

Energy Toolbase Software Inc

Terms and Conditions for ETB Monitor

Last Updated: September 7, 2023

ETB Monitor consists of a robust monitoring software suite that provides insights into the performance and savings of solar energy systems. This document lays out all the important terms and conditions of Energy Toolbase software, equipment and services related to the ETB Monitor product. While the legal terms within this document provide comprehensive detail, some of the most important elements are highlighted as follows:

- 🔄 Any data input into the ETB software, or that is generated by the monitoring of solar energy systems, can be used by ETB as detailed in our [Privacy Policy](#). ETB treats data privacy and security very seriously, and while data is regularly used internally to improve products and services, ETB will never share confidential information with 3rd parties without the explicit authorization of the party that owns the associated and applicable software licenses.
- 🔄 Any information shared by ETB is protected by confidentiality. If ETB shares details such as price lists, product descriptions, battery system performance curves, or performances guarantees, those need to be treated as confidential information, and ETB will label those materials accordingly when they are shared.
- 🔄 The purchase of the ETB Monitor service might include third party hardware such as current transformers, meters, ruggedized computers, and enclosures. To the extent possible, ETB will pass-through all warranties and rights provided by the original equipment manufacturer. Further, for hardware provided by ETB that is necessary for the effective operation of the ETB Monitor services, ETB will provide extended warranty coverage for the duration of the Services.
- 🔄 Owners of solar energy systems and the ETB Monitor services are sometimes separate entities from the consumers of the energy that those systems manage. Those consumers are often referred to as offtakers and these terms provide the roles and responsibilities of ETB, customers who own the assets, and offtakers who might have a business relationship established with the asset owner.
- 🔄 ETB owns the software code that drives ETB Monitor, and neither the asset owner nor any authorized user or subscriber of the software will try to reverse-engineer it, circumvent its security features, or scrape data from it.

These terms and conditions are the terms upon which Energy Toolbase Software, Inc. (“**ETB**”) is prepared to provide Services (as defined herein) to the Customer ordering Services from ETB by either entering into a written agreement with ETB, by accepting an ETB quote, by agreeing to an ETB statement of work, by issuing a purchase order to ETB, or, upon ETB’s issuance of a field ticket (each such form of order being referred to as a “**Work Order**”). These terms and conditions together with each Work Order (collectively, these “**Terms**”) are a legal agreement between ETB and the Customer and will also specify whether an Offtaker will benefit from the Services, and if so, the nature of the Offtaker’s business relationship with the Customer.

These terms and conditions are accepted entirely by the Customer and cannot be partially accepted. These Terms overrule any previous agreement over the Services provided by ETB.

1. Definitions

- (a) **“Asset”** means the Customer’s solar energy system.
- (b) **“Authorized Users”** means an employee, contractor, or agent of the Customer, and whom the Customer has authorized to use the Services pursuant to the license granted under these Terms.
- (c) **“Authorized Offtaker User”** means an employee, contractor, or agent of the Offtaker, and whom the Offtaker has authorized to use the Services pursuant to the license granted under these Terms.
- (d) **“Customer”** means the Person ordering and/or receiving Services from ETB under these Terms. In the case where the owner of the ETB Monitor Hardware and primary recipient of the Services has an agent working on their behalf (e.g., when a project developer is being contracted by the asset owner), the term Customer shall refer to both the project developer and the end-user of the Services and owner of the Hardware.
- (e) **“Customer Group”** means the Customer and its parent, affiliate and subsidiary companies, its co-owners, interest holders and joint ventures, and their contractors and subcontractors (other than ETB Group), and each of their agents, representatives, consultants, members, shareholders, directors, officers, managers, employees, and invitees.
- (f) **“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.
- (g) **“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.
- (h) **“ETB Monitor Services”, “Service” or “Services”** means the Customer’s use of the Hardware and/or time-limited license to the ETB Monitor Software as a service, and other services offered by ETB or work performed by ETB for the Customer Group from time to time, including without limit: product installation and removal, troubleshooting, recommendations, interpretation, and all updates thereof.
- (i) **“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, ruggedized computers, data acquisition sensors, meters, enclosures, and peripherals.
- (j) **“Interval Data”** means any Authorized User’s data, information and load profile collected by ETB in the course of the Authorized Users’ use of the Services, including, but not limited to, Authorized Users’ data or information which illustrates a pattern of electricity usage over time.
- (k) **“Offtaker”** means any Person who has established an agreement with the Customer for the consumption and/or provision of solar energy power, or other services. While the Customer is the owner of the ETB Monitor Hardware and Software license, an Offtaker is often the beneficiary of the energy savings or revenues generated by the Software. It is often the case that the Offtake and Customer are the same party, but various project financing structures dictate that the Asset is owned by one party (the Customer) and uses ETB’s Software for the benefit of another party (the Offtaker). For clarity, the Offtaker includes 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.
- (l) **“Person”** means an individual, company, corporation, partnership, joint venture, governmental authority, unincorporated organization, trust, association, or other entity.
- (m) **“Site” or “Sites”** means the Customer location on which the Assets are installed and operated.

(n) **“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 Monitor online portal and all economic analysis contained therein.

2. The Services

(a) These Terms govern the Customer’s acquisition, access, and use of ETB Monitor software services. ETB Monitor is an online portal where Customers and Authorized Users, and Offtakers and Authorized Offtaker Users (if applicable), interact with and view the data being made available by the solar energy system, which includes, but is not limited to, viewing site-specific performance data. This software service enable Customers to operate, monitor and manage the performance of their Asset. The performance of ETB Monitor depends on the Customer providing accurate and detailed parameters, including without limit, 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 solar energy equipment. Using the parameters set by the Customer, ETB’s proprietary Software then manages and makes visible the technical and economic performance of the Asset.

3. License Grant and Scope of Services

(a) **Perpetual ETB Monitor License.** Subject to these Terms, ETB grants the Customer a non-exclusive, non-transferable, non-sublicensable, perpetual license to connect a project to ETB Monitor.

(b) **ETB Monitor Subscription.** Subject to these Terms, ETB grants the Customer a non-exclusive, non-transferable, non-sublicensable limited license for the project data ingestion and project access in 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 by the Customer, Offtaker, Authorized Users, and the Authorized Offtaker Users for the duration of the subscription.

(c) **Customer’s Restrictions on Use of the Services.** In connection with the Customer’s use of the Services, the Customer and Authorized Users will comply with all applicable laws, rules and regulations. The Customer will not, and will not permit any Authorized User, member of the Customer Group or any other Person to: (i) copy, modify, 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.

(d) **Offtaker’s Restrictions on Use of the Services.** In connection with the Offtaker’s use of the Services, the Offtaker and Authorized Offtaker Users will comply with all applicable laws, rules and regulations. The Offtaker will not, and will not permit any Authorized Offtaker User or any other Person to: (i) copy, modify, 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 are also made aware of, and comply with, these Terms. Customers and Offtakers are responsible and liable for all uses of the Services through access they provide to the Services, whether directly or indirectly. Specifically, and without limiting the

generality of the foregoing, Customers and Offtakers (i) are responsible and liable for all actions and failures to take required 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 or Authorized Offtaker Users, as applicable, 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 you become aware, and (iii) will use the Services only in accordance with these Terms and all applicable laws and government regulations. Customers and Offtakers will not (w) make the Services available to any third party, (x) sell, resell, rent or lease the Services, (y) interfere with or disrupt the integrity or performance of the Services or any third-party data contained on the Services, including, as applicable, the third-party data of your employees, or (z) attempt to gain unauthorized access to the Services or their related systems or networks.

(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) **Passwords.** Access to the Software is password protected. Upon purchase of the Services, Customer will be assigned a default password. Upon logging into ETB Monitor for the first time, the Customer will be prompted to change the default password to their personal and confidential password. The Customer agrees to keep its password confidential in order to prevent unauthorized access to the Services, to only disclose the password to Authorized Users on a need-to-know basis and to notify such Authorized Users of the requirement of confidentiality under these Terms. The Customer shall control and maintain the security of all passwords. The Customer shall be solely responsible for all instructions, commitments and other actions or communications taken under any of its Authorized Users' accounts. The 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. The 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 the Customer's passwords, whether or not such use is authorized by the Authorized User.

4. Administrator Account

(a) The Customer and Offtaker, if applicable, shall be required to designate one Authorized User or Authorized Offtaker User to have access to an administrator account, who shall be responsible for (i) creating new user accounts for Authorized Users; (ii) removing access to the Services given to an Authorized User or Authorized Offtaker User (for example, in the event the user no longer acts on behalf of the Customer or Offtaker); and (iii) ensuring that the Fees as set out in Section 7 are promptly paid by the Customer.

5. 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. The Customer acknowledges that the Services incorporate ETB's valuable trade secrets and improper use or disclosure would cause ETB irreparable harm. Accordingly, the Customer agrees to use the Services solely as authorized by these Terms. The Customer further acknowledges that the license granted pursuant to these Terms is not a sale and does not transfer to the 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. Customer shall ensure that all Authorized Users are also made aware of, and comply with, these Terms. Offtakers shall ensure that all Authorized Offtaker Users are also made aware of, and comply with, these Terms.

6. Collection and Use of Information

(a) **Customer Data and Content.** Subject to the terms and conditions contained herein, the Customer and Offtaker, if applicable, agrees that ETB may use the information and data entered into the Software by the Customer Group, the Authorized Users, the Offtaker, the Authorized Offtaker Users, or by any third parties acting on behalf of

the 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 or Authorized Offtaker Users; and (iv) aggregate, anonymize, and analyze all data collected by ETB through the Services. The Customer and Offtaker, if applicable, represent and warrant that: (i) the Customer or Offtaker 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 the 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.** From time to time, the Customer or Offtaker may provide ETB (either on their own accord or at ETB's request) feedback, analysis, suggestions and comments (including, but not limited to, bug reports, test results and design suggestions or ideas) regarding the Services (collectively, "**Feedback**"). All right, title and interest in and to any such Feedback will be owned by ETB. The Customer and Offtaker agrees that ETB has the perpetual, irrevocable and worldwide right to use, modify, license, sublicense and otherwise exploit all or part of the Feedback or any derivative thereof in any manner or media now known or hereafter devised without any remuneration, compensation or credit to the Customer or Offtaker.

7. Fees

(a) **Fees.** The Customer will pay ETB the fees described on the Work Order for the Services that the 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 of the Services.

(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.** The Customer will be responsible for payment of all 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 the Customer's use of the Services, then such taxes will be charged to and paid by the Customer.

8. Confidential Information

(a) Depending on the Site configuration and Hardware employed, historical solar energy system data can be readily available on ETB's Hardware located at the 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 solar energy system and performance data.

(b) Provided an internet connection is available at the Site, ETB shall archive certain data provided by Customer during the use of the Services.

(c) ETB will implement and maintain strict safeguards designed to protect the confidentiality of the data and other information archived during the use of the Services and any other information that the Customer provides to us and clearly label or designate 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. If ETB receives a subpoena or other legal demand from a court or other proper legal authority requiring disclosure or release of Confidential Information relating to the Customer or Offtaker, we will promptly notify the party involved, unless prohibited by law. After providing notification, we may comply with such subpoena or order within the directed timelines, subject to your challenging same.

(d) Notwithstanding any of the foregoing, ETB understands that certain other entities providing services to Customer Group (“**Service Companies**”) may require access to the solar energy system 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. However, the 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 Services Companies at any and all times.

9. 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, Hardware, and Software to the Customer.

(b) **Termination.** Except as otherwise stated in a 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. ETB reserves the right to cease providing Services and terminate Customer’s use of the Services at any time if ETB reasonably believes that the Customer is in material violation of these Terms. Upon termination, the Customer, and Offtaker if applicable, will cease all use of and access to the Services. 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 the Customer will immediately terminate except for access to such data which is set out in this section 9(c), and all Fees will become immediately due and payable to ETB. Subject to the Customer having paid all Fees due and payable to ETB, upon the request for termination, the Customer’s data will be made available for a period of thirty (30) days following notice of termination. After that thirty (30) day period, ETB will have no obligation to maintain or provide the Customer or Offtaker their historical data.

(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.

10. Use of and Access to ETB Developer

(a) If the Customer or Offtaker 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/home/terms> 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 solar energy software and equipment management practices. ETB will exercise diligence in performing its Services, and securely transmit Asset performance 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 the Customer and Offtaker acknowledge that any information transferred over the internet is at risk of interception or corruption and release 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. For Hardware that is integral to the effective operation of the Services (which can include a ruggedized computer, meters, sensors, enclosures, or data acquisition peripherals), ETB will provide extended coverage of the original equipment manufacturer's warranty through to the end of the Term. For added clarity, for the period covered by the original equipment manufacturer, those warranty terms will apply. 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.

(d) **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 the 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 the 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 the 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 the Customer's, or any member of the Customer Group's, use or reliance (or failure to use or rely) on such interpretations and/or suggestions.

(e) **Third-Party Input.** As part of the Services provided hereunder, ETB may supply the 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 the Customer in connection with the Asset, and ETB shall not be responsible for the Customer's, Offtaker's, or any member of the Customer Group's use or reliance (of failure to use or rely) on such safety measures and operating parameters.

(f) **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 the 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 the 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 the 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 misdelivery of any information accessed or downloaded by the Customer or Offtaker. Any reliance on the Services will be at the Customer's own risk and that

the 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 the 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.

(g) **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, OR DAMAGES COVERED BY INSURANCE. 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) ETB shall indemnify, defend, protect, hold harmless, and release the Customer, its officers, agents, and employees, 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 such indemnifying party, to the extent limited in accordance with the laws of the state of California. 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) Customer shall indemnify, defend, protect, hold harmless, and release ETB, its officers, agents, and employees, 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 such indemnifying party, to the extent limited in accordance with the laws of the state of California. 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.

(c) Whenever any such claim shall arise, the party facing the suit will inform the other party of the claim and the facts constituting the basis for such claim. Both parties agree that the indemnity obligations herein shall survive the termination of these Terms.

14. Miscellaneous

(a) **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 the Customer's or any Authorized User's equipment, loss and destruction of property or any other circumstances or causes beyond the party's reasonable control.

(b) **Assignment.** Neither party may assign these Terms or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of the other party; provided, however, that 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(b) will be null and void.

(c) **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.

(d) **Export Regulations.** The 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, the Customer covenants that the 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 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. The 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 the Customer's breach of this provision.

(e) **Severability.** If any provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

(f) **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.

(g) **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 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.

(h) **Governing Law and Jurisdiction.** These Terms are governed by and construed under the laws of California without reference to conflict of laws principles. All disputes arising out of or related to these Terms will be subject to the exclusive jurisdiction of courts located in San Diego County, California, and the parties agree and submit to the exclusive jurisdiction and venue of these courts.

(i) **Waiver.** No waiver of these Terms will be valid unless made in writing and signed by both parties. The waiver of a breach of any term or provision hereof will in no way be construed as a waiver of any other term or breach hereof.

(j) **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(k), may be amended only by a writing signed by both parties.

(k) **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, the Customer's only remedy shall be to stop using the Services. The 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 the Customer or post the updated versions of these Terms on the ETB Monitor online portal in the event of any material modification of the Services or these Terms.

(l) **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 the Customer, Offtaker, or ETB (individually, a "**Party**" and collectively, the "**Parties**"), the Parties agree to first attempt to negotiate any Dispute informally for at least 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.

(m) **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.

(n) **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.

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

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