

**\_\_\_\_\_ FUND**  
Private Foundation Donor-Advised Fund Agreement

AN AGREEMENT, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between \_\_\_\_\_ (the "Company"), represented by \_\_\_\_\_ (the "Representative"), with a mailing address of \_\_\_\_\_, and The Community Foundation of Herkimer & Oneida Counties, Inc. (the "Foundation"), a New York State not-for-profit corporation located at 2608 Genesee Street, Utica, New York 13502, for the creation of a **corporate donor-advised fund**.

**1. Creation of Fund**

The fund shall be known as the \_\_\_\_\_ Fund (the "Fund").

An initial gift of \$ \_\_\_\_\_ has been made for use consistent with this Agreement (the "Donation").

**2. Management of the Fund**

The Fund shall be the property of the Foundation and administered according to provisions of the Foundation's Fund Terms and Conditions, which may be amended from time to time, and are attached hereto and made a part of this Agreement (Attachment C).

The assets of the Fund will be invested collectively with other assets of the Foundation but accounted for separately and in the name of the Fund. The market value of the Fund is not guaranteed by the Foundation and may fluctuate depending upon investment results.

The Fund shall be subject to an administrative fee in accordance with the fee schedule adopted from time to time by the Foundation Board of Trustees (Attachment B). The value of the Fund shall be separately determined and set forth at least annually by the Foundation, and such determination shall be conclusive.

**3. Use Restrictions**

The Fund shall at all times be used exclusively for the charitable purposes as defined under Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").

It is intended that the Fund shall be a component part of the Foundation as defined in Section 1.170A-9(f)(11) of the Income Tax Regulations and that nothing in this Agreement shall affect the status of the Foundation as an organization (i) described in Section 501(c)(3) of the Code and (ii) which is not a private foundation within the meaning of Section 509(a) of the Code. The Fund shall meet the requirements of a donor-advised fund under Section 4966 of the Code. Among other things, the Fund shall not (i) make distributions to individuals, private non-operating foundations, certain supporting organizations or to any organization for a non-charitable purpose; (ii) maintain excess business holdings as described under Section 4943(e) of the Code; (iii) engage in excess benefit transactions as described under Section 4958 of the Code or (iv) provide prohibited benefits as described under Section 4967 of the Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention and to conform to the requirements of the foregoing provisions of the Federal tax laws and any regulations issued thereunder.

Distributions from the Fund shall be in the form of grants and the recipient of any grant from the Fund shall be advised that the grant is to be used solely for charitable purposes.

**4. Fund Advisors**

The Fund shall be advised by a committee (the "Advisory Committee") and the Company will appoint one spokesperson to serve as a liaison to the Foundation. The spokesperson shall keep the Foundation informed of any changes to the makeup of the Advisory Committee. The

spokesperson shall have the sole authority to communicate with the Foundation for matters regarding the Fund on behalf of the Advisory Committee. In the event that the spokesperson should become unavailable or incapacitated for any reason, the Company shall have the ability to appoint a replacement spokesperson and the Foundation shall be notified of the change immediately.

The initial Advisory Committee is indicated in Attachment A.

**5. Future Legacy**

If no representatives from the Donor are available to advise and consult the Foundation on matters regarding the Fund, the Fund shall become a permanently endowment with the same name and be utilized to make grants for charitable purposes at the discretion of the Foundation.

**6. Acknowledgement**

Company agrees and acknowledges that it has read the Foundation's Fund Terms and Conditions and agrees to the fees, terms, and conditions described therein.

Company understands any contribution, once accepted by the Foundation's Board of Trustees, represents an irrevocable gift to the Foundation.

The Foundation's Board of Trustees has variance power under IRS regulations, and this gift is not refundable to the Company.

This Agreement shall be governed by and its terms and conditions construed in accordance with the laws of the State of New York, without regard to conflict of law principles.

This Agreement constitutes the entire agreement between the parties regarding the Donation, and supersedes all oral and written agreements entered into before or at the same time as this Agreement.

Company hereby certifies, to the best of its knowledge, that all information presented in connection with this form is accurate, and will notify the Foundation promptly of any changes.

*[Remainder of page intentionally left blank; signature page to follow.]*

IN WITNESS, WHEREOF, the Company and the Foundation have executed this Agreement as of the date first set forth above.

Company Representative

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Community Foundation of Herkimer & Oneida Counties, Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Alicia Dicks

Title: President & CEO

*Attachments:*

- A) Initial Fund Advisory Committee information provided by Company*
- B) Corporate Donor-Advised Fund Administrative Fee Schedule (as of September 2018)*
- C) The Foundation's Fund Terms and Conditions (as of January 2018)*

**ATTACHMENT A – FUND ADVISORY COMMITTEE INFORMATION**

Fund

The initial advisors to the fund shall be:

- 1) Name: \_\_\_\_\_ (SPOKESPERSON)  
Contact information: \_\_\_\_\_
  
- 2) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_
  
- 3) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_
  
- 4) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_
  
- 5) Name: \_\_\_\_\_ (FUND REPRESENTATIVE)  
Contact information: \_\_\_\_\_

The above-named individuals will have full advisory privileges over the fund, including, grant recommendations and access to fund financial information.

Approved and accepted by:

Company Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B – ADMINISTRATIVE FEE SCHEDULE**  
Corporate Donor-Advised Funds

**Corporate Donor-Advised Funds**

- Established with a minimum gift of \$10,000 and that amount must be maintained at all times
- Fund is permanent
- No mandatory spending requirement; grants must be \$200 or more
- Advised by a committee appointed by your company each year; fund becomes a permanent endowment with same name administered by the Foundation in the event that no company representatives are available to advise the fund
- Monthly statements of fund activity prepared for fund advisors
- **Administrative fee:**
  - 1.5% (or \$375, if greater) on the first \$500,000
  - 1.0% on the next \$1,000,000
  - 0.50% on all over \$1,500,000

*Foundation Board Approved September 27, 2018*