

**ENERGENIE, LLC**  
**TERMS OF SERVICE & PRIVACY POLICY**

## **1. Agreement**

Welcome to EnerGenie, LLC's ("EnerGenie," "we," "our" or "us") website and terms of service. This page explains the terms for using our website, member subscription services, shopping software agent, mobile applications, and any other software, services or products we provide (collectively, the "Services") and the terms of membership. By accessing or using the Service, or by clicking a button or checking a box marked "I Agree" or similar language of consent on the website, you are communicating that you have read, understood, and agree to be bound by these Terms of Service ("Terms of Service" or "TOS"), and to the collection and use of your information as set forth in our Privacy Policy and incorporated herein. EnerGenie reserves the right to modify these terms and may provide notice of any changes as described below. These Terms of Service applies to all visitors, users, Members, and others who access or use the Service. You must be 18 years or older to use our Service. If you do not agree to be bound by these Terms of Service and to abide by all applicable laws, you must discontinue use of the Services immediately. As long as you comply with these Terms of Service, EnerGenie grants you a personal, non-exclusive, non-transferable, limited privilege to enter and use this website and the Services.

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY TO ENSURE THAT YOU UNDERSTAND THEM. THESE TERMS OF SERVICE CONTAIN A MANDATORY ARBITRATION AND WAIVER OF CLASS ACTION / JURY TRIAL PROVISION THAT REQUIRES THE USE OF ARBITRATION TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.**

## **2. Our Service**

EnerGenie is a membership service which provides paid subscribers ("Members") access to our technology-based automated energy shopping, purchasing, advice and analytics platform for residential customers. The Service utilizes automated software to search online for energy plans for you based on the information you provide, and to enroll you automatically on a plan with a retail energy provider ("REP").

For commercial/business accounts, EnerGenie will shop for plans with various providers and work with you through the sign-up process. For commercial/business customers, the commission for EnerGenie is included in the energy rate and paid to EnerGenie directly by the REP.

## **3. Retail Energy Providers (REP) and Third Parties**

To shop for and find an energy plan that suits your needs, calculate estimated savings, and to enroll you on a plan, EnerGenie will request inputs from you including your current usage, energy bill information, service address, current energy provider account information, and other information, including personal information to establish a new account. EnerGenie may select a new electricity and/or natural gas provider, or a new plan or contract with your current energy provider based on

your inputs and EnerGenie's estimated savings calculations. The automated and/or human EnerGenie agent will enroll you automatically with an REP using the information you have provided to us.

Enrollments and contracts with energy providers are between the REP and the Member. EnerGenie is not a party to such contracts and shall have no liability or responsibility to any Member or REP, including with respect to any disputes arising out of the contract between a Member and a provider.

#### **4. Permission to Access Retail Energy Provider / Utility Account Information**

In order to shop for and provide provider plan information and ongoing savings reports to a Member, each Member authorizes EnerGenie to access and utilize energy data related to your electricity and energy usage from sources such as your current energy provider or retail electric provider, your utility or Transmission and Distribution Utility (TDU) and/or with the Smart Meter Texas Portal (SMTP), as allowed by applicable rules and law. Subject to SMTP rules, EnerGenie will request your current log-in credentials if available or will set up or work with you to set up an SMTP account and log-in credentials that EnerGenie can access with your authorization. Upon request, EnerGenie will share any and all log-in credentials with you that may have been set up on your behalf. Members also authorize EnerGenie to access your current online retail energy provider account(s) using the log-in credentials you provide us in order to obtain your prior and current energy usage and other energy information available from your retail energy provider account. If you do not have an online energy provider account or have selected a new energy provider and plan identified by EnerGenie, you give EnerGenie permission to establish a new account on your behalf with the energy provider using the information you have provided to us. We will provide you with the log-in credentials we have created for that account. You agree to notify us immediately at [info@myenergenie.com](mailto:info@myenergenie.com) if you change your account log-in information or if there are any other changes to your account information. Additionally, you authorize EnerGenie in a manner consistent with our Privacy Policy to contact your current retail energy provider and receive information about the status of your contract, your energy usage, and your contract term end dates and eligibility to switch to a different energy provider account.

Member understands and agrees that by subscribing to the Services he or she is authorizing deployment of the EnerGenie automated tool to initiate price searches, fetch pricing information, set up account access with energy providers, request and access energy usage and profile information, enroll on or cancel energy provider contracts, as well as authorizing us to perform other activities in connection with providing the Services and to provide related or other services and products as may be offered by EnerGenie from time to time, including authorizing EnerGenie to discontinue service with an REP on Member's behalf.

**BY USING ENERGENIE AS A MEMBER, EACH MEMBER ACKNOWLEDGES AND AGREES THAT HE OR SHE IS AUTHORIZING ENERGENIE TO ENROLL THE MEMBER'S SERVICE LOCATION DIRECTLY WITH RETAIL ENERGY PROVIDERS ON THEIR BEHALF. IN THE EVENT MANUAL INTERVENTION IS NECESSARY BASED ON TECHNICAL MALFUNCTION OR OTHER REASONS TO PROVIDE MEMBER WITH ACCOUNT ENROLLMENT OR MANAGEMENT SERVICES WITH AN ENERGY PROVIDER, MEMBER FURTHER AGREES ENERGENIE AND ITS**

**EMPLOYEES OR REPRESENTATIVES ARE AUTHORIZED TO ACT AS MEMBER'S AGENT FOR SUCH PURPOSES ON MEMBER'S BEHALF. THE AUTHORIZATIONS GRANTED BY MEMBER HEREUNDER MAY BE CANCELLED BY MEMBER AT ANY TIME UPON WRITTEN NOTICE TO ENERGENIE.**

## **5. Contracts with REPs and Other Service Providers**

EnerGenie Members agree to abide by all terms and conditions of account access detailed in each third party's TOS or terms of service that has been set up using the EnerGenie tool, including their REP terms of service, TDU and SMTP. In addition, Members acknowledge and agree to adhere to all agreements and terms of service with energy providers, utilities, or TDUs and other service providers, including payment of invoices for using their products and/or services. Member also agrees to allow EnerGenie to contact REPs or utilities in reference to their account.

## **6. Fees / Purchases / Early Termination**

Members may have a choice of paying a monthly, or single yearly payment for the Service, depending on current offers, which are subject to change by EnerGenie at any time. By signing up as a Member, you represent that you are at least 18 years of age and an authorized user of the credit or debit card you provide. You authorize EnerGenie to charge you the applicable fee on your billing date for your EnerGenie Service via recurring credit or debit card payments, until such time as you or we cancel your Services membership. You are charged in advance for the next month or, if an annual account, next year of service. You can request cancellation of your membership by contacting us at [info@myenergenie.com](mailto:info@myenergenie.com). You agree to advise us of any changes to your card account. Your Member subscription will automatically renew at the end of each subscription term, whether monthly, annual, or otherwise, at the same fee, unless we notify you of a fee change 30 days in advance. EnerGenie reserves the right to increase fees with 30 days' advance notice to you, except that annual fees will remain the same until the annual renewal date unless we notify you of a fee increase 30 days in advance of the annual renewal date. If your payment does not process, we may cancel your Member account and/or assess a late charge of the greater of 1.5% of the past-due amount or the highest rate allowed by law, at our discretion. We may refer your account to a collection agency to collect past-due amounts and any costs we incur to collect such charges.

You understand that in the event of early termination of your membership, you will be charged an early termination fee in proportion to the amount of your membership term still remaining. Early termination fees will vary according to your membership subscription terms (monthly, annual, or otherwise). Applicable early termination fees may be viewed in your account portal or by contacting us at [info@myenergenie.com](mailto:info@myenergenie.com).

EnerGenie reserves the right, in its sole discretion with or without prior notice, to do any one or more of the following: (i) limit the available quantity of or discontinue the Service or any product or service; (ii) impose conditions on the honoring of any coupon, coupon code, promotional code, or other similar promotion; (iii) bar any user from making or completing any or all transaction(s); and, (iv) refuse to provide any user with any product or service. You agree to pay all charges that may be incurred by you or on your behalf at the price(s) in effect when such charges are incurred. In addition, you remain responsible for any taxes that may be applicable to your transactions. You

are solely responsible for any and all transactions utilizing your financial information including, but not limited to, any and all charges. You acknowledge and agree that in the event a third-party payment processor experiences a data breach that affects your financials, EnerGenie will in no way be responsible or liable to you for any such breach.

## **7. Your Provision of Personal Information to Us**

When you provide information about yourself to us, you agree to: (a) provide accurate, current, and complete information about yourself; and (b) maintain and promptly update such information to keep it accurate, current, and complete. If you provide any such information that is untrue, inaccurate, or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, or incomplete, we have the right to suspend or terminate any account you establish in connection with your use of the Services and refuse any and all current or future use of the Services or any portion thereof. Your information will be handled by us in accordance with our Privacy Policy.

## **8. Termination**

EnerGenie reserves the right, to the maximum extent allowed by law, in our sole discretion, to cancel your Member account for any reason or no reason, including without limitation for violation of this TOS.

## **9. Licenses and Certification**

EnerGenie is licensed or certified to provide energy shopping and advisory services in those states that require it.

## **10. Modification of Terms**

EnerGenie may modify these Terms of Service, in whole or in part, from time to time in its sole discretion, effective immediately upon posting modified Terms of Service to the Services and, if you possess an account, by directly communicating them to you when you log in to the Services; provided, however, that: (i) any modification to the Dispute Resolution section shall not apply to any disputes initiated prior to the applicable modification; and (ii) any modification to the Fees section shall not apply to any charges incurred prior to the applicable modification. By not terminating your account within seven days after receiving a notice of modifications to this TOS as described above or by continuing to use or access the Services after modified TOS are posted to our website, you agree to comply with, and be bound by, such modifications. Unless explicitly stated otherwise, any future offer(s) made available to you on the Services that augment(s) or otherwise enhance(s) the current features of the Services shall be subject to this TOS.

## **11. Indemnity**

You agree to defend, indemnify and hold harmless EnerGenie and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities,

costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Services, including any data or content transmitted or received by you; (ii) your violation of any term of this TOS, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) any content of any kind that is submitted via your account including without limitation misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Services with your unique username, password or other appropriate security code.

## **12. Governing Law**

Access to this website is governed by all applicable United States federal, state and local laws. You are responsible for compliance with the laws of your jurisdiction and other applicable law. The laws of the State of Texas shall govern any dispute arising out of the use of this website or these Terms of Service. You also agree to submit to the exclusive jurisdiction and venue of Harris County, Texas. In the event of any dispute with EnerGenie arising out of or related to these Terms of Service or your use of the Services, you agree to submit such dispute to binding arbitration under the procedure provided herein.

## **13. Disclaimer of Warranties; Limitation of Liability**

**THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE. TO THE MAXIMUM EXTENT ALLOWABLE BY LAW, ENERGENIE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. WE AND OUR AFFILIATES DO NOT WARRANT THAT THE MATERIALS, INFORMATION, SOFTWARE, PRODUCTS, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE SERVICES ARE ACCURATE, RELIABLE, OR CORRECT; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. BECAUSE SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, THESE EXCLUSIONS MAY NOT APPLY TO YOU.**

The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action. EnerGenie reserves the right to do any of the following, at any time, without notice: (i) to modify, suspend or terminate operation of or access to the Services, or any portion of the Services, for any reason; (ii) to modify or change the Services, or any portion of the Services, and any applicable policies or terms; and (iii) to interrupt the operation of the Services, or any portion of the Services, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

**UNDER NO CIRCUMSTANCES SHALL WE OR OUR AFFILIATES BE LIABLE FOR DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF, OR INABILITY TO USE, THE WEBSITE. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL THEORY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES TO THE EXTENT INDICATED ABOVE, OUR LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**

#### **14. Jury Trial Waiver**

**TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LAWSUIT OR LITIGATION RELATING TO, OR ARISING FROM, THE USE OF THE SERVICES, OR IN CONNECTION WITH THE SERVICES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THESE TERMS OF SERVICE.**

#### **15. Dispute Resolution — Arbitration; Class Action Waiver**

**THE PARTIES HERETO HEREBY AGREE TO RESOLVE ANY DISPUTE, CLAIM, CONTROVERSY, LAWSUIT OR LITIGATION RELATING TO, OR ARISING FROM, THE USE OF THE SERVICES, OR IN CONNECTION WITH THE SERVICES, THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE PROCEDURAL RULES FOR COMMERCIAL DISPUTES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”). THE SITE OF SUCH ARBITRATION SHALL BE HOUSTON, TEXAS. THE NUMBER OF ARBITRATORS SHALL BE THREE (3). EACH PARTY SHALL APPOINT ONE ARBITRATOR AND THE TWO ARBITRATORS APPOINTED BY THE PARTIES SHALL APPOINT THE THIRD ONE. IF THE ARBITRATORS CANNOT AGREE ON WHICH ARBITRATOR TO APPOINT, THEN THE THIRD ONE SHALL BE APPOINTED BY AAA. THE ARBITRATORS SHALL APPLY TEXAS LAW. THE ARBITRATION OF DISPUTES DESCRIBED IN THIS PARAGRAPH SHALL BE IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR(S) MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS OR PARTIES WHO MAY BE SIMILARLY SITUATED. CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR CLASS ARBITRATION.**

#### **16. General Terms**

These Terms of Service constitute the complete and exclusive agreement between the parties, and supersede any and all other agreements between the parties, oral or written, regarding the subject matter of this TOS. If any provision of this TOS is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable, which shall not affect the enforceability of the TOS's remaining provisions. You may not assign or otherwise transfer this TOS or any of your rights or obligations hereunder without prior written consent from EnerGenie. EnerGenie may, without your consent or notice, transfer, sell, pledge, encumber or assign this TOS and any rights hereunder. You acknowledge that EnerGenie assumes no responsibility under this TOS or otherwise for the provision of energy or energy services or for the performance of the terms of any contract entered into between you and any licensed electricity or natural gas provider.

## **17. Notices**

Unless otherwise required by law, Member agrees that EnerGenie may transmit to you all notices required in this TOS in writing or via email to the address you provide to us. It is your sole responsibility to notify EnerGenie and provide updated address information whenever your contact information has changed.

## **18. Member Communications**

Subscribing Members acknowledge and consent to receive communications from EnerGenie and on its behalf for all non-marketing purposes, including but not limited to account updates. Such communications may be made by telephone, text message, e-mail, or any other platform.

## **19. Copyright/Trademark/Patent Notice**

All contents are © 2021 EnerGenie, LLC. All rights reserved. EnerGenie, MyEnerGenie.com, and all content and other materials, including, without limitation, all logos, designs, text, graphics, pictures, trade dress, information, data, software, sound files, other files and selections and arrangement thereof are the property of EnerGenie, LLC, and may be either registered trademarks or trademarks of EnerGenie, LLC. Other logos and product and company names mentioned herein may be in the trademarks of their respective owners. One or more patents or patents pending owned by EnerGenie, LLC may apply to this website and to the features and services accessible via the website.

*Revised: 09/20/2021*

## **EnerGenie Privacy Policy**

Thank you for visiting EnerGenie / MyEnerGenie.com. To help you understand how we handle your information, we provide this notice explaining our information practices and the choices you can make about the way your information is collected and used by us on this website and through our Services. By using the website and the Services, you consent to the processing of your information as set forth in this Privacy Policy, now and as amended by us.

### **Information You Provide**

EnerGenie collects information through voluntary submissions: through our website, you can request product and Services information and enroll for a Member Services subscription. In addition, we collect your personal information required to enroll you with an energy provider. The types of personally identifiable information that we may collect for such purposes include but are not limited to: (a) your name, contact information, username, password, and other registration information; (b) transaction-related and financial information, such as when you make purchases or respond to any offers; (c) information you provide about your current energy services or about your energy usage; (d) REP/utility account number; (e) date of birth, social security number, and driver license number in order to enroll you with a third party energy provider; and, (f) information you provide us when you contact us.

### **Information Automatically Collected From You**

We and our service providers may automatically collect certain technical information from your computer or mobile device over time and across different websites when you use the Services, such as your Internet Protocol address, your general geographic location, your browser type, your operating system, the pages you view on the Services, the pages you view immediately before and after you access the Services, and the search terms you enter on the Services. This information allows us to recognize you and personalize your experience if you return to the Services, and to improve the Services and the services we provide. We and our service providers may collect this information using “cookies,” which are small text files that the Services save on your computer using your web browser and access when you return, or similar technologies.

We may collect your utility account information that we obtain to analyze your energy use, rate structures, and other characteristics, either when you provide that information to us, or automatically.

### **How We Use Your Information**

We may use the information we collect for a number of purposes, including, but not limited to:

- Fulfill your requests for products and or services, to respond to inquiries about offerings and to offer other products, programs or services that may be of interest
- Provide you with information about the Services or required notices
- Enhance your experience on our website

- Send electronic newsletters and blogs
- Enable you to participate in polls and surveys
- Allow us to improve the Services and the services we provide, such as by better tailoring our content to our users' needs and preferences
- Generate and analyze statistics about your use of the Services
- Detect, prevent, and respond to fraud, intellectual property infringement, violations of our Terms of Service, violations of law, or other misuse of the Services

## **Under What Circumstances Do We Disclose This Information?**

We may disclose the information we collect from you through the Services:

- To third parties that provide services to us in connection with our business operations and that have agreed to keep the information confidential, including, but not limited to, third parties that provide order and payment processing services; and deliver marketing communications, promotional materials, or advertisements that may be of interest to you
- To electricity and natural gas providers, utilities, and other companies to identify energy usage and/or cost saving opportunities
- To business partners that may deliver marketing communications, promotional materials, or advertisements that may be of interest to you
- As required by law, such as to comply with a subpoena or other legal process, or to comply with government reporting obligations
- When we believe in good faith that disclosure is necessary (a) to protect our rights, the integrity of the Services, or your safety or the safety of others, or (b) to detect, prevent, or respond to fraud, intellectual property infringement, violations of our Terms of Service, violations of law, or other misuse of the Services
- To service providers, advisors, potential transactional partners, or other third parties in connection with the consideration, negotiation, or completion of a corporate transaction in which we are acquired by or merged with another company or we sell, liquidate, or transfer all or a portion of our assets
- In addition, we may share de-identified reports on user demographics and traffic patterns, as well as anonymized information, with third parties.

## **Information Security**

We utilize administrative, technical, and physical safeguards designed to protect the information collected by the Services. However, no information system can be 100% secure, so we cannot guarantee the absolute security of your information. Moreover, we are not responsible for the security of information you transmit to the Services over networks that we do not control, including the Internet and wireless networks. EnerGenie is not responsible for the functionality or security measures of any third-party product or service you use or access, including energy providers, utilities, and SMTP.

## **Privacy Options / Opt Out Options**

We give you choices about how some of your information is handled. You may:

- Opt not to register to receive our e-newsletter(s)/blog(s);
- Opt not to participate in certain interactive areas; and,
- Reject the use of cookies, if your browser supports it, however some functions may not work as intended when cookies are disabled.

We do not currently respond to web browser “do not track” signals or other mechanisms that provide a method to opt out of the collection of information across the networks of websites and online services in which we participate. If we do so in the future, we will describe how we do so in this Privacy Policy. Visit the following website, [www.allaboutdnt.com](http://www.allaboutdnt.com), for more information on this developing area.

## **Consent**

By using this website, you consent to the collection and use of this information by EnerGenie. If we decide to change our privacy policy, we will post those changes on this page so that you are always aware of what information we collect, how we use it, and under what circumstances we disclose it. If we make any revisions that materially change the ways in which we use or share the information previously collected from you through the Services, we will give you the opportunity to consent to such changes before applying them to that information.

## **Children’s Privacy**

EnerGenie does not knowingly collect or solicit any information from anyone under the age of 13 or knowingly allow such persons to register an account. The Services and its content are not directed at children under the age of 13. You must be 18 years of age or over to use the Services.

## **Links to Other Websites and Services**

The Services may contain third-party links. You acknowledge and agree that we are not responsible for the collection and use of your information by third parties that are not under our control. We are not responsible for the practices employed by websites or services linked to or from the Services, including the information or content contained at such sites or services. Your browsing and interaction on any third-party website or services, including those that have a link to or advertisement on our Services, are subject to that third party’s rules and policies. In addition, you agree that we are not responsible for and we do not have any control over any third parties that you authorize to access your information.

## **How to Contact Us**

If you have any questions or concerns about EnerGenie’s Privacy Policy or its implementation, please contact us via email at [info@myenergenie.com](mailto:info@myenergenie.com) or by clicking on the Contact Us page on our website. You can also mail us at: **EnerGenie, LLC, 2900 Wilcrest Dr., Suite 416, Houston, TX 77042.**

*Revised: **10/06/2021***