

CAF SERVICES FOR COMPANIES

Terms and Conditions

Definitions

The definitions set out in the Definition Schedule to these Terms and Conditions apply to all references in this Contract.

Terms and Conditions

1 Provision of the Services by CAF

- 1.1 A completed application form submitted in hard copy or online by the Customer to CAF constitutes an offer by the Customer to purchase the Services to which the application form relates on the terms of this Contract.
- 1.2 An application form shall only be deemed to be accepted by CAF when CAF issues a written acceptance of the application form, at such time this Contract shall come into existence in respect of the Service(s) to which the application form in question relates.
- 1.3 In consideration of the fees, and provided that the Customer complies with the terms of this Contract, CAF shall provide the Services in accordance with this Contract.
- 1.4 CAF may delegate the provision of some or all of the Services to one or more third parties as it, in its sole discretion, deems appropriate, but notwithstanding such delegation, CAF shall remain liable for the acts and omissions of every such delegate as if the delegation had not occurred.

2 Customer obligations and rights

- 2.1 The Customer shall:
 - 2.1.1 comply with its obligations under this Contract and any applicable law and regulations; and
 - 2.1.2 provide CAF with such access to the Customer's information as CAF may reasonably require on reasonable notice.
- 2.2 The Customer may request CAF to accept requests in respect of the Services from another person as well as the Customer by submitting a Contacts Form.

- 2.3 The Customer may replace any of the Forms by completing and submitting a new Form to CAF. This will take effect only after CAF 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 distribution or investment which CAF has decided to make prior to such Form being effective in accordance with this condition 2.3.
- 2.4 In the event of more than one Form being submitted to CAF which contain conflicting information, then CAF shall be entitled to take account of the request contained in the Form most recently received by it.
- 2.5 The Customer agrees to provide CAF with any documentation (including but not limited to original passports and/or driving licences and current utility bills showing home addresses) that it might require in order for it to comply with all applicable money laundering regulations, so that the Customer and/or any of its Employees, donors, trustees, partners or members can be identified by CAF for money laundering or other regulatory purposes. The Customer agrees that CAF can copy any such documentation if CAF deems it necessary in its sole discretion to do so. The Customer agrees that it may also have to provide details of any funding in connection with the Services and details of the underlying source of those funds.
- 2.6 The Customer agrees that the obligation set out in condition 2.5 above is ongoing, so that it must comply with any written request by CAF to provide such evidence throughout the term of this Contract, whether or not information has been supplied already.
- 2.7 Where the Customer receives money from a third party in respect of any of the Services, irrespective as to whether or not this was solicited by the Customer in accordance with, or in breach of, this Contract, the Customer shall ensure that they provide CAF with a Giving Request that accurately reflects the purposes for which the third party made the donation in question.

2.8 The Customer shall fully indemnify CAF and hold CAF harmless against all and any claims made by any party as a result of the Customer's failure to comply with condition 2.7 or in any way fail to use such third party money for the purpose for which it was donated or requested to be donated to.

3 Fees and recovery of costs

3.1 The Customer agrees that CAF shall be entitled to recover from donations made by the Customer in respect of any of the Services from time to time the Fees and Contributions and, if such amounts are insufficient, from the Customer 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 Services (including, without limitation, costs caused by infringements of any requirements, including the 'benefits rules', which apply to tax-effective charitable donations).

3.2 Where there are insufficient amounts held by CAF in respect of the Services for CAF to recover the full amount of its fees, charges and contributions from such amounts, CAF shall be entitled to invoice the Customer, and the Customer shall pay, on the following basis:

- 3.2.1 all sums due under this Contract shall (unless otherwise stated) be due for payment within thirty (30) days from the date of the relevant invoice;
- 3.2.2 unless otherwise specified, all sums payable by the Customer under this Contract are expressed to be exclusive of VAT, which shall also be paid by the Customer at the prevailing rate subject to the provision by CAF of a valid VAT invoice;
- 3.2.3 if the Customer is required to make any deduction or withholding, all sums payable pursuant to this Contract shall be paid free and clear of all deductions or withholdings of any kind, and the amount of the payment due from the Customer 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 CAF if no tax deduction or withholding had been required; and
- 3.2.4 if payment of any sum due to CAF from the Customer is not made when due, CAF 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.

4 Intellectual Property Rights

- 4.1 All Intellectual Property Rights belonging to a party prior to this Contract becoming effective shall remain vested in that party. Where there are modifications to pre-existing material which are inseparable from the pre-existing material, then the party which owns the pre-existing material shall own the modifications.
- 4.2 No Intellectual Property Rights to which CAF is entitled shall be used by the Customer for any purpose other than as provided for in this Contract.
- 4.3 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by CAF.

5 Data Protection

- 5.1 Each of CAF and the Customer shall, at all times, comply with its obligations and procure that its sub-contractors comply with their obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed by it in the course of performing its obligations under this Contract, including by maintaining any valid and up-to-date registration or notification required under the Data Protection Legislation.
- 5.2 Each of CAF and the Customer shall only process Personal Data for the purpose of lawfully providing, or receiving, the Services or as otherwise expressly authorised by the other and the individual to which the Personal Data relates and, in particular but without limitation, CAF shall be entitled to:
 - 5.2.1 use Personal Data provided by the Customer to update all records relating to the individuals whose Personal Data it is for the purposes of any other service provided by CAF to or for the benefit of such individuals;
 - 5.2.2 unless in any particular case an individual has explicitly requested anonymity, pass on to the organisations to whom the individual has made a charitable gift, pursuant to CAF's provision of the Services, the Personal Data of the individual for the purpose of enabling those organisations to establish direct contact with the individual;
 - 5.2.3 unless the Customer has explicitly requested non-disclosure, pass on to the organisations to which charitable gifts have been or are being made to pursuant to CAF's provision of the Services, details of the Customer including the Personal Data of any individuals for the time being performing functions relating to the Services within the Customer; and
 - 5.2.4 at its discretion, inform such individuals of services provided by CAF other than the Services provided that their prior explicit consent thereto has been obtained.

- 5.3 Each of CAF and the Customer shall ensure that neither it nor any of its Employees, agents or sub-contractors shall publish, disclose or divulge any Personal Data to any third party without the written consent of the other, unless as part of provision of the Services or when legally obliged to do so.
- 5.4 To the extent that any Personal Data is required to be disclosed by either CAF or the Customer to any Supervisory Authority or pursuant to any legal requirement, such disclosure shall be permitted provided that such disclosure is made subject to obligations of confidentiality no less onerous than those imposed by the Data Protection Legislation, the regulations and guidance of the Information Commissioner's Office and the terms of this Contract. For the avoidance of doubt, CAF shall be under no obligation to provide the Customer with any information regarding Employees that CAF holds.
- 5.5 Each of CAF and the Customer confirms to and agrees with the other that it shall not process Personal Data outside the European Economic Area (EEA) or a country not deemed to provide an adequate level of protection for Personal Data by a Supervisory Authority other than:
- 5.5.1 as permitted under Data Protection Legislation;
 - 5.5.2 in accordance with any guidance issued by a Supervisory Authority; and
 - 5.5.3 pursuant to an agreement which requires a level of protection no less onerous than that imposed by the obligations under Data Protection Legislation, the regulations and guidance of the Information Commissioner's Office and the terms of this Contract.
- 5.6 Each of CAF and the Customer shall promptly notify the other if:
- 5.6.1 it becomes aware of a breach of the terms of this Contract in so far as it relates to Personal Data; or
 - 5.6.2 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. In such event, CAF and the Customer will co-operate with each other in a reasonable manner acting in the interests of the data subject.

6 Warranties and representations

- 6.1 The Customer represents, warrants and undertakes that:
- 6.1.1 it has full capacity and authority to enter into and perform this Contract;
 - 6.1.2 where the Service is systems-based, it has been given the opportunity to test the functionality of the systems for the provision of the Services and has satisfied itself that the Services are appropriate to its needs;
 - 6.1.3 it will undertake its obligations and duties under this Contract with reasonable skill and care within any timescales specified;
 - 6.1.4 the performance by CAF of the Services will not cause CAF to infringe any third party rights (including, but not limited to, third party Intellectual Property Rights) or any third party item supplied directly or indirectly by the Customer; and
 - 6.1.5 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 this Contract.
- 6.2 CAF represents, warrants and undertakes that:
- 6.2.1 it has full capacity and authority to enter into and perform this Contract;
 - 6.2.2 it will use its reasonable endeavours to ensure that the Services are performed by persons possessing suitable skills and experience; and
 - 6.2.3 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 this Contract.

7 Confidentiality

- 7.1 CAF and the Customer shall each keep confidential and shall not disclose to any person any Confidential Information, except insofar as the Confidential Information is required to be disclosed by law or by regulation (whether or not having the force of law) or by any Supervisory Authority.
- 7.2 CAF and the Customer each undertakes to use the Confidential Information of the other solely in connection with the performance of this Contract and not otherwise for its own benefit or the benefit of any third party.
- 7.3 Neither CAF nor the Customer shall make any public or other announcement concerning the existence or terms of this Contract, whether by way of press release or otherwise without the prior written consent of the other.

7.4 Notwithstanding the expiry or early termination of this Contract, the provisions of this condition 7 shall continue to apply without limit in time.

8 Limitation of liability – Exclusions and limitations – THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CONDITION

- 8.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
- 8.2 Nothing in this Contract limits or excludes CAF's liability for death or personal injury resulting from CAF's negligence; any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by CAF or the Trustees; or for any other matter for which the limitation or exclusion of liability is prohibited by law.
- 8.3 Other than as provided in condition 8.2 above, CAF shall not be liable for loss of anticipated savings; loss of opportunity; loss of or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 8.4 To the extent that liability is not lawfully excluded by this condition 8, the total liability of CAF 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 this Contract shall be limited to the amount paid by the Customer of CAF's fees, costs, contributions or expenses during the 12 month period prior to the date when the liability arose.
- 8.5 Notwithstanding the expiry or early termination of this Contract, the provisions of this condition 8 shall continue to apply without limit in time.

9 Books and records

CAF shall maintain books to show the Services separately. All expenditures made in furtherance of the purposes of each Service shall be charged against the cash comprising the Service in question and shall appear on those books, unless otherwise agreed. CAF shall keep copies of all books and records and all reports or statements relating to the Customer's Services for at least four years after closure of the Service in question.

10 Closure of Service(s)

- 10.1 Except as set out in condition 13.3, if at any time, a Customer wishes CAF to close one or more of the Services, it shall, on three months' notice to CAF, be entitled to request that all of its undistributed donations are distributed for Charitable Purposes and to give written notice that it wishes CAF to close such Service(s). For the avoidance of doubt:
- 10.1.1 termination of any CAF Give As You Earn Service(s) will not operate as termination of any CAF Charity Account or CAF Charitable Trust opened by an Employee, as this comprises a separate relationship directly between CAF and the Employee; and
- 10.1.2 closure of all Services shall operate as termination of this Contract.
- 10.2 CAF shall be entitled to close one or more of the Services on giving three months' notice in writing to the Customer in the following circumstances:
- 10.2.1 where, in relation to the Service, no valid Giving Request is held by CAF and where no assets have been donated or received by CAF for a period of at least two years and assets have not been distributed for a period of at least two years (provided that this is not solely due to any act or omission of CAF). Deduction of fees, costs, contributions or expenses shall not be considered a distribution for these purposes;
- 10.2.2 where there are insufficient monies held by CAF from the Customer to pay the applicable fees, costs, contributions or expenses which become due under this Contract, and
- 10.2.3 where CAF decides in its absolute discretion that its ability to advance its Charitable Purposes is best served by the closure of such Service(s); or
- 10.2.4 where there has been a breach of this Contract by the Customer, and
- closure of all Services shall operate as termination of this Contract.
- 10.3 Upon closure of a particular Service, CAF shall distribute the assets. Without prejudice to its overriding discretion, where no Giving Request is in place, CAF shall request that the Customer provides a Giving Request to CAF and shall give the Customer 30 days in which to do so. If this is not received then CAF shall transfer the assets to the General Fund.
- 10.4 If the Customer wishes to donate further assets in respect of a Service after it has been closed by CAF, the Customer will be requested to submit a new application form.

11 Notices

11.1 Notices in connection with the Services are to be provided to CAF's head office at 25 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4TA companyaccounts@cafonline.org and to the Customer at the address set out for the Customer in the CAF Services for Companies Organisation Registration Form or as subsequently notified to and acknowledged by CAF in writing (including, for example, by submitting an application form for a subsequent service with a different registered address stated).

11.2 Any notice given under or in connection with the Services shall be in writing and:

- delivered by hand;
- sent by pre-paid recorded delivery;
- sent by facsimile; or
- sent by email (with a copy sent by pre-paid recorded delivery within 24 hours of sending the email) to the relevant party.

11.3 Any notice given under or in connection with the Services shall be deemed to have been served:

- if delivered by hand, at the time of delivery;
- if sent by pre-paid recorded delivery, at 9am on the second day after the date of posting;
- if sent by facsimile, at the time of confirmation of completion of transmission by way of a transmission report; and
- if sent by email, at the time of sending (except that if an automatic electronic notification is received by the sender informing the sender that the email has not been delivered to the recipient or that the recipient is out of the office, that email shall be deemed not to have been served).

The Customer shall provide any new contact details to CAF as soon as practicable.

11.4 Only signatories appointed by a Customer on a Contacts Form or on an application form may make requests on behalf of the Customer. If at any time a Customer wishes to change the signatories in connection with its Services, it must submit this Form to CAF and the amended authority for a signatory shall come into effect as soon as practicable thereafter. If a Customer wishes to update the contact details of a signatory, the same Form must be submitted to CAF and the new contact details shall be effective as soon as practicable thereafter.

12 Complaints

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

13 Changes to terms

13.1 CAF may change any of the terms of this Contract on providing one month's written notice to the Customer at the address set out for the Customer in the CAF Services for Companies Organisation Registration Form or as subsequently notified to CAF in writing save where CAF is required to change such terms for legal or regulatory reasons.

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

13.3 Where CAF has changed any of the terms of this Contract the Customer shall be entitled to close the relevant Service on one month's notice provided that such notice is served within one month of CAF serving a notice of change under condition 13.1.

14 General

14.1 When a Customer contacts CAF, or is contacted by CAF, by phone, such call may be recorded for security and training purposes, and in making the call, or proceeding with a call CAF makes to the Customer, the maker or recipient of the call on behalf of the Customer is consenting to this. The Customer must ensure that its relevant Employees, agents or representatives are aware of this.

14.2 A delay in exercising or failure to exercise a right or remedy under or in connection with this Contract 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.

- 14.3 This Contract constitutes the entire Contract between the parties and supersedes any prior Contract or arrangement in respect of their subject matter and neither party has entered into this Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in this Contract. The only remedies available for breach of any representation or statement which was made prior to entry into this Contract and which is set out in this Contract 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.
- 14.4 If any term of this Contract 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 Contract and this shall not affect the remainder of this Contract which shall continue in full force and effect.
- 14.5 Nothing in the Contract and no action taken by CAF or the Customer in connection with the Contract shall constitute a partnership or agency relationship between any of the parties, except as expressly provided in condition 5.1 of the CAF Matched Giving Service Schedule (if applicable).
- 14.6 The trustees of the Charities Aid Foundation accept each application form solely in their capacity as trustees of the Charities Aid Foundation. The Customer's right of recourse under this Contract therefore shall be limited to the assets of the Charities Aid Foundation at the relevant time.
- 14.7 Neither CAF nor the Customer intend that any term of this Contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any other person.
- 14.8 This Contract 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 Contract (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 Contract is conclusive and binding upon it.

Definition Schedule

Affiliate means each direct or indirect Subsidiary and Holding Company of an entity or organisation and each other direct or indirect Subsidiary of any such Holding Company.

Authorised Contact means the person or persons appointed by a Customer on a Contacts Form or on an application form to assume certain of the rights and responsibilities of the Customer under this Contract alongside the Customer.

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

CAF Charitable Trust means the fund established by CAF to be applied for Charitable Purposes and comprising the CAF Charitable Trust Initial Donation and any additional contributions or donations from the Original Donor or directed to the said fund established by CAF for the Original Donor, together with the Income.

CAF Charitable Trust Initial Donation means the donation remitted to CAF by the Original Donor with the CAF Charitable Trust Application Form.

CAF Charity Account means the initial donation and any additional contributions or donations from an Employee or directed to CAF to be held subject to terms and conditions and to the request of the Employee, in each case, to be applied for Charitable Purposes.

Charitable Purpose(s) shall have the meaning given to it in English law as set out in section 2 of the Charities Act 2011 (as amended or superseded).

Confidential Information means all information provided by one party to the other in connection with the Services, other than

- all information that is in, or comes into, the public domain; and
- information that the party seeking to rely on the information,

can show was properly and lawfully in its possession prior to the time that it was disclosed by the other party in connection with the Services.

Contract means together: these CAF Services for Companies Terms and Conditions, the Service Schedule and associated Fee Schedule for each of the Services subscribed for by the Customer, (in each case, as the same may be amended in accordance with condition 13 of these Terms and Conditions), and the Forms submitted to CAF by the Customer from time to time.

Contributions mean the applicable Contributions for the Services from time to time (and which currently are as set out in the relevant Service Schedule).

Customer means the person or persons, or organisation (as appropriate) noted as such on the CAF Services for Companies Organisation Registration Form.

Data Protection Legislation means any legislation (including all subordinate legislation) in force from time to time in the United Kingdom which implements the European Union Directives 95/46/EC and 97/66/EC on 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 this Contract.

Employee means an employee, pensioner or worker of the Customer or a Customer's Affiliate.

Fees mean the applicable Fees for the Services from time to time (and which currently are as set out in the relevant Service Schedule).

Fee Schedules means the fee schedules indicated as applicable to this Contract on the application forms submitted by the customer and accepted by CAF for each of the Services in which the fees, charges and contributions applicable to such relevant Services are set out, as may be amended from time to time, in accordance with condition 13 of these Terms and Conditions.

Forms means such of the Organisation Registration Form; the Giving Request(s); the Contacts Form; the application forms for the Services submitted by the Customer, and/or any of the applicable Forms (defined as such in the relevant Service Schedules), as the context may require.

General Fund means the fund or funds from time to time established by the Trustees for Charitable Purposes for distribution to third party organisations by CAF in support of its mission.

Giving Request means a written or electronic request made to CAF from time to time by a Customer or an Authorised Contact regarding distribution of all or part of the assets donated by the Customer in respect of the Service(s) in question for Charitable Purposes including, but not limited to, a request to set up a standing order.

Holding Company means in relation to the Customer, any other company or corporation in respect of which the Customer is a Subsidiary.

Income means any earnings or interest which accrues on the cash or non-cash assets in the CAF Charitable Trust.

Intellectual Property Rights means all rights in patents, trade marks and service marks (including associated goodwill), designs, trade or business names, trade addresses, copyrights, topography rights and databases (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

Original Donor means the person or persons, or organisation (as appropriate) noted as such on the CAF Charitable Trust Application Form.

Personal Data means all data and other information about or pertaining to those individuals whom use the Services (including Employees), whether that data or information is in oral, visual or written form or is recorded in any other medium.

Processing has the meaning given to that term by the Data Protection Legislation and Processed shall be construed accordingly.

Service means any or all of the services to be provided by CAF as more particularly described in each of the Service Schedules and as indicated as applicable to this Contract on the application form for the Service in question.

Service Schedules means the terms and conditions relating to those Services indicated as applicable to this Contract on the application form(s) submitted by the Customer and accepted by CAF for the Service(s) in question, as may be amended from time to time in accordance with condition 13 of these Terms and Conditions.

Subsidiary means a subsidiary within the meaning of Section 1159 of the Companies Act 2006 (as amended or superseded).

Supervisory Authority means any competent regulatory authority including but not limited to the Financial Services Authority (or any successor organisation), the Information Commissioner's Office, Her Majesty's Revenue and Customs, the Charity Commission and any equivalent financial services, law enforcement or privacy authority in any other jurisdiction in which the Services are provided or the Personal Data is processed.

Trustees means the Trustees from time to time of CAF.

Charities Aid Foundation, 25 Kings Hill Avenue,
Kings Hill, West Malling, Kent ME19 4TA

T: +44 (0)3000 123 000

W: www.cafonline.org

E: companyaccounts@cafonline.org

Registered charity number 268369

CAF Charities Aid
Foundation