

## **EnerSketch Pro – Service Agreement**

Use of this software indicates acceptance of this software license agreement.

### **User License**

When a license is purchased, Enertech Global, LLC & D4 Consulting, LLC grants the purchaser, “Service Partner” a non-exclusive license to operate this software within the Service Partner’s business with no limits on the number of users. All users must be active employees of the business that purchases the license. The annual license fee entitles the Service Partner to free updates for the period that the license is purchased. The user license is granted with the understanding that the Service Partner agrees to utilize the software for Enertech supported brands of geothermal heat pump equipment and will not use it for directly competing geothermal equipment.

### **Program Ownership and Copyright Notice**

This is a license agreement, not a sale of the original program or copies thereof. Enertech Global, LLC & D4 Consulting, LLC retains all rights to the program and all subsequent copies that exist regardless of their form. As such, Enertech Global, LLC & D4 Consulting, LLC reserve the right to end the license agreement at the end of the licensing period for any reason without notice. International copyright laws strictly prohibit reproduction of this software by parties other than Enertech Global, LLC & D4 Consulting, LLC

### **Disclaimer of Warranties**

EnerSketch Pro was written by D4 Consulting, LLC and may be distributed under agreement solely by Enertech Global, LLC, D4 Consulting LLC & its subsidiaries, and distributors at the discretion of Enertech Global, LLC & D4 Consulting LLC. This software uses algorithms that are generally accepted by the Heating Ventilation and Air Conditioning (HVAC) industry and as such, the results of these calculations should yield acceptable results for use in residential applications. The software uses International Ground Source Heat Pump Association (IGSHPA) loop sizing algorithms as designed for the CLGS software.

Enertech Global, LLC, D4 Consulting LLC, and associates, and the distributors of this software do not warrant that the information in this software is free of errors. The program is provided 'as is' without warranty of any kind, either expressed or implied. The entire risk as to the quality and performance of the program and data is with the purchaser of the license. In no event will Enertech Global, LLC or D4 Consulting LLC be liable for any damages, including without limitation any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use this program and data.

### **The Service Partner’s use of EnerSketch Pro**

The Service Partner shall ensure that no unauthorized persons have access to EnerSketch Pro and the Service Partner may neither deconstruct, perform reverse engineering or otherwise alter EnerSketch Pro.

The Service Partner is responsible for complying with all laws and regulations, including but not limited to, legislation regarding data protection and personal data. The Service Partner is responsible for obtaining the Customer’s consent for the Service Partner’s access to data and personal data in EnerSketch. Enertech Global, LLC & D4 Consulting LLC is not responsible for this and the Service Partner shall indemnify and hold Enertech Global, LLC & D4 Consulting harmless from and against any claims against Enertech Global, LLC & D4 Consulting in this respect.

### **Price and invoice**

D4 Consulting shall invoice the Service Partner for EnerSketch Pro by a one-time setup fee, a monthly subscription fee, and a monthly commission fee. Billings will occur on a quarterly basis.

### **Support and Service**

D4 Consulting shall to a reasonable extent provide the Service Partner with online support and/or information about troubleshooting and possible issues that are related to EnerSketch Pro as well as training for new users.

### **Personal data**

Enertech Global, LLC & D4 Consulting LLC is the controller for the personal data that is being stored and processed in EnerSketch Pro. Enertech Global, LLC & D4 Consulting LLC shall take all measures necessary to comply with applicable Data Protection Rules. The Service Partner is the collector of the personal data that is being processed in EnerSketch Pro. The Service Partner shall ensure that persons authorized to process the Personal

have committed to confidentiality. Personal data being collected includes user and consumer name, address, e-mail, and any other personal data collected under the scope of this agreement. This personal data is stored and available during the time in which the Service Partner maintains a license.

### **Availability of EnerSketch Pro**

Enertech Global, LLC & D4 Consulting LLC does not provide any warranties for the availability of EnerSketch Pro. Enertech Global, LLC & D4 Consulting LLC reserve the right to, without warning, limit the access to EnerSketch Pro to perform necessary maintenance and updates of the service.

### **Limitation of liability**

Enertech Global, LLC & D4 Consulting LLC is not responsible for any direct or indirect damage or claim arising from EnerSketch Pro or otherwise according to the Agreement. This means, among other things, that Enertech Global, LLC & D4 Consulting LLC is not liable for damage that (i) the Service Partner has suffered, (ii) is caused by the Service Partner as a result of the Service Partners use of EnerSketch Pro. Further, Enertech Global, LLC & D4 Consulting LLC is not responsible for damage caused by computer viruses or equivalent, delay, change or loss of data or intrusion in EnerSketch Pro.

### **Force Majeure**

Party is relieved from any sanction for the failure to perform a certain obligation according to this Agreement, if the failure is based on a circumstance beyond the party's control and which prevents the performance of the obligation (force majeure). Such relief also applies in cases where the subcontractor causes delays based on such circumstance. As soon as the impediment has ended, the obligation shall be performed in an agreed manner. Force majeure means war, war action, acts of authorities, new or changed legislation, labor conflict and any equal circumstance. In order to be relieved in accordance with the first paragraph above, the party who fails to perform shall without undue delay inform the other party of the impediment.

### **Term**

The Agreement shall apply from the date of acceptance of the Agreement and thereafter continue with a period of twelve (12) months at a time. Each party is entitled to terminate the Agreement before the twelve-month period has ended provided such termination is made thirty (30) days before the end of said period. Upon termination of the Agreement all access to EnerSketch Pro will cease and any prepaid fees will not be refunded.

### **Suspension**

Should Enertech Global, LLC & D4 Consulting LLC find that the Service Partner violates the Agreement or in another way misuses EnerSketch Pro, Enertech Global, LLC & D4 Consulting LLC is entitled to immediately and for an unlimited time suspend the Service Partner from EnerSketch Pro.

### **Intellectual property rights**

Enertech Global, LLC & D4 Consulting LLC shall retain all rights, including all intellectual property rights, to the content of EnerSketch Pro. The Agreement does not imply any assignment of intellectual property rights.

### Changes to the Agreement

Enertech Global, LLC & D4 Consulting LLC is entitled to change the Agreement. Unless otherwise required by law, Enertech Global, LLC & D4 Consulting LLC shall send a notification to the Service Partner (for example via e-mail or through EnerSketch PRO) at least thirty (30) days before the change of the Agreement has entered into force.

### Assignment of the Agreement

Enertech Global, LLC & D4 Consulting LLC may wholly or partly assign the rights and obligations under the Agreement to another company which, by itself or through subcontractors, is expected to fulfil Enertech Global, LLC & D4 Consulting LLC's obligations in relation to the Service Partner.

The Service Partner may not wholly or partly assign or grant its rights and obligations under the Agreement to a third party.

### Entire Agreement

The contents of the Agreement and its appendices shall supersede all previous written and oral commitments and undertakings.

### Governing law

Any dispute arising out of or in connection with this Agreement shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute in either the State of Michigan or State of Illinois.

Acceptance: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip Code: \_\_\_\_\_