

Pre-sale Guarantee Scheme Terms and Conditions

Terms and Conditions governing the Pre-sale Guarantee scheme

These Terms and Conditions govern the Scheme. By submitting an Application, You agree to be bound by these Terms and Conditions.

1. Definitions

Application means any application submitted by You to participate in the Scheme.

Application Fee means a fee payable by You to apply for participation in the Scheme.

Business Day means a day other than a Saturday, Sunday or gazetted public holiday in Perth, Western Australia under the *Public and Bank Holidays Act 1972 (WA)*.

Establishment Fee means a fee payable by You on acceptance of an offer to enter into the Scheme.

Keystart means the statutory corporation established under the *Keystart Act 2024 (WA)*.

Minister means the relevant minister(s) representing the Government of Western Australia (or their representative(s)) responsible for approving and delivering the Scheme from time to time.

PSG Documents means the documents that You will enter into with Keystart if Your Application is successful.

Project means the construction of residential dwellings and other component parts on the Property subject to the Application.

Scheme means the scheme established by the Western Australian Government known as the "Pre-Sale Guarantee scheme", as it may be amended or replaced from time to time.

Property means the land and any buildings subject to the Application.

You means the applicant of the Scheme. **Your** and **Yourself** have the same meaning.

2. Eligibility

Eligibility criteria apply to this Scheme. By submitting an Application, You warrant that You satisfy these criteria.

3. Costs borne by You

Any and all costs and expenses incurred by You in any way associated with the preparation and submission of an Application, the preparation, negotiation, and execution of any PSG Document, and participation in the Scheme, including attending meetings and discussions and providing additional information if required, will be entirely borne by You.

You must pay an Application Fee and an Establishment Fee, which are not refundable under any circumstances.

The Application Fee will be due and payable in full on the date Keystart advises You. Payment of the Application Fee does not guarantee acceptance or approval of Your Application by Keystart.

The Establishment Fee will be due and payable in full on the date You enter into the PSG Documents.

4. Discussions with You

Any statements or information provided by Keystart during discussions with You cannot be relied upon unless subsequently and expressly confirmed in writing by Keystart.

5. Intellectual property

Keystart is conscious of the need to protect Your intellectual and financial property.

Feedback and commentary that contain elements of Your intellectual property will be treated with the strictest confidence.

Intellectual property is to be distinguished from confidential information. The entitlement of a person to intellectual property does not depend on secrecy, but consistent with the general obligation of confidentiality, Your intellectual property will be kept confidential.

You should clearly indicate if any part of Your Application or information you provide to Keystart constitutes intellectual property, in the sense of intellectual property recognised and protected by law. Any claim by You that information constitutes intellectual property will be assessed and You may be asked to establish its propriety interest before the claim is accepted.

6. Absence of obligations

Save as expressly described in these Terms and Conditions, no legal or other obligation will arise between You and Keystart unless and until PSG Documents have been entered into between Keystart and You.

Without limitation, Keystart is not liable to You on the basis of any contractual, quasi-contractual, restitutionary ground or in negligence as a consequence of any matter or thing relating to or incidental to Your participation in the Scheme or Your Application.

7. Right to amend process

Keystart reserves the right to amend or terminate the Scheme at any time. If we do so, we will notify You in writing, which includes sending it to an email or postal address You have given us.

Keystart reserves the right to accept or stop accepting Applications to the Scheme at any time.

8. Keystart

In addition to its rights set out elsewhere in this Scheme, Keystart may, at any time and without giving reasons:

- (a) request that You submit additional information to support your Application;
- (b) amend, suspend, discontinue or terminate the Scheme;
- (c) provide additional information or clarification to You;
- (d) not proceed with the Scheme at all;
- (e) not proceed with Your Application;
- (f) conduct a financial assessment of You through a financial assessment provider, and You will be required to make available sufficient information for the assessment to be undertaken including current profit and loss, cashflow analysis, balance sheet or other audited financial statements;
- (g) have regard to Keystart's knowledge and previous experience and dealings with You and information about past or current performance of You under any contract, arrangement or dealing with Keystart or other Government agencies;
- (h) accept or reject any Application which:
 - (i) is in any way incomplete or irregular; or
 - (ii) does not comply with any requirements and eligibility criteria of the Scheme,

and Keystart's decision to exercise any or none of the rights in the Scheme is final, and Keystart will not be liable to You because Keystart has exercised any or none of its rights contained in these Terms and Conditions.

9. Access

In submitting an Application, You grant Keystart and its representatives a non-exclusive licence to access and inspect the Property from the date You submit an Application until the earlier of:

- (a) the withdrawal of Your Application;
- (b) refusal or non-approval of Your Application; or
- (c) when PSG Documents have been entered into between Keystart and You.

Keystart or its representative agrees to:

- (a) give You at least five business days written notice before accessing the Property for the purposes in clause 9;
- (b) conduct inspections during normal business hours, unless otherwise agreed;

- (c) not cause or permit any actual or potential danger, risk or disruption in, on, to or from the Property, and must take steps necessary or desirable to manage and minimise risks, including the potential for damage to the Property.

You agree to:

- (a) if applicable, obtain any consents from the owner(s) of the Property to allow Keystart or its representative to access the Property for the purposes of this clause 9;
- (b) ensure safe and unobstructed access to the Property;
- (c) cooperate with reasonable requests made by Keystart or its representative during the access period.

You agree that all information obtained during access to the Property under this clause 9 will be handled in accordance with these Terms and Conditions and used solely for the purpose of assessing the Property's value and suitability for the Scheme.

10. Disclaimer

You must rely on Your own investigations and satisfy Yourself in relation to all aspects of the Scheme. Keystart's employees, officers and consultants are not liable for any incorrect or misleading information or failure to disclose information whether in connection with these Terms and Conditions or at any other time.

Keystart reserves the right to review and change the information contained in these Terms and Conditions at any time and may do so by giving You prior notice.

While the information in the Scheme has been formulated with due care, Keystart does not warrant or represent that any information provided to You is free from errors or omissions. You must form independent judgments about any information in the Scheme.

Keystart recommends You seek independent advice and make your own enquiries.

The information is made available on the understanding that Keystart's personnel will have no liability (including liability by reason of negligence) for any loss, damage, cost or expense incurred or arising by reason of any person using or relying on the information and whether caused by reason or any error, omission or misrepresentation in the information or otherwise.

11. Discretion of Keystart

Keystart may exercise any power, right, discretion or remedy (however described) under the Scheme, in its absolute discretion, unless a PSG Document expressly contemplates otherwise.

Keystart reserves the right to accept an Application that is not in accordance with the Scheme.

Keystart can, at any time, conduct its own searches on You including, but not limited to, business, company or personnel history searches and credit checks.

Submission of an Application does not constitute acceptance or a guarantee of an offer or commitment by Keystart. Keystart reserves the right to accept or reject any Application at its sole discretion without providing reasons.

An offer does not constitute a binding agreement between the parties. No legal obligations will arise unless and until PSG Documents are executed by all relevant parties.

12. Requests for clarification or additional information

Keystart may, at any time, request from You clarification of Your Application or additional information about any aspect of Your Application. Keystart is not required to request the same clarification or information for each and every Application.

You must provide the clarification or additional information in the format requested by Keystart and by the date specified by Keystart. Keystart may take into account the information provided by You in the assessment of Your Application.

If You do not sufficiently respond, as determined by Keystart at its sole discretion, or do not provide the information by the date specified by Keystart, then Keystart may terminate the assessment of Your Application by notice in writing to You.

13. Application and assessment

You must submit an Application to developmentfinance@keystart.com.au or as otherwise directed by Keystart.

Keystart may take into account any of the following information in the assessment of Your Application:

- (a) the result of Keystart's due diligence and associated searches;
- (b) information publicly available;
- (c) any relevant information that Keystart may have in its possession.

14. Privacy and Personal Information Protection Notice

You acknowledge and agree that all (if any) personal information required to be provided with Your Application is intended only for use by Keystart for the purpose of the assessment of Applications. The information will be handled by Keystart in accordance with the requirements of the *Privacy Act 1988* (Cth) and the *Privacy and Responsible Information Sharing Act 2024* (WA).

Keystart may also collect information about You from other people and organisations including credit reporting bodies. You consent to Keystart sharing and using Your personal information provided with Your Application with other organisations for the purposes of determining Your eligibility to participate in the Scheme and assessing your Application.

Keystart may use systems to make automated decisions based on the personal information You have provided in your Application or obtained from other sources such as credit reporting bodies. If an automated decision-making process involves the use of Your personal information, we will give You notice of that.

You agree to promptly inform Keystart if any of the information You have provided is not correct or needs updating.

15. No contact

You must not make or otherwise initiate any direct contact with:

- (a) the Government of Western Australia;
- (b) any Minister of the Government of Western Australia;
- (c) any Government department, statutory body or organisation of the Government of Western Australia;
- (d) any other government in any jurisdiction, whether federal, state, territorial or local; or
- (e) any company or organisation that publishes or disseminates information or commentary through any media channel including newspapers, television, radio or any IT platform including any form of social media,

other than Keystart, to discuss the preparation or progress of Your Application or any other element of Your participation in the Scheme.

16. FOI Act

You acknowledge and agree that information provided with Your Application may be subject to the requirements of the *Freedom of Information Act 1992* (WA) (**FOI Act**) and information You supply may be subject to disclosure under the FOI Act.

You acknowledge and agree that neither Keystart nor Keystart's personnel nor the WA Government will be liable to You upon any claim arising out of, or in any way connected with, the disclosure of any information by Keystart in accordance with the FOI Act.

17. Machinery of Government changes

You acknowledge that Keystart may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liability or responsibilities of Keystart may be transferred or vested in another entity.

You acknowledge and agree that these Terms and Conditions and any rights or liabilities Keystart holds in connection with these Terms and Conditions may be novated, assigned or otherwise transferred from Keystart to another agency or entity formed part of or constitute by the WA Government.

You acknowledge and agree that You are not entitled to make any claim against Keystart arising from or in connection with any novation, assignment or transfer contemplated by this condition.

18. Media and announcements

Keystart and the Western Australian Government have the first right to announce any successful Application under the Scheme at a time of our choosing.

Should Your Application be successful, Keystart, the Minister and the Western Australian Government reserve the right of first option to announce, publicise, and report on the Scheme and Your successful Application which may include:

- (a) Your name, Your shareholders, Your project partners or subcontractors;
- (b) the amount of the successful Application; and
- (c) the cost of the Project, a description of the Project and its objectives.

Should your Application be successful, You must:

- (a) collaborate with the Minister and the Western Australian Government to determine an appropriate announcement or launch date; and
- (b) provide draft media releases, statements and alerts to be approved by Keystart, with such approval to be completed within 10 Business Days of receipt.

When, at any time during or after completion of the Project, You publish or participate in the publication of media releases, promotional material, website material, books, articles (including journal articles and full conference papers), television or radio schemes, newsletters or other literary or artistic works which relate to the Project, You must, and must ensure that any Project partners:

- (a) acknowledge, at a prominent place in the publication, the support of Keystart and the Western Australian Government, including where appropriate and possible, by using the Western Australian Government badge and/or text acknowledgment (**Acknowledgment**); and
- (b) stipulate in clear and express terms that neither Keystart nor the Western Australian Government endorses any information, product, process or outcome, arising from or in relation to the Project (**Disclaimer**); and
- (c) acknowledge the support of Keystart and the Western Australian Government in any publicity and onsite signage pertaining to the Project (**Signage**).

The form of Acknowledgement and (if applicable) Disclaimer and Signage must be approved by Keystart prior to its use.

Keystart recognises and accepts that on occasion, You may conduct commercially sponsored events and schemes or publish information at or in respect of which it may be inappropriate to include the Acknowledgement and/or the Disclaimer. You will inform Keystart a minimum of ten (10) Business Days prior to such events or publications.

Before making a public announcement in connection with the Scheme or Your Application, You must obtain Keystart's written consent to the announcement, except if required by law or regulatory body or relevant stock exchange, in which case Keystart should be notified of any requirement as soon as practicable.

You must also:

- (a) notify Keystart of opportunities for the Minister to attend or speak at any key official functions or other media opportunities You hold in relation to the Project (this may include ground breaking, site opening and similar) as soon as practicable in advance of the opportunity;
- (b) cooperate and collaborate with Keystart on such opportunities including by providing further information where requested by Keystart; and
- (c) where requested by Keystart, issue an invitation for the Minister (or another minister or representative of the Western Australian Government) to attend or speak at such functions or opportunities by emailing the invitation to the email address advised by Keystart. The invitations are to make clear the details of the function, its location, date and time, target audience, the Minister's role and speech duration (if any speech).

You acknowledge that the Minister is not obliged to accept any such invitation or opportunity described in this clause 18.

19. Debrief

If You are not successful, You may request a debrief within 45 business days of notification on the outcome of Your Application. The debrief may be provided in writing, by phone, or in a meeting.

20. Issues and complaints

You can make a complaint by visiting keystart.com.au/contact-us and completing the online complaint form.

Raising a complaint will not prejudice Your participation in current or future opportunities in the Scheme.

21. Conflict of interest

You must declare any actual, potential, or perceived conflicts of interest in Your Application and notify Keystart immediately if one arises during the assessment process.

A material conflict (as determined by Keystart, acting reasonably and taking into account any recommendations of any probity advisor appointed by Keystart) may result in the rejection or otherwise termination of Your Application.

22. Ethics and inducements

You must not attempt to influence or offer inducements to Keystart representatives at any time. Any such conduct may result in the rejection or termination of your Application, as determined by Keystart in its sole discretion.

Keystart may request You to undertake such measure as may be recommended by any probity advisor appointed by Keystart.

23. Anti-collusion and bid rigging

You must not engage in any collusive bidding or anti-competitive conduct with any person, or any other unethical, improper or unlawful conduct in relation to this Scheme.

Keystart may involve the Australian Competition and Consumer Commission (**ACCC**) to provide assistance to Keystart in relation to any competition issues concerning You or Your Application.

In addition to any other remedies available under law or any agreement, Keystart may exclude from further evaluation and assessment any Application that has engaged in any collusive bidding or anti-competitive conduct with any other person, or any other unethical, improper or unlawful conduct in relation to this Scheme.

You must not, and must ensure that Your consultants do not, use the improper assistance of any of Keystart employees or use information obtained unlawfully, unethically or in breach of an obligation of confidentiality to the Vendor in relation to this Scheme.

Keystart may exclude from further evaluation and assessment Applications which have been compiled:

- (a) with improper assistance from Keystart employees or any other person determined by Keystart from time to time;
- (b) using information improperly, unlawfully or unethically obtained;
- (c) from Keystart or third parties; or
- (d) as a result of unlawful, unethical or improper conduct.

24. Confidentiality of Application information

You must keep Your Application and the assessment process confidential and not make public statements without Keystart's consent. Disclosure is permitted only to those directly involved in the Application process.

25. Elimination criteria

Keystart may exclude Your Application if it is incomplete, contains false declarations, or if You are insolvent, have a history of poor performance, or the Application poses a security or reputational risk.

26. Notification of discrepancies

If You find any discrepancy, error or omission in these Terms and Conditions, or any other document provided by Keystart, You must notify Keystart in writing immediately.

27. Change in You

You must notify Keystart and obtain Keystart's prior written consent if You propose to:

- (a) substitute another legal entity to take over Your Application;
- (b) assign Your Application to another legal entity;
- (c) change or vary Your composition, ownership or beneficial ownership; or
- (d) change or vary Your shareholding;

from that outlined in Your expression of interest or Application prior to any offer to be part of the Scheme.

Keystart may request that You re-apply to the Scheme or provide Keystart with satisfactory evidence concerning that substitute entity and its ability to meet the requirements of the Scheme.

Keystart reserves the right to refuse to allow any such change where in Keystart's view the Scheme may be prejudiced or compromised or the change to the risk profile is unacceptable to Keystart, in its sole discretion.

28. Precedence of documents

In the event of inconsistency and until such time as all PSG Documents and any other necessary legal documents are duly exchanged between the parties, the order of precedence is:

- (a) these Terms and Conditions; and
- (b) any additional information provided by Keystart in writing by an authorised officer.

29. Governing law and jurisdiction

These Terms and Conditions are governed by the laws of Western Australia. You irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia.

30. Further information

For further information please contact the Scheme team at: developmentfinance@keystart.com.au

Keystart.

1300 578 278
info@keystart.com.au
keystart.com.au



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Keystart is an initiative of the WA Government.