

Terms and Conditions – EPA Services

1. General

These terms and conditions are incorporated into the contract between the Chartered Management Institute ('CMI') and the person, firm or institution ('Customer') placing an order with CMI for End Point Assessment services ('EPA Services'). Orders for EPA Services are subject to acceptance by CMI.

2. Definitions

2.1. In these terms and conditions:

- 2.1.1. **Applicable Law** means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, or other binding restriction of or by any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial, or administrative body (whether domestic, international, or foreign), as amended from time to time;
- 2.1.2. **Apprentice** means an individual meeting the entry criteria for the Programme and registered with CMI as a participant in the Programme;
- 2.1.3. **Apprentice Portfolio** means the information set out in the Apprenticeship Standard required to evidence the skills knowledge and behaviours acquired by the Apprentice against the Apprenticeship Standard;
- 2.1.4. **Apprenticeship** means the participation of an Apprentice in the Programme;
- 2.1.5. **Apprenticeship Standard** is the published standard for the Programme set out at <https://www.instituteforapprenticeships.org/apprenticeship-standards/?routes=Business-and-administration> as may be updated from time to time during the term of this Agreement;
- 2.1.6. **the Customer** means in respect of each Apprentice the person firm company or institution who or which employs the Apprentice for the purposes of the Programme and has entered into an agreement with the Customer for provision of training to the Apprentice;
- 2.1.7. **Customer Confidential Information**; all information (whether commercial, financial, technical or otherwise) relating to the Customer, its sub-contractors, other customers, members and suppliers, disclosed to or otherwise obtained by CMI under or in connection with the EPA Services and which is designated as being confidential or which is by its nature clearly confidential.

- 2.1.8. **End Point Assessment** or EPA means an assessment carried out by suitably qualified independent assessors appointed by CMI of an Apprentice in accordance with the Apprenticeship Standard;
- 2.1.9. **EPA Gateway** means the prerequisites published in the Apprenticeship Standard required before an Apprentice can move to the EPA;
- 2.1.10. **Data Protection Legislation** means the Data Protection Act 2018 and the General Data Protection Regulation ('the GDPR') as revised and superseded from time to time; and the terms '**personal data**', '**data controller**' and '**data processor**' when used in EPA Services shall have the meanings given in the Data Protection Legislation;
- 2.1.11. **Fees** means the fees payable for EPA Services under the Order;
- 2.1.12. **Funding Rules** means the Education and Skills Funding Agency Apprentice Funding and Performance Management Rules for the Customers and/or any amended or updated version of the Funding Rules released during the term of this Agreement;
- 2.1.13. **Gateway Date** the date on which the Apprentice has met the requirements of the EPA Gateway
- 2.1.14. **Intellectual Property Rights** means patents, copyrights, registered and unregistered design rights, trade-marks, trade secrets, know-how, database rights and all other similar or corresponding proprietary rights (whether registered or unregistered) including those subsisting in inventions, drawings, software, semiconductor topographies, business names and goodwill, and all applications for the same, anywhere in the world;
- 2.1.15. **Parties** means the Customer and CMI and '**Party**' means either one of them;
- 2.1.16. **Programme** means a CMI accredited course/qualification(s).

3. Fees and Payment Terms

- 3.1. CMI will invoice the full value of Fees in advance.
- 3.2. CMI will charge interest on overdue payments at the base rate of National Westminster Bank + 3%.
- 3.3. All amounts referred to exclude applicable VAT which will be invoiced and payable in addition at the then current rate in force.
- 3.4. The Partner will inform CMI if an EPA is funded privately and not by an employer, as CMI will be required to charge VAT on non-levy funded EPA services.

4. Customer obligations

- 4.1. The Customer will indicate a provisional Gateway Date within the normal working week (09.00 to 17.00 Monday to Friday) for an Apprentice as at the time of registering the Apprentice with CMI.
- 4.2. the Customer will:

- 4.2.1. Ensure, that the Apprentice has completed all elements of the Apprenticeship Standard in order to pass through the EPA Gateway;
- 4.2.2. determine the optimum date for the EPA. The lead-time will normally be 3 months. The Apprentice must have been in active learning for at least 12 months;
- 4.2.3. Confirm with CMI the actual date and location for the EPA if digital/virtual delivery is not being used,;
- 4.2.4. ensure that the Apprentice's portfolio is presented at EPA Gateway. Failure to present will result in the Apprentice not being able to proceed to the live assessment day;
- 4.2.5. With the exception of the Team Leader/Supervisor and Senior Leader Master's Degree Standard, ensure that a representative is available to sit on the interview panel, and the Customer has read and understood the requirements of the panel;
- 4.2.6. For Level 3 and Level 5, ensure that the Knowledge Test is only taken **after** it has been confirmed that the Apprentice has passed through EPA Gateway; and
- 4.2.7. Will ensure that evidence of English and Maths attainment at level 2 is provided at EPA Gateway. Failure to present will result in the Apprentice not being able to proceed to the live assessment day.
- 4.3. the Customer will provide the following data to CMI in relation to each Apprentice for the purpose of the EPA:
 - 4.3.1. The address where the Apprentice is located;
 - 4.3.2. The location where the EPA will take place if different from above if appropriate;
 - 4.3.3. The proposed date(s) of the EPA;
 - 4.3.4. The main Customer contact;
 - 4.3.5. The name of the Apprentice and their Unique Learner Number (ULN)
 - 4.3.6. Apprentice portfolio.

5. CMI Responsibilities

- 5.1. CMI will, in relation to each EPA:
 - 5.1.1. Appoint qualified and experienced independent assessors
 - 5.1.2. Develop assessment materials for use during the EPA
 - 5.1.3. Use reasonable endeavours to ensure that the independent assessors are standardised and provided with clear guidance so that assessment decisions across all assessors are consistent
 - 5.1.4. Liaise with the Customer with regards to the EPA
 - 5.1.5. Conduct the EPA and use this to allocate grades to Apprentices
 - 5.1.6. Complete all necessary administration relating to the EPA.
 - 5.1.7. At successful completion by the Apprentice of all EPA requirements, apply for the final apprenticeship certificate and despatch to the Apprentice.

- 5.2. Additionally, for the CMDA and the Operational/Departmental Manager Apprenticeship and Senior Leader Master's Degree Apprenticeship, CMI as the assessor for Chartered Manager will:
 - 5.2.1. Liaise with the Customer with regards to assessment for Chartered Manager eligibility.
 - 5.2.2. Use reasonable endeavours to ensure that assessors are standardised to achieve consistent assessment decisions.
 - 5.2.3. Award Chartered Manager status to Senior Leader Master's Degree, CMDA, Operational/Departmental Manager apprentices that satisfy the requirements of the End-point Assessment for Chartered Manager and have time-served as a manager for 3 or more years.

6. Postponement of Confirmed EPA booking

- 6.1. CMI reserve the right to postpone the EPA if, in its reasonable opinion, the Apprentice has not met the Gateway requirements at <http://www.managers.org.uk/management-apprenticeships/more/resources>
- 6.2. No additional charges will be payable should a confirmed EPA be postponed by the Customer by written notice received by CMI least 30 days prior to the booked EPA date.
- 6.3. Failure of the Customer to provide 30 days' notice will result in the following additional charges being payable by the Customer to cover costs incurred by CMI in relation to the postponed booking:
 - 6.3.1. 20-29 days' notice 50% of the total Fee for that Apprentice
 - 6.3.2. 14-19 days' notice 75% of the total Fee for that Apprentice
 - 6.3.3. 0-13 days' notice 100% of the total Fee for that Apprentice
- 6.4. In exceptional circumstances CMI may at its complete discretion consider waiver of all or part of these charges.

7. Retakes and Re-assessment

- 7.1. Retakes and reassessments are subject to payment of a charge dependent on the scope and complexity required.
- 7.2. Retakes/re-assessment charges are as set out below:
 - Knowledge Test - free of charge
 - Portfolio - £100
 - Live Interview - £250 plus travel costs if applicable and if undertaken in person rather than virtually.

8. Intellectual Property Rights

- 8.1. All intellectual property in the CMI Materials are and will remain the sole property of CMI.
- 8.2. The Customer agrees that it will do nothing in relation to the CMI Materials which is inconsistent with the Intellectual Property Rights of CMI in the CMI Materials and in particular will not;

- 8.2.1 sub-license, resell or redistribute any CMI Materials to any third party;
- 8.2.2 use CMI Materials or any part of it as a component or the basis of any other publication prepared for sale; or
- 8.2.3 create derivative works from the whole or any part of CMI Materials.

9. Warranties

The CUSTOMER

- 9.1.1. acknowledges that CMI makes no warranty or representation regarding the eligibility of the Customer and/or the EPA Services for funding by the Skills Funding Agency under the Funding Rules and that the Fees are payable in any event; and
- 9.1.2. warrants that it has reviewed the Funding Rules and satisfied itself regarding the eligibility requirements for relevant funding of the Customer and the EPA Services; and
- 9.1.3. Ensure that the delivery and monitoring of the Apprenticeship is in line with applicable Government standards including but not limited to ESFA standards as relates to apprenticeships.

10. Limitation of Liability

- 10.1. Subject to clause 10.3 CMI's aggregate liability in relation to the EPA Services, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, will not exceed the aggregate Fees.
- 10.2. CMI will not be liable for:
 - 10.2.1. Any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort (including negligence) or otherwise; or
 - 10.2.2. loss of revenue, loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time or loss of business or goodwill or anticipated savings.
- 10.3 CMI does not purport to exclude or limit any liability for death or personal injury caused by its negligence for fraud or that otherwise cannot be excluded or limited by Applicable Law

11. Confidentiality

- 11.1. CMI undertakes in respect of Customer Confidential Information of which it is the recipient in relation to EPA Services:
 - 11.1.1. to treat such information as confidential;
 - 11.1.2. not without the Customer's prior written consent to communicate or disclose any part of any such information to any person except to:
 - 11.1.2.1. those employees, agents, sub-contractors and other suppliers on a need to know basis who are directly involved in provision of EPA Services and who are bound by confidentiality obligations;

11.1.2.2. CMI's auditors, professional advisers and any other persons, regulators or bodies having a legal right or duty to have access to or knowledge of the Customer Confidential Information in connection with the business of CMI.

11.2. These obligations will not to apply to any Customer Confidential Information:

11.2.1. in CMI's possession (with full right to disclose) before receiving it; or

11.2.2. which is or becomes public knowledge other than by breach of this clause 11; or

11.2.3. which is independently developed by the recipient without access to or use of the Customer Confidential Information; or

11.2.4. lawfully received from a third party (with full right to disclose).

12. Data Protection

12.1. Where CMI is processing personal data on behalf of the Customer:

12.1.1. CMI agrees to process such personal data only in accordance with these terms and conditions and Customer's instructions from time to time and not to process such personal data for any purpose other than for the purposes of providing EPA Services.

12.1.2. CMI shall take reasonable steps to ensure the reliability of all its employees and sub-processors who have access to the personal data and shall take such steps as are reasonably required to ensure that all persons engaged in processing personal data have entered into confidentiality obligations.

12.1.3. CMI shall, having regard to the state of technological development and the cost of implementing any measures;

12.1.3.1. take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected; and

12.1.3.2. take reasonable steps to ensure compliance with those measures.

12.1.4. CMI will provide timely and adequate support to enable the Customer to;

12.1.4.1. respond to any request by any data subject exercising his or her right under the Data Protection Legislation, including the right to access, correct or delete personal data, or any other correspondence, request or complaint by any person or regulatory authority in connection with the processing of personal data. If such requests, correspondence, inquiries or complaints go directly to CMI, CMI will promptly notify the Customer and provide all relevant information; and

- 12.1.4.2. perform a data protection impact assessment where CMI's processing of personal data is likely to result in a high risk to the data protection rights and freedoms of data subjects.
- 12.1.5. CMI will notify the Customer within 48 hours and provide the Customer with all information and support reasonably required to enable Customer to comply with its obligation to report any breach of privacy or security incident to the relevant regulatory authority in accordance with the Data Protection Legislation. In addition, CMI will take such steps as are reasonably required to mitigate the effects of any breach of privacy or security incident.
- 12.1.6. The Customer consents to the appointment by CMI of sub-processors. CMI will enter into an agreement with such sub-processors on terms that reflect these terms and conditions prior to providing the sub-processor with access to such personal data. CMI will not transfer any personal data to any sub-processor outside the EEA except in accordance with the Data Protection Legislation. CMI will remain responsible to the Customer for all processing carried out by any sub-processor.
- 12.1.7. CMI will provide to the Customer or its external auditor on request such information relating to CMI's systems and records and those of its sub-processors as is reasonably required to enable the Customer to verify CMI's compliance with EPA Services and its obligations in relation to personal data processed by CMI. CMI shall be under no obligation to provide to the Customer information that relates to its data processing on behalf of any other person.
- 12.1.8. CMI agrees to cease processing such personal data or any part thereof immediately on written instructions from the Customer and, if required by the Customer in writing promptly to destroy such personal data or return it to the Customer without retaining copies. This obligation does not apply to personal data held by CMI as data controller.
- 12.1.9. On termination or expiry of this contract for any reason CMI shall comply with the instructions of the Customer or the Customer in relation to the personal data and shall if requested deliver a certification to the Customer that it has complied with such instructions.
- 12.2. The Customer undertakes to respond promptly to requests by CMI for instructions relating to the processing of personal data, during the provision of EPA Services and instructs CMI to retain personal data in respect of which it is a data processor for such period as is required by CMI for regulatory compliance purposes.

13. Termination

- 13.1. Either Party may terminate the contract for EPA Services immediately by notice in writing to the other Party if the other Party commits any material breach of any of its obligations and fails to remedy such breach (if capable of remedy) within 30 days of being notified of such breach by the non-defaulting Party.

- 13.2.** Either Party may terminate the contract for EPA Services with immediate effect on written notice if:
- 13.2.1.** the other Party ceases or threatens to cease to carry on its business;
 - 13.2.2.** a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party;
 - 13.2.3.** the other Party makes any arrangement for the benefit of its creditors; or
 - 13.2.4.** the other Party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction.
- 13.3.** Termination for any reason will not affect any rights of the Parties accrued to them up to the date of termination.
- 13.4.** On termination for any reason;
- 13.4.1.** CMI will return all Customer Confidential Information and delete all copies except those it is required to keep for legal or regulatory reasons;
 - 13.4.2.** All licenses granted by CMI to use CMI Materials will cease.

14. Notices

- 14.1.** All notices to be given under the contract for EPA Services will be in writing and will be sent to the current address of the receiving Party. For CMI the relevant address is the Chartered Management Institute, Management House, Cottingham Road, Corby, Northants NN17 1TT. For the Customer the address is that given in the Contract.
- 14.2.** Notices may be delivered personally, by first class pre-paid letter. Notices will be deemed to have been received:
- 14.2.1.** by hand delivery - at the time of delivery;
 - 14.2.2.** by first class post - 48 hours after the date of postage.

15. Waiver

No delay or failure by either Party to exercise any of its powers, rights or remedies under the contract for EPA Services will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other further exercise of them. Any waiver to be effective must be in writing.

16. Severability

If any part of the contract for EPA Services is found by a Court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of the contract term.

17. Entire Agreement

These terms and conditions and the Customer's order for EPA Services constitute the entire agreement between the Parties relating to its subject matter and supersedes and extinguishes all previous communications, representations and other arrangements

between them, whether written or oral. No variation will be effective unless it is in writing and signed by persons authorised on behalf of both Parties.

18. Governing Law

The contract for EPA Services will be construed in accordance with and governed by the law of England and Wales and each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales. Headings have been included for convenience only and will not be used in interpreting any provision.

19. No Partnership

Nothing in the contract for EPA Services shall create or evidence any partnership or a relationship of principal and agent between the Parties; neither Party shall make or represent that it has authority to make any commitments on the other's behalf.

20. Third Parties

A person who is not a party to a contract for EPA Services shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

21. Assignment

Neither Party may, without the prior written consent of the other Party, assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under a contract for EPA Services except in the event of a reorganisation or restructuring or the sale of all or part of its operations or business.

22. Freedom of Information

If the Customer is subject to the Freedom of Information Act 2000 (or as amended from time to time) ("the Act") CMI agrees to provide such information as the Customer requests to enable it to comply with its duties under the Act provided that where the Customer wishes to disclose information that is sensitive commercially or in some other respect the Customer will at CMI's request use reasonable efforts to prevent disclosure of such information.