

## RM Results Consultancy Services Terms and Conditions (Effective from January 2015)

**These terms and conditions regulate the business relationship between the Buyer and RM.**

**You warrant that you buy our services as a business and not as a consumer. By buying from RM, the Buyer agrees to be bound by these terms and conditions.**

### 1. Application of these Terms and Conditions

These Conditions apply to all of the Services (as defined below) provided by RM. If you do not wish to be bound by these Conditions, the Buyer should not order or accept performance of the Services. These Conditions apply to the exclusion of all other terms and conditions that may be provided by the Buyer.

### 2. Definitions

The following terms shall have the meaning set out below:

**"Buyer"** means the company, organisation or other entity entering into the Order for the Services on behalf of a company or organisation.

**"Conditions"** means these terms and conditions.

**"Document"** includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, film, negative, tape or other device embodying visual images and any disc, tape, flash drive or other device embodying any other data.

**"Input Material"** means any Documents or other materials, and any data or other information provided by the Buyer to RM relating to the Service.

**"Order"** means the Order placed by the Buyer for the Services.

**"Output Material"** means any Documents or other materials, and any data or other information provided by RM to the Buyer relating to the Service;

**"RM"** means RM Education Limited, a company registered in England and Wales and whose registered office is situated at 140 Eastern Avenue, Milton Park, Abingdon. Oxon, OX14 4SB.

**"RM Results"** means a division of RM.

**"Services"** means consultancy services provided by RM as further described in writing by RM and confirmed by an authorised officer of RM. For the avoidance of doubt, the specific Services to be provided to the Buyer shall be those ordered by the Buyer as set out in the relevant quote from RM.

### 3. Responsibilities of the Buyer

3.1 The provision of the Services by RM is subject to the Buyer performing or complying with all of its responsibilities set out in these Conditions. For the avoidance of doubt, RM may without notice suspend or terminate the Services in the event that any of the Buyer's responsibilities as set out in these Conditions, or as defined in the Services, is not performed.

3.2 It is the responsibility of the Buyer to produce an Order and deliver the same to RM for acceptance.

### 4. General Duties

4.1 RM shall provide the Services to the Buyer in a professional manner with due care and diligence to the best of its abilities.

4.2 RM accepts no liability for the use of any information or data provided.

4.3 RM shall not be restricted in providing similar services to other third parties.

### 5. Term

5.1 The term for each Order shall be as agreed between the parties but, for the avoidance of doubt, shall not be deemed to have commenced until RM accepts the relevant order.

### 6. Period of services availability

6.1 The Services will be carried out by RM during the hours 8am till 6pm week days only excluding bank holidays, public holidays and the period between Christmas and New Year.

If RM agrees to carry out the Services outside these hours by agreement with the Buyer, it will be at an additional cost.

6.2 The Buyer undertakes to ensure that a member of the Buyer's trained operations staff will be in attendance where the Services are being carried out at the Buyer's site.

6.3 For on-site Services, work on the Buyer's site will be carried out during the following set hours: For on-site Services, work on the Buyer's site will be carried out during the hours of 9.30am and 4.30pm. For half day visits work will last a minimum of 3 hours and will be carried out between 9.30am – 12:30pm or 1:30pm – 4.30pm. For a full day visit work will last a minimum of 6 hours and will be carried out between the hours of 9.30 am and 4.30pm.

### 7. Price

Unless a written quotation has been given (whereupon the price quoted will be fixed for a period of thirty (30) days or such other period as is specified therein) the price for the Services, together with payment for reasonable expenses as agreed by both parties, is subject to alteration without notice and the price charged to the Buyer will be that applicable at the date of RM's acceptance of the Order or (at RM's option) the start date of the Services. All prices are exclusive of Value Added Tax (and any similar tax) which will be added as separate items on RM's invoice.

### 8. Payment

8.1 Unless otherwise notified to the Buyer in writing by RM, the Buyer shall pay all invoices within thirty (30) days of the date thereof (time being of the essence). RM reserves the right to charge interest at a rate of 3% per annum above the Barclays Bank base rate ruling from time to time on any payment or any part payment overdue calculated from the date due and to recover its expenses including legal fees and costs of collection and to suspend delivery, performance of any warranty, or license, or (at RM's option) forthwith to determine the same.

8.2 All payments will be made without set off or counterclaim or any other withholding whatsoever.

### 9. Confidential information

The Buyer agrees (unless agreed otherwise in writing by RM) to maintain in confidence and not disclose, reproduce or copy any materials, documentation, specification or software in any form whatsoever provided to the Buyer in connection with the Services. The Buyer shall take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations endure beyond any termination of employment with the Buyer.

### 10. Warranty and RM's liability

10.1 RM warrants to the Buyer that it will use all reasonable skill and care in carrying out the Services. There are no warranties, conditions, guarantees or representations whether express implied by statute or otherwise, oral or in writing except as provided in these Conditions.

10.2 In the event of a breach of the warranty in Condition 10.1 (above), RM's sole liability shall be to re-perform at its expense any of the Services

which do not conform to the said warranty.

10.3 If RM fails without cause to perform the Services in accordance with its obligations under these Conditions, the Buyer may recover an amount to compensate for any direct physical loss which is suffered as a result of RM's failure, subject always to a maximum aggregate liability in any calendar year of the total charges paid or payable for the Services in question.

10.4 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) for any other matter in respect of which law prescribes that liability may not be excluded or limited arising from its performance of the Services .

10.5 RM shall also be liable for any other direct loss of or damage to tangible property caused solely by the negligence of RM or its employees, subject always to its maximum aggregate liability of one million pounds (£1,000,000).

10.6 The Buyer agrees that RM will not be liable for any loss caused by the Buyer's failure to perform its obligations as set out or referred to in these Conditions or for any act of the Buyer which is in contravention of these Conditions.

10.7 RM shall not in any event be liable for any indirect, special or consequential loss whether statutory or otherwise, howsoever arising (including but not limited to loss of anticipated profits or of data) in connection with or arising out of the Services, even if RM shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided for in these Conditions.

10.8 Except in respect of condition 10.4, or in respect of a claim for non-payment of monies due, no action regardless of form arising out of the transactions in relation to these Conditions may be brought by either party more than two (2) years after the cause of action has accrued.

10.9 RM shall have no liability to the Buyer for any loss damage costs expenses or other claims for compensation arising from any Input Material or instructions supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Buyer.

## 11. Intellectual Property Rights

11.1 Any Intellectual Property existing at the date of these Conditions shall belong to the Party that created it.

11.2 Any Input Material originating from the Buyer shall belong to the Buyer.

11.3 All Intellectual Property developed or created under these Conditions shall belong to RM subject only to the right of the Buyer to use that intellectual property for the purposes of utilising the Service by way of a non-exclusive licence subject only to payment in full of all sums payable under the Contract unless otherwise agreed in writing between the two Parties.

11.4 Any Output Material shall, unless otherwise agreed in writing between the Buyer and RM, belong to RM, subject only to the right of the Buyer to use the Output Material for the purposes of utilising the Service by way of a non-exclusive licence subject only to payment in full of all sums payable under the Contract.

11.5 Any Input Material or other information provided by the Buyer which is so designated by the Buyer shall be kept confidential by RM, and all Output Material or other information provided by RM which is so designated by RM shall be kept confidential by the Buyer, except that the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

11.6 The Buyer warrants that any Input Material and its use by RM for the purpose of providing the Specified Consultancy Service will not infringe the copyright or other rights of any third party and the Buyer shall indemnify RM against any loss, damages costs expenses or other claims arising from any such infringement.

11.7 Subject to condition 11.6, RM warrants that any Output Material and its use by the Buyer for the purposes of utilising the Service will not infringe the copyright or other rights of any third party and RM shall indemnify the Buyer against any loss damages costs expenses or other claims arising from any such infringement.

## 12. General Advice

The Buyer accepts that when providing any oral advice or suggestions during the Services, RM is relying upon information given to it by the Buyer. Whilst it is given in good faith, it is for the Buyer to verify whether any such advice or suggestions are suitable for its purposes and RM shall not be liable

in contract, tort or otherwise for any direct, indirect or consequential loss or damage arising out of or in connection with any such advice or suggestions. Any oral suggestions or advice tendered by RM must be confirmed in writing before RM will accept any liability for any such advice, which shall, in any event be limited to a refund of the charges paid for the relevant Services. In no event will RM be liable for any indirect or consequential loss or damage arising out of or in connection with any such written confirmation.

## 13. Termination

13.1 RM shall have the right, without prejudice to any other remedies it may have at any time by giving notice in writing to the Buyer to terminate forthwith any Services, in any of the following events:

(a) If the Buyer fails to pay any sums to RM on the due date of payment; or

(b) If the Buyer commits any other breach of any of these Conditions provided that if the breach in question is one which the Buyer can effectively remedy then the said notice of termination shall not be effective to terminate the Services unless the Buyer fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of; or

(c) If the Buyer ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into amalgamation reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar actions in consequence of debt or becomes unable to pay its debts as they fall due.

## 14. Data Protection

14.1 In these Conditions, the terms data controller, data processor, personal data, sensitive personal data and processing shall be as defined in the European Data Protection Directive 95/46/EC and "Data" shall mean the personal data and sensitive personal data provided to RM in connection with the Services. "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.

14.2 The parties acknowledge that the Buyer is a data controller and that RM is a data processor.

14.3 RM shall:

(a) use the Data only on the instructions of the Buyer as set out or referred to in these Conditions to perform the Services;

(b) 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

(c) take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the Services.

14.4 The parties acknowledge that RM's provision of the Services 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 personnel 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 these Conditions.

14.5 The parties also acknowledge that RM may also use services and/or products from other third parties in order to provide the Services and that, in doing so; RM may transfer Data to such third parties. This may include (by way of example only) third parties that provide online storage and other facilities. If RM becomes aware of any such third party wishing to transfer Data outside the European Economic Area, RM shall request that the third party enters into an agreement of the sort noted in condition 14.4 above.

14.6 The Buyer agrees to comply with its obligations under Data Protection Law in relation to its collection, processing and provision of Data to RM in connection with the Services.

14.7 The Buyer 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 Condition 14 by the Buyer, its employees, agents and/or sub-contractors.

14.8 The Buyer acknowledges that RM is reliant on the Buyer for direction as to the extent to which RM is entitled to

use and process the Data. Consequently, RM will not be liable for any claim brought by the Buyer or any data subject arising from any action or omission by RM to the extent that such action or omission resulted from the Buyer's instructions.

## 15. Miscellaneous

15.1 RM shall be fully entitled to use in any way it deems fit any skills, techniques, concepts or know-how acquired, developed or used in course of performing the Services.

15.2 Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) provided that such a failure is due to causes beyond its reasonable control.

15.3 Failure by RM to exercise or delay exercising any of these Conditions shall not constitute or be deemed to be a waiver of RM's rights hereunder nor prejudice RM's rights to take subsequent action.

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

15.5 The invalidity or unenforceability for any reason of any part of these Conditions shall not prejudice the continuation in force of the remainder thereof.

15.6 Neither party shall assign these Conditions without the prior written consent of the other, provided that RM shall be entitled to assign both its rights and obligations under this Agreement to any other subsidiary (of any level) of RM plc by giving written notice to such effect to the Buyer. RM shall also be entitled to subcontract the performance of its obligations under these Conditions and, also, RM may use tools and services provided by third parties to deliver the Services to you.

15.7 These Conditions shall be deemed to have been made in, and shall be construed pursuant to, the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

15.8 Any notice required to be given under these Conditions shall be in writing and shall be sent to the respective addresses of the Buyer set out in the Order, or the registered office of RM (as the case may be). Any change of address of either party shall be notified to the other in writing forthwith.

15.9 Where the Buyer comprises two or more persons their liability and

obligations to RM shall be joint and several.

15.10 The Buyer acknowledges that he/she/it has read these Conditions and understands and agrees to be bound by its terms, conditions and charges. The Buyer further agrees that these Conditions and the documents specifically incorporated herein are the complete and exclusive statement of the mutual understanding of the parties which supersedes and cancels all previous oral and written agreements and communications relating to the subject matter hereof.

15.11 Any equipment provided by RM is provided only for the purposes of RM providing the Services and no title or ownership in the same shall pass to the Buyer.

15.12 RM reserves the right to change the Conditions on giving the Buyer no less than thirty (30) days' notice of the change and the date on which the change takes effect.