

# DONOR ADVISED FUND TERMS AND CONDITIONS

*Welcome to the Community Foundation of Greater Huntsville. Governed by an independent Board of Directors responsible for all aspects of its operations, the Community Foundation is committed to responsible and prudent grantmaking with clear goals and procedures, legal knowledge and compliance, and internal and external accountability. The following describes the terms and conditions for establishing and maintaining a Donor Advised Fund at the Community Foundation, along with answers to frequently-asked questions. Donor Advised Funds afford donors the opportunity to support cherished causes and local needs in an informed, active way without incurring the paperwork and expenses of maintaining a private foundation. Our donor advisors are important members of our Community Foundation family, as advised-fund grants are a significant source of support to the vital nonprofits serving our community, our state, and our nation.*

## Definition and Status of a Public Charity

The Community Foundation of Greater Huntsville (“the Community Foundation”), a tax-exempt 501(c)(3) public charity that administers donor-advised and other types of charitable funds, exists exclusively for charitable purposes. In the over one hundred year old tradition of community foundations, the Community Foundation strives to improve the quality of life in the Greater Huntsville area by promoting and facilitating effective philanthropy. One of the ways this goal is accomplished is through the provision of charitable tools, resources, programs and support that make giving simple and effective for donors.

Funds established at the Community Foundation are funds of the Community Foundation and not separate trusts. Nothing in the fund agreement will affect the status of the Community Foundation as an organization described in Section 501(c)(3) of the Internal Revenue Code (“the Code”) of 1986, as amended, and as an organization which is not a private foundation within the meaning of Section 509(a) of the Code.

## Donor Advised Fund Basics

Donor Advised Funds are convenient, flexible tools for individuals, families, and businesses wishing to be personally involved in their philanthropy. The fund allows the donor to:

- Make irrevocable contributions to the fund;
- Take an immediate federal income tax deduction to the extent allowed by law, subject to individual limitations;
- Recommend grants to IRS-qualified charities at any time; and
- Potentially increase charitable giving in the community through professional investment management of the fund.

Contributions to a Donor Advised Fund at the Community Foundation are immediately tax-deductible to the fullest

extent allowed by law, subject to individual limitations. Contributions may be made at any time, while grants may be recommended to IRS-qualified charities on a separate timetable in keeping with the donor’s charitable goals. Assets in the fund are professionally managed and have the potential to grow over time, providing greater support to cherished causes and critical community needs.

## Establishing a Donor Advised Fund

Individuals, families, corporations, and businesses may establish a Donor Advised Fund by completing the Donor Advised Fund Agreement and making an irrevocable gift of \$10,000 or more to your named fund at the Community Foundation. Once the fund is established, the donor may make additional contributions at any time.

## Naming a Donor Advised Fund

Each fund of the Community Foundation has a unique name. Typically, the fund is named for the donor or the donor’s family, or to memorialize someone special (e.g. “Smith Family Fund”). Or, the donor may choose anonymity by selecting a name to his or her personal liking or in keeping with the fund’s purpose (e.g. “Sunshine Fund”). The Community Foundation reserves the right to reject a proposed fund name for any reason.

## Contributions

Contributions made to a Donor Advised Fund are irrevocable. With regard to individual donor advised funds, contributions may be made at any time. With regard to corporate donor advised funds, the Community Foundation encourages the company to contribute to and to promote participation in the fund across the employee base. In order for the Community Foundation to maintain a cost-effective fee structure for the fund, contributions from payroll deductions should be remitted no more frequently than quarterly. The company must maintain an up-to-date record of the corporate and individual sources of contributions and must provide this information to the Community Foundation to accompany the donation. Gift



P.O. Box 332 Huntsville, AL 35804 | 225 Church Street Huntsville, AL 35801  
256.535.2065

[www.communityfoundationhsv.org](http://www.communityfoundationhsv.org)

acknowledgements will be provided to all donors as such gifts are made.

Contributions may be in the form of cash equivalents (checks and credit card payments), real estate, marketable securities, or business interests. Contributions other than cash equivalents or marketable securities may be subject to approval by the Community Foundation's Board of Directors.

The general policy of the Community Foundation is to sell all contributed property as soon as practical after receipt so as to minimize market risk. For non-publicly traded securities or other assets for which no readily liquid market exists, the Community Foundation will exercise discretion as to the timing and price of sales. Closely-held stock or other assets for which no readily liquid market exists that are retained for any reason and that are valued in excess of \$1,000,000 shall be revalued using a qualified appraisal every three (3) years from the date of the gift to the Community Foundation. The cost of the qualified appraisal shall be an expense of the fund holding such asset. Any costs incurred by the Community Foundation necessary for the disposition of securities and other assets (i.e. legal and appraisal fees) and for the management of such assets prior to disposition will be an expense of the fund.

## **Testamentary Gifts**

Contributions to a Donor Advised Fund may be made as part of your estate plan. The fund may be named as the beneficiary of cash and cash equivalents, securities, life insurance policies, retirement plans, charitable remainder trusts, charitable gift annuities, charitable lead trusts and/or brokerage accounts. The Community Foundation can provide sample bequest language allowing the donor to designate all or a portion of his/her estate to benefit a fund at the Community Foundation.

Completion of a Donor Advised Fund agreement allows the donor to instruct the Community Foundation regarding the fund's name and purpose after the donor's lifetime, name successor advisors, and to specify charitable fields of interest. Community Foundation staff can assist you and your legal or tax advisor on the many ways charitable giving can fit into your estate plan.

## **Tax Considerations**

Contributions to the Community Foundation's funds are treated as gifts to a public charity and are generally tax deductible as allowed by law and subject to individual limitations. Under the Internal Revenue Code, deductions for charitable contributions are subject to certain percentage limitations that limit the deductions that can

be taken to a stated percentage of adjusted gross income, or AGI, in the year the deduction is taken. Contributions in excess of these percentage limitations may be carried forward up to five subsequent years. Because the Community Foundation is a public charity, the applicable percentage limitations are generally the most favorable charitable deductions under IRS regulations. Additional rules or limitations may apply with respect to an individual's tax treatment or specific circumstances.

The Community Foundation encourages each prospective donor to have the terms of all proposed agreements reviewed by the donor's legal and/or financial advisors. The Community Foundation does not provide legal, tax, or financial advice. The donor is advised that it is the donor's responsibility to obtain any necessary appraisals, file appropriate tax returns, and defend against any challenges to claims of tax benefits.

## **Fundraising Policy and Memorial Funds**

Donors may make additional contributions to funds they create, and the Community Foundation may, in its discretion, accept additional contributions to named funds from others. Third-party contributors have no access to the fund and no grant recommendation privileges, nor may they receive anything in exchange for or in consideration of their contribution, under IRS rules.

No fund advisor(s) nor any third party may solicit third-party contributions in exchange for a promise or guarantee to contributors that intended grant recommendations will be approved. The Community Foundation is unable to assist event organizers with fundraising events to benefit a Donor Advised Fund. Without prior express written approval by the Community Foundation, the fund advisor(s) may not raise money for any fund through quid pro quo fundraising events, online solicitations, or mass appeals.

Donations may be requested for memorial funds established in honor of someone who has passed away. Such requests must use the following language in obituaries or solicitations: "Funds raised will be added to the [insert fund name] Fund at the Community Foundation of Greater Huntsville, a 501(c)(3) organization. Please make checks payable to the Community Foundation of Greater Huntsville and note the [insert fund name] Fund in the memo section."

## **Variance Power**

All assets contributed to a Donor Advised Fund at the Community Foundation become irrevocable gifts to the Community Foundation, and legal control and responsibility for the funds rest with the Community Foundation, under IRS regulations. All funds established at

the Community Foundation are subject to the Community Foundation's "variance power," as set forth in the Community Foundation's Articles of Incorporation, which states: "The Board of Directors of this Corporation shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if, in their sole judgment, (without the approval of any trustee, custodian or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the greater Huntsville, Madison County area."

## Investment of Assets

Assets of the Community Foundation are professionally managed to provide competitive market returns with reasonable levels of risk. The Investment Committee, in conjunction with and under the authority of the Board of Directors of the Community Foundation, shall direct the investments of these funds consistent with that objective. Copies of the Community Foundation's investment program and policies are available to any interested party upon request.

Donors or fund advisors may request that the fund's assets be managed by an external investment manager or broker within a set of guidelines prescribed by the Community Foundation. External asset management is available for funds of \$25,000 or more. The Board and Investment Committee of the Community Foundation, or the external asset manager with approval from the Community Foundation, have the authority to make any or all investment decisions for the assets in the fund.

Investment fees are charged to funds, and investment returns are posted to the funds net of that fee. Information about investment fees is available upon request.

Income, investment gains or losses, and fees are posted to the fund on a monthly basis.

## Fund Activity Reporting

Fund activity statements are posted online quarterly to Donor Central. A user name and password are required to access this website, recommend grants, and view fund activity. Please contact our staff at 256.535.2065 or at [info@communityfoundationhsv.org](mailto:info@communityfoundationhsv.org) to obtain a user name and password after your fund has been established.

## Spending Policy

For endowed funds, the Community Foundation's Board of Directors sets and monitors the annual distribution rate

that is calculated as a percentage of fund assets, known as the Spending Policy. The Spending Policy may be amended and restated at any time at the discretion of the Community Foundation's Board of Directors. The Spending Policy limits the amount available each year for distribution so that the Fund can continue to grow in perpetuity.

The current Spending Policy states: *The spending rate will be five percent (5%) annually, until otherwise designated by the Board of Directors. This amount includes funds available for both grants and administrative fees. The spending policy is calculated each year using the trailing average of the market value of the fund for the preceding twelve (12) quarters ending on June 30. If the fund has not existed for twelve (12) quarters as of June 30, the spending policy calculation will be based on the average quarterly market value of the fund assets during which the Community Foundation has managed the fund.*

*The distribution that may be spent pursuant to this policy may be drawn from either ordinary income earned (e.g. dividends, interest, rents, royalties) or from principal, including appreciation, both earned and unearned.*

*The policy is intended to set a maximum amount available for spending from each covered fund, but not to mandate that such an amount be spent. Amounts not distributed in a particular year remain invested in the fund and will not be carried forward to be distributed in the next year.*

Spendable funds are not subject the Community Foundation's Spending Policy.

## Donor Services

The Community Foundation is responsible for administration of the fund's check writing, bookkeeping, investment management, tax reporting, auditing and evaluation, and makes available to the fund advisor reports of fund income, expenses, and grantmaking, as appropriate. Administrative fees support these services and other activities of the Community Foundation consistent with its role as a leader in the community.

In addition to these financial and administrative services, the Community Foundation's staff provides personalized services to Donor Advised Fund advisor(s). Donor Services staff can provide guidance on grantmaking, researching community needs, helping to craft a charitable mission for the fund, answering questions, and resolving issues that may arise. Donors are encouraged to take advantage of these personalized services in order to achieve their charitable goals.

## Fees

The current fee schedule provides for an annual administrative fee charged to all Donor Advised Funds (whether endowed or spendable) of the greater of 1% of the fund's asset value (declining as assets exceed \$1 million) or \$500. One-twelfth of this annual administrative fee is charged against the fund monthly. In addition, customary investment management fees apply. The fee schedule is subject to change at the sole discretion of the Community Foundation; fund advisor(s) would be notified in writing in advance of any fee changes.

## Minimums

A Donor Advised Fund may be opened with \$10,000, which is due to the Community Foundation within 60 days of signing a fund agreement. If the fund's assets do not reach \$10,000 within 60 days of inception, the fund may not be recognized as a separately-named fund, and any assets within the fund may be transitioned to an unrestricted fund at the Community Foundation at the discretion of the Community Foundation's Board of Directors. Externally-managed funds have a minimum balance requirement of \$25,000.

Endowed funds are required to maintain a \$50,000 minimum balance. Spendable funds are required to maintain a \$500 minimum balance. If a fund maintains a balance of less than \$500 for more than six months, after notification to the fund advisor(s), the Community Foundation may close the fund and transition the remaining assets to an unrestricted fund at the Community Foundation at the discretion of the Community Foundation's Board of Directors.

## Role of Fund Advisors

Donors establishing an advised fund may designate themselves or any person to be an advisor to the fund. Ideally, fund advisors are at least 18 years of age; however, if a fund advisor is a minor, the Community Foundation will work with the minor's guardian to facilitate fund advisory privileges. Individuals named as fund advisors may recommend grants to be issued from the fund. If a fund is advised jointly, upon the death of one advisor, the remaining advisor(s) retains fund advisory privileges.

Donors may appoint an Advisory Committee for an advised fund. The Advisory Committee may make recommendations to the Board of Directors concerning grants from the fund and any other matters that it deems of importance. Generally, each Advisory Committee should select one person who will have the authority to transmit the Advisory Committee's recommendations to the Community Foundation.

Unless contrary instructions have been made by the Donor, whenever two persons are designated to make recommendations they shall act by unanimous consent; whenever more than two persons are so designated, then a recommendation by a majority of such persons shall constitute an effective recommendation for consideration by the Community Foundation. Otherwise, each committee may operate under such procedures as it finds appropriate.

## Divorce or Separation

In the event a husband and wife serve as the only members of an Advisory Committee to a fund, and a legal action for divorce, separation, or annulment is pending between the husband and wife, the Community Foundation may, upon receiving notice of such action:

- suspend processing any grant distribution recommendation for such fund(s) unless and until the husband and wife both agree in writing to approve the grant distribution recommendation,

**OR**

- suspend processing any grant distribution recommendations for such fund(s) unless and until the husband and wife have jointly agreed in writing to an alternative procedure, acceptable to the Community Foundation, to provide for the future administration of such fund(s).

Subject to the approval of the Community Foundation, the husband and wife may jointly authorize the Community Foundation to bifurcate any fund(s), designating husband or other successor advisor to serve as the Advisory Committee to one of the successor fund(s) and designating wife or other successor advisor to serve as the Advisory Committee to the other successor fund(s) created as a result of bifurcation.

In the event that husband and wife cannot jointly agree as provided above and no divorce decree, order of legal separation, order of annulment, property settlement agreement, agreement of the parties, or other legal order has been entered or approved that would otherwise resolve the issue to the satisfaction of the Community Foundation, the Community Foundation may, in its sole discretion, bifurcate any fund(s) so affected into equal shares and designate husband to serve as the Advisory Committee to one of the successor fund(s) and designate wife to serve as the Advisory Committee to the other successor fund(s) created as a result of bifurcation. However, the Community Foundation shall not take such action until at least six months have transpired since the

date upon which the action for divorce, separation, or annulment was filed with the court of record.

## Successor Advisors

When the Donor Advised Fund is created, the donor may designate any person up to two succeeding generations to be a “successor advisor” to exercise the privileges and duties of an advisor upon an advisor’s death, incapacitation, or resignation. Successor advisors may assume the privilege to advise the fund upon the death, incapacitation or resignation of the preceding advisors, and only if the fund value is at least \$10,000 at the time of succession. The successor advisor(s) may be required to provide written notification and sufficient proof of the preceding advisor’s death, incapacitation, or resignation prior to assuming the privileges and duties of a fund advisor. Successor advisors may not appoint further successors.

If a donor has designated successor advisors and if the charitable interests of the successor advisors are sufficiently diverse, then the Community Foundation may, with the consent of the successor advisors and subject to the terms of the donor’s instrument of transfer, divide the Donor Advised Fund into multiple Donor Advised Funds and limit each successor advisor’s advisory privilege to a separate fund.

At the end of the advisory period (i.e. when the successor advisor’s advisory privileges have ceased for any reason), the fund will (a) support the donor’s designated residual charity, (b) support named fields of interest found within the Donor Advised Fund agreement or (c) support a wide range of charitable purposes at the discretion of the Community Foundation as indicated in the original Donor Advised Fund Agreement.

## Grantmaking

Fund advisors have grant recommendation privileges. Grants may be recommended online or by submitting a signed Donor Suggestion Form. All grants must be made for charitable, religious, scientific, literary, or educational purposes (collectively, “charitable purposes”). Recommendations may be made for grants to any organization that is described Code Section 170(c)(2), 501(c)(3), 2055(a)(2) or 2522(a)(2) (except for private foundations as defined by Code Section 509(a)) (“qualified organization”). Qualified organizations include schools, religious institutions, or government agencies located in the United States.

Unless otherwise requested, grant checks sent to organizations are accompanied by a grant letter from the Community Foundation specifying the name of the fund.

The Community Foundation generally does not forward mail received for the fund.

Foundation staff has authority to review and approve of individual grant recommendations, with the Board of Directors subsequently reviewing and ratifying these grants. Grants of less than \$50,000 are generally made within ten business days of receipt; grants of more than \$50,000 require additional approval procedures and are generally made within fifteen business days. Grants made from funds at the Community Foundation are issued on checks with the name and logo of the Community Foundation and will include the fund name unless anonymity has been requested by fund advisor.

## Restrictions on Grants

The Community Foundation can only approve grant recommendations that are used exclusively in furtherance of charitable purposes. The Community Foundation reserves the right to perform additional due diligence and to decline to make a recommended grant to an organization, including, without limitation:

- where the grant will confer a more than incidental benefit on the donor, fund advisor(s), other person with grant recommendation privileges, or other third party;
- where the grant will be used for lobbying, for political contributions, or to support political campaign activities;
- where the grant will be used for improper purposes;
- where the donor, fund advisor(s), and/or related persons control the organization;
- where the Community Foundation provides a substantial portion of the organization’s public support; and
- for other reasons in accordance with Community Foundation policies. A donor or a fund advisor(s) may be subject to IRS penalties for violation of several of these restrictions.

Grants may not confer more than an incidental benefit to the donor or fund advisor(s). Improper benefits include loans, compensation or similar payments, school tuition, scholarships sent directly to individuals, certain dues and membership fees, all or a portion of the cost to attend a charitable or other event, goods bought at charitable auctions, raffle tickets, or certain other goods and services. In addition, grants may not satisfy a financial obligation of any individual or entity, including pledges.

Please contact the Community Foundation if you have questions about the exclusion of benefits from grant recommendations and/or multiple-year payments.

## **Expense Reimbursement**

Under IRS rules, the Community Foundation does not permit expense reimbursements from an advised fund to the donor, fund advisor(s), or related party. All expenses must be paid by the Community Foundation directly after appropriate review of the expenses and their payees and must be pre-approved by an officer of the Community Foundation prior to being incurred. The expense submitted for review must be charitable in nature or support a charitable purpose.

## **Fund Closure**

Endowed funds are permanent and cannot be closed. A fund advisor(s) may recommend closing a spendable fund by granting up to 100 percent (100%) of the available fund balance to a qualified organization, including any of the Community Foundation's funds (e.g. field of interest funds, unrestricted funds, or operating fund). Such recommendations must be received in writing and, if approved, funds will be disbursed in accordance with the Community Foundation's Articles of Incorporation, Bylaws, current agreements, policies and procedures, laws, and regulations.

## Answers to Frequently Asked Questions about Donor Advised Funds

### What is a Donor Advised Fund?

A Donor Advised Fund is a fund that a sponsoring charity, like the Community Foundation, creates through a written agreement with a donor. It is not a separate legal entity like a trust or a corporation. The donor contributes assets to the Community Foundation, which agrees to treat those assets as a separate fund on its books. The assets belong to the Community Foundation, but the donor retains the privilege of recommending charitable grants from the fund. The law requires the Community Foundation to make clear in the agreement that the assets in a Donor Advised Fund are the property of the Community Foundation and that the Community Foundation has discretion and control over the use and investment of the Donor Advised Fund assets.

### How are Donor Advised Funds regulated?

Donor Advised Funds managed by the Community Foundation are regulated by the Community Foundation of Greater Huntsville's Board of Directors, by provisions of the Internal Revenue Code and Pension Protection Act of 2006, and by regulations of the Internal Revenue Service.

### Why must the Community Foundation have discretion and control?

In order for a donor to take advantage of the tax benefits that flow from a charitable gift, the gift has to be completed – that is, the donor has to part with control over the donated assets. The appearance of donor control could put the donor's tax deduction in jeopardy. Donors can make non-binding recommendations about grants from their Donor Advised Fund; they cannot control when and how the Community Foundation will make grants nor control decisions about which grantees will receive funding.

### How will I know the amount available for granting each year?

Quarterly fund statements are provided to the fund advisor(s) detailing the fund's net investment performance, gifts and grants made, fees, and other expenses. Current information about the fund's balance is also available through Donor Central.

### How do I recommend a grant?

Grants may be recommended online through Donor Central or through a Donor Suggestion Form available on Community Foundation's website.

### What kinds of organizations are eligible to receive grants from Donor Advised Funds?

Charitable, nonprofit organizations that are deemed tax-exempt under sections 501(c)(3) and 509(a) of the Internal Revenue Code, and governmental divisions such as schools, law enforcement agencies, and libraries are eligible to receive grants.

### What program areas may be supported by my recommendations?

Grants may be made for general support of the grantee or for a particular program or activity such as museum exhibits, laboratory equipment, or a music program.

### May I recommend grants to charities outside of the Huntsville area?

Yes. Although the Community Foundation's principal geographic area of concern is the Greater Huntsville area, grants may be made to any eligible nonprofit organization within the United States.

### May I step down as a fund advisor?

You may end your advisory relationship with the fund at any time by notifying the Community Foundation in writing. When you step down as advisor, a previously named successor advisor may become active, or the fund may be transitioned to an unrestricted or field of interest fund.

### May I recommend grants to support the Community Foundation of Huntsville/ Madison County?

Absolutely! The Donor Suggestion Form includes options for supporting the Community Foundation, a 501(c)(3) nonprofit organization.

### May I recommend a grant for membership dues and pledges?

No, legislation prohibits grants to satisfy membership obligations or to fulfill pledges or pre-existing obligations. Moreover, legislation prohibits donors, fund advisors and their families from receiving direct benefits as a result of a grant (for example, grants that will entitle advisors to tickets for fundraising events or greens fees for charity golf tournaments or grants to reimburse an advisor's fundraising expenses.)

**What about grants to support a political cause?**

The Community Foundation will not consider or award a grant from an advised fund if it will be used to carry on propaganda or otherwise attempt to influence legislation or if it will be used to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

**May I recommend grants to religious organizations?**

Yes, churches, synagogues, and other religious organizations are deemed tax-exempt under the Internal Revenue Code and are therefore eligible to receive grants for religious purposes, general purposes, and for programs intended for the greater good of the community.

**May I recommend grants to individuals?**

Legislation prohibits grants to individuals — such as grants for scholarships, educational awards, and emergency assistance—from Donor Advised Funds. However, many donors choose to open more than one type of fund at the Community Foundation to fully realize their charitable goals. Scholarship funds afford the donor the opportunity to support individuals pursuing higher education, and the donor has many options for his or her level of involvement in the scholar selection process. Our professional staff can assist with creation of a scholarship fund if this is of interest to you.

**What if I'd like to recommend a grant to an educational institution to benefit an individual?**

The Community Foundation will consider grants recommended to support a scholarship or award for educational purposes, provided the grant is made directly to the educational institution and provided the educational institution supplies written verification that the selection process is based on an objective, nondiscriminatory, and competitive process; that the educational institution has sole authority to determine the recipient; and that the recipient will not have been identified at the time the grant is made.

**Are there resources to help me in determining appropriate grantees?**

Yes, our professional staff has in-depth knowledge of community issues and nonprofit organizations and can assist you in identifying priority needs or programs in your interest areas, perform community research on your behalf, and/or accompany you on visits to charitable organizations.

**May my family, friends and I contribute to the fund?**

Yes! Many donors give gifts to Donor Advised Funds in memory or honor of someone special or to recognize a special event, like a birthday or anniversary. Not only are these gifts a wonderful way to honor someone special, they help the fund grow, increasing its ability to serve the community through grants. Gifts of any amount are welcome at any time from anyone. Please see the restrictions on third-party gifts in this document under "Fundraising Policy and Memorial Funds."

**Can non-endowed funds become endowed?**

Yes. Typically, non-endowed funds support short-term charitable purposes or projects. At any time, a non-endowed fund can become an endowed fund at the request of the fund advisor(s). Or, a fund advisor(s) may wish to maintain both a liquid non-endowed advised fund and an endowed fund. For example, \$5,000 could be transferred each year from the non-endowed fund to build the endowed fund.

**How can I get more information?**

For more information, please contact the Community Foundation at 256.535.2065 or visit our website at [www.communityfoundationhsv.org](http://www.communityfoundationhsv.org).