

## **North Dakota State University Foundation and Alumni Association Gift Acceptance Policies and Procedures**

**Purpose:** **North Dakota State University Foundation and Alumni Association** (the “Foundation”), a nonprofit corporation organized under the laws of the State of North Dakota, encourages gifts that will help the Foundation fulfill its mission to build enduring relationships that maximize advocacy and philanthropy to support North Dakota State University (the “University”). These Gift Acceptance Policies and Procedures establish the process for the acceptance of all gifts.

### **I. Approach to Gift Development**

The aim of all staff and volunteers who work with donors to develop gifts is to assist these donors in achieving their philanthropic goals, but never to influence unduly a decision about a gift. No staff member or volunteer shall knowingly execute an agreement, contract or other legal document with any donor or in connection with any gift that would jeopardize either the donor’s or the Foundation’s interests or be inconsistent with the Foundation’s policies, including, but not limited to, these Gift Acceptance Policies and Procedures. To be acceptable, a gift must be a voluntary, irrevocable transfer of property to the Foundation made without expectation of a financial return commensurate with the amount of the donation. The Foundation may reject or disclaim any proposed gift to the Foundation if it determines, in its sole discretion, that acceptance of the gift would not be in the best interests of the Foundation.

*The Foundation cannot provide legal or tax advice to donors. Donors are strongly encouraged to consult with their own professional advisors.*

### **II. Donor Privacy**

To the fullest extent permitted by law including, without limitation, North Dakota Century Code § 44-04-18.15, information about donors and prospective donors including names, addresses, telephone numbers, electronic mail addresses, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by the Foundation (collectively, “Donor Information”) will be confidential and used or disclosed only to the minimum degree necessary to carry out the work of the Foundation, unless the donor grants permission to release such information for other purposes or the Foundation is legally required to disclose such information. For the purposes of this Part, “financial information” includes data that provides details regarding a gift, a payment schedule of a gift, the form of a gift, or the specific amount of a gift made by a donor.

### **III. Decision-Making**

#### **A. Levels of Decision-Making Authority**

##### **1. Executive Governing Board**

The acceptance and review of all gifts to the Foundation shall be under the general direction and oversight of the Executive Governing Board (the “Board”). The Foundation shall not accept a proposed gift which exhibits one or more of the following characteristics without approval of the Board:

- a. The gift includes a restriction which requires the Foundation or University to conduct a major program, capital project or other activity which either would not otherwise undertake or refrain from activities which either would otherwise pursue.
- b. The gift requires the Foundation or University to enter into a legally binding obligation which involves an unusually large financial commitment by the Foundation or University.
- c. A provision of these Gift Acceptance Policies and Procedures requires that the Board decide whether the Foundation will accept the gift.

2. President/CEO

The President/CEO may, in his or her discretion, recommend gifts to the Board for its consideration and approval or rejection. Unless referred to the Board for decision, the President/CEO shall review and make all decisions regarding acceptance of the following kinds of gifts:

- a. Publicly traded securities subject to Securities and Exchange Commission (“SEC”) restrictions or their sale or transfer.
- b. Real estate.
- c. Gifts of closely held business interests.
- d. Gifts of tangible personal property (*e.g.*, artwork, computers and other equipment) that will require the Foundation to incur substantial costs in disposing of or using the gift property.
- e. Gifts that may generate unrelated business taxable income for the Foundation.
- f. Gifts that involve charitable trusts where the Foundation will be named as trustee, co-trustee or successor trustee.

- g. Charitable gift annuities (“CGAs”) funded with real estate or other nonliquid assets.
- h. Gifts that involve contracts (other than CGAs) or other documents under which the Foundation assumes a legally binding obligation.
- i. Gifts which involve naming commitments other than Foundation’s agreement to hold a fund named for a donor or another person.
- j. Transactions with the potential to result in IRS sanctions.
- k. Gifts that present any special risk of liability for the Foundation.
- l. Any gift referred by an officer of the Foundation for a final decision by the President/CEO.

3. Advisory Committee

The President/CEO, may, in his or her discretion, form an advisory committee made up of staff members of the Foundation or the University who hold major administrative positions to assist him or her with his or her consideration of the kinds of gifts listed in Part III.A.2 above (the “Advisory Committee”). The Advisory Committee shall not have delegated authority of the Executive Governing Board or any committee thereof, nor shall its recommendations bind the President/CEO. The President/CEO shall determine the precise makeup of the Advisory Committee.

4. Approval by a Designated Officer

The President/CEO, the Vice President of Development, and the Senior Vice President of Finance and Operations/CFO (each a “Designated Officer”) may each review and make decisions consistent with these Gift Acceptance Policies and Procedures regarding acceptance of the types of gifts listed in this Part II.A.4. The Designated Officers shall consult with each other and legal counsel as appropriate.

- a. Cash.
- b. Publicly traded securities which are not subject to restrictions or their sale or transfer.
- c. Gifts of tangible personal property (*e.g.*, artwork, computers and other equipment) the acceptance of which

will not require the Foundation to make more than ordinary expenditures.

d. Other types of gifts not listed in Part III.A.2 above.

5. Regular Reports and Referral

Each of the Designated Officers shall regularly report his or her activities to the President/CEO. Each Designated Officer may, in his or her discretion, recommend gifts described in Part III.A.4 above to President/CEO for his or her consideration and approval or rejection.

B. Consultation with the University

The Foundation shall consult with the University prior to accepting a gift if required by other provisions of these Gift Acceptance Policies and Procedures or the gift would require the University to incur an expense, use or retain the gift in a certain manner, or undertake activities which it would not otherwise undertake or refrain from activities which it would otherwise pursue.

C. Consultation With the Foundation's Legal Counsel

In the process of reviewing or accepting a gift, the Board, the President/CEO, or a Designated Officer, as the case may be, shall strongly consider consulting with legal counsel in the following circumstances:

1. A gift of any asset subject to a restriction on its sale or transfer.
2. Gifts subject to unusual or complex restrictions with respect to their use.
3. Gifts of closely held business interests.
4. Gifts that involve trusts or other legal structures that contain limitations on the Foundation's use or title to the gifted property.
5. Gifts that involve contracts, trusts, or other documents under which the Foundation assumes a legally binding obligation or will serve as trustee, co-trustee or successor trustee.
6. Gifts that present any special risk of liability for the Foundation.
7. Gifts that might confer a prohibited benefit to the donor.
8. Gifts in which the donor seeks to retain material control or involvement.

9. Gifts of real property.
10. Any proposed gift identified as a “problem” gift under the screening procedures in Part VII below.

#### **IV. Type of Gifts**

##### **A. Checks**

Checks shall be made payable to North Dakota State University Foundation and Alumni Association and shall be delivered by mail or otherwise to:

North Dakota State University Foundation and Alumni Association,  
1241 North University Drive, PO Box 5144  
Fargo, ND 58102.

##### **B. Credit Cards**

Credit card donations shall be made by the donor designating and authorizing the gift to the Foundation to be charged on the donor’s credit card whether online, by telephone, or in person. The donor’s signature, card number expiration date, and security code shall be provided to the Foundation as necessary and the amount shall be designated by the donor.

##### **C. Publicly Traded Securities**

###### **1. Acceptability**

Gifts of unrestricted publicly traded securities are acceptable. The President/CEO shall review and decide whether to accept proposed gifts of publicly traded securities that are subject to SEC restrictions.

###### **2. Methods of Transfer**

Donors may transfer publicly traded securities to a brokerage account of the Foundation or may deliver stock certificates by mail or in person. If a donor delivers a stock certificate by mail, the unsigned certificate and a signed stock power should be mailed in separate envelopes by registered mail. A hand delivery should consist of an unsigned certificate and a signed stock power.

###### **3. Disposition by the Foundation**

The Treasurer or his or her designee shall determine the disposition of each gift of publicly traded securities. The Foundation’s normal

preference is to liquidate donated publicly traded securities as soon as feasible.

D. Real Estate

1. Acceptability

The Foundation will consider proposed gifts of real estate in the following forms: developed real estate, undeveloped real estate, farmland, undivided fractional interests in real estate, and gifts of personal residences and farms subject to a retained life estate. To be acceptable, the donated interest must have a fair market value of at least \$50,000, as determined by a written appraisal or market analysis performed by an independent appraiser or realtor.

The Foundation will not accept timeshares.

2. Review Procedure

As provided in Part III above, the President/CEO shall—in consultation with the University if intent is for the University to use the property—review and determine whether to accept proposed gifts of interests in real estate. Before reviewing a proposed real estate gift, the Foundation shall obtain the following:

- a. The terms of any mortgage or other encumbrance on the property.
- b. The property's current carrying costs (*e.g.*, maintenance, insurance, property taxes, utilities, condominium or coop association fees and similar costs).
- c. The most recent property tax statement for the property.
- d. The results of a site inspection of the property by a Foundation employee or an authorized agent.
- e. As appropriate, a satisfactory Phase I environmental audit (or other environmental review appropriate to the type of property in question) from a professional environmental consultant. The President/CEO may determine that a Phase I is not necessary for non-farm residential property or, on a case by case basis, for real estate with a retained life interest.
- f. Confirmation that the donor has satisfied all encumbrances on the property, including any tax liens.

- g. Copies of all contracts and leases under which the property currently generates income (*e.g.*, any residential or commercial leases, any cash farm leases, crop leases, Conservation Reserve Program (CRP) contracts or similar arrangements).

3. Factors To Be Considered

In deciding whether to accept a gift of real property, the Foundation shall consider the following factors:

- a. Will the Foundation use the property, hold it for investment, or sell it?
- b. If the Foundation is considering whether to hold the property for investment, what factors support a decision to hold as opposed to a decision to sell and re-invest the net sale proceeds in another type of asset?
- c. How marketable is the property? Has the property recently been sold? Are there potential buyers?
- d. Are there any restrictions, reservations, easements or other limitations with respect to the use of the property? Will the Foundation receive less than the entire interest in the property?
- e. Is the property subject to debt?
- f. How much will the carrying costs be and how will the carrying costs for the property be paid?
- g. Is the property subject to a lease or similar arrangement that will generate unrelated business taxable income (UBTI) for the Foundation?
- h. Does the property present any special risk of liability for the Foundation?

4. Leases and Sales to Members of Donor's Family

- a. If the property is currently leased to a member of the donor's family, the Foundation will not accept the gift unless it has determined by reference to appropriate independent data that the lease is at fair rental value.
- b. If it is possible that the Foundation will lease or sell the gift property to a member of the donor's family in the future,

then prior to acceptance of the gift, the Foundation will inform the donor that:

- i. The Foundation cannot promise or legally bind itself to lease or sell the property to a member of the donor's family, and the Foundation must have complete discretion to make any decision about such a lease or sale based on the facts and circumstances at the time such a transaction is proposed.
- ii. Any lease or sale to a member of the donor's family must be at fair rental value or fair market value, as the case may be, as determined by reference to appropriate independent data such as an appraisal.

5. Transfer Procedures

a. After consultation with legal counsel as appropriate, the Foundation shall determine:

- i. Whether to require a title search and title policy with respect to a proposed gift of real property.
- ii. What form of deed the donor shall use to make the gift. Generally, the Foundation will only accept a warranty deed.

b. General Liability Insurance

Before accepting title to the gift property, the Foundation shall obtain appropriate insurance coverage for the property, either by adding property to its general liability policy or by other means.

c. Delivery and Recording of Deed

- i. The donor shall transfer the real property interest in question to the Foundation by delivering a deed to the Foundation's authorized agent, which may be the donor's attorneys or other agent provided that the Foundation has authorized the attorney or agent in writing to accept delivery of the deed on behalf of the Foundation.
- ii. The Foundation, at its expense, shall have the deed recorded as soon as practical after receiving it.

6. Management and Disposition of Gift Property

- a. Following acceptance and receipt of a gift of real estate, other than a gift of a remainder interest with a retained life estate, the Foundation shall pay all carrying costs for the property until it is sold. In appropriate cases, donors will be encouraged to make cash gifts to the Foundation to assist it in paying such carrying costs. The Foundation will not pay any carrying costs associated with real property while the donor and/or other individuals retain life estates in that property.
- b. When accepting a gift of a remainder interest in real property subject to a retained life estate for the donor and/or other individuals, the Foundation will enter into an “Agreement of Life Tenants and Remainderman” with the donor and any other individuals who will hold such life estates. The Agreement of Life Tenants and Remainderman will set out the respective rights and responsibilities of the life tenants and the Foundation.

E. Mineral Interests

With approval of the President/CEO, the Foundation may accept oil, gas, or other mineral interests so long as such interests are not “working” or “participating” interests. The Foundation will conduct such due diligence as it considers appropriate.

F. Tangible Personal Property

1. Classification of Gifts

The Foundation will classify all proposed gifts of tangible personal property into two categories.

- a. Related use gifts consist of property that the Foundation will use in furtherance of its tax-exempt purposes for an indefinite period.
- b. Unrelated use gifts consist of property for which the Foundation has no use in its tax-exempt programs and which the Foundation will hold for investment or sell.

2. Related Use Gifts

- a. Prior to the Foundation's acceptance of a related use gift, a Designated Officer, will confirm with the appropriate Foundation personnel—and in consultation with the University if the University will use the gift—that it is feasible and desirable for the Foundation to use the gift property in furtherance of its tax-exempt purposes for an indefinite period.
- b. If a decision is made to accept a related use gift, the Foundation will provide the donor with a written statement explaining how it plans to use the gift property. If the Foundation accepts a related use gift, it will comply with all applicable reporting requirements, including Form 8282, upon disposition of related use property.

3. Carrying Costs – Endowment Fund

If acceptance of a related use gift will require that the Foundation incur substantial ongoing costs to use the gift property in its tax-exempt programs, the President/CEO will determine whether to condition acceptance of the gift on a contemporaneous gift of liquid assets to establish an endowment fund adequate to pay those costs annually.

G. Closely Held Business Interests

1. Acceptability

- a. Acceptable Interest (subject to review)
  - i. Closely held stock.
  - ii. Limited partner interests in limited partnerships.
  - iii. Interests in limited liability companies.
  - iv. Debt instruments issued by closely held businesses.
- b. Unacceptable
  - i. General partnership interests.

2. Relevant Factors

In reviewing proposed gifts of closely held business interests, the President/CEO shall consider whether:

- a. The interest is subject to restrictions that would prevent the Foundation from realizing a substantial financial benefit from the interest within a reasonable period after the gift occurs.
- b. The interest is reasonably likely to provide a substantial return to the Foundation in the form of sale proceeds, dividends, interest or other return within a reasonable period after the gift occurs.
- c. The interest has the potential to generate taxable income, other undesirable tax consequences or other liabilities for the Foundation.
- d. The gift is likely to confer more than an incidental benefit on the donor or another person.

H. Charitable Gift Annuities

1. Acceptable Types of Funding Property

- a. Cash and publicly traded securities not subject to SEC restrictions are acceptable.
- b. Real estate and other non-liquid assets are subject to review. Before the Foundation accepts a transfer of real estate or other non-liquid assets in exchange for a CGA, the President/CEO will:
  - i. Obtain an appraisal of the fair market value of the property from an independent appraiser and obtain a market analysis that assesses how likely it is that the Foundation will be able to sell the property within a reasonable period of time.
  - ii. Determine what discount, if any, should be applied to the CGA rate that the Foundation would otherwise use for the CGA in question and determine whether the CGA payments should be deferred, and, if so, for how long.

2. Minimum Funding Amount

a. Cash and unrestricted publicly traded securities

The Foundation may establish a CGA in exchange for a transfer of cash or unrestricted publicly traded securities with a value of at least \$10,000.

b. Non-liquid Assets

The Foundation may establish a CGA in exchange for a transfer of a non-liquid asset with an appraised fair market value of at least \$50,000.

3. Minimum Ages of Annuitants

The Foundation may establish CGAs for annuitants with minimum ages as follows:

- a. One-life immediate CGA: Age 60
- b. Two-life immediate CGA: Ages 65
- c. One-life deferred CGA (minimum deferral – 5 years): Age 55
- d. Two-life deferred CGA (minimum deferral – 5 years): Ages 60

4. Maximum Amount per Annuitant

The Foundation will not issue CGAs to any one annuitant with a total value which exceeds \$1 million. This maximum may be reached through the establishment of one CGA or through multiple CGAs.

5. Reserves

When the Foundation accepts a transfer of cash or property in exchange for a CGA, it will hold the transferred property, or the reinvested proceeds from its sale, in its segregated account as required by N.D.C.C. § 26.1-34.1-03 until all payments under that CGA have been made.

6. Compliance With Applicable State Law

The Foundation will issue CGAs for annuitants who live in states which require CGA registration or notification only after complying with such registration and/or notification requirements. The Foundation will comply with all state reporting, reserve, disclosure, and investment requirements that apply to its CGAs, including N.D.C.C. § 26.1-34.1-01 *et. seq.* The Foundation may decline to issue a gift annuity to a resident of a state if compliance with that state's regulations would be time consuming, costly, or otherwise not in the interest of the Foundation.

I. Charitable Remainder Trusts

If the Foundation is not the trustee of a CRT, the Foundation may accept a distribution of property from that CRT upon its termination subject to the criteria for acceptance of outright gifts of the same type of property set out in Parts IV.A through IV.G above.

The Foundation may accept the trusteeship, co-trusteeship or successor trusteeship of a CRT subject to the criteria established in this Part I.

1. General Criteria for Acceptance

- a. The fair market value of the initial contribution to the trust must be at least \$100,000.
- b. The trust agreement must designate the Foundation as the irrevocable remainder beneficiary of at least 50 percent of the trust property.

2. Drafting of Trust Agreement

The Foundation's legal counsel will review the trust agreement if prepared by a donor's attorney prior to its execution or, if the Foundation will serve as trustee, the Foundation's legal counsel may draft the trust agreement at the Foundation's expense.

3. Acceptable Funding Assets

- a. The Foundation may accept trusteeship of a charitable remainder annuity trust only if it is funded exclusively with a single contribution of cash and/or unrestricted publicly traded securities.
- b. The Foundation may accept trusteeship of a standard charitable remainder unitrust (*i.e.*, a unitrust which pays a fixed percentage of the annual value of the trust assets) only if the trust is funded exclusively with cash and/or unrestricted publicly traded securities.
- c. The Foundation may accept trusteeship of a charitable remainder unitrust funded with non-liquid assets such as real estate or closely held business interests only if the trust is structured as a variety of net income unitrust or as a "flip" unitrust which becomes a standard unitrust only after the sale of such non-liquid assets.

- d. The Foundation may accept trusteeship of a CRT funded with real estate only if the trust meets the requirements of this Part IV.I and Part IV.D above (concerning real estate).

4. Successor Trusteeship and Co-Trusteeship

The Foundation may accept the successor trusteeship or co-trusteeship of a CRT only if:

- a. The criteria established by Parts IV.I.1 and IV.I.3 above are satisfied.
- b. In the case of a successor trusteeship, the Foundation has reviewed, with the assistance of legal counsel as appropriate, all trust records and tax returns prior to acceptance and has determined that acceptance of the successor trusteeship presents no unusual risks for the Foundation.
- c. In the case of a co-trusteeship, the Foundation has interviewed the proposed co-trustee and has determined that acceptance of the co-trusteeship is likely to lead to a cooperative relationship with the co-trustee and presents no unusual risks for the Foundation.

J. Charitable Lead Trusts

If the Foundation is not the trustee of a CLT, the Foundation may accept distributions of income from that CLT subject to the criteria for acceptance of outright gifts of the same type of property set out in Parts IV.A through IV.G above.

With approval of the Board, the Foundation may accept the trusteeship, successor trusteeship or co-trusteeship of a CLT according to the criteria established by this Part IV.J.

1. General Criteria for Acceptance

- a. The fair market value of the property the donor transfers to the CLT has a value of at least \$1 million at the time of the transfer.
- b. The trust agreement designates the Foundation as the irrevocable beneficiary of at least fifty percent of each annual charitable payment.
- c. The present value of the Foundation's irrevocable lead interest in the CLT is at least \$70,000.

2. Acceptable Funding Assets

- a. The Foundation will generally accept trusteeship of a CLT funded with cash and/or unrestricted publicly traded securities, provided that the basis and composition of the assets comprising the contribution to the CLT allow for reasonable diversification of the trust's assets without undesirable tax consequences for the trust.
- b. The Foundation may accept trusteeship of a CLT funded with non-liquid assets only if the following conditions are satisfied:
  - i. The assets will generate adequate cash flow to allow the trust to satisfy its annual payout obligation in cash.
  - ii. Either there is a reasonable prospect for diversification of trust assets without adverse tax consequences to the trust, or the trust agreement adequately exonerates the Foundation from any fiduciary liability for losses to trust beneficiaries resulting from a failure to diversify trust assets.

3. Family Issues

In addition to confirming that the proposed CLT satisfies the criteria established by Parts IV.J.1 and IV.J.2 above, the President/CEO will:

- a. Determine that the family remainder beneficiaries of the CLT are aware of and are agreeable to the role of the CLT in the donor's estate plan.
- b. Determine, based on all information available to the President/CEO, that the risk of a dispute with the remainder beneficiaries about the Foundation's administration of the trust is acceptably low.

4. Successor Trusteeship and Co-Trusteeship

The Foundation shall accept a successor trusteeship or co-trusteeship of a CLT based on criteria and procedures analogous to those established for acceptance of successor trusteeship or co-trusteeship of CRTs established by Part IV.I.4 above.

K. Gifts by Will or Revocable Trust

1. Acceptance of Distributions From Estate or Revocable Trust

The Foundation may accept distributions of assets from a donor's estate or revocable trust subject to the criteria for acceptance of outright lifetime gifts of those types of property established by Parts IV.A through IV.G above.

2. Trusteeship of Revocable Trust

- a. The Foundation will not accept co-trusteeship of a revocable trust with the donor while the donor is alive and competent.
- b. The Foundation generally will not accept successor trusteeship of a donor's revocable trust upon the donor's death or incapacity. With approval of the Board, the Foundation may accept such a trusteeship only if the following conditions are satisfied:
  - i. The Foundation's legal counsel has reviewed the revocable trust agreement and has recommended acceptance.
  - ii. Under the trust agreement, the Foundation is responsible only for trust administration and for management of trust assets, and the trust agreement names another trustee with sole responsibility for determining the donor's incapacity and for making and implementing personal care decisions for the incapacitated donor.
  - iii. The Foundation's gift under the revocable trust agreement is likely to be sufficient to justify the Foundation's acting as trustee.

L. Life Insurance

1. Lifetime Gifts

- a. Lifetime gifts of paid-up whole life insurance policies on the life of the donor are acceptable, provided that they are not subject to the condition that the Foundation keep the policy in force.
- b. If premiums remain to be paid on a whole life policy on the donor's life, a Designated Officer will review the policy to determine whether acceptance would be advantageous. The Foundation will not accept a gift of such a policy

subject to the condition that the Foundation pay future premiums and keep the policy in force.

2. Gifts of Life Insurance Proceeds

The Foundation may accept life insurance proceeds payable to it as beneficiary of a life insurance policy which the donor owns at death.

M. Retirement Accounts

The Foundation may accept distributions of retirement account assets at the donor's death as an outright gift, to fund a CGA, or to fund a CRT of which the Foundation is the trustee, subject to the relevant criteria for acceptance in the preceding provisions of this Part IV.M.

N. Other Types of Gifts

The Foundation may accept types of gifts not covered by the preceding provisions of this Part IV after review by the President/CEO, and, in his or her discretion, after review by the Foundation's legal counsel.

**V. Restricted Gifts**

A. In General

1. Fund Guidelines

The Foundation shall adhere to its Fund Guidelines, which contain procedures and requirements for accepting restricted gifts. In the event of any inconsistency between the Fund Guidelines and these Gift Acceptance Policies and Procedures, these Policies and Procedures shall control.

2. Additional Guidelines

The Foundation will not accept gifts subject to restrictions that:

- a. Impose an undue administrative burden on the Foundation or University.
- b. Involve unlawful discrimination of any kind or otherwise violate any applicable federal or state law.
- c. Are inconsistent with the Foundation's mission and/or ethical standards.
- d. Would prevent or impede the Foundation from seeking other gifts.

e. Are likely to generate adverse publicity for the Foundation.

3. Preacceptance Procedures

When a donor proposes a restricted gift, a Designated Officer will consult with the Foundation personnel who would be responsible for complying with the restriction—as well as University personnel if the restriction would impose obligations on the University—to determine that the Foundation and/or University can and is willing to use the gift for the designated purpose. The Designated Officer will report the results of that inquiry to the President/CEO.

4. Administration of Restricted Gifts

The Foundation will comply with restrictions imposed on the use of a gift by the applicable gift instrument (see Part V.B below) unless:

- a. The donor is living and the Foundation obtains the donor's consent to a release or a change of the restriction.
- b. The terms of the gift instrument permit the Foundation to modify a restriction in certain circumstances and the Board determines that such circumstances exist.
- c. The Foundation obtains an order from a North Dakota District Court releasing or modifying the restriction or North Dakota law otherwise permits the Foundation to release or modify the restriction.

B. The Gift Instrument

The Foundation may accept a restricted gift only upon the execution of a gift instrument, which may be styled as a memorandum of understanding, by the Foundation and the donor which sets out the use and administration of the gift.

1. Change-of-Use Clause

The gift instrument shall include a change-of-use clause that allows the Foundation, in its discretion, to change the use of the gift if a change in circumstances makes it impossible, impractical, or not in the Foundation's interest to continue using the gift for the purpose designated in the gift instrument.

2. Endowment Funds – Spending Policy

A gift instrument that governs an endowment fund shall provide that the Foundation will withdraw an annual amount from the fund determined by the spending policies for its endowment funds established by its Board or committee thereof.

C. Restricted Endowment Gifts

1. Adequacy of Designated Purpose

Before the Foundation accepts a restricted endowment gift, a Designated Officer or President/CEO, as applicable given the type of property transferred to the endowment, will conduct the review described in Part V.A above and will also determine whether the proposed gift is sufficient to create an endowment fund, the annual distribution from which will be adequate to carry out the purpose designated by the donor.

2. Minimum Size

The Foundation will adhere to “Endowed Fund Minimum Gift Levels” defined in the Foundation’s Fund Guidelines.

**VI. Naming Guidelines**

A. In General

1. Naming Guidelines

All gifts involving donor recognition or naming opportunities shall comply with and be subject to the Foundation’s Naming Guidelines, as may be amended from time to time.

**VII. Screening for Problem Gifts**

The Foundation will undertake the screening procedures set out in this Part VII before deciding whether to accept the gift. These procedures are designed to help the Foundation determine whether the proposed gift poses any unusual risks or problems, such as lack of genuine donative intent, shopping among institutions for the most favorable gift terms, and the possibility of a challenge to the gift or the Foundation’s administration of it by members of the donor’s family or others.

A. Guidelines

The Foundation will make reasonable efforts to obtain answers to the following questions:

1. Does the donor already have a positive connection with the Foundation or University?
2. Do the donor's comments and questions regarding the proposed gift suggest that the donor believes the donor and/or the donor's family can come out ahead financially as a result of the gift?
3. Does the gift potentially involve unlawful discrimination of any kind or otherwise violate any applicable federal or state law?
4. Is the gift arrangement legitimate and not abusive from a legal perspective?
5. Is the Foundation's role in the gift proposal obscure or mysterious?
6. Are relatives of the donor, other than the donor's spouse, named as beneficiaries of the gift arrangement (*e.g.*, as beneficiaries of a CGA, CRT, or CLT)?
  - a. If so, will such family member beneficiaries receive other substantial gifts from the donor during the donor's lifetime or at the donor's death, or will the proposed gift comprise the bulk of their inheritance?
7. Has the donor discussed the gift plan in detail with the family member beneficiaries and are they supportive of it?
8. Is the donor frail or elderly?
9. Is the donor married or a surviving spouse who lives in a community property state?
10. Does the donor propose to make the gift in part with assets (such as trust assets) that the donor does not own individually?

B. Acceptance Procedures

In cases where the above guidelines suggest potential problems or undue risks for the Foundation, the President/CEO will determine whether further investigation is appropriate and may refer the decision on the proposed gift to the Board in its discretion.

## VIII. Pledges

### A. Review Procedure

A pledge to make any gift other than an unrestricted gift of cash or unrestricted publicly traded securities shall receive the same review and be subject to the same criteria as a current gift of the same type.

### B. Pledge Agreement

All pledges must be made in writing, and the pledge document must state clearly all of the terms of the pledge, including the amount of the pledged gift, the time for payment of installments and the use to which the Foundation will put the gift.

### C. Binding Effect

All pledge agreements which are intended to be legally binding will include a statement to that effect. Because of the complications which can arise for donors when pledges are legally binding, the Foundation will require that a pledge be legally binding only if the Foundation intends to rely on the pledge in making financial commitments (*e.g.*, in the case of the construction of a building or other current capital project). A donor may not satisfy a pledge which legally binds the donor with a private foundation controlled by the donor or a donor advised fund with respect to which the donor has advisory privileges.

## IX. Implementation and Processing of Gifts

### A. Donor's Legal Counsel

#### 1. Encourage Donor to Obtain Representation

The Foundation will inform the donor at the beginning of the gift planning process that:

- a. The Foundation and its legal counsel do not represent the donor in connection with the gift.
- b. The donor should consult with his or her own legal counsel and accounting advisors about the gift before completing it.

#### 2. Attorney Referrals

If the donor asks for a referral to an attorney, the Foundation may provide the names of attorneys to the donor with a statement that the Foundation and its counsel make no representations regarding the skills or expertise of the attorneys in question.

B. Drafting Gift Documents

1. The Foundation's Legal Counsel

When the Foundation will be a party to a legal gift document, the Foundation will consider engaging legal counsel to draft or review the document.

2. Fees

Each party to a gift document should pay the fees for its own legal counsel's role in the process (*i.e.*, drafting or review).

C. Qualified Appraisal

1. In the case of an outright gift, the donor shall bear the entire cost of the appraisal.

2. In the case of a CGA, the donor and the Foundation can share the cost of the appraisal equally.

3. In the case of a CRT of which the Foundation is the trustee, the donor and the CRT can share the cost of the appraisal equally.

D. Environmental Audit

The Foundation will pay the entire cost of any environmental review conducted prior to acceptance of a gift of real estate.

E. Gift Receipts

1. Contemporaneous Written Acknowledgement

In the case of all gifts with a value of \$250 or more, the Foundation shall provide the donor with a gift receipt no later than January 31 of the year following the year in which the gift is completed. The receipt shall:

a. Give a description of the gift property but not its value (unless the gift is cash, in which case the receipt shall state the amount).

b. State whether the Foundation provided any goods or services to the donor in consideration for the gift.

c. Include the Foundation's good faith estimate of the fair market value of any goods or services it provides to the donor in consideration for the gift.

- d. If the gift is related to a donor advised fund, the receipt shall state that the Foundation has exclusive legal control over the assets contributed.

2. Quid Pro Quo Disclosure Statement

When a donor makes a gift of \$75 or more and the Foundation provides goods or services in consideration for the gift, the Foundation shall provide the donor with a quid pro quo disclosure, which may be incorporated into a gift receipt described in Part IX.E.1 above if appropriate. The Foundation shall provide the disclosure to the donor at the time of the solicitation or the receipt of the gift. The disclosure shall:

- a. State that the amount of the donor's deductible charitable contribution is the amount by which the value of the gift property exceeds the value of the goods or services the Foundation provided in consideration for the gift.
- b. Give a good faith estimate of the value of the goods or services the Foundation provided to the donor in consideration for the gift.

F. Reports to Donors

The Foundation shall provide periodic written reports to donors with respect to CRTs, CLTs and endowment funds. The President/CEO shall establish procedures regarding the timing of such reports and the information they shall include.

**X. Amendments**

These Gift Acceptance Policies and Procedures may be amended from time to time by a majority vote of the members of the Board.

Effective Date: September 29, 2017

Approved by: Executive Governing Board

Responsible Department: Finance and Operations

Revision History: September 29, 2017 Gray Plant Mooty

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