

ECOBEE SMARTBUILDINGS SUBSCRIPTION SERVICES AGREEMENT
(US Customers)

THIS ECOBEE SMARTBUILDINGS SUBSCRIPTION SERVICES AGREEMENT (this "Agreement") is entered into as of [insert date] (the "Effective Date") between **ecobee Ltd.**, a Nevada corporation, having an office at office at 11380 Prosperity Farms Road, Suite 2121E, Palm Beach Gardens, FL ("ecobee") and:

"Subscriber"

(Full Business Name): Stillwater Student Housing Contact Person: Jody O'Donnell
Address 1: 4105. Owner, LLC Phone: 214-874-3117
Address 2: Stillwater, OK 74074 E-Mail: Jody@LCLDev.com

AGREEMENT SPECIFICS

ecobee manufactures and sells Internet-enabled products, including residential and commercial thermostats ("Thermostats"), and also provides subscription software services to enable Subscribers their purchased Thermostats.

Subscriber agrees to subscribe to the following ecobee subscription services, pursuant to the terms and conditions of this Agreement:

Subscription Services*	Maximum Number of Concurrent Thermostats	Service Fee Totals	Payment Method	Subscription Period
SmartBuildings	<input type="text"/> <u>204</u>	XX USD <u>\$4896.00</u>	[cheque, credit card, ACH debit]	[1/3/5/10] years <u>①</u>
Order Type:	<u>Renewal</u> New Subscription			
Start Date:	<u>July 12, 2021</u>			

The Service Fee Total for New Subscriptions shall be calculated as follows:

- 1 year Agreement: Maximum Number of Concurrent Thermostats * [USD\$24]
- 3 year agreement: Maximum Number of Concurrent Thermostats * [USD\$65]
- 5 year agreement: Maximum Number of Concurrent Thermostats * [USD\$96]
- 10 year agreement: Maximum Number of Concurrent Thermostats * [USD\$168]

The Service Fee Total for Additions to existing Subscriptions shall be prorated for the remainder of the existing Subscription Period.

Payment from Subscriber is due within thirty (30) days from date of invoice.

All payments by cheque shall be sent to the following address:

ecobee
25 Dockside Drive, Suite 700
Toronto ON, M5A0B5

Additional Notes:

Copy of Billing information to
Property Manager


Kait Nommack
Kaitlin.Nommack@oneonfourth.com
Cell: 580-216-4523

This Agreement consists of these Agreement Specifics and the SmartBuildings Standard Subscription Services Terms and Conditions attached to this Agreement as Schedule A ("**Standard Terms**"). This Agreement contains the entire agreement between ecobee and Subscriber and supersedes all prior service agreements, negotiations, marketing or advertising materials, representations and proposals whether written or oral. Subscriber acknowledges having the Standard Terms.

Any and all notices required to be delivered hereunder shall be sent by email (for ecobee) to legal@ecobee.com or (for Subscriber) to **[INSERT CUSTOMER E-MAIL ADDRESS]** ("**Email Notification**"), or by nationally-recognized overnight courier service (signature required) to the address set out above ("**Mail Notification**"). Any such notification shall be deemed effective: (i) upon transmission when delivered by Email Notification; or (ii) when delivered by Mail Notification. Any Mail Notification to ecobee shall be sent to the attention of "Legal". The above addresses may be changed at any time by giving prior written notice as above provided.

EXECUTED AS AN AGREEMENT AS OF THE EFFECTIVE DATE.

Subscriber

By: 
Name: Jody O'Donnell
Title: President

ecobee Ltd.

By: _____
Jon Prosser
VP Finance

[Standard Terms follow.]

Schedule A – SmartBuildings Standard Subscription Services Terms and Conditions

1. SERVICES

1.1 Subscription Services. Subject to the terms and conditions of this Agreement, and in consideration of the payment by Subscriber of the Service Fees, ecobee will make the services identified in the Agreement Specifics (the "**Subscription Services**") available to Subscriber in such a manner that the Subscriber may access the functionality of the Subscription Services in respect to managing Subscriber's Thermostats. The current version of the ecobee Subscription Services documentation, including references to such functionality can be found at the following location on ecobee's website: www.ecobee.com/smartbuildings (the "**Documentation**").

1.2 Standard Support. Provided that Subscriber has paid all outstanding Service Fees and is otherwise in compliance with this Agreement, ecobee will provide Subscriber with ecobee's standard ongoing support during the Term (the "**Support Services**") (the Subscription Services, the Implementation and Training Services, and the Support Services collectively are defined as the "**Services**"), including telephone

1.3 Changes to Subscription Services; Service Levels; Updates. Subscriber acknowledges that ecobee has the right to change, modify, update, remove and/or add to the Subscription Services and any aspect or feature thereof including replacing any third party product or services incorporated into the Subscription Services. Payment of the Service Fees includes the receipt of all generally available updates to the Subscription Services free of charge. ecobee shall use commercially reasonable efforts to make the Subscription Services available 24 hours a day, 7 days a week, except for (i) planned downtime (of which ecobee shall give at least 72 hours electronic notice and which ecobee shall schedule to the extent practicable during the hours between 8:00 pm and 3:00 a.m. Eastern time), and (ii) any unavailability caused by circumstances beyond ecobee's reasonable control, including, for an example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving ecobee's employees), ecobee Internet failure or delay, non-ecobee application, or denial of service attack. Any planned downtime that is likely to require more than 3 hours will be scheduled at a mutually agreeable time.

1.4 2.9. Trial Subscriptions. If Subscriber receives free access or a trial or evaluation subscription to the Services (a "**Trial Subscription**"), then Subscriber may use the Services in accordance with the terms and conditions of this Agreement for a period of fourteen (14) days or such other period granted by ecobee (the "**Trial Period**"). Trial Subscriptions are permitted solely for Subscriber's use to determine whether to purchase a paid subscription to the Services. Trial Subscriptions may not include all functionality and features accessible as part of the paid Services. If Subscriber does pay the Service Fees at the end of the Trial Period, this Agreement and Subscriber's right to access and use the Services will terminate at the end of the Trial Period. ecobee has the right to terminate a Trial Subscription at any time for any reason. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ECOBEE WILL HAVE NO WARRANTY, INDEMNITY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS.

2. FEES AND PAYMENT

2.1 Service Fees. Subscriber will pay to ecobee the fees for the Services in the amounts and at the rates set out in the Agreement Specifics (the "**Service Fees**"). Unless otherwise specified in the Agreement Specifics, all Service Fees (and other fees set out in this Agreement) are fixed for the Initial Subscription Period (and subject to change thereafter). All Service Fees (and other fees set out in this Agreement) will be invoiced in advance and are non-cancelable and non-refundable except as explicitly provided for in this Agreement.

2.2 Payment Method. Payment shall be made in the manner set-out in the Agreement Specifics (e.g., cheque, credit card, ACH debit, etc.). If Subscriber's credit card payment does not go through for any reason or there are chargebacks, then Subscriber will promptly pay to ecobee upon demand any additional payment processing, chargeback, convenience or other related fees. If payment is by one of the other means specified, ecobee will provide details necessary for the transaction in the Agreement Specifics.

2.3 Excess. If Subscriber's use of the Subscription Services exceeds the Maximum Number of Concurrent Thermostats (as indicated in the Agreement Specifics) or otherwise requires the payment of additional fees (pursuant to the terms of this Agreement), Subscriber will be billed for such usage and Subscriber will pay the additional fees in accordance with this Agreement.

2.4 Reductions. Subscriber may reduce the Maximum Number of Concurrent Thermostats (specified in the Agreement Specifics), but may not reduce such number to lower than 1, at any time during a Subscription Period ("**Terminated Thermostats**"). In such event, ecobee will provide Subscriber with a future credit equal to the prorated Service Fees that would have been otherwise due for such Terminated Thermostats through the end of then-current

Subscription Period. Credits are only valid for future Subscription Periods and no cash refunds will be made. Credits are non-transferable. If the Subscription Services are terminated, all credits will expire.

2.5 Increases. Subscriber may increase the Maximum Number of Concurrent Thermostats (specified in the Agreement Specifics) at any time during a Subscription Period by providing ecobee with at least one days prior written notice regarding the number of Thermostats that Subscriber wishes to increase. In such event, ecobee will charge Subscriber the prorated Service Fees through the end of then-current Subscription Period.

2.6 Taxes. All Service Fees and other charges set forth in this Agreement are exclusive of all taxes, levies or duties or similar governmental assessments of any nature now in force or enacted in the future and imposed on the provision of goods and services ("**Taxes**") by any local, state, provincial, federal or foreign jurisdiction, including but not limited to value-added, sales, use, consumption or withholding taxes. Subscriber will be responsible for all such Taxes, except for Taxes based on ecobee's net income.

Upon the request of ecobee, Subscriber shall cooperate with ecobee in complying with relevant tax laws and regulations. This includes the completion of forms, certificates of tax exemption and documents and the provision of information to the relevant taxing authority, of the kind required under the applicable law, and ecobee shall take similar actions, and provide to Subscriber such information as is required by the relevant taxation authority.

2.7 Payment Terms; Set Off. Payment terms are provided in the Agreement Specifics. Subscriber will be charged a late fee of 1.50% per month (or the maximum amount allowed by law if it is less) on any unpaid amounts from the due date until the date of actual payment, whether before or after judgment. Fees due by Subscriber shall not be subject to set off, counterclaim, adjustment, reduction, compromise or otherwise, by virtue of any actual or potential claim against ecobee.

2.8 Changes to Fees. ecobee may increase Service Fees by providing written notice to Subscriber at least 60 days prior to the end of the then-current Subscription Period.

3. SUBSCRIBER OBLIGATIONS; CONCURRENT THERMOSTATS

3.1 Concurrent Thermostats. Subscriber may not use or manage more than the Maximum Number of Concurrent Thermostats (as indicated in the Agreement Specifics) via the Subscription Services under its User Account (as defined below).

3.2 Use; User Accounts. The Subscription Services may only be used by Subscriber and its employees, contractors and designates in connection with the Subscriber's business ("Permitted Users"). Subscriber will ensure that Permitted Users only use the Subscription Services through the Subscriber User Account. Subscriber will not allow any Permitted User to share the Subscriber User Account with any other person. Subscriber will promptly notify ecobee of any actual or suspected unauthorized use of the Subscription Services. ecobee reserves the right to suspend, deactivate, or replace the Subscriber User Account if it determines that the Subscriber User Account may have been used for an unauthorized purpose. Subscriber is responsible for identifying and authenticating all Permitted Users and for Permitted Users' compliance with this Agreement.

3.3 Additional Restrictions on Use. Subscriber must not itself, and will not permit others to (i) sub-license, sell, rent, lend, lease or distribute the Subscription Services or any intellectual property rights therein or otherwise make the Subscription Services available to others; (ii) use the Subscription Services to permit timesharing, service bureau use or commercially exploit the Subscription Services; (iii) use or access the Subscription Services in violation of any applicable law or intellectual property right, in a manner that threatens the security or functionality of the Subscription Services, or for any purpose or in any manner not expressly permitted in this Agreement; (iv) use the Subscription Services in any manner that competes with ecobee, such as to build a competitive product or service, including to build a product or service using any similar ideas, features, functions or graphics of the Subscription Services; (v) modify, adapt, create derivative works of, or compilations, aggregations or translations of the Subscription Services; (vi) reverse engineer, de-compile or disassemble the Subscription Services; (vii) remove or obscure any proprietary notices or labels on the Subscription Services, including brand, copyright, trademark and patent or patent pending notices; (viii) perform any vulnerability, penetration or similar testing of the Subscription Services; or (ix) use the Subscription Services to create, collect, transmit, store, use or process any Subscriber Data that (A) contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data; (B) Subscriber does not have the lawful right to create, collect, transmit, store, use or process; or (C) violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity). "**Subscriber Data**" means any data, information, content, records, and files that Subscriber (or any of its Permitted Users) loads, receives through, transmits to or enters into the Subscription Services.

4. OWNERSHIP AND CONFIDENTIALITY

4.1 Subscriber Data. As between the parties, Subscriber retains all ownership and intellectual property rights in and to Subscriber Data. Subscriber grants to ecobee a nonexclusive, worldwide, royalty-free, irrevocable, fully paid-up right to use, process and transmit Subscriber Data to provide the Services. ecobee may collect and analyze data and other information relating to the provision, use and performance of the Services and related systems and technologies (including, without limitation, information concerning Subscriber Data and data derived therefrom), and during and after the Term of this Agreement, ecobee may : (i) use such data and information to improve and enhance the ecobee Services and for other development, diagnostic and corrective purposes in connection with the ecobee Services and other ecobee offerings ; and (ii) disclose such data solely in aggregated or other de-identified form in connection with its business.

4.2 Ownership of Services. As between the parties, ecobee retains all right, title and interest in and to all intellectual and proprietary rights with respect to (a) the Services, together with any and all software and other technology that enables the provision of such Services and all Documentation, and any training materials and other deliverables provided by ecobee under this Agreement; (b) anything developed or delivered by or on behalf of ecobee; and (c) any modifications, improvements, customizations, updates, enhancements, aggregations, compilations, derivative works, translations and adaptations to any of the foregoing.

4.3 Reservation of Rights. All rights not expressly granted by ecobee to Subscriber under this Agreement are reserved.

4.4 Confidentiality.

(a) **Confidential Information** means all information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of a Disclosing Party includes information concerning the operations, affair, businesses, technology and technical information, product plans and designs, and business processes of such Party.

(b) Receiving Party hereby agrees that during the Term and at all times thereafter it will not: (i) disclose Confidential Information of the Disclosing Party to any person, except to its own personnel (including, in the case of ecobee, its contractors and subcontractors) having a "need to know" and that are bound by an obligation of confidentiality similar to the obligations under this Section 4.4; (ii) use Confidential Information of the Disclosing Party except to exercise its rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential Information of the Disclosing Party any proprietary legend. Each Receiving Party will protect the Disclosing Party's Confidential Information in a manner at least as great as the precautions that the Receiving Party takes to protect its own Confidential Information of a similar type, but no less than a reasonable precautions.

(c) These confidentiality obligations do not apply to any information, other than Personal Information, that is: (i) information already known or independently developed by Receiving Party without access to Disclosing Party's Confidential Information; (ii) information that is publicly available through no wrongful act of Receiving Party; or (iii) information received by Receiving Party from a third party who was free to disclose it without confidentiality obligations.

(d) Notwithstanding Section 4.4(b), Receiving Party may disclose Disclosing Party's Confidential Information: (i) to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body, provided that, except to the extent prohibited by law, the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party to seek an appropriate protective order; or (ii) to its legal counsel and other professional advisors if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services in connection with the Party's business.

4.5 Obligation on Termination. Upon expiration or termination of this Agreement for any reason:

(a) The Receiving Party shall (i) return to the Disclosing Party, or at Disclosing Party's written request destroy, all originals and copies of the Disclosing Party's Confidential Information; (ii) permanently erase all electronic copies of Disclosing Party Confidential Information from all of Receiving Party's systems and any other systems Receiving Party directly or indirectly controls; and (iii) upon request, certify to Disclosing Party in a signed written instrument that it has complied with the requirements of this Section 4.5(a).

(b) Notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control, Disclosing Party may retain the Receiving Party's Confidential Information (i) in tangible form, in its then current state solely to the extent and for so long as required by applicable law, rule or

regulation; and (ii) in electronic form, in its backups, archives and disaster recovery systems until such Receiving Party Confidential Information is deleted in the ordinary course. All information and materials described in this Section 4.5(b) will remain subject to all confidentiality requirements of this Agreement.

5. PRIVACY; DATA SECURITY

5.1 ecobee Privacy Policy. Subscriber agrees (on Subscriber's behalf and on behalf of each Permitted User) to ecobee's access, use, collection, storage and disclosure of Subscriber's and each Permitted User's Personal Information for the purposes authorized under this Agreement. Subscriber understands that Personal Information, including the Personal Information of Permitted Users, will be treated in accordance with ecobee's privacy policy located at www.ecobee.com/legal/use (the "**Privacy Policy**"). "**Personal Information**" means identifiable information about an specific individual.

5.2 Subscriber Warranty Subscriber represents and warrants to, and covenants with ecobee that the Subscriber Data will only contain Personal Information in respect of which Subscriber has provided all notices and disclosures (including to each Permitted User), obtained all applicable third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable ecobee to provide the Subscription Services, including with respect to the collection, storage, access, use, disclosure and transmission of Personal Information, including by or to ecobee and to or from all applicable third parties.

5.3 Data Security. ecobee will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Subscriber Data that is processes hereunder. Those safeguards will include, but will not be limited to, commercially reasonable measures for preventing access, use, modification or disclosure of Subscriber Data, except (i) to provide the Services and as contemplated herein in Section 4; or (ii) as Subscriber expressly permits in writing. ecobee's current Personal Information and General Data Security practices are described in Schedules A1 and A2, which may be amended from time to time.

5.4 Compliance with Laws. ecobee shall comply with all laws, rules and regulations applicable to its processing of Subscriber Data and Personal Information (as defined below).

6. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS; LIMITATIONS

6.1 General Representations and Warranties. Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

6.2 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, WITH RESPECT TO THE SERVICES (OR ANY PART THEREOF), ANY OTHER PRODUCTS AND SERVICES PROVIDED BY ECOBEE TO SUBSCRIBER, OR THE RESULTS THAT MAY BE OBTAINED FROM USE OF THEREOF, (A) THEY ARE PROVIDED AND MADE AVAILABLE "AS IS" AND "AS AVAILABLE"; AND (B) THERE ARE NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE) RELATING TO THEM, (I) INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABLE QUALITY, QUALITY, NON-INFRINGEMENT, CURRENCY, COMPLETENESS, ACCURACY, AVAILABILITY, ACCESSIBILITY, UNINTERRUPTED USE, RELIABILITY, OR SECURITY; (II) THAT THEY WILL MEET ANY REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE WITH OR WORK WITH ANY SOFTWARE, SYSTEM, HARDWARE OR OTHER SERVICES, OR BE SECURE, FREE OF HARMFUL CODE, OR ERROR FREE; OR (III) ANY ERRORS CAN OR WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ECOBEE WILL CREATE ANY REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE.

6.3 Liability

(a) AMOUNT. IN NO EVENT WILL ECOBEE'S OR ITS AFFILIATES' TOTAL AGGREGATE LIABILITY IN CONNECTION WITH OR UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID BY SUBSCRIBER TO ECOBEE FOR THE SERVICES IN THE PRIOR 12-MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT WILL ECOBEE'S THIRD PARTY SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.

(B) TYPE. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL ECOBEE OR ITS AFFILIATES BE LIABLE FOR ANY: (I) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY OR PUNITIVE DAMAGES; (II) LOST SAVINGS, PROFIT, REVENUE, BUSINESS, SALES, DATA, USE, OR GOODWILL (WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL); (III) BUSINESS INTERRUPTION; (IV) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (V) PERSONAL INJURY OR DEATH; OR (VI) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.

(C) EXCLUSIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ECOBEE SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES WHATSOEVER RESULTING FROM: (I) ANY ACTS, OMISSIONS OR FAILURES OF SUBSCRIBER, SUBSCRIBER SYSTEMS, THIRD PARTY PRODUCTS OR SERVICES, OR THIRD PARTY PROVIDERS; (II) PROVISION OF THE SERVICES WHICH OCCURS OUTSIDE OF THE BOUNDARY OF ECOBEE SYSTEMS (MEANING: THE POINT AT WHICH ECOBEE'S OWNED OR DIRECTLY OPERATED INFRASTRUCTURE MEETS EITHER: (X) THE PUBLIC INTERNET; (Y) AN INTERFACE TO A THIRD PARTY PROVIDER, SERVICE, SUPPLIER OR LICENSOR; OR (Z) A CONNECTIVITY SERVICE BETWEEN ECOBEE AND SUBSCRIBER); OR (III) ANY MALFEASANT OR WILFUL ACT OR OMISSION BY ANY THIRD PARTY (SUCH AS, WITHOUT LIMITATION, 'DDOS' ATTACKS).

(C) CARVE-OUTS. THE LIMITATIONS ON AND EXCLUSIONS FROM LIABILITY IN THIS SECTION 6.3 DO NOT APPLY TO LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, A PARTY'S FRAUD OR WILLFUL MISCONDUCT, A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 4.4, OR SUBSCRIBER'S BREACH OF SECTION(S) 2 OR 3.

(D) APPLICATION. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 6.3 APPLY TO ALL CAUSES OF ACTION, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE (INCLUDING FOR FUNDAMENTAL BREACH OR NEGLIGENCE), HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS ITS ESSENTIAL PURPOSE, AND EVEN IF A PARTY IS ADVISED IN ADVANCE OF THE DAMAGES IN QUESTION OR EVEN IF SUCH DAMAGES WERE FORESEEABLE.

(E) ACKNOWLEDGEMENT. THE PARTIES HAVE FREELY AND OPENLY NEGOTIATED THIS AGREEMENT, INCLUDING THE PRICING, IN THE KNOWLEDGE THAT THE LIABILITY OF THE PARTIES IS TO BE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.

7. INDEMNIFICATION

7.1 By Subscriber. Subscriber shall, at its expense, defend and hold harmless ecobee and the ecobee Associates from and against any and all claims, demands, suits, actions or proceedings by a third party ("**Claims**"), and indemnify ecobee and the ecobee Associates from and against any liabilities, losses, damages, costs, penalties and expenses (including reasonable lawyers' fees) ("**Losses**") suffered or incurred by ecobee or any ecobee Associate in relation to (a) Subscriber Data; (b) Subscriber's breach of Section 3; (c) in accordance with Section 7.5; (d) Subscriber's fraud or willful misconduct; or (e) any personal injury or damage to property. "**ecobee Associates**" are ecobee's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.

7.2 By ecobee. ecobee shall, at its expense, defend Subscriber and the Subscriber Associates from against and all Claims that the Services as provided or made available by ecobee to Subscriber infringe upon an intellectual property right under the laws of Canada or the United States, and ecobee shall indemnify and hold harmless Subscriber against any Losses that are suffered or incurred by Subscriber or any Subscriber Associate as the result of such Claim and that are required to be paid in a settlement approved by ecobee or awarded by a court in a final, non-appealable judgement. "**Subscriber Associates**" are Subscriber's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.

7.3 Additional Remedies. If any part of the Services is, in ecobee's opinion, likely to or does become the subject of a claim of infringement of the intellectual property rights of a third party, ecobee may (a) use reasonable efforts to modify the affected portion of the Services or ecobee Materials so that it is non-infringing; (b) obtain permission, at ecobee's expense, for Subscriber to continue to use such portion; or, (c) terminate this Agreement or the applicable Services Order(s) in exchange for a pro rata refund of any unused prepaid Fees for the then-current applicable Subscription Period as liquidated settlement of any liability other than the foregoing obligation of indemnification.

7.4 Sole Remedy. Sections 7.2 and 7.3 constitute Subscriber's and any Subscriber's Associate's sole remedies, and ecobee's sole obligations, in respect of infringement of intellectual property or other proprietary rights.

7.5 Exclusions. Notwithstanding Sections 7.2 and 7.3, ecobee has no obligation hereunder and will be indemnified by Subscriber to the extent any claim of infringement of the intellectual property rights of a third party

arises as a result of: (a) use of any of the Services or Documentation in violation of this Agreement; (b) any modification to any of the Services or Documentation by a party other than ecobee or its authorized agents; (c) any combination by Subscriber of any of the the Services or Documentation with any computer program, software, hardware or equipment; or (d) use of any of the Services or Documentation after ecobee reasonably notifies Subscriber to discontinue such use; or (e) any deliverables or any services, materials or other work product fulfilled according to the specifications, instructions or requirements supplied by Subscriber.

7.6 Additional Terms. The indemnification obligations on the part of either party are conditional upon: (a) the indemnifying party being notified in writing promptly of the indemnified party's receipt of notice of the Claim (provided, however, that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations under this Section 7, except to the extent of any material prejudice to the indemnifying party as a direct result of such failure); (b) the indemnifying party having sole control over the defense or settlement of such Claim; and (c) the indemnifying party being given the necessary authorization, information and full co-operation and assistance by the indemnified party for the defense of same (at the indemnifying party's cost); provided in all cases, however, that the indemnifying party shall not make any admission against the indemnified party's interests or enter into any settlement or compromise of any Claim in the event such settlement or compromise imposes any liability or obligation on the indemnified party without the indemnified party's prior written consent.

8. TERM AND TERMINATION; SUSPENSION

8.1 Term. This Agreement and its terms and conditions will be effective as of the Effective Date and will continue until the end of the Subscription Period indicated in the Agreement Specifics or until terminated in accordance with this Agreement, whichever is earlier ("**Term**"). This Agreement will automatically renew for additional Subscription Period(s), unless notice is provided in writing that the Subscriber does not wish to renew.

8.2 Termination for Insolvency or Material Breach. Either party may terminate this Agreement immediately on written notice to the other party, if the other party: (a) ceases to carry on business in the normal course, makes a general assignment for the benefit of creditors, or becomes subject to any proceeding for liquidation, insolvency or the appointment of a receiver that is not dismissed within 30 days; (b) is in material default of any provision of this Agreement that is reasonably susceptible to cure and is not cured or addressed to the satisfaction of the non-defaulting party (acting reasonably) within 30 days following written notice of the default from the non-defaulting party (other than non-payment for which the right to cure will be 5 days); or (c) is in material default of any provision of this Agreement that is not reasonably susceptible of cure.

8.3 Termination/Suspension of Services. ecobee reserves the right to suspend, terminate or limit performance of, and Subscriber's access to, the Services at any time in the event (i) that ecobee determines that the Services are being used by Subscriber in an unauthorized or fraudulent manner or in violation of the terms of this Agreement; (ii) that ecobee, in its sole discretion, determines that any Subscriber Data violates Section 3 (iii) that any ecobee invoice is more than 5 days overdue; or (iv) of a denial of service attack or any other security or other disaster which impacts the Subscription Services or the security of the Subscriber Data or other content stored with the Subscription Services, provided that ecobee will promptly notify Subscriber of the suspension or termination and use commercially reasonable efforts to notify Subscriber in advance. ecobee will have no liability for any damages, liabilities or losses as a result of any suspension, limitation or termination of the Services in accordance with this Agreement. Any suspension of the Services by ecobee pursuant to the terms of this Agreement will not excuse Subscriber from its obligation to make payments under this Agreement

8.4 Effect of Termination. Upon the termination of this Agreement for any reason, ecobee will terminate all access of Subscriber to the Subscription Services, Subscriber will pay all Service Fees incurred for Services received prior to termination and any applicable Taxes (unless terminated by Subscriber due to an uncured Material Breach by ecobee). Subscriber will pay all Service Fees that would have become payable during the remainder of the Term. Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

9. GENERAL

9.1 Feedback. Subscriber may from time to time provide suggestions, comments or other feedback ("**Feedback**") to ecobee with respect to the Services. Subscriber agrees that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by Subscriber, shall not, absent a separate written agreement, create any confidentiality obligation for the receiver of the Feedback. ecobee shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

9.2 Survival. The following Sections, together with any other provision of this Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of this Agreement, will survive expiration or termination of this Agreement for any reason: 2.1, 3, 4, 6.2, 6.3, 7, 8.3, and 9.

9.3 Non-Exclusive Agreement. This Agreement shall not prevent ecobee from entering into similar agreements with third parties, or from providing Services to third parties.

9.4 Choice of Law; Venue. This Agreement shall be governed and construed in all respects by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of laws principles. The exclusive venue for all disputes under this Agreement shall be heard in the city of Toronto, Ontario. *The United Nations Convention on Contracts for the International Sale of Goods*, as amended, replaced or re-enacted from time to time, shall not apply to this Agreement. This choice of jurisdiction does not prevent ecobee from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction

9.5 Assignment. Other than as part of a transfer of control of the Subscriber, Subscriber will not assign this Agreement to any third party without ecobee's prior written consent. ecobee may assign this Agreement or any rights under this Agreement to any third party without Subscriber's consent. Any assignment in violation of this Section will be void. This Agreement will inure to the benefit of and be binding upon the parties, their permitted successors and permitted assignees.

9.6 Export Restrictions. Subscriber will comply with all export laws and regulations that may apply to its access to or use of the Subscription Services.

9.7 Construction. Except as otherwise provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of this Agreement are for reference purposes only and have no substantive effect. The terms "consent" or "discretion", when used in respect of ecobee in this Agreement means the right of ecobee to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain its decision to Subscriber.

9.8 Force Majeure. ecobee will not be liable for delays caused by any event or circumstances beyond ecobee's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving ecobee's employees), Internet service or service failures or delays, or the unavailability or modification by third parties of telecommunications or hosting infrastructure or third party websites.

9.9 Actions. Subscriber acknowledges and agrees that any action (regardless of form) against ecobee arising out of this Agreement may be brought by Subscriber up to, but in no circumstances after, the 6 month anniversary of the date on which the cause of action arose, regardless of any statute or law regarding limitation periods to the contrary. Except to the extent precluded by applicable law: (a) any parties to an action brought hereunder shall be individually named, and Subscriber hereby waives any right it may have to litigate any such matter on a class or consolidated basis, or on bases involving disputes brought on a purported representative capacity; and (b) the parties hereby irrevocably waive any right they may have to trial by jury.

9.10 Rights and Remedies. Except as expressly specified in this Agreement, in the event of any breach of this Agreement, the rights and remedies of the parties provided for in this Agreement shall not be exclusive or exhaustive and are in addition to any other rights and remedies available at law or in equity. The parties agree that in the event of any breach or threatened breach of Sections 3 or 4, money damages would be an inadequate remedy and the affected Party shall be entitled to seek injunctive relief, without the need to post a bond or other security

9.11 Waiver; Severability. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all parties to this Agreement entitled to grant the waiver. If any provision of this Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the remaining terms and conditions of this Agreement shall be unimpaired and the parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequence as possible to the provision being struck or considered unenforceable. If the limitation of liability set forth in this Agreement is limited by law, then ecobee's liability will be limited to the greatest extent permitted by law.

9.12 Counterparts; Delivery by E-mail. This Agreement may be signed in any number of counterparts with the same effect as if the parties had signed the same document. Delivery by electronic transmission in portable document format (PDF) or TIF format of this Agreement is as effective as delivery of an original of this Agreement.

SCHEDULE A1

PERSONAL INFORMATION PRIVACY, CONFIDENTIALITY, AND SECURITY SCHEDULE

This Personal Information Privacy, Confidentiality and Security Schedule ("Schedule") is made pursuant to and a part of the Agreement. Capitalized terms not defined in this Schedule are defined in the Agreement.

1. Definitions

- 1.1 ecobee Systems** means any computer, computer network, computer application, imaging device, storage device, mobile computing device or software owned, leased or controlled by ecobee, or operated by a Third Party on behalf of ecobee, that Processes Personal Information or is connected to any Subscriber Systems.
- 1.2 Industry Standards** means industry standards and best practices relating to the privacy, confidentiality or security of Personal Information including, without limitation, industry standards and best practices of ecobee's industry and standards and best practices employed by ecobee's industry peers.
- 1.3 Information Security Incident** means any actual or reasonably suspected: (i) loss or theft of Personal Information; or (ii) unauthorized use, disclosure, acquisition of or access to, or other unauthorized Processing of Personal Information that reasonably may compromise the privacy or confidentiality of Personal Information.
- 1.4 Information Security Program** means ecobee's technological, physical, administrative and procedural safeguards, including without limitation, policies, procedures, guidelines, practices, standards and controls that (i) ensure the confidentiality, security, integrity and availability of Personal Information; (ii) protect against any anticipated threats or hazards to the security and integrity of Personal Information; and (iii) protect against any Information Security Incident.
- 1.5 Process or Processing** means any operation or set of operations performed upon Personal Information, such as accessing, obtaining, storing, transmitting, using, maintaining, disclosing or disposing of the information.
- 1.6 Subscriber Requirements** means Subscriber requirements regarding the privacy, confidentiality or security of Personal Information that are provided to ecobee in writing in this Attachment, or otherwise mutually agreed-to by both parties.
- 1.7 Subscriber Systems** means any computer, computer network, computer application, imaging device, storage device, mobile computing device or software owned, licensed or leased by Subscriber, or operated by a Third Party on behalf of Subscriber, that: (i) connects to or otherwise interacts with ecobee Systems; or (ii) is enabled or intended to access or interact with Personal Information Processed in connection with the Agreement.
- 1.8**

2. ecobee's Obligations

- 2.1 Authority to Process Personal Information**
 - 2.1.1** ecobee shall Process Personal Information only on behalf of and for the benefit of Subscriber to carry out its obligations pursuant to the Agreement and Subscriber's written instructions.
 - 2.1.2** As between ecobee and Subscriber, Subscriber is the owner of any and all Personal Information, and ecobee shall have no ownership rights or interest in Personal Information.

- 2.1.3 ecobee shall not Process for marketing purposes, sell, aggregate, analyze or anonymize Personal Information unless required in connection with the Agreement or authorized in writing by Subscriber.

2.2 Disclosure of and Access to Personal Information

- 2.2.1 ecobee and its personnel shall hold confidential any and all Personal Information.
- 2.2.2 ecobee shall limit access to Personal Information to its personnel that have a need to know the Personal Information as a condition to ecobee's performance of services for or on behalf of Subscriber.
- 2.2.3 ecobee shall not provide with access to Personal Information any subcontractor, vendor, or other Third Party unless ecobee has received prior written consent from Subscriber or such access is (i) specifically permitted by this Agreement, or (ii) required by law. Except with respect to disclosures required by this Agreement or by law to: (i) government or other regulatory entities, or (ii) any entity over whose privacy and information security practices ecobee may not exercise control, prior to providing access to Personal Information to any Third Party, ecobee shall: (i) conduct a reasonable, documented investigation of such Third Party to ensure the Third Party is capable of complying with requirements regarding the privacy, confidentiality and security of Personal Information that are at least as protective of Personal Information as the requirements imposed on ecobee under this Schedule; (ii) contractually impose upon such a Third Party the same or substantially similar contractual duties imposed on ecobee by this Schedule; and (iii) contractually secure rights with respect to such Third Party that enable ecobee's compliance with this Schedule. In all events, ecobee is and shall remain fully responsible for any act, errors or omission of any Third Party retained by ecobee.
- 2.2.4 ecobee shall cooperate with Subscriber if an individual requests access to his or her Personal Information for any reason.

2.3 Compliance with Privacy and Information Security Requirements

- 2.3.1 ecobee shall comply with all Privacy and Security Laws, Industry Standards and Subscriber Requirements as identified and defined within this Agreement.
- 2.3.2 ecobee shall promptly notify Subscriber in writing if ecobee cannot comply with its obligations under this Schedule. If this is the case, Subscriber and ecobee shall use their best efforts to remedy the situation.
- 2.3.3 ecobee is responsible for the security of ecobee Systems and any Personal Information. ecobee agrees that beginning on the date that the services commence under the Agreement, ecobee shall employ and maintain a reasonable Information Security Program and such program shall comply with and adequately address Privacy and Security Laws, Industry Standards, Subscriber Requirements, and controls set forth in the General Personal Information Security Controls attached as an Appendix hereto.
- 2.3.4 During the term of the Agreement, ecobee shall implement and maintain any additional privacy and security safeguards, as requested by Subscriber and mutually agreed to by the ecobee, in the event of any (i) material changes to any services subject to the Agreement, or any relevant technology or systems; (ii) Information Security Incident; or (iii) the discovery of a material privacy or security vulnerability or weakness; provided that the failure of Subscriber to direct ecobee to implement such additional safeguards shall not impact, eliminate or decrease ecobee's obligations under this Schedule.
- 2.3.5 In the event of any conflict between ecobee's obligation to employ and maintain a reasonable Information Security Program, its obligation to comply with Industry Standards, Subscriber Requirements, the controls set forth in the General Personal Information Security Controls attached as an Appendix hereto, or any other privacy or

security-related obligations contained in this Schedule, ecobee shall comply with the obligations that provide the most protection for Personal Information.

- 2.3.6 ecobee shall train personnel who shall (i) liaise with Subscriber regarding any issues concerning Personal Information; (ii) oversee ecobee's compliance with this Schedule; (iii) receive notice of any Information Security Incident experienced by ecobee, or any Third Party acting on ecobee's behalf, and provide notice of any such Information Security Incident to Subscriber; and (iv) coordinate ecobee's Information Security Incident response and remedial action.

2.4 Data Processing Location

- 2.4.1 Neither ecobee nor any Third Party acting on ecobee's behalf shall access Personal Information from or otherwise Process Personal Information outside the United States or Canada, unless ecobee has received Subscriber's prior written consent. In the event ecobee discovers or reasonably believes that any Personal Information has been or is being Processed in such jurisdictions, ecobee shall provide prompt notice to Subscriber, and in all events shall provide such notice within forty-eight (48) hours of the discovery.
- 2.4.2 If ecobee or any Third Party acting on ecobee's behalf seeks to transfer Subscriber Personal Information between countries other than the United States and Canada in connection with the Agreement, ecobee shall establish a legal basis for such transfer pursuant to Privacy and Security Laws applicable to the transfer; to the extent such Privacy and Security Laws impose restrictions on cross-border transfers of Personal Information.

2.5 Information Management

- 2.5.1 ecobee shall, consistent with applicable Privacy and Security Laws, Industry Standards collect and record information, and maintain, as solely required by law, logs, planning documents, audit trails, records and reports, concerning: (i) ecobee's Processing of Personal Information; (ii) ecobee's compliance with Privacy and Security Laws, Industry Standards and Subscriber Requirements; and (iii) Information Security Incidents.
- 2.5.2 ecobee shall collect and preserve any information related to its obligations under this Schedule and Processing of Personal Information and in the care, custody or control of ecobee in accordance with any retention agreements or litigation hold orders provided to ecobee by Subscriber. Upon Subscriber's request, ecobee shall provide the preserved information to Subscriber or its designee.
- 2.5.3 When Personal Information is no longer necessary for the performance of services for or on behalf of Subscriber, or promptly upon the expiration or earlier termination of the Agreement, whichever is earlier, or at an earlier time as Subscriber requests, ecobee shall securely destroy or, at Subscriber's written request, return to Subscriber or its designee, in the format determined by Subscriber, each and every original and copy in every media (including both active data and backup data) of all Personal Information in ecobee's possession, custody or control. In the event applicable law does not permit ecobee to comply with the delivery or destruction of the Personal Information, ecobee warrants that it shall ensure the confidentiality of the Personal Information and that it shall not use or disclose any Personal Information after termination of the Agreement, except as required by law. Upon Subscriber's request, ecobee shall provide written certification by one of its senior officers that Personal Information has been returned or securely destroyed in accordance with this Schedule.

2.6 Information Security Incident Response

- 2.6.1 ecobee shall notify Subscriber within forty-eight (48) hours of any reasonably suspected Information Security Incident by calling Subscriber's Security Operations Center at PROVIDE CONTACT INFO. Such notice shall summarize in reasonable detail the effect on

Subscriber, if known, of the Information Security Incident and the corrective action taken or to be taken by ecobee.

- 2.6.2 Promptly, and in no event more than two (2) business days after the initial notice of Information Security, ecobee shall provide a written report to Subscriber, providing all relevant details concerning the Information Security Incident, as available.
- 2.6.3 In the event of an Information Security Incident, ecobee shall:
 - (i) Conduct a reasonable investigation of the reasons for and circumstances of the Information Security Incident.
 - (ii) Use best efforts and promptly take all necessary actions to rectify, prevent, contain, mitigate, and remediate the impact of the Information Security Incident;.
 - (iii) Collect, preserve and document all evidence regarding the discovery and cause of, and vulnerabilities, response, remedial actions and impact related to the Information Security Incident, using means that shall meet reasonable expectations of forensic admissibility; and provide such documentation to Subscriber upon request.
- 2.6.4 The content of any filings, communications, notices, press releases or reports (collectively, "Communications") related to any Information Security Incident must be approved by Subscriber prior to any publication or communication thereof, to the extent such Communications may be associated with Subscriber or Subscriber's customers.
- 2.6.5 If requested by Subscriber, ecobee shall provide notice to individuals whose Personal Information was affected by the Information Security Incident, as well as to any other Third Parties, such as regulators, law enforcement agencies and consumer reporting agencies, that Subscriber determines should be notified of the Information Security Incident
- 2.6.6 ecobee hereby authorizes Subscriber to provide notice of any legally required information and documents concerning any Information Security Incident, to individuals or Third Parties that may have been affected by the Information Security Incident, as well as to law enforcement authorities, regulators, consumer reporting agencies and the media.

2.7 Periodic Reporting and Assessments

- 2.7.1 Upon reasonable request by Subscriber, ecobee shall promptly provide Subscriber with a written report containing information reasonably requested by Subscriber relating to: (i) any Information Security Incident; or (ii) actual or reasonably suspected non-compliance with this Schedule. In addition, ecobee shall provide Subscriber with any documents requested by Subscriber related to the foregoing, including without limitation, any security assessment and security control audit reports.
- 2.7.2 In the event of an Information Security Incident or if Subscriber has a reasonable basis for believing that Personal Information is not being appropriately safeguarded by ecobee in compliance with the requirements of this Attachment 3, upon Subscriber's written request, ecobee shall make appropriate personnel reasonably available to discuss ecobee's manner of compliance with the terms of this Attachment and to respond to related inquiries (including by providing appropriate and reasonable technical demonstrations and demonstrations of the operation of ecobee's relevant procedures and practices at the relevant ecobee's premises) concerning the information security processes and controls maintained by ecobee in connection with the Work. Any such information disclosed by ecobee shall be treated as the confidential information of ecobee under the Agreement. In the event that such an inspection and audit finds that ecobee is not in compliance with this Attachment, ecobee shall, without prejudice to any other rights or remedies Subscriber may have under this Agreement, take all reasonable

steps to promptly remedy any breach identified by the inspection and audit, or provide Subscriber with a detailed report as to why such breach cannot be remedied, and to pay Subscriber's reasonable costs of such an inspection and audit.

2.8 Cooperation and Information Requests

- 2.8.1 ecobee agrees to reasonably cooperate and coordinate with Subscriber concerning: (i) Subscriber's investigation, enforcement, monitoring, document preparation, notification requirements, efforts to prevent and mitigate, and reporting concerning Information Security Incidents and ecobee's and Subscriber's compliance with Privacy and Security Laws; and (ii) any other activities or duties set forth under this Schedule for which cooperation between ecobee and Subscriber may be reasonably necessary.
- 2.8.2 ecobee agrees to reasonably cooperate with Subscriber in responding to any party, non-party or government request or demand (including but not limited to requests or demands in connection with an audit, assessment or investigation) made to Subscriber for information regarding Personal Information or any provision of this Schedule.
- 2.8.3 In the event a demand by any party, non-party or government (in the form of a subpoena, court order or otherwise) is provided to or served on ecobee for information regarding Personal Information or any provision of this Schedule, ecobee shall, subject to applicable law, notify Subscriber in writing by electronic mail immediately, and in no event more than 72 hours after receiving the request. Such notification must include a copy of the request (i.e., the subpoena or court order). ecobee also shall immediately inform such party, non-party or government in writing that some or all the information covered by the request or demand is subject of a nondisclosure agreement with Subscriber. Subscriber shall have the right to defend such action in lieu of and on behalf of ecobee. Subscriber may, if it so chooses, seek a protective order or other relief from disclosure of the information subject to the request or demand. ecobee shall reasonably cooperate with Subscriber in such defense.
- 2.8.4 In the event that Subscriber is required to authenticate any of the information described in this Paragraph, ecobee shall cooperate with Subscriber in providing any requested assistance with such authentication, including without limitation testifying (by affidavit, declaration, deposition, in court, or otherwise) as a custodian of records to authenticate the information, establish chain of custody, and provide any other requested information and assistance.

3. Notices

- 3.1 Except as specified in the Information Security Incident Response Section of this Schedule, the following individuals shall be the primary contacts at Subscriber and ecobee for any coordination, communications or notices with respect to Personal Information, this Schedule, or any Information Security Incident: ecobee: See "Notices" section of the Agreement; _____. Each party shall promptly notify the other if any of the foregoing contact information changes.

4. Rights, Remedies and Indemnification

- 4.1 Notwithstanding any provision in the Agreement, or ecobee's failure to comply with any of the obligations set forth in this Schedule shall be considered a material breach of the Agreement.

- 4.2** ecobee agrees to reimburse Subscriber for the following expenses incurred by Subscriber in connection with an Information Security Incident: (i) expenses to provide warning or notice of the Information Security Incident to affected individuals and entities, regulators, law enforcement agencies, consumer reporting agencies, the media, and other Third Parties; (ii) expenses to investigate, assess or remediate the Information Security Incident or failure to comply with any Privacy and Security Laws; (iii) expenses to provide credit monitoring services to individuals affected by the Information Security Incident, to the extent Subscriber is requested to provide such services by a regulator having jurisdiction over Subscriber; (iv) expenses to retain a call center to respond to inquiries regarding the Information Security Incident to the extent Subscriber is unable to provide such call center services using its internal resources; and (v) expenses to respond to or address any investigation by regulators, law enforcement agencies, or other Third Parties.
- 4.3** Subscriber may, at its option and expense, participate and appear on an equal footing with ecobee in the defense of any claim related to Subscriber Personal Information or this Schedule that is conducted by ecobee as set forth herein. ecobee may not settle any claim regarding Subscriber Personal Information without the prior written approval of Subscriber.

5. Miscellaneous

- 5.1** This Schedule is the complete agreement between ecobee and Subscriber and supersedes any prior oral or written agreement between the parties concerning the privacy, confidentiality and security of Personal Information. This Schedule supercedes any provision of the Agreement to the extent such provision relates to the privacy, confidentiality or security of Personal Information.
- 5.2** ecobee's obligations and Subscriber's rights set forth in this Schedule shall continue as long as ecobee, or any Third Party acting on ecobee's behalf, Processes Personal Information, including after expiration or termination of the Agreement.

Subscriber affiliates, subsidiaries, successors and assigns (and their affiliates, subsidiaries, successors and assigns, etc.) are intended beneficiaries of this Schedule, the privacy and data security provisions set forth in this Schedule, and other rights and ecobee's obligations set forth in this Schedule, and this Schedule is intended to inure to the benefit of those affiliates, subsidiaries, successors and assigns. Subscriber affiliates, subsidiaries, successors and assigns are entitled to enforce the terms and obligations of this Schedule as if each was a signatory to this Schedule, the Agreement, statements of work or other relevant documents, and Subscriber may enforce the terms and obligations regarding Personal Information that are contained in this Schedule, the Agreement, statements of work or other relevant documents on their behalf.

[END OF SCHEDULE]

SCHEDULE A2

GENERAL PERSONAL INFORMATION SECURITY CONTROLS

The controls set forth below apply to ecobee's Processing of Personal Information and ecobee Systems.

1. Information Security Program

- 1.1 Assign to an individual or a group of individuals the responsibility for developing, implementing, and managing the organization's written information security program
- 1.2 The relevant personnel must be sufficiently trained, qualified and experienced to be able to fulfill these functions and any other functions that might reasonably be expected to be carried out by the personnel responsible for safeguarding personal information
- 1.3 Develop and maintain reasonable technological, physical, administrative and procedural safeguards, including without limitation, policies, procedures, guidelines, practices, standards and controls that:
 - 1.3.1 Ensure the privacy, confidentiality, security, integrity and availability of personal information (including, without limitation, Personal Information)
 - 1.3.2 Protect against any anticipated threats or hazards to the security and integrity of personal information
 - 1.3.3 Protect against any Information Security Incident
- 1.4 Regularly test, monitor and evaluate the sufficiency and effectiveness of the information security program, including Information Security Incident response procedures

2. Risk Assessment

- 2.1. Conduct periodic information security risk assessments. The risk assessment may include:
 - 2.1.1. Identifying and assessing reasonably foreseeable internal and external threats and risks to the privacy, confidentiality, security, integrity and availability of personal information
 - 2.1.2. Assessing the likelihood of, and potential damage that can be caused by, identified threats and risks
 - 2.1.3. Assessing the adequacy of personnel training concerning, and compliance with, the organization's information security program
 - 2.1.4. Assessing the adequacy of service provider arrangements
 - 2.1.5. Adjusting and updating the organization's information systems and information security program to limit and mitigate identified threats and risks, and to address material changes in relevant technology, business practices, personal information practices and sensitivity of personal information that the organization processes
 - 2.1.6. Assessing whether the organization's information security program is operating in a manner reasonably calculated to prevent and mitigate Information Security Incidents
- 2.2. Documenting the risk assessment in a format chosen solely at the discretion of the ecobee

3. Data Collection, Retention and Disposal

- 3.1. Collect only as much personal information as needed to accomplish the purpose for which the information is collected
- 3.2. Refrain from storing personal information on media connected to external networks unless necessary for business purposes
- 3.3. Securely dispose of records containing personal information so that the information cannot be read or reconstructed after it is no longer needed to comply with business purposes or legal obligations

3.4. Securely erase media containing personal information before reuse

4. Data Inventory

4.1. Track and periodically inventory personal information the organization collects, uses, maintains, discloses, disposes of or otherwise processes

4.2. Periodically inventory the organization's information systems and assets that contain personal information

5. Personnel Background Checks

5.1. Conduct reasonable background checks (including criminal background checks) of any new personnel who will have access to personal information or relevant information systems,

6. Personnel Training and Education

Regularly and periodically train personnel who have access to personal information or relevant information systems concerning:

6.1. The organization's information security program

6.2. The importance of the security, confidentiality and privacy of personal information

6.3. The risks to the organization and its customers associated with Information Security Incidents

7. Segregation of Duties

7.1. Duties and areas of responsibility of the organization's personnel should be segregated to reduce opportunities for unauthorized or unintentional modification or misuse of personal information or the organization's information systems

8. Access Controls

8.1. Identify personnel and classes of personnel whose documented business functions and responsibilities require access to personal information, relevant information systems and the organization's premises

8.2. Permit access to personal information, relevant information systems and the organization's premises only to such authorized personnel

8.3. Maintain a current record of personnel who are authorized to access personal information, relevant information systems and the organization's premises, and the purposes of such access

8.4. Maintain physical access controls, secure user authentication protocols, secure access control methods, and firewall protection

8.5. Prevent terminated personnel from accessing personal information and information systems by immediately terminating their physical and electronic access to personal information and relevant information systems

9. Secure User Authentication

To manage access to personal information and relevant information systems for all ecobee employees and subcontractors:

9.1. Maintain secure control over user IDs, passwords and other authentication identifiers

9.2. Maintain a secure method for selecting and assigning passwords and use reasonable authentication technologies

9.3. Assign unique user identifications and passwords that are not vendor supplied default passwords

9.4. Require personnel to change passwords based on the number of access attempts, and whenever there is any indication of possible system or password compromise

9.5. Frequently change passwords for accounts that have access to sensitive personal information

9.6. Avoid reusing or recycling old passwords

9.7. Restrict access to personal information and relevant information systems to only active users and accounts

- 9.8. Block user access after multiple unsuccessful attempts to login or otherwise gain access to personal information or relevant information systems
- 9.9. Terminate user access after a predetermined period of inactivity

10. Intrusion Detection and Response

Maintain policies and procedures to detect, monitor, document and respond to actual or reasonably suspected Information Security Incidents, and encourage the reporting of such incidents, including through:

- 10.1. Training personnel with access to personal information to recognize actual or potential Information Security Incidents and to escalate and notify senior management of such incidents
- 10.2. Mandatory post-Information Security Incident review of events and actions taken concerning the security of personal information
- 10.3. Policies governing the reporting of Information Security Incidents to regulators and law enforcement agencies

11. Encryption

To the extent technically feasible, ensure strong encryption of personal information:

- 11.1. Stored on laptops or mobile devices
- 11.2. Stored outside of the organization's physical controls
- 11.3. Transmitted across any public network (such as the Internet) or wirelessly
- 11.4. In transit outside of the organization's information systems

12. Firewalls

- 13.1 Implement up-to-date firewalls between the organization's information systems, the Internet (including internal networks connected to the Internet) and other public networks, and internal networks that are not necessary for processing personal information; the firewalls must be reasonably designed to maintain the security of personal information and relevant information systems

14. Malicious Code Detection

- 14.1. Implement and maintain software on applicable platforms that detects, prevents, removes and remedies malicious code designed to perform an unauthorized function on, or permit unauthorized access to, any information system, including without limitation, computer viruses, Trojan horses, worms, and time or logic bombs
- 14.2. Run malicious code detection software on applicable platforms at least daily
- 14.3. Update malicious code detection software on applicable platforms at least daily, including by obtaining and implementing the most current available virus signatures

15. Change Controls

- 15.1. Prior to implementing changes to the organization's information systems, assess the potential impact of such changes on privacy, confidentiality, security, integrity and availability of personal information, and determine whether such changes are consistent with the organization's information security program
- 15.2. No changes should be made to the organization's information systems or information security program that increase the risk of an Information Security Incident or fail to comply with the organization's contractual or other legal obligations

16. Off-Premises Information Security

- 16.1. Maintain policies governing the security of the storage, access, transportation and destruction of records or media containing personal information outside of the organization's business premises
- 16.2. Monitor and document movement of records or media containing personal information

16.3. Create copies of personal information before movement of records or media containing the information

17. Physical Security

17.1. Maintain reasonable restrictions on physical access to personal information and relevant information systems

17.2. Maintain physical protection against damage from fire, flood, earthquake, explosion, civil unrest, and other forms of natural or man-made disaster

17.3. Lock workstations with access to personal information when unattended

17.4. Document repairs and modifications to information security-related physical components of the organization's information systems

18. Contingency Planning

Maintain policies and procedures for responding to an emergency or other occurrence that can compromise the privacy, confidentiality, integrity or availability of personal information or damage the organization's information systems; such policies and procedures should provide for:

18.1. Creating and maintaining retrievable copies of personal information

18.2. Restoring any loss of personal information

18.3. Enabling continuation of critical business processes involving personal information in emergency mode

18.4. Assessing relative criticality of specific applications and personal information in support of other contingency plan components

Periodic testing and updates of contingency plans.

[END OF SCHEDULE]

SCHEDULE B

SERVICE LEVEL COMMITMENT ("SLC")

ecobee is committed to providing first-rate service and support to its customers to assist resolution of any issues encountered in the use of the Subscription Services, as set forth in this SLC. Capitalized terms not defined in this SLC have the meanings given to them in the Agreement. The remedies set forth in this SLC are Subscriber's sole and exclusive remedies for any failure to achieve the service levels set forth in the SLC.

- 1 ecobee shall use reasonable efforts to ensure the Subscription Service is available over the Internet at least 99.5% of each calendar month..
- 2 Subscriber may report any unscheduled downtime by email to support@ecobee.com. Subscriber's ability to report unscheduled downtime shall in no way relieve ecobee of its duty to provide the required amount of uptime each month.
- 3 In the event that the availability of the Subscription Service is under 99.5% in any calendar month, then the Subscriber will be eligible for a Financial Credit. In order to receive any of the Financial Credits described below, Subscriber must notify ecobee customer support at support@ecobee.com within thirty days from the time Subscriber becomes eligible to receive a Financial Credit. If requested by ecobee customer support, Subscriber may be required to provide supplemental evidence in order to be eligible for the Financial Credit. If a dispute arises with respect to this SLC or the level of availability, ecobee will make a determination in good faith based on its system logs, monitoring reports, configuration records, and other available information, which ecobee will make available for auditing by Subscriber at Subscriber's request.
- 4 The aggregate maximum number of Financial Credits to be issued by ecobee to Subscriber for any and all downtime periods that occur in a single calendar month will not exceed 50% of the amount due by Subscriber for the Subscription Service for the applicable month. Financial Credits will be made solely in the form of a monetary credit applied to future use of the Service and will be applied within 60 days after the Financial Credit was requested.

Definitions

"Availability" means total number of minutes in a month, minus the number of minutes of downtime suffered from all downtime periods in a month, divided by the total number of minutes in a month, provided that the following shall not be considered toward any calculation of Availability: (i) scheduled maintenance times for which Company has received reasonable prior notification; (ii) emergency maintenance; (ii) any downtime occurring as a result of Subscriber's breach of this Agreement; (iii) downtime resulting from a Force Majeure; (iv) Subscriber's failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not owned and operated by ecobee; (v) disabling, suspension or termination by ecobee pursuant to the Agreement.

"Financial Credit" will be calculated as follows:

Monthly Availability Percentage	Financial Credit
99.00% - < 99.5%	Service Fee Total/ Number of Months in the Subscription Period*10%
95.00% - < 99.00%	Service Fee Total/ Number of Months in the Subscription Period *25%
< 95.00%	Service Fee Total/ Number of Months in the Subscription Period *50%

[END OF SCHEDULE]

Subscriptions

Product	Description (Visit ecobee.com/SmartBuildings)	USD	CAD
ecobee SmartBuildings Subscription 1-year (SB1YR)	<ul style="list-style-type: none"> • Smart thermostat management software for commercial and multifamily facilities • Works with all ecobee smart thermostats and sensors • Bulk controls and settings • Multi-user access, alerts and reporting • Centralized control, limits and passcodes 	\$24 per thermostat (\$2.00/month)	\$30 per thermostat (\$2.50/month)
ecobee SmartBuildings Subscription 3-year (SB3YR)	<ul style="list-style-type: none"> • Smart thermostat management software for commercial and multifamily facilities • Works with all ecobee smart thermostats and sensors • Bulk controls and settings • Multi-user access, alerts and reporting • Centralized control, limits and passcodes 	\$65 per thermostat (\$1.80/month)	\$80 per thermostat (\$2.22/month)
ecobee SmartBuildings Subscription 5-year (SB5YR)	<ul style="list-style-type: none"> • Smart thermostat management software for commercial and multifamily facilities • Works with all ecobee smart thermostats and sensors • Bulk controls and settings • Multi-user access, alerts and reporting • Centralized control, limits and passcodes 	\$96 per thermostat (\$1.60/month)	\$120 per thermostat (\$2.00/month)
ecobee SmartBuildings Subscription (10-year) (SB10YR)	<ul style="list-style-type: none"> • Smart thermostat management software for commercial and multifamily facilities • Works with all ecobee smart thermostats and sensors • Bulk controls and settings • Multi-user access, alerts and reporting • Centralized control, limits and passcodes 	\$168 per thermostat (\$1.40/month)	\$210 per thermostat (\$1.75/month)

Price effective October 15th 2019 for all customers.