

## SMS/MMS MOBILE MESSAGE MARKETING PROGRAM TERMS AND CONDITIONS

Verb Energy, Inc. (hereinafter, “We,” “Us,” “Our”) is offering a mobile messaging program (the “Program”), which you agree to use and participate in subject to these Mobile Messaging Terms and Conditions and Privacy Policy (the “Agreement”). By opting in to or participating in any of our Programs, you accept and agree to these terms and conditions, including, without limitation, your agreement to resolve any disputes with us through binding, individual-only arbitration, as detailed in the “Dispute Resolution” section below. This Agreement is limited to the Program and is not intended to modify other Terms and Conditions or Privacy Policy that may govern the relationship between you and Us in other contexts.

**User Opt In:** The Program allows Users to receive SMS/MMS mobile messages by affirmatively opting into the Program, such as through online or application-based enrollment forms. Regardless of the opt-in method you utilized to join the Program, you agree that this Agreement applies to your participation in the Program. By participating in the Program, you agree to receive autodialed or prerecorded marketing mobile messages at the phone number associated with your opt-in, and you understand that consent is not required to make any purchase from Us. While you consent to receive messages sent using an autodialer, the foregoing shall not be interpreted to suggest or imply that any or all of Our mobile messages are sent using an automatic telephone dialing system (“ATDS” or “autodialer”). **Message and data rates may apply.** □

**User Opt Out:** If you do not wish to continue participating in the Program or no longer agree to this Agreement, you agree to reply to any mobile message from Us and ask to opt out of the Program. You may receive an additional mobile message confirming your decision to opt out. You understand and agree that the foregoing options are the only reasonable methods of opting out. You also understand and agree that any other method of opting out, including, but not limited to, texting words other than those set forth above or verbally requesting one of our employees to remove you from our list, is not a reasonable means of opting out.

**Duty to Notify and Indemnify:** If at any time you intend to stop using the mobile telephone number that has been used to subscribe to the Program, including canceling your service plan or selling or transferring the phone number to another party, you agree that you will complete the User Opt Out process set forth above prior to ending your use of the mobile telephone number. You understand and agree that your agreement to do so is a material part of these terms and conditions. You further agree that, **if you discontinue the use of your mobile telephone number without notifying Us of such change, you agree that you will be responsible for all costs (including attorneys’ fees) and liabilities incurred by Us, or any party that assists in the delivery of the mobile messages, as a result of claims brought by individual(s) who are later assigned that mobile telephone number.** This duty and

agreement shall survive any cancellation or termination of your agreement to participate in any of our Programs.

**YOU AGREE THAT YOU SHALL INDEMNIFY, DEFEND, AND HOLD US HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM YOUR FAILURE TO NOTIFY US OF A CHANGE IN THE INFORMATION YOU HAVE PROVIDED, INCLUDING ANY CLAIM OR LIABILITY UNDER THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, et seq., OR SIMILAR STATE AND FEDERAL LAWS, AND ANY REGULATIONS PROMULGATED THEREUNDER RESULTING FROM US ATTEMPTING TO CONTACT YOU AT THE MOBILE TELEPHONE NUMBER YOU PROVIDED.**

**Program Description:** Without limiting the scope of the Program, users that opt into the Program can expect to receive messages concerning the marketing and sale of products sold by and through Us.

**Cost and Frequency:** Message and data rates may apply. The Program involves recurring mobile messages, and additional mobile messages may be sent periodically based on your interaction with Us.

**Support Instructions:** For support regarding the Program, text “HELP” to the number you received messages from or email us at [hi@verbenergy.co](mailto:hi@verbenergy.co). Please note that the use of this email address is not an acceptable method of opting out of the program. Opt outs must be submitted in accordance with the procedures set forth above.

**MMS Disclosure:** The Program will send SMS TMs (terminating messages) if your mobile device does not support MMS messaging.

**Our Disclaimer of Warranty:** The Program is offered on an "as-is" basis and may not be available in all areas at all times and may not continue to work in the event of product, software, coverage or other changes made by your wireless carrier. We will not be liable for any delays or failures in the receipt of any mobile messages connected with this Program. Delivery of mobile messages is subject to effective transmission from your wireless service provider/network operator and is outside of Our control. T-Mobile is not liable for delayed or undelivered mobile messages.

**Participant Requirements:** You must have a wireless device of your own, capable of two-way messaging, be using a participating wireless carrier, and be a wireless service subscriber with

text messaging service. Not all cellular phone providers carry the necessary service to participate. Check your phone capabilities for specific text messaging instructions.

**Age Restriction:** You may not use or engage with the Platform if you are under thirteen (13) years of age. If you use or engage with the Platform and are between the ages of thirteen (13) and eighteen (18) years of age, you must have your parent's or legal guardian's permission to do so. By using or engaging with the Platform, you acknowledge and agree that you are not under the age of thirteen (13) years, are between the ages of thirteen (13) and eighteen (18) and have your parent's or legal guardian's permission to use or engage with the Platform, or are of adult age in your jurisdiction. By using or engaging with the Platform, you also acknowledge and agree that you are permitted by your jurisdiction's Applicable Law to use and/or engage with the Platform.

**Prohibited Content:** You acknowledge and agree to not send any prohibited content over the Platform. Prohibited content includes:

- Any fraudulent, libelous, defamatory, scandalous, threatening, harassing, or stalking activity;
- Objectionable content, including profanity, obscenity, lasciviousness, violence, bigotry, hatred, and discrimination on the basis of race, sex, religion, nationality, disability, sexual orientation, or age;
- Pirated computer programs, viruses, worms, Trojan horses, or other harmful code;
- Any product, service, or promotion that is unlawful where such product, service, or promotion thereof is received;
- Any content that implicates and/or references personal health information that is protected by the Health Insurance Portability and Accountability Act ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITEC" Act); and
- Any other content that is prohibited by Applicable Law in the jurisdiction from which the message is sent.

**Dispute Resolution:** In the event that there is a dispute, claim, or controversy between you and Us, or between you and Stodge, LLC d/b/a Postscript or any other third-party service provider acting on Our behalf to transmit the mobile messages within the scope of the Program, arising

out of or relating to federal or state statutory claims, common law claims, this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, such dispute, claim, or controversy will be, to the fullest extent permitted by law, determined by arbitration in Boston, MA before one arbitrator.

The parties agree to submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect. Except as otherwise provided herein, the arbitrator shall apply the substantive laws of the Federal Judicial Circuit in which Verb Energy, Inc.’s principal place of business is located, without regard to its conflict of laws rules. Within ten (10) calendar days after the arbitration demand is served upon a party, the parties must jointly select an arbitrator with at least five years’ experience in that capacity and who has knowledge of and experience with the subject matter of the dispute. If the parties do not agree on an arbitrator within ten (10) calendar days, a party may petition the AAA to appoint an arbitrator, who must satisfy the same experience requirement. In the event of a dispute, the arbitrator shall decide the enforceability and interpretation of this arbitration agreement in accordance with the Federal Arbitration Act (“FAA”). The parties also agree that the AAA’s rules governing Emergency Measures of Protection shall apply in lieu of seeking emergency injunctive relief from a court. The decision of the arbitrator shall be final and binding, and no party shall have rights of appeal except for those provided in section 10 of the FAA. Each party shall bear its share of the fees paid for the arbitrator and the administration of the arbitration; however, the arbitrator shall have the power to order one party to pay all or any portion of such fees as part of a well-reasoned decision. The parties agree that the arbitrator shall have the authority to award attorneys’ fees only to the extent expressly authorized by statute or contract. The arbitrator shall have no authority to award punitive damages and each party hereby waives any right to seek or recover punitive damages with respect to any dispute resolved by arbitration. The parties agree to arbitrate solely on an individual basis, and this agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right. If any term or provision of this Section is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Section or invalidate or render unenforceable such term or provision in any other jurisdiction. If for any reason a dispute proceeds in court rather than in arbitration, the parties hereby waive any right to a jury trial. This arbitration provision shall survive any cancellation or termination of your agreement to participate in any of our Programs.

**Miscellaneous:** You warrant and represent to Us that you have all necessary rights, power, and authority to agree to these Terms and perform your obligations hereunder, and nothing contained in this Agreement or in the performance of such obligations will place you in breach of any other contract or obligation. The failure of either party to exercise in any respect any right

provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any new features, changes, updates or improvements of the Program shall be subject to this Agreement unless explicitly stated otherwise in writing. We reserve the right to change this Agreement from time to time. Any updates to this Agreement shall be communicated to you. You acknowledge your responsibility to review this Agreement from time to time and to be aware of any such changes. By continuing to participate in the Program after any such changes, you accept this Agreement, as modified.

Effective Date: March 27, 2019