

# Sawnee Smart Savers Terms and Conditions

PLEASE READ THESE TERMS CAREFULLY.

Welcome to the BYOT Program!

**About the Program.** Participants ("**Participants**", "**Members**" or "**you**") whose applications to participate in the Program are accepted by ecobee, Inc. ("**ecobee**") and Sawnee EMC ("**Sawnee**" or "**Utility**") and who fully comply with these official terms and conditions ("**Terms**") will receive a reward from Sawnee in the form set forth below in the "**Program Details**" paragraph ("**Reward**").

**Why should I participate in the Program?** If ecobee provides and allows you to participate in the program named below in the "**Program Details**" paragraph (the "**Program**") and otherwise described in these Terms, the Program will enable Utility to help members save energy and money while also allowing Utility and EnergyHub to evaluate energy savings achieved as a result of the Program. By participating in the Program, Participants will also help reduce the risk of blackouts and brownouts occurring in their electricity service areas.

Definitions.

- "**EnergyHub**" means EnergyHub, Inc. and its agents, directors, officers, employees, successors, and assigns.
- "**Program Parties**" means EnergyHub, ecobee, and Utility, together with their agents, directors, trustees, officers, employees, successors, and assigns.

**Binding Agreement.** To participate in the Program and in addition to any other requirements described below in the "**Program Details**" paragraph, Participants must be at least 18 years of age and agree to these Terms. Because these Terms form a legally binding agreement with respect to the Program, please read them carefully. These Terms apply to your participation in the Program. If you do not agree to these Terms, you are not eligible to participate in the Program. Your application for the Program or your written acceptance thereof constitutes your agreement to these Terms. Notwithstanding the foregoing, you will not become a "Participant" in the Program until your application has been accepted and approved by Utility. These Terms become effective upon acceptance and will continue until you, ecobee or Utility cancels or terminates your participation, provided that any permissions or releases granted hereunder shall survive cancellation or termination with respect to activities occurring prior to the time of such cancellation or termination.

**Application Consent.** By submitting an application and accepting these Terms, you give ecobee, EnergyHub and Utility the following permissions:

- ecobee, EnergyHub, Utility and their respective agents may send you emails and other notifications related to your application to participate in the Program;
- ecobee, Utility and EnergyHub may share between them any information necessary to confirm your enrollment in the Program and operate the Program; and
- ecobee, Utility and/or EnergyHub may enroll you in the Program.

**Participation Consent.** Participant authorizes:

- ecobee's servers to automatically adjust your thermostat, as required by the Program at times indicated by Utility or for general system testing purposes;
- ecobee, EnergyHub, Utility, and their respective agents to send you emails, text/SMS and other notifications related to the Program, including about your enrollment status and Program-related adjustments to your thermostat settings;
- ecobee, EnergyHub and Utility to send you emails, text/SMS messages and other notifications related to surveys

about the Program and to share your responses to such surveys between themselves. Such surveys may include questions about topics such as your experience in the Program and your willingness to participate in future energy saving programs;

- ecobee, EnergyHub and Utility to collect your energy usage information and review and analyze such usage information and electric bill information for purposes of fulfilling their obligations under the Program and applicable law, improving the Program and as otherwise permitted by applicable law, and to exchange conclusions with each other and publish results based on those conclusions; provided that ecobee, EnergyHub and Utility treat all such data in accordance with their respective privacy policies;
- ecobee, EnergyHub, Utility, and their respective agents to exchange data related to your identity and your service account status with Utility, solely for the purposes of fulfilling their obligations under the Program; and
- ecobee, EnergyHub and Utility to summarize the results of the Program in publicly-available studies, provided that any data included in such studies will be anonymized such that you are not individually identifiable.

**Eligibility Requirements.** Potential Participants who meet the following criteria may apply to participate in the Program:

- You must be a service account holder of Utility;
- You must have one or more thermostats that are compatible with and connected to the ecobee platform ("**Service**");
- You must have obtained any necessary consents to accept these Terms or join the Program (e.g., from a landlord if the terms of your lease or similar agreement so provide); and
- You must have an active account in good standing on the Service.

**How To Apply.** The Program application is available at the website address set forth below in the "**Program Details**" paragraph. ecobee and/or Utility may accept or reject a potential Participant's application in their sole discretion without any liability to Participant.

**Participation Requirements.** Participant agrees, for the duration of the Program and at Participant's sole expense, to:

- Maintain the connection between your enrolled thermostat(s) and the Service;
- Maintain an active account in good standing on the Service;
- Maintain (*i.e.*, always on) internet service; and
- Assist ecobee's and Utility's support personnel in troubleshooting and resolving connectivity and other thermostat-related issues.

**Reward.** Participants are eligible to earn the Reward described set forth below in the "**Program Details**" paragraph. The Reward is provided solely by Utility. ecobee, and EnergyHub bear no responsibility for the payment. You acknowledge that EnergyHub and ecobee are facilitating your ability to claim this payment, but EnergyHub and ecobee are not providing you any compensation or other financial benefit, and the enforceability of these Terms is not dependent upon your receipt of the Reward or the amount of the Reward. Utility reserves the right to seek further information to verify your eligibility to receive the Reward and to substitute a reward of equivalent value for the Reward described above at EnergyHub's and ecobee's discretion without liability to Participant.

**How To Withdraw.** You are participating in the Program on a voluntary basis. If you are dissatisfied with the Program, or if you no longer wish to grant the authorizations provided herein, you may withdraw from the Program at any time by emailing EnergyHub at the email address provided below in the "**Program Details**" paragraph. Withdrawing will not affect the other services provided to you by ecobee or Utility. By withdrawing, you may render yourself ineligible to receive a Reward or other compensation, participate in the Program in the future, or participate in other programs offered by ecobee or Utility.

**Information.** By applying for the Program and accepting these Terms, you represent and warrant that the information you provided for enrollment and as a part of Participant's service account is truthful and that you meet the eligibility requirements above, and agree to promptly notify ecobee if changes occur. ecobee or Utility may cancel or terminate your participation in the Program (or reject your enrollment) if the information you submit as part of your application is not true, if you do not satisfy the eligibility requirements, or for any other reason. Participant agrees that information about Participant's service account, Service usage, and devices connected to Participant's service account, as well as information Participant provides while applying for the Program or that is related to the Program may be shared with other third-party entities necessary for purposes of ensuring compliance with Program objectives and analyzing data.

**Program Termination Due to Third-Party Approvals.** ecobee's ability to offer the Program is contingent upon certain approvals and acceptances from the Utility. Should ecobee fail to obtain such approvals and acceptances, the Program will be terminated, and Participants may not receive any Reward or other compensation.

**Participant Termination by ecobee.** ecobee reserves the right to terminate your participation in the Program at any time and without liability to Participant upon notice via email to the email address registered with ecobee or that you use to apply for the Program if you violate these Terms or applicable law, the Utility declares you ineligible or if your account with ecobee is no longer in good standing. If you enroll in a conflicting energy program through ecobee, EnergyHub or Utility, ecobee may terminate your participation in the Program without liability and without notice to you.

**Conduct.** You agree to use the Program only in compliance with the policies and agreements referenced in these Terms and on ecobee's website (<https://www.ecobee.cecoom/legal/use/>) which are incorporated herein by reference, as well as all applicable local, state, national, and international laws, rules and regulations. You also agree that your participation in the Program is subject to Utility's and ecobee's Privacy Policy, as set forth on the Utility's website, which is described below in the "Program Details" paragraph, and ecobee's website (<https://www.ecobee.cecoom/legal/use/>). Failure to comply with these Terms may result in your disqualification from the Program. You further agree to comply with and be bound by the decisions of ecobee and Utility regarding your eligibility to participate, which are final and binding in all respects. ecobee reserves the right in its sole discretion to disqualify any Participant it finds to be: (1) tampering or attempting to tamper with the operation of the Program; or (2) violating these Terms, conditions of use, or guidelines of any of ecobee's or Utility's property or service. **Any false information provided within the context of the Program by any Participant is a violation of these Terms and may result in the immediate disqualification of a Participant and forfeiture of any Reward.**

**Energy Consumption.** None of ecobee, EnergyHub, or Utility is responsible for any changes to your electricity costs incurred by you during or related to the Program.

**Program Period.** The Program will run for the period set forth below in the "Program Details" paragraph. You may be automatically re-enrolled in subsequent Program Periods at ecobee's discretion, subject to the then-current Terms for the Program.

**Adjustment Details.** During Program events, ecobee's servers will automatically inform your thermostat of the existence of a demand response event, which may cause the thermostat to change the temperature set-point for the HVAC system in your home on that day. At any time that you desire, you may override this temperature set-point simply by turning your thermostat to a different temperature or through components of the Service, such as the web portal and smartphone applications. Events are triggered based on a variety of factors and you may not receive all possible events or any particular event. Any such adjustment will occur without any manual intervention by you. You generally will be notified of an event; however, in an emergency, Utility may deploy an event without notice if deemed necessary to prevent outages. Again, at any time that you desire, you may override this temperature set-point.

**Privacy Notice.** By participating in the Program, you agree that ecobee, EnergyHub and Utility may collect your personal information or data, as permitted by law, and that if they cannot collect the required information or data, you may not be eligible to participate in the Program. ecobee, Utility and EnergyHub will protect your personal information and usage data consistent with these Terms and each company's then-current privacy policy.

**Governing Law.** This Program is governed by the laws of New York. All federal, state and local laws and regulations apply. As a condition of participating in the Program, unless otherwise prohibited by law, applicants and Participants agree that any and all disputes that cannot be resolved between the parties, and causes of action arising out of or in connection with the Program, shall be resolved individually, without resort to any form of class action. Further, in any such dispute, Participant hereby waives all rights to claim or be awarded, punitive, incidental or consequential damages, including attorneys' fees, and Participant further waives all rights to have damages multiplied or increased.

**No Recourse to Judicial or Other Procedures.** To the fullest extent permitted by law, the rights to litigate, to seek injunctive relief, or to any other recourse to judicial remedy or any other procedure in case of disputes or claims resulting from or in connection with the Program are hereby excluded, and you expressly waive any and all such rights. Note, such waiver is not enforceable in all jurisdictions.

**DISCLAIMER:** THE PROGRAM PARTIES ARE NOT RESPONSIBLE OR LIABLE FOR ANY INCORRECT OR INACCURATE PROGRAM APPLICATION INFORMATION, AND ASSUME NO RESPONSIBILITY FOR (I) ANY CONTENT, SOFTWARE, HARDWARE, THERMOSTATS, PRODUCTS OR OTHER MATERIALS PROVIDED, MANUFACTURED, DEVELOPED OR CREATED BY A THIRD PARTY; (II) TYPOGRAPHICAL OR OTHER ERRORS IN THE PRINTING OF THE PROGRAM MATERIALS OR THE OFFERING OR ANNOUNCEMENT OF ANY REWARD, (III) ANY ERROR, OMISSION, INTERRUPTION, DEFECT OR DELAY IN OPERATION OR TRANSMISSION AT ANY WEBSITE, (IV) FAILURE OF ANY APPLICATION TO BE RECEIVED BY ECOBEE OR UTILITY DUE TO TECHNICAL PROBLEMS, TELEPHONE SERVICE PROBLEMS, PRINTING ERRORS, HUMAN ERROR OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY WEBSITE, (V) COMMUNICATIONS LINE, HARDWARE AND/OR SOFTWARE FAILURES, (VI) DAMAGE TO ANY COMPUTER (SOFTWARE OR HARDWARE) RESULTING FROM PARTICIPATION IN THE PROGRAM, (VII) THEFT OR DESTRUCTION OF, TAMPERING WITH, UNAUTHORIZED ACCESS TO, OR ALTERATION OF APPLICATIONS AND/OR PROGRAM APPLICATION INFORMATION, OR (VIII) APPLICATIONS THAT ARE LATE, LOST, STOLEN, DAMAGED, ILLEGIBLE, AND/OR UNINTELLIGIBLE (OR ANY COMBINATION THEREOF).

**LIMITATIONS OF LIABILITY:** PARTICIPANTS ASSUME ALL RISK OF PARTICIPATION IN THE PROGRAM. TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU INDEMNIFY AND AGREE TO HOLD HARMLESS THE PROGRAM PARTIES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS AND EXPENSES THAT ARISE FROM OR ARE RELATED TO ANY ACT, BREACH, DEFAULT OR OMISSION BY YOU, WHETHER NEGLIGENT OR OTHERWISE, UNDER THESE TERMS OR IN CONNECTION WITH THE PROGRAM. TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU RELEASE, FOREVER DISCHARGE AND HOLD HARMLESS THE PROGRAM PARTIES FROM ANY AND ALL LIABILITY, CLAIM, DEMAND, CAUSE OF ACTION, DAMAGE OR EXPENSE ARISING OUT OF OR RESULTING FROM YOUR PARTICIPATION IN THE PROGRAM AND/OR USE OR ACCEPTANCE OF ANY REWARD OTHER THAN FOR: (1) DEATH OR PERSONAL INJURY ARISING DIRECTLY OUT OF OR RESULTING DIRECTLY FROM ECOBEE'S, UTILITY'S OR ENERGYHUB'S NEGLIGENCE OR BREACH OF CONTRACT; OR (2) THE PROGRAM PARTIES' FRAUDULENT MISREPRESENTATION OR DELIBERATE BREACH OF CONTRACT. THE PROGRAM PARTIES HAVE NO LIABILITY TO ANY PARTICIPANT FOR ANY LOSS, DAMAGE, COSTS OR EXPENSE INCURRED AS A RESULT OF OR IN CONNECTION WITH A PARTICIPANT'S PARTICIPATION IN THE PROGRAM.

**Other Terms and Conditions.**

- ecobee, EnergyHub and Utility are not responsible for any typographical or other error in the printing of the offer or administration of the Program.
- ecobee, Utility and EnergyHub are not responsible for the policies, actions, or inactions of others that might prevent the Participant from entering, participating, and/or claiming a prize or Reward in the Program.
- ecobee's failure to enforce any term of these Terms shall not constitute a waiver of that provision or any other provision of these Terms.
- If any provision(s) of these Terms are held to be invalid or unenforceable, all remaining provisions hereof will remain in full force and effect.

- You agree that (i) ecobee has the right to make changes to these Terms at any time, and (ii) Utility has the right to make changes to incentive offerings at any time in its sole discretion. Ecobee and Utility will make reasonable efforts to notify you of such changes, and you can review the most current version of the Terms at any time at the website address set forth below in the “**Program Details**” paragraph. Your continued participation in the Program constitutes your agreement to the changed Terms.
- These Terms constitute the entire agreement between ecobee and a Participant relating to the subject matter hereof and supersedes all other such prior or contemporaneous oral and written agreements and understandings with respect to such subject matter.

#### **Program Details.**

- Utility name: **Sawnee EMC**
- Utility website address: **<https://www.sawnee.com/>**
- Reward amount: \$36 one-time bill credit per thermostat enrolled, plus up to \$36 per thermostat for participating in subsequent program years
- Program name: Sawnee Smart Savers
- Additional eligibility terms: Must be a Sawnee residential electric service customer; must possess and enroll at least one (1) Internet connected thermostat; must own their own AC unit(s); aforementioned thermostat(s) must be controlling said Central AC(s).
- The Program application for enrollment is available at the following website address: <https://www.ecobee.com/sawnee>
- EnergyHub contact information: [sawnee@energyhub.com](mailto:sawnee@energyhub.com)
- Program Period: The Program began April 1, 2016 and will continue until Sawnee EMC or EnergyHub terminates the Program, provided that your participation in the Program may be terminated as specified in these Terms. Participants must apply by June 15, 2018 in order to participate in the 2018 program season.
- The Program Terms are available at the following website address: <https://www.ecobee.com/sawnee>