

1. Overview

- (a) Enercare provides: (1) a website portal (the “**Site**”); (2) services accessible through the Site (the “**Web App**”); (3) software that may be downloaded to your smartphone or tablet to access services (“**Mobile Apps**”); and (4) subscription services, including smart home connectivity and automation services that may be accessed using the Web App and Mobile Apps (the “**Subscription Services**”). The term “**Services**” means the Site, Web App, Mobile Apps and Subscription Services.
- (b) These Terms of Service (the “**Terms**”) govern your access to and use of the Services and any device or equipment (the “**Equipment**”) used to access or use the Services. Please read these Terms carefully. The term “**you**”, as used in these Terms, means any person or entity who accesses or uses the Services and any person or entity who creates an Account (as defined below), including Owners (as defined below), Authorized Users (as defined below) and the parents and guardians of Authorized Users, as applicable. In these Terms, “**Enercare**”, “**us**”, “**we**” and “**our**” means Enercare Home and Commercial Services Limited Partnership, and its successors and assigns. These Terms will remain in full force and effect so long as you continue to access or use the Services.
- (c) These Terms work together with the following materials to form your complete agreement (the “**Agreement**”) with us and provide you with the important information you need to help you fully understand and use your Services and Equipment: (1) your service agreement with us (the “**Service Agreement**”); (2) your order confirmation(s) with us; (3) the Enercare Privacy Policy (“**Privacy Policy**”) available on Enercare’s website at enercare.ca/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 guidelines, terms, conditions and rules that may apply to a specific Service that you subscribe to or use. The Agreement, with any amendments, is the entire agreement between you and Enercare for the applicable Services and Equipment. If there is any inconsistency between the provisions of any of the items listed above and these Terms, these Terms will prevail.

2. Accounts

- (a) Your Account. To access and use the Services, you must register for a user account (“**Account**”) and provide certain information about yourself as prompted by the applicable registration form. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your access to and use of the Services does not violate any applicable laws. You are entirely responsible for maintaining the confidentiality of your Account login information and for all activities that occur under your Account. You agree to use strong passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your Account, and to maintain your password securely to prevent others from gaining access without your permission. You agree to

immediately notify Enercare of any suspected unauthorized use of your Account or any other breach of security.

- (b) **Owners/Authorized Users.** The individual who is identified as the primary account holder is the “**Owner**” of that Account and the related Services. Individuals who are authorized to access the Services are “**Authorized Users**”. Authorized Users may have the ability to access and use the Services. Authorized Users may also have the ability to view information (including personal information) and content across all of an Owner’s Equipment and Services. The Owner hereby agrees to be fully responsible for all actions taken by Authorized Users relating to the Equipment, Services and Owner’s Account. The Owner of an Account is responsible for: (1) payment of all charges on the Account when due; (2) ensuring that anyone who uses Services under the Account complies with the Agreement; (3) ensuring that others do not gain unauthorized access to the Account and the Services, including by protecting the security of any user names or passwords relating to the Account; and (4) ensuring that any information provided to us is up-to date and accurate and to promptly let us know if it changes.
- (c) **Eligibility.** You may act as an Owner of an Account only if you can form a binding contract with Enercare and only if you are in compliance with these Terms and all applicable laws. Only individuals age 18 and older are permitted to act as Owners of Accounts. If you are an Authorized User and you are under the age of majority in the jurisdiction where you reside, you may only use the Services under the supervision of a parent or legal guardian who agrees to be bound by these Terms.

3. Access to Services

- (a) **Access and Use.** Subject to these Terms, Enercare grants you a non-transferable, non-exclusive right, without the right to sublicense, to access and use the Services by: (i) using the Web Apps in connection with, and solely for the purpose of, controlling and monitoring the Equipment (the “**Permitted Purpose**”); and (ii) installing and using the Mobile Apps solely on your own mobile device and solely for the Permitted Purpose.
- (b) **Automatic Software Updates.** Enercare or an Enercare Party (as defined below) may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Services (“**Updates**”). You consent to these Updates. The Updates may be automatically installed without Enercare providing any additional notice or receiving any additional consent. If you do not want such Updates, your remedy is to terminate your Account and stop using the Services and the Equipment, subject to the applicable termination provisions set forth in the Service Agreement. You acknowledge that you may be required to install Updates to use the Services and the Equipment and you agree to promptly install any Updates that Enercare provides. Your continued access to and use of the Services and the Equipment is your agreement to these Terms.

- (c) **Certain Restrictions.** The rights granted to you in these Terms are subject to the following restrictions: (i) you agree not to license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services; (ii) you agree not to modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services; (iii) you agree not to access the Services in order to build a similar or competitive service; (iv) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means; (v) you agree not to interfere with, disrupt, or attempt to gain unauthorized access to, the servers or networks connected to the Services or violate the regulations, policies, or procedures of such networks; (vi) you agree not to access (or attempt to access) any of the Services by means other than through the interface that is provided by Enercare; and (vii) you agree not to remove, obscure or alter any proprietary rights notices (including copyrights and trademark notices) which may be contained in or displayed in connection with the Services. Any future release, update, or other addition to functionality of the Services shall be subject to these Terms.
- (d) **Open Source.** Certain items of independent, third party code may be included in the Web Apps and/or Mobile Apps that are subject to the GNU General Public License (“**GPL**”) or other open source licenses (“**Open Source Software**”). The Open Source Software is licensed under the terms of the license that accompanies such Open Source Software. Nothing in these Terms limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software. In particular, nothing in these Terms restricts your right to copy, modify, and distribute such Open Source Software that is subject to the terms of the GPL.
- (e) **Privacy.** Please review our Privacy Policy. By using the Services, you consent to the collection and use of your information by Enercare and its subcontractors, suppliers, vendors, licensors, representatives, affiliates or any other third party service providers (each, an “**Enercare Party**”) in accordance with our Privacy Policy: (i) to improve or modify the Services and to analyze how certain features or functionality are performing or are used by consumers; (ii) to allow us to better service you in responding to customer requests; and (iii) for the purposes set forth in the Agreement. Furthermore, you agree that you (and not Enercare) are responsible for ensuring that you comply with any applicable laws when you use the Equipment and Services, including but not limited to: (i) any laws relating to the recording or sharing of video or audio content that includes third parties; or (ii) any laws requiring notice to or consent of third parties with respect to your use of a camera. Enercare cares about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information, Use Data (as defined below), Anonymous Data (as defined below) or Aggregate Data (as defined below) for improper purposes. You acknowledge that you provide your personal information at your own risk.

- (f) Modification. Enercare reserves the right, at any time, to add, delete, change, modify, suspend, discontinue or terminate the Services or any part thereof on commercially reasonable notice to you.

4. Agreed Usage and Limitations of Services

- (a) Intended Use of Services. The Services are intended to be accessed and used for non-time-critical information and control of Equipment and are not intended or certified for emergency response. Enercare makes no warranty or representation that use of the Equipment or Services will affect or increase any level of safety. You acknowledge that the Services, including remote access and mobile notifications, are not intended to be 100% reliable and 100% available. We cannot and do not guarantee that you will receive notifications at any given time or at all. **YOU UNDERSTAND THAT THE EQUIPMENT AND SERVICES ARE NOT A THIRD-PARTY MONITORED EMERGENCY NOTIFICATION SYSTEM, THAT ENERCARE WILL NOT DISPATCH EMERGENCY AUTHORITIES TO YOUR HOME IN THE EVENT OF AN EMERGENCY AND THAT THAT YOU WILL NOT RELY ON THE SERVICES FOR ANY LIFE SAFETY OR CRITICAL PURPOSES.** All life threatening and emergency events should be directed to the appropriate emergency response services.
- (b) Temporary Suspension. The Services may be suspended temporarily without notice for security reasons, system failure, maintenance and repair, or other reasons. You agree that you will not be entitled to any refund or rebate for any temporary suspensions. Enercare does not offer any specific uptime guarantee for the Services.
- (c) System Requirements, Equipment, ISP, and Carrier. You acknowledge that the availability of the Services is dependent on: (i) your premises being located within an area of wireless telemetry coverage sufficient for proper operation of the Services; (ii) a working Wi-Fi network in your home that is positioned to communicate reliably with the Equipment; (iii) an Account; (iv) mobile clients such as a supported phone or tablet or other device capable of accessing the Web App and Mobile App; (v) always-on broadband Internet access in your home with bandwidth sufficient to support the Equipment and Services and equivalent cellular network service for use with your mobile device; (vi) your computer, tablet, mobile device, home wiring, home Wi-Fi network, Bluetooth connection; (vii) your Internet service provider (“**ISP**”); (viii) your mobile device carrier (“**Carrier**”); and (ix) other related equipment or system elements that may be specified by Enercare. It is your responsibility to ensure that you have all required system elements and that they are compatible and properly configured. You acknowledge that the Services may not work as described when the system and compatibility requirements have not been met. You acknowledge that you are responsible for all fees charged by your ISP and Carrier in connection with your access to and use of the Services. You also acknowledge that you are responsible for compliance with all applicable agreements, terms of use/service, and other policies of your ISP and Carrier.

- (d) Energy Savings and other Benefits. Enercare does not guarantee or promise any specific level of energy savings or other monetary benefit from the use of the Equipment or Services or any feature of them. Actual energy savings and monetary benefits vary with factors beyond Enercare's control or knowledge. From time to time, Enercare may use the Services to provide you with information that is unique to you and your energy usage and suggests an opportunity to save money on energy bills if you adopt suggestions or features of the Equipment or Services. We do this to highlight an opportunity based on our analysis and information we have about you and your household. You acknowledge that this information and suggested opportunities are not a guarantee of actual savings, and you agree not to seek monetary or other remedies from Enercare if your savings differ or if there are no savings.
- (e) The Services may provide you with information ("**Equipment Information**") regarding the Equipment in your home and their connection with other products and services (including your HVAC equipment). All Equipment Information is provided "as is" and "as available" and we cannot guarantee that it is correct, timely or up to date.

5. Equipment

- (a) Access to Property by Enercare. You authorize us and the relevant Enercare Parties to enter or have access to your premises as necessary at mutually agreed upon times to install, maintain, inspect, repair, remove, replace, investigate, protect, modify, upgrade or improve the operation of our Services, the Equipment or our facilities or networks.
- (b) Your Responsibilities. You are solely responsible for: (i) any access to the Equipment; (ii) providing any additional connections, as well as inside wiring, that are not provided by us; (iii) reconnecting any of your equipment and facilities as necessary after cancellation of your Services; (iv) maintaining the security and privacy of your premises and your transmissions using the Services, the Equipment or our facilities or networks; (v) protecting against any breaches of security or privacy or other risks involved in installing, using, maintaining or changing the Services or the Equipment; and (vi) ensuring that there are no unauthorized attachments to the Equipment.
- (c) Equipment Replacement. If at any time and for any reason Enercare determines that your Equipment needs to be replaced, you authorize us and the relevant Enercare Parties to remove such Equipment and replace it with similarly functioning Equipment of equal or greater value.

6. Limitations of Enercare Services due to Third Parties.

- (a) Third Party Service Providers Used By Enercare. You acknowledge that Enercare may use one or more Enercare Parties to enable or provide some or all of the Services, including, but not limited to, installation, repair, monitoring, communications, signal transmission services (including cellular transmission, internet and/or VoIP services) or other services. To the extent permitted

by law, the limitations of liability set forth in these Terms shall apply to the work, products or services that an Enercare Party provides, and shall apply to and protect such Enercare Party in the same manner as they apply to and protect Enercare.

- (b) App Stores. You acknowledge and agree that the availability of the Mobile Apps is dependent on the third party websites from which you download the Mobile Apps (each an “**App Store**”). You acknowledge that these Terms are between you and Enercare and not with an App Store. Each App Store may have its own terms and conditions to which you must agree before downloading Mobile Apps from it. You agree to comply, and your license to use the Mobile Apps is conditioned upon your compliance, with such App Store terms and conditions.
- (c) Third Party Website Links and Referrals. The Site may contain links to other web sites operated by third parties (“**Third Party Sites**”) and referrals to third party vendors (“**Referred Vendors**”). Such Third Party Sites and Referred Vendors are not under our control. Enercare provides these links and referrals only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to such Third Party Sites or Referred Vendors. Your use of these Third Party Sites or Referred Vendors is at your own risk.

7. Ownership and Intellectual Property

- (a) Enercare Property. You acknowledge that all intellectual property rights, including without limitation copyrights, patents, trademarks, and trade secrets, in the Equipment and Services are owned by Enercare and/or the Enercare Parties. Your possession, access, and use of the Equipment and Services do not transfer to you or any third party any rights, title, or interest in or to such intellectual property rights. Enercare and/or the Enercare Parties reserve all rights not granted in these Terms. The Services are licensed to you, not sold, under these Terms. You may only copy parts of the Services on to your own computer or other applicable device for your own personal use. You may not use the content of the Services in any other public or commercial way nor may you copy or incorporate any of the Services into any other work, including your own website without the written consent of Enercare. Enercare retains full and complete title to all Content on the Services, including any downloadable software and all data that accompanies it. You must not copy, modify or in any way reproduce or damage the structure or presentation of the Services or any Content therein.
- (b) Content/User Submissions. Certain materials may be displayed on the Services (including, but not limited to text, graphics, articles, photographs, video, images, and illustrations (“**Content**”). The Content may also include comments, suggestions, or ideas about the Equipment or Services, including how to improve the Equipment or Services and other information that you and other users provide us in the course of using the Services (collectively, “**User Submissions**”), which we may use to provide, maintain and improve the Services. You may also post feedback, comments, questions, or other information on the Site. You are solely responsible for all User Submissions that you contribute in any manner to the Services. You hereby grant us with a nonexclusive,

worldwide, royalty-free, perpetual, irrevocable, sublicenseable and transferable right to access, display, or otherwise use your User Submissions (including all related intellectual property rights). Furthermore, you understand that we retain the right to reformat, modify, create derivative works of, excerpt, and translate any User Submissions submitted by you. You represent and warrant that you will not contribute any User Submissions or otherwise use the Services in a manner that: (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any law, statute, ordinance or regulation; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable; (iv) impersonates any person or entity, including without limitation any employee or representative of Enercare; (v) contains a virus, trojan horse, worm, time bomb, or other harmful computer code, file, or program; (vi) jeopardizes the security of your Account or anyone else's Account (such as allowing someone else to log in to the Services as you); (vii) attempts, in any manner, to obtain the password, account, or other security information from any other user; (viii) violates the security of any computer network, or cracks any passwords or security encryption codes; (ix) copies or stores any significant portion of the Content; or (xi) decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services. Enercare reserves the right to remove any User Submissions at any time for any reason.

- (c) **Use Data.** Customer acknowledges and agrees that Enercare and the Enercare Parties may derive or create data and information about your access to and use of the Services ("**Use Data**") and may use and disclose Use Data in order to improve the Services.

- (d) **Anonymous Data.** You hereby grant to Enercare and the Enercare Parties a non-exclusive, fully paid, world-wide and irrevocable license to use data uploaded, inputted or otherwise submitted through the Services ("**Customer Data**") to: (i) provide the Services; (ii) copy, anonymize, aggregate, process and display Customer Data; (iii) derive anonymous statistical and usage data related to the Service ("**Anonymous Data**"); or (iv) compile, combine or incorporate such Anonymous Data with or into other similar data and information available, derived or obtained from other clients, customers, or licensees of Enercare and the Enercare Parties (collectively, Anonymous Data and such compiled, combined or incorporated data and information shall be referred to as "**Aggregate Data**"). Your grant of license to copy, anonymize, aggregate, process, use and display Customer Data and Use Data survives the expiry or termination of the Agreement.

8. No Warranties; Disclaimers

- (a) THE EQUIPMENT AND SERVICES ARE PROVIDED FOR YOUR CONVENIENCE, "AS IS" AND "AS AVAILABLE", AND ENERCARE AND THE ENERCARE PARTIES EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE

WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT.

- (b) ENERCARE DOES NOT WARRANT, ENDORSE, GUARANTEE, ASSUME RESPONSIBILITY FOR OR MAKE RECCOMENDATIONS IN RESPECT OF ANY EQUIPMENT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH OR IN CONNECTION WITH THE EQUIPMENT OR SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE, AND ENERCARE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF SUCH EQUIPMENT OR SERVICES. ENERCARE IS NOT RESPONSIBLE FOR THIRD PARTIES OR THEIR PRODUCTS AND SERVICES, INCLUDING, WITHOUT LIMITATION, THE APP STORES, REFERRED VENDORS, ISPS, AND CARRIERS. YOU HEREBY FULLY DISCHARGE, WAIVE AND RELEASE ENERCARE AND THE ENERCARE PARTIES FROM ANY PAST, PRESENT, AND FUTURE CLAIMS, LIABILITIES, AND DAMAGES, KNOWN OR UNKNOWN, ARISING OUT OF OR RELATING TO YOUR INTERACTIONS WITH SUCH THIRD PARTIES AND THEIR PRODUCTS AND SERVICES.

- (c) YOU MAY RECEIVE ALERTS THROUGH THE SERVICES WITH INFORMATION REGARDING, AMONG OTHER THINGS, THE STATUS OF YOUR HVAC EQUIPMENT OR OTHER HOME SYSTEMS. ENERCARE AND THE ENERCARE PARTIES EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED IN RESPECT OF THE ACCURACY OR SUITABILITY OF SUCH ALERTS. YOU AGREE AND ACKNOWLEDGE THAT ENERCARE IS NOT RESPONSIBLE FOR DAMAGES OR LOSSES DUE TO THE INACCURACY OF AN ALERT PROVIDED THROUGH THE SERVICES, THE FAILURE TO PROVIDE AN ALERT OR YOUR RESPONSE TO OR FAILURE TO RESPOND TO SUCH AN ALERT. ENERCARE DOES NOT GUARANTEE OR WARRANT THAT THE SERVICES AND/OR EQUIPMENT WILL DETECT, AVERT OR PREVENT OCCURRENCES OR THE CONSEQUENCES THEREFROM, WHICH THE SERVICES AND/OR EQUIPMENT ARE DESIGNED TO DETECT, AVERT OR PREVENT.

- (d) ENERCARE MAKES NO REPRESENTATIONS CONCERNING ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES, AND ENERCARE WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES.

- (e) YOU HEREBY FULLY DISCHARGE, WAIVE AND RELEASE ENERCARE AND THE ENERCARE PARTIES FROM ANY PAST, PRESENT, AND FUTURE CLAIMS, LIABILITIES, AND DAMAGES, KNOWN OR UNKNOWN, ARISING OUT OF OR RELATING TO YOUR FAILURE TO COMPLY WITH THE AGREEMENT.

9. Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT ENERCARE IS NOT AN INSURER AND THAT INSURANCE, IF ANY, SHALL BE OBTAINED BY YOU TO COVER PERSONAL INJURY AND PROPERTY LOSS OR DAMAGE AT YOUR PREMISES. ANY AMOUNTS THAT YOU PAY TO ENERCARE UNDER THE SERVICE AGREEMENT

FOR THE SERVICES ARE ONLY BASED UPON THE VALUE OF THE SERVICES AND ARE UNRELATED TO THE VALUE OF YOUR PREMISES OR THE PROPERTY LOCATED AT YOUR PREMISES.

To the maximum extent permitted by applicable law, in addition to the above disclaimers, Enercare will not be liable to you or to any third party for any direct, indirect, special, consequential, incidental, economic or punitive damages (including loss of profit or revenue, financial loss, loss of business opportunities, loss, destruction or alteration of data, files, software, breach of privacy or security, property damage, personal injury, death, or any other foreseeable or unforeseeable loss, however caused) resulting or relating directly or indirectly from or relating to: (i) any malfunction, disruption or unavailability of the Services or Equipment (including, without limitation, the failure, for any reason, of a sensor, alert or alarm to operate or the recipient of any alert or alarm signal to react properly); (ii) delays to installing, maintaining, repairing or improving the Equipment, including, without limitation, acts of God, inclement weather, power outages, labour disputes, riots or civil disputes, war or armed conflict, any law, governmental order, decision or regulation, or order of any court of competent jurisdiction; and/or (iii) any defacement of or damage to your premises resulting from the attachment of any instruments, apparatus, wiring or equipment (including the installation of the Equipment), or our removal thereof; even if we were negligent or were advised of the possibility of such damages.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IF ENERCARE SHOULD BE FOUND LIABLE FOR ANY LOSS, DAMAGE OR INJURY DUE TO A FAILURE OF THE SERVICES AND/OR THE EQUIPMENT IN ANY RESPECT, THEN ITS AGGREGATE LIABILITY SHALL NOT EXCEED THE MONTHLY SERVICE FEES PAID BY THE CUSTOMER IN THE MOST RECENT SIX (6) MONTHS FOR THE SERVICES OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

10. General

(a) Changes to these Terms. Subject to compliance with applicable law, Enercare reserves the right to make changes to these Terms. We'll post notice of modifications to these Terms at enercare.ca/smarterhome and notify you if required to do so under applicable law. You should ensure that you have read and agree with our most recent Terms when you use the Services. Continued access to and use of the Services following notice of such changes shall indicate your acknowledgment of such changes and agreement to be bound by the revised Terms. If you do not agree to the modified Terms, you should discontinue use of the Services.

(b) How to Contact Us.

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