

Department for Energy and Mining

Home Battery Scheme

System Provider Terms

www.energymining.sa.gov.au



Government of South Australia
Department for Energy and Mining

1 Introduction

1.1 Purpose and Scope

These are the terms and conditions that apply to Qualified System Providers.

Each Applicant and Qualified System Provider must read, and agree to be bound by, these Terms.

1.2 Modifications

The SA Government reserves the right to modify, supplement or replace these Terms at any time in its absolute discretion.

A Qualified System Provider is responsible for remaining aware of the provisions of these Terms and any modifications to these Terms.

A Qualified System Provider will be deemed to have accepted and agreed to any such modified Terms on and from the time those modified Terms having been Published by the SA Government and/or provided to the Qualified System Provider.

1.3 Version Release History

Version	Effective Date	Summary of Changes
1.0*	8 October 2018]	First Issue

* Current Version

1.4 Definitions

The following definitions apply in this document, unless the context requires otherwise:

Applicant means a person who applies for Qualification.

CEC means the Clean Energy Council.

Contractor means any person engaged by the SA Government to assist with the administration of Subsidy Scheme Matters.

Eligible Supply means the supply and/or installation by a Qualified System Provider of equipment at a site for a customer which satisfies the criteria and conditions for payment of a Subsidy pursuant to the Subsidy Terms.

Publish means publish on the website at www.energymining.sa.gov.au/hbs.

Qualified System Provider means any person who has obtained Qualification.

Qualification means permission by the SA Government and its Contractors to receive Subsidies on behalf of customers.

Responsible Parties means, in relation to a person, that person's directors, officers, employees, agents, consultants, contractors and related bodies.

SA Government means the Minister for Department of Energy and Mining for and on behalf of the Crown in right of the State of South Australia.

SA Government System Provider Criteria means the criteria prescribed by the SA Government in Annexure 1, which a person is required to satisfy in order to obtain Qualification.

Subsidy means a subsidy under the Subsidy Scheme.

Subsidy Scheme means the South Australian Home Battery Subsidy Scheme launched in 2018.

Subsidy Scheme Matters means these Terms, other terms and conditions applying to Qualified System Providers (including terms and conditions imposed by the SA Government's Contractors), Qualifications (including eligibility criteria, application and assessment for Qualification), quotations and Eligible Supplies by Qualified System Providers, the Subsidy Terms and the Subsidy Scheme (including eligibility criteria, application and assessment for Subsidy payments).

Subsidy Terms means the terms and conditions pursuant to which Subsidies will be provided, as determined and Published by the SA Government from time to time (and as varied by the SA Government in its absolute discretion from time to time).

Terms means these terms and conditions, as varied by the SA Government in its absolute discretion from time to time.

WHS Act means the *Work Health and Safety Act 2012* (SA).

2 Contractor Terms

Each Applicant and Qualified System Provider acknowledges and agrees that additional terms and conditions may be imposed on the Qualified System Provider by the SA Government's Contractors and that the Qualified System Provider must remain aware of and comply with any such additional terms and conditions.

3 SA Government Discretion

As between the Applicant or Qualified System Provider and the SA Government, notwithstanding any other document, terms, conditions, statement or representation (written or otherwise) to the contrary, each Applicant and Qualified System Provider acknowledges and agrees that:

- a) the SA Government has absolute discretion in relation to Subsidy Scheme Matters including:
 - (i) in relation to the implementation and operation of the Subsidy Scheme and may discontinue, suspend or modify the Subsidy Scheme at any time;
 - (ii) to suspend or revoke the Qualified System Provider's Qualification at any time; and
 - (iii) in relation to the eligibility for any Subsidy, the payment of any Subsidy, the amount of any Subsidy, and the timing and order of any Subsidy payments.
- b) an application for Qualification confers no right or expectation on the Applicant to be considered for, or granted, any Qualification;

- c) where Qualification is granted in circumstances where a Qualified System Provider has applied to be a CEC Approved Solar Retailer, that Qualification may be revoked if such application is rejected or not accepted within 2 months of the date application is first made to become a Qualified System Provider;
- d) a Qualified System Provider must at all times comply with the SA Government System Provider Criteria and Qualification may be revoked if at any time they do not comply with those Criteria;
- e) a quotation submitted by a Qualified System Provider in respect of an Eligible Supply confers no right or expectation on the Qualified System Provider or its customer to be considered for, or receive, any Subsidy; and
- f) the SA Government gives no warranty as to the standard of care or process that will be undertaken by the SA Government or its Contractors in conducting an assessment of an application for Qualification or a quotation submitted by a Qualified System Provider and the SA Government has no obligation to give any reason for any assessment or decision.

4 Relationship with SA Government

A Qualified System Provider is in no respect a contractor, agent, employee or representative of the SA Government and has no authority to incur any debt, liability, or obligation, or to make commitments, on behalf of, or otherwise represent, the SA Government for any purpose and shall not represent or hold itself out as such or as having such authority for any purpose whatsoever.

5 Dealings with Customers

5.1 Information Provision

- a) A Qualified System Provider must provide its customers with general information about the Subsidy Scheme which must include the following:
 - (i) the Qualified System Provider is a “Qualified System Provider” for the purposes of the Subsidy Scheme;
 - (ii) the Subsidy is provided by the SA Government;
 - (iii) a copy of or link to information for customers on the Government’s Home Battery Scheme website;
 - (iv) the warranty provisions relating to the Eligible Supply completed;
 - (v) who to contact in case of complaint or service request;
 - (vi) any approvals, permits or licences that the customer may need to seek in relation to completing the Eligible Supply; and
 - (vii) such other information as notified by the SA Government or its Contractors in writing from time to time.

- b) All information provided by a Qualified System Provider to its customers about the Subsidy Scheme must be consistent with information published by the SA Government and its Contractors, and must not be misleading or deceptive.

5.2 Price

A Qualified System Provider must not provide a quotation, or charge, for any Eligible Supply at a price which is above the fair market value of the Eligible Supply or otherwise inflate the price of any Eligible Supply to cover the cost of obtaining or maintaining its Qualification or receiving Subsidies (whether by charging any commission or premium in connection with the Eligible Supply or by any other means).

5.3 Application of Subsidy

- a) Each Applicant and Qualified System acknowledges that each Subsidy it receives on behalf of a customer may only be applied in and towards payment for an Eligible Supply acquired by the customer (**Subsidy Purpose**) and not for any other purpose.
- b) On receipt and application of a Subsidy on behalf of a customer, the Applicant or Qualified System Provider hereby certifies on its own behalf and on behalf of the customer in favour of the SA Government that the whole of the Subsidy has been used for the Subsidy Purpose, and will provide any certification, acknowledgement, acquittal or confirmation in connection with receipt or use of the Subsidy as is required by the SA Government.
- c) Without limiting clause 11, if any all or any part of any Subsidy received by an Applicant or Qualified System Provider is not used for the Subsidy Purpose, the Applicant or Qualified System Provider must immediately notify the SA Government and repay the relevant Subsidy (or portion thereof) to the SA Government.

5.4 Work Standards

A Qualified System Provider must ensure all work it undertakes in relation to an Eligible Supply is undertaken in accordance with the installation standards and SAPN requirements referred to in the SA Government System Provider Criteria.

6 Records

A Qualified System Provider must:

- a) keep and retain full and proper records of all documents relating to Subsidy Scheme Matters while its Qualification is current and for a period of 5 years after its Qualification ceases; and
- b) upon request, make such records available at its own cost to the Minister and its Contractors in the format and manner reasonably specified by them.

7 Work Health and Safety

- a) If requested by the SA Government, an Applicant or Qualified System Provider must at its own cost:
 - (i) provide evidence satisfactory to the SA Government of its capacity to comply with the WHS Act;
 - (ii) provide evidence that its Responsible Parties have received appropriate training in and are aware of their legal obligations and responsibilities in relation to the WHS Act.
- b) An Applicant or Qualified System Provider must permit the SA Government to carry out any inspections the SA Government deems necessary to ensure that an Applicant or Qualified System Provider is complying with its obligations under the WHS Act.
- c) If a Qualified System Provider becomes aware of:
 - (i) any potentially hazardous situation that places people, at risk of serious injury; or
 - (ii) any potentially hazardous situation that places the environment or property at serious risk of harm,

the Qualified System Provider must immediately stop work, make the area safe, and immediately bring it to the SA Government's attention.
- d) If a Qualified System Provider becomes aware of an injury to any of its employees or subcontractors, the Qualified System Provider must immediately stop work, render appropriate medical assistance for injured people, make the area safe, and immediately bring it to the SA Government's attention.
- e) If an injury to its Responsible Party has occurred, a Qualified System Provider must provide to the SA Government a report regarding the condition of the injured person and the circumstances of the injury. Such reports will be provided in a format agreed between the Qualified System Provider and the SA Government. The report must be provided within one calendar week of the injury occurrence.
- f) A Qualified System Provider must:
 - (i) comply with the WHS Act at all times;
 - (ii) ensure a Safe Work Method Statement is in place for all high risk work planned to be performed and all personnel performing high risk work are trained and competent to perform high-risk work;
 - (iii) maintain copies of relevant permits, licenses, certificates and workers compensation insurance information

8 Installer Accreditation

A Qualified System Provider must ensure that all persons involved in Eligible Supply installations hold current CEC Grid-connect Design and Install accreditation with the Battery Storage (for Grid-connected systems) endorsement at all times.

9 Respectful Behaviour and Equal Opportunity

- a) Each Applicant and Qualified System Provider acknowledges the State of South Australia's zero tolerance towards men's violence against women in the workplace and the broader community.
 - b) Each Applicant and Qualified System Provider must comply, and take reasonable steps to ensure that their Responsible Parties comply, with all equal opportunity and anti-discrimination legislation applicable in South Australia and with the requirements of affirmative action legislation, including the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (Cth).
 - c) Each Applicant and Qualified System Provider agrees that in performing Eligible Supplies, it will take reasonable steps to procure that their Responsible Parties will at all times:
 - (i) act in a manner that is non-threatening, courteous, and respectful; and
 - (ii) comply with any instructions, policies, procedures or guidelines issued by the SA Government regarding acceptable workplace behaviour.
 - d) If the SA Government believes that any Responsible Party of the Applicant or Qualified System Provider is failing to comply with the behavioural standards specified in this clause, then the SA Government may direct the Applicant or Qualified System Provider to withdraw the relevant Responsible Party from the provision of Eligible Supplies.
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10 Representations and Warranties

Each Applicant and Qualified System Provider represents and warrants to the SA Government on an ongoing basis that it complies with these Terms.

11 Consequences of Breach

Each Applicant and Qualified System Provider acknowledges and agrees that if it breaches these Terms, the SA Government may (without limitation to its rights) do any one or more of the following:

- a) sue the Applicant, Qualified System Provider or their Responsible Parties for damages and/or exercise any other available legal and equitable remedies,

including, without limitation, suing for injunctive relief of specific performance, or such other relief as it deems appropriate;

- b) suspend or revoke the Qualified System Provider's Qualification or reject the Applicant's application for Qualification;
- c) reject all or any pending Subsidy applications and withhold all or any pending Subsidy payments relating to the Qualified System Provider; and
- d) require the Qualified System Provider to return all or any part of any Subsidy as specified by the SA Government.

Nothing in this clause will alter an Applicant or Qualified System Provider's obligation to perform services or make payments to any parties including their Responsible Parties.

12 Incorrect Information

An Applicant or Qualified System Provider acknowledges and agrees that incorrect or incomplete information submitted by it may lead to the delay or rejection of an application for Qualification or a Subsidy and may cause the SA Government to prevent the Applicant or Qualified System Provider or its customers from applying for Qualification or a Subsidy (as applicable) in future.

13 Audit

13.1 Auditor General

- a) Each Applicant and Qualified System Provider acknowledges and agrees that the rights and responsibilities of the Auditor General under the *Public Finance and Audit Act 1987* (SA) are not limited or otherwise affected by these Terms.
- b) Each Applicant and Qualified System Provider must provide the Auditor-General with such assistance, including the provision of information, as the Auditor-General may reasonably require in connection with any carrying out of his or her functions under the *Public Finance and Audit Act 1987* (SA).

13.2 Other Audits

A Qualified System Provider must at its own cost upon request by the SA Government:

- a) conduct an audit of its operations in relation to, and its compliance with, these Terms;
- b) report to the SA Government the results of such audit; and
- c) conduct field audits of Eligible Supplies undertaken by or on the Qualified System Provider's behalf, and report the results of those field audits to the SA Government.

14 Privacy and Disclosure

Each Applicant or Qualified System Provider acknowledges and agrees that:

- a) all information and documents provided by it to a SA Government Contractor in connection with Subsidy Scheme Matters will be the property of the SA Government Contractor and the collection of such information will not be subject to the SA Government Contractor's privacy policies;
- b) all information and documents provided by it to the SA Government in connection with Subsidy Scheme Matters will be the property of the SA Government and the collection of such information will be subject to the SA Government's privacy policies;
- c) the SA Government may disclose information and documents provided to the SA Government in connection with Subsidy Scheme Matters to:
 - (i) its Contractors; and
 - (ii) any agency, authority, instrumentality, a Minister or officer of the State of South Australia or to Cabinet, Parliament or any Parliamentary committee where it is customary for the SA Government to disclose such information (whether or not the SA Government is legally obliged to do so); and
- d) the SA Government and other South Australian governmental agencies are subject to the *Freedom of Information Act 1991 (SA)* and that information and documents provided to the SA Government in connection with Subsidy Scheme Matters may become the subject of an application under that Act and access to them may need to be given to a third party in accordance with that Act. Neither the SA Government nor any other South Australian governmental agency has any liability to an Applicant or Qualified System Provider whatsoever for giving access to information or a document in accordance with the *Freedom of Information Act 1991 (SA)*.

15 Notices to SA Government

Any notice or other communication by an Applicant or Qualified System Provider to the SA Government contemplated by these Terms must be:

- a) in writing in English, legible and signed by the Applicant or Qualified System Provider or its agent; and
- b) sent by:
 - (i) express or registered post (with delivery confirmation) to GPO Box 320, Adelaide SA 5001; or
 - (ii) email to HBS@sa.gov.au.

If an Applicant or Qualified System Provider sends a communication contemplated by these Terms other than by email, it must use all reasonable endeavours to send a copy of the communication promptly by email.