

Terms and Conditions for ETB Monitor with ETB Controller

PLEASE READ THE FOLLOWING CAREFULLY

THESE TERMS & CONDITIONS CONTAIN LIMITATIONS OF LIABILITY AND INDEMNITIES

These terms & conditions are the terms upon which ETB (“**ETB**”, “**we**”, “**our**”, or “**us**”) is prepared to provide Services to you, as the company or other entity ordering Services from ETB by entering into a written (pricing) agreement with ETB; by accepting an ETB quote; by agreeing to an ETB statement of work; or, upon ETB’s issuance of a field ticket (each such form of order being referred to as a “**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 ETB Monitor, 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 continued use of the Services. These Terms replace any and all previous terms. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY DISCONTINUE YOUR USE OF THE SERVICES AND RETURN ANY HARDWARE OR OTHER PRODUCTS TO US AS DESCRIBED BELOW.

1. Definitions

- (a) “**Asset**” means Customer’s energy storage system;
- (b) “**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;
- (c) “**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;
- (d) “**Confidential Information**” is defined below in Section 7(c);
- (e) “**Content**” is defined below in Section 5(a);
- (f) “**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;
- (g) “**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;
- (h) “**Designated User**” is defined below in Section 3(a);

- (i) **“Dispute”** is defined below in Section 14(o);
- (j) **“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;
- (k) **“ETB Controller”** means ETB’s battery energy storage system control software that provides a limited number of manually programmed discrete operating modes, such as charge over window, charge against solar, and discharge against imports as shown in the Operating Schedules selection screen, but excludes all advanced modes associated with Acumen AI;
- (l) **“Acumen AI”** means all operating modes of the ETB Controller, including but not limited to manually programmed, time-of-use arbitrage, demand charge management, and participation in grid service programs such as demand response;
- (m) **“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;
- (n) **“ETB Monitor”** means ETB’s secure web application for collection, storage and display of Site data, system economic performance information, and other Asset management information;
- (o) **“Extended Warranty Period”** is defined below in Section 11(c);
- (p) **“Feedback”** is defined below in Section 5(b);
- (q) **“Fees”** is defined below in Section 6(a);
- (r) **“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, data acquisition sensors and peripherals combined with the ETB Controller;
- (s) **“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;
- (t) **“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, power, or other services;
- (u) **“Operating Schedule”** means a manually configured schedule comprised of one or more fixed discrete modes that the ETB Controller can be programmed to follow;
- (v) **“Service”** or **“Services”** means the Hardware and Software made available to you hereunder;
- (w) **“Service Companies”** is defined below in Section 7(d);
- (x) **“Site”** or **“Sites”** means the location on which Customer’s Assets are installed and operated; and
- (y) **“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, including without limit, the ETB Controller, Acumen AI, battery dispatch and charge algorithms, and the ETB Monitor.

2. License Grant and Scope of Services

(a) **License to ETB Monitor.** Subject to these Terms, ETB grants Customer a non-exclusive, non-transferable, revokable, non-sublicensable, license to access and use the ETB Monitor, solely by and through its Authorized Users, Offtaker, and Authorized Offtaker Users. The information and data produced in the course of using ETB Monitor will be accessible up until the earlier of expiration or the termination of these Terms. Your rights to use previous versions of ETB Monitor Software other than the current version of the Software terminates as soon as you can receive or have the most current version of the Software installed.

(b) **License to ETB Controller and Acumen AI.** Subject to these Terms, ETB grants Customer a non-exclusive, non-transferable, revokable, non-sublicensable license to access and use the ETB Controller or the ETB Controller combined with Acumen AI, if such Services have been purchased, solely by and through its Authorized Users, Offtaker, and Authorized Offtaker Users. Your rights to use previous versions of ETB Controller and Acumen AI Software other than the current version of the Software terminates as soon as you can receive or have the most current version of the Software installed.

(c) **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 Monitor or other Service 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. These updates, upgrades and Services may have effects on, among other things, functionality. ETB is not responsible to you for any such effects, or any harm caused by the installation process.

(d) **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 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.

(e) **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 you and any other person to whom you 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 notify ETB immediately of any such unauthorized access and/or use of which Customer becomes aware, 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.

(f) **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.

(g) **Security.**

- i. Subject to Section 3(a), 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.
- ii. 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 password becomes known to any third Person who is not authorized to possess such password. 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 usernames or passwords, whether or not such use is authorized by the Authorized User, Offtaker, or Authorized Offtaker User.
- iii. 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, or 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. 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.

3. Administrator Account

- (a) Customer shall be required to designate 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 6 are promptly paid by Customer.

4. Intellectual Property Rights

- (a) 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.

5. Collection and Use of Information

(a) **Customer Data and Content.** Subject to the terms and conditions contained herein, Customer agrees that ETB may use the information and data entered into the Software by Customer Group, the Authorized Users, Offtaker, the Authorized Offtaker Users, or by any third parties acting on behalf of Customer or at its request, which for greater certainty includes but is not limited to Interval Data, and any results generated by the Services from such data, (collectively, the "**Content**") 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 Content posted by it on or through the Services; (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 providing of the Content does not result in a breach of contract between Customer or Offtaker and any third party. You further acknowledge that ETB may use Content for purposes of sales, marketing, business development, product enhancement, or customer service, as detailed in our [Privacy Policy](#).

(b) **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, proposals, 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. In addition, you hereby irrevocably waive all your moral rights as author in respect of such Feedback, however arising.

(c) **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 3rd Parties) for secure processing and storage in accordance with these Terms, as further rdescribed in Section 11(b).

6. Fees

(a) **Fees.** Customer will pay ETB the fees described on the 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. ETB may increase any of its Fees from time to time, however, notice of such increase(s) will be provided to Customer in advance.

(b) **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.

(c) **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.

7. Confidential Information

(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(g)iii, 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.

8. Term and Termination

(a) **Term.** The duration of the Services shall be defined in the applicable Work Order. Except as otherwise stated in such Work Order, these Terms shall govern the delivery of Services to Customer.

(b) **Termination.** Except as otherwise stated in the Work Order, these Terms may be terminated upon thirty (30) days written notice by either party. 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.

(c) **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.

(d) **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.

9. Use of and Access to ETB Monitor

(a) If Customer subscribes to or otherwise uses ETB Monitor as part of their use of Services, then the Terms and Conditions for ETB Monitor shall apply in addition to these Terms. Terms and Conditions for ETB Monitor are available at [ETB Monitor Terms and Conditions](#) and are incorporated by reference herein.

10. Use of and Access to ETB Developer

(a) If Customer subscribes to or otherwise uses ETB Developer as part of their use of Services, then the Terms and Conditions for ETB Developer shall apply in addition to these Terms. Terms and Conditions for ETB Developer are available at: <https://www.energytoolbase.com/terms-of-services> and are incorporated by reference herein.

11. Warranties and Disclaimer

(a) **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 securely transmit Interval Data and other information to the Software.

(b) **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.

(c) **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 non-battery energy storage system Hardware that is integral to the effective operation of the Services, ETB will, upon expiry of the original equipment manufacturer's warranty, provide extended coverage of such warranty for the shorter of (i) the remainder of the initial term specified in the applicable Work Order; or (2) six (6) months ("**Extended Warranty Period**"). For clarity, warranty coverage provided by the original equipment manufacturer will apply to non-battery energy storage system Hardware until the expiry of such warranty. Thereafter, ETB will provide a warranty for non-battery energy storage system Hardware that is equivalent to that offered by the original equipment manufacturer for the Extended Warranty Period.

(d) For the period following the end of coverage by the original equipment manufacturer through to the end of the Term, ETB will provide warranty terms and conditions equivalent to those offered by the original equipment manufacturer of the non-battery energy storage system hardware.

(e) **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 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.

(f) **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.

(g) **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. ETB recognizes the importance to Customer and Offtaker of continuous and uninterrupted access to the Services, and ETB will use commercially reasonable efforts to minimize outages of the Services. If an outage is expected to last longer than five (5) hours, then ETB will attempt to notify both Customer and Offtaker by email to describe the outage and provide an estimate of when the Services will again be available. 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.

(h) **WARRANTY DISCLAIMER.** 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.

12. LIMITATION OF LIABILITY

(a) TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL ETB'S LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND/OR THE SERVICES PROVIDED HEREUNDER EXCEED THE TOTAL AMOUNT PAID TO ETB UNDER THESE TERMS FOR THE SERVICES DURING THE ONE YEAR PERIOD PRECEDING THE CLAIM GIVING RISE TO LIABILITY. IN NO EVENT WILL ETB 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, 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. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO GROSS NEGLIGENCE, WILLFUL ACTS. 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.

13. Indemnification

(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, arising from, or in connection with, or caused by, any act, failure to act, or negligence of Customer, Authorized User, Offtaker, or Authorized Offtaker User, to the extent limited by any applicable law. 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) Whenever any such claim shall arise, ETB will inform Customer 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.

14. Miscellaneous

(a) **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.

(b) **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.

(c) **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. 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 14(c) will be null and void.

(d) **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.

(e) **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.

(f) **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 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.

(g) **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.

(h) **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.

(i) **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:

- i. 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
- ii. 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.

(j) **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.

(k) **Entire Agreement.** These Terms, together with the 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 14(n), may be amended only by a writing signed by both parties.

(l) **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.

(m) **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.

(n) **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 ETB Monitor online portal in the event of any material modification of the Services or these Terms.

(o) **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 this Agreement shall be entitled to an award of its attorneys' fees and costs.

(p) **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. Each party (i) consents to the recording of telephone or video conversations between the personnel of the parties in connection with these Terms, and (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel.

(q) **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.

(r) **Headings.** The headings in these Terms are for reference only and do not affect the interpretation of these Terms.

(s) **Binding Effect.** These Terms are binding on Customer and ETB and their respective successors and permitted assigns.

Last updated: October 2, 2024