

**RM Terms and Conditions of Wireless as a Service  
(Effective from September 2014)**

**In buying from RM you acknowledge and agree that you are buying goods or services for business purposes.**

**The liability provisions in clause 14 below set out our responsibilities to you in more detail, but as a business customer, purchases you make from us will not benefit from the same statutory protection available to consumers under the Sale of Goods Act 1979 (as amended), the Consumer Protection (Distance Selling) Regulations 2000 as amended by the Consumer Protection (Distance Selling) (Amendment) Regulations 2005, or other consumer related legislation.**

**1. Definitions**

|                                |   |
|--------------------------------|---|
| "Agreement"                    | means these terms and conditions, together with the relevant order;   |
| "Customer"                     | means a purchaser or licensee of the Services;  |
| "Customer Equipment"           | means any equipment used in conjunction with the Services as provided by the Customer;  |
| "Fee"                          | means any amount billed to the Customer for the provision of Services or support;   |
| "Force Majeure Event"          | means any cause beyond a party's reasonable control affecting the performance of its obligations hereunder;   |
| "Intellectual Property Rights" | means any and all patents, trademarks, service marks, copyright, moral rights, database rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;   |
| "RM"                           | RM Education Ltd a company incorporated in England and Wales and whose registered office is situated at 140 Eastern Avenue, Milton Park, Abingdon, Oxon, OX14 4SB;  |
| "Service Equipment"            | means any equipment provided to the Customer for the purposes of delivering the Services to the Customer, such as preconfigured access points;  |
| "Services"                     | the provision of wireless as a service as described in the order;   |
| "Site"                         | means the Customer's premises where the Services will be delivered and / or installed;  |
| "Specific Conditions"          | means such conditions as are set out in the order;  |
| "Unacceptable Content"         | means any material of any nature whatsoever which is or which contains any material which: (i) is or may be defamatory, libellous, obscene, in contempt of court or in contravention of any law, statute, directive or regulation or which 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; |
| "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"                  | means the hours of 8am – 6pm, Monday to Friday inclusive excluding public/bank holidays in the United Kingdom and the RM Christmas shutdown period.   |

**2. Duration**

2.1 The Agreement shall commence on the date the Service begins and shall be for the initial term as set out in the order ("Initial Term").

- 2.2 At the end of the Initial Term, or any subsequent term, the Agreement shall automatically renew for periods of one (1) year unless either party has served a notice to terminate the Agreement at the end of such term with at least thirty (30) days' written notice to the other party. RM will inform the Customer by email, using the email address provided, before automatically renewing any the Service for a further term, together with details regarding how to cancel such renewal. Once RM has informed the Customer that the subscription will be automatically renewed, RM will automatically renew the Services and charge the Customer the then current price for the renewal term. The Customer must cancel the Service thirty (30) days before the renewal date to avoid being charged and invoiced for the renewal.

### **3. Price**

- 3.1 Unless a written quotation has been given (whereupon the price quoted will be fixed for a period of thirty (30) days or such other period as is specified therein) the prices for the Services are subject to alteration without notice. The Fees charged to the Customer will be those applicable at the date of RM's acceptance of the order. Orders are not binding upon RM until accepted by RM. All prices are exclusive of value added tax (and any similar tax), packing, carriage, insurance and installation. Where applicable these will be added as separate items on RM's invoice.
- 3.2 Unless otherwise notified to the Customer in writing by RM, the Customer shall pay for Services annually in advance. Where the Customer is invoiced by RM on the date of delivery for the Services, 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's sole discretion.
- 3.3 RM shall have the right to increase the yearly charge for the Services. If there are any third party charges included in the Services, the Customer agrees to accept any increases of charges made by the third party at any point and pay such increases accordingly.
- 3.4 RM may share Customer credit history information with relevant credit agencies. RM reserves the right to run a credit check with a relevant credit agency before giving the Customer credit, and to validate any credit card account holder or delivery address details.
- 3.5 Title to any Service Equipment shall remain with RM and shall not pass to the Customer. Upon termination or expiry of the Agreement, the Service Equipment shall be returned to RM. Risk of loss and damage of Service Equipment shall pass from RM to the Customer upon delivery of the same to the Customer or its agent.
- 3.6 Until payment of the order in accordance with clause 3.2 above:
- 3.6.1 RM shall have absolute right to cease providing the Services;
  - 3.6.2 in the event of threatened liquidation or threatened seizure of the Service Equipment, the Customer will immediately notify RM and RM may take action to repossess the Service Equipment and / or cease providing the Services. The Customer will also notify interested third parties of RM's ownership of the Service Equipment.

### **4 Order acceptance**

- 4.1 Orders will be deemed accepted and binding on both parties following payment for the Services in accordance with clause 3.2 above and at the point that RM commences delivery of the Services.
- 4.2 In particular, but without limitation to the generality of the foregoing, the generation of any automatic electronic responses shall not constitute acceptance of an order.

## **5 Late payment**

- 5.1 RM reserves the right to charge interest and compensation under the Late Payment of Commercial Debts (interest) Act 1998 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's option) forthwith to determine the same. RM has no obligation to provide service or support until RM has received full payment for the Services or services or support that the Customer has purchased.
- 5.2 If any sum owed by the Customer to RM under the Agreement or any other contract the Customer has with RM is not paid by the due date, RM may deduct this sum from any payment or credit due to the Customer under the Agreement or any other contract with RM, together with any of the remedies available to RM under clause 3.6.
- 5.3 RM reserves the right to suspend or cancel the Customer's credit account if any invoice is overdue.

## **6 Site preparation, access and installation**

- 6.1 If the Customer installs the Services, the Customer:
- 6.1.1 the Customer shall be responsible for the installation of the Service Equipment in accordance with instructions provided by RM or third party supplier. If installation is not performed by RM, RM shall be under no obligation to perform any acceptance test procedures and the date of acceptance shall be the date of delivery to the Customer;
- 6.1.2 acknowledges and agrees that RM shall not carry out a survey.
- 6.2 If RM installs the Services the Customer:
- 6.2.1 agrees to prepare the Site according to any instructions RM may give and to provide RM with reasonable access to the Site for the purposes of the Agreement. In the event that RM is required to perform an installation of Service Equipment, perform maintenance on Service Equipment or remove Service Equipment at the Site, the Customer shall be solely responsible for ensuring that the Site is safe to perform such works and free from hazardous materials. In the event that a RM representative attends the Site and acting in good faith, finds that the Site is not safe to proceed with required works, the representative shall cease any works and RM shall provide written notification to the Customer of such circumstance. The Customer shall indemnify against all reasonable costs incurred to RM in such circumstances;
- 6.2.2 shall ensure that all necessary firewall ports are opened;
- 6.2.3 agrees to RM carrying out a survey, when RM deems this is necessary. The Customer will implement any recommendations as a result of the survey before the Service can be installed;
- 6.2.4 will obtain any permission needed, including permission for any changes to the Site. For the avoidance of doubt this includes, without limitation, any licences, planning permissions or other consents;
- 6.2.5 Where RM installs the Service Equipment, RM shall perform the standard inspection diagnostic checks; and
- 6.2.6 For RM installed Services, satisfactory completion of RM's standard test procedure and an Acceptance Form (if applicable) signed by the Customer, which the Customer shall not unreasonably refuse to sign, and RM will be sufficient to establish acceptance. If the Acceptance Form is not signed by the Customer within seven (7) days after installation of the Services and in the absence of written notification of valid reasons justifying non acceptance, the Customer shall be deemed to have accepted the Services on the eighth (8th) day.

- 6.3 The Customer and RM will meet each other's reasonable safety and security requirements when on the Site. If the Customer or RM damages the other's equipment it must pay for any repair or replacement needed.
- 6.4 The Customer is responsible for making the Site good, after any work undertaken by RM at the Site, including putting items back and for re-decorating.
- 6.5 If the Site is not suitable for the Services (as determined at RM's sole discretion), RM shall be under no obligation to provide such Services.
- 6.6 The Customer warrants and undertakes that it:
- 6.6.1 shall house any Service Equipment in accordance with RM's reasonable instructions as may be given from time to time;
  - 6.6.2 shall not move, modify, relocate or in any way interfere with the Service Equipment;
  - 6.6.3 shall not cause the Service Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of RM;
  - 6.6.4 shall not remove, tamper with or obliterate any words or labels on the Service Equipment;
  - 6.6.5 shall not create or allow any charges, liens, pledges or other encumbrances whatsoever to be placed on the Service Equipment;
  - 6.6.6 shall not use the Service Equipment except in accordance with such reasonable written instructions, as RM may from time to time give; and
  - 6.6.7 shall not dispose of the Service Equipment other than in accordance with RM's written instructions or authorisation.
- 6.7 For the avoidance of doubt, installation of the Services may include physically fitting and fixing Service Equipment to the Site which may include without limitation drilling, running and fixing cables.

## **7 Delivery**

- 7.1 Upon delivery, the Customer is responsible for protecting and insuring the Service Equipment against loss, damage or destruction.
- 7.2 Save as expressly otherwise agreed in writing, the Customer shall be responsible for the care and maintenance of all Service Equipment. Any damage to, or loss of, any Service Equipment shall be the exclusive responsibility of the Customer.
- 7.3 All deliveries shall be made during Working Days. If the Customer requires delivery to be made outside such times, subject to RM's sole discretion, an additional charge shall be payable. RM reserves the right to make partial deliveries.
- 7.4 If the Customer delays or prevents the delivery or installation of the Services, RM may apply reasonable additional charges.
- 7.5 Dates for delivery of the Services are estimates only and are subject to RM's availability schedule. RM shall make every reasonable effort to meet any delivery date(s) acknowledged but shall not be liable for failure to meet such date(s). RM does not accept liability for delays and time shall not be of the essence. RM will use reasonable endeavours to inform the Customer if RM believes that performance is likely to be delayed for any reason.

## **8 Service Provision**

- 8.1 RM excludes any warranties or undertaking (expressed or implied) that:

- 8.1.1 the Customer shall be able to access or utilise the Services at any time or that there shall be sufficient capacity for Service as a whole in a geographical location; and
- 8.1.2 Customer Equipment or software shall be compatible with the Service Equipment provided by RM; and
- 8.1.3 any software or content from the internet shall be free from virus, malware, spyware, worm, trojan horse or other program or device that is intended to access, delete, damage or modify data file(s) or computer program(s); and
- 8.1.4 the Customer's wireless service shall secure from interception or traffic sniffing;
- 8.1.5 Service Equipment, software or Service shall be free from faults.

8.2 The Customer shall provide during the Initial Term and any subsequent term on an on-going basis, all space, power, power supply access points, cables, trunking, electricity and air-conditioning as are required to receive the Services at the Site.

## 9. **Service Availability**

9.1 Any defect or impairment in the operation or performance of the Customer Equipment, as detected and determined by RM, shall result in RM notifying the Customer of the nature of such defect or impairment.

9.2 RM will be entitled to charge the Customer and the Customer will pay a Fee at RM's then current reasonable charging rates to the extent that the need for any maintenance results from any one or more of the following:

- 9.2.1 Misuse or neglect (as determined by RM) of, or accidental or wilful damage to the Service Equipment occurs as a result of Customer action in inaction; or
- 9.2.2 Failure by the Customer to comply with any of the provisions of the Agreement;

PROVIDED THAT, in the case of any event referred to in clause 9.2.1, RM shall have given the Customer reasonable written notice of its intention to charge such Fee.

9.3 If the Customer prevents or delays the performance of maintenance due to the Customer's action or inaction, RM shall have the right to charge to the Customer all reasonable costs incurred by such delay or prevention.

9.4 RM may suspend the Service with immediate effect and without prior notification in the unlikely event of an emergency. Any emergency maintenance shall only be performed if RM, acting in good faith and using best industry practice, establishes an immediate danger to any of the following:

- 9.4.1 the Customer or its employees, any RM employee or any third party; or
- 9.4.2 Customer Equipment or Service Equipment; or
- 9.4.3 a Force Majeure Event.

9.5 RM may from time to time suspend the availability of the Service without being required to give notice of the same for the purposes of performing maintenance or other updating work. RM shall not be liable for the unavailability of the Services during any such period. Wherever possible, RM shall endeavour to put a notification on the system informing the Customer of the unavailability of the Service.

9.6 The Customer shall receive notification of any unavailability by notification on the system stats page online.

9.7 After a period of unavailability, RM may email the Customer to carry out some availability testing. The Customer agrees to complete such testing and will be provided with a basic technical article to follow.

## 10. **Order Amendments**

- 10.1 The Agreement cannot be varied without the written agreement of the parties, except that RM may make minor changes to the specification of the Services at any time and without notice which do not materially affect the performance of the Services.
- 10.2 The Customer may request an amendment to an order prior to despatch of the Services. Amendments requested by the Customer may incur an additional charge to be calculated by RM at its sole discretion and may result in delayed delivery of the Services. The Customer may only request an amendment to an order in writing (including via email). The request must state clearly the Customer name, order number, the requested amendment and the reason for the amendment. No change to the order will be effective until RM has confirmed in writing (which for these purposes shall include e-mail) its acceptance to the Customer requested amendment.
- 10.3 RM may request an amendment to an order prior to delivery of the Services. Amendments requested by RM may incur an additional charge and may result in delayed delivery of the Services. RM will only request an amendment to an order in writing (which for these purposes shall include e-mail) setting out the reason for the amendment. The Customer has five (5) Working Days to reject the order amendment, otherwise the revised order will be valid for the purposes of the Agreement.

## **11. Cancellation and Returns**

- 11.1 Once RM has accepted an order from the Customer for the Services, the Customer shall not be entitled to cancel that order at any time.
- 11.2 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.
- 11.3 Nothing in this clause 11 shall affect the Customer's right to terminate use of the Services in accordance with clause 12 (below).

## **12. Termination**

- 12.1 The Customer may terminate the Agreement in accordance with clause 2.2.
- 12.2 RM shall have the right, without prejudice to any other remedies, at any time by giving notice in writing to the Customer to terminate the Agreement and terminate the Service if any of the following events occurs:
- 12.2.1 if the Customer fails to pay any sums to RM on the due date of payment; or
  - 12.2.2 if the Customer commits any breach of any of the Agreement provided that if the breach in question is one which the Customer can effectively remedy then the said notice of termination shall not be effective to terminate the Agreement unless the Customer fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of;
  - 12.2.3 if the Customer 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;
  - 12.2.4 the Customer has given any false or misleading information to RM;
  - 12.2.5 if the Site is changed.
- 12.3 The Customer holds harmless and indemnifies RM against all subsequent issues related to the Customer's Site arising from the installation and continued operation of the Service

Equipment, excluding any damage that is proven to be due to the negligence of RM or its representatives.

### **13 Disputes**

Any dispute must be raised in writing with the Customer's or RM's representative as appropriate giving all relevant details including the nature and extent of the dispute. The Customer and RM will use reasonable endeavours to resolve any dispute. If a dispute cannot be resolved then the Customer should refer to the complaints process on [www.rm.com](http://www.rm.com).

### **14 Liability**

14.1 Nothing in the Agreement excludes the liability of either party:

- 14.1.1 for death or personal injury caused by their negligence; or
- 14.1.2 for fraud or fraudulent misrepresentation.

14.2 Neither party shall in any circumstances be liable whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- 14.2.1 loss of profits; or
- 14.2.2 loss of business; or
- 14.2.3 depletion of goodwill or similar losses; or
- 14.2.4 loss of anticipated savings; or
- 14.2.5 loss of goods; or
- 14.2.6 loss of use; or
- 14.2.7 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

14.3 Subject to clause 14.1, RM WILL NOT, UNDER ANY CIRCUMSTANCES OR CAUSES OF ACTION BE LIABLE FOR ANY DAMAGES, INCLUDING TO TANGIBLE PROPERTY, IN EXCESS OF THE PRICE PAID BY THE CUSTOMER FOR THE PRODUCTS.

14.4 Services have been manufactured or developed by RM or third parties to standard specifications. The Customer accepts that RM is acting only as a supplier and that it is the Customer's responsibility to verify that the Services will be suitable for its 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 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.

14.5 The Customer agrees that RM will not be liable for any loss arising out of the provision of goods or services by any company organisational person other than RM or for any loss caused by the Customer's failure to perform its obligations under the 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 access any Services or any impairment in using any Services 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 Services in question.

14.6 In particular but without limitation to the generality of clause 14.5 (above), the Customer acknowledges that RM is unable to exercise control over the content of material transmitted over the Internet and so RM excludes all liability for any kind of defamation, for the transmission or reception of material of any nature unless specifically provided by RM. Further, RM cannot guarantee that the Customer will not receive "SPAM" and, as such, RM excludes all liability in respect of the same.

- 14.7 The Customer agrees to indemnify and keep indemnified RM in respect of any and all actions, claims, demands, costs, losses, financial or non-financial penalties or charges, other charges and/or expenses (including legal expenses on an indemnity basis) that RM may suffer or incur as a direct or indirect result of, or in consequence of, any breach by the Customer of any of its obligations under the Agreement or its negligence in performing any of its obligations under the Agreement.

## **15 Customer's obligations**

- 15.1 In addition to the Customer's obligations as set elsewhere in the Agreement, the Customer:

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

15.1.2 agrees that it will not use the Service for the purpose of transmitting or receiving any Unacceptable Content;

15.1.3 agrees to act at all times with good faith in its dealings with RM;

15.1.4 shall provide to RM such reasonable co-operation, information, advice and assistance as RM may reasonably require;

15.1.5 shall not do or omit to do anything, and shall procure that none of its personnel does or omits to do anything, which constitutes an offence under any law, regulation or code of conduct;

15.1.6 shall be responsible for maintaining the security and confidentiality of any passwords relevant to any Services and RM shall not be liable in any way for any loss or damage caused by an unauthorised user gaining access to a Services by the unauthorised use of the Customer's password(s);

15.1.7 shall be responsible for all back-ups of any data that may be deleted by use of the Services, unless specifically stated otherwise.

- 15.2 In addition to the above general obligations, the Customer shall perform those obligations in relation to the Services as are specified in the Specific Conditions.

- 15.3 Before logging a support call, the Customer shall follow the tech article in the RM Knowledge Library.

- 15.4 The Customer warrants that it shall ensure that any Customer Equipment connected to the Service Equipment or the Services shall comply with all relevant legislation, standards and licence requirements and shall be in good working order and suitable for the purposes for which it will be used in relation to the Services. RM reserves the right to disconnect any Customer Equipment which is not compliant with any legal or regulatory requirements or is liable to cause death or personal injury or to cause damage to or to impair the Service Equipment. The Customer shall indemnify, defend and hold RM harmless from any liability incurred as a result of its failure to comply with this clause 15.5.

- 15.5 The Customer shall ensure that it provides all relevant contact details reasonably requested for the purpose of delivering the Services and agrees to update and maintain the contact details on an ongoing basis. The Customer understands and agrees that RM shall not be responsible for any failed communications if the Customer has not updated their contact details.

## **16 Warranties**

- 16.1 RM warrants and represents to the Customer that on the date hereof:

16.1.1 it is properly constituted and incorporated under the laws of England and Wales (or under the laws of the agreed jurisdiction) and has the corporate power to own its assets and to carry on its business as it is now being conducted;



- 16.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Agreement;
- 16.1.3 all action necessary on the part of RM to authorise the execution of and the performance of its obligations under the Agreement has been taken;
- 16.1.4 the execution, delivery and performance by it of the Agreement does not contravene any provision of:
  - 16.1.4.1 any existing legislation either in force, or enacted but not yet in force, binding on RM;
  - 16.1.4.2 the Memorandum and Articles of Association of RM;
  - 16.1.4.3 any order or decree of any court or arbitrator which is binding on RM; or
  - 16.1.4.4 any obligation which is binding upon RM or upon any of its assets or revenues.

## **17 WEEE Regulations**

- 17.1 The Customer is responsible under Regulation 9 of the Waste Electrical and Electronic Equipment Regulations 2006 (the "WEEE Regulations") for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any equipment supplied under the Agreement that has become waste electrical and electronic equipment ("WEEE"). RM and the Customer acknowledges that for the purposes of Regulation 9 this clause 17 is an agreement stipulating other financing arrangements for the collection, treatment, recovery, recycling and environmentally sound disposal of WEEE.
- 17.2 The Customer is responsible for any information recording or reporting obligations imposed by the WEEE Regulations. The Customer will indemnify RM against any claims or legal proceedings that are brought or threatened against RM by a third party which would not have been caused or made had the Customer fulfilled its express or implied obligations under this clause or in connection with the WEEE Regulations. RM will notify the Customer of any such claims or proceedings and keep the Customer informed as to the progress of such claims or proceedings.

## **18 Export Control**

Under regulations governing United Kingdom trade and by virtue of its agreements with suppliers, RM requires to be pre-notified of shipments outside the United Kingdom. The Customer is required to obtain all necessary licences prior to export. Delivery of Services is subject to all such authorisations being available at the time of delivery. RM will provide guidance and required data or at its option seek to obtain the relevant licences on behalf of the end user.

## **19 Data Protection**

- 19.1 In the 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 Agreement. "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.
- 19.2 The Customer acknowledges that it is a data controller and that RM is a data processor.
- 19.3 RM shall:
  - 19.3.1 use the Data only on the Customer's instructions as set out or referred to in the Agreement to provide the services;
  - 19.3.2 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

- 19.3.3 take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the service.
- 19.4 The parties acknowledge that RM's provision of the service under the Agreement 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 the Agreement.
- 19.5 The parties also acknowledge that RM may also use services and/or products from other third parties in order to provide the services under the Agreement and that, in doing so, RM may transfer Data to such third parties. This may include (by way of example only) third parties that provide online storage and other facilities. 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 19.4 above.
- 19.6 The Customer agrees to comply with its obligations under Data Protection Law in relation to its collection, processing and provision of Data to RM in connection with the services provided under the Agreement.
- 19.7 The Customer shall indemnify and keep RM indemnified against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this clause 19 by the Customer and/or its employees, agents and/or sub-contractors.
- 19.8 The Customer acknowledges that RM is reliant on the Customer for direction as to the extent to which RM is entitled to use and process the Data. Consequently, RM will not be liable for any claim brought by the Customer or any data subject arising from any action or omission by RM to the extent that such action or omission resulted from the Customer's instructions.
- 19.9 RM may also use the Customer's personal data in accordance with its Privacy Policy which can be found at [www.rm.com](http://www.rm.com).

## **20 Confidentiality**

- 20.1 "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:
- 20.1.1 information which is already in the public domain or comes into the public domain other than as a result of a breach of the Agreement;
  - 20.1.2 information which the receiving party can demonstrate was developed independently of information received from the other party;
  - 20.1.3 information which is required to be disclosed by statute (but not contractual obligation); and
  - 20.1.4 information which is received from a third party who is entitled to share such information without restriction.
- 20.2 The Customer agrees that it will not disclose any of RM's Confidential Information to any third party without RM's prior written consent.

- 20.3 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.
- 20.4 RM acknowledges that the Customer may have statutory obligations to consider disclosing RM's Confidential Information pursuant to, inter alia, the Freedom of Information Act 2000 (but this shall not include contractual obligations, in respect of which the confidentiality provisions in clauses 20.2 and 20.3 (above) shall apply in full). However, the Customer agrees that it will consult with RM in good faith prior to disclosing any of RM's Confidential Information in connection with any such statutory obligations and shall take into account in good faith all and any representations made by RM in connection with the decision as to whether or not to disclose the same prior to doing so. Should the Customer decide to disclose any such information (whether or not RM has made any representations), it shall provide RM with detailed written reasons for doing so.
- 20.5 Where the Freedom of Information Act 2000 applies to the Customer and the Customer receives a request under the Act that includes any information held by the Customer that was provided by RM in connection with the Agreement the Customer will:
- 20.5.1 notify RM immediately of the request; and
- 20.5.2 give RM at least five (5) Working Days to make representations.
- 20.6 Customer agrees to maintain in confidence and not disclose, reproduce or copy any materials, documentation or specifications which are provided to the Customer hereunder.

## **21 Rights of Third Parties**

No term of the Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person or entity who is not a party to it.

## **22 Anti-Bribery**

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

## **23 Assignment and sub-contracting**

The Customer may not assign the Customer's rights or obligations under the Agreement without the prior written consent of the Customer. RM may use subcontractors to perform all or some of RM's obligations under the Agreement but where RM does so RM will remain liable to the Customer in accordance with the Agreement for their acts and omissions. RM may on prior written notice to the Customer assign RM's rights and obligations to a third party.

## **24 Relationship**

Nothing in the Agreement creates a joint venture, relationship of partnership or agency between the parties. Except as expressly authorised under the Agreement neither party has authority to pledge the credit of or make any representation or give any authority to contract on behalf of another party.

## **25 Waiver**

No forbearance, delay or indulgence by either party in enforcing the provisions of the Agreement shall prejudice or restrict the rights of that party, nor shall any waiver of its rights in relation to a

breach of the Agreement operate as a waiver of any subsequent breach and no right, power or remedy given to or reserved to either party under the Agreement is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

## **26 Severability**

Notwithstanding that the whole or any part of any provision of the Agreement may prove to be illegal or unenforceable the other provisions of the Agreement and the remainder of the provision in question shall remain in full force and effect.

## **27 Notices**

27.1 Any notice required to be given under the Agreement shall be in writing and shall be sent to the address of the Customer set out in each order (for notices to be sent to the Customer) or the registered office of RM (for notices sent to RM).

27.2 Any notice shall not be effective unless sent by hand, registered post or equivalent and unless delivered by hand (where it shall be deemed received on delivery) it shall be deemed to have been received three (3) Working Days after the date of posting.

## **28 Miscellaneous**

28.1 RM sometimes monitors or records telephone calls for training purposes.

28.2 RM reserves the right to amend the Agreement from time to time without notice by updating the same on its website at [www.rm.com](http://www.rm.com).

28.3 The headings in the Agreement are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of the Agreement.

## **29 Entire Agreement**

The Agreement together with any contract documents RM provides the Customer constitute the entire agreement and understanding between the parties relating to the subject matter. Except as may be expressly stated in the Agreement, the Agreement supersedes and cancels all prior agreements, statements, representations, understandings, negotiations and discussions, whether oral or written, between the parties. Each of the parties acknowledges and agrees that in entering into the Agreement it has not relied on (or has been induced to enter into the Agreement by) any statement, representation, warranty or understanding made prior to the Agreement. Nothing in this clause excludes any liability for fraudulent misrepresentation.

## **30 Governing Law**

The Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and both the Customer and RM hereby agree to the exclusive jurisdiction of the English Courts.