

RM Easimaths Terms and Conditions

(Effective December 2014)

BY USING OR ACCESSING THE RM EASIMATHS WEBSITE YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING YOUR USE OF THE SERVICE.

THIS AGREEMENT SHALL APPLY TO YOUR USE OF THE SERVICE, REGARDLESS OF ANY OTHER TERMS AND CONDITIONS THAT YOU MAY HAVE PROPOSED AND/OR ANY OTHER TERMS THAT MAY HAVE BEEN AGREED BETWEEN YOU AND RM.

IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER TERMS, THE TERMS OF THIS AGREEMENT SHALL PREVAIL. BY ACCESSING AND USING THE SERVICE, YOU CONFIRM YOUR AGREEMENT TO THESE TERMS.

1 DEFINITIONS

'Agreement' these Terms and Conditions and any Purchase Order between Customer and RM related to the Service.

"Confidential Information" shall mean and include all information which the disclosing party reasonably regards as confidential (which in the case of RM shall include without limitation all of RM's technical materials, software, trade secrets, documentation and pricing) but shall exclude information which:

- (a) is already in the public domain or comes into the public domain other than as a result of a breach of an Agreement;
- (b) the receiving party can demonstrate was developed independently of information received from the other party;
- (c) is required to be disclosed by statute (but not contractual obligation); and
- (d) is received from a third party who is entitled to share such information without restriction.

'Customer' means the person or organisation whose name is set out on the Purchase Order.

'Customer Data' means any data, information or material provided or submitted by You or Your Users to the Service in the course of using the Service, including, without limitation, name and contact information for Users, other personally identifiable information about Users and employees and students of Customer, some of which may not be publicly available or may include personal health information such as allergies or disabilities.

'Effective Date' means the earlier of the date this Agreement is accepted or the date You begin using the Service.

'Initial Term' means the initial period during which You are obliged to pay for the Service as stated on the Purchase Order.

'IPR' means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

'Purchase Order' means the purchase order placed on RM by You for the provision of the Service which shall identify the Service and modules, number of authorised users, the License Term and other details relating to the Service.

'Renewal Term' means has the meaning given to it in paragraph 2 (below).

'RM' means RM Education Ltd of 140 Eastern Avenue, Milton Park, Abingdon, Oxon, OX14 4SB, UK.

'Service' means access to the RM Easimaths service and modules thereof as identified in the Purchase Order, developed, operated, and maintained by RM, accessible via a designated web site or IP address, to which You are being granted access under this Agreement.

'Suppliers' means companies that supply software, hardware or services that are required to deliver the Service.

'Term' means the Initial Term and any Renewal Term.

'Unacceptable Content' means any material of any nature whatsoever which is or contains any material that: (i) is or may be defamatory, libellous, obscene, in contempt of court or in contravention of any law or regulation or infringes the rights of any third party; and/or (ii) promotes violence or discrimination based on race, sex, sexual orientation, religion, national origin, physical disability, mental disability, age or which promotes any illegal activities; and/or (iii) is a Virus.

'User' means Your pupils, their parents and Your employees, representatives, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by You (or by RM at Your request).

"Virus" means any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap door, malware, botnets or any other similar form of code intended, or having that effect, to cause harm, damage or to prevent or restrict the use of any computer system or data.

"Website" means RM's Easimaths website.

'You' or 'Your' means the name of the Customer as set out on the Purchase Order.

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2 DURATION

This Agreement shall commence on the Effective Date and continue until the end of the Initial Term. At the end of the Initial Term, unless otherwise agreed, this Agreement shall automatically renew for a period equal to the Initial Term (each a "Renewal Term"), at the then-current rate payable for the Service.

3 LICENCE GRANT AND RESTRICTIONS

- 3.1 Upon Your payment of the relevant fees, RM agrees to provide You with the non-exclusive, limited, non-assignable right to access the Service and use all the functionality contained within the Service in connection with educational services You provide to Users. You are not authorised to allow other entities to access or use the Service and You will not charge any User for access or use of the Service unless You have first obtained RM's written consent.
- 3.2 This Agreement licenses the Service to be used by the total number of staff and student Users that You have purchased from RM as set forth on the Purchase Order. The following Users may access the Service free of charge for the Term of this Agreement: parents or carers of Your students; and associates who work with Your establishment but are not employed by You.
- 3.3 You may produce copies of any instructions provided by RM and distribute such copies to Users to enable them to use the Service. This shall be without prejudice to the provisions of paragraph 5.
- 3.4 All rights not expressly granted in this Agreement are reserved to RM. No rights are granted by implication.

4 YOUR RESPONSIBILITIES

- 4.1 If You or Your Users disclose or share user account details with any third party or allow any third party to use the Service on Your behalf or violate the terms of this agreement in any other way, You agree to indemnify RM and our Suppliers for any losses costs or damages incurred by RM or our Suppliers as a result of Your actions. If RM reasonably believes that an account is being used in any way which is not permitted by RM, RM reserves the right to cancel access rights immediately without notice and to block access to all Users from that account. We will use reasonable efforts to notify You promptly after taking such action.
- 4.2 You are solely responsible for acquiring and maintaining all computer hardware and software, telephone and communications equipment needed for access to and use of the Service.
- 4.3 You are solely responsible to obtain all appropriate and necessary consents and authorizations from any third party required or appropriate in order to disclose or use any Customer Data, including without limitation personally identifiable information about Your Users, to RM to provide or use such information in connection with the Services. You will be responsible for Your use and access of Customer Data in a manner consistent with Your obligations to third parties.
- 4.4 You own and have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and IPR ownership or right to use of all Customer Data and RM shall not be responsible or liable for the deletion, correction, destruction, damage, loss of or failure to store any Customer Data. You will maintain back-up copies of such Customer Data to the extent that You require such back-up copies.

4.5 You agree to ensure that no User will introduce any Virus into any computer equipment or system or software of RM. You further agree to use virus-checking software before downloading any material from the Internet or the Service and, unless otherwise agreed, shall be responsible for applying anti-virus software to protect Your machines and networks.

4.6 You agree to ensure that no User will use the Service for the purposes of storing, transmitting or receiving any Unacceptable Content.

4.7 You agree that You and Users shall not modify in any way the paper or digital copies of any materials printed off or downloaded as part of accessing the Service. You and Users shall not use any illustrations, photographs, video or audio sequences or any graphics without acknowledging RM's rights in the Website .RM's status (and that of any identified contributors) as the authors of material on the Website must always be acknowledged

4.8 You and each of Your Users will comply with the "Acceptable Use Policy" made available for viewing through the Service, which is incorporated by reference. Each of Your Users will be required to accept the terms and conditions of the Acceptable Use Policy prior to being allowed first access to use the Service. RM may suspend or terminate access by any User for failure to comply with the terms and conditions of the Acceptable Use Policy. RM reserves the right to update the Acceptable Use Policy from time to time by making the updated policy available for viewing through the Service. If any change in the Acceptable Use Policy would materially and adversely impact You or Your Users' use of the Service, then You may terminate this Agreement upon written notice to us within thirty days of the effectiveness of the Acceptable Use Policy.

5 INTELLECTUAL PROPERTY

5.1 At no time shall You or any User gain any title to any such software or be entitled to receive a copy of the RM software You are using to access the Service.

5.2 You shall and ensure that Users shall treat the Service like any other copyrighted material (e.g. a book or musical recording).

5.3 You undertake not to perform (nor allow any User to perform) any of the acts referred to in this paragraph 5.3 except to the extent and only to the extent permitted by law as a lawful user of the Service and only then for the specific limited purpose permitted by law or in this Agreement. You undertake (including on behalf of all Users):

5.3.1 not to copy the Service (other than for normal system operation and as expressly specified in this Agreement) nor otherwise reproduce the same;

5.3.2 not to translate, adapt, vary, or modify the Service;

5.3.3 not to disassemble, decompile or reverse engineer the Service;

5.3.4 not to remove, obscure or modify any notice of patent, copyright, trademark or other proprietary rights notice on the Service;

5.3.5 not to sub-license, distribute, rent, lease, or otherwise transfer the Service or any unique access code or copy the Service other than as expressly provided in this Agreement;

5.3.6 not to make the Service accessible by any type of broadcast or transmission, including but not limited to broadcast or transmission by cable, Internet, television, satellite, or telephone;

5.3.7 not to use the Service to attract customers away from RM or to procure commercial

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- 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;
- 5.3.8 not to reproduce or transmit to or store in any website any part of the Service, nor disseminate in any electronic or non-electronic form any of the pages or parts thereof, nor include any of the foregoing in any public or private electronic retrieval system or service; and
- 5.3.9 not to enable a third party to do any of the acts set out in this paragraph 5.3.
- 5.4 If notified promptly in writing of any action (and all prior claims relating to such action) brought against You, based on a claim that any User's use of the Service infringes a UK patent or copyright, RM will defend such action at its expense and pay the costs and damages awarded, provided that RM shall have sole control of the defence of any such action and all negotiations for its settlement or compromise. At any time during the course of any litigation or other dispute resolution process arising out of a claim of infringement for a UK patent or copyright, or if in RM's opinion, the Service is likely to become the subject of a claim of infringement of a UK patent or copyright, RM will at its option and expense either procure for You and any Users the right to continue using the Service, replace or modify the same so that it becomes non-infringing, or refund the prior month's subscription fees for the Service and any pre-paid unused amount and terminate the license to the Service. RM will not have any liability to You under any provision of this paragraph if the infringement or claim thereof is based upon:
- 5.4.1 use of the Service in combination with other equipment or software not supplied by RM; or
- 5.4.2 the use of the Service in carrying out any patented process; or
- 5.4.3 infringement as described in paragraph 5.6 (below).
- 5.5 Paragraph 5.4 (above) states the entire liability of RM and Customer's sole remedy with respect to infringement of patents or copyrights by the service or any part thereof or by its operation. No costs or expenses will be incurred for the account of RM without the prior written consent of RM.
- 5.6 RM is not responsible for monitoring any content or information submitted by Your or any of Your Users. You should implement policies and procedures to ensure all content You or Your Users submit to the Service are appropriate for the Users, meet with Your requirements, and in conformance with this Agreement. RM may remove any content that is illegal or violates this Agreement or the Acceptable Use Policy and/or immediately suspend or terminate access and use of the Service by any User associated with such content or activities that violate this Agreement or the Acceptable Use Policy. RM reserves the right to suspend the Service to You and Your Users in the event such activities pose a risk to RM's systems or use of the Service by RM's other customers. You will hold RM harmless against any expense, judgment, liability or loss, or infringement of any IPRs which results from (a) Your provision of the Customer Data to RM or the service, (b) RM's compliance with Your or any User's instructions, (c) use by RM of any Customer Data or other materials or information provided by You or any User, or (d) the violation of any law, regulation or third party right by any content, data or information provided by You or any of Your Users, or (e) Your or Your User's violation of this Agreement.
- 5.7 RM may update, modify, change features, improve or extend the Service from time to time. To the extent any such modification results in a material adverse impact and You notify RM within thirty days of such change, RM will either modify the Service to remedy or provide a workaround to the issue or allow You to terminate without additional liability on condition that Your termination is completed within an additional thirty day period.
- ## 6 TERMINATION
- 6.1 Either party may terminate this Agreement:
- 6.1.1 in accordance with paragraph 2.2 (above);
- 6.1.2 if the other party commits any material breach of this Agreement which is not remedied within thirty (30) days of a notice requiring such breach to be remedied; or
- 6.1.3 if the other party ceases to carry on business or substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due.
- 6.2 RM may terminate this Agreement upon written notice to You (which would automatically terminate any related License(s)) if You fail to pay any sums to RM in respect of the Service on the due date of payment.
- 6.3 Subject to paragraph 6.4 (below), following termination of this Agreement, RM will provide You with access to the Service for a limited period of no more than thirty (30) days from the date of termination to enable You to take copies of any Customer Data if You request this at the time of termination.
- 6.4 Where this Agreement has been terminated by RM pursuant to paragraphs 6.1.2, 6.1.3 or 6.2 (above), Your right to access or use Customer Data shall immediately cease and RM may withhold, remove and/or discard Customer Data without notice. Additionally, RM shall have no obligation to maintain or forward any Customer Data in such circumstances.
- ## 7 WARRANTY DISCLAIMER
- 7.1 You accept that RM is acting only as a supplier and that it is Your responsibility to verify that the Service will be suitable for its own requirements and the results You intend to achieve through use of the Service. The service is provided "as is", "where is", and RM disclaims all warranties, conditions, guarantees or representations, whether express, implied or statutory, including without limitation any warranty of merchantability or fitness for a particular purpose. RM makes support services available for the Services under a separate support services agreement.
- ## 8 DATA PROTECTION
- 8.1 In this Agreement, 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 Service. "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.
- 8.2 You acknowledge that You are a data controller and that RM is a data processor.
- 8.3 RM shall:
- 8.3.1 use the Data only on Your instructions as set out or referred to in this Agreement to provide the Service;

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- 8.3.2 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
- 8.3.3 take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the Service.
- 8.4 The parties acknowledge that RM's provision of the Service 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 this Agreement.
- 8.5 The parties also acknowledge that RM may also use services and/or products from other third parties in order to provide the Service 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. If RM becomes aware of any such third party wishing to transfer Data outside the European Economic Area, RM shall request that the third party enters into an agreement of the sort noted in clause 8.4 above.
- 8.6 You agree to comply with Your obligations under Data Protection Law in relation to its collection, processing and provision of Data to RM in connection with the Service.
- 8.7 You 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 Clause 8 by You and/or Your employees, agents and/or sub-contractors.
- 8.8 You acknowledge that RM is reliant on You 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 You or any data subject arising from any action or omission by RM to the extent that such action or omission resulted from Your instructions.
- 8.9 RM may also use Your personal data in accordance with its Privacy Policy which can be found at www.rm.com.
- 9 CONFIDENTIALITY
- 9.1 The information that You provide to RM will be used by RM for the effective administration of the Service and to communicate with You and Users generally.
- 9.2 The Customer agrees to keep RM's Confidential Information secure and to implement such security measures on RM's Confidential Information as it employs on its own Confidential Information, but in no event will You use less than reasonable measures to protect RM's Confidential Information. You acknowledge and agree the software used to provide the Service constitutes RM's Confidential Information. You agree that You will not disclose any of RM's Confidential Information to any third party without RM's prior written consent.
- 10 LIMITATION OF LIABILITY
- 10.1 The Service has been manufactured or developed by RM or third parties to standard specifications. You accept that RM is acting only as a supplier and that it is Your responsibility to verify that the Service will be suitable for Your own requirements. There are no warranties, conditions, guarantees or representations as to description, merchantability or fitness for a particular purpose or other warranties, conditions, guarantees or representations relating to the Service, whether express implied by statute or otherwise oral or in writing except as provided in this Agreement and except as to statute implied terms as to title.
- 10.2 You agree that RM will not be liable for any loss arising out of the provision of goods or services by any company, organisation or person other than RM or for any loss caused by Your failure to perform Your obligations under this Agreement. In particular but without limitation to the generality of the foregoing, RM shall not be responsible nor liable for Your inability to access the Service or any impairment in using the Service where such inability or impairment results from any incompatibility between any hardware or software used by You, unless such items have been supplied by RM specifically for use with the Service.
- 10.3 RM's liability shall be unlimited in respect of (a) any death or personal injury caused by its negligence or that of its employees, agents or contractors; (b) fraud; (c) under Part 1 of the Consumer Protection Act 1987; (d) for breach of any conditions as to title or quiet enjoyment implied by section 12 of the Sale of Goods Act 1979 (as amended) or section 2 of the Supply of Goods and Services Act 1982 (as amended) under any express indemnities contained in this Agreement; or (e) for any other matter in respect of which law prescribes that liability may not be excluded or limited.
- 10.4 Subject to clause 10.3 (above), RM shall not in any event be liable for any loss of profits, loss or corruption of data, loss of use, loss of goodwill, anticipated savings, loss of amenity, or any indirect, special or consequential losses, in each case howsoever arising, in connection with or arising out of the supply, functioning or use of the Service 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 this Agreement
- 10.5 Subject to clauses 5.4 and 10.3 (above), 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 the Service shall be limited to the fees paid or payable in respect of the Service. 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.
- 11 ANTI-BRIBERY
- 11.1 You shall ensure that You and all of Your staff, agents, contractors and any other party performing Your obligations or exercising Your rights under or in connection with this Agreement and/or any other agreement that You 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. You 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.
- 12 NOTICE
- 12.1 Except for notices about renewal in paragraph 2 (above), any notices You may wish to serve on RM must be sent by first class registered post to RM's registered office. Any such notice will be deemed delivered on receipt.
- 12.2 RM may give notice to You by means of a general notice on the Service, electronic mail to Your e-mail address on record in RM's account information, or by first class mail to the address on Your record held by RM. Any such correctly addressed notices shall be deemed to have been given upon the expiration of 48 hours after posting (if sent by first class mail) or 12 hours after sending (if sent by email).
- 13 LINKS TO WEBSITES

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13.1 If the Website provides access via hypertext or other links to resources in other websites, such links shall be for browsing only and in so doing RM is not responsible for and does not endorse any linked entities nor authorise any act which may be in breach of copyright or any other third party rights which are protected in law or by international treaties worldwide. RM does not accept any responsibility or liability for any of the material contained on any third party website. Your linking to any other off-site pages or other sites is entirely at Your own risk

13.2 You may link only to RM's homepage on the Website, provided You do so in a way that is fair and legal and does not damage RM's reputation or take advantage of it, but You must not establish a link in such a way as to suggest any form of association, approval or endorsement on RM's part where none exists. You must not establish a link from any website that is not owned by or licensed to You. The Website must not be framed on any other website,. RM reserves the right to withdraw linking permission without notice. The website from which You are linking must not contain any unacceptable content. If You wish to make any use of material on the Website other than that set out above, please ask RM.

14 ENTIRE AGREEMENT; MODIFICATIONS TO TERMS

14.1 These terms and conditions together with the Purchase Order and the Acceptable Use Policy, constitute the entire agreement between RM and You with respect to the subject matter herein.

14.2 RM reserves the right, on reasonable notice, to change these terms and conditions. It is Your responsibility to check the terms and conditions governing the use of the Website.

14.3 Any terms and conditions set forth in the Purchase Order shall only be effective with respect to the number of items ordered, the scope of the Service ordered, the licence Term and the pricing.

14.4 Notwithstanding any other provisions set forth in the Purchase Order, sale order, sale confirmation or any other document relating to the subject matter of this Agreement, these terms and conditions will take precedence over any such document, and any conflicting, inconsistent, or additional terms contained therein will be null and void and are hereby rejected.

15 FORCE MAJEURE

Neither party shall be liable to the other for any delay in or failure to perform its obligations under this Agreement (other than a payment of money) provided that such a failure is due to causes beyond its reasonable control. Such causes shall include but are not limited to terrorism, fire, flooding, lightning, storm, power surges and failures, failure of suppliers, telecommunications disruptions, industrial disputes and other similar action, earthquakes and acts of God.

16 NON-WAIVER

Failure by either party to exercise or delay exercising any of the terms of this Agreement shall not constitute or be deemed to be a waiver of its rights under this Agreement nor prejudice its rights to take subsequent action.

17 NON-ENFORCEABILITY

The invalidity or unenforceability for any reason of any part of this Agreement shall not prejudice the continuation in force of any other part of this Agreement.

18 ASSIGNMENT

This Agreement may not be assigned by You without the prior written consent of RM (which RM shall be entitled to refuse at its absolute discretion). RM shall be entitled to assign the benefit and/or

burden of this Agreement to any other subsidiary (of any level) of RM plc (Regd No 01749877) upon giving notice to You to that effect. RM shall also be entitled to use subcontractors at its discretion in order to provide the Service.

19 CUSTOMER MORE THAN ONE PERSON

Where any order for the Service has been made by two or more legal persons jointly, the liability of such persons and their obligations to RM under this Agreement shall be joint and several.

20 THIRD PARTY RIGHTS

Nothing in this Agreement shall confer on any third party any right or benefit under the provisions of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

21 GOVERNING LAW

This Agreement (and any dispute, controversy, proceedings or claim of whatever nature) shall be governed by English law. The parties hereby submit to the exclusive jurisdiction of the English courts.