



OTrack
Bespoke Pupil Tracking

OTrack – Terms and Conditions of Service

ACCEPTANCE OF TERMS

Your access to and use of OTrack ("the Website") is subject exclusively to these Terms and Conditions. You will not use the Website for any purpose that is unlawful or prohibited by these Terms and Conditions. By using the Website you are fully accepting the terms, conditions and disclaimers contained in this notice and you fully adhere to and agree with the main 'Data Processing Terms' which was signed by a senior member of staff at your school on ordering OTrack. If you do not accept these Terms and Conditions you must immediately stop using the Website.

ADVICE

The contents of the Website do not constitute advice and should not be relied upon in making or refraining from making, any decision.

CHANGES TO WEBSITE

We may change or remove (temporarily or permanently) the Website or any part of it without notice and you confirm that OTrack shall not be liable to you for any such change or removal; and change these Terms and Conditions at any time, and your continued use of the Website following any changes shall be deemed to be your acceptance of such change.

LINKS TO THIRD PARTY WEBSITES

The Website may include links to third party websites that are controlled and maintained by others. Any link to other websites is not an endorsement of such websites and you acknowledge and agree that we are not responsible for the content or availability of any such sites.

COPYRIGHT

All copyright, trade marks and all other intellectual property rights in the Website and its content (including without limitation the Website design, text, graphics and all software and source codes connected with the Website) are owned by or licensed to OTrack or otherwise used by OTrack as permitted by law.

In accessing the Website you agree that you will access the content solely for your personal, non-commercial use. None of the content may be downloaded, copied, reproduced, transmitted, stored, sold or distributed without the prior written consent of the copyright holder. This excludes the downloading, copying and/or printing of pages of the Website for personal, non-commercial home use only.



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DISCLAIMERS AND LIMITATION OF LIABILITY

The Website is provided on an "AS IS" and "AS AVAILABLE" basis without any representation or endorsement made and without warranty of any kind whether express or implied, including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy.

To the extent permitted by law, OTrack will not be liable for any indirect or consequential loss or damage whatever (including without limitation loss of business, opportunity, data, profits) arising out of or in connection with the use of the Website.

OTrack makes no warranty that the functionality of the Website will be uninterrupted or error free, that defects will be corrected or that the Website or the server that makes it available are free of viruses or anything else which may be harmful or destructive.

Nothing in these Terms and Conditions shall be construed so as to exclude or limit the liability of OTrack for death or personal injury as a result of the negligence of OTrack or that of its employees or agents.

PRIVACY AND COOKIES

Use of the Website is also governed by our privacy policy which can be found at [<https://optimumotrack.co.uk/otrack-and-gdpr/>] (the "**Privacy Policy**"), our cookie policy which can be found at [<https://optimumotrack.co.uk/otrack-and-gdpr/>] (the "**Cookie Policy**") and our data processing terms which can be found at [<https://optimumotrack.co.uk/otrack-and-gdpr/>] (the "**Data Processing Terms**"), each of which is incorporated into these Terms. To view the Privacy Policy, please click on the link above.

Cookies

1. The Website uses cookies. Cookies are small text files that are created by a web server and stored on your computer when you visit a website. The Website uses the cookies listed below, for the following purposes:
 - Session: This cookie is necessary for the site to work by maintaining your session. It contains no personal information.
 - __utma, __utmb, __utmc, __utmz, __utmt, NID, GAPS, GALX: These are deployed by our Google Analytics only if you accept our cookies. They collect information such as the pages you visit, the length of time you spend on the site and what browser you are using. This information helps us improve and optimise the site in the future.
2. By accepting these Terms, you are giving consent to OTrack to place cookies on your computer. Please read the information contained in the Cookies Policy prior to acceptance.
3. If you wish to opt-out of our placing cookies on your computer, please adjust your internet browser's settings to restrict cookies as detailed in your internet browser's help menu. You may also wish to delete cookies which



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have already been placed. For instructions on how to do this, please consult your internet browser's help menu.

Privacy

4. The following capitalised terms used herein shall have the following meanings:

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

GDPR means the General Data Protection Regulation ((EU) 2016/679);

The terms “**Personal Data**”, “**Data Subject**”, “**Data Controller**” and “**Data Processor**” shall have the same meaning as defined in the General Data Protection Regulation (EU) 2016/679. The Data Subjects are any individuals for whom we process Personal Data on your behalf.

5. The subject matter, categories and nature of personal data to be processed by us and on our behalf when you use OTrack are set out in our Privacy Policy.
6. Both parties undertake to comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under any Data Protection Legislation.
7. We shall process Personal Data only to the extent, and in such a manner, as is necessary to enable the school to use our services and for us to meet the school's instructions from time to time. We undertake to process the Personal Data only in accordance with these Terms, any lawful instructions reasonably given by the school from time to time and pursuant to any legal obligation binding on us pursuant to the Data Protection Legislation. We shall not to process the Personal Data for any other purpose.
8. We shall process data on the school's behalf when performing our obligations under this agreement and the parties record their agreement that the school shall be the Data Controller and we shall be a Data Processor of all personal data relating to pupils of the school in accordance with these Terms.
9. In relation to any Personal Data processed in connection with the performance by us of our obligations under this agreement:
 - (a) each party shall provide adequate safeguards for any transfer of Personal Data to the other party;
 - (b) we shall not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the school has been obtained and the following conditions are fulfilled:
 1. either we or the school have provided appropriate safeguards in relation to the transfer;



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2. the Data Subject has enforceable rights and effective legal remedies;
 3. we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 4. we comply with reasonable instructions notified to us in advance by the school with respect to the processing of the Personal Data;
- (c) the school shall ensure that it is entitled to transfer the relevant Personal Data to us so that we may lawfully use, process and transfer the Personal Data on the school's behalf in accordance with this agreement;
 - (d) the school shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Personal Data provided for processing;
 - (e) the school shall ensure that the Data Subjects have been informed of, and have given their written consent to, such processing and transfer as required by the Data Protection Legislation and as such confirms that the school is entitled to transfer the relevant Personal Data to us so that we may lawfully process and transfer the Personal Data on the school's behalf in accordance with these Terms;
 - (f) we shall notify the school if we receive a request which infringes Data Protection Legislation;
 - (g) each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the school, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (h) each party shall assist the other in meeting their obligations in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation including with respect to complying with data audits, maintaining the security of Data, complying with the rights of Data Subjects, breach



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- notifications, impact assessments and consultations with supervisory authorities or regulators;
- (i) we shall ensure our personnel comply with their commitments of confidentiality in relation to the processing of Personal Data;
 - (j) we shall notify the school without undue delay on becoming aware of a Personal Data breach;
 - (k) the school acknowledges that we shall employ sub-processors in the performance of our obligations under these Terms and we will impose no less restrictive technical and organisation measures in the sub-processing of Personal Data. The school consents to us appointing third parties as notified to the school from time to time as a third-party processor of Personal Data under this agreement. We confirm that we have entered or (as the case may be) will enter with each third-party processor into a written agreement substantially on that third party's standard terms of business. As between the school and ourselves, we shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.
 - (l) at the written direction of the school, delete or return Personal Data and copies thereof to the school on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (m) maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
10. In the event of any loss or damage to Personal Data, the school's sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore the lost or damaged Personal Data from the latest back-up of such Personal Data maintained by ourselves.
11. Upon termination of the agreement constituted by the order form and these Terms, we shall delete or return all Personal Data and shall only retain Personal Data which it is obliged to retain by law for the retention periods required by law.
12. Either party may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).



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INDEMNITY

You agree to indemnify and hold OTrack and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against OTrack arising out of any breach by you of these Terms and Conditions or other liabilities arising out of your use of this Website.

SEVERANCE

If any of these Terms and Conditions should be determined to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction then such Term or Condition shall be severed and the remaining Terms and Conditions shall survive and remain in full force and effect and continue to be binding and enforceable.

GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the law of England and you hereby submit to the exclusive jurisdiction of the English courts.