

Institution of Mechanical Engineers (IMechE) End Point Assessment Organisation
TERMS AND CONDITIONS – COMMERCIALY SENSITIVE

Engineers TERMS AND CONDITIONS – COMMERCIALY SENSITIVE - August 2022

IMechE End Point Assessment Organisation (EPAO)
Terms and Conditions for the provision of End Point Assessment (EPA) Services for Apprenticeships

This Agreement is made on the date accepted between:

Parties

1. The Training Provider named as such within the Business Proposal shared on the 'Proposify' proposal system ("Training Provider").

and

2. The Institution of Mechanical Engineers ("IMechE"), End Point Assessment Organisation.

Each shall be a "Party" and together shall be the "Parties".

Definitions

The definitions and rules of interpretation set out in Schedule 2 to this agreement and apply in this agreement (unless the context requires otherwise).

Term	Definition
IMechE	Institution of Mechanical Engineers
Training Provider	Company or individual requesting End Point Assessment
EAL	Excellence, Achievement and Learning Limited
EPAO	End Point Assessment Organisation
ESFA	Education and Skills Funding Agency
ReEPAO	Register of End Point Assessment Organisations
RoATP	Register of Apprenticeship Training Providers
ILR	Independent Learner Record

By electronically signing acceptance to this agreement the Training Provider agrees to the terms and conditions and agrees to adhere to the requirements herein. The terms specified in this agreement will be referred to where there is any dispute or disagreement relating to the provision of services.

Provision of the End Point Assessment Services

3. Subject to the remainder of this clause and upon the terms of this Agreement, IMechE the EPAO shall provide EPA Services to the Training Provider.

4. The IMechE as the EPAO shall perform any EPA services it provides to the Training Provider with reasonable care and skill, complying with ESFA regulations at the time.

Employer Third Party Rights

5. Without prejudice to its rights generally under these terms and conditions, the Employer shall have the right to enforce the benefits it is due in this Agreement.

Commencement and Duration

6. This Agreement shall commence on the Commencement Date which have been agreed in

the Business Proposal accepted on the Proposify system and continue until this Agreement is terminated by one of the Parties giving the other at least 3 months' notice unless this agreement is terminated in accordance with the Termination clause.

Charges and Payment

7. In consideration of the provision of EPA Services by the IMechE, the Training Provider shall pay the Charges as set out in any Charges Sheet or the Business Proposal.
8. Payment of the Charges shall be in accordance with an invoice to be issued by the IMechE, the terms of which (other than the obligation to pay) shall (i) be agreed by the Parties, (ii) be set out at IMechE's invoicing policy and may change from time to time, and, (iii) not be inconsistent with the other terms of this Agreement (with the other terms of this Agreement taking precedence in the case of such inconsistency).
9. Where the Charges are set out in the Business Proposal, the payable charges shall be those described in the Business Proposal at the time of the issuing of an invoice by the IMechE unless agreed otherwise and evidenced in the invoice.
10. For the purposes of VAT the provider warrants that payment for these services is made from the apprenticeship service account, and ultimately represents a charge to Government funds.
11. The IMechE will invoice the Training Provider a non-refundable sum of £150 per Apprentice, at the registration stage, which will be no less than 60 working days before the agreed time and date of the EPA. The IMechE will invoice the Training Provider for any outstanding fees on completion of the agreed EPA activity.
12. If the Training Provider requests an alteration to any services already agreed to be provided by IMechE in the Business Proposal pursuant to clause 3, the Training Provider shall pay to IMechE an administration fee of £50 save for where the alteration is required to correct an error by IMechE. If the Training Provider reallocates a registration, subject to the terms in clause 9, to another Apprentice(s) no administration fee shall be paid.
13. All invoices properly submitted by IMechE for the charges payable under this agreement shall be paid in full by the Training Provider in accordance with the terms of that invoice.
14. If the IMechE as the EPAO requests an alteration to any finalised booking confirmation for EPA services, the IMechE will contact the Training Provider as soon as reasonably possible requesting alternative arrangements.
15. Rights and obligations belonging, and in relation, to Employers
An Employer for which the Training Provider has secured an EPA with the IMechE has the right to expect that the IMechE shall perform such EPA services with reasonable care and skill. Such skill shall include the IMechE being and remaining registered on the Register of End Point Assessment Organisations until at least the obligations upon it under this Agreement are discharged and providing its services in accordance with this Agreement.
16. A Training Provider shall not take steps to influence or hinder the choice of the Employer in selecting an EPAO.

17. Status & Relationship of the Parties:

- 17.1 The relationship of the Training Provider (and any personnel or a subcontractor of it) to the IMechE will be that of independent contractor and nothing in this agreement shall render it (or any personnel or a subcontractor of it)
- 17.2 Should the Training Provider choose not to use the EPAO's assessors to conduct the Occupational Assessment of the EPA, the Training Provider shall be fully responsible for and shall indemnify the IMechE for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any employees or workers of the Training Provider.
- 17.3 Nothing in this Agreement is intended or expected to give rise to a relevant transfer for the purposes of TUPE, nor is it intended or expected that anything under this Agreement will operate so as to transfer the contracts of employment of any employee and/or worker of the Training Provider or Employer to EAL or vice versa at any time.
- 17.4 Notwithstanding the provisions of clause 17.3, in the event that TUPE is deemed to apply to any of the relationships under this Agreement, the Training Provider shall fully indemnify and hold the IMechE harmless against any and all costs, claims, losses, damages, liabilities and expenses (including legal and other professional fees and expenses) for which the IMechE is or may be liable arising from or in connection with:
- 16.4.1 the employment of any employee and/or worker by the Training Provider or Employer whose employment has transferred to the IMechE by virtue of TUPE.
- 16.4.2 the employment of any employee and/or worker by the IMechE whose employment has transferred to the Training Provider or Employer by virtue of TUPE.
- 16.4.3 the termination of employment of any such person by the Training Provider, Employer or Ethe IMechE.
- 16.4.4 the transfer of employment of any such person to EAL or Training Provider by virtue of TUPE.
- 16.4.5 any act or omission prior to the transfer of employment to the IMechE or Training Provider, which is deemed to be an act or omission of the IMechE or Training Provider by virtue of TUPE; and
- 16.4.6 the Training Provider's failure to comply with its obligations under regulation 13 of TUPE.

Information, Auditing and Reporting

18. Each Party shall comply with any reasonable request from the other Party to supply information or data to the requestor in connection with any EPA delivered to Apprentices under this Agreement which is required by the requestor in order to fulfil its obligations under this Agreement, or, to fulfil any reasonable obligations it has to its External Quality Assurance Organisation, the ESFA or any other public authority.
19. Each Party shall keep all documents, information, data, reports, accounts and records relating to this Agreement for a minimum of 6 years after the end of the financial year in which the final payment under this Agreement is made and shall supply copies of the same to a requesting Party if copies are required by the requestor in order to fulfil its obligations under this Agreement, or, to fulfil any reasonable obligations it has to its External Quality Assurance organisation, the ESFA or any other public authority.
20. Each Party shall assist and cooperate with the other in relation to any audit or investigation by its External Quality Assurance organisation, the ESFA, any other public authority or their authorised representatives or auditors.

21. Nothing in this section authorises or allows for a breach of the Data Protection clauses in this Agreement.

Intellectual Property Rights

22. The Parties agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either Party before entering into this Agreement or developed by either party during the term of this Agreement, shall remain the property of that Party.
23. Each Party has a licence to utilise the intellectual property of the other in order to fulfil its obligations under this Agreement.

Confidentiality

24. Each Party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.
25. The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
 - (a) at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Party.
 - (b) is already known to the receiving Party as evidenced by written records at the time of its disclosure by the disclosing Party and was not otherwise acquired by the receiving Party from the disclosing Party under any obligations of confidence.
 - (c) is at any time after the date of this Agreement acquired by the receiving Party from a third Party having the right to disclose the same to the receiving Party without breach of the obligations owed by that Party to the disclosing Party.
 - (d) is lawfully required to be disclosed to the External Quality Assurance organisation or any public authority; or,
 - (e) is reasonably and lawfully required to be disclosed to any professional adviser, consultant, contractor or other person engaged by the ESFA in connection with this Agreement.

Data Protection

26. Each Party shall (and shall procure that any of their staff and any Subcontractor involved in connection with the activities under the Agreement shall) comply with the requirements of the Data Protection Act 2018 (the "DPA"). In particular, the Parties shall ensure that the notification requirements of the DPA, and the provisions of the DPA as applied against the requirements of the ILR in respect of each of the Parties are complied with by each of the Parties.
27. Each Party shall (and shall procure that any of their staff and any Subcontractor involved in connection with the activities under the Agreement shall) comply with the requirements of

any successor law dealing with data protection applicable in England & Wales relating to the processing of data (including, for the avoidance of doubt, Regulation (EU) 2016/679, the “GDPR”, Data Protection Act 2018 collectively the “Data Protection Legislation”).

28. In accordance with the UK GDPR, both Parties shall jointly determine the purposes and means of processing Personal Data in relation to Apprentices, including special categories of data (as referred to in Article 9(1) GDPR), and shall be joint controllers of that Personal Data (as referred to in Article 26 GDPR ‘Joint controllers’).
29. Pursuant to Article 26 GDPR, the Parties set out their respective responsibilities for compliance with the Data Protection Legislation herein:
 - (i) The Training Provider shall gain all necessary consents from Data Subjects required by and in accordance with the Data Protection Legislation as is necessary for the provision of EPA Services under this Agreement.
 - (ii) The Training Provider shall have the responsibility to provide the information to be provided to the Data Subject as set out in Articles 13 and 14 GDPR.
 - (iii) The Training Provider shall gather Personal Data as is necessary for the provision of EPA Services under this Agreement.
 - (iv) The EPAO shall process Personal Data as is necessary for the provision of EPA Services under this Agreement; and,
 - (v) The Training Provider shall make the essence of this arrangement in relation to the respective roles and relationships of the Parties as Joint controllers available to the relevant Data Subjects.
30. Each Party, as a Data Controller in relation to Apprentices’ Personal Data shall comply with its obligations under the Data Protection Legislation in relation to that Personal Data and shall aid the other Party in its compliance.

Anti-discrimination

31. The IMechE shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination in providing EPA services under this Agreement. The IMechE is committed to complying with all current and relevant legislation in relation to the development and delivery of end-point assessment and, which at the time of writing includes, but is not limited to the Equality Act 2010.
32. The IMechE as an organisation seeks to uphold human rights relating to race relations, disability discrimination and special educational needs of apprentices and to provide equal reasonable adjustments and special considerations for all apprentices undertaking EPA services through IMechE.

Limitation of liability

33. Each Party’s liability under this Agreement is limited to the amount paid to IMechE under it.

Warranties

34. IMechE warrants, undertakes and agrees that:
 - (i) it has all necessary resources and expertise to deliver EPAs to Apprentices and to liaise with the ESFA and any other government department or agency in order to ensure that Apprentices that have been successfully assessed through an EPA are, as a result, in a position to successfully complete their Apprenticeships and receive certificates to demonstrate the same.

- (ii) it has not committed, nor shall it commit, any Prohibited Act.
- (iii) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations when carrying out activities in connection with this Agreement and shall notify the ESFA (or Institute for Apprenticeships, as the case may be) immediately of any significant departure from such legislation, codes or recommendations.
- (iv) it shall comply, or cooperate with Employers and Training Providers in complying, with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Apprentices and any other employees or persons carrying out activities in connection with the provision of EPA services.
- (v) it has, and adheres to, adequate procedures for dealing with any conflicts of interest.
- (vi) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction.
- (vii) all information that it discloses to the ESFA or any other public authority pursuant to this Agreement shall be to the best of its knowledge and belief complete, true and accurate.
- (viii) It is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations under this Agreement; and,
- (ix) as of the date on which it begins to provide services under this Agreement there has been no material change in its financial position or prospects since the date of its last accounts which would reasonably be expected or would or does affect the performance of its obligations under this Agreement.

Termination

35. Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (i) the other Party (or a sub-contractor of it) commits a material breach of any term of this Agreement.
 - (ii) the other Party (or a sub-contractor of it) commits a breach of this Agreement which is irremediable or which it fails to remedy before the deadline specified in a written request from the innocent Party requiring the breach to be remedied.
 - (iii) the other Party (or a sub-contractor of it) repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
 - (iv) any employee or other individual carrying out activities on behalf of a Party has (a) acted dishonestly or negligently at any time in connection with this Agreement or (b) taken any actions which, in the reasonable opinion of the ESFA or the innocent Party, bring or are likely to bring the innocent Party or the Employer's name or reputation into disrepute (save where the actions of the innocent Party or the Employer have substantially or wholly caused such disrepute);
 - (vi) the Training Provider commits or committed a Prohibited Act.
 - (vii) the other Party fails to maintain its registration with the ESFA (either on the RoEPAO, or the RoATP); or,
 - (viii) there occurs, in respect of the other Party, any Insolvency Event or Change of

Control which, in the reasonable opinion of the innocent Party, may affect the other Party's ability to comply with its obligations under this Agreement.

36. Without affecting any other right or remedy available to it, either party may terminate this Agreement for any reason by giving not less than 30 days' notice in writing to the other Party, or such shorter or longer notice period as may be mutually agreed in writing between them.
37. Following the termination of this Agreement, the clauses dealing with the following shall remain in full force and effect: Definitions and interpretation; Information, Audit and Reporting; Intellectual Property Rights; Data Protection; Limitation of Liability; Notices; Dispute Resolution; Joint and Several Liability; and Governing Law.

Interpretation

38. In this Agreement:-

- (i) Any phrase introduced by the terms "including", "include" and "in particular" or any similar expression shall not limit the sense of the words preceding these terms; and
- (ii) The headings are for convenience only and shall not affect the interpretation of this Agreement.

Force Majeure

39. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for ninety (90) days or more, the party not affected may terminate this agreement by giving thirty (30) days' written notice to the other party.

Assignment

40. Neither Party may, without the prior written consent of the other Party, assign, transfer, or in any other way make over to any third party the benefit and/or the burden of this Agreement.

Variation

41. Subject to explicit provision in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties.

Variation in the case of Regulatory Change

- 41.1 Explicit provision is made in this Agreement to permit IMechE to propose amendments to this Agreement in the case of Regulatory Change.
- 41.2 In the case of Regulatory Change, IMechE may:
 - (i) Within 6 months of becoming aware of the Regulatory Change in question propose amendments (the "Proposed amendments") to this Agreement to ensure its continued efficacy (including its economic rationale for the EPAO as at the date of this Agreement).

- (ii) The Proposed amendments shall be proposed by way of a notice which shall also contain details of the Regulatory Change in question.
- (iii) Upon receipt of IMechE's notice referred to in clause 41.2 (ii) above, the Training Provider shall, within 5 days of receipt:
 - (a) accept the Proposed amendments; or,
 - (b) propose different amendments ("Counter-amendments") that it considers achieve business efficacy by way of a notice.
- (iv) Upon receipt of the Training Provider's notice referred to in clause 41.2(iii)(b) above, IMechE may either accept the Counter-amendments or reject them on the basis that, in IMechE's sole reasonable opinion, they do not ensure the continued efficacy of the Agreement (including its economic rationale for the EPAO as at the date of this Agreement).
- (v) Where IMechE rejects Counter-amendments, the proposed amendments shall stand.
- (vi) IMechE shall communicate its decision pursuant to clause 41.2(iv) above by way of a notice, such notice shall include the date that the amendments shall be effective. For the avoidance of doubt, such a date may be immediately upon service of the notice or on a date in the future but not on a date that has passed.

Severance

- 42. Subject to the rights of IMechE in clause 41 above, if any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 43. If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Waiver

- 44. No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

Notices

- 45. All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant Party being the person specified as the appropriate recipient, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-Working Day or after 5.00 pm on any Working Day, they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

Dispute resolution

46. Any dispute arising in relation to this Agreement shall be resolved in the following manner and order: The Parties shall endeavour to resolve the dispute in good faith. Should that endeavour not result in a resolution, then either Party may propose a mediation process to resolve the dispute. The other Party shall be free to reject such proposal. Should such a proposal be rejected, not made or fail to resolve the dispute, the Dispute shall be finally resolved by the courts of England and Wales.

No partnership or agency

47. This Agreement shall not create any partnership or joint venture between the Parties, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

Joint and several liability

48. Where either Party is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of that Party shall be jointly and severally liable for its obligations and liabilities arising under this Agreement. Entire Agreement 49. This Agreement (including any Business Proposal or Order Form issued pursuant to it) constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter save those variations to this agreement may be agreed between the Parties and must be evidenced in writing.

Governing law

49. This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English and Welsh courts.

Insurance

50. Each Party shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by that Party, arising out of its performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.
51. The terms of any insurance or the amount of cover shall not relieve the insured Party of any liabilities under this agreement.

Safeguarding

52. IMechE acknowledges that the Training Provider has a statutory duty to safeguard and promote the welfare of individuals under the age of 18 years old and vulnerable adults over the age of eighteen (18) years old pursuant to the Children Act 2004, Education Act 2002 and the Safeguarding Vulnerable Groups Act 2006.
53. IMechE shall and will ensure that its employees, contractors and agents:
- 53.1 Comply with the requirements of the Children Act 2004, Education Act 2002, Equality Act 2010 and the Safeguarding Vulnerable Groups Act 2006 to the extent that they apply to the EPAO; and
- 53.2 Confidentially report to the Training Provider's designated senior safeguarding person from

time to time, any concerns relating to an Apprentice or other learner enrolled with the Training Provider, employee, agent or contractor of the Training Provider.

54. The Training Provider shall provide sufficient and adequate resources to ensure that any party providing end-point assessment services on behalf of IMechE and any representatives of EAL on behalf of IMechE visiting the Training Provider or Employer premises or otherwise providing services to the Training Provider under this agreement shall at all times be accompanied by an adult representative of the Training Provider such that at no time in the course of or in connection with the Agreement any representative of EAL on behalf of IMechE is left unaccompanied with any child or vulnerable individual as defined within the Safeguarding Vulnerable Groups Act 2006.

Schedule 1 EPA Services

Description of the services

1. IMechE shall:
 - 1.1 Verify that the registered Apprentice(s) has correctly completed all mandatory qualifications as per the Apprenticeship Standard.
 - 1.2 Provide reasonable guidance and support to the Employer on End Point Assessment services including the administration, assessment and quality assurance processes.
 - 1.3 Prepare the application on behalf of the Employer for the registered Apprentice to obtain an apprenticeship certificate upon successful completion of the End Point Assessment; and
 - 1.4 Maintain records in respect of the Registered Apprentice for a minimum of 5 years from the date from which [the End Point Assessment was carried out].

Assessment Activities,

IMechE shall:

- 1.5 Carry out and document End Point Assessments.
- 1.6 Stay at the centre for the duration of the End Point Assessment Assess all components of the End Point Assessments, in line with criteria as set out in the relevant Apprenticeship Standard/Assessment Plan.
- 1.7 Have appropriate policies, processes and systems in place to identify, manage and report any conflict of interests between the End-Point Assessment Organisation, Training Provider, Employer and the Apprentice(s).
- 1.8 Assess remotely relevant components of End Point Assessment evidence within agreed timescales and in accordance with the apprenticeship

Standards/Assessment Plans, and criteria set by the End-Point Assessment Organisation.

- 1.9 Preparing assessment documents prior to the apprentice assessment within agreed timescales.
- 1.10 Making assessment decisions based on the evidence provided by the apprentice in accordance with the assessment methods in the Apprenticeship Standard/Assessment Plan
- 1.11 Recording assessment decisions, complete reports and maintain assessment records accurately.
- 1.12 Provide recommended outcomes of the End-point Assessment to

Apprentices/Employer.

Assessment Activities

2. The Training Provider shall:
 - 2.1 Ensure the following at the End-Point Assessment Location/Site:
 - i. Sufficient resources available for the apprentice(s) to undertake the end-point assessment.
 - ii. Sufficient Health and Safety risk assessments in place and are understood by those involved in the end point assessment.
 - iii. An Employer and/or Training Provider representative to meet and inform the independent assessor(s) of all health and safety policies and fire safety policies and procedures applicable to the location/site

The requirement to cancel, postpone, delay or stop the end-point assessment

3. IMechE may take the decision to cancel, postpone, delay or stop the end-point assessment at any time during the process including, but not limited to, the following circumstances:
 - i. Insufficient resources are available for the Apprentice(s) to undertake the End-point Assessment.
 - ii. Location/site is unavailable or alternatives unsuitable.
 - iii. The Apprentice(s) is unable to prove their identification.
 - iv. The Apprentice(s) is absent.
 - v. The Apprentice(s) is late which impacts on the timings or quality of the End-point Assessment.
 - vi. Potential or actual Health and Safety concerns.
 - vii. Insufficient or not competent panel members available as per the assessment plan requirements.
 - viii. Potential or actual malpractice occurring.
 - ix. The apprentice(s) cannot continue due sickness, illness or any other agreed situation.
 - x. A conflict of interest has been identified on the day of the end point assessment and cannot reasonably be mitigated.
4. The IMechE will work with all stakeholders where possible and resolve any issue(s) on the day in order that a reliable and fair assessment decision can be made. Adjustments may be considered so as not to disadvantage the End-point Assessment process or the Apprentice(s). The independent assessor will consult with IMechE before any final judgement is made to cancel, postpone, delay or stop the End-point Assessment.

Timescales

5. IMechE shall fully complete the End Point Assessment for a Registered Apprentice within a period of 20 Working Days provided that the Training Provider complies with the provisions of this Agreement (including, for the avoidance of doubt, any terms set out in the Business Proposal, or any other order method agreed between the Parties). IMechE will promptly inform the Employer / Training Provider of any actual or potential delay to this process.

Apprenticeship certificate:

6. IMechE shall complete and submit the application to the appropriate authority once they have received notice from the Employer that such Apprentice has achieved his or her Apprenticeship, in order for the relevant Apprentice to obtain an apprenticeship certificate ensuring that the Apprentice has given their permission for IMechE to apply for certification on their behalf. IMechE will complete and submit a request to the appropriate authority.

Registered on RoEPAO

7. IMechE has applied and been accepted for registration on the RoEPAO. Registration is in respect of named Apprenticeship Standards.

Have relevant and recent (to the time of providing any EPA to the Training Provider) occupational experience of the Standard

8. IMechE has occupational experience of the Apprenticeship Standard which EPA services are being offered for.

Be aware of the assessment plan

9. IMechE has knowledge of the assessment plan associated with the Apprenticeship Standard in respect of which it is providing EPA services. IMechE will notify the Employer/Training

Provider of any changes in the assessment plan as published by the IfATE.

10. If any changes or variations in the assessment plan affect the agreed Proposify Business Proposal or within the provisions of this Agreement (including, for the avoidance of doubt, any terms set out in the Proposify Business Proposal, or any other order method agreed between the Parties). IMechE, Employer and Training Provider must agree any variations with all parties, subject to variation clause of this agreement.

Check gateways met

11. It is the Employer and Training Provider's responsibility to ensure that all assessment gateways mandatory requirements have been met and that the Apprentice has acquired the full set of knowledge, skills and behaviours before the Apprentice proceeds to EPA. The Employer should be confident that the Apprentice will pass their End-point Assessment. IMechE will check with the Employer whether the gateways of the Apprenticeship Standard being assessed have been met by an Apprentice in respect of which an EPA is being conducted.

Provide EPA services to Employer

12. IMechE, the Employer and Training Provider must agree and set out any further mechanics of how the EPA will be provided beyond those set out in the Business Proposal e.g., further details of where the EPA will take place, how the EPA will be conducted, timescales for IMechE to carry out its work and any post-EPA obligations. Such mechanics may be set out in the Business Proposal.

Provide information so that the Apprentice can receive his or her Certificate

13. Once an EPA has been completed, and the Apprentice has been successful, IMechE will provide information to
 - (i) the Training Provider in order for the Training Provider to update the Apprentice's ILR and,
 - (ii) the ESFA regarding any Apprentice that has successfully passed their EPA and where the Certificate should be sent to.

Guard independence and avoid conflicts of interest

14. IMechE will guard its independence and ensure that it actively avoids any conflicts of interest.

Have internal and external quality assurance

15. The ESFA expects IMechE to have internal quality assurance to ensure that EPA results are robust and consistent. Also, it is a requirement IMechE has in place external quality assurance from one of the four specified routes: The Institute of Apprenticeships, Ofqual, an existing professional body, or an Employer group.

Schedule 2 Definitions and Interpretation

1. The definitions and rules of interpretation in this clause apply to this agreement:

Title	Description
Agreement	Refers to the agreement that the suggested clauses may be included in.
Apprentice	A person who works under an Apprenticeship Agreement
Apprenticeship	The training and (where applicable) End-point Assessment for an employee as part of a job with an accompanying knowledge, skills and behaviours development programme pursuant to an Apprenticeship Agreement.
Apprenticeship Agreement	(a) an approved English apprenticeship agreement; or (b) an apprenticeship agreement within the meaning given in section 32 of the Apprenticeship, Skills, Children and Learning Act 2009 as it applies in relation to England by virtue of provision made under section 115(9) of the Deregulation Act 2015.
Apprenticeship Standard	Has the meaning given in Section A1 of the Apprenticeships, Skills, Children and Learning Act 2009.
Assessment Plan	The part of an Apprenticeship Standard which is labelled as such, and which sets out the manner by which an Apprentice's skills, knowledge and behaviours in relation to that Apprenticeship Standard will be evidenced.
Bribery Act	The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation
Certificate	The certificate administered and issued by the Education and Skills Funding
Certificate Agency	Certificate Agency on behalf of the Institute for Apprenticeships to an Apprentice to evidence his or her satisfactory completion of an Apprenticeship
Change of Control	The changing of control in a company in accordance with the meaning given to "control" in section 1124 of the Corporation Tax Act 2010.
Charges	The charges invoiced by the EPAO to the Training Provider in exchange for the provision of EPA Services (or any part of them).
Business Proposal	A document issued by the EPAO, via the "Proposify" system and accepted by the Training Provider and which may be amended by the EPAO from time to time, containing a description of the charges invoiced by the EPAO to the Training Provider, agreed by the employer, in exchange for the provision of EPA Services (or any part of them) which may be published by the EPAO by placing and dating it on its website.
Commencement Date	The date of acceptance of this Agreement
End Point Assessment Organisations or EPAO	An organisation on the Register of End Point Assessment Organisations.
EPA Services	The services described at Schedule 1. Education and Skills Funding Agency or ESFA Means the Secretary of State for Education, acting through the Education and Skills Funding Agency, an executive agency of the Department for Education, whose principal address is at Cheylesmore House, Quinton Road, Coventry, CV1 2WT
External Quality Assurance	The external quality assurer appointed to assess the quality of the EPA provision, being one of the Institute for Apprenticeships, Ofqual, a

Organisation	professional body, or an employer group.
Funding Rules	The Apprenticeship Funding and Performance Management Rules for Training Providers and, where applicable, the Apprenticeship Funding Rules for Employer-Providers, published by ESFA and both as amended from time to time.
ILR or Individual Learner Record	The record in respect of individual learners maintained and kept by the ESFA.
Institute for Apprenticeships & Technical Education (IfATE)	Means the Institute for Apprenticeships and Technical Education, being an executive non-departmental public body sponsored by the Department for Education responsible for ensuring that high quality Approved Apprenticeship Standards are developed, advising government on funding for each Approved Apprenticeship Standard and ensuring that all End-Point Assessments are quality assured, or such other statutory or non-statutory body responsible for the same from time to time.
Insolvency Event	Means any of the following circumstances: (a) A party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or is deemed unable to pay its debts within the meaning of any relevant provision of the Insolvency Act 1986. (b) A party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a bona fide reconstruction or amalgamation). (c) A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the relevant party (other than for the sole purpose of a bona fide reconstruction or amalgamation). (d) A receiver, administrative receiver or similar officer is appointed over the whole or any part of the relevant party's business or assets. (e) An application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given. (f) Any event occurs, or proceeding is taken, with respect to the relevant party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a)-(e) (inclusive); or, (g) The relevant party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
Intellectual Property Rights	All patents, trademarks, logos, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How, however, arising for their full term and any renewals and extensions. Know-How Information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, Law means all statutes, statutory instruments, regulations, byelaws, rules, judicial rulings and orders made under any statute, directive or by any competent legislative or judicial body in England and Wales including but not limited to the Bribery Act;
Prohibited Act means	(a) offering, giving or agreeing to give to any servant of the Crown or any other person or party any gift or consideration of any kind as an inducement or reward for: (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of

	<p>this Agreement which is improper; or, (ii) showing or not showing favour or disfavour to any person in relation to this Agreement which is improper; (b) committing any offence: (i) under the Bribery Act; (ii) under legislation creating offences in respect of fraudulent acts; or, (iii) at common law in respect of fraudulent acts in relation to this Agreement; or, (iv) defrauding or attempting to defraud or conspiring to defraud any person or party.</p>
Proposify Proposal	Software used by the EPAO to create, send, track, and e-sign Business Proposals, contracts, and agreements.
Register of End Point Assessment Organisations or RoEPAO	The online register of End-Point Assessment Organisations from which the Employer may select an organisation to carry out End-Point Assessment of Apprentices.
Register of Apprenticeship Training Providers or RoATP	The online register of apprenticeship Training Providers which lists the organisations approved to deliver Training to Apprentices under this Agreement.
Excellence, Achievement & Learning Limited Employer	Any employer of Apprentices requiring training (a) for its own Apprentices and/or (b) on behalf of a connected employer for the connected employer's Apprentices, to be funded in whole or in part from the Employer's Digital Account as administered by EFSA
End-point Assessment or EPA	The independent assessment of the Apprentice's knowledge, skills and behaviours carried out by an End Point Assessment Organisation at the end of the Training to confirm that the Apprentice has met the requirements of any relevant Approved Apprenticeship Standard/Assessment Plan.
End Point Assessment Organisations or EPAO	An organisation on the Register of End Point Assessment Organisations. EPA Services The services described at Schedule 1. Education and Skills Funding Agency or ESFA Means the Secretary of State for Education, acting through the Education and Skills Funding Agency, an executive agency of the Department for Education, whose principal address is at Cheylesmore House, Quinton Road, Coventry, CV1 2WT

EPA TERMS AND CONDITIONS – COMMERCIALY SENSITIVE

1. Definitions

Regulatory Change	Means any change in the law, policy or regulation affecting the provision of EPA Services (including any changes required by any External Quality Assurance Organisation).
Training	The delivery of training and on-programme assessment by the Training Provider to one or more Apprentices.
Training Provider	An organisation on the RoATP who has entered into this agreement with EAL.
Working Day	A day that is not Saturday, Sunday or a public holiday in England.
VAT	Means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994

2. References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this agreement.
3. If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.
4. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.
5. A reference to a statute or statutory provision or the Funding Rules is a reference to it as amended, extended or re-enacted from time to time.
6. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
7. Words or phrases defined in the Funding Rules shall have the same meaning in this agreement.
8. A reference to a person includes firms, partnerships and corporations and their permitted