



Small & Medium Business EMS Innovation Pilot Program  
Terms and Conditions

1. This Pilot Participant Agreement is between and is binding on the Local Distribution Company (the “LDC”) and the Pilot Participant. ecobee Inc. (the “Contractor”), for the purposes of this Pilot Program, is a subcontractor of the LDC and the LDC may subcontract any of its responsibilities under this Small & Medium Business EMS Innovation Pilot Program (the “Pilot Program”) to the Contractor, an affiliate, or a third party.
2. The LDC shall install one or more devices (the “Device”), in the form of an ecobee EMS Si Thermostat and any associated wiring, at the Facility.
3. The LDC is responsible for the cost of Device and the installation of the Device.
4. The Pilot Participant authorizes (i) the LDC to install the Device at the Facility and (ii) the LDC to remove and dispose of any existing thermostats.
5. THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR (THE “IESO”), THE LDC, AND CONTRACTOR WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, COSTS OR LOSSES ARISING FROM THE INSTALLATION OR USE OF THE DEVICE, WHETHER IN ACCORDANCE WITH THE MANUFACTURER’S INSTRUCTIONS OR OTHERWISE, OR FROM ANY ACTIONS, NEGLIGENCE OR MISCONDUCT BY THE CONTRACTOR, AN AFFILIATE OR ANY THIRD PARTY. Notwithstanding the foregoing, the Contractor shall be liable for direct damages, costs or losses to the extent such damages, costs or losses arise from Contractor’s negligence or willful misconduct.
6. The Pilot Participant represents and warrants that:
  - (a) the Pilot Participant is a small commercial electricity distribution customer of the LDC in good standing;
  - (b) the Pilot Participant has been at the Facility for more than 12 months, with the intention to remain at the Facility for 12 months following the installation date
  - (c) the Pilot Participant owns or leases the Facility and the thermostat being replaced; provided that if the Pilot Participant is a lessee of either the Facility or the thermostat being replaced, that it has all right and authority to install the Device at the Facility;
  - (d) the Pilot Participant is responsible for taking action and proactively using the Device and the ecobee customer Portal (the “Portal”) to achieve energy savings;
  - (e) the Pilot Participant shall provide safe and suitable access to the LDC or its Contractor for the purpose of verifying the heating and central air conditioning system and installing the Device;
  - (f) the Facility is within the service area of the LDC;
  - (g) where the Facility is individually metered, it is the subject of a General Service <50kW Account;
  - (h) where the Facility is not individually metered by the LDC, the average estimated demand of all units connected to that meter over a twelve month period is less than 50kW based on the bulk metered data;
  - (i) the Facility has an eligible central air condition system and the associated wiring as determined by the sole discretion of the LDC or its Contractor and is in good working order;
  - (j) the Facility has high speed broadband internet connection with a wireless Wi-Fi network and access to connect to the wireless network, including permission and the necessary access codes, passwords, etc.;
  - (k) the Facility did not previously participate in this Pilot Program; and
  - (l) the Pilot Participant has the authority and capacity to enter into this Pilot Participant Agreement.
7. The Pilot Participant agrees to permit the Device to be installed in or at the Facility by the LDC and/or the Contractor. If the LDC determines at its sole discretion that a Device cannot be installed, including for safety or access reasons or lack of funds, this Agreement will terminate without payment or liability by either party.
8. The Pilot Participant agrees not to move, remove, tamper with, disable or damage the Device that are installed in or at the Facility. Any failure to comply with these obligations will be at your sole risk for any damage that may result including damage to the equipment or the Facility or injury to any person.
9. The Pilot Participant agrees to allow the LDC or a representative of the LDC to have reasonable access to the Facility in order to inspect and test the Device as the LDC deems necessary.
10. The Pilot Participant agrees to allow the LDC or its Contractor and the IESO or its representatives access to the Facility for the purpose of conducting evaluation, measurement and verification activities including installing physical loggers or other monitoring equipment.
11. The Pilot Participant agrees and acknowledges that: (i) the LDC’s Contractor is independent of the LDC and that the LDC makes no representation, warranty, endorsement or recommendation of any kind with regard to the “Pilot Program”; (ii) the LDC does not guarantee energy cost savings or other benefits arising from this Pilot Program; (iii) neither the LDC, the IESO, nor their respective successors, assignors, affiliates, employees, agents, officers, directors, service providers and such affiliates, respective officers, directors or employees or any of their heirs, successors or assigns (collectively, the “Pilot Program Operators”) will be liable for any loss, damage or injury to persons or property, including without limitation any economic loss, loss of good will, loss of profit or any direct, indirect, special or consequential damages, and any costs or losses, expenses, fees, liabilities, allegations, causes of action, suits, proceedings, debts, penalties and demands arising therefrom or connected therewith of any nature or kind whatsoever arising from or related to the installation of the Device, the Pilot Program or any matter related to this Agreement, including, without limitation, any acts or omissions of any Pilot Program Operator and you hereby release the Pilot Program Operators of, from and against any and all of the foregoing. You agree to indemnify and save harmless the Pilot Program Operators if you or any member of your family,

- customer, occupant or guest seeks damages against any Pilot Program Operators for any reason that is connected with this Agreement and the Device.
12. The Pilot Participant agrees to participate in any follow up surveys, studies, audits, evaluations or verifications conducted by the LDC or the IESO or their agents or service providers in connection with the Pilot Program. This Section 12 shall survive the termination of this Agreement.
  13. The Pilot Participant agrees and consents to the LDC and Union Gas Limited where the Facility is a customer of Union Gas Limited to share with the IESO or their agents or service providers in connection with the Pilot Program, 12 calendar months of electricity and natural gas consumption data preceding the Installation Date and 12 calendar months of electricity and natural gas consumption data following the Installation Date.
  14. The Pilot Participant understands and agrees that by submitting the Pilot Program application, whether or not the Pilot Program application is accepted, it consents to the collection, use, disclosure and other handling of any information it provides to the Pilot Program Operators, including personal information such as the Pilot Participant's name, address, telephone number, email address and records showing historical energy use and consumption (the "**Pilot Participant Information**") by the Pilot Program Operators for purposes relating to the operation, administration or assessment of the Pilot Program or the Pilot application or the Agreement, and in connection with any reporting activities relating to the Pilot, which shall include, without limitation: (i) sharing of Pilot Participant Information among the Pilot Program Operators; (ii) use by the Pilot Program Operators of the Pilot Participant Information provided by the Pilot Participant to conduct, analyze and report on the results of the Pilot and to conduct surveys and modify the Pilot based on such surveys; and (iii) disclosure to the Ontario Energy Board, the Ontario Ministry of Energy or the Ontario Environmental Commissioner and/or their respective successors. The Pilot Participant hereby consents to the disclosure by IESO to LDC of information regarding the Pilot Participant's past participation in other IESO-funded Pilot Programs for the purposes of processing the Pilot application. The Pilot Participant will indemnify and save harmless each of the Pilot Program Operators and their respective directors, officers and employees from any and all liability and all claims, losses, damages (including indirect and consequential damages), expenses and proceedings for personal injury (including death) or property damage of any person relating to, or in connection with, resulting from, or arising out of the Pilot, including by reason of the actual or alleged implementation of any part of the Pilot and its operation or any other matter contemplated by the Pilot application or the Agreement.
  15. The Pilot Participant hereby acknowledges that the Pilot Participant Information may be accessible to third parties under the *Freedom of Information and Protection of Privacy Act (Ontario)* or the *Municipal Freedom of Information and Protection of Privacy Act (Ontario)*. This Section 15 shall survive the termination of this Agreement.
  16. As a Pilot Participant in the Pilot Program, Pilot Participant consents to the collection, use and disclosure of personal information by the LDC and the IESO in connection with the Pilot Program including for purposes of reporting, follow-up surveys, studies and audits, and the provision to the IESO of my past and current energy usage for such purposes. Pilot Participant understands that in connection with such reporting, surveys, studies and audits, the IESO and/or the LDC may contact Pilot Participant directly, including by email and other electronic communication.
  17. Pursuant to Canada's anti-spam legislation (hereinafter "CASL"), the LDC, on behalf of the Independent Electricity System Operator ("IESO") is hereby requesting your Express Consent (as that term is meant in CASL and its associated Regulations) to contact you at the electronic address identified in this Pilot Participant Agreement. Pilot Participant may withdraw its consent at any time. You may also reach the IESO at 120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1, ieso.ca, saveonenergy.ca, or 905.403.6900.
  18. Pursuant to CASL, the LDC is hereby requesting your Express Consent (as that term is meant in CASL and its associated Regulations) to contact you at the electronic address identified in this Pilot Participant Agreement. Pilot Participant may withdraw its consent at any time.
  19. The Pilot Participant transfers and assigns, or to the extent transfer or assignment is not permitted, hold in trust for, or in favour of, the LDC in its capacity as agent for and on behalf of the IESO, and not for the LDC's own benefit, all right, title and interest in and to all benefits or entitlements associated with the electricity savings or demand savings attributable to a Device, and the right to quantify and register these, including without limitation, any energy efficiency certificate, renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance (collectively, the "**Environmental Attributes**"). Until the IESO notifies the Pilot Participant otherwise, the LDC, in its capacity as agent, shall be entitled, unilaterally and without the Pilot Participants consent, to deal with such Environmental Attributes on behalf of the IESO in any manner the LDC determines. The Pilot Participant acknowledges that the IESO may direct the Pilot Participant in the same manner as the LDC and that until the IESO notifies the Pilot Participant otherwise the LDC may direct the Pilot Participant to take such actions and do all such things necessary to certify, obtain, qualify and register with the relevant authorities or agencies such Environmental Attributes for the purpose of transferring, assigning, or holding in trust, such Environmental Attributes to and for the IESO and the Pilot Participant shall comply with such directions, and the Pilot Participant will be entitled to reimbursement of the cost of complying with such direction, provided that the LDC, acting reasonably, has approved such cost in writing prior to the cost being incurred by the Pilot Participant. This Section 18 shall survive the termination of this Agreement.
  20. As between the Pilot Participant and the LDC, the LDC does not own nor will it own the Device installed on or in the Facility and title to the Device shall at all times be and remain with you. Nothing in this Agreement or otherwise shall have the effect of passing title to the Device to the LDC. The Pilot Participant acknowledges and agrees that repair or ongoing maintenance for the Device and of the heating and cooling equipment is its responsibility.
  21. The Pilot Participant acknowledges and agrees that: (i) the Pilot Participant has independently assessed the risk of installing Device at the Facility and the Pilot Participant accepts such risk; (ii) the Device have been selected and obtained through normal commercial channels, and the LDC makes no representation or warranty, express, implied, statutory or otherwise, including any representation or warranty as to merchantability, design, capabilities, suitability, durability or fitness for use or for a particular purpose, with regard to the Device or any part thereof or the installation thereof or otherwise; (iii) the energy cost savings and other benefits described in connection with

the Pilot Program are based on estimates, and actual results may differ; and (iv) the Device are intended for use only as directed and improper use may result in injury or damage.

22. The LDC shall not be in default, and shall not be deemed to be in default, of this Agreement by reason of delay or the failure or inability to perform its obligations hereunder where the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including without limitation any act of God or other cause which frustrates the performance of this Agreement.
23. Subject to earlier termination rights herein, this Agreement shall remain in effect for as long as there is an operational Device at the Facility or until the Pilot Participant moves from the Facility where a Device is located or at the latest December 31, 2020. In the event a Device cannot be installed at Pilot Participant's Facility, this Agreement shall terminate. If the Pilot Participant breaches any of the obligations in this contract, the LDC may terminate this Agreement. The LDC may terminate this Agreement at any time and for any reason by sending you a notice.
24. This Agreement shall be interpreted under Ontario law. You may not assign this Agreement. This Agreement may be amended by the LDC with thirty (30) days' notice to the Pilot Participant.
25. Except as provided in Sections 11, 12, 13, 17 and 18 and this Section 25, this Agreement is solely for the benefit of:
  - (a) the LDC, and its successors and assigns, with respect to the obligations of the Pilot Participant under this Agreement, and
  - (b) the Pilot Participant, and its successors, with respect to the obligations of the LDC under this Agreement; and
  - (c) Union Gas Limited with respect to any provision granting consent to disclosure and use of any information relating to Pilot Participant's Union Gas account, where a Union Gas account exists.

and this Agreement will not be deemed to confer upon or give to any other person any claim or other right or remedy. The Pilot Participant appoints the LDC as the trustee for the IESO and the other Pilot Program Operators of the applicable provisions set out in this Agreement, including Sections 11, 12, 13 and this Section 25. The LDC is the IESO's agent for the purpose of Section 17.

26. The Pilot Participant acknowledges and agrees that the terms and conditions of this Agreement are subject to change at any time.
27. This Agreement may be executed and delivered by facsimile transmission or by any other method of electronic execution and the parties may rely upon all such signatures as though such signatures were original signatures.
28. Each party to this Agreement will comply, in all material respects, with all laws and regulations required to be complied with in the performance of its obligations hereunder.