8. DISTINGUISHING BETWEEN GIFT OR SPONSORED PROJECT ('GRANT')

The University of Delaware (UD) receives monetary support for many different initiatives from donors and sponsors. The University must manage all funds received in accordance with applicable federal, state, and local laws, and with the specific terms and conditions of any gift, grant or contract.   The University's approval, negotiation and agreement processes and mechanisms, accounting, budget practices, oversight and compliance practices differ depending on the categorization of funds as either a gift or as a sponsored project. Below are some general guidelines that will assist in determining the appropriate classification of funds and the process to follow in the acceptance and deposit of those funds. Proposals and awards that are considered to be gifts are processed through the Gift & Record Management (GRM) function of the Office of Development & Alumni Relations (DAR) (see guidelines that follow). The Research Office (RO) processes proposals and awards that are considered to be sponsored projects. On occasion, the Research Office may process unrestricted gifts as determined on a case-by-case basis through a coordinated decision of the Research Office, DAR, and the Office of the VP for Finance (VPFIN).

8.1. Gift Criteria – Gifts typically carry no reciprocal obligations between donor and recipient, and are often unrelated (or only indirectly related) to the business interests or mission of the donor. UD accepts (and records as gifts) transactions that meet the following gift criteria:

1. The funding provides support for activities, such as professorships, endowed chairs, scholarships, non-federal building projects, fellowships, Research and instructional programs that meet the criteria of items 2-5 below. The donor may direct the use of funds to a specific program area or purpose.
2. No scientific or technical data are required to be given to the funder as a condition of the gift. The donor may require or request a brief summary of the results from the recipient.
3. The donor makes no claim on the patents, copyrights and other intellectual property rights that may result from activities supported by the gift.
4. The gift does not include restrictive provisions, such as delays or reviews prior to publication of results, or disposition of tangible property.
5. There is no expectation at the time the gift is given that funds remaining at the termination of the project must be returned to the donor or that formal permission would be required to spend outside of the defined budget period. Funding from private foundations is exempt from this criterion. Private foundations may request the return of unused funds associated with a project, and it can still be considered a gift.

If funding is provided as a gift for the general purpose of supporting research, then the foundation will provide a copy of the proposal and award document to the Research Office. All research projects will be reviewed for conformance with university policies for conducting research, including research compliance and conformance with the university's mission. In the

event an award is received in DAR that fits the criteria of a sponsored project, DAR will notify the Research Office and assist with the transfer of the project to RO for administration.

8.2. Sponsored Project Criteria – For sponsored projects, the sponsors are concerned that their funds be used to support activities that bolster their own mission or interests; therefore, sponsored project funding is normally provided for a specific project or research plan and budget, for a specific period of time with specific goals and/or objectives, as well as the methodologies and approaches to be used. The Research Office administers (and tracks) sponsored projects defined according to the following sponsored project criteria:

1. If the funding is from a federal, state or local government agency, or flow-through from one of these agencies it is always treated as a sponsored project.
2. If the funding is from a commodity group and the purpose of the project is to perform basic or applied research, then it is handled as a sponsored project.
3. If the funding is from a non-government sponsor and includes one or more of the following provisions it will be treated as a sponsored project:

   - The sponsor requires return of unexpended funds or written approval to spend beyond the designated project period. (Note: private foundations are not included in this provision)
   - The award contains restrictive provisions for intellectual property rights
   - The award restricts or monitors publications or use of results
   - The award requires indemnification of the sponsor
   - The award includes reference to confidential information
   - The award comes in the form of a contract or cooperative agreement
   - The award is cost-reimbursable

In the event an award is received in the Research Office that otherwise fits the criteria of a gift, the Research Office will notify DAR and assist with the transfer of the funds to DAR for administration.

8.3. Immaterial Factors in Determining a Gift or Sponsored Project

1. The payment or nonpayment of indirect costs (facilities and administrative costs) is not a factor in defining whether the funding is a gift or a sponsored project.
2. Designation as a "gift" will not preclude the recovery of indirect (F&A) costs if allowed by the donor.
3. A proposal may be solicited or unsolicited and be awarded as a gift or sponsored project.
4. Both competitive and non-competitive proposals could be considered gifts. An RFP does not necessarily require that an award be handled as a sponsored project.
5. The presence or absence of sub-recipient agreements with an outside entity is not a factor in defining whether the funding is a gift or a sponsored project.
6. A funder's requirement to provide an auditable fiscal report is not a factor in defining whether the funding is a gift or a sponsored project.
7. The funder's description of the funds as a gift, sponsored project or other terminology has no bearing on UD's determination of it as a gift or sponsored project.

Therefore, when the situation is not clear, the documentation provided with the funds must be carefully reviewed by the Research Office, VPFIN, and DAR for the substance of the

agreement, and internally treated as a sponsored project or as a gift, based on the nature of the individual agreement.

Corporate and foundation funds may come to the university in a variety of ways and can be referred to as gifts, grants, purchase orders, cooperative agreements, subcontracts, contractual agreements, memorandums of agreement, and memorandums of understanding. DAR, and the Research Office, and VPFIN work closely together to determine whether the corporate or foundation award should be managed as a sponsored agreement or as a gift, based on the funder's intent and any restrictions that the funder may place on the funds. In addition, the Research Office and DAR share information regarding pending proposals for foundations and corporations to ensure early and effective communication.

8.4. Implementation and Administrative Issues

8.4.1. Additional Guidelines for Distinguishing Between Gifts and Sponsored Projects

Distinctions based on source of funds

Any funding provided by U.S. Government agencies, at the federal, state, or local level, in support of UD activities is treated as sponsored project funding. Government funds are not treated as gifts.

Distinctions based on intent of donor/sponsor

In remaining cases, e.g., where funding is being provided by corporations, foundations or others not specified above, the distinction between gifts and sponsored projects will be made based on the proposal, statement of work, and terms of the agreement, taking into consideration the intent of the donor/sponsor.

Note that, in some situations, communication—including the proposal and award as well as conversations—makes it clear that the donor's/sponsor's intent is to classify an award to the University of Delaware as either a gift or a sponsored project. In these cases, the terms of the accompanying agreement *may have to be adjusted* in consultation with the donor/sponsor in order to clearly document the intent and avoid unintended classification. See Section 8.4.2 below.

8.4.2. Administrative Protocols

Decision-making in unclear situations

In some cases, the distinction between gift and sponsored project, can be difficult to determine. Donors may sometimes use the word "grant" when the donation qualifies as a "gift" or vice versa. When an individual is in doubt about the proper classification and handling of an award to UD, the Assistant Provost for Research Administration, the Director of Corporate and Foundation Relations, the Assistant VP, University Finance, and, if appropriate, the Development Officer for the college(s) involved will confer and resolve the question. Should these parties fail to reach agreement, the Provost and/or Executive Vice President will consider the matter.

Attachment A to this policy, Checklist for Determining Whether Funding is a Gift or Support for a Sponsored Project, defines this process, offices to be consulted, and materials to be reviewed. As described in this checklist, when this determination is not initially clear, personnel should review appropriate documentation and consult with staff

within their college representing both the research administration and development functions to determine the appropriate classification and handling of funds.

In those cases where the determination is not initially clear, and where the final determination is to accept the funds as a gift, the completed Checklist is to be attached to the Gift Transmittal Form.

Donor/Sponsor Relations

In resolving issues related to the classification of an award, UD personnel must maintain an appropriate balance between the interests and preferences of the donor/sponsor and the University's administrative policies and objectives. In the process of resolving these issues, in some cases it may be necessary to contact the donor/sponsor for clarification of intent and requirements, and/or to discuss the planned use of the funds. Such contacts are usually best handled by the faculty member and/or development officer who initiated the activity.

Accounting

- **Fundraising/Campaign Reports** (*see also, Policy Section 27: Fundraising Reporting*)

Fundraising reports will include for all non-government funded sponsored research in accounting for campaign totals under a <u>separate</u> category of 'Research' – *This is in alignment with CAE (Council for the Advancement of Education) management reporting standards*.

- **(Financial) Account Set-up**

Whenever a new account is requested, the responsible organization (Research in the case of sponsored projects, or DAR Gift & Record Management in the case of gift funding) verifies that the account being set up is proper, in accordance with the definitions in this policy. These offices are responsible for assuring that a proper determination of gift or grant status has been made.

Attachment A – Checklist for Determining Whether Funding is a Gift or Support for a Sponsored Project

PI/Recipient: _____ Dept.: _____ Date: _____

Sponsor/Donor: _____ Project Title: _____ Amount: _____

Instructions for Completing the Checklist:

This document is meant to provide guidance to determine if a transaction is a gift to be processed and administered by the Office of Development & Alumni Relations (DAR) or the Research Office (RO). See UD Gift Policy Section 8 (Gift vs. Sponsored Project) for complete details about how to make this determination.

Answer all seven questions in the checklist below, and include comments whenever necessary. To use this form, review all the documentation associated with the funding for indications that will help you to determine whether the funding should be considered support for a *sponsored project* or a *gift*. Documentation may include some or all the items listed below.

1. Statement of Work or Project Description
2. Award Letter
3. Proposal or Letter of Intent, or request for funding including budget
4. Correspondence (including paper and email correspondence)

Checklist:

FUNDING SOURCE

1 Is the funding originating from the US government, at the federal, state, or local level? **If YES, this is a SPONSORED PROJECT**
This includes funds that 'flow' through a corporation and/or industry.

Comments:

2 Is the funding provided by an individual (not an organization)? **If YES, this is a GIFT**

Comments:

IF NEITHER OF THE ABOVE ARE TRUE, CONSIDER THE QUESTIONS BELOW:	YES	NO	UNCERTAIN
3 Does the funding agreement require detailed financial reporting beyond a summary report of expenditures (i.e. line item detail, percentages of effort) and the return of any unexpended funds at the end of a designated period (i.e. "Start" and "Stop" dates)? Comments:	☐	☐	☐
4 Does the funding agreement allow the University to be penalized for non-performance? Comments:	☐	☐	☐
5 Does the project commit the University to a specific line of scholarly or scientific inquiry, typically documented by a research plan or statement of work? Comments:	☐	☐	☐
6 Is a specific commitment made regarding the level of personnel effort, deliverables, or milestones? Comments:	☐	☐	☐
7 Does the funding agreement include terms and conditions for the disposition of *tangible* property (i.e., equipment, records, technical reports, theses, dissertations or other deliverables)? Comments:	☐	☐	☐
8 Does the funding agreement include terms and conditions for the disposition of *intangible* property (i.e., intellectual property, rights in data, copyrights)? Comments:	☐	☐	☐

Check one box below, and processing accordingly.

☐ **Sponsored Project:** *If you answer 'Yes' to Question 1 or any of the responses from 3-8 are 'Yes', this indicates the funding is for a sponsored project. Keep the completed checklist on file, and FILL OUT A SPONSORED RESEARCH TRANSMITTAL FORM?*

☐ **Gift:** If you answer 'Yes' to Question 2, or if all of the responses from questions 3-7 are 'No', this indicates that the funding is a gift. Keep the completed checklist on file, and complete a Gift Transmittal Form and send it the office of Gift and Records Management with any other relevant documents.

☐ **Uncertain**: If you cannot determine with certainty, review with DAR and Research. If the funding is determined to be a gift, attach a signed copy of this checklist indicating the final determination to the Gift Transmittal form, along with a Gift Commitment document (Gift Agreement/Letter of Intent) and send to the Office of Gift and Record Management, DAR.

Final Determination: ☐ Gift ☐ Sponsored Project Determined by: _____