

## Smart Energy Program Terms and Conditions

YOU MUST BE AN EXISTING USER OF THE **ECOBEE** SERVICE TO ENTER INTO THIS PROGRAM AGREEMENT WITH **ECOBEE**. PLEASE READ THESE TERMS CAREFULLY. THIS PROGRAM IS VOID WHERE PROHIBITED BY LAW.

**Binding Agreement.** You acknowledge and agree that EnergyHub is facilitating your participation in the Smart Energy Program (“Program”) and the official terms and conditions (“Terms”) are a legally binding contract between you and ecobee. To participate in the Program, all 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. If you do not agree to the Terms, you are not eligible to participate in the Program. Your application for the Program and your electronic acceptance thereof constitutes your agreement to be bound by these Terms. Notwithstanding the foregoing, you will not become a Participant in the Program until your application has been accepted and approved by Utility. You are entering this Program on a voluntary basis.

**About the Program.** Customers whose applications to participate in the Program are accepted by the Program Parties ("**Participants**" or "**you**") and who fully comply with these official Terms will receive a reward from the Utility in the form set forth below ("**Reward**").

**Sponsor.** The Program is provided by EnergyHub, Inc., 232 3<sup>rd</sup> Street, Suite C201, Brooklyn NY 11215, a Delaware corporation (“Sponsor” or “EnergyHub”)

### Definitions.

- “**Sponsor**” means EnergyHub, Inc. and its respective affiliates, agents, directors, officers, employees, successors, and assigns.
- “**Utility**” means Southern California Edison Company (SCE).
- “**ecobee**” means ecobee Smart Thermostat provider.
- “**Program Parties**” means Sponsor, ecobee and Utility together with their respective affiliates, agents, directors, trustees, officers, employees, successors, and assigns.

**Application Consent.** By submitting an application and accepting these Terms, you give Program Parties the following permissions:

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

**Participation Consent.** As a registered Participant in the Program, you authorize:

- Sponsor and ecobee to automatically adjust your thermostat, as required by the Program at times indicated by Utility or for general system testing purposes;
- Program Parties 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;
- Program Parties 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;
- Program Parties to collect your energy usage information and review and analyze such usage 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;
- Program Parties 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
- Program Parties 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.

**Reward.** A number of factors determine how your home uses electricity and EnergyHub cannot promise that your participation in the Program will result in a Reward.

EnergyHub may also be compensated by Utility for your participation in the Program. 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. EnergyHub and ecobee make no promise of any incentive or rebate amount.

Participants enrolled in the Program are eligible for bill credits for their participation in the program. Customers enrolled during the summer months will earn a daily capacity payment of \$0.3275 from June 1 through September 30 of each year. If a customer enrolls in the Program after June 1 or disenrolls prior to September 30, the payment will be prorated, based on the summer season days on which the customer was actively enrolled in the Program. For more

information on the Program, please visit <https://pages.email.sce.com/SCESmartBonus/> and <https://www.sce.com/tnc/smart-energy-program-terms-and-conditions>.

**The Program Sign-Up Bonus.** SCE offers a one-time sign-up bonus of \$75 to customers who enroll in the Program (the “Enrollment Bonus”). The Enrollment Bonus is provided to Participants, in the form of a bill credit, following successful enrollment. To qualify for the Enrollment Bonus, the following conditions apply:

- The Enrollment Bonus is for new customer enrollments and is only available until funding is exhausted.
- Customers previously enrolled in the Program for the same service account will be ineligible for the Enrollment Bonus.
- If your service account closes or you disenroll from the Program before SCE can process any portion of the Enrollment Bonus, your Enrollment Bonus will be cancelled.
- Enrollment Bonuses are limited to one per service account and will not exceed \$75. Enrolling multiple smart thermostats under the same account will not increase your Enrollment Bonus amount.
- Customers that have more than one service account (e.g., a second home) and enroll in the program may be eligible for more than one Enrollment Bonus.
- SCE will not pay an Enrollment Bonus for a thermostat with the same serial number that has already received a bonus or payment, including payment to a previous owner of the thermostat.
- Customers that received their thermostat at no cost for participating in another SCE program (e.g., the residential direct install program) are not eligible for the Enrollment Bonus.
- Bill credits will be processed within one to two billing cycles.

**Energy Events.** An “Energy Event” is a call for electricity demand reduction issued by SCE. Energy Events will be declared by SCE 20 minutes prior to the start of an energy event. You may monitor SCE’s declaration of Energy Events for the Smart Energy Program at <https://www.sce.openadr.com/dr.website/scepr-event-status-resi.jsf> by looking under SCE’s program name, Smart Energy Program.

The Participation Bill Credits and any Enrollment Bonus are applied as bill credits and provided solely by SCE. EnergyHub and ecobee bears no responsibility for any Bill Credits, Enrollment Bonus, other incentives or rebates. You acknowledge that EnergyHub and ecobee are facilitating your ability to earn these incentives or rebates, but EnergyHub and ecobee are not providing you any compensation or other financial benefit, and your permissions to EnergyHub and ecobee are not contingent on receipt or amount of the incentives or rebates. EnergyHub and ecobee make no promise of any incentive or rebate amount – your Bill Credit will depend on your enrollment in the Program.

**How To Apply.** The Program application is available at <https://www.ecobee.com/sce/>. EnergyHub, ecobee and/or Utility may accept or reject a potential Participant's application in their sole discretion without any 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 [sce@energyhub.com](mailto:sce@energyhub.com) or contacting SCE directly at (800) 655-4555. Withdrawing will not affect the other services provided to you by EnergyHub, 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 EnergyHub, ecobee or Utility.

**Program Termination Due to Third-Party Approvals.** EnergyHub and ecobee's ability to offer the Program is contingent upon certain approvals and acceptances from the Utility. Should EnergyHub and 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, if your account with ecobee is no longer in good standing, or for any other reason. 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.

**Privacy Notice.** By participating in the Program, you agree that Program Parties 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. Program Parties will protect your personal information and usage data consistent with these Terms and each company's then-current privacy policy.

**Energy Consumption.** Program Parties not responsible for any changes to your electricity costs incurred by you during or related to the Program.

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

- You must have one or more thermostats that are compatible with and connected to the EnergyHub platform ("**Service**"); and
- You must have an installed, connected and operable thermostat controlling an air conditioner at your SCE service address;
- You must have an active account in good standing on the Service

- You must have an eligible Edison SmartConnect® meter
- You must receive both energy and distribution services (bundled) by SCE
- You must receive service under rate schedule D, D-CARE, D-FERA, TOU-D or TOU-D-T
- You must not be enrolled in any of the following programs, rate schedules, rate options, or services:
  - Demand Response programs or rates offered by Non-Utility Demand Response Service Providers
  - All types of Medical Baseline Allocations
  - Critical Peak Pricing (CPP)
  - Domestic Multiple (DM)
  - Domestic Multiple Service 1 (DMS-1)
  - Domestic Multiple Service 2 (DMS-2)
  - Domestic Multiple Service 3 (DMS-3)
  - Community Choice Aggregation (CCA) Service
  - Direct Access (DA) Service
  - Summer Discount Plan

**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.
- Register the use of a minimum of 1.5 kWh, one hour before or after the energy event at least once in a calendar year to remain eligible to participate in the Program.

**Program Period.** The Program will run throughout the year. You will be automatically re-enrolled annually at ecobee's discretion or unless you terminate your participation, subject to the then-current Terms for the Program.

**Adjustment Window.** Participant's enrolled thermostat(s) may be adjusted:

- Any day of the year for up to a maximum of four hours;
- Multiple events in one day are possible but will not exceed a cumulative total of four hours per day.

**Adjustment Frequency.** Historically, there have been approximately 12 Energy Events per year

under the Program. However, there is no limit to the number of Energy Events per year or the number of adjustments. The total number of hours that can be called in a calendar year is 180 hours. Notwithstanding the foregoing, there is no limit to the adjustments for system testing, as described above.

**Adjustment Details.** During Program events, Sponsor'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 up to 4 °F to temporarily reduce normal operating patterns in order to reduce electrical demand. These setpoint increases may be preceded by "pre-cool" periods, wherein the current or scheduled target setpoint is temporarily decreased to prepare the premises for the subsequent setpoint increase. The change is measured relative to the setpoint of your thermostat at the beginning of an adjustment period and the setpoint defined by the programmed thermostat schedule as set with the Service. Your thermostat may be adjusted even if the thermostat is in hold mode at the start of an event. 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. However, at Utility's discretion, you may be removed from Program for overriding all energy events dispatched in a calendar year, when such overrides consistently occur within the first hour of events.

#### **Other Terms and Conditions.**

- Program Parties are not responsible for any typographical or other error in the printing of the offer or administration of the Program.
- Program Parties 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.
- 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.

**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.

**Conduct.** By applying for the Program, Participant agrees to comply with and be bound by the Terms, any Official Rules applicable to a Reward and any other additional Program information provided to you during the Program. 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 the Sponsor regarding your eligibility to participate, which are final and binding in all respects. Sponsor 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 the Terms, conditions of use, or Terms of any of Program Parties' 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.

**Governing Law.** This Program is governed by the laws of California. 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.

**Release.** You hereby release, hold harmless, and indemnify the Program Parties from any liability, claims, demands, cause of action, damages, or expenses resulting from: 1) any release of information to EnergyHub or ecobee pursuant to these Terms; 2) EnergyHub or ecobee's use of information obtained and managed as described in this Agreement; and 3) from any actions taken by EnergyHub or ecobee pursuant to these Terms.

**Third Parties.** The Program Parties are not responsible for the policies, actions, or inactions of others that might prevent the Participant from entering, participating, or claiming a Reward. All Participant applications are subject to review by and require approval from Utility.

**Severability.** 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.

**Terms Modifications.** You agree that ecobee has the right to make changes to these Terms at any time. ecobee will make reasonable efforts to notify you of such changes, and you can review the most current version of the Terms at <https://www.ecobee.com/sce>. Your continued participation in the Program constitutes your agreement to the changed Terms.

**Entire Agreement.** These Terms, together with any Official Rules applicable to a Reward, constitutes the entire agreement between Utility and a Participant relating to the subject matter hereof and supersedes all other such prior or contemporaneous oral and written agreements and understandings.

#### **Authorization to Receive Customer Information**

By submitting this Agreement, you also give ecobee, EnergyHub, and Utility the following permissions:



I declare under penalty of perjury under the laws of the State of California that I am the customer of record for the service account provided.

I certify that ecobee and EnergyHub have authority to act on my behalf and request the release of information for the account listed above and perform the specific acts and functions listed above.

I understand that Utility reserves the right to verify any authorization request submitted before releasing information or taking any action on my behalf.

I understand that Utility will provide the eligibility information requested above to EnergyHub, to the extent available, at no charge to me.

I authorize Utility to release the confirmation of eligibility on my account to ecobee and EnergyHub who are acting on my behalf regarding the matters listed above.

I hereby release, hold harmless, and indemnify Utility from any liability, claims, demands, cause of action, damages, or expenses resulting from: 1) any release of information to ecobee and EnergyHub pursuant to this Authorization; 2) the unauthorized use of this information by ecobee and EnergyHub and 3) from any actions taken by ecobee and EnergyHub pursuant to this authorization.

My authorization is given for the period commencing with the date of execution until I cancel this authorization, whichever comes first. I understand that I may cancel this authorization at any time by contacting Utility at (800) 655-4555.