

THIS END-USER LICENCE AGREEMENT (EULA) IS A LEGAL AGREEMENT BETWEEN YOU, THE END-USER, IN YOUR CAPACITY AS AN INDIVIDUAL AND/OR AS AN AGENT FOR YOUR COMPANY, INSTITUTION OR OTHER ENTITY (hereinafter referred to as the "**Licensee**"), AND HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATURAL RESOURCES (hereinafter referred to as "**NRCan**")

WHEREAS **NRCAN** HAS THE RIGHT TO GRANT A LICENSE FOR THE EARTH TO AIR THERMAL EXCHANGER (EATEX) SOFTWARE TOOL, AN EXCEL SOFTWARE TOOL WHICH HELPS ARCHITECTS, BUILDERS, DESIGNERS, AND INSTALLING CONTRACTORS ASSESS THE BENEFITS OF PRE-HEATING/ PRE-COOLING FRESH AIR WITH UNDERGROUND TUBES (hereinafter referred to as the "Software").

BY DOWNLOADING, INSTALLING, USING OR COPYING THE SOFTWARE THE **LICENSEE** HEREBY AGREES TO ADHERE TO THE TERMS AND CONDITIONS BELOW:

1 GRANT OF LICENSE

- 1.1 Upon the terms and conditions hereinafter set forth, **NRCan** hereby grants to you, the **Licensee**, a non-exclusive license to use the Software.
- 1.2 The **Licensee** shall not disclose, modify, sell, sublicense, loan, transfer, reverse-engineer the Software, or otherwise assign any rights under this EULA to any third party.
- 1.3 Subject to Article 8.2, the **Licensee** shall not make more than one (1) backup copy of the Software. The backup copy shall be held confidential and shall be used only for the purpose of backup.

2 TERM

- 2.1 This EULA shall come into force upon the first instance that the Software is used by the **Licensee** or comes into the possession of the **Licensee**.
- 2.2 This EULA shall remain in force until terminated by a) **NRCan** as a result of the **Licensee's** breach of this EULA or, b) the **Licensee** destroys all copies of the Software.
- 2.3 Notwithstanding any other provisions in this agreement, Articles 3.1 and 3.2 shall survive termination of this EULA.

3 OBLIGATIONS OF THE LICENSEE

- 3.1 The **Licensee** shall not make any statement or representation indicating that the **NRCan** or the Government of Canada endorses or approves any recommendation, study, report, product, service or course of action as a result of the **Licensee's** use of the Software.
- 3.2 The **Licensee's** publications referring to the Software must state the origin of the Software using the following text: "Earth to Air Thermal Exchanger (EATEX) Software is owned by Natural Resources Canada © Her Majesty the Queen in Right of Canada (Natural Resources Canada) 2021". The **Licensee** shall seek prior written approval for any other statements concerning **NRCan** beyond the origin of the Software.

4 MAINTENANCE AND SUPPORT

- 4.1 The parties understand and agree that while the **Licensee** may report any bugs or technical malfunctions in the Software to **NRCan**, **NRCan** is under no obligation to provide technical support, maintenance services, update services, notices of latent defects, or correction of defects for the Software.

5 TITLE

5.1 **Licensee** agrees that the Software is and shall at all times remain the property of the **NRCan**. The **Licensee** shall have no right, title and interest therein or thereto, except as expressly set forth in this EULA.

5.2 The **Licensee** acknowledges that the Software is protected under the *Copyright Act*.

6 WARRANTY AND INDEMNITY

6.1 The Software is licensed on an "AS IS" basis. **NRCan** makes no guarantees, representations, or warranties respecting the Software, either express or implied, arising by law or otherwise, including but not limited to effectiveness, completeness, accuracy, or fitness for a particular purpose.

6.2 **NRCan** shall not be liable in respect of any claim, demand or action, irrespective of the nature of the cause of the claim, demand or action alleging any loss, injury or damages, direct or indirect, which may result from the **Licensee's** use or possession of the Software. **NRCan** shall not be liable in any way for loss of revenue or contracts, or any other consequential loss of any kind resulting from the **Licensee's** use or possession of the Software.

6.3 The **Licensee** shall indemnify and defend **NRCan**, its employees, contractors, agents and suppliers, from and against all claims, demands, losses, damages, costs (including legal fees and costs on a substantial indemnity basis), actions, suits or proceedings brought by any third party, that are in any manner based upon, arising out of, or attributable to the use, possession, or performance of the Software by the **Licensee**, or its employees or agents.

7 TERMINATION

7.1 Subject to Article 8.2, if the **Licensee** breaches any obligation under this EULA and fails to remedy the breach within thirty (30) calendar days, the present EULA is deemed to be terminated immediately without any notice.

8 DESTRUCTION

8.1 Prior to assigning, selling or otherwise disposing of any media, the **Licensee** shall completely erase or otherwise destroy any Software contained on such media.

8.2 Upon termination or expiration of the Agreement, the **Licensee** agrees to either:

(1) Return to **NRCan** immediately all copies of the Software and any related documentation and completely erase or otherwise destroy the backup copy of the Software provided for under Article 1.3 on the **Licensee's** media, or

(2) Completely erase or otherwise destroy all copies of the Software, including but not limited to the backup copy provided for under Article 1.3, as well as any related documentation on the **Licensee's** media.

9 APPLICABLE LAW

9.1 This EULA shall be interpreted in accordance with the provincial or territorial laws in force in Ontario, Canada.

10 NOTICES

10.1 All notices, inquiries and other communications hereunder shall be in writing and shall be deemed to have been duly given once confirmation is received after sending to **NRCan**:

Natural Resources Canada
Intellectual Property Division
NRCan.ipd-dpi.mcan@canada.ca