

This is a legal agreement (the “Service Agreement”) entered into between Enercare Home and Commercial Services Limited Partnership (“Enercare” or “we”) and the customer (“you”) named in one or more order confirmations (each, an “Order Confirmation”). This Service Agreement sets out the terms upon which Enercare will provide the services set out in the Order Confirmation (the “Services”) and the devices or equipment set out in the Order Confirmation (the “Equipment”) required to access and/or use the Services at the service address set out in the Order Confirmation (the “Premises”). This Service Agreement is also posted and available for review at [enercare.ca/smarterhome](http://enercare.ca/smarterhome).

This Service Agreement works together with the following materials to form your complete agreement with us (the “Agreement”), and provide you with the important information you need to help you fully understand your Services and Equipment: (1) the terms of service (the “Terms”) that accompany this Service Agreement and are also posted and available for review at [enercare.ca/smarterhome](http://enercare.ca/smarterhome); (2) the Order Confirmation(s); (3) our Privacy Policy, which sets out our policies in relation to the collection, use and disclosure of your personal information; (4) the Building 36 End User Terms and Conditions; and (5) any additional terms and conditions that may apply to a specific Service that you subscribe to or use.

Unless otherwise defined in this Service Agreement, capitalized terms in this Service Agreement have the meanings given to them in the Terms.

#### 1. Term of Service and Termination

This Service Agreement begins on the date set out in the Order Confirmation and ends when the Agreement is terminated in accordance with its terms. The minimum term of this Service Agreement starts when we first install the Equipment at the Premises and ends on the date indicated in the Order Confirmation (the “**Minimum Term**”), unless extended or terminated as described below. Following the Minimum Term, this Service Agreement will automatically continue until terminated in accordance with the terms set forth herein.

This Service Agreement may be terminated: (i) by you at any time after the end of the Minimum Term; (ii) by you during the Minimum Term upon payment of the early termination fee (see section 6 below); (iii) by us if you Default (see section 10 below); or (iv) by us at any time and for any reason, in our sole discretion. For greater certainty, you will continue to be obligated to pay all fees due and payable under this Service Agreement up to and including the effective date of termination and, following the effective date of termination, you will be entitled to retain possession of the Equipment.

If your Services include automation and/or video services (the “**Additional Services**”), you may cancel any or all such Additional Services at any time. However, where the Additional Equipment (as defined in Section 5 below) has not been purchased by you and we have included the cost of such Additional Equipment in the monthly charges payable by you in respect of the Additional Services (as set forth in the applicable Order Confirmation), the minimum term in respect of the Additional Services starts on the date we install the Additional Equipment at the Premises and ends on the date listed in the Order Confirmation (the “**Additional Services Minimum Term**”). If you terminate your Additional Services prior to the end of the Additional Services Minimum Term, you will be required to pay the Additional Services component of the early termination fee (see section 6 below).

#### 2. Personal Information

We collect personal information about you in order to establish and manage our, and our authorized service providers', business relationship with you. We will not knowingly share this information with third parties without your permission, other than to service providers, parties that provide us with credit information, parties to whom we transfer, assign, encumber or otherwise dispose of this Service Agreement or otherwise in accordance with our Privacy Policy, which is available at [enercare.ca/privacy-policy](http://enercare.ca/privacy-policy) or can be obtained from our Privacy Officer.

In light of this, you hereby: (i) consent to the collection, use, disclosure and maintenance of personal information and to receiving commercial electronic messages and promotional offers (such as tips to help you run your home or place of business more efficiently and reliably, special money-saving offers available to our customers and news about products and services that may be of interest to you) in accordance with the terms of our Privacy Policy (you may opt out at any time by contacting our Privacy Officer using the information below); (ii) authorize us to use and disclose your personal information to: verify your identity when you request information about your account by telephone or email; bill, collect payment, manage your account and/or supply services to you under this Service Agreement; review information about your bill payments; provide to our authorized technicians and other companies that provide service under this Service Agreement; comply with law enforcement and/or a legal requirement; process past due accounts of yours which have been passed to a debt collection agency; and undertake a credit reference check and we agree that the results thereof, any other personal information provided by or about you shall be handled by us in accordance with applicable laws and the Privacy Policy; and (iii) if your Services are billed by your gas utility, you authorize your gas utility to provide us with any information about your Services, including charges and payment information. We may record our telephone conversations with you and disclose the recordings to achieve the purposes set out in this section.

You may contact our Privacy Officer to discuss any questions or concerns related to the Privacy Policy, how your information is being handled, or to request that your personal information be revised or removed from our promotional list by telephone at: 416-649-1862, e-mail at: [privacy@enercare.ca](mailto:privacy@enercare.ca), or mail at: John Toffoletto, Privacy Officer, Enercare Inc., 7400 Birchmount Road, Markham, ON, L3R 5V4.

### 3. Service and Equipment Fees

The details with respect to the Services you have selected and the Equipment you have purchased, including the fees payable for such Services and Equipment, are set forth in the Order Confirmation. All amounts set out in the Order Confirmations do not include applicable taxes. In consideration of receiving and using the Services and Equipment, you agree that:

- You will pay charges billed to you under this Service Agreement when due. You agree to pay HST and any other taxes payable in connection with this Service Agreement.
- You will promptly inform us of any change in: i) your mailing address by providing at least 30 days advance notice of such change; and/or ii) if previously provided, bank account or credit card information you provided us promptly after such change is made and prior to the next bill due date.
- Your charges may be included on your utility bill, or we may choose to bill you directly or through our service provider. Acceptable methods of payment, which currently include pre-authorized payment, by telephone or in person, or online banking, will be

set out on the bill you receive. Should any payment be returned for non-sufficient funds (“NSF”), you agree to pay a NSF charge of \$25. A late payment charge will apply to all overdue amounts on your bill, including applicable federal and provincial taxes. The rate for late payment charges is 1.5% per month or 18% per year (for an effective rate of 19.56% per year). Your bill is due on the date indicated on the bill.

- Late Payment Charges on your Enbridge Gas Distribution (“EGD”) bill (applicable only if your charges are included on your EGD bill): A late payment charge will apply to all overdue amounts on your EGD bill, including applicable federal and provincial taxes. The late payment charge will be calculated and applied as approved by the Ontario Energy Board from time to time. Your EGD bill is due when you receive it, which is considered to be three days after the bill date. If you do not pay your bill in full by the late payment effective date on the first page of your EGD bill, a late payment charge equal to the late payment rate multiplied by a total of all unpaid charges will be added to your EGD bill.
- The monthly fees are set out in the Order Confirmation. You agree that following the end of the Minimum Term we may increase our monthly fees on January 1 of each calendar year by a percentage up to the percentage increase to CPI plus 2%. For the purposes of this Agreement, “CPI” means the All-items Consumer Price Index (not seasonally adjusted) for Ontario or the equivalent thereof, or any comparable successor index thereof, published by Statistics Canada in October in respect of the immediately preceding September to September period, or by any other equivalent or duly authorized department of the Government of Canada (for clarity, the Consumer Price Index in Canada is expressed in terms of 2002 = 100). We will notify you of any such increases in advance by bill inserts, by letter or by any other method permitted by law.

#### 4. Installation

An Enercare representative will deliver to you and install the Equipment set out in the Order Confirmation on the installation date referenced in the Order Confirmation or on such other mutually agreed upon date. You will be informed of any applicable installation fee at the time you order the Services and such installation fee will be set out in the Order Confirmation. You acknowledge that you own the Premises where the Equipment will be installed or that you have the authority to allow an Enercare representative to install the Equipment at the Premises and enter into an agreement for the Services at the Premises.

#### 5. Limited Equipment Warranty

##### (a) Limited Warranty (Core Equipment)

Subject to the limitations below, Enercare warrants to you that any hub, smart thermostat and water leak sensor (the “**Core Equipment**”) shall be free from material defects in workmanship and materials, under normal use, from the date such Core Equipment is installed (as set forth in the Order Confirmation) to the expiry of the Minimum Term. This limited warranty is absolutely conditional upon the Core Equipment having been properly installed (where not installed by Enercare), maintained and operated under conditions of normal use in accordance with the manufacturer’s recommended operating instructions. Enercare’s sole obligation under this limited warranty is, at Enercare’s option and expense, to repair the affected Core Equipment or replace it with similarly functioning Core Equipment

then made available by Enercare. This limited warranty applies to any replaced or repaired Core Equipment through to the end of the Minimum Term. The replacement Core Equipment provided to you may be new or refurbished at Enercare's sole discretion. Neither this limited warranty nor any of the rights hereunder are transferable by you. For more information regarding this limited warranty, call Enercare Technical Support at 1-833-99-SMART.

(b) Limited Warranty (Additional Equipment)

Subject to the limitations below, Enercare warrants to you that all Equipment other than the Core Equipment (the "**Additional Equipment**") set out in the Order Confirmation shall be free from material defects in workmanship and materials, under normal use, for a period of one (1) year from the date such Additional Equipment is installed (as set forth in the Order Confirmation). This limited warranty is absolutely conditional upon the Additional Equipment having been properly installed (where not installed by Enercare), maintained and operated under conditions of normal use in accordance with the manufacturer's recommended operating instructions. Enercare's sole obligation under this limited warranty is, at Enercare's option and expense, to repair the affected Additional Equipment or replace it with similarly functioning Additional Equipment then made available by Enercare. This limited warranty applies to any replaced or repaired Additional Equipment through to the end of the initial one (1) year warranty period referred to above. The replacement Additional Equipment provided to you may be new or refurbished at Enercare's sole discretion. Neither this limited warranty nor any of the rights hereunder are transferable by you. For more information regarding this limited warranty, call Enercare Technical Support at 1-833-99-SMART.

(c) Warranty Service

Before returning the Equipment to Enercare for warranty service within the applicable warranty period, you must call Enercare Technical Support at 1-833-99-SMART to attempt to diagnose and correct the malfunction or other defect over the telephone. If Enercare is unable to do so, Enercare may dispatch a technician to your Premises. Should the technician determine that the problem is not covered by the limited warranties set out in section 5(a) or 5(b), Enercare may charge you a fee, plus applicable taxes, for the dispatch of the technician.

(d) Non-Warranty Service

If you require service to Equipment that is not covered by the limited warranties set out in section 5(a) or 5(b), you may call Enercare Technical Support at 1-833-99-SMART. Before providing you with the available options, Enercare may attempt to diagnose and correct the malfunction or other defect over the telephone. If Enercare is unable to do so, Enercare may dispatch a technician to your Premises and Enercare may charge you a fee, plus applicable taxes, for the dispatch of the technician and the cost to repair the defective Equipment.

(e) No Other Warranties

To the maximum extent permitted by applicable law the limited warranties set out in section 5(a) or 5(b) are exclusive and are in lieu of all other warranties, obligations, liabilities, terms, or conditions provided by Enercare, whether written or oral, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties, terms, or conditions of merchantable quality and fitness for a particular purpose. Enercare shall not be liable under these limited warranties unless the Equipment has

been purchased from Enercare and properly installed (where not installed by Enercare), maintained and operated under conditions of normal use in accordance with the manufacturer's recommended operating instructions and, for greater certainty, Enercare shall not be liable under these limited warranties if: (i) the material defect or malfunction was caused by your or any third person's misuse, neglect, improper installation or testing, unauthorized attempts to open, repair, or modify the Equipment, or any other cause beyond the range of the intended use, or by accident, fire, lightning, power cuts, surges or outages, other hazards, or acts of God; (ii) the material defect or malfunction results from the use of the Equipment in conjunction with accessories, other products, or ancillary or peripheral equipment; or (iii) the Equipment is lost or stolen.

(f) **Limitations of Liability**

In addition to the limitations of liability in the Terms under "Limitation of Liability", to the maximum extent permitted by applicable law, Enercare's sole liability hereunder and your sole remedy in respect of the limited warranties set out in section 5(a) or 5(b), is limited to the replacement or repair, at Enercare's sole option and discretion and in accordance with the procedures set forth in this Section 5, of the Equipment covered by the limited warranties set out in section 5(a) or 5(b).

6. **Early Termination Fees**

If you terminate this Service Agreement before the end of the Minimum Term, you will be charged an early termination fee equal to 100% of the monthly charges due for the balance of the Minimum Term. If you terminate any of your Additional Services before the end of the Additional Services Minimum Term, you will be charged an additional early termination fee equal to 100% of the monthly charges due in respect of such Additional Services for the balance of the Additional Services Minimum Term.

7. **Broadband and Cellular Connection**

You agree to maintain a broadband connection compatible with the Services, as determined by us, at your Premises at all times during which you have subscribed to the Services. Your failure to maintain such a broadband connection may affect the proper operation of the Services. You acknowledge and agree that the Premises must be located within an area of wireless telemetry coverage sufficient for proper operation of the Services at all times during which you have subscribed to the Services. Enercare is not responsible for any loss or failure of the Services due to your failure to obtain or maintain the necessary broadband connection/wireless telemetry coverage to permit the proper operation of the Services.

8. **Battery Power**

Some of the Equipment is not connected to the electrical system of your Premises and is operated by battery power. This battery-powered Equipment will not operate if, for any reason, the battery is inoperative or does not function. You agree to regularly inspect such Equipment and to replace batteries, as necessary, and where applicable, test such Equipment at least once per month, or more frequently if required, to help maintain continued operability.

9. **Building 36 End User Terms and Conditions**

By accessing, browsing or using the Services or downloading any content from the Services, you acknowledge that you have read, understood and agree to be bound by the terms of the Building 36 End User Terms and Conditions, a copy of which is available in the website portal used to access and use the Services.

#### 10. Termination by Enercare

Each of the following will be events of default (a “**Default**”) by you:

- If any bankruptcy, insolvency or receivership proceedings are commenced with respect to you; and
- If you breach any provision of, or fail to perform any of your obligations under, this Service Agreement, including but not limited to any failure to pay any amount when due.

At any time while there is a Default, we may, on 30 days written notice require that you immediately pay the early termination fees set out in section 6. If we choose not to exercise this option, or if you fail to pay the early termination fees, then we may also exercise one or more of the following rights without further advance notice:

- Terminate this Service Agreement; and
- Pursue any other remedies we may have at law.

Upon termination of this Service Agreement, all amounts owing hereunder, including, for greater certainty, any early termination fees, are due and payable.

#### 11. Indemnity

You agree to defend, indemnify and hold Enercare and the Enercare Parties harmless from any damages, liabilities, claims or demands (including costs and attorneys’ fees) made by any third party due to or arising out of: (i) your use and each Authorized User’s use of the Equipment or Services; (ii) your or your Authorized Users’ violation of the Agreement; or (iii) your or your Authorized Users’ violation of any law or the rights of any third party. Enercare reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Enercare and you agree to cooperate with our defense of such claims. You agree not to settle any such claim without Enercare’s prior written consent. Enercare will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

#### 12. Sale of Premises

You may not transfer, assign or encumber all or part of this Service Agreement. If you are the owner and you sell or otherwise transfer the Premises at any time before the end of the Minimum Term, you are required to terminate this Service Agreement effective as of the date of such sale or transfer and pay to Enercare the early termination fees in accordance with section 6.

#### 13. Invalidity of Provision

If any provision of this Service Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, such provision shall be severed and the remainder of this Service Agreement shall continue to remain in full force and effect subject to such modifications as may be necessary to carry out the provisions and intent of this Service Agreement.

#### 14. Governing Law

This Service Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and federal laws of Canada applicable therein. You hereby irrevocably submit to the non-exclusive jurisdiction of any applicable court of Ontario located in the City of Toronto for the purpose of all legal proceedings arising out of or relating to this Service Agreement.

#### 15. Amendments

This Service Agreement may be amended from time to time by us by notice by bill inserts, by letter or by any other method permitted by law.

#### 16. Assignment

We may transfer, assign, encumber or otherwise dispose of all or any part of our interest in this Service Agreement to another party at any time without notice to you and without your permission. To the extent permitted by law, you will not assert against any transferee any claims, defences, set-offs, deductions or counter-claims which you may now or in the future be entitled to assert against us.

#### 17. Survivability

Any provision of this Service Agreement which, by its nature, would survive termination or expiration of this Service Agreement, will survive any such termination or expiration of this Service Agreement.

#### 18. How To Contact Us:

7400 Birchmount Road  
Markham, Ontario  
L3R 5V4  
Attention: "Smarter Home Operations"  
1-833-99-SMART