

Charitable Remainder Trust Agreement

Draft agreement for a charitable remainder trust where a trust company, the charity, or an individual named by the donor is the trustee. Where the donor is to act as trustee, a different form, called a "Declaration of Trust," should be used. This agreement was drafted by Arthur B. C. Drache, Q.C., and Jane Burke-Robertson of the Drache, Burke-Robertson & Buchmayer law firm in Ottawa and is presented here as an example. Before execution a trust agreement should be approved by the donor's and trustee's legal counsel.

CHARITABLE REMAINDER TRUST

THIS AGREEMENT made this _____ day of _____, 20_____.

BETWEEN:

(hereinafter referred to as the "Settlor")

OF THE FIRST PART

AND:

(hereinafter referred to as the "Trustee")

OF THE SECOND PART

WHEREAS the Settlor desires to establish an irrevocable trust and has transferred to the Trustee the personal property described in Schedule "A" annexed hereto, all of which is to be held by the Trustee upon the trusts and with and subject to the powers and provisions hereinafter declared and contained;

AND WHEREAS by this Indenture the Settlor desires to make an irrevocable gift of the residual interest in the Trust Fund to the Capital Beneficiary and of the income interest to the Income Beneficiary (both as defined below) upon and subject to the provisions described herein;

NOW THEREFORE THIS INDENTURE WITNESSES THAT in consideration of the premises and of the mutual covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties hereto as follows:

ARTICLE I

Definitions

In this Indenture, unless the context indicates otherwise, the expressions recited hereunder shall have the following meanings and shall be construed accordingly and the singular shall include the plural and the masculine gender shall include the feminine gender.

1.01 “Beneficiary” and “Beneficiaries” shall mean both the Income Beneficiary and the Capital Beneficiary.

1.02 “Capital” of the Trust Fund shall mean the gift made by the Settlor to the Trust.

1.03 “Capital Beneficiary” shall mean the Charity.

1.04 “Charity” shall mean “X” Charity.

1.05 “Income” of the Trust Fund shall mean any Income of the Trust which is treated as Income for taxation purposes under the Income Tax Act (Canada) but excludes capital gains and any amounts received which are not subject to tax.

1.06 “Income Beneficiary” shall mean the Settlor. [Other examples include:

(a) the Settlor and the Settlor’s spouse, (name of spouse), jointly. Any references in this Indenture to the lifetime of the Income Beneficiary shall be construed to mean the lifetime of both the Settlor and (name of spouse) and any references to the death of the Income Beneficiary shall be construed to mean the last to die of the Settlor and (name of spouse);

(b) the Settlor and the Settlor’s spouse, (name of spouse), jointly and upon the death of the last of the Settlor and (name of spouse), then (name of child). Any references in this Indenture to the lifetime of the Income Beneficiary shall be construed to mean the lifetime of each of the Settlor, (name of spouse) and (name of child) and any references to the death of the Income Beneficiary shall mean the last to die of the Settlor, (name of spouse) and (name of child).

1.07 “Net Income” of the Trust Fund shall mean all of the annual Income of the Trust, less the aggregate of:

(a) any and all expenses incurred in or about the management of the Trust; and

(b) such further or other sums in each year as the Trustee in [its/his/her] sole and absolute discretion consider to be proper allowances, reserves, deductions and disbursements applicable in accordance with generally accepted accounting principles.

1.08 “Trust” shall mean the Trust established by this Indenture.

1.09 “Trustee” shall mean and include the Trustee or Trustees for the time being hereof, whether original or subsequently appointed.

1.10 “Trust Fund” shall mean the property described in Schedule “A” under the control of the Trustee and all Capital accretions thereto and all income from such property to be held upon the trusts and with and subject to the powers and provisions hereof.

ARTICLE II

Payment and Treatment of Income and Capital

2.01 The Trustee shall retain the Trust Fund and distribute Net Income of the Trust to the Income Beneficiary or to any person designated by the Income Beneficiary, during the lifetime of the Income Beneficiary. Such distribution shall be made by the Trustee quarterly, on January 31st, April 30th, July 31st and October 31st in each year. Where the Income Beneficiary designates payments to be made to a third person, such designation shall be made in writing and signed by the Income Beneficiary. Payments made to designated third parties shall be deemed, for the purposes of this Indenture, to have been made to the Income Beneficiary. Where a third person is designated to receive funds under this provision, the said third person shall have no rights as against the Trustee nor shall the third person be considered to be a Beneficiary hereunder.

2.02 The Trustee’s obligation to distribute the Net Income of the Trust to the Income Beneficiary shall automatically cease with the regular payment due immediately prior to the death of the Income Beneficiary. By way of further clarification, the Trustee shall be under no obligation to make any pro-rata or other payments of Net Income to the Income Beneficiary or to the estate of the Income Beneficiary after the last payment of Net Income immediately preceding the death of the Income Beneficiary.

2.03 The Trustee shall have a duty to the Income Beneficiary to make all reasonable efforts to ensure that the annual return of Net Income to the Income Beneficiary is equal to or greater than the return on Capital that was generated to the Settlor at the time of the gift hereunder.

2.04 The Trustee may, at any time in the year make further interim allocations of Net Income to the Income Beneficiary or to any person designated by the Income Beneficiary, at the request of the Income Beneficiary.

2.05 The Trustee shall not advance any amounts out of the Capital of the Trust to a Beneficiary whether by way of loan or otherwise, during the lifetime of the Income Beneficiary.

2.06 The Trustee shall, as soon as convenient after the death of the Income Beneficiary, distribute the Trust Fund to the Capital Beneficiary.

2.07 Notwithstanding the fact that the Income Beneficiary is alive or of any provision of the Income Tax Act (Canada), all capital gains shall be allocated to the Capital Beneficiary and the Trustee shall make whatever election necessary under the Income Tax Act (Canada) to ensure that any realized capital gains of the Trust in any year are allocated to the Capital Beneficiary. The fact that the capital gains are allocated to the Capital Beneficiary shall not preclude the Trustee from, in [its/his/her] sole discretion, retaining the allocated capital gains within the Trust until after the death of the Income Beneficiary.

ARTICLE III

Charitable Receipt

3.01 The Trustee shall require the Charity to issue a charitable donation receipt to the Settlor within sixty (60) days following the date of this Indenture which shall be equal to the value of the residual interest of the Trust Fund. In the event that the Charity fails to issue a charitable donation receipt to the Settlor within such time period then this Agreement shall be null and void and the Capital and Income shall be returned to the Settlor forthwith.

ARTICLE IV

Powers

4.01 In addition to all other powers conferred upon the Trustee by the other provisions of this Agreement, or by any statute or general rule of law, the Trustee, without the interposition of any person entitled hereunder and without application to or approval by any Court, shall have and is hereby given the power and authority in its absolute and uncontrolled discretion at any time and from time to time to administer the Trust Fund in whatever manner the Trustee may determine and shall have the right to take any action in connection with the Trust Fund and to exercise any rights, powers and privileges which may exist or arise in connection therewith to the same extent and as fully as an individual could if he were the sole owner of the Trust Fund. Without in any way limiting the generality of the foregoing, the Trustee has the power and authority:

- (a) Subject to any specific direction hereinbefore set forth in this Indenture concerning any of the property of the Trust Fund, to use [its/his/her] discretion in the realization of any of such property and to see and call in and convert into money any part of the Trust Fund not consisting of money at such time or times and in such manner and upon such terms and either for cash or credit or for part cash and part credit, as the Trustee may decide upon, or to postpone such conversion of any of such property or any part or parts thereof for such length of time as [it/he/she] considers advisable. The Trustee may retain as an authorized investment of the Trust Fund for all purposes of this Trust for such length of time as the Trustee considers necessary or advisable any property originally transferred to the Trustee pursuant to this Indenture or hereafter assigned, transferred or appointed to the Trustee by the Settlor, in the form in which it may be at the date hereof or at the date of such assignment, transfer or appointment, as the case may be.
- (b) When making investments under this Agreement, to make such investments (whether inside or outside Canada) not limited to investments authorized by law for trustees, as the Trustee considers advisable and from time to time to alter or vary such investments.
- (c) To exercise all voting powers attaching to and all rights incidental to the ownership of stocks, bonds and other securities, and any other investments and property held as part of the Trust Fund, including voting all stocks, shares and other securities and issuing proxies to others.
- (d) To employ and pay for such professional or other assistance as the Trustee considers necessary in order to discharge [its/his/her] duties as Trustee hereunder.
- (e) To act on the written opinion obtained from any lawyer, chartered accountant or other professional person, and the Trustee shall not be responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance therewith provided that the Trustee acted in good faith.

- (f) To determine all questions and matters of doubt which may arise in the course of the management, administration, realization, liquidation, partition or winding up of the Trust Fund.
- (g) To institute and defend proceedings at law and to proceed to the final determination thereof or compromise the same as the Trustee considers advisable.
- (h) To carry out any transactions and enter into any contracts or agreements with any person or corporation concerning any asset forming part of the Trust Fund where the Trustee considers such agreement to be in the best interests of this Trust, and in connection therewith the Trustee may make, execute, acknowledge and deliver any and all instruments that may be necessary, proper or desirable.
- (i) To deposit any cash funds forming all or part of the Trust Fund in any bank or trust company inside or outside Canada.
- (j) To, without affecting [its/his/her] liability as Trustee, register any assets (real or personal property) forming part of the Trust Fund in [its/his/her] own name or in the names of [its/his/her] nominees or to hold such assets unregistered or in any manner in which title may pass by delivery.
- (k) To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from place to place inside or outside Canada. In this connection, the Trustee may deposit or keep any assets of the Trust in a safety deposit box of a bank, trust company or other financial institution and the Trustee shall have no responsibility or liability for loss of any such assets or damage to any such assets; the Trustee may also deposit any assets of the Trust with a bank, trust company or other financial institution to be held by it in its safekeeping facilities and the Trustee shall have no responsibility or liability for loss of any such assets or damage to any such assets while held by the bank, trust company or other financial institution in safekeeping.
- (l) To pay out of either or both the Income and Capital of the Trust Fund, as the Trustee may from time to time determine, any taxes or other imposts payable in connection with the Trust Fund by the Trustee or by any Beneficiary of this Trust.
- (m) Subject to Article 2.07, from time to time and at any time or times to make or not to make any election or elections, determinations, distributions and/or allocations for the purpose of the Income Tax Act (Canada) or any similar legislation of any province or other jurisdiction in force from time to time as the Trustee in [its/his/her] absolute discretion deems to be in the best interests of the Trust Fund and the Beneficiaries.
- (n) The Trustee shall pay the Net Income of the Trust to the Income Beneficiary in quarterly or more frequent periodic payments during each year in which the Income Beneficiary is entitled to receive such payments hereunder. For such purpose the Trustee at any time or times during such year is hereby specifically authorized and empowered to

make reasonable estimates of the annual Net Income for such year in order to ascertain the amount of the annual Net Income which shall be payable to the Income Beneficiary. In the event that the annual Net Income shall in fact be more than the amount paid to the Income Beneficiary during a particular year, the Trustee shall pay to the Income Beneficiary the difference between the Net Income for that year and the amount actually paid to the Income Beneficiary hereunder within sixty (60) days following such determination. In the event that the annual Net Income shall in fact be less than the amount paid to the Income Beneficiary during a particular year, the Income Beneficiary shall be required to return the amount of such overpayment to the Trustee within sixty (60) days of receiving notice from the Trustee to that effect. If the Income Beneficiary fails to return the amount of such overpayment, within the said sixty (60) day period, the Trustee shall be entitled to set off the amount owing by the Income Beneficiary to the Trust against future installments of Net Income to the Income Beneficiary hereunder.

ARTICLE V

Rights and Duties of Trustee

5.01 The Trustee is exonerated from any responsibility or liability to the Settlor or to his/her estate or to the Capital Beneficiary for loss or damage to the Trust Fund or to any part thereof through a bona fide exercise by the Trustee of any power conferred on the Trustee by this Agreement or by any statute of law.

5.02 The Trustee shall keep or cause to be kept accurate accounts of [its/his/her] Trusteeship and may have the Trust audited annually by a chartered accountant and the expense thereof shall be charged as provided by Article IV. The Trustee may employ a trust company to keep such accounts.

5.03 The customary expenses in connection with the administration of this Trust, including any charges in connection with the investment and reinvestment of any part of the Trust Fund and with the collection of Income and other sums derivable therefrom, shall be charged solely against the Income of the Trust Fund.

ARTICLE VI

Additions to the Trust Fund

6.01 The Settlor may from time to time during the currency of this Indenture convey, transfer or assign, by deed, will or inter vivos trust or in any other manner, any assets (being real, personal or mixed property) to the Trustee to become part of the Trust Fund and such additional assets so conveyed, transferred or assigned shall be held upon and be subject to the trusts herein set forth to the same extent and effect as if originally included in the property listed in Schedule "A" annexed to this Agreement.

ARTICLE VII

Replacement of Trustee

7.01 The Trustee may at any time resign from the office of Trustee on giving not less than thirty (30) days notice in writing and addressed to the Settlor.

7.02 The office of Trustee shall be determined to be vacated if such Trustee shall be declared bankrupt or insolvent, if a subsequently appointed Trustee shall be found to be a mentally incompetent person, or if a Trustee shall be removed by the Court.

Notwithstanding the provisions of subsection (1) of Section 3 of the Trustees Act, R.S.O. 1990, c. T.23, or any statutory provisions from time to time in force to the same or like effect, no person who from time to time may be a Trustee hereof (whether original, substituted or additional) shall at any time be required to be a resident of the Province of _____ or of Canada.

7.03 In the event of the resignation of the Trustee hereof at any time or upon the occurrence of any of the events to which reference is made in Article 7.02, subject as herein expressly provided, the Trustee shall appoint a substitute or additional Trustee or Trustees. The Trustee or Trustees from time to time in office may by deed appoint such number of additional Trustees as they in their absolute and uncontrolled discretion consider advisable to act with [it/him/her/them].

7.04 Notice of all changes in the Trusteeship hereunder shall be endorsed on or attached to this Agreement and shall be signed by the continuing Trustee and every such notice shall be sufficient evidence to any person having dealings with the Trustee for the time being of the facts to which it relates.

ARTICLE VIII

Miscellaneous

8.01 This Agreement is intended and is hereby declared to be irrevocable by the Settlor and notwithstanding anything to the contrary herein expressed or implied, no part of the Capital of the Trust Fund shall be paid or lent or applied for the benefit of the Settlor in any manner or in any circumstances whatsoever, and no part of the Capital shall revert to the Settlor.

8.02 All assets of the Trust Fund shall hereby vest in the Trustee of this Trust.

8.03 The Trustee may make a decision to exercise or not exercise any of the powers conferred on the Trustee by this Agreement or by any statute or law notwithstanding that the Trustee or in the case of a subsequently appointed Trustee, one or more members of the family of the Trustee, may be or may hereafter be beneficially interested (directly or indirectly) in the result of such decision.

8.04 The Trustee hereby accepts the trusts herein set forth and agrees to be bound by the provisions of this Agreement and to hold the Trust Fund upon the trusts herein set forth.

8.05 This Trust has been created under the laws of the Province of _____ [Consult counsel to determine that this Agreement conforms to the laws of your province], Canada, and the rights of all parties and the construction and effect of each and every provision hereof shall be interpreted according to the laws of the Province of _____.

8.06 Notwithstanding Article 8.05, nothing contained in this Agreement shall prevent the Trustee from engaging in transactions or exercising [its/his/her] powers and discretions granted hereunder in any jurisdiction in the world.

8.07 In the case of there being more than one subsequently appointed Trustee, a decision of a majority of the Trustees shall be deemed and taken to be to all intents and purposes the decision and act of the whole, and any Trustee who is not part of such majority shall have no responsibility or liability for loss arising from such a decision. Further, every document of any nature or description executed by a majority of the Trustees at any time in connection with such decision shall be valid, effectual and binding as if executed by all of the Trustees and may be acted upon by all parties transacting any business with the Trustees and shall be binding upon all persons claiming under this Agreement and upon all other persons claiming to take any estate or interest under any document.

8.08 This Indenture is intended by the parties and is hereby declared to be irrevocable.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written.

SIGNED, SEALED AND DELIVERED)
in the presence of:)
) _____)
) , Settlor)
))
) _____)
) , Trustee)

Schedule "A"

TRUST FUND

Residual Interest Gift Agreement

Draft Indenture for giving a residual interest in property to a charity. This document was drafted by Arthur B. C. Drache, Q.C., of Drache, Burke-Robertson & Buchmayer law firm in Ottawa and is presented here as an example. Before execution an Indenture should be approved by the donor's and trustee's legal council.

THIS INDENTURE

Made this _____ day of _____, 20_____

Between

_____ of the city of _____,
Province of _____ (hereinafter called the "Donor")

--and--

_____, of the city of _____,
Province of _____, (hereinafter called the "Donee")

Whereas the Donor is possessed of the articles hereinafter set forth, and wishes to make an unconditional gift of a remainder interest in the said articles to the Donee;

And Whereas the Donor wishes to have the use and retain possession of such articles until the Donor's death;

And Whereas the Donor makes this gift to the Donee to ensure that the said articles are not considered a part of the Donor's estate upon the Donor's death;

Now Therefore this indenture witnesses that in pursuance of the wishes of the Donor as expressed herein, the Donor does assign, transfer and set over unto the Donee a remainder interest in all those articles described as follows, whereas the Donor's life interest shall be terminable upon the Donor's death:

All of which articles are in the possession of the Donor as of the date hereinbefore mentioned;

And upon the death of the Donor, the Donor's personal representatives and all persons rightfully claiming any estate, right, title, or interest in or to the said articles or any of

them shall and will from time to time, and at all times hereafter upon every reasonable request and at the cost and charges of the Donee, make, do and execute, or cause to be made, done and executed, all such further acts, deeds and assurances for more effectually assigning and assuring the said articles unto the Donee in the manner aforesaid, as by the Donee or the Donee's counsel in law shall be reasonable advised or required.

It is Agreed that this Indenture and everything herein contained shall inure to the benefit of and be binding upon the heirs, executors, administrators an assigns, or successors and assigns, as the case may be, of the parties hereto respectively.

In Witness Whereof the Donor and Donee have executed this Indenture as of the date hereinbefore mentioned.

Sign, Sealed and Delivered)	
In the presence of)	_____
)	Donor
)	
)	_____
)	Donee