

TERMS RELATING TO THE JESS SERVICE

This page (together with the documents expressly referred to on it) tells you information about us and the legal terms and conditions ("Terms") on which we grant you access to the JEPlus Simulation Server (JESS) based online simulation service ("JESS Service").

These Terms will apply to any contract between us for access to the JESS Service. Please read these Terms carefully and make sure that you understand them. Please note that by accessing the JESS Service, you agree to be bound by these Terms and the other documents expressly referred to in them.

Your attention is specifically drawn to clause 9.2 (in which you grant us a licence to use the data you input into the JESS Service for certain purposes), clause 9.4 (in which you indemnify us if the data you input into the JESS Service infringes the rights of any third party), clause 14.1 (where you acknowledge that any data you input into the JESS Service is NON-CONFIDENTIAL), and clause 15 (in which we cap our liability to you).

By clicking on the button marked "login" when you login to the JESS Service you are acknowledging that you have read, understood and accept these Terms. If you refuse to accept these Terms, you must not click the button marked "login" and will not be able to access the JESS Service.

You should print a copy of these Terms for future reference.

We may amend these Terms from time to time as set out in clause 6. Every time you wish to access the JESS Service, please check these Terms to ensure you understand the terms which will apply at that time.

These Terms, and any Contract between us, are only in the English language.

We have used certain defined terms in these Terms. Unless otherwise indicated, the following definitions apply to these Terms:

Defined term	Definition
Authorised User(s)	the employees, agents and independent contractors who have been authorised to use the JESS Service and the Documentation by a person who we have invited to use the JESS Service and Documentation and sent a username and password.

Documentation	the documents we make available to you online via our web pages emanating from url ensims.com and jeplus.org from time to time or such other web address we notify you from time to time which sets out a basic description of the JESS Service and basic user instructions for the JESS Service.
Our Websites	the websites we operate under the urls ensims.com and jeplus.org
JESS Service	the online EnergyPlus simulation with JEPlus Simulation Server (JESS) service we provide you as more particularly described in the Documentation.
Your Data	the data you or your Authorised User(s) inputted for the purpose of using the JESS Service.

1. INFORMATION ABOUT US

- 1.1 We operate the website ensims.com and jeplus.org from which the JESS Service can be accessed. We are Energy Simulation Solutions Limited and have our primary place of business at 40 Edward Street, Anstey, Leicester, LE7 7DQ. Our VAT number is 163286696.
- 1.2 To contact us about our website at ensims.com and jeplus.org generally, or to contact us about the JESS Service, please see our [About Us](#) page.

2. USE OF OUR WEBSITES

- 2.1 Your use of our websites is governed by our [terms of use](#) and [acceptable use policy](#). Please take the time to read these, as they include important terms which apply to you.

3. USE OF YOUR PERSONAL INFORMATION

- 3.1 When you use the JESS Service we will only use your personal information in accordance our Websites and JESS Service [Privacy Policy](#). For details, please

see our Websites and JESS Service [Privacy Policy](#). Please take the time to read these, as they include important terms which apply to you.

4. IF YOU ARE A BUSINESS

This clause 4 only applies if you are a business.

- 4.1 If you will be, or are, using the JESS Service on behalf of a business, you confirm that you have authority to bind any business on whose behalf you are acting.

5. HOW ANY CONTRACT IS FORMED BETWEEN YOU AND US

- 5.1 At the moment, access to the JESS Service is by invitation only. However, you can: (a) request access to the JESS Service, in which case we will consider your request and send you an invitation at our sole discretion; or (b) obtain access to the JESS Service as the Authorised User of someone who already has access to the JESS Service.
- 5.2 If we would like you to trial the JESS Service, we will send you an invitation to trial the JESS Service by email enclosing a user name and password.
- 5.3 Even though we would have sent you a user name and password, you will need to accept these Terms before you can access the JESS Service. Equally, if you are the Authorised User of someone who already has access to the JESS Service, you will still need to accept these Terms before you can access the JESS Service. You will also need to use the JESS Service and Documentation in accordance with these Terms as if you are the person who authorised you to use the JESS Service and Documentation.
- 5.4 You can only use the JESS Service on condition that you accept our Terms. Any contract between us will only be formed once you have accepted our Terms by clicking the "I accept" button when you login to the JESS Service using a user name and password.

6. OUR RIGHT TO VARY THESE TERMS

- 6.1 We may revise these Terms from time to time at our discretion.

- 6.2 Whenever we revise these Terms in accordance with this clause 6, we will keep you informed and give you notice of this by stating that these Terms have been amended and stating the relevant date at the top of this page.

7. AUTHORISED USERS

- 7.1 Subject to the restrictions set out in this clause 7 and the other terms and conditions of these Terms, we grant you a non-exclusive, non-transferable right to use, and permit your Authorised User(s) to use, the JESS Service and the Documentation solely for your internal business purposes until such time as either of us terminates the Contract in accordance with clause 16.
- 7.2 In relation to the Authorised Users, you undertake that each Authorised User shall keep secure the user name and password, and that each Authorised User shall keep the user name and password confidential.
- 7.3 You shall not access, store, distribute or transmit any viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful or any material during the course of your use of the JESS Service that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and we reserve the right, without liability or prejudice to our other rights against you, to disable your access to any material that breaches the provisions of this clause.

- 7.4 You shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between us both:
 - (i) and except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the underlying software forming part of the JESS Service and/or

Documentation (as applicable) in any form or media or by any means; or

- (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the underlying software forming part of the JESS Service; or
- (b) access all or any part of the JESS Service and Documentation in order to build a product or service which competes with the JESS Service and/or the Documentation; or
- (c) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the JESS Service and/or Documentation available to any third party except the Authorised Users; or
- (d) attempt to obtain, or assist third parties in obtaining, access to the JESS Service and/or Documentation, other than as provided under this clause 7.

7.5 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the JESS Service and/or the Documentation and promptly notify us in the event of any such unauthorised access or use.

7.6 The rights provided under this clause 7 are granted to you only, and shall not be considered granted to any of your subsidiaries or holding companies.

7.7 You shall procure the compliance of your Authorised Users with the terms set out in this clause 7.

8. USAGE LIMITATIONS

8.1 **Your use of the JESS Service will be subject to certain usage limitations based on the amount of available computing resources. You will be notified of any usage limitations in the invitation to use the JESS Service that we send to you pursuant to clause 5.2.**

9. YOUR DATA

9.1 You shall own all right, title and interest in and to all of Your Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data. **You must not input any data or information into the JESS Service that you consider to be confidential. Your Data will be considered to be non-confidential and we shall be free to use Your Data as set out in these Terms.**

- 9.2 **You grant to us an irrevocable, non-exclusive, worldwide, royalty-free, transferrable and perpetual licence to use Your Data for the purpose of: (a) providing the JESS Service to you; (b) developing and improving the JESS Service (whether in the same form or not) for all existing and future users; and (c) for non-commercial and commercial research and development purposes.**
- 9.3 You warrant that you own all rights in Your Data and have the authority to grant to us the licence set out in clause 9.2.
- 9.4 **You shall indemnify us, and keep us indemnified against, all costs, damages, losses and expenses (including legal costs and expenses) arising as a result of any action or claim: (a) that Your Data infringes or allegedly infringes any intellectual property rights of a third party; and (b) that you have breached the warranty in clause 9.3.**
- 9.5 **You are solely responsible for maintaining copies of data you, or your Authorised Users, input into the JESS Service. We will not archive or backup Your Data for you and you will not be able to access Your Data directly from our server again. You can of course input the same data again into the JESS Service in the future.**

10. THIRD PARTY PROVIDERS

You acknowledge that our Websites and JESS Service may enable or assist you to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that you do so solely at your own risk. We make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not us. We recommend that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via our Websites or JESS Service.

11. OUR OBLIGATIONS

- 11.1 **The JESS Service and the Documentation are provided to you on an "as is" basis.**

11.2 If you notify us that the JESS Service or Documentation contains an error or omission, we will use reasonable commercial endeavours to correct such error or omission in due course. The use of such reasonable commercial endeavours constitutes your sole and exclusive remedy in relation to such error or omission. Notwithstanding the foregoing, we:

- (a) do not warrant that your use of the JESS Service will be uninterrupted or error-free; or that the JESS Service, Documentation and/or the information or results obtained by you through the JESS Service will meet your requirements;
- (b) do not warrant that any error or omission you inform us of will be corrected or correctable; and
- (c) are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the JESS Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

12. YOUR OBLIGATIONS

12.1 You shall:

- (a) inform us immediately of any errors or omissions you discover in the JESS Service and Documentation and provide us with all necessary co-operation in relation to correcting such errors or omissions;
- (b) provide us with feedback on the look, feel and usability of the JESS Service and Documentation and provide us with all necessary co-operation in improving the same;
- (c) provide us with all necessary access to such information as we may reasonably require;
- (d) comply with all applicable laws and regulations with respect to your activities under these Terms;
- (e) carry out all your responsibilities set out in these Terms in a timely and efficient manner;
- (f) ensure that the Authorised Users use the JESS Service and the Documentation in accordance with these Terms and shall be responsible for any Authorised User's breach of these Terms;
- (g) obtain and shall maintain all necessary licences, consents, and permissions necessary for us to perform our, and our contractors and agents to perform their, obligations under these Terms, including without limitation to provide the JESS Service;

- (h) ensure that your network and systems comply with the relevant specifications we provide from time to time; and
- (i) be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to the internet, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

13. PROPRIETARY RIGHTS

- 13.1 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the JESS Service and the Documentation. Except as expressly stated herein, these Terms do not grant you any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks or other intellectual property (whether registered or unregistered), or any other rights or licences in respect of the JESS Service or the Documentation.
- 13.2 We confirm that we have all the rights in relation to the JESS Service and the Documentation that are necessary to grant all the rights we purport to grant under, and in accordance with, these Terms.

14. CONFIDENTIALITY

- 14.1 **You must not input any data or information into the JESS Service that you consider to be confidential. Your Data will be considered to be non-confidential and we shall be free to use Your Data as set out in these Terms.**
- 14.2 We may give you access to information that we consider confidential.
- 14.3 We consider the following to be our confidential information: (1) details of the JESS Service and Documentation; (2) the results of any performance tests of the JESS Service; (3) the source code of the underlying software forming part of the JESS Service; (4) any access codes and keys relating to the JESS Service; (5) any error messages and debugging information relating to the JESS Service; (6) internal performance statistics and accounting information; (7) any information we mark “confidential” at the time of disclosure; and (8) any information that a reasonable business person would consider to be confidential.
- 14.4 Notwithstanding any other clause, information that we disclose to you shall not be deemed to be confidential if:

- (a) it is or becomes publicly known other than through your act or omission or that of your Authorised Users;
- (b) it was in the your lawful possession before the disclosure;
- (c) it is lawfully disclosed to you by a third party without restriction on disclosure;
- (d) it is independently developed by you, which independent development can be shown by written evidence; or
- (e) it is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

14.5 You shall hold our confidential information in confidence and, unless required by law, not make our confidential information available to any third party, or use our confidential information for any purpose, except that you may use our confidential information to use the JESS Service as described in the Documentation until such time as your access to the JESS Service is terminated pursuant to these Terms.

14.6 You shall take reasonable steps to ensure that our confidential information to which you have access is not disclosed or distributed by your employees or agents in breach of these Terms.

14.7 This clause 14 shall survive termination of the Contract, however arising.

15. LIMITATION OF LIABILITY

15.1 **This clause 15 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you:**

- (a) **arising under or in connection with these Terms;**
- (b) **in respect of any use you make of the JESS Service and Documentation or any part of them; and**
- (c) **in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.**

15.2 **Except as expressly and specifically provided in these Terms:**

- (a) **you assume sole responsibility for the results obtained from the use of the JESS Service and the Documentation, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information,**

instructions or scripts you provide in connection with the JESS Service, or any actions we take at your direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and the Contract; and
- (c) the JESS Service and the Documentation are provided to you on an "as is" basis. You agree this is reasonable given the JESS Service is still in its developmental stage and as such is likely to contain inherent errors and omissions.

15.3 **Nothing in these Terms excludes or limits our liability:**

- (a) for death or personal injury caused by our negligence; or
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any matter for which liability cannot be excluded or limited as a matter of law.

15.4 **Subject to clause 15.2 and clause 15.3:**

- (a) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits or revenues, loss of business or contracts, depletion of goodwill, increased management or office time or costs, and/or similar losses or loss or corruption of data or information, or pure economic loss (in each case whether direct, indirect or consequential), or for any special losses, costs, damages, charges or expenses however arising under these Terms or the Contract; and
- (b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms or the Contract shall be limited to £50.

16. TERM AND TERMINATION

16.1 Your Contract for access to the JESS Service shall commence on the date you accept these Terms under clause 5.4 and may be terminated by either of us at any time.

16.2 You may terminate the Contract and your access to the JESS Service at any time by sending an email to us at info@ensims.com.

- 16.3 We may terminate the Contract and your access to the JESS Service by sending you an email to the email address registered against your user account.
- 16.4 On termination of the Contract and your access to the JESS Service for any reason:
- (a) all licences granted under these Terms shall immediately terminate, unless they are perpetual licences; and
 - (b) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

17. FORCE MAJEURE

We shall have no liability to you under these Terms if we are prevented from or delayed in performing our obligations under these Terms by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

18. WAIVER

- 18.1 A waiver of any right under these Terms is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 18.2 Unless specifically provided otherwise, rights arising under these Terms are cumulative and do not exclude rights provided by law.

19. SEVERANCE

- 19.1 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. ENTIRE AGREEMENT

- 20.1 These Terms, and any documents referred to in them, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 20.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in these Terms.

21. ASSIGNMENT

- 21.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under these Terms.
- 21.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Terms or the Contract.

22. NO PARTNERSHIP OR AGENCY

Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. THIRD PARTY RIGHTS

These Terms do not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. NOTICES

- 24.1 If you need to send us any notice about our Websites or JESS Service, you can send it to us by e-mail to info@ensims.com.

- 24.2 If we need to send you or give you any notice, we will do so by e-mail or by pre-paid post to the email or postal address registered against your user account.
- 24.3 Please note that any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted on our Websites, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

25. GOVERNING LAW AND JURISDICTION

- 25.1 These Terms and our Contract and any disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).