

**RM Flexible Managed Service
Terms and Conditions
(Effective April 2017)**

1 Application of these Terms and Conditions

These Conditions apply to all of the Services (as defined below) to be provided by RM to the Customer. If the Customer does not wish to be bound by these Conditions, the Customer should not order or accept performance of the Services. The Customer's order for the Services is subject to acceptance by RM. These Conditions apply to the exclusion of all other terms and conditions that may be provided by the Customer.

2 Interpretation

2.1 Unless the context otherwise requires, the words "include" and "including" will be construed without limitation and words in the singular shall include the plural, and vice versa. The headings in these Conditions are inserted for convenience only and are not intended to affect the interpretation of these Conditions. The following terms shall have the meaning set out below:

Acceptable Use Policy	the Customer's acceptable use policy relating to the use of the Network or if the Customer has no such policy it shall mean the policy for acceptable use of school networks as recommended by the Customer's advisory body ;
Additional Charges	RM's additional charges for Additional Services which shall be on its standard rates for time and materials at the relevant period, unless otherwise agreed;
Additional Services	any additional services provided by RM to the Customer, subject to these Conditions, which may incur Additional Charges, such as services within the ambit of Excluded Services;
Assumptions	any and all assumptions made by RM as set out in these Conditions and the Service Proposal;
Audit	any Preliminary Audit or Due Diligence Audit
Business Day	any day which is not a Saturday, Sunday, public holiday or bank holiday in England and Wales and also excluding RM's shutdown period between Christmas and New Year each year;
Charges	all charges, including Additional Charges, payable by the Customer to RM under these Conditions;
Commencement Date	the date these Conditions take effect which shall be the date RM accepts the Customer's order for the Services;
Conditions	these terms and conditions;
Customer	the legal entity to which RM provides the Services under these Conditions;
Customer's ICT Estate	all the Customer's ICT infrastructure, peripherals, and networks including In-scope ICT Estate;

Due Diligence Audit	a detailed audit of the In-scope ICT Estate to be conducted by RM after the Commencement Date and prior to the Service Commencement Date;
Employment Liabilities	all and any costs, losses, expenses (including legal expenses on an indemnity basis), claims, proceedings, demands, fines, damages and compensation and other liabilities) arising out of or relating in any way with the employment and/or termination of employment of an individual including (without limitation) all salary, bonus and other emoluments, all pension and pension-related benefits and all and any other contractual, statutory or other entitlements paid or payable to, or on behalf of, or in connection with the employment of, or termination of employment of, that individual;
Excluded Services	any service or request for service coming within Condition 4.4;
Fair Use Policy	fair use of the Services by the Customer as set out in Condition 4.11;
Flex Services	the services to be provided by RM to manage the Customer's In-scope ICT Estate as set out in the Service Proposal;
In-scope ICT Estate	that part of the Customer's ICT infrastructure and Network in relation to which RM provides the Services;
Initial Term	the minimum term set out in the Service Proposal which shall not be less than 12 months;
Network	the Customer's ICT network such as devices, laptops, PCs, tablets, servers, wireless equipment, switches and related cabling equipment (including any owned by Users if requested by the Customer);
Preliminary Audit	any initial audit of the In-scope ICT Estate conducted by RM prior to these Conditions taking effect;
Renewal Term	each period during which Services are extended as described in Condition 3;
RM	RM Education Limited, a company registered in England and Wales and whose registered office is at 140 Eastern Avenue, Milton Park, Abingdon, Oxon, OX14 4SB;
Service Commencement Date	the date RM commences to provide the Flex Services;
Service Proposal	RM's service proposal for the provision of the Services that is agreed and signed by both parties describing the Services to be provided by RM to the Customer which may be revised by mutual agreement from time to time during the period these Conditions apply;
Services	all services to be provided by RM to the Customer from time to time subject to these Conditions including the Flex Services and Transition Services as expressly set out in the relevant Service Proposal plus any Additional Services;

SIMS Support	means support of the SIMS software operated by Capita Plc;
Site	the Customer location at which the Services are to be provided;
SLA	RM's service level agreement setting out the service levels applicable to the Flex Services which shall usually accompany the Service Proposal;
Software	the software and related materials, updates and enhancements developed by RM or third parties in order to provide the Services;
Term	the total period during which the Services are provided subject to these Conditions including the Initial Term and any Renewal Term;
Transition Services	all the services to be provided by RM before the Flex Services can start to be delivered , e.g. carrying out the Due Diligence Audit; checking the Acceptable Use Policy etc;
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 as substituted or varied from time to time or any equivalent or like legislation in place in any and all relevant jurisdictions;
User	any person employed by the Customer, any pupil and any other category of people or person nominated by the Customer as set out in the Service Proposal; and
Virus	any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap door or any other similar form of code intended, or having that effect, to cause harm, damage or to prevent or restrict the use of In-scope ICT Estate.

3 Term

The Services shall commence on the date agreed in the Service Proposal and shall continue until the end of the Initial Term. The Services shall automatically roll on for successive terms equal to the period of the Initial Term unless either party gives the other party at least four (4) months' written notice (or any alternative notice period expressly stated in the Service Proposal) of its intent not to renew the Services. The Customer may also request RM to vary the Services during the Initial Term or any Renewal Term subject to giving RM at least four (4) months' written notice (or any alternative notice period expressly stated in the Service Proposal) to allow RM time for an orderly transition and to redeploy staff. Such request if agreed by RM will result in a revised Service Proposal setting out the agreed variation of the Services and the applicable revised Charges.

4 Scope of the Services

- 4.1 The Services to be provided by RM shall be as set out in the relevant Service Proposal that is agreed by both parties. The descriptions set forth in the Service

Proposal shall be subject to these Conditions. RM shall provide SIMS Support if it is set out in the Service Proposal but such support shall be subject to the Customer complying with Condition 5.12 and paying all relevant sums directly to Capita Plc. Unless otherwise expressly stated in a relevant Condition, the terms of these Conditions shall prevail over the terms of the Service Proposal if there is any conflict or inconsistency between the terms of the Service Proposal and the terms of these Conditions.

- 4.2 RM shall be responsible for providing the Services as described in the Service Proposal and is not obliged to provide any other services requested by the Customer unless it agrees to do so.
- 4.3 If the Customer requests RM to provide it with other deliverables such as equipment, software, consumables or access to a RM website such deliverables shall be sold under the applicable RM terms as agreed between the parties at the relevant time.
- 4.4 Excluded Services are out of-scope and include:
 - 4.4.1 assistance with relocation of any part of the Customer's ICT Estate;
 - 4.4.2 any request for support required as a result of any accident, neglect, alterations, improper use or misuse (including in breach of the Acceptable Use Policy) of the Network in whole or part;
 - 4.4.3 any request for support necessitated by repairs to the Customer's ICT Estate and premises, unless such repairs have been carried out by RM or its subcontractors;
 - 4.4.4 any request for support due to work carried out on any part of the Customer's ICT Estate by other suppliers to the Customer;
 - 4.4.5 assistance with writing or rewriting any software;
 - 4.4.6 project management;
 - 4.4.7 support for use of any non-curriculum software applications on the Customer's ICT Estate;
 - 4.4.8 any licence rights in addition to those set out in these Conditions;
 - 4.4.9 support required as a result of any material differences (i) between the findings of any Preliminary Audit and the Due Diligence Audit; (ii) between the findings of the Due Diligence Audit and the Assumptions made in respect of it;
 - 4.4.10 support required because of any breach of the Acceptable Use Policy; and/or
 - 4.4.11 all other matters or request for support not expressly acknowledged by RM as its responsibility in the Service Proposal.

- 4.5 Should the Customer wish RM to carry out any tasks listed in the Excluded Services during the Term then RM will discuss such tasks with the Customer and may, as appropriate, provide a scope of work and a proposal to cover such Additional Services.
- 4.6 Should the Customer request advice from RM concerning the handling of any Virus, any advice provided by RM shall be given "as is" with no warranties as RM is not a specialist in handling Viruses. Should the Customer wish to obtain advice on which it can rely, the Customer must obtain specialist advice directly from a manufacturer of virus-checking software or from another specialist with relevant expertise in handling Viruses.
- 4.7 The Services may entail the Customer accessing the Software. The Customer undertakes:
- 4.7.1 not to copy the Software in whole or in part;
 - 4.7.2 not to reproduce, translate, adapt, vary or modify the Software;
 - 4.7.3 to reproduce and include RM's or any third party's copyright notice and/or any other legend on each copy of the Software including partial copies and modifications of the Software; and
 - 4.7.4 not to reverse assemble or reverse compile the Software in whole or in part except to the extent permitted by law.
- 4.8 All copies of the Software in whole or in part are the property of RM (or its licensors) and no title to or ownership of any software or any unmodified part thereof is hereby transferred to the Customer. Notwithstanding any copyright notice appearing thereon the Software is proprietary and confidential information and Customer agrees not to provide, disclose or make available the Software or part thereof to any third party.
- 4.9 RM assumes that the Site and Customer's ICT Estate are suitable for the receipt of the Services. Should the performance of the Services be, or will likely be, adversely affected, RM shall in good faith, provide a proposal for rectifying the relevant issue. For the avoidance of doubt this may include the suggested provision of Additional Services to bring the In-scope ICT Estate into a suitable working state so that RM can provide the Services in accordance with the Service Proposal. RM shall have no liability to the Customer for the performance of the Services to the extent that performance is affected by the condition of the Site and/or Customer's ICT Estate.
- 4.10 Period of Services availability
- 4.10.1 Unless stated otherwise in the Service Proposal, Helpdesk services will be available between 8am and 6pm Monday to Friday, on Business Days
 - 4.10.2 Subject to Condition 4.10.3, on-site support will be delivered during the hours expressly specified in the Service Proposal. Unless stated otherwise in the Service Proposal, RM shall provide the on-site support for 7.5 hours during the school day during term time only.
 - 4.10.3 The Customer accepts that on-site support depends upon the availability of individuals to provide and manage the relevant Services and RM

cannot always guarantee the availability of such individuals, e.g. due to illness, compassionate leave. In these circumstances, RM shall use reasonable endeavours to provide remote support and/or emergency cover to mitigate the impact of such absence.

4.11 Fair Use

4.11.1 The Customer acknowledges that, for the benefit of all RM's customers, including the Customer, RM has structured and priced the provision of the Services on the basis of average levels of use. By taking this approach, RM is able to deliver a quality service to all RM customers but RM assumes that no individual customer, including the Customer, places excessive demands upon RM's resources. The Customer therefore accepts the provisions of this Condition 4.11.

4.11.2 If the Customer makes excessive use of the Services and/or the resources used to deliver the Services (in RM's opinion acting in good faith):

4.11.2.1 RM shall be entitled to restrict the Services provided and/or, the Customer's use of the Services and/or the resources used to deliver the Services, each in such manner as RM (acting in good faith) considers appropriate; and/or

4.11.2.2 RM may contact the Customer to request that the Customer modifies the manner in which it uses the Services and/or the resources used to deliver the Services - this may include (by way of example only) asking the Customer to reduce the number of calls logged, the number of change requests made, the service management time requested and/or the technical architecture time used. The Customer agrees to honour any such request and ensure that its use of the Services and/or the resources used to deliver the Services is modified accordingly.

For the avoidance of doubt, examples of excessive use of the Services are the project management, installation, maintenance and support of infrastructure and eco-systems, installation of a large number of devices and one-off project work.

5 Responsibilities of the Customer

5.1 The Customer shall be responsible for ensuring that all Users of the In-scope ICT Estate comply with the Acceptable Use Policy.

5.2 The Customer shall be responsible for procuring all required internet connections at its cost.

5.3 The Customer must have in force and maintain for the full duration of the Services current software licenses for all software within the In-scope ICT Estate and valid third party support contracts (which RM shall be entitled but not obliged to enforce on behalf of the Customer) in respect of all third party software and systems.

- 5.4 The Customer must ensure the configuration, hardware and cabling relating to the In-scope ICT Estate is in good working order and complies with any requirements stipulated by RM in any Audit before the Service Commencement Date or any alternative date required by RM.
- 5.5 The Customer must maintain secure, good quality current backup copies of all software and data within the In-Scope ICT Estate. The Customer must provide access to current backup copies to RM and its subcontractors where required.
- 5.6 The Customer must permit RM (and its subcontractors) access to the Site to work on the In-scope ICT Estate where reasonably required.
- 5.7 Where required to provide any of the Services, the Customer shall ensure the provision of an installed data link through which RM can access the In-scope ICT Estate using RM's chosen remote access software and technology. The Customer must also provide access to those areas of the In-scope ICT Estate as required by RM for RM to deliver the Services.
- 5.8 The Customer must nominate at least two (2) contacts (and inform RM) who will act as the liaison between the Site and RM. If there are any changes to such nominated personnel the Customer shall inform RM immediately.
- 5.9 The Customer must notify RM before making any changes to the In-scope ICT Estate. Advance knowledge of planned changes is essential to ensure that RM engineers have current information on the status of the In-scope ICT Estate, helping RM to resolve issues affecting the In-scope ICT Estate more efficiently. For the avoidance of doubt, the Customer must notify RM of any change of internet service provider.
- 5.10 In respect of each Site the Customer shall provide to RM such non-exclusive rights of access to and egress from that Site and such non-exclusive rights to enter and remain on that Site as are reasonably necessary for the purposes of providing the Services at that Site for the duration of the Services.
- 5.11 The Customer shall provide a secure location for the storage of data backups. The Customer must provide suitable media to RM for such backups to be performed.
- 5.12 Where SIMS Support forms part of the Services, the Customer shall be responsible for (a) paying the 'SIMS Licence and Annual Entitlement' fees directly to Capita Plc; (b) complying with any other requirements or paying any other fees as directed by Capita Plc that are necessary to maintain a SIMS Direct subscription; and (c) informing Capita Plc that RM will be acting as the Customer's agent for provision of SIMS Support.

6 Price & Payment

- 6.1 The Charges for the Services shall be as set out in the Service Proposal. All prices are exclusive of Value Added Tax (and any similar tax) which will be payable by the Customer in addition to the Charges.

- 6.2 The Charges shall be subject to indexation, with effect from each anniversary of the Service Commencement Date. The Charges shall be revised to reflect any increase in RPIx over the relevant reference period.
- 6.3 The Customer shall pay all invoices within thirty (30) days of the date thereof.
- 6.4 Without prejudice to its other rights under these Conditions, 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.
- 6.5 All payments will be made without set off or counterclaim or any other withholding whatsoever.

7 Title and passing of risk

Risk of loss and damage in any RM owned equipment (including loan items) provided by RM to the Customer or installed by RM at the Site for the provision of the Services shall pass to the Customer at the time of such provision or installation. For the avoidance of doubt, RM shall retain title in such RM owned equipment.

8 Confidential information

- 8.1 Unless agreed otherwise in writing, each party agrees to maintain in confidence and shall not use, disclose or copy any materials, documentation, the Service Proposal or any other information provided to it (in whatever form) by the other party other than for the purpose of fulfilling its obligations under these Conditions or seeking advice. If either party has to disclose information to its employees, contractors and service providers it shall only do so on a need-to-know basis subject to ensuring that such employees, contractors and service providers are bound by the same obligations set out in this Condition and for a reasonable period after any disclosure. The obligations of confidence in this Condition shall not apply to the extent that (i) any information is or comes into the public domain other than as a result of a breach of this Condition and/or (ii) any information is required to be disclosed by law or by order of a Court or other regulatory authority.
- 8.2 Where the Freedom of Information Act 2000 applies to the Customer and the Customer receives a request under the Act that includes any information held by the Customer that was provided by RM in connection with these Conditions the Customer will notify RM immediately of the request and give RM at least five (5) Business Days to make representations.

9 Warranty and RM's liability

- 9.1 RM warrants to the Customer that it will use reasonable skill and care in carrying out the Services. Except as expressly stated in these Conditions, no other warranties, conditions, guarantees or representations whether implied by statute or otherwise, are provided
- 9.2 In the event of a breach of the above warranty, RM's sole liability shall be to re-perform at its expense any of the Services which do not conform to the warranty.

- 9.3 RM shall be liable for any loss of or damage to tangible property caused by it arising from its performance of the Services, subject always to a maximum aggregate liability of one million pounds (£1,000,000).
- 9.4 The Customer agrees that RM will not be liable for any loss caused by the Customer's failure to perform its obligations as set out in these Conditions including Condition 5 or for any breach of these Conditions by the Customer. The Customer also agrees that RM will not be liable for any loss or damage suffered by the Customer during any attempt by RM to clear a Virus from the In-scope ICT Estate.
- 9.5 RM shall not in any event be liable for any loss of profits or loss of anticipated savings or for any indirect, special or consequential loss whatsoever and howsoever caused in connection with, or arising out of, the provision of the Services by RM, even if RM shall have been advised of the possibility of such loss. RM shall not be liable for any loss except where it expressly assumes liability for such loss under these Conditions.
- 9.6 Except in respect of RM's liability for death or personal injury resulting from its negligence or that of its employees or subcontractors or in respect of any claim for non payment of monies due, no action of any kind in relation to the Services may be brought by either party more than two (2) years after the relevant cause of action has arisen.
- 9.7 Neither Party limits its liability for:
- 9.7.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or
 - 9.7.2 fraud or fraudulent misrepresentation by it or its employees; or
 - 9.7.3 breach of any obligation as to title implied by statute.
- 9.8 Save as expressly stated otherwise above, RM's liability for all losses under or in any way relating to the Services shall, in each year of the Services, be limited to the sums payable by the Customer in respect of the Services for that year.

10 Termination

- 10.1 Either party shall have the right (without prejudice to any other remedies it may have), at any time by giving notice in writing to the other party, to terminate forthwith the Services provided under these Conditions, in any of the following events:
- 10.1.1 if the other party commits a material breach of these Conditions which it fails to remedy within thirty (30) days of a notice requiring it to do so (which in the case of the Customer, shall include the non-payment of Charges by the due date for payment or failing to comply with its obligations under Condition 5); or
 - 10.1.2 if the other party 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.

10.2 On expiry or termination of these Conditions, the Customer grants to RM the irrevocable right to enter the Site during the hours 9.00am to 5.00pm on Business Days to remove any RM-owned equipment (including software) installed by RM on the Site in connection with the Services.

10.3 Upon a termination of these Conditions howsoever arising:

10.3.1 RM shall use reasonable endeavours to procure that the benefit of manufacturers' warranties in respect of any equipment bought by RM on behalf of the Customer as part of the Services is assigned, or otherwise transferred, to the Customer;

10.3.2 RM shall in an orderly manner and with due speed, deliver to the Customer all relevant documents relating to the provision of the Services which are under the control of RM and which RM reasonably considers appropriate to provide.

10.4 RM may without notice and without liability suspend the Services if the Customer fails to comply with its obligations under these Conditions, including Condition 5.

11 Data Protection

11.1 In these Conditions, the terms data controller, data processor, personal data, sensitive personal data and processing shall be as defined in the European Data Protection Directive 95/46/EC and "Data" shall mean the personal data and sensitive personal data provided to RM in connection with the Services. "Data Protection Law" means applicable data protection legislation implementing the European Data Protection Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof.

11.2 The parties acknowledge that the Customer is a data controller and that RM is a data processor.

11.3 RM shall:

11.3.1 use the Data only on the instructions of the Customer as set out or referred to in these Conditions to perform the Services;

11.3.2 provide appropriate technical and organisational measures to protect the security of the Data, in particular against unauthorised or unlawful access or processing, alteration, accidental loss or destruction of or damage to the Data; and

11.3.3 take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the Services.

- 11.4 The parties acknowledge that RM's provision of the Services may require the transfer of Data to RM's sub-contractors (including RM group entities) ("Recipients") outside the European Economic Area in 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. RM will be permitted to transfer Data to such Recipients provided that RM shall have entered into an agreement with the relevant Recipient based upon standard contractual clauses approved by the European Commission for transfers of personal data to processors outside of the European Economic Area and which agreement shall include security obligations on the Recipient which are no less onerous than those contained in these Conditions.
- 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 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.
- 11.6 The Customer agrees to comply with its obligations under Data Protection Law in relation to its collection, processing and provision of Data to RM in connection with the Services.
- 11.7 The Customer shall indemnify and keep RM indemnified against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this Condition 11 by the Customer, its employees, agents and/or sub-contractors.
- 11.8 The Customer acknowledges that RM is reliant on the Customer 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 Customer or any data subject arising from any action or omission by RM to the extent that such action or omission resulted from the Customer's instructions.

12 Notices

- 12.1 All notices under these Conditions shall be in writing and all certificates, notices or written instructions to be given under the terms of these Conditions shall be served by sending the same by courier, recorded or registered delivery or first class post to (in the case of the Customer) the last known address of the Customer or (in the case of RM) to RM's registered office from time to time and subject to any such notices being clearly marked "For the attention of the Company Secretary".
- 12.2 Notices given by post shall be effective upon the earlier of actual receipt or three (3) Business Days after mailing. Notices delivered by hand shall be effective upon delivery.

13 TUPE & Non-Solicitation

- 13.1 It is acknowledged that TUPE may apply on commencement, during the provision of, and on termination or expiry of the Services in whole or part. Subject to the following provisions, each party agrees with the other to comply with all of its legal obligations under or otherwise in connection with TUPE.

- 13.2 The Customer acknowledges that RM has relied upon certain information and/or assumptions in connection with TUPE matters. As such, the Service Proposal shall specify the following details (together the “**TUPE Assumptions**”):
- 13.2.1 the number of individuals whose employment will transfer to RM in connection with the Services as a result of the operation of TUPE (the “**Transferring Employees**”); and
 - 13.2.2 all emoluments and other payments, costs and/or liabilities that may be incurred by RM as a result of employing the Transferring Employees (the “**TUPE Employment Costs**”).
- 13.3 Only those Transferring Employees and TUPE Employment Costs expressly stated in the Service Proposal shall fall within the TUPE Assumptions. For the avoidance of doubt, where a Service Proposal does not explicitly set out details of any Transferring Employees and/or any TUPE Employment Costs, it is acknowledged that RM’s assumption will be that there are no Transferring Employees and/or TUPE Employment Costs.
- 13.4 If any of the TUPE Assumptions proves incorrect in any respect, the Customer shall indemnify and keep indemnified RM and/or any relevant subcontractors of RM against any and all Employment Liabilities that RM and/or any relevant subcontractors may suffer, sustain, incur, pay or be put to arising from or in connection with any person employed by the Customer or any contractor of the Customer whose employment or claims arising out of their employment and/or its termination transfer to the Contractor or any sub-contractor of the Contractor as a result of the commencement of the Services (in whole or part) or as a result of any subsequent variation of the Services (in whole or part) in each case pursuant to or by virtue of TUPE or who claim that their employment and/or such claims so transfer.
- 13.5 Where RM requires fewer on-site staff to operate the Services than those whose employment transfers to RM as a result of the operation of TUPE (regardless of whether this is identified in the Service Proposal), RM may (at any time) terminate the employment of one or more of the relevant employees (the “**Relevant Employees**”). For the avoidance of doubt, this shall apply whether or not RM is lawfully entitled to terminate the employment of such Relevant Employees. In those circumstances, the Customer shall indemnify and keep indemnified RM and/or any relevant subcontractor against any and all Employment Liabilities that RM and/or any relevant subcontractor may suffer, sustain, incur, pay or be put to in respect of the Relevant Employees. The Customer’s liability to RM under this clause may be reduced if, and to the extent (but only to that extent), the parties have agreed to include a specified sum (“**Restructure Prepayment**”) within the Charges relating to the Customer’s potential liability under this clause provided always that all of the following conditions must be satisfied in full in order for this to apply: (i) the Service Proposal itself shall specify the precise amount of the Restructure Prepayment (i.e., it shall not be sufficient for the figure to have been agreed separately if it is not explicitly stated within the Service Proposal itself); (ii) the Restructure Prepayment must be explicitly referred to within the Service Proposal as a “**Restructure Prepayment**” and explicitly refer to this clause 13.5; and (iii) the Service Proposal shall clearly state how the Restructure Prepayment is built into the Charges (i.e., which payments the Restructure Prepayment are within) and all of those payments

must have been paid by the Customer to RM in full and in cleared funds (i.e., RM shall not be obliged to reduce its claim under this clause in respect of any part of the Restructure Prepayment it has not actually received).

13.6 Pension-Related Benefits

13.6.1 Notwithstanding the above provisions of this Condition 13 and/or anything stated to the contrary in any Service Proposal (whether explicit or implicit), RM assumes that the sole liability that it will have in relation to the provision of retirement related benefits (including without limitation any pension) to or otherwise in respect of any Transferring Employees shall be an ongoing employer contribution to the relevant pension scheme of a fixed percentage of the base salary of such Transferring Employees .

13.6.2 The Service Proposal shall state the relevant percentage and, where no such percentage is expressly stated, the employer contribution rate shall be assumed to be no greater than ten percent (10%) of the base salary of the Transferring Employees. The employer contribution assumed shall be the “**Assumed Pension Costs**”.

13.6.3 If at any time RM and/or any subcontractor of RM becomes liable for any costs of any kind (including without limitation as a result of increased employer contribution rates and/or any exit or deficit payment) in excess of the Assumed Pension Costs, the Customer shall indemnify and keep indemnified RM and/or any relevant subcontractor against such liability.

13.7 The Customer and RM each agree that, subject to Condition 13.8, throughout the duration of the Services and for a period of twelve (12) months afterwards, the Customer and RM shall not either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other party any person employed by such other party in the provision of the Services or (in the case of the Customer) in the receipt and/or administration of the Services.

13.8 For the avoidance of doubt, Condition 13.7:

13.8.1 shall be subject always to the provisions of Conditions 13.1 to 13.6 (above) – i.e., neither party shall be in breach of Condition 13.7 where the employment of an individual transfers from one party to the other as a result of the application of TUPE; and

13.8.2 shall not prevent either party from employing, or making an offer to employ, any employee of the other party, where such employment or offer has resulted from the relevant person making an unprompted application to the Customer or RM (as applicable) following a bona fide advertised recruitment campaign.

14 Miscellaneous

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

- 14.2 Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than for 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 Nothing in these Conditions shall be construed as creating a partnership or agency or contract of employment between the Customer and RM.
- 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 these Conditions without the prior written consent of the other, provided that RM shall be entitled to assign both its rights and obligations under these Conditions to any subsidiary (of any level) of RM plc by giving written notice to such effect to the Customer. RM shall also be entitled to subcontract the performance of its obligations under these Conditions. RM may also use tools and services from third parties to deliver the Services.
- 14.7 No term of these Conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person or entity who is not a party to it.
- 14.8 The Customer shall ensure that it and all of its staff, agents, contractors and any other party performing its obligations or exercising its rights under or in connection with these Conditions and/or any other agreement that the Customer 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 Customer shall, whenever requested by RM, provide evidence of the measures, steps and processes that it takes to ensure compliance with the provisions of this Condition and the relevant laws, regulations and codes of conduct.
- 14.9 These Conditions shall be construed pursuant to the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 14.10 Where the Customer comprises two or more persons their liability and obligations to RM shall be joint and several.
- 14.11 The Customer acknowledges that it has read and agrees to be bound by these Conditions. The Customer further agrees that these Conditions, the Service Proposal, the Customer's order and all documents incorporated by reference are the complete and exclusive statement of the mutual understanding of the parties which supersede and cancel all previous oral and written agreements and communications relating to the subject matter hereof. Each of the parties acknowledges and agrees that in agreeing to these Conditions it has not relied on (or has been induced to agree these Conditions by) any statement, representation, warranty or understanding made prior to agreeing these Conditions. Nothing in this clause excludes any party's liability for fraudulent misrepresentation.

14.12 RM reserves the right to change these Conditions from time to time either (i) on giving the Customer 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, in which case the updated Conditions shall take effect thirty (30) days after posting on www.rm.com.
