

RM Results Pilot Terms & Conditions

RM RESULTS PILOT SPECIFIC DETAILS

1.	Name of Customer:		(the "Customer")
2.	Address of Customer:		
3.	Title of Pilot:		
4.	Date:		(the "Effective Date")
5.	Term:		(the "Term")
6.	Users:		The total number of users licenced to use the service (the "Users")
7.	Support Services:		(the "Support Services")
8.	Training:		(the "Training")
9.	Table of fees and expenses, together with payment dates:		(the "Payments")
10.	Special Conditions:	The Customer shall be responsible for any necessary insurance.	(the "Special Conditions")

<p>..... Signed for and on behalf of RM Results Name & Position</p>	<p>..... Date</p>
<p>..... Signed for and on behalf of the Customer Name & Position</p>	<p>..... Date</p>

RM Results Pilot Terms and Conditions
(Effective September 2014)

**BY USING OR ACCESSING RM ASSESSOR
AND / OR RM DELIVERY 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 RESULTS.**

1 **DEFINITIONS**

‘Agreement’ these terms and conditions and any Purchase Order or the cover sheet to these terms and conditions, if applicable, between Customer and RM Results related to the Service. In the event of any conflict or inconsistency between these terms and conditions and any Purchase Order or the cover sheet to these terms and conditions, these terms and conditions shall prevail.

‘Confidential Information’ shall mean and include all information which the disclosing party reasonably regards as confidential (which in the case of RM Results shall include without limitation all of RM Results’ 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 this 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 or the cover sheet to these terms and conditions.

‘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 date this Agreement is accepted. For the avoidance of doubt, You are deemed to have accepted this Agreement if you begin using the Service.

‘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 Results by You for the provision of the Service which shall identify the Service and modules, number of authorised users, the Term and other details relating to the Service as applicable.

‘RM Results’ means a division of RM Education Limited of 140 Eastern Avenue, Milton Park, Abingdon, Oxon, OX14 4SB, UK.

‘Service’ means access to the RM Assessor and/or RM Delivery service and modules thereof as identified in the Purchase Order or the cover sheet to these terms and conditions, developed, operated, and maintained by RM Results, 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 period during which You are obliged to pay for the Service, use or access RM Assessor and / or RM Delivery for the Service as stated on the Purchase Order or the cover sheet to these terms and conditions, as appropriate..

‘User’ means 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 Results at Your request).

‘You’ or ‘Your’ means the name of the Customer as set out on the Purchase Order or the cover sheet to these terms and conditions.

2 **DURATION**

2.1 This Agreement shall commence on the Effective Date and continue until the end of the Term. At the end of the Term, unless otherwise agreed, this Agreement shall automatically terminate.

2.2 Subject to paragraph 7, either party may terminate this Agreement by giving not less than ninety (90) days notice prior to the end of the then-current Term.

3 **LICENSE GRANT AND RESTRICTIONS**

3.1 Upon the entering into of this Agreement, RM Results agrees to provide You with the non-exclusive, limited, non-assignable right to access the Service. 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 Results’ written consent.

3.2 This Agreement licenses the Service to be used by the total number of Users as set forth on the Purchase Order or the cover sheet to these terms and conditions.

3.3 You may produce copies of any instructions provided by RM Results and distribute such copies to Users to enable them to use the Service. This shall be without prejudice to the provisions of paragraph 6.

3.4 All rights not expressly granted in this Agreement are reserved to RM Results. No rights are granted by implication.

4 **PAYMENT**

4.1 Unless otherwise notified to the Customer in writing by RM Results, the Customer shall pay for the Service, if applicable, at the time of order. Alternatively where the Customer is invoiced by RM Results on the date of delivery for the Service, the Customer shall pay all invoices within thirty (30) days of the date thereof (time being of the essence). Terms of payment are within RM Results’ sole discretion and unless otherwise agreed to by RM Results, payment may be received by RM Results prior to RM Results’ acceptance of an order in accordance with these terms. RM Results reserves the right to charge interest at the lower rate of (a) 8% per annum above the Bank of England base rate or (b) the highest rate applicable under the Governing Law, 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 (at RM Results’ option) forthwith to determine the same. RM Results has no obligation to provide the Service

until RM Results has received full payment for the Service that the Customer has ordered, unless otherwise detailed in the cover sheet.

5 YOUR RESPONSIBILITIES

5.1 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 Results and our Suppliers for any losses costs or damages incurred by RM Results or our Suppliers as a result of Your actions. If RM Results reasonably believes that an account is being used in any way which is not permitted by RM Results, RM Results 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.

5.2 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.

5.3 You are solely responsible to obtain all appropriate and necessary consents and authorisations 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 Results 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.

5.4 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 Results 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.

6 INTELLECTUAL PROPERTY

6.1 Title to any RM Results Confidential Information shall at all times remain vested in RM Results or its licensors. 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 Results software You are using to provide the Service.

6.2 Subject always to the provisions of paragraph 6.1, RM Results hereby grants to You a limited, non-exclusive, non-transferable License to access and use the software made available to You (if any) by RM Results for use with the Service for the duration of the Term. You shall and ensure that Users shall treat the Service like any other copyrighted material (e.g. a book or musical recording).

6.3 You undertake not to perform (nor allow any User to perform) any of the acts referred to in this paragraph 6.3 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):

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

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

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

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

6.3.5 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;

6.3.6 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;

6.3.7 not to use the Service to attract customers away from RM Results or to procure commercial advantage over RM Results or to use it in any other way which is likely to be directly or indirectly detrimental to RM Results or its business;

6.3.8 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

6.3.9 not to enable a third party to do any of the acts set out in this paragraph 6.3.

6.4 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 Results will defend such action at its expense and pay the costs and damages awarded, provided that RM Results 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 Results' opinion, the Service is likely to become the subject of a claim of infringement of a UK patent or copyright, RM Results 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, if applicable, for the Service and any pre-paid unused amount and terminate the license to the Service. RM Results will not have any liability to You under any provision of this paragraph if the infringement or claim thereof is based upon:

6.4.1 use of the Service in combination with other equipment or software not supplied by RM Results; or

6.4.2 the use of the Service in carrying out any patented process.

6.5 Paragraph 6.4 (above) states the entire liability of RM Results 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 Results without the prior written consent of RM Results.

6.6 RM Results is not responsible for monitoring any content or information submitted by You 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. You will hold RM Results 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 Results or the service, (b) RM Results' compliance with Your or any User's instructions, (c) use by RM Results 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.

6.7 RM Results may update, modify, change features, improve or extend the Service from time to time.

7 TERMINATION

7.1 Either party may terminate this Agreement:

7.1.1 in accordance with paragraph 2.2 (above);

7.1.2 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

- 7.1.3 Immediately 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.
- 7.2 RM Results 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 Results in respect of the Service on the due date of payment.
- 7.3 Following termination of this Agreement, RM Results 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.
- 8 WARRANTY DISCLAIMER
- 8.1 You accept that RM Results 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 Results 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. Where RM Results makes Support Services and Training available for the Services, these will be as stated in the cover sheet to these terms and conditions.
- 9 DATA PROTECTION
- 9.1 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, Customer Data and any other sensitive personal data provided to RM Results 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.
- 9.2 You acknowledge that You are a data controller and that RM Results is a data processor.
- 9.3 RM Results shall:
- 9.3.1 use the Data only on Your instructions as set out or referred to in this Agreement to provide the Service;
- 9.3.2 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
- 9.3.3 take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the Service.
- 9.4 The parties acknowledge that RM Results’ provision of the Service may require the transfer of Data to RM Results’ sub-contractors (including RM Results 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 Results will be permitted to transfer Data to such Recipients provided that RM Results 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.
- 9.5 The parties also acknowledge that RM Results may also use services and/or products from other third parties in order to provide the Service and that, in doing so, RM Results may transfer Data to such third parties. This may include (by way of example only) third parties that provide scanning and indexing facilities. If RM Results becomes aware of any such third party wishing to transfer Data outside the European Economic Area, RM Results shall request that the third party enters into an agreement of the sort noted in clause 9.4 above.
- 9.6 You agree to comply with Your obligations under Data Protection Law in relation to its collection, processing and provision of Data to RM Results in connection with the Service.
- 9.7 You shall indemnify and keep RM Results indemnified against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this Clause 9 by You and/or Your employees, agents and/or sub-contractors.
- 9.8 You acknowledge that RM Results is reliant on You for direction as to the extent to which RM Results is entitled to use and process the Data. Consequently, RM Results will not be liable for any claim brought by You or any data subject arising from any action or omission by RM Results to the extent that such action or omission resulted from Your instructions.
- 9.9 RM Results may also use Your personal data in accordance with its Privacy Policy which can be found at www.rm.com.
- 10 CONFIDENTIALITY
- 10.1 The information that You provide to RM Results will be used by RM Results for the effective administration of its services and to communicate with You and Users generally.
- 10.2 The Customer agrees to keep RM Results’ Confidential Information secure and to implement such security measures on RM Results’ Confidential Information as it employs on its own Confidential Information, but in no event will You use less than reasonable measures to protect RM Results’ Confidential Information. You acknowledge and agree the software used to provide the Services constitutes RM Results’ Confidential Information. You agree that You will not disclose any of RM Results’ Confidential Information to any third party without RM Results’ prior written consent.
- 11 LIMITATION OF LIABILITY
- 11.1 The Service has been manufactured or developed by RM Results or third parties to standard specifications. You accept that RM Results 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.
- 11.2 You agree that RM Results 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 Results or for any loss caused by Your failure to perform Your obligations under this Agreement or as referenced by the Special Conditions detailed on the cover sheet to this Agreement. In particular but without limitation to the generality of the foregoing, RM Results 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 Results specifically for use with the Service.
- 11.3 RM Results’ 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) for any other matter in respect of which law prescribes that liability may not be excluded or limited.
- 11.4 Subject to clause 11.3 (above), RM Results’ liability under or

otherwise arising out of this Agreement in respect of loss of profit, loss or corruption of data, loss of use, loss of anticipated savings, loss of amenity, loss of business, loss of revenue, loss of capital and / or any indirect, special or consequential losses, and / or loss of goodwill of any kind shall be excluded, in each case howsoever arising, in connection with or arising out of the supply, functioning or use of the Service even if RM Results 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.

11.5 Subject to clauses 6.4, 11.3 and 11.4 (above), the maximum aggregate liability of RM Results 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, or, in the event no fees are payable, the sum of £50. 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 Results becomes liable for loss or damage that could otherwise have been limited.

12 ANTI-BRIBERY

12.1 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 Results, 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 Results, 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 NOTICE

13.1 Any notices You may wish to serve on RM Results must be sent by first class registered post to RM Results' registered office. Any such notice will be deemed delivered on receipt.

13.2 RM Results 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 Results' account information, or by first class mail to the address on Your record held by RM Results. 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).

14 ENTIRE AGREEMENT: MODIFICATIONS TO TERMS

14.1 These terms and conditions and any Purchase Order or the cover sheet to these terms and conditions, if applicable, between You and RM Results related to the Service, constitute the entire agreement between RM Results and You with respect to the subject matter herein.

14.2 RM Results 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 RM Assessor and RM Delivery.

14.3 Any terms and conditions set forth in the Purchase Order or the cover sheet to these terms and conditions shall only be effective with respect to the number of items ordered, the scope of the Services ordered, the Term and the pricing.

14.4 Notwithstanding any other provisions set forth in the Purchase Order or the cover sheet to these terms and conditions, 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 Results (which RM Results shall be entitled to refuse at its absolute discretion). RM Results shall be entitled to assign the benefit and/or burden of this Agreement to any other subsidiary (of any level) of RM Education Limited (Registered No 01148594) upon giving notice to You to that effect. RM Results 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 Results 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.