

**Third Party ValueCare, IMAC/IPAD ReturnCare and MacBook ReturnCare+**

**Terms and Conditions (July 2015)**

**IMPORTANT NOTES:**

Please read these terms and conditions and ensure that you have understood them in full prior to making your purchase. Placing any order for the services listed above shall be taken as confirmation from you that you have read, understood and agree to be bound by these terms and conditions.

**1. APPLICATION**

1.1 These Conditions shall supersede all terms and conditions of the Customer.

1.2 RM shall not be considered to have accepted any order until it has confirmed any order in writing. In particular but without limitation to the generality of the foregoing, the generation of any automatic e-mail responses shall not constitute such acceptance.

**2. DEFINITIONS**

2.1 The following expressions shall bear the meanings set out below:

**“Additional Services”** any Emergency Maintenance and/or any Excluded Maintenance performed by RM under this Agreement.

**“Additional Services Fees”** the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

**“Additional Services Rates”** the rates as quoted and/or agreed between the parties with the terms of this Agreement.

**“Agreement”** the agreement between the Customer and RM, under which RM will provide a Service, subject to these Conditions;

**“Beyond Economical Repair”** Scheduled Equipment that is deemed by RM to be:

- (a) not repairable (heavily damaged and cannot be repaired);
- (b) have parts not available (from RM or third party supplier);
- (c) beyond serviceable life (when a repair would not result in the reliable or safe operation of the Scheduled Equipment due to degradation and age of casing or other components within the Scheduled Equipment, or the cost of the repair/replacement is equivalent or greater than the value of the Scheduled Equipment and the Scheduled Equipment is 6 years old or more); and/or
- (d) have had repeated failure (Scheduled Equipment has been repaired more than 3 times in a rolling 12 month period including incidents where the original fix has been accepted as complete).

**“Charges”** the Standard Maintenance Fees and the Additional Services Fees together;

**“Conditions”** these terms and conditions;

**“Confidential Information”** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Maintenance Services or Additional Services, who need to know the confidential information in question (Representatives) to the other party and that party’s Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**“Customer”** any purchaser of any Service;

**“Contact Details”** the telephone number or email address more particularly set out in the Schedule.

**“Corrective Maintenance”** means:

- (a) making any adjustments to the Scheduled Equipment; and
- (b) replacing any parts or components of the Scheduled Equipment, required to restore the Scheduled Equipment to Good Working Order, in accordance with clause 10.3.

**“Coverage Hours”** the hours during a Working Day more particularly set out in the Schedule.

**“Emergency Maintenance”** in accordance with clause 100 and clause 10.5:

- (a) making any adjustments to the Scheduled Equipment; and
- (b) replacing any parts or components of the Scheduled Equipment, required to restore the Scheduled Equipment to Good Working Order;

**“End Date”** means the date on which the Maintenance Services shall end on each line item of **Scheduled Equipment** as more particularly set out in the Schedules;

**“Excluded Causes”** means:

- (a) a defect in the manufacturer's design of the Scheduled Equipment;
- (b) faulty materials or workmanship in the manufacture of the Scheduled Equipment;
- (c) use of the Scheduled Equipment with computer equipment or materials not supplied or approved in writing by RM;
- (d) any maintenance, alteration, modification or adjustment performed by persons other than RM or its employees or agents unless approved by RM in accordance with clause 13.11(j);
- (e) the Customer or a third party moving the Scheduled Equipment;
- (f) the use of the Scheduled Equipment in breach of any of the provisions of the agreement under which the Scheduled Equipment was supplied;
- (g) a failure by the Customer to correctly and completely provide to RM the Scheduled Equipment specifications and/or if the Scheduled Equipment or any parts of the Scheduled Equipment is ‘grey’;
- (h) where the Scheduled Equipment is Beyond Economical Repair;
- (i) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Scheduled Equipment;
- (j) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Scheduled Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
- (k) the neglect or misuse of the Scheduled Equipment;
- (l) maintenance as a result of:
  - (i) the Customer's failure to comply with the environmental electrical or other conditions specified by RM and/or the manufacture of the Scheduled Equipment;
  - (ii) damage resulting from failure or fluctuation of electrical power, air conditioning or humidity controls or of any attachments or associated equipment (whether supplied by Customer or not) which do not form part of the Scheduled Equipment;
  - (iii) damage resulting from accident, transportation or any neglect, misuse or default on the part of the Customer its employees or agents or any third party;
  - (iv) Act of God, fire, flood, war, act of vandalism or other similar occurrence;
  - (v) repair, replacement or removal of any consumable or expendable items including but not limited to any item deemed to be consumable by the manufacturer, rechargeable batteries, media, print-heads, fuser units, ink bottles and ink, ribbons, paper, collection units/bottles, laser drums, toner cartridges, maintenance kits, ozone filters, developer kits, print shields, print wheels, ink cartridges, print bands, cathode ray tubes (outside of manufacturers life expectancy) and terminal/PC accessories such as: screen filters, mouse mats, holsters, monitor arms;
  - (vi) addition, modification or adjustment to the Scheduled Equipment by any party other than Customer without the prior written consent of Customer;
  - (vii) Excessive use of any part of the Scheduled Equipment such being in excess of the manufacturers specification;

**“Excluded Maintenance”** any Maintenance Services required to restore any malfunctioning or failed Scheduled Equipment and any equipment not set out in the Schedule, to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes;

**“Fault”** an issue or issues with any Scheduled Equipment which results in the Scheduled Equipment malfunctioning, failing or otherwise not being in Good Working Order;

**“Fix Time”** the applicable fix times as set out in the Schedule;

**“Good Industry Practice”** in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a reasonably skilled person engaged in the same type of undertaking under the same or similar circumstances;

**“Good Working Order”** the Scheduled Equipment operates in accordance with the Operating Manuals;

**“Intellectual Property Rights”** means RM’s 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;

**“Location”** the location or locations of the Scheduled Equipment at the Customer’s premises as specified in the Schedule, or any other location as may be agreed by the parties in writing from time to time;

**“Maintenance Services”** Technical Support, Corrective Maintenance of the Scheduled Equipment.

The Maintenance Services shall not include:

- electrical work external to the Scheduled Equipment or maintenance of accessories, attachments, machines or other devices not forming part of the Scheduled Equipment;
- making specification changes or performing services connected with the relocation of the Scheduled Equipment;
- on-call remedial maintenance outside the Coverage Hours;
- installation of engineering changes or performing services connected with the relocation of the Scheduled Equipment;
- maintenance or support of software and/or operating system unless charged for and specified in the schedule;
- attendance other than at the site in respect of any item of Scheduled Equipment;
- any inspection work or materials required to put Scheduled Equipment to good operating condition;
- preventative maintenance;
- the training of the Customers staff;
- any requirement to carry out an annual or other test on the Scheduled Equipment to satisfy statutory regulations or any repair necessitated as a result of a failure to satisfy such test, except where this deviates from the manufacturers specification;
- the supply of consumable items, as dictated by the manufacturer. These include but are not limited to: reconditioned toners, duplexing options, paper trays, sheet feeders, door hinges, scanner feed rollers, batteries, thermal wax, paper separation pads, fuser units, toners, ribbons, bulbs/lamps, developer, hammer modules/banks, cabling up to network card and external cabling issues, power leads, purge units, print heads, print bands, drum kit, EP and ink cartridges, maintenance kits and brushes;

**“Operating Manuals”** all operating manuals, specifications and other manufacturer documentation relating to the Scheduled Equipment;

**“Registered Office”** 140 Eastern Avenue, Milton Park, Abingdon, Oxon, OX14 4SB or such other place as RM may from time to time specify as its registered office;

**“Response Time”** the applicable response times as set out in the Schedule;

**“RM”** RM Education Ltd, a company incorporated in England and Wales and whose registered office is situated at the Registered Office;

**“Scheduled Equipment”** is equipment that is recorded in the contract entitlement area on RM’s or appropriate third party’s electronic records system;

**“Service”** the service which has been agreed between the Customer and RM, which RM will provide to the Customer pursuant to an Agreement;

**“Service Levels”** the levels to which RM must perform the Maintenance Services, as set out in the Schedule;

**“Service Procedure”** as more particularly set out in the Schedule;

**“Service Software”** any software used by RM in the course of performing any Service;

**“Standard Maintenance Fees”** the fees payable by the Customer for the provision of Maintenance Services, as set out in the Schedule, as these fees are varied from time to time in accordance with the terms of this Agreement;

**“Start Date”** means the date on which the Maintenance Services shall commence on each line item of Scheduled Equipment as more particularly set out in the Schedules;

**“Technical Support Services”** means advice by telephone or email in relation to the operation of or possible Fault in the Scheduled Equipment:

- upon request by the Customer the diagnosis of Fault in the Scheduled Equipment and recommendations on how to resolve such Fault including where necessary reference to the original authors of the Scheduled Equipment; and/or
- remote support by modem or internet access in respect of the Scheduled Equipment;

**“Term”** the period between the Start Date and End Date as defined in the Schedules;

**“Third Party”** means either HP, Dell, Lenovo and Toshiba;

**“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 any computer system or data; and

**“Working Day”** between the hours of 9am and 5pm on any day on which banks are generally open for the transacting of normal banking business in England and Wales and shall exclude all weekends, public bank holidays and also RM’s shutdown period between Christmas and New Year.

2.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

**3. DURATION**

3.1 An Agreement shall commence on the date of acceptance by RM (in accordance with Clause 1.2) and shall continue, unless terminated in accordance with its terms, for such period(s) as agreed.

3.2 At the end of the agreed period the Agreement will terminate.

3.3 No refunds shall be payable if the Customer seeks to terminate any Agreement mid-term (including any renewal thereof) unless RM agrees (in its absolute discretion) to make such refund.

**4. THIRD PARTY VALUECARE**

4.1 The Third Party ValueCare Service is available for Third Party Desktops and Notebooks.

4.2 Third Party ValueCare is an on-site service. A RM engineer will attend the Customer’s site to attempt to repair the Scheduled Equipment. RM’s engineer will be equipped with tools and parts to

- attempt the repair. On occasions it may be necessary to ship parts or tools directly to the Customer's site.
- 4.3 Third Party ValueCare is not a guaranteed service. A level of diagnostics will be required to establish a correct diagnosis of the fault and in some cases further diagnostics may be required that may prejudice a next-day repair. At RM's sole discretion, the Scheduled Equipment may be returned to RM's, or any RM subcontractor's, premises for diagnosis/servicing. RM shall provide the Customer with loan equipment the next Working Day for the below products, to the same specification or higher than the Customer's equipment being fixed, if RM's engineer is not able to fix the issue on site in the same Working Day:
- Third Party Desktops;  
Third Party Notebooks.
- 4.4 Third Party ValueCare does not include any service or assistance to restore data or configuration. RM's engineer will perform a hardware repair only. If the hardware repair compromises the integrity of the data stored on, or configuration of, the Scheduled Equipment then the Scheduled Equipment will remain without an operating system. Data and system configuration restoration remains the responsibility of the Customer.
- 4.5 Third Party ValueCare does not include accidental damage to components. Accidental damage will be assessed and determined by a RM engineer; accidental damage is not covered by the Third Party ValueCare contract and will result in the call and any required parts being chargeable.
- 4.6 The Scheduled Equipment must be ready for repair when RM's engineer arrives onsite. For Third Party ValueCare calls, RM's engineer will wait a maximum of ten (10) minutes before leaving site. The hardware call will be closed, and the Customer will then have to re-log their support call. If the Customer's site is closed when RM's engineer arrives, this will also result in the hardware call being closed, and the Customer having to re-log the support call. If RM's engineer attends site and is unable to complete a Third Party ValueCare Service call because the Customer or equipment is not available, RM can seek to charge the Customer the fixed amount of £150 per missed call.
- 5 **IMAC/IPAD RETURN CARE**
- 5.1 iMac/iPad ReturnCare is available for Apple iMacs and iPads only.
- 5.2 iMac/iPad ReturnCare is a return to base warranty service and does not include any on-site Services.
- 5.3 iMac/iPad ReturnCare is a hardware repair only warranty and does not include any data backup or restoration tasks. Data integrity remains the responsibility of the Customer at all times and data backups should be made prior to the fault occurring or prior to the collection of the Scheduled Equipment by RM's courier. Requests for data salvage cannot be honoured after the Scheduled Equipment has been collected by RM's courier. Many of RM's service-centre diagnostics tasks are data destructive; if data integrity is compromised during the repair, the Scheduled Equipment will be returned with a base operating system and options as installed when the Scheduled Equipment was new.
- 5.4 It is the Customer's responsibility to pack the Scheduled Equipment securely and adequately to ensure that the Scheduled Equipment arrives to RM in good condition. Any damage to the Scheduled Equipment occurring during transit as a result of poor packaging is the Customer's (not RM's courier's) responsibility.
- 5.5 If the call requesting collection of the Scheduled Equipment is logged before midday on a Working Day, RM will endeavour to contact the Customer the next Working Day. Two (2) Working Days after the request call was first logged, on a reasonable endeavours basis, RM's courier will come to collect the Scheduled Equipment for return to RM's Service Centre.
- 5.6 The iMac/iPad ReturnCare Service does not guarantee turnaround timescales; Average time between collection and return of the Scheduled Equipment is 10 (ten) Working Days, however part shortages or ongoing faults may cause this turnaround time to be extended. RM will notify the Customer of any delays upon request.
- 5.7 iMac/iPad ReturnCare does not include accidental damage to components. Faults will be examined by an RM engineer; accidental damage is not covered by the iMac/iPad ReturnCare contract and will result in the call being chargeable.
- 5.8 Cracked or split screens will be assessed by RM's engineer, and if the damage is found to be user damage, all repair work will become chargeable.
- 6 **MACBOOK RETURN CARE+**
- 6.1 MacBook ReturnCare+ is available for Apple MacBooks only.
- 6.2 MacBook ReturnCare+ is a return to base warranty service and does not include any on-site Services.
- 6.3 RM shall provide the Customer with loan equipment the next Working Day to the same specification or higher than the Customer's Scheduled Equipment being fixed.
- 6.4 MacBook ReturnCare+ is a hardware repair only warranty and does not include any data backup or restoration tasks. Data integrity remains the responsibility of the Customer at all times and data backups should be made prior to the fault occurring or prior to the collection of the Scheduled Equipment by RM's courier. Requests for data salvage cannot be honoured after the Scheduled Equipment has been collected by RM's courier. Many of RM's service-centre diagnostics tasks are data destructive; if data integrity is compromised during the repair, the Scheduled Equipment will be returned with a base operating system and options as installed when the Scheduled Equipment was new.
- 6.5 It is the Customer's responsibility to pack the Scheduled Equipment securely and adequately to ensure that the Scheduled Equipment arrives to RM in good condition. Any damage to the Scheduled Equipment occurring during transit as a result of poor packaging is the Customer's (not RM's courier's) responsibility.
- 6.6 If the call requesting collection of the Scheduled Equipment is logged before midday on a Working Day, RM will endeavour to contact the Customer the next Working Day. Two (2) Working Days after the request call was first logged, on a reasonable endeavours basis, RM's courier will come to collect the Scheduled Equipment for return to RM's Service Centre.
- 6.7 The MacBook ReturnCare+ Service does not guarantee turnaround timescales; Average time between collection and return of the Scheduled Equipment is 10 (ten) Working Days, however part shortages or ongoing faults may cause this turnaround time to be extended. RM will notify the Customer of any delays upon request.
- 6.8 MacBook ReturnCare+ does not include accidental damage to components. Faults will be examined by an RM engineer; accidental damage is not covered by the MacBook ReturnCare+ contract and will result in the call being chargeable.
- 6.9 Cracked or split screens will be assessed by RM's engineer, and if the damage is found to be user damage, all repair work will become chargeable.
- 7 **NOTIFICATION OF FAULTS**
- 7.1 The Customer shall be able to contact RM to report a hardware fault by the following methods and at the following times:
- over the Internet 24 hours a day, 7 days a week; and
  - by telephone between 9am and 5pm on Working Days.
- 7.2 In all cases where the Customer notifies RM of a hardware fault they will receive a reference number that shall record the time and date the fault was reported by the Customer to RM.
- 7.3 The Customer must provide the following information when reporting a fault:
- a full description of the fault and related symptoms;
  - site history prior to fault occurring;
  - all actions previously taken to try to rectify the fault;
  - the serial numbers for the affected Scheduled Equipment;
  - confirmation of the site address; and
  - such other relevant information as RM may request at the time the fault is reported.
- 7.4 The Customer will be required to perform diagnostic tests as specified by RM's Support to confirm the fault and enable accurate part screening.

**8 RESPONSE TIMES**

- 8.1 Time shall not be of the essence for the purposes of the performance of RM's obligations under any Agreement and, while RM will use its reasonable endeavours to meet the response times set out in this Clause 8.2, it shall not be liable for any loss or damage suffered as a result of the delay where it fails to meet such times.
- 8.2 Where the Customer reports a hardware fault to RM before the relevant Reporting Time set out below in relation to each Service, RM will use reasonable endeavours to provide the Response set out below:

<u>Service</u>	<u>Reporting Time</u>	<u>Response</u>
<b>Third Party ValueCare</b>	<b>Midday</b>	RM's engineer to arrive at the Customer's premises before 5pm on the next Working Day on a reasonable endeavours basis.
<b>iMac / iPad ReturnCare</b>	<b>Midday</b>	RM will agree collection the next Working Day, and two (2) Working Days after the call is logged, RM's courier will collect the Scheduled Equipment on a reasonable endeavours basis.
<b>MacBook ReturnCare+</b>	<b>Midday</b>	RM will agree collection the next Working Day, and two (2) Working Days after the call is logged, RM's courier will collect the Scheduled Equipment on a reasonable endeavours basis.

- 8.3 Where the Customer reports a hardware fault after the Reporting Time on a Working Day, the Customer shall be deemed to have reported the fault before the Reporting Time on the next following Working Day.
- 8.4 If the Customer has not registered the equipment in accordance with clause 10.1 below, RM will be under no obligation to provide the Services.
- 8.5 In the event that parts are not available to attempt a repair, RM will notify the Customer of the expected delay and lead times. Where parts are not available, RM will not be held responsible for failing to meet the standard response times.

**9. SERVICE LEVELS**

RM shall perform the Maintenance Services in accordance with the Service Levels.

**10. MAINTENANCE SERVICES**

- 10.1 The Customer acknowledges that for the first thirty business days of the Term, beginning on the Start Date ("Integration Period"), RM requires this time to process the Customer's requirements into RM's systems and procure any additional spares and equipment required to enable RM to provide the Maintenance Services. During the Integration Period, the Customer accepts that RM shall use its reasonable endeavours to provide the Maintenance Services.
- 10.2 During the Term, RM shall use commercially reasonable efforts to provide Technical Support Services to the Customer to resolve a Fault.
- 10.3 On the Customer informing RM utilising the Contact Details that there is a Fault with the Scheduled Equipment, RM shall:
- (a) use commercially reasonable efforts to provide Technical Support Services to the Customer to resolve the Fault during Coverage Hours within the relevant Response Time;
  - (b) use commercially reasonable efforts to attend at the Location during Coverage Hours within the relevant Response Time; and

- (c) use commercially reasonable efforts to perform Corrective Maintenance of the Scheduled Equipment within the relevant Fix Time.

10.4 In the event that RM is unable to resolve the Fault by means of Technical Support, RM shall:

- (a) use commercially reasonable efforts to attend at the Location within the relevant Response Time; and
- (b) use commercially reasonable efforts to perform Emergency Maintenance of the Scheduled Equipment within the relevant Fix Time.

10.5 Emergency Maintenance shall be charged at the Additional Services Rates for each of RM's personnel reasonably required to attend the Location.

10.6 In performing the Maintenance Services, RM shall use commercially reasonable efforts to restore any malfunctioning or failed Scheduled Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, RM shall either arrange for a further visit to the Location within Normal Business Hours to complete the repair, or remove the Scheduled Equipment or part of the Scheduled Equipment for repair off-site.

10.7 When a call is logged by the Customer outside of the Coverage Hours, RM is under no obligations to respond until the commencement of the Coverage Hours the next day. In the event RM responds outside of the Coverage Hours, such response will be considered to be Emergency Maintenance and the Customer shall be charged accordingly.

**11 REPLACEMENT AND SPARE PARTS**

All spare parts and/or replacements provided by RM to the Customer shall become part of the Scheduled Equipment. All parts and components removed from the Scheduled Equipment by RM in the course of performing the Corrective Maintenance and/or the Additional Services shall no longer constitute part of the Scheduled Equipment and will be the property of RM. The Customer will assign to RM, with full title guarantee and free from all third-party rights, all parts and components removed from the Scheduled Equipment by RM in accordance with this clause 10. RM recognises that the Customer may wish to retain faulty hard disk drives for data recovery or security reasons. Should the retention of such items result in additional costs to the Supplier, these charges will be payable by the Customer at RM's or manufacturer's then current rate.

**12 EXCLUSIONS FROM SERVICE**

- 12.1 Each Service will only provide the levels of cover specifically set out or referred to in these Conditions.
- 12.2 Only equipment that is recorded in RM's contract management tool shall be included in the Agreement between RM and the Customer. Any equipment of the Customer that is not Scheduled Equipment shall not be equipment to which the applicable Service applies.
- 12.3 RM is not obliged to perform any Excluded Maintenance.
- 12.4 Where RM is performing or has performed Excluded Maintenance, and the Customer shall pay, the Additional Services Fees in respect of that work.
- 12.5 Unless otherwise specified in writing by RM none of the Services include:
- (a) any hardware restoration or data recovery services;
  - (b) RM performing any electrical work and/or maintenance that is external and/or ancillary to the Scheduled Equipment; or
  - (c) any preventative maintenance visits by RM to the Customer.
- 12.6 Where items/accessories have been fitted to the Scheduled Equipment by the Customer and/or third parties, they shall not form a part of the Scheduled Equipment and will only be covered by the Service.
- 12.7 RM shall be under no obligation or duty to carry out work under an Agreement to Scheduled Equipment that is located in an environment reasonably considered by RM to be unsafe and/or hazardous.

13.8 RM shall be under no obligation or duty to physically move or otherwise relocate any Scheduled Equipment by virtue of the Customer having entered into an Agreement with RM for a Service.

### 13. CUSTOMER OBLIGATIONS

13.1 The Customer understands and agrees that it must register the equipment with RM's contract management tool in order to use the Services.

13.2 The Customer shall:

- (a) follow the Service Procedure;
- (b) ensure that the Scheduled Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the agreement under which the Scheduled Equipment was supplied, permit only trained and competent personnel to use it and follow any operating instructions as RM may give from time to time;
- (c) notify RM promptly if the Scheduled Equipment is discovered to be operating incorrectly;

13.3 Save as expressly otherwise agreed in writing, the Customer shall be responsible for the care and maintenance of all equipment not covered by the Agreement. Any damage to, or loss of, any such equipment shall be the exclusive responsibility of the Customer, save where such damage is expressly stated within these Conditions to be RM's responsibility.

13.4 For the avoidance of doubt the Customer is responsible for the care and maintenance in accordance with RM's instructions of any equipment on loan to it from RM. In the event that any equipment on loan to the Customer is damaged whilst in the care of the Customer, then RM has the right to invoice the Customer for either repairing the damage or replacing the equipment.

13.5 The Customer shall ensure that it will at no time in performing any of its obligations under any Agreement infringe any rights (including without limitation any Intellectual Property Rights) of any third party.

13.6 The Customer agrees that it will not introduce any Virus into any computer equipment or system or software of RM's or any of the Scheduled Equipment. Unless specifically agreed otherwise in writing, the Customer shall be responsible for applying anti-virus software to protect its machines and networks. If the Customer introduces any Virus onto any of RM's systems or any of the Scheduled Equipment, RM shall be entitled to suspend the delivery of the Service to the Customer for such period as RM (in its absolute discretion) deems necessary or desirable to deal with the effects of the same.

13.7 The Customer agrees that it will be responsible for the installation and maintenance of computer network cabling, including active components, telecommunications equipment or services and any charges relating thereto.

13.8 The Customer agrees to use its reasonable endeavours to provide RM with assistance in the diagnosis of problems, use of communications equipment, services and other suitable computer medium as RM reasonably requires.

13.9 The Customer agrees to set up and maintain up-to-date backup copies of all software and all other data. The Customer acknowledges that under no circumstances will RM be held responsible for data loss whether caused through the use by the Customer of any Service or the provision of the Service by RM.

13.10 The Customer shall be responsible for maintaining the security and confidentiality of any passwords relevant to any Service Software and/or Scheduled Equipment and RM shall not be liable in any way for any loss or damage caused by an unauthorised user gaining access to any Service Software and/or Scheduled Equipment by the unauthorised use of the Customer's password(s). The Customer agrees to keep all passwords strictly confidential and to update passwords periodically in order to maintain appropriate levels of security. Additionally, the Customer shall amend any passwords issued on activation of the Service Software and /or Scheduled Equipment at the earliest possible opportunity.

13.11 The Customer shall:

- (a) at all reasonable times permit full and free access to the Location and to the Scheduled Equipment to RM, its employees, contractors and agents, and provide them with

adequate and safe working space, and any telecommunications facilities as are reasonably required to enable RM to perform the Maintenance Services and the Additional Services while at the Location;

- (b) provide to RM such reasonable co-operation, information, advice and assistance as RM may reasonably require;
- (c) ensure that a member of its staff shall always be in attendance while the Service is being provided by RM to the Customer on site;
- (d) ensure that it has obtained all necessary consents, licences and permissions necessary to use the Service at its premises and any equipment related to the Service;
- (e) be responsible for all electrical supplies and connections at their premises that are necessary for the operation of the Service;
- (f) insure any equipment on loan to it from RM to its full replacement value;
- (g) provide RM with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services;
- (h) take any steps reasonably necessary to ensure the safety of RM's personnel when attending the Location;
- (i) not allow any person other than RM to maintain, alter, modify or adjust the Scheduled Equipment without the prior written approval of RM;
- (j) not move the Scheduled Equipment from the Location without the prior written approval of RM;
- (k) store any reserve equipment only in conditions approved by RM, and make this equipment available for periodic maintenance, as with all other Scheduled Equipment; and only use supplies or materials supplied or approved by RM (such approval not to be unreasonably withheld or delayed).

13.12 The Customer is responsible for providing the following information to RM's engineer:

- (a) Username and password for a Domain Administrator account if required for testing;
- (b) Username and password for Local Administrator account if required for testing;
- (c) Username and password for Domain User account for testing purposes;
- (d) The Roles of the faulty Scheduled Equipment, e.g. Domain Controller, Exchange Server, Admin Server, etc;
- (e) Date and time of last known good backup set;
- (f) Backup Exec serial keys, installation directory location and service credentials;
- (g) Partition sizes for all partitions on all disks within the Scheduled Equipment;
- (h) IP Address details, including Subnet Masks, DNS Servers, WINS Servers, Gateways, Domain Names and static routes; and
- (i) Location of backup media and credentials (for disk-based or remote backup solutions).

### 14. PRICE AND PAYMENT

14.1 Unless otherwise stated, all payments in respect of Services provided by RM to the Customer shall be payable advance. Payment shall be made in the amount and currency specified in the invoice.

14.2 Where the Customer fails to pay any monies on the due date then RM shall be entitled to require payment in full for the Service that the Customer has agreed to purchase pursuant to these Conditions.

14.3 The Customer understands that there may be chargeable work, outside the Services, which will be the responsibility of the Customer. Such charges will be agreed between the Customer and RM prior to such work being completed on the Scheduled Equipment.

14.4 Unless agreed to the contrary by RM, the price of the Service shall be inclusive of carriage and any costs of packaging (and for the avoidance of doubt it is the Customer's responsibility to dispose of any such packaging) but exclusive of any costs of insurance of any equipment provided as part of the Service and/or any value added tax or other applicable sales tax or duty which shall be added to the sum in question.

14.5 If the Customer does not make any payment by the due date for payment, RM may charge interest and compensation to the Customer on the overdue amount at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

### 15. PASSING OF RISK AND TITLE

- 15.1 Risk of loss and damage of any equipment provided as part of a Service shall pass from RM's to the Customer upon delivery of the relevant equipment to the Customer or its agent.
- 15.2 Where RM's delivers any equipment to the Customer, the Customer shall inspect it on delivery and RM's will accept responsibility for damage, shortages or losses in transit only if such damage, shortage or loss is noted on the consignment note or delivery document upon receipt by the Customer, or is notified within fourteen (14) days in the case of latent damages, shortages or losses, from the date on which that damage, shortage or loss could reasonably have been first identified.
- 15.3 Title to any equipment and/or any physical and/or other property which form a part of any Service shall only pass to the Customer once full payment for such Service has been received by RM from the Customer.
- 15.4 Until such time as title in the items referred to in clause 15.3 (above) has passed to the Customer, RM:
- shall have absolute authority to retake, sell or otherwise deal with or dispose of such items;
  - for the purposes specified in clause 14.4(a) (above), RM or any of its agents or authorised representatives shall be irrevocably entitled at any time and without notice to enter upon any premises in which the relevant items or any part thereof is present or is reasonably believed to be; and
  - shall be entitled to seek an injunction to prevent the Customer from selling, transferring or otherwise disposing of any such item.
- 15.5 Where RM's exchanges parts under an Agreement any parts that are so replaced shall forthwith become the property of RM.

## 16. CANCELLATION AND RETURNS

- 16.1 Once RM has accepted an order from the Customer for a Service, the Customer shall not be entitled to cancel that order at any time.
- 16.2 If RM (in its absolute discretion and on such terms as it may determine) agrees to allow the Customer to cancel an order after it has been accepted by RM, this shall not under any circumstances be taken as a precedent which may be applied to other orders, either by the Customer or any other customers.
- 16.3 RM may replace any part of the Scheduled Equipment, if it is within its warranty period, upon notification by the Customer to RM of a fault. Where RM provides replacement equipment, the Customer must return the faulty equipment to RM using the pre-paid label provided by RM. If no such label is received by the Customer, the Customer shall inform RM to enable one to be sent. In the event that the Customer does not return the faulty equipment to RM within two (2) weeks of receiving the replacement equipment, RM shall have the right, at its sole discretion, to invoice the Customer for the cost price of the replacement equipment.

## 17. GENERAL WARRANTIES

- 17.1 Each party warrants to the other that it has full legal right and authority to enter into all and any Agreements which it purports to enter into.
- 17.2 The Customer warrants to RM that it is not subject to any other obligation, compliance with which will or is likely to have an adverse effect on its ability to perform its obligations under any Agreement.
- 17.3 The Customer warrants to RM there are no material facts or circumstances in relation to its financial position or operational constitution that have not been fully and fairly disclosed to RM and which, if disclosed, might reasonably have been expected to affect the decision of RM to enter into an Agreement.
- 17.4 The Customer warrants to RM that it will not, at any time, infringe any rights (including without limitation any Intellectual Property Rights of any kind in any jurisdiction) of any third party in performing any of its obligations, or exercising any of its rights, under an Agreement.
- 17.5 Save as expressly provided elsewhere in these Conditions:
- the Customer agrees to use the Service (and any equipment associated with it) at the Customer's own risk; and

- to the fullest extent permitted by law RM hereby expressly disclaims all other warranties (whether express or implied) of any kind in relation to the Service and all matters associated with the Service. This Clause 16.5 shall apply without prejudice to the provisions of Clause 19 (below).

- 17.6 The Customer represents and warrants to RM for the Term that:
- all of the equipment is detailed in the Scheduled Equipment;
  - the Scheduled Equipment is in Good Working Order;
  - it is the Customer's responsibility to inform RM of any changes to the Scheduled Equipment
- 17.7 RM represents and warrants to the Customer that the Maintenance Services and the Additional Services shall be performed:
- by an appropriate number of suitably qualified and experienced personnel using all reasonable skill and care; and
  - in accordance with all applicable laws and regulations in force from time to time.
- 17.8 RM has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this Agreement.
- 17.9 RM makes no other warranties or representations regarding the Maintenance Services. Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

## 18. INTELLECTUAL PROPERTY

- 18.1 Title to any Service Software shall at all times remain vested in RM or its licensors. At no time shall the Customer gain any title to any such software.
- 18.2 Subject always to the provisions of Clause 18.1 RM's hereby grants to the Customer a personal, limited, non-exclusive, non-transferable licence to use the Service Software (if any) for use as part of the relevant Service. The Customer must treat the Service Software like any other copyrighted material (e.g. a book or musical recording) except that the Customer may either (a) make one copy of the Service Software solely for backup or archival purposes; or (b) transfer the Service Software to a single hard disk, provided the Customer keeps the original solely for backup or archival purposes. The Customer must reproduce and include the copyright notice on any copy. The Customer may not copy the written materials accompanying the Service Software.
- 18.3 The Customer agrees that even where a Service provides for software restoration (if applicable), RM's is not obliged to restore such software if the Customer is unable to produce satisfactory evidence of owning a licence to such software.
- 18.4 The Customer undertakes not to perform any of the acts referred to in this Clause 18.4 except to the extent and only to the extent permitted by law to the Customer as a lawful user of the Service Software and only then for the specific limited purpose permitted by law or in these Conditions. The Customer undertakes:
- not to copy the Service Software (other than for normal system operation and as expressly specified in these Conditions) nor otherwise reproduce the same;
  - not to translate, adapt, vary, or modify the Service Software;
  - not to disassemble, decompile or reverse engineer the Service Software;
  - not to remove, obscure or alter any notice of patent, copyright, trademark or other proprietary notice on the Service Software;
  - not to sub-license, distribute, rent, lease, or otherwise transfer the Service Software or any unique access code or copy the Service Software other than as expressly provided in these Conditions;
  - not to make the Service Software accessible by any type of broadcast or transmission, including but not limited to broadcast or transmission by cable, Internet, television, satellite, or telephone;
  - not to use the Service Software to attract customers away from RM or to procure commercial advantage over RM or to use it in any other way which is likely to be directly or indirectly detrimental to RM's or its business; and
  - not to enable a third party to do any of the acts set out in this clause 18.4.

- 18.5 If notified promptly in writing of any action (and all prior claims relating to such action) brought against the Customer, based on a claim that the Customer's use of any item provided as part of a Service (including the Service Software) infringes a United Kingdom 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 arising out of a claim of infringement for a United Kingdom patent or copyright, or if in RM's opinion, any part of a Service (including the Service Software) is likely to become the subject of a claim of infringement of a United Kingdom patent or copyright, RM will at its option and expense either procure for the Customer the right to continue using the relevant item, replace or modify the same so that it becomes non-infringing, or grant the Customer a credit for the relevant part of the Service as depreciated and accept its return. Depreciation will be an equal amount per year over the lifetime of such an item as established by RM. RM will not have any liability to the Customer under any provision of this clause if the infringement or claim thereof is based upon:
- (a) use of such an infringing item in combination with other equipment or software not supplied by RM; or
  - (b) the use of such an infringing item in carrying out any patented process; or
  - (c) infringement as described in clause 18.6 (below).

18.6 Clause 18.5 (above) states the entire liability of RM with respect to infringement of patents or copyrights by the Services or any part thereof or by their operation. No costs or expenses will be incurred for the account of RM without the prior written consent of RM.

18.7 The Customer will hold RM harmless against any expense, judgment or loss of infringement of any patents, copyrights or trademarks which results from RM's compliance with Customer's designs specifications or instructions.

## 19. **TERMINATION**

19.1 Either party shall have the right, without prejudice to any other remedies, at any time by giving notice in writing to the other party to terminate forthwith any Agreement (which would automatically terminate any related licence) in any of the following events:

- (a) if the other party commits any material breach of any Agreement and, for the avoidance of doubt, any failure by the Customer to pay any sum due to RM on the due date of payment shall constitute a material breach; or
- (b) 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 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.

## 20. **LIMITATIONS ON LIABILITY**

20.1 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 whether express, implied by statute or otherwise oral or in writing except as provided in these Conditions and except as to statute implied terms as to title.

20.2 If RM is unable, other than through the act or default of the Customer, within a reasonable time to replace or repair any defective item provided pursuant to an Agreement and where the affected item is totally unusable due to the defect or non-conformity, the Customer may reject it and is entitled to recover the proportion of the purchase price of the relevant item that they had paid at the date of rejection.

20.3 RM shall be liable for death or personal injury arising from the provision of any Service or any part thereof to the extent that it results from the negligence of that RM or its employees. RM's liability shall not be limited for fraudulent misrepresentation or misrepresentation as to a fundamental matter, nor any other liability which cannot be excluded or limited under applicable law.

20.4 RM shall be liable to the Customer for any other direct loss of or damage to tangible property caused solely by the negligence of its or

its employees subject always to the maximum aggregate liability of RM under any Agreement or in connection with the supply of any Service under it, whether in respect of contract, tort or otherwise in relation to any successful claim made on RM by the Customer not exceeding the amount received by RM from the Customer in respect of sale of the Service to which the claim relates.

20.5 The Customer agrees that RM will not be liable for any loss arising out of the provision of goods or Services by any natural or legal person other than RM or for any loss caused by the Customer's failure to perform its obligations under an Agreement. In particular but without limitation to the generality of the foregoing, RM shall not be responsible nor liable for the Customer's inability to use any Scheduled Equipment or any impairment in using any Scheduled Equipment where such inability or impairment results from any incompatibility between any hardware or software used by the Customer, unless such items have been supplied by RM specifically for use with the Scheduled Equipment in question.

20.6 RM shall not in any event be liable for any loss of anticipated profits or loss of data, or any indirect, special or consequential loss in connection with or arising out of the provision of any 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 these Conditions.

20.8 Save as expressly provided in clauses 20.1 to 20.6 (above) or as otherwise required by law, RM shall have no liability whatsoever to the Customer in connection with the provision of any Services howsoever arising and whether such liability arises directly or indirectly.

## 21. **SUB-CONTRACTING**

RM shall have the right at its discretion to sub-contract the provision of the Service to a reputable sub-contractor provided that such sub-contractor performs the Service to the same standard as RM under the terms of this Agreement.

## 22. **TERRITORY**

The Services shall only be provided by RM to the Customer in the United Kingdom mainland, the United Kingdom islands limited to those connected by road bridges and the Isle of Wight unless otherwise agreed by RM in writing.

## 23. **CONFIDENTIAL INFORMATION**

23.1 "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, 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.

23.2 The Customer agrees that it will not disclose any of RM's Confidential Information to any third party without RM's prior written consent.

23.3 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.

## 24. **DATA PROTECTION**

24.1 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 these Conditions. "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.

- 24.2 The Customer acknowledges that RM's provision of the Services under these Conditions may require the transfer of Data to a sub-contractor (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 an agreement be entered into between RM 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.
- 24.3 The Customer also acknowledges that RM may also use services and/or products from other third parties in order to provide the Services under these Conditions 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 24.2 above.
- 24.4 RM process information about the Customer in accordance with RM's Privacy Policy which can be found at [www.rm.com](http://www.rm.com). By using the Site, the Customer consents to such processing and warrants that all data provided by the Customer is accurate.

**25. FORCE MAJEURE**

Neither party shall be liable to the other for any delay in, or failure to perform, its obligations under any 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, industrial disputes and other similar action, earthquakes and acts of God.

**26. NOTICES**

- 26.1 Any notice required to be given under any Agreement shall be in writing and shall be sent by first class post to the address of the Customer set out in each sales order (for notices to be sent to the Customer) or the Registered Office of RM (for notices to be sent to RM).
- 26.2 Notices correctly addressed and served in accordance with Clause 26.1 shall be deemed to be delivered two (2) Working Days after posting.

**27. CUSTOMER MORE THAN ONE PERSON**

Where the Customer comprises two or more persons their liability and obligations to RM under any Agreement shall be joint and several.

**28. THIRD PARTY RIGHTS**

Nothing in any 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.

**29. GOVERNING LAW**

All Agreements shall be governed by English law. The parties hereby submit to the exclusive jurisdiction of the English court.