

# TERMS AND CONDITIONS FOR THE PROVISION OF SUPPORT SERVICES TO TECHNICIAN SERVICE PARTNERS

1. **DEFINITIONS AND INTERPRETATION**
  - 1.1 “Confidential Information” – all or any information to which confidentiality is capable of attaching and including without limitation information relating to the business or affairs of RM and the Partner whether or not such information is reduced to a tangible form or is marked in writing or designated orally as "confidential".
  - 1.2 “Partner” – any purchaser of the Services, including a Tier 2 Partner. Where the Partner comprises two or more persons their liability and obligations to RM shall be joint and several.
  - 1.3 “RM?” – Research Machines plc of New Mill House, 183 Milton Park, Abingdon, Oxon, OX14 4SE.
  - 1.4 “Schools” - schools within the United Kingdom that have a valid support services contract with RM.
  - 1.5 “Services” – the services provided by RM to the Partner as set out in Condition 4.
  - 1.6 “Tier 2 Partner” – any purchaser of the Services who RM has notified is classified by RM as a ‘Tier 2 Partner’.
  - 1.7 “these Conditions” - these terms and conditions for the pilot program, including any documents referred to herein, as amended by RM from time to time under Condition 10.7.
  - 1.8 The levels of support are defined as follows: “First Line” – problem is resolved on first call to support; Second Line – problem requires investigation before solution provided; and Third Line – problem requires escalation to RM.
2. **DURATION**

The term shall commence on the date of commencement of the Services and, unless terminated early under Condition 9, shall continue for a period of 12 months (“**Term**”). RM may at its sole option offer to extend the Term for further 12 month periods at a time on the same terms, by giving at least two (2) months written notice to the Partner prior to the end of the relevant 12 month period.
3. **SCOPE OF SERVICE**

RM agrees to provide and the Partner agrees to take and pay for, the Services. RM shall only be obliged to provide the Services to the Partner in respect of any School, when both the School and the Partner has an appropriate support contract with RM.
4. **SERVICES**
  - 4.1 **Support provided by RM**
    - 4.1.1 **Third Line Support:** Subject to the Partner complying with its obligations under these Conditions and providing First and Second Line support to the Schools, RM shall provide Third Line support to the Partner in accordance with the product category in the RM Supported Product List set out on RM Support Online: <http://www.rm.com/support/spl/>.
    - 4.1.2 **Telephone Hotline:** RM will provide Third Line technical support via telephone to the Partner between 08.00 and 18.00 hours Monday to Friday, excluding Public Holidays and the Christmas Break (midday Christmas Eve until New Years Day inclusive). Outside of these hours the Partner can log support calls using Support Online. All calls to the RM Hotline will be answered initially by the RM First Response Group (“**FRG**”) and RM shall use reasonable endeavours to answer all such calls within two (2) minutes. FRG will establish the caller’s identity and verify their contractual entitlement. FRG will then transfer the call to the most appropriate available engineer.
    - 4.1.3 **RM Support Online:** The Partner may use this interactive service to log support calls, update call notes or to check the progress of a call. The Partner may also use Support Online to log, review and edit calls on behalf of Schools, subject to Schools’ consenting. All support requests raised by the Partner via RM Support Online will receive an immediate notification of receipt. Following this, the Partner’s request will be assigned to an appropriate engineer who will respond to the request within four (4) working hours.
    - 4.1.4 **Knowledge Library:** The Partner may access the RM Knowledge Library which provides an online resource of valuable support information such as frequently asked questions, latest issues and driver downloads.
    - 4.1.5 **Technical Support Email Bulletins:** The Partner may subscribe to Email Bulletins that provide information on latest issues, security updates and virus alerts. RM recommends subscription, as these emails will be the primary means of distributing new and important information.
    - 4.1.6 **RM Communities:** The Partner may access the online discussion forum hosted by RM, whereby the Partner can exchange and obtain ideas and suggestions with other network managers and Partners.
    - 4.1.7 **Network Support Bulletin:** The Partner may access the Network Support Bulletin at [www.rm.com/nsb](http://www.rm.com/nsb), which includes valuable support articles on RM products and the use of ICT in education.
  - 4.1.8 **Technical Seminars:** The Partner is entitled to two (2) places free of charge at each round of the RM Technical Seminars, which cover topics from RM Network management to emerging technologies, and provide an opportunity to meet RM staff. The Partner may purchase additional seminar places for its engineers or those Schools it feels would benefit from attending, at the price applicable at the date of RM’s acceptance of the order.
  - 4.1.9 **Service Manager:** A nominated RM Service Manager will be the Partner’s point of contact for call escalation and shall provide continuity for the Partner’s dealings with RM support. The Service Manager will only be able to respond to a query once a support call has been logged. At no time shall the Partner divulge the Service Manager’s contact details to any School.
  - 4.1.10 **Training Course.**
    - (a) Upon purchasing the Services under these Conditions for the first time, and not upon any renewal of the Term, the Partner is entitled to one (1) place free of charge on the RM “Managing Community Connect for ICT Technicians” training course. If the Partner has already attended “Managing Community Connect for ICT Technicians”, then one (1) of the following courses may be chosen instead: “Applications Integration”, “Masterclass Station and Resource Management” or “Becta FITS workshop”. The training course must be taken within nine (9) months of purchasing the Services.
    - (b) Clause 4.1.10(a) shall apply to any Tier 2 Partner save that the Tier 2 Partner shall be entitled to one (1) additional training course as mentioned in clauses 4.1.10(a).
- 4.2 **Exclusions to RM’s support service**
- 4.2.1 **Reliance on Partner:** Any failure by the Partner to perform its duties and obligations under these Conditions shall relieve RM of its obligations in so far as RM’s obligations are materially and adversely affected thereby.
- 4.2.2 **Fix Times:** RM makes no warranties, representations or guarantees regarding RM’s fix time for any problem raised in a support request by a Partner due to the complex nature of ICT related support calls and because RM may need to escalate the call to a third party outside of RM’s control. The Partner shall therefore not make any representations or

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- warranties to Schools regarding the time RM will take to fix the problem the subject of a support request.
- 4.2.3 **On-Site Assistance:** No on-site support at any School's premises is included under these Conditions. RM is only obliged to provide telephone support. However, the Partner may purchase on-site days, at RM's then prevailing rate, for RM to support the Partner on a particular task or for RM to provide support services directly to a School at the School's premises, provided that RM is given at least 20 working days' notice and the Partner facilitates the visit by agreeing a convenient time and date with the School. Rather than purchase on-site support on behalf of a School, the Partner may request RM to deal directly with the School and for the School to purchase on-site support for RM to attend the School's premises for as many days as required and agreed.
- 4.2.4 **RM not able to provide support:** RM will not be held responsible for any School network problem arising as follows and may need to charge for any support so provided:
- in the event of a virus attack on the Schools' network;
  - a hardware failure has caused the incident, including the cabling infrastructure;
  - the failure of any third party, over whom RM has no direct control, has caused the incident to occur;
  - the incident has been caused by malicious negligent damage or mis-use by a party outside of RM's direct control;
  - the incident has been left open for monitoring with the agreement of the School and Partner;
  - theft of any part of the network; or
  - RM was unable to visit the site to resolve an incident due to factors beyond RM's reasonable control.
5. **PRICE AND PAYMENT**
- 5.1 Unless a written quotation has been given (whereupon the price quoted will be fixed for a period of thirty days or such other period as is specified therein) the prices for the Services are subject to alteration without notice and the price charged to the Partner will be that applicable at the date of RM's acceptance of the order or (at RM's option) the commencement date of the Service if this is more than six months later. All prices are exclusive of Value Added Tax (and any similar tax).
- 5.2 Unless otherwise notified to the Partner in writing by RM, the Partner shall pay all invoices within thirty (30) days of the date thereof (time being of the essence). Payment for Services shall be made before the commencement of Services. RM reserves the right to charge interest at a rate of 3% per annum above Barclays Bank base rate ruling from time to time on any payment or any part payment overdue calculated from the date due and to recover its expenses including legal fees and costs of collection and to suspend delivery, performance of any warranty, or license, or (at RM's option) forthwith to determine the same. All payments will be made without set off or counterclaim or any other withholding whatsoever.
- 5.3 RM reserves the right to charge the Partner for site visits undertaken by RM to the Partner's Schools where problems have been caused by the Partner's failure to install critical updates on behalf of the School or advice provided to the Partner by RM not being implemented or outdated virus definitions.
6. **PARTNER'S RESPONSIBILITIES**
- 6.1 **Support to Schools**
- 6.1.1 Further to Condition 3, the Partner shall provide First and Second Line support to Schools that have a valid support contract with RM, and that the Partner has a support contract with also, and the Partner shall provide RM with a list of the Schools that it will be supporting and shall keep this list updated throughout the Term. The Partner may record information relating to its expertise and Schools' infrastructure on the RM website and RM recommends the Partner does so, to enable RM to provide a more effective Service to the Partner.
- 6.1.2 Further to Condition 3, it is the Partner's responsibility to ensure that the Schools the Partner supports have the appropriate RM Support Contracts.
- 6.1.3 It is the Partner's responsibility to agree with the Schools the nature and price of the service the Partner provides to the Schools. RM shall not be liable for any disputes arising between the School and the Partner regarding the Partner's service provision.
- 6.1.4 Unless otherwise agreed with RM and subject to Condition 4.2.3, the Partner shall retain ownership of all calls that it logs with RM and shall be responsible for implementing solutions at the Schools' sites it supports.
- 6.1.5 The Partner shall:
- ensure that the Schools it supports have downloaded and installed any appropriate software updates from RM. Partners will be notified by email from time to time of any critical updates which are required to address any security issues;
  - ensure that the Schools it supports have current anti-virus software;
  - if the Partner is managing hardware calls on behalf of its Schools, contact RM to log any hardware call, which will only be logged when RM has established that the Partner has completed all relevant diagnostic procedures. On occasions, the relevant hardware manufacturer may need to be contacted directly to arrange a warranty replacement or repair, and the Partner shall manage this process on behalf of its Schools;
  - not publish or use promotional materials prepared by or for the Partner that mentions RM or the support services without RM's prior written approval;
  - be responsible for obtaining all licences, permits and approvals which are necessary or advisable for the performance of its duties under these Conditions;
  - represent RM accurately and fairly and at all times avoid misleading or unethical business practices; and
  - not distribute software updates to schools that do not have an appropriate maintenance or support contract with RM.
- 6.2 **Named Points of Contact**
- The Partner shall provide and keep RM informed of its representatives' contact details during the Term.
- 6.3 **Contacting RM Support**
- 6.3.1 Prior to contacting RM for support under these Conditions, the Partner must have backed up the School's data where possible and used all reasonable endeavours to diagnose the problem, including without limitation by checking cables, software help screens and re-booting.
- 6.3.2 When contacting the RM Hotline, the Partner shall provide:
- its RM ID number and the School's RM ID number;
  - a full description of the problem, including all error messages;

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- (c) the site history prior to the problem appearing, for example has any software or updates been installed;
- (d) all actions which have been taken in an attempt to resolve the problem; and
- (e) serial numbers if applicable.

If the Partner does not provide all of this information, the call will be referred back to the Partner with details regarding what information is still required to progress the call.

6.3.3 If RM is unable to resolve the problem during the initial call, RM will log the call and allocate a call number. The Partner should make a note of this number, as it will be needed when referring to the call with the helpdesk or via Support Online.

6.3.4 During the resolution process the Partner may be required to implement a resolution. The Partner shall update RM of the progress of this resolution within five (5) days, or such later date as agreed between RM the parties, and if RM does not receive an update within three (3) weeks, the support request will be closed by RM, unless agreed otherwise.

## 6.4 Support Call Escalation

If the Partner is dissatisfied with RM's response to a support call, the Partner should escalate the call to the Partner's nominated Service Manager. The Service Manager will investigate the call to determine if further escalation is required, including escalation to the RM development team or an external advisor.

## 7. RM APPROVAL AND REVIEW

### 7.1 RM Approval

7.1.1 To be approved by RM as an RM Affiliated Partner, the Partner shall achieve certification by attending the required training course as notified to the Partner from time to time and passing the relevant certification test(s). The Partner must achieve affiliated status within twelve (12) months of the date it first purchased the Services.

7.1.2 In consideration of being approved as an RM Affiliated Partner and in order to maintain this affiliated status throughout the Term, the Partner shall:

- (a) attend RM led training courses as and when they are available and for the price as notified to the Partner by RM in writing from time to time;
- (b) ensure that all technicians employed by the Partner and who are supporting RM Community Connect networks

have achieved certification as required under Condition 7.1.1;

- (c) achieve further certifications as required by RM;
- (d) comply with its obligations set out in these Conditions;
- (e) satisfy RM's quality, technical, financial and credit criteria at the time of application and thereafter; and
- (f) support fewer than 200 schools.

7.1.3 The grant of approval under these Conditions does not in anyway accredit or underwrite the support services that the Partner shall be obliged to provide to the Schools. In no event shall the Partner represent itself as an agent of RM for any purpose nor pledge RM's credit or give any condition or warranty or make any representation on RM's behalf or commit RM to any contracts, nor without RM's prior written consent, make any promises or guarantees with reference to the support services RM shall provide to the Schools or otherwise incur any liability on behalf of RM.

## 7.2 Service Review

7.2.1 An RM Service Manager in consultation with the Partner may review the provision of the Service if any of the following non-exhaustive list of events occur, and, where required, may recommend additional training for the Partner or termination of the Service under Condition 9:

- (a) the Partner has not been approved as an RM Affiliated Partner or has not maintained its affiliated status;
- (b) Schools, supported by the Partner, do not have an appropriate RM Network support contract;
- (c) persistent failure to follow the procedures outlined in these Conditions;
- (d) the Partner's support call profile is higher than the average profile; or
- (e) a written complaint has been lodged with RM regarding the services provided by a Partner to a School.

7.2.2 RM will also periodically monitor the customer satisfaction of Schools supported by Partners. Any customer satisfaction issues will be considered as part of the review process under Condition 7.2.1.

## 8. INDEMNITY AND LIABILITY

8.1 RM shall be liable for death or personal injury arising from the performance of the Service to the extent that it results from the negligence of RM or its employees. RM shall also be liable to the Partner for direct loss of or damage to tangible property caused solely by the negligence of RM or its employees subject always to a maximum aggregate liability of the annual value of the charges payable by the Partner for the Services it receives from RM under these Conditions.

8.2 The Partner agrees that RM will not be liable for any loss caused by the Partner's failure to perform its obligations in relation to these Conditions and RM shall not in any event be liable for any indirect, special or consequential loss, howsoever arising (including but not limited to loss of anticipated profits or of data) in connection with or arising out of the performance of the Services.

8.3 Except in respect of RM's liability under Condition 8.1, no action regardless of form arising out of the transactions in relation to these Conditions may be brought by either party more than 2 years after the cause of action has accrued.

8.4 The Partner shall indemnify and hold harmless RM from and against any and all judgements, settlements, penalties, costs and expenses (including reasonable legal fees) paid or incurred in connection with any breach of the Partner's obligations, warranties and/or representations made or given under these Conditions.

## 9. TERMINATION

9.1 Either party may terminate this agreement upon ninety (90) days written notice to the other.

9.2 The Partner may terminate this agreement by written notice to RM within 30 days of RM accepting the Partner's order for the Service and the Partner shall be entitled to a full refund of any annual service charge paid in respect of the order.

9.3 RM shall have the right to terminate this agreement forthwith by giving written notice to the Partner if:

9.3.1 the Partner fails to pay any sums to RM on the due date of payment;

9.3.2 the Partner commits any other breach of these Conditions provided that if the breach is one which the Partner can effectively remedy then the said notice of termination shall not be effective to terminate this agreement unless the Partner fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of;

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- 9.3.3 if the Partner ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due; or
- 9.3.4 if the Partner fails to take reasonable steps to ensure the Schools it supports have appropriate support contracts (as per Condition 6.1.2).
- 9.4 Upon termination or expiry of these Conditions for any reason, the Partner shall immediately cease to represent itself as an RM Affiliated Partner (if applicable) and RM will be entitled to terminate access to the Service forthwith.
- 9.5 Where the Service is cancelled other than for material breach of these Conditions by RM or under Condition 9.2, no refunds will be given to the Partner and the Partner shall remain liable for the fees of RM for the remainder of the relevant Term.
- 10.1 GENERAL**
- 10.1 Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) provided that such a failure is due to causes beyond its reasonable control.
- 10.2 Failure by RM to exercise or delay exercising any of these Conditions is not a waiver of RM's rights hereunder nor prejudice RM's rights to take subsequent action.
- 10.3 These Conditions are personal to the Partner who shall not assign the same without the prior written consent of RM. Any such attempt to assign shall be void.
- 10.4 These Conditions are governed and shall be construed pursuant to the laws of England and Wales.
- 10.5 Any notice required to be given under these Conditions shall be in writing, which includes receipted electronic mail, and shall be sent to the respective registered addresses of the Partner and RM or as set out in the purchase order.
- 10.6 Save as required by law or as otherwise expressly stated in these Conditions, neither party shall disclose the Confidential Information of the other party to any third party without the prior written consent of the disclosing party.
- 10.7 These Conditions contain the entire understanding between the parties. These Conditions are subject to alteration by RM and such changes take effect upon written notification to the Partner.