**The State of Victoria through its Department of ENERGY, ENVIRONMENT AND CLIMATE ACTION**

**AND**

**[*ASSESSOR NAME*]**

**RESIDENTIAL EFFICIENCY SCORECARD SCHEME**

**ASSESSOR AGREEMENT**

**ASSESSOR AGREEMENT**

# THIS AGREEMENT is made on [ ] day of [ ] 20

# BETWEEN:

# The State of Victoria through its Department of Energy, Environment and Climate Action (the “Department”)

# AND

# [ ] of [ ] (the “Assessor”)

# BACKGROUND:

# A. The Department has an on-line tool that assesses the energy performance of residential properties, known as the “Scorecard Tool”. The Scorecard Tool produces an overall house energy rating, hot weather performance rating and high level house upgrade recommendations.

# B. The Department shall only allow the Scorecard Tool to be accessed by individuals who are accredited by the Department.

# C. The Assessor wishes to be accredited by the Department to have access to the Scorecard Tool for the purpose of conducting energy performance assessments on houses.

# D. The Department and the Assessor have agreed that the Assessor shall be accredited to have access to the Scorecard Tool on the terms and conditions of this Agreement.

# E. [The Department has separately entered into an Intermediary Agreement with Assessor’s employer or principal.] DELETE IF NOT APPLICABLE.

# IT IS AGREED:

# DEFINITIONS

**Agreement** means this agreement and any amendment made to it as agreed between the Parties in writing.

**Accreditation** means the accreditation provided under clause 6 of this Agreement to the Assessor to carry out the Scorecard Rating Process.

**Assessor Manual** means the rules by which the Assessors are to determine the correct data to enter into the Scorecard Tool, as amended from time to time.

**Audit** means an audit of a Scorecard Rating to determine whether the Assessor Manual has been followed.

**Background Intellectual Property** means intellectual property in any information or literature owned by the Assessor that does not constitute any Rating Materials which is supplied by the Assessor to the Department in the course of a Scorecard Rating or the Rating Process.

**Code of Conduct** means the code of conduct as set out in Schedule 1 and as amended from time to time by changes to http://www.victorianenergysaver.vic.gov.au/

**Complaints Policy** means the complaints process as set out in Schedule 2 and as amended from time to time by changes to http://www.victorianenergysaver.vic.gov.au/

**Confidential Information** means any information that is by its nature confidential, and:

1. is designated by the Department as confidential; or
2. an Assessor knows or ought to know is confidential,

but does not include information which:

1. is in, or comes into, the public domain through no fault of the recipient;
2. is lawfully received from a third party free of any obligations of confidence at the time of its disclosure;
3. is independently developed by the recipient;
4. is required by law, or by court or government order to be disclosed where reasonable prior notice has been given to the Department; or
5. is the subject of a notice in writing from the Department to the Assessor stating that the information is no longer confidential.

**Conflict of Interest** means a situation where the Assessor’s actions may be at odds with another role or where there are circumstances which mean that:

1. the Assessor is not capable of exercising objective and impartial judgement when conducting the Scorecard Rating; or
2. a reasonable person, with full knowledge of all relevant facts and circumstances, would conclude that there is a real risk that the Assessor would not be capable of exercising objective and impartial judgment when conducting the Scorecard Rating.

**Customer** means a customer or prospective customer of the Assessor for the provision of services arising from the use of the Scorecard Tool.

**Department** means the State of Victoria, through its Department of Environment, Land, Water and Planning, including its successors.

**Intellectual Property** means all present and future intellectual property rights, titles and interests, wherever subsisting throughout the world, whether registered or not, including copyright, trademarks, patents, designs, trade secrets and know-how.

**Intermediary** means a person that has entered an Intermediary Agreement with the Department.

**Intermediary Agreement** means an agreement between an Intermediary and the Department, under which the Intermediary agrees to terms and conditions which the Assessor may use the Scorecard Tool in the provision of services to members of the general public.

**Non-compliance Points** means any non-compliance points awarded by the Department in accordance with the Complaints Policy as a result of a breach of the Code of Conduct by an Assessor.

**Notice of Suspension** means a written notice provided to the Assessor by the Department advising of the Assessor’s suspension of Accreditation and indicating the reasons for that suspension.

**Notice of Termination** means a written notice provided to the Assessor by the Department advising of the termination of this Agreement and indicating the reasons for that termination.

**Parties** means the Department and the Assessor.

**Person** includes a natural person, partnership, joint venture, association, corporation or other corporate body.

**Process Documents** means the key processes and procedure documents that underpin and govern the Scorecard Scheme, which include but are not limited to:

1. the Assessor Manual;
2. the Software Manual
3. technical advice provided by the Department;
4. the Code of Conduct; and
5. the Complaints Policy.

These documents are amended periodically and are available on the Scorecard website at http://www.victorianenergysaver.vic.gov.au or can be requested through help.scorecard@delwp.vic.gov.au. Assessors will be informed of any amendments to these documents by notice, in accordance with clause 21 of this Agreement.

**Rating Materials** means anything brought into existence, or required to be brought into existence by the Assessor, as part of, for the purposes of carrying out, or in connection with the Rating Process carried out by the Assessor under this Agreement including all data and information of a Customer.

**Rating Process** means all activities associated with the assessment of an existing or future building’s overall environmental performance during operation required under this Agreement to be carried out in accordance with the Assessor Manual and Software Manual for performing a Scorecard Rating, any relevant Rulings or technical advice provided by the Department and includes the process for applying for obtaining an official rating based on a Scorecard Rating.

**Scorecard Tool** means the Scorecard Rating computer software.

**Scorecard Auditor** means a person appointed by the Department to conduct Audits.

**Scorecard Brand Guidelines** means the Scorecard Brand Guidelines published by the Department from time to time.

**Scorecard Branding** means the Scorecard branding, trading name, logos and other trademarks or design specifications thereof developed by the Department in the course of administering the Scorecard.

**Scorecard Materials** means the Department’s material and documentation relating to Scorecard including but not limited to the Scorecard Rating computer software and the Process Documents.

**Scorecard Methodology** means the algorithms and data that enable the calculation of a Scorecard Rating based on specified user inputs.

**Scorecard Rating** means the accredited rating provided by the Department in respect of a building based on the Rating Process performed by the Assessor and the provision of Rating Materials to the Department.

**Scorecard Scheme** means the program administered by the Department in which access to the Scorecard Tool is limited to Assessors and Intermediaries that enter into agreements with the Department.

# THE ROLE OF THE ASSESSOR

* 1. The role of the Assessor is to use the Scorecard Tool in the provision of services to their Customers. The Assessor is not an employee, agent, partner or representative of the Department. The Assessor or Intermediary, as the case may be, shall engage with their Customers as independent contractors.
  2. The Assessor will negotiate and enter contractual relations with the Customer for the provision of the services using the Scorecard Tool.
  3. The Assessor will attend the residence of Customers and collect data in accordance with the Assessor Manual and Software Manual and shall provide the certificate generated by Scorecard Tool. The Assessor may provide other services to the Customer related to energy performance.
  4. The Assessor may be a sole trader, or an employee, independent contractor or other agent of an Intermediary.
  5. The Assessor must notify the Department within 28 days if they either become, or cease to be, an employee, independent contractor or other agent of an Intermediary.

# THE ROLE OF THE DEPARTMENT

In addition to providing Assessor Accreditation under clause 6, the role of the Department is to provide reasonable access to the Scorecard Tool for the Assessor and administer complaints under the Complaints Policy.

# TERM OF AGREEMENT

# This Agreement commences on the date that the Assessor signs this Agreement and shall continue until terminated in accordance with clause 12 of this Agreement (‘Term’).

# ASSESSOR DETAILS

The Assessor acknowledges that the Department may from time to time, during the Term, publish on its website:

1. the details of the Assessor;
2. the termination of this Agreement;
3. any action or sanction imposed following an Audit;
4. any suspension of the Accreditation of the Assessor under clause 11;
5. any other change to the Assessor’s details; and
6. any award of Non-compliance Points to the Assessor and a brief statement of reasons.

# ASSESSOR ACCREDITATION

* 1. In consideration of the Assessor’s acceptance of the terms and conditions of this Agreement, the Department hereby provides Accreditation to the Assessor to have access to the Scorecard Tool and carry out the Rating Process.
  2. The Assessor acknowledges that the Accreditation was offered to the Assessor after the Department was satisfied of:

1. the qualifications of the Assessor in relation to the assessment of the energy performance of a residence and occupational health and safety;
2. the training of the Assessor in the use of the Scorecard Tool;
3. the results of any background checks requested by the Department, and
4. any other qualifications or experience requirements notified by the Department, from time to time.
   1. In addition to the obligations set out in this Agreement, it is a condition of Accreditation under this Agreement that the Assessor:
5. must carry out the Rating Process and obtain Scorecard Ratings for the residence;
6. must familiarise themselves and comply with the following documents, including any amendments made from time to time:
   1. the Code of Conduct;
   2. the Complaints Policy; and
   3. all other Process Documents;
7. must comply with any measure to be taken or sanction imposed following an Audit; and
8. must ensure that any activity carried out as part of the Rating Process and obtaining Scorecard Ratings complies with the Assessor Manual and Software Manual and any technical advice provided by the Department.
   1. The Assessor must undergo further training and examination, as notified by the Department from time to time, at no cost to the Department. Failure by the Assessor to complete such further training or examination to the satisfaction of the Department may result in suspension of Accreditation.
   2. The Assessor agrees and acknowledges that they are responsible for and must ensure the completeness and accuracy of all Rating Material provided to the Department as part of the Rating Process and obtaining of Scorecard Ratings.
   3. The Assessor agrees to place no reliance on the Department to detect incomplete or inaccurate information in its management of the Scorecard Tool or the conduct of any Audits.

# SERVICES AND FEES

# The Department may update the Scorecard Tool with new features or updates from time to time and will advise the Assessor of these in writing

# Subject to clause 7.3, the Assessor shall pay no fees to the Department for the access to the Scorecard Tool.

# The Assessor acknowledges that the Department may decide, in its absolute discretion, to charge the Assessor fees for access to the Scorecard Tool and the Department will give effect to this by either by requesting to vary this Agreement or terminating this Agreement , in accordance with clause 12.4 of this Agreement, and proposing a new agreement to replace it.

# AUDITS

* 1. The Assessor agrees that a Scorecard Auditor, on the Department’s behalf, may carry out an Audit of the Assessor’s Rating Materials and Scorecard Ratings, and any other work carried out as part of the Rating Process.
  2. The Assessor must:

1. take all reasonable steps to cooperate with the Department and the Scorecard Auditor in respect of any Audit;
2. upon written request and within 28 days provide all documentation and information necessary to enable the Scorecard Auditor to conduct an Audit of a Scorecard Rating, including any of the Assessor’s Rating Materials and activities carried out as part of the Rating Process;
3. provide access to (and where relevant, copies of) all records, books of account, documents, photos, information, premises, equipment and things which the Scorecard Auditor reasonably considers necessary to satisfy itself that the Accredited Assessor has complied with the Assessor and Software Manuals, Code of Conduct, and other Process Documents; and
4. work closely with the Scorecard Auditor to ensure that the correct interpretation and application of the Assessor and Software Manuals have been made, and sufficient documentary evidence is provided.
   1. The Assessor agrees that a range of measures and sanctions can be applied to the Assessor by the Department following an Audit. These include:
5. referring any breach of the Code of Conduct which comes to light during an Audit as a complaint under the Complaints Policy;
6. revoking the Scorecard Rating and re-issuing a different Scorecard Rating and certificate;
7. issuing the Assessor with a warning letter;
8. requiring future rating work by the Assessor to be supervised;
9. requiring future rating work by the Assessor to undergo an Audit;
10. requiring the Assessor to undergo training;
11. requiring the Assessor to pay costs for any of the above;
12. suspending the Assessor’s Accreditation; and
13. terminating this Agreement.

8.4 For the avoidance of doubt, this clause 8 survives the expiry or termination of this Agreement for a period of seven (7) years.

# ASSESSOR’S USE OF Scorecard BRANDING

* 1. The Assessor agrees and acknowledges that all Scorecard Branding, is owned by the Department and that the Department reserves the right at all times to specify the manner in which any person may use the Scorecard Branding.
  2. The Department grants to the Assessor a limited, personal, royalty free, non-exclusive and non-transferable licence to use and refer to the Scorecard Branding, in connection with the Assessor’s activities in respect of the Rating Process, subject to this Agreement.
  3. The Assessor agrees that, in any exercise of the licence, it will comply in all respects with the Scorecard Brand Guidelines and any other reasonable guidelines or policies or directions regarding the use of Scorecard Branding, made available at http://www.victorianenergysaver.vic.gov.au/
  4. Except as provided in the Scorecard Brand Guidelines, the Assessor has no right to:

1. use or make reference to the Scorecard Branding, in any marketing, advertising or public announcements;
2. alter or modify the Scorecard Branding, in any way;
3. reproduce, use, sub-license, or otherwise deal with the Scorecard Branding, or allow any other person to do so, for any purpose.
   1. Prior to using any marketing, advertising or public announcements containing the Scorecard Branding, the Assessor must submit such material to the Department for approval. The Department must approve submitted material which complies with the Scorecard Brand Guidelines within 14 days. The Assessor must not use any marketing, advertising or public announcements containing the Scorecard Branding without the prior written approval of the Department.
   2. The Assessor must not at any time during or after the Term, register or attempt to register, or use as a trade mark, business or company name, email address, phone number or domain name, the Scorecard Branding, or any device or word substantially identical with or deceptively similar to any of the Scorecard Branding.
   3. Upon the suspension of Accreditation or termination of this Agreement the Assessor must immediately cease to use or display the Scorecard Branding, for any purpose whatsoever including without limitation, the use of Scorecard Branding on stationery, advertising, promotional and sales material, websites and online material, and any other materials which incorporate the Scorecard Branding.

# INTELLECTUAL PROPERTY

* 1. The Assessor warrants that in carrying out any activities under this Agreement, the Assessor will not infringe any Intellectual Property rights of the Department or of any third party.
  2. The Assessor acknowledges and agrees that the Department owns all Intellectual Property rights in:

1. all Scorecard Methodology, Scorecard Branding, Scorecard Materials and the Process Documents; and
2. all Rating Materials and Scorecard Ratings, and that such rights in respect of these materials brought into existence after the date of this Agreement shall vest upon their creation in the Department.
   1. The Assessor acknowledges and agrees that the Department may use, adapt and change the Rating Materials for any purpose.
   2. The Department grants to the Assessor a limited, personal, non-exclusive, non-transferrable, royalty free licence to use Scorecard Materials for the sole purpose of carrying out Scorecard Ratings and for no other purpose whatsoever unless where otherwise agreed by the Department in writing.
   3. Where the Rating Materials incorporates any work that is not the Assessor’s, the Assessor must obtain irrevocable written consent from all authors, for the Department to use their work for any purpose the Department chooses.
   4. The Department acknowledges and agrees that any Background Intellectual Property of the Assessor remains vested in the Assessor and the Assessor grants to the Department a perpetual, royalty free, non-exclusive licence to use the Background Intellectual Property for purposes related to this Agreement.

# SUSPENSION

# Suspension following an Audit

* 1. The Assessor’s Accreditation and access to the Scorecard tool under this Agreement may be immediately suspended by Notice of Suspension in response to a determination reached by the Department following an Audit, that an Assessor has not properly applied the Assessor or Software Manual or the technical advice provided by the Department. The Notice of Suspension may state that the sanction of suspending the Assessor’s Accreditation as a Scorecard Assessor should be applied pending further action including, but not limited to, further training.

# Suspension where Intermediary Agreement is terminated

* 1. Notwithstanding any other provision of this Agreement, where the Assessor is employed by or contracted to an Intermediary and the Intermediary Agreement with the Department is terminated, then the Department may in its absolute discretion immediately provide the Assessor with a Notice of Suspension.

# Suspension where Department is investigating breach of Code of Conduct

* 1. On the Department becoming aware of an alleged breach of the Code of Conduct by the Assessor (in accordance with Schedule 2 clause 2), then the Department may in its absolute discretion immediately provide the Assessor with a Notice of Suspension.

**Assessor Behaviour**

* 1. The Department may immediately suspend the Assessor’s access to the Scorecard Tool if the Department becomes aware of any behaviour or alleged behaviour by the Assessor which in its opinion warrants immediate suspension.

# Commencement of, Effect of, and Lifting of Suspension

* 1. Suspension under clauses 11.1 (audit sanction), 11.2 (termination of Intermediary Agreement) or 11.3 (alleged breach of the Conduct of Conduct) shall take effect immediately upon the provision of a Notice of Suspension to the Assessor.
  2. The Notice of Suspension shall state:
     1. the reason for suspension;
     2. the actions to be undertaken by the Assessor to remedy the suspension (if applicable); and
     3. the period of the suspension (where applicable in the absolute discretion of the Department).
  3. Following the provision of a Notice of Suspension the Assessor shall, for the period of the suspension:
     1. cease to have Accreditation for the period of the suspension;
     2. not have access to the Scorecard Tool;
     3. not directly or indirectly carry out any activities that constitute the Rating Process; and
     4. cease to use or display the Scorecard Branding, for any purpose whatsoever.
  4. Suspension under this clause shall cease upon the provision of a notice lifting the Suspension from the Department stating:
     1. in the case of suspension under clause 11.1 (audit sanction), that the cause of the suspension referred to in the Notice of Suspension (as applicable) has been remedied by the Assessor to the reasonable satisfaction of the Department;
     2. in the case of suspension under clause 11.2 (termination of Intermediary Agreement), that the Department is satisfied that the Assessor is able to comply with the obligations set out in this Agreement; or
     3. in the case of suspension under clause 11.3 (alleged breach of the Code of Conduct) that the Department’s investigation has determined that there is no breach of the Code of Conduct by the Assessor, or that a breach has occurred but has been remedied by the Assessor to the reasonable satisfaction of the Department,

and that the Assessor’s Accreditation under this Agreement is re-instated.

* 1. Where the Assessor is an employee, agent or contractor of an Intermediary the Assessor must notify the Intermediary of any change to their Accreditation.

# TERMINATION

**Termination by the Department**

* 1. This Agreement may be immediately terminated by Notice of Termination in response to a determination reached by the Department following an Audit that an Assessor has not properly applied the Assessor or Software Manual or the technical advice provided by the Department and that the sanction of termination of this Agreement should be applied.
  2. Notwithstanding any other provision of this Agreement, where the Assessor fails to remedy any breach of this Agreement within 14 days of written notice of such breach then the Department may immediately terminate this Agreement by Notice of Termination.
  3. If the Assessor is found to have breached the Code of Conduct, the Department may award Non-compliance Points against the Assessor in accordance with the Complaints Policy. Notwithstanding any other provision of this Agreement, if the Assessor is awarded 6 or more Non-compliance Points in any 24 month period, then the Department may in its absolute discretion immediately provide the Assessor with a Notice of Termination.
  4. The Department may terminate this Agreement by giving three months’ notice in writing,

# Termination by the Assessor

* 1. The Assessor may terminate this Agreement by giving 28 days’ notice in writing to the Department.

# Arrangements upon termination

* 1. The Assessor must, within 28 days of termination of this Agreement:
     1. cease use of all Scorecard Intellectual Property and Scorecard Materials, including but not limited to computer software and the Process Documents;
     2. withdraw any publicly available promotional materials consisting of, incorporating or displaying the Scorecard Branding;
     3. cease and thereafter refrain from representing that the Assessor is accredited or approved by, or associated in any way with the Department or the Scorecard Scheme.
  2. Termination of this Agreement and suspension of Accreditation shall be without prejudice to the continuing enforceability of any rights or obligations of the Department accrued at the time of termination.

# Clauses to apply following termination

* 1. The operation of:
     1. Clause 9 – Scorecard Branding;
     2. Clause 10 – Scorecard Intellectual Property;
     3. Clause 13 - Professional indemnity insurance;
     4. Clause 14 – Indemnity;
     5. Clause 15 – Release;
     6. Clause 16 – Confidentiality; and
     7. any other provision which expressly or by implication from its nature is intended to continue,

survive the termination of this Agreement.

# INSURANCE

* 1. The Assessor acknowledges and agrees that at the commencement of this Agreement and each year thereafter, the Assessor will maintain the insurance required under this clause. Failure by the Assessor to provide the relevant certificates of currency upon request may result in the Department taking action under this Agreement to suspend the Assessor or terminate this Agreement. Insurance acquired through an Intermediary employing the Assessor is valid, provided it covers that said Assessor.
  2. The Assessor must, prior to carrying any activities pursuant to a Scorecard Rating or the Ratings Process and at all subsequent times during the Term, ensure that the following insurance policies are in place:

1. **Public liability insurance** covering the Assessor for any death, injury, damage or loss to other persons arising from the carrying out of Scorecard Ratings. The Assessor must maintain such insurance current for the duration of this Agreement and for an amount of not less than ten (10) million dollars for any single occurrence.
2. **Professional indemnity insurance** covering the Assessor for breaches of professional duty (whether owed in contract or otherwise) in carrying out Scorecard Ratings. The Assessor must maintain such insurance current for the duration of this Agreement and six (6) years thereafter, and for an amount of not less than two (2) million dollars for any single occurrence.
   1. The Assessor must not do, or fail to do, anything that would allow any insurer to reduce cover or void a policy of insurance required by this Agreement.
   2. The Department is not obliged to accept any material from the Assessor as part of a Scorecard Rating or the Ratings Process, or provide a Scorecard Rating unless and until the Assessor has complied strictly with the obligations of this clause.
   3. For the purposes of meeting the requirements of this clause, the Assessor acknowledges that insurers must be listed by the Australian Prudential Regulation Authority (APRA) as being regulated by the APRA, or listed by Lloyds underwriters or be underwritten by an organisation regulated by the APRA or listed by Lloyds underwriters. Lists appear on the APRA website at: [http://www.apra.gov.au/.](http://www.apra.gov.au/)

# INDEMNITY

* 1. The Assessor and the Department acknowledge and agree that, where the Assessor is employed by an Intermediary, the obligation to indemnify set out in this clause shall be taken to be satisfied by the indemnity provided by the Intermediary to the Department for as long as the Intermediary Agreement is in force.
  2. The Assessor will at all times indemnify, hold harmless and defend the Department from and against any cost, claim, loss (including consequential loss arising from an inaccurate Scorecard Rating or Ratings Materials) or damage, liability or expense which the Department pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) resulting from:

1. any act or omission of the Assessor, including any unlawful, negligent, reckless or deliberately wrongful act or omission of the Assessor (or its employees, agents or subcontractors) in the course of the Rating Process or in the carrying out of any activities as an Assessor or otherwise in the performance of this Agreement;
2. any breach of this Agreement by the Assessor;
3. the use or reliance on by the Department of any Rating Materials provided by the Assessor as part of a Scorecard Rating or Rating Process; or
4. any change to a Scorecard Rating based on the Assessor’s Rating Materials following an Audit.
   1. The Assessor’s liability to indemnify the Department under this clause will be reduced proportionally to the extent that any act or omission involving fault on the part of the Department contributed to the relevant cost, liability, loss, damage or expense.
   2. This proportional reduction does not apply in respect of anything resulting from a change to a Scorecard Rating in accordance with a determination reached by the Department following an Audit.
   3. The Assessor’s liability in connection with this Agreement or the performance of the Assessor’s obligations under this Agreement, whether in contract, tort (including negligence) or equity, under statute or otherwise is limited to the amounts insured under the insurance policies required to be effected and maintained under clause 13.

# RELEASE

* 1. The Assessor acknowledges and agrees that any activities carried out as an Assessor in the course of the Rating Process or in the performance of this Agreement or otherwise in connection with the Scorecard Tool are done at its own risk.
  2. The Assessor releases the Department from and against all claims and proceedings relating to any cost, liability, loss, damage or expense to the Assessor that may arise from:

1. the carrying out of any activities as an Assessor in the course of the Rating Process or in the performance of this Agreement or otherwise in connection with the Scorecard Tool;
2. the consequences of any inaccurate Rating Material provided to the Department in respect of a Scorecard Rating in the course of the Rating Process;
3. the cessation of the Scorecard Scheme for whatever reason;
4. any suspension of this Agreement in accordance with clause 11;
5. any termination of this Agreement in accordance with clause 12; and
6. any determination reached by the Department as a result of the Scorecard Audit.
   1. Notwithstanding any other clause in this Agreement, neither party shall have any liability to the other for or in connection with any loss suffered by the other which is indirect or consequential (except for consequential loss referred to in clause 14.2 above) such as loss of profits, loss or opportunity or loss of bargain.

# CONFIDENTIALITY

* 1. Subject to clause 16.2, the Assessor shall not, without the prior written approval of the Department, make public or disclose to any third party any Confidential Information, and in giving such written approval, the Department, may impose such terms and conditions as it thinks fit.
  2. Notwithstanding clause 16.1, the Confidential Information belonging to the Department shall only be disclosed by the Assessor to the Intermediary as is necessary for the Assessor to fulfil its obligations under this Agreement.
  3. The Assessor shall take all reasonable steps to ensure that it complies with this clause 16.
  4. The Assessor shall not make or allow to be made copies of or extracts of all or any part of the Confidential Information, except for the purpose of this Agreement.
  5. This clause shall continue to bind the Assessor after the date of expiry of the Term, or any extension thereof, or the date of termination of this Agreement, as the case may be.
  6. Notwithstanding any other provision of this Agreement, the Assessor may:
     1. pass on Confidential Information where it is reasonably necessary for the Assessor to seek professional advice or to defend itself from any suit or claim, provided that such Confidential Information is disclosed under terms no less onerous than the terms of this clause; and
     2. securely retain one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Agreement.

# CONFLICTS OF INTEREST

**Warranty as to Conflicts of Interest**

* 1. The Assessor warrants that to the best of their knowledge after making diligent inquiry, at the date of entering into this Agreement:
     1. it will comply with clause 17.3 (obligation to keep informed and prevent conflicts of interest); and
     2. if there is a Conflict of Interest in relation to the performance of its obligations under this Agreement, the Assessor will immediately comply with clause 17.2 (notification of conflict of interest).

# Notification of a Conflict of Interest

* 1. If, during the Term a Conflict of Interest arises, or appears likely to arise, the Assessor must:
     1. inform the Department as soon as is practicable after becoming aware that the Conflict of Interest has arisen, or appears likely to arise;
     2. make full disclosure of all relevant information relating to the conflict, including, but not limited to, the Assessor’s strategy for managing the relevant Conflict of Interest; and
     3. take such steps as the Department requires to resolve or otherwise deal with the Conflict of Interest.

# Obligation to keep informed and prevent Conflicts of Interest

* 1. The Assessor must, at all times during the Term, use its best endeavours to:
     1. keep themselves informed of any potential Conflicts of Interest; and
     2. take necessary steps to prevent and mitigate the effects of any Conflicts of Interest.
  2. The Assessor acknowledges that there is a potential Conflict of Interest in respect of the recommendation of particular house upgrade solutions where the Assessor or the Intermediary is an agent or a supplier of such a house upgrade solution. The Assessor must disclose to all customers such Conflicts of Interest prior to entering contractual relations with those customers.

# COMPLAINTS

* 1. Any complaints made to the Department by the customers of the Assessor shall be dealt with under the Complaints Policy.
  2. Nothing contained in the Complaints Policy will deny the Department the right to:

1. Issue a Notice of Suspension under clause 11; or
2. seek injunctive or other urgent relief from an appropriate court where failure to obtain such relief would cause irreparable damage to the Department or its business.

# NATURE OF RELATIONSHIP

* 1. No employment or agency relationship arises between Department and Assessor under this Agreement.
  2. The Assessor must not represent or hold itself out as being an agent of the Department in respect of the Scorecard Scheme.
  3. The Assessor acknowledges that the Department makes no representations in respect of any work that may arise following Accreditation under this Agreement.

# RECORDS

* 1. During the Term the Assessor shall, upon receipt of written request and upon reasonable notice, provide the Department, its authorised representatives and/or auditors appointed by it with access to (and where relevant, copies of) all records, books of account, documents, photos, information, premises, equipment and things which the Department reasonably considers necessary to satisfy itself that the Assessor is continuing to comply with the requirements of the Assessor Manual, the Software Manual, the Code of Conduct and other Process Documents.
  2. The Assessor shall provide the Department, its authorised representative and/or auditors appointed by it with the information and reports referred to in clause 20.1 within 28 days of any request.
  3. The Assessor must retain all Scorecard Rating Materials for seven years. Additional responsibilities of the Assessor with respect to records are listed in the Assessor Code of Conduct.

# NOTICES

* 1. Any notice that the Department may serve on the Assessor under this Agreement shall be taken to be effectively served if sent to the postal address or email address provided to the Department by the Assessor.
  2. Any notice that the Assessor may serve on the Department under this Agreement shall be taken to be effectively served if sent to the email address:

help.scorecard@delwp.vic.gov.au

or address:

Department of Environment, Land, Water and Planning

PO Box 500

East Melbourne, Vic, 3002

# PROPER LAW

This Agreement shall in all respects be governed by the law of the State of Victoria.

# GENERAL

* 1. The Parties shall do all acts and things necessary for the complete performance of their obligations under this Agreement.
  2. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of this Agreement. Upon execution of this Agreement, any prior arrangements, agreements, representations or undertakings as to the subject matter of this Agreement are superseded.
  3. No failure or delay on the part of any Party in the execution of any right, power or remedy hereunder shall operate as a waiver thereof nor shall any exercise of such right, power or remedy preclude any other or further exercise of any other right, power or remedy hereunder.
  4. No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any Party, shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by the Parties hereto or, in the case of waiver or consent, the Party giving that waiver or consent, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

|  |  |
| --- | --- |
| **Signed for and on behalf of the State of Victoria, through its Department of Energy, Environment and Climate Action** | |
| Name (print) |  |
| Position |  |
| Signature and date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_/ \_\_\_\_\_\_\_\_/ \_\_\_\_\_\_\_\_ |
| Signed by the Assessor | |
| Name (print) |  |
|  |  |
| Signature and date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_/ \_\_\_\_\_\_\_\_/ \_\_\_\_\_\_\_\_ |

# SCHEDULE 1

**Code of Conduct**

**Purpose**

It is a condition of Accreditation under the Assessor Agreement that Assessors must comply with this Code of Conduct. The Department may amend this Code of Conduct from time to time, by changes to <https://www.homescorecard.gov.au/>

Any breach of this Code of Conduct shall be dealt with under the Complaints Policy, and may result in the award of Non-compliance Points, suspension of the Assessor or termination of this Agreement

**Pre-Sale Conduct**

The Assessor will:

1. ensure any advertising, promotions and quotations are not misleading or deceptive;
2. not represent themselves as acting on behalf of the Department or the State of Victoria;
3. comply with the rules relating to the Do Not Call register administered by the Australian Communications and Media Authority (ACMA);
4. not deal or otherwise conduct business with suppliers or third parties who do not comply with the Do Not Call register rules;
5. respect Do Not Knock signs or other signs requesting door to door salesperson not to contact the householders;
6. give any potential customers an ‘Information Sheet’ containing the text set out in Annexure 1 of this Code of Conduct and explain what products and services that they are associated with and that there is no obligation to purchase these products or services;
7. comply with all consumer legislative requirements including those governing door to door sales, in particular:
   1. tell any potential Customers of the reason why the Assessor is visiting;
   2. show photo identification upon request;
   3. leave immediately if asked to do so by the Customer or other resident;
   4. provide the Assessor’s contact details; and
   5. not visit outside the permitted selling hours unless otherwise agreed with the Customer;
8. provide any Customer with a quotation of the total price of the service before entering a contract with the Customer;
9. not be involved or otherwise participate in any unethical behaviour or business practices;
10. immediately disclose to any Customer any potential conflict of interest;
11. avoid any high pressure sales tactics that, including any intended to induce Customers to sign a sales agreement for the purchase of goods or services aimed to increase the energy performance of the household;
12. provide the Customer with a written copy of the sales agreement (or the quote and acceptance, as the case may be) which shall contain clear and concise terms of business, as soon as it is signed; and
13. ensure that they honor in full all the terms of the sales agreement, unless terminated or amended by mutual consent of the contracting parties.

**General Conduct**

The Assessor shall:

1. not assist or allow any third party including an Intermediary to access or use the Scorecard Tool;
2. not disclose the log-in details of the Assessor for the Scorecard Tool to any other person;
3. exercise due skill, care and diligence in the performance of their duties;
4. perform all work in a competent manner and to a professional standard;
5. comply with Assessor and Software Manuals and technical advice of the Department;
6. work in a safe manner and comply with all applicable Occupational Health and Safety requirements;
7. not engage in any rude, offensive or discriminatory behavior;
8. not recommend a product if the Assessor knows or ought reasonably to know that the product is unsuitable for the Customer;
9. act on their own behalf and not represent themselves as acting on behalf of another individual or organisation without authority;
10. act promptly, fairly, and honestly with all available information and work to the standard reasonably expected by a practitioner in the industry;
11. not accept any undisclosed fee or commission from any person other than the Customer in relation to the Scorecard Tool;
12. only receive a fee for providing a rating certificate regardless of the final rating. A bonus of any kind, or commission based on the number of stars achieved is strictly prohibited;
13. comply with the *Privacy and Data Protection Act 2014* (Vic) and the Information Privacy Principles;
14. not enter any data into the Scorecard Tool unless the Customer has signed the Privacy consent in the Information Statement; and
15. not collect, use or disclose any personal information of a Customer unless the Customer has signed the Privacy consent in the Information Statement.

**Post Assessment**

The Assessor shall:

1. demonstrate the highest possible ethical standards, and avoid high-pressure sales techniques that induce customers to make hasty or uninformed decisions about any products or technologies they are selecting to purchase from the Assessor or any third party;
2. not revisit the Customer’s premises uninvited intending to pressure the Customer;
3. not make frequent phone calls to try and sell additional services or products; and
4. comply with all applicable laws and regulations (including the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* and the *Spam Act 2003* (Cth) in relation to the use and disclosure of the customers’ personal information).
5. be available to answer and respond to any queries that may arise from a Customer, the Department or any appointed auditor, consistent with the purpose of conducting and evaluating energy performances under this Agreement.

**Annexure 1**

1. [insert name of Assessor and name of Intermediary, where applicable] does not represent or act on behalf of the State of Victoria or the Department of Environment, Land, Water and Planning (the Department) and this assessment is being performed by [insert name of Assessor] [insert provider number] [and Intermediary, where applicable] as a private provider accredited to utilise the Scorecard Tool.

**Code of Conduct**

1. [insert name of Assessor] is subject to a Code of Conduct which can be viewed at https://www.homescorecard.gov.au/about-scorecard/privacy-code-of-conduct-and-complaints
2. If you believe that [insert name of Assessor] has breached the Code of Conduct then you should first contact [insert name of Assessor] at [insert contact phone number and email of assessor]. If you are not satisfied with the response from [insert name of Assessor] then you can lodge a complaint at [help.scorecard@delwp.vic.gov.au](mailto:help.scorecard@delwp.vic.gov.au).
3. If a dispute between you and [insert name of Assessor and name of Intermediary where applicable], does not include a breach of the Code of Conduct, then you should contact the government agency responsible for consumer affairs in your state or territory for assistance.

**Privacy Collection Statement**

This tool was developed by the Victorian Department of Energy, Environment and Climate Action, (DEECA). Independent Assessors have been authorised to use the tool across Australia. Your information will be protected because the Assessors [and Intermediary, where applicable] are bound by the *Privacy and Data Protection Act 2014* (Vic) .

As part of the rating process, the Assessors [and Intermediary, where applicable] may collect and store personal information about you. The Assessors [and Intermediary, where applicable] will only use your personal information (such as your name, address and contact information) to complete the assessment of your home, unless you consent for your information to be used for another purpose.

Given your information is entered into a tool developed by DEECA, any information you provide will be received by DEECA. DEECA may use this information to contact you for research purposes or to advise you of other government programs.

If you have any concerns or questions about the way your information is being handled, a copy of DEECA’s Privacy Policy can be provided on request by emailing foi.unit@delwp.vic.gov.au. Alternatively, you can contact the Office of the Victorian Information Commissioner on 1300 006 842 or enquires@ovic.vic.gov.au . Further information is available at www.ovic.vic.gov.au[w.cpdp.vic.gov.au](http://www.cpdp.vic.gov.au)

DEECA protects individual’s personal information in accordance with the Privacy and Data Protection Act 2014 (Vic). The information you provide will be used for the purpose of rating the energy performance of your home. Your details may be provided to other relevant government departments with responsibilities in the areas of environment, planning, energy, regulation and safety, for the purposes of policy development. Your information may also be provided to organisations who can offer energy services to you. We may provide your information to trusted third parties bound to the Privacy Act to survey your satisfaction with the energy assessment service.

You can access the information you have provided by contacting **help.scorecard@delwp.vic.gov.au**

**Residential Efficiency Scorecard - Privacy and Conflict of Interest Statement**

**Disclosure of my personal information to third party suppliers**

Please circle:

**Yes/No** I consent to the Assessor [and Intermediary, where applicable] providing my name and contact information to various suppliers so that I can be contacted about products or services that will increase the energy performance rating of my home. I understand that if I don’t provide consent to this disclosure, the energy performance assessment may still proceed but the Assessor [and Intermediary, where applicable] will be prevented from disclosing my personal information to third party suppliers of energy performance products.

**Disclosure of Assessor Conflict of Interest**

Please complete either A or B, where applicable:

* A) I acknowledge that the Assessor has advised me that the Assessor [and Intermediary, where applicable] is not affiliated with any companies, products or services, and no potential conflicts of interest exist, in respect of the recommendation of particular house upgrade solutions.I also understand that I am under no obligation to purchase any products or services as result of its recommendations.
* B) I acknowledge the Assessor [and Intermediary, where applicable] has declared a conflict of interest through the following companies:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

As such, I am aware that there is a potential Conflict of Interest in respect of the recommendation of particular house upgrade solutions where the Assessor [or the Intermediary, where applicable] is an agent or a supplier of such a house upgrade solution. I understand that I am under no obligation to purchase any products or services from the Assessor [or the Intermediary, where applicable]

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name and Address |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

# SCHEDULE 2

# Complaints Policy

1. The Department may investigate any alleged breaches by an Assessor of the Code of Conduct.
2. The Department may become aware of alleged breaches of the Code of Conduct by:
   1. self-reporting by the Assessor;
   2. notification by an Intermediary;
   3. notification by a Customer;
   4. notification by a Scorecard Auditor; or
   5. becoming aware of information in some other manner.
3. The Department only deals with alleged breaches of the Code of Conduct. It shall not attempt to resolve disputes between the customers and Assessor in relation to commercial disputes. The alleged breach will be classified to ensure it is within the jurisdiction of the Department.
4. The alleged breaches of the Code of Conduct may be investigated by the Department. The key steps of such an investigation shall be:
   1. determining the source of information of the alleged breaches raised by a third party;
   2. details of the breach will be requested from the third party;
   3. the Department will contact the Assessor in writing, providing details of the alleged breach as soon as practical;
   4. the Assessor will have 28 days to respond to the Department setting out its comments and evidence on the alleged breach, (if the Assessor provides no response the Department will continue with its investigation under this Complaints Policy);
   5. if the matter is not disputed by the Assessor they must explain any actions they have taken to address the alleged breach/es as soon as practical;
   6. the Department will investigate and assess the issues as soon as reasonably practicable in order to minimise the customer dissatisfaction and inconvenience to the Assessor;
   7. where a breach of the Code of Conduct is found, the Department has the absolute discretion to determine the gravity of the breach, as either minor, moderate or serious and award Non-compliance Points in accordance with the following scale:
      1. serious breach – 3 Non-compliance Points;
      2. moderate breach - 2 Non-compliance Points; and
      3. minor breach – 1 Non-compliance Point.
5. In addition, the Department has the absolute discretion to determine that any reported breach of the Code of Conduct is of such severity that:
   1. 6 Non-compliance Points should be awarded; or
   2. the Assessor should be immediately suspended.
6. The Assessor will be notified in writing of the outcome of the investigation, including the number of Non-compliance Points being awarded (if any).
7. If the Assessor is found to have breached the Code of Conduct and has had Non-compliance points awarded or is suspended, any Intermediary associated with the Assessor shall be notified of the outcome by the assessor.
8. Each Assessor shall commence their Accreditation with zero Non-compliance Points.
9. If an Assessor is not satisfied with the findings of the Department and/or the number of Non-compliance Points awarded then the Assessor may make a written request to the Department for an internal review. The Department shall respond to the Assessor with the outcomes of the internal review within 60 days of receipt of the written request for an internal review.