



AGREEMENT ESTABLISHING THE

A DONOR ADVISED FUND WITHIN GIFTFACT FOUNDATION INC.

1. Establishment of Fund

THIS AGREEMENT is entered into this _____ day of _____, 20____, by _____ of the City of Winnipeg, in the Province of Manitoba ("Donor") and GiftPact Foundation Inc., a public foundation, (Charitable Registration #839545803RR0001 – the "Foundation") to establish a donor advised fund to be known as the "_____" ("Fund").

A donation in cash or other assets (directly or by transfer from another charity) that is irrevocable for charitable donation purposes shall be required to establish the Fund. A description of the initial property or property being transferred is set out in **Schedule A**.

No minimum balance shall be required to maintain the Fund and the balance may be depleted by one or more distributions to qualified donees as defined in the *Income Tax Act (Canada)* ("ITA") or by other distributions to non-qualifying donees that comply with rules and regulations in accordance with the ITA or by guidelines issued by Canada Revenue Agency ("CRA") for distributions by the Fund. The Donor confirms by this Agreement that there is no known advantage to them, as defined in the ITA, regarding any gift, that has not or will not be disclosed to the Foundation in connection with any donation to the Foundation or distribution from the Foundation to a qualified donee.

This Agreement is viewed as an opportunity to build a philanthropic partnership between the Foundation and the Donor to fulfill the charitable intentions of the Donor, and their family.

The Fund shall be considered created on the date this executed agreement and the gift to establish the Fund is received and accepted by the Foundation.

The Donor confirms that it does not intend that this Agreement create any express or implied trust with respect to the Fund and acknowledges that this Agreement does not impose any express or implied fiduciary obligations on the Foundation.

2. Further Additions to Donor Advised Fund

If the Donor decides to provide for further donations to the Fund, either while alive or in their will, or if a corporation, in existence, such further donations shall be governed by this Agreement.

3. Donor to Advise - Appoint Representative

The Foundation must and does retain final decision making authority over grants and distributions from the Fund, including quantum and conditions of use. The Foundation will make every effort to accommodate the wishes of a Donor subject to compliance with the requirements of the Income Tax Act and the conditions provided herein.

The Donor may appoint a Designated Representative (and an alternate) to maintain their ongoing relationship with the Foundation. The Donor has initially designated those persons listed on **Schedule B** to this Agreement. The Donor may change the Designated Representative of the Fund at any time, including if an individual by Will, by communicating such change to the Foundation in writing.

Alternatively, the Donor may appoint an Advisory Committee with the Donor, family, friends or other persons, as the case may be. If an Advisory Committee is established, the Donor shall appoint such persons (and alternates) as Designated Representatives in accordance with this Agreement. The Foundation must be kept informed in writing as to any change in the Advisory Committee's representative who has been designated to act as the Committee's exclusive contact with the Foundation on behalf of the Committee.

The Donor or the Advisory Committee may recommend grants to charities from the Fund.

Upon the death or winding up of the Donor, if a successor representative has not been designated and no such designation is in the Donor's Will (or by-laws or resolution if a corporation or trust), the Donor's heirs, successors and assigns or legal representative may appoint a Designated Representative. If neither the Donor nor a Designated Representative contact the Foundation for a period of 3 consecutive years, and the Foundation after taking reasonable measures to do so is unable to contact the Donor or a Designated Representative, the Fund shall be terminated and the Foundation shall continue to hold the assets of the Fund in a general unrestricted endowment fund to be disbursed as the Board of Directors of the Foundation shall, in its discretion, determine.

4. Advice Upon Death of Donor

If the Donor does not want the provisions in clause 3 above to apply on their death to the distribution of all or a portion of the assets in the Fund, the Donor can express their wishes by completing Schedule E. The Donor's instructions expressed in Schedule E shall take priority over the instructions that may be given pursuant to any other provision of this Agreement.

5. Division and Internal Transfer of Fund

The Donor, the Donor's representative or the Donor's Advisory Committee may contribute additional donations to the Foundation in order to establish additional fund(s) ("Separate New Fund") each with their own Designative Representative or Advisory Committee. The Donor, the Donor's representative or the Donor's Advisory Committee may make a request pursuant to the terms of this Agreement to transfer capital of the Fund to establish a Separate New Fund. Such Separate New Fund would be established by the Foundation subject to the Foundation's policies in effect from time to time, including minimum levels of funds. Once transferred to a Separate New Fund, funds cannot be transferred back to the Fund without written consent of the Designated Representatives of the Separate New Fund. Furthermore, any Separate New Fund would be subject to this Agreement.

6. Donations Restricted to Registered Charities

The Foundation can only make distributions or grants to other registered charities that are registered charities in accordance with the ITA. All distributions or grants must be supported by the charitable registration number issued to a qualifying donee by Canada Revenue Agency (the "CRA").

The Foundation shall consider charitable needs and gifting opportunities consistent with a Donor's expressed intention and may provide the Donor or the Advisory Committee with suggestions for which distributions from the Fund might be appropriate.

The Donor shall inform the Foundation of any potential conflicts of interest or advantages received by them or anyone related to them, prior to the donation to the Foundation and prior to distribution from the Foundation to a qualified donee. The Donor hereby releases and holds the Foundation harmless from any claim it may or could have, should CRA reassess the amount or value of the donation requiring a revision to the donation receipt issued by the Foundation.

7. Assets of the Fund

The Fund shall include the initial property gifted or transferred to the Fund together with any property contributed or added to the Fund and accepted by the Foundation. The Board of the Foundation shall have complete authority and discretion to accept or decline any non-cash gifts.

8. Management of Fund

The Foundation shall have complete authority and discretion with respect to the investment and reinvestment of the assets of the Fund and shall hold them as part of and commingled with other funds forming part of the Foundation's portfolio. However, the Foundation will consider recommendations as to investment of the Fund by a Donor or Designated Representative.

The Foundation shall be entitled to engage a portfolio manager to invest the assets of the Foundation. The Donor acknowledges that the primary portfolio manager shall be Quadrant Private Wealth Corporation which established the GiftPact Foundation.

The Foundation shall keep a separate accounting and identity of the Fund for purposes of reporting to the Donor or representatives each year as to the activities of the Fund.

9. Minimum Distribution

The Fund shall be required to make a minimum distribution each year as determined by the Board. The minimum distribution is determined by the Board based upon the overall disbursement requirement of the Foundation as required by the *Income Tax Act*. The Donor shall designate a “default” charity in Schedule “A” to which such minimum donation can be paid in the event that the Donor does not provide any specific requests during such year that result in the minimum distribution. Failing any request or “default” charity, the minimum donation shall be distributed as determined by the Board.

10. Fees

The Foundation shall be entitled to those fees set out in **Schedule C** to this Agreement. Fees include administration fees and any transaction costs directly attributable to the Fund. The Foundation does not charge a fee for establishing a Fund.

In addition to the above administration fees, fees are paid to a portfolio manager by the Foundation. The Donor shall be provided and acknowledge a fee disclosure form relating to the investment management fees charged to the Fund.

The Fund shall also be charged for any expenses or costs for services incurred specifically for or directly attributable to that Fund.

11. Policies and Procedures

All assets held by a Fund are subject to the Articles of Incorporation, Bylaws and Policies and Procedures of the Foundation. The Policies and Procedures are set out in **Schedule D** to this Agreement. This Agreement shall be interpreted in a manner consistent with the aforementioned documents and any applicable requirement of the Income Tax Act to ensure the Foundation maintains its status as a public foundation.

12. Term

This Agreement shall continue so long as there are assets in the Fund, provided this Agreement may be terminated should there be no contact with a Donor for 3 consecutive years as set out in Section 2 of this Agreement.

13. Binding, Severability and Non-Assignment

This Agreement shall be binding upon the Donor and their heirs, successors and assigns. This Agreement may not be assigned by the Donor. Should any provision of this Agreement be invalid, illegal or unenforceable, it shall not affect the validity, legality or enforceability of any other provision of this Agreement.

14. Governing Law

This Agreement shall be interpreted in accordance with and governed by the laws of the Province of Manitoba and the laws of Canada as applicable therein.

15. Amendment

This Agreement may be amended or altered by mutual agreement of the signing parties.

16. Communication

All notices, requests, or other communications shall be given in writing by electronic mail, personal delivery, facsimile or by registered mail, postage prepaid, addressed to each party or delivered to such other party as follows:

To GiftPact Foundation Inc.:

720 – One Lombard Place

Winnipeg, Manitoba R3B 0X3

Email: info@giftpact.com

To the Donor:

17. Schedules and Appendix

Schedule A – Description of Property

Schedule B – Donor Representative

Schedule C – Fees

Schedule D – Policies and Procedures

Schedule E – Instructions on Death

This Agreement is signed by the parties this ____ day of _____, 20__.

GiftPact Foundation Inc.

_____ (Donor):

Per:

Per:

Murray S. Palay, President

Name and Title:

Per:

_____ Name and Title:

SAMPLE

Schedule A to Donor Advised Agreement

Description of Property to Be Delivered to

GiftPact Foundation Inc.

For The

A Donor Advised Fund

Assets Initially Given: _____

Transfer Date of Assets: _____

Default Charity: _____

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Schedule B to the Donor Advised Agreement

Donor Representative and Advisory Committee

Each Donor Advised Fund has at least one, but not more than two, designated Donor Representative(s). The Donor Representatives acknowledge that while the Foundation welcomes the voluntary participation and recommendations of Donor Representatives, such recommendations are advisory only and not binding to the Foundation.

PRIMARY DONOR REPRESENTATIVE

Name:

Address:

Tel:

E-mail:

SECONDARY DONOR REPRESENTATIVE

Name:

Address:

Tel:

E-mail:

ADVISORY COMMITTEE

Member 1 (Chair and Designated representative):

Address:

Tel:

E-mail:

Member 2:

Address:

Tel:

E-mail:

Member 3:

Address:

Tel:

E-mail:

Schedule C to Donor Advised Agreement

Fees

1% on \$1,000,000,

½ of 1% on the next \$4,000,000,

and ¼ of 1% on any amount over \$5,000,000,

Charged quarterly with a minimum annual charge of \$250.00. The fund will also be charged its pro-rata share of the pooled investment account money management fees as set out on a Fee Disclosure Form.

No fees are charged on Impact Now Accounts (described below) and no income is allocated to these accounts.

Impact Now Accounts and Future Impact Accounts shall be directly charged for any expense or cost or services provided specifically to that account. For example, any trading costs on the donation of securities, special administrative costs of the Foundation or consulting or other service provided by a third party consultant.

Should the full amount of any Fund be immediately distributed or requests be made within 30 days of receipt by GiftPact to distribute funds to Qualifying Donees, GiftPact reserves the right to charge a, accommodation fee of 2% of the amount distributed to a Qualifying Donee as a charge against that distribution. For greater clarity if a donation of \$100,000 is made and immediately requested to be distributed, there shall be a charge of \$2,000 against that distribution. Payment shall be deducted prior to any distribution so either the donated amount is reduced to \$98,000 or the donor must contribute \$102,000 (should sufficient funds not otherwise be available to pay the accommodation fee).

Investment Considerations

For purpose of providing administrative and investment guidance, Donor Advised Funds are categorized as follows:

Impact Now Account – these accounts are intended for distribution in the immediate to short term to designated charities.

Future Impact Account – this account is meant to provide long term giving through distributing income each year in the minimum amount required to comply with the disbursement quota.

Schedule D to Donor Advised Agreement

GiftPact Foundation Inc. Policies and Procedures for Governing Donor Advised Funds

Section 1. Establishment and Purpose

- 1.1 *GiftPact Foundation Inc.* (hereinafter “Foundation”) has authorized and ratified the establishment of Donor Advised Funds (“Advised Funds”) by Resolution of the Board of Directors (hereinafter “Board”) adopted February 29, 2012. This Resolution authorizes the adoption of these procedures for the administration of Advised Funds. These procedures may be amended from time to time, when deemed necessary or desirable by the Board.
- 1.2 *Establishment of Funds.* Advised Funds may be established by the donation or transfer by any person (hereinafter “Donor”) to the Foundation of money or property, whether by contribution, gift, bequest, or devise or by transfer from a charitable or other organization (hereinafter “contribution”), to further or carry out the purposes of the Foundation, as set forth in its constating documents. Advised Funds shall be administered as separate funds of the Foundation for accounting purposes only.
- 1.3 *Nature and Terms of Funds.* Each Advised Fund shall be the property of the Foundation owned by it in its normal corporate capacity. In such capacity, the Foundation shall have authority and control of all property in the Fund, and the income derived therefrom, for the charitable purposes of the Foundation. Each Fund may be recorded on the books and records of the Foundation as an identifiable or separate fund and may be given a name or other appropriate designation as requested by the Donor.
- 1.4 *Forms.* The President or other officer of the Foundation is authorized to provide forms for the establishment of Advised Funds and such other forms as are necessary or desirable for the administration of Advised Funds in accordance with these procedures.

Section 2. Acceptance of Funds

- 2.1 *Authorization.* The President of the Foundation (or such additional officers or employees of the Foundation as the Board may from time to time authorize) shall have the authority to accept, on behalf of the Foundation, contributions to establish or add to an Advised Fund. A Donor may not impose any restriction or condition that prevents the Foundation from freely and effectively employing the contributed assets or the income derived therefrom, in furtherance of a charitable purpose of the Foundation.
- 2.2 *Value.* There is no minimum amount to establish an Advised Fund within the Foundation. However, the Foundation requests that Donor consider making additional contributions to the Fund until it reaches at least the \$25,000 level.

Foundation will not certify to a Donor the value of a contribution of any property or equipment. For property that does not have a published or ascertainable market value, an appraisal shall be required (provided at cost of Donor).

Section 3. Investment of Fund Assets

- 3.1 *Responsibility.* The Foundation has the responsibility and authority for the investment of the assets of each Advised Fund. The assets of any Fund may be commingled with those of other Advised Funds, or with other funds of the Foundation, or may be invested in units of a common investment fund, which may be established or utilized by the Foundation.
- 3.2 *Donor Investment Manager Recommendations.* The Foundation has established an Investment Committee consisting of the President and Secretary of the Foundation and others to review Donor or successor advisor recommendations to retain Investment Managers for funds established by a Donor. The Foundation is not obligated to follow Donor recommendations but authorizes the Investment Committee to retain Investment Managers when they meet the general investment goals and guidelines for the Foundation. It is acknowledged that the primary investment advisor shall be Quadrant Private Wealth Corporation.
- 3.3 *Administration.* Decisions with respect to the retention, investment, or reinvestment of assets and with respect to commingling of assets shall be made by the Board, or a committee, agent or director authorized by the Board, in accordance with regular procedures. All Funds may be charged an appropriate allocation of direct and indirect expenses attributable to the creation and maintenance of such funds as determined by the Board from time to time.
- 3.4 *Additions/Charges to Fund.* The Advised Fund will be allocated a pro-rata portion of the interest and unrealized gains earned in the pooled investment account (separate custody might track different asset mixes). The Foundation may charge to the Advised Fund expenses and fees which it customarily charges to other Advised Funds. This annual fee is currently:

1% on \$1,000,000,

½ of 1% on the next \$4,000,000,

and ¼ of 1% on any amount over \$5,000,000,

charged quarterly with a minimum annual charge of \$250.00 (waived in the sole discretion of GiftPact). The fund will also be charged its pro-rata share of the pooled investment account money management fees.

Section 4. General Administrative Provisions

- 4.1 *In General.* The Donor of an Advised Fund (where applicable, the term “Donor” shall include the Donor and the successor or designated advisors) may, after the contribution of money or property to a Fund, recommend to the Foundation the making of distributions from the Fund which are consistent with the specific charitable purposes of the Foundation. The Foundation shall consider and evaluate all such recommendations, but such recommendations will be solely advisory and the Foundation is not bound by such recommendations. The President has authority to approve and make payments to

qualified charitable organizations in accord with such Donor recommendations. The President will report quarterly to, and seek concurrence of, the Board of Directors for all charitable distributions that have been made from the Fund.

4.2 *Donors and Their Designees Accorded the Privilege of Making Recommendations.* The privilege of making recommendations (as described in section 4.1 above) shall be extended to Donors and their designees, subject to the following limitations:

- (a) *Donor and Spouse.* Ordinarily, if an individual establishes an Advised Fund, the privilege of making recommendations is limited to the Donor and their spouse, and, unless otherwise specified in the instrument establishing the Fund, recommendations may be made by them separately or jointly. Such privilege of a Donor or the spouse will be continuous with the existence of the Fund unless earlier terminated by (i) death, (ii) written notice to the Foundation of resignation or release, or (iii) a finding by the Foundation that the person involved is not available to exercise the privilege.
- (b) *Other Persons.* An individual Donor may designate in the instrument establishing an Advised Fund a person or persons other than or in addition to the Donor and their spouse to exercise the privilege to make recommendations. The instrument establishing an Advised Fund may designate a child or children (and spouses) of a Donor to have such privilege after the termination of the privilege of the Donor and the spouse, and such designation of a successor or successors to the original Donor or the spouse will be recognized if it furthers continued family participation, support, and involvement by such successors.

The Donor or their designees may close the Fund at any time and request that the Fund's assets be transferred to the unrestricted endowment of the Foundation or transferred to another registered charity.

- (c) *Corporations.* A corporate Donor, including a registered charity, that established an Advised Fund will have the privilege of making recommendations for a period not to exceed 10 years from the date of the establishment of the Fund. The privilege to make recommendations may be extended beyond the 10-year limitation if the Fund exceeds \$10,000 and the corporation maintains a continuing charitable involvement with the Foundation. Such corporation, or those acting on its behalf, shall designate one person (and may designate their successor) to submit the recommendations of the corporation to the Foundation.

In the following Sections, the term Donor will apply to all persons having the privilege of making recommendations as provided above.

4.3 *Limitations.* The following limitations apply to all distributions from Advised Funds:

- (a) *Minimum Distribution:* The minimum amount of any one distribution from an Advised Fund shall be \$250, although the Board may, from time to time, set a higher threshold.
- (b) *Frequency of Distributions:* The President is authorized to approve Donor Advised Fund distributions. **A minimum of 15 days' notice must be provided by the Donor on suggested distributions from the Advised Fund.**

- (c) *Distributions from Corpus*: A Donor or the successor advisors of an Advised Fund shall have the privilege of making recommendations as to distributions out of the corpus of an Advised Fund. A Donor who wishes to “close out” their Fund may request that up to 50% of the corpus be distributed for charitable purposes within the 15 days’ notice period, subject to any notice requirements for redemption of investments. The remaining 50% will be available for distribution to qualified charities on completion of month-end financial statements and verification of the Fund’s month-end value, and subject to any notice requirements for redemption of investments.

4.4 Procedure.

- 4.4.1 *Recommendations by Donors*. Recommendations by a Donor or the successor advisors with respect to the distributions from an Advised Fund shall be made in writing, addressed to the Foundation, using a standard form provided by the Foundation or as otherwise accepted by the Foundation.
- 4.4.2 *Staff Investigation*. With respect to each recommendation by a Donor, the staff of the Foundation will determine whether the recommendation is consistent with the charitable objects of the Foundation and the payment is to a qualified donee. If the staff determines that the recommendation is not consistent with the specific charitable purposes of the Foundation, the Donor shall be advised that the recommendation does not meet the standards for distributions.
- 4.4.3 *Board Action*. The Board shall consider all staff recommendations as presented to it and shall decide whether to authorize the transfer of funds from the Advised Fund.
- 4.5 *Notification to Grantee as to Source of Distribution*. Any distribution from an Advised Fund, unless otherwise requested by the Donor of the Fund, shall identify to the grantee organization the name of the Fund from which the distribution is made.
- 4.6 *Requirement of Current Distributions*. It is the general policy of the Foundation that an amount at least equal to 3.5% of the (average of 24 months) capital of an Advised Fund shall be distributed during the fiscal year unless the Board determines a different pay-out ratio for that year in order to ensure the Foundation as a whole meets its disbursement quota as prescribed by the *Income Tax Act (Canada)*.

Section 5. Reports

With current account information being available through the Donor Impact Portal, reports on account activity will be provided upon request. DAF’s with a Future Impact Fund will have reporting uploaded to the portal semi-annually for June and December.

Section 6. Continuity of Funds

- 6.1 *Upon Death, etc., of Donor*. Upon the termination, by death, winding up or otherwise, of the privilege of a Donor or successive advisors of an Advised Fund to make recommendations, as provided in Section 4.2 above, the Fund shall continue as part of the unrestricted permanent funds of the Foundation, unless previously designated to become (or be added to) a designated or field of interest fund.

- 6.2 *Upon Closing of an Advised Fund.* Upon the closing of an Advised Fund, if less than \$100 remain in the account, such funds will be transferred into the GiftPact's operating fund.

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Schedule E to Donor Advised Agreement

Instructions on Death

Assets governed by this Schedule:

Instructions regarding distribution of assets

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