

**Senate Standing Committee on Environment, Communications and the Arts
Legislation Committee**

Budget Estimates 2010-2011, May 2010

Answers to questions on notice

Climate Change and Energy Efficiency portfolio

Outcome: 1 **Question No:** 13
Program: 1.2
Division/Agency: DDPD
Topic: Green Loans
Hansard Page ECA: Written

Senator BIRMINGHAM asked:

1. For the month of May, how many assessors contracted under the Green Loans program had bookings of:
 - a. Zero assessments (i.e. no bookings)
 - b. 1 to 10 assessments
 - c. 11 to 20 assessments
 - d. More than 20 assessments
2. How many of these bookings were arranged through organisations such as Fieldforce and GLACO?

Answer:

1. Assessor bookings for the month of May 2010:

Zero Bookings	1,746
1 to 10 Bookings	998
11-20 Bookings	616
More than 20 Bookings*	1,022

* Note: Assessors are limited to five assessments per week. A week is defined as Monday to Sunday. The month of May covers all or part of six 'booking weeks' which accounts for a number of assessors having made more than 20 bookings in the calendar month. No assessors made more than five bookings per week.

2. Of the assessors contracted to deliver services under the Green Loans Program in May 2010, 2,333 made bookings and delivered assessments as specified personnel under an 'organisation contract'.

**Senate Standing Committee on Environment, Communications and the Arts
Legislation Committee**

Budget Estimates 2010-2011, May 2010

Answers to questions on notice

Climate Change and Energy Efficiency portfolio

Outcome: 1 **Question No:** 14
Program: 1.2
Division/Agency: DDPD
Topic: Green Loans
Hansard Page ECA: Written

Senator Birmingham asked:

Since the Government began contracting assessors under the Green Loans program, please detail by month:

- a. The number of new assessors who entered into a contract
- b. The number of assessors who discontinued engagement with the program
- c. The total number of contracted assessors

Answer:

	Number of new assessors who entered into a contract	Number of assessors who discontinued engagement with the program*	Total number of contracted assessors
June 2009	157	-	157
July 2009	273	-	430
August 2009	289	-	719
September 2009	348	-	1,067
October 2009	522	-	1,589
November 2009	580	-	2,169
December 2009	703	-	2,872
January 2010	776	-	3,648
February 2010	398	-	4,046
March 2010	0	2	4,044
April 2010	0	1	4,043
May 2010	354**	13	4,384

June 2010	0	2	4,382
July 2010	0	0	4,382
August 2010	0	0	4,382

- * Due to contract processes, no data for cancelled contracts was collected prior to March 2010.
- ** The Department ceased offering contracts in February 2010. Through a legal review the Department identified that under the Organisation Contract the Department must accept new specified personnel. The assessor terms and conditions were subsequently varied to ensure that no new contracts would be offered from that point on.

The accuracy of these numbers is being confirmed through a project designed to improve data integrity for the Green Loans Program.

**Senate Standing Committee on Environment, Communications and the Arts
Legislation Committee**

Budget Estimates 2010-2011, May 2010

Answers to questions on notice

Climate Change and Energy Efficiency portfolio

Outcome:	1	Question No:	15
Program:	1.2		
Division/Agency:	DDPD		
Topic:	Green Loans		
Hansard Page ECA:	Written		

Senator BIRMINGHAM asked:

1. How many organisations, such as Fieldforce and GLACO, were involved in the booking of assessments on behalf of large numbers of assessors?
2. Please name them, and detail for how many assessors each was involved in booking assessments:
 - a. In total
 - b. The peak number; and
 - c. As at the end of May
3. What was the nature of any contractual arrangements between the Government and these organisations?

Answer:

1. As at 31 August 2010, there were 289 companies with organisation contracts under the Green Loans Program.
2. A list of organisations holding a contract for the provision of assessor services under the Green Loans Program is provided in the table below. The table includes only those organisations with 20 or more ‘specified personnel’ (assessors). Data is current as at 31 August 2010.

The following details are considered to be ‘commercial-in-confidence’ information and cannot be provided: booking numbers per organisation; the actual number of ‘specified personnel’ employed by each organisation; and how many of the assessors employed by each organisation was involved in booking assessments.

Organisations with a contract to deliver services under the Green Loans Program that employ 20 or more ‘specified personnel’
24x7 Direct Pty Ltd T/A 247 Green
Advantage Asset Management Pty Ltd T/A Advantage Energy Assessors
Alpha Green P/L
AMRS (Aust) P/L
Atomic Emergency Hot Water Pty Ltd
Auspro Group Pty Ltd ATF D.S.K Group Trust
Australian Sales and Promotions Pty Ltd (ASAP)
Business Enterprises Australia Pty Ltd
Eco Rebates Pty Ltd
Ecomaster Pty Ltd
Fieldforce Pty Ltd
Go Green Come Clean Pty Ltd
Golden Heavens Total Property Care Pty Ltd
Green Home Energy Assessors Pty Ltd (GHEA)
Green Home Green Planet Pty Ltd (GHGP)
Green Home Loans Australia Pty Ltd
Green Made Easy Pty Ltd
Home Green Pty Ltd
Loughlin Pty Ltd
Making A Difference Enterprises
Mojarra Pty Ltd (Formerly: EcoSmart Programs Pty Ltd)
Simorgh Pty Ltd T/A Live Green Pty Ltd
Simple Energy Solutions
The Trustee For Spotholme Limited Partner Trust & Holmesfield Pty Ltd
Winners Marketing Pty Ltd

3. All organisations sign the standard organisation contract, a copy of which is at Attachment A.



Contract for the provision of Assessor Services by an organisation

Green Loans Program

PLEASE READ BEFORE FILLING OUT CONTRACT

Important note:

The Contract may only be entered into by an organisation which engages individuals to undertake Assessments on its behalf.

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 pages 1 to 5, along with the signed Deeds of Undertaking (Attachment A) for all Specified Personnel listed in Item 4, by post only to:
Green Loans Program, GPO BOX 854, 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 Climate Change and Energy Efficiency
Short form name	Department
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 854, Canberra, ACT 2601

Telephone number 1800 895 076

Item 2 - Organisation contact details

Name _____

Note: Insert the full name of the registered legal entity.

Short form name **Assessor**

ABN _____

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

GST registered? Yes No

Note: Please tick the appropriate box.

Contact person _____

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 - Organisation bank details

Note: Provide details for the bank account in which payment for Service Charges is to be deposited.

Bank name _____

Account name _____

Account number _____

BSB _____

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 Climate Change and Energy Efficiency (**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: Select one of the following two execution clauses. Where the organisation is a company, select the first execution block below. Otherwise, select the second option.

Executed by

Name of organisation

in accordance with section 127 of the
Corporations Act 2001 (Cth)

Signature of director

Signature of director/company secretary/sole
director and sole company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary/sole director
and sole company secretary (print)

OR

Signed by

Name of organisation

In the presence of

Signature of witness

Signature

Name of witness (print)

**Signed for the Commonwealth of Australia
as represented by the Department of Climate Change and Energy Efficiency** 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

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Provision of Assessor Services

Terms and Conditions

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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 28.1, and rules for interpreting this Contract are in clause 28.2.

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 and the Specified Personnel'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 or its Specified Personnel 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 and the Specified Personnel have 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 or the Specified Personnel incorporate 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 ensure that its Specified Personnel do not, at the time of conducting an Assessment, undertake any additional services on his or her 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, and must ensure its Specified Personnel comply, with those conditions.
- (c) Where the Department approves the undertaking of additional services under this clause 3.4, the Assessor must ensure that its Specified Personnel 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 by its Specified Personnel.

4. Specified Personnel

4.1 Specified Personnel

For the purposes of this Contract, a **Specified Personnel** means:

- (a) Assessor Personnel listed in Item 4 of the Contract Details; and
- (b) Assessor Personnel added to the list of Specified Personnel in accordance with the requirements specified in clause 4.2(a),

but does not include Assessor Personnel removed in accordance with clauses 4.2(b) or 4.4.

4.2 Updating Specified Personnel

- (a) The Assessor may, subject to approval in writing by the Department, include additional Specified Personnel by:
 - (i) providing written notice of the additional Specified Personnel to the Department, including the person's name, Accreditation Number and Accreditation Organisation; and

- (ii) submitting to the Department a Deed of Undertaking for Specified Personnel signed by that Specified Personnel.

The person referred to in clause 4.2(a)(i) is not a Specified Personnel and must not be added to the list of Specified Personnel (and the Assessor must ensure that the person does not provide Services) until the Assessor has received notice from the Department that the addition of the person as a Specified Personnel has been approved.

- (b) The Assessor may remove Specified Personnel by providing written notice to the Department.
- (c) The Assessor must provide the Department with an up to date list of all Specified Personnel in the event that the details of Specified Personnel change, including if:
 - (i) the Assessor engages or disengages Specified Personnel in accordance with clauses 4.2(a) and 4.2(b) respectively;
 - (ii) the Department requests removal of Specified Personnel in accordance with clause 4.4; or
 - (iii) the accreditation details of any Specified Personnel change.

4.3 Use of Specified Personnel

The Assessor:

- (a) must ensure that each of the Specified Personnel is aware of and complies with all obligations in relation to the provision of the Services;
- (b) must ensure that, where a Specified Personnel has been booked to undertake an Assessment, that Specified Personnel undertakes the Assessment, unless otherwise agreed with the Householder; and
- (c) will be responsible at all times for work performed by the Specified Personnel.

4.4 Department may request removal of Personnel

- (a) The Department may at any time request the Assessor to remove from performing the Services any of the Specified Personnel or Personnel.
- (b) The Assessor must promptly arrange for the removal of such Personnel.

4.5 Responsibility for Specified Personnel

The Specified Personnel will not, by virtue of this Contract, be or for any purpose be deemed to be employees, partners or agents of the Department. The Assessor will remain responsible for payment of all wages, entitlements, superannuation, taxes and other statutory charges or other amounts payable to or in respect of the Specified Personnel.

5. Accreditation requirements

5.1 Specified Personnel to have and maintain accreditation

The Assessor must ensure each of the Specified Personnel undertaking Assessments, at no cost to the Department, has and maintains accreditation with an Accrediting Organisation at all times.

5.2 Confirmation of accreditation

- (a) The Assessor must provide written evidence of the Specified Personnel's 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 any of the Specified Personnel's accreditation with an Accrediting Organisation.

5.3 Suspension of provision of Services

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

- (a) provide Services; or
 - (b) use the Department's Material or the Contract Material,
- for the period during which that Specified Personnel does not have accreditation.

6. Training requirements

6.1 Training requirements

The Assessor must ensure its Specified Personnel undertake:

- (a) training in respect of the Online Booking System and the Assessment Software as reasonably requested by the Department;
- (b) ongoing training, including quality assurance testing, and continuing professional development in respect of the Services, as reasonably requested by the Department or an Accrediting Organisation; and
- (c) the Accrediting Organisation may suspend the accreditation of Specified Personnel who fail to undertake ongoing training or continuing professional development, or who fails to pass quality assurance tests requested under clause 6.1(b).

6.2 Confirmation of training

The Assessor must provide written evidence of training undertaken in accordance with clause 6.1 to the Department upon request.

7. Use of and access to Online Booking System

7.1 Registration on Online Booking System

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

7.2 Assessment bookings

- (a) Bookings must be made by the householder, the Assessor or the relevant Specified Personnel through the booking call centre or Online Booking System prior to the Assessment taking place.

- (b) An Assessment Reference Number will be assigned by the booking call centre or Online Booking System to each booking.
- (c) The Assessor Organisation must ensure that each of its Specified Personnel confirms his or her Assessment bookings through the booking call centre or Online Booking System.

7.2 Warranty by Assessor

- (a) In placing the Availability Information on the Online Booking System, the Assessor warrants that the Specified Personnel are 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.

7.3 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 7.3.

7.4 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.

7.5 Indemnity by Assessor

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

- (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.

8. Advertising of Services

- (a) Subject to clause 8(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.

9. 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.

10. Assessment Software

10.1 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.

10.2 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 other than to the Specified Personnel; or
- (e) use the Assessment Software in a way that could be detrimental to the interests or reputation of the Department.

10.3 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.

10.4 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.

10.5 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.

11. Intellectual Property Rights

11.1 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.

11.2 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-transferable, non-exclusive licence (including the right to sub-license to Specified Personnel), to use, reproduce, adapt, modify, distribute and communicate such Contract Material solely for the purpose of providing the Services.

11.3 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-transferable, royalty-free, non-exclusive licence (including the right to sub-license to Specified Personnel) to use, access and display Department Material solely for the purposes of performing the Services under this Contract.

11.4 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.

11.5 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.

11.6 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.

12. Payment

12.1 Obligation to pay charges

- (a) Subject to this clause 12 and the Services meeting the requirements of this Contract, the Department must pay to the Assessor the applicable Service Charges.
- (b) The Department is entitled, in addition to any other right it may have, to delay payment to an Assessor until the Assessor has completed to the satisfaction of the Department that part of the Services to which the payment relates.

12.2 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 Specified Personnel is accredited with an Accrediting Organisation at the time of performing the Services;
 - (ii) prior to the Assessment being conducted, a householder, the Assessor or the Specified Personnel has made a booking through the booking call centre or Online Booking System and the Assessor has received an Assessment Reference Number;
 - (iii) the Specified Personnel has completed the Services in accordance with the requirements of this Contract; and
 - (iv) the Assessor has submitted a correctly rendered invoice.
- (b) The Department is not obliged to pay the Assessor for Assessments in excess of the maximum number of Assessments per Specified Personnel in accordance with any announced limits of Assessments per day or week per Specified Personnel. Relevant limits will be announced on the Green Loans website.
- (c) 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 Specified Personnel booked for the Assessment is accredited with an Accrediting Organisation at the time of the Non Attendance.
 - (ii) the Specified Personnel booked for the Assessment has confirmed the Assessment booking using the booking call centre or the Online Booking System prior to the Non Attendance and has received an Assessment Reference Number.

12.2 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 12.2(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 and ABN;

- (iii) an itemised list of the Services conducted and the applicable Service Charges for the relevant period, including, for each Assessment booking:
 - (A) the Assessment Reference Number; and
 - (B) the name of the Specified Personnel who conducted the Assessment and the Specified Personnel's Accreditation Number; and
 - (iv) such other information as the Department requires.
- (c) Invoices should be submitted to:
- Attention: Contract Manager, Green Loans Program
Department of Climate Change and Energy Efficiency
GPO Box 854
CANBERRA ACT 2601

12.3 Due date for payment

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

12.4 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.

12.5 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.

12.6 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 13, all taxes, duties and government charges imposed or levied in connection with the performance of this Contract.

13. GST

13.1 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 13.

13.2 Consideration is GST exclusive

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

13.3 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.

13.4 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.

13.5 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.

13.6 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.

14. Subcontracting

14.1 Requirements for subcontracting

The Assessor must:

- (a) not subcontract any aspect of the provision of the Services other than to Specified Personnel without the prior written approval of the Department;
- (b) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth); and
- (c) ensure that any subcontractor complies with:
 - (i) clause 16 (Insurance);
 - (ii) clause 17 (Confidentiality); and
 - (iii) clause 19 (Conflict of interest).

14.2 Details of subcontractors

The Assessor:

- (a) must on request by the Department provide the Department with the names of any of the Assessor's subcontractors;
- (b) agrees that the Department may disclose publicly the names of any of the Assessor's subcontractors; and
- (c) must ensure that any subcontractor agrees that the Department may disclose the subcontractor's name publicly.

15. Releases and indemnity

15.1 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 or its Personnel 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.

15.2 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.

16. Insurance

16.1 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 \$5 million per claim; and
 - (iii) workers' compensation as required by Law; and

- (b) for seven years 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 \$5 million per claim.

16.2 Confirmation of insurance

- (a) The Assessor must provide written evidence of the insurance policies referred to in clause 16.1 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 16.1.

17. Confidentiality

17.1 Prohibition on disclosure

- (a) Subject to clause 17.2, the Assessor must not, and must ensure that its Personnel do not, without the prior written consent of the Department, disclose any Department Confidential Information to a third party.
- (b) Subject to clause 17.2, the Department must not, without the prior written consent of the Assessor, disclose any Assessor Confidential Information to a third party.

17.2 Exceptions to obligations

The obligations on the parties under this clause 17 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 17.

17.3 No reduction in privacy obligations

Nothing in this clause 17 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.

18. Protection of Personal Information

18.1 Application of this clause

This clause 18 applies only where the Assessor deals with Personal Information when, and for the purpose of, providing Services under this Contract.

18.2 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 18;
- (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 18; 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 18.

18.3 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 18, including the requirement in relation to subcontracts.

18.4 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 18.

18.5 Definitions

In this clause 18, 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.

19. Conflict of interest

19.1 Requirement for independence

- (a) The Assessor must, and must ensure that its Specified Personnel, 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, and must ensure that its Specified Personnel do 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 or any Specified Personnel is associated or from whom the Assessor or any Specified Personnel receives a commission or other benefit.

19.2 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.

19.3 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.

20. Books and records

20.1 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.

20.2 Costs

The Assessor must bear its own costs of complying with this clause 20.

21. Audit and access

21.1 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.

21.2 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 21, and provide the Department with any reasonable assistance requested by the Department to use that hardware and software.

21.3 Conduct of audit and access

The Department must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 21.1; and
- (b) the exercise of the general rights granted by clause 21.2 by the Department,

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

21.4 Costs

- (a) Except as set out in clause 21.4(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 21.1 or clause 21.2 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.

21.5 Auditor-General and Privacy Commissioner

The rights of the Department under clause 21.2(a)(i) to 21.2(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.

21.6 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 21.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

21.7 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.

21.8 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.

22. Fraudulent, dishonest, inappropriate conduct and suspected breaches

22.1 What the Department may do

Where the Department or its representative reasonably considers that the Assessor or a Specified Personnel, 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 or Specified Personnel, at the Assessor's cost, to undertake additional training;
- (b) provide the Assessor or Specified Personnel with a 'formal warning';
- (c) suspend the Assessor or a Specified Personnel in accordance with clause 22.2; or
- (d) terminate this Contract in accordance with clause 24.3.

22.2 Suspension of provision of Services

- (a) Where pursuant to clause 22.1 the Department or its representative reasonably considers that the Assessor or a Specified Personnel has acted in a manner that does not meet the requirements of this Contract or is considered fraudulent, dishonest or inappropriate, the Department may notify the Assessor that it or that Specified Personnel is Suspended while the Department conducts an investigation into the conduct.
- (b) If the Department or its representative suspects that the Assessor or a Specified Personnel may have breached the terms of this Contract it may, in its absolute discretion, notify the Assessor that it or that Specified Personnel is Suspended while the Department conducts an investigation into the suspected breach.

- (c) Following receipt of a notice pursuant to clause 22.2(a) or 22.2(b) the Assessor or Specified Personnel will continue to be Suspended until:
 - (i) the Department notifies the Assessor that it or that Specified Personnel is no longer Suspended; or
 - (ii) the Contract is terminated in accordance with clause 24.
- (d) Following notification that the Assessor or a Specified Personnel is Suspended, the Assessor must remove the Availability Information relating to all Specified Personnel of the Assessor (if the Assessor is Suspended) or that Specified Personnel (if the Specified Personnel is suspended) from the Online Booking System and must ensure that:
 - (i) where the Assessor is Suspended, that it (or any Specified Personnel) does not:
 - (A) advertise the Services;
 - (B) book Assessments to be undertaken by the Assessor's Specified Personnel;
 - (C) provide Services; or
 - (D) use the Department's Material or the Contract Material,
 - (ii) where a Specified Personnel is Suspended, that that Specified Personnel does not:
 - (A) advertise the Services;
 - (B) book Assessments to be undertaken by the Assessor's Specified Personnel;
 - (C) provide Services; or
 - (D) use the Department's Material or the Contract Material,

until the Assessor is notified in accordance with clause 22.2(c)(i) that it or that Specified Personnel is no longer Suspended.

23. 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).

24. Termination

24.1 Automatic termination

- (a) This Contract automatically terminates when the Program terminates.
- (b) Notwithstanding clause 26, the Department will give prior notification of Program termination on the Program Website.

24.2 Termination on notice

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

24.3 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 or its Specified Personnel from performing its obligations under this Contract;
 - (iv) the Department determines it is appropriate to do so under clause **Error! Reference source not found.**;
 - (v) there is a Change in Control of the Assessor which has not been notified in advance to and approved by the Department; or
 - (vi) an event specified in clause 24.3(b) happens to the Assessor.
- (b) The Assessor must notify the Department immediately if the Assessor ceases to be able to pay its debts as they become due, enters into liquidation, has a controller or managing controller or liquidator or administrator appointed, or is declared bankrupt or assigns its estate for the benefit of creditors or any analogous event occurs.

24.4 After termination

On termination of this Contract the Assessor must:

- (a) and must ensure that Specified Personnel, 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.

24.5 Termination does not affect accrued rights

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

25. Survival

- (a) The obligations under clauses 16 (Insurance); 20 (Books and records) and 21 (Audit and access) survive the expiration or termination of this Contract for a period of seven years.
- (b) The obligations under clauses 7.5 (Indemnity by Assessor); 10.2 (Use of Assessment Software); 10.4 (Intellectual Property Rights); 10.5 (Release and indemnity); 11 (Intellectual Property Rights); 12.4 (Incorrect invoices and under/overpayment); 12.6 (Taxes); 13 (GST); 14.2 (Details of subcontractors); 15 (Release and indemnity); 17 (Confidentiality); 18 (Protection of personal information) and 24.4 (After termination) continue, notwithstanding the expiration or termination of this Contract.

26. Notices and other communications

26.1 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.

26.2 Receiving Notices

A Notice given in accordance with clause 26.1 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.

27. Miscellaneous

27.1 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.

27.2 Assignment and novation

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

27.3 Counterparts

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

27.4 No merger

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

27.5 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.

27.6 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.

27.7 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.

27.8 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.

27.9 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.

27.10 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.

28. How to interpret this Contract

28.1 Dictionary

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

Accreditation Number	the identification number assigned to the Specified Personnel on registration by an Accrediting Organisation.
Accrediting Organisation	an organisation approved by the Department under the Protocol for Accrediting Organisations.
Accounting Standards	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.
Advisers	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
Assessment	a Home Sustainability Assessment under the Program.
Assessment Fee	the fee applicable for conducting an Assessment as described in the Schedule of Service Charges.
Assessment Reference Number	the identification number assigned when a booking is made for an Assessment.
Assessment Report	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.
Assessment Software	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.
Assessor	the party specified in Item 2 of the Contract Details.
Assessor Material	any Material, other than Contract Material, provided to the Department by the Assessor or its Personnel.
Availability Information	the availability information of each of the Assessor's Specified Personnel as described in clause 7.1(a).
Business Day	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.
Change in Control	<p>in relation to a body corporate, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):</p> <p>(a) to control more than half of the voting power of the body;</p> <p>(b) to control the composition of the board of directors of the body; or</p> <p>(c) to control more than half of the issued share capital of the body, excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital,</p> <p>resides with persons other than those holding that power on the Commencement Date.</p>
Commencement Date	the date on which this Contract commences, as specified in clause 1.
Confidential Information	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.
Contract	this agreement between the Department and the Assessor, as varied by the Department from time to time in accordance with clause 27.1, and is comprised of the Contract Details, the agreed terms, the signing page, the Terms and Conditions, Attachment A (Deed of Undertaking for Specified Personnel) and the Schedule of Service Charges.
Contract Details	the details containing Items 1 – 4 as completed by the parties.
Contract Material	any Material created by the Assessor or its Specified Personnel on or following the Commencement Date, for the purpose of or as a result of performing obligations under this Contract.
Deed of Undertaking for Specified Personnel	a deed in the form of Attachment A to this Contract.
Department	the Commonwealth of Australia represented by the Department of Climate Change and Energy Efficiency as specified in Item 1 of the Contract Details.
Department Material	any Material provided to the Assessor or Specified Personnel by the Department, including the Assessment Software.
Green Loans Program Assessor Procedures	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.
Green Loans Program Style Guide	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.
Home	a residential dwelling that is a principal place of residence.
Home Sustainability Assessment	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.
Household	an individual, or a collection of individuals, living in a Home.
Householder	an eligible person who requests an Assessment under the Program in

	respect of a Home.
Intellectual Property Rights	all intellectual property rights, including the following rights: <ul style="list-style-type: none"> (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
Law	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.
Losses	claims, liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party).
Material	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.
Non Attendance	where a Specified Personnel 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 Specified Personnel.
Non Attendance Fee	the fee applicable in the event of Non Attendance as described in the Schedule of Service Charges.
Notice	a notice, demand, consent, approval or communication issued under this Contract.
Online Booking System	the Department's Assessment online booking facility for the Program located on the Program Website.
Personal Information	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.
Personnel	in relation to a party, any employee, contractor, officer, agent or Adviser of that party, but, in the case of the Department, not including the Assessor.
Program	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.
Program Website	the website accessed through the following portal: www.environment.gov.au/greenloans/index.html.
Protocol for Accrediting	the document governing the operation of Accrediting Organisations

Organisations	developed by the Department and available on the Program Website, as varied by the Department from time to time.
Schedule of Service Charges	the schedule of Service Charges developed by the Department and available on the Program Website, as varied by the Department from time to time.
Self Assessment	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.
Self Assessment Fee	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.
Service Charges	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.
Services	the services to be provided by the Assessor or a Specified Personnel, as specified in the Green Loans Program Assessor Procedures.
Specified Personnel	as defined in clause 4.
Suspended	means that the Assessor or a Specified Personnel must comply with the requirements of clause 22.2(d) until it or that Specified Personnel receives a notice pursuant to clause 22.2(c)(i).
Term	the term of this Contract as set out in clause 1.
Terms and Conditions	the terms and conditions of this Contract comprising clauses 1 to 28 as varied by the Department from time to time in accordance with clause 27.1.
Third Party Material	Material in which someone other than the Assessor or its Specified Personnel hold Intellectual Property Rights.
Travel Fee No.1	the fee applicable where a Specified Personnel travels a distance between 50kms and 100kms to conduct an Assessment as described in the Schedule of Service Charges.
Travel Fee No.2	the fee applicable where a Specified Personnel travels a distance greater than 100kms to conduct an Assessment as described in the Schedule of Service Charges.

28.2 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.

Attachment A – Deed of Undertaking for Specified Personnel

THIS DEED POLL is made the _____ / _____ / _____
day month year

by

.....
[Insert name, address and Accreditation Number of the Specified Personnel] (Contractor), for the benefit of the Commonwealth of Australia as represented by the Department of Climate Change and Energy Efficiency (**Department**).

BACKGROUND

A The Department and _____ (**Assessor**) have entered into **[insert name and address of Assessor]** a contract dated _____ for the provision of Assessor Services by an organisation **[insert date]** under the Green Loans Program (**Contract**).

- B The Contractor is employed or engaged by the Assessor.
- C The Department requires that this Deed Poll be executed by the Contractor before it performs any work under the Contract.
- D The Contractor provides the undertakings and warranties set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with the Contract.

DEFINITIONS

Terms used in this Deed Poll are defined in the dictionary at clause 28.1 of the Terms and Conditions of the Contract, and rules for interpreting this Deed Poll are in clause 28.2 of the Contract.

AGREED TERMS

- 1. I undertake and warrant that:
 - (a) I am accredited with an Accrediting Organisation;
 - (b) I will notify the Assessor of any suspension, cancellation, non-renewal or change of my accreditation;
 - (c) I will undertake training reasonably required by the Department;
 - (d) no conflict of interest exists or is likely to arise for me in performing work under the Contract and I will not permit any situation to arise or engage in any activity which may result in a conflict of interest for me in performing work under the Contract;
 - (e) I will perform Assessment-related services:

- (i) with due skill and care and to the best of my knowledge and expertise;
 - (ii) to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
 - (iii) in accordance with the Green Loans Program Assessor Procedures;
 - (iv) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines;
 - (v) in accordance with all applicable Laws, including occupational health and safety and discrimination legislation;
 - (vi) in accordance with any directions in relation to the Services given by the Department from time to time; and
 - (vii) promptly and without delay;
- (f) I will act impartially at all times and provide Assessments that are accurate, independent and free of commercial influence;
- (g) I will 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 I am associated or from whom I receive a commission or other benefit;
- (h) I will treat as secret and confidential all Confidential Information to which I have access or which is disclosed to me;
- (i) I will treat Confidential Information with the utmost care and will protect it at all times;
- (j) I will take necessary precautions to prevent unauthorised access to or copying of Confidential Information in my control; and
- (k) I will comply with the provisions of the *Privacy Act 1988* (Cth), including the Information Privacy Principles and National Privacy Principles set out in that Act, in respect of both Personal Information and Confidential Information, whether or not I am legally bound to comply with that Act and as if the definition of "personal information" in that Act includes Confidential Information.

2. This Deed Poll will survive the expiry or termination of the Contract.
3. The laws of the Australian Capital Territory will apply to this Deed Poll. The courts of the Australian Capital Territory will have non-exclusive jurisdiction to decide any matter arising out of this Deed Poll.

Signed sealed and delivered by

Name of Contractor

In the presence of

_____ ← _____ ←

Signature of witness

Signature of Contractor

Name of witness (print)

Date

EXECUTED as a Deed Poll

**Senate Standing Committee on Environment, Communications and the Arts
Legislation Committee**

Budget Estimates 2010-2011, May 2010

Answers to questions on notice

Climate Change and Energy Efficiency portfolio

Outcome:	1	Question No:	16
Program:	1.2		
Division/Agency:	DDPD		
Topic:	Green Loans		
Hansard Page ECA:	Written		

Senator Birmingham asked:

1. Following discontinuation of the loans component of the Green Loans Program, what was the final number of Government-subsidised Green Loans provided?
2. What was the total value of these loans?
3. What was the total sum paid to all financial institutions participating in the program?

Answer:

1. As at 31 August 2010, 7,976 loans had been approved by financial institutions and the Department had paid subsidies and application fees for 7,448 loans. The final number of loans approved will be confirmed following an audit of final loan documentation with each financial institution.
2. As at 31 August 2010, the total value of the 7,448 loans for which the Department had paid subsidies and application fees was \$67,900,866.00.
3. As at 31 August 2010, the total sum of subsidies and application fees paid to all financial institutions participating in the program was \$13,553,381. This is based on the 7,448 loans for which payments had been made as at 31 August 2010.

**Senate Standing Committee on Environment, Communications and the Arts
Legislation Committee**

Budget Estimates 2010-2011, May 2010

Answers to questions on notice

Climate Change and Energy Efficiency portfolio

Outcome:	1	Question No:	17
Program:	1.2		
Division/Agency:	DDPD		
Topic:	Green Loans		
Hansard Page ECA:	Written		

Senator Birmingham asked:

1. Is the Government expecting to have to pay compensation to any businesses, individuals or households affected by the program?
2. If so, what amount has been budgeted?
3. What risk assessment of such exposures has been completed?

Answer:

It is not possible to respond to these questions without prejudicing the Commonwealth's legal position regarding any potential claims.