**ecobee 3rd Party Commercial Services Agreement**

ecobee, Inc. (“ecobee”) provides a collection of application programming interfaces (APIs), referred to collectively as “Services” that provide communication and/or interoperability with ecobee devices, systems and user accounts.

You wish to develop software that interacts with the ecobee Services, this software referred to here as the “Implementation”. ecobee wishes to make these Services available to you for use in your Implementation, subject to your compliance with the terms and conditions set forth below (the "Agreement").

This Agreement applies to both commercial and non-commercial uses of the Services that may charge a fee for use of the Service. By accessing, or using these Services, you are agreeing to be bound by the Agreement. If you do not wish to be bound by the Agreement, you may not access or otherwise use the Services.

1. **Your Relationship with ecobee**
   1. Your use of any of the Services is subject to the terms of a legal agreement between you and ecobee, inc., whose principle place of business is at 333 Adelaide St. West, 6th Floor, Toronto, ON, M5V 1R5, Canada (“ecobee”).
   2. Before using the Services, you should read each of the documents comprising the Agreement. If there is any contradiction between the terms of this Agreement, and other documents relating to these Services (including, but not limited to the API documentation), then this Agreement will take precedence.
   3. Nothing contained in this Agreement shall be deemed to constitute either party as partner, joint venture or employee of the other party for any purpose.
   4. Nothing contained in this Agreement shall be deemed to constitute a non-compete agreement. ecobee may choose to independently develop products and services which compete with your Implementation.
   5. You represent that you have full power, capacity and authority to accept these Agreements. If you are accepting on behalf of your employer or another entity, you represent that you have full legal authority to bind your employer or such entity to these Agreements. If you do not have the legal authority to bind, please ensure that an authorized person from your entity consents to and accepts these Agreements.
2. **Term of the Agreement**
   1. This Agreement begins upon you accepting and returning this Agreement to ecobee, either digitally or in print (the Effective Date) and lasts for a term of one year.
   2. This Agreement may be renewed annually.
   3. Continued usage of the Services will be deemed a renewal of this Agreement. You may terminate your participation in the Agreement by ceasing use of the Services, and by removing the ecobee API code from your Implementation. ecobee, at its discretion, may cancel this Agreement at the end of the first or any renewal term, upon one six (6) months notice. If there is a material breach of the Agreement, then this notice period is waived, and the Agreement may be cancelled immediately.
   4. The restrictions and obligations in sections 3, 4, 6, 7, 10, 11 and 12 survive the termination or cancellation of this Agreement, and shall continue to bind you, your successions and heirs.
3. **Privacy and Personal Information**
   1. ecobee's Privacy Policy. For information about ecobee's data protection practices, please read ecobee's privacy policy at <http://www.ecobee.com/legal/privacy/>. This policy explains how ecobee treats personal information and protects customer privacy. You agree that your Implementation will use customer data accessed through the Service in accordance with ecobee's privacy policy, unless otherwise authorized by those customers in writing.
   2. Your Privacy Policy. You must post and abide by an appropriate privacy policy in, and will comply with all applicable laws in your jurisdiction relating to the use of personal information by your Implementation. Your Privacy Policy must disclose any and all potential sharing of personal information between your Implementation and ecobee Services. In addition, you must secure any and all necessary customer permissions necessary to facilitate such sharing of personal information between your Implementation and ecobee Services.
4. **ecobee Proprietary Rights**
   1. ecobee shall own and retain all right, title and interest in and to the Intellectual Property Rights in the Services, subject only to the limited license expressly set forth in the section entitled “Permitted Uses”. You do not acquire any other rights, express or implied, in the Services. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO ECOBEE.
   2. ecobee claims no ownership over your software or data, as provided in the Implementation, and you retain copyright and any other rights you already hold. By using the Service, you grant ecobee a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, perform, display and distribute your data through the Service for the sole purpose of ecobee providing the Service to your Implementation.
5. **Permitted Uses**
   1. Limited License. Subject to the terms and conditions of this Agreement, ecobee grants to you a non-exclusive, non-transferable license (without the right to sublicense) (i) to use the Services for commercial and non-commercial purposes within your Implementation. Also subject to the terms and conditions of this Agreement, ecobee further grants to you a non-exclusive, non-transferable license (without the right to sublicense) to resell the Services as an integrated component of your Implementation.
   2. Identification. In your Implementation, you shall identify to your users Services which are provided by ecobee. Under no circumstance shall you identify Services provided by ecobee as coming from any source other than ecobee. For the purposes of this Identification, you are granted a limited, non-exclusive license to use ecobee’s trade-marks for the purposes of this Identification, provided that all titles, trade-marks, copyright and restricted rights notices are reproduced on such copies.
   3. Limits on your Use of the Service. You acknowledge and agree that ecobee may limit your usage of the Services. These limitations are specified in Appendix A. Such limits may be set by ecobee at any time, at ecobee’s discretion. You further acknowledge and agree that ecobee may adjust the rate at which such queries are received and processed by the Service in order to maintain the integrity of the Service. Such adjustments may be set by ecobee at any time, at ecobee’s discretion. If you want your Implementation to use the Services outside these usage limits or usage policies, please contact ecobee for information on additional licensing options.
   4. Restrictions
      1. You shall not copy or use the Services, or any related documentation except as expressly permitted in this Agreement.
      2. You will not, and will not permit any third party to, retain, sublicense, rent, copy, modify, translate, reverse engineer, decompile, disassemble, or otherwise reduce to human perceivable form any portion of the Services.
      3. You and your Implementation will not use the Services to harm ecobee, such harm including, but not being limited to, disrupting ecobee business and customers, overloading ecobee’s network or conducting Denial of Services attacks, finding or exploiting vulnerabilities in ecobee’s security, contacting ecobee customers who do not have an explicit and preexisting relationship with you.

Violating any of these restrictions shall be considered a material breach of the Agreement.

* 1. Third-Party Software. The terms and conditions of this Agreement shall not apply to any Third-Party Software accompanying the Services. Any such Third-Party Software is provided under the terms of the license agreement or copyright notice accompanying such Third-Party Software.
  2. Open Source Software. The terms and conditions of this Agreement shall not apply to any Open Source Software accompanying the Services. Any such Open Source Software is provided under the terms of the open source license agreement or copyright notice accompanying such Open Source Software.

1. **Changes to Service or Termination of Service**
   1. ecobee may make provide periodic Upgrades to the Services. ecobee will provide at least six (6) months notice if we intend to depreciate an existing API or otherwise make backwards-incompatible changes to the Services in an Upgrade (“Depreciation Policy”).
   2. This notice period, Services and software availability may be shortened or waived if:

i) required by law or a court ruling (including if there is a change in applicable law); or

ii) doing so could create a security risk or substantial economic or material technical burden to ecobee.

* 1. This Deprecation Policy does not apply to versions, features, and functionality labeled as "beta" or “experimental”.
  2. Your continued access and use of the Services shall be deemed your conclusive acceptance of the modified Services. If a modification is unacceptable to you, you must terminate use of the Services. In no way shall ecobee be held liable for any costs or damages caused by the changes to the Services beyond refunding any unused pre-paid purchases of queries that have been requested by you.

1. **Confidential Information**
   1. Services are proprietary to, and include confidential information belonging to ecobee. For greater certainty, confidential information includes all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, and software source documents relating to the Services, and other information provided by ecobee, whether disclosed orally, in writing, or by examination or inspection, other than information which you can demonstrate (i) was already known to you, other than under an obligation of confidentiality, at the time of disclosure; (ii) was generally available in the public domain at the time of disclosure to you; (iii) became generally available in the public domain after disclosure other than through any act or omission of you; (iv) was subsequently lawfully disclosed to you by a third party without any obligation of confidentiality; or (v) was independently developed by you without use of or reference to any information or materials disclosed by ecobee. Confidential Information shall include without limitation the APIs, documentation relating to the APIs, Performance Data, and any Updates. For greater certainty, any Service (including any API) which is published under an open source license will no longer be considered confidential information, without affecting the confidentiality of the other non-published ecobee Services.
   2. You agrees to not
      1. disclose to any party not involved in the Implementation any information about the Service’s performance, content, specifications or its code;
      2. copy any portion of Services code, appearance or documentation, except to the extent necessary to perform integration with ecobee devices and services; or
      3. reverse engineer, decompile or disassemble the Services or any portion of it.
   3. Without limiting the foregoing, you shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance, but in no event less than reasonable care, to prevent the disclosure of Confidential Information
   4. Information regarded as confidential will be held in confidence by you in perpetuity, or until ecobee or a competent Court of Law no longer considers such information confidential.
   5. You agree that monetary damages would not be a sufficient remedy for any breach of this Agreement, and that any court having jurisdiction may enter a preliminary and/or permanent restraining order, injunction or order for specific performance in the event of an actual or threatened breach of any of the provisions of this Agreement, in addition to any other remedy available to ecobee.
2. **Assignment**
   1. The Terms may be assigned by ecobee and will inure to the benefit of ecobee, its successors, and assigns.
   2. You shall not assign or otherwise transfer any rights or obligations under this Agreement, without the written authorization by ecobee, such authorization not to be unreasonably withheld.
3. **Changes to the Agreement**
   1. ecobee reserves the right to make changes to the Agreement from time to time. ecobee will use commercially reasonable efforts to provide at least three (3) months notice of any material changes to the Agreement. When these changes are made, ecobee will make a new copy of the Agreement available at www.ecobee.com/developers (or such successor URLs that ecobee may designate from time to time). You are therefore responsible for regularly reviewing the Agreement and additional terms sent to you, or notices posted on the ecobee website. Your continued access and use of the Services shall be deemed your conclusive acceptance of the modified agreement. If a modification is unacceptable to you, you may terminate this Agreement by ceasing use of the Services. In no way shall ecobee be held liable for any costs or damages caused by the changes or termination to the Agreement.
   2. If there is any contradiction between the Agreement and other API-related documents (including but not limited to the APIs Documentation), then this Agreement will take precedence.
4. **Exclusion of Warranties**
   1. The accuracy, reliability and fitness of purpose of the Services are not guaranteed. You should monitor your use of the Services on a regular basis to ensure their proper performance. You waive any and all claims that they may have against ecobee arising out of the performance or nonperformance of the Services.
   2. SERVICES ARE PROVIDED AS IS, AND ecobee DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO IT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
5. **Limitations of Liabilities**
   1. THESE SERVICES AND RELATED INFORMATION ARE PROVIDED BY ecobee Inc. ON AN "AS IS" AND "AS AVAILABLE" BASIS. ecobee Inc. MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS OF ANY KIND, OR AS TO THE OPERATION OF THE SERVICES OR THE INFORMATION, CONTENT, MATERIALS, OR PRODUCTS INCLUDED ON THIS Services. YOU EXPRESSLY AGREE THAT YOUR USE OF THESE SERVICES IS AT YOUR SOLE RISK.
   2. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, ecobee Inc. DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ecobee Inc. DOES NOT WARRANT THAT THIS Services, ITS SERVERS, OR E-MAIL SENT FROM ecobee Inc. ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ecobee Inc. WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THIS SITE, INCLUDING, BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES.
   3. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.
6. **Indemnities.** 
   1. You agree to indemnify, defend and hold harmless ecobee Inc., its officers, directors, owners, partners, employees, agents, licensors, suppliers and any third party information provider to the website from and against all losses, expenses, damages and costs, including legal fees, resulting from any violation of these Agreement (including negligent or wrongful conduct) by you or your use and access of the ecobee Services.
   2. You agree to agree to indemnify, defend and hold harmless ecobee Inc., its officers, directors, owners, partners, employees, agents, licensors, suppliers and any third party information provider to the website from and against all losses, expenses, damages and costs, including legal fees, resulting from any claim by a 3rd party that your Implementation violates their intellectual property rights (including patent, copyright or trademark infringement, or violation of trade-secrets by you).
   3. You will cooperate as fully as reasonably required in the defense of any claim. ecobee reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by you. You acknowledge that damages for improper use of the Services may be irreparable; therefore, ecobee is entitled to seek equitable relief, including but not limited to preliminary injunction and injunction, in addition to all other remedies.
7. **General Legal Terms**
   1. Severability: If a court finds any provision of this Agreement invalid or unenforceable, then that provision will be removed from the Agreement without affecting the rest of the Agreement. The remaining provisions of the Agreement will continue to be valid and enforceable.
   2. Integration: This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.
   3. Waiver: The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.
   4. Attorney Fees and Expenses: In a dispute arising out of or related to this Agreement, the prevailing party shall have the right to collect from the other party its reasonable attorney fees and costs and necessary expenditures.
   5. Governing Law: This Agreement shall be governed in accordance with the laws of the Province of Ontario.
   6. Jurisdiction: The parties consent to the exclusive jurisdiction and venue of the federal and provincial courts located in Toronto, Ontario Canada in any action arising out of or relating to this Agreement. The parties waive any other venue to which either party might be entitled by domicile or otherwise.
   7. International Use. Given the global nature of the Internet, you agree to comply with all local rules including, without limitation, rules about the Internet, data, e-mail, privacy, copyright, and trademark infringement. Additionally, you agree to comply with all applicable laws regarding the transmission of technical data exported from the Canada or the country in which you reside.
   8. COMMUNICATION. When you send e-mails to us, you are communicating with us electronically, and thereby you are consenting to receive communications from us electronically or by other means available. We will communicate with you electronically, by telephone or by facsimile. It is further understood that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communication be in writing
   9. LANGUAGE. It is the express wish of the parties that this Agreement and any related documents be drawn up in the English language. Les parties confirment qu'il est de leur volonté expresse et réciproque que cette convention et tout document qui s'y rattache soient rédigés en anglais.
   10. CONTACT INFORMATION. Please send notices or requests by care of e-mail to: legal@ecobee.com

(or) by our Mailing Address:

ATTN: Legal

ecobee Inc.

333 Adelaide St. W, 6th Floor

Toronto, ON M5V 1R5

You:

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Appendix A: Service Level and Usage Limits**

1. If your Implementation generates a high volume of queries, ecobee reserves the right to set usage limits, as are described below. ecobee also reserves the right to set other usage policies for the Services from time to time. If you want to engage in use outside these usage limits or usage policies, annual subscriptions for enhanced usage limits are described in Appendix B.
2. Usage Limits.
   1. Implementations using the Services may at no cost generate up to 85,000 queries (“usage limit”), per month starting on the date you register for developer access (“Registration Date”). More information on how the usage limit is calculated can be found at www.ecobee.com/developers.Every month, your Implementation receives a new allotment of 85,000 queries. Unused free queries are not carried over from month to month.
   2. If your Implementation exceeds the usage limits, ecobee reserves the right to restrict access to the Services by your Implementation, including by not limited to, throttling access to the server or denying access to the Services by your Implementation. In no way will ecobee be liable for any losses or damages caused by the restriction of access to the Services by your Implementation caused by excess queries.
   3. To avoid restriction of access to the Services by your Implementation, you can respond in one of the following ways:
      1. Modify your Implementation to reduce the number of queries per month to be below the usage limit.
      2. Purchase an annual subscription for enhanced Usage Limits, which provides additional queries per month from ecobee. These additional queries may be governed by different terms than the free queries provided in this Agreement.
   4. Every query made by your Implementation is associated with a user account. Queries that are made by a user account that is identified as your Developer account(s) is/are considered to be test queries, and are not counted against your Implementation’s usage limits. ecobee reserves the right to limit the number of Developer accounts provided to you.
   5. If you are recognized by ecobee as a non-profit organization, then your Implementation is not subject to the aforementioned usage limit. All other limitations described in this Agreement will still apply. ecobee reserves the right to periodically review and reassess this exemption and your non-profit status under this exemption.
3. Other Limitations.
   1. Rate Restrictions. Your Implementation may not request queries from the Services at a rate greater than 1 request per second per thermostat. If your Implementation requests queries at a greater rate, ecobee may throttle or otherwise limit access to the Services by your Implementation.
   2. Data Restrictions. ecobee may also, at its sole discretion, limit the volume of data transferred to or from the Services to your Implementation.

**Appendix B: Enhanced Usage Limits Annual Subscriptions**

If the usage limits provided in Appendix A are insufficient for your Implementation, you may purchase an Annual Subscription from ecobee to increase your monthly usage limits. Annual Subscriptions will be managed through the Developer portal at [www.ecobee/Developers](http://www.ecobee/Developers). Pricing for the Annual Subscriptions is as follows:

$500/year: Your usage limit is increased by 170,000 additional queries per month. These additional queries are added to the basic usage limit provided. You may purchase multiple bocks of usage limit increases to achieve your desired total.

*For example: for $500, your Implementation’s usage limit is increased to a total of 255,000 queries/month (85K+170K). For $1000, your Implementation’s usage limit is increased to a total of 425,000 queries/month (85K+2\*170K).*

$6,500/year: Your usage limit is increased to a total of 3 million queries per month, which includes the basic usage limit. You may purchase multiple bocks of usage limit increases to achieve your desired total.

*For example: for $13,000, your Implementation’s usage limit is increased to a total of 6 million queries/month (2x3 million).*

$50,000/year: Your usage limit is increased to a total of 30 million queries per month, which includes the basic usage limit. You may purchase multiple bocks of usage limit increases to achieve your desired total.

$400,000/year: Your usage limit is increased to a total of 300 million queries per month, which includes the basic usage limit. You may purchase multiple bocks of usage limit increases to achieve your desired total.

Additional Terms and Conditions

1. All pricing is in US dollars, and is exclusive of any federal, state or provincial taxes required by law to be collected.
2. If midway through the year (based upon your Anniversary Date) you choose to increase your subscription level, then your Annual Subscription amount is pro-rated to the remaining months of the year for which your subscription will be active. For example, if your Anniversary Date is in May and, in July you wish to increase your usage limit from 85,000 queries per month (free) to 255,000 queries month, then the cost of your subscription for the partial year will be $500\*10/12 = $416.67.
3. Your Annual Subscription will renew automatically on your anniversary date at your current subscription level. You may lower your subscription level or terminate your subscription by providing at least thirty (30) days written notice to ecobee. ecobee shall invoice you at least thirty (30) days prior to the anniversary of the agreement for the Annual Hosting Fee. All payment is due within thirty (30) days of the date indicated on the invoice.
4. Warranties. You use the Services at your own risk. ecobee makes no warranty, express or implied, or statutory, as to the Services including but not limited to representations, guarantees or warranties of merchantability, accuracy, quiet enjoyment, fitness for a particular purpose or warranties of its third party providers. ecobee is not responsible for any damage, loss, use or misuse of your login ID’s or unauthorized access to passwords unless it is due to the gross negligence of ecobee. You acknowledge that neither ecobee nor its third party providers controls the transfer of data over communications facilities, including the Internet, and that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities. ecobee is not responsible for any delays, delivery failures or other damage resulting from such problems.
5. The purchase of an Enhanced Usage Limits subscription does not confer any additional rights or benefits beyond what is expressly stated in this Agreement other than the right to continue using the Service under the existing Agreement.