

BETTER IMPACT SYSTEM USER AGREEMENT and DATA PROCESSING AGREEMENT – United Kingdom

Applicable as of 12 February 2019 until superseded.

1) LICENCE

Through the acceptance of this agreement (herein The Agreement or THE AGREEMENT), Better Impact Software Ltd. (herein Better Impact Software Ltd. and The Processor) grants to the software subscription purchaser (herein The Organisation and The Controller) the non-exclusive and non-assignable licence to use any of the Better Impact suite of software for which it has paid the applicable subscription fee (herein The Software or THE SOFTWARE).

2) ACCEPTANCE OF THE AGREEMENT

The terms and conditions of The Agreement are deemed to be accepted by the parties as follows:

- a) By Better Impact Software Ltd., by allowing the successful login by the Organisation,
- b) By The Organisation, by logging into the software 22 February 2019 or thereafter.

3) PAYMENT FOR THE USE OF THE SOFTWARE

- a) Payment of fees during the trial period are not applicable.
- b) If The Organisation chooses to subscribe to the Software after the trial period, The Organisation agrees to pay, Better Impact Software Ltd., as per the subscription and services listed on its invoice and further agrees to pay the annual subscription fee as published at www.BetterImpact.co.uk based on the number of accounts and, if Volunteer Impact is included in the subscription, the number of volunteers subject to calculation processes described in paragraph 3(c).
- c) The number of volunteers used to determine the annual subscription fee in the first year will be the estimated number provided by The Organisation. The number of volunteers used to determine the annual subscription fee after the first year is the number of volunteers in the organisation's accounts that are not marked as Applicant, In Process or Archived when Better Impact Software Ltd. conducts its annual audit, one to two months prior to the annual subscription due date.
- d) Increases in annual subscription fees are limited to the average national rate of inflation (RPI) since the most recent rate increase applied to the Organisation. Increases in text messaging rates are excluded from this limit as telecommunications costs associated with text messaging are always subject to change.
- e) Access to The Software by an unlimited number of administrators is included in the annual subscription fee.

4) ADMINISTRATOR SUPPORT

- a) Support on using the software will be available to all administrators via email, chat and telephone. Responses to support queries will occur according to the following:
 - i) Monday 09:00 – Friday 23:30 (London time) excluding holidays – Median first response of less than 15 minutes
 - ii) Friday 23:30 – Monday 09:00 (London time) and all day Saturdays, Sundays and holidays – Immediate to 1 Business Day
- b) Standard PLUS subscribers also receive onboard consultation and contact details importation in their first subscription year as well as an account review and one hour of web based training each year.
- c) Enterprise PLUS subscribers also receive onboard consultation, initial custom field and qualification configuration and contact details importation in their first subscription year as well as a system wide account review and four hours of web based training each year.

5) SOFTWARE UPGRADES

Better Impact Software Ltd. agrees to make standard upgrades to The Software available to the Organisation at no additional cost. If Better Impact Software Ltd. makes additional features available as optional additions with additional costs to future purchasers, those features will not be considered as part of the standard upgrades. The Organisation recognises that from time to time Better Impact Software Ltd. will publish updated versions of The Software and that the standard upgrades included in updated versions will automatically be included in The Software licence. The Organisation further recognises that future upgrades might change the way some features work and that some features might be removed from The Software.

6) TEXT MESSAGING

The use of text messaging is subject to the following terms:

- a) Volunteers, donors, clients and/or members must opt in to receive text messages. They can do so in the application and in their profile. They can also opt out at anytime. An administrator cannot change this setting in a constituent profile.
- b) This is one-way texting only. Constituents cannot text you back. In the event they attempt to reply, the system must send them a message stating the text cannot go through and this will count as a text message sent by you. The Organisation recognizes that Better Impact has no control over this and agrees that it is in its best interest to inform its constituents that they should not reply prior to sending texts.
- c) You are not permitted to send messages that are unrelated to your management of the constituents within your Organisation.
- d) 1,000 text messages per year are included with a Standard Account, 2,500 text messages per year for Enterprise Accounts (additional available for purchase at £50 / 1,000 text messages) and unlimited when our PLUS option has been added to your account. Unlimited text messages are included with PLUS subscriptions.

7) SERVICE LEVEL

- a) Web Server Availability - Better Impact is committed to providing scheduled network and server uptime of 99.95%. This uptime percentage is a monthly figure and is calculated solely by Better Impact monitoring systems or Better Impact authorised/contracted outside monitoring services. Scheduled maintenance as described in item (c) is not included in

this guarantee. Should we not meet our server uptime commitment, a credit based on the percentages listed below and the prorated monthly amount will be issued.

- i) < 99.95% – 10%
- ii) < 99.5% – 25%
-) < 99% – 50%
- b) Scheduled Maintenance shall mean any maintenance (a) of which Organisation is notified 24 hours in advance, or (b) that is performed during a standard maintenance window from 02:00 to 05:00 UTC. Notice of Scheduled Maintenance will be provided to The Organisation by way of a notification posted to the system updates section on the main home page for administrators and/or by email to those subscribing to our application status alert email list.
- c) Data Integrity– Better Impact Software Ltd. employs a RAID 10 configuration on solid state drives to ensure the integrity of the data on its servers. Routine backups with a 28 day retention policy are performed for system wide emergency recovery purposes only. These backups include:
 - i) Transaction log backup once every 3 hours
 - ii) Incremental backup once per day
 - iii) Full backup once per week

8) WARRANTY

- a) Although Better Impact Software Ltd. does not warrant that The Software supplied hereunder shall be free from all known viruses, Better Impact Software Ltd. represents and warrants that it used reasonable commercial efforts to ensure The Software delivered to The Organisation under this Agreement does not contain any viruses that would affect The Organisation’s ability to use The Software and further represents and warrants that it continues to use reasonable commercial efforts to check for the most commonly known viruses on an ongoing basis.
- b) Better Impact Software Ltd. warrants that The Software will function in accordance with the specifications of The Software published by Better Impact Software Ltd. on www.BetterImpact.co.uk.
- c) Better Impact Software Ltd. represents and warrants that Better Impact Software Ltd. has the right to enter into this agreement and to provide the Licence rights granted by this Agreement to The Organisation.
- d) The use of The Software will not infringe, breach or constitute a misappropriation of the intellectual property or other proprietary or contractual rights of any third party.
- e) The Organisation acknowledges that Better Impact Software Ltd. is not liable if The Software does not meet the requirements of The Organisation, if The Software will not operate free of errors or uninterrupted, or if The Software will not function in The Organisation’s hardware environment. The Organisation accepts The Software as-is.

9) DEVELOPER'S LIABILITY

- a) Better Impact Software Ltd. shall not be liable to The Organisation for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Licence, the Software, its use or otherwise, except where related to paragraph 10 herein and also except to the extent that such liability may not be lawfully excluded by the terms of this Agreement under the applicable law.
- b) Notwithstanding the generality of (a) above, Better Impact Software Ltd. expressly excludes liability for indirect, special, incidental or consequential loss or damage of any kind which may arise in any manner from use of The Software by the Organisation, the end user, or any other person, firm or corporation, including, without limiting the foregoing, damages in respect of or to equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- c) In the event that any exclusion contained in this Agreement shall be held to be invalid or if for that reason or any other reason whatsoever Better Impact Software Ltd. becomes liable for loss or damage, such liability shall at all times and in all circumstances be limited only to a maximum amount equal to the initial licence fees paid by The Organisation plus annual fees paid by the Organisation for up to two years. A claim for the refund of such licence fees shall be the sole and exclusive remedy of The Organisation and/or any other person, firm or corporation. This paragraph 9(c) shall not apply to any breach or infraction of obligations of The Processor contained in paragraph 10.

10) DATA PROCESSING AND PROTECTION

- a) In this clause 10, the following words have the following meanings:
 - i. Data Protection Legislation means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject, including the Data Protection Act 2018 and the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) and any successor legislation to the Data Protection Act 2018 and the GDPR.

- ii. Controller, data controller, processor, data processor, data subject and processing: as set out in the Data Protection Legislation in force at the time.
- b) The Processor will process the personal data only in compliance with the Controller's written instructions, which are provided herein, and may be amended in writing from time to time, unless required to do so by Union or Member State law to which the processor is subject. In such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. In agreeing to this licensing agreement, the Controller is providing written instruction to process any data it, or its constituents such as a volunteers, donors, members or clients, add or edit in any of the Better Impact software the Controller utilises. In agreeing to The Agreement, the Controller further agrees that the Processor may transfer the data to Canada it will be stored exclusively, and in accordance with the ICO's data protection principles and the General Data Protection Regulation. The Processor will comply with Article 28 of the GDPR. In accordance with which, the Processor shall not engage a third party processor of personal data under this Agreement (a sub-processor) unless the Controller in its absolute discretion gives a specific or general written authorisation; and where such consent is given, the processor: (i) shall put in place a written agreement that imposes data protection obligations that are substantially the same to those set out in this Agreement; (ii) acknowledges that the Processor remains fully liable to the Controller for the performance of any sub-contracted processing obligations; and (iii) the Processor shall inform the Controller if they wish to change their Sub-processor and allow a reasonable opportunity to object. In such event, the parties shall discuss such concerns in good faith with a view to achieving commercially reasonable resolution. If this is not possible, either party may terminate the agreement.
- c) The Processor shall not transfer any of the personal data outside of the European Economic Area ("EEA") or to an international organisation except:
 - i. with the prior written consent of the Controller and in accordance with any written instructions and terms the Controller may impose on such transfer to ensure that transfers of personal data outside of the EEA have adequate protections in place as set out in the General Data Protection Regulation; or
 - ii. if required by the laws of any member of the European Union or by the laws of the European Union applicable to the Processor, in which case the Processor shall inform the Controller of that legal requirement before transferring, unless the law prohibits such information on important grounds of public interest.
- d) The Controller, in its acceptance of the Agreement, is providing specific authorisation for the use of the following sub-processors: Better Impact Inc. (located in Canada), Cogeco/PEER1 (data centre located in Canada) and ZeroFail (backup storage data centre located in Canada). In making a selection in The Controller's administrative console, The Controller may also provide specific authorisation for one or both of the following sub-processors for the proposes of providing administrative use support: Better Impact USA Inc (located in the USA) and Better Impact Pty Ltd (located in Australia).
- e) The Processor shall not at any time before, during or after the termination of this Agreement resell, lease, rent, disclose, release, permit the disclosure or release, nor provide access to any information related to any person listed with the software database, except to the Better Impact team and only for the purpose of support.
- f) The Processor shall not at any time before, during or after the termination of this Agreement use, or make use of any information related to any person listed with the software database for any purpose other than those required in the provision of the software to the Organisation. The Processor may generate aggregate reports such as but not limited to the number of constituents in the database, the number of volunteer hours recorded within The Software provided that no information related to individual constituents is included in any report.
- g) The Processor will ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- h) The Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- i) The Processor will, within 5 working days, taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III.
- j) The Processor agrees to inform The Controller in the event of any breach of the Data Protection Legislation within 24 hours of becoming aware of the breach.
- k) The Processor will assist the Controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 taking into account the nature of processing and the information available to the Processor;
- l) The Processor will, at the choice of the Controller, delete all the personal data within 2 months of termination of the termination of the provision of services relating to processing, and delete existing copies unless Union or Member State law requires storage of the personal data and with the exception of contact information data related to volunteers who use or have used within the past five years, the same volunteer account with another organisation;

- m) The Processor will make available to the controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller.
- n) The Processor will respect the rights of The Controller as described in the General Data Protection Regulations.
- o) The Controller agrees that:
 - i) It is granting permission to The Processor to process data pursuant to this agreement,
 - ii) That it shall comply with its obligations as a Controller under Data Protection Laws in respect of its processing of Personal Data.
 - iii) It will not process data in The Software unrelated to the purposes listed in paragraph r).
- p) Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- q) Data subjects include:
 - i) Regarding Volunteer Impact – Any person who has applied to be become a volunteer with the Controller, regardless of whether or not they are accepted, or is currently a volunteer with the Controller, or has been a volunteer with the Controller.
 - ii) Regarding Client Impact – Any person who has applied to be become a client with the Controller, regardless of whether or not they were accepted, or is currently a client with the Controller, or has been a client with the Controller.
 - iii) Regarding Member Impact – Any person who has applied to be become a member with the Controller, regardless of whether or not they were accepted, or is currently a member with the Controller, or has been a member with the Controller.
 - iv) Regarding Donor Impact – Any person who has expressed an interest in becoming a donor with the Controller, or is currently a donor with the Controller, or has been a donor with the Controller.
- r) Data processing inclusions and the purposes of processing include:
 - i) Regarding Volunteer Impact – To accept and record applications and/or expressions of interest to volunteer and maintain records related to volunteer engagement including contact details and other fields as created by the Controller, and/or create volunteer rosters and/or track volunteer hours and/or feedback.
 - ii) Regarding Client Impact – To accept and record applications and/or expressions of interest to become a client and maintain records related to client assistance including contact details and other fields as created by the Controller, and/or client-volunteer interactions.
 - iii) Regarding Member Impact – To accept and record applications and/or expressions of interest to become a Member and maintain records related to membership including contact details and other fields as created by the Controller
 - iv) Regarding Donor Impact – To accept and record donations along with the donor's including contact details and other fields as created by the Controller, and preference of donation allocation, and/or type of donation and/or associated campaign.

11) FORCE MAJEURE

Better Impact Software Ltd. is under no liability to The Organisation in respect of anything which, apart from this provision, may constitute a breach of this Licence arising by reason of force majeure.

12) WAIVER

Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed as a waiver of that party's rights hereunder nor prejudice that party's rights to take subsequent action. No waiver of any clause, term or condition of this Agreement by any employee, agent or contractor of The Organisation shall constitute an enforceable or continuing waiver by The Organisation, nor shall Better Impact Software Ltd. be entitled to rely on any such waiver.

13) SEVERABILITY

In the event that any of these terms, conditions and provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such terms, conditions and provisions shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

14) ENTIRE AGREEMENT

In the absence of any contract or letter of addendum, signed by both Better Impact Software Ltd and The Organisation, and in such case, exclusively limited in context to the content of such contract or letter of addendum, this agreement sets forth the entire agreement between Better Impact Software Ltd. and The Organisation and supersedes any prior agreements or understanding, whether oral or in writing.

15) COPYRIGHT

Better Impact Software Ltd. possesses the exclusive distribution rights to The Software in the United Kingdom. Better Impact Inc. (of Canada) is the intellectual property owner in respect of the copyright in the compilation incorporated in the Software). All such rights are reserved and retained by Better Impact Inc..

16) COMPLIANCE WITH LAWS

Better Impact Software Ltd. agrees at all times to comply with all applicable United Kingdom laws and regulations. Any dispute or claim arising in connection with the agreement will be governed by the laws of England and Wales and the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim.

17) INDEPENDENT PARTIES

Nothing in this Agreement shall be construed so as to imply a partnership, joint venture or other relationship between Better Impact Software Ltd. and The Organisation. It is expressly acknowledged and agreed that the parties are independent contractors and that no partnership, joint venture or other relationship of any kind is intended