LIMITATION, YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH THIRD PARTY SERVICES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH THIRD PARTY SERVICES.
- 7.5 Privacy Policy. All of the information that GES collects from You, such as registration information and Your Data, is subject to GES' [Privacy Policy](#) as in effect from time to time, and applicable privacy laws.
- 7.6 Unauthorized Access. Unauthorized access to the Site and/or the GES Services is a breach of these Terms of Use and a violation of the law. You agree not to access the Site or the GES Services by any means other than through the interface that is provided by GES for use in accessing the Site or the GES Services. You agree not to use any automated means, including, without limitation, agents, robots, scripts, or spiders, to access, monitor, or copy any part of the Site or the GES Services, except those automated means that GES has approved in advance in writing.
- 7.7 Unauthorized Use. Without limiting the provisions of Section 7.1, You agree that You will not use the Site or the GES Services to take any of the following actions: (a) defame, abuse, harass, stalk, threaten, or otherwise violate the legal right of others; (b) publish, post, upload, e-mail, distribute, or disseminate (collectively, "Transmit") any inappropriate, profane, defamatory, misleading, infringing, obscene, indecent, or unlawful content; (c) Transmit files or data that contain viruses, corrupted files, or any other similar software or programs that may damage or adversely affect the operation of another person's computer, the Site, any software or hardware, or telecommunications equipment; (d) Transmit surveys, contests, pyramid schemes, spam, unsolicited advertising or promotional materials, chain letters or other unsolicited messages; (e) download any file that You know or reasonably should know cannot be legally obtained in such manner; (f) falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or the source of software or other material; (g) restrict or inhibit any other user from using and enjoying any area within the Site; (h) interfere with or disrupt GES's Site, servers, or networks; (i) probe, scan or test the vulnerability of the Site or circumvent any security mechanism used by the Site; (j) impersonate any person or entity, including, but not limited to, any GES representative, or falsely state or otherwise misrepresent Your affiliation with a person or entity; (k) forge headers or manipulate identifiers or other data in order to disguise the origin of any content transmitted through the Site or to manipulate Your presence on the Site; (l) take any action that imposes an unreasonably or disproportionately large load on GES's infrastructure; or (m) engage in any illegal activities.
- 7.8 Forums. If offered as part of the GES Services, You agree to use GES's bulletin board services, chat areas, news groups, forums, communities and/or message or communication facilities (collectively, the "Forums") only to send and receive messages and material that are proper and related to that particular Forum.

SECTION 8 - DISCLAIMER OF WARRANTIES

THE GES SERVICES AND SITE, INCLUDING ALL CONTENT, SOFTWARE AND INFORMATION MADE AVAILABLE THEREON OR ACCESSED BY MEANS THEREOF, IS DISTRIBUTED ON AN “AS IS” “AS AVAILABLE” BASIS. THERE ARE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPATIBILITY, SECURITY, ACCURACY OR NON-INFRINGEMENT. IN ADDITION, THERE ARE NO WARRANTIES (A) THAT THE FUNCTIONS CONTAINED IN GES’S SITE OR THE GES SERVICES SHALL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, (B) THAT THE GES SERVICES OR SITE WILL MEET YOUR REQUIREMENTS, (C) THAT THE DEFECTS IN THE TECHNOLOGY AND/OR THE SOFTWARE UNDERLYING THE SITE OR THE GES SERVICES SHALL BE CORRECTED, (D) THAT GES’S SITE OR THE GES SERVICES SHALL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY, (E) THAT GES’S SITE OR THE GES SERVICES, INCLUDING THE SERVERS ON WHICH GES’S SITE IS OPERATED, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (F) AS TO THE ACCURACY, ADEQUACY, RELIABILITY, AVAILABILITY, TIMELINESS, COMPLETENESS, SUITABILITY OR OTHER CHARACTERISTICS OF THE INFORMATION AND MATERIALS CONTAINED MADE AVAILABLE ON THE SITE OR ACCESSED BY MEANS THEREOF.

SECTION 9 – INDEMNIFICATION

- 9.1 **Indemnification.** You, at Your sole cost and expense, shall at all times defend, indemnify and hold harmless GES, its affiliated and related entities, and any of their respective owners, members, managers, officers, directors, agents employees, successors and assigns (collectively, the “**Indemnified Parties**”) from and against any and all claims, suits, judgments, settlements, damages (direct, incidental, consequential, and otherwise), fees, penalties, costs, expenses (including reasonable attorneys’ fees), and other, losses liabilities and obligations whatsoever (collectively, the “**Losses**”), which, in whole or in part, arise from or relate to: (a) any alleged act or omission by You, Your employees, subcontractors or agents; (b) any breach or alleged breach by You of these Terms of Use, including, without limitation, any representations or warranties provided herein; (c) Your failure to comply with all applicable laws, rules, and/or regulations regarding the use of the Site and/or the GES Services; (d) Your Content, including, without limitation, any claim that any of Your Content caused damage to a third party; or (e) any infringement, misappropriation, or other violation, of any patent, trademark, copyright, publicity, privacy, trade secret, or other right of any third party by You, Your Content, or the use thereof.
- 9.2 **Indemnification Process.** Your obligations under this Section 9 are subject to GES (a) providing You written notice promptly after GES has actual knowledge of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify You will not remove Your indemnification obligations under these Terms of Use except to the extent that such failure results in a failure of actual notice to You and, as a result, You are materially damaged, (b) providing all reasonable assistance in the defense of the same, subject to the reimbursement of any reasonable costs associated with the such defense by GES, and (c) except as otherwise set forth herein, providing You sole control over the defense or settlement of such claim, suit or proceeding for which indemnity is sought hereunder. Counsel selected by You to conduct the defense of such claim, suit or proceeding for which indemnity is claimed shall be reasonably satisfactory to GES, and GES may participate in the defense or settlement of any such claim, suit or proceeding with counsel at its expense. Notwithstanding anything to the contrary provided for herein, GES shall have the right to, upon written notice to You, elect to assume control of the defense and settlement of any such claim, suit or proceeding for which indemnity is claimed, and You will have the right to participate and be represented in the defense of such claim, suit or proceeding for which indemnity is claimed by Your own counsel and at Your own expense. Without GES's express written consent, You shall not, in the defense of any such claim or litigation, consent to the entry of any judgment or enter into any settlement that provides for injunctive or other non-monetary relief affecting any Indemnified Party or that does not include as an unconditional term thereof a release from all liability with respect to such claim or litigation to all Indemnified Parties by the claimant or plaintiff.

SECTION 10 - COMPLIANCE WITH LAW AND AUTHORIZATIONS

- 10.1 **General.** You, at Your expense, shall comply with all applicable laws, statutes, rules, regulations, orders, ordinances, and other requirements of any U.S. or foreign national, state, provincial, or local government and of any multi-national or international body (collectively, “**Laws**”) pertaining to a Your use of the Site and GES Services, including, without limitation, any Laws governing false, unfair and deceptive practices, discounts, gift cards, coupons, and/or gift certificates.
- 10.2 **Taxes.** Any United States (whether federal, state, or local) or foreign sales, use, or other taxes (excluding only any tax based on GES's net income), assessments, or other governmental fees or charges arising from any products or services purchased by You through the Site or with respect to Your use of the GES Services or Site, or otherwise related to or arising out of these Terms of Use, are the responsibility of and shall be paid by You or, if GES is required to pay the same, shall be reimbursed by You to GES immediately upon demand.

SECTION 11 – GES INTELLECTUAL PROPERTY RIGHTS

You acknowledge and agree that, except as otherwise expressly set forth in these Terms of Use regarding Your Content or Likeness, GES exclusively owns all intellectual property rights and other rights, title and interest, in and to the Site and the GES Services (collectively the “**GES IP**”), The GES IP includes, without limitation, all GES trade names, logos, trademarks, and service marks, the copyrights in and to the Site, and certain content (including, artwork), data, software, technology, tools, and business methods used by GES to develop, promote, market, sell, generate, or distribute the GES Services. GES hereby grants You a limited revocable license to use the GES IP for purposes of accessing and using the Site and GES Services for their intended purposes. You shall refrain from any direct or indirect use or registration of GES’s name, trade names, logos, trademarks, and service marks (collectively, the “**GES Marks**”) or any trade names, trademarks or other insignia which may be confusingly similar to the GES Marks. All goodwill and improved reputation in respect of and associated with the GES IP shall automatically inure to the sole benefit of GES. Except as expressly set forth in these Terms of Use, You have no right, license, title or interest in or to any GES IP, and shall not use, distribute, transfer, copy, download, display, modify, perform or create derivative works of the GES IP without the express written consent of GES. You shall not translate, reverse engineer, decompile or disassemble the GES IP. GES has the right to revoke the rights sets forth in this Section upon written notice to You reserves all rights not specifically granted.

SECTION 12 - LIMITATIONS OF LIABILITY

- 12.1 **Consequential Damages Limitation.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL GES OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR RESULTING FROM THE USE OF OR INABILITY TO USE THE GES SERVICES OR THE SITE, EVEN IF GES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE (EXCLUDING, HOWEVER, ANY SUCH CLAIM AGAINST GES RELATING TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SITE OR ANY OF THE GES SERVICES).
- 12.2 **Direct Damages Limitation.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GES’S, AND GES’S AFFILIATES’, LIABILITY ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, THE GES SERVICES OR THE SITE SHALL BE LIMITED TO THE AMOUNT OF YOUR DIRECT DAMAGES RESULTING FROM SUCH BREACH OR DEFAULT, NOT TO EXCEED \$1,000. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO AMOUNTS PAYABLE BY GES TO A THIRD PARTY CLAIMANT FOR PERSONAL INJURY OR PROPERTY DAMAGE (EXCLUDING, HOWEVER, ANY CLAIM AGAINST GES RELATING TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SITE OR ANY OF THE GES SERVICES).

SECTION 13 – MISCELLANEOUS

- 13.1 Force Majeure. Neither party shall be liable for any default or delay in the performance of its obligations under these Terms of Use due to acts of God, terrorism, natural disasters, earthquakes, fire, riots, floods, and other similar events, to the extent such event is beyond the reasonable control of such party and only for the duration of such event.
- 13.2 Relationship of the Parties. You and GES are independent contractors. Nothing in these Terms of Use shall be deemed or construed by You and GES hereto, nor by any third party, as creating a joint venture, partnership, franchise, or an agency relationship between You and GES. Neither You nor GES has the authority, without the others prior written approval, to bind or commit the other party in any way.
- 13.3 Entire Agreement. These Terms of Use shall constitute the complete and exclusive agreement between GES and You with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications, proposals, understandings, or other agreements, whether oral, electronic, or written, between them regarding the subject matter hereof.
- 13.4 Modification to the Agreement. The terms and conditions contained in these Terms of Use may not be modified by You except in a writing duly signed by You and an authorized representative of GES. GES reserves the right, in its sole discretion, to modify and revise these Terms of Use, including any terms and conditions, policies and guidelines referenced herein and/or available by hyperlink, or otherwise affecting the Site. Any modification or revision is effective immediately upon posting to the Site or distribution to You via electronic mail or conventional mail. Your continued use of the GES Services and the Site following any modification(s) or revision(s) to these Terms of Use, or any terms and conditions, policies and guidelines referenced herein and/or available by hyperlink, or otherwise affecting the Site shall be conclusively deemed an acceptance of all such modification(s) or revision(s). Your only right with respect to any dissatisfaction with any modifications or revisions made pursuant to this provision, or any policies or practices of GES in providing the GES Services, is to terminate Your use of the Site and GES Services in accordance with the provisions of these Terms of Use.
- 13.5 Interpretation. The section headings of these Terms of Use are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms and conditions hereof. References to a Section include references to all Subsections of that section.
- 13.6 Severability. Each term, condition, and provision of these Terms of Use shall be valid and enforced to the fullest extent permitted by law. If any term, condition, or provision of these Terms of Use, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, then such term, condition, or provision shall be curtailed and limited to the extent necessary to bring it within the legal requirements and the remainder of these Terms of Use, and the application of such term, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 13.7 Waivers. Failure or delay by either party to enforce any provision of these Terms of Use shall not be deemed a waiver of that provision or of any other provision of these Terms of Use. The failure or delay of either party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce such provision. The waiver of any defaults under these Terms of Use will not waive any other defaults of the same or different kind hereunder or under any other agreements between the parties.
- 13.8 Assignment. You may not assign or transfer any of Your rights, or delegate any of Your obligations, under these Terms of Use without GES's prior written consent, and any attempt to do so shall be void and unenforceable.
- 13.9 Successors and Assigns; No Third Party Beneficiaries. These Terms of Use shall be binding upon and inure to the benefit of, the parties hereto and their respective permitted successors and assigns. There are no third party beneficiaries to these Terms of Use, except as expressly set forth herein.

- 13.10 Governing Law; Jurisdiction. These Terms of Use shall be governed, construed and interpreted in accordance with the laws of the State of New Hampshire, USA, without regard to its choice of law provisions or policies. The parties agree that in the event of any action for enforcement of or breach of these Terms of Use (excepting only actions for injunctive or other equitable relief), the Federal and State courts of the State of New Hampshire shall have exclusive jurisdiction over the enforcement of these Terms of Use, and the parties specifically consent to, and agree that they are subject to, the jurisdiction of such courts. You hereby waive any objection to the conduct of any action or proceeding in any such court which You may have based upon lack of personal jurisdiction, improper venue or forum non conveniens.
- 13.11 Waiver of Jury Trial. THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF GES RELATING TO THE GES SERVICES, AND AGREE THAT NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE TERMS AND PROVISIONS OF THIS SECTION CONSTITUTE A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.
- 13.12 Notice. Any notice required or permitted to be given to a party under the Agreement shall be in writing and shall be (a) given by personal delivery to such party, which shall be deemed received upon delivery, (b) mailed by registered or certified mail, return receipt requested, postage prepaid, which shall be deemed received three (3) business days after mailing, (c) shipped by a nationally-recognized overnight carrier, shipping prepaid, which shall be deemed received one (1) business day after mailing, or (d) by electronic delivery, which shall be deemed received upon written or electronic confirmation of receipt. Any such notice shall be sent to GES at 9 Madbury Rd. Suite 402, Durham NH or support@groundenergysupport.com or to You at the mailing address or e-mail address in GES's records (as provided to GES either during the registration of Your GES Account or when changed by You pursuant to this Section). Either party may at any time change the address to which such notices are to be sent to such party by notifying the other party of the new address by means of notice to the other party given in accordance with this Section.

rev. August 10, 2015