

Clean Energy Future Fund

General conditions of agreement

These terms are indicative of those that will be in the funding agreement. They are provided without prejudice to the state's rights to add to, remove or amend any of the indicative terms.

Issue	General conditions of agreement
<p>1. Grant payment</p>	<p>The state agrees to pay the grant provided under the funding agreement (grant) to the recipient at the times, and using the method specified, in the agreement, subject to the recipient satisfying all the conditions specified in this agreement.</p>
<p>2. Milestone payments</p>	<p>The milestones will be developed on the basis of the proposed milestones outlined in the application. The milestone table will specify milestone payments to be made upon completion of milestones. The total of milestone payments should equal the approved grant.</p> <p>If project costs are below the approved grant, or if a project is not completed in the allotted period, only eligible expenditure that has been paid will be considered.</p> <p>No part payments of the grant will be made for partly achieved milestones, unless agreed in writing at least 10 days prior to the milestone due date.</p> <p>On milestone completion, the recipient must provide a statement and evidence of completion, along with evidence of eligible costs incurred.</p> <p>Milestone payments will be paid in arrears, upon milestone completion.</p>
<p>3. Use of grant</p>	<p>The recipient must use the grant to carry out of the project in accordance with this agreement. Eligible expenditure must be sensible, reasonable and commercially prudent.</p> <p>The recipient must meet all project milestones and complete the project by the date for project completion unless a variation is agreed by both parties failing which an event of default occurs.</p> <p>If the recipient fails to comply with or meet a milestone, the state may impose additional milestones in relation to any aspect of the project or replace any milestones with new milestones.</p>
<p>4. Eligible expenditure</p>	<p>The grant can only be applied to items that are characterised as eligible expenditure. This may include:</p> <ul style="list-style-type: none"> • capital costs of renewable energy generation equipment

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	<ul style="list-style-type: none"> • essential enabling equipment, including equipment and structures for energy storage and conversion, system control equipment, monitoring or communications equipment • non-equipment expenditure including design, professional services, transport, installation and commissioning required to achieve a project objective or milestone • project management costs and grant administration costs. <p>Eligible expenditure will not include:</p> <ul style="list-style-type: none"> • land acquisition • provision of venture capital by the applicant • costs associated with core business or business-as-usual activities • ongoing administrative and operational costs • retrospective funding for work already undertaken • all works or purchases already underway, committed or completed at the time the funding was announced • maintenance of pre-existing installations or projects • costs of preparing applications.
5. Grant limit	At any point in time during the project, the grant must comprise no more than 25 per cent of the evidenced eligible expenditure for the project.
6. Advancing the grant	The state will not advance the grant if the recipient is in default under the agreement.
7. Banking of the grant	<p>The recipient must hold the grant in a bank account:</p> <ul style="list-style-type: none"> • in the recipient's name • over which the recipient has sole control • which the recipient has created for the sole purpose of receiving and using the grant • which the recipient does not use for any other purpose than receiving and using the grant for the term.
8. Unused funds	If the recipient does not use any part of the grant, they must repay those moneys back to the state.
9. Additional expenditure	The recipient is solely responsible for any expenditure in relation to the project that exceeds the grant.
10. Balance of funds	Balance of funds means funds that the recipient has secured to satisfy the eligible expenditure required to complete the project, which do not comprise part of the grant.

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	<p>The recipient must identify the source of all balance of funds and must use those identified balance of funds to carry out the project and for no other purpose.</p> <p>The recipient must provide evidence that the leveraged funds have been secured within 183 days of signing the funding agreement. The agreement will not come into force until this condition precedent is met.</p> <p>No grant moneys will be provided until evidence is provided that the leveraged funds have been obtained.</p>
<p>11. Ongoing conditions</p>	<p>The recipient must ensure at all times that:</p> <ul style="list-style-type: none"> • the project is undertaken primarily in the state of Western Australia • the project is completed within the term of the agreement • resources are allocated to successfully administer and deliver the project • they have the financial capacity to fund their contribution to the costs of the project, including ongoing operation and maintenance costs within the term of the agreement and • the milestones are utilised to manage the delivery of the project. <p>The state may, at any time during the term, require in writing that the recipient provides evidence that the recipient is meeting one or more of the conditions of eligibility.</p>
<p>12. Recipient's general undertakings</p>	<p>The recipient agrees that during the term of the agreement, the recipient:</p> <ul style="list-style-type: none"> • (representation or warranty incorrect) will notify the state if any representation or warranty the recipient has made is found to be incorrect or misleading • (appropriate skills and expertise) will ensure that their obligations are carried out by people with appropriate skills and expertise • (fit and proper person) will ensure that their obligations are carried out by people who are fit and proper persons • (performance of obligations) will perform and observe their obligations under the agreement and will promptly inform the state of any occurrence which might materially adversely affect their ability to perform • (authorisations) will comply with the terms of each authorisation necessary to enter into this agreement and keep current all required authorisations • (acknowledge) acknowledges that funding provided under this agreement is public money and is subject to compliance by the recipient with the terms of the grant as detailed in this agreement

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	<ul style="list-style-type: none"> • (undertake) will undertake its responsibilities under this agreement with integrity, good faith and probity in accordance with good corporate governance practices • (no transfer or assignment) will not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or obligations under this agreement without the state's consent • (cooperate) will cooperate fully with the state in the administration of the agreement • (Laws) will comply with all relevant law • (inspection) will permit the state to enter the recipient's premises at any reasonable time to determine whether the recipient is performing their obligations under this agreement, provided that any person entering the recipient's premises does so in a manner so as to cause minimal disruption to the recipient's business
<p>13. Recipient's warranties</p>	<p>The recipient represents and warrants that:</p> <ul style="list-style-type: none"> • they has the power to enter into and observe their obligations • their obligations are valid, binding and enforceable • they will obtain and keep current all necessary authorisations, registrations, consents, approvals licences and permits • they are not aware of any litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the recipient which could have materially adverse effect on the recipient's ability to perform this agreement • as far as the recipient is aware, the agreement and performance under them does not violate any law or government order or decree or any consent, registration, approval, licence or permit or agreement, order or award binding on the recipient • all information provided by the recipient to the state relating to the recipient's affairs and this agreement are true, accurate and complete • they have, after diligent inquiry and investigation, fully disclosed to the state all material information which could reasonably be regarded as affecting in any way the state's decision to enter into this agreement • they will comply with all prior representations made by them in connection with the recipient or this agreement.
<p>14. Recipient diligence</p>	<p>The recipient must carry out the project fully, properly, competently, carefully, diligently and efficiently in accordance with the approved application and the terms and conditions of this agreement. The recipient must use the grant efficiently and not extravagantly, wastefully or irresponsibly.</p>

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15. Notification to state	<p>The recipient must:</p> <ul style="list-style-type: none"> • promptly notify the state of any actual, pending or threatened claim against the recipient • immediately notify the state if the recipient is in breach of any law or authorisation or receives an audit qualification • immediately notify the state if the recipient becomes aware of any fraud or corruption in relation to the project, the grant, any interest which accrues on the grant, or the agreement.
16. No changes	<p>The recipient must not make any changes to the project, the approved application, the milestones or any agreed budget without the prior written consent of the state.</p> <p>The recipient must immediately notify the state in writing if any part of the grant has not been used in accordance with this agreement.</p> <p>In the event of breach, the recipient must repay to the state any part of the grant which has not been used in accordance with this agreement.</p>
17. Benefits to Western Australia	<p>The recipient will seek to ensure that the project delivers benefits and opportunities to Western Australia consistent with the objectives of the fund.</p>
18. Assets	<p>The recipient must:</p> <ul style="list-style-type: none"> • follow ordinary and commercially prudent procedures and arrangements for the purchase, installation, maintenance and preservation of the assets purchased with the grant • ensure that all assets purchased with the grant must be available for priority use for the project • keep assets purchased with the grant within Western Australia unless otherwise permitted by the state • not sell, transfer, dispose of, mortgage, charge or otherwise encumber assets purchased with the grant without the state's consent.
19. Knowledge sharing, acknowledgements, publications and publicities	<p>The parties will agree to knowledge sharing provisions and these will be written into the agreement.</p> <p>The recipient should share outcomes of the project with potential end-users, relevant stakeholders and the community at large.</p> <p>If the recipient is not able or willing to disclose certain information under the agreement, it is expected that the reasons for such non-disclosure will be identified in the recipient's knowledge sharing plan.</p> <p>The recipient must notify the state of the reasons for their inability or unwillingness to disclose information under this agreement.</p>

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	<p>The recipient must acknowledge the state for its part in the project at relevant conferences and project launches, and media events relating to the project are to be coordinated with the state.</p> <p>The state acknowledges that there may be occasions where it is inappropriate to acknowledge the state at commercially sponsored events and programs.</p>
20. Limitation of liability	<p>The recipient releases the state from all liability in relation to the project, this agreement and any related matter.</p> <p>The recipient must indemnify the state against all claims or liability, suffered or incurred by or brought against the state caused by, arising out of or relating directly or indirectly to any:</p> <ul style="list-style-type: none"> • breach of any provision by the recipient • act or omission of the recipient • breach of a law by the recipient <p>This indemnity is reduced to the extent that the indemnified party caused or contributed to the liability or damage.</p>
21. Reporting	<p>The recipient must keep detailed, accurate, complete and up-to-date records of:</p> <ul style="list-style-type: none"> • their income, expenditure and financial commitments in relation to the project • the activities, performance, progress, successes, achievements, setbacks, failures and remedial actions of and associated with the project. <p>The recipient must comply with the reporting requirements which require</p> <ul style="list-style-type: none"> • an annual report (including a financial report and a project report) • a milestone report for each milestone • progress report (on request from the state) • final report (at completion of the project) • any other reports as required in the funding agreement. <p>All such reports must be in writing and properly detailed, accurate, complete and up to date.</p>
22. Evaluation	<p>The recipient must contribute to, and participate in, evaluation relating to the project during the term, and for at least four years after the conclusion of this agreement.</p>
23. Information	<p>If the state requires the recipient to provide to the state, any information and documents in connection with the project, the recipient must provide the information and documents within five business days.</p>

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<p>24. Audit rights</p>	<p>The state may arrange, at its own cost, for an independent audit to be carried out of the recipient's activities and finances that relate directly to the project and the grant. If the state arranges for an independent audit to be carried out, the recipient must provide the state with access to the recipient's financial records.</p>
<p>25. Freedom of Information Act 1992</p> <p>26. Financial Management Act 2006</p> <p>27. Auditor General Act 2006</p>	<p>This agreement and information regarding it is subject to the <i>Freedom of Information Act 1992</i>. The state may publicly disclose information in relation to this agreement, including its terms and the details of the recipient if required under any legislative provision.</p> <p>To the extent permitted by law, the recipient must allow the auditor general to have access to and audit, review, examine or evaluate the recipient's records and information concerning either or both this agreement and the project.</p>
<p>28. Insurance to be obtained and maintained</p>	<p>The recipient must obtain and maintain the following insurances with an appropriate insurer and provide certificates of currency with the first milestone report and each annual report:</p> <ul style="list-style-type: none"> • workers' compensation in accordance with statutory requirements • public liability insurance in the minimum amount of \$20,000,000 per claim • professional indemnity insurance in the minimum amount of \$10,000,000 per claim.
<p>29. Termination</p>	<p>Default</p> <p>If an event of default occurs, the state may terminate the agreement.</p> <p>An event of default includes but is not limited to:</p> <ul style="list-style-type: none"> • progress of the project is not, in the opinion of the state, satisfactory • the recipient breaches any provision of the agreement and does not remedy that breach in five business days • the recipient fails to comply with or meet a milestone or a new agreed milestone, or fails to complete the project within five years of the project being commenced • the recipient becomes insolvent • the state reasonably believes that the recipient is unwilling or unable to comply with any one or more of the provisions of the agreement • the recipient repudiates the agreement or the agreement becomes void or unenforceable or the parties agree to terminate the agreement • a material warranty given by or representation made by the recipient is or becomes untrue

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	<ul style="list-style-type: none"> • the recipient persistently, regularly, consistently or continually breaches the provisions • the reputation of the state or the department is, or is likely to be, damaged by any act or omission of, or any conduct by, the recipient. <p>If the agreement is terminated:</p> <ul style="list-style-type: none"> • the state is not required to pay the recipient any unpaid part of the grant • the state may demand that part or all of the grant is repaid to the state within 20 business days. <p>If the recipient is in breach of this agreement, the state may suspend payment of grant until the recipient has remedied the breach.</p> <p>Project no longer necessary</p> <p>The state may terminate the agreement by providing notice in writing to the recipient if, in the opinion of the state exercisable in its absolute discretion, the project is not consistent with, or will not achieve the outcomes outlined in the approved application. The agreement is then terminated from the date specified in that notice.</p>
<p>30. Repayment and retention of the funding</p>	<p>At the completion of the project or the expiration or termination of this agreement (whichever occurs first):</p> <ul style="list-style-type: none"> • the recipient must remit to the state within 20 business days any part of the grant which the state has paid, and which has not been used or committed in accordance with this agreement • the state will retain any unpaid part of the grant which the recipient has not committed or will not use in accordance with this agreement.
<p>31. Agreement between the recipient and a third party</p>	<p>If the recipient enters into an agreement with any other party relating to this agreement and the grant (third-party agreement), the recipient must ensure that the other party</p> <ul style="list-style-type: none"> • has obligations in the third-party agreement which, if properly fulfilled, will ensure that the recipient properly fulfils its corresponding obligations under the agreement • agrees to the recipient providing the state with any documents and information provided to the recipient and to the state attending any meetings it has with the recipient.
<p>32. Access to land</p>	<p>If the project is being undertaken on land (whether freehold or crown land) that is not owned, leased or managed by the recipient, the recipient must obtain before they enter or occupy that land, and keep in place whilst the recipient is on or occupying that land, the written consent of the person owning or leasing that land to such entry or occupation by the recipient. A copy of this consent to be provided to the state.</p>

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<p>33. Intellectual property</p>	<p>Ownership of intellectual property rights in new material</p> <p>All intellectual property rights in all new material are vested in the recipient.</p> <p>Licence of intellectual property rights in new material</p> <p>The recipient grants to the state an irrevocable perpetual, non-exclusive, royalty free licence to use, adapt and re-produce any new material solely for the permitted purpose.</p> <p>Existing material – licence</p> <p>The recipient grants, and must ensure that any other owner of any intellectual property rights (other than moral rights) grants, to the state an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise the rights of an owner of intellectual property rights in the existing material solely for the permitted purpose.</p> <p>If a third party owns moral rights in any existing material, the recipient must obtain consent and waiver from the third party owner in relation to his or her moral rights to enable the state to use the existing material solely for the permitted purpose without regard to the third party’s moral rights.</p> <p>Existing material broadly means material that the recipient developed before the date of the agreement</p> <p>New material means anything created by the recipient under this agreement in which intellectual property rights subsist</p> <p>Permitted purpose in respect to the existing material means for the sole purpose of the state complying with laws, judicial orders and public accountability obligations, including disclosure to any parliamentary body or governmental agency.</p> <p>Permitted purpose in respect to the new material means:</p> <ul style="list-style-type: none"> • for the purpose of the state promoting the Clean Energy Future Fund and the project • other permitted purposes as agreed between the state and the recipient.
<p>34. Dispute resolution</p>	<p>The parties agree that any dispute arising during the term of this agreement that has not been resolved between the contact officers will be dealt with as follows:</p> <p>(i) the party claiming that there is a dispute will send the other Party a written notice setting out the nature of the dispute</p> <p>(ii) the parties will try to resolve the dispute through direct negotiation between one or more senior representatives from each party.</p> <p>If there is no resolution of the dispute within 30 business days of the dispute being referred to the senior representatives from each party, any party may commence legal proceedings.</p>

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<p>35. GST</p>	<p>Prices do not include GST</p> <p>All prices or other amounts fixed or determined under the agreement are exclusive of GST, except where expressed otherwise in the agreement.</p> <p>Recipient must pay GST</p> <p>If GST is payable by a party (supplier) in relation to any supply that it makes under the agreement, the parties agree that, in addition to the cost of that supply, the recipient must pay to the supplier the amount of any GST for which the supplier is liable in relation to that supply (additional amount).</p>
<p>36. Variation</p>	<p>Any variation to the agreement must be made in writing and be executed by both parties.</p> <p>It is at the state's discretion whether it agrees to a variation proposed by the recipient.</p>
<p>37. State's rights</p>	<p>The state may:</p> <ul style="list-style-type: none"> • on providing at least 10 business days' notice, attend the project site to verify the contents of a milestone report or project status • accept or reject any invoice, having regard to any other matter or thing which the state considers relevant • request additional information or clarification from the recipient.
<p>38. Force majeure</p>	<p>If any party is prevented from or delayed in performing an obligation by any event or occurrences beyond its reasonable control (e.g., weather, oceanic conditions, outbreak, epidemic or pandemic), and promptly acts to mitigate the event or occurrence, the party's obligation is suspended for a period which is reasonable in the circumstance.</p> <p>If the event or occurrence extends for more than six months, then either party can lawfully terminate this agreement without any further obligations accruing to any party.</p>