

# Terms and Conditions for Beacon User u3as

## 1. Introduction

- 1.1. The Beacon System (defined below) is an online management system. It was designed to support the operation and administration of individual u3a organisations. The Beacon System supports multiple u3as, but each u3a can only administer and view its own data.
- 1.2. Third Age Trust Trading Limited [Company Number 11899419] (TATTL) offers the Beacon System as a service to u3as. It provides support for the Beacon System and its Users through staff members from the Third Age Trust, a group of volunteers known as the Beacon Team and where necessary by professional contractors and other authorised third parties.
- 1.3. This document explains the basis on which the Beacon System is provided by TATTL and states the terms and conditions which each u3a agrees to when it applies for a Licence to use, and uses, the Beacon System.
- 1.4. The effective date of this document is 18th July 2022.

## 2. Terminology used in this document

**Administrator** The person within a u3a with responsibility to the u3a committee for administering the relevant u3a's Beacon System site.

**Applicant u3a** A u3a which has applied to use the Beacon System but has not yet loaded its data.

**Beacon System** The system provided under the name "Beacon" comprising the software, data storage and support services and materials.

**Beacon Team** A team of volunteers which delivers the Beacon System as a service to u3as on behalf of TATTL.

**Controller** Has the meaning in Data Protection Law.

**Data Protection Law** All applicable laws and regulations, in each case pertaining to the security, confidentiality, protection or privacy of personal data, as amended or re-enacted from time to time, including the UK GDPR, the European General Data Protection Regulation (Regulation (EU) 2016/679) (the GDPR) and the Data Protection Act 2018.

**Data Subject** Has the meaning in the Data Protection Law.

**Initial Licence Fee** The initial licence fee which is payable by the User u3a to TATTL as referred to in clause 4.2.

**Installation** The date on which the relevant u3a's Beacon System site becomes 'live'.

**Intellectual Property** Means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Licence** Means an agreement between the User u3a/Applicant u3a and TATTL that facilitates a u3a to use the Beacon membership management system on the terms and conditions set out in this Licence.

**Licence Fee** Means either the Initial Licence Fee or the Renewal Licence Fee, as applicable.

**Personal Data** Has the meaning in clause 5.1.

**Processor** Has the meaning in the Data Protection Law.

**Processing/process** Has the meaning in the Data Protection Law.

**Renewal Licence Fee** The annual licence fee which is payable by the User u3a to TATTL on renewal of this Licence as referred to in clause 4.3.

**Sub-processor** Has the meaning of any third party processor engaged by TATTL that may process or have access to data held by TATTL.

**TATTL** Means Third Age Trust Trading Limited.

**Terminating u3a** A User u3a who has given notice to TATTL to terminate its Licence.

**Trust** Refers to the Third Age Trust.

**UK GDPR** Has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**User u3a** A u3a which is using the Beacon System.

**User u3a Member** A person who is, or has been, a member of a participating u3a, and whose personal details are held within the Beacon System.

**User** A member who has been registered as an authorised user of the Beacon System and who has a password for access to the system. Users will be allocated access privileges by the Administrator depending on their role within their u3a.

**You** Has the meaning of the executive committee of the User or Applicant u3a represented by the signatory for the User or Applicant u3a, usually the Chair of the executive committee.

Any reference to written information includes correspondence in email format.

### 3. Beacon System Licence and Intellectual Property

- 3.1. The Licence is the agreement under which you are permitted to use the Beacon System which includes these terms and conditions.
- 3.2. In consideration of the payment of the fee, TATTL grants to you a non-exclusive, non-sublicensable, non-transferable licence to use the Beacon System for your legitimate business purposes only in the United Kingdom in accordance with these terms and conditions ('Licence'). The use of the Beacon System by you constitutes your acceptance to be bound by the Licence and these terms and conditions.
- 3.3. TATTL confirm and agree that every reasonable effort will be made to ensure the data lodged with TATTL will be processed and stored securely.
- 3.4. TATTL agrees to provide each u3a with six months' notice of termination unless there has been a substantive breach of these terms and conditions in which case TATTL may terminate this Licence immediately by giving you written notice to your last known address in accordance with clause 10 of this document.
- 3.5. You acknowledge that save as is granted by these terms and conditions, you will not acquire any right, title or interest in or to the Beacon System.
- 3.6. You shall not do or omit to do or authorise any other person to do or omit to do any act which:
  - 3.6.1. would or might invalidate or be inconsistent with any Intellectual Property of TATTL; and
  - 3.6.2. would be in breach of or otherwise inconsistent with the moral rights of the authors of the items comprising the Beacon System.
- 3.7. You shall promptly inform TATTL in writing if you become aware of:
  - 3.7.1. any unauthorised use of the Beacon System;

- 3.7.2. any actual, threatened, or suspected infringement of any Intellectual Property of TATTL in the Beacon System which comes to your notice; and
  - 3.7.3. any claim by any third party coming to your notice that the Beacon System infringes its Intellectual Property or the Intellectual Property of any other person.
- 3.8. Subject to any Data Protection Law, the User u3a hereby grants, and where applicable shall procure the grant, to TATTL a non-exclusive, sub-licensable, worldwide, perpetual, irrevocable and royalty free licence to use the Intellectual Property in any content, databases and information that is:
- 3.8.1. uploaded,
  - 3.8.2. hosted, and/or
  - 3.8.3. stored by the User u3a, or on its behalf, on the Beacon System for the building, hosting, maintaining, managing, administering, modifying, developing, upgrading and improving the Beacon System.

#### **4. Charging Policy**

- 4.1. The Beacon System licence fee is currently £1.00 (including VAT) per current member per annum.
- 4.2. The Initial Licence Fee will be invoiced by TATTL on or after Installation. The amount of the Initial Licence Fee will be calculated using the number of members notified by the User u3a to TATTL on a pro rata basis to the following 31<sup>st</sup> March.
- 4.3. Thereafter, each year's Renewal Licence Fee will be invoiced on or after 1<sup>st</sup> April and will be calculated using the number of current members of the User u3a held on the Beacon System as at 00:00 on the 31<sup>st</sup> March immediately before that date.
- 4.4. The User u3a shall pay the relevant Licence Fee to TATTL within 60 days of the date of the relevant invoice.

4.5. On termination of the Licence by either party for any reason, the User u3a shall not be entitled to a refund of the Licence Fee for any unused portions of the year.

## **5. TATTL's Data Protection and Data Security Responsibilities**

- 5.1. The Beacon System stores personal data about members of the participating u3as within its database (the Personal Data). The Personal Data includes (but are not limited to) the names, addresses, telephone numbers and email addresses of User u3a Members, and the Beacon System may store other data related to their activities within the u3a. TATTL acts as a Processor of the Personal Data during the duration of the Licence on behalf of the relevant participating u3a (as Controller), in investigating system problems, building, maintaining, managing, developing and improving the Beacon System.
- 5.2. TATTL shall comply with its obligations under Data Protection Laws.
- 5.3. TATTL shall only process the Personal Data for the purposes of performing its obligations under these terms and conditions and in accordance with the written instructions (including via email) given by you, unless TATTL is subject to an obligation under applicable law.
- 5.4. TATTL shall notify you immediately if, in TATTL's opinion, an instruction from you breaches a requirement of the Data Protection Law, provided that this obligation shall not be construed as an obligation on TATTL to provide legal or professional advice or services to you.
- 5.5. TATTL shall at all times process the Personal Data in a manner that ensures appropriate security for the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction, or processing and against accidental loss, destruction, or damage, using appropriate technical and

organizational measures. TATTL shall ensure that, at a minimum, the measures required under this clause:

5.5.1. meet the standard required by the Data Protection Law and

5.5.2. include the security measures set out in TATTL Information Security Policies.

5.6. The Personal Data are processed by the User u3a, TATTL and the following authorised Sub-processors:

5.6.1. Authorised Users of participating u3as, allowed to process it by their u3a's management. They are only able to access data relating to their own u3a.

5.6.2. Beacon Team members who are authorised by TATTL and who process the data during uploading and may be able to view it while investigating system problems. Beacon Team members who assist u3as with migrating data to the Beacon System have access to data during Installation.

5.6.3. Third parties and their employees, authorised by TATTL who may be able to process it while investigating system problems, building, maintaining, managing, developing and improving the Beacon System.

5.7. TATTL shall ensure that all parties authorised by TATTL to have access to the Personal Data are subject to a contractual duty of confidence to hold the Personal Data in strict confidence and only process the Personal Data in the manner permitted by these terms and conditions and in accordance with the Beacon Team's data handling procedures and detailed data protection and privacy policies. The data protection and privacy policies are available on the website [at: https://beacon.u3a.org.uk/](https://beacon.u3a.org.uk/).

5.8. You acknowledge that Beacon System uses some service providers and business partners as Sub-processors to process data (Approved Sub-processors). These are listed in the TATTL privacy policy. TATTL may add, replace or remove Approved Sub-processors from time to time. The terms of each Sub-processor are reviewed regularly, and they have been judged to comply with



requirements of Data Protection Law. TATTL will notify you of any intended changes concerning the addition, replacement or removal of Approved Sub-processors. You may object to such changes, in which case TATTL will remove the relevant Sub-processor.

5.9. Your continued use of the Beacon System after notification indicates your authorisation of the subcontracting of the processing of Personal Data to each Approved Sub-processor.

5.10. If online payment of membership fees is enabled at a u3a's request, a Payment Gateway is used for fee collection and transfer to the u3a's bank account. The Payment Gateway is not a TATTL Sub-processor. TATTL does not have access to any User u3a Members' financial card details.

5.11. TATTL shall assist you:

5.11.1. in responding to, and complying with, all Data Subject rights requests relating to the Personal Data (each a Request), including by providing such assistance as is contemplated by Article 28(3)(e) of the GDPR; and

5.11.2. in ensuring compliance with the obligations in Articles 32 to 36 of the GDPR (and any equivalent requirements of Data Protection Law). TATTL shall promptly notify you of each Request it receives and shall not respond to the Request, except as instructed by you.

5.12. TATTL shall promptly notify you in writing of each Personal Data breach (as defined by the GDPR) of which it becomes aware. TATTL shall (to the extent feasible) ensure that such initial notification contains the information required under Article 33(3) of the GDPR (and any equivalent requirements of Data Protection Law). TATTL shall take such steps and provide such assistance and information to you as may be reasonably required to deal with and respond to the Personal Data breach.

5.13. In the event of termination of this Licence Personal Data shall be returned and deleted in accordance with clauses 10.5.4 and 10.5.5.

5.14. TATTL shall provide you with all information reasonably requested by you to enable you to verify TATTL's compliance with its obligations under this clause 5.

5.15. Without prejudice to clause 5.14 and upon reasonable prior written notice from you, TATTL shall assist you in undertaking an audit of TATTL's compliance with the requirements of this clause 5, provided that the scope of the audit and manner in which it is conducted will be agreed between the parties in advance. You agree to act reasonably and in good faith in exercising your audit rights under this clause 5.15. TATTL's costs and expenses incurred in assisting you with each audit shall be borne by you.

## **6. Your Data Protection and Data Security Responsibilities**

6.1. The executive committee of each User u3a is responsible for deciding its own Data Protection Policy, and how this should be applied to the Beacon System by the committee member appointed as the Administrator.

6.1.1. The u3a committee confirms that it has a Data Protection Policy which complies with Data Protection Laws and which includes their legal basis for processing, what personal data will be collected, how that data will be used and who can access it.

6.1.2. The u3a committee confirms that User u3a Members have access to your Data Protection Policy.

6.1.3. The u3a committee is responsible for ensuring that its Users are advised that they must take active steps to understand the u3a's Data Protection Policy and that they must adhere to it.

6.2. The u3a committee confirms that they advise Users that when using the Beacon System, they must always process any Personal Data collected in compliance with all applicable laws including, but not limited to, Data Protection Law.

6.3. The u3a committee confirms that when using the Beacon System, Users are advised that they must take all reasonable measures

against the unauthorised or unlawful access and processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data and as required by Data Protection Law.

- 6.3.1. Access to data within a u3a site is controlled by the User u3a's Administrator. User names, passwords and the privileges associated with each User's role are allocated by the User u3a's Administrator.
  - 6.3.2. Each User u3a Member is advised that it is essential that their password is kept securely and secret from others.
  - 6.3.3. The u3a committee will advise each member granted specific access to the Beacon System that access to it is conditional upon having taken adequate and reasonable measures to ensure that their computer is free of viruses and other malware which might enable unauthorised access to the Beacon System.
  - 6.3.4. The u3a committee will advise any User granted specific access they must not allow any other person to use or to have access to their Beacon System account. In particular, a shared computer must not be used to access a Beacon System account unless the user has a personal logon for the shared computer.
- 6.4. Access to the Beacon System via a public computer, e.g. in a public library, is strictly prohibited.
- 6.5. The u3a committee will promptly notify TATTL in writing of each Personal Data breach (as defined by the GDPR) of which you become aware.

## **7. System Availability**

- 7.1. The Beacon System is designed to be available at all times and it is anticipated that disruption of service will be rare. However, TATTL cannot guarantee that the Beacon System or any content on it will always be available, be uninterrupted or free from errors or omissions. TATTL will not be liable to a u3a if, for any reason, the Beacon System is unavailable at any time or for any period.
- 7.2. You acknowledge that the Beacon System User support is provided mainly by the Beacon Team of volunteers.

- 7.3. The Beacon Team will use reasonable endeavours to assist you if you have any problems using the Beacon System or if there are any failures or disruptions on the Beacon System, but TATTL cannot guarantee how long it might take to respond to your queries or to address and fix any failures or disruptions.
- 7.4. Details of planned periods of unavailability of a significant duration will be made available to User u3as.

## **8. Backup**

- 8.1. All Beacon System data is automatically backed up daily and kept for 30 days. A separate daily data backup is automatically stored.
- 8.2. Backup data can be restored following any major server failure.
- 8.3. In the event of a failure, u3a Users should be aware that they would lose data changed since the previous backup, so it is advisable to keep the original data sources (e.g. membership forms) for 24 hours before disposal.
- 8.4. Data backups are intended to protect against major system faults. They cannot be used to recover from mistakes affecting a single u3a's loss.
- 8.5. User u3as may use the data download facility to make a copy of their own data, particularly before making large-scale data changes. There is no facility to reload data to the Beacon System from a local download.

## **9. User Support**

- 9.1. The Beacon Team provides various levels of support to Applicant u3as and User u3as. These include but are not limited to:
- 9.1.1. User documentation including a user guide available on the Beacon System home page and other 'How-to' guides.

- 9.1.2. An online user forum. The forum provides a facility for the Beacon System community to ask questions and post answers in the best tradition of mutual help. The Beacon Team monitors the forum and responds if no community answer is forthcoming or if the issue is technical.
- 9.1.3. A website providing information about the Beacon System and links to key documentation and other support.
- 9.2. The provision of support to User u3as by the Beacon Team is very much dependent on its pool of suitably experienced volunteers. Generally, a response from the Beacon Team should be expected, but cannot be guaranteed, within 72 hours.

## **10. Duration, Suspension or Termination of the Licence**

- 10.1. The Licence will come into effect on Installation and will continue unless and until terminated by:
- 10.1.1. TATTL in accordance with clause 3.4 or 10.5 (or otherwise as set out in this Licence); or
- 10.1.2. the User u3a at any time on giving not less than 30 days' written notice to TATTL at [helpdesk@u3abeacon.org.uk](mailto:helpdesk@u3abeacon.org.uk).
- 10.2. In the event of a material but not critical default of these terms and conditions TATTL agrees to negotiate in good faith any remedial action with the u3a. A period of three months or other relevant period will be agreed to allow the u3a to undertake the remedial action.
- 10.3. TATTL will aim to resolve any incorrect application of the Licence with a local u3a through discussion and agreement.
- 10.4. TATTL reserves the right to suspend, disable, edit or immediately terminate any User u3a's Licence in the following circumstances:
- 10.4.1. In TATTL's reasonable opinion your u3a is using the Beacon System inappropriately or incompetently, or in a way that might bring TATTL into disrepute, or

10.4.2. The User u3a fails in its responsibilities to protect the Beacon System and its data, or

10.4.3. The User u3a breaches these terms and conditions in a way that cannot be corrected, or

10.4.4. The User u3a fails to correct a breach within a reasonable time period if TATTL asks you to do so, or

10.4.5. There is, in TATTL's reasonable opinion, a similarly very serious reason that requires your access to the Beacon System to be terminated, or

10.4.6. You fail to pay the appropriate licence fee.

10.5. In the event of termination:

10.5.1. all rights granted to you to use the Beacon System under this Licence shall cease;

10.5.2. you must cease all activities authorised by this Licence;

10.5.3. your access to the Beacon System may be disabled at any time after the date of termination;

10.5.4. TATTL shall provide the User u3a with a 30 day period in which it may download its data from the Beacon System (in either Excel or CSV format). On the expiry of that 30 day period TATTL will, without undue delay, delete the User u3a's data from the Beacon System, provided that TATTL may retain User u3a data where: (i) required to comply with applicable law; (ii) continued retention is required to enable TATTL to comply with its post-termination obligations; or (iii) data is retained as part of TATTL's internal record keeping, back-up or business continuity procedures, provided, in each case, that the data is deleted without undue delay when it is no longer required to be retained;

10.5.5. the User u3a shall no longer be permitted to access any other demonstration systems as may have been provided or made available by TATTL (and to the extent made available for use on the User u3a's systems, the User u3a must delete any copies thereof from its systems). Any data uploaded by the User u3a to any such demonstration system will also be deleted by TATTL to the extent stored on TATTL's systems.

## 11. Warranties

11.1. TATTL use all reasonable endeavours to ensure that the Beacon System performs as specified, but TATTL does not and cannot guarantee:

- 11.1.1. that the information TATTL provides, or that is provided through the Beacon Team, or on the Beacon System is accurate, complete, up-to-date, reliable or correct;
- 11.1.2. the availability of the Beacon Team who are a team of volunteers;
- 11.1.3. the Beacon service will meet your requirements;
- 11.1.4. that the Beacon System will be available at any particular time or location;
- 11.1.5. that the Beacon System will function in an uninterrupted manner or be secure;
- 11.1.6. that any defects or errors will be corrected;
- 11.1.7. and/or that the Beacon System is at all times secure, free of viruses or other harmful components.

11.2. Any subject matter downloaded or otherwise obtained through the Beacon System is done so at your own risk and you will be solely responsible for any loss of data or other damages that result from download or use of any such material.

11.3. The Beacon System is provided to you on an "as is" and "as available" basis.

11.4. To the maximum extent permitted by law, TATTL expressly disclaims any and all guarantees and conditions of any kind, whether express, implied or statutory, including without limitation any implied warranties of satisfactory quality, fitness for a particular purpose and non-infringement.

## 12. Liabilities

12.1. Subject to clause 12.3, TATTL shall not in any circumstances have any liability for any losses or damages which may be suffered by

you (or any Users), as a result of you or your members using the Beacon system incorrectly whether:

- 12.1.1. the losses or damages are suffered directly or indirectly
  - 12.1.2. the losses or damages are immediate or consequential,
  - 12.1.3. and whether the losses or damages that arise in contract, tort (including negligence) or otherwise which fall within any of the following categories:
    - 12.1.3.1. special damages even if TATTL were aware of the circumstances in which such special damages could arise;
    - 12.1.3.2. loss of profits;
    - 12.1.3.3. loss of anticipated savings;
    - 12.1.3.4. loss of business opportunity;
    - 12.1.3.5. loss of goodwill; and/or
    - 12.1.3.6. loss or corruption of data.
- 12.2. Subject to clause 12.1, the aggregate maximum liability of TATTL, whether in contract, tort (including negligence) or otherwise and whether in connection with this Licence or any collateral contract, shall in no circumstance exceed £1.
- 12.3. The exclusions in clause 12.1 shall apply to the fullest extent permissible at law but TATTL does not exclude liability for:
- 12.3.1. death or personal injury caused by the negligence of TATTL, its officers, employees, contractors or agents;
  - 12.3.2. fraud or fraudulent misrepresentation;
  - 12.3.3. breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 12.3.4. any other liability which may not be excluded by law.
- 12.4. TATTL shall not be liable for the use of the Beacon System by you, your agents and employees and you shall keep TATTL fully indemnified against any claims, costs, damages, loss and liabilities arising out of any such use.



### **13. Confidential Information**

13.1. Each party undertakes to keep confidential and not to disclose to any third party any information supplied under these terms and conditions that is proprietary or confidential and is clearly labelled as such or identified by the disclosing party as confidential information, without the prior written approval of the other party.

13.2. Confidential Information shall not be deemed to include information that:

13.2.1. is or becomes publicly known other than through any act or omission of the receiving party;

13.2.2. was in the receiving party's lawful possession before the disclosure;

13.2.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

13.2.4. is independently developed by the receiving party, which can be shown by written evidence; or

13.2.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

13.3. The parties' obligations under this clause 13 shall survive the termination of the Licence for a period of one (1) year from that date.

### **14. General Terms**

14.1. TATTL shall have no liability to you if TATTL is prevented from or delayed in performing its obligations under these terms and conditions, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.

14.2. If any provision (or part of a provision) of these terms and conditions is found by any court to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 14.3. These terms and conditions are the whole agreement between the parties and replace any previous understanding or agreement between TATTL and the participating u3a.
- 14.4. TATTL may, at any time, and at its sole discretion, modify these terms and conditions, and will give you advance notice of any such modifications, except in exceptional circumstances outside of TATTL's control where such modifications are necessary to maintain the service.
- 14.5. You may not assign, transfer, charge, or sub-license any of your rights or obligations under these terms and conditions to any other person.
- 14.6. TATTL may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 14.7. Nothing in these terms and conditions is intended to or shall operate to create a partnership between the parties or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 14.8. These terms and conditions do not confer any rights on any person or party (other than the parties and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14.9. These terms and conditions and any dispute or claim arising out of or in connection with them (including noncontractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.