

## **GIFT ACCEPTANCE POLICY**

Nutrition Science Initiative, a California public benefit corporation ("NuSI") located in San Diego, California, encourages the solicitation and acceptance of gifts to NuSI for purposes that will help NuSI further and fulfill its mission. The following policies and guidelines govern acceptance of gifts made to NuSI, or for the benefit of any of NuSI's endowment or any of its programs.

### **I. Purpose of Policies and Procedures**

The purpose of this document is to set forth the criteria that NuSI and its Gift Acceptance Committee use to determine that a proposed gift is acceptable and to inform prospective donors and their advisors of the types of gifts NuSI accepts. While these guidelines establish best practices, they are also designed to provide flexibility as directed by the Gift Acceptance Committee, and in limited cases, the NuSI Board of Directors.

### **II. Donor Restrictions, Naming Rights, Special Circumstances**

#### *Donor Restrictions*

2.1 Donors are encouraged to make gifts to NuSI that are unrestricted, and that can be used for any NuSI purpose, as determined from time to time by the NuSI Board of Directors. NuSI will generally decline to accept any gifts from non-governmental entities that are subject to a restriction (as such word is used in California Business and Professions Code section 17510.8), except as expressly permitted in section 2.2.

2.2 From time to time NuSI may establish general field-of-interest projects. Such projects may be carried on for a finite time, or they might continue for an indefinite period of time. Although donors are encouraged to make unrestricted gifts, NuSI will generally accept a donor restriction that supports a field-of-interest project. Any such restriction will be: (i) confirmed in writing at the time of the gift, and (ii) provide that if the NuSI Board of Directors determines to modify the scope of such field-of-interest project, the donor's prior restriction is automatically modified in an identical fashion, and (iii) provide that if the NuSI Board of Directors determines to cancel or terminate such field-of-interest project, the donor's restriction will be removed entirely and any unspent portion of such gift will be converted to an unrestricted gift.

2.3 NuSI will not accept a gift under conditions that require NuSI to employ specific individuals or utilize the services of specific companies. Under no circumstance will NuSI accept a gift under conditions that bias, or could be construed to bias, the conduct or outcome of a NuSI-supported study. Specifically, NuSI will not accept a gift under circumstances- that constrain the design of a NuSI-supported study, that restrict or control publication of study results by NuSI or its grantees, or that limits in any way open access to study data or materials made available by NuSI or its grantees.

### *Endowment Gifts*

2.4 NuSI will accept gifts that are subject to an "endowment" restriction. Donors of an endowment gift agree that a gift to NuSI's endowment will be held subject to the Uniform Prudent Management of Institutional Funds Act (California Probate Code 18501 et seq.). NuSI reserves the right (but does not have the duty) to transfer any such endowment fund to a third party, either as a custodian or as an independent owner of such funds.

### *Naming Opportunities*

2.5 NuSI recognizes that larger gifts are often recognized by naming opportunities. Such naming opportunities are of value to NuSI as the continuing public announcements of names encourage others to likewise make gifts. Except upon approval of the NuSI Board of Directors, all donor recognition that involves naming opportunities must recognize individuals and not companies or product trade names. Any naming opportunities that is made in recognition of a larger gift must occur by action of the NuSI Board of Directors; a Board of Directors pre-approved slate of naming opportunities as part of a major fundraising campaign satisfies this criteria and in such cases the Gift Acceptance Committee will award naming rights. NuSI generally intends, but does not guarantee, that naming opportunities will survive for the shorter of the following periods: (i) the duration that NuSI operates, or is engaged in using, as applicable, the program, project, instrument, equipment, vehicle or building; and (ii) twenty (20) years.

2.6 If a naming opportunity is extended based upon a gift made by pledge, the following additional criteria apply: (i) the term of the pledge must not exceed five (5) years, or must be irrevocable and funded with a third party (such as a "Cooperating Charity" as defined in this Gift Acceptance Policy), and (ii) all naming opportunities are revocable at the sole option of NuSI if the pledge is not satisfied in strict accord with its terms.

### *Special Circumstances*

2.7 Other charities have experienced financial hardship, even to the point of threatening the continued existence of those other charities, when extraordinary situations have occurred. Examples of such extraordinary situations include: (i) bankruptcy of a donor with a requirement that the charity repay to the donor's estate the amount previously received, and (ii) criminal or anti-social activity involving a donor who is prominently associated (for example, through a naming gift) with the charity, resulting in other prospective donors shunning the charity. NuSI reserves the right to defer spending contributed funds, to withdraw previously granted donor recognition, and to take other measures as are deemed necessary and appropriate in the judgment of NuSI's Board of Directors when an extraordinary event -- whether of the type described above or otherwise -- occurs. In any such case, and consistent with the IRS position that donor recognition does not have value, no refund of a prior gift will be made except as required by law.

### *Reputational Risk*

2.8 Some proposed gifts, although offered in good faith, may present an appearance of impropriety, or expose the research efforts of NuSI to a charge of bias by reason of financial dependency upon a particular donor with an interest in the outcome of a NuSI research study. To avoid any such appearance or charge (collectively "Reputational Risk"), NuSI will -- with respect to every proposed gift offered to NuSI -- evaluate each gift for the possibility of such Reputational Risk. If any member of the Gift Acceptance Committee raises the possibility of Reputational Risk with respect to any proposed gift to NuSI, then the entire Gift Acceptance Committee shall evaluate that proposed gift prior to its being received by NuSI. In making such proposed evaluation, the Gift Acceptance Committee will consider: (i) the size of the proposed gift (smaller gifts, for example less than \$100, will generally not result in a finding of Reputational Damage), (ii) restrictions on the use of the proposed gift, and (iii) the identity of the donor of the proposed gift, and any relationships prominently associated with the donor. The Gift Acceptance Committee may determine to (A) accept the proposed gift as initially offered, (B) accept the proposed gift but only if donor-proposed restrictions are modified or removed, (C) refer the donor to a cooperating charity which might choose to accept the proposed gift, or (D) decline the proposed gift.

### **III. Communications with Donors**

NuSI holds all communications with donors, and all information concerning donors and prospective donors, in strict confidence, subject to legally authorized and enforceable requests for information by government agencies and courts. All other requests for or releases of information concerning a donor or a prospective donor will be granted only if permission is first obtained from the donor.

In the course of dealing with donors, particularly those with whom NuSI is collaborating on a research project, NUSI may come into possession of Confidential Information. "Confidential Information" means information that a party would reasonably know is confidential but such term does not apply to any portion of the Confidential Information of the Disclosing Party which:

- a. is disclosed without restriction to NuSI in good faith by a third party who is in lawful possession thereof and who has the right to make such disclosure; or
- b. is or shall have become public knowledge, by publications or otherwise, through no fault of NuSI; or
- c. is independently developed by NuSI without utilizing or referencing Confidential Information, as evidenced by business records.

### **IV. Conflict of Interest**

NuSI does not provide personal, legal, tax, financial, or other professional advice to donors or prospective donors. Donors and prospective donors are strongly urged to seek the assistance of their own professional advisors in matters relating to a donor's gifts and the resulting tax and estate planning consequences.

## **V. Acknowledgement of Gifts Received**

All gift acknowledgments will be written, dated and mailed to the donor within sixty (60) days of NuSI's acceptance of the gift and contain the following:

- i. A statement that NuSI is a charity recognized as tax-exempt by the IRS under Section 501(c)(3) and 170(b)(1)(A)(vi), having an EIN of 45-4676706.
- ii. Either (a) specify the dollar amount donated (if cash or cash equivalents); or (b) describe the property donated. In compliance with federal rules, NuSI is not permitted assign a value to any contributed property in its gift acknowledgment. If the donation was not cash, the acknowledgement will recite that valuation is the donor's responsibility.
- iii. Identify the date the donation was received (or if different, the date accepted) by NuSI.
- iv. The acknowledgement will contain one of two statements: Either:
  - (a) a statement that NuSI provided no goods or services in return for the donation, such as, "No goods or services were provided in return for this gift"; or
  - (b) if the gift was \$75 or more and NuSI did provide something of more than insubstantial benefit in return for the gift (such as tickets to a special event or a dinner), then NuSI will state what was provided to the donor and will include NuSI's good faith estimate of the value of the goods/services provided (such as "NuSI provided two tickets to the Gala Dinner having an estimated fair market value of \$100 each.").
- v. A statement confirming that the donor has imposed no restrictions on NuSI's use of such gifted funds (other than as permitted in Article II of this Policy, in which case the restriction will be expressly stated).

These practices are consistent with federal law as summarized in IRS Publication 1771 Charitable Contributions – Substantiation and Disclosure Requirements.

## **VI. The NuSI Gift Acceptance Committee**

The Gift Acceptance Committee will review, prior to acceptance by NuSI, all non-marketable gifts to NuSI, and all proposed gifts referred to it by the Vice President of Development. The Gift Acceptance Committee consists of the following individuals:

Board of Directors representative, Vice President of Development, Vice President of Strategy and External Affairs, Director of Operations, and Outside Legal Counsel.

The Gift Acceptance Committee is responsible for regularly reporting its decisions on gift acceptance to the Board of Directors. The Gift Acceptance Committee is also responsible for

reviewing these Policies and Procedures at least annually, or more often as needed, to ensure that they remain consistent with applicable laws and the programs of NuSI.

## **VII. Types of Gifts**

- A. NuSI shall not accept gifts that:
- (1) Violate the terms of NuSI's organizational documents;
  - (2) Would jeopardize NuSI's status as a tax-exempt organization under federal or state law;
  - (3) Are too difficult or expensive to administer;
  - (4) Are restricted for purposes that do not further NuSI's objectives; or
  - (5) Could damage the reputation of NuSI.
- B. The following gifts may be considered for acceptance by NuSI:
1. Cash
  2. Bequests
  3. Securities
  4. Real estate
  5. Remainder interests in property
  6. Bargain sales
  7. Charitable remainder trust payments
  8. Revocable trust agreements
  9. Charitable lead trust payments
  10. Retirement plan beneficiary designations
  11. Tangible personal property, including in-kind gifts
  12. Life insurance beneficiary designations
  13. Intellectual property rights
  14. Charitable gift annuity (in conjunction with Cooperating Charity)
- C. The following criteria apply to the acceptance of gifts in these categories.

1. Cash: Cash may be accepted in any negotiable form. Checks must be made payable to NuSI and should be delivered to Vice President of Development at NuSI's administrative offices.

2. Tangible Personal Property: NuSI will accept tangible personal property gifts valued at \$10,000 or greater if the gift will generate adequate revenue for the organization, and meet the purposes for which the gift is intended. In general, a decision will be made and communicated to the donor prior to gift acceptance as to whether NuSI will keep, or immediately sell, the gift. The prospective donor will be urged to consult with his own tax advisor to understand the consequence of NuSI's prompt resale of gifted tangible property and concurrent filing of IRS Form 8282. In assessing the appropriateness of the gift, NuSI will address the following questions:

- Is the property marketable? What is the market for and costs of transportation to market and sale?

- Are there any undue restrictions on the use, display, or sale of the property?
- Are there any carrying costs (insurance, storage, ongoing maintenance) for the property?
- Should NuSI receive the gift through an arrangement with another charitable entity ("Cooperating Charity")?

3. Securities: NuSI may accept both publicly traded securities and closely held securities.

Publicly Traded Securities: Marketable securities will be transferred to an account maintained at one or more brokerage firms or delivered physically with the transferor's signature or stock power attached. As a general rule, all marketable securities will be sold upon receipt unless otherwise directed by the Budget & Finance Committee of NuSI. In some cases marketable securities may be restricted by applicable securities laws; in such instances the final determination on the acceptance of the restricted securities may be made by the Gift Acceptance Committee.

Options and Other Rights in Securities: The following questions will be considered prior to acceptance of warrants, stock options and stock appreciation rights:

- Is NuSI required to advance funds upon exercise of the gift? If so, does NuSI have the required funds?
- Is NuSI at risk of loss of funds in accepting the gift?
- Are the rights restricted? And if so, does the restriction affect the ability of NuSI to dispose of the asset? Does the restriction materially impact the value of the gift to NuSI?

Closely Held Securities: Proposed gifts of closely held securities, which include not only debt and equity positions in non-publicly traded companies but also interests in LLPs and LLCs or other ownership forms, will be considered prior to acceptance by addressing the following questions:

- Is the security marketable? If so, what is the market for sale, and estimated time required for sale?
- What type of entity issued the security? (For example, C Corporation, S Corporation, LLC, LLP.)
- Will the security generate unrelated business taxable income to NuSI? If so, does NuSI have the funds to pay this tax?
- Are there restrictions on the security that would prevent NuSI from converting those assets to cash? If so, for what period of time do the restrictions prevent realization?
- How does the company operate? Does its operation create liability for NuSI?

If potential problems arise on initial review of the security, further review and recommendations may be sought from an outside professional before making a decision whether to accept the gift. Every effort will be made to sell non-marketable securities as quickly as possible.

4. Real Estate: NuSI will consider real property gifts with a net market value of \$50,000 or greater. Gifts of real estate may include developed property, undeveloped property, or gifts subject to a prior life interest. Prior to acceptance of real estate, NuSI requires an initial environmental review of the property to ensure that the property is free of environmental damage. In the event that the initial inspection reveals a potential problem, NuSI may retain a qualified inspection firm to conduct an environmental audit. The prospective donor must bear the cost of the initial environmental review and any subsequent environmental audit. When appropriate, a title binder shall be obtained by NuSI prior to the acceptance of the real property gift. The cost of the title binder will be borne by the donor.

The following criteria applies to gifts of real estate:

- Is the property useful for the purposes of NuSI?
- Is the property marketable? Are market factors favorable for a sale that net of all selling expenses and debts will yield the \$50,000 threshold?
- Are there any restrictions, reservations, easements, or other limitations associated with the property?
- Are there carrying costs, which may include insurance, property taxes, mortgages, homeowner association fees, etc., associated with the property?
- Does the audit reflect that the property is free of environmental damage?
- Should NuSI receive the gift through an arrangement with a Cooperating Charity?

5. Remainder Interests In Property: NuSI may accept a remainder interest in a personal residence, farm, or vacation property subject to the provisions of paragraph (4). At the death of the life tenants, NuSI may use the property or sell it or convert it to cash. Where NuSI receives a gift of a remainder interest, expenses for maintenance, real estate taxes, and any property indebtedness will be paid by the donor and/or primary beneficiary.

The following criteria apply to gifts of remainder interests in property:

- Does life tenant understand and have the likely capacity to comply with the financial duties of a life tenant?
- Is NuSI prepared to enforce the life tenant's duties?

6. Bargain Sales: NuSI may enter into a bargain-sale arrangement in instances where the bargain sale furthers the mission and purposes of NuSI. All bargain sales must be reviewed and recommended in advance by the Gift Acceptance Committee of NuSI. In determining the appropriateness of the transaction, NuSI will consider whether:

- The value of the property has been substantiated by an independent appraisal.
- Any debt to which the property is subject is less than 50% of the appraised market value.
- NuSI will use the property, or there is a market for sale of the property allowing sale within 12 months of receipt.

- The costs to safeguard, insure, and expense the property (including property tax, if applicable) during the holding period have been determined.

7. Charitable Gift Annuities: Through arrangements with a Cooperating Charity, NuSI offers both current and deferred charitable gift annuities to NuSI's donors. The minimum funding amount is \$10,000. No more than two life income beneficiaries are permitted for any gift annuity.

The Cooperating Charity will generally accept only cash or marketable securities for current annuities. Gifts of real estate or closely held stock for deferred gift annuities with a deferral period of five years or more is also permissible.

8. Charitable Remainder Trusts: NuSI encourages its donors to name NuSI as a remainder beneficiary of a charitable remainder trust and NuSI will work with donors to structure such agreements. However, NuSI will generally not serve as trustee of a charitable remainder trust and will instead encourage the donor to use a professional fiduciary.

9. Revocable Trust Agreements: NuSI encourages its donors to name NuSI as a beneficiary of all or a portion of a revocable trust agreement. However, NuSI will not serve as trustee of a revocable trust agreement and will instead encourage the donor to use a professional fiduciary.

10. Charitable Lead Trusts: NuSI will accept a designation as income beneficiary of a charitable lead trust. NuSI will not accept an appointment as trustee of a charitable lead trust.

11. Retirement Plan Beneficiary Designations: NuSI's donors are encouraged to name NuSI as beneficiary of their retirement plans. Such designations will not be recorded as gifts to NuSI until such time as the gift is irrevocable.

12. Bequests: Donors and supporters of NuSI are encouraged to make bequests to NuSI under their wills and trusts. Such bequests will be recorded as gifts to NuSI at such time as the gift is irrevocable.

13. Life Insurance: NuSI must be named as both beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift. If the donor contributes future premium payments, NuSI will include the entire amount of the additional premium payment as a gift in the year that it is made.

If the donor does not elect to continue to make gifts to cover premium payments on the life insurance policy, NuSI may:

- continue to pay the premiums,
- convert the policy to paid up insurance, or
- surrender the policy for its current cash value

Once the policy is accepted, life insurance holdings will be reviewed annually to determine whether it is best for NuSI to continue to pay the premiums, convert the policy to paid up insurance, surrender the policy for its current cash value, or change the underlying investment structure.

14. Life Insurance Beneficiary Designations: Donors and supporters of NuSI are encouraged to name NuSI as contingent beneficiary of their life insurance policies. Such designations will be recorded as gifts to NuSI at such time as the gift is irrevocable.

15. Intellectual Property Rights: Intellectual property rights, which include royalties, patents, copyrights, contract rights or other similar interests, will be evaluated prior to acceptance by NuSI by reference to the following criteria:

- Is the intellectual property right related to the mission of NuSI?
- Can the ownership of the intellectual property right be clearly transferred or assigned to NuSI?
- Is the intellectual property right a full or fractional interest?
- If fractional, who are the other owners of the property and percentage interests?
- Does the right in the intellectual property generate, or have the potential to generate, at least \$5,000 or more each year?
- Is there a market for the sale or licensing of the intellectual property right?
- Are there any costs associated with acceptance of the intellectual property right? (i.e., is the gift a patent application that will require further action to secure, are there any claims, liens or other contests associated with the property, or are there likely to be costs associated with defending the intellectual property right?)
- Are there any restrictions on the retention or use of the property?
- What agreements or other legal documents would NuSI be required to execute in order to obtain patents, market the property and grant licenses in the name of NuSI?

### **VIII. Use of Legal Counsel**

NuSI seeks the advice of outside legal counsel as appropriate on matters relating to acceptance of gifts. Review by legal counsel is usually sought in connection with:

- a. Closely held stock transfers that are subject to restrictions or buy-sell agreements
- b. Documents naming NuSI as Director, Trustee, or containing any comparable operational oversight role
- c. Gifts involving contracts or debt, such as bargain sales or other documents requiring NuSI to assume a legal obligation (financial or performance)
- d. Gifts of patents and intellectual property
- e. Transactions with potential conflict of interest that may invoke IRS or state government sanctions
- f. Other instances in which use of counsel is deemed appropriate by NuSI's Board of Directors or Gift Acceptance Committee.

## IX. Miscellaneous

A. *Securing appraisals and legal fees for gifts to NuSI:* It will be the responsibility of the donor to secure an appraisal (where required) and the advice of independent legal, financial or other professional advisers as needed for all gifts made to NuSI. NuSI does not appraise contributed property from the donor. NuSI only provides an acknowledgment of receipt.

B. *Valuation of gifts for development purposes:* NuSI will record a gift received by NuSI at its net fair market value on the date of gift.

C. *Responsibility for IRS Filings upon sale of gift items:* The Director of Operations office is responsible for filing IRS Form 8282 upon the sale or disposition of any non-marketable asset sold within three years of receipt by NuSI when the charitable deduction value of the item is more than \$5,000. If NuSI disposes of charitable deduction property within 3 years of the date the original donee received it, NuSI will file Form 8282 within 125 days after the date of disposition. There are two exceptions where Form 8282 does not have to be filed: (1) items valued at \$500 or less, and (2) items consumed or distributed for charitable purposes. For additional information, see instructions for IRS Form 8282.

D. *Acknowledgement of all gifts made to NuSI and compliance with the current IRS requirements in acknowledgement of such gifts is the responsibility of the Secretary of NuSI or his/her designee.* IRS Publication 561 Determining the Value of Donated Property and IRS Publication 526 Charitable Contributions provide excellent guidance and can be downloaded from [www.irs.gov](http://www.irs.gov). NuSI's authorized representative will execute IRS Form 8283, to be provided by donor. Prior to signing such form on behalf of NuSI, the authorized representative will confirm that the property contributed, and all restrictions applicable thereto, are identified in Section A of Form 8283. NuSI neither provides nor corroborates the donor's appraiser's opinion of value of the contributed property.

E. *Disclosure provided for pooled funds.* The Cooperating Charity will provide all appropriate disclosures as required by the Philanthropy Protection Act of 1995 for gifts contributed to pooled funds.

F. *Gift Agreements.* Where appropriate, NuSI will enter into a written gift agreement with the donor, specifying the terms of any restricted gift, which may include provisions regarding donor recognition.

G. *Pledge Agreements.* Acceptance by NuSI of pledges by donors of future support of NuSI (including by way of matching gift commitments) will be contingent upon the execution and fulfillment of a written charitable pledge agreement specifying the terms of the pledge, which may include provisions regarding donor recognition.

H. *Changes to or Deviations from the Policy.* This Policy has been reviewed and accepted by NuSI's Governing Body, which has the sole power to change this Policy. In addition, NuSI's



Gift Acceptance Committee (or the NuSI Board of Directors if specified in this Policy ) must approve in writing any deviations from this Policy.

I. This Gift Acceptance Policy may be amended from time to time by action of the NuSI Board of Directors.

Adopted by: \_\_\_\_\_ on \_\_\_\_\_.

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