

## OVERVIEW OF OUR SERVICE AND TERMS

### Introduction

Thank you for visiting Energy Promo Codes, a website owned and operated by Electricity Club. By using the EnergyPromoCodes.com website domain or any other website domain owned by Electricity Club ("Site" and collectively, the "Sites"), you acknowledge that you have read, understood and agreed to our [Terms of Service](#), which are detailed below this overview, and our [Privacy Policy](#), which you can access by clicking here and in the footer of the Site.

### Our Service

We are a digital marketer of electricity and natural gas, and an independent agent for retail electricity providers ("Providers"); we are not an energy provider. Energy Promo Codes provides you with electricity and natural gas offers from established Providers. In some versions of the Site on certain landing pages, you may also be provided with offers and information from non-energy retail store merchants ("Merchants"), and offers and information from affiliate organizations ("Organizations") with whom you may have a relationship (such as an employer) or referred you to the Site.

### Your Information

When you input information into the Site or a Provider's site, you agree to provide true and complete information. Information you enter in relation to a Provider's energy plan enrollment is necessary to complete your enrollment into a selected energy plan. Information submitted by you in form fill requests to Merchants on the Site in relation to their merchandise and service offers, will be sent to the Merchants and sometimes to other entities related to the offer. In the event we need to resolve an issue in relation to your experience on the Site, we may share information you submitted with any entities related to an offer that concerns you. We do not sell to or share your information with unapproved third parties who are unrelated to the offers on the Site. Be sure to read our [Privacy Policy](#) for details on our use of your information.

### What you Acknowledge by Using the Site

As savings are based in part on homeowners' specific circumstances and other variables outside the control of Electricity Club, its subsidiaries, divisions, affiliates, owners, employees and contractors (collectively, ECLUB), you hereby acknowledge by use of the Site that ECLUB and the Providers do not guarantee that energy savings will result as a use of its service or any service or product procured through this Site or associated websites. ECLUB, as operator of this Site, displays information provided by participating Providers, Merchants, and Organizations, and provides a platform for you to conveniently enroll in energy plans, make purchases of retail merchandise and services, and request information. ECLUB does not guarantee that participating Providers, Merchants and Organizations will

service you, and does not make any guarantees in relation to their pricing, products, service, and availability. You understand and agree that ECLUB's services are provided "AS IS" and we assume no responsibility for any errors or failures on the Energy Promo Codes site or any of its other Sites.

### **Your Business with Providers, Merchants and Organizations**

Your business transactions, dealings and communications with any Providers, Merchants or Organizations that are displayed on the Site, and your participation in any offers from any Providers, Merchants or Organizations, including any payments or delivery of any goods and services, pricing, terms, conditions, warranties or representations, are solely between you and the Provider, Merchant or Organization. You understand and agree that ECLUB and the Site shall not be responsible or liable for any loss or damage of any kind resulting from any business transactions, dealings and communications you have with Providers, Merchants and Organizations, or as a result of their participation or display on the Site.

### **Credit Checks**

Providers, Merchants and Organizations may perform credit checks with credit reporting bureaus or obtain consumer reports through alternative providers. Any terms under which you and the Providers, Merchants or Organizations may engage to execute a credit check, are solely between you and them.

### **Experiencing a Problem?**

If you are experiencing a problem with our Site, please email us at [Help@ElectricityClub.com](mailto:Help@ElectricityClub.com) . Depending on the issue, we will plan to circle back within 24 hours.

### **Miscellaneous**

Participating energy providers may not offer all of their energy plans on our website, and energy plans may not be available in all states. This service is void where prohibited.

Thank you for visiting our website! [Please see our detailed Terms of Service \(below\) and Privacy Policy link in the footer of the Site for more information.](#)

Happy Savings,

The Electricity Club Team

## Terms of Service

**Last Updated: May 22, 2018**

Electricity Club ("EClub", "we," "us" or "our", "Company"), a registered dba of Papillon Productions, LLC, a Texas corporation, operates websites, including this website domain at EnergyPromoCodes.com ("Site" and collectively, the "Sites") and its associated brand names and programs. By using or accessing this Site, a mobile or tablet application of this Site, or any of the Site's Content (as defined below), you acknowledge that you have read, understand and agree to and are subject to these terms of service and ECLUB'S privacy policy (the "Terms"). If you do not fully agree to these Terms, please note that you may not access or otherwise use the Site.

The Terms constitute an agreement between you and EClub, which is the owner of the Site. You represent and warrant that you have authorization to enter into this agreement and that your use of the Site, including provision or use of any Content (defined below), does not violate any applicable law. If you are using the Site on behalf of and/or representing an employer or other entity, you represent and warrant that you have the authority to bind such entity to the Terms.

You must be a resident of the United States (including its territorial possessions) and at least eighteen (18) years of age to access and use the Site.

THESE TERMS CONTAIN AN AGREEMENT TO ARBITRATE ALL CLAIMS, A WAIVER OF YOUR ABILITY TO BRING OR PARTICIPATE IN ANY CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION AND ALSO CONTAINS DISCLAIMERS OF WARRANTIES AND LIABILITY (please see relevant sections below). These provisions form an essential basis of our bargain. Please note that if you do not agree to these Terms, you are not authorized to access or use the Site or the services offered on the Site, and you should stop using and exit the Site.

**1. Our Services.** The Company is not a generator, transmitter or distributor of energy. The company is also not a retail energy supplier ("Supplier" or "Provider") of electricity or natural gas (collectively, "Energy"), nor is Company a merchant ("Merchant") of various types of other energy-related and non-energy related merchandise and services that may be offered on the Site. The Company is an independent agent for retail Providers, and a marketer of Energy, and operates this Site as a digital platform to display Energy offers and other offers of Providers to consumer prospects ("Prospects"), as well as merchandise and service offers from an assortment of non-Provider Merchants, and offers from organizations ("Organization") with whom you may have a direct or indirect relationship or may have referred you to the Site. The Company is paid a performance fee from Providers for customer enrollments in offered Energy plans. The Company is also compensated for displaying Merchant merchandise or service offers on the Site. We do not create the pricing for any products or services offered by Providers on the Site, and we are not in any way responsible for the delivery of any goods or services purchased on the Site or in connection with the Site. Because the Company simply provides a lead generation platform to assist Prospects in conveniently gaining special deals and performing enrollments, and in performing form fill requests to gain information, the Company cannot and does not make any guarantees whatsoever regarding the products and services offered on the Site. The Providers and Merchants on the Site are solely responsible for the quality and safety of their products and services offered for sale, the truth and accuracy of their representations regarding such products and services, and their ability to deliver such products and services under the terms they advertise. The Company is an independent contractor for all purposes. We are not responsible in any way for the conduct of any Prospect, Provider or Merchant. We do not guarantee that any of the Merchants or Organizations to whom we forward your or any other Prospect's information in our form fills on the Site will contact you, or agree to provide you with merchandise, services, financing or requested information.

Your location, building square footage, insulation, weather conditions and other factors may determine the exact amount of energy usage you consume in your residence or business, and thus it is not possible to predict the exact amount of savings you will gain in the future based on any energy rate or plan offered on the Site. The Site provides you with some tools to estimate your savings based on assumed monthly average usage

levels of 500 kWh, 1000 kWh and 2000 kWh. These same assumed usage levels are found in the State of Texas-mandated Electricity Fact Label for electricity plans. Because usage levels may be different for your home, the Site provides you with an additional tool, a savings calculator, to assist you in estimating usage based on historic usage. However, neither the assumed usage method or the historic usage method can predict future usage, and by using the Site you acknowledge and agree that any savings numbers displayed on the Site or otherwise provided in connection with the Site may be different from your actual savings, and in fact there may be no savings. We do not take any responsibility for whether or not you save money, or whether or not you select an Energy plan that is suitable for your individual situation.

The Company does not make any decisions in connection with delivery or management of any product or service on the Site. Any compensation the Company receives from Providers or Merchants is payment for use of Company's Site as a platform to display and to bring attention to offers. Your use of the Site constitutes your agreement with this compensation arrangement.

The Site and the products and services provided or advertised on and through the Site may not be available in all states, and the availability of such services and the products offered on and through the Site may change from time to time without notice. Providers and Merchants may change, discontinue, suspend or terminate their offerings on the Site at any time, without prior notice.

Your input of data into the Site does not guarantee acceptance into any particular program or specific terms or conditions, as approval standards are established and maintained solely by individual Providers, Merchants and Organizations. In the case of Providers, as you complete the Site's process to enroll in an Energy plan, the Provider will perform a credit check based on the data you input, and you hereby authorize the Provider to conduct a credit check on you. Typically, this credit check shall be used to determine if a deposit is required before starting Energy service. Merchants and Organizations may also perform a credit check based on the data you submit to them in relation to goods or services you wish to purchase, and you hereby authorize Merchants and Organizations to perform a credit check on you.

Company does not guarantee that the terms or Energy rates offered and made available by Providers are the best terms or lowest rates available in the market. Unless expressly stated in writing, nothing contained on the Site shall constitute an offer or promise for a commitment or guaranteed agreement. Providers may not offer all products featured on the Site. Providers, Merchants and Organizations may obtain, verify and record information that identifies each person who applied for or obtained products or services from them.

By clicking on any submit button as an indication of an acceptance or agreement to terms, a continuance of processing or additional information or any other submission (collectively, "Submission"), you understand that you are agreeing to the stated terms and conditions of that Submission. By including your telephone number or email address in any submission, you are extending your express written consent to the Company and to each and every Provider, Merchant and Organization and agreeing that you have elected to provide such information so they may (i) contact you by telephone at the numbers you have provided so they may provide information and assist you (and you hereby consent to any such calls or texts even if your phone number is on any corporate, state or national Do Not Call list or registry), and/or (ii) contact you by email at any email address you provided. For SMS and MMS text messaging, message and data rates imposed by your mobile data provider may apply. You represent that all of the information you have provided in your submission is true and complete.

By submitting information in a form fill request or similar form on our Site, you authorize us to provide such information to Providers, Merchants and Organizations in order to provide you with information related to their products and services, and help you complete your request. Additionally, where applicable, you authorize the Providers and Merchants to verify the accuracy and authenticity of all information supplied by you, both internally and with the assistance of unaffiliated third parties or credit bureaus.

**2. Personal Use.** We do not charge users to access the public portions of our Site. Accordingly, we grant each user a limited, revocable, non-exclusive license to access the Site in order to, as applicable, view information, enroll in Energy plans, and make legitimate inquiries through form fill requests, all in accordance with these Terms. We further grant each contracted Merchant a limited, revocable, non-exclusive license to access a specific password-protected portion of the Site specifically related to their offers, if any, so they may update data in connection with Merchant offers in accordance with these Terms. Any other use of the Site or the Service is expressly prohibited. This limited license does not include any right of collection, aggregation,

copying, duplication, display or modification of the Site nor any right of use of data mining, robots, spiders or similar data gathering and extraction tools without our prior written permission.

**3. Proprietary Rights and Downloading of Information from the Site.** The Site is protected by copyright as a collective work and/or compilation, pursuant to U.S. copyright laws, international conventions, and other copyright laws. The text, files, logos, graphics, images, photos, maps and other materials on the Site (collectively, the "Content") are only for each user's personal use in accordance with the limited license grant contained herein or also pursuant to any separate written agreement. All Content on the Site, and the Site itself, is protected by copyright and database rights, and you will abide by any and all additional copyright (or other proprietary) notices, information, or restrictions contained in or relating to any Content on the Site. Copying or storing of any Content other than for your personal, noncommercial use is expressly prohibited without the prior written permission from us or the applicable copyright holder. All trade and service marks and logos used on the Sites (including, without limitation, the Site's domain name) are the exclusive property of Company or its licensors, Providers, Merchants and Organizations (as applicable), and you may not copy or use them in any manner, and all goodwill arising from the usage thereof shall inure to our (or our licensors', Providers', Merchants' or Organizations as applicable) sole benefit.

**4. Unauthorized Use.** Unless otherwise provided within these Terms, or unless otherwise applicable law requires us to allow you to do so, you may not do any of the following without our prior written consent:

- Copy, reproduce, upload, post, display, republish, distribute, or transmit any part of the Content in any form whatsoever;
- Reproduce any portion of the Site on your website or otherwise, using any device including, but not limited to, use of a frame or border environment or other framing technique, to enclose any portion or aspect of the Site, or mirror or replicate any portion of the Site, its format or concept;
- Modify, translate into any language or computer language, or create derivative works from, any Content or any part of this Site or its format;
- Reverse engineer any part of this Site;
- Sell, offer for sale, transfer, or license any portion of the Site or its services in any form to any third parties;
- Use any robot, spider, other automatic device, or manual process to monitor, copy, or keep a database copy of the Content or any portion of the Site or its services;
- Use the Site other than to learn about consumer offers, enroll in Energy plans, purchase merchandise or services, and to make legitimate inquiries via form fill requests;
- Use the Site to create any false or fraudulent account or inquiry or engage in any fraudulent action;
- Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, indecent, inflammatory, sexually explicit, pornographic or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law or for any other purpose that is unlawful or prohibited by these Terms;
- Post or transmit any information that constitutes or contains false or misleading indications of origin or statements of fact;
- Use or access the Site in any way that, in our sole discretion, adversely affects the performance or function of the Site or any other computer systems or networks used by us or the Site, or infringes on our copyright or any copyright of our Providers, Merchants or Organizations;
- Violate, plagiarize or infringe the rights of third parties including, without limitation, copyright, trademark or patent rights, rights of publicity or privacy or any other proprietary rights;
- Upload or transmit to the Site or use in connection with the Site any device, software or routine that contains viruses, Trojan horses, worms, time bombs, or other computer programming routines that may damage, interfere or attempt to interfere with, or in any way disrupt or intercept the normal operation of the Site, or appropriate the Site or any system, or take any action that imposes an unreasonable load on our computer equipment, systems or networks; or
- Disguise the origin of any information or inquiry transmitted through the Site.

If we believe that you are engaging in any activity through or in connection with the Site that appears to be in violation of the above, or in violation of any other provision of these Terms or a violation of applicable law or

regulations, we may, without limiting our other rights and remedies, immediately terminate any further use of the Site by you without notice.

**5. Changes to Site.** We may change, remove, suspend or discontinue any aspect of the Site at any time, including the availability of any Site features, database, or Content, with or without notice. We may also impose limits on certain features or services or restrict your access to parts or all of the Site without notice to you or liability to us.

**6. Your Email Address and Our Privacy Policy.** When you use the Site to send an inquiry, or when you make or attempt to make an enrollment in an Energy plan or make any type of purchase, you agree to allow the Site and EClub to add your email address to our respective database of users. If we send you a marketing email, you may opt not to receive such marketing emails from us at any time. Please review our Privacy Policy. Your use of the Site signifies your acknowledgement of and agreement with our Privacy Policy which is expressly incorporated into these Terms.

**7. Data Transmittal.** Each user acknowledges and agrees that, regardless of such user's physical location, we may store and process any data transmitted to the Site from such user at locations both within and outside of the United States. By using the Site, you consent to the transfer of your information to the United States and agree that any transactions you conduct through the Site will be deemed to have occurred in the United States.

**8. Identity Verification.** User verification on the Internet is difficult, and we cannot and do not confirm each user's purported identity. We encourage you to use appropriate caution with anyone with whom you may be doing business via the Site or the Internet, generally. When you give someone your online ID and online password, you are authorizing that person to access and use your account, and you are responsible for any and all transactions that person performs while using your account, even those transactions that are fraudulent or that you did not intend or want performed. EACH USER ACKNOWLEDGES AND AGREES THAT: (i) NEITHER ECLUB NOR ANY OF ITS PROVIDERS, MERCHANTS AND ORGANIZATIONS WILL HAVE ANY LIABILITY TO ANY USER FOR ANY UNAUTHORIZED TRANSACTION MADE ON THE SITE; AND (ii) THE UNAUTHORIZED USE OF YOUR PERSONAL INFORMATION COULD CAUSE YOU TO INCUR LIABILITY. Further, we may suspend or cancel your access to the Site at any time with or without notice if we suspect that your access is being used in an unauthorized or fraudulent manner.

**9. Limitation of Liability.** IN NO EVENT WILL ECLUB, OUR SITES, AFFILIATES, OFFICERS, MEMBERS, MANAGERS, DIRECTORS, AGENTS AND/OR EMPLOYEES (COLLECTIVELY, "ECLUB") BE LIABLE FOR ANY COST OR DIRECT OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM OUR SITES, SERVICE, THESE TERMS, YOUR USE OF THE SITE OR THE SERVICE, AND/OR ANY TRANSACTION BETWEEN PROVIDERS, MERCHANTS AND PROSPECTS, OR BETWEEN SITE USERS, GENERALLY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (i) BREACH OF CONTRACT, (ii) BREACH OF WARRANTY, (iii) STRICT LIABILITY, (iv) TORT, (v) NEGLIGENCE, OR (vi) ANY OTHER CAUSE OF ACTION, TO THE MAXIMUM EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW. IF YOU ARE DISSATISFIED WITH THE SITE OR THE SERVICE, IF YOU DO NOT AGREE WITH ANY PART OF THESE TERMS, OR IF YOU HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST ECLUB, OR A PROVIDER, MERCHANT OR ORGANIZATION ON THE SITE WITH RESPECT TO THESE TERMS OR THE SITE ITSELF, THEN YOUR SOLE AND EXCLUSIVE REMEDY AGAINST US IS TO DISCONTINUE USING THE SITE AND THE SERVICE. IN ALL EVENTS, OUR

LIABILITY, AND THE LIABILITY OF ANY MEMBER OF THE ECLUB, TO YOU OR TO ANY THIRD PARTY IN ANY CIRCUMSTANCE ARISING OUT OF OR IN CONNECTION WITH THE SITE OR THE SERVICE, IN THE AGGREGATE FOR ANY AND ALL CLAIMS, IS LIMITED TO \$100.00.

**10. Disclaimer.** THE SITES AND THE SERVICE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, SERVICES, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE SITES OR THE SERVICE, ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS, OR EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHATSOEVER FOR THE CONTENT ON THE SITE OR THE SERVICES, MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SITES OR THE SERVICE, FOR ANY PRODUCTS OR SERVICES OR LINKS TO THIRD PARTIES, OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SITES OR ANY LINKED SITE. FURTHER, WE EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLETENESS AND ACCURACY. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITES OR ANY SERVICES, MATERIALS OR CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITES OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

**11. Release.** IN THE EVENT THAT YOU HAVE A DISPUTE WITH ONE OR MORE OTHER USERS OF THE SITE (INCLUDING, WITHOUT LIMITATION, ANY DISPUTE WITH ANY PROVIDER, MERCHANT OR ORGANIZATION REGARDING ANY TRANSACTION), YOU HEREBY AGREE TO RELEASE, REMISE AND FOREVER DISCHARGE THE SITE AND EACH MEMBER OF ECLUB, EACH OF THEIR RESPECTIVE AGENTS, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, SUCCESSORS AND ALL OTHER RELATED PERSONS OR ENTITIES FROM ANY AND ALL MANNER OF RIGHTS, CLAIMS, COMPLAINTS, SUITS, DEMANDS, CAUSES OF ACTION, PROCEEDINGS, LIABILITIES, OBLIGATIONS, LEGAL FEES, COSTS, AND DISBURSEMENTS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, WHICH NOW OR HEREAFTER ARISE FROM, RELATE TO, OR ARE CONNECTED WITH SUCH DISPUTE AND/OR YOUR USE OF THE SITES OR THE SERVICE. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR" (OR ANY EQUIVALENT STATUTORY PROVISION WITH A SIMILAR IMPORT OR INTENT); IF YOU ARE A RESIDENT OF A STATE OTHER THAN CALIFORNIA, YOU EXPLICITLY WAIVE THE TERMS AND PROTECTIONS OF ANY STATUTE OF YOUR OWN STATE THAT HAS A SIMILAR IMPORT OR INTENT.

**12. Indemnity.** YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD THE SITES, ECLUB, ECLUB'S OWNERS AND EMPLOYEES, AND ECLUB'S PROVIDERS, MERCHANTS AND ORGANIZATIONS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY AND COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS) INCURRED BY THE INDEMNIFIED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF YOUR USE OF THE SITES (INCLUDING, WITHOUT LIMITATION, ANY DISPUTE BETWEEN A PROVIDER OR MERCHANT REGARDING ANY TRANSACTION), ANY ACT (OR FAILURE TO ACT) BY YOU OR OTHER USERS OF YOUR ACCOUNT OR ANY BREACH BY YOU OF THESE TERMS OR THE REPRESENTATIONS, WARRANTIES AND COVENANTS MADE BY YOU HEREIN. YOU SHALL COOPERATE AS FULLY AS REASONABLY REQUIRED IN THE DEFENSE OF ANY CLAIM. ECLUB RESERVES THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND

CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU AND YOU SHALL NOT IN ANY EVENT SETTLE ANY MATTER WITHOUT OUR PRIOR WRITTEN CONSENT.

**13. Jurisdiction; Dispute Resolution; Arbitration.**

**PLEASE READ CAREFULLY. THE FOLLOWING AFFECTS YOUR RIGHTS**

- A. These Terms shall be treated as though they were executed and performed in the State of Texas and shall be governed by and construed in accordance with the laws of the State of Texas (without regard to conflict of law principles).
- B. SHOULD A DISPUTE ARISE BETWEEN YOU AND ECLUB (OR, WITH RESPECT TO DISPUTES INVOLVING YOUR DATA SUBMITTED THROUGH THE SITE OR THE SERVICE, BETWEEN YOU AND ANY ENTITY WHO PURCHASES SUCH DATA) CONCERNING THE TERMS AND CONDITIONS OF THESE TERMS, THE BREACH OF SAME BY ANY PARTY HERETO, ANY DATA SUBMITTED BY YOU, THE SITE OR SERVICE OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ELUB, YOU AGREE TO SUBMIT THE DISPUTE FOR RESOLUTION BY ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS THEN CURRENT COMMERCIAL ARBITRATION RULES AND THE SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES (COLLECTIVELY, "AAA RULES"), AS MODIFIED BY THESE TERMS. SUCH ARBITRATION SHALL BE ADMINISTERED BY A SINGLE ARBITRATOR. The arbitrator is bound by these Terms and must issue a written decision sufficient to explain the essential findings and conclusions on which an award is based. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provisions in this Section 13 are for a court to decide. ANY AWARD RENDERED SHALL BE FINAL AND CONCLUSIVE TO THE PARTIES, AND A JUDGMENT THEREON MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. THE ARBITRATION SHALL BE CONDUCTED IN MONTGOMERY COUNTY, TEXAS. YOU MAY OPT OUT OF THIS ARBITRATION REQUIREMENT BY NOTIFYING ECLUB IN WRITING AT 43 MISTFLOWER PLACE, THE WOODLANDS, TEXAS 77381, THIRTY (30) DAYS AFTER SUBMITTING YOUR DATA THAT IS INVOLVED IN THE DISPUTE. NOTHING HEREIN SHALL BE CONSTRUED TO PRECLUDE ANY PARTY FROM SEEKING INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT JURISDICTION IN ORDER TO PROTECT ITS INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION.
- C. TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT YOU WILL NOT BRING, JOIN OR PARTICIPATE IN ANY CLASS ACTION LAWSUIT, CLASS-WIDE ARBITRATION, CLAIMS BROUGHT IN A REPRESENTATIVE CAPACITY OR CONSOLIDATED CLAIMS AS TO ANY CLAIM, DISPUTE OR CONTROVERSY THAT YOU MAY HAVE AGAINST ECLUB OR ITS AFFILIATES (OR, WITH RESPECT TO CAUSES OF ACTION INVOLVING YOUR DATA SUBMITTED THROUGH THE SITE OR THE SERVICE, AGAINST ANY PERSON WHO PURCHASES SUCH DATA), AND/OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OWNERS, LENDERS, REPRESENTATIVES AND ASSIGNS. YOU AGREE TO THE ENTRY OF INJUNCTIVE RELIEF TO STOP SUCH A LAWSUIT OR TO REMOVE YOU AS A PARTICIPANT IN THE SUIT. YOU AGREE TO PAY THE ATTORNEYS' FEES AND COURT COSTS THAT ECLUB INCURS IN SEEKING SUCH RELIEF. THIS PROVISION PREVENTING YOU FROM BRINGING, JOINING OR PARTICIPATING IN CLASS ACTION LAWSUITS AND OTHER CONSOLIDATED CLAIMS IS AN INDEPENDENT AGREEMENT AND DOES NOT CONSTITUTE A WAIVER OF ANY OF YOUR RIGHTS AND REMEDIES TO PURSUE A CLAIM INDIVIDUALLY AND NOT AS A CLASS ACTION IN BINDING ARBITRATION AS PROVIDED ABOVE. ANY PERSON OR ENTITY WHO PURCHASES DATA SUBMITTED BY YOU THROUGH THE SITE OR SERVICE SHALL BE DEEMED A THIRD-PARTY BENEFICIARY OF THE FOREGOING PROVISIONS IN THIS SECTION 13 AND SHALL BE ABLE TO ENFORCE SUCH PROVISIONS DIRECTLY AGAINST YOU. Further, unless both you and ECLUB agree otherwise, in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.
- D. Should a dispute arise between you and ECLUB, and should the arbitration provisions herein become inapplicable or unenforceable, the parties agree that jurisdiction over and venue of any suit shall be exclusively in the state courts sitting in Montgomery County, Texas, and you hereby consent to the exercise of jurisdiction and venue by such courts. If either party employs attorneys to enforce any right in connection with a dispute or lawsuit, the prevailing party shall be entitled to recover reasonable attorneys' fees.

**14. No Agency.** The relationship between ECLUB and each user is that of independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relations is intended or created by these Terms or your use of the Site.



**15. Notices.** Except as explicitly stated otherwise, any notices shall be submitted (in the case of you contacting us) by certified postal mail, return receipt requested, to:

Electricity Club  
43 Mistflower Place  
The Woodlands, Texas 77381  
Attn: Legal Dept.

or, when we need to send you notice, to any email address you may provide to the Sites during the registration process or when submitting an inquiry (as applicable). Notice shall be deemed given upon receipt or 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested or by national courier service, to any address provided to us on the Site or other channels.

**16. Amendments.** We reserve the right, in our sole discretion, to change, modify, add or remove any portion of these Terms, in whole or in part, at any time. Changes to these Terms will be posted on the Sites and will be effective immediately thereafter. Your use of the Sites following the posting of any such change, modification or amendment to these Terms will constitute your acceptance thereof. When we post changes to these Terms, we will revise the "last updated" date at the top of these Terms. Accordingly, you should periodically check the "last updated" date at the top of these Terms so that you can familiarize yourself with any changes.

**17. Copyright Infringement.** As ECLUB asks others to respect its intellectual property rights, it respects the intellectual property rights of others, and requires its users to do so. If you are a copyright owner or an agent thereof and believe that any third-party Content on the Sites infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C § 512(c)(3) for further detail): (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works on or available through our Sites are covered by a single notification, a representative list of such works at those locations; (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit ECLUB to locate the material; (iv) information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address; (v) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. ECLUB's designated Copyright Agent to receive notifications of claimed infringement is Copyright Agent, 43 Mistflower Place, The Woodlands, Texas 77381. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests and communications should be directed to ECLUB's customer service. You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid. In the event that you believe ECLUB removed any of your Content in response to a false notice of copyright infringement, you should notify ECLUB promptly in writing pursuant to the DMCA, at the mailing address provided above. Such notification should include: (i) your physical or electronic signature; (ii) identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled; (iii) a statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and (iv) your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the U.S. District Court for the Southern District of Texas, and a statement that you will accept service of process from the person who provided notification of the alleged infringement. Furthermore, you should include a clear statement of your acceptance of process pertaining to the notifying party or the agent of the party as defined in DMCA § 512(c)(1)(C). If a counter-notice is received by the Copyright Agent, ECLUB may send a

copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it in ten (10) business days. Unless the copyright owner files an action seeking a court order against the Content provider or user, the removed Content may be replaced, or access to it restored, in ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at our sole and absolute discretion. ECLUB has a policy of terminating the account of, or denying access or use of the Site to, in its sole and absolute discretion, any user who demonstrates a pattern of infringing the copyrights or other intellectual property rights of others.

**18. Links to Third-Party Sites.** This Site may contain links and pointers to other websites that are not owned or controlled by ECLUB. ECLUB has no control over, and assumes no responsibility for the products, services, content, privacy policies or practices of any third-party website or application. Links to and from the Site to other sites, maintained by third parties, do not constitute an endorsement by us of such third-party sites or the contents, products or services thereof. You expressly relieve ECLUB from any and all liability arising from your use of any linked third-party website or application. Accordingly, we encourage you to be aware when you leave our Site and to read the terms and conditions and privacy policy of each website or application that you access or use.

**19. Your Record of These Terms.** We do not separately file the Terms entered into by each user of the Sites. Please make a copy of these Terms for your records by printing and/or saving a downloaded copy of the Terms on your computer.

**20. Miscellaneous.** We may immediately and in our sole discretion terminate any user's access to or use of the Sites due to such user's breach of these Terms or our Privacy Policy, or other unauthorized use of the Site. Any claim or cause of action you may have hereunder or with respect to your use of the Sites or the Service must be commenced within one (1) year after the claim or cause of action first arises. Our failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of any such right or provision. If for any reason a court of competent jurisdiction or an arbitrator finds any provision of these Terms, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of these Terms, and the remainder of these Terms shall continue in full force and effect. Except for Sections 11, 12 and 13 above, these Terms do not give rise to any third-party beneficiary rights. All provisions of these Terms shall survive any termination hereof, except for those provisions (like licenses) that are revocable or, by their context, are not intended to survive termination. You may not assign any of your rights or delegate any of your obligations under these Terms; ECLUB may assign or delegate these Terms in whole or in part.

