



## DONOR ADVISED FUND AGREEMENT

This DONOR ADVISED FUND AGREEMENT (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_ between The Upstate Foundation, Inc., a New York not-for-profit corporation (the "Foundation"), and \_\_\_\_\_ ("Donor") to create a Donor Advised Fund ("Fund") of the Foundation.

- 1) Name of the Fund. The name of the Fund created hereby is the \_\_\_\_\_ Fund.
- 2) Initial Contribution. Upon signing this Agreement the Donor will transfer and deliver to the Foundation the cash and/or marketable securities described as follows:  
\_\_\_\_\_.
- 3) Purpose and Use of the Fund. The purpose of the Fund is to further the purposes set forth in the Foundation's Certificate of Incorporation.

Notwithstanding any of the foregoing, no part of the Fund may be used, directly or indirectly, for any of the following: the relief of any legal obligation of any donor to the Fund; the benefit of any foreign charities, private foundation or other organization not described in Internal Revenue Code Section 170(c)(1) or (2), or in Code Sections 501(c)(3) and 509(a)(1) or (2); to influence legislation within the meaning of Code Section 4945(e); or to influence the outcome of any specific public election except as provided in Code Section 4945(f). The Fund is defined as a "donor-advised fund" under Code Section 4966(d)(2); accordingly, the Fund shall not make any grants to individuals or pay out grants to any entity for a non-charitable purpose.

- 4) Maintenance of Fund Assets. Donors have an option to keep Fund assets in cash and cash equivalents or to have them invested with the other assets of the Foundation. Donor elects to:

- have the assets of the Fund invested
- have the assets kept in cash and cash equivalents

Donor acknowledges that if they have elected to keep assets in cash they are relieving the Foundation of any and all obligations relative to their management and investment including, but not limited, those provided for under Not-for-Profit Corporation Law Section 552.

- 5) Successor Advisor. After the Donor's lifetime the following person is authorized to provide grant-making recommendations for the Fund: \_\_\_\_\_ or, in his/her absence or inability to perform, \_\_\_\_\_ (each a "Successor Advisor" and, together, the "Successor Advisors").

After the respective lifetimes of the Successor Advisors, remaining balances of the Fund will be added to the Foundation's unrestricted funds, or if more than \$25,000 will be:

- maintained in the name of the Fund as a permanent endowment for general Foundation purposes
- set aside in the name of the Fund for use towards the following broad field(s) of interest:  
\_\_\_\_\_

6) Management. The Foundation hereby agrees to accept cash and marketable securities transferred to it by the Donor and any and all other sources who wish to participate in the Fund; provided that all such donations shall be subject to the same restrictions as are placed on the initial contribution, and shall be valued as at the time of receipt. The value of the Fund shall be separately determined and set forth at least annually by the Foundation, and such determination shall be conclusive. The assets of the Fund shall be wholly-owned, invested and managed by the Foundation. If the Donor has elected to have the assets invested under Section 4 of this Agreement, then the Foundation has full right and power to commingle and co-invest the assets of the Fund with other investment assets of the Foundation and to delegate investment management of the assets of the Fund, subject to the same investment guidelines and policies as apply to other funds held by the Foundation. Any fundraising activity must be approved by the Foundation in advance. The Fund is open ended and may be added to at any time.

7) Distributions. Distributions from the Fund shall be made in accordance with such procedures for the administration and operation of such funds of the Foundation as may be in effect from time to time. Any distribution from the Fund shall be in the form of a grant or award. The recipient of any grant or award from the Fund shall be advised that the grant or award is to be used solely for charitable purposes.

Under Code Section 4966(d)(2), the Fund shall not pay out any grants, awards, loans, compensation or similar payments to any "disqualified persons" under the law. Nor shall any "disqualified person" receive more than an "incidental benefit" from the Fund or from any grantee receiving a disbursement from the Fund. The provisions of this Section 7 shall not apply to limit distributions made to the Donor as long as Donor is an organization described in Code Section 170(b)(1)(A) at the time of the distribution.

The Foundation hereby agrees to receive non-binding recommendations from the Donor and Successor Advisor (if any) regarding the timing and recipient of distributions for charitable uses; however, nothing herein shall be construed so as to reserve to the Donor or Successor Advisor the legal right to do so. The Foundation's Board, by law, must have final authority to determine the use and distribution of all of the Foundation's assets.

Distributions from the Fund shall be made in the name of the Fund. The minimum distribution is \$250. If the Fund has remained dormant without grant-making for five years, the Foundation will make every effort to secure grant-making advice from the Donor and Successor Advisor(s) (if any) and, if unsuccessful, will make distributions in accordance with Board-designated priorities.

8) Compensation to the Foundation. As compensation for its services the Foundation shall receive those fees provided for in the Foundation's Investment Policy Statement.

9) Conditions and Variance Power. Donor agrees and acknowledges that contributions to the Fund are made in recognition of, and the Fund is at all times subject to, the terms and

conditions of the Certificate of Incorporation and By-laws of the Foundation as from time to time may be amended. The Fund is protected from obsolescence. Should the purposes for which the Fund is established ever become obsolete, unnecessary, incapable of fulfillment, or inconsistent with the charitable purposes of the Foundation, the Board of Directors of the Foundation shall in its sole judgment select a similar use for the assets of the Fund that will most nearly fulfill the original charitable intent of the Fund. The Board of Directors of the Foundation may modify the restrictions or conditions placed on the Fund without obtaining the approval of the Donor or the Justice of the State Supreme Court or giving notice to the Attorney General or obtaining any other approval or consent.

10) Governing Law. This Agreement and the Fund 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.

11) Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement. An electronic copy of a signature shall have the same force as an original. This Agreement shall be binding upon the signatories and their successors and assigns.

12) Entire Agreement. The Foundation's Policy on Donor Advised Funds is hereby incorporated by reference as if it were part of this Agreement. This Agreement and the Foundation's Policy on Donor Advised Funds shall constitute the entire agreement between the parties regarding the Fund, and supersede all oral and written agreements entered into before or at the same time as this Agreement.

**IN WITNESS WHEREOF**, the Donor and the Foundation have executed this Agreement as of the date set forth below.

**DONOR**

**THE UPSTATE FOUNDATION, INC.**

Sign \_\_\_\_\_

Sign \_\_\_\_\_

Print \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_