

RM Collaborate Terms and Conditions June 2014

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

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

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

1 DEFINITIONS

“**Agreement**” these Terms and Conditions, together with any Order.

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

(a) is already in the public domain or comes into the public domain other than as a result of a breach of an Agreement;

(b) the receiving party can demonstrate was developed independently of information received from the other party;

(c) is required to be disclosed by statute (but not contractual obligation); and

(d) is received from a third party who is entitled to share such information without restriction.

“**Customer**” means the person or organisation whose name is set out in the Order.

“**Customer Data**” means any data, information or material provided or submitted by You or Your Users to the Service in the course of using the Service.

“**Establishment(s)**” means the school(s) or other organisation(s) as set out in the Order, or as amended by You in agreement with RM as set out in Clause 9 (below), whose Users will be authorised to use the Service by You.

“**Establishment Information Form**” means the list of Establishments authorised by You to access the Service along with any other details required by RM at the time that You place the Order.

“**Fee**” means the fee for the Service as set out in the Order.

“**Initial Term**” means the initial period during which You are obliged to pay for the Service as stated in the Order.

“**IPR**” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all

other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

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

“**Nominated Contact(s)**” means for each Establishment up to two (2) individuals who will be authorised to use the Support Service by You and provided to RM within fourteen (14) days of the information being requested by RM or in any case no later than fourteen (14) days prior to the Service Commencement Date.

“**Order**” means the order placed on RM by You for the provision of the Service. An Order shall consist of: (i) a purchase order from You for the total Fee quoted to You by RM for the duration of the Initial Term; and (ii) a completed Establishment Information Form.

“**Renewal Term**” means has the meaning given to it in section 2.1 (below).

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

“**Service**” means access to the RM Collaborate service as identified in the Order, developed, operated, and maintained by RM, accessible via a designated web site or IP address, to which You are being granted access under this Agreement. Such Service shall include the initial provision of school performance data or other such data as determined by and at the sole discretion of RM from time to time for each Establishment subject always to such data being available to RM, accessible from within the public domain and available for the individual Establishment. Subject to the above, RM shall update any such data it provides at least annually.

“**Service Commencement Date**” means the earlier of the date You begin using the Service or the service commencement date communicated to you by RM.

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

“**Support Service**” shall have the meaning given in Clause 22.1 (below).

“**Term**” means the Initial Term and any Renewal Term.

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

“**User**” means Your employees, representatives, consultants, contractors or agents or those employees, representatives, consultants, contractors or agents of the Establishments, who are authorised by You to use the Service and have registered to use the Service.

“**You**” or “**Your**” means the name of the Customer as set out in the Order.

2 DURATION AND PAYMENT

2.1 This Agreement shall commence on the date the last party signs the Order. The Services shall commence on the Service Commencement Date and continue until the end of the Initial Term. At the end of the Initial Term, unless

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otherwise agreed, this Agreement shall automatically renew for one year (each a "Renewal Term") at the then-current rate payable for the Service.

- 2.2 Either party may terminate this Agreement by giving not less than ninety (90) days notice prior to the end of the then-current Term.
- 2.3 Unless otherwise notified to You in writing by RM, RM shall invoice you annually in advance for the Fees on the invoice date as set out in the Order. You 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.
- 2.4 RM reserves the right to claim interest at the rate of 8% per annum above the minimum base lending rate for the time being of the Bank of England, calculated on a daily basis on all sums due to RM and unpaid from the date on which payment of the Fees are due under this Agreement until the date on which payment of the Fees is made, both including the period before and after any Court judgment.

3 LICENSE GRANT AND RESTRICTIONS

- 3.1 Upon provision of information required to create an account to use the Service and payment of the relevant Fees, RM agrees to provide You with the non-exclusive, limited, non-assignable right to access the Service and use it in connection with school improvement activities You provide to Users. You are not authorised to allow Establishments other than those listed in the Order to access or use the Service and You will not charge any User for access or use of the Service unless You have first obtained RM's written consent.
- 3.2 You may produce copies of any instructions provided by RM and distribute such copies to Users to enable them to use the Service. This shall be without prejudice to the provisions of Clause 5.
- 3.3 All rights not expressly granted in this Agreement are reserved to RM. No rights are granted by implication.
- 3.4 Your subscription to RM Collaborate entitles You to receive, subject to payment of the relevant Fees:
 - 3.4.1 access to the RM Collaborate Support Portal; and
 - 3.4.2 subject to Clause 22 (below), telephone and/or online Support.
- 3.5 RM may from time to time suspend the availability of the Service or any part thereof 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 any unavailability of the Service or any part thereof during any such period.
- 3.6 RM will use reasonable efforts to make the Service perform substantially in accordance with the Service description, as it may exist from time to time. However, You acknowledge that some errors may exist in the Service, and the presence of such errors shall not be a breach of this provision. RM's sole obligation with regard to such errors shall be to use reasonable efforts to correct such errors and provide support as stated in this Agreement.

4 YOUR RESPONSIBILITIES

- 4.1 If You or Your Users disclose or share user account details with any third party or allow any third party to use the Service on Your behalf or violate the terms of this Agreement in any other way, You agree to indemnify RM and RM's Suppliers for any losses costs or damages incurred by RM or its Suppliers as a result of Your or Your Users' actions. If RM reasonably believes that an account is being used in any way which is not permitted by RM, RM reserves the right to cancel access rights immediately without notice and to block access to all Users from that account. RM will use reasonable efforts to inform You promptly after taking such action.
- 4.2 You are solely responsible for providing RM with a completed Establishment Information Form with your

Order.

- 4.3 You are solely responsible for creating and maintaining the content within RM Collaborate including using the functionality within RM Collaborate to manage school, hub, aspiration and other settings.
- 4.4 You are solely responsible for ensuring that no User uploads pupil-level data on to RM Collaborate.
- 4.5 You are solely responsible for User account creation and User account management within RM Collaborate.
- 4.6 You are solely responsible for ensuring a programme of activity is in place to encourage your Establishments to use RM Collaborate and to train Users in how to use RM Collaborate.
- 4.7 You are solely responsible for acquiring and maintaining all computer hardware and software, telephone, internet provision and communications equipment needed for access to and use of the Service.
- 4.8 You are solely responsible for obtaining all appropriate and necessary consents and authorisations from any third party required or appropriate in order to disclose or use any Customer Data, including without limitation personally identifiable information about Your Users, to RM to provide or use such information in connection with the Service. You will be responsible for Your use and Your Users' use and access of Customer Data in a manner consistent with Your and their obligations to third parties.
- 4.9 You own and have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and IPR ownership or rights to use all Customer Data and RM shall not be responsible or liable for the deletion, correction, destruction, damage, loss of or failure to store any Customer Data.
- 4.10 You agree to ensure that no User will introduce any Malware into any computer equipment or system or software of RM. You further agree to use virus-checking software before downloading any material from the Internet or the Service and, unless otherwise agreed, shall be responsible for applying anti-virus software to protect Your and Your Users' machines and networks.
- 4.11 You agree to ensure that no User will use the Service for the purposes of storing, transmitting or receiving any Unacceptable Content.

5 INTELLECTUAL PROPERTY

- 5.1 Title to all materials (including, without limitation, all designs, text, underlying source code, graphics and their selection and arrangement, but excluding any Customer Data or data provided by third parties) on the RM Collaborate service are the copyright of RM or its licensors. No material (excluding any Customer Data or data provided by third parties) on RM Collaborate nor any part of it may be copied, reproduced, modified, transmitted, reused, re-posted or used for public or commercial purposes in any form whatsoever, whether physical, electronic or otherwise, without RM's express, prior, written consent. However, where "Printer Friendly" versions of any of the pages of this website are shown to be available, You and Your Establishments may print out those pages and keep for Your own, non-commercial, use only provided that (a) You do not remove or alter any copyright and other proprietary notices contained on the materials and (b) all use is for lawful purposes only. At no time shall You or any User gain any title to any such materials or be entitled to receive a copy of the same.
- 5.2 Subject always to the provisions of section 5.1, RM hereby grants to You a limited, non-exclusive, non-transferable License to access and use the Service made available to You by RM for the duration of the Term. You shall ensure that Users treat the Service like any other copyrighted material (e.g. a book or musical recording).

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- 5.3 You undertake not to perform (nor allow any User to perform) any of the acts referred to in this section 5.3 except to the extent and only to the extent permitted by law as a lawful user of the Service and only then for the specific limited purpose permitted by law or in this Agreement. You undertake (including on behalf of all Users):
- 5.3.1 not to copy the Service nor otherwise reproduce the same;
 - 5.3.2 not to translate, adapt, vary or modify the Service;
 - 5.3.3 not to disassemble, decompile or reverse engineer the Service;
 - 5.3.4 not to remove, obscure or modify any notice of patent, copyright, trademark or other proprietary rights notice on the Service;
 - 5.3.5 not to sublicense, distribute, rent, lease, or otherwise transfer the Service or any unique access code or copy the Service other than as expressly provided in this Agreement;
 - 5.3.6 not to make the Service accessible by any type of broadcast or transmission, including but not limited to broadcast or transmission by cable, Internet, television, satellite, or telephone;
 - 5.3.7 not to use the Service to attract customers away from RM or to procure commercial advantage over RM or to use it in any other way which is likely to be directly or indirectly detrimental to RM or its business;
 - 5.3.8 not to reproduce or transmit to or store in any website any part of the Service, nor disseminate in any electronic or non-electronic form any of the pages or parts thereof, nor include any of the foregoing in any public or private electronic retrieval system or service; and
 - 5.3.9 not to enable a third party to do any of the acts set out in this section 5.3.
- 5.4 If notified promptly in writing of any action (and all prior claims relating to such action) brought against You, based on a claim that any User's use of the Service infringes a UK patent or copyright, RM will defend such action at its expense and pay the costs and damages awarded, provided that RM shall have sole control of the defence of any such action and all negotiations for its settlement or compromise. At any time during the course of any litigation or other dispute resolution process arising out of a claim of infringement for a UK patent or copyright, or if in RM's opinion, the Service is likely to become the subject of a claim of infringement of a UK patent or copyright, RM will at its option and expense either: procure for You and any Users the right to continue using the Service; replace or modify the same so that it becomes non-infringing; or refund the Service and any pre-paid unused amount and terminate the license to the Service. RM will not have any liability to You under any provision of this section if the infringement or claim thereof is based upon:
- 5.4.1 use of the Service in combination with other equipment or software not supplied by RM; or
 - 5.4.2 the use of the Service in carrying out any patented process; or
 - 5.4.3 infringement as described in section 5.6 (below).
- 5.5 Section 5.4 (above) states the entire liability of RM and the sole remedy of the Customer and the Customer's Users with respect to infringement of patents or copyrights by the service or any part thereof or by its operation. No costs or expenses will be incurred for the account of RM without the prior written consent of RM.

- 5.6 RM is not responsible for monitoring any content or

information submitted by You or any of Your Users. You should implement policies and procedures to ensure all content You or Your Users submit to the Service are appropriate for the Users, meet with Your requirements, and are in conformance with this Agreement for the avoidance of doubt, You will not upload or otherwise add or display personal data (as defined within the Data Protection Act 1998) within or on RM Collaborate. RM may remove any content from the Service in its absolute discretion (particularly content that may be illegal, of substandard quality or violates this Agreement) and/or immediately suspend or terminate access and use of the Service by any User associated with content or activities that violate this Agreement. RM reserves the right to suspend the Service to You and Your Users in the event such activities pose a risk to RM's systems or use of the Service by RM's other customers. You will hold RM harmless against any expense, judgment, liability or loss, or infringement of any IPRs which results from: (a) Your provision of the Customer Data to RM or the Service; (b) RM's compliance with Your or any User's instructions; (c) use by RM of any Customer Data or other materials or information provided by You or any User; (d) use of third party websites accessed via the Service by You or your Users, (e) the violation of any law, regulation or third party right by any content, data or information provided by You or any of Your Users; or (f) Your or Your User's violation of this Agreement.

- 5.7 RM may update, modify, change features, improve or extend the Service from time to time. To the extent any such modification results in a material adverse impact and You notify RM within thirty (30) days of such change, RM will either modify the Service to remedy or provide a workaround to the issue or allow You to terminate without additional liability on condition that Your termination is completed within an additional thirty (30) day period.

6 TERMINATION

- 6.1 Either party may terminate this Agreement:
- 6.1.1 in accordance with section 2.2 (above);
 - 6.1.2 if the other party commits any material breach of this Agreement which is not remedied within thirty (30) days of a notice requiring such breach to be remedied; or
 - 6.1.3 if the other party ceases to carry on business or substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due.
- 6.2 RM may terminate this Agreement upon written notice to You (which would automatically terminate any related License(s)) if You fail to pay any sums to RM in respect of the Service on the due date of payment.
- 6.3 Subject to section 6.4 (below), following termination of this Agreement, RM will provide You with access to the Service for a limited period of no more than thirty (30) days from the date of termination to enable You to take copies of any Customer Data if You request this at the time of termination.
- 6.4 Where this Agreement has been terminated by RM pursuant to sections 6.1.2, 6.1.3 or 6.2 (above), Your and Your Users' right to access or use of Customer Data shall immediately cease and RM may withhold, remove and/or discard Customer Data without notice. Additionally, RM shall have no obligation to maintain or forward any Customer Data in such circumstances.

7 WARRANTY DISCLAIMER

You accept that RM is acting only as a supplier and that it is Your responsibility to verify that the Service will be suitable

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for Your and Your Users' own requirements and the results You and Your Users intend to achieve through use of the Service. The service is provided "as is", "where is", and RM disclaims all warranties, conditions, guarantees or representations, whether express, implied or statutory, including without limitation any warranty of merchantability or fitness for a particular purpose.

8 THIRD PARTY WEBSITES

- 8.1 The Service may contain links to third party websites that are not owned or controlled by RM. When You or Your Users access third party websites, You and Your Users do so at Your own risk. RM encourages You to, and it is Your responsibility to, read the terms and conditions and privacy policy of each third party website that You or Your Users visit or any Application that You or Your Users use or download.
- 8.2 RM has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third party websites. In addition, RM will not and cannot monitor, verify, censor or edit the content of any third party site.
- 8.3 By using the Service and permitting Your Users to do the same, You expressly relieve and hold harmless RM from any and all liability arising from Your or Your Users' use of any third party website.
- 8.4 Your and Your Users' interactions with organisations and/or individuals found on or through the Service, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between You or Your Users and any such organisations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties or permitting any of Your Users to do the same. You agree that RM shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between You or any of Your Users and any third party, You understand and agree that RM is under no obligation to become involved. In the event that you have a dispute, You hereby release RM, its officers, employees, contractors and agents from claims, demands, and damages (direct and consequential) of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or service.

9 ADDITIONAL SERVICES

- 9.1 RM may provide access to additional services from time to time including but not limited to such services as: (1) additional Support Service entitlement; (2) training specific to the Service; and (3) the inclusion of additional Establishments. Where RM makes any such additional services available for purchase by You an additional fee shall be payable as advised to You by RM.

10 DATA PROTECTION

- 10.1 In this Agreement, the terms data controller, data processor, personal data, sensitive personal data and processing shall be as defined in the European Data Protection Directive 95/46/EC and "Data" shall mean the personal data and sensitive personal data provided to RM in connection with the Service. "Data Protection Law" means applicable data protection legislation implementing the European Data Protection Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof.
- 10.2 You acknowledge that You are a data controller and that RM is a data processor.
- 10.3 RM shall:
 - 10.3.1 use the Data only on Your instructions as set out or referred to in this Agreement to provide the Service;
 - 10.3.2 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

- 10.3.3 take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the Service.

10.4 The parties acknowledge that RM's provision of the Service may require the transfer of Data to RM's sub-contractors (including RM group entities) ("Recipients") outside the European Economic Area in countries which have not been approved by the European Commission as having adequate protections in place for the purpose of the transfer of personal data. RM will be permitted to transfer Data to such Recipients provided that RM shall have entered into an agreement with the relevant Recipient based upon standard contractual clauses approved by the European Commission for transfers of personal data to processors outside of the European Economic Area and which agreement shall include security obligations on the Recipient which are no less onerous than those contained in this Agreement.

10.5 The parties acknowledge that RM may use services and/or products from other third parties in order to provide the Service and that, in doing so, RM may transfer Data to such third parties. This may include (by way of example only) third parties that provide online application hosting, delivery, 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 10.4 above.

10.6 You agree to comply with Your obligations under Data Protection Law in relation to its collection, processing and provision of Data to RM in connection with the Service.

10.7 You shall indemnify and keep RM indemnified against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this section 10 by You and/or Your employees, agents and/or sub-contractors.

10.8 You acknowledge that RM is reliant on You for direction as to the extent to which RM is entitled to use and process the Data. Consequently, RM will not be liable for any claim brought by You or any data subject arising from any action or omission by RM to the extent that such action or omission resulted from Your instructions.

10.9 RM may use Your personal data in accordance with its Privacy Policy which can be found at www.rmresults.co.uk.

11 CONFIDENTIALITY

11.1 The information that You and Your Users provide to RM will be used by RM for the effective administration of its services and to communicate with You and Users generally.

11.2 You agree to keep and to procure that Your Users keep RM's Confidential Information secure and to implement such security measures in relation to RM's Confidential Information as You employ on Your own Confidential Information, but in no event will You or Your Users use less than reasonable measures to protect RM's Confidential Information. You acknowledge and agree the software used to provide the Service constitutes RM's Confidential Information. You agree that You and Your Users will not disclose any of RM's Confidential Information to any third party without RM's prior written consent.

12 LIMITATION OF LIABILITY

12.1 The Service has been manufactured or developed by RM or third parties to standard specifications. You accept that RM is acting only as a supplier and that it is Your responsibility to verify that the Service will be suitable for Your own and Your Users' requirements. There are no warranties, conditions, guarantees or representations as to description, merchantability or fitness for a particular purpose or other warranties, conditions, guarantees or representations relating to the Service, whether express implied by statute or otherwise oral or

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in writing except as provided in this Agreement and except as to statute implied terms as to title.

12.2 You agree that RM will not be liable for any loss arising out of the provision of goods or services by any company, organisation or person other than RM or for any loss caused by Your or Your Users' failure to perform Your or their obligations under this Agreement. In particular but without limitation to the generality of the foregoing, RM shall not be responsible nor liable for Your or Your Users' inability to access the Service or any impairment in using the Service where such inability or impairment results from any incompatibility between any hardware or software used by You or Your Users, unless such items have been supplied by RM specifically for use with the Service.

12.3 RM's liability shall be unlimited in respect of (a) any death or personal injury caused by its negligence or that of its employees, agents or contractors; (b) fraud; (c) under Part 1 of the Consumer Protection Act 1987; (d) for breach of any conditions as to title or quiet enjoyment implied by section 12 of the Sale of Goods Act 1979 (as amended) or section 2 of the Supply of Goods and Services Act 1982 (as amended) under any express indemnities contained in this Agreement; or (e) for any other matter in respect of which law prescribes that liability may not be excluded or limited.

12.4 Subject to clause 12.3 (above), RM shall not in any event be liable for any loss of profits, loss or corruption of data, loss of use, loss of goodwill, anticipated savings, loss of amenity, or any indirect, special or consequential losses, in each case howsoever arising, in connection with or arising out of the supply, functioning or use of the Service even if RM shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided for in this Agreement.

12.5 Subject to clause 12.3 (above), the maximum aggregate liability of RM whether in contract, tort, negligence, statutory duty or otherwise, for any loss or damage whatever arising from or in any way connected with the Service shall be limited to the Fees paid or payable in respect of the Service, or in the event no Fees are payable, the sum of £50. This limit shall also apply in the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and RM becomes liable for loss or damage that could otherwise have been limited.

13 ANTI-BRIBERY

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

14 NOTICE

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

14.2 RM may give notice to You by means of a general notice on the Service, electronic mail to Your e-mail address on record in RM's account information, or by first class mail to the address on Your record held by RM. Any such correctly addressed notices shall be deemed to have been given upon the expiration of 48 hours after posting (if sent by first class mail) or 12 hours after sending (if sent by email).

15 ENTIRE AGREEMENT: MODIFICATIONS TO TERMS

15.1 These terms and conditions together with the Order constitute the entire agreement between RM and You with respect to the

subject matter of this Agreement.

15.2 RM reserves the right, on reasonable notice, to change these terms and conditions. It is Your responsibility to check the terms and conditions governing the use of the Service by You or Your Users.

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

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

16 FORCE MAJEURE

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

17 NON-WAIVER

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

18 NON-ENFORCEABILITY

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

19 ASSIGNMENT

This Agreement may not be assigned by You without the prior written consent of RM (which RM shall be entitled to refuse at its absolute discretion). RM shall be entitled to assign the benefit and/or burden of this Agreement to any other subsidiary (of any level) of RM plc (Regd No 01749877) upon giving notice to You to that effect. RM shall also be entitled to use subcontractors at its discretion in order to provide the Service.

20 CUSTOMER MORE THAN ONE PERSON

Where any order for the Service has been made by two (2) or more legal persons jointly, the liability of such persons and their obligations to RM under this Agreement shall be joint and several.

21 THIRD PARTY RIGHTS

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

22 SUPPORT SERVICE ENTITLEMENT

22.1 RM agrees, subject to Clause 22.2 below, to provide technical support services by email and/or phone to You or Your Nominated Contacts (but not directly to Users) including reasonable efforts to correct, fix, or circumvent errors, and in the discretion of RM, provide updates, enhancements, and new versions of the Service. RM shall provide such support by email and/or phone at RM's discretion during its normal business hours of 9.00am to 5.00pm Monday to Friday excluding national bank holidays and the period between Christmas and New Year (together the "Support Service"). You agree that your Nominated Contacts will act as a frontline services to the Users for day-to-day support, technical aid, help and other assistance for Users' use of the Service.

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- 22.2 Your entitlement to the Support Service is capped such that the maximum aggregate amount of unique issues (“**Service Calls**”) logged with RM shall be equivalent to one (1) Service Call per Establishment per annum.
- 22.3 If the number of aggregate Service Calls opened per annum exceeds the number permitted in Clause 22.2 (above), RM may, at its discretion, refuse to open new service calls until the earlier of (i) the renewal of the Service; or (ii) the purchase of an additional service providing an increased entitlement to the Support Service. RM’s refusal to open a new Service Call will not affect the status of any Service Call opened prior to any refusal of service nor will it affect your entitlement to use other services that are not subject to such limits.

23 REMOVAL OF CONTENT

Notwithstanding any other provision of this Agreement, RM reserves the right to amend, remove, suspend or disable access to any materials that are offered as part of the Service without notice. In no event will RM be liable for making such amendments, removals, suspensions or disabling of access. For the avoidance of doubt You or Your Users shall not be entitled to any refund from RM for any other materials that are removed or become unavailable.

24 GOVERNING LAW

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