

## ENERGY TOOLBASE TERMS & CONDITIONS MONITOR

### 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 Services to you, as the company or other entity ordering Services from ETB by issuing a Purchase Order against an ETB Quotation; by issuing a Purchase Order against an ETB Change Order; or, by signing an ETB Change Order (each such form of order being referred to as a “**Work Order**”). By issuing a Work Order against an ETB Quotation or ETB Change Order, you are agreeing (1) to all of the terms and conditions included in the applicable ETB Quotation or ETB Change Order; and (2) that all terms and conditions of the applicable ETB Quotation or ETB Change Order are incorporated into the Work Order. These terms & conditions together with each Work Order (together, these “**Terms**”) are a legal agreement between ETB and you. These Terms govern the general supply of any Services performed by ETB for you. Additional terms that are specific to particular Services (such as the terms governing access to the Controller and specific licenses for software or acceptable use policies for internet services) may also apply.

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.

If you have previously entered into any license or terms for the Services, you hereby agree to the amendment of those terms and agree to be bound by these current Terms as a condition of any new Work Order. These Terms replace any and all previous terms. **IF YOU DO NOT AGREE TO THESE TERMS, DO NOT ISSUE NEW WORK ORDERS AGAINST ANY ETB QUOTATIONS.**

### ARTICLE I Definitions

“**Asset**” means Customer’s energy storage system;

“**Authentication Credentials**” means the combined username and password used to login into the Services;

“**Authorized Offtaker User(s)**” means an employee, contractor, or agent of Offtaker whom Offtaker has authorized to use the Services pursuant to the license granted under these Terms;

“**Authorized User(s)**” means an employee, contractor, or agent of Customer, whom Customer has authorized to use the Services pursuant to the license granted under these Terms;

“**Change Order**” means an amendment to a Purchase Order duly executed by ETB and Customer;

“**Competitor**” means any person, company or other entity in the business of developing or selling software solutions that control, optimize, or model the dispatch of energy storage systems other than ETB;

“**Confidential Information**” is defined below in Section 6.01(c);

“**Customer**” or “**you**” means the person, company or other entity ordering and/or receiving Services from ETB under these Terms. For the avoidance of doubt, in the event the primary recipient of the Services has an agent working on their behalf, for example when a project developer is being contracted by the Asset owner, the term “Customer” includes both the primary recipient of the Services and their agent;

“**Customer Data**” means the data, information or material provided or submitted by Customer Group, Authorized Users, Authorized Offtaker Users, any third parties acting on behalf of Customer or at its request, or by Customer’s renewable energy system to the Services, including Interval Data and other data related to Customer’s renewable energy system, and includes information about energy consumption, the performance and efficiency of Customer’s renewable energy system, environmental data such as weather conditions, and the internet protocol address for Customer’s internet access.

“**Customer Group**” means Customer and its parent, affiliate and subsidiary companies, its co-owners, interest holders and joint ventures, their contractors and subcontractors (other than ETB Group), and each of their agents, representatives, consultants, members, shareholders, directors, officers, managers, employees, and invitees;

“**Designated User**” is defined below in Section 2.01;

“**Dispute**” is defined below in Section 11.16;

“**Documentation**” means user manuals and any other materials provided by ETB, in printed, electronic or other form, which describe the operation, use or technical specifications of the Services;

“**ETB Group**” means ETB and its parent, affiliate and subsidiary companies, its co-owners, interest holders and joint ventures, and their contractors and subcontractors, and each of their agents, representatives, consultants, members, shareholders, directors, officers, managers, employees, and invitees;

“**ETB Quotation**” means the applicable quotation issued to Customer by ETB, along with all of its content, terms and conditions incorporated therein by reference, and attachments;

“**Extended Warranty Period**” is defined below in Section 8.03;

“**Feedback**” is defined below in Section 4.02;

“**Fees**” is defined below in Section 5.01;

“**Hardware**” includes any equipment, products, computers, or other hardware purchased or otherwise made available to you by ETB from time to time, including without limit, battery energy storage systems, ruggedized computers, LTE systems, data acquisition sensors, and peripherals combined with the Monitor;

“**Interval Data**” means any data, information, load profile and related information that is measured or collected by ETB’s computer network, Hardware and/or Software, in the course of providing the Services hereunder, including, but not limited to, Authorized User data or information which illustrates a pattern of electricity usage over time;

“**Monitor**” means ETB’s web application for collection, storage and display of Site data, system economic performance information, other Asset management information and associated Hardware;

“**Offtaker**” means any person, company or other entity who has established an agreement with Customer for the consumption and/or provision of energy storage capacity or power,;

“**Purchase Order**” means the applicable standard form purchase order;

“**Service**” or “**Services**” means the Hardware and Software made available to you hereunder;

“**Service Companies**” is defined below in Section 6.01(d);

“**Site**” or “**Sites**” means the location on which Customer’s Assets are installed and operated;

“**Software**” includes any firmware, middleware and other software, modules, updates, upgrades, supplements pre-loaded on or in connection with the Hardware, offered as a service, or as otherwise made available to Customer Group by ETB;

“**Subscription**” ETB at times offers subscriptions for certain Services, any such subscriptions will be set out in the ETB Quotation incorporated into the applicable Work Order;

“**Subscription Period**” means the length of the Subscription as set out in the ETB Quotation incorporated into the applicable Work Order; and

“**Works**” is defined below in Section 2.02.

## **ARTICLE II**

### **License Grant and Scope of Services**

**Section 2.01 Administrator Account.** Customer shall be required to designate at least one Authorized User or have Offtaker designate one Authorized Offtaker User to have access to an administrator account (“**Designated User**”). Such Designated User shall be responsible for (i) creating new user accounts for Authorized Users and Authorized Offtaker Users; (ii) removing access to the Services given to an Authorized User, Offtaker, or Authorized Offtaker User; and (iii) ensuring that the Fees as set out in Section 5.01 are promptly paid by Customer.

**Section 2.02 License to Software.** The Monitor’s Software is offered on term (subscription) licenses. Such subscription license allows Customer to use the Monitor’s Software for a specified Subscription Period so long as Customer complies with all these Terms. At the end of the Subscription Period, Customer must stop using the Software, extend the Subscription Period (if permitted by ETB), or purchase new licenses through an agreement with ETB

Subject to payment of the applicable Fees and compliance with these Terms, ETB grants you a limited, non-exclusive, non-transferable, revokable, non-sublicensable and non-assignable license to use the Monitor’s Software during the period stated in the ETB Quotation incorporated into the applicable Work Order. If you are an individual consumer, this license grant allows you to use the Monitor’s Software in connection with your own personal use. If you are a business entity, this license grant allows you to use the Monitor’s Software in connection with the internal business operations of your entity.

If you are a business entity, you may allow Authorized Users, Offtaker, and Authorized Offtaker Users to use the Monitor’s Software solely for the purpose of providing services to you, provided that such use is in compliance with these Terms. You are liable for any breach of these Terms by any Authorized Users, Offtaker, and Authorized Offtaker Users. ETB may revoke this third-party use permission.

The Monitor’s Software is licensed and not sold. Except for the license expressly granted in these Terms, ETB, on behalf of itself and its affiliates and suppliers, retains all rights in and to the Monitor’s Software and in all related materials (“**Works**”). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of Works by Customer other than as expressly set forth herein is strictly prohibited. ETB, on behalf of itself and its affiliates, retains ownership of the Works and all related intellectual property rights.

If you do not comply with these Terms, we may immediately revoke your license and terminate these Terms. Unless the Subscription is renewed, your license to the subscription is automatically revoked and your Software (the Subscription portions) and service will stop working at the end of the Subscription Period without any additional notice to you. ETB may, at any time, modify or discontinue (temporarily or permanently) or update our Services. Your rights to use previous versions of the Monitor's Software other than the current version of the Monitor's Software terminates as soon as you can receive or have the most current version of the Software installed.

You and your Authorized Users, Offtaker, and Authorized Offtaker Users must do the following:

- (a) Run the Monitor's Software only on the Hardware for which it was intended to operate, when applicable;
- (b) Use license keys (if applicable as determined by ETB) only from ETB; and
- (c) Treat the Monitor's Software as ETB confidential information.

Except as otherwise permitted by these Terms or by mandatory law (meaning a law that the parties cannot change by contract), you must not, and must not allow your Authorized Users, Offtakers and Authorized Offtaker Users, to do the following:

- A. Modify or remove any proprietary notices or markings on or in the Monitor's Software;
- B. Transfer license keys (if applicable) to any other person or entity;
- C. Install and operate counterfeit versions of the Monitor's Software (i.e. software provided by anyone other than ETB) on Hardware;
- D. Violate or circumvent any technological use restrictions in the Monitor's Software;
- E. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Monitor's Software;
- F. Use any trademarks or service marks of ETB, its affiliates or suppliers;
- G. Provide access to the Monitor's Software or allow use by any third party, other than Authorized Users, Offtakers and Authorized Offtaker Users, without ETB's prior written consent;
- H. Copy, republish, upload, post or transmit the Monitor's Software in any way;
- I. Modify or create derivative works based upon the Monitor's Software, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Monitor's Software, in whole or in part;
- J. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Monitor's Software;
- K. Create or permit others to create Internet "links" to the Monitor's Software or "frame" or "mirror" the Monitor's Software on any other server, wireless or Internet-based device;
- L. Use the Monitor's Software to create a competitive offering;
- M. Use the Monitor's Software to create other software, products or technologies; or
- N. Share or publish the results of any benchmarking of the Monitor's Software without ETB's prior written consent.

**Section 2.03 Upgrades.** ETB may provide you with certain Software updates or Services. Some upgrades and/or Services may be provided automatically when you sign into the Monitor or other Software, while other upgrades and/or Services 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. If the Software uses online servers, ETB makes no commitment to continue to make those servers available and may terminate online features at any time.

**Section 2.04 Responsibility for Use of Services.** Customer shall ensure that all Authorized Users, Offtakers and Authorized Offtaker Users, are made aware of, and comply with these Terms. Customer is fully responsible and liable for such compliance and the use of the Services by any third party who is provided access by Customer, whether directly or indirectly. Without limiting the generality of the foregoing, Customer (i) is responsible and liable for all actions and failures to take actions with respect to the Services by Customer Group and any other person to whom Customer may provide access to or use of the Services, including the Authorized Users, Authorized Offtaker Users and Offtakers whether such access or use is permitted by or in violation of these Terms, (ii) will use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and shall upon becoming aware notify ETB immediately of any such unauthorized access and/or use, and (iii) will use the Services only in accordance with these Terms and all applicable laws and government regulations. Customer will not (a) except as provided for in these Terms, make the Services available to any third party, (b) sell, resell, rent or lease the Services, (c) interfere with or disrupt the integrity or performance of the Services or any third-party data contained in the Services, including, as applicable, the third-party data of employees, or (d) attempt to gain unauthorized access to the Services or their related systems or networks.

**Section 2.05 Provision of Support.** If we provide you in-service or commissioning support, our responsibility for support is explicitly limited to support for the Software and Hardware, and does not include support, troubleshooting, or maintenance for the Hardware or Software of any third parties.

**Section 2.06 Security.**

- (a) Subject to Section 2.01, any usernames and passwords used for Services are for individual use only. You will be responsible for the security of your username and password. If ETB cancels your username or password for any reason, you agree not to reregister with us without ETB's prior written consent. In the event that you reregister without ETB's prior written consent, ETB will have the right in its sole discretion, without notice to you, to cancel your username and password.
- (b) Customer shall be solely responsible for all instructions, commitments and other actions or communications taken under any Authorized User, Offtaker and Authorized Offtaker User accounts. Customer shall promptly report to ETB any errors or irregularities in the Services or any unauthorized use of any part thereof and inform ETB immediately if any Customer Authentication Credentials become known to any third Person who is not authorized to possess such Authentication Credentials. Customer hereby indemnifies and holds harmless the ETB Group from any actions, claims, suits, proceeding or damages claimed against the ETB Group resulting from any use of Customer Authentication Credentials, whether or not such use is authorized by the Authorized User, Offtaker, or Authorized Offtaker User.
- (c) Notwithstanding anything to the contrary herein, ETB reserves the right to fully cooperate with any law enforcement authorities or court order requesting or directing ETB to disclose the identity of anyone posting any messages, publishing or otherwise making available any materials that are believed to violate these Terms. For greater clarity, ETB will be entitled to disclose Interval Data if such disclosure is required by a court, administrative body, or regulatory body (including a stock exchange) of competent jurisdiction, provided that ETB

will use commercially reasonable efforts to (a) give prompt written notice of any such requirement for disclosure to the applicable Customer so that such Customer may seek a protective order or other appropriate remedy; (b) take such steps as are reasonably necessary and available to maintain the confidentiality of Interval Data by such court, administrative or regulatory body; and (c) in any event, make such disclosure only to the extent so required. Notwithstanding anything to the contrary herein, by using the Services you hereby waive, and hold ETB harmless from, any claims resulting from any action taken by ETB during or as a result of its investigations and/or from any actions taken as a consequence of investigations by either ETB or law enforcement authorities

### **ARTICLE III**

#### **Intellectual Property Rights**

**Section 3.01 Intellectual Property Rights.** ETB reserves and retains all right, title and interest, including all intellectual property rights, in and to the Services and all intellectual property rights arising out of or relating to the Services, except as expressly granted to Customer in these Terms. Customer acknowledges that the Services incorporate ETB's valuable trade secrets and improper use or disclosure would cause ETB irreparable harm. Accordingly, Customer agrees to use the Services solely as authorized by these Terms. Customer further acknowledges that the license granted pursuant to these Terms is not a sale and does not transfer to Customer any title, ownership or interest in the Services, or any portion or copy thereof, and Customer only has a right of limited use of the Services pursuant to these Terms. All rights not expressly granted hereunder are reserved to ETB. All inventions, discoveries, improvements, software, copyright, know-how, trade secrets, trade-marks or other intellectual property in and to the Services (including the methods by which ETB collects, cleans, processes, validates, calculates, visualizes, interprets, reports and otherwise processes Interval Data), whether or not protected by patent or copyright, created during or after delivery of the Services, are and will remain the sole and absolute property of ETB and/or its licensors. Customer shall ensure that all Authorized Users, Offtakers and Authorized Offtaker Users are also made aware of and comply with these Terms.

### **ARTICLE IV**

#### **Collection and Use of Information**

**Section 4.01 Customer Data and Content.** Subject to third party rights, Customer reserves all right, title, and interest, including all intellectual property rights, in and to Customer Data and nothing herein shall grant ETB any title, ownership, or interest in or to the Customer Data, other than as set out in this Agreement. Notwithstanding the foregoing, Customer agrees that ETB may use the Customer Data to: (i) provide, evaluate and test the Services; (ii) improve ETB's existing products and/or services (including, but not limited to, the Services) and develop new products and/or services; (iii) respond to specific requests from Authorized Users, Offtakers or Authorized Offtaker Users; and (iv) aggregate, anonymize, and analyze all data collected by ETB through the Services. Customer represents and warrants that: (i) Customer and Offtaker each owns or has rights to the Customer Data posted by it on or through the Services; (ii) the posting and use of Customer Data 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 providing of the Customer Data does not result in a breach of contract between Customer or Offtaker and any third party. You further acknowledge that ETB may use Customer Data for purposes of sales, marketing, business development, product enhancement, or customer service, as detailed in our [Privacy Policy](#), provided that any public disclosure of Customer Data for marketing purposes is aggregated and anonymized and subject to the confidentiality requirements of Section 7 herein.

**Section 4.02 Feedback.** Your feedback on ETB’s Services is welcomed and encouraged, though it is entirely voluntary. However, if Customer Group elects to provide suggestions, ideas, concepts or other feedback to ETB (whether written, verbal or in any other format or manner) in connection the Services (“**Feedback**”), you hereby acknowledge and agree that ETB has no obligation (whether of confidentiality, compensation or otherwise) with respect to such Feedback and ETB will be free to use and exploit Feedback in any manner without restriction or obligation of any kind. You further acknowledge and agree that all Feedback will be the sole and exclusive property of ETB and hereby irrevocably transfer and assign to ETB all of Customer Group’s right, title, and interest in and to all Feedback, including all intellectual property rights therein. At ETB’s request and expense, you will execute or cause to be executed and delivered such documents and take such further acts as ETB may reasonably request to assist ETB to acquire, perfect and maintain its intellectual property rights and other legal protections for Feedback.

**Section 4.03 Personal Information.** If you or any member of Customer Group, Authorized User, Offtaker, or Authorized Offtaker User provide personal information to us, you represent and warrant that you have obtained all necessary consents in relation to personal information and we agree to comply with applicable privacy and data protection laws in connection therewith. We may transmit such information across international borders and to third parties (including 3<sup>rd</sup> Parties) for secure processing and storage in accordance with these Terms, as further described in Section 11.06.

## **ARTICLE V**

### **Fees**

**Section 5.01 Fees.** Customer will pay ETB the fees described in the ETB Quotation incorporated into the applicable Work Order for the Services that Customer purchases (the "**Fees**"). All Fees are based on the Services ordered rather than actual usage. Payment obligations are non-cancellable and Fees paid are non-refundable. Customer’s failure to pay when due may result in modifications of the Services, including without limit, restricting access, management, support and capabilities, or termination or suspension of the Services, provided that Customer has not cured such failure to pay within thirty (30) days of notice by ETB of such breach. ETB may increase any of its Fees from time to time, however, notice of such increase(s) will be provided to Customer in advance, and such increase shall not be effective until the end of any current Subscription Period. In the event of such increase, Customer may elect to terminate these Terms and its use of the Services without penalty beginning on the effective date of such increase.

**Section 5.02 Payment Terms.** Fees must be paid according to the terms set forth on the invoice. If the Fees are not paid within thirty (30) days from the date of invoice receipt, ETB will also charge (i) interest at the lesser of fifteen (15%) percent per annum or the maximum amount allowed 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 5.03 Taxes.** Customer will be responsible for payment of all duties, tariffs, sales, use, property, value-added, withholding, or other federal, provincial, state or local taxes except for taxes based solely on ETB’s net income. If ETB is required to pay any such taxes based on the licenses granted pursuant to these Terms or on Customer’s use of the Services, then such taxes will be charged to and paid by Customer.

## **ARTICLE VI**

### **Confidential Information**

**Section 6.01**

- (a) Customer acknowledges that real-time and historical Interval Data is readily available on ETB's Hardware located at the energy storage Site. Customer further acknowledges that ETB has no control over who accesses the Site, and therefore, Customer agrees that ETB has no obligations of confidentiality regarding access to such Interval Data.
- (b) Provided an internet connection is available at the Site, ETB shall archive certain Interval Data provided by Customer during the use of the Services.
- (c) Subject to Section 2.06, ETB will implement and maintain strict safeguards designed to protect the confidentiality of the Interval Data and other information archived during the use of the Services and any other information that Customer provides to us and clearly labels or designates as confidential ("**Confidential Information**"); provided, however that Confidential Information does not include any information that is or enters into the public domain without our breach of the confidentiality obligations herein, is already known to or independently developed by ETB, or is disclosed to ETB by a third party who has the right to do so.
- (d) Notwithstanding any of the foregoing, ETB understands that certain other entities providing services to Customer Group ("**Service Companies**") may require access to the Interval Data in order to effectively perform their operations. Accordingly, Customer and ETB each acknowledge and agree that such Service Companies may be provided with access to the Services throughout the term. However, Customer has the ability to restrict access to the Services (upon providing instructions to us through the security settings within our Software), for any of the Service Companies at any and all times.

## **ARTICLE VII**

### **Term and Termination**

**Section 7.01**            **Term.** The duration of the Services shall be defined in the ETB Quotation incorporated into the applicable Work Order. These Terms shall govern the delivery of Services to Customer.

**Section 7.02**            **Termination.** Except as otherwise stated herein or in the ETB Quotation incorporated into the applicable Work Order, the Services and these Terms may be terminated upon thirty (30) days written notice by either party. Notwithstanding the foregoing, Customer may not terminate during a Subscription Period. In the event of termination by ETB, Customer may elect to have ETB continue to provide any Services commenced prior to the effective date of such termination through to their completion, on these Terms. Notwithstanding anything to the contrary herein, ETB reserves the right to cease providing Services and terminate Customer, Offtaker, or their respective users' use of the Services immediately at any time if ETB believes that Customer is in violation of these Terms or misusing Services in any way. Upon termination, Customer will cease all use of and access to the Services, including access by any Authorized User, Offtaker or Authorized Offtaker User. ETB may terminate the Services and these Terms immediately if Customer files an assignment in bankruptcy or has a bankruptcy order made against it under any bankruptcy or insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, receiver-manager, monitor or custodian for all or a substantial part of its property

**Section 7.03**            **Effect of Termination.** Upon expiration or termination of these Terms for any reason, the rights, licenses and access to the Services granted to Customer, Authorized Users, Offtakers and

Authorized Offtaker Users will immediately terminate and all Fees will become immediately due and payable to ETB.

**Section 7.04 Survival.** All terms and provisions of these Terms, including any exhibits or schedules attached hereto, which by their nature are intended to survive any termination or expiration of these Terms, will so survive.

## **ARTICLE VIII Warranties and Disclaimer**

**Section 8.01 Service Standards.** ETB will conduct all Services in a good and workmanlike manner and in accordance with good renewable energy engineering and energy storage software and equipment management practices. ETB will exercise diligence in performing its Services, and transmit Interval Data and other information to the Software.

**Section 8.02 Product Standards.** The Hardware delivered hereunder shall be new, conform to the specifications on the ETB Quotation, and be free from defects in design, material or workmanship. ETB agrees to replace or correct defects of any Hardware not conforming to the foregoing warranty promptly, without expense to Customer, when notified of such non-conformity by Customer, unless such non-conformity is caused by Customer Group or otherwise outside ETB's control.

**Section 8.03 Data Transmission.** ETB may transmit information and data, including any personal information supplied to us, into or through the United States and Canada and across other international borders for purposes of processing and storage. Although ETB employs industry-leading data security practices and policies Customer acknowledges that any information transferred over the internet is at risk of interception or corruption and releases ETB of any liability as a result of any such events.

**Section 8.04 Pass-Through of Third Party Warranties.** In the event that ETB purchases or procures any third-party hardware or services for Customer in connection with the provision of the Services, in addition to the foregoing representations, warranties and covenants, ETB shall pass-through or assign to Customer the rights ETB obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable. If battery energy storage system Hardware is sold by ETB to Customer, ETB will provide no additional battery energy storage system Hardware warranty coverage other than what is provided by the original equipment manufacturer. For ETB supplied metering equipment, computers, and hardware within the ETB Control Center (if applicable), ETB will, upon expiry of the original equipment manufacturer's warranty, provide extended coverage of such warranties to 5 years from the commissioning date of the system as defined by ETB ("**Extended Warranty Period**"). For clarity, warranty coverage provided by the original equipment manufacturer will apply to the equipment listed above until the expiry of such warranty. Thereafter, ETB will provide a warranty for the equipment listed above that is equivalent to that offered by the original equipment manufacturer for the Extended Warranty Period.

- (a) Notwithstanding anything to the contrary herein, ETB does not warrant the SEL metering and control equipment is supplies, rather, ETB will pass through to Customer the manufacturer warranty to the extent possible.

**Section 8.05 No Reliance.** ETB makes no guarantees about the information provided by the Services. Specifically, ETB makes no representations about the accuracy, reliability, completeness, or timeliness of any contents of the Services, nor that the results are an accurate representation of energy use and costs. Use of the Services, and any reliance on the results of the Services, is at Customer's own risk.

The results of the Services are not intended, nor should they be used, as a substitute for tax, business, or other professional advice. Further, ETB may provide Customer with interpretations of Site and/or Asset performance data or other information, and suggestions based on the same. Such interpretations and/or suggestions (whether provided by ETB personnel from time to time or generated automatically through our Software algorithms) are mere opinions, based upon our judgment and experience. If Customer chooses to rely upon such interpretations and/or suggestions provided by ETB, you do so at your own risk. In offering any such interpretations and/or suggestions, ETB makes no warranty whatsoever with respect to their accuracy or completeness, and ETB shall not be responsible for Customer's, or any member of Customer Group, Authorized User, Offtaker or Authorized Offtaker User's, use or reliance, or failure to use or rely on such interpretations and/or suggestions.

**Section 8.06 Third-Party Input.** As part of the Services provided hereunder, ETB may supply Customer or Offtaker with information collected from ETB's data acquisition systems, which may be wholly or in part based on third-party information and/or user defined settings. While ETB will use diligence to ensure the information it supplies is accurate, our personnel do not remain at the Site to monitor our Hardware, Software and other systems for accuracy, operating performance or any other conditions. As such, ETB cannot, and does not, warrant the accuracy or completeness of any information obtained or communicated through ETB's Hardware, Software and/or any other systems as part of our Services. Further, ETB's Services, including the Hardware and Software, relies on the safety measures and operating parameters established by the hardware manufacturers of all equipment present in the Asset. ETB makes no warranty whatsoever with respect to the effectiveness, accuracy, or completeness of the safety measures or operating parameters for third-party equipment used by Customer in connection with the Asset, and ETB shall not be responsible for Customer, Authorized User Offtaker, Authorized Offtaker User, or any member of Customer Group's use or reliance (of failure to use or rely) on such safety measures and operating parameters

**Section 8.07 Availability of Services.** While ETB strives to be as accurate as possible regarding the Software, and to ensure that all information contained in the Software is accurate and up-to-date, ETB does not represent or warrant that the information contained in the Software is accurate, complete, reliable, current, or error-free. However, other than as described herein, the Services are provided on an "as-is, as available" basis without any further warranty, representation, or covenant of any kind, including as to any result or benefit that Customer may obtain through their use of the Services or Software. ETB assumes no responsibility for the timeliness, truthfulness, accuracy, reliability or completeness of any information made available to you through the Services or for the miss-delivery of any information accessed or downloaded by Customer or Offtaker. Any reliance on the Services will be at Customer's own risk and that Customer must bear all risks associated with the use of any Services, including any reliance on the accuracy, completeness, or usefulness of the data or such Services. ETB shall be held harmless and blameless by Customer and free of any and all liabilities that may occur as a result of any use or application of the information provided by ETB in connection with the use of the Services.

**Section 8.08 WARRANTY DISCLAIMER.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, WITH THE SOLE EXCEPTION OF ANY EXPRESS WARRANTIES SET OUT IN THESE TERMS, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ETB, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL CONDITIONS AND 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. ETB SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE,

TITLE, QUIET POSSESSION, AND ALL OTHER IMPLIED OR STATUTORY WARRANTIES, AS WELL AS ANY LOCAL JURISDICTIONAL ANALOGUES TO THE ABOVE.

## **ARTICLE IX LIMITATION OF LIABILITY**

**Section 9.01** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT WILL ETB'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND/OR THE SERVICES PROVIDED HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO ETB UNDER THESE TERMS FOR SERVICES DURING THE PRECEDING TWELVE (12) MONTHS. IN NO EVENT WILL ETB GROUP HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES 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 AND/OR THE SERVICES PROVIDED HEREUNDER, 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, USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SERVICES, COST OF SUBSTITUTED SERVICES, DELAYS, INTERRUPTION OR LOSS OF THE SERVICES, BUSINESS, OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, INCORRECT TAX DATA, FINANCIAL INFORMATION, TARIFF INFORMATION, OR FINANCIAL PROJECTIONS PREDICTED, PREPARED, OR MODELED BY THE SERVICES, OR BREACHES IN SYSTEM SECURITY. 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 THESE TERMS.

## **ARTICLE X Indemnification**

### **Section 10.01**

- (a) Customer shall indemnify, defend, protect, hold harmless, and release ETB Group from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense, including attorneys' fees and witness fees incurred in the defense of any such matter ("**Losses**"), arising from, or in connection with, or caused by, any (i) breach or non-fulfilment of any representation, condition, warranty or covenant under/representation, condition or warranty set out in these Terms by Customer Group, Authorized User, Offtaker, or Authorized Offtaker User; (ii) any act, omission, negligence or willful misconduct of Customer Group, Authorized User, Offtaker, or Authorized Offtaker User in connection with the performance of its obligations under these Terms; or (iii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the acts or omissions or negligence of Customer Group, Authorized User, Offtaker, or Authorized Offtaker User. This indemnification shall not be limited in any way, by any limitation on the amount or type of damages or compensation payable to, or for, the

indemnifying party under workers' compensation, disability benefits, or other employee benefit acts.

- (b) ETB shall indemnify, defend and hold harmless Customer Group against any Losses arising out of or resulting from any breach of the representations, warranties, covenants, agreements and/or obligations of ETB under these Terms.
- (c) Whenever any such claim shall arise, the idemnitee will inform indemnifier of the claim and the facts constituting the basis for such claim. You agree that the indemnity obligations herein shall survive the termination of these Terms.

## **ARTICLE XI Miscellaneous**

**Section 11.01 Customer's Restrictions on Use of the Services.** In connection with Customer's use of the Services, Customer will comply with all applicable laws, rules and regulations. Customer will not, and will not permit any Authorized User, member of Customer Group, Offtaker, Authorized Offtaker User, or any other person, company or other entity to: (i) copy, modify, duplicate, adapt, translate, or create derivative works of the Services; (ii) scrape data, 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, or make the Services available to, any third parties; (iv) attempt to circumvent any license, timing or use restrictions that are built into the Services; (v) interfere with or disrupt the integrity or performance of the Service or any data contained on the Software; (vi) make copies, republish, upload, post or transmit the Software in any way, or install any Software on devices other than the Hardware; or (vii) attempt to gain unauthorized access to the Services or their related Software, Hardware, systems or networks.

**Section 11.02 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 11.03 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 11.04 Assignment.** You may not assign, convey, subcontract or delegate your rights, duties or obligations under these Terms or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of ETB, except that you may assign these terms to any affiliate or wholly owned subsidiary with prior written notice to ETB, if the affiliate or wholly owned subsidiary is not a Competitor. ETB 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 11.04 will be null and void.

**Section 11.05 U.S. Government Rights.** In the event ETB provides the Services, including related Software and technology, for ultimate federal government end use, it shall do so in accordance with the following: Government technical data and software rights related to the Services includes only those rights customarily provided to the public as defined in these Terms. 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 ETB 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 11.06 Export Regulations.** . Customer agrees 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, Customer covenants that Customer 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 ETB under these Terms to any destination, entity, or person, company or other entity prohibited by the laws or regulations of the United States or Canada, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Customer will indemnify, to the fullest extent permitted by law, ETB from and against any fines or penalties that may arise as a result of Customer, Authorized User, Offtaker, or Authorized Offtaker User's breach of this provision.

**Section 11.07 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 11.08 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 11.09 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 11.10 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 11.11 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 11.12 Entire Agreement.** These Terms, together with the ETB Quotation incorporated into the applicable Work Order(s) and any of ETB's additional terms in respect of specific Services, embody the entire understanding of the parties and supersedes any previous or contemporaneous communications, whether oral or written; and, subject to Section 11.15, may be amended only by a writing signed by both parties

**Section 11.13 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 11.14 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 11.15 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 11.16 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 11.17 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 11.18 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 11.19 Headings.** The headings in these Terms are for reference only and do not affect the interpretation of these Terms.

**Section 11.20 Binding Effect.** These Terms are binding on Customer and ETB and their respective successors and permitted assigns