

RM TERMS AND CONDITIONS FOR THE SUPPLY OF RM ASSESS CORE SERVICES, AND WHERE APPLICABLE OPTIONAL SERVICES (THE “TERMS”)

- A. THESE TERMS APPLY TO THE SERVICES TO BE PROVIDED BY RM EDUCATION LTD (COMPANY NUMBER 1148594), AN ORGANISATION WHOSE REGISTERED ADDRESS IS AT 142B PARK DRIVE, MILTON PARK, ABINGDON, OX14 4SE (“RM”) TO THE CUSTOMER AS SET IN THE QUOTE AND ASSOCIATED PROPOSAL.
- B. UPON SIGNATURE OF A QUOTE THE CUSTOMER AGREES TO BE BOUND BY THESE TERMS. IF THE CUSTOMER DOES NOT WISH TO BE BOUND BY THESE TERMS, THE CUSTOMER SHOULD NOT SIGN THE QUOTE, RECEIVE ACCESS TO RM ASSESS OR ACCEPT PERFORMANCE OF THE SERVICES.
- C. THE CUSTOMER’S SIGNED QUOTE FOR RM ASSESS CORE SERVICES, AND WHERE APPLICABLE OPTIONAL SERVICES TAKEN ON THE EFFECTIVE DATE OR AS MAY BE OTHERWISE REQUIRED DURING THE TERM (THROUGH AN ADDITIONAL QUOTE) ARE SUBJECT ALWAYS TO ACCEPTANCE BY RM. EXCEPT AS MAY BE SET OUT IN THE QUOTE, THESE TERMS APPLY TO THE EXCLUSION OF ALL OTHER TERMS AND CONDITIONS THAT THE CUSTOMER MAY HAVE PROPOSED OR SEEK TO INCORPORATE AFTER THE EFFECTIVE DATE.
- D. IN THE EVENT OF ANY CONFLICT OR AMBIGUITY BETWEEN THE TERMS OF THE DOCUMENTS LISTED BELOW, A TERM CONTAINED IN A DOCUMENT HIGHER IN THE LIST SHALL HAVE PRIORITY OVER ONE CONTAINED IN A DOCUMENT LOWER IN THE LIST:
1. THE QUOTE;
 2. THESE TERMS; AND
 3. THE PROPOSAL.

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions used in these Terms shall have the following meaning:

“Action”	have the meaning set out in Clause 6.1 of the Agreement;
“Affected Employees”	means any employees who shall transfer from one party to the other party by reason of a Relevant Transfer;
“Agreed Downtime”	means any agreed period of unavailability of the System;
“Agreement”	means together the Quote, these Terms (including the Schedules to these Terms) and the Proposal, the terms of which are agreed and accepted by the Customer and RM by the execution of the Quote by both parties;
“Anti-Bribery Laws”	means any and all applicable anti-bribery and/or anti-corruption laws of each jurisdiction in which the parties conduct business including, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977 as amended from time to time;
“Author”	Means a specific End Users authorised by Customer staff to undertake Authoring;
“Authoring”	means the creation of Items and Test question content using RM Assess;
“Branding Guidelines”	means a suite of documents that set out how to use a party’s Branding Materials, which the relevant party shall make available upon request;
“Branding Materials”	means any names, logos, symbols, trademarks, or other branding used by a party;

“Bribery”	means any activity, practice or conduct which would be an offence under any Anti-Bribery Laws;
“Business Day(s)”	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London but excluding RM’s shutdown period between Christmas and New Year;
“Business Hours”	means 08:30 to 17:00 hours on Business Days Monday to Thursday and 08.30 to 16.15 on Friday in UK BST/GMT;
“Business Systems”	means the information technology and communication systems including networks, hardware, software, and interfaces owned by, or licensed to, the Customer or any of or their agents or contractors or Customer Related Parties use to access the System and receive the Services;
“Candidate(s)”	means one or more students who use the System to sit a Test(s);
“Concurrent End Users”	means the maximum number of End Users who may use the System simultaneously (including Candidates taking a Test) which shall be limited to fifty thousand (50,000) End Users, providing that where Proctoring Services are taken Candidate onboarding will be limited and staggered so that no more than five hundred (500) Candidates are commencing a Test every twenty (20) minutes;
“Confidential Information”	means any and all information to which confidentiality is capable of

	attaching and including without limitation information relating to the business, affairs, operations, customer processes, budgets, product information, examination/Test materials, strategies, developments, trade secrets, know-how, personnel and or suppliers of the Customer or RM whether or not such information is in a tangible form or is marked in writing or designated orally as 'confidential', 'protect' or 'restricted';
"Contract Year"	means each twelve (12) month period beginning on the Effective Date and each anniversary thereafter;
"Customer"	means the party to this Agreement who is the recipient of the Services as set out in the Quote;
"Customer Data"	means any data (including any Personal Data relating to the Customer or any Customer Related Party), materials, documents, texts, drawings, diagrams, images or sounds embodied in any medium, that are supplied to RM, its Group Companies and/or subcontractors by or on behalf of the Customer, or are owned or controlled by the Customer and stored in or otherwise incorporated into the System, or which RM, its Group Companies and/or subcontractors are required to generate, process, store or transmit pursuant to this Agreement (including any updates, modifications, and/or additions to such data);
"Customer Obligations"	means all of the Customer's obligations as set out in this Agreement including those stated in Schedule 4 of these Terms;
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time: (a) in the UK (including, but not limited to, the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426)) and/or; (b) to the extent that the General Data Protection Regulation EU 2016/679 ("EU GDPR") applies, the law of the European Union or any member state of the European Union to which the Customer is subject, which relates to the protection of personal data;
"Designated Contact"	means Customer employees or subcontractors who are approved users of the RM Service Desk as agreed between RM and the Customer.
"Disclosing Party"	means the party disclosing Confidential Information;

"Dispute Resolution Procedure"	means the escalation and dispute resolution procedure set out in Clause 20;
"Effective Date"	means the date of the last party to apply their signature to the Quote;
"End User"	means any party authorised to use the System in accordance with these Terms;
"Examination"	shall have the same meaning as Test;
"Examination Session"	means the period of time when a Candidate is sitting an Examination using the System;
"Familiarisation Test"	means a test that is taken through the System for familiarisation or demonstration purposes which does not lead to a response that is stored within the System. Such tests will not count towards the consumption of Tests in respect of the Maximum Contract Volume;
"Fees"	those sums the Customer shall pay to RM under this Agreement;
"Force Majeure Event"	means any cause or circumstance beyond the reasonable control of the affected party including without limitation an act of God, an act of government, war or civil commotion, national emergency, fire, flood, storm, earthquake, epidemic, global health emergency or pandemic, or strike or lockout (excluding strikes or lockouts involving RM Personnel);
"Good Industry Practice"	means a degree of skill, care, prudence, foresight and operating practice a reasonable person would reasonably and ordinarily expect from of a skilled and experienced operator (engaged in the same type of undertaking as that of RM) under the same or similar circumstances;
"Group Company"	means in relation to any party to this Agreement: (a) any company that controls such party; (b) any company controlled by such party, including a subsidiary; or (c) any company controlled by the same company that controls such party, where "control" shall mean any direct or indirect interest corresponding to more than 50% of the voting rights;
"Indemnified Party" and "Indemnifying Party"	have the meaning set out in Clause 6.1 of the Agreement;
"Indirect Losses"	means, losses that do not occur naturally or directly from the breach(es) complained of and includes the following: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings;

	(e) loss of use or corruption of software, data, or information; (f) loss of or damage to goodwill; and (g) indirect or consequential loss;
“Initial Term”	the initial duration of the Agreement as set out in the Quote;
“Instance”	means the environment in which the System or part thereof is hosted.
“Intellectual Property Rights”	means all rights, title and interest (present and future) in inventions, patents, trademarks, service marks, designs, utility models, whether registered or not, copyright, trade secrets, know-how, software, discoveries, improvements, concepts, models, drawings, databases, processes logos, rights to software, and all rights to confidential or proprietary information including all rights to know-how and other technical or commercial information and all other rights of similar nature (including under the EU Database Directive as implemented in the United Kingdom) whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
“Issue”	Means a problem with the Services which arises due to any act or omission wholly or substantially attributable to RM and/or its Subcontractors raised by a Designated Contact with the RM Service Desk.
“Item”	means a document or other such Test question content which are stored within the Item Bank and utilised by Authors for Authoring;
“Item Bank”	means the Customer's Test question content bank;
“Key Assumptions”	means certain assumed parameters, details or other matters (if any) as set out in the Quote;
“Live Proctoring”	means a Proctor engaged by the Proctoring Provider in respect of the Live Proctoring Optional Service to reviews Test(s) in real time using a webcam, mobile phone, and the Candidate's computer screen in accordance with the standard Proctoring guidelines;
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or have a disruptive effect on program files, data or other information, executable code, or application software macros, whether or not its operation is immediate or delayed, and whether such software programme or code is introduced wilfully, negligently or without knowledge of its existence and

	including computer programmes commonly referred to as viruses, worms, trojan horses, key-loggers, and spyware;
“Maximum Contract Volume”	means the maximum volume of Tests that can be sat using the System per Contract Year as set out in the Quote;
“Minimum System Requirements”	means the minimum specification and requirements for the Business Systems as required to access the System provided under this Agreement. These will be provided by RM as part of the onboarding process and are subject to revision by RM from time to time;
“Modern Slavery Laws”	means any and all applicable anti-slavery and/or human trafficking laws of each jurisdiction in which the parties conduct business, including, the UK Modern Slavery Act 2015, as amended from time to time;
“Optional Services”	means the optional services (including Subcontracted Services) as may be set out in the Quote and in which case are to be provided by RM as set out in the Proposal subject to the Customer Obligations and the Key Assumptions;
“Personnel”	all employees, agents, consultants (such as lawyers and accountants) of a party and of any Related Parties who are engaged in connection with the Services and/or this Agreement from time to time;
“Personnel Information”	means such information as the Transferee may reasonably request in relation to the Affected Employees which shall include but which shall not be limited to the same information as the Transferor would be obliged to disclose under regulation 11 of the TUPE Regulations;
“Practice Tests”	a practice test or mock test whereby the Candidate's responses are stored and utilised as part of a formative assessment, such tests will count towards the consumption of Tests in respect of the Maximum Contract Volume;
“Priority 1”	A “Priority 1 Issue” means a failure of the Services where: (a) The application URL produces no results or responds with server-side errors, and/or (b) The System is not available or unreachable. This excludes Agreed Downtime.
“Priority 2”	A “Priority 2 Issue” means a failure of the Services affecting multiple users where, within the System, a whole application module is not functioning to specification and users have no obvious workaround. For example, authors or markers are

	not able to use the system to complete a time critical task.
“Priority 3”	A “Priority 3 Issue” means a failure of the Services affecting single or multiple users which is less severe than a P2. For example, a single feature in a module might not be performing to specification but users can continue with their work via a workaround or similar.
“Priority 4”	A “Priority 4” category will be assigned to all “Service Requests” placed at the Service Desk
“Proctor”	means an individual responsible for maintaining the proper conduct of a particular Test in accordance with the regulations of the Customer. Proctors will be provided by RM’s Proctoring Provider where this Optional Service is taken;
“Proctored Session”	means a Candidate taking an Examination or Test that requires the Proctoring Services;
“Proctoring”	means the application of the Proctoring Services to the proctoring process;
“Proctoring Units”	Means the amount of units purchased by the Customer for Proctoring Services as set out in the Quote, such units are consumed through the provision of the chosen Proctoring Services per Test taken by a Candidate;
“Proctoring Materials”	means any and all data, documents, texts, drawings, diagrams, images or sounds, notes, information, photography, screenshot, recording (whether audio or video) and/or other content embodied in any medium which is created or collected by the Proctoring System and/or which the Proctoring Provider is required to generate by or on behalf of RM and/or the Customer (either solely or in conjunction with others) in performing (whether directly or indirectly) any Services. Proctoring Materials will contain Personal Data. For the avoidance of doubt, Proctoring Usage Data is excluded from this definition;
“Proctoring Provider”	means RM’s third party Proctoring subcontractor as may be updated from time to time;
“Proctoring Services”	means an Optional Service as may be provided in conjunction with RM’s Proctoring Provider using the Remote Invigilation System including either Live Proctoring or Record and Review service (a Subcontracted Service), as more particularly set out in the Quote and detailed in the Proposal subject to the Customer Obligations, Concurrent End Users Candidates and any Key Assumptions;

“Proctoring Usage Data”	means all data, documents, texts, information, report and/or analytics derived from Proctoring Materials and/or created by the Proctoring Provider during the Term for the purpose providing and/or maintaining the Services and/or developing new functionality in the Proctoring System to the extent it does not contain any Data and is fully anonymised;
“Proposal”	means the proposal made by RM to the Customer for the provision of the Services as set out in the Quote and which forms part of the Agreement and is included by reference in these Terms;
“Quote”	The quote provided by RM which upon execution by both parties will together with these Terms and the Proposal form the Agreement, including any additional quotes that may be provided and agreed during the Term for Optional Services;
“Recipient”	means the party receiving Confidential Information;
“Record and Review”	means the service whereby proctors provided by the Proctoring Provider review the footage of Proctored Sessions after the Test has taken place in accordance with the standard Violation Checklist;
“Related Party” or “Related Parties”	means: (a) in respect of the Customer: any End User (including, but not limited to, examiners, invigilators, proctors and Candidates), any subcontractor, existing supplier, future supplier, customer, employee, officer, or director of the Customer; and (b) in respect of RM: any subcontractor, supplier, or customer of RM (other than the Customer);
“Relevant Transfer”	has the meaning set out in Clause 17.1.1 of the Agreement;
“Remote Invigilation System”	means the computer based electronic system (including all Subcontractor IPR, hardware, updates, modifications, changes and upgrades) provided by the RMs Proctoring Provider to deliver the Proctoring Services and as made available to the Customer via a designated website or IP address;
“Resolution”	Means the period of time during which a workaround or permanent fix is implemented which restores the Services and/or Resolves the Issue reported to the RM Service Desk.
“Resolve”	Means in relation to an Issue logged by the Customer with the RM Service Desk the point at which RM provides the raiser of the request with a workaround or

	permanent fix which restores the service and/or otherwise resolves the Issue reported to the RM Service Desk;
“RM Assess”	the computer based electronic system known as RM Assess (including all RM IPR, hardware, updates, modifications, changes and upgrades) as provided by RM to deliver the RM Assess Core Services and as made available to the Customer via a designated website or IP address;
“RM Assess Core Services”	means the provision of RM Assess and associated services (excluding Optional Services) by RM as set out in the Proposal and further detailed in the Service Description, subject to the Customer Obligations and the Key Assumptions;
“RM IPR”	means the Intellectual Property Rights of RM; including RM Assess, RM Source Materials, and any Third Party Software and/or Third Party Materials incorporated into RM Assess and/or the Services;
“RM Service Desk”	means the RM support system that Designated Contacts can access online, by email and by telephone during Service Hours on Service Days;
“RM Source Materials”	means all materials including text, audio, music, graphics, photographic images, film, and video which RM develop or produce for incorporation into the System and/or Services;
“RMESI”	means RM Education Solutions India Pvt Ltd, RM's wholly owned subsidiary based in India;
“Sales Tax”	means UK Value Added Tax and/or any other tax of any kind that may be payable in any jurisdiction because of the performance by RM of its obligations under this Agreement but excluding UK corporation tax;
“Service Days”	Means the days within which the targets for Resolution Service Levels specified in Schedule 2 shall be measured and when the RM Service Desk is available for contact. These are Monday to Friday excluding public holidays in the UK during Service Hours.
“Service Description”	means the document titled as such which sets out the detailed description of the RM Assess Core Service as may be updated from time to time and made available to the Customer upon request;
“Service Hours”	Means the hours within which the targets for Resolution Service Levels specified Schedule 2 shall be measured and when the RM Service Desk is available for contact. These are from 9am to 5pm UK local time during Service

	Days; or from 9am to 9pm (UK local time) if the Optional Service 'Extended Weekday Hours Support' is purchased; or from 9am to 5pm (UK local time) Saturday and Sundays if the Optional Service 'Weekend Hours Support' is purchased.
“Service Levels”	means the relevant service levels as set out in Schedule 2 to these Terms;
“Service Request”	A request made to the RM Service Desk that is not related to an Issue but rather a request for minor assistance in how to use specific functionality in the System. A request to find out how to create a multiple-choice Test Item, for example, would be a service request. Service requests are available only when this 'How do I support' Optional Service is purchased;
“Services”	means together those services to be provided by RM including the RM Assess Core Services any Optional Services (including any Subcontracted Services) as may be required by the Customer as set out in the Quote, as further detailed in the Proposal, subject to the Customer Obligations, the maximum number of Concurrent End Users and any Key Assumptions;
“Slavery”	means any activity, practice or conduct which would constitute an offence under the Modern Slavery Laws;
“SoNET”	means the wholly owned subsidiary of RM based in Australia and known as SoNET Systems PTY LTD;
“Subcontracted Services”	has the meaning set out in Clause 24.1 of the Agreement;
“Subcontractor IPR”	means the Intellectual Property Rights of a subcontractor; including Proctoring Usage Data, Subcontractor Software and Subcontractor Source Materials;
“Subcontractor Software”	means all software written, owned, or controlled by a subcontractor and used to provide the Subcontracted Services;
“Subcontractor Source Materials”	means all materials including, text, audio, music, graphics, photographic images, film, and video (but excluding software) used by a subcontractor to provide the Subcontracted Services;
“System”	means: (a) the computer based electronic system known as RM Assess (including all RM IPR, hardware, updates, modifications, changes and upgrades) provided by RM to deliver the RM Assess Core Services and as licenced to the Customer in accordance with Clause 8 of these Terms and made

	available via a designated website or IP address; and (b) where selected by the Customer, the Subcontractor Software;
“Term”	means the Initial Term and any subsequent renewals in accordance with Clause 13.2;
“Terms”	These terms and conditions including the Schedules to them;
“Test”	means a single online based test taken through the System including Practice Tests and excluding Familiarisation Tests.
“Third Party Materials”	means all materials including text, audio, music, graphics, photographic images, film, and video which are developed or produced by an RM Related Party in relation to the provision of the Services;
“Third Party Software”	means any software written, owned, or controlled by an RM Related Party and is licenced to RM to incorporate into RM Assess and/or the Services;
“Transferee” and “Transferor”	have the meaning set out in Clause 17.1.1 of the Agreement;
“TUPE Regulations”	has the meaning set out in Clause 17.1 of the Agreement;
“UK GDPR”	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;
“Unacceptable Content”	means any material of any nature whatsoever which is or contains any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; is discriminatory based on race, gender, colour, religion or religious belief, sex, sexual orientation, disability or is otherwise illegal or causes damage or injury to any person or property and/or is Malware;
“Unavailable”	means all minutes from the point at which the monitoring system detects unavailability (except for Agreed Downtime) and ending when the monitoring system detects that availability has been recovered in the System;
“Violation Checklist”	means a document which is used by Proctors in the provision of Proctoring Services to classify violations to examination rules

	applicable to the sitting of a Test by a Candidate
“Vulnerability”	means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability; and
“Workaround”	has the meaning set out in Clause 6.4.1.2 of the Agreement;

- 1.2. References to Clauses and Schedules are to clauses and the schedules to these Terms unless the context otherwise requires.
- 1.3. The masculine gender includes the feminine and neuter and any word in the singular shall include the plural and vice versa.
- 1.4. Headings are used for convenience only and shall not affect the interpretation of these Terms.
- 1.5. Any phrase containing the words ‘including’, ‘in particular’ or ‘for example’ or similar is illustrative and shall not limit the generality of the related words.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7. Unless these Terms express a party's right or remedy to be exclusive, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 1.8. If any provision of these Terms requires or refers to the agreement or consent of either or both parties, a party shall not unreasonably withhold or delay such agreement.
- 1.9. If any provision of these Terms refers to the opinion of either party or requires a party to consider any matter, the party who is providing the opinion, or who is considering the relevant matter, shall act reasonably and in good faith in reaching its opinion or determination and shall consider any reasonable representations made by the other party.
- 1.10. A reference to writing or written includes letter and e-mail.
- 1.11. If there is and to the extent of any conflict between the Clauses and the Schedules, the Clauses shall prevail.

2. PROVISION OF SERVICES

2.1. Performance

- 2.1.1. RM agrees to provide the Services in accordance with this Agreement subject always to the limit of Concurrent End Users and the Maximum Contract Volume applicable. Anything required in addition to the Services shall be the responsibility of the Customer, notwithstanding that such further requirements may not be expressly set out as a Customer Obligation.

- 2.1.2. RM is not obliged to provide any services except the Services specifically set out in these Terms including any Test exceeding the Maximum Contract Volume. If the Customer so requests any additional services, the Customer will pay RM for those services agreed between the parties from time to time and these Terms will apply to those services, together with any additional terms and conditions agreed at the time.
- 2.1.3. RM may charge the Customer at its standard rates from time to time, if RM provides any services in relation to problems the Customer reports to RM and which RM discover are not as a result of any error on RM's part.
- 2.1.4. RM shall perform the Services in accordance with the applicable Service Levels and Good Industry Practice.
- 2.1.5. The Customer shall perform all Customer Obligations and be responsible for any delays, delivery failures, or any other loss or damage resulting from the Customer's failure to input the required pre-requisite data correctly, including but not limited to Candidate data, question content, Test information and examination session data.
- 2.1.6. Each party shall carry out their duties and obligations in compliance with all applicable laws.
- 2.1.7. The Customer shall be solely responsible for results it obtains from the use of the Services, and for conclusions drawn from such use.

2.2. Monitoring the Services

- 2.2.1. RM shall monitor the Services in accordance with the Service Levels and report its performance against those to the Customer on an annual basis.
- 2.2.2. If the Customer is dissatisfied with the Service provided by RM, or if the parties cannot agree whether the Services satisfy the Service Levels, then either party may escalate the matter in accordance with the Dispute Resolution Procedure.

2.3. Minimum System Requirements

- 2.3.1. The Customer shall ensure that any Business Systems it or a Customer Related Party provides, or which End Users receive the Services on, shall comply with the Minimum System Requirements.
- 2.3.2. There will be specific Minimum System Requirements for RM Assess and the Remote Invigilation System, and where both applications are included in the Service some Business System requirements, such as internet bandwidth, will be cumulative as set out in the Minimum System Requirements. In this case, the Business Systems will need to be of a specification that meets both requirements when added together.
- 2.3.3. End Users may experience performance issues if their Business Systems do not meet the Minimum System Requirements. RM shall not have failed to satisfy a Service Level or otherwise be in breach of this Agreement to the extent that the End User's Business Systems fails to meet the Minimum System Requirements.

- 2.3.4. RM may update the Minimum System Requirements from time to time, by updating the relevant System website or by informing the Customer of the new requirements. Upon written request, RM shall promptly provide the Customer with a copy of the latest Minimum System Requirements.
- 2.3.5. RM may, without liability to the Customer, suspend, in part or in full, the delivery of the Services for such period as RM (in its absolute discretion) deems necessary or desirable where the Customer is in material breach of the terms of this Agreement including, but not limited to:
 - 2.3.5.1. not paying a valid invoice when due;
 - 2.3.5.2. exceeding the Maximum Contract Volume;
 - 2.3.5.3. exceeding the Concurrent End Users; and/or
 - 2.3.5.4. failure to perform a Customer Obligation that prevents RM from delivering the Services.

2.4. RM Support

- 2.4.1. RM will provide the following support to the Customer in respect of the Services:
 - 2.4.1.1. Access to the RM Service Desk such that Designated Contacts will be able to ask for support in respect of Issues with the System and Services either online, by email or by telephone.
 - 2.4.1.2. Where purchased as an Optional Service, Designated Contacts will be able to raise Service Requests with the RM Service Desk.
 - 2.4.1.3. A Service Manager will be the single point of contact for the Customer should there be a need to escalate Issues relating to the Services.
 - 2.4.1.4. Access to webinars and demonstrations to enable the Customer to familiarise themselves with the System.
 - 2.4.1.5. Access to a knowledge base containing essential articles to help End Users get the most out of the System.
 - 2.4.1.6. A quarterly webinar which will provide updates from RM's product and proposition specialists including market trends, product updates and RM's product roadmap.

3. MAINTENANCE EVENTS

- 3.1. Nothing in this Agreement shall prevent or hinder RM from updating or maintaining the System in the ordinary course of business. RM will carry out software releases where necessary (including feature updates, bug fixes, security, and vulnerability updates) in its scheduled release programme as advised from time to time by the RM Service Manager.
- 3.2. RM may also interrupt the Services in the following circumstances:
 - 3.2.1. for unscheduled maintenance providing RM informs the Customer at least three (3) days before commencing the maintenance; and
 - 3.2.2. for emergency maintenance provided that RM:

3.2.2.1. will only do so where it has legitimate grounds for considering that the measures would be to the overall benefit of the Customer; and

3.2.2.2. will inform the Customer as soon as reasonably practicable.

3.3. All of the above (Clauses 3.1 to 3.2) are “**Maintenance Events**” and shall be classed as Agreed Downtime.

3.4. RM shall endeavour to keep service interruptions to a minimum.

4. FEES

4.1. The Customer shall pay to RM the Fees as described and set out in the Quote.

4.2. The Customer shall pay all Fees, in pounds sterling to RM's designated bank account, within fourteen (14) days of receiving a valid invoice under this Agreement, being the “**Due Date**” in respect of the relevant invoice.

4.3. If the Customer fails to pay a valid invoice on or before the relevant Due Date, RM may:

4.3.1. suspend the Services until RM receives full payment. RM shall not be in default of its obligations by doing so and, once RM receives payment, all dates for performance shall be deferred by the duration of the delay in payment; and

4.3.2. charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

4.4. All Fees are exclusive of any Sales Tax. Should Sales Tax be chargeable or due nonetheless, the Customer shall pay such Sales Tax to RM in addition to the Fees.

4.5. In addition to any other increases (including for increases in third-party costs), RM has the right, on the anniversary of each Contract Year, to increase the Fees to reflect increases in inflation that have occurred between the date when the Fees were last increased (or the Effective Date if this is the first increase) and the date of the calculation. Such increase shall be on forty-five (45) days' notice to the Customer and calculated such that the Fees are increased by either: (a) increases in the Consumer Prices Index in the UK during this period; or (b) 3%, whichever is higher.

5. INTELLECTUAL PROPERTY RIGHTS

5.1. This Clause 5 shall survive termination or expiry of this Agreement.

RM Intellectual Property Rights

5.2. All RM IPR, regardless of the date or manner of creation, are and shall remain the property of RM or the appropriate RM Related Party and the Customer acquires no rights in or to the RM IPR other than those licences expressly granted by this Agreement.

5.3. The Customer shall, and shall ensure Customer Related Parties shall:

5.3.1. only use RM IPR in accordance with this Agreement;

5.3.2. not knowingly infringe the RM IPR;

5.3.3. not decompile, reverse engineer, copy, modify, adapt, or translate the RM IPR save to the extent permitted by law or as expressly permitted in writing by RM, such permission signed by a statutory director of RM;

5.3.4. not produce any derivative work based upon the RM IPR without first securing the specific written consent of RM, such consent signed by a statutory director of RM, for each individual use; or

5.3.5. not grant any sub-licences in respect of RM IPR unless explicitly authorised under this Agreement.

5.3.6. RM reserves the right to grant a licence to use the RM IPR to any other party or parties as it so chooses.

Customer Intellectual Property Rights

5.4. The title in all Intellectual Property Rights contained within Customer Data shall vest and remain in the Customer or the appropriate Customer Related Party.

5.5. RM shall and shall ensure RM Related Parties shall:

5.5.1. only use Customer Data in accordance with this Agreement;

5.5.2. not knowingly infringe the Intellectual Property Rights in Customer Data;

5.5.3. not decompile, reverse engineer, copy, adapt or translate the Customer Data save to the extent permitted by law or as required to deliver the Services; or

5.5.4. not produce any derivative work incorporating the Customer Data without first securing the specific written consent of the Customer.

5.6. To the extent that any RM IPR may vest in the Customer (or the relevant Customer Related Party, as appropriate), effective upon creation of such Intellectual Property Rights, the Customer hereby assigns, and shall cause each of its personnel to assign, all right, title and interest in the RM IPR to RM (or the relevant RM Related Party) without further compensation.

5.7. To the extent that any Intellectual Property Rights relating to the Customer Data do not automatically vest in the Customer, effective upon creation of such Intellectual Property Rights, RM hereby assigns, and shall cause each of its personnel to assign, all right, title and interest, including any Intellectual Property Rights, in this Customer Data, to the Customer without further compensation.

5.8. Where necessary to give effect to Clause 5.7 or 5.8 (as applicable) the assigning party shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the receiving party (acting reasonably) considers necessary to perfect the right, title and interest of the receiving party to the relevant Intellectual Property Rights.

6. INTELLECTUAL PROPERTY INDEMNITY

- 6.1. Each party (the “**Indemnifying Party**”) shall indemnify and hold the other party (the “**Indemnified Party**”) harmless against all damages, losses, costs, and expenses (including reasonable legal costs and expenses) and other liabilities which the Indemnified Party incurs or which are awarded against it in connection with:
- 6.1.1. where the Customer is the Indemnified Party, any claim that the RM IPR infringes or may infringe any Intellectual Property Rights of any third party; or
- 6.1.2. where RM is the Indemnified Party, any claim that the Customer Data infringes or may infringe any Intellectual Property Rights of any third party;
- (each an “**Action**”).
- 6.2. The Indemnified Party agrees to notify the Indemnifying Party in writing as soon as reasonably practicable if it becomes aware of any actual or potential Action.
- 6.3. In the event of an Action, the Indemnifying Party may, without prejudice to the indemnity contained in Clause 6.1 or any other rights of the Indemnified Party under this Agreement, at the Indemnifying Party's own expense and sole option:
- 6.3.1. require the Indemnified Party to cease using the infringing material, in the relevant jurisdictions and either:
- 6.3.1.1. replace or modify, or procure the replacement or modification of, such material or the relevant element thereof, provided that:
- the performance and functionality of the replaced or modified item is substantially equivalent to the performance and functionality of the original item;
 - there is no additional cost to the Indemnified Party; and
 - the Terms apply to the replaced or modified material; or
- 6.3.1.2. implement a workaround solution by which the Indemnified Party's use of the System or Services or Customer Data (as relevant), or the relevant part thereof, may be modified or replaced to remove the infringement (a “**Workaround**”).
- 6.3.1.3. Where a Workaround is provided, the Indemnifying Party shall be responsible for any increased costs reasonably incurred by the Indemnified Party in such circumstances.
- 6.3.1.4. In respect of any Workaround:
- where RM is the Indemnifying Party, RM shall ensure that:
 - the Workaround does not have an adverse effect on any of the Services; and
 - the Service Levels in relation to the Services shall continue to apply; and
 - where the Customer is the Indemnifying Party, the Customer shall ensure that:
 - the Workaround supports RM's use of the Customer Data in a timely and secure manner and can be used in a similar way by RM for the provision of the Services without requiring RM to incur any additional costs; and
 - the Workaround does not have an adverse effect on RM's ability to perform its obligations or deliver the Services under this Agreement (and RM shall not be liable to the extent the Workaround has any adverse effect on RM's ability to perform its obligations or deliver the Services); or
 - procure for the Indemnified Party the right to continue using the part of the material which is subject to an Action.
- 6.4. In the event of an actual or potential Action for which RM is the Indemnified Party, and the Action adversely affects RM's performance of its obligations under this Agreement (including the Service Levels), the Customer agrees that RM shall not be liable for such under-performance.
- ## 7. CONDUCT OF CLAIMS
- 7.1. In relation to any Action (as set out in Clause 6.1):
- the Indemnified Party shall, as soon as reasonably possible, give the Indemnifying Party all details regarding the nature of the Action;
 - the Indemnifying Party shall have full conduct of the defence of any such Action;
 - the Indemnified Party shall (at the Indemnifying Party's cost) give the Indemnifying Party such reasonable assistance as the Indemnifying Party may reasonably request;
 - the Indemnified Party shall not settle any Action (or take any action which may compromise any Action) without the Indemnifying Party's prior written consent; and
 - nothing in this clause shall oblige the Indemnified Party or entitle the Indemnifying Party to do anything which would have an adverse effect on the reputation of the Indemnified Party or its relationships with its suppliers, customers, or other Related Parties.
- ## 8. LICENCES
- 8.1. RM grants the Customer (together with the right to grant the same to End Users) a non-transferable and non-exclusive licence for the Term to access the System for the purposes of receiving the Services.
- 8.2. The Customer acknowledges and agrees that it and each Customer Related Party shall not grant any sub-licences in respect of the System other than as set out in Clause 8.1 unless otherwise agreed in writing with RM.
- 8.3. The Customer grants to RM and RM Related Parties a non-exclusive and non-transferable licence to use, adapt and reproduce the Customer Data for the sole

purpose of maintaining the System and providing the Services during the Term.

9. DATA PROTECTION

9.1. In this Agreement, the terms Controller, Processor, Data Subject, Personal Data, Special Categories of Personal Data, Processing, Data Protection Impact Assessment and Personal Data Breach shall be as defined in the Data Protection Legislation shall apply and “**Data**” shall mean the Personal Data and Special Categories of Personal Data provided to RM by the Customer in connection with the Agreement.

9.2. The Customer acknowledges it is a Controller, and RM is a Processor.

9.3. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 9 is in addition to, and does not relieve, remove, or replace, a party’s obligations under the Data Protection Legislation.

9.4. RM shall:

9.4.1. ensure that its employees shall, Process the Data only on the Customer’s instructions as set out or referred to in the Agreement (including in Schedule 1) to provide the Services;

9.4.2. provide appropriate technical and organisational measures:

9.4.2.1. to ensure the protection of the rights of the Data Subjects; and

9.4.2.2. ensure an appropriate level of security, assessing, in particular, the risks Processing presents, to protect the Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Data transmitted, stored, or otherwise Processed;

9.4.3. take all reasonable steps to ensure the reliability of any of its staff who have access to and/or process Data in connection with the Services, including duties of confidentiality under any employment contracts;

9.4.4. assist the Customer, at the Customer’s cost, in responding to any request from a Data Subject and in ensuring compliance with applicable obligations under the Data Protection Legislation with respect to security of Processing, Personal Data Breach notifications and communications, Data Protection Impact Assessments and consultations with supervisory authorities or regulators;

9.4.5. notify the Customer without undue delay after becoming aware of a Personal Data Breach;

9.4.6. notify the Customer immediately if it considers that any of the Customer’s instructions infringe the Data Protection Legislation;

9.4.7. at the written direction of the Customer, delete or return the Data to the Customer after the end of the provision of the Services relating to Processing, except that:

9.4.7.1. RM may keep any Data, if required by any applicable laws to store the Personal Data; and

9.4.7.2. RM may keep Data stored in any System back-ups until such Data is permanently deleted;

9.4.8. maintain complete and accurate records and information to demonstrate its compliance with this Clause 9 and provide access to the same for the purpose of a Customer conducted audit. Any audits must be no more than once in a twelve (12) month period, on not less than thirty (30) days’ notice, be conducted within RM’s normal business hours, cause minimal disruption to RM, and be at the Customer’s sole cost.

9.5. The parties acknowledge that RM will also use services and/or products from sub-processors in order to provide the Service under the Agreement and that, in doing so, RM may transfer Data to such sub-processors. Accordingly:

9.5.1. The Customer consents to the appointment by RM of the sub-processors listed here (the “**Sub-processors List**”);

9.5.2. RM may appoint new sub-processors or make changes to the Sub-processors List provided that it notifies the Customer in writing a reasonable period of time in advance before a new sub-processor is granted access to Data; and

9.5.3. The Customer may object on reasonable data protection grounds in writing to the appointment of any new sub-processor provided it does so no later than 14 days after receiving the notice referred to in 9.5.2. If the parties cannot agree on a solution within a reasonable time, either party may terminate the Services.

9.6. RM shall:

9.6.1. agree written contractual obligations with each sub-processor which are at least equivalent to the obligations imposed on RM pursuant to this Clause 9; and

9.6.2. if applicable, ensure that appropriate safeguards are in place before internationally transferring Personal Data to its sub-processors.

9.7. The Customer agrees that, to provide the Services under the Agreement, RM will transfer the Data as set out in this Clause 9.7.. RM will transfer the Data outside the United Kingdom and the European Economic Area (“**EEA**”) to third countries which have not been approved by the Information Commissioner’s Office or the European Commission as having adequate protections in place for the purpose of the transfer of Personal Data pursuant to the Data Protection Legislation (each an “**International Transfer**”). For each International Transfer, RM shall ensure that an agreement is in place with the relevant sub-processor(s) which shall incorporate the EU Standard Contractual Clauses (“**EU SCCs**”) and UK International Data Transfer Addendum to the EU SCCs for the transfer of Personal Data (the “**EU SCCs and UK Addendum**”). Under this Clause 9.7, RM may make International Transfers to the sub-processors located outside the EEA as set out in the latest version of the Sub-processors List. Details of the EU SCCs and UK Addendum agreed between RM and its Group

Companies including RMESl and SoNET can be found [here](#).

- 9.8. RM may, at any time on not less than thirty (30) days' notice, revise the above Clause 9.7 by replacing it with any applicable Standard Contractual Clauses or similar terms forming part of an applicable approved certification scheme mechanism.
- 9.9. RM shall remain fully liable to the Customer for the performance of any sub-processor appointed by it pursuant to this Clause 9.
- 9.10. The Customer agrees to comply with its obligations under Data Protection Legislation and warrants that it has all necessary consents and notices in place in relation to its collection, processing, and provision of Data, to enable the lawful transfer of the Data to RM in connection with, and for the duration of, the Services provided under the Agreement.
- 9.11. The Customer shall indemnify and hold harmless RM against all costs, claims, losses, damages, and expenses (including legal expenses) arising out of, or in connection with, any breach of this Clause 9 by the Customer and/or its employees, agents and/or subcontractors.
- 9.12. The Customer acknowledges that RM is reliant on the Customer for direction as to the extent to which RM may use and process the Personal 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 such action or omission resulted from the Customer's instructions.
- 9.13. Schedule 1 to this Agreement sets out the following information regarding Processing of Data: subject-matter; duration of the Processing; nature and purpose of the Processing; type of Data; categories of Data Subjects; and the obligations and rights of RM.
- 9.14. RM may also act as an independent Data Controller for the purpose of contract management, and as further set out in RM's privacy policy which can be found at www.rm.com.

10. GENERAL WARRANTIES

- 10.1. Each party warrants:
- 10.1.1. it has full capacity and authority to enter and to perform this Agreement;
- 10.1.2. the Agreement is executed by a duly authorised representative of that party; and
- 10.1.3. there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement.
- 10.2. RM warrants and represents it has and will continue to hold all consents, licences, permits and regulatory approvals necessary to provide the Services.
- 10.3. The Customer warrants and represents:

- 10.3.1. Customer Data will not infringe the Intellectual Property Rights of any third parties;
- 10.3.2. it has sufficient and suitably qualified personnel available to devote such time as is necessary to assist RM in carrying out the Services in accordance with this Agreement; and
- 10.3.3. it has thoroughly acquainted itself with and made its own enquiries in respect of all matters connected with the System and Services and has concluded the System and Services are suitable and appropriate for its organisation and assessment processes.
- 10.4. The representations and warranties set out in this Clause 10 and any other warranties stated expressly in this Agreement are the only representations and warranties made by RM and the Customer in respect of the subject matter of this Agreement. Consequently, RM and the Customer disclaim any and all:
- 10.4.1. express or implied warranties;
- 10.4.2. warranties of fitness for a particular purpose;
- 10.4.3. warranties of satisfactory quality;
- 10.4.4. warranties the System is Vulnerability free; and
- 10.4.5. warranties the Customer's use of the Services will be uninterrupted or error-free.

11. CONFIDENTIALITY

- 11.1. This Clause 11 shall survive termination or expiry of this Agreement.
- 11.2. Except as expressly provided in this Agreement, neither party may use or disclose the other party's Confidential Information, and each party shall treat the other party's Confidential Information as confidential.
- 11.3. The Recipient may disclose the Confidential Information of the Disclosing Party:
- 11.3.1. when required to do so by law or the rules of any regulatory authority or the London Stock Exchange, provided where practicable and lawful, the Recipient promptly notifies the Disclosing Party of such a requirement;
- 11.3.2. to those of its Personnel and Group Companies whose duties reasonably require such disclosure, on condition the Recipient ensures each such person:
- 11.3.2.1. is informed of the confidentiality obligations under this Agreement; and
- 11.3.2.2. there is no conflict of interest in disclosing or receiving such Confidential Information.
- 11.4. This Agreement imposes no obligations on Confidential Information that:
- 11.4.1. is lawfully known by the Recipient at the time of disclosure;
- 11.4.2. is or becomes, through no fault of the Recipient, generally available to the public;

- 11.4.3. the Recipient independently develops without using the Confidential Information of the Disclosing Party;
- 11.4.4. the Recipient lawfully receives from a third party who does not have an obligation of confidentiality to the Disclosing Party; or
- 11.4.5. the Disclosing Party permits (in writing) the Recipient to disclose or publish such Confidential Information.

Branding and Announcements

- 11.5. A party may:
 - 11.5.1. in respect of the Customer, disclose that RM is its supplier; and
 - 11.5.2. in respect of RM, disclose that the Customer is a customer of RM.
- 11.6. Either party may reasonably use the other party's Branding Materials on its website or in its marketing materials subject to compliance with the relevant party's Branding Guidelines.
- 11.7. Except for Clause 11.5 and 11.6, the parties undertake they will not make any public announcements regarding this Agreement without first obtaining the other party's prior written consent.

12. SECURITY

- 12.1. RM shall maintain appropriate security measures in accordance with Good Industry Practice, such as, using the latest versions of anti-virus software available from an industry accepted anti-virus software vendor or the use of other appropriate technical measures to check for and delete Malicious Software from the System. The Customer acknowledges, save for this obligation, RM shall have no liability or responsibility in respect of any Malicious Software.
- 12.2. The Customer warrants and shall ensure on an ongoing basis:
 - 12.2.1. any Customer Data uploaded into the System does not contain Unacceptable Content;
 - 12.2.2. End Users will not use the Service to store, transmit, and/or receive any Unacceptable Content;
 - 12.2.3. any Customer Data uploaded into the System has been subject to appropriate security measures including the use of the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for any Malicious Software;
 - 12.2.4. End Users shall not introduce any Vulnerability in the System; and
 - 12.2.5. End Users shall not exploit a Vulnerability that already exists in the System.
- 12.3. The parties agree if Malicious Software and/or a Vulnerability is found in the System, they shall co-operate to reduce the effect of the Malicious Software and/or Vulnerability, mitigate any losses, and restore the Services to their original operating efficiency, particularly if Malicious Software or Vulnerability causes

loss of operational efficiency or loss or corruption of the Customer's Data.

- 12.4. RM may, without liability to the Customer, suspend the delivery of the Service for such period as RM (in its absolute discretion) deems necessary or desirable to manage and resolve any issues arising from any Malicious Software and/or Unacceptable Content found in the System.
- 12.5. The parties acknowledge security requirements are constantly changing, and effective security requires frequent evaluation and regular improvements of outdated security measures. RM shall update its security measures in accordance with Good Industry Practice and as a Maintenance Event.

13. TERM

- 13.1. This Agreement and the rights and obligations of the parties shall take effect on the Effective Date and shall, subject to the provisions for early termination set out in this Agreement, remain in force for the Initial Term.
- 13.2. At the end of the Initial Term, unless otherwise agreed, this Agreement shall automatically renew for either one year or a period equal to the Initial Term, whichever is greater. RM will provide you with a quotation for the new fees prior to the end of the Initial Term and these fees shall apply after the Agreement has renewed unless otherwise agreed by RM in writing.

14. TERMINATION

- 14.1. Either party may terminate this Agreement by giving not less than thirty (30) days' notice prior to the end of the then-current Term.
- 14.2. Either party may terminate this Agreement where the other party materially breaches its obligations under this Agreement and the defaulting party fails to remedy such breach within thirty (30) days of written notice requiring its remedy.
- 14.3. Either party may terminate this Agreement immediately if the other party:
 - 14.3.1. has a receiver, manager, administrator, or similar officer appointed over all or a material part of its undertakings, assets, or income;
 - 14.3.2. has passed a resolution for its winding-up or a court of competent jurisdiction makes an order for its winding-up or dissolution;
 - 14.3.3. enters an arrangement, compromise, or composition in satisfaction of its debts with its creditors or any class of them, or takes steps to obtain a moratorium, or makes an application to a court of competent jurisdiction for protection from its creditors; or
 - 14.3.4. is unable to pay its debts, or is reasonably deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986.

15. CONSEQUENCES OF TERMINATION

- 15.1. Termination of this Agreement, however it arises, shall not affect, or prejudice the accrued rights of the parties as at termination or the continuance of any provision expressly stated to survive, or implicitly surviving, termination.
- 15.2. The provisions intended to survive termination or expiry of this Agreement shall (as the context requires) survive any such termination or expiry and continue in full force and effect.
- 15.3. On termination of this Agreement for any reason:
- 15.3.1. the Customer's and End Users' access to the System and Services under this agreement shall immediately end;
- 15.3.2. each party shall return and make no further use of any equipment, property, materials, and other items (and all copies of them) belonging to the other party;
- 15.3.3. The return/deletion of Customer Data shall be dealt with in accordance with Clause 9.4.7 or Schedule 1 as applicable.
- 15.4. In the event of early termination of this Agreement by the Customer in accordance with Clause 14.1 or Clause 14.2, the Customer shall pay the remaining Fees for the then Term had it not been for the earlier termination.

16. LIMITATION OF LIABILITY

- 16.1. Save for the provisions of Clause 16.7, nothing in this Clause 16 shall affect or limit the indemnities included under this Agreement.
- 16.2. Neither party excludes or limits liability to the other party for:
- 16.2.1. breach of Clause 11 (Confidentiality);
- 16.2.2. matters arising under Clause 17 (Employment);
- 16.2.3. fraud or wilful default; and/or
- 16.2.4. any liability that cannot be limited or excluded as a matter of law.
- 16.3. Save as provided in Clause 16.2 and without prejudice to the Customer's obligations to pay the Fees as and when they become due and subject always to Clause 16.4, each party's aggregate liability to the other party (whether in tort, contract or otherwise) arising out of, under or otherwise arising in connection with this Agreement shall, in any Contract Year, in no circumstances exceed one hundred percent (100%) of the Fees payable under this Agreement for that Contract Year.

Exclusion of Indirect Losses

- 16.4. Subject to Clause 16.2 and without prejudice to the Customer's obligations to pay the Fees as and when they become due, in no other event shall either party be liable to the other for any Indirect Losses.

General Provisions Relating to Limitations on Liability

- 16.5. References to liability in this Clause 16 includes every kind of liability in contract, tort (including negligence), misrepresentation, restitution or otherwise arising under or in connection with this Agreement.
- 16.6. The parties expressly agree if any limitation or provision contained or referred to in this Clause 16 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted. If any party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other provisions of this Clause 16.
- 16.7. Both parties shall take reasonable steps to mitigate any losses they may suffer or incur because of any act or omission that may give rise to a claim under the Agreement (including under any indemnity).
- 16.8. Neither party shall be in breach of this Agreement to the extent such breach has been caused by the negligence or breach of this Agreement by the other party or a relevant Related Party.

17. EMPLOYMENT

- 17.1. It is the intention of the parties that the supply of Services under this Agreement shall not constitute a transfer of any part of the business carried on by the Customer according to the Transfer of Undertakings (Protection of Employment) Regulations 2006 or, where appropriate, its predecessor the Acquired Rights Directive (collectively the "**TUPE Regulations**").
- 17.2. If at any time on or after the Effective Date of this Agreement, a party alleges and/or it is found that the contracts of employment of, and/or any claims, costs, damages, liabilities and/or expenses are made pursuant to which, any person(s) employed or formerly employed by the Customer and/or any Customer Related Party, (each a "**Transferor**" as relevant) have transferred or will transfer under regulation 3 (1) (a) or regulation 3 (1) (b) of the TUPE Regulations (each a "**Relevant Transfer**") to RM or any relevant third party appointed by RM (the "**Transferee**") pursuant to TUPE Regulations at any time on or during the Term, the parties shall comply with the provisions of this Clause 17.
- 17.3. Should the TUPE Regulations apply upon receiving a written request from the Transferee, the Transferor shall:
- 17.3.1. fully and accurately disclose to the Transferee the Personnel Information; and
- 17.3.2. warrant that the Personnel Information is accurate and correct in all material respects as at the time of its disclosure which will be no later than twenty-eight (28) days before the point in time at which any Relevant Transfer under the TUPE Regulations occurs (the "**Transfer Date**") and the Transferor will notify the Transferee of any change to the Personnel Information not later than fourteen (14) days before the Transfer Date.
- 17.4. Where the obligations on the Transferor under this Clause 17 are subject to the Data Protection Legislation, the Transferor will use its reasonable

endeavours to seek the consent of the relevant Affected Employee to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

Information and consultation prior to the Transfer Date

- 17.5. In accordance with regulations 11 and 13 of the TUPE Regulations, the Customer shall comply with its obligations to provide employee liability information as applicable and inform and consult with the appropriate representatives of any of the Affected Employees should there be a Relevant Transfer.

The Transferor's obligations in respect of a Relevant Transfer

- 17.6. The Transferor will on or before the Transfer Date (or in the case of the payments referred to in Clauses 17.6.4 and 17.6.5 within fourteen (14) days of the Transfer Date):
- 17.6.1. pay all wages, salaries and other benefits of the Affected Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Affected Employees in respect of the periods of their employment with the Transferor up to the Transfer Date;
- 17.6.2. procure that any loans or advances made to the Affected Employees before the Transfer Date are repaid;
- 17.6.3. account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Affected Employees in the period up to and including the Transfer Date;
- 17.6.4. pay the Transferee the amount which would be payable to each of the Affected Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date;
- 17.6.5. pay the Transferee an amount which fairly reflects the progress of each of the Affected Employees as at the Transfer Date towards achieving any commission, bonus, profit share or other incentive payment payable after the Transfer Date wholly or partly in respect of a period before the Transfer Date; and
- 17.6.6. deliver complete personnel records relating to the Transferring Employees to the Transferee.

Indemnities

- 17.7. The Transferor shall perform and discharge all its obligations in respect of all the Affected Employees for its own account up to and including the Transfer Date. The Transferor shall indemnify the Transferee and keep the Transferee indemnified from and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Transferee including without limitation all legal

expenses and other professional fees (together with any VAT thereon) in relation to:

- 17.7.1. any failure of the Transferor to comply with the TUPE Regulations;
- 17.7.2. the termination by the Transferee of the employment of any individual transferred to the Transferee by operation of the TUPE Regulations within 60 days of the Transfer Date provided that the Transferee takes all reasonable steps to minimise any such claims, costs, expenses or liabilities, including, but not limited to, pays only sums due to the Affected Employees by virtue of a statutory provision or contractual obligation, but excluding claims for discrimination and/or equal pay under the Equality Act 2010 in relation to an alleged act or omission of the Transferee;
- 17.7.3. anything done or omitted to be done on or before the Transfer Date in respect of any of the Affected Employees by the Transferor which is deemed to have been done by the Transferee by reason of the TUPE Regulations;
- 17.7.4. failure of the Transferor to perform and discharge its obligations under this Clause 17;
- 17.7.5. any act of omission by the Transferor in respect of the Affected Employees occurring on or before the Transfer Date;
- 17.7.6. any claim made by or in respect of any person employed or formerly employed by the Transferor other than an Affected Employee for which it is alleged that the Transferee may be liable by virtue of this Agreement and/or the TUPE Regulations; and
- 17.7.7. any emoluments payable to Affected Employees (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Transfer Date provided that such claims, costs, expenses or liabilities incurred or payable under this Clause 17.6 are not payable as a result of any act or omission of the Transferee.
- 17.8. The Transferee shall perform and discharge all its obligations in respect of all the Affected Employees and their representatives for its own account from the Transfer Date. The Transferee shall indemnify the Transferor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Transferor arising from the Transferee's failure to perform and discharge any obligation and against any claims in respect of any Affected Employees arising from or as a result of:
- 17.8.1. The Transferee's failure to perform and discharge any of its obligations under this Clause 17; and
- 17.8.2. all and any claims in respect of all emoluments and outgoings in relation to the Affected Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Transfer Date provided that such claims, costs, expenses or liabilities incurred or payable under this Clause 17.7 are

- not payable as a result of any act or omission of the Transferor.
- 17.9. The Transferee shall assume the outstanding obligations of the Transferor in relation to any Affected Employees in respect of accrued holiday entitlements and accrued holiday remuneration prior to the Transfer Date.
- 18. NOTICES**
- 18.1. Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the party giving it and that party shall serve the notice by delivering it personally, by email or by sending it by recorded delivery or registered post to the address and for the attention of the relevant party notified for such purpose or to such other address as that party may have stipulated in accordance with this Clause 18.
- 18.2. The parties may also serve notice by email provided that (as applicable):
- 18.2.1. the Customer sends the notice to companysecretary@rm.com and the subject of the email includes the Customer's name followed by '– RM Education Ltd RM Assess Core Services Agreement – Official Notice'; and
- 18.2.2. RM sends the notice to the Customers email address (as set out in the Quote) and the subject of the email includes the Customers name followed by '– RM Education Ltd RM Assess Core Services Agreement – Official Notice'.
- 18.3. A party shall be deemed to have received a notice:
- 18.3.1. at the time of delivery if delivered personally;
- 18.3.2. three (3) Business Days from the date of posting in the case of recorded delivery or registered post; and
- 18.3.3. one (1) Business Day from when the email enters the recipients email system and provided the sender does not receive an error message indicating failure to deliver.
- 19. ASSIGNMENT**
- 19.1. The Customer may not assign, transfer, or otherwise dispose of this Agreement or its rights hereunder without the prior written consent of RM.
- 19.2. RM may assign the burden of this Agreement to another RM Group Company by giving the Customer reasonable notice.
- 20. GOVERNING LAW AND DISPUTE RESOLUTION**
- 20.1. Where the parties cannot settle an issue, claim or dispute arising in connection with this Agreement or any part thereof by discussion between the parties or negotiation, either party may escalate the matter to an appropriate senior leader within the organisation.
- 20.2. Any discussion, negotiation and/or escalation shall not preclude either party from applying to the courts for relief where that party requires an order for an injunction, disclosure, or legal precedent.
- 20.3. This Agreement shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 21. FORCE MAJEURE**
- 21.1. Neither party shall be liable to the other for any delay or failure to perform any of its obligations hereunder which is due to a Force Majeure Event.
- 21.2. Each party shall use reasonable efforts to mitigate the extent of the delay or failure caused by the Force Majeure Event and its adverse consequences and to recommence performance of the affected obligations as soon as and to the extent reasonably practicable.
- 21.3. The non-affected party may terminate this Agreement forthwith by serving notice on the other party to that effect if a Force Majeure Event continues for a period greater than ninety (90) days.
- 22. GENERAL PROVISIONS**
- 22.1. This Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all prior, proposals, understandings, agreements, or representations between the parties relating to this Agreement save for fraudulent representations.
- 22.2. If any provision of this Agreement is held invalid, illegal, or unenforceable, such provision shall be severed and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.
- 22.3. The waiver or failure or delay of either party to exercise any right provided in this Agreement shall not be deemed to be a waiver of any further or continuing entitlement to exercise that right.
- 22.4. The parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed to place the parties in the relationship of principal/agent, partners, or joint ventures.
- 22.5. This Agreement may not be varied except by an agreement in writing expressed to vary this Agreement signed by duly authorised representatives of the parties.
- 22.6. The parties may execute this Agreement in counterparts, each of which shall constitute a duplicate original, but together shall constitute one agreement. Where the parties execute this Agreement in counterparts, each party shall promptly deliver the counterpart it has executed to the other party in PDF, JPEG, or other agreed format.
- 22.7. This Agreement does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement.
- 23. REGULATORY COMPLIANCE**
- 23.1. The parties shall comply with Modern Slavery Laws and Anti-Bribery Laws.

- 23.2. The parties shall take reasonable steps to prevent instances of Bribery and/or Slavery from occurring within its own organisation and Related Parties. These steps may include the following:
- 23.2.1. maintaining and enforcing policies which have a zero-tolerance approach to Bribery and/or Slavery;
 - 23.2.2. conducting regular internal and supplier audits;
 - 23.2.3. performing due diligence checks on new suppliers; and
 - 23.2.4. only trading with organisations who comply with, or are taking verifiable steps towards compliance with, the Anti-Bribery Laws and Modern Slavery Laws.

24. SUBCONTRACTING

- 24.1. Subject to Clause 9 (Data Protection) and RM remaining liable for the subcontractor's performance, RM may subcontract the performance of its obligations under this Agreement to a third party subcontractor ("**Subcontracted Services**") and make changes to the identity of any subcontractor from time to time.
- 24.2. Should the Customer have any reasonable objections, it shall notify RM within seven (7) days of receiving the notification that the identity of a subcontractor is changing stating the reasons for such objection. If the Customer, acting reasonably at all times, refuses the appointment of a new subcontractor in accordance with Clause 24.1, RM shall promptly initiate the appointment of a replacement subcontractor however, until such time as a new replacement is ready to provide its services to RM, RM shall be relieved from its obligations in respect of any Subcontracted Service to the extent these cannot be provided because of such refusal.

25. VARIATION

- 25.1. But for clause 25.2, any variation to these Terms will not be valid unless it is in writing (email will suffice) and with the express agreement of the parties.
- 25.2. RM may issue a notice of amended Terms in the event that the change is required due to:
- 25.2.1. the Services needing to change to comply with any laws; or
 - 25.2.2. the Services needing to change in response to any facts or circumstances which have arisen that were outside of RM's control, and which prevent the delivery of the Services in the manner envisaged at the date of this Agreement; or
 - 25.2.3. in respect of any Subcontracted Service, where there are unavoidable or material changes to such Subcontracted Services.

SCHEDULE 1
PROCESSING OF PERSONAL DATA

1. This Schedule 1 includes certain details of the Processing of Personal Data as required by the Data Protection Legislation.
2. The Customer acknowledges and agrees that the provisions of this Schedule 1 constitute the Customer's instructions with respect to the Processing of Personal Data under this Agreement.
3. RM shall comply with the following provisions as varied in accordance with Clause 22.5 of this Agreement.

Description	Details
Subject matter of the processing	The subject matter will be the provision of RM Assess Core Services and any Optional Services including Subcontracted Services indicated in the Quote.
Duration of the processing	<p>Processing of Personal Data shall take place for the duration of the Agreement however Personal Data shall be retained in accordance with the following timeframes:</p> <p>For RM Assess Core Services:</p> <p>Personal Data will be retained until the expiry or valid termination of the Agreement whichever is earlier.</p> <p>For Proctoring Services:</p> <p>Proctoring Materials relating to a Test shall be stored and capable of being accessed by the Customer for three (3) months following the date of the relevant Test unless earlier deleted by or at the request of the Customer.</p>
Nature and purposes of the processing	<p>The purpose of the Processing shall be the provision of RM Assess, Subcontractor Software and Optional Services indicated in the Quote. The nature of the Processing shall include but not be limited to:</p> <ul style="list-style-type: none"> • Accessing; • Collecting; • Recording; • Structuring; • Storing; • Altering; • Retrieving; • Using; • Reporting; • Erasing or deleting; • Sharing; and • Restricting.
Type of Personal Data	<p>RM will process the following types of Personal Data on behalf of the Customer when required to do so in order to provide the Services:</p> <p>For RM Assess Core Services</p> <ul style="list-style-type: none"> • Name; • Username and login details; • Gender; • Contact details including, but not limited to, email; • Employment information: organisation, job role; • Assessment / Education data including, but not limited to, Candidate answers, examiner marks and comments; • Screenshots; • Date of birth / age; • IP address or other location data; • Numerical identifiers including, but not limited to, Candidate number; • Health data including, but not limited to, reasonable adjustments (which is Special Category Personal Data); and • Any other data relating to individuals provided to RM (and/or any of its sub-processors) via the Services, by (or at the direction of) Customer or End Users. <p>For Proctoring Services</p>

	<ul style="list-style-type: none"> • Identification information of the Candidate, such as a student card or ID; • Associated details regarding Tests (including but not limited to education provider); • Name and email of the Candidate; • Video footage of the Candidate; • Screenshots of the PC or other device used by the Candidate; <p>Special Category Personal Data:</p> <ul style="list-style-type: none"> • Biometric data; and • Health data including, but not limited to, reasonable adjustments. 	<ul style="list-style-type: none"> • IP address of the Candidate; • Any other data relating to individuals provided to RM (and/or any of its sub-processors including the Proctoring Provider) via the Services, by (or at the direction of) Customer or End Users.
Categories of Data Subject	<p>RM Processes Personal Data for the following categories of data subjects on behalf of the Customer when providing the Services:</p> <ul style="list-style-type: none"> • Candidates; • End Users; and • Any other Customer Related Party involved in the provision of the Services. 	
Plan for return and destruction of the data once the processing is complete unless union or member state law require the preservation of that type of data.	<p>Throughout the Term, once the Processing of certain Personal Data is complete, such Personal Data shall be archived and rendered inaccessible until the relevant archive is deleted.</p> <p>Unless otherwise agreed in writing with the Customer, Personal Data shall be permanently deleted from the System within 60 calendar days after termination of this Agreement.</p>	

SCHEDULE 2
SERVICE LEVELS

Our Service Promise

1. We will employ reasonable endeavours to meet the following Service Levels throughout the Term of our Agreement with you. If you have any concerns, you will be able to get in touch with your Service Manager.
2. Where development work is required to provide a permanent resolution to an Issue raised at the RM Service Desk then the permanent fix shall be deployed as a Maintenance Event as set out in the Agreement.
3. RM's Service Levels are as follows:

Service Level 1:	System availability
Description	The availability of the System hosted on the production environment. For the avoidance of doubt, this Service Level target shall not apply to any non-production environments.
Performance criteria	The minimum availability of the System shall be 99.9% during an Examination Session and 99.5% at all other times measured 24 hours a day 7 days a week over a calendar month.
Detailed Measure / Monitoring	<p>RM will measure availability for the System using local monitoring systems that actively poll the System every sixty (60) seconds. Performance against this Service Level will be calculated as follows:</p> $A = \frac{SA - (U - AD)}{SA}$ <p>WHERE:</p> <p>A is the measure of performance (expressed in percentage terms) against this Service Level;</p> <p>SA means the total number of minutes in a calendar month;</p> <p>U means the total number of minutes in a calendar month during which the System is unavailable (with such periods including all minutes from the point at which the monitoring system detects unavailability and ending when the monitoring system or other usage logs/ detects that availability has been recovered); and</p> <p>AD means the total number of minutes in a calendar month which is Agreed Downtime.</p>

Service Level 2:	Priority 1 Resolution Times
Description	The Resolution times for a Priority 1 Issue logged with the RM Service Desk. Resolution times shall be measured from the time when an Issue is logged at the RM Service Desk.
Performance criteria	The target time for Resolution of a Priority 1 Issue shall be within four (4) Service Hours during an Examination Session and within eight (8) Service Hours at all other times.
Detailed Measure / Monitoring	Performance against this Service Level shall be measured monthly.

Service Level 3:	Priority 2 Resolution Times
Description	The Resolution times for a Priority 2 Issue logged with the RM Service Desk. Resolution times shall be measured from the time when an Issue is logged with the RM Service Desk.
Performance criteria	The target time for Resolution of a Priority 2 Issue shall be within eight (8) Service Hours during an Examination Session and sixteen (16) Service Hours at all other times measured from the start of the next Service Day.
Detailed Measure / Monitoring	Performance against this Service Level shall be measured monthly.

Service Level 4:	Priority 3 Resolution Times
Description	The Resolution times for a Priority 3 Issue logged with the RM Service Desk. Resolution times shall be measured from the time when an Issue is logged with the RM Service Desk.
Performance criteria	the target time for Resolution of a Priority 3 Issue shall be within five (5) Service Days measured from the start of the next available Service Day.
Detailed Measure / Monitoring	Performance against this Service Level shall be measured monthly.

Service Level 5:	Priority 4 Resolution Times
Description	The Resolution times for a Priority 4 Issue logged with the RM Service Desk. Resolution times shall be measured from the time when an Issue is logged with the RM Service Desk.
Performance criteria	Whilst the volume of P4 Issues is reported they are not subject to a standard Resolution time.
Detailed Measure / Monitoring	Performance against this Service Level shall be measured monthly.

SCHEDULE 3
CUSTOMER OBLIGATIONS

The following Customer Obligations shall be the responsibility of the Customer throughout the Term of the Agreement, in addition to, and not in substitution for, any other obligations of the Customer expressly set out or implied in the Agreement.

The Customer shall:

1. provide all reasonable co-operation and assistance to RM to perform the Services;
2. provide demand forecasting data in a timely manner when requested to do so by the Service Manager so that RM has the opportunity to provision the Services and ensure sufficient resources;
3. provide a single point of contact (the Customer representative as set out in the Quote) who will facilitate all decisions and escalations relating to the Services including assisting in the resolution of all Issues concerning the Services;
4. procure that it has sufficiently skilled personnel available to devote such time as is necessary to assist RM in carrying out the Services in accordance with this Agreement;
5. undertake self-service training using the knowledge articles provided by RM;
6. maintain a written, up-to-date list of current End Users and provide such list to RM within five 5 Business Days of the RM's written request;
7. be responsible for Candidate/End User, support, hardware and bandwidth including where applicable in any external testing centres, strictly in accordance with the Minimum System Requirements;
8. ensure that all End Users receive full training and associated information in the use of the System in good time and of good quality including but not limited to:
 - 8.1. all End User operating instructions, including updates issued by RM from time to time;
 - 8.2. agreed minimum and recommended technical specification for End User equipment (including, but not limited to, Minimum System Requirements); and
 - 8.3. the need to ensure each End User has a secure password and that such password shall be changed no less frequently than reasonably required and/or requested by RM and that each End User shall keep their password strictly confidential;
9. use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly inform RM;
10. Ensure that only agreed Designated Contacts access the RM Service Desk and in doing so provide the following information in respect of any technical Issues arising and which are passed to RM to resolve:
 - 10.1. appropriate individual contact details;
 - 10.2. full specification of End User equipment including operating system versions;
 - 10.3. full description of symptom; and
 - 10.4. time and place of Issue arising;
11. be responsible for the proper operation and support (including the resolution of any technical issues) of any Business Systems operated by the Customer which allow End Users to access the System;
12. ensure that End Users close the Proctoring System strictly in accordance with the instructions to ensure that the recording session is closed correctly;
13. be responsible for the authoring of all Tests;
14. be responsible for the management of End User accounts in the System;
15. if applicable, provide all necessary translation services;
16. with RM's guidance, produce Candidate joining instructions in respect of Proctoring which will be presented to the Candidate in the System;
17. permit RM or RM's designated auditor to audit the Services to ensure the Customer and End Users are complying with the Agreement; and
18. All other operations other than those for which RM is explicitly responsible.