

RM Support Services Terms and Conditions for the Kaleidos Learning Platform

1 Definitions

The following conditions (“**the Conditions**”) apply to the support services in relation to the Portal⁺, Data Exchange, VLE and Assessment modules of the Kaleidos Learning Platform (“**the Support Services**”), which RM agrees to provide and you (“**the Contract Holder**”) agree to take as part of the Kaleidos Learning Platform service (“**the Platform**”). You are advised that this document only applies to the provision of the Support Services provided as part of the Platform.

2 Responsibilities of the Contract Holder

The provision of the Support Services by RM is subject to the Contract Holder performing all of its responsibilities set out in these Conditions. For the avoidance of doubt, RM may without notice suspend or terminate the Support Services in the event that:

- (a) any of the Contract Holder’s responsibilities as set out in these Conditions are not performed; or
- (b) any Virus is transmitted onto any of RM’s systems. A “Virus” shall include but not be limited to any virus, worm, Trojan horse or any other contaminant that may be used to access and/or modify delete or damage any data files or other computer programmes.

2.1 Anti Virus Protection

The Contract Holder should ensure that their network is protected from the threat of viruses. As a minimum the Contract Holder must ensure that RM VP4 virus protection software or industry equivalent is installed upon the Contract Holder’s network.

2.2 Software Maintenance

The Contract Holder must ensure that they comply with recommendations regarding Platform software updates contained in the RM Kaleidos Learning Platform Support Portal. Support for older versions of Platform software can be withdrawn if the Contract

Holder is provided with or offered a newer version of the applicable software.

2.3 Acceptable Use Policies

The Contract Holder must enforce the Acceptable Use Policy for the Kaleidos Learning Platform.

2.4 Internet Access

The Contract Holder should ensure that they have sufficient bandwidth in place considering their other Internet usage. RM cannot accept any liability for the Contract Holder’s Internet costs, which are entirely the responsibility of the Contract Holder. Any increase in internet bandwidth required for the purposes of the Platform shall be at the sole cost of the Contract Holder.

2.5 Server Maintenance

The Contract Holder must maintain securely, good quality current backup copies of all Platform software and data relating to the provision of the Support Services which are stored on the Contract Holder’s systems.

2.6 Network Access

The Contract Holder must permit RM (and RM authorised third party) personnel connected with the provision of the Support Services access to the Contract Holder’s premises to work on the Contract Holder’s network where reasonably required.

2.7 Remote Diagnostic Service

Where the remote diagnostic service is to be provided it is the responsibility of the Contract Holder to ensure the provision of an installed data link through which RM can access the Contract Holder’s network using our chosen remote access software and technology. The Contract Holder must also provide access to those areas of the network to RM to enable RM to carry out the remote diagnostic service.

2.8 Appointed ICT Support Staff

The Contract Holder must nominate a Portal Administrator and a maximum of two additional contacts who will act as the liaison between the Contract Holder’s establishment and RM Support Services. If there are any changes to nominated personnel the Contract Holder must inform RM immediately.

2.9 Network Management Training

- (a) The Contract Holder must attend appropriate Platform training at the sole cost of the Contract Holder.
- (b) When the Contract Holder attends Platform training they will be provided with a password for verification purposes on Support Service telephone calls. The Contract Holder agrees that a condition of receiving the Support Services is that they can provide the password to the RM representative on the telephone.

2.10 Functionality Change

RM is not responsible for the results of a school adding functionality to the Platform that has not been provided by RM.

3 Service Limitations

The Support Services does not include:

- (a) Support Services required as a result of accident, neglect, alterations, improper use or misuse of the Platform or part thereof.
- (b) Support Services necessitated by repairs to the Contract Holder’s premises, hardware or Platform software attempted by non-RM personnel.
- (c) Assistance with writing or rewriting any software.

(d) Advice given in connection with the removal or treatment of any Virus.

(e) Any other service provided on the Contract Holder's premises.

Notwithstanding the above exclusions from the Support Services, the above services may be available to a Contract Holder from RM on request at additional cost and under a separate agreement.

4 Provision of software for the remote diagnostic service

4.1 No software licence of any sort is granted to the Contract Holder on software provided as part of the remote diagnostic service to the Contract Holder or in respect of any other software which may be provided as part of the Support Services.

4.2 RM may at its discretion at any time remove any remote diagnostic software or other software referred to in sub clause 4.1 above from the Contract Holder's network. This provision shall override any conflicting provision in any software licence agreement provided to the Contract Holder in connection with the Support Services.

5 Term

The term for the Support Services shall not commence until delivery of the Support Services by RM has commenced and shall end on the termination or expiry of the Contract Holder's agreement for the provision of the Platform in accordance with the RM Kaleidos Learning Platform Terms and Conditions of Use.

6 Period of services availability

6.1 The Support Services will be carried out by RM on a reasonable endeavours basis during the hours 8am to 6pm Monday to Friday, excluding public, bank holidays and RMs Christmas shut down period, all such hours of Support Services availability being subject to minor change from time to time. If

RM agrees to carry out the Support Services outside these hours by agreement with the Contract Holder it will be at additional cost to the Contract Holder.

6.2 The Contract Holder undertakes to ensure that a member of the Contract Holder's trained operations staff will be in attendance where the Support Services are being carried out at the Contract Holder's site.

7 Passing of risk

Risk of loss and damage shall pass from RM to the Contract Holder upon delivery of any products (including loan items) to the Contract Holder or its agent.

8 Confidential information

The Contract Holder agrees (unless agreed otherwise in writing by RM) to maintain in confidence and not disclose, reproduce or copy any materials, documentation, specification or software in any form whatsoever provided to the Contract Holder hereunder. The Contract Holder shall take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations ensue beyond any termination of employment with the Contract Holder.

9 Data Protection

The information that the Contract Holder provides to RM will be used by RM for the effective administration of its Support Services and to communicate with the Contract Holder generally. The Contract Holder's details will only be disclosed outside of RM to RM partners who help in the delivery of those Support Services.

10 Warranty and RM's liability

10.1 RM warrants to the Contract Holder that it will use all reasonable skill and care in carrying out the Support Services. There are no warranties, conditions, guarantees or representations whether express implied by statute or otherwise, oral or in writing except as provided herein.

10.2 Notwithstanding 10.1 above all rights which the Contract Holder may have under the Consumer Protection Act 1987 and the Unfair Contract Terms Act 1977 are in addition to those set out in these Conditions.

10.3 In the event of a breach of the warranty in Clause 10.1 above, RM's sole liability shall be to re-perform at its expense any of the Support Services which do not conform to the said warranty.

10.4 If RM fails without cause to perform the Support Services in accordance with its obligations hereunder the Contract Holder may recover an amount to compensate for any direct physical loss which is suffered as a result of RM's failure, subject always to a maximum total aggregate liability of £50,000.

10.5 RM shall be liable without limit for death or personal injury arising from its performance of the Support Services to the extent that it results from the negligence of RM or its employees. RM shall also be liable for any other direct loss of or damage to tangible property caused solely by the negligence of RM or its employees, subject always to its maximum total aggregate liability of one million pounds (£1,000,000)

10.6 The Contract Holder agrees that RM will not be liable for any loss caused by the Contract Holder's failure to perform its obligations as set out or referred to in these Conditions or for any act of the contract Holder which is in contravention of these Conditions. For the purposes of this sub-clause the acts of British Telecom or any other third party (unless specifically authorised by RM to carry out the Support Services on RM's behalf) shall be deemed to be the acts of the Contract Holder.

10.7 RM shall not in any event be liable for any indirect, special or consequential loss whether statutory or otherwise, howsoever arising (including but not limited to loss of anticipated profits or of data)

in connection with or arising out of these conditions even if RM shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided for in these conditions.

10.8 Except in respect of the liability of RM for death or personal injury resulting from the negligence of RM or its employees or in respect of a claim for non payment of monies due under this agreement no action regardless of form arising out of the transactions in relation to this agreement may be brought by either party more than 2 years after the cause of action has accrued.

10.9 In the event that access for the provision of the remote diagnostic service is denied to RM, RM shall not be under any obligation to deliver support via alternative means nor shall the Contract Holder be entitled to any refund in such circumstances.

11 General Advice

The Contract Holder accepts that when providing any oral advice or suggestions during the Service, RM is relying upon information given to it by the Contract Holder about the Contract Holder's network, its configuration and usage, and any future improvement or strategic direction associated therewith. Whilst it is given in good faith it is for the Contract Holder to verify whether any such advice or suggestions are suitable for its purposes and RM shall not be liable in contract, tort or otherwise for any direct, indirect or consequential loss or damage arising out of or in connection with any such advice or suggestions. Any oral suggestions or advice tendered by RM must be confirmed in writing before RM will accept any liability therefore, which shall, in any event be limited to the sum of £50,000 in the total aggregate. In no event will RM be liable for any indirect or consequential loss or damage arising out of or in connection with any such written confirmation.

12 Recovery of files

Recovery of files and other data structures deleted by the Contract Holder will be provided if technically possible at the cost of the Contract Holder.

13 Termination

13.1 RM shall have the right, without prejudice to any other remedies it may have at any time by giving notice in writing to the Contract Holder to terminate forthwith this agreement, in any of the following events:

- (a) If the Contract Holder fails to pay any sums to RM on the due date of payment; or
- (b) If the Contract Holder commits any other breach of any of these conditions provided that if the breach in question is one which the Contract Holder can effectively remedy then the said notice of termination shall not be effective to terminate this agreement unless the Contract Holder fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of; or
- (c) If the Contract Holder ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into 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 actions in consequence of debt or becomes unable to pay its debts as they fall due.

13.2 On expiry or termination of this agreement, the Contract Holder grants to RM the irrevocable right to enter Contract Holder's premises during the hours 9.00am to 5.00pm (Monday to Friday excluding national bank holidays) to remove any equipment (including software) provided for the purpose of this agreement.

14 Miscellaneous

14.1 RM shall be fully entitled to use in any way it deems fit any skills, techniques, concepts or know-how acquired, developed or used in course of performing the Support Services.

14.2 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.

14.3 Failure by RM to exercise or delay exercising any of these Conditions shall not constitute or be deemed to be a waiver of RM's rights hereunder nor prejudice RM's rights to take subsequent action.

14.4 The headings in these conditions are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of these Conditions.

14.5 The invalidity or unenforceability for any reason of any part of these Conditions shall not prejudice the continuation in force of the remainder thereof.

14.6 Neither party shall assign this agreement without the prior written consent of the other.

14.7 These Conditions shall be deemed to have been made in, and shall be construed pursuant to, the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

14.8 Where the Contract Holder comprises two or more persons their liability and obligations to RM shall be joint and several.

14.9 The Contract Holder acknowledges that he/she has read these Conditions and understands and agrees to be bound by its terms, conditions and

charges. The Contract Holder further agrees that these Conditions and the documents specifically incorporated herein are the complete and exclusive statement of the mutual understanding of the parties which supersedes and cancels all previous oral and written agreements and communications relating to the subject matter hereof.

14.10 Any equipment provided by RM is provided only for the purposes of RM providing the Service and no title or ownership in the same shall pass to the Contract Holder.

14.11 Any notice required to be given under these Conditions shall be in writing and shall be sent to the respective addresses of the Contract Holder set out in the agreement for the provision of the Platform or the registered office of RM as the case maybe.