THE UT FOUNDATION

GIFT ACCEPTANCE POLICY
Board Approval: March 27, 2015

Gift Acceptance Policy

Introduction

The University of Toledo Foundation (UT Foundation) is a not-for-profit organization incorporated under the laws of the State of Ohio. The Internal Revenue Service has determined the UT Foundation is a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code.

The mission of the UT Foundation is to secure the future for The University of Toledo (University), through prudent asset management and philanthropy. We build strong linkages between alumni and the University, fostering a spirit of loyalty and opportunity for engagement.

Purpose of the Policy

The policy provides guidance, discipline, and education to donors, donor advisors, UT Foundation and University employees, fundraisers and major gift officers, and other key stakeholders relative to the gift acceptance process.

Compliance with Law

The UT Foundation complies with federal and Ohio state law, including the Internal Revenue Code and the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

Use of Legal Counsel and Conflict of Interest

The UT Foundation does not provide legal, tax, or financial advice to donors. Donors are encouraged to seek independent legal counsel or advisory consultation before entering into a commitment to make a gift to the UT Foundation.

The UT Foundation may seek the advice of its legal counsel in matters relating to gift acceptance as deemed appropriate. Such matters may include, but are not limited to:

- Reviewing certain gifts, such as closely held stock that may be subject to restrictions, buy-sell agreements, or other arrangements that limit the marketability of the securities.

- Reviewing all transactions governed by contracts or legal documents.

- Reviewing transactions with potential conflicts of interest.

Types of Funds

The UT Foundation manages two types of funds:

Endowed

The original gift value is preserved in perpetuity. Endowed funds participate in the Pooled Investment Portfolio of the UT Foundation and accrue investment earnings. Endowed funds use a portion of their accumulated earnings to spend in support of the University. An annual budget is established for each endowed fund based on the board-approved spending rate. An annual administrative fee is assessed based on the board-approved administrative fee rate.

A certain gift level is required to establish an endowed fund. The gift level is approved by the Board of Trustees. The gift level as of July 1, 2013 is $25,000. The gift level is subject to change based on the approval of the Board of Trustees.

An ***Endowed Agreement*** is required to be completed and signed by the donor, UT Foundation President, UT VP of Institutional Advancement, and the applicable Director of Development / Major Gifts Officer in order to document the donor's intent as to the use of the funds.

Non-Endowed

The gifts are one-time gifts and are permitted to be spent upon receipt from a donor. Non-endowed funds do **not** accrue investment earnings and are **not** assessed an administrative fee. These funds function similarly to a non-interest bearing checking account with no fees.

A certain gift level is required to establish a non-endowed fund. The gift level is approved by the Board of Trustees. The gift level as of July 1, 2013 is $2,500. The gift level is subject to change based on the approval of the Board of Trustees.

A ***Non-Endowed Agreement*** is required to be completed and signed by the donor, UT Foundation President, UT VP of Institutional Advancement and the applicable Director of Development / Major Gifts Officer in order to document the donor's intent as to the use of the funds.

Donor Intent and Donor Control

Donors can make a gift that is unrestricted to be used for the University's greatest needs as identified by University administration; or the gift can be restricted for a general area of use that benefits the University or its students.

Generally, unrestricted gifts will be recorded to the Annual Fund unless otherwise designated by the Board.

Significant gifts that are absent of donor intent or have unclear donor intent will be reviewed and directed by the Board.

A donor may not retain any implicit control over a gift after the acceptance by the UT Foundation. The following are considered examples of donor control:

- A donor cannot make a gift to a scholarship fund and be solely responsible for selecting the award recipient.
- An employee cannot make a gift to a fund under his/her complete control and for his/her personal benefit.
- A donor cannot make a gift in support of a professorship requiring the University to select a specific individual to fill the professorship.

Consideration: Donors may want to participate and select scholarship recipients. To provide a level of independence, a scholarship committee, the UT office of Student Financial Aid or another body will provide preliminary screening of applicants and subsequently present to the donor a narrowed list of candidates.

Documentation of the donor's intent should accompany any gift received by the UT Foundation. Donor's intent can be demonstrated through:

- Donor Fund Agreements
- Indication on memo line of checks
- Return of solicitation materials with gift
- Donor letter or e-mail

Restriction(s) placed on a gift may be rendered illegal, unreasonable or unable to be fulfilled due to certain circumstances. In this event, the UT Foundation will contact the donor or donor representative to restructure the restrictions. If a representative is not available or an agreement is not reached, the UT Foundation may seek approval of the court with jurisdiction to remove or modify the restrictions in question.

General Acceptance Conditions

The UT Foundation can only accept contributions that are:

- Consistent with the University and UT Foundation's core values, mission, purpose, and priorities.
- Compliant with Internal Revenue Code and other federal and state statutes, regulations, rulings, or court decisions.
- Compatible with the UT Foundation's tax-exempt status.

The UT Foundation generally does not accept contributions based on the following characteristics:

- The contribution lacks a charitable component.
- The contribution violates any federal, state, or local statutes, regulations, rulings, or court decisions.
- The contribution has donor restrictions that are inconsistent with the values and mission of the University or the UT Foundation, cannot be satisfied, or are unreasonable.
- The contribution generates unrelated business income.
- Administration of the gift is onerous and costly.

Refunds

The UT Foundation cannot return gifts received from donors. A gift is considered a completed transaction when the assets of the donor are transferred to and under the legal control of the UT Foundation. A 501(c)(3) organization is required to use its assets solely and exclusively to advance its purpose. Therefore, transferring UT Foundation assets to a donor or trust would not be consistent with the purpose of the UT Foundation.

Consideration:

The UT Foundation President or his/her designee is charged with approving gifts that are overly complex, vague, problematic, or may not be consistent with the general acceptance conditions stated in the above section on an as needed basis.

Types of Gifts

The following gifts are generally acceptable:

- Cash
    - Acceptable forms include U.S. currency, checks, money orders, credit card, ACH transfer or wire transfer.
- Pledges
    - Two forms of accepted pledges:
        - Oral pledges - accepted through the phonathon program; pledges accompanied by credit card information and scheduled as auto-credit card payments.

- Written pledges – pledges from donors should be documented to include the dollar amount, installment plan (amount and frequency), designation and donor's signature. Pledges received by development officers with at least a donor confirmation via email, letter, etc.

  - A pledge can only be made by the person or entity exercising legal control over the assets pledged.

    - <u>Matching Gifts:</u> For a pledge involving a matching gift company, the UT Foundation will only record a pledge for the donor's portion of the pledge. The matching gift portion will be recognized as gift revenue when the payment is received from the matching gift company.

      - Example: A donor wishes to make a pledge of $10,000 but is expecting to contribute $5,000 and the additional $5,000 to come from his/her employer matching gift program. The pledge can only be recorded at $5,000. The matching gift will not be considered a pledge or gift until the UT Foundation receives the contribution from the matching gift company.

  - A change in pledge amount, terms and designation require confirmation from the donor.

- Marketable securities

  - Publically-traded securities: These securities are readily traded on national or regional stock exchanges. The UT Foundation or a development officer can provide the Depository Trust & Clearing Code (DTC) and account numbers to the donor or donor investment advisor. Other securities may require transfer to a UT Foundation brokerage account.
  -

    - The UT Foundation policy requires the liquidation of publicly-traded securities immediately upon receipt. The proceeds will be transferred to the UT Foundation investment portfolio and invested in accordance with the board-approved investment policy.

    - The UT Foundation values marketable security gifts based on the average high and low quoted selling prices on the date the donor relinquishes control of the asset to the UT Foundation, which is consistent with IRS guidelines for valuing stock gifts. Any gains or losses realized by the UT Foundation, due to the difference between the gift amount (average price on day of receipt) and the sales price, do not affect the value of the gift or the amount contributed to the donor's designation.

        - The UT Foundation values mutual funds at the closing price based on the Net Asset Valuation (NAV) on the date the donor relinquishes control of the assets to the UT Foundation.

        - Electronically transferred securities are considered to be a gift as of the date the securities are credited to the UT Foundation's trustee or brokerage account.

    - Closely-held securities: Acceptance of a gift of these securities will be granted upon careful review and approval.

        - UT Foundation executives and legal counsel will review all closely held stock to determine if the securities are subject to restrictions, buy-sell agreements or other arrangements that limit the marketability of the securities.

        - The donor is requested to provide an independent valuation analysis to determine the fair market value at the time of the gift.

- Real estate
    - Real estate gifts are governed by the **UT Foundation Real Estate Gift Acceptance Policy**.

- Personal property
    - Personal property gifts are governed by the **UT Foundation Gifts-in-Kind /Other Non-Cash Gifts Policy**
- Planned gifts
    - Planned gifts are governed by the **UT Foundation Planned Gift Acceptance Policy**.
    - Planned gifts include:
        - Life insurance policies
        - Charitable gift annuities
        - Charitable gift remainder trusts
        - Charitable lead trusts
        - Bequests and trusts

Determining Gift Revenue

Gift: A gift is a contribution received by an institution for either unrestricted or restricted use in the furtherance of the UT Foundation's mission. The gift is a nonreciprocal transfer in that there is no implicit or explicit statement of exchanges, purchases of services, or provision of exclusive information.

<u>Note</u>: Contributions of other assets, non-cash, are governed by ***The University of Toledo Foundation Gift-In Kind / Other Non-Cash Gifts Policy.***

Generally, all transactions defined as "gifts" will be recorded as gift revenue.

Some exceptions or stipulations include:

- Donor Control – To be considered a gift, the donor cannot retain control, explicit or implicit, over a gift after acceptance by the UT Foundation. The donor may restrict the gift to a certain department or program, but further involvement by the donor is not appropriate.

- IRS Exclusions – If the IRS does not recognize a transaction as a charitable donation, then the UT Foundation will not recognize the transaction as gift revenue. Consequently, these exclusions may be accepted and processed as non-gift revenue by the UT Foundation. However, some of these exclusions, at the discretion of the UT Foundation, may not be accepted. See *IRS Publication 526* for further clarification on what constitutes a legal gift. Some examples of exclusions include:
    - Membership fees / dues
    - Contract revenue
    - Government funds
    - Non-gift portion of quid pro quo (see below)
    - Royalties
    - Tickets purchased at fair market value
    - Expenses associated with transferring a gift

- Quid Pro Quo Contributions – A payment made partly as a contribution and partly in consideration for goods and services provided to the donor by the UT Foundation or University. The qualifying gift portion is only the amount of the contribution that exceeds the value of the benefits the donor receives from the UT Foundation or University in return for the gift. Some additional factors regarding the value of the benefits include:
    - Items that have "substantial" value will be considered as "benefits" under the IRS regulation and, therefore, will be subtracted from the donor's contribution.
    - Items that have insubstantial value will not be subtracted from the donor's contribution.
    - The IRS "safe harbor" rules will be used to determine whether the benefits are of insubstantial value. These "safe harbor" rules are adjusted annually.

Note: See *IRS Publications 526* and *1771* for additional guidance.

Determining Quid Pro Quo (Value Received)

The quid pro quo or valued received is based on the estimated fair value of the goods or services received in the market place. The value received is **not** based on the cost of the items to the University or UT Foundation. The actual gift component of the contribution to the donor is the excess of the payment over the value received.

Events

The University department hosting an event or a development officer is responsible for determining the value received and providing documentation to the UT Foundation to support the value received calculation. Supporting documentation can include:

- Detailed listing of goods or services received.
- Vendor providing the goods or services.
- Invoices provided by the vendors.
- Letter provided by vendor.
- Vendor menus, catalogs, or product price listings that indicate market prices.

Special Considerations:

***Athletics Premium Seating* –** Donor payments for the right to buy tickets to an athletic event at a University of Toledo stadium or area are considered charitable contributions by the IRS and the donor can deduct 80% of the payment (20% value received). The price of tickets and any other value received (example: parking pass, food, merchandise) is not a charitable contribution and should be subtracted from the payment before the deductible portion is calculated.

Example:

Donor makes a payment in the amount of $2,000 for a ticket package. The ticket package includes the right to buy premium tickets at a cost of $1,000, tickets at a cost of $500 and a parking pass valued at $50.

The donor’s tax deduction would be calculated as follows:

Total payment	$	2,000.00
Less:		
Value of tickets		500.00
Value of parking pass		50.00
Value of right to purchase tickets (1,000 x 20%)		200.00
Total value received		750.00
Charitable deduction	$	1,250.00

Raffles – Donor payments for an opportunity to win a prize are not considered a charitable gift by the IRS.

Prizes from raffles are considered gambling winnings and can be subject to federal income tax withholdings. The UT Foundation withholds the federal income tax, submits the taxes to the IRS and issues the donor a W-2 G, ***Certain Gambling Winnings***, showing the donor the amount won and the amount withheld.

Gambling winnings from lotteries, sweepstakes, or other wagers (if proceeds are at least 300 times the amount of the bet or more) exceeding $5,000 are subject to tax withholding. Gambling winnings do not have to be in the form of cash. Non-cash winnings are taxed at their respective fair market value.

Corporate Sponsorships – A contribution from an organization to sponsor an event, activity, or project in return for recognition at the event or in an event publication. Most corporate sponsorships are considered gift revenue unless the recognition received is considered advertising and the sponsorship is an exchange transaction and not a gift. The IRS defines advertising in this instance as competitive pricing or product information displayed because of the donation. Simple name or logo is not considered advertising.

Factors qualifying a sponsorship as a gift:

- Contribution is made by a person or corporation engaged in a trade or business.
- Sponsor should not receive "substantial" benefits in return for payment other than name acknowledgment.
- Promotional information is limited to:
  - Sponsor's location, phone number, internet address
  - Description of sponsor's products or services absent of value
  - Sponsor's brand/trade name or product/service listings

- Sponsorship is absent any qualitative or comparative information of products or services such as pricing, savings, values and purchase inducements.
- Sponsorship is not contingent on event attendance, ratings or public exposure.

Factors disqualifying a sponsorship as a gift:

- Advertising revenue
- Exclusive vendor relationships
- Trade-outs, such as hotel rooms and transportation (these are considered services)
- Donation of athletic uniforms, shoes and equipment via exclusive vendor agreements whereby the University receives the items in exchange for refraining from using competitors' products.

Note: Additional guidance for corporate sponsorships can be found in the *IRS Federal Register Volume 67, number 80*.

Donor-Advised Funds

A donor-advised fund (DAF) is a giving vehicle offered by financial institutions, community foundations and sometimes colleges and universities (organization). An individual donor contributes assets to a DAF, giving control of those assets to that organization. The transfer of assets to the DAF is considered a gift and a charitable donation from the donor at the time of the transfer. The donor advises the organization by recommending the organization make a contribution to the UT Foundation. The organization is considered the legal donor and source of the gift since the donor has already gifted the assets to the DAF and the organization has legal control over the assets.

The benefit of using a DAF for donors is the flexibility to control the timing of their gift and tax benefit and defer the philanthropic priorities to a future time.

Assets from a DAF cannot be used to fulfill a personal pledge from a donor because relieving a donor of a substantial obligation by satisfying a donor's pledge is an impermissible benefit under Internal Revenue Code Section 4967. Nor can assets from a DAF result in any value received by the donor.

The donor will receive initiated credit (soft credit) on the payments received from a DAF.

Qualified Charitable Distribution from Retirement Accounts

The U.S. Tax Code has provided a provision for IRA owners to gain a tax benefit for distributions to charitable organizations from retirement accounts. This provision may or may not be extended in future years by Congress.

A qualified charitable distribution (QCD) is an otherwise taxable distribution paid directly from an individual IRA to a qualified charity. Under the provision, the IRA owner can exclude the QCD from gross income up to a designated amount. The QCD can be used to satisfy any IRA required minimum distributions for the year.

The distribution can only be treated as a QCD if the entire amount would be considered a charitable contribution under Internal Revenue Code Section 170. Therefore, a QCD received by UT Foundation cannot be used to satisfy a donor gift or pledge that results in any value received.

Grants and Contracts

Grant: A contribution received by the UT Foundation from a corporation, foundation or other organization for either unrestricted or restricted use. Charitable grants fall into two categories:

1. Nonspecific grant: A grant received by the UT Foundation that did not result from a specific grant proposal. The institution does not commit specific resources or services and is not required to report to the donor on the use of the funds. This type of grant may be reported as gift revenue.

2. Specific grant: A grant received by the UT Foundation resulting from a grant proposal submitted by the institution. The institution commits resources or services as a condition of the grant, and the grantor often requests an accounting of the use of the funds and the results of the programs or projects undertaken. The grantor's requirement of regular status reports or other reports does not negate the philanthropic nature of a specific grant.

Contract: An agreement between the institution and another entity to provide an economic benefit for compensation. The agreement is binding and creates a quid pro quo relationship between the institution and the entity. Contracts are not considered contributions.

Some transactions are difficult to differentiate between a charitable grant (contribution) and a contract (exchange transaction). Therefore, careful review of the characteristics of the transaction from the perspective of both the provider (donor) and the UT Foundation is necessary to determine whether a gift has occurred.

See **Appendix A** for a listing of common characteristics to assist in differentiating transactions between a contribution and an exchange transaction.

Receiving and Recording of Transaction

<u>Charitable Grant (Non-specific)</u> – Transaction is received by the UT Foundation and recorded as gift revenue.

<u>Government (Specific Grant)</u> – Transaction is received by the University and recorded as government grant revenue on the University's general ledger.

<u>Non-government (Specific Grant)</u> – Transaction is received by the UT Foundation and recorded as gift revenue. Note: If the program has any additional reporting requirements, is research-related, requires cost share, involves salary support, and/or requires other budgetary responsibilities, those funds will be immediately transferred to the University's Grants Accounting Department for proper administration of the program.

<u>Contract</u> – Transaction is received by the University's Grants Accounting Department or the proper University cost center.

See **Appendix B** for illustration of the decision tree for processing and reporting.

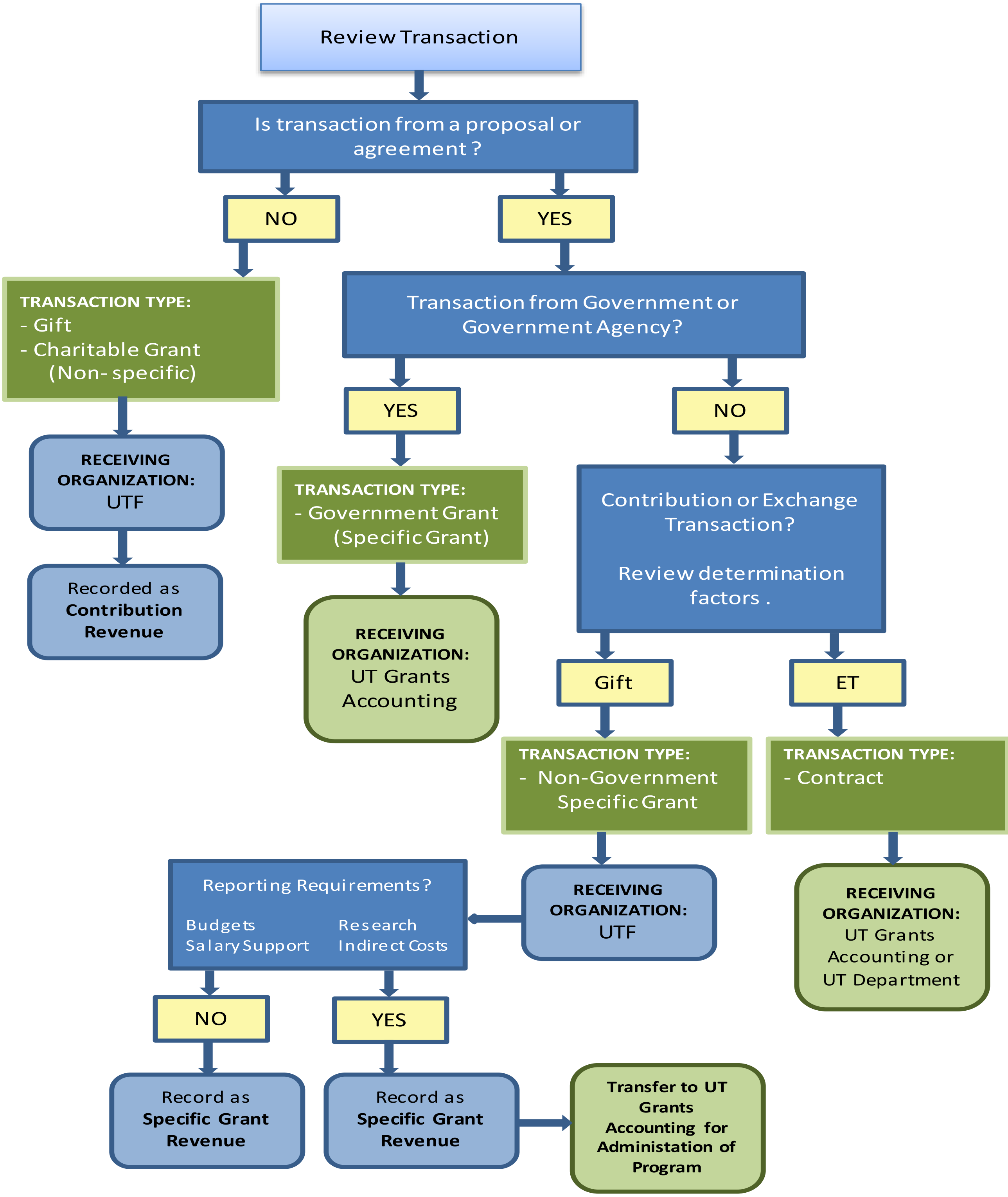
Special Consideration:

> Clinical Trials – An industry-sponsored organized medical study of a new or existing drug, medical device or biological treatment on people or animals for the purpose of identifying the potential beneficial effect on treating human or animal illness and/or determining safety and efficiency.
>
> For the purposes of these standards, a clinical trial is considered a contract, regardless of the terminology used by the granting organization.

APPENDIX A: Contribution / Exchange Transaction Characteristics

Factor	Contribution	Exchange
Funds provide goods/services for a program of the resource provider.		X
Initiative for project comes from the organization providing the funds.		X
Proprietary results belong to funding organization, in whole or in part, after the projects are completed.		X
Results of work have a specific commercial value for the resource provider.		X
Resource provider sponsors research and development activities and retains patents, copyrights, advance and exclusive knowledge of outcomes.		X
Payment supports direct/immediate need of government or organization that provides the funding.		X
Benefits to the resource provider are primary and public benefits are secondary.		X
Resource provider defines performance objectives such as a detailed report and a timetable for meeting objectives.		X
Time and place for delivery of results are specified.		X
Fulfills a service as prescribed by the resource provider.		X
Recipient gives up the benefits of the research to the resource provider.		X
Recipient pays economic/punitive penalties for failure to meet agreement.		X
Initiative for project comes from the organization receiving the funds.	X	
Proprietary results belong entirely to recipient organization after the work is completed.	X	
Results of the work have no commercial value for the resource provider.	X	
Time and place for delivery of results are not specified	X	
Resource provider does not receive commensurate value in return for support.	X	
Recipient determines ownership of the products of the research.	X	
Recipient holds unconditional right to receive the funds.	X	
Recipient retains control and ownership of any work completed after completion of the project.	X	
Funds used to carry out an already existing program of the recipient organization.	X	
Recipient participates actively in determining how the funds will be spent.	X	

APPENDIX B: Processing and Reporting - Decision Tree


Review Transaction
Is transaction from a proposal or agreement?
NO
YES
TRANSACTION TYPE:
- Gift
- Charitable Grant (Non-specific)
RECEIVING ORGANIZATION:
UTF
Recorded as Contribution Revenue
Transaction from Government or Government Agency?
YES
NO
TRANSACTION TYPE:
- Government Grant (Specific Grant)
RECEIVING ORGANIZATION:
UT Grants Accounting
Contribution or Exchange Transaction?
Review determination factors .
Gift
ET
TRANSACTION TYPE:
- Non-Government Specific Grant
TRANSACTION TYPE:
- Contract
RECEIVING ORGANIZATION:
UTF
RECEIVING ORGANIZATION:
UT Grants Accounting or UT Department
Reporting Requirements?
Budgets
Salary Support
Research
Indirect Costs
NO
YES
Record as Specific Grant Revenue
Record as Specific Grant Revenue
Transfer to UT Grants Accounting for Administration of Program