

Terms and Conditions of Participation –Small Business Energy Saver Program

1 DEFINITIONS

In this document, capitalised words have the same meaning as set out in the Small Business Energy Saver Program Guidelines (**Guidelines**).

2 APPLICATION

- 2.1 These Terms and Conditions apply to any person who registers to participate in the Program. In registering to participate in the Program you agree that you have read and understood the Guidelines and these Terms and Conditions and agree to comply with them.
- 2.2 The Guidelines and the Program Activity Schedule form part of these Terms and Conditions.

3 OBLIGATIONS OF APs

- 3.1 You must be an Accredited Person and, at all times, hold current accreditation with the ESC. This includes meeting the requirements for Accredited Persons as set out in the ESC's current *Obligations and Program Guide for Accredited Persons*.
- 3.2 You will immediately notify SV if you are no longer an Accredited Person.
- 3.3 You warrant that the information you have provided to SV including the information in your Registration Form and any information submitted to claim the Bonus including, in particular, the Required Evidence is true, complete and correct. You will immediately notify SV if there is a material change in circumstance that may affect the truth, completeness or accuracy of any information provided.
- 3.4 You agree to participate in the Program as it is described in the Guidelines.
- 3.5 You must ensure that your employees and contractors engaged to perform the Eligible VEU Activities are appropriately trained, qualified, experienced and competent in all requirements and that they perform the activities in a professional manner and:
- (a) in a manner that ensures the safety of persons and property; and
 - (b) in accordance with relevant laws, standards and codes of conduct.
- 3.6 You will act honestly and with integrity in dealing with SV, Small Business Customers and Intermediaries in relation to this Program and must not do anything to damage or bring into disrepute this Program, the VEU Program, SV or the Victorian Government.
- 3.7 You must take steps to ensure that the full benefit of the Bonus has been or will be passed on to the Small Business Customer as a discount and will not engage in any unfair market practices such as:
- (a) engaging in misleading or deceptive conduct as defined under the Australian Consumer Law; or
 - (b) unnecessarily inflating the pre-Bonus price on an Eligible VEU Activity above what would ordinarily apply outside of this Program.
- 3.8 While a Small Business Customer invoice does not form part of the Required Evidence, you must retain copies of these invoices in accordance with clause 6.2 and you must provide such copies on request by SV.

4 CLAIMING THE BONUS

- 4.1 The Bonus will be calculated in accordance with the Guidelines and using the Multiplier Factors set out in the Program Activity Schedule.
- 4.2 SV will pay the total amount of Bonus due to the AP in respect to the completion of Eligible VEU Activities in the month and on provision of the Required Evidence.
- 4.3 You must submit a valid invoice to SV within 30 days from the date of registration of the VEECs in respect of the completed Eligible VEU Activities.
- 4.4 SV will pay invoiced amounts which comply with these Terms and Conditions within 30 days of receipt of a valid invoice.
- 4.5 SV is not obliged to pay any invoice that is not submitted within three months of the registration of the relevant VEECs as described in clause 4.3.
- 4.6 Payment of an invoice is to be taken as payment on account only and not evidence that an Eligible VEU Activity was performed in accordance with these Terms and Conditions. You will reimburse to SV on demand any amount paid to you:
- (a) while you were not an Accredited Person;
 - (b) in relation to an activity or business that is not eligible under the Program;
 - (c) in relation to an activity that is deemed to be non-compliant by the ESC after an audit or investigation;
 - (d) in relation to a Bonus that was not correctly calculated; or
 - (e) in relation to a Bonus, the full benefit of which was not passed on to the Small Business Customer.
- 4.7 Without disadvantage to any other rights, we may deduct from amounts otherwise payable to you, amounts which are payable to us, whether under these Terms and Conditions or otherwise.

5 BONUS ALLOCATIONS AND REVIEWS

- 5.1 On registration, you will be issued with a Bonus Allocation and you will use reasonable endeavours to acquit the Bonus Allocation within the initial three-month Delivery Period.
- 5.2 You may request an increase to your Bonus Allocation at any time if it is likely to be exhausted which request SV will not unreasonably refuse or delay.
- 5.3 If you do not use your Bonus Allocation within the Delivery Period and are not likely to use the Bonus Allocation SV may give the balance of your Bonus Allocation to a more active AP.
- 5.4 SV may contact you at any time and you will consult with SV to discuss your rate of installation activity under the Program.
- 5.5 Bonus Allocations and Delivery Periods will be regularly reviewed by SV to ensure the Program is achieving its objectives.

6 RECORDS AND INSPECTIONS

- 6.1 On request, you will provide us with any information needed to allow us to verify the information you have provided, including information provided in your Registration Form and in your claim for the Bonus. We may request such other information as

- might be reasonably necessary to administer the Program.
- 6.2 During the duration of the Program and for seven years thereafter you must keep all records relevant to your participation in the Program, including all tax and accounting records and all records relating to the Eligible VEU Activities undertaken.
- 6.3 SV or its representative may, at SV's cost, and upon reasonable notice, conduct inspections and audits of your Program records and you will comply with any such audit or inspection.
- 6.4 SV may also undertake spot checks of the installation of Eligible VEU Activities, including contacting Small Business Customers, to ensure you and your employees and contractors are delivering the Program in accordance with the Guidelines and these Terms and Conditions.
- 6.5 You acknowledge that any audit, inspection or check under this clause 6 is additional to and separate from those undertaken by the ESC under the VEU Program.

7 PRIVACY AND INFORMATION SECURITY

- 7.1 For the purposes of this clause 7, Personal Information and public sector data have the meanings given to them in the *Privacy and Data Protection Act 2014 (Vic)* (**Privacy Act**).
- 7.2 You acknowledge that during the Program you will receive Personal Information and agree that you and your employees and contractors will comply with the Privacy Act and the Information Privacy Principles set out in the Privacy Act. This means that you will:
- have a privacy policy that complies with the Privacy Act;
 - only collect and use Personal Information if collection and use of such Personal Information is necessary for this Program or the VEU Program;
 - protect Personal Information from misuse, loss, unauthorised use, access, modification and disclosure; and
 - ensure you are permitted to provide Personal Information to SV where required for the purpose of the Program.
- 7.3 SV will provide a form of Customer Declaration for you to use as part of the Required Evidence and you must use this form or a form that is substantially similar to the form.
- 7.4 In respect to any Personal Information or public sector data collected, held, used, managed, disclosed or transferred, you will protect such information from any unauthorised access and otherwise comply with the protective data security standards established under Part 4 of the Privacy Act. You must not, and must procure that your employees and contractors do not, do any act or engage in any practice that contravenes a protective data security standard in respect of public sector data.
- 7.5 In accessing SV's systems and website, you must comply with SV's data security requirements (including the ICT Acceptable Usage policy) as notified to you.

- 7.6 You must notify us immediately, and comply with our reasonable directions, if you become aware of any breach of the Privacy Act or data security requirements.
- 7.7 All documents submitted by you to SV become the property of SV.

8 PROMOTIONS

- 8.1 SV will provide relevant promotional material to you which material you will use to promote your participation in the Program. You will not use any promotional material that is inconsistent with the material we provide.
- 8.2 If you wish to use promotional material that is outside or inconsistent with the material SV has provided, you must first obtain our written consent to use such material.
- 8.3 You will work with Intermediaries to promote the Program to Small Business Customers.
- 8.4 You must ensure your employees and contractors accurately represent the Program to potential Small Business Customers (as set out in our approved promotional material) and not make statements that are contrary to the approved promotional material nor engage in any misleading or deceptive conduct as defined in the Australian Consumer Law.
- 8.5 We may withdraw any permission to use the approved promotional material (including the use of SV's or the Victorian Government's name and logo) at any time and, upon notice of withdrawal, you must immediately stop using the promotional materials and our and the Victorian Government's name and logo.
- 8.6 Your participation in the Program does not constitute endorsement of you, your contractors, your products, services or Eligible VEU Activities undertaken, and we do not accept any responsibility for your conduct (or the conduct of your contractors) and should not be represented in such a manner.
- 8.7 You agree to information about your participation in the Program (including your contact details) to be:
- promoted and listed on our website; and
 - shared with Intermediaries, Small Business Customers, other government departments and statutory bodies,
- and you grant to SV a licence to use your name and logo for these purposes.

9 INTELLECTUAL PROPERTY

- 9.1 In this clause 9, "Intellectual Property" includes patents, know-how, copyright, designs, semiconductor or circuit layout rights, trademarks, trade secrets, data, confidential information, business or company names and other proprietary rights or any right to registration of such rights, whether created before or after the date of your registration to participate in this Program and whether protected under common law or statute.
- 9.2 Any Intellectual Property that is created in the course of the Program will be and remain the property of the party that created it.
- 9.3 You acknowledge that any promotional material or other forms (such as the Customer Declaration) we provide to you is SV's Intellectual Property and you are licensed to use such material for the duration of and solely for the purpose of the Program.

9.4 Nothing in these Terms and Conditions is intended to affect the ownership of your Intellectual Property.

10 CONFIDENTIAL INFORMATION

10.1 Subject to this clause 10, each party must keep information of the other party which is by its nature confidential or which is described by the other party to be confidential (**Confidential Information**) confidential at all times, and must not, without the other party's written consent:

- (a) disclose any Confidential Information to any third party; or
- (b) use or allow any person to use any Confidential Information for any purpose other than for the purposes of the Program or these Terms and Conditions.

10.2 A party may disclose the Confidential Information of the other party:

- (a) to the extent required by law or in connection with legal proceedings; and
- (b) to its employees, contractors and professional advisers for purposes connected to the Program or these Terms and Conditions.

10.3 SV may disclose your Confidential Information for public accountability purposes or to comply with any reporting obligation.

11 INSURANCE

11.1 Further to any insurance requirements under the VEU Program, you must, at your own cost, for the duration of the Program or longer if required by law, maintain all relevant insurances that a prudent Accredited Person would be reasonably expected to maintain in order to ensure the successful completion of your obligations under these Terms and Conditions including:

- (a) public and products liability insurance of \$5 million per occurrence; and
- (b) where applicable, professional indemnity insurance of \$2 million per claim.

11.2 You will ensure that any contractors engaged to deliver the Eligible VEU Activities maintain all relevant insurances that a prudent person in their industry would maintain including the insurance requirements set out above at clause 11.1, as applicable.

11.3 You will provide evidence of your and any contractors' insurance on request.

12 LIABILITY AND INDEMNITIES

12.1 To the extent permitted by law and subject to any rights accrued to you under these Terms and Conditions, SV excludes all liability (in contract, tort including negligence, under statute, or otherwise arising) for any loss, damage, liability, claim, cost or expense (**Loss**) suffered or incurred by you, whether direct or indirect, and howsoever caused in connection with any action or omission relating to the Program, the VEU Program or these Terms and Conditions.

12.2 You are responsible for all works and installation activities completed under the Program and the VEU Program and you indemnify SV and its officers, employees, agents and contractors (**those indemnified**), and will keep those indemnified from

and against any and all Loss (including legal costs on a full indemnity basis) suffered or incurred by any of those indemnified arising directly out of:

- (a) any claim by a third party (including, without limitation, a Small Business Customer) against SV relating to your participation in the Program or the VEU Program;
- (b) any negligent, or unlawful act or omission or wilful misconduct by you in connection with the Program or these Terms and Conditions;
- (c) any breach by you of these Terms and Conditions; or
- (d) any misleading or fraudulent information submitted by you.

12.3 You are not required to indemnify any of those indemnified to the extent that a relevant Loss is caused by the negligence of any of those indemnified.

12.4 To the extent that you indemnify persons other than SV under clause 12.2 (**beneficiaries**), SV holds the benefit of the indemnity on trust for and may enforce the indemnity directly against you for and on behalf of the beneficiaries.

13 CONFLICT OF INTEREST

13.1 You must not, and must ensure your employees and contractors do not, hold any office or possess any property, be involved in any business, trade or calling, or have any obligations under any contract whereby, directly or indirectly, duties or interests are or might be created (or appear to be created) in conflict with your duties and interests under the Program and these Terms and Conditions.

13.2 You must promptly notify us of any matter which may give rise to a breach of clause 13.1.

14 TERMINATION

14.1 You may elect to not participate in the Program at any time by providing us with 14 days' notice.

14.2 SV may immediately terminate your participation in the Program if:

- (a) you no longer maintain the status as an Accredited Person;
- (b) you become insolvent, go into liquidation, are wound up, dissolved, commit an act of bankruptcy or enter into a scheme of arrangement with any creditor;
- (c) any of your employees, officers or contractors are found guilty of breaking any law;
- (d) you fail to complete Eligible VEU Activities to our reasonable satisfaction;
- (e) you breach of any of your obligations under these Terms and Conditions and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is not remedied by you within five days of being notified of the breach by us; or
- (f) you breach clauses 3.5, 3.6, 3.7 or 8.4.

14.3 Despite any other term of these Terms and Conditions, we may at any time at our discretion terminate or suspend the Program upon written notice to you.

14.4 If you no longer participate in the Program or the Program is terminated for any reason, SV will pay you any amount accrued to you in respect to the completion of Eligible VEU Activities and on

provision of the Required Evidence. SV is not otherwise liable to compensate you any amount on termination.

15 GST

- 15.1 In this clause 15, defined terms have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), unless the contrary intention appears.
- 15.2 Unless otherwise specified, any consideration specified in these Terms and Conditions excludes GST.
- 15.3 You agree that the Bonus is consideration for a Supply made by you to SV.
- 15.4 If a Supply under these Terms and Conditions is subject to GST, the party paying for the Supply must pay to the party making the Supply an additional amount equal to the amount payable multiplied by the applicable GST rate, subject to the party making the supply issuing a tax invoice.
- 15.5 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 15.4.

16 ASSIGNMENT

SV may at any time assign, novate or subcontract any or all our rights and obligations under these Terms and Conditions to any other entity or organisation, at our discretion. We will notify you in writing of that assignment, novation or subcontract. You must not assign or novate these Terms and Conditions without our consent.

17 COMPLAINTS

- 17.1 If you have a complaint about any aspect of the Program or disagree with a decision of SV you may give notice of your complaint to SV, giving full details.
- 17.2 Within 14 days of receiving notice of the complaint, a senior staff member of SV who is not connected with the Program will consider the grounds for the complaint and either proceed to determine the complaint or request further information from you.
- 17.3 If the complaint is not resolved to both parties' satisfaction within one month of the notice given in clause 17.1, a party may refer the complaint to a director of the Department of Environment, Land, Water and Planning whose decision will be final and binding.

18 GENERAL

- 18.1 These Terms and Conditions do not create any employment, contracting or fiduciary relationship between the parties.
- 18.2 You acknowledge that your participation in the Program is not exclusive.
- 18.3 These Terms and Conditions (including the Guidelines) may be varied at any time by SV if reasonably required to properly administer the Program. We will notify you of any change in writing via an email bulletin to the Authorised Representative notified in your Registration Form. We may also update our website notifying of the changes. We will endeavour to give you as much

notice as possible of any change and will not implement a change retrospectively such that your current Eligible VEU Activities are adversely affected.

- 18.4 Any notices or other communications to you will be provided via an email generated from your account. You must reference your SV account number in all communications with us.
- 18.5 Clauses 3.8, 4.7, 6.1, 6.2, 6.3, 7.2, 7.4, 10, 11, 12, and 14.4, and any other clause that by its nature is intended to survive termination, survive expiry or termination of these Terms and Conditions.
- 18.6 A term or part of a term in these Terms and Conditions that is illegal or unenforceable may be severed from these Terms and Conditions and the remaining terms shall continue in force.
- 18.7 These Terms and Conditions are governed by the laws of Victoria.
- 18.8 In the event of a discrepancy or ambiguity between these Terms and Conditions, the Guidelines and the Program Activity Schedule, these Terms and Conditions will prevail to the extent of the inconsistency.

End of Terms and Conditions