

Solar Service Guys Pty Ltd

Application Terms

1. Background

- (a) Solar Service Guys Pty Ltd ACN 121 907 579 (**we/us/our**) provides the Application.
- (b) We have been requested by LG to make the Application available to service providers wishing to participate in the Promotion being run by LG as part of its Recall Program.
- (c) We have agreed to grant you access to the Application to enable you to participate in the Promotion in accordance with the terms of this Agreement.

2. Acceptance and Term

2.1 Acceptance

You accept and agree to be bound by the terms of this Agreement where you:

- (a) click and accept, or use another technological means of positively indicating your intention to be bound by this Agreement;
- (b) download, access and commencing using the Application; or
- (c) otherwise indicate to us, whether directly or indirectly, that you accept and agree to be bound by the terms of this Agreement.

2.2 Term

This Agreement commences on the Acceptance Date and continues:

- (a) until terminated in accordance with clause 12; or
- (b) you cease and refrain in future from continuing to use the Application.

3. Application

3.1 Access to Application

- (a) Subject to clause 3.1(b), we grant you the Licence during the Term.
- (b) Access to the Application is provided on the following conditions:
 - (i) you must only access the Application in accordance with the terms of this Agreement and for the purposes of entering into the Promotion;
 - (ii) you must comply with all reasonable and lawful directions that we may give from time to time with respect to your access to and use of the Application;
 - (iii) you must cooperate with us in the remediation of any security threat, unauthorised use, or misuse, of the

Application and promptly report all such matters that you become aware of to us;

- (iv) you must not interfere with or disrupt the operation of the Application nor attempt to do so; and
- (v) subject to any right under, sections 47B(3), 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth), either directly or indirectly, copy, reproduce, modify, attempt to decompile, cross compile, disassemble, reverse engineer, or use any other means to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Application.

3.2 Permissions

- (a) As part of your access to the Application, you may be required to provide us with access to the following aspects of your device:
 - (i) your camera;
 - (ii) select photos in your photo gallery as chosen by you; and
 - (iii) GPS location meta data while using the Application.
- (b) If you do not consent to provide us with the access described in 3.2(a), you acknowledge that this may limit your ability to use the Application and consequently your ability to enter into the Promotion.

3.3 Updates and Variation

- (a) You acknowledge and agree that we may modify, update, or permanently or temporarily disable or discontinue any part of the Application, without liability or further notice to you.
- (b) Any new features of the Application made available under 3.2(a), will be governed by the terms of this Agreement.
- (c) If we are required to update any provision of this Agreement, we will provide notice of the proposed update to you prior to it becoming effective. Your continued use of the Application following any amendment to this Agreement becoming effective will be deemed as your acceptance of the amended Agreement.
- (d) If you do not agree to any proposed amendments to the terms of this Agreement, you must terminate this Agreement pursuant to clause 11.

4. Promotion

4.1 Third Party Provider

- (a) You acknowledge that the Promotion is being provided by LG and is not provided by us directly.
- (b) The terms of the Promotion, including information regarding the:
 - (i) selection and allocation of any Prizes;
 - (ii) payment of any monetary consideration forming part of a Prize;
 - (iii) duration of the Promotion and number of Prizes available; and
 - (iv) participation eligibility for the Promotion,
 are governed by and determined by LG and not by us.
- (c) We will act in good faith and use reasonable endeavours to respond to any of your questions and queries regarding the Promotion. However, you acknowledge that we cannot accept any responsibility or liability in respect of any information that we provide in respect of the Promotion.
- (d) You acknowledge that by providing you with access to the Application we are only providing you with a means to enter and participate in the Promotion. We make no representation or warranty:
 - (i) that use of the Application will be the only means available for participants to enter the Promotion;
 - (ii) regarding the availability of the Application at any time; or
 - (iii) regarding the Promotion or any information relating to the Promotion generally.

4.2 Entering the Promotion

- (a) To participate in the Promotion, when you attend the premises of a customer, you must:
 - (i) enquire as to whether the customer has purchased or is in possession of any batteries that are the subject of the Recall Program;
 - (ii) if you locate a battery that is the subject of the Recall Program, you must:
 - (A) scan the Serial Number of the relevant battery using the Application (which will require you to provide the Application with permission to access your device's camera and photo gallery); or
 - (B) enter the unique Serial Number identifying that battery into the Application.
- (b) Upon entering the Serial Number into the Application:
 - (i) you will receive a notification advising that you have won from LG a major or minor prize

- (which will be valued at \$50, \$5,000 or \$10,000) (**Prize**); and
- (ii) you must collect from the customer and enter into the Application their (**Customer Information**):
 - (A) full name;
 - (B) residential address; and
 - (C) best mobile or telephone contact number.
- (c) You must at all times comply with the *Privacy Act 1968* (Cth) when collecting and storing Customer Information and must specifically obtain the Customer's consent to:
 - (i) providing the Customer Information to us for the purposes of enabling us to contact the relevant customer;
 - (ii) providing the Customer Information to LG for the purposes of enabling LG (whether through us or another service provider) to replace the battery the subject of the Recall Program.
- (d) Within thirty (30) days of receiving the Customer Information referred to in 4.2(b)(ii) we will attend the premises of the customer to verify that the battery you have identified qualifies for the Recall Program. You will not receive any Prize money until such time as we have been able to verify that the battery is a qualifying battery.

4.3 Payment of Prize Money

- (a) You acknowledge that LG is solely responsible for the payment to you of any Prize.
- (b) If you have any issues regarding the receipt of a Prize (of whatever nature) you must contact LG directly regarding your issue.
- (c) We will in our discretion act in good faith to respond to any questions or queries that you have regarding your receipt of a Prize, however we accept no responsibility or liability in this regard.
- (d) You acknowledge that your sole recourse in respect of the receipt of any Prize is as against LG and you hereby release and hold us harmless from all liability and from all Claims regarding payment to you of any Prize.

4.4 Specific Acknowledgements

You acknowledge and agree that:

- (a) if we are unable to access the premises of a customer to verify that a battery does fall within the scope of the Recall Program, LG at its sole discretion may elect not to award any Prize (even where it was previously indicated that you would receive such a Prize);
- (b) if any of the information you provide us is inaccurate or incomplete, this will affect your eligibility to claim

- (c) a Prize, and we may require you to resubmit information regarding the relevant battery or the Customer Information;
- (c) a battery is only eligible to be used as an entry into the Promotion once. If the Serial Number of a battery has already been scanned and submitted to us using the Application (or through any other means), then you will not be eligible to receive any Prize in respect of that battery;
- (d) the duration, length and number of Prizes available under the Promotion is determined solely at the discretion of LG and the Promotion may be terminated at any time, without notice;
- (e) Prizes are not transferable, exchangeable or replaceable if lost or stolen once awarded; and
- (f) to the extent that any tax liability arises as a consequence of your receipt of a Prize, then you are solely responsible for that tax liability and you will not be entitled to any additional amounts as a consequence of incurring that liability.

5. Obligations

5.1 Our obligations

We must at all times throughout the Term of this Agreement:

- (a) act in accordance with all laws and applicable regulations and codes in Australia; and
- (b) comply with our obligations to you under this Agreement.

5.2 Your obligations

You must ensure:

- (a) that at all times you act in accordance with all relevant laws and applicable regulations and codes in Australia with respect to your participation in the Promotion;
- (b) all Personal Information collected by you and provided to us, whether relating to a customer or otherwise, has been collected in accordance with the requirements of the *Privacy Act 1968* (Cth) and that you have obtained appropriate consents and permissions to provide us with such Personal Information;
- (c) you do not provide any Personal Information or other data to us where you do not have the appropriate consent or authority to do so, and you do not provide false or misleading information to us;
- (d) you treat all Personal Information collected in respect of a customer as confidential in nature, and do not make any unauthorised use or disclosure of such information;
- (e) at all times that you comply with your obligations under this Agreement;

- (f) the information that you provide to us is accurate, complete and current;
- (g) notify us immediately in the event of any known or suspected unauthorised access of the Application, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of any customer related data or information;
- (h) take all necessary steps to prevent the continuance of any unauthorised access or use of the Application; and
- (i) maintain all systems needed to connect to network that allows you to access the Application and participate in the Promotion.

6. Warranties

You represent and warrant that:

- (a) you have the capacity and authority to enter this Agreement and to perform all your obligations under it; and
- (b) the terms of this Agreement have been accepted by you or by a duly authorised representative of yours and accordingly the terms of this Agreement legally bind you.

7. Intellectual Property Rights

- (a) We retain ownership of all Intellectual Property Rights subsisting in the Application, or any trade marks, marketing or promotional material that we provide to you.
- (b) Nothing in this Agreement has the effect, or is to be construed or interpreted in a manner that would result in, transferring ownership of any Intellectual Property Rights in the Application, our trade marks, marketing and promotional material, to you.

8. Disputes

- (a) If a dispute (**Dispute**) arises between the parties to this Agreement which they cannot resolve, then the party claiming that a Dispute has arisen must deliver to the other party a notice containing particulars of the Dispute (**Dispute Notice**).
- (b) During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties must meet in good faith in an attempt to resolve the Dispute.
- (c) If the parties cannot resolve the Dispute within the Initial Period then unless they all agree otherwise, they must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. The parties must participate in the mediation in good faith.
- (d) The mediator must be agreed on by the parties within 10 Business Days after the Dispute Notice is given to the parties and if they cannot agree within

that time the mediator will be nominated by the president of the Resolution Institute.

- (e) The mediation concludes when:
 - (i) all the parties agree in writing on a resolution of the Dispute; or
 - (ii) a party, not earlier than 20 Business Days after appointment of the mediator, has given 5 Business Days' notice to the other parties and to the mediator, terminating the mediation, and that 5 Business Days has expired without all the parties agreeing in writing on a resolution of the issue.

9. Termination

9.1 Immediate Termination

- (a) You may immediately terminate this Agreement by ceasing use of the Application and deleting or removing your access to the Application.
- (b) We may immediately terminate this Agreement with you at any time by ceasing to provide you with access to the Application.

9.2 Effect of termination

Upon termination of this Agreement:

- (a) if you are eligible for or have been awarded a Prize from LG, you must seek payment or receipt of that Prize from LG directly; and
- (b) you must cease and refrain from continuing to use the Application, and must not create any alternate or substitute account that would allow you to access the Application.

10. Liability Indemnity

10.1 Your indemnity

You indemnify us and must keep us indemnified against any Loss that we may suffer or incur (whether or not such Loss has been actually realised), arising from or in connection with (directly or indirectly):

- (a) any breach or default by you of this Agreement (including any breach of warranty);
- (b) your failure to obtain appropriate consents to the collections, disclosure and use of any Personal Information collected and provided to us in respect of any customer;
- (c) your breach of the Privacy Act 1968 (*Cth*);
- (d) a negligent act or omission by you; and
- (e) your failure to comply with any other relevant Law.

10.2 Liability

Notwithstanding any other provision of this Agreement, our maximum liability to you in respect of any Loss that you may suffer under or in connection with this Agreement will be limited to the greater of:

- (a) the proceeds of any insurance policy of which we actually receive the benefit of in respect of the event giving rise to the Loss; and
- (b) five thousand dollars.

11. Acknowledgements

You acknowledge and agree that:

- (a) computer and telecommunications software are not fault free and occasional periods of downtime may occur;
- (b) we have not made any representations or warranties that the Application will be error free or available at all times without interruption; and
- (c) we may immediately suspend all or any part of your access to the Application without any liability or notice to you where we consider it necessary because:
 - (i) a Claim is made alleging that the continued provision of the Application or any part of it infringes the rights of any person or any Law; or
 - (ii) we are reasonably of the view that you have breached or are likely to breach a provision of this Agreement or any relevant Law.

12. Assignment

- (a) Subject to clause 15(b), you cannot assign, novate or otherwise transfer any of your rights or obligations under this Agreement without our prior consent.
- (b) You agree that if we merge or amalgamate with another company, business or otherwise sell or dispose of our business, we may:
 - (i) transfer your matter, including all data that you have provided us, along with Personal Information, to a third party provided they agree to be bound on terms equivalent to those contained in this Agreement; and
 - (ii) assign, novate or otherwise transfer any of our rights or obligations under this Agreement.

13. General matters

13.1 Consents

Unless this Agreement expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under this Agreement. To be effective any consent under this Agreement must be in writing.

13.2 Entire Agreement

This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

13.3 Jurisdiction

This Agreement is governed by the law in force in the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, in relation to any proceedings that may be brought at any time relating to this Agreement.

14. Definitions and interpretation

14.1 Definitions

In this Agreement:

Acceptance Date means the date the Agreement is accepted by you or on your behalf under clause 2.

Agreement means this document and any schedules or annexures to it or contemplated by it.

Application means the smart phone and tablet application that provided by us that enables access and entry into the Promotion.

Business Day means a day that is not a Saturday, Sunday or any other day that is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made.

Claim includes a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Intellectual Property Rights includes:

- (a) patents, designs, trademarks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in the Application, code, graphics, copy, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world,

whether created before or after the date of the Agreement.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

LG means LG Electronics Australia Pty Ltd ACN 064 531 264.

Licence means a revocable, worldwide, non-exclusive, non-sublicensable and non-transferable licence to access the Application.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether

prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

Personal Information means personal information as defined in the Privacy Act.

Privacy Act means the *Privacy Act 1988* (Cth).

Prizes means the cash prizes available to be won by Accessing the Application and participating in the Promotion.

Promotion means the game of chance delivered through the Application that allows you the opportunity to win Prizes.

Recall Program means the program to recall LG RESU Energy Storage System Home Batteries currently under recall and as listed at <
<https://www.productsafety.gov.au/recalls/lg-energy-solution-australia-pty-ltd-formerly-lg-chem-australia-pty-ltd-%E2%80%94-ess-home-energy-storage-system-batteries>>.

Serial Number means a unique number used to identify each LG battery.

Term means the duration of this Agreement from the Acceptance Date until it is terminated.

14.2 Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) a reference to an agreement includes any variation or replacement of the agreement;
- (b) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) all currency amounts are in Australian dollars;
- (d) headings are provided for convenience and do not affect the interpretation of the documents making up the Agreement;
- (e) "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (f) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (g) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (h) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
- (i) a person includes the person's executors, administrators and permitted novatees and assignees;
- (j) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;

- (k) if any part of the Agreement is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Agreement will not apply but the other parts of the Agreement will not be affected.