

# Lendwithcare Terms and Conditions

Please read these Terms carefully before using the Website. These Terms govern your use of the Website and your participation in Lendwithcare and supersede any previous Terms that may have applied. By accessing the Website, making a Loan Contribution, or making a donation, you signify your agreement to be bound by these Terms.

## Important!

You acknowledge and accept:

- (a) **there is a significant risk that your Loan Contribution may not be repaid to you;**
  - (b) **in the event of repayment, you will not receive an amount that exceeds the amount of your Loan Contribution;**
  - (c) **This is not an investment program. No financial return (whether by way of interest or a share of any profits made) or other benefit will be provided to you.**
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## 1 About CARE

CARE's registered office is at Level 4, 53 Queen Street, Melbourne VIC 3000. CARE is a registered charity with the Australian Charities and Not-for-profits Commission.

## 2 Interpretation

2.1 In these Terms the following words have the following meanings:

**"CARE Lender Fund Account"** means the bank account in CARE's name that is used to hold Loan Contributions and repayments received from FSPs for an FSP Loan;

**"Borrower"** means the proponent of the Project you make a Loan Contribution to, and whom your money is ultimately lent to through Lendwithcare;

**"CARE"** or **"us"** or **"we"** or **"our"** means CARE Australia (ABN 46 003 380 890);

**"Donation"**

**"Event of Force Majeure"** means an event or circumstance beyond CARE's reasonable control, including (but not limited to) an act of God, fire, windstorm, flood, pandemic, explosion, collapse of structures, riot, war, civil commotion, labour disputes, and delays or restrictions by governmental bodies;

**"FSP Loan"** means the provision of credit by CARE through Lendwithcare to a FSP using Loan Contributions made by you;

**"FSP"** means Financial Service Provider and is an institution or organisation active in Microfinance that operates in the country of the Borrowers, and provides and administers the Microfinance Loans made to Borrowers;

**"Guest"** means a user of the Website who has not created a Lender Account;

**"Lender Account"** means the password protected account on the Website which you must open in order to participate in Lendwithcare;

"Lender Account Balance" means the funds available for use with Lendwithcare in your Lender Account;

**"Lender"** or **"you"** means you, if you have made a Loan Contribution;

**"Lendwithcare"** means the Lendwithcare microfinance program operated by CARE and carried on through the Website;

**"Loan"** means a FSP Loan or a Microfinance Loan;

"Loan Contribution" means money that you loan to a Project through Lendwithcare;

**"Microfinance Loan"** means the provision of credit by a FSP to a Borrower which was funded through a FSP Loan;

**"Payment Default"** means either:

(a) a failure by a Borrower to repay amounts owed to a FSP under a Microfinance Loan;  
or

(b) a failure by a FSP to repay amounts owed under a FSP Loan;

**"Project"** means the microfinance project you choose to make a Loan Contribution to through Lendwithcare;

**"Terms"** means these terms and conditions;

**"Website"** means the website with the URL 'www.Lendwithcare.org.au'.

2.2 In these Terms:

- (a) headings do not affect interpretation;
- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to any party includes its permitted assigns and successors in title; and
- (d) the words "includes" and "including" mean includes or including without limitation.

### 3 Use of the Website

3.1 By accepting these Terms, you warrant that you:

- (a) are 18 years of age or older or, if you are under 18, have the permission of your parent/guardian before accepting these terms; and
- (b) have the capacity to enter into a legally binding contract.

3.2 You may not:

- (a) use the Website in any way that breaches any law or regulation;

- (b) use the Website in any way which infringes upon the intellectual property or other rights of anyone, or restricts or inhibits their use and enjoyment of the Website;
  - (c) use the Website in any way, or to any effect, that is unlawful or fraudulent;
  - (d) knowingly transmit any data, or send or upload any material, to the Website that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware, or any other harmful program or computer code designed to adversely affect the operation of any computer software or hardware;
  - (e) duplicate, copy or re-sell any part of the Website;
  - (f) damage or disrupt the Website or any equipment used for the Website; or
  - (g) use the Website or the information contained on the Website to attempt to contact, or in any way contact, any other Lender, FSP, or Borrower without CARE's prior written consent.
- 3.3 If you breach any of the Terms in clauses 3.1 and 3.2 we may deny you access to the Website.
- 3.4 We retain the right to deny access to the Website to any person at our absolute discretion.
- 3.5 We reserve the right to make changes or corrections to, or alter, suspend or discontinue any aspect of, the Website or the content or services available through it, including your access to it. Unless explicitly stated to the contrary, any new features, including new content, is subject to these Terms.
- 3.6 We will not be liable if for any reason the Website is unavailable at any time or for any period.

## 4 Lender Accounts and Guest Accounts

### **Lender Accounts**

- 4.1 You may create a Lender Account to participate in Lendwithcare. In our absolute discretion, we may require you to create a Lender Account.
- 4.2 If you create a Lender Account on behalf of a company, trust, partnership, incorporated body, or other entity, you confirm that you have the authority to act on behalf of the entity and bind the entity to these Terms.
- 4.3 To create a Lender Account, we may require you to provide us with certain information about you which we use to personalise your experience on the Website and to meet our legal and compliance obligations:
- (a) if you are an individual that information could include your full name, date of birth, residential address, and email address; and
  - (b) if you are not an individual, we will tell you the information about you that you must provide to us.
- 4.4 From time to time we may require you to provide us with documents or other evidence that proves your identity. We will advise you what documents are acceptable. If we require documents or other evidence that proves your identity you must provide it to us as soon as reasonably possible. If you don't provide

us with that information, we may suspend or terminate your access to Lendwithcare, including your Lender Account.

- 4.5 If you choose, or you are provided with, a user identification code, password or any other security identifier as part of our security procedures for your Lender Account, you must treat such information as confidential, and you must not disclose it to any third party. We have the right to disable any user identification code, password or any other security identifier whether chosen by you or allocated by us, at any time, if in our opinion you have failed to comply with any of the provisions of these Terms. We will not be liable for any loss suffered if in our opinion you have failed to comply with any of the provisions of these Terms.

### **Guest Accounts**

- 4.6 You may choose to participate in Lendwithcare as a Guest. If you are a Guest you will not be required to create a Lender Account. You can choose to create a Lender Account at any time.
- 4.7 We may place limitations on the Lendwithcare functionality that Guests can access.
- 4.8 If you participate in Lendwithcare as a Guest on behalf of a company, trust, partnership, incorporated body or other entity you confirm that you have the authority to act on behalf of the entity and bind the entity to these Terms.
- 4.9 Guests are not eligible to receive any repayments for Loan Contributions made to Projects. Any repayments that have been received by us based off Loan Contributions made as a Guest will be treated as a donation to us (see clauses 5.12, 5.13, and 5.14 for more information on repayments).

4.10

### **Dormant accounts**

- 4.11 If there is no activity on your Lender Account for a period of 12 months, your Lender Account will be considered 'dormant' and we will automatically apply the Lender Account Balance as a donation to CARE. Clause 7 contains more information about donations.
- 4.12 Activity on your Lender Account includes:
- (a) accessing your Lender Account;
  - (b) making a Loan Contribution or donation; or
  - (c) having outstanding repayments owing to you from a Project,

- 4.13 Before we treat your Lender Account as dormant we will make at least three attempts to contact you using the contact email address you provide to us when you set up your Lender Account.

## **5 Contributing to a Project and receiving repayments**

- 5.1 You can add funds as credit to your Lender Account Balance using a payment method we make available. We may place limits on the amount of funds you can store in your Lender Account Balance at any time at our discretion.
- 5.2 If you make a one-off Loan Contribution, the funds from your Lender Account Balance will be used to make that Loan Contribution.
- 5.3 We may allow you to set up an automatic repeating Loan Contribution (referred to in these Terms as 'Auto-Lend'). If we allow you to set up an Auto-Lend and you elect to set up an Auto-Lend, the funds from your Lender Account Balance will be used to make Loan Contributions, unless:
- (a)** there are insufficient funds in your Lender Account Balance to make the Loan Contribution;
  - (b)** you elect to opt out of the Auto-Lend feature.

- 5.4 A small donation to support CARE's operations will be added to your Auto-Lend Loan Contribution. By default you will make a donation to CARE with each Auto-Lend.
- 5.5 The terms of Microfinance Loans, including when repayments are to be made, are determined solely by the FSP and the Borrower. FSPs may charge interest or fees and charges on a Microfinance Loan at a rate they determine. No interest will be charged by FSPs on any sharia-compliant Microfinance Loans.
- 5.6 FSP Loans and Microfinance Loans may be funded in U.S. Dollars, the local currency in the jurisdiction where the FSP operates, or another currency as determined by CARE. Repayments under FSP Loans and Microfinance Loans may also be made in U.S. Dollars, the local currency in the jurisdiction where the FSP operates, or another currency as determined by CARE and will be converted to Australian Dollars at the prevailing foreign exchange rate when received by CARE.
- 5.7 If we do not receive sufficient Loan Contributions to fund the Project after a period indicated on our website or determined by us (in our absolute discretion), or if we (in our absolute discretion) determine that a Project should not proceed, your Loan Contribution will be returned to your Lender Account Balance.
- 5.8 Loan Contributions and any repayments that are received by CARE will be held in one or more general CARE lender fund accounts (being the 'CARE Lender Fund Accounts'). The CARE Lender Fund Accounts are not dedicated to you and are held in the name of CARE. You have no rights in respect of any CARE Lender Fund Accounts or any amounts held in them.
- 5.9 CARE may earn interest on funds held in the CARE Lender Fund Accounts. Any interest earned will be deemed as CARE income and may be used by CARE for any purpose.
- 5.10 Loan Contributions are non-refundable. However, a repayment based off your Loan Contribution may be paid to your Lender Account Balance if:
- (a) you have a Lender Account;
  - (b) the Borrower repays their Microfinance Loan; and
  - (c) the FSP subsequently repays the corresponding FSP Loan. A FSP has no obligation to repay a FSP Loan if the corresponding Microfinance Loan is not repaid by the Borrower. Any repayment from a FSP in relation to a FSP Loan will be converted by us into Australian Dollars at the prevailing foreign exchange rate when that repayment is received by us. You bear all foreign exchange risk for this transfer. Clause 6 contains more information on foreign exchange risk.

**Important!**

**There is a material risk that a Payment Default will occur. A Payment Default will result in the loss of all or part of your Loan Contribution.**

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- 5.11 A FSP Loan is deemed repaid when the outstanding balance of the FSP loan has been repaid by the FSP, by reference to the currency set out in the FSP loan regardless of the effect of foreign exchange fluctuations. This means the repayment you receive may be less than the amount of your Loan Contribution. The repayment you receive will not include any interest or other fees that may be charged by us or a FSP in relation to any Loan. You understand and acknowledge that a Payment Default in relation to a Loan for the Project your Loan Contribution is directed to will result in the loss of all or part of your Loan Contribution, and that we do not represent, warrant or otherwise guarantee that a FSP Loan or a Microfinance Loan will be repaid.
- 5.12 You will not receive a repayment based off your Loan Contribution unless and until the events in clause 5.12 occur, at which point we will make the repayment available as credit in your Lender Account Balance.
- 5.13 CARE accepts no responsibility for the genuineness of any Borrowers, or for the adequacy or accuracy of any information provided from any source in relation to any Borrower.
- 5.14 Once a repayment based off your Loan Contribution is made available to you, you can choose to:
- (a) apply the repayment as a Loan Contribution to another Project,
  - (b) make a donation to CARE; or
  - (c) withdraw the funds from your Lender Account Balance using a funds transfer method we make available from time to time.
- 5.15 If you elect to withdraw the funds from your Lender Account Balance, the funds transfer may be subject to delays to allow us to comply with our legal obligations.

## 6 Foreign exchange rates and fluctuations

- 6.1 All Loan Contributions will be converted into U.S. Dollars by CARE at the prevailing foreign exchange rate. You will be deemed to have contributed the U.S. Dollar amount resulting from this conversion. This U.S. Dollar amount will be used to determine the proportion of each repayment to which you are entitled.
- 6.2 All foreign exchange risk and any losses arising from foreign exchange rate fluctuations will be borne by you for all Loan Contributions you make and any repayments that result from your Loan Contributions. Foreign exchange rate fluctuations may result in either:
- (a) the repayments returned to you being less than the value of your Loan Contribution; or
  - (b) the repayments being greater than the value of your Loan Contribution, in which case any additional value will be retained by us. You waive any claim to that additional value.

### Important!

**s are provided overseas and are subject to foreign exchange risk. All foreign exchange risk and any losses arising from foreign exchange rate fluctuations will be borne by you.**

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- 6.3 You understand and acknowledge that the risk and potential losses from foreign exchange rate fluctuations that are borne by you are reasonably necessary to protect CARE's interest, in light of:
- (a) the charitable, and not investment-based nature of the Loan Contributions within the Lendwithcare program; and
  - (b) CARE's role in assisting multiple FSPs across a number of overseas jurisdictions.

## 7 Donations

- 7.1 You can choose to make a donation to CARE at any time through the Website, including by donating a chosen amount of funds from your Lender Account Balance if you have a Lender Account, or by using a gift voucher (if we allow you to do so in our absolute discretion). Clause 8 contains more information about gift vouchers.
- 7.2 A donation will be made if your Lender Account is considered dormant. Clause 4.12 contains more information about dormant accounts.
- 7.3 If you make a donation, CARE may use it to cover operational costs of Lendwithcare or at our full discretion.

## 8 Gift Vouchers

- 8.1 From time to time we may in our absolute discretion offer gift vouchers for purchase on the Website.
- 8.2 Gift vouchers may be redeemed on the Website, but have no cash redemption value, are non-refundable, and cannot be used to purchase further gift vouchers.
- 8.3 Gift vouchers (including any unused portion of a gift voucher) will expire three years from the date of purchase, or longer where required by applicable law (the 'Expiry Date'). You acknowledge and accept that any expired gift voucher or an unused portion of an expired gift voucher will be treated as property of CARE on the Expiry Date.
- 8.4 To the extent permitted by law, we are not responsible if a gift voucher is lost, stolen, destroyed, or used without permission.

## 9 Promotional credit

- 9.1 From time to time we may make promotional credit available to you in your Lender Account Balance, subject to other terms and conditions which may



apply. You will be able to use that promotional credit to make a Loan Contribution to a Project.

## 10 Confidentiality and Rights of Ownership

- 10.1 CARE owns and retains all trademarks, copyright, and other proprietary rights in Lendwithcare and the Website (including the name, logo, and other trade marks) and all materials, messages, images, or information posted on the Website ("Content").
- 10.2 You may not copy, modify, distribute, publish, transmit, display, sell, or otherwise use any of the Content without prior written permission from CARE.
- 10.3 You agree that, by posting any images or information on the Website, you hereby grant CARE an irrevocable, worldwide, non-exclusive, royalty-free licence (with the right to sublicense) to use such images or information, whether on the Website or otherwise in, or in connection with any of CARE's advertisements, campaigns, or any other material posted, created, or used by CARE from time to time.
- 10.4 By posting the images or information you:
  - (a) warrant that the images or information so posted do not contain any material which is defamatory, obscene, offensive, hateful, or sexually explicit or which promotes violence, discrimination, or illegal activities; and
  - (b) warrant that the images or information so posted do not infringe any third party proprietary right or any applicable law.

## 11 General terms and conditions

### Changes to these Terms

- 11.1 We may change these Terms from time to time in our absolute discretion. We will act reasonably in the event that we make any changes to these Terms.
- 11.2 If it is reasonable for us to do so, we will give you advance notice of any changes to these Terms. We will make copies of the updated Terms available on the Website.

### Changes to Loans

- 11.3 We or a FSP (as the case may be) may restructure Projects and the associated Loans (and the terms of any repayments) from time to time in response to specific adverse events affecting the FSPs and/or Borrowers in order to reduce the risk of Payment Default. These adverse events include, but are not limited to, prolonged drought or flooding.
- 11.4 We will make reasonable endeavours to notify you if we have restructured a Project that you have made a Loan Contribution to.

### CARE's authority to exercise rights on your behalf

- 11.5 You agree irrevocably that CARE has full authority to exercise on your behalf any rights you have under or in respect of a Project. You further agree that:
  - (a) you will not revoke CARE's authority;

- (b) you will not exercise any rights under or in respect of a Project other than by making a request to CARE;
- (c) CARE will have absolute discretion in deciding whether to follow any such request; and
- (d) these restrictions are reasonable in light of CARE's role in assisting multiple FSPs and the specialist nature of microfinance.

### **Force Majeure**

- 11.6 All risk and any losses arising from an Event of Force Majeure will be borne by you in relation to all Loan Contributions you make.

### **Communications and Notices**

- 11.7 Any communications or notices for us must be:
- (a) submitted through the contact form on our website
  - (b) sent by email to 'complaints@care.org.au' and acknowledged with a receipt; or
  - (c) sent by post to the following address: 'CARE Australia Feedback and Complaints, PO Box 372 Collins Street West, Melbourne VIC 8007';
  - (d) be given personally at CARE's registered office; or
  - (e) be given by any other means permitted by law.
- 11.8 We may give you communications and notices:
- (a) electronically (including by email to your email address, by making them available on the Website, or through your Lender Account);
  - (b) by post to your postal address;
  - (c) by giving them to you personally or at your last known address; or
  - (d) by any other means permitted by law.
- 11.9 You must promptly notify us through the contact form on our website if your email address for your account has changed.

### **Your information**

- 11.10 CARE handles your personal information in accordance with the *Privacy Act 1989* (Cth). Please refer to our Privacy Policy for more information.
- 11.11 We may require you to provide us with additional information to meet our legal obligations, including in relation to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). We will act reasonably if we require you to give us additional information.

### **Entire agreement**

- 11.12 You agree that:
- (a) these Terms constitute the entire agreement between you and CARE relating to the Website and participation in Lendwithcare;
  - (b) you have not been induced to enter into these Terms in reliance upon any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity, or commitment of any nature whatsoever other than as are expressly set out in these Terms, and to the extent that you have been, you unconditionally and irrevocably waive

any claims, rights, or remedies which you might otherwise have had in relation thereto.

### **No partnership**

- 11.13 You agree that no joint venture, partnership, employment, or agency relationship exists between you and CARE, a FSP, or a Borrower as a result of these Terms, participation in Lendwithcare, or use of the Website.

### **Severability**

- 11.14 If any provision of these Terms is or becomes for any reason whatsoever invalid, illegal, or unenforceable, it will be divisible from these Terms and will be deemed to be deleted from it and the validity of the remaining provisions will not be affected in any way.

### **Waiver**

- 11.15 No breach of any provision of these Terms will be waived or discharged except with the express written consent of CARE. No failure or delay by CARE to exercise any of its rights under these Terms will operate as a waiver thereof and no single or partial exercise of any such right will prevent any other or further exercise of that or any other right.

### **Governing law and jurisdiction**

- 11.16 These Terms and any dispute or claim whatsoever relating to these Terms or its formation will be governed by and construed in accordance with the laws of Victoria and you irrevocably agree that the courts of that state have exclusive jurisdiction.

### **No advice**

- 11.17 You are solely responsible for determining the proper tax treatment for any Loan Contribution or donation. CARE has not and will not provide any financial, tax, or legal advice to you in connection with any Loan Contribution, donation, or other payment you might make in connection with Lendwithcare.

### **Indemnity**

- 11.18 You agree to indemnify and hold CARE (and its employees, officers agents and subcontractors) harmless for any loss (including any special, incidental, consequential or punitive damages), liability, cost, penalty, action, claim, or demand, including, without limit, reasonable lawyers' fees, suffered or incurred by CARE arising from (directly or indirectly) or in connection with your use of the Website and/or any contents thereon (including these Terms), or your participation in Lendwithcare or a Project or a donation to CARE, your violation of any law or right of any third party or arising from a breach of these Terms.

### **Term and termination**

- 11.19 These Terms remain in full force and effect during and after your use of the Website or participation in Lendwithcare.
- 11.20 You can terminate your participation in Lendwithcare through the Website at any time. If you terminate your participation in Lendwithcare:
- (a) we will close your Lender Account;
  - (b) you will no longer have access to the Website;
  - (c) any unused Lender Account Balance will need to be withdrawn by you prior to account termination; and

- (d) you acknowledge that any future repayments due to you, are forfeited and will become CARE's property.
- 11.21 We may, in our absolute discretion, terminate your participation in Lendwithcare upon notice to you.
- 11.22 If we deny you access to the Website or terminate your participation in Lendwithcare:
  - (a) you will not be able make a new Lender Account;
  - (b) we will close any Lender Account you hold;
  - (c) you will not be able to withdraw your Lender Account Balance; and
  - (d) you acknowledge that any future repayments due to you, are forfeited and will become CARE's property.
- 11.23 Termination by either you or us will be without prejudice to any accrued rights or remedies CARE may have against you.

## 12 Representations and Warranties

- 12.1 We make no representations or and warranties to you in relation to:
  - (a) the accuracy of information on the Website, including information about any Projects;
  - (b) the availability and reliability of the Website;
  - (c) the likelihood of repayment;
  - (d) the credit risk of any FSPs or Borrowers; and
  - (e) any specific results or outcomes from:
    - (i) a Project;
    - (ii) using the Website; or
    - (iii) the Lendwithcare program.

## 13 Liability

- 13.1 Subject to clause 13.4, CARE excludes all liability whatsoever (whether in contract, tort, or otherwise) including any damages, costs, losses, or expenses to any person incurred as a result (whether directly or indirectly) of:
  - (a) accessing the Website, participating in Lendwithcare, or contributing to a Project;
  - (b) any dispute or interaction between any user of the Website and any other person, including any FSP, Borrower, or any other use of the Website whether online or offline;
  - (c) use of, or reliance on any information received, including any Borrower profiles or updates regarding repayments, from us or any FSP, Borrower, or other users of the Website through the Website or otherwise;
  - (d) use of or reliance on any materials posted on the Website;

- (e) any inaccuracy, error, or delay in the omission, transmission, or delivery of any third party data due to either any negligent act or omission by CARE or any cause beyond the control of CARE;
- (f) an Event of Force Majeure;
- (g) any loss of a Loan Contribution (including partial loss and any rights in relation to that Loan Contribution) due to Payment Default by a Borrower under a Microfinance Loan;
- (h) any loss of a Loan Contribution (including partial loss and any rights in relation to that Loan Contribution) due to Payment Default by a FSP under a FSP Loan;
- (i) any loss of a Loan Contribution (including partial loss and any rights in relation to that Loan Contribution) due to foreign exchange rate fluctuations;
- (j) CARE, a FSP, or a Borrower becoming insolvent;

whether caused by CARE, another lender, a FSP, a Borrower, or other person, or by any of the equipment or programming associated with or utilised in Lendwithcare, or due to a collapse of a bank or the banking sector or the limitations imposed on taking money out of a country, or any transaction charges or disruptions in the local or Australian financial markets, or changes in the local fiscal laws and regulations of a FSP or Borrower, regardless of whether CARE was or was not aware of the risk of such loss.

- 13.2 Subject to clause 13.4 and without prejudice to clause 13.1, to the extent that any part of clause 13.1 is found for any reason by any court of competent jurisdiction to be unenforceable, invalid, or illegal, CARE's total aggregate liability to you under or in connection with these Terms is limited to the amount of any Loan Contribution to any FSP Loan to which the relevant liability applies.
- 13.3 You agree that the limitations and exclusions set out in these Terms are reasonable having regard to all the relevant circumstances, and the levels of risk and reward associated with CARE's obligations under these Terms.
- 13.4 Nothing in these Terms excludes or limits CARE's liability for:
  - (a) death or personal injury resulting from negligence, act, or omission by CARE or any of its agents, employees, officers, or directors; or
  - (b) any other liability which cannot be excluded or limited under applicable law.