

GIFT ANNUITY FUNDS TRUST
(SAMPLE)

For the purpose of complying with California Insurance Code Sec. 11521.1, [name of non-profit corporation / licensee] (“the Trustor”), a charitable corporation with a principal place of business in [Applicant / licensee’s city and state], hereby establishes with [name of bank] (“the Trustee”), of [bank’s city], California, a trust of such funds (including securities and cash) as shall from time to time be deposited with the Trustee by or on behalf of the Trustor, together with income generated by the funds. The Trustee shall receive and hold such property in trust under this Agreement in a separate account physically and legally segregated from the other assets of the Trustor.

ARTICLE FIRST

The Trustee shall act as investment adviser to the Trustor with respect to the assets of the trust, and shall make recommendations of purchase, sale, or other actions as it deems appropriate from time to time. The Trustee shall make investment change in the trust only with the prior approval of the Trustor.

The Trustee shall collect the income and add it to principal for reinvestment. The Trustee shall distribute to the Trustor such amounts of the trust property as the Trustor may from time to time request in writing signed by an officer of the Trustor. Such request shall contain the officer’s certification that the Board of Directors of the Trustor (i) authorized such a withdrawal, and (ii) determined that such a withdrawal will consist of amounts that are over and above the reserve required to be maintained under the provisions of the California Insurance Code then in effect. The Trustee shall not be held liable for any violations of the California Insurance Code resulting from distributions made as a result of incorrect information provided by the Trustor in connection with a withdrawal pursuant to this Article.

ARTICLE SECOND

The Trustee shall be responsible only for sums actually received by its as Trustee hereunder and shall be under no obligation or duty to collect any sums from the Trustor.

Charitable gift annuities issued by the Trustor with respect to funds which are held in trust hereunder shall be the sole responsibility of the Trustor, and the Trustee shall not in any way be obligated for such gift annuities.

ARTICLE THIRD

The trustee, in addition to and not in limitation of all common law and statutory authority, shall have the following powers, exercisable without resort to, or order of, any court, which shall continue after the date of the termination of this trust until final distribution:

1. To sell, at public or private sale, or to exchange, in such manner and on such terms as the Trustee deems advisable, any property, real or personal, which may at any time constitute a part of the trust hereunder, provided, however, that any such action shall be taken only with the prior approval of the Trustor, as provided in Article First.
2. To retain, invest in, and reinvest in any property which in the opinion of the Trustee is suitable for the purpose hereof subject to the restrictions on permitted assets in the California Insurance Code, as described below; provided, however, that any such action shall be taken only with the prior approval of the Trustor, as provided in Article First.

3. To keep any securities or other property registered in the name of the Trustee's nominees; to deposit securities with a securities depository within or outside of the State of California provided that such depository is registered with the Securities & Exchange Commission; and to hold U. S. government securities in book-entry form on the books of the Federal Reserve Bank.
4. To employ legal counsel, accountants, agents, of others for any of the purposes hereof, and to pay their reasonable compensation.
5. To make distributions in cash or in specific property, real or personal, or an undivided interest therein or partly in cash and partly in such property.

Notwithstanding any investment power granted in this Article, the Trustee shall at all time invest the assets of the trust solely in investment complying with the provisions of the California Insurance Code Sections 11521.2 and 1170 through 1182, or such provisions applicable to annuities societies from time to time in effect.

ARTICLE FOURTH

The Trustee shall be responsible for physical loss of or damage to the securities under its care, custody, and control or under the care, custody, possession, and control of its nominees, depositories, Federal Reserve Banks, and agents, including but not limited to losses due to fire, burglary, robbery, theft, or mysterious disappearance. In the event of loss of or damage to the securities under the care, custody, possession, and control of the Trustee or its nominees, depositories, Federal Reserve Banks, and agents, the Trustee shall, upon demand by the Trustor, promptly replace such securities with like kind and quality together with all rights and privileges pertaining to such securities, or if acceptable to the Trustor, deliver cash equal to the then fair market value of the securities. Under no circumstances, however, shall the Trustee be liable for consequential damages or any other damages beyond the replacement of the securities.

ARTICLE FIFTH

The Trustee agree to reimburse the trust for any loss or expense incurred by the trust as a result of the Trustee's negligent failure to follow any instructions of the Trustor with respect to the maintenance, investment, and divestment of the assets of the trust.

ARTICLE SIXTH

All records of the trust shall at all reasonable times be available for inspection during normal business hours by the Trustor, the Trustor's auditors, the California Insurance Commissioner or his designee, and any other person duly authorized by the Trustor. Upon request, the Trustee shall provide to the Trustor or to the Trustor's designee written verification of all securities held by the Trustee or the Trustee's agent or nominee. Such verification shall be signed by an officer of the Trustee.

ARTICLE SEVENTH

This agreement may be revoked by the Trustor at any time by an instrument in writing delivered to the Trustee, and it may be amended at any time and from time to time by an instrument in writing delivered to the Trustee; provided, however, that no amendment increasing the duties of the Trustee shall be effective unless assented to in writing by the Trustee. In addition, no amendment to the agreement will be effective until approved in writing by the California Department of Insurance.

ARTICLE EIGHTH:

The Trustee may resign at any time from the trust created hereunder by giving thirty (30) days' written notice, delivered personally or by registered or certified mail, to the Trustor. A successor may be appointed by the Trustor; and in the event of the failure of the Trustor to appoint a successor within sixty (60) days, then the resigning Trustee may appoint a successor. Any appointment of a successor Trustee shall be subject to the approval of the California Insurance Commissioner and shall be by an instrument in writing, signed by the persons making the appointment, and shall be effective upon the written acceptance of the appointee made on the instrument of appointment. A successor Trustee shall all the powers, immunities, and discretions conferred upon the original Trustee. Any successor Trustee shall be a corporation duly authorized to conduct a trust business in the United States of America or any political subdivision thereof.

ARTICLE NINTH

The Trustor agrees to compensate the Trustee from its own funds in such manner and in such amounts as shall be agreed upon by the Trustor and the Trustee from time to time. In no event shall the Trustee charge the trust for any compensation or expenses, not shall it have any lien on the trust assets for such compensation or experience.

ARTICLE TENTH

Unless otherwise instructed by the Trustor, the Trustee shall forward to the Trustor, signed in blank, all proxies received by the Trustee with respect to securities held in the trust.

ARTICLE ELEVENTH

The validity, construction, and administration of this Agreement and of the trust created hereunder shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 20_____.

[NAME OF TRUSTOR]

By: _____
Name of signatory
Office/Title of signatory

[NAME OF TRUSTEE]

By: _____