

## ENERGY TOOLBASE TERMS & CONDITIONS ETB DEVELOPER

PLEASE READ THE FOLLOWING CAREFULLY

THESE TERMS & CONDITIONS CONTAIN LIMITATIONS OF LIABILITY AND INDEMNITIES

THESE TERMS & CONDITIONS ARE THE TERMS UPON WHICH ENERGY TOOLBASE SOFTWARE, INC. (“**ETB**”, “**we**”, “**our**”, or “**us**”) IS PREPARED TO PROVIDE ENERGY TOOLBASE’S DEVELOPER SERVICE TO YOU, AS THE COMPANY (“**You**”, “**Customer**”) OR OTHER ENTITY ORDERING SERVICES FROM ETB.

THESE TERMS & CONDITIONS GOVERNS YOUR USE OF ENERGY TOOLBASE’S DEVELOPER SERVICE (“**ETB DEVELOPER**”). BY CLICKING “I ACCEPT THE TERMS OF SERVICE,” YOU AGREE TO THESE TERMS OF SERVICE (THESE “**TERMS**“). IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY.

The ETB Service engagements (“**Engagement**”) are provided through our website, [www.energytoolbase.com](http://www.energytoolbase.com) and performed using the ETB Developer software platform.

Please read all these Terms. You are bound by these Terms even if you do not read all of them. By making use of the Services, you accept these Terms without change. If you do not accept these Terms in their entirety, you are not authorized to use the Services.

### ARTICLE I Definitions

“**Confidential Information**” is defined below in Section 5.01.

“**Content**” is defined below in Section 2.06.

“**Customer**” or “**you**” means the person, company or other entity ordering and/or receiving ETB Developer Services from ETB under these Terms.

“**Disclosing Party**” is defined below in Section 5.01.

“**Dispute**” means any dispute, controversy, or claim arising out of or relating to these Terms, including their interpretation, performance, or breach, brought by either Customer or Energy Toolbase (individually, a “**Party**” and collectively, the “**Parties**”). The Parties agree to seek expedited resolution and cost control for any Dispute.

“**ETB Developer Services**” means ETB’s software platform and associated services that enable Customers to generate financial analyses for solar photovoltaic projects, advanced energy storage projects, energy efficiency projects, utility rate switching scenarios, and other energy service projects.

“**Feedback**” is defined below in Section 2.10.

“Fees” is defined below in Section 4.01.

“Indemnifying Party” is defined below in Section 7.04.

“Initial Term” is defined below Section 6.01.

“Quote” means a written document issued by ETB to Customer specifying the Services to be provided, applicable fees, and subscription term. “Receiving Party” is defined below in Section 5.01.

“Renewal Term” is defined below Section 6.01.

“Results” is defined below in Section 2.04.

“Service” or “Services” means the software made available to you hereunder;

“Site” refers to ETB’s official website located at <https://www.energytoolbase.com>, including all pages, content, features, and services accessible through this domain.

## ARTICLE II Subscriptions and Scope of Services

**Section 2.01 Subscription to Services.** Subject to the terms and conditions of these Terms, ETB grants you a non-exclusive, non-transferable, non-sublicensable, limited subscription to access and use the ETB Developer Services you select on the Site. ETB may reject any request for subscription/access in its sole discretion.

**Section 2.02 Restrictions on User of the Services.** The Services are licensed for internal use only. In connection with your use of the Services, you will comply with all applicable laws, rules and regulations. You will not, and will not permit any third party to: (i) copy, modify, translate, or create derivative works of the Services; (ii) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Services; (iii) lend, lease, offer for sale, sell or otherwise use the Services for the benefit of third parties; or (iv) attempt to circumvent any license, timing or use restrictions that are built into the Services. The Services are subject to usage limits, including, for example, the limits on users specified on the Site. Unless otherwise specified, (A) the Services may not be accessed by more than the number of users associated with your Subscription tier, (B) a user’s password may not be shared with any other individual, and (C) a user identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Services. If you exceed a contractual usage limit, Energy Toolbase may work with you to seek to reduce your usage so that it conforms to that limit. If, notwithstanding our efforts, you are unable or unwilling to abide by a contractual usage limit, you will be required to upgrade your Subscription for additional quantities of the applicable Services promptly upon our request, and/or pay any applicable Fees for excess usage.

**Section 2.03 Use of Services.** You will (i) be responsible for your (and as applicable, your personnel’s) compliance with these Terms, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Energy Toolbase immediately of any such unauthorized access and/or use of which you become aware, and (iii) use the Services only in accordance with these Terms and all applicable laws and government regulations. You will not (w) make the Services available to any third party, (x) sell, resell, rent or lease the Services, (y) interfere with or disrupt the integrity or performance of the Services or any third-party data contained on the Services, including, as applicable, the third-party data of your employees, or (z) attempt to gain unauthorized access to the Services or their related systems or networks.

**Section 2.04**      **Proposals.** If you use the Services to generate proposals for your clients integrating the results generated by the Services (the “**Results**”), then Energy Toolbase grants you a license to reproduce and display such proposals and Results.

**Section 2.05**      **Energy Toolbase Ownership of Services.** Except for the limited rights granted in Section 2.01 above, Energy Toolbase retains all right, title and interest, including all intellectual property rights, in and to the Services. You acknowledge that the Services include Energy Toolbase’s valuable trade secrets and improper use or disclosure would cause Energy Toolbase irreparable harm. Accordingly, you agree to use the Services solely as authorized in these Terms. You further acknowledge that the license granted pursuant to these Terms is not a sale and does not transfer to you title or ownership of the Services or a copy of the Services, but only a right of limited use. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO ENERGY TOOLBASE.

**Section 2.06**      **Licensee Data and Content.** Subject to the terms and conditions of these Terms, you grant Energy Toolbase a limited, non-transferable (except pursuant to Section 8.01 below) license to use the information and data entered into the Services by you and/or your personnel, or by any third parties acting on behalf of you or at your request (“**Content**”) for the purpose of providing the Services. You represent and warrant that: (i) you own the Content posted by you on or through the Services or otherwise have the right to grant the license set forth in this Section 2.03 (ii) the posting and use of Content on or through the Services does not violate the privacy rights, publicity rights, copyrights, contract rights, intellectual property rights, or any other rights of any person; and (iii) the posting of Content on the Services does not result in a breach of contract between you and any third party. Energy Toolbase may use Content in an aggregated and/or anonymized manner for purposes of sales, marketing, business development, product enhancement, customer service, or as otherwise detailed in our Privacy Policy.

**Section 2.07**      **Upgrades.** ETB may provide you with certain Software updates or Services. Some upgrades or Services may be provided automatically when you sign in to ETB Developer or other Services and others may be available to you through ETB’s website or authorized channels. You consent to ETB providing you these automatic updates, upgrades and Services. Services may include the latest update or download of a new release of Software containing security patches, new technology or revised settings and features that may prevent access to unauthorized or pirated content or prevent use of unauthorized hardware or software. ETB shall ensure that updates, upgrades, and Services do not materially reduce or degrade the functionality of the Software or Services. In the event an update negatively impacts Customer’s use of the Services, ETB shall work in good faith to provide a resolution or rollback option.

**Section 2.08**      **Third Party Websites.** The Services may include links to third party websites and applications. You are responsible for evaluating whether you want to access or use them. We are not responsible for and do not endorse any features, content, advertising, products, or other materials on other websites or applications. You assume all risk and we disclaim all liability arising from your use of them.

**Section 2.09**      **No Reliance.** Energy Toolbase does not broker energy or utility transactions, nor does Energy Toolbase act as an agent for you or any other user. Energy Toolbase does not sell, buy, or negotiate the purchase, sale, or exchange of energy. Energy Toolbase makes no guarantees about the information provided on the Services, including without limitation, that the Results are an accurate representation of energy costs. Specifically, Energy Toolbase makes no representations about accuracy, reliability, completeness, or timeliness of any contents of the Services, including the Results. Similarly, we make no representations about accuracy, reliability, completeness, or timeliness of any data from a third-party service provider or the quality or nature of third-party products or services obtained through the Services. Use the Services at your own risk. The Results are not intended, nor should they be used, as a substitute for tax, business, or other professional advice. While we have made every attempt to ensure that the information contained on the Services has been obtained from reliable sources, Energy Toolbase is not

responsible for any errors or omissions, or for the Results. All information on the Site and in the Services is provided “as is,” with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance, merchantability and fitness for a particular purpose. In no event will Energy Toolbase, its related partnerships or corporations, or the partners, agents or employees thereof be liable to you or anyone else for any decision made or action taken in reliance on the information in the Services (including the Results) or for any consequential, special or similar damages, even if advised of the possibility of such damages.

**Section 2.10 Feedback.** From time to time, you may provide us (either on your own accord or at our request) feedback, analysis, suggestions and comments (including, but not limited to, bug reports and test results, and design suggestions or ideas) related to the Services (collectively, “**Feedback**”). As between you and us, all right, title and interest in and to any such Feedback will be owned by us. You agrees that Energy Toolbase has the perpetual, irrevocable and worldwide right to use, modify, license, sublicense and otherwise exploit all or part of the Feedback or any derivative thereof in any manner or media now known or hereafter devised without any remuneration, compensation or credit to you.

### **ARTICLE III Free Trial**

**Section 3.01 Eligibility.** At ETB’s sole discretion, ETB offers free trial periods to new subscribers that select a single user subscription. The trial period begins immediately upon account activation. The free trial period only applies to new customers and does not apply to existing customers that have a subscription plan. We will not honor a free trial period for customers who were once paying subscribers, cancelled, and then decided to re-instate their subscription to Energy Toolbase software service.

**Section 3.02 Free Trial.** If you register on for a free trial, Energy Toolbase, at its sole discretion, may make one or more Services available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use the applicable Services, or (b) the start date of any purchased Services. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into these Terms by reference and are legally binding. **NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, DURING THE FREE TRIAL, THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.**

**Section 3.03 Cancellation.** At any time during the free trial period, a customer can cancel their account and will not be billed. ETB may require payment information to sign up for the free trial period. If you forget to cancel within the free trial period, your account **WILL BE CHARGED.**

### **ARTICLE IV Payment**

**Section 4.01 Fees.** You will pay Energy Toolbase the fees described on the Quote . All Fees are due in advance and are based on Services ordered rather than actual usage.

**Section 4.02 Payment Terms.** Fees must be paid via Credit Card or ACH using Energy Toolbase’s third-party payment provider or by Cheque upon ordering Services. All payments are due within thirty (30) days from the date of invoice (“Net 30”). If any payment is not received within thirty (30) days of the invoice date, Energy Toolbase may charge (i) interest at the lesser of fifteen percent (15%) per annum or the maximum amount permitted by law on any delinquent payment and on any other sum due

under these Terms from the date when such payment was due until paid, and (ii) expenses of collection or suit to recover all amounts due and owing, including legal fees and expenses on a full indemnity basis.

**Section 4.03 Taxes.** All fees for the Services are exclusive of any taxes, levies, duties, or similar charges imposed by any taxing authority. You are responsible for payment of all such taxes, levies, duties, and charges, including but not limited to sales, use, property, value-added, withholding, or other federal, state, provincial, or local taxes, except for taxes based solely on Energy Toolbase's net income. If Energy Toolbase is required to pay any such taxes or charges arising from the subscriptions granted under these Terms or your use of the Services, those amounts will be billed to and paid by you. Fees for monthly or yearly subscription plans exclude taxes, phone and internet access charges, and any other data transmission costs. Currency exchange settlements and related fees are based on your agreement with your payment method provider. These taxes and charges are your sole responsibility.

**Section 4.04 Cancellation & Refund.** We charge and collect in advance for use of the Energy Toolbase software service. All services rendered are non-refundable. Once a customer selects a subscription plan and provides billing information during or after the free trial, Energy Toolbase will begin billing the customer upon the expiration of their free trial period, or immediately if a free trial does not apply. Your billing cycle runs thereafter until cancelled. Customers can cancel anytime by calling (866) 303-7786 or emailing us at [contact@energytoolbase.com](mailto:contact@energytoolbase.com). Customers will receive an email from us confirming that their subscription to the Energy Toolbase software service has been cancelled. **No refunds or credits for partial months, or years of service will be refunded to a customer upon cancellation.**

## **ARTICLE V**

### **Confidential Information**

**Section 5.01 Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Content; our Confidential Information includes the Services; and Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Content) will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**Section 5.02 Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care). The Receiving Party agrees (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**Section 5.03 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the

Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## **ARTICLE VI**

### **Term and Termination**

**Section 6.01 Term and Renewals.** The initial term of each subscription ("Initial Term") shall be as specified in the applicable Quote. Following the expiration of the Initial Term, each subscription shall automatically renew for successive one-year renewal terms (each, a "Renewal Term"), unless Customer provides ETB with written notice (email acceptable) of non-renewal at least thirty (30) days prior to the end of the then-current subscription term. Any subscription, including any subscription purchased at a promotional, discounted, or one-time price, will renew at ETB's applicable list price in effect on the renewal date, unless expressly agreed otherwise in writing by both Customer and ETB. ETB, in its sole discretion, may elect to modify, cancel, or resume any promotional, discounted, or one-time pricing in effect on the renewal date.

**Section 6.02 Termination.** Either party may terminate these Terms for cause upon 30 days written notice to the other party of material breach if the breach remains uncured at the expiration the 30-day notice period. Energy Toolbase may terminate your Subscription for convenience upon 5 days notice.

**Section 6.03 Effect of Termination.** Upon expiration or termination of these Terms for any reason, the rights, licenses and access to the Services granted to you under these Terms will immediately terminate, and all Fees will become immediately due and payable to Energy Toolbase.

**Section 6.04 Survival.** All terms and provisions of this Agreement, including any exhibits, which by their nature are intended to survive any termination or expiration of these Terms, will so survive.

## **ARTICLE VII**

### **Representations and Warranties**

**Section 7.01 Representations and Warranties.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the right, power and authority to enter these Terms and to grant the rights and licenses granted hereunder and to perform all of its obligations hereunder; (c) the execution of these Terms by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or organizational action of the party; (d) when executed and delivered by both parties, these Terms will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (e) it will abide by all applicable federal, state and local laws and regulations with respect to online activities, use of end user data and the products and services offered by each party in connection with these Terms.

**Section 7.02 WARRANTY DISCLAIMER. THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. AND ENERGY TOOLBASE MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, OR THE EXISTENCE OF**

**ANY LATENT OR PATENT DEFECTS. ENERGY TOOLBASE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER IMPLIED OR STATUTORY WARRANTIES, AS WELL AS ANY LOCAL JURISDICTIONAL ANALOGUES TO THE ABOVE. ENERGY TOOLBASE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL WORK WITHOUT INTERRUPTIONS.**

**Section 7.03 LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS EXCEED FEES PAID BY YOU TO ENERGY TOOLBASE DURING THE ONE YEAR PERIOD PRECEDING THE CLAIM GIVING RISE TO LIABILITY. EXCEPT FOR A BREACH OF THE LICENSE RESTRICTIONS OR CONFIDENTIALITY OBLIGATIONS, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR RELATED TO THESE TERMS, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR LOSS OR INTERRUPTION OF USE OF ANY FILES, DATA OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT.

**Section 7.04 Indemnification.** Each party ("Indemnifying Party") will indemnify, defend and hold the other party ("Indemnified Party") harmless from any claim, action, suit or proceeding made or brought against the Indemnified Party arising out of or related to the Indemnified Party's breach of any term of these Terms.

## **ARTICLE VIII Miscellaneous**

**Section 8.01 Accurate Information.** Customer is responsible for providing and inputting accurate and detailed parameters, including without limitation, the Site address, the electrical tariff applied by the Site's utility, a set of historical electrical load data, and the physical configuration and performance specifications of energy generation or storage equipment. ETB shall have no liability for data accuracy.

**Section 8.02 Force Majeure.** Other than for the payment of Fees, neither party will be liable for any causes beyond their control. Neither party will be deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, tsunami, fire, sabotage, fluctuations or non-availability of electrical power or telecommunications or transportation, heat, light, air conditioning or any other causes beyond the party's reasonable control.

**Section 8.03 Assignment.** Neither party may assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of the other party; provided, however, that Energy Toolbase may assign these Terms to a parent, affiliate, subsidiary, or successor to its business, if any. Subject to the foregoing, these Terms will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Any attempted assignment in violation of this Section 8.01 will be null and void.

**Section 8.04 United States Government Rights.** Energy Toolbase provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Energy Toolbase to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**Section 8.05 Export Regulations.** You agree to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“ITAR”) maintained by the Department of State. Specifically, you covenant that you will not — directly or indirectly — sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Energy Toolbase under these Terms to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. You will indemnify, to the fullest extent permitted by law, Energy Toolbase from and against any fines or penalties that may arise as a result of your breach of this provision.

**Section 8.06 Severability.** If for any reason a court of competent jurisdiction finds any provision of these Terms is invalid, illegal, or unenforceable in any respect or in any circumstance, in whole or in part, the invalidity, illegality or enforceability of such provision in in any other respect or circumstance will not in any way be affected or impaired thereby and the parties hereto will endeavor to replace the invalid, illegal or unenforceable provision with a similar provision and the validity, legality and enforceability of the remaining provisions of these Terms will not in any way be affected or impaired thereby.

**Section 8.07 Contract Interpretation.** These Terms shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

**Section 8.08 Due Organization and Good Standing.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation, other entity, or person, company or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation; (b) it has the right, power and authority to enter these Terms and to grant the rights and licenses granted hereunder and to perform all of its obligations hereunder; (c) the entering into of these Terms has been duly authorized by all necessary corporate or organizational action of the applicable party; (d) these Terms will constitute the legal, valid and binding obligation of such party, enforceable against such party in; and, (e) it will abide by all applicable federal, provincial, state and local laws and regulations with respect to online activities, use of Interval Data, end user data and the Services offered in connection with these Terms.

**Section 8.09 Choice of Laws and Jurisdiction.** Without regard to any conflict of law rules that would impose the laws of another jurisdiction and without regard to the UN Convention on Contracts for the International Sale of Goods, if the Services hereunder are performed:

- (a) exclusively in the United States, these Terms will be governed by and construed in accordance with the laws of the State of Texas and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts located in Harris County, Texas; or
- (b) outside of the United States (all or any portion of the Services), these Terms will be governed by and construed in accordance with the laws of the Province of Alberta and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts located in Calgary, Alberta, Canada.

**Section 8.10 Waiver.** Neither party hereto will be considered to have waived any of its rights or remedies described in these Terms unless the waiver is in writing and signed. No delay or omission by a party hereto in exercising its rights or remedies will impair or be construed as a waiver. Any single or partial exercise of a right or remedy will not preclude further exercise of any other right or remedy. Failure to enforce the strict performance of any provision of these Terms will not constitute a waiver of any right to subsequently enforce such provision or any other provisions of these Terms.

**Section 8.11 Entire Agreement.** These Terms, together with the Subscription order page on the Site, embody the entire understanding of the parties and supersedes any previous or contemporaneous communications, whether oral or written; and may be amended only by a writing signed by both parties.

**Section 8.12 Independent Contractor Relationships.** Neither party is an agent, fiduciary, trustee, or employee of the other; ETB is an independent contractor of you at all times and neither ETB nor any of ETB's employees will be considered your employee.

**Section 8.13 Third Party Rights.** Nothing expressed in or implied from these Terms is intended or will be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to these Terms. Claims for indemnity under these Terms by a member of the indemnified party group (Customer Group or ETB Group, as applicable) must be brought by Customer or ETB on behalf of such indemnified party group member. These Terms and all of the representations, warranties, covenants, conditions, and provisions hereof are intended to be and are for the sole and exclusive benefit of ETB and Customer.

**Section 8.14 Right to Amend Terms.** ETB reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms at any time. If at any point, you do not agree to any portion of the then-current version of these Terms, Customer's only remedy shall be to stop using the Services. Customer will be deemed to have accepted any changes to these Terms by continuing to use the Services. ETB will either provide written notice to Customer or post the updated versions of these Terms on Monitor online portal in the event of any material modification of the Services or these Terms.

**Section 8.15 Dispute Resolution.** To expedite resolution and control the cost of any dispute, controversy, or claim related to these Terms (each a "**Dispute**") brought by either Customer or ETB (individually, a "**Party**" and collectively, the "**Parties**"), the Parties agree to first attempt to negotiate any Dispute informally for at least thirty (30) days before initiating arbitration with the American Arbitration Association under its Construction Industry Rules. Such informal negotiations commence upon written notice from one Party to the other Party. The prevailing party in a dispute arising from these Terms shall be entitled to an award of its attorneys' fees and costs.

**Section 8.16 Recording of Conversations.** From time to time, the Services that we provide to you will be conducted on the phone or via video conference. Calls or video conference sessions may be recorded for training and quality assurance purposes. The recording party shall notify and obtain advance consent of the other party prior to recording.

**Section 8.17 English Language.** The parties confirm that it is their express wish that these Terms, as well as any other documents related to these Terms, including notices, schedules, and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement. Las partes confirman que desean expresamente que este Acuerdo, así como cualquier otro documento relacionado con este Acuerdo, incluidos avisos, calendarios y autorizaciones, se hayan redactado y se redactarán únicamente en el idioma inglés.

**Section 8.18 Headings.** The headings in these Terms are for reference only and do not affect the interpretation of these Terms.

**Section 8.19 Binding Effect.** These Terms are binding on Customer and ETB and their respective successors and permitted assigns