



## **Stephanie Alexander Kitchen Garden Foundation Subscription Program**

### **TERMS & CONDITIONS**

#### **1 Agreement**

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This document, together with the application form of which it forms part (“**Application Form**”), sets out the terms and conditions under which the Applicant agrees to become a Subscriber (“**Subscriber**”) to the Stephanie Alexander Kitchen Garden Foundation (“**Foundation**”), and the Foundation agrees to grant to the Subscriber access to a number of benefits of participation in the Stephanie Alexander Kitchen Garden Subscription Program (the “**Subscription Program**”).

#### **2 Fees and Charges**

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##### **2.1 Joining Fee**

- (a) The Applicant agrees to pay the Joining Fee to the Foundation at the time of submitting the Application Form to the Foundation.
- (b) The Joining Fee is payable in the manner specified in the Application Form.

##### **2.2 Annual Subscription Fee**

- (a) The Applicant agrees to pay the Annual Subscription Fee to the Foundation at the time of submitting its first Application Form to participate in the Subscription Program to the Foundation.
- (b) If the Applicant wishes to renew its participation in the Subscription Program in a subsequent Financial Year, the Applicant must complete the Renewal Application Form and pay the Annual Subscription Fee within 30 days of the date of the Renewal Application Form, or such other date as is specified in the Renewal Application Form.

##### **2.3 No refund of Annual Fee**

Neither the Joining Fee nor the Annual Fee is refundable to the Applicant in any circumstance.

### **3 Subscribing and ending Subscription**

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#### **3.1 Becoming a Subscriber**

Upon the Foundation receiving full payment of the Joining Fee plus the Annual Subscription Fee (first time application) or the ongoing Annual Subscription Fee (renewal application), and the Foundation accepting the Applicant's application to the Subscription Program (which decision is within the sole and absolute discretion of the Foundation), the Applicant will become a Subscriber to the Foundation for the remainder of the relevant Financial Year.

#### **3.2 Ceasing to be a Subscriber**

The Applicant will cease to be a Subscriber to the Foundation if any of the following occur at the time specified for that circumstance:

- (a) if the Applicant does not lodge a Renewal Application Form for a subsequent Financial Year - at the end of the Financial Year for which the Applicant has fully paid its Fee;
- (b) if the Applicant does not pay the Annual Fee for a Financial Year - at the end of the Financial Year for which the Applicant has fully paid its Fee; or
- (c) if the Foundation does not accept the Applicant's Renewal Application Form - at the end of the Financial Year for which the Applicant has fully paid its Fee.

The Applicant will have no right to receive the Annual Benefits on and from the date that the Applicant ceases to be a Subscriber to the Foundation.

### **4 Benefits of being a Subscriber**

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#### **4.1 Subscription Package**

After becoming a Subscriber, the Foundation will provide the Applicant with the Subscription Package in order to assist the Applicant with establishing and maintaining a kitchen garden.

#### **4.2 Annual Benefits**

After becoming or renewing its status as a Subscriber, and while the Applicant continues to be a Subscriber, the Foundation will provide the Applicant during the relevant Financial Year with the Annual Benefits. The obligation of the Foundation to provide the Annual Benefits during the Financial Year is subject to the availability of such benefits at the relevant time.

#### **4.3 Use of Name**

- (a) During the time that the Applicant is a Subscriber, it may publically state that it is a Subscriber to the Foundation.
- (b) The Applicant is permitted to refer to itself as a Subscriber to the Foundation for such time, and only for such time, as the Applicant is a Subscriber.
- (c) The Applicant must not use the logo of the Foundation for any purpose and must not place the Foundation's logo on any materials created by or for the Applicant.

## **5 Intellectual Property**

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### **5.1 Rights to remain with the Foundation**

Other than as specifically stated in these Terms and Conditions, nothing in these Terms and Conditions confers upon the Applicant any right, licence or Intellectual Property in or related to the Information. The Information and any Intellectual Property related to the Information will at all times remain the exclusive property of the Foundation.

### **5.2 No assertion of rights**

Except as otherwise expressly provided for in these Terms and Conditions, the Applicant must not at any time without the prior written consent of the Foundation:

- (a) assert rights of any nature in respect of; or
  - (b) contest the Foundation's ownership of,
- the Information and any Intellectual Property related to the Information.

### **5.3 Contributions**

Any contribution made by the Applicant to any Foundation publication or website is the exclusive property of the Foundation and the Foundation will have full ownership rights over any such contribution.

## **6 Notice of breach**

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The Applicant agrees to immediately inform the Foundation of any breach by the Applicant of these Terms and Conditions and of any conduct by any other person which the Applicant thinks may be a breach of these Terms and Conditions, whether the conduct has ceased, is continuing, or may occur in the future.

## **7 Limitation of liability**

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- (a) To the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating in any way to the Subscription Program, the Applicant's participation in the Subscription Program, any aspect of the Subscription Package or the Annual Benefits or any other aspect of these Terms and Conditions ("**Matters**") are excluded. Without limiting the preceding sentence, the Foundation will not be under any other liability in respect of any loss or damage however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of any Matter.
- (b) Without limiting clause 7(a), the Foundation will not be liable for:
  - (i) any consequential loss or damage (including, without limitation, loss of profit and expenses) incurred by the Applicant either directly or indirectly as a result of any breach of warranty or any breach of these Terms and Conditions, (under tort, contract or otherwise) in connection with any Matter; or
  - (ii) any costs or expenses arising out of injury to or death of any person or persons or damage to property resulting directly or indirectly from any breach of warranty or any breach of these Terms and Conditions (under tort, contract or otherwise) in connection with any Matter.

## **8 General**

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### **8.1 Entire agreement**

These Terms and Conditions along with the Application Form constitute the entire agreement between the Foundation and the Applicant in relation to their subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by these Terms and Conditions and, therefore, have no further effect.

### **8.2 Paramountcy of Terms and Conditions**

If these Terms and Conditions conflict with any other document, agreement or arrangement, these Terms and Conditions prevail to the extent of the inconsistency.

### **8.3 No merger**

The provisions of these Terms and Conditions will not merge on completion of any transaction contemplated in these Terms and Conditions and, to the extent any provision has not been fulfilled, will remain in force.

### **8.4 Attorneys**

Each person who executes these Terms and Conditions on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute these Terms and Conditions under that power.

### **8.5 Amendment**

The Foundation may modify these Terms and Conditions at any time, and will give the Applicant notice by publishing the new Terms and Conditions on the Foundation's website and/or by email to the address specified by the Applicant in the Application Form. Such modifications will take effect immediately upon notification being provided by the Foundation. By accepting these Terms and Conditions, the Applicant also agrees to accept and be bound by any changes made by the Foundation under this clause.

### **8.6 Assignment**

The Applicant may not assign, transfer or otherwise deal with these Terms and Conditions or any right under these Terms and Conditions without the prior written consent of the Foundation.

### **8.7 Severability**

Part or all of any provision of these Terms and Conditions that is illegal or unenforceable will be severed from these Terms and Conditions and will not affect the continued operation of the remaining provisions of these Terms and Conditions.

### **8.8 Waiver**

Waiver of any power or right under these Terms and Conditions:

- (a) must be in writing and signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in such written waiver.

## 8.9 Costs

Each party must bear its own legal, accounting and other costs for the preparation and execution of these Terms and Conditions.

## 8.10 Governing law and jurisdiction

These Terms and Conditions will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the exclusive jurisdiction of the courts of that State.

## 9 Defined terms

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In these Terms and Conditions, unless the context requires otherwise:

“**Annual Benefits**” means the benefits of participating in the Subscription Program for a Financial Year, as determined from time to time by the Foundation and listed in the Application Form for the relevant Financial Year.

“**Annual Fee**” means the appropriate annual fee listed in the Application Form plus GST, if applicable.

“**Applicant**” means the group or person identified in the Application Form.

“**Application Form**” means, as the context requires, the first Application Form given by the Applicant or a Renewal Application Form.

“**Fee**” means: (a) for first time applicants, the Joining Fee plus the Annual Subscription Fee; and (b) for renewal applicants, the Annual Subscription Fee.

“**Financial Year**” means each 12 month period starting on 1 July and ending on 30 June.

“**Foundation**” means the Stephanie Alexander Kitchen Garden Foundation ACN 107 809 030.

“**Implementation Manual**” means the Stephanie Alexander Kitchen Garden Foundation Implementation Manual.

“**Information**” means:

- (a) all trade secrets, ideas, know-how, concepts, processes, techniques, research, data, plans, materials, product development and all other information regardless of form that relates to the Foundation, its businesses or affairs, and that, either before or after the date of these Terms and Conditions:
  - (i) is disclosed directly or indirectly by any means to the Applicant by the Foundation or any of its agents or advisers;
  - (ii) is obtained by the Applicant from the Foundation or any of its agents or advisers or developed or created by the Applicant in conjunction with the Foundation or any of its agents or advisers; or
  - (iii) otherwise comes to the knowledge of the Applicant; and
- (b) any notes, reports and documents which contain or refer to the information described in paragraph (a).

**“Intellectual Property”** means all intellectual and industrial property rights of whatever nature (whether or not registered or registrable) including, but not limited to:

- (a) all technical information, know-how, trade and service marks, business names, domain names, copyright, designs, patents, logos, drawings, inventions, discoveries, research developments, trade secrets, rights in circuit layouts, rights in data bases and plant breeders rights;
- (b) any application or right to apply for registration of any of the rights in paragraph (a) and all renewals and extensions of those rights; and
- (c) the right to have confidential information kept confidential.

**“Joining Fee”** means the appropriate joining fee listed in the Application Form plus GST, if applicable.

**“Matter”** has the meaning given to that term in clause 7 of these Terms and Conditions.

**“Renewal Application Form”** means an Application Form in such form as the Foundation determines from time to time for the purposes of enabling a Subscriber to renew its subscription to the Subscription Program for a Financial Year.

**“Subscriber”** has the meaning given to that term in clause 1 of these Terms and Conditions.

**“Subscription Program”** has the meaning given to that term in clause 1 of these Terms and Conditions.

**“Subscription Package”** means the package of items listed in the Application Form, as determined from time to time by the Foundation.

**“Terms and Conditions”** means the terms and conditions set out in this document as described in clause 1.