

## EtaPRO Software License Terms

These EtaPRO Software License Terms (these “Software License Terms”) are incorporated by reference into any Order Form signed by EtaPRO LLC (“EtaPRO”) and the entity or individual identified as the “Customer” in the Order Form (the “Customer”).

### 1. DEFINITIONS

- 1.1. “Contract” means, collectively, these Software License Terms, the Order Form (including the EtaPRO Proposal(s), if any, referenced therein), and if Customer has purchased any Services as set forth on the EtaPRO Proposal or Order Form, the EtaPRO Technical Services Agreement referenced therein and entered into by the parties, or such other written agreement entered into by the parties that governs the Services.
- 1.2. “Customer” means the entity or individual identified as “Customer” in an Order Form signed by both parties.
- 1.3. “Customer Location” means the location for each Designated Unit, as set forth on the Order Form.
- 1.4. “Designated Units” means the generating units, unit groupings, or other facility/equipment listed in the Order Form, owned or operated by Customer in each Customer Location.
- 1.5. “EtaPRO Proposal” means the proposals referenced in the Order Form for each of the Customer’s Location.
- 1.6. “Licensed Features” means the Software features of the EtaPRO System that are individually licensed hereunder, as indicated by a check mark for the Designated Units listed in the Order Form.
- 1.7. “Documentation” means EtaPRO’s user manuals, handbooks, installation guides and other documents relating to the Software that EtaPRO provides or makes available to Customer which describe the functionality, components, features, or requirements of the Software, including any aspect of the installation, configuration, integration, operation, or use of the Software.
- 1.8. “Order Form” means an electronic or tangible form provided by EtaPRO to Customer that sets forth the Software and/or Services to be licensed by EtaPRO or its affiliate to Customer.
- 1.9. “Services” means the services Customer selected on an Order Form.
- 1.10. “Software” means the executable, object code version of the Licensed Features, and any related revisions, updates, modifications, options and enhancements furnished by EtaPRO from time to time, installed on a single server for each Customer.

### 2. LICENSE

- 2.1. **GRANT OF LICENSE.** Subject to all of the terms and conditions contained in these Software License Terms and Customer’s payment of all applicable fees under the Contract, Customer is hereby granted a non-exclusive, non-transferable, worldwide license (the “License”) to install, run and use the Software and use Documentation, during the Term (defined below), solely for the Designated Units, and solely for internal business purposes only.
- 2.2. **OWNERSHIP.** The Software and Documentation are the exclusive property of EtaPRO. Except as expressly set out in this License or as permitted by applicable law, the Software and Documentation, including all alterations, modifications, revisions and enhancements made to the Software or Documentation by or on behalf of EtaPRO, whether now or hereafter made, are and shall at all times remain the property of EtaPRO. Except for the License granted hereunder, Customer shall not acquire any proprietary interest in, right to copy, or any right to use the Software or Documentation. Except for the rights expressly granted hereunder, nothing in these Software License Terms shall be construed to grant Customer any right in, to, or under any intellectual property of EtaPRO.
- 2.3. **LICENSE RESTRICTIONS.** Customer shall not (i) reverse assemble or reverse compile, reverse engineer, modify, alter, or create derivative works of the Software or Documentation, in whole or in part, (ii) use, print, copy, translate, transfer or display the Software or Documentation, in whole or in part, except as expressly permitted by the License, (iii) sub-license, rent, lease, assign or otherwise transfer all or any rights of Customer with respect to the License or these Software License Terms, or (iv) permit the Software or Documentation to be used by or disclosed to any third party, except as expressly permitted by [Section 2.8](#) of these Software License Terms. Without limiting the foregoing, in no event shall Customer utilize all or any portion of the Software or Documentation, or any enhancement, modification, or improvement thereof, to create, market, or sell a product that directly or indirectly competes with the Software or Documentation.
- 2.4. **SECURITY, RECORDS, AND CONTROL OF USE.** Customer shall keep all copies of the Software and Documentation secure and maintain accurate and up-to-date records of the number and locations of all copies thereof. Customer shall supervise and control the use of the Software and Documentation and ensure that they are used by the Customer’s authorized employees and representatives (“Authorized Users”) solely in accordance with the terms and conditions of this License and the End User License Agreement available on EtaPRO’s online support portal at <https://support.etapro.com> (the “EULA”), as may be amended from time to time.
- 2.5. **TERM OF LICENSE.** Subject to all of the terms and conditions contained in these Software License Terms and Customer’s payment of all applicable fees under the Contract, Customer’s rights shall commence at the time the Software is installed on the Designated Units and continue for the term specified on Order Form (or if no term is specified, then an indefinite period thereafter), unless and until terminated in accordance with [Section 2.6](#) (the “Term”).
- 2.6. **TERMINATION.** EtaPRO may immediately terminate the License upon (i) any failure by Customer to timely pay any fees due hereunder within ten (10) days after receipt of written notice of default from EtaPRO or (ii) any failure by Customer to cure any other default under the Contract within thirty (30) days after receipt of written notice of default thereof from EtaPRO. Termination of the License shall not terminate any of Customer’s obligations or liabilities to EtaPRO, including any payment obligation, that has already accrued hereunder, that comes into effect due to the expiration or termination of the Agreement, or that otherwise survives the expiration or termination of the License. Nothing in these Software License Terms shall be deemed to limit any right, pursuant to which EtaPRO may have at law or in equity in the event of a default by Customer hereunder.
- 2.7. **NO MODIFICATIONS BY CUSTOMER.** Unless otherwise agreed in a writing signed by an authorized representative of EtaPRO, any modification of the Software or Documentation by any party other than EtaPRO, or any use of the Software or Documentation in contravention with the terms of this License, shall be a breach of contract on the part of Customer.
- 2.8. **THIRD PARTY USE.** Customer shall not permit any third party to access or use the Software or Documentation unless otherwise pre-approved by LICENSOR in a signed writing. The license provided hereunder is provided specifically to the party identified as the

Customer herein and will not automatically transfer to any third party as a result of such third party acquiring or receiving ownership rights in a Designated Unit.

### 3. CUSTOMER'S PURCHASE ORDERS

3.1. Subject to [Section 8.2](#), Customer may submit its own written or electronic purchase orders ("[Purchase Orders](#)") to EtaPRO for the purchase of new or additional licenses of the EtaPRO Software, provided, however, that no Purchase Order will be deemed to be accepted by EtaPRO until Customer receives the Software.

### 4. DISCLAIMER OF WARRANTY

4.1. The Software is distributed "AS IS" without warranty of any kind, express or implied. ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. The operation of the Software is not warranted to be uninterrupted or error free.

### 5. LIMITATION OF REMEDIES

5.1. EtaPRO's liability under these Software License Terms or related to Customer's use of the Software or Documentation, regardless of the form of action, whether in contract or in tort (including negligence), shall not exceed the amount(s) paid by Customer to EtaPRO for the Software, and Customer agrees to release, defend, and indemnify EtaPRO from and against any and all further liability arising in any manner from Customer's use of the Software, except to the extent arising from EtaPRO's sole negligence or willful misconduct.

5.2. In no event shall EtaPRO be liable for any lost profits, loss of sales, loss of business, lost savings, lost revenue, loss of business opportunity, loss of goodwill or reputation, loss of use of equipment, cost of capital, business interruption, cost of replacement power, loss or corruption of data or information, or other incidental, special, indirect, consequential, or exemplary damages.

5.3. Customer agrees that EtaPRO shall not be liable for any injury or property damage arising from the use or misuse of the Software, or for any injury or damage arising from Customer's failure to keep relevant data up to date.

5.4. Except as set forth in [Section 2.6](#), the warranties, obligations, liabilities, and remedies of the parties, as provided in the Contract, are exclusive and in lieu of any others available at law or in equity. Indemnifications, releases from liability, and limitations of liability shall apply notwithstanding the fault, negligence, or strict liability of the party indemnified, released or whose liability is limited.

### 6. EXPORT OF SOFTWARE OR DOCUMENTATION AND MILITARY END-USE

6.1. The Software, Documentation, and any related technical data included with, or contained in, such Software or Documentation, and any products utilizing any such Software, Documentation, or technical data (collectively, "Regulated Products") may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. The Customer shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Regulated Products to any jurisdiction or country to which, or any party to whom, or for any use for which, the export, reexport, or release of any Regulated Products is prohibited by applicable federal or foreign law, regulation, or rule. The Customer shall be responsible for any breach of this Section by its, and its successors' and permitted assigns', parent, affiliates, employees, officers, directors, partners, members, shareholders, customers, agents, distributors, resellers, or vendors. The Customer shall comply with all applicable federal and foreign laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any Regulated Products. The Customer shall provide prior written notice of the need to comply with such laws, regulations, and rules to any person, firm, or entity which it has reason to believe is obtaining any such Regulated Products from the Customer with the intent to export, reexport, or release.

6.2. Unless authorized by EtaPRO, Customer shall not use all or any portion of the Software or Documentation for a military end-user or military end-use.

### 7. INFRINGEMENT

7.1. Subject to [Section 5](#), EtaPRO will defend Customer against any third-party claim that the Software or Documentation infringe any registered United States patent or copyright and hold Customer harmless from any loss or expense that a court finally awards against Customer as a result of such claim, provided that Customer (i) gives EtaPRO written notice in a reasonable amount of time of any such claim, (ii) allows EtaPRO to control and reasonably cooperates with EtaPRO in the defense and settlement of any such claim, and (iii) allows EtaPRO to either modify the Software or Documentation in a functionally equivalent manner so that they become non-infringing or procure the right for Customer to continue to use the Software or Documentation. However, EtaPRO shall have no obligation to defend or hold Customer harmless against any claim, loss, or expense arising out of Customer's (a) modification of the Software or Documentation or their combination with data, software, or materials not furnished by EtaPRO, (b) use of any version of the Software or Documentation other than the most current version or failure to timely implement any maintenance release, modification, update, or replacement of the Software or Documentation made available to Customer by EtaPRO, or (c) use of the Software or Documentation after EtaPRO's notice to Customer of such activity's alleged or actual infringement, misappropriation, or other violation of a third party's rights, or use of the Software or Documentation by or on behalf of Customer that is outside the purpose, scope, or manner of use authorized by the Contract or in any manner contrary to EtaPRO's instructions.

7.2. The Customer reserves the right, at its cost, to participate in the defense of any such claim, including retaining legal counsel of its choice.

### 8. GENERAL

8.1. **Subcontracting.** EtaPRO may subcontract the performance of any of its duties or obligations set forth herein to one or more of its affiliates, provided EtaPRO shall be responsible and liable for the acts and omissions of each such affiliate to the same extent as if such acts or omissions were made by EtaPRO.

8.2. **Entire Agreement.** These Software License Terms, together with the Order Form and the EtaPRO Proposals (if any) referenced therein, represent the complete understanding between EtaPRO and Customer regarding the Software, Documentation, and License and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. For the avoidance of doubt, these Software License Terms, together with the Order Form and

the EtaPRO Proposals (if any) referenced therein, supersede any Customer-provided document, including Customer's own Purchase Order, services agreement, end user license agreement, or other document provided by Customer, that purports to govern the terms of the Software, Documentation or License. No other terms and conditions of the Customer (including, but not limited to, any terms and conditions attached to any of the Customer's Purchase Orders or set forth in any other document provided by Customer) shall govern the Software, Documentation, or License and are hereby deemed null and void.

**8.3. Amendment, Modification, or Waiver of Software License Terms.** These Software License Terms may be modified only by a written instrument, identified as an amendment to this Agreement, executed by duly authorized representatives of EtaPRO and Customer. No part of these Software License Terms may be waived, nullified, amended, terminated, or otherwise changed orally. Any waiver of performance or nonperformance must be made expressly in writing and executed by an authorized representative of the party against whom the waiver is sought. No waiver made in any single instance shall be deemed a waiver as to any other instance.

**8.4. Changes of EULA Terms.** Notwithstanding anything herein to the contrary, EtaPRO may add to, delete, modify, or otherwise amend the terms and conditions in the EULA, at any time and from time to time, subject to applicable law, effective upon publishing an updated version thereof to EtaPRO's online support portal available at <https://support.etaapro.com>, with or without notice. Customer hereby acknowledges and agrees that, by downloading, installing or using the Software, Customer shall ensure that its Authorized Users comply with this Agreement and any future amendments and additions to the EULA, information referenced at hyperlinks therein, or documents incorporated therein. Continued use of the Software after any such changes shall constitute Customer's consent to ensuring its Authorized Users comply with such changes.

**8.5. Precedence.** If there is any conflict between the provisions of these Software License Terms and any other provision(s) of the Contract, then the provisions of these Software License Terms shall govern if the conflict relates to the Software, Documentation or License.

**8.6. Severability.** Each provision of the Contract, including these Software License Terms, shall be valid and enforceable to the fullest extent allowed by applicable law. In the event that any provision hereof is declared invalid or unenforceable, then such provision shall be deemed deleted to the extent it is invalid or unenforceable. No determination by any court, governmental or administrative body or otherwise that any provision of the Contract or any amendment thereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other provision of the Contract, or (ii) such provision in any circumstance not controlled by such determination.

**8.7. Arbitration.** EtaPRO and Customer shall endeavor to resolve any disagreement, dispute, controversy or claim relating to the Software or Documentation amicably through discussions between the executive personnel of each party. However, if such discussions are unsuccessful, such matters shall be resolved by arbitration conducted in English in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, which shall administer the arbitration and act as the appointing authority. The arbitration shall take place in a location which is mutually agreed by EtaPRO and Customer, and not less convenient for one or the other.

**8.8. Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under these Software License Terms without the prior written consent of EtaPRO (which consent may be withheld or delayed for any reason or no reason). EtaPRO may freely assign its rights or delegate its obligations hereunder. No assignment or delegation by Customer shall relieve the Customer of any of its obligations under these Software License Terms unless EtaPRO enters into a novation releasing Customer of its obligation hereunder. Any purported assignment or delegation in violation of this Section is void. These Software License Terms are binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If Company needs to provide access to the EtaPRO software to a third party, then, prior to provision of any such access, Company will notify EtaPRO so that the proper EtaPRO Third Party Use and Access Agreement can be entered into between Company, EtaPRO and the third party.

**8.9. Confidentiality.** Each party shall treat the other party's Confidential Information as proprietary and confidential and shall not disclose it to any third parties or use it for any other purpose other than as is reasonably necessary to perform its obligations under this Proposal. "Confidential Information" means information that one party (or an affiliate) discloses to the other party in connection with this Proposal and any resulting contract, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is lawfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient.

**8.10. Force Majeure.** EtaPRO shall not be liable for any delay or failure to fulfill its obligations under the Contract due to causes beyond its reasonable control.

**8.11. Governing Law.** The Contract shall be governed by and interpreted in accordance with the laws of the State of New York and the federal laws applicable therein. In the event that the Parties agree in writing for the Contract to be governed by a law other than the laws of the State of New York, these Software License Terms shall in all events remain governed by and interpreted in accordance with the laws of the State of New York and the federal laws applicable therein

**8.12. Governing Language.** If the Contract is presented in English and any language other than English, then the English version shall take precedence over the non-English version in the event of any conflict between the meanings of each language. The non-English version is intended only for the convenience of the Customer.