



VLE Support Ltd Terms and Conditions, End User Annual Software Licence Agreement and Support Agreement

Terms and Conditions

1. These Terms and Conditions form an integral part of a purchase order from the Customer and take precedence over the Customer's own trading conditions where there is a conflict.

2. QUOTATIONS

These are valid for one month from the date on the quotation, unless VLE Support Limited withdraws the quotation, in writing, prior to written acceptance by the Customer.

3. VARIATIONS

Any variations to the order will be valued on the basis of the price levels contained in the order or as subsequently agreed in writing to the Customer.

4. END-USER ANNUAL SOFTWARE LICENCE AGREEMENT

Purchase and use will be strictly in accordance with the VLE Support Limited End User Annual Software Licence Agreement (attached) and subject to review from time to time.

5. ANNUAL SUPPORT AGREEMENT

Purchase and use will be strictly in accordance with the VLE Support Limited Annual Support Agreement (attached) and subject to review from time to time.

6. PAYMENT

- 6.1. Payment of invoice will be made strictly within 30 days from the date of invoice (net 30) unless otherwise specified in writing.
- 6.2. Initial and annual End-User Annual Software Licence will be paid in advance (CIA) of supply and installation.
- 6.3. Training days must be booked and paid for in accordance with the document entitled 'eTrackr^{ilp} Training - Terms and Conditions for customers', available on VLE Support Limited's website.
- 6.4. A Purchase Order for SMS Credits must be received by VLE Support Limited before those SMS Credits are made available to the customer.
- 6.5. All correspondence relating to payment, invoices etc must clearly show the Customer's Order number and VLE Support Limited invoice number, otherwise it may be rejected.

VLE Support Ltd.

Address: TMS HOUSE, CRAY AVENUE, ORPINGTON, KENT. BR5 3QB Tel: 01689 885 068 Email: info@vlesupport.co.uk Web: www.vlesupport.co.uk

Company Registration number: 03322835 VAT Number: 888 4315 78

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- 6.6. Renewable Licences are subject to annual price adjustment for upgrade, inflation or other change

7. LATE PAYMENT AND ABORTIVE COSTS

- 7.1. Interest on late payments will be charged at 8% per annum above Bank rate following written confirmation, unless otherwise specified in writing.
- 7.2. Cancellation charges and abortive costs will be charged following written confirmation
- 7.3. Debt recovery costs will be charged following written confirmation.

8. GOVERNING LAW

- 8.1. This Agreement is governed by and interpreted in accordance with English law. Any disputes or claims relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts.

9. DISPUTES AND TERMINATION

9.1 Where the Customer breaches the provisions of these Terms and Conditions then VLE Support Limited may give written notice to the Customer of the default and, where appropriate, require him to remedy such default(s) within 7 days or such longer period if mutually agreed. If the default(s) are not or cannot be remedied after this period then VLE Support Limited will terminate the Licence Agreement in accordance with clause 14.3.1 of the End-User Annual Software Licence Agreement (attached).

9.2 Where VLE Support Ltd terminates the Licence Agreement in accordance with clause 14.3.1 of the End-User Annual Software Licence Agreement (attached), any outstanding licence fees will remain payable in full. VLE Support Limited reserves the right to employ debt collection agencies to recover any outstanding debt as necessary.

10. LIQUIDATION / BANKRUTCY / CLOSURE

Where a Customer is the subject of a winding up procedure, VLE Support Limited will terminate the Licence Agreement in accordance with clause 14.3.1 of the End-User Annual Software Licence Agreement (attached).

11. VAT (and other government taxes)

All prices are subject to VAT and other government taxes at the current rate.

12. ENTIRE AGREEMENT

- 12.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous agreements, arrangements or undertakings between the parties relating to the subject matter of this Agreement and any representations or warranties previously given or made to it.

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- 12.2 The client agrees to the entire agreement and agrees to sign this document below where indicated to confirm his/her agreement to the terms and conditions.
- 12.3 Should the client fail to sign and return this document, it is deemed that they accept the entire agreement in full as a consequence of raising a Purchase Order for VLE Support's products and / or services.
- 12.4 Failure or neglect by either party to exercise any of its rights or remedies under this Agreement will not be construed as a waiver of that party's rights nor in any way affect the validity of the whole or part of this Agreement nor prejudice that party's right to take subsequent action.

VLE Support Limited End User Annual Software Licence Agreement

Definitions

"the Software" - means the VLE Support Limited eTrackr^{ip} system which is a web-based application that aggregates information held in 3rd party systems used by educational facilities, and presents that information in a single place using a consistent interface. This also includes any modules or derivatives extending from the original application, which may not necessarily bear the name 'eTrackr^{ip}'. The application also provides data management and reporting facilities for data not held anywhere else.

13. INTRODUCTION

13.1. This Licence Agreement is an agreement between you and VLE Support Limited. Please read this Licence Agreement and applicable documentation carefully before the installation of any software as they contain important information about your rights and obligations. It governs your use of the software ("the Software") and related documentation supplied to you by VLE Support Limited. In particular, we draw your attention to clause 20 (limitation of liability).

By installing or otherwise using the Software you agree to be legally bound by this Licence Agreement as it may be modified and posted on our website from time to time.

13.2. If you do not wish to be bound by this Agreement, then you may not use the Software.

14. LICENCE

14.1. Specific conditions of use apply to the type of single End-User Annual Licence you have acquired from VLE Support Limited. These are:

14.1.1 End-User Site Licence:

- (a) With a single End-User Site Licence you may use one copy of the Software on a single web server (virtual or otherwise) with the database

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on a single SQL server (virtual or otherwise). You may not share the Licence between further different servers.

(b) The Licence entitles you to one installation of the Software at one single physical (geographical) location notified to VLE Support Limited.

14.2 Agreement term and licence renewal:

14.2.1 The single End-User Site Licence commences as advised by VLE Support and, after an initial two-year licence period, will be automatically renewed.

14.2.2 In the first year of the software licence, the licence start date shall, in normal circumstances, be issued 60 days subsequent to the purchase order being received, or at the completion of software installation, whichever occurs sooner.

14.2.3 VLE Support will issue the licence start date by means of electronic communication.

14.2.4 VLE Support agrees to act in a timely fashion to effect the eTrack^{ilp} software installation within the 60 day period, wherever possible, where the client also acts in a timely fashion to ensure that the client's necessary actions are completed within agreed timescales.

14.2.5 VLE Support will commence the licence start date 60 days after the Purchase Order has been received, even if the software is not yet installed.

14.2.6 VLE Support has sole responsibility in deciding the starting date of the licence, and reserves the right to determine whether any delay in the start date, due to mitigating circumstances, should occur.

14.2.7 The software licence initially runs for two years, commencing from the licence start date.

14.2.8 Payment for the initial two-year software licence will be made in two annual installments, unless otherwise agreed in writing. The client agrees to send a purchase order for the second installment of the payment at least 33 days before the end of the first licence year, if paying by electronic BACS transfer, or at least 38 days before the renewal date if paying by cheque.

14.2.9 After the initial two-year licence, the software licence will be automatically renewed annually, unless the client gives notice in writing that they wish to terminate the agreement as specified in clause 14.3.2 (below).

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14.2.10 VLE Support will issue a renewal quotation to the client annually, approximately four months before the licence renewal date.

14.2.11 The client agrees to provide a Purchase Order for the renewed software licence of the agreed amount, at least 33 days before the licence renewal date, if paying by electronic BACS transfer, or at least 38 days before the expiry date if paying by cheque.

14.2.12 VLE reserves the right to levy a surcharge for late payment of the software licence renewal fee, following written confirmation.

14.3 Licence Termination

14.3.1 If the End-User Licence is terminated, you must destroy all copies and login details of the Software supplied to you immediately, including any copies installed on any computer, and all related documentation as applicable. Permission is deemed to be given for remote access via VPN and RDP to destroy the software if necessary.

14.3.2 If you wish to terminate the End-User Licence, you must inform VLE in writing at least three months prior to the licence renewal date. If written notice is not received at least three months prior to the licence renewal date, then the End-User Licence will be automatically extended for a further twelve months and the annual licence fee detailed in the quotation most recently provided will be payable in full. VLE Support Limited reserves the right to employ debt collection agencies to recover any outstanding debt as necessary.

14.4 Adjustments and variations

14.4.1 After the initial two-year period, the automatically renewable licence is subject to annual price adjustment for upgrade, inflation or other change

14.4.2 Prices quoted in the initial quotation for the two-year licence period will remain fixed for the entire two-year period of the software licence, and will not be adjusted due to inflation or other change.

15 RESTRICTIONS ON USE

15.1 You may make a reasonable number of copies of the Software solely for backup and recovery purposes. Any such copies shall in all respects be subject to the terms and conditions of this Agreement.

15.2 You shall not make copies of the Software additional to those expressly permitted in this Licence Agreement.

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- 15.3 You shall not copy any written documentation accompanying the Software.
- 15.4 You shall not remove or obscure any copyright and trademark notices or other proprietary notices relating to the Software. All notices must be duplicated as it appears on the Software on all authorised copies.
- 15.5 You shall not reverse engineer or disassemble the Software except to the extent expressly permitted by any applicable local laws which may over-rule this restriction.
- 15.6 You may not distribute any portions of the Software to any third party, nor extract, copy, translate or transfer any data held within the eTrackr^{ilp} Pre-loaded Qualifications Database to any third party software package, except under the terms of a Developer Distribution Licence if you have acquired such a licence from VLE Support Limited.
- 15.7 You may not alter, extract, translate, transfer or copy (other than for routine back-up purposes) any data held within the eTrackr^{ilp} database, except under the terms of a Developer Distribution Licence if you have acquired such a licence from VLE Support Limited.
- 15.8 You may not rent or lease the Software.
- 15.9 You shall not use the Software in any way other than in a manner specifically licensed under this Agreement.
- 15.10 You shall not display copies of the Software for download, including or excluding screen shots of the Software or any other elements therein on a public bulletin board, third-party website, chat room or by any other unauthorised means.
- 15.11 Purchase and use will be strictly in accordance with the VLE Support Limited Annual Support Agreement (attached) and subject to review from time to time.

16 CONFIDENTIALITY

- 16.1 VLE agrees to act in accordance with the principles and regulations of the Data Protections Act (1998)
- 16.2 Any personal data accessed by employees of VLE Support is treated as confidential
- 16.3 VLE agrees to access personal data relating to persons associated with the Client solely for the purposes of installation, testing and maintenance of the Software, and for no other purpose.

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16.4 Personal data will only be accessed by employees of VLE Support for business purposes as outlined above

16.5 VLE will not share any personal data relating to persons associated with the Client with any third party for any reason

16.6 The Software serves to present and/or display information and data which is already held within the Client's Management Information Systems. VLE can therefore take no legal responsibility for inaccurate or untrue information or data displayed by the Software or for any resulting actions from such inaccuracies being displayed within the Software.

16.7 In accordance with the Data Protections Act (1998), VLE will ensure that appropriate security processes are in place to prevent personal data of persons associated with the Client being disclosed to any unauthorised third party.

16.8 In the unlikely event of any security breach, where personal data of persons associated with the Client is accessible to any third party, VLE will act promptly to ensure the security breach is rectified.

17 INTELLECTUAL PROPERTY RIGHTS

The copyright, patents, trade marks and all other intellectual property rights in the Software and related documentation are owned by and remain the property of VLE Support Limited or its suppliers and are protected by national laws and international treaty provisions. You do not obtain any rights in the Software other than those expressly granted in this Agreement.

18 UPDATE POLICY

VLE Support Limited may create, from time to time, updated versions of the Software. VLE Support Limited will make any such updated versions available to licensees. The Software may update automatically or otherwise by arrangement of a mutually convenient time and all copies of the previous version shall be destroyed and not used, except for any copy which may have been retained solely for archival purposes.

19 WARRANTY

19.1 Subject to the limitations upon its liability set out in clause 20, VLE Support Limited warrants that:

19.1.1 for a period of 90 days from the date of installation of the Software, it will materially conform to the electronic documentation provided with it; and

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19.1.2 with respect to any physical disc(s), the same shall be free from defects in materials and workmanship for a period of 90 days from the same installation date.

19.2 In the event of notification within the warranty period stated in clause 19.1.1, VLE Support Limited shall replace the defective Software and/or disc(s). Your remedy for breach of the warranties set out in clause 19.1 shall be limited to replacement of the defective materials and shall not encompass any other damages.

19.3 Save as stated herein, VLE Support Limited expressly disclaims all other conditions, warranties, terms and undertakings, expressed or implied, statutory or otherwise, relating to the Software and related documentation or technical support including but not limited to warranties of quality, performance, satisfactory quality or fitness for a particular purpose.

20 LIMITATION OF LIABILITY

20.1 Nothing in this Agreement shall limit VLE Support Limited liability for:

fraud or other criminal act;

personal injury or death caused by our negligence;

any other liability that cannot be excluded by law.

20.2 Subject to clause 20.1, VLE Support Limited accepts no liability for any indirect or consequential loss or damage, or for any loss of data, profit, revenue, anticipated savings or business, however caused and even if foreseeable or made known to VLE Support Limited.

20.3 Except as provided in clause 20.1, VLE Support Limited maximum liability to you for any cause whatsoever will be limited to the amount paid for the Software.

21 SEVERABILITY

If a Court or other competent authority decides that any provision of this Agreement is void or otherwise ineffective in whole or in part then any other part and the other terms and conditions of this Agreement shall continue in full force and effect.

22 THIRD PARTY RIGHTS

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

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23 ASSIGNMENT

You may not assign this Agreement nor any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the Software without VLE Support Limited prior consent.

24 NOTICES

24.1 All notices shall be given:

24.1.1 to VLE Support Limited via e-mail at info@vlesupport.co.uk

24.1.2 to you at either the e-mail or postal address you provide during any ordering process.

24.2 Notice will be deemed received when an e-mail is received in full (or else on the next business day if it is received on a weekend or a public holiday in the place of receipt) or 3 days after the date of posting.

VLE Support Annual Support Agreement

25 This Agreement applies to:

eTrackr^{ilp} web based software application and any derivatives, which may not necessarily bear the name "eTrackr^{ilp}".

26. DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

26.1 **The Software.** eTrackr^{ilp} being the computer software application operating under the trademark name of eTrackr^{ilp} or any subsequent name, including any extracts from such software, derivative works of such software, collective works constituting such software (such as subsequent Releases), and documentation to the extent offered to the Client.

26.2 **Agreement Term.** The agreed period of time covered by the support contract, in conjunction with the eTrackr^{ilp} software licence.

26.3 **eTrackr^{ilp} software licence.** The licence to use the eTrackr^{ilp} software, purchased on an initial two-year basis and thereafter on an annual basis. The software licence is governed by our terms and conditions (attached).

26.4 **Error.** Any failure of the Software to conform in all material respects to the functional specifications for the Software published from time to time by VLE. However, any non-conformity resulting from the Client's misuse or improper use of the Software or combining or merging the Software with any hardware or software not authorized to be so combined or merged by VLE, shall not be considered an Error.

26.5 **Error Correction.** Either a software modification or addition that, when made or added to the Software, established material conformity of the Software to the functional specifications, or a procedure or routine that, when



observed in the regular operation of the Software, eliminates the practical adverse effect on the Client of such non-conformity.

- 26.6 **Enhancement (VLE).** Any modification or addition that, when made or added to the Software, materially changes its utility, efficiency, functional capability, or application, but does not constitute solely an Error correction. VLE may designate enhancements as minor or major, depending on VLE's assessment of their value and of the function added to the pre-existing Software. VLE enhancement is carried out at the discretion of VLE.
- 26.7 **eTrackr^{ilp} Support.** Based upon first-line support via web, email, telephone and remote access (when appropriate) but in the first instance via web support desk. All such support requests, shall be initiated by the Client and the service is available during Normal Working hours as specified in this contract. VLE shall provide operational help and advice to the Client via email, telephone or remote access (if required); such help shall relate to operational queries only. Requests for software amendments or updates shall be dealt with separately, in no specified timescale, at the discretion of VLE. Initial support requests must be raised through the on line Support Desk. No support request is serviced without a support ticket
- 26.8 **Normal Working Hours.** The hours between 09:30 and 17:30 from Monday to Friday, excluding bank holidays and the annual shut down period between Christmas and the New Year.
- 26.9 **Releases.** New versions of the Software, in which new versions may include both Error Corrections and VLE Enhancements.
- 27 SUPPORT
- 27.1 VLE agrees to provide eTrackr^{ilp} Support services by computer telecommunications during Normal Working Hours for the duration of this agreement, provided the Agreement Terms are met. VLE shall use telephone communications to contact the Client where it is appropriate to do so.
- 27.2 VLE agrees to respond and provide a solution to any eTrackr^{ilp} Support request within 48 hours of receiving a support request through the proper channels.
- 27.3 VLE reserves the right to take longer than 48 hours to conduct activities towards an eTrackr^{ilp} Support request, should VLE Enhancement result in part or in whole of the solution, and/or VLE are awaiting further communication from the Client.
- 27.4 VLE agree to ensure the Client is informed on a regular basis of any progress on work that is being undertaken resulting from a support request.
- 27.5 VLE agrees that they shall not come on site unless approved by the Client.
- 27.6 VLE shall not invoice the Client for any expenses beyond the annual Support service unless agreed by both parties in advance.
- 27.7 VLE shall not charge the Client for Error Correction within the eTrackr^{ilp} Support service, unless any non-conformity results from the Client's misuse or improper use of the Software or combining or merging the Software with any hardware or software not authorized to be so combined or merged by VLE, shall not be considered an Error Correction, and shall incur a charge.
- 28 THE CLIENT AGREES:
- 28.1 To provide permanent VPN and/or RDP access to VLE to enable VLE to carry out support requests remotely.
- 28.2 The Client agrees and is responsible for ensuring that as much information as possible is supplied to VLE for the purposes of a support request, to assist with the speed of reaching a satisfactory solution, such as screen grabs and web URL's.

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- 28.3 The Client agrees and is responsible for keeping and maintaining at least one back-up copy of the Software and all data held within it.
- 28.4 To uphold the conditions detailed in Appendix A (below).

29 FEES AND CHARGES

- 29.1 The fees for the support service are included in the eTrackr^{iplp} annual licence fee.
- 29.2 VLE shall invoice the Client for additional services and for expenses as they are incurred, as detailed in Schedule 1 (attached). Invoices shall be payable in accordance with VLE Terms and Conditions. VLE shall not invoice the Client for any services or expenses outside of eTrackr^{iplp} Support contract, unless agreed by both parties in advance.

30 ALTERATION OR MODIFICATION

- 30.1 No modification or alteration to this agreement shall be valid or effective unless made in writing, signed by both parties and is affixed to this Agreement as an amendment.

31 EXCLUSIONS

- 31.1 VLE shall not be liable for the cost of repairing and damage to the Software caused by:
 - 31.1.1 any non-conformity or error resulting from Client's misuse or improper use of the Software or combining or merging the Software with any hardware or software not authorized to be so combined or merged by VLE;
 - 31.1.2 theft, fire, flood, accident, explosion or acts of God;
 - 31.1.3 misuse of the Software by the user or additions to the software not approved or installed by VLE;
 - 31.1.4 inspection, adjustment or repair of the Software by persons not in the employ of or agreed with VLE.
- 31.2 VLE shall not be liable for any hardware, support thereof, or licences associated with any hardware or third party software beyond eTrackr^{iplp}.

32 ENTRY OF PREMISES

- 32.1 The Client shall allow all necessary access to their premises to enable VLE to carry out services and repairs as agreed. VLE shall comply with the requirements of the Client in the matter of ensuring the identity and bona fides of any engineer or other person requiring to be admitted to the Client's premises in connection with the Agreement.



Entire Agreement agreed to and signed this [date].....

[Name of appointed signatory], [Name of college]:

The Client

Mark Trinick, Managing Director, VLE Support Limited:

A handwritten signature in black ink, appearing to read 'Mark Trinick', written over a horizontal line.

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Schedule 1

VLE Support Limited

Rates and Charges for Services provided outside of the Support Agreement

| Item | £ |
|---|--------|
| Extended Support* (Non-Error Correction) (per hour) | 120.00 |
| Out of Hours working (per hour) | 150.00 |
| Training (per day) | 800.00 |
| Customization/Programming (per hour) | 100.00 |
| Car mileage (per mile) | 0.45 |
| Other Travel Expenses as Incurred | |

*Note that when travel is necessary, the Client agrees to pay extended support for all time spent in non-error correction services and travel.

All prices are exclusive of VAT and other government taxes. The rates are reviewed annually on the 1st January each year and applied to each Agreement at renewal.

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