

# CAF AMERICAN DONOR FUND

TERMS AND CONDITIONS AS AT 1 NOVEMBER 2019

## DEFINITIONS

The definitions set out in the Schedule to these Terms and conditions apply to all references to such terms in the Agreement and throughout the Guide. For the avoidance of doubt these Terms and conditions apply to donor advised gifts, donor advised funds and premier donor advised funds (where appropriate and as specifically referred to) and as more particularly set out in the Guide.

## TERMS AND CONDITIONS

### 1 NATURE OF A FUND

1.1 All Assets donated by a Donor to the Fund constitute an irrevocable and outright gift by the Donor to CAF American Donor Fund (“CADF”) of all right, title and interest in such Assets. CADF agrees to hold such Assets together with any Income (if applicable) and to apply them solely for Charitable Purposes and to provide such information to the Donor about the Fund as is provided for in this Agreement. CADF further agrees that it will make the Forms available to the Donor so that they may notify CADF of their wishes in respect of the investment of the Assets and/or distribution of the Fund for Charitable Purposes.

1.2 CADF reserves the right to use the income or gain resulting from the temporary investment of undistributed Assets for its own purposes except such Income or gains resulting from the investment of Assets in a Premier Service Fund which will form part of the relevant Fund.

1.3 For the avoidance of doubt:

1.3.1 once a donation has been made to a Fund, such donation cannot be repaid to the Donor; and

1.3.2 at no time will the Donor (nor any Connected Person) be able to derive any benefit from the Assets or Income in the Fund.

### 2 CADF'S AUTHORITY

2.1 Grant Requests and/or investment requests are purely advisory and are not binding on CADF. There is no agreement, written or oral, by which the Donor may cause CADF to make any particular investment and/or distribution from the Fund, or by which the Donor may direct the timing or amounts of investments and/or distributions.

2.2 When investing or distributing the Fund, CADF will, subject to the terms of this Agreement (and in particular clauses 3 and 6) and to CADF's procedures, policies and applicable law and regulation from time to time, take into account the Donor's wishes as set out in the Forms. However, and notwithstanding any other terms of the Agreement, CADF shall at all times have final discretion as to whether and/or when to invest or distribute all or part of the Fund.

2.3 CADF may make such enquiries as it deems necessary to ensure that the Fund is applied for Charitable Purposes, and shall not make any distribution until it is satisfied that the outcome of such enquiries satisfies its Charitable Purposes.

### 3 CADF'S AUTHORITY TO DISTRIBUTE

Without prejudice to the more general provisions of clause 2, CADF may, in particular, in the following circumstances, distribute all or part of the Fund for Charitable Purposes without seeking or having regard to the Donor's wish or recommendation:

3.1 where no valid Letter of Wishes or valid Grant Request Form for the Fund is held by CADF and:

3.1.1 Assets or Income (if applicable) are held in the Fund but have not been distributed from the Fund for a period of at least six years (provided that this is not solely due to any act or omission of CADF). (Deduction of fees, costs, contributions or expenses shall not be considered a distribution from the Fund for these purposes);

3.1.2 the Donor has indicated that it does not wish to or cannot complete any of the Forms or otherwise make a recommendation or express a wish on how the Assets and Income (if applicable) should be distributed;

3.1.3 to the extent applicable law and regulation requires a minimum distribution from a Fund to be made each year and the Donor has failed to provide such Grant Request on request by CADF;

3.1.4 where in CADF's reasonable opinion the Donor's capability or capacity to complete any or all of the Forms or otherwise make a

recommendation or express a wish on how the Assets and Income (if applicable) should be distributed is in doubt; or

3.1.5 where CADF receives formal notification of the death of the Donor(s) and, in the case of the Premier Service Fund, the Successor (if applicable);

3.2 where, in CADF's reasonable opinion, the wish or purported recommendation of the Donor in respect of the Fund is no longer possible, practical, ethical or viable or does not fulfil a Charitable Purpose;

3.3 where the Fund is closed in the circumstance set out in clause 6; or

3.4 where the Donor has not complied with any material obligation under or in respect of this Agreement.

#### **4 DONOR OBLIGATIONS AND RIGHTS**

4.1 The Donor is required to maintain the Fund for the Minimum Term (where applicable).

4.2 A Donor may not market or publicise the Fund or fundraise for it.

4.3 A Donor may make a Grant Request at any time and by such means as CADF shall make available from time to time.

4.4 A Donor may make a recommendation as to how CADF distributes the Fund for Charitable Purposes after its death, insolvency, dissolution, winding up or on appointment of administrators or receivers to the Donor (as appropriate), in a Letter of Wishes.

4.5 Where a Donor is an individual he/she may request CADF to accept recommendations in respect of his/her Fund from another person as well as the Donor by submitting an Additional Signatory Form.

4.6 Where a Donor is an Organisation it may request CADF to accept recommendations in respect of its Fund from one or more individuals by submitting an Authorised Signatory Form.

4.7 Where a Donor is an individual and has selected the Premier Service level for the Fund, the Donor may set out who he/she wishes CADF to treat as their Successor on an Appointment of Successor Form.

4.8 Where a Donor has selected the Premier Service level for the Fund, the Donor may set out how it wishes CADF to invest the Assets and/or Income at any time and by such means as CADF shall make available from time to time.

4.9 A Donor may replace any of the Forms by completing and submitting a new Form to CADF. This will take effect only after CADF has received the Form and had reasonable time (being not less than five working days after receipt) to verify it and the wishes set out

therein. In no circumstances will the submission of a new Form affect any investment or distribution which CADF has decided to make prior to receipt of such Form.

4.10 In the event of more than one Form being submitted to CADF by the Donor (including its Authorised Signatories and/or any Additional Signatory (where applicable) at the same time and containing conflicting information, then CADF shall be entitled to take account of the request contained in the Form most recently received by it, in the event that conflicting forms arrive in the same communication, the Donor will be contacted for clarification, failing which, it will be at CADF's discretion which Form it relies upon.

4.11 A Donor shall be entitled to receive statements of its Fund provided by CADF every quarter This statement shall list all donations to the Fund, all capital transactions, Income (where applicable) and all distributions made from the Fund and fees and expenses deducted during the period covered by the statement.

4.12 Where applicable, a Donor shall be entitled to amend the service option it receives in respect of its Fund by submitting a Change of Service Option Form.

4.13 A Donor shall not suggest, and CADF shall not use, any portion of the Fund to influence the outcome of any specific election for candidates to public office, to carry on any voter registration drive except as provided in section 4945(f) of the US Internal Revenue Code, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, and generally not to take any other action inconsistent with section 501(c)(3) of the US Internal Revenue Code and/or the laws of England and Wales relating to charities and Charitable Purposes.

#### **5 OPERATING THE FUND**

5.1 The Donors will be able to provide Assets to the Fund using the methods set out in the Guide.

5.2 Where applicable CADF will reclaim Gift Aid in respect of a donation to the Fund and apply the amount received from Her Majesty's Revenue and Customs in respect of that Gift Aid reclamation to the Fund as if it were a donation or contribution directed to the Fund for the purposes of these Terms and Conditions.

5.3 Unless otherwise set out in this Agreement, CADF may act upon recommendations and information that it believes in good faith to have been received from the Donor or an Additional Signatory or Authorised Signatory whether made in writing, electronically or verbally. The Donor shall be responsible for

- monitoring activity of its Fund to ensure that it is being operated to its satisfaction.
- 5.4 To the extent applicable law and regulation requires a minimum distribution from a Fund to be made each year, the Donor shall on request provide CADF with a Grant Request Form. Should a Donor fail to provide such Grant Request, CADF shall distribute such part of the Fund to Charitable Purposes as CADF, in its absolute discretion, deems appropriate to comply with the applicable law and regulation.
- 5.5 Where a Donor of a Fund with the Premier Service (who is an individual) has appointed a Successor to operate the Fund, upon receipt by CADF of formal notification of the death or permanent incapacity of the Donor, the appointed Successor shall acquire the rights and obligations of the Donor under this Agreement, save that the Successor shall not have the authority to replace or amend any Letter of Wishes that the Donor has submitted and such Successor shall be bound by the terms of the Letter of Wishes and CADF shall give effect to the terms of the Letter of Wishes notwithstanding any request from the Successor.
- 5.6 Where an Additional Signatory is appointed to act for or alongside the Donor in operating the Fund, such Additional Signatory shall not have the authority to revoke or amend a Letter of Wishes or the appointment of a Successor.
- 6 CLOSURE OF A FUND**
- 6.1 If at any time, a Donor wishes CADF to close the Fund, it shall, on 30 days' notice to CADF, be entitled to recommend that all Assets and Income (if applicable) within the Fund are distributed for Charitable Purposes and to give written notice that it wishes CADF to close the Fund and to terminate this Agreement.
- 6.2 CADF shall be entitled to close a Fund on giving 30 days' notice in writing to the Donor in the following circumstances:
- 6.2.1 where the Assets and Income (if applicable) held in a Fund have fallen below the Minimum Balance (if applicable) (including due to action taken by CADF in accordance with clause 3 above) and the Donor fails to cure any such default within 60 days of notice from CADF of such default occurring;
- 6.2.2 where there are insufficient monies in the Fund to pay the applicable fees, costs, contributions or expenses which become due under this Agreement; or
- 6.2.3 where CADF decides in its absolute discretion that its ability to advance its Charitable Purposes is best served by the closure of a Fund.
- 6.3 Upon closure of the Fund CADF shall distribute the Assets and Income (if applicable). Without prejudice to its overriding discretion, where no Grant Request Form is in place, CADF shall request that the Donor completes a Grant Request Form and submits it to CADF and shall give the Donor ten working days in which to do so. If this is not received then CADF shall transfer the Assets and Income (if applicable) to the General Fund.
- 6.4 Where CADF receives notice or obtains evidence to its satisfaction that a Donor has died, become insolvent, dissolved, wound up or an administrator or receiver has been appointed (as appropriate) and CADF is not in receipt of a valid Letter of Wishes in respect of the Donor's Fund, CADF shall transfer the Assets and Income (if applicable) of such Fund to the General Fund.
- 6.5 If the Donor wishes to donate further Assets to the Fund after it has been closed by CADF, the Donor will be requested to submit a new Application Form.
- 7 MAKING A DONATION OF STOCKS OR SHARES TO CADF**
- 7.1 An Original Donor may sell or transfer Gifted Assets by completing a Gifting Stocks and Shares Application Form submitted in hard copy or online by the Original Donor to sell or transfer the Gifted Asset to which the Form relates on the terms of the Agreement which shall only be deemed to be accepted by CADF when CADF issues a written acceptance of the Gifting Stocks and Shares Form.
- 7.2 Original Donor's obligations and rights in relation to the donation of stocks or shares to CADF
- 7.2.1 The Original Donor shall:
- 7.2.1.2 provide CADF with such access to such documentation and information in respect of the Gifted Asset as CADF may reasonably require on reasonable notice, including but not limited to proof of ownership, documents of authenticity and, where CADF has agreed for the Original Donor to sell the Gifted Asset on CADF's behalf, proof of sale.
- 7.2.2 Once the Gifted Asset has been transferred in whole or in part, and legally and/or beneficially, to CADF, it cannot be returned to the Original Donor and the Original Donor shall have no further right to or interest in the beneficial value of the Gifted Asset or any return or income accruing thereto.
- 7.2.3 Where any income or return, or similar, accruing to the Gifted Asset is received by the Original Donor or any representative of the Original Donor after the date on which CADF has accepted the Gifted Asset, the Original Donor shall hold, or shall ensure that its representative holds, such

- income or return, or similar, on trust for CADF and to CADF's order.
- 7.2.4 Where clause 7.2.3 above applies, the Original Donor shall ensure that any such income or return, or similar, is transferred to CADF within 14 (fourteen) days of receipt.
- 7.2.5 The Original Donor must not, and must ensure that they do not, personally benefit in any way either directly or indirectly from the Gifted Asset.
- 7.2.6 Where CADF has agreed for the Original Donor to sell the Gifted Asset on CADF's behalf, the Original Donor shall hold, or shall ensure that its representative holds, any proceeds of sale received by the Original Donor or any representative of the Original Donor, on trust for CADF and to CADF's order.
- 7.2.7 Where clause 7.2.6 above applies, the Original Donor shall ensure that any such proceeds of sale are transferred to CADF within 14 (fourteen) days of receipt.
- 7.3 Transferring and/or selling the Gifted Asset
- 7.3.1 Where CADF has agreed to accept the donation of the Gifted Asset CADF shall undertake the transfer of the Gifted Asset as soon as is reasonably practicable.
- 7.3.2 Where CADF has agreed to sell the Gifted Asset and transfer the proceeds of sale to the Fund in question, CADF shall undertake such sale as soon as is reasonably practicable.
- 7.3.3 The Original Donor agrees, accepts and understands that CADF accepts no responsibility or liability in respect of achieving a particular price or value for the Gifted Asset.
- 7.4 Warranties and representations
- 7.4.1 The Original Donor represents, warrants and undertakes that:
- 7.4.1.1 it has full capacity and authority to enter into and perform the Agreement;
- 7.4.1.2 the contents of all documentation and information provided to CADF by the Original Donor or on the Original Donor's behalf in respect of the Gifted Asset is in all respects true and accurate, and is not in any way misleading;
- 7.4.1.3 it will undertake its obligations and duties under the Agreement with reasonable skill and care within the timescales specified; and
- 7.4.1.4 it has and will maintain in force all necessary memberships, licences, registrations, approvals, consents or qualifications required by any applicable law, order or regulation necessary to perform its obligations under the Agreement.
- 8 INVESTMENT OF ASSETS AND INCOME**
- 8.1 CADF shall manage the investment of the Assets and Income (if applicable) in accordance with its investment policy (including social or programme related investment).
- 8.2 Where the Donor has selected the Premier Service for the Donor's Fund:
- 8.2.1 If an Investment Request is submitted then CADF shall, subject to the terms of this Agreement and in particular clause 2, consider the request and may arrange for the Assets and/or Income to be invested in accordance with the wishes set out there in, provided such request does not fall outside the policy agreed by CADF for the investment of CADF's Assets from time to time.
- 8.2.2 A Donor may request that Assets and/or Income are applied to make social or programme related investments subject to CADF's policies and procedure on social and programme related investments then in force.
- 8.2.3 Donor may request either that a third party discretionary fund manager is appointed by CADF to manage some or all of the Assets and Income or that CADF places some or all of the Fund on deposit with a third party. Where CADF, in its absolute discretion, agrees to such request, such agreement from CADF shall at all times be subject to the following conditions:
- 8.2.3(a) the Donor agrees that all costs of such appointment or placing of all or any part of the Fund outside CADF are to be deducted from the Assets and/or Income in the Fund;
- 8.2.3(b) CADF's policies and procedures in place at that time will be followed;
- 8.2.3(c) the terms of the appointment of such fund manager or third party are acceptable to CADF;
- 8.2.3(d) CADF is, and continues to be, satisfied with the performance of and the risk presented by such fund manager and/or any associated suppliers, bankers and advisers; and
- 8.2.3(e) CADF will be free to reject or terminate



any such investment, deposit or appointment, at its sole discretion.

8.2.4 In circumstances where CADF holds all or part of the Funds in cash in relation to the Premier Service, CADF shall credit to the Donor's Fund an amount equivalent to interest at the rates and tiers on such accounts as are set out on CAF's Website. Such rates and tiers may be subject to change by CADF in accordance with market conditions and outlook without notice to the Donor.

8.2.5 CADF shall exercise due care and diligence in managing and monitoring the investment of Assets and Income and may take any and all such actions as are required in connection with the investment of Assets or Income in order to meet its obligations. However, CADF shall have no liability to the Donor in respect of the performance of any investment and no act or representation made or alleged to have been made by CADF or representatives of CADF shall be taken as implying or accepting that CADF has any liability to the Donor in connection with the performance of any investment or any failure to invest or to monitor the Assets or Income.

## **9 LIMITATION OF LIABILITY**

- 9.1 The Donor accepts that any duty of care CADF owes in respect of the Fund is owed to the charitable beneficiaries of the Fund. The Donor further acknowledges and accepts that as the Assets and Income in the Fund are owned by CADF, CADF owes no duty of care to the Donor in respect of the Assets and/or Income under the terms of this Agreement or in law and that neither CADF nor the Donor can foresee any losses that can be suffered by the Donor in respect of the Assets and Income in the Fund and that none are within the contemplation of the parties.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 9.3 Nothing in this Agreement limits or excludes CADF's liability for death or personal injury resulting from CADF's negligence; any damage or liability incurred by the Donor as a result of fraud or fraudulent misrepresentation by CADF; or for any other matter for which the limitation or exclusion of liability is prohibited by law.
- 9.4 Other than as provided in clause 9.3 above, CADF shall not be liable for loss of anticipated savings; loss of opportunity; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

9.5 To the extent that liability is not lawfully excluded by this clause 9, the total liability of CADF in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance or failure to perform under or in respect of the Agreement shall be limited to the amount deducted from the Fund in order to pay CADF's fees, costs, contributions or expenses during the 12 month period prior to the date when the liability arose.

## **10 BOOKS AND RECORDS**

CADF shall maintain books and records to show the Fund separately. All expenditures made in furtherance of the purposes of the Fund shall be charged against the Assets and Income (if applicable) comprising the Fund and shall appear on those books and records. CADF shall make such records available to the Donor during normal business hours subject to prior reasonable notice. CADF shall keep copies of all books and records and all reports to the Donor for at least seven years after closure of the Fund.

## **11 FEES AND RECOVERY OF COSTS**

- 11.1 The Donor agrees that CADF shall be entitled to recover from its Fund any sums of money which may be required to be paid to Her Majesty's Revenue and Customs for any reason in relation to the Fund (including, without limitation, costs caused by infringements of any requirements, including the 'benefits rules', which apply to Gift Aid).
- 11.2 The Donor agrees that CADF may deduct from the Fund all costs, fees, contributions and expenses that it incurs in connection with the operation and administration of the Donor's Fund. The Donor accepts that CADF will recover its costs by means of a deduction from the Fund of a sum equivalent to the costs, fees, contributions and expenses set out in the Fee Schedule. Such sums are deducted at such times as set out in the Fee Schedule.
- 11.3 The Donor agrees that CADF may deduct from its Fund all costs, fees, contributions and expenses that become due to third parties or CADF in connection with the operation and administration of the Donor's Fund and in particular those incurred in the course of investing the Assets and/or Income (if applicable).
- 11.4 Closure of the Fund for a reason set out in clauses 6.1; 6.2.1; 6.2.2 and/or 6.3 prior to the Minimum Term (where applicable), shall result in the early closure fees as set out in the Fee Schedule being deducted from the Fund.
- 11.5 The Donor agrees that CADF may also deduct from the Fund the fees, costs, contributions or expenses associated with the provision of any additional

features or additional services that the Donor may request from time to time at the rate or price then prevailing.

11.6 Where there are insufficient amounts held in the Fund by CADF to recover the full amount of its fees, charges and expenses from such amounts, CADF shall be entitled to invoice the Donor, and the Donor shall pay, on the following basis:

11.6.1 all sums due under the Agreement shall (unless otherwise stated) be due for payment within fourteen (14) days from the date of the relevant invoice;

11.6.2 unless otherwise specified, all sums payable by the Donor under the Agreement are expressed to be exclusive of VAT, which shall also be paid by the Donor at the prevailing rate subject to the provision by CADF of a valid VAT invoice;

11.6.3 if the Donor is required to make any tax deduction or withholding, all sums payable pursuant to the Agreement shall be paid free and clear of all deductions or withholdings of any kind, and the amount of the payment due from the Donor shall be increased to an amount which (after making any tax deduction or withholding) leaves an amount equal to the payment which would have been due to CADF if no tax deduction or withholding had been required; and

11.6.4 if payment of any sum due to CADF from the Donor is not made when due, CADF reserves the right to charge interest on the overdue sum from the due date until the date of actual payment at the rate of 3% above the prevailing sterling base rate of the Bank of England from time to time.

11.7 For the avoidance of doubt, the Donor agrees and acknowledges that the Assets and Income (if applicable) that are required to pay for the costs, fees, contributions and expenses referred to in these Terms and conditions will not be available for distribution in accordance with a Grant Request or Letter of Wishes.

11.8 Where gifts other than cash are made to the Fund, the costs of converting the gift to cash will be met by the Fund.

## 12 NOTICES

Notices in connection with the Fund are to be provided to CADF's registered office at 25 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4TA and to the Donor at the correspondence (including email) address set out for the Donor in the Application Form or as subsequently notified to and acknowledged by CADF in writing.

Any notice or other communication given under or in connection with the Fund shall be given by CADF to the Donor personally which shall mean by post, email, in statement messages or inserts or in any other way which CADF chooses and is appropriate and reasonable in the circumstances, and which satisfies CADF's legal and regulatory requirements subject always to the requirement of clause 14 (changes to terms). \*Any notice or communication shall be deemed to have been served, if a letter, the second day after posting if in the UK or seven days after posting to the US and in all other cases at the time of sending.

The Donor shall provide any new contact details to CADF as soon as practicable.

Only signatories appointed by a Donor on an Additional Signatory Form or an Authorised Signatory Form may make requests on behalf of the Donor. If at any time a Donor wishes to change the signatories in connection with its Fund, it must submit the relevant Form to CADF and the amended authority for a signatory shall come into effect as soon as practicable thereafter. If a Donor wishes to update the contact details of a signatory, the same Form must be submitted to CADF and the new contact details shall be effective in accordance with clause 4.9.

## 13 COMPLAINTS

CADF will make every effort to resolve a complaint quickly and fairly. If a Donor has a complaint in relation to any aspect of its Fund, CADF will follow the procedure set out in the CADF complaints procedure prevailing at that time.

## 14 CHANGES TO TERMS

14.1 CADF may change any of the terms set out in these Terms and conditions on providing one month's written notice to the Donor at the correspondence (including email) address held on file for such person or Organisation save where CADF is required to change such terms for legal or regulatory reasons.

14.2 Where a change is required for legal or regulatory reasons, this may be made immediately. Where the Donor regards any proposed change as unfair or unreasonable in law the Donor shall notify CADF of this view within the one month notice period giving reasons for its views. CADF shall review the Donor's concerns and respond in writing as soon as is practical indicating whether it accepts or rejects the Donor's views. The parties may discuss what alternatives, including termination of this Agreement, may be pursued if agreement cannot be reached between the Donor and CADF.

## 15 DATA PROTECTION

- 15.1 The Donor acknowledges that any information provided by it to CADF is up to date and accurate and will keep CADF informed of any changes to the information it holds as soon as possible.
- 15.2 The Donor must read and be aware of CAF's Privacy Notice on [www.cafonline.org/privacy](http://www.cafonline.org/privacy).
- 15.3 The Donor's personal data is processed on behalf of CADF by trusted third parties for the purposes of providing and operating the Fund.
- 15.4 CADF shall, at all times, comply with its obligations and procure that its sub-contractors comply with their obligations under all applicable Data Protection Legislation.
- 15.5 CADF shall only process Personal Data for the purpose of lawfully providing, the Services or as otherwise expressly authorised by the Donor.
- 15.6 To the extent that any Personal Data is required to be disclosed by CADF to any Supervisory Authority or pursuant to any legal requirement, such disclosure shall be permitted provided that such disclosure is made subject to adequate obligations of confidentiality.
- 15.7 Each of CADF and the Donor shall promptly notify the other if within 48 hours of breach: it becomes aware of a breach of the terms of this Agreement in so far as it relates to Personal Data; or it becomes aware of the loss, damage or destruction of any relevant Personal Data, and shall take whatever action is necessary to minimise the impact of such event and prevent such events recurring. The Donor will provide any necessary assistance required to investigate the causes of any such incident, liaise with the Information Commissioner or correct any breaches.
- 15.8 CADF will use appropriate processes to keep the Personal Data or Confidential Information safe.
- 15.9 Upon satisfactory completion of the Services or on termination of this Agreement, CADF will ensure that the Personal Data that it does not need to keep for HMRC and/or regulatory purposes, is securely removed from its systems and any printed copies securely destroyed.

## 16 NO EARMARKING

- 16.1 No gift provided under this Agreement is earmarked to be used in any attempt to influence legislation within the meaning of section 4945(e) of the US Internal Revenue Code. No agreement, oral or written, to that effect has been made nor will be made between the Donor and CADF.

## 17 GENERAL

- 17.1 When a Donor or an Authorised or Additional Signatory contacts CADF, or is contacted by CADF, by phone, such call may be recorded for security and training purposes.
- 17.2 CADF may delegate the provision of some or all of its obligations under these Terms and conditions to one or more third parties as it, in its sole discretion, deems appropriate, but notwithstanding such delegation, CADF shall remain liable for the acts and omissions of every such delegate as if the delegation had not occurred.
- 17.3 CADF represents, warrants and undertakes that:
  - 17.3.1 it has full capacity and authority to enter into and perform the Agreement; and
  - 17.3.2 it has and will maintain in force all necessary memberships, licences, registrations, approvals, consents or qualifications required by any applicable law, order or regulation necessary to perform its obligations under the Agreement.
- 17.4 In performing their obligations under this agreement, both parties shall and shall procure that each member of their group and their sub-contractors (if any) comply at all times with applicable laws, statutes, regulations and codes from time to time including but not limited to the Criminal Finances Act 2017, the Modern Slavery Act 2015 and CAF's anti-slavery policy from time to time and the Bribery Act 2010 and each parties' own Anti-Bribery Policy which each party agrees to maintain.
- 17.5 For the avoidance of doubt under no circumstances does or will CADF provide regulated financial advice.
- 17.6 Following receipt by CADF, of the Agreement (including all Service Schedules and Forms) and any other documents provided by the Donor relating to the Services will be properly scanned, unaltered, and electronically stored and the original destroyed. The scanned copies will be destroyed in accordance with CAF's data retention policy from time to time.
- 17.7 CADF is required to complete identity checks on people opening and operating a Fund. Where possible these checks are performed electronically, however, where this is not possible, the Donor agrees to provide CADF with any documentation that it might require in order for it to comply with all applicable anti-money laundering regulations. The Donor agrees that it may also have to provide details of any funding in connection with its Fund and details of the underlying source of those funds. The Donor confirms that it has procured the consent of each of its Additional Signatories to CADF undertaking such

identification searches. The Donor agrees that the obligation set out in clause 17.7 above is ongoing. Until such information noted in clause 17.7 is provided, CADF may restrict transactions to and from the Fund.

- 17.8 A delay in exercising or failure to exercise a right or remedy under or in connection with the Agreement shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy. Similarly the single or partial exercise of a right or remedy shall not prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.
- 17.9 Nothing in the Agreement and no action taken by CADF or the Donor in connection with the Agreement shall constitute a partnership or agency relationship between any of the parties.
- 17.10 Neither CADF nor the Donor intend that any term of the Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any other person.
- 17.11 This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of their subject matter and neither party has entered into such agreement in reliance upon, and it shall have no

remedy in respect of, any representation or statement which is not expressly set out in this Agreement.

The only remedies available for breach of any representation or statement which was made prior to entry into this Agreement and which is set out in this Agreement shall be for breach of contract and nothing in this condition shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

- 17.12 If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from this Agreement and this shall not affect the remainder of this Agreement which shall continue in full force and effect.
- 17.13 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law.

The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the determination of any dispute arising out of or in connection with this Agreement (including (without limitation) in relation to any non-contractual obligations) and each party irrevocably waives any objection to the jurisdiction of those courts on the grounds of inconvenience or otherwise, and each party irrevocably agrees that a judgment or order of those courts in connection with this Agreement is conclusive and binding upon it.



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## SCHEDULE

**Additional Signatory** means the person or persons appointed by the Donor on an Additional Signatory Form to assume certain of the rights and responsibilities of the Donor under this Agreement alongside the Donor.

**Additional Signatory Form** means the form made available by CADF from time to time in which a Donor can notify CADF of an Additional Signatory and/or update such Additional Signatory contact details (as applicable) to its Fund.

**Agreement** means these Terms and conditions, the Application Form, the Fee Schedule and the Forms which together represent the agreement between the Donor and CADF.

**Application Form** means the form made available by CADF from time to time in which a Donor can apply to open a Fund.

**Appointment of Successor Form** means the form made available by CADF from time to time in which an Original Donor with the Premier Service can notify CADF of the appointment of a Successor to its Fund.

**Assets** means all Assets including cash, stocks, shares and/or non-cash Assets given to CADF by a Donor for inclusion in the Fund.

**Authorised Signatory** means the person or persons appointed by a Donor being an Organisation to act on its behalf in relation to every aspect of the administration of its Fund.

**Authorised Signatory Form** means the form made available by CADF from time to time in which a Donor which is an Organisation can notify CADF of the appointment or replacement of an Authorised Signatory and/or update such Authorised Signatory's contact details (as applicable) to its Fund.

**CADF** means Southampton Row Trust Limited (trading as CAF American Donor Fund) acting for itself and on behalf of CAF America.

**CAF** means Charities Aid Foundation, an unincorporated charitable trust (registered charity number 268369), and where applicable "CAF" shall mean Trustees of the Charities Aid Foundation and those acting with their authority.

**CAF America** means a US charitable organisation incorporated in 1992 in Delaware and is exempt from tax under Section 501(c)(3) of the US Internal Revenue Code.

**CAF's Website** means [www.cafonline.org/system/login-cadf](http://www.cafonline.org/system/login-cadf)

**Charitable Purpose(s)** shall have the meaning given to it in English law as set out in section 2 of the Charities Act 2011 and to the purposes to which an organisation must dedicate its Assets in order to obtain exemption from tax under section 501(c)(3) of the US Internal Revenue Code (to the extent that these have the same meaning as each other).

**Change of Service Option Form** means the form made available by CADF from time to time in which a Donor can change the service option they receive in relation to their Fund.

**Connected Person** means a spouse, close relative or such other acquaintance as Her Majesty's Revenue and Customs shall from time to time regard as connected to the Donor.

**Data Protection Legislation** means any legislation and/or regulations (including all subordinate legislation) in force from time to time in the United Kingdom relating to the protection of individuals with regard to the processing of personal data, the free movement of such data and the protection of privacy, and is applicable to the activities carried out in relation to the Fund and this Agreement.

**Donor** means the Original Donor, being a person or an Organisation (as appropriate) and any Successor.

**Fee Schedule** means the Fee Schedule made available by CADF from time to time in which the fees, costs, contributions or expenses applicable to a Fund are set out, and may be amended from time to time in accordance with clause 14 of these Terms and conditions.

**Forms** mean any or all of the Application Form, Appointment of a Successor Form, Grant Request Form, the Letter of Wishes, Additional/Authorised Signatory Form, Change of Service Option Form, the Investment Request, the Gifting Stocks and Shares Application Form and any other form relating to the Fund provided by CADF and submitted by the Donor as the context may require.

**Fund** means the fund established by CADF to be applied for Charitable Purposes and comprising the Initial Donation and any additional contributions or donations from the Original Donor or directed to the said Fund established by CADF for the Original Donor, and in the case of a Fund with Premier Service level, Income.

**General Fund** means the fund or funds from time to time established by CADF for distribution by CADF in support of its mission.

**Gift Aid** means the amount equal to basic rate tax that CADF can reclaim on a gift made to CADF by a UK taxpayer who has paid more than the value of the amount being so reclaimed in income tax during the tax year in question and who has made a declaration to this effect in the form required by Her Majesty's Revenue and Customs from time to time.

**Gifted Asset** means the asset as described by the Donor on the Gifting Stocks and Shares Application Form in question.

**Gifting Stocks and Shares Application Form** means the Gifting Stocks and Shares Application Form and/or any other Form and medium acceptable to CADF (in its absolute discretion) which sets out sufficient details of the Gifted Asset

**Grant Request Form** means a request made to CADF from time to time by a Donor or an Additional or Authorised Signatory regarding distribution of the Fund for Charitable Purposes.

**Guide** means the additional information and explanatory notes relating to the operation of the Fund, made available by CADF from time to time.

**Income** means any earnings or interest which accrues on the Assets in a Fund with the Premier Service.

**Initial Donation** means the donation remitted to CADF by the Original Donor with the Application Form.

**Investment Request** means a request made to CADF from time to time by a Donor or an Additional or Authorised Signatory of a Fund with the Premier Service regarding the investment or use of Assets and/or Income in the period prior to distribution for Charitable Purposes.

**Letter of Wishes** means the form made available by CADF from time to time in which the Original Donor can communicate any recommendation to CADF regarding distribution of the Fund on their death or in the event of insolvency, dissolution, winding up or appointment of administrators or receivers to the Original Donor (as appropriate) for Charitable Purposes.

**Minimum Balance** means the applicable minimum balance for the Fund's selected service level, as set out in the Fee

Schedule from time to time.

**Minimum Term** means the applicable minimum term for the Fund's selected service level, as set out in the Fee Schedule from time to time.

**Organisation** means a Donor which is an incorporated or unincorporated organisation.

**Original Donor** means the person or Organisation (as appropriate) noted as such service on the Application Form.

**Premier Service** means the service where the Donor receives the rights set out in clauses 4.7, 4.8 and 8.2 of this Agreement following successful application for such service in the relevant Form.

**Privacy Notice** means the notice document which explains how we use and process your data and is available at [www.cafonline.org/privacy](http://www.cafonline.org/privacy).

**Successor** means the person or persons appointed by an Original Donor of a Fund with Premier Service level, on an Appointment of a Successor Form to assume the rights and responsibilities of the Original Donor under this Agreement in place of the Original Donor and any person or persons appointed in turn by such person or persons in their place.

**UK** means the United Kingdom.

**US** means the United States of America.