

Target Tracker Terms of Service

Target Tracker software is produced by EES for Schools, a traded arm of Essex County Council. This document serves as an addendum to the [EES for Schools Terms of Service](#), outlining the terms of the agreement between the licensor (hereto referred to as ECC) and the licensee (you, the customer).

Please read the [EES for Schools Terms of Service](#) and this document carefully before using the Software. This Agreement is a legal agreement between Essex County Council (ECC) and the Licensee for the Licence of the Software.

1. Definitions, interpretation and scope

1.1 In this agreement, unless otherwise provided:

2018 Act means the Data Protection Act 2018 including the General Data Protection Regulations (2016);

Agreement means the terms in the main body of this agreement, the appendices and the Schedule;

Business Day means any day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;

Data means the pupil data or information, in whatever form, made available to ECC by the Licensee;

Derived Data means any Data (wholly or in part) manipulated to such a degree that it cannot be identified as originating or deriving directly from the Data or such that it can be so identified;

Distribute means to make Data accessible (including the provision of access through a database or other application populated with the Data, re-selling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means, to any ECC User;

ECC User means any person authorised by ECC to access and use the Data;

ECC's Licensor means any licensor of ECC to including a provider software or third party libraries in object code or otherwise;

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of care, and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;

Helpdesk means a manned telephone line;

Initial Licence Period means a period of twelve-months from commencement of this Agreement;

Intellectual Property Rights means copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights, chip topography rights, and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;

Licence means the licence granted by ECC to the Licensee in respect of the Software subject to the terms of the Agreement;

Licence Fee means the amount payable by the Licensee to ECC in respect of the Licence;

Licence Period means the duration of the Licence;

Manipulate means to combine or aggregate the Data (wholly or in part) with other data or information or to adapt the Data (wholly or in part);

Manipulated Data means any Data which has been manipulated. Manipulated Data includes any Derived Data; personal data that is manipulated is anonymized or pseudonymised to the extent it is no longer personally identifiable Data;

Modifications mean any correction, modification, enhancement, update or other change made by ECC to the Software;

Party means each of ECC and the Licensee and together being the 'Parties';

Renewal Licence Period means the twelve-month period after the expiry of the Initial Licence Period and each subsequent twelve-month period;

Representatives means the employees, agents, contractors or representatives of the Licensee and other persons duly authorised on its behalf in the using of the Software pursuant to the Agreement;

Software means the Target Tracker desktop software

Helpdesk Services means the provision of the Helpdesk during Working Hours;

Update means a maintenance release, correction, amendment, or update of the Software provided without additional charge to the Licensee;

Working Hours means the hours between 0900 and 1700 local time in London, United Kingdom, Monday to Friday on Business Days.

- 1.2 Unless the context otherwise requires:
- 1.2.1 each gender includes the others;
 - 1.2.2 the singular includes the plural and vice versa;
 - 1.2.3 references to Clauses, Schedules or Appendices refers to Clauses, Schedules or Appendices of this Agreement;
 - 1.2.4 references to this Agreement include its Schedules and Appendices;
 - 1.2.5 references to persons include individuals, unincorporated bodies, government entities, companies and corporations; and
 - 1.2.6 the words 'including' or 'includes' means including or includes without limitation.

2. Grant of licence

- 2.2.1 Subject to the payment of the applicable Licence Fee, ECC grants to the Licensee a non-exclusive and non-transferable limited Licence to use the Software in accordance with the terms of this Agreement.
- 2.2.2 The Licence will be granted for the Initial Period and will continue thereafter from year to year unless or until terminated in accordance with the provisions of this Agreement.
- 2.2.3 If use of the Software outside the United Kingdom is authorised by ECC, the Licensee shall be responsible at its expense for complying with all applicable laws and regulations and obtaining any applicable licences and consents, relating to the import, export, installation, or use of the Software.

3. Fees and payment

- 3.1 The Licensee shall pay to ECC the Licence Fee under this Agreement within thirty (30) days of receipt of ECC's invoice, or as otherwise specified by ECC.
- 3.2 The Licence Fee is exclusive of VAT and any other Sales Tax or Duty which, if applicable, shall be paid additionally by the Licensee at the then prevailing rate.
- 3.3 If any sum due to ECC under the Agreement (other than one which is the subject of a genuine dispute which is notified to ECC in accordance with this Agreement) is in arrears for more than 30 days after the due date, ECC may without prejudice to any other right or remedy:

3.4 charge interest on such overdue sum on a day-to-day basis from the original due date until paid in full at the rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1998; and/or

3.5 The Licensee must notify ECC in writing within fifteen (15) Business Days of receipt of an invoice if the Licensee considers such invoice incorrect or invalid for any reason and the reasons for withholding payment failing which the Licensee will raise no objection to any such invoice and will make full payment in accordance with it.

4. Delivery and installation

4.1 Where payment of any part of the Licence Fee is due before delivery or installation of the Software ECC may withhold delivery or installation or performance until such payment has been received.

4.2 Unless otherwise specified by ECC, the Licensee is responsible for installation of the Software.

4.3 If ECC is delayed from performing its obligations by reason of any fault or negligence of the Licensee, then the Licensee shall pay to ECC all reasonable and demonstrable costs attributable to such delay.

5. Permitted use

5.1 The Licensee may use the Software only for its own internal purposes.

5.2 The Licensee shall not use or attempt to use the Software (whether on behalf of, or for the benefit of, itself or a third party) or permit or allow any third party to:

5.2.1 distribute or resell the Software;

5.2.2 contrary to any restriction stated in the Agreement; or

5.2.3 unless otherwise expressly permitted by the Agreement.

5.3 The Licence shall include the right of the Licensee's Representatives to use and have access to the Software to the extent that the Licensee may use and have access to the Software provided that:

5.3.1 such use is controlled by the Licensee; and

5.3.2 such use is otherwise subject to and in accordance with the terms of the Agreement.

5.4 The Licensee shall procure that its Representatives:

5.4.1 are aware of the obligations or restrictions imposed on the Licensee under the Agreement; and

5.4.2 shall use its reasonable endeavours to ensure that they comply with the provisions of the Agreement.

6. Restrictions on use

6.1 Except to the extent required to be permitted by applicable law or as expressly allowed in this Agreement, the Licensee shall not:

6.1.1 translate, adapt, disassemble, reverse engineer, decompile or copy the whole or any part of the Software, nor arrange or create derivative works based on the Software;

6.1.2 make for any purpose including (without limitation) error correction, any modifications, additions or enhancements to the Software;

6.1.3 permit the whole or any part of the Software to be combined or merged with or become incorporated in any other program;

6.1.4 assign, distribute, licence, sell, charge or otherwise deal in or encumber the Software;

6.1.5 use the Software on behalf of or make it available to any third party nor allow or permit a third party to do so; or

6.1.6 remove or alter any copyright or other proprietary notice on any of the Software.

7. Proprietary rights

7.1 The Licensee shall not acquire in any way any title, rights of ownership, Intellectual Property Rights of whatever nature in the Software or in any copies of it. All such interests and rights are and shall remain the exclusive and absolute property of ECC or ECC's Licensor as applicable.

7.2 The Intellectual Proprietary Rights and all other proprietary rights in any materials developed under this Agreement including the Modifications will remain vested in and be the absolute property of ECC or ECC's Licensor. The Licensee will do all such acts and things as ECC may reasonably require for the purpose of preserving or perfecting such vesting.

7.3 Those Modifications supplied for use as part of the Software will be deemed to form part of the Software and be subject to the Licence.

7.4 The Licensee agrees not to conceal, modify, remove, or destroy in any way any proprietary markings of ECC or ECC's Licensor on or in the Software including without limitation any copyright notices or confidential legends placed upon or contained within the Software or any related materials and documentation. The Licensee shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.

7.5 The Licensee acknowledges and understands that the Software contains confidential and proprietary information and the Licensee shall:

7.5.1 not provide or otherwise make any of the Software available for any reason to any other person except as permitted by the Agreement or otherwise in accordance with express written authority signed by an authorised signatory of ECC;

7.5.2 keep confidential the Software and limit access to the same to those of its Representatives who either have a need to know or who are engaged in the use of the Software;

7.5.3 maintain an accurate and up-to-date record of the number of instances of the Software installed which are in use by the Licensee and of users and Representatives in each environment;

7.5.4 apply appropriate security measures to ensure that all relevant Representatives are advised that the Software constitutes confidential and proprietary information of ECC and/or ECC's Licensors and that all Intellectual Property Rights therein are the property of ECC and/or ECC's Licensor and that they owe a duty of confidentiality to ECC and/or ECC's Licensor.

7.6 The Licensee shall effect and maintain appropriate security measures to safeguard the Software from unauthorised access, use or copying by any person.

7.7 The Licensee shall notify ECC as soon as reasonably practicable if the Licensee becomes aware of any unauthorised access to, use or copying of any part of the Software by any person.

7.8 The Licensee shall, at reasonable times during Working Hours on being given reasonable written notice allow ECC to check on the use by the Licensee of the Software and all materials and information belonging to or under the control of ECC to which the Licensee is given access or receives directly or indirectly as a result of the operation of the Agreement. ECC shall comply with the Licensee's reasonable policies on confidentiality, security, health and safety at work, entry times and conduct of visitors to the Licensee's premises which have been notified in writing to ECC.

8. Warranties

8.1 Subject to the exceptions and the limitation upon its liability, ECC warrants that it has the right, power and authority to Licence the Software upon the terms of the Agreement.

8.2 The Licensee acknowledges that:

8.2.1 ECC is not and cannot be aware of the extent of any potential loss or damage to the Licensee resulting from any failure of the Software or any failure by ECC to discharge its obligations under the Agreement;

8.2.2 the Software cannot be tested in every possible combination and operating environment, and that it is not possible to produce or maintain economically (if at all) computer programs known to be entirely error free or which operate in uninterrupted manner.

8.3 ECC does not warrant that the operation of the Software shall be uninterrupted or error-free.

8.4 The Licensee acknowledges that the Software has not been prepared to meet the Licensee's individual requirements and that it is the Licensee's responsibility to ensure that the facilities and functions of the Software meet the Licensee's requirements.

8.5 To the extent permitted by applicable law, ECC disclaims all other warranties and conditions as to the Software including but not limited to implied warranties relating to quality, fitness for a particular purpose, or ability to achieve a particular result.

8.6 Without prejudice to the Licensee's right to terminate this Agreement for material breach the Licensee's sole remedy against ECC for any failure on the part of the Software shall be to require ECC to use all reasonable endeavours to correct such failure, free of additional charge, and within a reasonable time.

8.7 ECC undertakes to use all reasonable endeavours to remedy free of charge to the Licensee any faulty work arising from a breach of the warranty which is reported to ECC in writing within ninety (90) days after performance by ECC of such work. If ECC rectifies such faulty work by the provision at ECC's option of replacement or additional materials or services within a reasonable period of time, then ECC will have no other liability of any kind in respect of or arising from such faulty work.

8.8 ECC will not be liable to remedy any problem arising from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) by persons other than the Licensee without its express prior written consent.

9. Limitation of liability

9.1 Nothing in the Agreement shall exclude or restrict either Party's liability for:

9.1.1 fraud;

9.1.2 death or personal injury resulting from the negligence of a Party or its employees while acting in the course of their employment; or

9.1.3 any other liability that cannot be limited or excluded by law.

9.2 Subject to clause 9.1, ECC's liability to the Licensee in contract, tort (including negligence), misrepresentation (whether innocent or negligent) breach of statutory duty or otherwise arising out of or in connection with the Software or other performance or non-performance of ECC's obligations under the Agreement shall:

9.2.1 be limited to the Licence Fee paid by the Licensee under the Agreement for the preceding twelve months in respect of any one incident or any series of connected incidents;

9.2.2 not extend to any:

- (a) loss of profits;
- (b) loss of revenue;
- (c) loss of business;
- (d) loss of goodwill;
- (e) loss of contracts;
- (f) loss of anticipated savings;
- (g) loss of production;
- (h) loss of or corruption to data; or
- (i) any other special, indirect or consequential loss or damage whatsoever, whether sustained by the Licensee or any other person and even if foreseeable or if ECC has been advised of their possibility.

9.3 All advice and recommendations given by ECC and its representatives shall be made in good faith and in accordance with Good Industry Practice and on the basis of information provided to ECC and otherwise generally available. Advice or recommendations by ECC shall in no circumstances constitute a warranty by ECC as to the accuracy of such advice or recommendations and ECC shall not in any event be liable for any loss or damage that may be suffered whether directly or indirectly as a result of the Licensee acting upon such advice or recommendations.

10. Licensee's obligations

10.1 The Licensee undertakes to:

10.1.1 provide ECC with all necessary information, facilities, support and, services reasonably required by ECC for the performance of its obligations to the Licensee under the Agreement;

10.1.2 provide or arrange at its expense for any specialist training in the Licensee's methods, business practices, applications or products which it is required to reasonably undertake by ECC or which ECC considers reasonably necessary for the proper performance of its obligations under the Agreement;

10.1.3 ensure that the Software is used in a proper manner by competent trained employees only, or by persons under their supervision; and

10.1.4 be fully responsible for all applications, data, interfaces, hardware and equipment within its control unless agreed otherwise.

11. Helpdesk

11.1 ECC shall provide Helpdesk Services to the Licensee in relation to the Software during the Initial Licence Period and each subsequent Renewal Licence Period.

11.2 The Licensee acknowledges that provision of the Helpdesk Services does not imply any guarantee that ECC will be able to assist the Licensee in achieving any results from the Software which are not technically feasible.

11.3 ECC shall be under no obligation to provide services in relation to the Software additional to the Helpdesk Services, or which do not qualify under or are excluded from the Helpdesk Services but if it does so, the Licensee shall pay the cost of such services to ECC.

11.4 Before contacting the Helpdesk, users should explore help that is readily available in their setting. This help might come from the help utility that is built into the software, and/or peers in the department. When such local help has been exhausted and assistance is needed, then the users should contact the Helpdesk. Throughout the Licence Period, ECC will send guidance by email or other means to the Licensee directly relating to the software, associated software, and its use. The Licensee will ensure contact details are kept up-to-date.

11.5 Support term - The term of service for support hours is defined as one year from the date of purchase or until the included 3 hours support has been used, whichever comes first. Further support can be purchased at £70 per hour. The

included 3 hours does not include issues as a result of technical faults with the software.

12. Data use

12.1 The Licensee grants to ECC a non-exclusive, non-transferable licence to:

12.1.1 access, view and manipulate Data and create derived Data;

12.1.2 store the Data and manipulated Data; and

12.1.3 distribute the Data and manipulate Data to ECC Users.

12.2 ECC shall ensure that appropriate security measures shall be applied to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Data.

12.3 The Parties shall comply with their obligations under the 2018 Act and the Computer Misuse Act 1990 in so far as performance of this Licence Agreement gives rise to obligations under those Acts.

12.4 Notwithstanding the general obligation in clause 12.3, where it is processing personal data (as defined by the 2018 Act) as a Data Processor (as defined by the 2018 Act) the Parties shall ensure that they have in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Sixth Data Protection Principle in Article 5(f) of the General Data Protection Regulations (2016);

13. Termination

13.1 Either Party may (without prejudice to its other rights) terminate the Agreement at any time forthwith by notice in writing to the other if:

13.1.1 a voluntary arrangement is approved, or an administration order is made, or receiver or administrative receiver is appointed over any of the other Party's assets or undertaking or resolution or petition to wind up the other Party is passed or presented (other than for the purposes of amalgamation or reconstruction) or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order; or

13.1.2 the other Party defaults in due performance or observance of any of its material obligations under the Agreement, and (in the case a remedial breach) fails to remedy the breach within 30 days of receipt of a written notice to do so; or

13.1.3 are in breach of any of the obligations of confidentiality specified in clause [16] of this Agreement.

13.2 ECC may terminate this Agreement at any time forthwith by notice in writing to the Licensee if the Licensee or Representatives:

13.2.1 infringe ECC's (or ECC's Licensor's) Intellectual Property Rights; or

13.2.2 are in breach of any of the obligations of confidentiality specified in this Agreement;

13.2.3 and (where capable of remedy) such breach has not been remedied within fourteen (14) days

13.2.4 of ECC having given written notice to the Licensee in writing specifying the breach and requiring its remedy within such fourteen (14) day period.

13.3 Termination of this Agreement for any reason, shall be without prejudice to the rights and liabilities of either Party which may have accrued on, or at any time up to the date of termination, nor affect the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

13.4 Upon termination of this Agreement by ECC then the Licence will terminate and the Licensee shall forthwith cease using the Software and shall remove or destroy forthwith all copies of the Software or, at ECC's request, return all copies of the same to ECC.

14. Force Majeure

14.1 Force Majeure means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations hereunder. Inability to pay is not Force Majeure.

14.2 A Party will not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:

14.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and

14.2.2 uses reasonable endeavours to minimise the effects of that event.

14.3 If, due to Force Majeure, a Party:

14.3.1 is (or is likely to be) unable to perform a material obligation; or

14.3.2 is (or is likely to be) delayed in or prevented from performing its obligations for a continuous period of more than sixty (60) Business Days;

14.3.3 the Parties will renegotiate the Agreement to achieve, as nearly as possible, its original commercial intent.

15. Confidentiality

15.1 Each Party will treat as confidential all information obtained from the other Party under or in connection with this Agreement which is designated as confidential by the other Party or which is by its nature clearly confidential. The recipient Party will not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, suppliers and other representatives who need to know it) or use such confidential information without the other Party's prior written consent. This clause will not extend to information which:

15.1.1 was in the possession of the recipient Party (with full right to disclose) before receiving it;

15.1.2 is already or becomes public knowledge (otherwise than as a result of a breach of this clause);

15.1.3 is independently developed by the recipient Party without access to or use of such information;

15.1.4 is required to be disclosed by law or regulatory authority.

15.2 Each Party will ensure that all persons to whom it discloses any confidential information of the other Party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other Party. These obligations of confidentiality will survive any termination of this Agreement.

15.3 Each Party will establish and maintain adequate security measures to safeguard information and data of the other Party in its possession from unauthorised access use or copying.

16. Dispute resolution

16.1 Without prejudice to the termination provisions in this Agreement, if a Party believes in good faith that the other Party (Other Party) has breached any material term of this Agreement, that Party (Aggrieved Party) shall notify the Other Party, in writing setting forth in reasonable detail the nature of the alleged breach (Notice of

Breach). If the Other Party does not dispute the validity of the Notice of Breach, it shall promptly undertake to cure the breach described therein. If, the Other Party disputes the validity of the Notice of Breach, then the Parties shall comply with the following provisions [in order to expedite the review, verification, cure and remedy of any such breach].

16.2 Any dispute to be resolved under this Agreement shall first be submitted for resolution to the representatives of each Party then charged with the administration of this Agreement. If such representatives are unable to resolve the dispute within five (5) Business Days after the date on which the Notice of Breach is received by the Other Party, then, the dispute shall be submitted to the Directors (or persons of comparable authority) of each Party for resolution. If such Directors are unable to resolve the dispute within ten (10) Business Days after the date on which the Notice of Breach is received by the Other Party, then each Party shall be free to pursue whatever remedies hereunder, at law or in equity may be available to it in respect of the subject matter of the dispute.

16.3 Notwithstanding anything herein to the contrary, the cure period provided in this Agreement for any breach which is the subject of a dispute submitted for resolution in accordance with this clause will be suspended during foregoing dispute resolution procedures and commence to run on the day after the dispute has been resolved in favour of the Aggrieved Party or the dispute resolution procedures have been exhausted, whichever is applicable.

17. Mediation

Before resorting to legal proceedings the Parties may (but shall not be obliged to) attempt to settle by negotiations between them in good faith all disputes or differences between them out of or in connection with this Agreement. The Parties further agree that (provided that both Parties consider that such negotiations will be assisted thereby), they will appoint a Mediator by mutual agreement, or failing mutual agreement each Party will appoint a Mediator of their choice and the two appointed Mediators will appoint a third mediator to assist them and the Parties in such negotiations. Mediation shall take place in London or such other place as the Parties mutually agree. Both Parties agree to co-operate fully with the appointed Mediator (or Mediators), provide such assistance as necessary to enable the Mediators to discharge their duties, and to bear equally between them the fees and expenses of the Mediators, but otherwise each Party shall bear their own costs. Unless the Parties otherwise agree in writing, if Mediation is unable to resolve the dispute within thirty (30) days from the Notice of Breach above then the dispute shall be determined by the courts of England and Wales.

18. Assignment

18.1 Neither Party shall be entitled to assign or sub-licence to any third party any of its rights or obligations under the Agreement without the other Party's prior written consent.

18.2 ECC shall be entitled to assign or sub-contract its rights and obligations under this Agreement to any person, but ECC shall give notice of such assignment or sub-contracting in writing to the Licensee.

19. Severability

If any part, term or provision of the Agreement not being of a fundamental nature be held illegal or unenforceable the validity or enforceability of the remainder of the contract shall not be affected.

20. Entire agreement

20.1 This Agreement is the entire agreement between the Parties in relation to its subject matter. To the fullest extent permitted by law no other terms apply.

20.2 Without prejudice to clause 20.1, or to liability for fraudulent misrepresentation, each Party acknowledges that has not relied on any statement or representation given by or for the other in entering into this Agreement.

21. No waiver

Unless otherwise agreed in writing, no delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

22. Notice

Notices under this Agreement will be in writing and sent to the Party's address above. They may be given, and will be deemed received:

22.1 by first-class post: two Business Days after posting;

22.2 by airmail: seven Business Days after posting;

22.3 by hand: on delivery;

22.4 by facsimile: on receipt of a successful transmission report from the correct

number;

22.5 by email: on receipt of a delivery or read return mail from the correct address.

23. Variation

The Agreement may be amended only in writing signed by both Parties.

24. Relationship of the parties

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided in this Agreement.

25. Rights of third parties

A person who is not a Party to this Agreement has no right to benefit or to enforce any term of this Agreement.

26. Governing

The Agreement shall be governed by and construed and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English Courts.