Foreign Activities by Canadian Charities

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1. Introduction

Section 149.1(1)(b) of the *Income Tax Act* sets out the prerequisites for a charitable organization. Included in the section is the requirement that all the resources of the organization must be devoted to the charitable activities carried on by the organization itself.[1]

Case law and not the *Income Tax Act* has provided us with the meaning of charity through the development of four principal categories:

i) relief of poverty

ii) advancement of education

iii) advancement of religion

iv) other purposes considered to be beneficial to the community at large.

The above categories have been reflected in the definition of "charitable purposes" as set out in Section 7 of the *Charities Accounting Act.*[2]

While charity comes under the legislative authority of the provinces, federal regulation is also necessary as tax privileges are granted to a registered charity pursuant to the provisions of the *Income Tax Act.*

The charitable organization or foundation is granted exemption from tax on revenues received. It also has the ability to issue a tax receipt to donors for tax credit purposes. Such privileges reflect a desire on the part of the Canadian taxpayer to support charitable purposes. While registered charities depend on donors for financial support, they also depend "on the sense of fairness of those who willingly pay higher taxes so that foregone revenues can be redirected in support of charity".[3]

The charity is accountable to the public for how it carries on its activities and applies its resources. The monitoring mechanisms set out in the *Act* attempt to ensure that Canadians will continue to have confidence in such organizations.

2. Income Tax Act Provisions

Subsection 248(1) – Registered Charity

The term "registered charity" is defined in Subsection 248(1) of the *Act.* The organization must be created or established in Canada, be a resident of Canada and be either a charitable organization or a public or private foundation as

defined in Subsection 149.1(1) of the *Act* and registered as such by the Minister of National Revenue.

A branch, division or congregation of such an organization or foundation can also be a registered charity if it meets the residency requirement, is created or established in Canada and received donations on its own behalf.

Subsection 149.1(1)(b) – Charitable Organization

One of the elements in the definition of a "charitable organization" in subsection 149.1(1)(b) of the *Act* is that *all* the resources of the organization must be devoted to charitable activities which are carried on by the organization *itself.* While activities in themselves are neither charitable nor noncharitable, the objects or purposes of the organization giving rise to the activities must be charitable, i.e., they must promote a public benefit which is recognized as such by the courts. Such an interpretation is consistent with trust law principles and the provisions of Section 7 of the *Charities Accounting Act.*[4]

Subsection149.1(1)(c) – Charitable Purpose

This subsection of the *Act* expands the definition of "charitable purposes" to include the disbursement of funds by a charitable organization or foundation to qualified donees.

Subsection 149.1(1)(e) –Disbursement Quota

This provision of the *Act* sets out the disbursement quota rules that require charitable organizations and foundations to spend specified amounts of receipted income and, in the case of foundations, a specified percentage of the value of investment assets, on charitable activities or gifts to qualified donees. The charitable organization must carefully address whether or not it is complying with the restrictions on disbursements imposed on it by this subsection of the *Act.* Eighty per cent of the receipted income for the immediately preceding taxation year must be spent by the charitable organization in carrying out its charitable purposes. It must still comply with the requirement that all its resources must eventually be devoted to charitable activities carried on by itself. Certain types of donations referred to in section 149.1(1)(e)(i) are not included in the receipted income totals for purposes of calculating the disbursement quota. They include:

(a) bequests and inheritances;

(b) gifts subject to a trust or direction that they be held for a period of not less than 10 years;

(c) gifts from a registered charity (under some circumstances).

In the case of a charitable organization, not more than 50 per cent of its annual income is to be disbursed to a qualified donee. (A qualified donee is defined in the *Act* to include other registered charities, registered Canadian amateur

athletic associations, the United Nations and its agencies, Canadian municipalities, registered national art service organizations and other organizations. A complete listing of qualified donees is set out in Appendix A.)

The *Act* allows two separate charities to apply to the Minister for recognition as "associated charities" (e.g., a national head office with local provincial charity divisions). With such a designation, up to 100 per cent of the charitable organization's income can be transferred to an "associated charity".

Such designations are also considered to be acceptable for the purpose of determining if the charity has met its minimum disbursement requirements.

Pursuant to Section 149.1(5) of the *Act*, a registered charity can apply on form T2094 to the Minister to have a specified amount in a taxation year deemed to be an amount expended by the charity on its charitable activities for the year. Such approval is only considered if the deficiency cannot be corrected by utilizing disbursement excesses from prior years. Disbursement excesses can be carried back one year and forward five years from the year such excess occurred.[5]

3. Carrying on Activity Abroad

General

The *Act* does not distinguish between charitable activity which is domestic and that which is foreign. Many Canadian charities have foreign charitable activities as their primary objective (e.g., missionary organizations and relief agencies).

In carrying on activity abroad, the charity must still comply with the regulations and restrictions placed upon it by statute and common law. As indicated above, Subsection 149.1(1)(b) of the *Act* requires the charity to devote *all* of its resources to carrying on its *own* charitable activity. This can be accomplished to some degree by disbursing funds to a qualified donee and allowing such donee to carry on the charitable activities. Not more than 50 per cent of the charitable organization's annual income can be disbursed to qualified donees.

Alternatively, the charity can actively carry out its own programs to fulfil its charitable objectives. Until recently, Revenue Canada (now Canada Customs and Revenue Agency) identified three ways in which this could be done:

(i) by the charity using its own employees to actually carry on the work of the charity;

(ii) by the charity entering into a principal/agent agreement wherein an agent was retained by the charity to perform on behalf of the charity such specific duties as are assigned by it; and

(iii) by the charity entering into such contractual arrangements with other organizations or individuals pursuant to which the parties carry on the charitable activity (e.g., joint venture agreements).

1990 Discussion Paper

In its 1990 *Discussion Paper*,[6] the Registration Directorate of Revenue Canada – Charities Division, recognized that the charity sector required more flexibility to enable the sector to provide a greater degree of charitable assistance in foreign countries. It also appreciated the concerns expressed by the sector that other forms of participation were necessary in order to provide protection to the Canadian charity from possible liabilities arising from the charitable activities. As a result, the government has taken the following position:

> The government will now accept other arrangements which ensure that charities are accountable for how their resources are used and introduce new controls to ensure public confidence is maintained in the foreign activities of Canadian charities.
>
> Performance contracts and other arrangements which secure "expenditure responsibility" by the Canadian charity in an acceptable manner will now be allowed. These arrangements will require specifically that charitable activities be carried out under the terms of a contract or agreement. Acceptable joint venture agreements would include those with participation from the Canadian International Development Agency. Simplified arrangements will be developed in these circumstances to reduce the paper burden.
>
> Charities operating abroad will be closely monitored and be required to provide more detail in their annual returns on their financial involvement and how they will perform such activities.

Improved information will also be made available to charities on how they may operate abroad.[7]

Registered Charity Information Return

Since the 1990 *Discussion Paper*, the T3010 Registered Charity Information Return has been amended. More information is requested from the charity as to the manner in which it carries on its activities. In addition, more information is made available to the public about the charity.

A greater degree of public awareness produces greater accountability on the part of the charity, resulting in greater public confidence. In interpreting subsection 149.1(1)(b), Revenue Canada has developed an administrative policy that requires the charity to demonstrate direction, control and supervision over the application of its resources. The revised T3010E(97) Registered Charity Information Return contains numerous questions which enable it to identify the manner in which the organization carries on its foreign activity. These questions, herein numbered as they appear in the Information Return, include:

A4 Was the charity affiliated or otherwise linked to a provincial, national or international organization?

C1 What programs did the charity carry on during the fiscal period to accomplish its charitable purpose?

C3 Were any of these programs directly or indirectly outside Canada?

H1 Did the charity make gifts to qualified donees?

I1 Did the charity make any direct expenditures to conduct programs outside Canada?

I4 Were any of these programs carried on:

- by employees of the charity?
- under agency or contract with other organizations or individuals? under other arrangements?

Please describe the nature of these arrangements.

I5 Does the charity:

- issue instructions directing the use of its funds?
- retain legal responsibility for the use of its funds?
- receive a detailed breakdown of expenditures at least annually?
- give prior approval for the specific allocation of funds?

In addition to these questions, the T3010(E) requires financial disclosure of expenditures on foreign programs.

The *Guide* for completing the Registered Charity Information Return is very specific as to the information to be disclosed in detailing how the charity structured and managed its foreign operations during the fiscal year. If carried on with other organization, the roles of the Canadian charity and those with whom it is involved are to be disclosed. The legal arrangements are to be identified, together with the length of time they are to be in place. A description of the programs is also to be set out in the return. Reference is made to programs carried on by employees, agents, contractors and other arrangements. The *Guide* also contains the following statement:

> Any charity claiming to be carrying on its own activities (and this is true whether these activities are located in Canada or another country) must be able to show that it is controlling and directing the use of its resources, rather than just funding a project or program run by another person or organization.[8]

In other words, the Canadian charity must not receive donations, issue receipts for them and then make such funds available for other nonqualified donees to use within their programs. In doing so, the Canadian charity is "lending" its charitable registration to the non-Canadian entity. The funds for which it has issued a donation receipt are not, in fact, being used by the Canadian charity

for its own activities and should not be considered as disbursements in determining if the charity has met its minimum spending requirements.

RC4106E – Draft Information Brochure

(a) General

The Minister of National Revenue has produced a draft brochure, RC4106E – "Registered Charities: Operating Outside Canada". The draft is too lengthy to be reproduced here but can be found in full at http://www.ccra.adrc.gc.cg/. This draft provides guidelines for Canadian Charities as to how they can carry on foreign activity through intermediaries and in co-operation with other organizations that are not qualified donees. The draft demonstrates that drafted contractual arrangements which show that the Canadian charity is applying its resources to its own activity are required.

(b) Use of Intermediaries

(i) Principal/Agent

A Canadian charity can carry on its *own* activities by appointing an agent to act on its behalf. A formal agreement should be in place which clearly demonstrates that direction, control and supervision of the funds and the activities to which they are applied rest with the Canadian charity. Board approval of projects and activities is further evidence that the activity is that of the Canadian charity.

Information Circular 80-10R sets out the following conditions for the expenditure of funds where an agent is employed:

(a) The charity must maintain direction, control and supervision over the application of its funds by the agent;

(b) The charity's funds must remain apart from those of its agent so that the charity's role in any particular project or endeavour is separately identifiable as its own charitable activity;

(c) The financial statements submitted in support of the charity's annual information returns must include a detailed breakdown of expenditures made in respect of the charitable activities performed on behalf of the charity by its agent(s); and

(d) Adequate books and records must be kept by the charity and its agent(s) to substantiate compliance with the conditions outlined above.[9]

Revenue Canada has also developed guidelines indicating the elements to be included in an agency agreement. These include:

- the names and addresses of the parties;
- a comprehensive description of the specific activities (actual and proposed) for which funds will be transferred, in sufficient detail to clearly outline the limits of the authority the agent has to act on behalf of the Canadian charity;

- provision to update the agreement as new projects are initiated by the Canadian charity in order to provide descriptions of the specific activities as per above;
- provision for written progress reports;
- provision for installment payments by the Canadian charity based on confirmation of reasonable progress and assurance that the resources provided to date have been applied for the specific activities outlined in the agreement;
- provision for the Canadian charity, at its discretion, to withhold or withdraw the funds or other resources;
- provision for the Canadian charity's funds and property to be kept separate from those of the agent and for the agent to keep separate books and records; and
- the date and signatures of the parties to the agreement.

It must be emphasized that the agent only draws its authority from the agreement and serves as the charity's representative in carrying out the duties assigned to it.

(ii) Contractors

In RC4106E, reference is made to a charity carrying out its charitable activities by contracting with a third party in a foreign country to provide the needed goods and services. It refers to such third parties as "contractors".

In all areas of charitable activity, the charity contracts with third parties to provide goods or services on its behalf. Even the relationship between the charity and its employees is of a contractual nature. In entering into such contractual relationships, the charity is merely applying its resources to carry on its own charitable activity. Any service for which the charity has contracted, be it the transportation of supplies to a foreign country or the retention of advisors to oversee a project undertaken by the charity, is simply the charity carrying on its own charitable activity. Such arrangements should not be designated as "contractor" arrangements. To do so creates what appears to be a special relationship between the charity and the providers of such goods and services when in fact, no distinction exists between this contractual arrangement and other contracts regularly entered into by the charity. To suggest that a special relationship may be created through such arrangements may result in the charity improperly transferring resources to a third party over which the charity lacks the requisite level of control.

c) Participation With Other Non-Canadian Organizations

(i) Joint Ventures

A Canadian charity may decide to carry on foreign activity in the furtherance of its charitable objects by pooling its resources with other organizations that

are not qualified donees. Such an arrangement is often used when the project is too large to be financed in its entirety by one of the parties.

The Canadian charity must be able to demonstrate that it exercises direction, control and supervision over the application of its funds. Since it may not be the largest contributor to the co-funded project, it is not in a position to dictate the manner in which the funds are applied or how the project is undertaken. However, if it is an active participant in the venture and has the right, in proportion to its resource input into the joint activities, to participate in long-term planning, financial commitment and decision-making, the activities will be considered to be those of the Canadian charity. Only activities which are in pursuit of the charitable purposes of the Canadian organization should be carried on through the joint venture.

As in the case of a principal/agent, the agreement should be in writing. Each of the parties that financially contributes to the pool appoints a representative to a committee whose role is to represent the interests of the appointing party when decisions are made as to the programs and activities to be carried on jointly. Such Canadian representation on the management committee of the joint venture demonstrates continuing participation by the Canadian charity in the employment of its resources.

The joint venture is not a legal entity unto itself nor is it a partnership in the legal sense. Rather, the joint venture is merely an activity in which the various charities mutually participate. The agreement regulates the manner in which the activity is carried on and the obligations of each participant in such activity.

Some joint venture agreements are restricted to a single project in a specific country. Other arrangements regulate continuing foreign activity of the Canadian charity but not those activities which are undertaken and financed solely by the Canadian charity.

Only parties which contribute to the activity, either in the form of financial resources or human resources for which a dollar value can be assigned, should execute the joint venture agreement. Any party to the agreement which fails to make a contribution in any year may be entitled to attend and participate in meetings of the management committee but should not be entitled to vote on the issues being addressed.

Joint venture agreements have been employed by the writer for various activities:

(a) the establishment of a structure for a denominational head office of a congregation whose churches are located in both Canada and the United States;

(b) the continuing international relief activities of a Canadian charity acting collectively with many non-Canadian organizations; and

(c) a single project carried on collectively by a Canadian charity and other non- Canadian organizations.

Educating the non-Canadian charity as to why such agreements are necessary is the most difficult aspect of developing a joint venture agreement. Most organizations resist change. Often the Canadian charity is a small contributor to the joint activity and the other charities resent having to accommodate it as it usually requires some adjustment to their current *modus operandi*. Often, the Canadian charity has been established in Canada after its counterpart has successfully carried on programs and activities in the United States. The American organizations may refer to the Canadian charity as a "branch office", "sister organization" or "affiliate" and often have difficulty in accepting the autonomy of the Canadian charity and the fact that it is subject to Canadian regulations. It is not free to serve as a conduit for the direction of funds to the U.S. organization to support its programs and activities even if they are international in scope. Only through a proper agreement that assures Canadian direction, control and supervision over its resources can a Canadian charity participate with such non-Canadian organizations. It must also be emphasized that it is not sufficient merely to develop the model on paper and then ignore it. Revenue Canada is now more vigilant in auditing charities and ensuring compliance with the terms and provisions of the applicable joint venture agreement.

The parties to the Joint Ministry Agreement must have charitable objects or purposes which are similar in nature. The constating documents of all parties to the agreement should be reviewed to ensure such similarity exists.

Some of the key provisions to be included in a Joint Ministry Agreement are:

(a) Management Committee

The right of each party contributing to the programs and activities of the joint venture to appoint representatives to a managing body (herein called the Management Committee) should be set out in the agreement. The number of representations on the committee and the manner in which they are appointed must be defined.

The rights, powers and duties of the Management Committee should be clearly enunciated in the agreement. This should include:

(i) Regulating the application of funds to various projects and/or activities;

(ii) Keeping proper records and financial statements;

(iii) Selecting appropriate projects and monitoring their progress;

(iv) Determining all other issues relating to the general conduct and management of the affairs of the joint venture;

(v) Preparing a budget which is to be submitted to the parties for their approval, with or without amendment.

(b) Voting Control

All issues to be decided by the Management Committee are to be determined by a vote. Some agreements provide for representation at the Management Committee in proportion to the financial contributions of the parties to the joint activity. In other agreements, the members of the committee have the same percentage of votes as is represented by the organization's percentage of the financial and resource contributions to the activities of the joint venture for the preceding fiscal period (i.e., the voting power of each party at the Management Committee level is proportional to the resource input of the party to the joint venture).

Some agreements provide that a consensus will be sought on all decisions but if that is not possible, the parties will resort to a weighted vote. The parties to the joint venture must determine the required percentage necessary to pass a motion coming before the Management Committee. Many agreements require that all issues be determined by a two-thirds majority vote.

The agreement can also provide that certain decisions cannot be made without the prior approval of the parties themselves, not just their representatives on the Management Committee.

(c) Meetings of the Management Committee

The agreement should set out the frequency of meetings, notice requirements for meetings and the requirement that each party have a representative in attendance for a Management Committee meeting to be convened. Provision can also be made for conference call participation in such meetings.

(d) Reporting Obligations

The agreement should provide that the minutes of all Management Committee meetings will be forwarded to the parties, together with any other materials that will reflect the participation of the various charities in the programs and activities carried on in accordance with the agreement.

(e) Financial Statements

Annual financial statements of the joint activity must be prepared and must disclose fully all funds received and the manner in which such funds have been applied. These statements must be distributed annually to the parties of the joint venture. Such statements form the basis for informing the regulatory bodies in the various jurisdictions (e.g., Internal Revenue Service – USA and Canada Customs and Revenue Agency – Canada) of the manner in which the funds contributed to the joint activity by the individual parties have been applied and that such application is consistent with the objects of each individual charity.

(f) Term and Termination Provisions

Specific provisions should be set out in the agreement as to when and how the joint ministry may be terminated (e.g., at the conclusion of a specific project; at a specified date upon written notice). The unilateral right of any party to withdraw should be entrenched in the agreement. If the Management Committee undertakes activities not within the charitable purposes of the Canadian charity, the Canadian charity would then be able to withdraw and not jeopardize its charitable registration.

The agreement would also provide for a complete accounting between the parties upon termination and the manner in which any remaining property is to be distributed among the parties.

(g) Financial Arrangements

Each charity would commit itself to contribute to the joint activity in accordance with the approved budget. The budget process should also be set out in the agreement. As indicated, this would require each party to first approve a draft budget. The first draft would be prepared by the Management Committee and the parties would amend it as they deemed appropriate.

The manner in which capital assets are to be contributed to the joint ministry activity would also be set out in the agreement.

(h) Liability

Each party should be concerned about the negligent acts or wilful misconduct of the other participants in the joint venture. Where possible, the costs and consequences of inappropriate actions by one party should be attributable to that party. If the action is not traceable, liability should be borne in proportion to the contributions of the parties to the joint activity.

Contractual breaches, criminal acts and statutory noncompliance are some of the ways in which liability can arise. The Management Committee and the parties to the agreement should develop a legal checklist of issues to be addressed on a regular basis to minimize risk and avoid liability. Appropriate policy statements should be developed in potential problem areas.

Revenue Canada looks to various indicators to determine if the Canadian charity is exercising the requisite level of control in joint-venture arrangements. They include the following:

1. Presence of members of the Canadian charity on the governing board of the joint venture;
2. Presence in the field of members of the Canadian charity.;
3. Joint control by the Canadian charity over the hiring and firing of personnel involved in the venture;
4. Joint ownership by the Canadian charity of foreign assets and property;

5. Input by the Canadian charity into the venture's initiation and follow-through, including the charity's ability to direct or modify the venture and to establish deadlines or other performance benchmarks;
6. Signature of the Canadian charity on loans, contracts and other agreements arising from the venture;
7. Review and approval of the venture's budget by the Canadian charity, availability of an independent audit of the venture and the option to discontinue funding;
8. Authorship of procedures manuals, training guides, standards of conduct, etc., by the Canadian charity;
9. On-site identification of the venture as being the work, at least in part, of the Canadian charity.

Attached as Appendix B is an agreement for a joint ministry venture that has been reviewed and accepted by Canada Customs and Revenue Agency for a specific client. This is not intended to be a precedent but merely an indication of the structure of one acceptable joint venture arrangement.

ii) Co-operative Partnerships

The concept of a co-operative partnership was introduced in RC4106E. Unlike the joint venture where resources are pooled by the various participants, in the co-operative partnership, the parties work in association with each other, each assuming responsibility for one aspect of the charitable activity. The writer used such an agreement to enable a Canadian charity to provide medical equipment to a hospital in a Third World country. The Canadian charity maintained ownership over the equipment and the foreign organization provided medical personnel to use the equipment within the local community. A copy of this agreement, which was presented to Canada Customs and Revenue and found to be acceptable, is attached as Appendix C.

(d) Foreign Transfer of Property by a Canadian Charity

Ownership of capital assets in foreign countries by Canadian charities has become a difficult and complex matter. If the asset (e.g., land and buildings) is registered in the name of the charity and appears on the charity's financial statements, Canada Customs and Revenue is usually satisfied that direction and control remain with the organization, provided the asset is being used in carrying out the charity's activities. However, where foreign ownership is prohibited in the country in which the Canadian charity carries on its activity, how can capital projects that are instrumental to the charity's purposes be undertaken?

It should never be assumed that the transfer of capital goods to a foreign organization is an acceptable application of funds by a Canadian charity. In RC4106E, Canada Customs and Revenue emphasizes that the *Income Tax Act* clearly does not allow a registered charity to carry out its purposes by transfer-

ring money or other resources to organizations that are not qualified donees. The draft brochure states that, whether operating in Canada or abroad, the Canadian charity *should* maintain ownership and control over assets unless:

- the transfer of the assets in itself is the organization's charitable activity (e.g., providing housing for the disadvantaged and homeless);
- the assets are sold for fair market value; or
- the assets are transferred to qualified donees.

Canadian tax authority Arthur Drache suggests that there may be circumstances in which Canada Customs and Revenue may permit the transfer of capital assets to a foreign organization that is not a qualified donee. If title cannot vest in the Canadian charity, provided the asset is used exclusively for charitable purposes consistent with those of the Canadian charity and provided appropriate written assurances are given, it may be possible to transfer title to a local charity or government body.[10]

The use of the Co-operative Partnership Agreement referred to above may also be a means by which the problem of capital assets can be addressed.

(e) Books and Records

Subsection 230(2) of the *Act* requires a registered charity to keep records and books of account at a Canadian address. The records are to be in such form and contain such information as will enable verification of donations to the charity.

Paragraph 25 of *Information Circular* 80-10R indicates that registered charities must have available sufficient records to also allow verification of income received and any disbursements made.

Subsection 230(4) of the *Act* imposes on the charity, as a "person" required by Subsection 230 to keep records, the obligation to keep every account and voucher necessary to verify the information contained therein.

It is difficult, if not impossible, to comply with such provisions when a charity carries on foreign activity. It is even more difficult if such foreign activity is conducted pursuant to some of the structural arrangements noted above.

Perhaps some comfort can be drawn from RC4106E as to the position of the Department on books and records to be kept in Canada by the charity carrying on activities abroad. It indicates that the Department must be able to determine from the information available whether the charity, in carrying out its charitable purposes, is in compliance with the *Act*. Regular reports on the foreign activities supported by minutes of meetings, copies of written agreements, financial statements and other materials which demonstrate how the charity's funds are applied must be maintained by the charity. The types of records to be kept may vary depending on the form of structured arrangement. As previously stated, minutes of the management committee of a joint venture

should demonstrate the level of participation by the Canadian charity in the decision-making process. The minutes, combined with the financial statements, should confirm that the Canadian charity's resources are being applied to its own charitable activities.

In the case of an agent, copies of the agent's books and records detailing the manner in which the charity's funds have been applied should be forwarded on a regular basis. The draft RC4106E indicates that the *originals* should be available for *inspection* by the charity at the place they are being kept by the agent.

If the information referred to in RC4106E indicates the types of records which the Department feels are necessary, it would appear a practical and reasonable approach to reports and records has been adopted by the Department.

Conclusion

In its 1990 *Discussion Paper*, the Department recognized the need for the charity sector to be fully accountable to its donors and the general public for the manner in which it applies the funds entrusted to it. While the Department has the authority to enforce compliance with the provisions of the *Income Tax Act*, self-discipline by charities is the most effective means by which public confidence in the sector can be maintained.

Awareness on the part of charities and their advisors of the legal duties to which charities are subject will allow Canadians to continue to support philanthropy with the assurance that the charitable purposes entrusted to such organizations are honoured.

FOOTNOTES

1. 149:1(1)(b) *Income Tax Act*, S.C. 1970-71-72, c.63, as amended (the *Act*).
2. R.S.O. 1990, c.10, as amended.
3. "Suggested Issues for Discussion in the Ministry of National Revenue's Review of the Administration of the Charities' Tax Incentive", Minister of National Revenue, The Registration Directorate of Revenue Canada – Taxation [now the Canada Customs and Revenue Agency].
4. R.S.O. 1990 c. 10, as amended.
5. S.149.1(20).
6. *Supra*, footnote 3.
7. *Ibid.*
8. "Completing the Registered Charity Information Return" – T4033(E)Rev.97, Revenue Canada – Charities Division.
9. Information Circular IC 80-10R at paragraph 19.
10. Arthur B.C. Drache, *Canadian Taxation of Charities and Donations*, (1994 edition), revised and consolidated (Toronto:Carswell, 1994), at 2–27.

APPENDIX A
QUALIFIED DONEES

- Registered charities (in practice, the largest category of qualified donees);
- Registered Canadian amateur athletic organizations;
- Housing corporations resident in Canada constituted exclusively to provide low-cost accommodation for the elderly and exempted from tax by paragraph 149(1)(i) of the *Act*;
- The United Nations and its agencies;
- Universities outside Canada prescribed to be universities with a student body that ordinarily includes students from Canada (these universities are listed in Schedule VIII of the *Income Tax Regulations*);
- Charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift during the charity's fiscal period, or in the 12 months immediately preceding the period (for more information, see *Information Circular* 84-3, Gifts in Right of Canada);
- Canadian municipalities;
- Her Majesty in right of a province; and
- Her Majesty in right of Canada.

APPENDIX B
SAMPLE JOINT MINISTRY AGREEMENT

THIS AGREEMENT, made as of the day of

BETWEEN:

_____, a non-profit corporation incorporated under the laws of the Province of _____, one of The Provinces of Canada
(hereinafter referred to as "CANADIAN")

AND:

_____, a non-profit corporation incorporated under the laws of the State of _____, one of the United States of America;
(hereinafter referred to as "U.S.")

WHEREAS Canadian is a charitable organization and registered charity within the meaning of such terms in the Income Tax Act (Canada);

AND WHEREAS U.S. is a tax exempt religious non-profit organization under the Internal Revenue Code (U.S.);

AND WHEREAS the parties hereto have concluded that certain of the ministries which are carried on by each organization could be more effectively and economically carried

on by pooling the resources which each of the parties are willing to devote to such ministries for the purpose of carrying on these ministries jointly;

AND WHEREAS the parties have carried on joint ministry projects for a number of years, with Canadian typically providing approximately _____% of the resources applied to such projects and U.S. providing the balance; and

WHEREAS the parties hereto have previously been conducting joint ministry activities under terms similar to this Agreement, and it is the intent of the parties hereto that this amended and restated Joint Ministry Agreement replace and supersede all prior written or oral Joint Ministry Agreements between the parties, and that this agreement be entered into for the sole purpose of establishing a meaningful structure for regulating and overseeing the ministry activity or activities which are co-funded by the parties hereto; and

WHEREAS each of the parties hereto is an autonomous organization and each party acknowledges that it shall continue to be a distinct entity from the other parties to this agreement and each party shall determine from time to time in consultation with the other party the ministries which will be carried on jointly.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

ARTICLE 1
PURPOSE

1.1 *Joint Activity*
The parties shall collectively carry on the ministry activities which are mutually agreed upon by each of the parties hereto from time to time and which are in compliance with the terms and provisions of this agreement. Such ministry activities shall not be inconsistent with those activities which are permitted or authorized by the objects or purposes of each of the parties. For further clarification, the parties agree that at the date of this agreement, the activities to be carried on pursuant to the terms of this agreement are as follows:

(a) to erect and operate radio stations for missionary broadcasting in all parts of the world;

(b) to erect and operate hospitals on a charitable basis;

(c) to carry on such services as are incidental to the attainment of the above-noted charitable objects

1.2 *Jurisdiction*
This agreement shall be interpreted according to the laws of the Province of Ontario, one of the provinces of Canada.

1.3 *Trade Names*
In carrying out the joint ministry activities pursuant to the provisions of this Agreement, such activities shall be conducted under the tradename _____ (hereinafter called the "_____") provided that the tradename may be modified in the various countries in which the ministry activities are carried on to meet the specific legal requirements of such country.

ARTICLE II
ORGANIZATION

2.1 *Joint Activities Committee Composition*
The ministry activities carried on pursuant to Article 1.1 shall be directed by a Joint Activities Committee initially composed of ten (10) persons. The number of members of the Joint Activities Committee may be changed from time to time by agreement of all the parties to this agreement. One (1) of such persons, or such greater number as may be determined pursuant to the agreement of the parties, shall be appointed by Canadian and shall be designated as a voting member. The remaining members of the Joint Activities Committee shall be appointed by U.S. and shall also be designated as voting members. <OPTIONAL> Unless otherwise expressly agreed by U.S., U.S. shall have the right to appoint at least a majority of the Joint Activities Committee for so long as U.S. continues to contribute at least 51% of the revenues contributed to the activities of the joint ministry under this Agreement.

2.2 *Appointment to Joint Activities Committee*
The appointment of each person and the designation of voting members shall be for a term of two (2) years, ending at the later of the second annual meeting of the Joint Activities Committee following such person's appointment and at which the financial statements of the joint ministry are considered or until their successors are appointed in their stead. A first and second alternative voting member may be designated by the party appointing the voting member to take the place of any voting member of the Joint Activities Committee. Nothing herein shall prevent a party from designating another appointee or voting member in the place and stead of its representative throughout the term.

2.3 *Meeting of Joint Activities Committees*
The Joint Activities Committee shall meet at least once each year in September, or more frequently as the interests of the joint ministry activities may require, at any place designated by the Joint Activities Committee. A meeting of the members of the Joint Activities Committee may be called by the Chairperson at any time. The secretary of the Joint Activities Committee shall convene a meeting of the members of the Joint Activities Committee pursuant to a written request therefore from the chairperson or any two members and a quorum at any meeting of the Joint Activities Committee shall be determined in accordance with Article 2.9.

2.4 *Notice of Meeting of Joint Activities Committee*
Reasonable advance notice of any meeting of the Joint Activities Committee shall be given in writing stating the time, date and place, and mailed to each member at the last address thereof as shown on the records maintained for the joint ministry activities. Such notice may be faxed to any member where the member has so requested and has provided the secretary with a fax number.

2.5 *Waiver of Notice*
Meetings of the Joint Activities Committee may be held at any time without formal notice if all the members are present or those members who are absent have waived notice and have signified in writing their consent to the meeting being held in their absence.

2.6 *Conference Meetings of Joint Activities Committee*
Where all the members have consented thereto, any member may participate in a meeting of a Joint Activities Committee by means of a conference telephone or other communications equipment by means of which all persons participating in such a meeting can hear each other, and a member participating in such a meeting by means of a conference telephone or other communicating equipment shall be deemed to be present in person at the meeting. Any consent given hereunder shall be effective whether given before or after the meeting to which it relates. Notice of any meeting or any irregularity in any meeting, or the notice thereof, may be waived by any member.

2.7 *Votes on Joint Activities Committee*
At all meetings of the Joint Activities Committee, every question shall be decided by the majority of the votes cast. Each voting member shall have such number of votes on any question before the Joint Activities Committee as determined pursuant to the provisions of Article 2.8. The Chairperson of the meeting shall not be entitled to vote on any matter.

2.8 *Determination of Number of Votes*
The number of votes to be exercised by any voting member of the Joint Activities Committee shall be determined in the following manner:

(a) following the preparation of the financial statements of the joint ministry activities and prior to the annual meeting of the Joint Activities Committee, each year the financial contribution of each part to such joint ministry activities for the immediately preceding fiscal period shall be determined as a percentage of the aggregate of all financial contributions to the joint ministry activities by parties to this Agreement for the immediately preceding fiscal period. In determining such contributions, a reasonable value shall be assigned to any resource input contributed to the joint ministry activities by any party to this Agreement and such value shall be deemed to be a financial contribution and be included in such calculations.

(b) upon the determination of the percentage contribution by each party to this Agreement, the total number of votes to be cast by each party's voting members shall be equal to one vote for each full percentage point of such party's financial contribution determined in accordance with Article 2.8(a). Where a party to this agreement has more than one voting member appointed to the Joint Activities Committee the total number of votes which such party's appointees are entitled to cast shall be divided equally among such party's appointees.

2.9 *Quorum*
A quorum at any meeting of the Joint Activities Committee shall be one-half of the members present in person or by teleconference provided that at least one appointee of each party is part of such quorum. Neither party shall use this quorum requirement as a means of unreasonably delaying or avoiding a meeting of the Joint Activities Committee.

2.10 *Budget Process*
The process to establish a budget for the joint activities of _____ shall be as follows:

(a) Prior to the August meeting of the board of directors of Canadian and the September meeting of the U.S. board of trustees, the Joint Activities Committee shall prepare a budget setting out the estimated costs and funding required for all proposed ministry activities to be carried on jointly by the parties hereto for the ensuing fiscal year. Upon completion of the budget by the Joint Activities Committee, such budget shall be forwarded promptly to the parties by their respective representatives on the Joint Activities Committee. Receipt of the budget by any of the party's Joint Activities Committee representatives shall be deemed to be receipt by the party. If such budget meets with the approval of all parties, with or without change, the budget or amended budget, as the case may be, shall become the budget for joint ministry activities overseen by the Joint Activities Committee for the ensuing year. Notice of approval of the budget or amendments required thereto shall be given to the other party as soon as is practicable but in any event not later than October 15th of each year.

(b) Each party shall contribute such funds as agreed to by that party during the budget approval process and such funds shall be used to carry out the joint ministry activities as set out in the budget.

2.11 *Powers and Duties of Joint Activities Committee*

The Joint Activities Committee shall oversee the ministry activities which are carried on jointly by the parties hereto in accordance with the terms of this agreement. In doing so, the Joint Activities Committee shall exercise such rights, powers and privileges as assigned to it by the parties, which shall include the following:

(a) the Joint Activities Committee may establish policies, which are not inconsistent with the charter, bylaws and policies of each of the parties, as it considers necessary or advisable for the general conduct and management of the activities which are carried on jointly;

(b) the Joint Activities Committee shall elect one of its members to be chairperson and one of its members to be secretary;

(c) the members of the Joint Activities Committee may establish a single joint bank account in the name of all parties to this Agreement to which all funds to be used in the joint ministry activities shall be deposited. The funds on deposit in such account shall be owned by the parties hereto in proportion to each party's contribution thereto. Alternatively, the Joint Activities Committee may authorize each party to open bank accounts for the purpose of holding funds for the joint ministry activities. The Joint Activities Committee shall designate the individuals who shall have signing authority for each such account:

(d) the Joint Activities Committee may establish such committees as it deems appropriate for the general conduct and management of the activities which are carried on jointly and may determine the duties and responsibilities of such committee;

(e) in addition to the officers appointed pursuant to paragraph (b) above, the Joint Activities Committee may, from time to time appoint such additional

officers or engage such persons as it considers to be necessary to carry out the function describe therein;

(f) the Joint Activities Committee shall provide regular reports to the parties hereto and act within the authority given to it by the parties from time to time.

2.12 *Remuneration*

(a) No member of the Joint Activities Committee shall receive any remuneration for acting as a member of such Committee. However, expenses incurred in attending meetings or fulfilling duties specifically assigned by the Joint Activities Committee shall be paid by each party for their respective appointees.

(b) In the event the services of an individual or individuals are required to carry out functions in connection with the ministry activities which are carried on jointly, a party to this Agreement may employ such individual or individuals and then make the services of such employee or employees available to the Joint Activities Committee to carry on the ministry activities carried on jointly by the parties. The compensation paid to such employee or employees shall be included in the financial contributions by such party to fund the joint ministry activities in determining the number of votes to be cast by such party pursuant to the provisions of Article 2.8 of this Agreement. With the approval of the parties hereto, the parties may jointly employ persons for the purposes of the joint ministry activities in such capacities at such remuneration and upon such terms as the Joint Activities Committee determines.

ARTICLE III
TERM AND TERMINATION

3.1 *Term*

The parties hereto shall commence to carry on the joint ministry activities in accordance with the provisions of this Agreement upon the signing of the Agreement by each of such parties. The parties shall continue to carry on the joint ministry activities until terminated by the agreement of the parties hereto. The parties acknowledge that should any decision made by the Joint Activities Committee in carrying out the joint activities provided for hereunder not meet with the approval of either party, the party disapproving of such decision shall be entitled to give written notice to terminate this agreement forthwith, whereupon the provisions of Article 3.2 shall apply.

3.2 *Termination*

Upon termination of the Agreement:

(a) a complete accounting of all property and assets held in connection with the joint ministry activities shall be made to the parties herein;

(b) subject to the provisions of Article 5.2, all such property and assets shall be returned to the parties in proportion to the contributions made by them to such joint ministry activities no later than sixty (60) days following the completion of the said accounting;

(c) each party hereto shall cease to have the right to use and shall discontinue the use of names, marks, designs and logos which are the names, marks, designs and logos of or similar to those owned by the other party to this Agreement. Where otherwise ambiguous, ownership of such names, marks, designs and logos shall be determined based on the usage of such names prior to usage in connection with the joint ministry activities hereunder.

ARTICLE IV
MANAGEMENT

4.1 *Compliance*

_____ shall be operated in accordance with policies mutually established from time to time by Canadian and U.S. and such policies shall not be inconsistent with those stated in their respective bylaws, manuals, doctrinal and policy statements and any other applicable governing documents. Unless otherwise mutually agreed by the parties, the parties shall maintain bylaws, manuals doctrinal and policy statements and other applicable governing documents which are consistent with their respective permitted corporate objects or purposes in existence as of the date of this Agreement.

4.2 *Records of the Joint Ministry*

Records of he joint ministry activities shall be maintained as required by law as well as minutes of all meetings of the Joint Activities Committee. Copies of all minutes and annual reports of the joint ministry activities shall be promptly forwarded to each party.

4.3 *Annual Reports*

Within one hundred and twenty (120) days after the end of each fiscal period, the Joint Activities Committee shall submit an annual report of the ministry that is carried on jointly by the parties hereto during such fiscal year to each party.

4.4 *Retention of Records*

All records required to be kept pursuant to this Agreement, all financial information and books of account and all other documentation shall be retained at the head office of U.S. or at such other location as the parties shall determine from time to time. The parties hereto shall have full access to such records and all copies of same shall be provided to either party upon written request.

ARTICLE V
FINANCIAL ARRANGEMENTS

5.1 *Financial Support*

Each of the parties hereto agree to provide funds for the joint ministry activities to meet the financial commitments made in connection with the joint ministry activities established in accordance with the budget approved pursuant to Article 2.10 or as otherwise mutually agreed upon from time to time.

5.2 *Contribution of Acquisitions*

The following provisions shall apply in relation to the acquisition and/or use of real property and/or personal property that is used primarily in the carrying out of the joint ministries activities for herein (herein referred to as "Capital"):

(a) to the greatest extent possible, any Capital as defined above shall be acquired or leased by one party to this agreement who shall then contribute the use of such Capital for the joint ministry activities. For the purposes of section 2.08, the annual fair rental value related to the use of such Capital shall be deemed to be a financial contribution by such party to the joint ministry on an annual basis. The said party shall retain the title and ownership to the Capital and shall retain such ownership upon ceasing to be a party to this agreement.

(b) In the event that such Capital is not acquired by one party, then the Capital shall be acquired from the funds made available for the joint ministry activities in accordance with the budget approved pursuant to section 2.10. Title to such Capital shall be held by one of the parties hereto in trust for all parties to this agreement in proportion to the contributions to the purchase of such Capital.

(c) In the event that Capital has been acquired by both parties pursuant to section 5.2(b) above, and this agreement is terminated, the parties shall endeavour by mutual agreement within ninety (90) days from the date of termination of this agreement to transfer their respective interest in such jointly acquired or owned Capital to one or the other at fair market value and upon such terms and conditions as the parties shall mutually agree, failing which, the Capital shall be sold and the proceeds distributed amongst the parties in accordance with their proportional interest within a period of six months from the offering for sale of such Capital. If the said Capital cannot be sold within the said six month period of time and the parties cannot otherwise agree in writing concerning the disposition of such Capital, then the said Capital shall be immediately conveyed into the names of both parties in accordance with their respective interests therein.

(d) Notwithstanding the foregoing provisions of this Section 5.2, in order to simplify the joint project accounting for the joint ministry activities the parties agree that all Canadian contributions first shall be allocated to and applied to operation expenses, as opposed to capital expenditures, unless allocation to capital expenditures is expressly required by the terms of a donor's restricted contribution to Canadian and Canadian provides timely notice of this restriction to U.S..

5.3 *Financial Statements*

The Joint Activities Committee shall furnish to each party within one hundred and twenty (120) days of the fiscal year-end set out in Article 5.5 statements of the financial condition of the ministry activities which are carried on jointly by the parties at the end of such fiscal year. Such statements shall be signed by two (2) members of the Joint Activities Committee on behalf of the Committee and shall include an opinion on such statements from an independent auditor approved by the parties hereto. Such auditor's opinion shall confirm that it is an audit of the activities carried on jointly by the parties pursuant to this agreement.

5.4 *Fiscal Policies*
The Joint Activities Committee shall establish and maintain fiscal policies, accounting systems and procedures compatible with the policies, accounting systems and procedures adopted by the parties hereto.

5.5 *Fiscal Year*
The fiscal year used to report on the joint ministry activities of the parties shall end on December 31st of each calendar year.

ARTICLE VI
MISCELLANEOUS

6.1 *Scope of Agreement*
This agreement shall govern and define the respective rights, benefits, liabilities, obligations, interests and powers of the parties with respect to the creation and operation of the joint ministry activities.

6.2 *Relationship of the Parties*
Each party acknowledges its relationship in participating in the ministry activities which are carried on jointly is that of a joint participant in such activities pursuant to the terms and provisions of this agreement and expressly disclaims any intention to create a partnership or other separate entity. Nothing in this agreement shall constitute any such party the partner, agent or representative of any other party, or create any trust of one in favour of any other party or render one party liable for the debts or obligations of any other party except as specifically provided for in this Agreement.

6.3 *Amendment*
This Agreement may not be modified or amended except with the written consent of all the parties hereto.

6.4 *Assignment*
Except as otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. No party may assign it rights hereunder except as herein expressly provided.

6.5 *Further Assurance*
The parties hereto agree that they will, from time to time at the reasonable request of any of them, execute and deliver such instruments, conveyances and assignments and take such further action as may be required pursuant to the terms hereof to accomplish the intent of this Agreement.

6.6 *Time of the Essence*
Time shall be deemed to be of the essence with respect to all time limits mentioned in this Agreement.

6.7 *Entire Agreement*
This agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions whether oral or written of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

6.8 *Notice*

Except as otherwise herein set forth, any notice contemplated or required to be given hereunder shall be in writing and either delivered personally, sent by prepaid mail or reproduced electronically addressed as follows:

In the case of Canadian:	name
	address
In the case of U.S.:	name
	address

6.9 *Severable Covenants*

If any covenant or obligation set forth in this Agreement or the application of it to any party or the particular circumstances shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such obligation to the parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each such obligation shall be separately valid and enforceable to the fullest extent permitted by law.

6.10 *Responsibility for Liability from Joint Ministry Projects*

The parties acknowledge that activities conducted in connection with the joint ministry activities could conceivably result in unexpected liabilities in excess of applicable insurance which liabilities might be asserted against one or both parties. The parties now agree that to the extent that such liabilities are not covered by applicable insurance and except to the extent otherwise agreed:

(a) to the extent that such liabilities are attributable to the negligence or willful misconduct of one party, the liabilities shall be borne solely by that party, and

(b) otherwise, such liabilities shall be shared by the parties in accordance with the relative amount of financial contribution made by each party to the activity creating the liability.

6.11 *Dispute Resolution*

(a) The parties agree to cooperate in good faith in all joint ministry activities, to communicate openly and honestly, and generally to attempt to avoid disputes in connection with this Agreement. If, nevertheless, a dispute should arise in connection with this Agreement, the parties agree to first attempt to resolve such disputes by mediation. The parties shall attempt to agree in good faith on the terms for submission of such dispute for mediation to a Christian mediation or conciliation service which uses Biblical principles in attempting to resolve disputes. The terms of the mediation and the mediation service to be used must be approved by both parties. If the parties are unable to resolve the dispute by mediation within a reasonable period of time, then the dispute shall be resolved by binding arbitration in accordance with Section 6.11(b) below.

(b) If the parties are unable to otherwise resolve a dispute in the manner set forth above, the dispute shall be submitted to binding arbitration at a reasonable location and using such recognized rules and principles of international arbitrations as shall be determined in the reasonable good

faith judgment of the Joint Activities Committee. Subject to the foregoing provisions of this Section 6.11, the parties intend that arbitration be the sole remedy available as to matters arbitrable hereunder. The arbitrators shall determine the rules governing admissibility of evidence and the rules of procedure and discovery. All arbitration awards shall be final and binding on the parties, and the parties agree to abide by all awards rendered in such arbitration proceedings. Arbitration awards shall be enforceable by appropriate proceedings at the request of any party. Unless otherwise provided by arbitrators, each party shall pay one-half of the reasonable fees and expenses of the arbitrator. All other fees and expenses of each party, including without limitation, the fees and expenses of its counsel, witnesses and others acting for it, shall be paid as determined by the arbitrators.

6.12 *Headings*
All headings in this agreement are inserted for convenience and reference only and are not to be considered in the construction or interpretation of any provision of this agreement.

6.13 *Gender*
Words used herein which refer to male persons shall include female persons.

6.14 *Survival*
Section 3.2 and Section 5.2 shall survive the termination of this Agreement.

IN WITNESS WHEREOF CANADIAN has executed this agreement this day of , 20 as attested to by its duly authorized signing officer.

name

Per: _____

– President

"I have authority to bind the Corporation"

IN WITNESS WHEREOF U.S. has executed this agreement this day of , 20 as attested to by its duly authorized signing officer.

name

Per: _____

– President

"I have authority to bind the Corporation"

APPENDIX C
CO-OPERATIVE PARTNERSHIP & TRUST AGREEMENT

THIS AGREEMENT made as of the day of 199

BETWEEN:

_____, a Not-For-Profit Corporation incorporated pursuant to the laws of Canada

(hereinafter referred to as "Canadian")

OF THE FIRST PART

AND:

(Name of Non-qualified Donee)

(hereinafter referred to as "Non-Canadian")

OF THE SECOND PART

WHEREAS Canadian and Non-Canadian desire to participate with each other in a co-operative manner to carry on certain charitable activities that are within the permitted charitable objects of both Canadian and Non-Canadian;

AND WHEREAS the parties wish to set out in this Agreement the terms and conditions under which Canadian will participate with Non-Canadian in the charitable activities as set out in Schedule "A" attached hereto;

NOW THEREFORE in consideration of the mutual covenants herein contained, the parties agree as follows:

1.0 *Activities*

1.1 Canadian and Non-Canadian shall co-operate with each other in carrying out the charitable activity as set out in Schedule "A" attached, such activity herein called the "Project".

2.0 *Role of Canadian*

2.1 As an active participant in the Project, Canadian shall:

a) deliver and make available the use of the following medical equipment (herein called "Equipment") to be used in carrying out the Project:

(List of Equipment)

b) provide trained medical technicians to install and regularly maintain the Equipment;

c) provide qualified medical professionals who are either volunteer personnel under the direction, control and supervision of Canadian or who are paid employees of Canadian, to provide, in association with the personnel of Non-Canadian, health care and medical treatment, which shall include the use of the Equipment;

d) provide such other services as required to undertake the Project where such services fall within the charitable objects of Canadian, provided such services are under the direction, control and supervision of Canadian.

3.0 *Role of Non-Canadian*

3.1 As an active participant in the Project, Non-Canadian shall:

a) provide the services of qualified medical professionals to provide, in association with the personnel of Canadian, health care and medical treatment, which shall include the use of the Equipment which is owned by Canadian;

b) provide a physical location at which the Equipment may be installed and to make such premises fully accessible to Canadian, its officers, directors, employees or other personnel for the purpose of using, maintaining and, if deemed necessary by Canadian in its sole discretion, removing such Equipment;

c) provide such other services as may be necessary to undertake the Project.

3.2 Non-Canadian acknowledges it is aware of the goals and objectives of Canadian and shall use the Equipment only for the purposes of such goals and objectives.

4.0 *Trustee Relationship*

4.1 Non-Canadian further acknowledges that the Equipment is owned by Canadian and all rights with respect to same are those of Canadian. Non-Canadian shall be a trustee of such Equipment only and shall have no right of ownership with respect to same.

4.2 Canadian shall have and will maintain full and complete direction, control and supervision over the use and application of the Equipment and any other resources applied by Canadian to the Project.

4.3 On the completion of the Project, or termination of this Agreement for any reason, the Equipment or the then fair market value of same, together with any other resources of Canadian, shall be returned to Canadian forthwith.

5.0 *Changes to Project*

5.1 In the event the parties hereto mutually agree in writing to amend the Project, such amended Project shall be charitable in accordance with the laws of Canada and the Equipment and/or any other resources of Canadian used in such amended Project shall be used exclusively for charitable purposes within the prescribed charitable objects of Canadian.

6.0 *Records and Books*

6.1 The parties hereto agree to maintain, keep and preserve such books and records as required by law.

7.0 *Modification Amendment*

7.1 This Agreement shall not be modified or amended except with the written consent of all the parties hereto.

8.0 *Termination*

8.1 This Agreement will be in effect from the day of , 199 until it is superseded or replaced by a subsequent agreement or until it is terminated in accordance with the terms of this section. Either party may terminate this Agreement without cause by giving sixty (60) days advance written notice to the other party. Canadian may terminate this Agreement at any time upon notice to Non-Canadian, to be effective immediately in the event of a default by Non-Canadian of any of the terms of this Agreement. In the event of any termination of this Agreement, the Equipment and other resources of Canadian shall be dealt with in accordance with the provisions of Section 4.3 hereof.

9.0 *Notice*

9.1 Any notice contemplated or required to be given hereunder shall be in writing and either delivered personally, sent by prepaid mail or reproduced electronically addressed as follows:

In the case of Canadian:

In the case of Non-Canadian:

10.0 *Assignment*

10.1 Except as otherwise provided to the contrary, this Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. No party may assign it rights hereunder except as herein expressly provided.

11.0 *Further Assurance*

11.1 The parties hereto agree that they will, from time to time at the reasonable request of any of them, execute and deliver such instruments, conveyances and assignments and take such further action as may be required pursuant to the terms hereof to accomplish the intent of this Agreement.

12.0 *Time of the Essence*

12.1 Time shall be deemed to be of the essence with respect to all time limits mentioned in this Agreement.

13.0 *Entire Agreement*

13.1 This agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions whether oral or written of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

13.2 This Agreement shall govern and define the rights, obligations, interests and powers of the parties with respect to the Project.

14.0 *Severable Covenants*

14.1 If any covenant or obligation set forth in this Agreement or the application of it to any party or the particular circumstances shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such

obligation to the parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each such obligation shall be separately valid and enforceable to the fullest extent permitted by law.

15.0 *Headings*

15.1 All headings in this Agreement are inserted for convenience and reference only and are not to be considered in the construction or interpretation of any provisions of this Agreement.

16.0 *Gender*

16.1 Words used herein which refer to male persons shall include female persons.

17.0 *Survival*

17.1 Section 4.1, 4.2, 4.3, 6.1, and 8.1 shall survive the termination of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this day of , 20 as attested to by their duly authorized signing officers.

SIGNED, SEALED AND DELIVERED) CANADIAN

In the presence of :)

Per:

) _____

)

) NON-CANADIAN

) Per: _____

)