

## ConEd ecosave Terms and Conditions (“T&Cs”)

Welcome to the ConEd ecosave program (the “**Program**”) presented by ecobee Technologies ULC, d/b/a ecobee (“ecobee”) and Generac Grid Services LLC (“**Generac**”). Throughout these T&Cs, the references to “**you**” and “**your**” refer to you as the undersigned ecobee customer, participant in the Program, account holder with Consolidated Edison of NY (“**Utility**” or “**Program Administrator**”), and owner/purchaser of an eligible ecobee smart thermostat (“**Thermostat**”) that is connected to the electrical system of your home. Purchases of a discounted ecobee thermostat for the Program are administered through an e-commerce platform configured by Techniart Inc. (“**Techniart**”) who is also a data processor for the Program. Your participation in the Program is governed by these T&Cs.

THIS PROGRAM IS VOID WHERE PROHIBITED BY LAW.

**How the Program Works.** The Program makes the services described herein available to you as an ecobee customer that will participate in a demand response program administered by Utility and managed by Generac.

For participating in the Program in accordance with these T&Cs, you will receive an incentive once the Utility approves your enrollment in the program, your device is connected and your participation is confirmed, as reflected on the attached Schedule A (“**Incentive**”). An Incentive is limited to one per utility account number.

The length of the term of the Program is reflected on the attached Schedule B (“**Term**”). These T&Cs shall be in effect for the time that you participate in the Program. The Program will continue throughout the Term unless terminated earlier in accordance with these T&Cs. At the end of the Term, ecobee or Generac may contact you about future incentive programs for which you may be eligible at that time, including, reenrollment in the Program, or other ecobee or Generac programs. If you would like to unenroll from the Program at any time, you can do so by contacting Generac Customer Support at 1-855-388-3148. If you withdraw from the Program or violate Program Requirements prior to the completion of the demand response summer season (May-September), you may forfeit your right to receive Incentives under the Program.

During the Program, your Program Administrator will initiate a number of demand response events (“**Events**”) in accordance with the terms and conditions of the Program. In response, ecobee and Generac will initiate a slight setpoint adjustment on your thermostat during an Event for a duration of no more than 4 consecutive hours. The participation of your Thermostat in these Events is an essential component of the Program, and you agree to use your best efforts to participate in the maximum number of your Program Administrator’s applicable Events during the term of the Program. The number and nature of the Events will be decided by the Program Administrator. During time periods without an Event or the end of the summer demand response season, your Thermostat will not be adjusted.

Participation in the Program will not affect your Thermostat warranty, which will remain in full force and effect in accordance with its terms.

**Program Requirements.** The following describes your additional requirements for participation in the Program. Your failure to comply, in the sole discretion of ecobee, with any of these requirements below or any other obligation or requirement of these T&Cs or the Program may at any time result in: (a) suspension or disqualification and unenrollment from the Program; or (b) the termination of these T&Cs, and any such results shall be final and binding in all respects and without liability to ecobee or Generac. Further, failure to comply with the Program may result in your Utility modifying your participation in, suspending, or disqualifying and unenrolling you from the Program.

- You must maintain an internet connection (“**Connectivity**”) to your Thermostat that is sufficient, in ecobee’s sole discretion, to enable ecobee and Generac to initiate slight setpoint adjustments to your Thermostat.
- You must not in any way cause or permit any third party to cause any persistent or lasting interference with your Thermostat, its Connectivity, or any connected component or material system, that, in ecobee’s sole discretion, would negatively impact your Thermostat’s performance under the Program, including, any disruption or interference with the ability of ecobee and Generac to initiate slight setpoint adjustments to your Thermostat before, during, and after an Event (“**Interference**”).

- You must reasonably assist ecobee’s technicians and support staff in diagnosing, troubleshooting, or remedying any problems with your Thermostat, its Connectivity, or any connected component or material system.
- You must not enroll or participate—or have your Thermostat or other connected device on your premise enrolled or participating in any other distributed energy resource or demand response program that conflicts with the Program.
- You must have the ecobee thermostat installed within **30 days** of receipt. Non-compliance may result in you forfeiting the right to receive the program incentive and being charged for the thermostat.
- You must not be a solar Net Metering or Value of Distributed Energy Resource customer (“**Rider R**”)
- You must not be part of the ConEdison “Bring Your Own Thermostat” Program (“**Rider L**”)
- You may not opt-out of more than one (1) Events(s), per year, throughout the duration of the Program.
- You must be at least eighteen (18) years of age.
- You must be a customer of the Utility with eligible equipment (air conditioner/heat pump)
- You agree to comply with these T&Cs and any applicable terms and conditions of your Utility, as well as Generac’s T&Cs of Service, privacy policy, and any other policies referenced in these T&Cs and on the Generac website located at <https://www.generac.com/privacy-policy> (“**Company Privacy Policy**”). You also agree to comply with all applicable local, state, national, and international laws, rules and regulations
- You certify that you will not operate, or allow to be operated, any critical or essential medical life support equipment that is connected to the electrical system of your home.
- You must install the ecobee app and maintain the ability to receive in-app notifications from ecobee.

**Force Majeure.** “**Force Majeure**” means an event or circumstance that prevents ecobee or Generac from performing any obligation under these T&Cs and that was not previously anticipated or, if anticipated, was unavoidable, is not within ecobee or Generac’s reasonable control, and not the result of ecobee or Generac’s negligence or willful misconduct, and which, by the exercise of due diligence, is unable to be overcome or avoided. Events or circumstances on which a claim of Force Majeure may be based include acts of God (such as tornadoes, fires, earthquakes and floods), explosions, war, hostilities, riots and acts or threats of terrorism, pandemics, epidemics, vandalism, civil disturbances, protests or embargoes, or any such event or similar event not within the reasonable control of ecobee or Generac. ecobee and Generac shall not be considered in breach of these T&Cs or liable for any delay or failure to comply with these T&Cs to the extent that such breach, delay, or failure is attributable to the occurrence of a Force Majeure; *provided that* ecobee and Generac shall use reasonable efforts to minimize the delay caused by such Force Majeure and resume performance of its obligations hereunder. If any Force Majeure event or circumstance disrupts, in ecobee or Generac’s sole discretion, the ability of your Thermostat to properly respond and fully perform during an Event, then ecobee and Generac reserve the right to reduce the amount of your Incentive in accordance with any corresponding reduction of payment received from the Program.

**Release and Indemnity.** To the maximum extent permitted by law, you agree to indemnify, release, and hold harmless ecobee and Generac and the directors, trustees, officers, shareholders, partners, members, agents and employees of ecobee and Generac, and the respective affiliates of thereof (the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (the “**Liabilities**”) resulting from any third party actions relating to your breach of these T&Cs and from injury to or death of persons, and damage to or loss of property arising out of your acts or omissions (or such acts or omissions of your contractors, subcontractors, affiliates, agents or employees) in connection with these T&Cs or related subject matter, including, any such Liabilities resulting from your participation in the Program or ConEd Demand Response Program; *provided, however,* that nothing herein shall require you to indemnify the Indemnified Parties for any Liabilities to the extent, and only to the extent, caused by or arising out of the negligent acts or omissions, or the willful misconduct, of the Indemnified Parties.

**Limitation of Liability.** To the maximum extent permitted by law, your, ecobee and Generac’s liability in connection with these T&Cs will be limited by these T&Cs, and all other damages or remedies are hereby waived. With the exception of your indemnification obligations hereunder, your, ecobee and Generac’s liability under this Agreement will be limited to direct, actual damages or costs only. Notwithstanding anything to the contrary, IN NO EVENT SHALL ECOBEE OR GENERAC BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS AND BUSINESS INTERRUPTION DAMAGES, ARISING UNDER THESE T&Cs OR THE SERVICES CONTEMPLATED HEREBY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, GENERAC’S

AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THESE T&CS FROM ANY AND ALL CAUSES, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL AGGREGATE PAYMENTS PAID TO YOU BY GENERAC IN THE PREVIOUS YEAR.

**Notices.** All notices to you under these T&Cs shall be in writing by email to the most current email address that ecobee has on record for you or to the most current address that Generac has on record for you. You must provide all notices to ecobee in writing via email to [enroll@generacgs.com](mailto:enroll@generacgs.com).

**Choice of Law.** This Program is governed by the laws of the State of Wisconsin without giving effect to conflict of laws principles.

**Non-Waiver.** Failure to enforce any provision of these T&Cs shall not constitute a waiver of that or any other provision of these T&Cs.

**Survival.** The following sections will survive any termination of these T&Cs: Release and Indemnity, Limitation of Liability, Notices, Choice of Law, Non-Waiver, Severability, Entire Agreement, Information, No Class Action Procedure, Assumption of Risk, Dispute Resolution, Intellectual Property, Warranty Disclaimer, and Interpretation. In addition, those provisions that by their nature are intended to survive termination of these T&Cs shall so survive.

**Severability.** If any provision or portion of these T&Cs are found to be unenforceable, the remainder shall be enforced as fully as possible, and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein.

**Assignment.** These T&Cs shall be binding on you, ecobee and Generac and their respective successors and assigns. You may not transfer or assign these T&Cs to any third party. Generac may assign these T&Cs to any third party qualified to perform Generac's obligations hereunder with or without your consent.

**Entire Agreement.** These T&Cs constitute the entire agreement between you, ecobee and Generac regarding the subject matter hereof and supersedes all other such prior or contemporaneous oral and written agreements and understandings.

**Changes to T&Cs.** ecobee may modify and amend these T&Cs at any time, in its sole discretion, and will use reasonable efforts to provide seven (7) days' notice to you when ecobee makes any material changes to these T&Cs. Continued participation in the Program shall constitute acceptance of any such modification of these T&Cs. ecobee will also post these T&Cs at [ecobee.com/ConEd-ecosave](http://ecobee.com/ConEd-ecosave) and encourages you to check them frequently. ecobee is not responsible for any change to the Program or any difference between the Program T&Cs or requirements and the description of the Program above. You further agree that ecobee may modify or terminate these T&Cs or the Program if there is any material change to, or termination of, the Program or any associated law, rule, regulation, requirement, code, order, or decree, or any interpretation thereof, by your Utility or any governmental authority.

**Withdrawal.** You may withdraw from the Program at any time by calling Generac Customer Support at 1-855-388-3148 and notifying your intent to withdraw. Upon your withdrawal, these T&Cs will terminate without any liability on the part of you or Generac to the other, except for any rights that accrued before the date of withdrawal. Furthermore, withdrawal may result in forfeiture of your right to receive some or all of the Incentive for the then-current season.

**Acceptance of T&Cs.** The use of an electronic signature process to accept and sign these T&Cs, including, your indication of acceptance of these T&Cs by a click-through or click-wrap process presented on an ecobee or Generac platform like a website or mobile app, or by acceptance via email, shall constitute effective execution and delivery of these T&Cs, and shall form a binding contract between you and Generac.

**Information.** By participating in the Program, you authorize ecobee, Generac and Techniart to act as your agents in connection with your participation in the Program, as necessary, and to collect, exchange, and utilize data related to your identity, energy usage, energy production, energy profile, Utility account, Utility rates, home, and Thermostat (your "Data") for the purposes of determining Program eligibility, administering and improving the Program, and as otherwise permitted under applicable law, including, in connection with the remote configuration, adjustment, and administration of your Thermostat as required to participate in the Program. You authorize Program Administrator to provide your Data to Generac and Techniart, to the extent available. Additionally, you agree to accept live and

automated voice notifications, email, text messages, first class mail, or other communications by any reasonable means, including, through ecobee app or any other means of electronic or web-based communication about the Program, Events, your Thermostat, and other related products and services. Network and other data or text charges may apply. You also authorize ecobee and Generac to share your Data with third parties in de-identified and anonymous form for any lawful purpose and in accordance with the Company Privacy Policy. You represent and warrant that the information that you provide to ecobee, Generac and Techniart during the Program is accurate, complete, true, and correct to the best of your knowledge and you agree to immediately notify Generac if any information that you provide has changed.

**No Class Action Procedure.** Notwithstanding anything to the contrary, class arbitration is not permitted under any circumstance. You and Generac agree that, by entering into these T&Cs, THE PARTIES MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITY, and not as a plaintiff or class member in any purported class or representative proceeding. Further, you agree that the arbitrator may not consolidate proceedings or more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Although the non-availability of any form of representative or class proceeding is clear from these T&Cs, should any dispute arise regarding or relating to the existence, validity, enforceability, or interpretation of the Dispute Resolution and No Class Action procedures provisions above, the arbitrator shall have the sole and exclusive jurisdiction to hear and determine the issue.

**Assumption of Risk.** You assume all risk of participation in the Program. ecobee and Generac are not responsible for any changes in your electricity costs or other costs before, during, or after the Program.

**Dispute Resolution.** In the event of a dispute between you, ecobee and Generac in connection with ConEd Demand Response Program, the Program, or these T&Cs, you, ecobee and Generac will first attempt to resolve the dispute informally for at least forty-five (45) days from when you, ecobee or Generac notifies the other in writing of any such dispute. Notwithstanding anything to the contrary, any dispute that cannot be resolved informally within the forty-five (45) day period shall be settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. SUCH AGREEMENT TO ARBITRATE MEANS THAT BOTH PARTIES HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL. The Parties may, in arbitration, seek all remedies available to such Party under this Agreement as interpreted under the laws of the State of Wisconsin. The arbitrator(s) may award costs of the arbitration and fees, including reasonable attorney's fees and expenses of travel to the arbitration to the prevailing Party subject to Generac's absolute aggregate limitation of liability below. The arbitration will be held in Milwaukee, Wisconsin unless you and Generac agree to another location in writing.

**Intellectual Property.** You agree and acknowledge that your participation in the Program does not provide you with any right to or ownership interest in any of Generac's confidential or proprietary information, including, any intellectual property, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, or technical information regarding the financing, design, operation and maintenance of the Program or of Generac's services, business, or accounts.

**Warranty Disclaimer.** YOU AGREE AND ACKNOWLEDGE THAT THE PROGRAM AND ANY SERVICES OR PERFORMANCE PROVIDED TO YOU BY GENERAC PURSUANT TO THESE T&CS SHALL BE "AS-IS WHERE-IS" AND THAT GENERAC IS NOT OFFERING AND EXPRESSLY DISCLAIMS ANY WARRANTY TO YOU OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IN CONNECTION WITH THE PROGRAM OR ANY SERVICE OR PERFORMANCE PROVIDED HEREUNDER OR DESCRIBED HEREIN, AND YOU HEREBY EXPRESSLY RECOGNIZE SUCH DISCLAIMER.

**Interpretation.** Unless otherwise specifically defined or required by the context in which the term appears, in these T&Cs: (a) the singular includes the plural and vice versa; (b) the words "these T&Cs," "herein," "hereto" "hereof" and "hereunder" refer to these T&Cs as a whole, including all schedules or exhibits, and not to any particular section or subsection of these T&Cs; (c) unless qualified by "either," "greater of," "lesser of," "later of," "earlier of," or other express language indicating that clauses are mutually exclusive, when "or" is used in these T&Cs it also contains "and" (i.e. or = and/or); (d) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented, restated or replaced from time to time; (e) the words "include," "includes" and "including" mean include, includes and including "without limitation."; (f) the captions or headings in these T&Cs are strictly for convenience and shall not be considered in interpreting these T&Cs; (g) references to persons, parties, or entities include their permitted successors and assigns; (h) references to exhibits,

schedules, or sections mean the exhibits to, schedules to, and sections of, these T&Cs; (i) references to approvals, consents or permissions shall refer to written approvals, consents, or permissions; (j) references to “unreasonable”, “reasonable”, “unreasonably”, and “reasonably” shall be deemed respectively to mean “commercially unreasonable”, “commercially reasonable” and “commercially unreasonably” and “commercially reasonably”; (k) any time period set forth herein that concludes on a non-business day shall be automatically extended to conclude on the next business day; and (l) any references to “annual”, “annually”, “year”, or “yearly” hereunder shall refer to the twelve (12) month period starting on the date that these T&Cs first go into effect and be distinct from calendar years, unless the context expressly indicates otherwise.

BY SUBMITTING YOUR APPLICATION INTO THIS PROGRAM YOU ARE ELECTRONICALLY ACCEPTING THESE T&CS, YOU HEREBY CONSENT TO PARTICIPATE IN THE PROGRAM AND AGREE TO THE T&CS DESCRIBED HEREIN.

**[SCHEDULE A (Incentive)]**

Unless otherwise modified in accordance with the terms of the attached T&Cs, the incentive schedule for this Program is listed in the below table:

Area	Existing	New Ecobee Owners
Eligible Westchester Area	Upon successful enrollment, you will receive a US\$100 one-time payment.	Upon successful enrollment, you will receive a free ecobee3 lite smart thermostat (shipping and sales taxes apply) or discounted ecobee Smart Thermostat Premium
All Other Eligible Areas	Upon successful enrollment, you will be entered into a sweepstakes for a chance to win one of two prizes of \$2500 each. The sweepstakes draw will be made approximately November 1, 2023.	N/A

[Schedule B: Term)]

Area	Term
Eligible Westchester Area	5 years from successful enrollment
All Other Areas	5 years from successful enrollment