

ENERCARE HOME AND COMMERCIAL SERVICES LIMITED PARTNERSHIP APPLICATION

Terms of Use and End User License Agreement

IMPORTANT: BY ACCESSING OR USING THE APPLICATION, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND THAT YOU UNDERSTAND AND AGREE TO BE LEGALLY BOUND BY ITS TERMS.

1. Agreement

These Terms of Use and End User License Agreement (the “**Agreement**”) represents a binding, contractual agreement between you (“**you**” or “**your**”) and Enercare Home and Commercial Services Limited Partnership, together with its subsidiaries and affiliates (hereinafter referred to as “**us**”, “**we**”, “**our**” or “**Enercare**”) with respect to your use of the Enercare application (the “**Application**”), whether or not you are a registered user of the Application. This Agreement applies to your use of the Application, including all enhancements and modifications to, and versions of, the Application. By clicking the “**Continue**” button, you: (i) agree to be legally bound by all of the terms and conditions of this Agreement; and (ii) consent to the installation of the Application on your mobile or other electronic device. By not accepting the Agreement, you will not be permitted to access or use the Application.

From time to time, we may supplement this Agreement with additional or revised terms and conditions (“**Additional Terms**”), or may modify, eliminate, enhance or revise the functionality available through the Application (“**Modifications**”). You understand and agree that such Additional Terms are hereby incorporated by reference into this Agreement. Your continued use of the Application after the provision of any Modifications or the inclusion of any Additional Terms signifies your acceptance of such Modifications and/or Additional Terms.

2. Application Functionality

The Application is designed to assist you to obtain information about Enercare’s product offers, services and information concerning energy cost savings and conservation measures, and to schedule and manage service appointments (the “**Services**”).

3. Ownership

As between you and Enercare, you acknowledge that Enercare and any applicable third parties hold all right, title, and interest in and to any and all content used in the Application, including, without limitation, all such information in text, graphical, video and audio formats, images, icons, designs, trade-marks, brand names, and software (collectively, the “**Application Content**”). You acknowledge that the Application Content is protected by applicable intellectual property laws. Except as provided for in this Agreement, your use of the Application does not grant or transfer to you any ownership, license or other rights in the Application or the Application Content. Any rights not expressly granted to you in this Agreement are expressly reserved by Enercare. For greater certainty, you agree that you will not take any action that is

inconsistent with Enercare's ownership of the Application and/or Enercare's ownership of, or any third party's ownership of, any Application Content. You are hereby expressly prohibited from removing any proprietary notice of Enercare, or any third party, from any copy of the Application or Application Content.

4. License

Upon your acceptance of the terms and conditions of this Agreement, you will be permitted to install and use one (1) copy of the Application. Subject to the terms and conditions in this Agreement, Enercare hereby grants you a limited, non-exclusive, royalty-free and revocable license for personal use of the Application and its Application Content on a single mobile or other electronic device in executable in object code format only (the "**License**"). For greater certainty, this License only allows you to use the Application for your own personal use. This License does not include any rights not specifically enumerated herein. You agree not to take or permit any action with respect to the Application that is not expressly authorized under this License.

5. Confidentiality

The structure, organization and source code of the Application are the valuable trade secrets and proprietary confidential information of Enercare and its licensors. You agree not to provide or disclose any such confidential information in the Application or derived from it to any third party.

6. Restrictions

You may not:

1. use, copy, modify, download or transfer the Application or any component of the Application (including, without limitation, the Application Content), in whole or in part, except as expressly provided for in this Agreement;
2. (i) reverse engineer, disassemble, decompile, or translate the Application; (ii) attempt to derive the source code of the Application; (iii) create any derivative work from the Application; and/or (iv) authorize or assist any third party to do any of the foregoing;
3. rent, lease, loan, resell for profit, or distribute the Application, or any part thereof;
4. remove or alter any proprietary notice or legend regarding Enercare's, or any third party's, proprietary rights in the Application;
5. use the Application except in accordance with applicable laws and regulations; or
6. use the Application: (i) to defraud any third party; (ii) to distribute obscene or other unlawful materials or information; and/or (iii) to disseminate or encourage conduct that could constitute a criminal offence or give rise to civil liability.

7. Accuracy and Changes

Enercare endeavors to verify that any information provided by Enercare on or through the Application is accurate when accessed through the Application, however Enercare is not responsible for your use and/or reliance on such information.

8. Disclaimer and Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION, APPLICATION CONTENT AND ITS AVAILABILITY TO YOU IS PROVIDED “*AS IS*” WITHOUT ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES WHATSOEVER. THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE APPLICATION AND APPLICATION CONTENT RESIDES WITH YOU. ENERCARE EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT, SYSTEM INTEGRATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND DATA ACCURACY.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ENERCARE MAKES NO REPRESENTATION OR WARRANTY THAT: (I) THE APPLICATION WILL BE COMPATIBLE WITH YOUR MOBILE DEVICE AND SOFTWARE; (II) THE APPLICATION WILL BE AVAILABLE OR WILL FUNCTION WITHOUT INTERRUPTION OR ERROR; (III) THE USE OF THE APPLICATION, INCLUDING, WITHOUT LIMITATION, THE BROWSING AND DOWNLOADING OF ANY INFORMATION, WILL BE FREE OF ANY VIRUSES, TROJAN HORSES, WORMS OR OTHER DESTRUCTIVE, INTRUSIVE OR DISRUPTIVE COMPONENTS; (IV) THE TRANSMISSION OF INFORMATION TO AND FROM THE APPLICATION WILL BE SECURE; (V) APPLICATION, APPLICATION CONTENT, OR THE USE OF THE APPLICATION OR APPLICATION CONTENT WILL NOT INFRINGE THE RIGHTS (INCLUDING, WITHOUT LIMITATION, INTELLECTUAL PROPERTY RIGHTS) OF ANY PERSON; (VI) THE USE OF THE APPLICATION OR APPLICATION CONTENT WILL NOT CAUSE ANY DAMAGE TO YOUR MOBILE DEVICE, SOFTWARE OR ELECTRONIC FILES; OR (VII) THE INFORMATION PRESENTED IS ACCURATE OR COMPLETE.

ENERCARE WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES WHATSOEVER ARISING FROM, CONNECTED WITH, OR RELATING TO THE APPLICATION OR APPLICATION CONTENT. YOU EXPRESSLY ACKNOWLEDGE THAT ENERCARE HAS ENTERED INTO THIS AGREEMENT WITH YOU AND MAKES THE APPLICATION AVAILABLE TO YOU, IN RELIANCE UPON THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND THE DISCLAIMERS SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND ENERCARE. YOU EXPRESSLY AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND THE DISCLAIMERS SET FORTH HEREIN WILL SURVIVE, AND CONTINUE TO APPLY IN THE CASE OF A FUNDAMENTAL BREACH OR BREACHES, THE FAILURE

OF ESSENTIAL PURPOSE OF CONTRACT, THE FAILURE OF ANY EXCLUSIVE REMEDY, OR TERMINATION OF THIS AGREEMENT.

9. **Electronic Transmissions**

The transmission of data or information over the internet or other forms of networks may not be secure, and is subject to possible loss, interception or alteration while in transit. Enercare does not assume any liability for any damage you may experience or costs you may incur as a result of any electronic transmissions over the internet, other forms of networks or otherwise while using the Application. In no event will the information you provide on or through the Application be deemed to be confidential, create any fiduciary obligations to you on our part, or result in any liability to you on our part in the event that such information is inadvertently released by us or accessed by third parties without your consent. We ask that you please not send personal or financial information to us using the Application or unencrypted e-mail messages.

10. **Privacy**

Without limiting the generality of this Agreement, your use of the Application is subject to the terms of our privacy policy located at <https://enercare.ca/privacy-policy> (the “**Privacy Policy**”), which is hereby incorporated into and made part of this Agreement. Please carefully review our Privacy Policy. By using the Application, you hereby agree that you have read, fully understand and agree to be legally bound by our Privacy Policy, including any and all changes made thereto from time to time.

11. **No Duty to Correct Errors**

You acknowledge and agree that Enercare has no obligation under this Agreement to correct any defects or errors in the Application, regardless of whether you inform Enercare of such defects or errors or Enercare otherwise is, or becomes aware of, such defects or errors. To the extent Enercare provides you with any updates or upgrades to the Application, such updates and upgrades shall be deemed to constitute part of the Application and shall be subject to all terms and provisions set forth in this Agreement, including, without limitation, terms and provisions related to licenses, use restrictions, ownership and distribution of the Application.

12. **Trade-Marks and Copyright**

Certain names, graphics, logos, icons, designs, words, titles or phrases contained within the Application and/or Application Content may constitute trade names, registered or unregistered trade-marks or service marks (collectively, “**Trade-marks**”) of Enercare or its affiliates. Trade-marks may be registered in Canada and in other countries, as applicable. All Trade-marks not owned by Enercare are the property of their respective owners, and, where used by Enercare, are used under license or with permission. All Trade-marks are and shall remain the sole and exclusive property of their respective owner(s). Any use of such Trade-marks, except as expressly provided for herein, without the express written consent of the applicable owner is strictly prohibited. Nothing contained herein or on this Application may be construed as granting, by implication, estoppel, or otherwise, any license to use of any the Trade-

mark(s). You agree that you will not take any actions inconsistent with Enercare's ownership of, or any third party's ownership of, the Trade-marks.

TMEnercare, the "e" design, Enercare Home Services, Enercare Commercial Services, "Same Day Service", the "Same Day Service" design and "It's Better Inside" are trademarks of Enercare Inc., used under license.

13. Governing Law and Jurisdiction

This Agreement, your use of the Application, and all related matters shall be governed solely by the laws of the Province of Ontario, Canada and the applicable federal laws of Canada, without regard to the conflicts of law provisions of any jurisdiction. You hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario in the City of Toronto in relation to all disputes arising from or related to this Agreement, your use of the Application and any related matters.

14. Termination

If you breach any provision of this Agreement or our Privacy Policy, you may no longer use the Application. We may, in our sole discretion, change, restrict, suspend or terminate, either temporarily or permanently, the functionality on the Application or any part thereof or any of its features at any time, for any reason, without any notice or liability to you or any other entity. If this Agreement or your permission to use the Application is terminated by us for any reason, the agreement formed by your acceptance of this Agreement will nevertheless continue to apply and be binding upon you in respect of your prior use of the Application and anything relating to or arising from such use. If you are dissatisfied with the Application, then your sole and exclusive remedy is to discontinue using the Application.

15. Export Controls

You acknowledge that the Application, the Application Content and the underlying technology may be subject to applicable export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Application, Application Content and the underlying technology, as well as end-user, end use, and destination restrictions issued by Canadian and other governments. By downloading or using the Application or the Application Content, you agree to the foregoing and you represent, warrant and covenant that you are not located in, under the control of, or a national or a resident of any country identified in any applicable legislation, regulation, deny order or prohibition list issued by any governmental or regulatory body, and that you will otherwise comply with all applicable export control laws.

16. General

If any provision of this Agreement is held invalid or unenforceable by any court having competent jurisdiction, such provision shall be enforced to the maximum extent permitted by law, and the remaining provisions of this Agreement shall continue in full force and effect. No failure to exercise or waiver of any provision of this Agreement shall be deemed a further or

continuing waiver of such provision or any other provision of this Agreement. This Agreement is binding upon you, your heirs, executors, beneficiaries, successors and assigns and you may not assign this Agreement to any other party without our prior written consent, which consent may be withheld in our sole and absolute discretion.

If you have read this Agreement and agree to be legally bound by all of the terms and conditions set forth above, click the “**Continue**” button.

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