

# RM PORTICO END USER LICENCE AGREEMENT

## (Effective May 2013)

This is a legal agreement (the "Agreement") between you ("Licensee") and RM EDUCATION LTD ("RM"), which expression shall include its subsidiaries, agents, successors and assigns.

By installing, downloading or otherwise accessing RM Portico (the "Software"), the Licensee is agreeing to be bound by the terms of this Agreement and the RM Terms and Conditions of Sale (a copy of which can be found on [www.rm.com/about/terms](http://www.rm.com/about/terms)).

If the Licensee does not agree to the terms of this Agreement and the RM Terms and Conditions of Sale, the Licensee must uninstall the Software and the Licensee must promptly return the package and the accompanying items (including written materials and binders or other containers) to the place the Licensee obtained them in the same condition in which the Licensee received them for a full refund within 14 days of purchase. This licence is not valid unless the Licensee has an associated Licence Confirmation for the Software.

### 1. GRANT OF LICENCE

RM grants to the Licensee a non-exclusive, non-transferable licence to install one copy of the Software on a file server used to store network user accounts. For the avoidance of doubt, a separate licence is required for each file server that is used to store network user accounts on a network.

### 2. USE OF THE SOFTWARE

2.1. For the purposes of this Licence "Use" shall mean and include:

- 2.1.1. utilisation of the Software by copying, transmitting or loading the same into the temporary memory (RAM) of a PC for the processing of the instructions or statements contained in such Software; and
- 2.1.2. copying the Software for back-up or archive purposes provided that no more than two copies will be in existence under any licence at any one time without prior written consent from RM or as otherwise permitted by law.

2.2. The Licensee may purchase additional licences at any time from RM. On receipt of payment from the Licensee, RM will issue a further Licence Confirmation in respect of such additional licences.

### 3. COPYRIGHT

3.1. The Software is owned by RM or its suppliers/licensors and is protected by copyright laws and international treaty provisions. Therefore, the Licensee must treat the Software like any other copyrighted material (e.g. a book or musical recording) except that the Licensee may either (a) make one copy of the Software solely for backup or archival purposes, or (b) transfer the Software to a single hard disk provided the Licensee keeps the original solely for backup or archival purposes. The Licensee must reproduce and include the copyright notice on any copy. The Licensee may copy the written materials accompanying the Software provided always that RM's copyright in those materials are always acknowledged.

3.2. Some Software requires a unique access code before it can be used. RM shall identify this code to you. You must not reveal it to any third party.

### 4. LICENSEE'S UNDERTAKINGS

4.1. The Licensee undertakes not to perform any of the acts referred to in this sub-clause 4.1 except to the extent and only to the extent permitted by law to the Licensee as a lawful user (i.e., a party with a right to use) of the Software and only then for the specific limited purpose permitted by law or under this Agreement. The Licensee undertakes:

- 4.1.1. not to copy or network the Software (other than for normal system operation and as specified in Clause 2 above) nor otherwise reproduce the same;
- 4.1.2. not to translate, adapt, vary, modify the Software;
- 4.1.3. not to disassemble, decompile or reverse engineer the Software except as permitted by law;
- 4.1.4. not to remove, obscure or alter any notice of patent, copyright, trademark or other proprietary notice on the Software;
- 4.1.5. not to sub-license, distribute, rent, lease, or otherwise transfer the Software or any unique access code or copy the Software;
- 4.1.6. not to make the Software accessible by any type of broadcast or transmission, including but not limited to broadcast or transmission by cable, Internet, television, satellite, or telephone;
- 4.1.7. not to use the Software to attract customers away from RM or to procure commercial advantage over RM or to use it in any other way which is likely to be directly or indirectly detrimental to RM or its business;
- 4.1.8. not to enable a third party to do any of the acts set out in this Clause 4.1;
- 4.1.9. to maintain accurate and up-to-date records of the number and location of all copies of the Software;
- 4.1.10. to supervise and control use of the Software in accordance with the terms of this Agreement;
- 4.1.11. to ensure that its employees, agents and other parties who will use the Software are notified of this Agreement and its terms prior to such employee, agent or party using the same;
- 4.1.12. to reproduce and include the copyright notice of RM on all and any copies, whether in whole or in part, in any form, including partial copies or modifications of the Software made under the terms of this Agreement;
- 4.1.13. not to provide or otherwise make available the Software in whole or in part (including where applicable, but not limited to program listings, object code and source program listings, object code and source code), in any form in connection with or in conjunction with or as part of any "Managed Service" or to any person other than as specified in clause 4.1.11 above without prior written consent from RM. For the purpose of this clause 4.1.13, "Managed Service" shall mean any commercial time sharing rental, bureau service or outsourcing agreement or arrangement; and

4.1.14. within fourteen (14) days after the date of termination or discontinuance of this Agreement for whatever reason, to destroy the Software and all updates, upgrades or copies, in whole and in part, in any form including partial copies or modifications of the Software received from RM or made in connection with this Agreement, and all documentation relating thereto and RM shall have the right to enter the Licensee's premises to retake immediate possession without the need for process or other legal action.

## **5. WARRANTY**

- 5.1. The Licensee acknowledges that Software in general is not error-free and agrees that the existence of such errors shall not constitute a breach of this Agreement.
- 5.2. In the event that the Licensee discovers a material error which substantially affects the Licensee's use of the Software and notifies RM of the error within ninety (90) days from the date of payment of the relevant licence fee (the "warranty period") RM shall at its sole option either refund the licence fee or use all reasonable endeavours to correct by patch or new release (at its option) that part of the Software which does not so comply PROVIDED THAT such non-compliance has not been caused by any modification, variation or addition to the Software not performed by RM or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other Software or on equipment with which it is incompatible.
- 5.3. To the extent permitted by law, RM disclaims all other warranties with respect to the Software, either express or implied, including but not limited to any implied warranties or terms and conditions of satisfactory quality or fitness for any particular purpose. Specifically RM does not warrant that the functions mentioned in the Software will meet the Licensee's individual requirements.

## **6. RM'S LIABILITY**

- 6.1. RM shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Software, its use or otherwise, except to the extent set out in clause 6.2 below or to the extent that such liability may not be lawfully excluded.
- 6.2. The Licensee agrees that the maximum aggregate liability of RM whether in contract, tort, negligence, statutory duty or otherwise, for any loss or damage whatever arising from or in any way connected with any liability not excluded by this Agreement shall be limited to £25,000. This limit shall also apply in the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and RM becomes liable for loss or damage that could otherwise have been limited.
- 6.3. RM expressly excludes liability for indirect, special, incidental or consequential loss or damage which may arise in respect of the Software, its use, or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 6.4. RM does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of RM, its employees, agents or authorised representatives.
- 6.5. If RM is unable through no act or default of the Licensee to procure the correction of defects in the Software in accordance with and during the 90 day warranty period and where the Software is totally unusable due to the defect, Licensee may reject it by sending written notice to RM within ten (10) days of receipt of notice from RM that RM is unable to correct or procure the correction of such defects and upon its return to RM's premises is entitled to recover the relevant licence fee.

## **7. COPYRIGHT, PATENTS, TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS**

The Licensee acknowledges that any and all of the copyright, trademarks, trade names, patents and other intellectual

property rights subsisting in or used in connection with the Software including but not limited to all documentation and manuals relating thereto, all images, animations, audio music and text incorporated into the Software remain the sole property of RM. The Licensee agrees to immediately notify RM of any actual or suspected infringement and the Licensee also agrees not to use any of RM's trademarks as any part of the name under which the Licensee conducts its business.

## **8. CONFIDENTIAL INFORMATION**

- 8.1. All information, data, drawings, specifications, documentation, Software listings, source or object code which RM may have imparted and may from time to time impart to the Licensee relating to the Software is proprietary and confidential. The Licensee hereby agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement, disclose the same, whether directly or indirectly, to any third party without RM's prior written consent.
- 8.2. Subject only to the specific, limited provisions of clause 4.1 and its sub-clauses above, the Licensee further agrees that it shall not itself or through any subsidiary, agent or third party use such confidential information to copy, reproduce, translate, adapt, vary, modify, decompile, disassemble or reverse engineer the Software nor shall the Licensee sell, lease, license, sub-license or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements thereof or have any Software or other program written or developed for itself based on any confidential information supplied to it by RM.
- 8.3. The foregoing provisions shall not prevent the disclosure or use by the Licensee of any information which is or hereafter, through no fault of the Licensee, becomes public knowledge or to the extent permitted by law.

## **9. FORCE MAJEURE**

Neither party shall have any liability to the other party in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, where such event is beyond that party's reasonable control.

## **10. TERMINATION**

- 10.1. In addition to provisions for termination as herein provided, RM may by notice in writing to the Licensee terminate this Agreement if:
- 10.1.1. the Licensee is in breach of any term, condition or provision of this Agreement or required by law and fails to remedy such breach (if capable of remedy) within thirty (30) days of having received written notice from RM specifying such breach; or
- 10.1.2. if Licensee ceases to carry on business or a substantial part thereof or enters into liquidation whether compulsory or voluntary other than for the purpose of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or manager or administrator appointed over all or any part of its assets or becomes unable to pay its debts as they fall due.
- 10.2. Upon termination, the Licensee shall comply with its undertaking specified in Clause 4.1.14 (above).
- 10.3. Termination, howsoever or whenever occasioned shall be subject to any rights and remedies RM may have under this Agreement or under law.

## **11. DATA PROTECTION**

- 11.1. In this Agreement, the terms Controller, Processor, Data Subject, Personal Data, Special Categories of Personal Data, Processing, Data Protection Impact Assessment and Personal Data Breach shall be as defined in the General Data Protection Regulation EU 2016/679 ("GDPR") and "Data" shall mean the Personal Data and Special Categories of Personal Data provided to RM by the Licensee in

connection with the Agreement. "Data Protection Legislation" means the GDPR and any national implementing laws, regulations and secondary legislation, as amended, revised, re-enacted, consolidated or updated from time to time.

- 11.2 The Licensee acknowledges that it is a Controller and that RM is a Processor.
- 11.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 11.4 RM shall:
- 11.4.1 ensure that its employees shall, Process the Data only on the Licensee's instructions as set out or referred to in the Agreement to provide the Services;
- 11.4.2 provide appropriate technical and organisational measures:
- (a) to ensure the protection of the rights of the Data Subjects; and
- (b) ensure an appropriate level of security, assessing, in particular, the risks that are presented by Processing, to protect the Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Data transmitted, stored or otherwise Processed;
- 11.4.3 take all reasonable steps to ensure the reliability of any of its staff who have access to and/or process Data in connection with the Services, including duties of confidentiality under any employment contracts;
- 11.4.4 assist the Licensee, at the Licensee's cost, in responding to any request from a Data Subject and in ensuring compliance with applicable obligations under the Data Protection Legislation with respect to security of Processing, Personal Data Breach notifications and communications, Data Protection Impact Assessments and consultations with supervisory authorities or regulators;
- 11.4.5 notify the Licensee without undue delay after becoming aware of a Personal Data Breach;
- 11.4.6 notify the Licensee immediately if it considers that any of the Licensee's instructions infringe the Data Protection Legislation;
- 11.4.7 at the written direction of the Licensee, delete or return the Data to the Licensee after the end of the provision of the Services relating to Processing, except that:
- (a) RM may keep any Data, if required by any applicable laws to store the Personal Data; and
- (b) RM may keep Data stored in any system back-ups; and
- 11.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and provide access to the same for the purpose of a Licensee conducted audit. Any audits must be no more than once in a twelve (12) month period and must be on not less than thirty (30) days' notice.
- 11.5 The parties also acknowledge that RM may also use services and/or products from other third parties in order to provide the Services under the Agreement and that, in doing so, RM may transfer Data to such third parties. This may include (by way of example only) third parties that provide online storage and other facilities. The Licensee consents to the appointment by RM of sub-processors provided that:
- 11.5.1 RM notifies the Licensee in writing of each sub-processor prior to the Processing of any Data by the relevant sub-processor and shall notify the Licensee in writing of any change in the identity of the sub-processor from time to time; and
- 11.5.2 RM shall put in place with any sub-processor, written contractual obligations which are at least equivalent to the obligations imposed on RM pursuant to this clause 11.
- 11.6 If RM becomes aware of its sub-processor (including RM group entities) ("Recipient") wishing to transfer Data outside the European Economic Area to countries which have not

been approved by the European Commission as having adequate protections in place for the purpose of the transfer of personal data pursuant to the Data Protection Legislation, RM shall require that the Recipient enters into an agreement incorporating the standard contractual clauses approved by the European Commission for transfers of personal data to processors outside of the European Economic Area where RM would sign as data exporter on behalf of the Licensee and the Recipient will sign as data importer and this agreement shall include security obligations on the Recipient which are no less onerous than those contained in this Agreement

- 11.7 Either Party may, at any time on not less than 30 days' notice, revise the above clause 11.6 by replacing it with any applicable controller to processor standard clauses or similar terms forming Party of an applicable certification scheme.
- 11.8 Subject to clauses 11.9 – 11.11, RM shall remain fully liable to the Licensee for the performance of any sub-processor appointed by it pursuant to clause 11.5.
- 11.9 The Licensee agrees to comply with its obligations under Data Protection Legislation and warrants that it has all necessary consents and notices in place in relation to its collection, processing and provision of Data, to enable the lawful transfer of the Data to RM in connection with, and for the duration of, the Services provided under the Agreement.
- 11.10 The Licensee shall indemnify and hold harmless RM against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this clause 11 by the Licensee and/or its employees, agents and/or sub-contractors.
- 11.11 The Licensee acknowledges that RM is reliant on the Licensee for direction as to the extent to which RM is entitled to use and process the Data. Consequently, RM will not be liable for any claim brought by the Licensee or any Data Subject arising from any action or omission by RM to the extent that such action or omission resulted from the Licensee's instructions.
- 11.12 RM may also use the Licensee's data in accordance with its Privacy Policy which can be found at [www.rm.com](http://www.rm.com).

## 12. ANTI-BRIBERY

The Licensee shall ensure that the Licensee and all of its staff, agents, contractors and any other party performing its obligations or exercising its rights under or in connection with this Agreement and/or any other agreement that the Licensee may have with RM, complies at all times with all applicable anti-bribery and/or corruption laws, regulations and codes of conduct in all jurisdictions. The Licensee shall, whenever requested by RM, provide evidence of the measures, steps and processes that it takes to ensure compliance with the provisions of this clause and the relevant laws, regulations and codes of conduct.

## 13. ASSIGNMENT

The Licensee shall not assign or otherwise transfer all or any part of the Software or this Agreement without the prior written consent of RM.

## 14. WAIVER

Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's rights to take subsequent action.

## 15. HEADINGS

The headings of the terms and conditions herein contained are inserted for convenience or reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

**16. SEVERABILITY**

In the event that any of these terms and conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such terms, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

**17. NOTICES**

Any notice required to be given under this Agreement shall be in writing and shall be sent to the address of RM's registered office. All notices hereunder shall be sent by confirmed facsimile (provided, however, that any notice which could materially affect the rights of either party shall also be sent by courier as provided herein) or recognised commercial overnight courier service. Such notice shall be effective upon receipt, but in any event no later than three days after sent by recognised commercial overnight courier.

**18. SURVIVAL**

Those provisions of this Agreement intended to survive its expiry or termination shall do so.

**19. ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter. Nothing in this Clause shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or any innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance as the same as being fair and reasonable.

**20. MISCELLANEOUS**

RM reserves the right to change this Agreement from time to time either (i) on giving the Licensee no less than thirty (30) days' notice of the change and the date on which the change takes effect and/or (ii) by updating the same on its website at [www.rm.com](http://www.rm.com), in which case the updated Conditions shall take effect thirty (30) days after posting on [www.rm.com](http://www.rm.com).

**21. LAW**

This Agreement will be governed by and construed in accordance with the laws of England and shall be subject to the jurisdiction of the English Courts.