

# CAF CHARITY ACCOUNT

## *Terms and conditions*

### Definitions

The definitions set out in the Schedule to these Terms and conditions apply to all references to the terms defined in the schedule where they appear in the terms and conditions and throughout the rest of this guide.

### Terms and conditions

#### 1 Nature of a Charity Account

1.1 All assets donated by a Donor to the Charity Account constitute an irrevocable and outright gift by the Donor to CAF of all right, title and interest in such assets. CAF agrees to hold such assets and to apply them solely for Charitable Purposes and to provide such information to the Donor about the Charity Account as is provided for in this Agreement. CAF further agrees that it will make the Forms available to the Donor so that they may notify CAF of their wishes in respect of the distribution of the Charity Account for Charitable Purposes.

1.2 Any income or gain resulting from the investment of undistributed assets shall be used by CAF for its own purposes and does not form part of the Charity Account.

1.3 For the avoidance of doubt:

- 1.3.1 once a donation has been made to a Charity Account, such donation cannot be repaid to the Donor;
- 1.3.2 at no time will the Donor (nor any Connected Person) be able to derive any benefit from the assets in the Charity Account; and
- 1.3.3 no distribution from the Charity Account may be used to discharge or satisfy a legally enforceable pledge or obligation of any person.

#### 2 CAF's general authority

2.1 When distributing the Charity Account, CAF will, subject to the terms of this Agreement (and in particular clauses 3 and 6) and to CAF's procedures, policies and applicable law and regulation from time to time, take into account the Donor's wishes as set out in a Giving Request. However, and notwithstanding any other terms of the Agreement, CAF shall at all times have final discretion as to whether or when to distribute all or part of the Charity Account.

2.2 CAF may make such enquiries as it deems necessary to ensure that the Charity Account 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 CAF's authority to distribute

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

3.1 where no valid Letter of Wishes or valid Giving Request for the Charity Account is held by CAF and:

3.1.1 assets are held in the Charity Account but have not been distributed from the Charity Account 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 from the Charity Account for these purposes);

3.1.2 the Donor has indicated that it does not wish to or cannot complete any of the Forms, submit a Giving Request or otherwise make a request or express a wish on how the assets should be distributed; or

3.1.3 in CAF's reasonable opinion the Donor's capability or capacity to complete any or all of the Forms, submit a Giving Request or otherwise make a request or express a wish on how the assets should be distributed is in doubt;

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

3.3 where the Charity Account 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 may not market or publicise the Charity Account or fundraise for it unless it does so with the prior written consent of CAF and only then where the Donor agrees to act in accordance with CAF's policies and procedures.

4.2 The Donor may make a Giving Request at any time and by such means as CAF shall make available from time to time.

4.3 The Donor may make a request as to how CAF distributes the Charity Account for Charitable Purposes after their death in a Letter of Wishes.

4.4 The Donor may request CAF to accept requests in respect of his/her Charity Account from another person as well as the Donor by submitting an Additional Signatory Form.

4.5 The Donor 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 receipt of such Form.

- 4.6 In the event of more than one Form being submitted to CAF at the same time and containing conflicting information, then CAF shall be entitled to take account of the request contained in the Form most recently received by it.
- 4.7 The Donor shall be entitled to receive statements of its Charity Account provided by CAF annually. This statement shall list all donations to the Charity Account, all capital transactions and all grants made from the Charity Account and fees taken during the period covered by the statement.
- 4.8 A Donor shall not suggest that CAF use any portion of the Charity Account other than for Charitable Purposes.
- 5 Operating the Charity Account**
- 5.1 The Donor will be able to provide assets to the Charity Account using the methods set out in the Guidance Notes.
- 5.2 Where applicable (as set out in the Guidance Notes), CAF will reclaim Gift Aid in respect of a donation to the Charity Account and apply the amount received from Her Majesty's Revenue and Customs in respect of that Gift Aid reclamation to the Charity Account as if it were a donation or contribution directed to the Charity Account for the purposes of these Terms and conditions.
- 5.3 Unless otherwise set out in this Agreement, CAF may act upon requests and information that it believes in good faith to have been received from the Donor or an Additional Signatory whether made in writing, electronically or verbally. The Donor shall be responsible for monitoring activity in its Charity Account to ensure that it is being operated to its satisfaction.
- 6 Closure of a Charity Account**
- 6.1 If at any time, a Donor wishes CAF to close the Charity Account, it shall, on 30 days' notice to CAF, be entitled to request that all assets within the Charity Account are distributed for Charitable Purposes and to give written notice that it wishes CAF to close the Charity Account and terminate this Agreement.
- 6.2 CAF shall be entitled to close a Charity Account on giving 30 days' notice in writing to the Donor in the following circumstances:
- 6.2.1 where the assets held in a Charity Account have not changed and have remained there for a period of 24 months;
- 6.2.2 where there are insufficient monies in the Charity Account to pay the applicable fees, costs, contributions or expenses which become due under this Agreement; or
- 6.2.3 where CAF decides in its absolute discretion that its ability to advance its Charitable Purposes is best served by the closure of a Charity Account.
- 6.3 Upon closure of the Charity Account CAF shall distribute the assets. Without prejudice to its overriding discretion, where no Giving Request is in place, CAF shall request that the Donor provides a Giving Request to CAF and shall give the Donor ten working days in which to do so. If this is not received then CAF shall transfer the assets to the General Fund.
- 6.4 If the Donor wishes to donate further assets to the Charity Account after it has been closed by CAF, the Donor will be requested to submit a new Application Form.
- 6.5 If the Donor dies and has not left a Letter of Wishes with CAF, or with their executors for CAF, CAF shall transfer the assets comprising the Charity Account to the General Fund and close the Charity Account.
- 6.6 If the Donor dies and has left a Letter of Wishes with CAF, or with their executors for CAF, CAF shall distribute the assets comprising the Charity Account in accordance with the Letter of Wishes, subject always to CAF's overriding discretion, and close the Charity Account.
- 7 Limitation of liability**
- 7.1 The Donor accepts that any duty of care CAF owes in respect of the Charity Account is owed to the charitable beneficiaries of the Charity Account. The Donor further acknowledges and accepts that as the assets in the Charity Account are owned by CAF, CAF owes no duty of care to the Donor in respect of the assets under this Agreement or in law and that neither CAF nor the Donor can foresee any losses that can be suffered by the Donor in respect of the assets in the Charity Account and that none are within the contemplation of the parties.
- 7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 7.3 Nothing in this Agreement limits or excludes CAF's liability for death or personal injury resulting from CAF's negligence; any damage or liability incurred by the Donor 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.
- 7.4 Other than as provided in clause 7.3 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;
- 7.5 To the extent that liability is not lawfully excluded by this clause 7, 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 the Agreement shall be limited to the amount deducted from the Charity Account in order to pay CAF's fees, costs, contributions or expenses during the year in which the liability arose.
- 8 Books and records**
- CAF shall maintain books to show the Charity Account separately. All expenditures made in furtherance of the purposes of the Charity Account shall be charged against the assets comprising the Charity Account and shall appear on those books. CAF shall keep copies of all books and records and all reports or statements to the Donor for at least four years after closure of the Charity Account.
- 9 Fees and recovery of costs**
- 9.1 The Donor agrees that CAF shall be entitled to recover from

its Charity Account 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 Charity Account (including, without limitation, costs caused by infringements of any requirements, including the 'benefits rules', which apply to Gift Aid).

- 9.2 The Donor agrees that, to defray the costs of administering the Charity Account, CAF may deduct from its Charity Account all costs, fees, contributions and expenses that it incurs in connection with the operation and administration of the Charity Account. The Donor accepts that CAF will recover its costs by means of a deduction from the Charity Account of a sum equivalent to the costs, fees, contributions and expenses set out in the Fee Schedule. Such sums are deducted from the Charity Account at the time of the relevant transaction.
- 9.3 The Donor agrees that CAF may also deduct from the Charity Account 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.
- 9.4 For the avoidance of doubt, the Donor agrees and acknowledges that the assets 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 Giving Request or Letter of Wishes.
- 9.5 Where gifts other than cash are made to the Charity Account, the costs of converting the gift to cash will be met by the Charity Account.

## 10 Notices

Notices in connection with the Charity Account are to be provided to CAF's head office at 25 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4TA and to the Donor at the address set out for the Donor in the Application Form or as subsequently notified to and acknowledged by CAF in writing.

Any notice or other communication given under or in connection with the Charity Account 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.

Any notice or communication given under or in connection with the Charity Account 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). Any Donor shall provide any new contact details to CAF as soon as practicable.

Only signatories appointed by a Donor on an Additional 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 Charity Account, 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 Donor 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 on receipt.

## 11 Complaints

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

## 12 Changes to terms

- 12.1 CAF 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 address held on file for such person save where CAF is required to change such terms for legal or regulatory reasons.
- 12.2 CAF 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 CAF. Where a change is required for legal or regulatory reasons, this may be made immediately without notice. Where the Donor regards any proposed change as unfair or unreasonable in law the Donor shall notify CAF of this view within the one month notice period giving reasons for its views.

## 13 Data protection

CAF will not share information about a Donor with any outside person or organisation, except where this has been authorised by the Donor or a person acting with their authority or where this is required in order to provide a product or service to the Donor, or where CAF is legally obliged to do so.

## 14 General

- 14.1 When a Donor 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 you, you are consenting to this.
- 14.2 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.
- 14.3 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.

- 14.4 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.
- 14.5 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.

## Schedule

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

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

**Assets** means all assets including cash, stocks, shares and/or non-cash assets given to CAF by or on behalf of a Donor for inclusion in the Charity Account.

**Agreement** means these terms and conditions, the Application Form and the Fee Schedule which together represent the agreement between the Donor and CAF.

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

**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.

**Charitable Purpose(s)** shall have the meaning given to it in English law as set out in section 2 of the Charities Act 2006.

**Charity Account** means the Initial Donation and any additional contributions or donations from the Donor or directed to CAF to be held subject to terms and conditions and to the request of the Donor, in each case, to be applied for Charitable Purposes.

**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.

**Donor** means the person noted as such on the Charity Account Application form.

**Fee Schedule** means the schedule made available by CAF from time to time in which the fees, costs, contributions or expenses applicable to a Charity Account are set out.

**Forms** means any or all of the Application Form, the Letter of Wishes and the Additional Signatory Form submitted by the Donor 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 by CAF in support of its mission.

**Gift Aid** means the amount equal to basic rate tax that CAF can reclaim on a gift made to CAF 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.

**Giving Request** means a written, electronic or verbal request made to CAF from time to time by a Donor or an Additional Signatory regarding distribution of all or part of the Charity Account for Charitable Purposes.

**Guidance Notes** means the additional information and explanatory notes relating to the operation of the Charity Account, made available by CAF from time to time.

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

**Letter of Wishes** means the form made available by CAF from time to time in which a Donor can communicate any request to CAF regarding distribution of the Charity Account on their death for Charitable Purposes.

**Trustees** means the Trustees from time to time of CAF.

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Registered charity number 268369