

# CAF CHARITY ACCOUNT

## Terms and Conditions

### Definitions

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

### Terms and Conditions

#### 1 Nature of the Charity Account

- 1.1 All Assets donated by the 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 the Donor 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 the 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 Assets from 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 regulations from time to time, take into account the Donor's wishes as set out in a Giving Request and the Letter of Wishes. **However, and notwithstanding any other terms of this 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 Assets

- 3.1 Without prejudice to the more general provisions of clause 2, CAF may, in the following circumstances, distribute all or part of the Assets from the Charity Account for Charitable Purposes without seeking or having regard to the Donor's wish or request:
  - 3.1.1 where no valid Letter of Wishes or valid Giving Request for the Charity Account is held by CAF and:
    - (a) 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); and/or
    - (b) the Donor has indicated that they do not wish to or cannot complete and/or submit any of the Forms, or otherwise make a request or express a wish on how the Assets should be distributed; and/or
    - (c) in CAF's reasonable opinion, the Donor's capability or capacity to complete and/or submit any or all of the Forms, or otherwise make a request or express a wish on how the Assets should be distributed, is in doubt; and/or
    - (d) CAF receives formal notification of the death of the Donor;
  - 3.1.2 where, in CAF's reasonable opinion, the wish or 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;
  - 3.1.3 where the Charity Account is closed in the circumstance set out in clause 6; or
  - 3.1.4 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.
- 4.2 The Donor may make a Giving Request as to how the Donor wishes CAF to distribute the Charity Account for Charitable Purposes at any time prior to their death and by such means as CAF shall make available from time to time.
- 4.3 The Donor may set out how they wish CAF to distribute the Charity Account for Charitable Purposes after their death in a Letter of Wishes.
- 4.4 For the avoidance of doubt only the Donor can fund its Charity Account and donations from third parties will not be accepted, but the Donor may request CAF to accept Giving Requests in respect of their Charity Account from another person as well as the Donor by submitting an Additional Signatory Form. Upon the death of the Donor, the authority of the Additional Signatory shall lapse.
- 4.5 CAF is required to complete identity checks on people opening and operating a Charity Account. Where possible these checks are performed electronically, however, where this is not possible, the Donor agrees to provide CAF 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 CAF Charity Account 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 CAF undertaking such identification searches. The Donor agrees that the obligation set out in condition 4.5 above is ongoing. Until such information noted in clause 4.5 is provided, CAF may restrict transactions to and from the Charity Account.
- 4.6 The Donor may replace any of the Forms (including any changes to Additional Signatories) by completing and submitting a new Form to CAF which shall take effect only after CAF has received such 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 which CAF has determined to make prior to receipt and verification of such Form.

- 4.7 In the event of more than one Form being submitted to CAF at a similar time and containing conflicting information, CAF shall be entitled to take account of the request contained in the Form most recently received and verified by it.
- 4.8 On request from the Donor (or the Additional Signatory (if any)), CAF shall provide an annual statement of their Charity Account. Such summary of transactions shall list all donations into the Charity Account, and distributions made from the Charity Account and fees taken during the period covered by the statement.
- 4.9 The Donor shall not suggest that CAF uses any portion of the Charity Account other than for Charitable Purposes.

#### **5 Operating the Charity Account**

- 5.1 The Donor will be able to donate 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 HMRC 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 the Additional Signatory (if any) whether made in writing, electronically or verbally. The Donor shall be responsible for monitoring activity of their Charity Account to ensure that it is being operated to their satisfaction.

#### **6 Closure of the Charity Account**

- 6.1 If at any time, the Donor wishes to close the Charity Account, they shall, on 30 days' notice to CAF, be entitled to request that all Assets within the Charity Account are distributed for Charitable Purposes by completing a Giving Request and by providing a written notice that they wish CAF to close the Charity Account and terminate this Agreement.
- 6.2 CAF shall be entitled to close the Charity Account on giving 30 days' notice in writing to the Donor in the following circumstances:
  - 6.2.1 where no Asset has been donated by the Donor to the Charity Account within a period of 60 days since the submission of the Application Form to CAF;
  - 6.2.2 where there have been no donations to, or distributions from, the Charity Account for a period of 24 months;

- 6.2.3 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
  - 6.2.4 where CAF decides in its absolute discretion that its ability to advance its Charitable Purposes is best served by the closure of the Charity Account.
- 6.3 Upon closure of the Charity Account CAF shall distribute the Assets. Without prejudice to CAF's overriding discretion as to the distribution of Assets of the Charity Account, 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 to CAF.
- 6.5 If the Donor dies and has not left a Letter of Wishes with CAF, or with their executors for CAF, CAF shall be entitled to 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 - Exclusions and limitations

THE DONOR'S ATTENTION IS DRAWN TO THIS CONDITION

- 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 gifted to and 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; 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 this 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 12 month period prior to the date such liability arose.

## 8 Books and records

CAF shall maintain records in relation to the Charity Account separately. All expenditures made in furtherance of the Charitable Purposes of the Charity Account shall be charged against the Assets comprising the Charity Account and shall appear on those records. CAF shall keep copies of all records and all reports or statements provided 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 his/her Charity Account any sums of money which may be required to be paid to HMRC 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, CAF shall be entitled to deduct from his/her Charity Account:

- 9.2.1 all costs, fees, contributions and expenses that it incurs in connection with the operation and administration of the Charity Account;
- 9.2.2 all 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 costs, the fees, contributions or expenses associated with the provision of any additional features or additional services in relation to the Charity Account that the Donor may request from time to time at the rate or price then prevailing.

9.4 The Donor agrees and acknowledges that the Assets that are required to pay for the costs, fees, contributions and expenses referred to in this Agreement will not be available for distribution in accordance with the Giving Request or Letter of Wishes.

9.5 Where gifts other than cash are made to the Charity Account, the costs of converting such gift to cash will be met by the Charity Account.

9.6 The Donor agrees that amongst the costs that CAF is entitled to recover from the Charity Account is the contributions to CAF and those CAF is required to make to its founder, the National Council for Voluntary Organisations.

## 10 Notices

10.1 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.

10.2 Any notice or other communication given under or in connection with the Charity Account shall be given by CAF to the Donor personally, which shall mean by post, email, in statement messages or inserts or in any other way which CAF chooses and is appropriate and reasonable in the circumstances, and which satisfies CAF's legal and regulatory requirements, subject always to the requirements of clause 12 (changes to terms shall be in writing and on no less than 30 days' notice). Any notice or communication shall be deemed to have been served, if a letter, the second day after posting and in all other cases at the time of sending.

## 11 Complaints

CAF will make every effort to resolve a complaint quickly and fairly. If the Donor has a complaint in relation to any aspect of his/her 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 this Agreement from time to time by giving not less than 30 days' written notice to the Donor in accordance with clause 10 except where CAF is required to change such terms of this Agreement for legal or regulatory reasons.

12.2 Where a change is required for legal or regulatory reasons or where any change to any provision of this Agreement is considered to be to the Donor's advantage, this may be made immediately without notice.

12.3 Where the Donor regards any proposed change as unfair or unreasonable in law the Donor shall notify CAF of such view within 30 days notice period giving reasons for his/her views. 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.

## 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.

13.1 The Donor acknowledges that any information provided by it to CAF is up to date and accurate and is provided to CAF as Data Controller and Data Processor.

13.2 CAF is entitled to share information about the Donor with the CAF Group. The CAF Group will not share the Donor's information with any other organisation except as part of providing a product or service and when legally obliged to do so.

13.3 The Donor's personal data is processed on behalf of CAF by trusted third parties for the purposes of providing and operating the Charity Account.

13.4 CAF shall, and shall ensure that its trusted third parties shall, at all times, comply with their obligations under the Data Protection Legislation.

13.5 To the extent that any of the Donor's personal data is required to be disclosed by CAF or its trusted third party processors 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.

13.6 CAF will only retain the Donor's data for as long as is necessary and as set out in the Privacy Notice.

## 14 General

- 14.1 When the Donor or an Additional Signatory contacts CAF, or is contacted by CAF, by phone, such call may be recorded for security and training purposes.
- 14.2 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.
- 14.3 Following receipt by CAF, 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.
- 14.4 A delay in exercising or failure to exercise a right or remedy under or in connection with this 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.
- 14.5 This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of the subject matter and neither party has entered into this 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. Nothing in this clause shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
- 14.6 If any term of this Agreement is found by any court or administrative 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 and this shall not affect the remainder of this Agreement which shall continue in full force and effect.

- 14.7 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual claims or disputes) 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.

## Definition Schedule

**Additional Signatory** means the person or persons appointed by the Donor on the 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 the Donor notifies CAF of the Additional Signatory and/or update such Additional Signatory contact details (as applicable) to his/her Charity Account.

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

**Agreement** means these Terms and Conditions, the Application Form, the Fee Schedule and the Additional Signatory Form (if applicable) which together represent the entire agreement between the Donor and CAF (in each case as may be amended from time to time in accordance with clause 12 of these Terms and Conditions).

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

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

**CAF Group** means CAF and the companies in which it has a majority stake, or their subsidiaries.

**Charitable Purpose(s)** shall have the meaning given to it as set out in section 2 of the Charities Act 2006 (as may be amended from time to time).

**Charity Account** means the donations given to CAF by the Donor and any additional donations or contributions from the Donor and any Gift Aid given to CAF by the donor to be held subject to this Agreement.

**Connected Person** means a spouse, close relative or such other acquaintance as HMRC 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 Donor's Charity Account and this Agreement.

**Donor** means the person noted as such on the Application Form.

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

**Forms** means any or all of the Application Form, the Giving Request, the Gift Aid declaration, 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 HMRC 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, on the Forms.

**HMRC** means Her Majesty's Revenue and Customs.

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

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

**Supervisory Authority** means any competent regulatory authority including but not limited to the Financial Conduct 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.

**Terms and Conditions** means these "CAF Charity Account Terms and Conditions" as may be amended by CAF from time to time in accordance with clause 12 hereof.

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