

# **Dignity Trust**

## **Article I. *Trust Estate***

### **A. Original *Trust Estate***

The *Settlor* agrees that they have transferred to the *Trustee* the property described in the *Schedule*. The *Trustee* did not pay anything for the property when they accepted it on behalf of the *Trust*.

### **B. Additions to *Trust Estate***

Additional property of any kind may be added to the *Trust Estate* by the *Settlor* or by anyone else, except the *Beneficiary*. This may be done at any time and from time to time. Property may be given to the *Trust* while the donor is living, or the donor may leave the property to the *Trust* in the donor's will or Living Trust. The property may also be in the form of a future gift by naming the *Trust* as beneficiary of a life insurance policy, employee benefit plan or retirement plan. Anyone can make a gift to the *Trust* just as they would to a person.

## **Article II. Irrevocability of the *Trust***

This *Trust* may not be revoked or changed and no part of the *Trust Estate* shall be paid or loaned or applied to or for the benefit of the *Settlor*.

## **Article III. Distributions to the *Beneficiary***

### **A. Payments of Income and Principal.**

The *Trustee* may, whenever the *Trustee* decides to, make any payment or distribution (in cash or in specie and whether income or capital) for the *Beneficiary*. The *Trustees* shall, in their unfettered discretion, decide how much of the net income or principal of the *Trust Estate* is necessary to take care of the needs of the *Beneficiary*. This money may not be paid directly to the *Beneficiary*. It may be paid to a *Personal Representative* who will use the money to pay for the *Beneficiary's* needs. He or she will report to the *Trustee* how the money was used. Depending on the procedure the *Trustee* and *Personal Representative* decide upon together, the *Personal Representative* must either send the *Trustee* the receipts for these payments or send the *Trustee* a written report on how the money was used. Alternatively, the *Trustee* may pay for the *Beneficiary's* needs directly, keeping careful records of how the money was spent. The receipt of the person receiving such payment shall be sufficient discharge to the *Trustees*. The *Trustees* are authorized to make any election or elections on behalf of the *Beneficiaries* for the purposes of the Income Tax Act (Canada) or any similar legislation of any Province or other jurisdiction in force from time to time.

**B.** Without in any way limiting the absolute and uncontrolled discretion of the *Trustee*, the *Trustee* agrees to exercise such discretion taking into account the financial or other benefits the *Beneficiary* would receive from other sources if

payments from this *Trust* were not available, or if such payments were limited as to amount or time. To the extent that the *Trustee* considers it to be necessary or advisable, for the benefit and protection of the *Beneficiary*, the *Trustee* shall take such steps as are necessary or desirable to maximize such benefits.

C. In order to maximize such benefits, the *Trustee* is specifically authorized to make payments out of this *Trust* to the *Beneficiary*, or on or for the *Beneficiary's* behalf or benefit in such amount or amounts and at such time or times as the *Trustee* considers it to be in the best interest of the *Beneficiary*.

D. Spendthrift Provision

No part of the *Trust Estate* shall be subject to the claims of any creditor of the *Beneficiary*. This is true even if they have a legal judgment against the *Beneficiary*.

This *Trust* is intended to be conserved and maintained for the benefit of the *Beneficiary* for the *Beneficiary's* entire lifetime. No part of the *Trust Estate* shall ever be considered or determined to be a part of the *Beneficiary's* estate. Also, no part of the *Trust Estate* shall ever be subject to or available to pay for any claims of any creditors who have provided any form or kind of care or services to the *Beneficiary*. Stated simply, the *Beneficiary* does not own any part of the *Trust Estate*, so the *Beneficiary* can not give any part of the *Trust Estate* to anyone else.

#### Article IV. Termination

A. Termination upon death of the *Beneficiary*

This *Trust* ends when the *Beneficiary* dies. At that time the *Trustee* may pay any death taxes that are due because the *Beneficiary* has died. The *Trustee* may also pay any expenses of the *Beneficiary's* funeral and burial or cremation expenses and any cost of distributing the *Beneficiary's* estate. If other satisfactory provisions have been made for paying these expenses, the *Trustee* shall not pay them.

The *Trustee* has the right to make the *Beneficiary's* final arrangements, after consulting with the *Beneficiary's* family members and the *Letter Of Intent*.

The *Trustee* shall distribute any remaining balance of the *Trust Estate* to the *Remaindermen* to do with as they wish, unless the *Settlor* has given special instructions (such as the creation of a trust for a particular beneficiary) in the *Schedule*.

B. Distribution to the *Remaindermen*

The share of the *Trust Estate* each *Remainderman* will receive is set out in the *Schedule*. The *Schedule* also states whether a *Remainderman* receives his or her share *per stirpes* or whether the *Trust Estate* is divided among the *Remaindermen* who are living at the time of distribution.

## Article V. Office Of *Trustee*

### A. *Successor Trustee(s)*

The *Successor Trustee(s)* shall become *Trustee* whenever the original *Trustee* or *Trustees* become unable or unwilling to serve as *Trustee*. The *Successor Trustees* will serve in the order and at the time set out in the *Schedule*.

When the *Settlor* has named more than one *Co-Trustee*, the *Settlor* wants one of the *Co-Trustees* to continue to serve even if the other one does not serve for any reason (unless the *Settlor* has given different instructions in the *Schedule*). A *Successor Trustee* can name another *Successor Trustee* if there is no other *Successor Trustee* named in the *Schedule* who is able to or wants to serve as *Trustee*. A time may come when there is no *Trustee* available to serve or to appoint another *Trustee*. In that event the Judge of a Court that has the right to appoint *Trustees* in the area where the *Beneficiary* lives may name a *Successor Trustee*. This must be done as provided in the laws of the Province where the *Beneficiary* is living at the time.

### B. Proof of need for the appointment of a new *Successor Trustee*

1. A *Trustee* may appoint a *Successor Trustee* by giving a written notice to the person who is being appointed. A copy of the notice must also be given to the *Beneficiary* or to the *Beneficiary's Personal Representative*.

2. A *Trustee* may become disabled or want to resign as *Trustee* for some other reason. The *Trustee* may make this known by writing a letter stating that the *Trustee* is resigning. The *Trustee* shall deliver this resignation to the *Successor Trustee*. The *Trustee* may for some reason be unable to do this. In that case, the person who can act for the *Trustee* such as the *Trustee's Power Of Attorney* can write the resignation for the *Trustee*. Alternatively, the *Successor Trustee* may have a licensed physician or a licensed clinical psychologist who has examined the resigning *Trustee* state in writing that the *Trustee* is unable to serve. A Court order that says the *Trustee* is incompetent will also be a reason for appointing a *Successor Trustee*.

3. When a *Trustee* dies, a copy of the death certificate will be proof that a *Successor Trustee* should be appointed. This copy of the death certificate should be filed in the Advance Lifetime Directive binder where the original *Trust Agreement* is kept.

4. A person who is named in the *Schedule* as a *Trustee* or *Successor Trustee* may resign or refuse to accept the appointment. This must be done by a written notice. The notice must be given to the *Beneficiary* or *Personal Representative* and to the *Successor Trustee* or to the person who can appoint a *Successor Trustee*.

The *Trustee* who is resigning must keep on serving as *Trustee* until a *Successor Trustee* has agreed to serve as *Trustee*. The resigning *Trustee* must provide the *Successor Trustee* with the information and documents the *Successor Trustee* needs to take over the duties of the *Trustee* and take possession of the *Trust*

*Estate*. No Court has to approve this change of *Trustees*.

C. Reasonable payment for serving as *Trustee*

The *Trustee* may pay himself or herself a reasonable amount from the *Trust Estate* for all ordinary services performed for the *Trust*. This amount should be no more than banks in the local area charge for *trust* management services. The *Trustee* may also pay himself or herself an additional amount for extraordinary services performed for the *Trust*. These payments may be paid for services performed during each calendar year the *Trustee* serves as *Trustee*. No Court need approve these payments. If a *Trustee* serves for only a part of a calendar year, the *Trustee* may pay himself for the part of the year he or she served.

D. Employment of Consultants

The *Trustee* does not have to perform all the services the *Trust* requires by himself or herself. The *Trustee* may employ others to do some services and pay them from the *Trust Estate*. Examples of the type of persons a *Trustee* might employ are: *Personal Representatives*, custodians, attorneys, investment advisers, trust departments, or other agents or advisors. The *Trustee* may rely on the advice given by these persons. The *Trustee* shall decide how much to pay these persons for their services, but the amount paid must be reasonable. The amount paid them will be in addition to the amount paid the *Trustee* for his or her services.

E. Guidance for *Trustee*

The *Settlor* has left a *Letter Of Intent* in the Advance Lifetime Directive with this *Trust*. It is *Settlor's* intent that the *Letter Of Intent* be a guide to the *Trustee* in determining what the *Beneficiary* needs. Because these needs will evolve during the *Beneficiary's* life, the *Settlors* intend to update the *Letter Of Intent* from time to time by adding new information. The *Settlors* intend that this *Letter Of Intent* be considered as a continuing expression of their concerns for the welfare of the *Beneficiary* and an expression of how the *Trust* should address those concerns. If some provision of the *Letter Of Intent* should conflict with the provisions of this *Trust Agreement*, the *Trust Agreement* shall control.

F. Liability of *Trustee*

No *Trustee* shall be liable to any person interested in this *Trust* for anything the *Trustee* has done or not done while acting in good faith as *Trustee* of this *Trust*. If the *Trustee* intentionally does something wrong, however, they may be liable. The *Trustee* is responsible for bad faith, intentional misconduct or gross negligence (extreme carelessness) in the performance of his or her duties.

G. Liability of former *Trustee*

Any *Successor Trustee* may accept as correct any accounting of *Trust* assets made by a former *Trustee*. The *Successor Trustee* does not have to accept them as

correct. It is up to the *Successor Trustee*. The *Successor Trustee* may request an audit or take any other reasonable action to find out whether the former *Trustee* did something wrong. If the *Successor Trustee* finds that the former *Trustee* did something wrong intentionally or was extremely careless, he or she may sue the former *Trustee* to recover anything that was lost.

#### Article VI. Powers Of *Trustee*

The *Trustee* shall have the following powers and duties. The *Trustee* shall also be able to decide when and how he will use these powers and duties. The *Trustee* shall also have any powers and duties which the law gives the *Trustee*. If these powers and duties are limited somewhere else in this *Trust Agreement* or on the *Schedule*, the stated limitations will apply.

- A. The *Trustee* may hold any or all of the *Trust Estate* in the form of investment in which it was received.
- B. The *Trustee* may sell at public or private sale any portion or all of the assets in the *Trust Estate*. (Of course, the proceeds of the sale will become part of the *Trust Estate*.) The *Trustee* may mortgage or pledge or lease any asset or portion of the *Trust Estate*. A lease may extend beyond the terms of this *Trust*, if it is necessary to do so to uphold the terms of a lease agreement. The terms of any such transaction shall be up to the *Trustee*.
- C. The *Trustee* may invest and re-invest the *Trust Estate* in the kinds of investments a reasonable and prudent person would choose to invest in, given the *Settlers'* intent in creating this trust. These investments may include real or personal property, stocks, bonds, notes, mortgages, land minerals, royalties, leaseholds and any other assets he or she thinks are reasonable. The *Trustee* may also participate in partnerships, joint ventures and other business enterprises.
- D. The *Trustee* may also construct, repair, improve or demolish any buildings or improvements upon any real property held in the *Trust*.
- E. The *Trust* may own stocks, bonds or securities of a corporation, If so, the *Trustee* may vote, like any other shareholder, on any reorganization, consolidation, merger or dissolution of such corporation.
- F. The *Trustee* may hold investments or any part of the *Trust Estate* in common or undivided interests with other persons.
- G. The *Trustee* may demand and receive money or anything else that is owed to the *Trust*. When payment or property is received, the *Trustee* may give a receipt for it. The *Trustee* may settle or compromise any claims owed to the *Trust*. If the *Trustee* decides it is prudent to do so, the *Trustee* may abandon any claim in favor of or against the *Trust*.
- H. The *Trustee* may borrow funds for the *Trust* in such amounts and for such purposes as the *Trustee* decides are proper. A proper purpose might be to obtain

funds for the repair of a *trust* asset. The *Trustee* may also purchase property for the *Trust* based on the credit of the *Trust*. The *Trustee* may have to secure the repayment of any loans or credit given to the *Trust*. If so, the *Trustee* may sign notes, mortgages or other evidences of indebtedness to secure such credit or loans. The *Trustee* may also repay any such indebtedness out of assets of the *Trust Estate*.

I. The *Trustee* may carry insurance at the expense of the *Trust* of such kinds and amounts as the *Trustee* decides is advisable. This insurance shall be for the protection of the *Trust Estate* against damage or loss. The insurance may also cover the *Trustee's* liability with respect to claims of third parties.

J. The *Trustee* may vote in person or by proxy any shares of stock which may be a part of the *Trust Estate*.

K. The *Trustee* may lend money to any person or persons upon such terms as the *Trustee* may decide. If the *Trustee* does so, the *Trustee* must require adequate interest and security to protect the interest of the *Trust* and the *Beneficiary*.

L. The statements in the next sentence will not take away any of the rights of the *Trustee* listed in A through K above or any other provision of this *Trust Agreement*. The *Trustee* can do everything with the *Trust Estate*, that is not specifically prohibited by applicable law or regulation, that any reasonable and prudent person can do with his or her own property and funds, as long as it is done solely for the benefit of the *Beneficiary* and the *Trust* .

M. The *Trustee* must use his or her best judgment in each separate situation and follow the best course available for the benefit of the *Trust* and the *Beneficiary*. When the *Trustee* does this, it is not necessary to get the approval of a Court. The fact that the *Trustee* may obtain some coincidental benefit from an action because he or she is *Trustee* for other *Trusts* or is an agent for other persons or corporations as a stockholder, director or otherwise, does not change this. The *Trustee* has a very high standard of duty to this *Trust*, however, and must at all times use the highest degree of care to be sure that what he or she is doing is for the best interest of the *Trust* and the *Beneficiary*.

N. The *Trustee* may purchase policies of life insurance and annuities for the benefit of the *Trust* and pay for them as an investment and as part of the *Trust Estate*. This may be done at any time and from time to time. The *Trustee* may use either principal or interest of the *Trust Estate* to pay these premiums. It is up to the *Trustee*. The *Trustee* may also decide to purchase policies on the lives of other persons with the death benefits payable to the *Trust*. If the *Trustee* does this, the policies will be a part of the *Trust Estate*.

1. The *Trustee* may pay all premiums and other charges which are charged to keep an insurance policy in force. The *Trustee* may also choose not to pay such premiums and charges. It is up to the *Trustee*.

2. The *Trustee* may decide to change a policy by canceling it or converting it or doing something else that will make a serious change in the policy. If

so, the *Trustee* must first give the insured a notice in writing, telling what the *Trustee* intends to do. If the insured is disabled, the notice must be given to the insured's guardian or other *Personal Representative*. Each notice of this sort must be in writing and must be delivered at least fifteen (15) days before any action on the policy is taken.

3. The *Trustee* shall treat any dividend received on a policy as principal rather than income.

4. The *Trustee* may receive proof of death on a person who was insured for the benefit of the *Trust*. The *Trustee* may find that a policy has matured before the death of the insured. In either case the *Trustee* shall collect any amounts due the *Trust*. Any amounts the *Trustee* collects in this way, except interest paid by the insurance company, shall be held as principal of the *Trust Estate*.

5. The *Trustee* may accept any payments due the *Trust* under any settlement arrangements made before the death of the insured. The *Trustee* may also take advantage of any rights available under such arrangements.

6. The *Trustee* may settle any policy claim in a manner the *Trustee* thinks is best for the *Trust*. This includes arbitration, compromise or other means of adjustment. The *Trustee* does not have to accept settlement options available under the policy. The *Trustee's* receipt for payment is all the insurer needs to show that the claim has been fully settled. The insurer does not have to check up on the *Trustee* to see what is done with the proceeds of a policy.

Even though the *Trustee* can do all things listed above, the *Trustee* should always contact a tax expert for advice to determine if the manner of premium payment will cause a tax problem for the *Trust*.

O. The *Trustee* may enter into agreements with taxing authorities as to the proper way to administer the *Trust*. The agreements may relate to the liability of the *Trust* for taxes. They may also limit the decisions the *Trustee* may make in future transactions or any other matter which may be in the best interest of the *Trust Estate* and the *Beneficiary*.

P. The *Trustee* may, if the *Trustee* decides to, permit any heir of the *Settlor* who is living on any real property which is a part of the *Trust Estate* to continue living there. The *Trustee* shall decide what rent or other payment, if any, the person living there will be required to pay to the *Trust*.

Q. The *Trustee* may, if the *Trustee* decides to, permit any person or persons to reside upon any real property which is a part of the *Trust Estate* where the *Beneficiary* is residing. The *Trustee* shall decide what rent or other payment, if any, shall be paid to the *Trust* by the person who is living there. The *Trustee* may let such person or persons stay on such real property rent free if they will provide care, supervision or simple companionship for the *Beneficiary*. The *Trustee* may decide that such person or persons should pay the taxes, insurance, maintenance and ordinary repairs on such real property. It is up to the *Trustee*.

R. It may be that the *Trustee* will need to divide a portion or portions of the *Trust Estate* into parts or shares for the purpose of distribution or for some other reason. If this happens, the *Trustee* may make these divisions using a reasonable method selected by the *Trustee*. The persons who are to receive the distributions may each have equal and identical rights to the property being distributed. This does not require the *Trustee* to distribute exactly the same types of property to each such person. The *Trustee* may distribute assets of the *Trust Estate* in the same form they were owned by the *Trust*. On the other hand, the *Trustee* may distribute a portion in money and the balance in the form in which it was being held in the *Trust Estate*. The *Trustee* may sell as much of the *Trust* property as the *Trustee* thinks is necessary in order to make the distribution. The *Trustee* must make the decision.

S. The *Trustee* shall have all the power he or she needs to do anything necessary and proper to qualify the *Beneficiary* for benefits which the *Trustee* determines are or should be available to or for the *Beneficiary*. He or she may apply for these benefits for the *Beneficiary*. This is true even if this will benefit the *Trustee*, as well as the *Beneficiary*.

T. The *Trustee* has a duty to keep the *Beneficiary* reasonably informed of the *Trust* and its administration. The *Trustee* may do this by sending the *Beneficiary* a report at least once a year, telling him or her what the *Trust* owns, and what distributions the *Trustee* has made during that year. The *Trustee* may do this in any one or more of the following ways:

1. The *Trustee* may send the report to the *Personal Representative*, of the *Beneficiary*. The report may also be sent to any suitable person who lives with or who cares for the *Beneficiary*.

2. The *Trustee* may send the notice to a custodian serving on behalf of the *Beneficiary* under Canadian law or Provincial law.

The *Trustee* is not responsible for finding out how the distributed funds were used. When the *Trustee* gets a receipt from the *Personal Representative* or any other person who receives the distribution, that is all that the *Trustee* needs to show that the distribution has been made properly. As long as the *Trustee* acts in good faith, no one can challenge how the distribution was made or how it was spent. This is the decision of the *Trustee*.

U. The *Trustee* shall not be required to be a resident of any Province or of Canada.

## ARTICLE VII. GENERAL ADMINISTRATIVE PROVISIONS

### A. Partial\_invalidity

Some part or portion of this *Trust Agreement* may be void or unenforceable. This does not mean that the rest of the *Trust Agreement* can not be carried out. The rest of the *Trust* will still be valid and can be carried into effect.

## **B. Headings**

Headings are used in this *Trust Agreement* so that the different parts of the *Trust Agreement* will be easy to find. The same is true in the Table Of Contents. These headings are not a part of the language which follows the headings.

## **C. Situs\_of\_Trust**

The *situs* of the *Trust* is the Province which has legal control of this *Trust*. This is usually the Province where the *Beneficiary* is living on the *Effective Date* of this *Discretionary Trust*. This Province is set out in the *Schedule*. If the *Beneficiary* moves to another Province, the *Beneficiary* or his or her *Personal Representative* should notify the *Trustee* in writing. When the *Trustee* receives this written notice, the *Trustee* should decide whether or not it is necessary to change the *situs* of this *Trust* to the other Province. This decision is up to the *Trustee*, but the decision must conform to the applicable law at that time.

## **D. Application\_to\_a\_Court**

The *Settlor* does not intend that any Court shall have control of this *Trust*. If there is a dispute as to what the *Trust Agreement* means or if an accounting needs to be approved by a court, however, the *Settlor* directs the *Trustee* to apply to the proper Court for assistance. When the problem is solved, the *Settlors* intend that such Court shall have no further control of this *Trust*.

## **E. Statutes,\_Codes\_and\_Regulations**

If a statute, code or regulation is referred to in this *Trust Agreement*, it shall also mean any new ones that take the place of those statutes, codes, or regulations.

## **F. Severability**

If any part or provision of this *Trust* is unenforceable or cannot be carried out, the rest of the *Trust* shall be carried into effect.

## **G. Name\_of\_the\_Trust**

The name of the *Trust* created in this *Trust Agreement* is set out in the *Schedule*.

## **H. Confidentiality\_Regarding\_Provisions**

It is the intent of the *Settlor* that the provisions of this *Trust Agreement* are to be kept confidential as to all persons. That means that nobody is to be told what is in this *Trust Agreement*. An exception to this is the requirement for an annual report to the *Beneficiary* (see Article VI, paragraph T). Financial institutions, such as banks, who are holding portions of the *Trust Estate* may also need to see a copy of the *Trust*. The *Trustee* should determine whether it is appropriate to provide a copy to anyone making such a request.

## ARTICLE VIII. PERSONAL REPRESENTATIVE

**If the *Beneficiary* has a *Personal Representative*, the name and other necessary information about the *Personal Representative* is set out in the *Schedule*. Successor *Personal Representatives* are also set out in the *Schedule*.**