##### TERMS & CONDITIONS OF BUSINESS

(A)       “Recognising Excellence” shall mean Recognising Excellence of Unit 3 Twigworth Court Business Centre, Tewkesbury Road, Twigworth, Gloucester, GL2 9PG

(B)       “The Client” shall mean the other party to this Agreement who acknowledges that it/he/she has had the opportunity of reading this Agreement and has agreed to be bound by its terms by signing the Application Form for a Desktop Audit / Pre Quality Mark / Post Quality Mark Audit.

# RECITAL

(1)       Recognising Excellence is engaged to arrange audits of those organisations wishing to be accredited as meeting the requirements of the Specialist Quality Mark. An audit is available to all Client’s, regardless of the location, size and membership of their group or association

(2)      The Client has requested Recognising Excellence to arrange for an Audit Visit of the Client to be carried out on the

 following terms and conditions:-

**1.         Interpretation**

“ACKNOWLEDGEMENT

 LETTER” means the letter sent by Recognising Excellence to the Client which acknowledges the Clients application and consent to be bound by the Agreement

“AGREEMENT” means the Application Form for Audit, the Terms and Conditions of Business, the Confirmation of Fees Letter

“ASSESSMENT PLAN” means the planned activities and schedule of key personnel to be interviewed during the Audit

“AUDITOR”         means a Specialist Quality Mark Auditor, approved by Recognising Excellence, under the observation at times by the SQM Contract Manager/ SQM Lead Auditor, appointed by Recognising Excellence to carry out the Audit. Recognising Excellence reserves the rights to use sub contracted auditors.

“AUDIT”  means the process of establishing whether the Client satisfies the requirements of the Specialist Quality Mark and shall include the Services as detailed in clause 3 hereof

“CONFIRMATION OF means the letter which is produced to the Client following acceptance of the application form

FEES LETTER”

“CONFLICT OF INTEREST” means any pre existing relationship between the Auditor appointed by Recognising Excellence and the Client.

“CORRECTIVE ACTION means where the Client has come forward for an Audit Visit and has not fully met all the requirements of the Standard

“FORCE MAJEURE” means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock‑out or other industrial action)

“SERVICES”          means the services detailed in clause 3 hereof

“SERVICES FEE” means the fee as set out in the Confirmation of Fees Letter for the Services to be provided under this Agreement

#### “SITE(S)” means the site which the Auditor conducts the Audit as confirmed by the Client

#### “SITE DATE” means the date the Auditor attends the Client premises and obtains evidence from the Client against the Standard

#### “SITE INTERVIEW” means the interview between the Auditor and the Client’ staff which may take place at any Site as agreed between the Auditor and the Client or may be conducted by telephone

“STANDARD” means the Specialist Quality Mark

####  “OUTCOME”        shall have the meaning set out in clause 2.2

**2. Duration**

2.1 This Agreement shall commence at the date the Application Form for Audit Visit has been signed and dated by the Client and shall cease upon either an Outcome being obtained or this Agreement being terminated pursuant to clause 5.

2.2 Audit Durations are as detailed in the Pricing Schedule

2.3       An Outcome shall be either of the following:

2.3.1 The Auditor judges that the Client does not yet meet, or continue to meet the requirements of the Specialist Quality Mark (in accordance with the provisions in clause 3.4.1 hereof) and prepares a report as to the shortfalls in meeting the Specialist Quality Mark;   **or**

2.3.2The Auditor judges that the Client does meet/continue to meet the Specialist Quality Mark and prepares a report confirming the same

2.3 In either case outlined in 2.3 the Auditor will, at the end of the audit process, inform the Client of his/her judgement and provide oral feedback on his/her findings.

**3. Obligations of Recognising Excellence**

3.1      Recognising Excellence will upon receiving the Client’s request for an Audit-

3.1.1 Take initial action to organise the Audit which shall include (but not be limited to) appointing an Auditor from Recognising Excellence’s register of approved Specialist Quality Mark auditors. This action will include sharing the information detailed within your application with our appointed Auditor.

3.1.2 Assist in arranging suitable dates for the commencement of on-site visits

3.1.3 Provide support to both the Client and the Auditor throughout the Audit and in particular respond in such a way as Recognising Excellence may feel appropriate to any requests arising out of the “Assessment Plan” agreed with the Auditor.

3.2 If at any time there is a dispute that arises between the Client and the Auditor then Recognising Excellence will endeavour to resolve that dispute

3.3   Provide quality assurance measures in respect of the audit process and to ensure that the final report meets the required standard as determined by Recognising Excellence.

3.4     Report to the Client where the Auditor judges that the Organisation does not meet the Specialist Quality Mark.

3.4.1 If the Auditor judges that the Client does not meet the Specialist Quality Mark, Recognising Excellence will engage with the client to arrange a re-audit for the required areas. The re-audit will be chargeable at the prevailing rate.

3.5     In the event of any delay occurring in the on-site audit Recognising Excellence will consult the Client and where that delay appears to be unreasonable and in any event, exceeds 72 hours in duration Recognising Excellence will use its reasonable endeavours to appoint a new Auditor to complete the Audit.

3.6 Recognising Excellence agrees to treat as secret and confidential and not at any time (except as is expressly authorised by the terms and conditions of this Agreement) to disclose any information relating to the Client that has been passed to Recognising Excellence and is expressed to be confidential.

**4.     Client’s Obligations**

4.1     To assist the Audit process in whatever way reasonably required by Recognising Excellence to ensure that Audit can take place and in particular (but without limitation to the foregoing):

- to ensure that Recognising Excellence is fully informed of the Client’s requirements for the Audit

- to notify Recognising Excellence of any known conflict of interest with your appointed Auditor. A Conflict of interest is defined as any pre existing relationship whether in the form of previous consultancy or Audit activity carried out by the Auditor appointed by Recognising Excellence.

- to provide the name and address and daytime telephone number of the person who is responsible for the Specialist Quality Mark audit arrangements

- to allow the Auditor ready access during normal working hours to all personnel of the Client at the Site(s)

- to allow the Auditor full access to the Client’s written evidence and other documentation both prior to and during the on Site in order to support the Client’s application for accreditation against the Specialist Quality Mark

- to ensure that identified key personnel are available to speak with the Auditor during the On Site Audit

- to act upon any Corrective Action arising from the Audit within a period of 28 days of the Auditors visit

- to assist in any quality surveys undertaken by Recognising Excellence to establish the level of service given by Recognising Excellence and by the Auditor

4.2     The Client shall advise the Auditor of the rules and regulations which are then in force for the conduct of visitors at the Site(s)

4.3 The Client shall pay the fees of Recognising Excellence in respect of the Services no later than 30 days from date of invoice raised.  The invoice will be raised in advance of the Audit activity and payment must be received prior to the Auditor starting any audit related activity. All quoted prices will be subject to VAT.

### 4.4 The Client shall not solicit or entice away or attempt to solicit or entice away from Recognising Excellence a person who is currently employed by Recognising Excellence or employ or otherwise engage a person who is, or during the past 12 months was, employed or otherwise engaged by Recognising Excellence.

4.5 Pursuant to clause 5.3 and 5.4 below, the Client may be required to pay, at Recognising Excellence discretion, a terminationfeein the event that the Client terminates this Agreement after the expiry of 10 business days as set out in clause 5.2 .

**5. Termination**

5.1    Subject to payment of Recognising Excellence of the audit charges this Agreement shall terminate automatically upon delivery of an Outcome.

5.2     The Client may terminate this Agreement without liability to Recognising Excellence on giving written notice to Recognising Excellence within 10 business days of the date of the Confirmation of Fees Letter.

5.3 If the Client terminates this Agreement in writing after the expiry of 10 business days as set out in clause 5.2 above, but with more than 20 business days of the agreed Site Date, then the Client shall pay Recognising Excellence on demand, 60% of the Services Fee plus VAT as set out in the Confirmation of Fees Letter by way of liquidated damages. Both the Client and Recognising Excellence acknowledge that this represents a genuine pre-estimate of the loss that Recognising Excellence and the Auditor would suffer as a result.

5.4 If the Client terminates this Agreement in writing within 10 business days’ or less of the agreed Site Date then the Client shall pay Recognising Excellence on demand, the full Services Fee plus VAT as set out in the Confirmation of Fees Letter.

5.5 Recognising Excellence shall not be required to fulfil its duties and obligations under this Agreement if Recognising Excellence is prevented from fulfilling its duties and obligations by any acts or omissions of the Client.

5.6      Recognising Excellence shall have the right to terminate this Agreement if, having raised an interim invoice for its services, the invoice remains unpaid for 30 days thereafter.

5.7    Without prejudice to any other rights of Recognising Excellence if the Client fails to pay the invoice price by the due date the Client shall pay interest on any overdue amount from the date on which payment was due to that on  which it is made (whether before or after judgement) on a daily basis at a rate of 4 per cent per annum  over the base rate from time to time quoted by The National Westminster Bank Limited and reimburse to Recognising Excellence all costs and expenses (including legal costs) incurred in the  collection of any overdue amount

5.8     The exercise of Recognising Excellence of any right to terminate this Agreement shall not prejudice its right to receive payment for any work carried out by Recognising Excellence prior to that date and such termination.

**6. Liability**

6.1 This clause ***6*** sets out the entire financial liability ***of Recognising Excellence*** (including any liability for the acts or omissions of its employees, agents, ***auditors*** and subcontractors) to the ***Client*** in respect of:

**-** any breach of this Agreement;

**-** any use made by the Client of the Services; and

**-** any representation, statement or tortuous act or omission (including negligence) arising under or in connection with this Agreement.

6.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

## 6.3 The Client acknowledges and accepts that where the Services are required to be changed to comply with either health and safety regulations or to satisfy any legal requirements, Recognising Excellence shall not be liable for breach of this Agreement.

6.4 Where the Auditor is an independent contractor, Recognising Excellence shall not be liable for any act or omission of the Auditor save where such liability arises directly as a result of Recognising Excellence’s own negligence.

## 6.5 Nothing in this Agreement limits or excludes the liability of Recognising Excellence:

#  -for death or personal injury resulting from negligence; or

# -for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Recognising Excellence.

## 6.6 Subject to clause 6.1 and clause 6.2:

# 6.6.1 Recognising Excellence shall not be liable for:

#### - loss of profits;

#### - loss of business;

#### - depletion of goodwill and/or similar losses;

#### - loss of contract;

#### - loss of corruption of data or information; or

#### - any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;

### 6.6.2 Recognising Excellence’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the Services Fee.

## 6.7 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

## 6.8 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

**7. Governing Law**

7.1This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

## 7.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

**8. Entire Agreement**

8.1  This Agreement embodies and sets forth the entire Agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this Agreement.

**9. Notice**

* + 1. Any notice to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by first class post, registered post or facsimile or other electronic media to a party at the address or relevant telecommunication number for such party or such other address as the party may from time to time designate by written notice to the other.
		2. Any notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch of the notice of other document by post or, where the notice or other document is sent by hand or is given by facsimile or other electronic media simultaneously with the delivery or transmission.

**10. Severance**

10.1 If any provision of this ***Agreement*** (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the ***Agreement***, and the validity and enforceability of the other provisions of the ***Agreement*** shall not be affected.

## 10.2 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**11. Assignment**

11.1 The Client shall not, without the prior written consent of Recognising Excellence, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement

**12. Data Protection**

Recognising Excellence is complying with current data protection legislation, the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018 or any codes of practices issued by the Information Commissioner from time to time.

12.1 For the purposes of this agreement to carry audits the Legal Aid Agency is the ‘Data Controller’, Recognising Excellence the ‘Data Processor’ and the Auditor is the Sub Processor ontracted to RE.

12.2 The legal basis for Recognising Excellence for processing data is that of “contractual obligation” as set out in Article 6 (1) (b) of the GDPR.

12.3 The Client will be made fully aware of its rights under GDPR by reference to the Legal Aid Agency’s Privacy Policy <https://www.gov.uk/government/organisations/legal-aid-agency/about/personal-information-charter> and the Recognising Excellence’s Privacy Policy [http://www.recognisingexcellence.co.uk](http://www.recognisingexcellence.co.uk/recognising-privacy-policy/). Most commonly these are:

* All information gathered during the Audit shall be held as absolutely confidential however obtained or learned from the Client in pursuant to or in preparation of, or obtained or learned during the term of this agreement, whether relating to the Practice or to its business or to any of its officers, servants, agents, clients, suppliers, or subsidiaries or to the business of any of the foregoing persons or otherwise, and whether or not expressly designated confidential;
* Recognising Excellence shall not without the Client’s prior written consent use or permit or cause the same to be used save for the direct purpose of this agreement;
* Recognising Excellence shall not without the Client’s prior written consent disclose or permit or cause the same to be disclosed to any person other than to those of its full-time employees and/or its Auditors and Verifiers who need to be informed thereof to enable Recognising Excellence to perform its obligations.
* No case files or employee records will leave the Client’s premises and Recognising Excellence’s Auditor will destroy all notes/records completion of the Audit process;
* Recognising Excellence on behalf of the Legal Aid Agency will securely retain any SQM related audit information for 6 years from the date of creation, for the period it holds the SQM license.