



# Contract for the provision of Assessor Services by an individual

## Green Loans Program

***PLEASE READ BEFORE FILLING OUT CONTRACT***

***Important note:***

***The Contract may only be entered into by an individual.***

***Contracts are only valid if an original copy is posted to the Department. Faxed or email versions will not be accepted.***

***To complete the Contract, the Assessor must:***

***a) complete Items 2 to 4 below***

***b) sign the relevant execution block on the Signing page and***

***c) send these four pages by post only to: Green Loans Program, GPO BOX 787, Canberra ACT 2601***

***If you require a signed copy for your records, you will need to sign and send two copies, one of which will be returned to you.***

***If the Department accepts and executes the Contract, the Assessor will be bound by the Contract.***

***Assessors should carefully read the Terms and Conditions of the Contract set out on the Program Website, and understand the legal consequences and the obligations imposed on the Assessor.***

***Assessors are advised to obtain independent legal advice.***

***The Department does not intend to negotiate the Terms and Conditions of the Contract.***

## Contract Details

### Item 1 - Department contact details

Name	Commonwealth of Australia as represented by the Department of the Environment, Water, Heritage and the Arts
Short form name	<b>Department</b>
ABN	34 190 894 983
Contact person	Director, Green Loans Program
Street address	John Gorton Building, King Edward Terrace, Parkes ACT 2600 Australia
Postal address	GPO Box 787, Canberra, ACT 2601

Telephone number 1800 895 076

**Item 2 - Assessor contact details**

Name \_\_\_\_\_

Short form name **Assessor**

ABN \_\_\_\_\_

*Note: The Assessor must have an ABN to enter into the Contract.*

GST registered? Yes  No

*Note: Please tick the appropriate box.*

Street address \_\_\_\_\_

Postal address \_\_\_\_\_

*Note: If the postal address is the same as the street address, please insert 'As above'.*

Telephone number \_\_\_\_\_

Facsimile number \_\_\_\_\_

Email \_\_\_\_\_

**Item 3 - Assessor bank details**

*Note: Assessors should provide details for the bank account in which payment for Service Charges is to be deposited.*

Bank name \_\_\_\_\_

Account name \_\_\_\_\_

Account number \_\_\_\_\_

BSB \_\_\_\_\_

**Item 4 - Assessor accreditation details**

Accreditation Number \_\_\_\_\_

Accrediting Organisation \_\_\_\_\_

## Agreed terms

1. This Contract is made between the person specified in Item 2 of this Contract as the Assessor (**Assessor**) and the Commonwealth of Australia as represented by the Department of the Environment, Water, Heritage and the Arts (**Department**).
2. This Contract includes the terms and conditions set out on the Program Website (**Terms and Conditions**) and the Schedule of Service Charges set out on the Program Website, and is subject to variation by the Department at any time at the Department's absolute discretion. The Department will give prior notification to the Assessor of any changes to this Contract.
3. By completing, executing and submitting this Contract, the Assessor agrees to provide, from time to time, Services (as specified in the Green Loans Program Assessor Procedures) on the Terms and Conditions.
4. The Assessor agrees to be bound by the Terms and Conditions if this Contract is executed by the Department.
5. By executing this Contract, the Department agrees to be bound by the Terms and Conditions.

# Signing page

**EXECUTED** as an agreement.

*Note: The Assessor is required to sign this execution block as follows:*

- *insert the name of the Assessor. This should be the same as the name listed in Item 2 above.*
- *the Assessor should sign where indicated in the presence of a witness.*
- *the witness should be an adult (over 18 years). The witness need not hold any formal qualifications.*
- *the witness should insert his or her name and sign where indicated.*
- *insert the date of signature.*

**Signed by**

\_\_\_\_\_  
Name of Assessor

\_\_\_\_\_  
Signature

in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Date

**Signed for the Commonwealth of Australia  
as represented by the Department of the Environment,  
Water, Heritage and the Arts** by an authorised officer  
in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office held

# Provision of Assessor Services

## Terms and Conditions

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1.	When this Contract becomes effective	6
2.	Definitions and interpretation	6
3.	Provision of Services	6
4.	Accreditation requirements	7
5.	Training requirements	8
6.	Use of and access to Online Booking System	8
7.	Advertising of Services	9
8.	Department Material	9
9.	Assessment Software	9
10.	Intellectual Property Rights	10
11.	Payment	11
12.	GST	13
13.	Releases and indemnity	14
14.	Insurance	14
15.	Confidentiality	15
16.	Protection of personal information	15
17.	Conflict of interest	16
18.	Books and records	17
19.	Audit and access	17
20.	Fraudulent, dishonest and inappropriate conduct	19
21.	Dispute resolution	19
22.	Termination	19
23.	Survival	20
24.	Notices and other communications	20
25.	Miscellaneous	21
26.	How to interpret this Contract	22

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## 1. When this Contract becomes effective

This Contract becomes effective on the date it is executed by the Department and continues until terminated in accordance with the terms of this Contract (**Term**).

## 2. Definitions and interpretation

Terms used in this Contract are defined in the dictionary at clause 26.1, and rules for interpreting this Contract are in clause 26.2.

## 3. Provision of Services

### 3.1 Assessor obligations

The Assessor must ensure that the Services are supplied:

- (a) to the reasonable satisfaction of the Department;
- (b) with due skill and care and to the best of the Assessor's knowledge and expertise;
- (c) to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
- (d) in accordance with the Green Loans Program Assessor Procedures;
- (e) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines;
- (f) in accordance with all applicable Laws, including occupational health and safety and discrimination legislation;
- (g) in accordance with any directions in relation to the Services given by the Department from time to time;
- (h) promptly and without delay;
- (i) so as to keep accurate and auditable records relating to the performance of the Services; and
- (j) otherwise in accordance with the provisions of this Contract.

### 3.2 No guarantee of work

The Assessor acknowledges that there is no guarantee or assurance:

- (a) of any particular volume of business under this Contract or the Program; or
- (b) that the Assessor will receive any bookings to undertake any Assessments.

### 3.3 Assessor warranties

The Assessor represents and warrants that:

- (a) it has the right to enter into this Contract;
- (b) it has all rights, title, licences, accreditations, interests and property necessary to lawfully perform the Services;
- (c) it has the necessary experience, skill, knowledge, expertise and competence to perform the Services and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to perform the Services;
- (d) the Services will be fit for their purposes;

- (e) the Services will be complete and accurate;
- (f) any materials that the Assessor incorporates in the Services are free from defects in design, performance and workmanship;
- (g) all work performed under this Contract will be carried out and completed in a proper and workmanlike manner, and in accordance with all applicable Laws, including occupational health and safety and discrimination legislation; and
- (h) if the Assessor is a trustee, it enters this Contract personally and in its capacity as trustee and has the power to perform its obligations under this Contract.

### **3.4 Additional services that do not form part of the Services**

- (a) The Assessor must not, at the time of conducting the Assessment, undertake any additional services on its own behalf or on behalf of or for any person, that do not form part of the Services, unless those additional services have been approved in writing by the Department.
- (b) In approving any additional services under clause 3.4(a), the Department may impose any conditions it thinks fit, and the Assessor must comply with those conditions.
- (c) Where the Department approves the undertaking of additional services by the Assessor, the Assessor must provide to the Department:
  - (i) a description of the additional services; and
  - (ii) any information collected for the purposes of those additional services, for each Assessment.
- (d) Notwithstanding the approval of any additional services by the Department under this clause 3.4, the Assessor remains responsible at all times for the undertaking of any additional services.

## **4. Accreditation requirements**

### **4.1 Assessor to have and maintain accreditation**

To provide the Services, the Assessor must, at no cost to the Department, have and maintain accreditation with an Accrediting Organisation at all times.

### **4.2 Confirmation of accreditation**

- (a) The Assessor must provide written evidence of its accreditation with an Accrediting Organisation to the Department upon request.
- (b) The Assessor must immediately notify the Department of any suspension, cancellation, non-renewal or change of its accreditation with an Accrediting Organisation.

### **4.3 Suspension of provision of Services**

In the event that, during the Term, the Assessor does not have accreditation (for example as a result of suspension or cancellation of the Assessor's accreditation by an Accrediting Organisation), the Assessor must, for the period of any suspension or cancellation, remove its Availability Information from the Online Booking System and must not:

- (a) advertise the Services;
- (b) book Assessments to be undertaken by the Assessor;
- (c) provide Services; or

- (d) use the Department's Material or the Contract Material, for the period during which the Assessor does not have accreditation.

## 5. Training requirements

### 5.1 Training requirements

The Assessor must undertake:

- (a) training in respect of the Online Booking System and the Assessment Software as reasonably requested by the Department; and
- (b) ongoing training and continuing professional development in respect of the Services, as reasonably requested by the Department or an Accrediting Organisation.

### 5.2 Confirmation of training

The Assessor must provide written evidence of training undertaken in accordance with clause 5.1 to the Department upon request.

## 6. Use of and access to Online Booking System

### 6.1 Registration on Online Booking System

- (a) The Assessor must register its available areas of service and available hours of service (**Availability Information**) on the Online Booking System in order to participate in the Program and provide Services.
- (b) The Assessor must update its Availability Information on the Online Booking System in the event its available areas of service or available hours of service change.
- (c) The Department reserves the right to monitor, audit and veto Availability Information placed on the Online Booking System.

### 6.2 Confirmation of Assessment bookings using Online Booking System

The Assessor must confirm all Assessment bookings in relation to Assessments to be undertaken by the Assessor, through the Online Booking System, regardless of whether the Assessment booking is initiated in person, over the phone or via the internet.

### 6.3 Warranty by Assessor

- (a) In placing the Availability Information on the Online Booking System, the Assessor warrants that it is accredited with an Accrediting Organisation.
- (b) The Assessor warrants that the information it places on the Online Booking System is:
  - (i) current and accurate; and
  - (ii) suitable for publication on the Online Booking System and does not include Confidential Information.

### 6.4 Assessor bears risk

- (a) The internet is not a secure public network which means there are risks that information sent to or from the Online Booking System may be intercepted, corrupted or modified by third parties.
- (b) In addition, files obtained from or through the Online Booking System may contain computer viruses, disabling codes, worms or other devices or defects and technical problems may mean that transmission to the Online Booking System is interrupted.

- (c) The Assessor bears the risks and responsibility for any loss or damage caused, directly or indirectly, by the risks referred to in this clause 6.4.

## **6.5 General disclaimer of liabilities**

To the maximum extent permitted by Law, the Department disclaims all responsibility and liability for any loss, damage, expense and costs incurred by the Assessor:

- (a) in placing information on the Online Booking System, including any delay in publishing that information on the Online Booking System; or
- (b) arising out of the accessing, downloading, viewing, reliance on, or any other use of any information on the Online Booking System by the Assessor or the Assessor's Personnel, the Department (including its Personnel), a Householder or any other person.

## **6.6 Indemnity by Assessor**

The Assessor indemnifies the Department against any Losses incurred by the Department, arising from or in connection with the:

- (a) the placement of information by the Assessor on the Online Booking System;
- (b) the publication of that information on the Online Booking System;
- (c) the use of that information by the Department, any Householder or any other person; or
- (d) a claim that the information infringes the Intellectual Property Rights of any person, or breaches the confidence of another person.

## **7. Advertising of Services**

- (a) Subject to clause 7(b), the Assessor may advertise its Services and approach members of the public to advise them of the Services.
- (b) When advertising the Services, the Assessor must advertise in accordance with the Green Loans Program Style Guide.

## **8. Department Material**

The Department may provide to the Assessor Department Material and the Assessor must ensure that the Department Material is used strictly in accordance with any conditions, restrictions or directions specified by the Department.

## **9. Assessment Software**

### **9.1 Provision of Assessment Software**

- (a) The Department will provide online access to the Assessment Software to the Assessor on the Program Website.
- (b) The Assessor acknowledges that:
  - (i) it is the Assessor's responsibility to ensure that it uses the most current version of the Assessment Software; and
  - (ii) to operate the Assessment Software, the Assessor is required to supply its own computer and all necessary equipment and must ensure that the computer and equipment meet the compatibility requirements published with the Assessment Software.

## 9.2 Use of Assessment Software

The Assessor must not:

- (a) adapt, reverse engineer, decompile, delete, amend or otherwise modify the Assessment Software;
- (b) create a derivative product from the Assessment Software (**Derivative**);
- (c) commercialise or attempt to commercialise the Assessment Software or any Derivative;
- (d) sub-license the Assessor's rights in respect of the Assessment Software under this Contract; or
- (e) use the Assessment Software in a way that could be detrimental to the interests or reputation of the Department.

## 9.3 Disclaimer

- (a) The Department in conjunction with third parties has developed the Assessment Software to assist the Assessor to conduct Assessments under the Program. The Department makes the Assessment Software available on the condition that the Assessor will exercise its own skill and care with respect to use of the Assessment Software, and accept that the Assessment Software is subject to revision and regular updates. The use of the Assessment Software is strictly at the Assessor's own risk.
- (b) While care has been taken to ensure the Assessment Software accords with the Department's requirements under the Program, the Department makes no representation or warranty (express or implied) as to the currency, completeness, accuracy, reliability or suitability of the Assessment Software and does not guarantee that the Assessment Software is free from errors, viruses or defects.
- (c) The Assessor assumes all risk and responsibility for the use of the Assessment Software, and for the interpretation of any results obtained from use of the Assessment Software and must exercise all appropriate precautions before placing any reliance on those results.

## 9.4 Intellectual Property Rights

- (a) Save to the extent of any inclusion of Third Party Material, all Intellectual Property Rights in the Assessment Software are retained by the Department.
- (b) All rights not expressly granted to the Assessor are reserved.
- (c) The Department does not warrant that the Assessment Software does not infringe the Intellectual Property Rights or moral rights of any third party.

## 9.5 Release and indemnity

The Assessor releases and indemnifies the Department (including its Personnel) in respect of all claims and Losses arising, directly or indirectly from the Assessor's or any other person's use of the Assessment Software.

# 10. Intellectual Property Rights

## 10.1 Intellectual Property Rights not affected

This Contract does not affect the ownership of Intellectual Property Rights in any Department Material, Assessor Material, or Third Party Material.

## 10.2 Contract Material

- (a) Ownership of Intellectual Property Rights in Contract Material will vest, upon creation, in the Department.

- (b) To the extent that the Assessor needs to use any of the Contract Material for the purpose of performing its obligations under this Contract, the Department grants to the Assessor, subject to any conditions, restrictions or any direction by the Department, a royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify, distribute and communicate such Contract Material solely for the purpose of providing the Services.

### **10.3 Department Material**

To the extent that the Assessor needs to use any of the Department Material for the purpose of performing its obligations under this Contract, the Department grants the Assessor for the Term a non-exclusive, non-transferable, royalty-free licence to use, access and display Department Material solely for the purposes of performing the Services under this Contract.

### **10.4 Assessor Material**

The Assessor grants the Department a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable licence (including a right to sub-license to other Australian Government agencies and the Department's other contractors) to use, reproduce, communicate, adapt, support, and exploit the Assessor Material anywhere in the world for the purpose of the Department exercising its rights in the Contract Material.

### **10.5 Third Party Material**

To the extent that the Assessor includes, embodies or attaches Third Party Material to the Contract Material, the Assessor must ensure that the Department obtains, at no additional cost to the Department, all licences and permits to the Third Party Material necessary or convenient to enable the Department to use the Third Party Material for Departmental or portfolio purposes.

### **10.6 Intellectual Property Rights warranty**

The Assessor warrants that anything done by the Assessor in the course of providing the Services, including the provision of the Assessor Material and the development of the Contract Material, and any use of the Assessor Material or Contract Material (except if used otherwise than as contemplated by this Contract) by the Department or its clients, employees, officers, agents or contractors, will not infringe the Intellectual Property Rights of any person.

## **11. Payment**

### **11.1 Obligation to pay charges**

Subject to this clause 11 and the Services meeting the requirements of this Contract, the Department must pay to the Assessor the applicable Service Charges.

### **11.2 Pre-conditions for payment**

- (a) The Department is not obliged to pay the Assessor in relation to an Assessment unless the following pre-conditions have been met:
  - (i) the Assessor has confirmed the Assessment booking using the Online Booking System;
  - (ii) the Assessor is accredited with an Accrediting Organisation at the time of performing the Services;
  - (iii) the Assessor has submitted the Assessment Report for the Assessment to the Department; and
  - (iv) the Assessor has completed the Services in accordance with the requirements of this Contract.

- (b) The Department is not obliged to pay the Assessor in relation to a Non Attendance unless the following pre-conditions have been met:
  - (i) the Assessor has confirmed the Assessment booking using the Online Booking System;
  - (ii) the Assessor is accredited with an Accrediting Organisation at the time of performing the Services; and
  - (iii) the Assessor has notified the Department of the Non Attendance using the Online Booking System.

### **11.3 Invoicing requirements**

- (a) The Assessor must provide a correctly rendered invoice to the Department for the applicable Service Charges in accordance with the requirements specified in paragraph 11.3(b), and no more frequently than once a month.
- (b) The invoice must include:
  - (i) the title: Green Loans Program - Assessor Services;
  - (ii) the Assessor's name, ABN and Accreditation Number;
  - (iii) an itemised list of the Services conducted and the applicable Service Charges for the relevant period, including, for each Assessment booking, the Assessment Reference Number; and
  - (iv) such other information as the Department requires.
- (c) Invoices should be submitted to:

Attention: Contract Manager, Green Loans Program  
Department of the Environment, Water, Heritage and the Arts  
GPO Box 787  
CANBERRA ACT 2601

### **11.4 Due date for payment**

The Department must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

### **11.5 Incorrect invoices and under/over payment**

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Assessor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Department to the Assessor under this Contract.

### **11.6 Expenses**

The Assessor must not charge the Department for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Department is under no obligation to pay any amount in excess of the applicable Service Charges.

### **11.7 Taxes**

The Assessor must pay:

- (a) all stamp duty (including penalties and interest) assessed or payable in respect of this Contract and the undertaking of the Services; and

- (b) subject to clause 12, all taxes, duties and government charges imposed or levied in connection with the performance of this Contract.

## 12. GST

### 12.1 Interpretation

Words or expressions used in this clause 12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 12.

### 12.2 Consideration is GST exclusive

Any consideration payable or to be provided for a supply under this Contract is exclusive of GST.

### 12.3 Gross up of consideration

If a party (**Supplier**) makes a supply under this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an additional amount equal to the GST payable on the supply (**GST Amount**); and
- (b) subject to clause 12.4, the GST Amount must be paid to the Supplier by the Recipient at the same time as the GST exclusive consideration is payable or to be provided.

### 12.4 Payment of GST Amount

The Department will only pay a GST Amount in respect of any taxable supply made to it under this Contract if the Assessor has:

- (a) at Item 2 of the Contract Details, ticked the box which states that the Assessor is registered for GST and stated its ABN or otherwise notified the Department in writing that it is registered for GST. For the avoidance of doubt, if the Assessor indicates (in this Contract or otherwise) that it is not registered for GST, the Department will not pay any GST Amount to the Assessor; and
- (b) provided the Department with a valid tax invoice for that supply on or before the time the GST exclusive consideration for that supply is payable or to be provided under this Contract.

### 12.5 Reimbursements (net down)

If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

### 12.6 PAYG withholding

The Assessor acknowledges that in undertaking the activities required by this Contract, the Assessor is carrying on an enterprise and must state its Australian Business Number (**ABN**) in this Contract. If the Assessor's ABN is not stated in this Contract or the Assessor does not otherwise notify the Department of its ABN in writing, the Department will deduct from any payment made to the Assessor, an amount of PAYG withholding tax at the prescribed rate in accordance with Part 2-5 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) and remit that amount to the Australian Taxation Office.

## 13. Releases and indemnity

### 13.1 Releases

- (a) To the maximum extent permitted by Law, the Assessor releases the Department from any Losses directly or indirectly arising from or incurred in connection with the Assessor's dealings or any interaction with any:
  - (i) training organisation in connection with any training course undertaken or related in any way to the Program;
  - (ii) Accrediting Organisation in connection with any accreditation related in any way to the Program; or
  - (iii) Householder or third party in relation to or in connection with the Services.
- (b) To the maximum extent permitted by Law, the Assessor releases the Department from any Losses arising from or in relation to personal injury or property damage incurred by the Assessor in connection with the Services except to the extent that any negligent act or omission by the Department, its officers or employees contributed to the injury or damage.

### 13.2 Indemnity

The Assessor indemnifies the Department against any Losses:

- (a) arising out of, or as a consequence of, any unlawful or negligent act or omission or breach of this Contract by the Assessor or its Personnel;
- (b) arising from or in relation to personal injury or property damage incurred by a third party in connection with the Services; or
- (c) arising out of, or as a consequence of, any additional services undertaken under clause 3.4, except to the extent that any negligent act or omission by the Department, its officers or employees contributed to the Losses.

## 14. Insurance

### 14.1 Obligation to maintain insurance

In connection with the provision of the Services, the Assessor must have and maintain:

- (a) for the Term, valid and enforceable insurance policies for:
  - (i) public liability to the value of \$10 million per claim;
  - (ii) either professional indemnity or errors or omissions to the value of \$2 million per claim; and
  - (iii) workers' compensation as required by Law; and
- (b) for one year following the expiration or termination of this Contract, valid and enforceable insurance policies for either professional indemnity or errors or omissions to the value of \$2 million per claim.

### 14.2 Confirmation of insurance

- (a) The Assessor must provide written evidence of the insurance policies referred to in clause 14.1 to the Department upon request.
- (b) The Assessor must immediately notify the Department of any cancellation or non-renewal of the insurance policies specified in clause 14.1.

## 15. Confidentiality

### 15.1 Prohibition on disclosure

- (a) Subject to clause 15.2, the Assessor must not, and must ensure that its Personnel (if any) do not, without the prior written consent of the Department, disclose any Department Confidential Information to a third party.
- (b) Subject to clause 15.2, the Department must not, without the prior written consent of the Assessor, disclose any Assessor Confidential Information to a third party.

### 15.2 Exceptions to obligations

The obligations on the parties under this clause 15 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers, employees, officers, agents or contractors solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed by the Department to the responsible Minister or a House or a Committee of the Parliament of the Commonwealth or is shared by the Department within the Department's organisation or with a Commonwealth agency, where this serves the Department's or the Commonwealth's legitimate interests;
- (c) is authorised or required by Law, including under this Contract, under a licence or otherwise, to be disclosed; or
- (d) is in the public domain otherwise than due to a breach of this clause 15.

### 15.3 No reduction in privacy obligations

Nothing in this clause 15 derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Contract, in relation to the protection of personal information.

## 16. Protection of personal information

### 16.1 Application of this clause

This clause 16 applies only where the Assessor deals with personal information when, and for the purpose of, providing Services under this Contract.

### 16.2 Obligations

The Assessor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (**Privacy Act**), and agrees in respect of the provision of Services under this Contract:

- (a) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose personal information the Assessor holds, that complaints about acts or practices of the Assessor may be investigated by the Privacy Commissioner who has power to award compensation against the Assessor in appropriate circumstances;

- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Assessor, unless:
  - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or
  - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
- (g) to immediately notify the Department if the Assessor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 16;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 16; and
- (i) to ensure that any employee of the Assessor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Assessor set out in this clause 16.

### **16.3 Subcontracts**

The Assessor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Assessor has under this clause 16, including the requirement in relation to subcontracts.

### **16.4 Indemnity**

The Assessor agrees to indemnify the Department in respect of any Losses suffered or incurred by the Department which arises directly or indirectly from a breach of any of the obligations of the Assessor or its Personnel under this clause 16.

### **16.5 Definitions**

In this clause 16, the terms ‘agency’, ‘approved privacy code’ (**APC**), ‘Information Privacy Principles’ (**IPPs**), and ‘National Privacy Principles’ (**NPPs**) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

## **17. Conflict of interest**

### **17.1 Requirement for independence**

- (a) The Assessor must act impartially at all times and provide Assessments that are accurate, independent and free of commercial influence.
- (b) Unless otherwise specified in this Contract or the Green Loans Program Assessor Procedures, or by the Department, the Assessor must not:

- (i) communicate or use commercial branding for products or services during an Assessment; or
- (ii) direct Householders towards a range of products or services developed or supported by an enterprise with which the Assessor is associated or from whom the Assessor receives a commission or other benefit.

## **17.2 Warranty**

The Assessor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its or its Personnel's obligations under this Contract.

## **17.3 Notification of a conflict of interest**

If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Assessor must:

- (a) notify the Department immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Department requires to resolve or otherwise deal with the conflict.

## **18. Books and records**

### **18.1 Assessor to keep books and records**

The Assessor must:

- (a) keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by the Department under this Contract to be determined; and
- (b) retain for a period of seven years after the expiration or termination of this Contract all books and records relating to the Services.

### **18.2 Costs**

The Assessor must bear its own costs of complying with this clause 18.

## **19. Audit and access**

### **19.1 Right to conduct audits**

The Department or its representative may conduct audits relevant to the performance of the Assessor's obligations under this Contract. Audits may be conducted of:

- (a) the Assessor's operational practices and procedures as they relate to this Contract, including security procedures;
- (b) the accuracy of the Assessor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Assessor's compliance with its confidentiality and privacy obligations under this Contract;
- (d) Material (including books and records) in the possession of the Assessor or its Personnel relevant to the Services or this Contract; and
- (e) any other matters determined by the Department to be relevant to the Services or this Contract.

## **19.2 Access by the Department**

- (a) The Department or its representative may, at reasonable times and on giving reasonable notice to the Assessor:
  - (i) access the premises of the Assessor to the extent relevant to the performance of this Contract;
  - (ii) require the provision by the Assessor or its Personnel of records and information in a data format and storage medium accessible by the Department by use of the Department's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Assessor or its Personnel; and
  - (iv) require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any parliamentary committee.
- (b) The Assessor and its Personnel must provide access to their computer hardware and software to the extent necessary for the Department to exercise its rights under this clause 19, and provide the Department with any reasonable assistance requested by the Department to use that hardware and software.

## **19.3 Conduct of audit and access**

The Department must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 19.1; and
- (b) the exercise of the general rights granted by clause 19.2 by the Department,

do not unreasonably delay or disrupt in any material respect the Assessor's performance of its obligations under this Contract.

## **19.4 Costs**

- (a) Except as set out in clause 19.4(b) each party must bear its own costs of any reviews and/or audits.
- (b) If the Assessor is able to substantiate that it has incurred direct expenses in the Department's exercise of the rights granted under clause 19.1 or clause 19.2 which, having regard to the value of this Contract, are substantial, the Department and the Assessor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

## **19.5 Auditor-General and Privacy Commissioner**

The rights of the Department under clause 19.2(a)(i) to 19.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

## **19.6 Assessor to comply with Auditor-General's requirements**

The Assessor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 19.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

## **19.7 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Assessor's responsibility to perform its obligations in accordance with this Contract.

## **19.8 No restriction**

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Department under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

## **20. Fraudulent, dishonest and inappropriate conduct**

### **20.1 What the Department may do**

Where the Department or its representative reasonably considers that the Assessor, in respect of the manner in which it has conducted the Services under this Contract, has acted in a manner that does not meet the requirements of this Contract or is considered fraudulent, dishonest or inappropriate, the Department may, without limiting any other rights or remedies the Department may have against the Assessor arising out of or in connection with this Contract, either directly, or through the relevant Accrediting Organisation:

- (a) request the Assessor, at the Assessor's cost, to undertake additional training;
- (b) provide the Assessor with a 'formal warning'; or
- (c) terminate this Contract in accordance with clause 22.3.

## **21. Dispute resolution**

The parties must endeavour to resolve any dispute under this Contract by mediation or other dispute resolution method before they commence legal proceedings (except proceedings for interlocutory relief).

## **22. Termination**

### **22.1 Automatic termination**

- (a) This Contract automatically terminates when the Program terminates.
- (b) Notwithstanding clause 24, the Department will give prior notification of Program termination on the Program Website.

### **22.2 Termination on notice**

Either party may terminate this Contract on 14 days written notice to the other party.

### **22.3 Termination for default**

- (a) Without limiting any other rights or remedies the Department may have against the Assessor arising out of or in connection with this Contract, the Department may terminate this Contract effective immediately by giving notice to the Assessor if:
  - (i) the Assessor breaches a material provision of this Contract where that breach is not capable of remedy;
  - (ii) the Assessor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

- (iii) in the opinion of the Department, a conflict of interest exists which would prevent the Assessor from performing its obligations under this Contract;
  - (iv) the Department determines it is appropriate to do so under clause 20.1; or
  - (v) an event specified in clause 22.3(b) happens to the Assessor.
- (b) The Assessor must notify the Department immediately:
- (i) if the Assessor ceases to be able to pay its debts as they become due, or is declared bankrupt or assigns its estate for the benefit of creditors or any analogous event occurs; or
  - (ii) on suspension or cancellation of the Assessor's accreditation with an Accrediting Organisation.

## **22.4 After termination**

On termination of this Contract the Assessor must:

- (a) stop work on the Services as specified in the notice;
- (b) deliver all Contract Material to the Department;
- (c) deal with the Department Material as reasonably directed by the Department; and
- (d) return all the Department Confidential Information to the Department.

## **22.5 Termination does not affect accrued rights**

Termination of this Contract does not affect any accrued rights or remedies of a party.

## **23. Survival**

- (a) The obligations under clause 14 (Insurance) survive the expiration or termination of this Contract for a period of one year.
- (b) The obligations under clauses 18 (Books and records) and 19 (Audit and access) survive the expiration or termination of this Contract for a period of seven years.
- (c) The obligations under clauses 6.6 (Indemnity by Assessor); 9.2 (Use of Assessment Software); 9.4 (Intellectual Property Rights); 9.5 (Release and indemnity); 10 (Intellectual Property Rights); 11.5 (Incorrect invoices and under/overpayment); 11.7 (Taxes); 12 (GST); 13 (Release and indemnity); 15 (Confidentiality); 16 (Protection of personal information) and 22.4 (After termination) continue, notwithstanding the expiration or termination of this Contract.

## **24. Notices and other communications**

### **24.1 Giving of Notices**

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, transmitted electronically or by facsimile to the recipient's address for Notices specified in the Contract Details, as varied by any Notice given by the recipient to the sender.

### **24.2 Receiving Notices**

A Notice given in accordance with clause 24.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if transmitted electronically or by facsimile, on receipt by the sender of an electronic or facsimile acknowledgement that the entire Notice has been properly transmitted to the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## **25. Miscellaneous**

### **25.1 Variation**

The Department may vary the terms and conditions of this Contract at its absolute discretion. The Department will give prior notification to the Assessor of any such variation.

### **25.2 Subcontracting, assignment and novation**

The Assessor may not subcontract, assign or novate its rights or obligations under this Contract without the prior written consent of the Department.

### **25.3 Counterparts**

This Contract may be executed in counterparts. All executed counterparts constitute one document.

### **25.4 No merger**

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

### **25.5 Entire agreement**

This Contract and the documents referred to in this Contract constitute the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

### **25.6 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

### **25.7 Severability**

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

### **25.8 Waiver**

Waiver of any provision of or right under this Contract:

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

### **25.9 Relationship**

- (a) The parties must not represent themselves, and must ensure that their officers, employees and agents do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

- (b) This Contract does not create a relationship of employment, agency or partnership between the parties.

## 25.10 Governing law and jurisdiction

This Contract is governed by the Law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

## 26. How to interpret this Contract

### 26.1 Dictionary

In this Contract, except where the contrary intention is expressed, the following definitions are used:

<b>Accreditation Number</b>	the identification number assigned to an Assessor on registration by an Accrediting Organisation.
<b>Accrediting Organisation</b>	an organisation approved by the Department under the Protocol for Accrediting Organisations.
<b>Accounting Standards</b>	standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Assessment</b>	a Home Sustainability Assessment under the Program.
<b>Assessment Fee</b>	the fee applicable for conducting an Assessment as described in the Schedule of Service Charges.
<b>Assessment Reference Number</b>	the identification number assigned when a booking is made for each Assessment.
<b>Assessment Report</b>	a report describing the Assessment findings, recommending actions, and providing details of where to get further services or information, which is generated in accordance with the Green Loans Program Assessor Procedures.
<b>Assessment Software</b>	any software provided by the Department for use in conducting Assessments, and available to the Assessor on the Program Website as updated from time to time.
<b>Assessor</b>	the party specified in Item 2 of the Contract Details.
<b>Assessor Material</b>	any Material, other than Contract Material, provided to the Department by the Assessor.
<b>Availability Information</b>	the availability information of the Assessor as described in clause 6.1(a).
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the notice is received.
<b>Commencement Date</b>	the date on which this Contract commences, as specified in clause 1.
<b>Confidential Information</b>	information that is by its nature confidential or a party knows or ought to know is confidential, but does not include information that

	is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation.
<b>Contract</b>	this agreement between the Department and the Assessor, as varied by the Department from time to time in accordance with clause 25.1, and is comprised of the Contract Details, the agreed terms, the signing page, the Terms and Conditions, and the Schedule of Service Charges.
<b>Contract Details</b>	the details containing Items 1 – 4 as completed by the parties.
<b>Contract Material</b>	any Material created by the Assessor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract.
<b>Department</b>	the Commonwealth of Australia represented by the Department of the Environment, Water, Heritage and the Arts as specified in Item 1 of the Contract Details.
<b>Department Material</b>	any Material provided to the Assessor by the Department, including the Assessment Software.
<b>Green Loans Program Assessor Procedures</b>	the procedures for assessors participating in the Program, developed by the Department and available on the Program Website, as varied by the Department from time to time.
<b>Green Loans Program Style Guide</b>	the promotional guide to marketing aspects of the Program developed by the Department and available on the Program Website, as varied by the Department from time to time.
<b>Home</b>	a residential dwelling that is a principal place of residence.
<b>Home Sustainability Assessment</b>	an energy use, water use and greenhouse gas emission assessment and calculation for a Home conducted in accordance with the Green Loans Program Assessor Procedures.
<b>Household</b>	an individual, or a collection of individuals, living in a Home.
<b>Householder</b>	an eligible person who requests an Assessment under the Program in respect of a Home.
<b>Intellectual Property Rights</b>	all intellectual property rights, including the following rights: <ul style="list-style-type: none"> <li>(a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;</li> <li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</li> <li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</li> </ul> whether or not such rights are registered or capable of being registered.
<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, a Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>Losses</b>	claims, liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party).
<b>Material</b>	includes property, information, documentation or other material in

	whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
<b>Non Attendance</b>	where the Assessor attends a Home to conduct an Assessment and the Householder is not available, or becomes unavailable, and less than 50% of the Assessment can be completed by the Assessor.
<b>Non Attendance Fee</b>	the fee applicable in the event of Non Attendance as described in the Schedule of Service Charges.
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Contract.
<b>Online Booking System</b>	the Department's Assessment online booking facility for the Program located on the Program Website.
<b>Personnel</b>	in relation to a party, any employee, officer, agent or Adviser of that party.
<b>Program</b>	the Department's Green Loans Program which gives effect to the Australian Government's 2008/09 Federal Budget announcement that funding would be available to assist Australian families to install solar, water saving and energy efficient products.
<b>Program Website</b>	the website accessed through the following portal: <a href="http://www.environment.gov.au/greenloans/index.html">www.environment.gov.au/greenloans/index.html</a> .
<b>Protocol for Accrediting Organisations</b>	the document governing the operation of Accrediting Organisations developed by the Department and available on the Program Website, as varied by the Department from time to time.
<b>Schedule of Service Charges</b>	the schedule of Service Charges developed by the Department and available on the Program Website, as varied by the Department from time to time.
<b>Self Assessment</b>	the answering or completion of a series of non-expert questions described in the Green Loans Program Assessor Procedures as the self assessment component of the Assessment.
<b>Self Assessment Fee</b>	the fee applicable in the event of non- or insufficient completion of the Self Assessment by the Householder as described in the Schedule of Service Charges.
<b>Service Charges</b>	the charges payable to the Assessor in accordance with the Schedule of Service Charges as published by the Department from time to time and in effect at the date the Services are performed.
<b>Services</b>	the services to be provided by the Assessor, as specified in the Green Loans Program Assessor Procedures.
<b>Term</b>	the term of this Contract as set out in clause 1.
<b>Terms and Conditions</b>	the terms and conditions of this Contract comprising clauses 1 to 26 as varied by the Department from time to time in accordance with clause 25.1.
<b>Third Party Material</b>	Material in which a third party holds Intellectual Property Rights.
<b>Travel Fee No.1</b>	the fee applicable where an Assessor travels a distance between 50kms and 100kms to conduct an Assessment as described in the Schedule of Service Charges.
<b>Travel Fee No.2</b>	the fee applicable where an Assessor travels a distance greater than 100kms to conduct an Assessment as described in the Schedule of

## 26.2 Rules for interpreting this Contract

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (e) a reference to time is to Canberra, Australia time;
- (f) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (k) if a day on or by which an obligation (other than Services) must be performed or an event (other than Services) must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (l) headings are for ease of reference only and do not affect interpretation