

# RM Support Services Terms and Conditions

## 1 Definitions

The following conditions (“**the Conditions**”) apply to the purchase of RM Support Services (“**the Services**”) as described in the accompanying RM Support Services document (also available from [www.rm.com/support](http://www.rm.com/support)), which RM agrees to provide and you (“**the Contract Holder**”) agree to take and pay for. You are advised that this document only applies to the provision of the Services on the Contract Holder’s network (“**the Network**”), such Network being the RM Community Connect 3, Microsoft Windows 2000 or Microsoft Windows 2003 server or later versions with workstations which are electronically linked together and that are situated within one building or across a series of buildings that share the same postal address.

## 2 Responsibilities of the Contract Holder

The provision of the service 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 service in the event that:

- (a) any of the Contract Holder’s responsibilities as set out in these Conditions is 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 must ensure that the Network is protected against the threat of virus infection by installing and maintaining up to date anti virus software.

## 2.2 Software maintenance

The Contract Holder must keep the Network current and secure by applying all appropriate RM validated service releases and software updates.

## 2.3 Acceptable Use Policies

The Contract Holder must implement and enforce an Acceptable Use Policy for the Network and a consistent disciplinary procedure for all staff and students who have access to the Network.

## 2.4 Internet Access

The Contract Holder must have a suitable Internet tariff in place for all educational Internet connections. In addition the Contract Holder must ensure that all prudent measures have been taken to reduce the chance of incurring unwanted Internet costs. RM cannot accept any liability for the Contract Holder’s Internet costs, which are entirely the responsibility of the Contract Holder.

## 2.5 Licensing

The Contract Holder must have in force current software licenses for all software on the Network.

## 2.6 Network maintenance and configuration

The Contract Holder must maintain the configuration, hardware and cabling relating to the Network(s) in good working order and within any specifications provided by RM.

## 2.7 Server maintenance

The Contract Holder must maintain securely, good quality current backup copies of all Network software and data on the Contract holder’s premises. The Contract Holder must provide access to current backup copies to RM (and RM authorised third party) personnel connected with the provision of the service where required.

## 2.8 Network access

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

## 2.9 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 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.

## 2.10 Appointed ICT Support Staff

The Contract Holder must nominate a Network Manager 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.

## 2.11 Network Management Training

The Contract Holder must take all reasonable measures to ensure that ICT support staff are appropriately trained and competent in the management of the Network. Where excessive use of the RM support services is demonstrated and RM has highlighted a training requirement, the Contract Holder must address this requirement to the satisfaction of RM forthwith. RM reserve the right to withhold support until such time as RM (acting reasonably) is satisfied that any such training requirements have been addressed.

## 2.12 Attendance at Seminars

The Contract Holder must use their best endeavours to ensure that all appropriate personnel nominated in accordance with Condition 2.10 attend all seminars provided under the Service.

### 2.13 Strategic Change

The Contract Holder must notify RM before strategic changes are made to the Network. Advance knowledge of planned changes will ensure that RM engineers have current information on the status of the Network, helping them to resolve issues affecting the Network more efficiently. RM considers strategic changes to be changes that significantly alter the Network including:

- (a) adding a new server to the Network
- (b) Changing the configuration or role of a server connected to the Network
- (c) Changes to the topology and infrastructure of the Network
- (d) Change of Internet Service Provider or transition to Broadband

### 3 Service Limitations

3.1 The provision of the service relates only to the Network(s) as set out on the original network support quotation or subsequent network support renewal forms. No quotation or renewal form will be accepted for the service on part of a Network.

3.2 The Service does not include:

- (a) Assistance with relocation of the Network(s) or part thereof.
- (b) Service resulting from accident, neglect, alterations, improper use or misuse of the Network(s) or part thereof.
- (c) Service necessitated by repairs to the Contract Holder's premises, hardware or software attempted by non-RM personnel.
- (d) Assistance with writing or rewriting any software.
- (e) Project management.

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- (f) Consultancy on software which does not appear on the RM Networks Product Support Lifecycle Policy, except under a bespoke contract where written agreement for such support must be made.
- (g) Services relating to any software or hardware that does not appear on the RM Networks Product Support Lifecycle Policy (or the interaction of the same with software or hardware provided by RM), except under a Bespoke contract where written agreement for such support must be made.
- (h) Assistance with the installation or integration of products where an RM commissioning service is available, except where written agreement for such support is presented by RM.
- (i) Advice given in connection with the removal or treatment of any Virus, to which (inter alia) the provisions of clauses 3.3 and 13 shall apply.
- (j) Any other service provided on the Contract Holder's premises. Notwithstanding the above exclusions from the Service, the above services may be available to a Contract Holder from RM on request at additional costs and under a separate agreement.
- (k) Support in respect of products and/or services made available by RM to Contract Holders and that are categorised by RM as subject to a separate agreement and charging regime.

3.3 Whilst RM will take reasonable steps to remove and remedy the effects of Viruses on the Network, RM cannot guarantee the removal of any Virus and reserves the right to charge for services incurred over and above a period of 1 hour, such additional chargeable services not to be carried out without the prior consent of the Contract Holder.

3.4 Where you have employed the services of a third party commissioning agent to install,

commission or relocate part of the Network, RM may request at its discretion that a chargeable network survey is conducted prior to continuing offering support and advice.

### 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 and the Contract Holder is not permitted to use in any way any software resident on the Network which may be provided as part of the service.

4.2 RM may at its discretion at any time remove any 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 service.

### 5 Term

5.1 The term for the service shall not commence until:

- (a) The Contract Holder accepts in writing that the Network commissioning service has been completed on the Network (or part thereof) satisfactorily; or
- (b) RM has accepted the original order form or subsequent renewal forms (as appropriate).

5.2 The start date for the service shall be the date on which the final condition set out in Clause 5.1 above is achieved unless the parties agree an alternative later date.

5.3 The service shall commence on the date referred to in Clause 5.2 above and shall continue initially for twelve (12) months (unless otherwise agreed in writing by the parties). Unless at least one month's written notice to terminate this Agreement is given by either party to the other party prior to the expiry of the initial or any subsequent twelve (12)

month term, then the Agreement shall be renewed for a further twelve (12) month period.

5.4 Where there is any change in pricing, which exceeds 4% of the value of the contract, the Contract Holder shall be notified at least two months in advance of the expiry of the relevant twelve (12) month period to enable the Contract Holder to obtain alternative quotes for the service prior to the automatic renewal of this agreement.

## 6 Period of services availability

6.1 The service will be carried out by RM during the hours set out in the RM Support Services document (also available from [www.rm.com/support](http://www.rm.com/support)) which may be subject to minor change from time to time. If RM agrees to carry out the service outside these hours by agreement with the Contract holder it will be at an additional cost.

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 service is being carried out at the Contract Holder's site.

6.3 For onsite services, work on the Contract Holder's site will be carried out during the hours set out in the RM Support Services document (also available from [www.rm.com/support](http://www.rm.com/support)), or to a schedule agreed with the Contract Holder.

## 7 Price

7.1 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 price for the service is subject to alteration without notice and the price charged to the Contract Holder will be that applicable at the date of RM's acceptance of the order or (at RM's option) the start date of the service if this is more than six months later. All prices are exclusive of Value Added Tax (and any similar tax) which will be added as separate items on RM's invoice.

7.2 The prices for the provision of service described in the RM Support Services document are fixed for the first year but thereafter are subject to an annual increase. Subject always to the provisions of Condition 5.4, the Contract Holder shall be informed of the current price at the time of renewal of the service.

## 8 Payment

8.1 Unless otherwise notified to the Contract Holder in writing by RM, the Contract Holder shall pay all invoices within thirty (30) days of the date thereof (time being of the essence). RM reserves the right to charge interest at a rate of 3% per annum above the 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.

8.2 All payments will be made without set off or counterclaim or any other withholding whatsoever.

## 9 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.

## 10 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.

## 11 Warranty and RM's liability

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

11.2 Notwithstanding 11.1 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.

11.3 In the event of a breach of the warranty in Clause 11.2 above, RM's sole liability shall be to re-perform at its expense any of the services which do not conform to the said warranty.

11.4 If RM fails without cause to perform the service 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 aggregate liability in any calendar year of the total charges paid or payable for the services in question.

11.5 RM shall be liable without limit for death or personal injury arising from its performance of the service 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 aggregate liability of one million pounds (£1,000,000)

11.6 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 service on RM's

behalf) shall be deemed to be the acts of the Contract Holder. The Contract Holder also agrees that RM will not be liable for the effects of any further virus attack occasioned during an attempt by RM to clean the Network from a previous virus attack.

11.7 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.

11.8 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.

11.9 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.

## **12 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

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RM will accept any liability therefore, which shall, in any event be limited to a refund of the charges paid for the service. 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. The provisions of this clause 12 shall be without prejudice to the provisions of clause 13 below.

## **13 Advice Concerning Viruses**

Should the Contract Holder wish to receive advice from RM concerning the treatment of any of the effects of a Virus, RM shall be entitled (but not obliged) to provide such advice but the Contract Holder accepts that, as RM does not have specialist knowledge concerning Viruses, such information is given on a reasonable endeavours basis and the Contract Holder shall not be entitled to rely on such advice. Should the Contract Holder wish to receive specialist advice concerning any Virus, the Contract Holder agrees to obtain such advice directly from a manufacturer of virus-checking software or another specialist in that field of expertise.

## **14 Termination**

14.1 RM shall have the right, without prejudice to any other remedies it may have at any time (including, without limitation, as set out in Condition 2) 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.

14.2 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.

## **15 Miscellaneous**

15.1 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 services.

15.2 The service is provided to Contract Holders in the United Kingdom only.

15.3 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.

15.4 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.

15.5 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.

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

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

15.8 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 jurisdiction of the English courts.

15.9 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 Renewal Form, or the registered office of RM (as the case may be). Any change of address of either party shall be notified to the other in writing forthwith.

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

15.11 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.

15.12 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.

15.13 RM reserves the right to change the Conditions on giving you at least 30 days' prior written notice of the change and the date on which the change takes effect.