

**REGISTERED CHARITIES COLLABORATING WITH NON-CHARITIES
TOOLS 2015
November 25, 2015**

| | REQUIREMENTS / RELATIONSHIP | WHAT TO LOOK FOR | WHAT TO AVOID |
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| 1. | Charity to carry out its <i>own charitable activities itself</i> | <ul style="list-style-type: none"> • Staff • Volunteers • Intermediaries | <ul style="list-style-type: none"> • Giving funds to organizations that are not registered charities to carry out work |
| 2. | Intermediary's requirements | <ul style="list-style-type: none"> • Intermediary has capacity to carry out the project • Intermediary understands and accepts that charity must direct and control the use of its resources | <ul style="list-style-type: none"> • Intermediary lacks organizational and staffing capacity to carry out the project • Intermediary expects that the resources provided by the charity will fund the intermediary's own work |
| 3. | Agency relationship | <ul style="list-style-type: none"> • "Agency" is a legal relationship between a "principal" and an "agent" • "Principal" is the person for whom the "agent" works and whose legal relations are affected by the "agent" • "Agent" is the person who has authority from the "principal" to affect the "principal's" legal relations • The registered charity is the "principal" • The intermediary is the "agent" of the charity • Project being carried out is the work / activity of the charity, not the intermediary • Agreement between charity (as | <ul style="list-style-type: none"> • Reversal of roles, where intermediary acts as if it is the "principal" and the charity acts as if it is the "agent" (e.g., charity is described as the "trustee" of funds for a non-profit organization that is not a registered charity) • Project is described publicly as a project of the intermediary • Lack of written agreement • Lack of oversight by the board of directors of the charity • Minutes of board or executive committee meetings describing the advance of the funds as a "grant" or in response to a request by agent for a grant |

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| | | “principal”) and intermediary (as “agent”) should be in writing | |
| 4. | Joint venture relationship | <ul style="list-style-type: none"> • Charity and another organization, or other organizations, pool resources to carry out project together • Other organization(s) provide resources to the project, as does the charity • Charity’s resources may be personnel, property or funds • Charity must retain a say in how the project is carried out • Written joint venture agreement | <ul style="list-style-type: none"> • Charity provides all the resources and the other organization provides nothing • Charity cedes its right to have a say in the operation of the project • Lack of a written agreement |
| 5. | Co-operative participant relationship | <ul style="list-style-type: none"> • Charity and another organization, or other organizations, work together on a project, each assuming responsibility for a different part of the project • Minimal pooling of resources (<i>e.g.</i>, they share a leased space, together; they make a joint application to government for funding a project) • Charity retains control over its contribution to the overall project • Project must be consistent with the charitable purposes of the charity | <ul style="list-style-type: none"> • Charity does not retain control over its part of the overall project • Lack of true pooling of resources (charity assumes, exclusively, the burden of the resources that are used in common) • Lack of a written agreement |

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| | | <ul style="list-style-type: none"> • Written co-operative venture agreement | |
| 6. | Employing a contractor | <ul style="list-style-type: none"> • Charity retains services of another organization to provide services to the charity in furtherance of the charity's charitable purposes • Extent of control of contractor's services will depend on the nature of the services being provided • Charity should retain control over work product • Written agreement | <ul style="list-style-type: none"> • Contract price should not be inflated (no undue benefit to the contractor) • Lack of written agreement |
| 7. | Direction and control | <ul style="list-style-type: none"> • <u>Agency</u>: Charity must exercise complete control and direction of the activities of the project carried out by the agent • <u>Co-operative Venture</u>: Charity's direction and control will be in proportion to the value / amount of its contribution to the joint project • <u>Co-operative Participant</u>: Charity will retain control and direction of the part of the project that it is carrying out • <u>Contractor</u>: Ordinarily, the manner in which the services are to be provided to the charity remain under the control of the contractor, although "what" is to be | <ul style="list-style-type: none"> • Insufficient statement of the activities to be carried out by the intermediary • No reporting mechanism, including absence of an obligation to report • No right to audit performance of the intermediary • Advance of funds in a single tranche, unrelated to performance of the activities by the intermediary • Lack of documentary evidence of how the charity exercised control and direction (<i>e.g.</i> charity failing to keep [or obtain] proper minutes of the project committee overseeing a joint venture project) |

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| | | <p>done shall be subject to the direction and control of the charity</p> <ul style="list-style-type: none"> • Clear statement of what the intermediary is required to do for the charity • Clear performance benchmarks • Regular reporting to charity, in writing • Requirements for creating and maintaining accurate financial and narrative records of the project • Separate account(s) for holding the charity's funds • Periodic advances of funds, based on performance | <ul style="list-style-type: none"> • Inability of charity to suspend payments to intermediary for reasons of poor performance |
| 8. | Written agreements - Checklist | | |
| a. | <i>Names of parties to agreement</i> | <ul style="list-style-type: none"> • Full legal name of the parties (charity and intermediary) to the agreement | <ul style="list-style-type: none"> • Intermediary is improperly identified¹ |
| b. | <i>Representation / Warranty as to the Intermediary's Capacity</i> | <ul style="list-style-type: none"> • Statement / confirmation from the intermediary that it, and its personnel, is able to carry out the activities in | <ul style="list-style-type: none"> • No statement of capacity from the intermediary |

¹ In a 2006 decision of the Federal Court of Appeal, the court decided that a charity was not operating through an agent where the funds were transferred to an individual who then passed the funds on to an organization to carry out charitable activities; the organization was considered by the court not to be an agent of the charity, as the individual was the party to the agreement with the charity. See *Bayit Lepletot v. Canada (Minister of National Revenue)*, 2006 FCA 128 (CanLII), <http://canlii.ca/t/1mzlw>.

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| | | accordance with the requirements of the agreement | |
| c. | <i>Description of the activities</i> | <ul style="list-style-type: none"> • Description of the various elements of the activities to be carried out by the intermediary, the location and the manner in which the activities are to be carried out by the intermediary • Recommend that the description of the activities be set out in a schedule to the agreement | <ul style="list-style-type: none"> • No or inadequate description of the activities |
| d. | <i>Decision-making regarding activities</i> | <ul style="list-style-type: none"> • <i>Agency</i>: Decision-making about the scope of the activities (that is, what is to be done) remains with charity • <i>Co-operative Venture</i>: Decision-making about the scope of the activities (that is, what is to be done) to be given to a committee of delegates of the parties to the agreement (this means that the charity must retain a role in decision-making) • <i>Co-operative Participant</i>: Decision-making about the scope of activities to be carried out by the charity to remain with the charity • <i>Contractor</i>: Decision-making about the scope of the activities (that is, what is to | <ul style="list-style-type: none"> • Absence of a statement about who has the decision-making authority regarding the activities |

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| | | be done) remains with the charity, although, typically, the manner of carrying out the activities would be left to the discretion of the contractor | |
| e. | <i>Instructions with respect to activities</i> | <ul style="list-style-type: none"> Depending on the nature of the activities and scope of the work, to be reserved to the charity, although for simpler projects, may delegate all or portion of the authority to the intermediary | <ul style="list-style-type: none"> Absence of a statement about who has the authority for giving instructions about the activities and how the instructions are to be given |
| f. | <i>Location(s) of activities</i> | <ul style="list-style-type: none"> Include in the description of the activities | <ul style="list-style-type: none"> No description of the location in which the activities are to be undertaken |
| g. | <i>Time frames / deadlines</i> | <ul style="list-style-type: none"> Include in a schedule to the agreement the deadline(s) for the performance of the activities, including deadlines for completing components of the activities | <ul style="list-style-type: none"> No description of deadlines |
| h. | <i>Authority of intermediary</i> | <ul style="list-style-type: none"> Agreement should include a clause that sets out the limits of the intermediary's authority | <ul style="list-style-type: none"> No statement as to the limits of the intermediary's authority |
| i. | <i>Advance of funds by installments</i> | <ul style="list-style-type: none"> Whether by installment or not depends on the scope of the project (larger amount of money, then advance by installments) | <ul style="list-style-type: none"> Failing to address how funds are to be advanced |

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| j. | <i>Withholding advance of funds</i> | <ul style="list-style-type: none"> Withholding advance of funds should be linked to either a failure in performance or some concern about the intermediary's ability to perform the agreement | <ul style="list-style-type: none"> Absence of a clause that allows the charity to withhold the advance of fund |
| k. | <i>Banking arrangements</i> | <ul style="list-style-type: none"> The agreement should specify where (account location) and how the funds that the charity advances to the intermediary will be held (exception for payments to contractors as consideration for services or goods) In the case of joint venture, if a separate bank account is established to hold the funds, then the agreement should specify who will have signing authority over the account, how such authority may be changed, including withdrawn | <ul style="list-style-type: none"> Absence of a clause regarding banking arrangements |
| l. | <i>Segregation of funds</i> | <ul style="list-style-type: none"> Whether there is a segregation of funds will depend on the nature of the intermediary relationship and the scale of the project | <ul style="list-style-type: none"> Absence of a clause regarding how funds advanced by the charity are to be held |
| m. | <i>Record keeping</i> | <ul style="list-style-type: none"> Agreement should specify what records (e.g., financial, narrative, minutes of meetings) are to be maintained, where they are to be maintained, their accessibility to the charity and their | <ul style="list-style-type: none"> Absence of a clause regarding record-keeping |

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| | | production to the charity, or as the charity directs, upon request | |
| n. | <i>Financial and program reporting</i> | <ul style="list-style-type: none"> Specify that must be in writing Agreement should include a clause about the frequency of the reporting and what is to be included in the reports | <ul style="list-style-type: none"> Absence of a clause regarding reporting or reporting other than in writing |
| o. | <i>Inspection rights</i> | <ul style="list-style-type: none"> Clause giving the charity the right to inspect the project, at the location where it is being carried out, and to inspect the records maintained by the intermediary with respect to the project | <ul style="list-style-type: none"> Absence of a clause regarding inspection |
| p. | <i>Ownership rights</i> | <ul style="list-style-type: none"> Whether, and the extent to which, ownership rights should be addressed in the agreement depends on the nature of the agreement | <ul style="list-style-type: none"> Failing to address ownership rights |
| q. | <i>Suspension of agreement</i> | <ul style="list-style-type: none"> There should be a clause permitting the charity to suspend the advance of funds under the agreement if there are concerns about performance by, or the ongoing capacity of, the intermediary | <ul style="list-style-type: none"> Absence of a clause regarding suspension of the agreement |
| r. | <i>Termination provision</i> | <ul style="list-style-type: none"> Clause to allow termination for default or for convenience | <ul style="list-style-type: none"> Absence of a clause regarding termination |
| s. | <i>Date of agreement</i> | <ul style="list-style-type: none"> Agreement should be current dated | <ul style="list-style-type: none"> Absence of a date |

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| t. | <i>Signatures of parties</i> | <ul style="list-style-type: none"> Authorized signing officers should sign and the signing page should state that they have the authority to sign and bind the parties | <ul style="list-style-type: none"> Absence of signatures or representation as to authority of signers |

REFERENCES

1. Canada Revenue Agency, *Guidance: Canadian Registered Charities Carrying Out Activities outside Canada* (CG-002, July 8, 2010) <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>.
2. Canada Revenue Agency, *Guidance: Using an Intermediary to Carry Out a Charity's Activities within Canada* (CG-004, June 20, 2011) <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html>.

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