



TREE OF LIFE

FOUNDATION

Terms and conditions of the Donor-advised Fund platform

This agreement governs your Donations to the Platform and your recommendations regarding Distributions (grants) from the Platform to Charities, as well as ancillary matters.

1. Definitions

In this agreement:

- 1.1 **“Applicable Law”** means any law, legislation, subordinate legislation, rule, ruling or instruction of a regulatory authority to which the Platform is subject;
- 1.2 **“Authorized Person”** means a person nominated by you and accepted by us, that will be allowed to access your information held by us and to issue Instructions to us on your behalf;
- 1.3 **“Charity”** means a public benefit organization as contemplated in section 30 of the South African Income Tax Act, or a foreign organisation which is exempt from tax on income in the country in which is incorporated, formed or established, the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Schedule 9 of the South African Income Tax Act if carried on in South Africa, and that carries on each of its activities
 - 1.3.1 in a non-profit manner;
 - 1.3.2 with altruistic or philanthropic intent;
 - 1.3.3 in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
 - 1.3.4 for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups);
- 1.4 **“Confidential Information”** means any information about us or any of our Trustees, officers, employees, agents, or contractors, a Donor other than you, or a Donor-advised Fund (including information about fund transactions) with regard to which you are not an Authorized Person, that we have not disclosed intentionally to the general public (including the fact that a person is a Donor and any computer code owned or licensed by us);

- 1.5 **“Distribution”** or **“Grant”** means a payment from a Donor-advised Fund to a Charity at the request of the Donor;
- 1.6 **“Donor”** or **“you”** means the person indicated as the donor on the application form;
- 1.7 **“Donor-advised Fund”** means the portion of the Platform’s assets in respect of which a specific Donor is allowed to issue Instructions. The portion is calculated as [Donations received from that Donor] plus [investment growth on such Donations] minus [Fees levied by the Platform] minus [Distributions already made on Instruction from the Donor].
- 1.8 **“Donation”** means a donation of money or other assets to the Platform;
- 1.9 **“Financial Adviser”** means a Financial Services Provider (or an authorised representative of a Financial Services Provider) appropriately licensed in terms of the South African Financial Advisory and Intermediary Services Act (or any replacement act) to provide the relevant advice or intermediary services and appointed in terms of clause 5;
- 1.10 **“General Donation”** means a Donation that will not rank for an income tax deduction in terms of Section 18A of the South African Income Tax Act (irrespective of whether or not it may rank for a tax deduction in another tax jurisdiction);
- 1.11 **“General Platform”** means the Tree of Life Foundation (IT 385/2007) which provides a facility to Donors in terms of this agreement that allows the Donor to issue Instructions regarding General Donations;
- 1.12 **“Instruction”** means a request or recommendation a Donor issues to the platform relating to how a Donation by that Donor should be invested, which Charities should benefit from such a Donation and investment returns on such Donation, when money should be distributed to such Charities as well as the amount of such distribution;
- 1.13 **“Platform”** or **“us”** or **“we”** means either the General Platform or the Section 18A Platform, or both the General Platform and the Section 18A Platform, as the case may be;
- 1.14 **“POPIA”** means the South African Protection of Personal Information Act, 4 of 2013 as amended or replaced from time to time, and includes subordinate legislation issued in terms of it;
- 1.15 **“Section 18A Donation”** means a Donation that may rank for an income tax deduction in terms of Section 18A of the South African Income Tax Act;
- 1.16 **“Section 18A Platform”** means the Christian Development Trust (IT 9334/2012) and/or the True South Foundation (IT 97/2010) which provide a facility to Donors in terms of this agreement that allows the Donor to issue Instructions regarding Section 18A Donations by that Donor;
- 1.17 **“South African Income Tax Act”** means the South African Income Tax Act, 58 of 1962 as amended from time to time;

- 1.18 **"Trustees"** means the trustees of the Platform, and includes a person with delegated authority from such trustees;
- 1.19 clause headings are for convenience and shall not be used in its interpretation;
- 1.20 unless the context clearly indicates a contrary intention, an expression which denotes any gender includes the other genders, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa;
- 1.21 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.22 when any number of days is prescribed, they shall be counted exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.23 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.24 references to any statute or statutory provision shall include any subordinate legislation made from time to time under that statute or provision and shall include that statute or provision as modified, replaced or re-enacted from time to time;
- 1.25 a reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 1.26 the words "include", "including", "in particular", "other" and "otherwise" shall be construed as expanding the ambit of the clause in which they appear and not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- 1.27 the rule of construction that this agreement shall be interpreted against the party responsible for the drafting of this agreement, shall not apply.
- 1.28 This agreement shall be governed by and construed in accordance with South African law and be subject to the jurisdiction of the South African courts.
- 1.29 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this definition clause.

2. Donations

- 2.1 A Donation is irrevocable and non-refundable.

- 2.2 The Platform becomes the owner of the donated money or assets and you will no longer be allowed to benefit personally from the donated money or assets.
- 2.3 Only Charities will be allowed to benefit from a Donation.
- 2.4 You warrant that the Donation will not render you legally insolvent and that it will not otherwise be a voidable transaction.
- 2.5 We may elect not to accept a Donation.

3. Governance

- 3.1 The Platform will administer, invest and distribute the Donation in compliance with its trust deed and Applicable Law.
- 3.2 Any changes in Applicable Law may override these terms and conditions, and to the extent required these terms and conditions will be deemed amended to comply with such changes.

4. Authorized persons

- 4.1 You may nominate an Authorized Person, nominate a person who will become an Authorized Person on your death or legal disability, replace an Authorized Person or nominate an additional Authorized Person by giving us notice in writing, but such nomination or replacement will only take effect once we have accepted the nomination.
- 4.2 We may decline to accept the nomination of an Authorized Person without giving reasons for such decision.
- 4.3 You may revoke the nomination of an Authorized Person by giving us notice in writing, which revocation shall take effect when we acknowledge receipt of the revocation.
- 4.4 We can act on Instructions from any of your Authorized Persons without reference to you.
- 4.5 Should you die (or cease to exist in the case of a Donor which is not a natural person), or become legally incapacitated, then:
 - 4.5.1 If you have nominated an Authorized Person, all your rights in terms of this agreement will automatically be transferred to such Authorized Person, and if there is more than one, to the one listed first in our records; or
 - 4.5.2 If you have not nominated an Authorized Person, the Trustees will decide how your Donor-advised fund is to be utilized, taking into account any written wishes you communicated to the Trustees prior to such event, as well as the Charities and type of Charity which have received Distributions from your Donor-advised fund in the past.

5. Financial Adviser

- 5.1 You may select a Financial Adviser to provide advice and intermediary services to you and us relating to your Donor-advised Fund and investments linked to it, subject to the terms and conditions set out below.
- 5.2 Your selected Financial Adviser must
 - 5.2.1 be a Financial Services Provider (or an authorised representative of a Financial Services Provider) appropriately licensed in terms of the Financial Advisory and Intermediary Services Act to provide the relevant advice or intermediary services; and
 - 5.2.2 be approved by us.
- 5.3 At your request we will contract with your selected Financial Adviser and pay the Financial Adviser an ongoing fee at a rate approved by you (maximum 1% per annum), which fee will be recovered from your Donor-advised Fund or investments linked to it.
- 5.4 You may elect to cease using the services of a Financial Adviser by giving us one month's notice, in which case we will endeavour to terminate the agreement with the Financial Adviser in respect of your Donor-advised Fund. Once such agreement has been terminated, we will cease recovering the Financial Adviser fee from your Donor-advised Fund.
- 5.5 Should your Donor-advised Fund be invested in a portfolio or investments managed by a Financial Adviser at the time you elect to cease using the services of that Financial Adviser, you must simultaneously with giving the notice in 5.4 provide us with a switch instruction to switch the underlying investments of your Donor-advised Fund to alternative portfolios provided in terms of clause 6. Should you fail to provide such an instruction we may switch the underlying investments to our Short-term Portfolio.

6. Investments

- 6.1 The Trustees may make various investment portfolios available for Donors to elect that their Donations be invested in.
- 6.2 The investment portfolios will be managed by the Trustees or their appointed investment manager(s).
- 6.3 The Trustees may close any portfolio to new investments at any time, liquidate or merge portfolios, or add new portfolios. Should this happen, the Trustees will endeavor to inform all affected Donors via email at the last email address on record.
- 6.4 You agree that no investment guarantees are provided and that investment returns can be negative.
- 6.5 Any withdrawal from a portfolio, whether for Distribution to a Charity or to reinvest in another portfolio, is subject to sufficient liquidity in the underlying portfolio being available to accommodate the withdrawal. If sufficient liquidity is not available, the Trustees will

inform the Donor issuing the request accordingly, and the withdrawal Instruction will be held over until sufficient liquidity is available or the Donor withdraws the Instruction, whichever occurs first.

- 6.6 In addition to the investment portfolios made available in terms of 6.1, at your request, we may make additional investment options (including investment options managed by a Financial Adviser) available on such terms and conditions as may be agreed. An additional fee will be levied for such investment options.

7. Distributions (Grants)

- 7.1 Distributions from the Platform can only be made to Charities approved by the Trustees after successfully completing such due diligence as the Trustees may require. The Trustees may rely on due diligence done by external parties.
- 7.2 In respect of the Section 18A Platform, distributions can only be made to public benefit organizations contemplated in, and registered in accordance with, Section 18A of the South African Income Tax Act.
- 7.3 You acknowledge that Applicable Legislation requires the Section 18A Platform to make certain minimum distributions within certain maximum periods, and agree to issue Instructions for Distributions for at least the amounts and within the periods as required by the Trustees.
- 7.4 You agree that you will not recommend any grant if you anticipate that you or any Donor or any Authorized Person (or any related individual or related entity other than one qualified to receive grants from the Platform) will receive any benefit directly or indirectly as a result of the recommendation or grant. Such benefit includes tuition or payment of other educational costs, admission to any event, and discharge of any pledge or other legal obligation. You further agree that if offered or presented with any such benefit as a result of such a recommendation or grant, you will decline. If you make a recommendation that violates the foregoing, or recommend a grant that you know would violate then-current standards that we have published or otherwise (for example, you know the grantee intends to use the grant for political campaigning which use is specifically prohibited in terms of Applicable Law), then you will cooperate with us in recovering the grant, reimburse us for the amount of the grant that is not recovered, and indemnify us for any costs, liabilities, and damages incurred in recovering the grant or otherwise as a result of the grant.

8. Amendments

- 8.1 We may amend this User Agreement, including terms, conditions, and guidelines incorporated herein by reference, by notice to you at any time.
- 8.2 Notwithstanding the foregoing, we may not terminate your right to issue Instructions regarding a Donation you made to us prior to the effective date of the amendment, unless we are required to terminate such privileges by law or as a condition of our status as an organization exempt from income tax, or if you have breached this agreement.

9. Confidentiality

- 9.1 You agree that if you obtain Confidential Information in the course of your interaction with us, you will refrain from disclosing such information to any other person and will deliver to us any documents or records, regardless of form, that contain such information without making additional copies. You agree that we may enforce this in an action for specific performance.

10. Communication

- 10.1 You agree to provide us with your current email address, to promptly provide us with any changes to your email address, and to accept electronic communications from us at the email address you specify.
- 10.2 We will not be held responsible for any communication which fails to reach you as a result of your failure to provide us with an updated email address, or otherwise.
- 10.3 Where this agreement requires us to give any notice to you, sending such notice to your email address on record with us will be sufficient notice.

11. Protection of personal information

- 11.1 In terms of POPIA you have a number of rights regarding your personal information. More information about these rights, how to exercise them and about the information we collect, can be found in our privacy notice which is available on request.
- 11.2 We collect, hold, use and disclose your personal information mainly to provide the services contemplated in this agreement, including receiving donations from you, investing the donations until distributed to charities, and making distributions to charities. If you fail to provide the personal information we request, we may be unable to provide some or all of the services contemplated in this agreement.
- 11.3 You consent to us processing and retaining the personal information, including information on your religious beliefs, you (or somebody purporting to act on your behalf) provide to us.
- 11.4 If we share your information with third parties we will take precautions aimed at ensuring that the third party will treat your information with the same level of protection as is applied by us. We may disclose your information to the following third parties:
- 11.4.1 Charities (unless you have specifically requested to remain anonymous);
- 11.4.2 Other donors (unless you have specifically requested to remain anonymous);
- 11.4.3 Our auditors;
- 11.4.4 Any regulatory or tax authority having jurisdiction over us;

11.4.5 Banks and organisations involved in transferring funds to and from us;

11.4.6 Our trustees and professional advisers;

11.4.7 Your selected Financial Adviser; and

11.4.8 Any entity stated in our privacy notice.

11.5 You consent that your information may be stored and processed on servers managed by third-party service providers and in data centres that may be located inside or outside South Africa.

12. Fees

12.1 The Platform will levy fees in accordance with its current Fee Schedule as published from time to time.

12.2 To the extent that the fees levied may exceed the actual cost of providing the service the Trustees of the Platform will decide how to use the surplus.

13. Waivers

13.1 You agree that neither us, or any of our Trustees, employees or related parties have provided you with legal, tax, accounting, financial or other advice. We urge you to consult your own professional advisers.

13.2 We do not accept any responsibility for ensuring that a Charity to which you recommend a Distribution will use the Distribution as you intended or appropriately. We will not be liable for (and you agree not to attempt to hold us liable for) any action or inaction by a Charity receiving a Distribution from us, even if such action or inaction was reasonably foreseeable and we failed to act.

13.3 If you elect to use the services of a Financial Adviser, you agree that you have selected such Financial Adviser and that we will not be liable for (and you agree not to attempt to hold us liable for) any action, inaction or negligence of a Financial Adviser.

13.4 You agree to indemnify us and our affiliates, subsidiaries, and related entities, and all of their respective trustees, officers, directors, employees, legal representatives, agents, heirs, successors and assigns, from and against any damages, liabilities, losses, costs and expenses arising out of or connected in any way to any claims, actions, suits or demands based on or related to your use of the Platform, or any breach by you of this User Agreement.

13.5 No extension of time or indulgence which either Party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

14. Disputes

- 14.1 In the event of there being any dispute or disagreement between the Parties (**"the Dispute"**) arising out of this Agreement, the parties shall try to resolve the dispute by negotiation. This entails that the one party invites the other in writing to a meeting and to attempt to resolve the dispute within 7 (seven) days from date of the written invitation.
- 14.2 If the dispute has not been resolved by such negotiation, the parties shall submit the dispute to mediation administered by the Arbitration Foundation of Southern Africa (**"AFSA"**), upon the terms set by the AFSA Secretariat. The Parties shall have 7 (seven) days to agree on a mediator, failing which a mediator professing the Christian faith shall be appointed by AFSA.
- 14.3 Failing resolution by mediation in terms of 14.2, the said dispute shall on written demand by a Party be submitted to arbitration in Cape Town in accordance with the rules of the Arbitration Foundation of Southern Africa (**"AFSA"**), which arbitration shall be administered by AFSA.
- 14.4 The Parties agree that any arbitration proceedings shall be conducted in accordance with the speedy dispute resolution procedure of AFSA, and that the decision of the arbitrator shall, in the absence of manifest error, be final and binding on the parties to the Dispute.
- 14.5 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the Dispute or failing agreement within ten Business Days of the demand for arbitration, then any party to the Dispute shall be entitled to forthwith call upon the chairperson of the Cape Society of Advocates to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the Dispute. In the event of the parties to the Dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall, in the absence of manifest error, be final and binding on the parties to the Dispute.
- 14.6 The arbitrator must be a person professing the Christian faith.
- 14.7 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 14.8 Any arbitration in terms of this clause 14 shall be conducted in private and the Parties shall treat as confidential details of the Dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 14.9 This clause 14 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

- 14.10 The Parties agree that the written demand by a party to the dispute in terms of clause 14.3 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the South African Prescription Act, No 68 of 1969.

15. General

- 15.1 By signing the application form you bind the Donor to these terms and conditions and warrant that you have full legal authority and capacity to do so.
- 15.2 The terms of this agreement comprise the entire agreement between you and us with respect to its subjects. You agree that you will have no rights not specifically granted in terms of this agreement.
- 15.3 You may not assign your rights and obligations under this agreement, in whole or in part, without our prior written consent, and any such assignment without such consent will be null and void. We may assign our rights and obligations under this agreement, in whole or in part, without your consent provided that such assignment is to a Charity that will continue to provide a similar service.
- 15.4 The Trustees may decide to close the Platform to new Donations at any time.
- 15.5 Should the Trustees decide to cease providing the service contemplated in this agreement, they will provide you with at least one year's notice of their intent to do so, and you will have to issue Distribution Instructions within six months after the end of the one-year notice period, failing which the Trustees may act regarding your Donor-advised Fund in their discretion, but subject to the Trust Deed and Applicable Law.

Fee Schedule

1 Donor-advised Fund Administration Fees

No initial fee.

Recurring Platform Fee: 0.45% per annum (levied monthly).

Distribution Fee (levied when money is distributed to a charity): 1% with a minimum of R500.

2 Investment Management Fees

Short-term portfolio: 0.25% per annum (levied monthly).

Medium term portfolio: 0.75% per annum (levied monthly). A performance fee equal to 20% of the outperformance above a benchmark of CPI + 3% will be levied.

Long-term private equity portfolio: 2% per annum (levied monthly). A performance fee equal to 20% of the outperformance above a benchmark of CPI + 5% will be levied.

Impact portfolio: 2% per annum (levied monthly).

Other options: 2% per annum (levied monthly), unless otherwise agreed in writing.

Please note: Only the Short-term Portfolio is available on the Section 18A Platform.

3. Financial Adviser Fees (optional)

Negotiable to a maximum of 1% per annum (levied monthly).

See clause 5 for details.