

Northgate Energy Assessor Accreditation Scheme: Membership Terms - SCOTLAND ONLY

1. Definitions

“APEL” means Approve Prior Experiential Learning, and is used as part of the Application Process to the scheme.

“Applicant/Member” means the individual person who has completed the Application Form. The terms defined shall be used respectively in relation to that person depending on whether before or after the Approval Date.

“Application Form” means the application form, completed by the Applicant, with which these terms and conditions have been provided.

“Approval Date” means the date on the letter of notification in which the Applicant’s application for membership is approved.

“Asset Skills” means the sector skills council for property services, housing, cleaning services and facilities management.

“Central Register” means the national database used to store the EPCs.

“CLG” means the Department for Communities and Local Government and the Secretary of State thereof.

“DFP” means the Department of Finance and Personnel in Northern Ireland.

“EA” means an Energy Assessor appropriate to the type of property; Domestic, Commercial, On-Construction.

“EPC” means an Energy Performance Certificate.

“Joining Fee” means the fee payable by the Member upon application to the Scheme.

“Joining Criteria” means those criteria stipulated to be met in order for the Applicant to be accepted in to the Scheme as a Member.

“Membership Pack” means the information pack provided to all Applicants including the Application Form, these Membership Terms, the Customer Complaints Policy, the Member’s Code of Conduct and the Disciplinary Policy.

“Northgate” means Northgate Land and Property Solutions Ltd, which operates the Scheme.

“OS” means the Occupational Standards for EAs as set by the QCA or BSD, and updated from time to time.

“QCA” means the Qualifications and Curriculum Authority.

“Regulations” means the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, the Building (Scotland) Act 2003, the Building (Procedure) (Scotland) Regulations 2004, the Building (Scotland) (Amendment) Regulations 2006, the Building (Procedure) (Scotland) Amendment Regulations 2007, “The Energy Performance of Buildings (Scotland)” 2008 (SI 309) and any other relevant regulation.

“Rejoining Fee” means the fee chargeable by Northgate arising from Northgate exercising its rights under Clause 4.3.

“Renewal” means the annual renewal of membership.

“BSD” means the Buildings Standards Division, part of the Directorate for the Built Environment, Scottish Government or such body responsible for the accreditation of Members in Scotland.

“Scheme” means the Accreditation Scheme for EAs operated by Northgate.

“Sponsor Company” means the Companies under contract with Northgate who employ or contract Northgate accredited Energy Assessors.

“Subscription Fee” means the annual fee payable by the Member in order to maintain his/her membership.

“Transaction Fees” means the transactional fees charged by Northgate for the production of EPCs and the fees levied by Landmark or other body appointed by the CLG / DFP/BS, relating to the lodgement of EPCs.

2. Interpretation

- 2.1 The Clause headings used in this Agreement are for convenience only and should not be interpreted as governing or limiting the clause in any way.
- 2.2 Any reference to statutory legislation shall be interpreted as including any replacement, re-enactment, modification or amendment to such legislation and any subordinate legislation enacted under it.

3. Approval of Membership

- 3.1 On receipt of an Application Form Northgate shall consider the application. As a accredited provider of the Scheme, Northgate is obliged to carry the following checks to ensure that the Applicant is a “fit and proper” person to undertake energy assessments: -
 - 3.1.1 An identity check on the Applicant, which will require the Applicant to send Northgate two items of identity, one of which has a photograph (passport or driving licence) and the other item that identifies the Applicant’s name and current residential address, for example, a recent utility bill (dated not more than 3 months prior to the date of signature of the Application Form); and
 - 3.1.2 If required for the particular Scheme, a criminal records board check, of the type required by CLG/DFP/BS guidelines, as issued from time to time, which will be carried out by Northgate, or a partner organisation, on its behalf; and
 - 3.1.3 A check to confirm that the Applicant has achieved a qualification which satisfies the Occupational Standards (OS), from an awarding body approved by the Qualifications and Curriculum Authority (QCA) or BSD or that the applicant satisfies the appropriate APEL criteria as assessed by Northgate; and
 - 3.1.4 A credit check, at Northgate’s discretion; and
 - 3.1.5 A check that the Applicant has in place adequate Professional Indemnity Insurance, meeting at least the levels prescribed by the CLG/DFP/BS, applicable at the time of Application, or that the Applicant has the benefit of suitable Professional Indemnity Insurance put in place and maintained by the Applicant’s employer.

- 3.2 In order for Northgate to process the application, the Applicant confirms that it has supplied together with the Application Form all the documentation set out in the section entitled “Check List”. The Applicant agrees to provide all assistance and other documentation that Northgate may also require to process the application in accordance with CLG or DFP or BSD guidelines.
- 3.3 Upon completion of the checks set out in Clause 3.1, Northgate will, within 28 days: -
- 3.3.1 Notify the Applicant whether his/her application for Membership has been approved.
- 3.3.2 If the application has been unsuccessful, Northgate will notify the Applicant of which of the above criteria the Applicant failed to meet.
- 3.4 Where the application for membership has been successful, the Applicant shall become a Member of the Scheme and the Member shall adhere to the terms and conditions set out in the Membership Pack.
- 3.5 Northgate reserves the right to periodically (i) carry out updating checks, of those items set out in Clause 3.1 and to require the Member to provide assistance as set out in Clause 3.2; and (ii) to update the Membership Pack by issuing updates to the Member and/or posting the updates on <http://www.northgate-dea.com> or www.northgate-energy.com.
- 4. Membership Term**
- 4.1 The Member’s membership of the Scheme shall commence on Approval Date and shall continue for a period of 12 months.
- 4.2 On payment of the Subscription Fee, the Member shall be entitled to renew his/her membership for subsequent periods of 12 months, provided that he/she still meets the criteria checks set out in Clause 3.1, the Member is not currently suspended and he/she remains a “fit and proper” person to undertake energy assessments.
- 4.3 The CLG/DFP/BSD requires that at least every 3 years, accreditation scheme providers must re-perform the checks set out in Clause 3.1. At this time, the Member will be required to pay a Rejoining Fee. If the CLG/DFP/BSD requirements should change, Northgate reserves the right to change the frequency and or nature of the checks/Rejoining Fee accordingly.
- 5. Payment**
- 5.1 The Applicant shall pay the Joining Fee and the first year Subscription Fees at the time of submitting the Application Form. The Applicant/Member acknowledges that the Joining Fee covers Northgate’s costs of carrying out the eligibility checks set out in Clause 3.1 and is non-refundable, irrespective of whether the Applicant’s application is successful. If the application is unsuccessful Northgate shall refund the Subscription Fee.
- 5.2 The Member shall pay the Subscription Fees for each subsequent year of membership on the anniversary of the Approval Date. Northgate shall issue an Invoice at least 30 days prior to the anniversary of the Approval Date (subject to the Member having made an application for Renewal of membership).
- 5.3 The Member shall pay the Rejoining Fee in accordance with the provisions of Clause 4.3. Northgate shall issue an Invoice in respect of the Rejoining Fee at least 30 days prior to the due date. Northgate will not be obliged to carrying out the updating checks until payment is received.

- 5.4 The Member shall pay the Transaction Fees in accordance with Northgate's published policy from time to time.
- 5.5 All invoices issued under the terms of this Agreement are payable within 30 days of the date of invoice.
- 5.6 Northgate may increase any fees payable under this Agreement once per year, to take effect immediately, but in respect of which the Member shall only be expected to pay such increased fees when such fees are next properly payable by the Member and invoiced in accordance with this Clause 5. The fees as varied shall remain fixed for a period of not less than 12 months.
- 5.7 Northgate may suspend the membership in the event that the Member is overdue with any payment due under this Agreement or otherwise owes any money to Northgate, howsoever arising and as otherwise stated in accordance with the terms contained within the Membership Pack. Northgate will give the Member 30 days written notice before invoking its right to suspend.
- 5.8 Where it has been expressly agreed in writing by Northgate, the Member's employer may pay the fees on behalf of the Member. In the absence of any such agreement the Member shall be solely responsible for payment.

6. Northgate's Obligations

- 6.1 Northgate shall: -
 - 6.1.1 Operate and maintain the Scheme as approved by the CLG/DFP/BSD (including any extension of renewal of such approval) and to do so in accordance with the guidelines issued by the CLG/DFP/BSD, the Regulations and with reasonable skill and care;
 - 6.1.2 Provide the Member with membership of the Scheme, subject to the Member's compliance with the terms of this Agreement;
 - 6.1.3 Provide the Member with a Membership Pack, including, but not limited to a Membership ID Card and Certificate of Membership. The Membership ID Card and Certificate of Membership shall at all times remain the property of Northgate;
 - 6.1.4 Provide the Member with access to the Member's portal via the internet;
 - 6.1.5 Publish details of the Member on the Scheme's Register of Members and confirm the Member's membership to any person seeking confirmation of the same;
 - 6.1.6 Publish details of the Member on Landmark's central register of EAs or such register as may be required by BSD;
 - 6.1.7 Operate the Scheme in good faith and act in a fair, open and honest manner; and
 - 6.1.8 Provide the Applicant with clear reasons why his/her application for membership has been rejected.

7. Member's Obligations

7.1 Conduct Obligations

- 7.1.1 The Member shall, in the execution of his/her duties as a EA, conduct himself in accordance with the Code of Conduct as may be amended and available on the Membership Portal, from time to time.
- 7.1.2 The Member shall act with professionalism and socially acceptable deportment in the execution of his/her duties as a EA and shall at all times act in accordance with the law.
- 7.1.3 The Member shall carry out his/her duties as an EA with all due skill and care.
- 7.1.4 The Member shall only use approved energy calculation software, appropriate to the type of dwelling, in his/her work as a EA, for the production of EPCs and which shall be in a form approved by, or containing the information prescribed by the CLG/DFP/BSD. In particular, the EPC shall not contain: -
 - 7.1.4.1 Any information, from which the identity of a living individual person may be discerned;
 - 7.1.4.2 Any expression of opinion about any living individual person;
 - 7.1.4.3 Any information concerning the security arrangements of any property that is the subject of the EPC (including but not limited details of any alarm systems, safes or valuables contained within the property).

7.2 Member's Scheme Obligations

- 7.2.1 The Member shall conduct himself with professionalism and courtesy in all dealings with Northgate;
- 7.2.2 The Member shall ensure that the eligibility criteria set out in Clause 3.1 continue to be met throughout the Member's membership of the Scheme and shall immediately advise Northgate if any of the eligibility criteria cease to be met, for whatever reason. Breach of this clause may result in disciplinary action being taken against the Member and/or suspension of the Membership;
- 7.2.3 The Member shall immediately advise Northgate of any event or circumstance which means that the Member is, or may be considered to no longer be a "fit and proper" person to be a EA or which puts the Member in breach of the Code of Conduct and/or this Agreement;
- 7.2.4 The Member shall keep full and detailed records of his/her work and activities as a EA for the duration of the Member's membership of the Scheme and for a period of 6 years thereafter;
- 7.2.5 The Member shall immediately provide to Northgate, copies or originals of the records referred to in Clause 7.2.4, upon request;
- 7.2.6 The Member shall immediately provide to Northgate, upon request, all other information or documentation as Northgate may reasonably require;
- 7.2.7 The Member shall attend such meetings as Northgate shall reasonably require and promptly respond to all communications from Northgate;
- 7.2.8 The Member shall keep Northgate advised of any matter which may affect the Member's membership;

- 7.2.9 The Member shall comply with any order made by Northgate under the Disciplinary Policy;
- 7.2.10 The Member shall observe and comply with the continuing professional development requirements by undertaking relevant training courses, or other relevant professional development activities meeting the OS as stipulated by the QCA or BSD from time to time

7.3 Member's General Obligations

- 7.3.1 The Member shall immediately advise Northgate if he/she becomes a member of another accreditation scheme, or any relevant professional body, trade association, regulatory body or similar organisation;
- 7.3.2 The Member shall immediately advise Northgate if his/her membership of any other accreditation scheme or organisation stated in Clause 7.3.1 is suspended or terminated;
- 7.3.3 The Member shall immediately advise Northgate of the commencement and outcome of any disciplinary procedure by any other accreditation scheme or organisation as stated in Clause 7.3.1;
- 7.3.4 The Member shall immediately advise Northgate if he/she is cautioned, arrested or charged with any criminal offence, save for motoring offences which do not carry a potential custodial sentence;
- 7.3.5 The Member shall immediately advise Northgate if he/she is convicted of any criminal offence, save for motoring offences which do not carry a potential custodial sentence;
- 7.3.6 The Member shall immediately advise Northgate if any civil legal proceedings relating to his/her activities as a EA, or proceedings for bankruptcy are commenced against the Member and if a bankruptcy order is made against the Member;
- 7.3.7 The Member shall immediately advise Northgate if he/she enters in to an arrangement with or for the benefit of his/her creditors;
- 7.3.8 The Member shall immediately advise Northgate if the limited company or limited liability partnership through which he/she trades has a receiver, administrator or administrative receiver appointed or becomes the subject of a resolution, petition or order for winding up (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Agreement). This clause shall not apply where the Member is only an employee of a limited company or limited liability partnership in respect of which the Member is not a director, shadow director, shareholder, or over which the Member has no formal or informal control or influence;
- 7.3.9 The Member shall immediately advise Northgate if he/she is disqualified as acting as a director;
- 7.3.10 The Member shall not enter in to any formal or informal agreement with any other person or persons engaged in activity as EAs, which fixes pricing, creates a cartel, and agrees market sharing. This clause shall not apply where the Member is employed by an organisation which employs a number of employees and which sets a uniform pricing structure for the supply of EPCs.

- 7.3.11 The Member shall not allow any person in his/her employment to carry out the duties of an EA, unless that person has the relevant OS qualifications and is a Member of an accreditation scheme.
- 7.3.12 The Member shall not engage in any business or other activity which creates a conflict of interest between the Member and Northgate and/or the Scheme and shall immediately advise Northgate if such a conflict arises.
- 7.3.13 The Member shall inform the scheme immediately they cease employment or contract with a Sponsor Company
- 7.4 The Member shall, throughout his/her membership of the Scheme and for a period of **6 years** from the termination of the Member's membership, for whatever reason, take out and maintain full and comprehensive insurance policies in respect of professional indemnity, employer's liability (if applicable) and public liability at levels sufficient to cover the Member's liabilities arising from executing his/her duties as a EA. The Member shall immediately notify Northgate of any notification under its insurance policy in respect of a potential claim.
- 7.5 The Member's breach of any one or more of the Member's Obligations within Clause 7 may be considered a disciplinary issue and be dealt with under the Disciplinary Policy.
- 8. Complaints and Disciplinary Procedure**
- 8.1 Northgate shall operate and administer the Complaints Policy and the Customer Complaints Policy.
- 9. Termination of Membership**
- 9.1 Northgate may terminate the Member's membership where the Member (i) has committed an irremediable material breach of this Agreement (ii) has committed a material breach capable of remedy (including non-payment of fees payable under this Agreement), and which the Member fails to remedy within 14 days of notice of the breach and (iii) has otherwise acted in a manner which brings the Scheme and/or Northgate into disrepute.
- 9.2 Northgate may terminate this Agreement and/or the Member's membership for cause as otherwise stated in accordance with the terms set out in the Membership Pack.
- 10. Termination by Member**
- 10.1 Subject to Clause 11 below, the Member may terminate his/her membership at any time by serving written notice on Northgate.
- 11. Termination Obligations**
- 11.1 In the event of termination, the Member shall;
- 11.1.1 Unless otherwise directed by Northgate in writing, use reasonable endeavours to complete all EPCs for which valid instructions have been received, or make suitable arrangements for such EPCs to be completed by another EA to the satisfaction of the instructing party and lodge or procure the proper lodgement of the EPCs with Landmark.
- 11.1.2 Pay all outstanding fees.
- 11.2 Upon termination of the Member's membership, for any reason: -

- 11.2.1 This Agreement shall terminate;
- 11.2.2 The Member shall immediately cease to hold himself out as a member of the Scheme and, unless he/she is a member of another accreditation scheme, cease to hold himself out as, or practise as a EA.
- 11.2.3 Northgate shall, as soon as reasonably practicable update its register and the central register of EAs who are members of the Scheme.
- 11.2.4 Return to Northgate the Membership ID Card and Certificate of Membership.

12. Arbitration

Any dispute arising out of or in connection with these Membership Terms may be resolved by either party (upon giving written notice to the other) applying to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2000 Edition), as may be amended from time to time, which Rules are deemed to be incorporated by reference into these terms. The seat of the arbitration shall be England and Wales. Further details of these rules are available on www.northgate-dea.com. The Arbitrator shall be entitled to make such award at to costs as he/she considers appropriate

13. Quality Checking

- 13.1 The Parties acknowledge that as an accreditation scheme provider, Northgate has certain obligations to monitor the quality of EPCs and the work of members, including the Member. Accordingly:
 - 13.1.1 Northgate shall closely monitor the EPCs submitted by the Member for the first 3 months of membership.
 - 13.1.2 Throughout the Member's membership, Northgate shall carry out periodic sampling of the Member's EPCs and apply a battery of tests to ascertain whether they fall within anticipated norms. Northgate will also carry out checks on the quality of the Member's work, which may require review of site notes and other documentation. The Member shall provide all documentation, information and assistance as Northgate shall require conduct this re-visit
 - 13.1.3 Northgate reserves the right to periodically: -
 - 13.1.3.1 Accompany or nominate a qualified third party to accompany the Member on energy assessment visits to monitor the quality of the Member's work and EPC submissions; and/or
 - 13.1.3.2 Re-visit the properties in respect of which the Member has carried out energy assessments and submitted EPCs. The Member shall provide all documentation, information and assistance as Northgate shall require to conduct this re-visit.

14. Member Status and Authority

- 14.1 Nothing in this Agreement shall render the Member an employee, partner or agent of Northgate and the Member will not hold himself out as such and does not have authority to contract on behalf of, incur liability or bind Northgate in any way.
- 14.2 Nothing in this Agreement shall render Northgate liable for the payment of income tax, national insurance contributions and/or VAT in respect of, or on behalf of the Member.
- 14.3 Nothing in this Agreement shall preclude the Member from joining another accreditation scheme, but the Member shall immediately inform Northgate in writing when application for such other membership is made and the outcome of such application.

15. Liability and Indemnity

- 15.1 The Member shall, on demand, indemnify and hold Northgate harmless against any liability, loss, damage, costs (including legal costs on an indemnity basis) and expenses of whatever nature arising from the Member's activities as a EA and/or from any breach of this Agreement, including but not limited to:

- 15.1.1 any claim made by a third party that Northgate is liable for the acts, omissions, negligence, breach of other tortious duty, breach of contract or breach of statutory provision howsoever arising, of the Member.

- 15.1.2 any act, omission, negligence, tortious duty, breach of contract, breach of primary or secondary statutory provision resulting in a claim by a seller, buyer, estate agent HIP provider or any other legal person arising from the Member's activities as a EA, including but not limited to: -

- 15.1.2.1 the inaccurate or negligent execution of the Member's duties as a EA, including the provision of an inaccurate EPC;

- 15.1.2.2 the death, personal injury or damage to property (including chattels) of a seller, buyer, estate agent HIP provider or any other third party; and

- 15.1.3 any claim for income tax or national insurance contributions (including any related interest or penalty payments) in respect of which Northgate is called upon to account to the relevant taxing authority.

- 15.2 Northgate shall have the following liability:

- 15.2.1 for death or personal injury or fraud (including without limitation fraudulent misrepresentation), to the extent caused by the negligent act or omission, breach or default, of Northgate, or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and

- 15.2.2 for direct loss or damage, other than governed by Clauses 15.2.1 up to an aggregate amount equal to the amount of the Member's net earnings during the 12 month period immediately preceding the event or events giving rise to the claim which the Member earned as a direct result of performing the activities administered under this Scheme to the extent that such loss or damage is caused by the negligent act or omission, breach or default of Northgate;

- 15.3 Subject to Clause 15.2.1, Northgate shall not be liable under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation, or for any other reason excluding fraudulent misrepresentation) for any indirect, consequential loss or damage (including loss or

damage suffered by the Member as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Northgate had been advised of the possibility of the Member incurring the same.

- 15.4 The parties expressly agree that should any limitation of liability clause or provision contained in this Agreement be held to be invalid under any applicable legislation (primary or otherwise) or rule of law by reason of some part of that clause or provision it shall, to that extent, be deemed omitted, but if Northgate thereby becomes liable for loss or damage which would otherwise have been excluded or limited, as the case may be, such liability should be subject to the other applicable limitations and provisions set out herein.

16. Data Protection

- 16.1 The Member consents to Northgate holding and processing “personal data” and “sensitive personal data” (both as defined in the Data Protection Act 1998) relating to the Member, including but not limited to information referred to in clauses 7.3.4 and 7.3.5 and all information required by Northgate for the proper operation of the Scheme and the execution of Northgate’s legal obligations and obligations to third parties.

- 16.2 The Member consents to Northgate recording on the Scheme’s register of Members and publishing to the public:

16.2.1 The Member’s name;

16.2.2 The Member’s business address;

16.2.3 The Member’s membership number;

16.2.4 The Member’s current membership status.

- 16.3 The Member consents to Northgate passing the information referred to in Clause 16.2 to Landmark or any equivalent central register in Scotland for it to store and process the data as part of the central register of all EAs and which will be published to the public.

- 16.4 The Member consents to Northgate passing information, including but not limited to personal data, sensitive personal data and information arising out of the complaints or disciplinary procedure, held by Northgate and relating to the Member, to regulatory authorities, governmental or quasi-governmental organisations, including but not limited to the CLG, DFP, BSD or any other accreditation scheme provider and the Central Register administration company.

- 16.5 The Member consents to Northgate disclosing information arising out of the Complaints or Disciplinary Policy to persons directly involved.

17. Survival of Clauses

- 17.1 Clauses 1, 7.2.4, 7.2.9, 7.4, 8.1, 11, 12, 14, 15, 16, 17 and 18 shall survive termination or expiry of this Agreement.

18. General

- 18.1 The Member shall not assign, novate, dispose of, sub-licence, sub-contract or otherwise transfer this Agreement nor any or all of their rights and obligations hereunder to any third party. Northgate may assign, sub-contract or transfer this Agreement or any or all of its rights and/or obligations under this Agreement.

- 18.2 The waiver by either party of any breach of this Agreement by the other party shall not operate as a waiver of subsequent or other earlier breaches of the same or a different kind. No delay, neglect or forbearance by either party in enforcing any of its rights under this Agreement shall be deemed to be a waiver of such rights.
- 18.3 Neither party shall be liable for delay or failure to perform any of its obligations under this Agreement if such delay or failure results from any circumstance beyond its reasonable control including but not limited to acts of God, government regulations, delay or failure of any supplier, sub-contractor or carrier and each party shall be excused performance of such obligation to the extent that such circumstances prevail.
- 18.4 A person who is not a party to this Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any term of this Agreement provided that a person who is the lawful successor to or permitted assignee of the rights of a party is considered to be a party to this Agreement. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
- 18.5 Any list or examples following the word "including" shall be interpreted without limitation to the generality of the preceding words.
- 18.6 If any provision of this Agreement is invalid or unenforceable at law, then such provision shall be severed and the remainder of this Agreement shall continue in full force and effect.
- 18.7 The headings contained in this Agreement are for convenience only and shall not affect its interpretation or meaning.
- 18.8 The validity, performance and construction of this Agreement shall be governed by English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.