

THE UNIVERSITY OF SOUTH CAROLINA EDUCATIONAL FOUNDATION
AMENDED AND RESTATED BYLAWS
(As amended March 31, 2009)

ARTICLE I

Mission, Relationship to the University, Legal Status

Section 1: The mission of The University of South Carolina Educational Foundation (the “Foundation”) is to support the University of South Carolina (the “University”) in all of its educational, instructional, scientific, literary, research, service, charitable, and outreach endeavors. The primary purpose of the Foundation is to receive, solicit, accept, hold, administer, use, invest, endow, and disburse gifts, bequests, devises, and all types of property for the exclusive benefit of the University. The Foundation is dedicated to maximizing support from the private sector for the University to provide a margin of excellence beyond that which could be achieved with state appropriated funds only.

Section 2: The relationship to the University is defined by a memorandum of understanding between the Foundation and the University.

Section 3: The Foundation is a non-profit corporation established and operating in accordance with the provisions of Section 501(c)(3) and 509 (a)(1) of the Internal Revenue Code. The Foundation is incorporated under the South Carolina Non-Profit Corporation Act of 1994 as a public benefit corporation with Directors pursuant to the Code of Laws of South Carolina, 1976 as amended §33-31-140(30). In the event of a dissolution of the Foundation, all funds, property and assets shall revert to the University, or to some other 501(c)(3) organization which appears most likely to carry out the purposes of the Foundation.

Section 4: The Foundation shall maintain its status as an Exempt Organization qualified to receive tax deductible gifts under the Internal Revenue Code. The period of existence of the Foundation shall be perpetual.

ARTICLE II

Purpose, Activities

Section 1: Specific purposes of the Foundation include but are not limited to:

- a) To build an endowment fund, the net income to be utilized as directed by the Board of Directors of the Foundation in accordance with established priorities and gift restrictions for the exclusive benefit of the University.
- b) To assist with a program of annual and deferred giving with the net proceeds received, unless otherwise restricted, to be applied to meet annual commitments against unrestricted funds.
- c) To determine, in cooperation with the administration of the University, appropriate projects, programs, and activities of the University to be supported in whole or part with the resources of the Foundation not restricted by donor gift agreements.

Section 2: No part of the net earnings shall inure to the benefit of any private shareholder or individual. No substantial part of the activities of the Foundation shall consist of carrying on propaganda or otherwise attempting to influence legislation. The Foundation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of a candidate for public office.

ARTICLE III

Directors

Section 1: The Board of Directors (the “Board”) shall be the governing body of the Foundation and shall be vested with the entire management of the operations and affairs of the Foundation, including but not limited to formulation of policy in accordance with the purposes of the Foundation. In addition, the Board shall:

- a) Maintain accurate and complete books and records of account
 - i. The Board may authorize, amend, or restate operating guidelines, plans, practices and procedures in order to effectively implement the purposes of the Foundation.
- b) Maintain custody and responsibility for the property and funds of the Foundation.
- c) Control the Foundation’s bank accounts.
- d) Select a certified public accountant to audit the books of account at least once a year and prepare a report (the “Audit Report”) for the Foundation.
- e) Establish operating guidelines for the selection of bank(s) or other depositories where all contributions, donations, dues, or other monies accepted by the Foundation are deposited and maintained.
- f) Hire such personnel as it sees fit for the administration of its duties. Personnel shall receive compensation as the Board determines and shall serve at the Board’s discretion. Personnel shall give bond as may be required by the Board for the faithful performances of their duties and the proper administration of all funds and property received or disbursed. The amount of the bond shall be determined by the Board and the expense for the bond shall be paid by the Foundation.
- g) Designate an appropriate custodian or custodians of its funds and qualified investment counsel.

Section 2: The Board of Directors shall have the sole right to name the Directors of the Board and to fix from time to time the number of the Directors. There shall never be less than twenty four (24) Directors (including four (4) ex-officio Directors). The four (4) ex-officio Directors shall consist of:

- a) President of the University
- b) Chairman of the University Board of Trustees
- c) Executive Director of the Foundation
- d) Vice President of University Advancement

Ex-officio Directors shall have all rights and privileges of other Directors of the Board, except voting.

The Foundation seeks to have representation from throughout the University to include:

- a) Director from the University Board of Trustees
- b) Director from the Columbia campus faculty
- c) Director from the faculty of another University system campus

The remainder of the Directors shall be selected from the public at large who have an interest in promoting the purposes of the Foundation. The Foundation seeks to have broad representation across South Carolina and the nation.

The immediate past Chair shall serve as *Chair Emeritus*, and shall be an ex-officio Director of the Executive Committee, and shall serve until replaced by the next retiring Chair. The Chair Emeritus shall not have voting rights in Executive Committee but may have voting rights in full Board meetings.

Section 3: The Executive Committee shall serve as the Nominating Committee for all Directors except the four (4) ex-officio Directors unless a separate Nominating Committee is established by the Board. The Nominating Committee shall actively seek nominations for Directorship from the current Board, University Administration, the Board of Trustees of the University, partnership boards, and other supportive organizations. After selection, candidates will be presented to the Board and shall be elected by a majority of the Directors of the Board present and voting at a regularly scheduled meeting. The terms of the newly elected Directors shall commence on the following July 1.

Section 4: Directors other than ex-officio Directors shall serve for terms of four (4) years each and may be elected to succeed themselves for one additional term. Directors are eligible for re-election after a two year absence. Directors may serve two successive complete terms in the case of having been originally elected to fill an unexpired or partial term. If a Director fails to attend in person or by telephone at least 50% of all regular meetings during the first term, they shall not be eligible for a second term unless the Executive Committee determines that extenuating circumstances prevented the attendance. The term of a Director serving as an officer or Committee Chair may be extended by the Executive Committee as long as the Director serves in the current position or is elected to another office or chairmanship.

Section 5: A vacancy on the Board shall be deemed to have occurred in the event of the expiration of a term of service, death, disability, resignation or removal of any Director of the Board. When a vacancy occurs, the new Director(s) shall be elected by the existing Board of Directors by a majority of those present and voting at a meeting, written notice of such election having been given; provided, however, the outgoing Director shall be entitled to vote in such an election. Any Director may resign in writing and have the resignation delivered to the Board of Directors or the Chair of the Educational Foundation. Such resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

Section 6: A Director shall discharge his/her duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director reasonably believes to be in the best interests of the Foundation. In discharging his/her duties, a Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- a) One or more officers or employees of the Foundation whom the Director reasonably believes is reliable and competent in the matters presented
- b) Legal counsel, public accountants, or other persons as to matters the Director reasonably believes are within the person's professional or expert competence
- c) A committee of the Board of which the Director is not a Member, as to matters within its jurisdiction, if the Director reasonably believes the committee merits confidence.

A Director is not acting in good faith if s/he has knowledge concerning the matter in question that makes reliance otherwise permitted unwarranted. A Director is not liable to the Foundation, a Director, or any other person for any action taken or not taken as a Director, if the Director acted in compliance with this Section.

ARTICLE IV

Meetings of the Board

Section 1: At all meetings, the presence of at least one half, but no less than nine (9), of the total voting Directors shall constitute a quorum to transact business, but any lesser number shall be sufficient to adjourn the meeting.

Section 2: Regular meetings of the Board shall be held twice a year. Notice of the date, time, and place of regular meetings shall be given no fewer than ten (10) and no more than thirty (30) days before the date of the meeting. The Chair or the Vice Chair of the Board shall conduct all meetings.

Section 3: Special meetings of the Board may be called by the Chair or by the Chair at the request of at least three (3) Directors of the Board. Notice of the date, time, and place of a special meeting shall be given no fewer than two (2) days before the date of the meeting.

Section 4: For any meeting, notice shall be given in writing unless oral notice is reasonable under the circumstances. Notice may be communicated in person; by telephone, telegraph, teletype, facsimile transmission, email, or other form of wire or wireless communication; or by mail or private carrier including specifically campus mail of the University.

Section 5: A Board of Directors' action to remove a Director is not valid unless each Director is given at least seven (7) days written notice that the matter will be voted upon at the meeting, along with the date, time, and place of the meeting, or unless notice is waived in writing in accordance with Section 6 of Article IV.

Section 6: A Director may waive any notice required by these Bylaws, the Articles, or applicable law. The waiver must be in writing, signed by the Director entitled to notice, and filed with the Foundation records or minutes, and may be executed either before or after the event requiring notice. A Director's attendance at, or participation in, a meeting waives any required notice unless the Director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with these Bylaws, the Articles, or applicable law, objects to the lack of notice and does not thereafter vote for or assent to the objected action.

Section 7: If the Chair determines that an emergency meeting of the Board is required to conduct urgent business within a time frame that does not permit the notice requirements, the notice requirements shall be waived; provided, however, that the Chair shall make a good faith effort to notify each Director of the Board regarding the date and hour of such emergency meeting, and the Chair may give notice by whatever means are practicable under the circumstances. One or more officers of the Foundation present at the emergency meeting of the Board may be deemed to be Directors for the meeting, in order of rank, as necessary to achieve a quorum. If a quorum cannot be assembled because of the emergency, the Board may proceed to act and such failure to obtain a quorum will not invalidate the good faith emergency action and shall not be used to impose liability for the action.

Section 8: Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the action is taken by all Directors of the Board. The action must be evidenced by one or more written consents describing the action taken, signed by each Director of the Board and included in the minutes filed with the corporate records reflecting the action taken. The action is effective when the last Director signs the consent, unless the consent specifies a different effective date. A consent signed under this provision has the effect of a meeting vote and may be described as such in any document.

Section 9: Unless otherwise stated, any or all Directors may participate in a meeting of the board or any meeting of any committee by means of conference telephone or any means of communication by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting.

ARTICLE V

Officers

Section 1: The elected officers of the Board shall be a Chair, Vice Chair, Chair Emeritus, Secretary/Treasurer, and the Executive Director. The Board may establish such other offices and elect officers as the Board may deem advisable. No two of these offices may be held by one person. An officer may serve as a Committee Chair.

Section 2: Unless a separate Nominating Committee is established by the Board, the Executive Committee shall nominate the officers. All officers shall be elected by a majority of the Directors of the Board present and voting at a regular meeting and in all subsequent even numbered years.

Section 3: All officers shall serve for two (2) years or until a successor has been elected or appointed in accordance with this Article. Officers are eligible for re-election to one additional term except the Executive Director who shall serve ex-officio. In the event of any vacancy occurring during the period for which an officer has been elected, the Board shall have authority to fill the vacancy at any meeting. An officer who is elected to fill a vacancy created by an officer who died, resigned or was otherwise unable to serve, shall serve the remainder of that term. An officer, whose regular term as a Director expires before the term of office expires, shall remain an active Director of the Board and may be re-elected to an office.

Section 4: The officers shall perform such duties as are ordinarily incumbent upon their positions and other duties as determined by the Board.

Section 5: All officers of the Foundation except the Executive Director shall serve without compensation.

ARTICLE VI

Powers of Officers

Section 1: The Board may hire an Executive Director to serve as chief executive officer of the Foundation and such other personnel as it sees fit for the administration of its activities. The Executive Director of the Foundation shall be responsible for properly carrying out the plans and purposes of the Board as the Chairman of the Board shall direct. The Executive Director shall receive compensation as the Board may decide and shall be held responsible for expending of and accounting for any operating funds appropriated by income from investments or other sources.

In addition, the Executive Director shall:

- a) Keep the seal of the Foundation as well as the minutes of all proceedings of the Foundation, including meetings of the Board in one or more books provided for such purpose.
- b) Maintain a Directorship roster.
- c) Prepare and file such reports as required by Federal, State, and Local laws and regulations.
- d) Be responsible for assuring that all funds of the Foundation are in proper custody, that correct and complete records of account are kept by the Foundation, and that such financial reports are presented to the Board, the Executive Committee, Directors of the Foundation, and the University as appropriate.
- e) Authenticate records of the Foundation.
- f) Perform such other duties as may be assigned by the Chair.

Section 2: All deeds, contracts, and other legal instruments shall be signed by the Executive Director, the Chair, or other duly authorized individuals of the Foundation, in accordance with such operating guidelines and procedures as authorized by the Board including establishment of such wholly owned corporations or limited liability companies provided such organizations are wholly owned by the Foundation and officers and employees of the Foundation serve as the officers, Directors, or managers of such organization.

ARTICLE VII

Committees

Section 1: The standing committees of the Board shall be:

- a) Executive Committee
- b) Audit and Budget Committee
- c) Investment Committee

The Chair shall be a Director, ex-officio, of each of these committees and shall appoint the chairman of each committee (the "Chairman") from the Directorship of the Board. The Chairman shall serve on the committee for the duration of his term as a Director or until he has been removed, has resigned, or otherwise ceases to qualify as Chairman. Vacancies on any committee may be filled for the unexpired portion of the term in the same manner as the original appointment. Except for the Executive Committee, the greater of fifty percent (50%) of Directors of any Committee or two (2) persons shall constitute a quorum and a vote of all of the Directors present at a meeting at which a quorum is present shall be the act of the Committee.

Section 2: Committee Directors shall serve until death, resignation, removal, inability to serve, or termination of service as an officer or Director of the Foundation, whichever occurs earlier.

Section 3: A committee may exercise the powers and duties delegated to it by the Board, except that a committee may not be empowered to do any of the following:

- a) Approve or recommend to Directors the dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Foundation's assets.
- b) Select, appoint, or remove Directors or fill vacancies on the Board or on any of its committees.
- c) Adopt, amend, or repeal the Foundation's Bylaws or Articles.

Section 4: The Board may establish other committees which shall have powers and duties in accordance with the Bylaws. These committees shall have at least three (3) Directors who will serve at the discretion of the Board. The creation of a committee is to be approved by the greater of (1) a majority of all the Directors in office when the action is taken or (2) the number of Directors required to take action as stated in these Bylaws.

ARTICLE VIII

Executive Committee

Section 1: The Executive Committee is to be composed of the following:

- a) Chair
- b) Chair Emeritus
- c) Vice Chair
- d) Secretary/Treasurer
- e) Executive Director of the Foundation
- f) Chairs of the following committees
 - i. Audit and Budget
 - ii. Investment

Section 2: Six (6) Directors of the Executive Committee constitute a quorum and a vote of a majority of Directors where a quorum is present will be the act of the Committee.

Section 3: The Executive Committee shall have and may exercise all the authority of the Board, except as the same may be limited by law, by the Articles of Incorporation, or by these Bylaws.

ARTICLE IX

Standing Committees

Section 1: Standing committees are to be composed of Directors of the Board all being appointed by the Chair of the Foundation. Each Director will serve on one committee. The standing committees are as follows:

- a) Audit and Budget Committee : The duties of the Audit and Budget Committee shall be to:

- i. Oversee funds of the Foundation.
 - ii. Review budget proposals for the needs of the University.
 - iii. Make recommendation of the annual budget of the Foundation to the Board.
 - iv. Select the independent auditing firm for the annual audit.
 - v. Meet with the auditor prior to the audit to discuss the scope of the audit.
 - vi. Meet with the auditor after the annual audit to review the audited financial statements and the management letter.
 - vii. Ensure that management addresses any issues determined in the auditor's management letter.
 - viii. Review the audit and report results to the Full Board.
 - ix. Set compensation for the independent auditors.
 - x. Request bid proposals from independent audit firms periodically.
 - xi. Approve accounting policies and standards.
 - xii. Review and make recommendations on internal controls.
 - xiii. Oversee policies and procedures for reporting questionable accounting or auditing matters.
 - xiv. Make recommendations relevant to the mutual understandings and policies between the University and the Foundation.
- b) Investment Committee: The Investment Committee shall:
- i. Review and monitor the investments of the Foundation at least quarterly
 - ii. Report their findings to the Board.
 - iii. Establish policies and procedures to include, but not limited to, selection of acceptable asset classes, allowable ranges of holdings in each asset class and by individual investment managers as a percent of assets, the determination of acceptable securities within each asset class, and investment performance expectations.
 - iv. Hire investment consultants and investment managers to assist in these duties as deemed necessary.
- c) Advisory Committees: The Board may organize such advisory committees, advancement, and other committees from outside its Directorship as it sees fit to achieve the purposes of the Foundation.

ARTICLE X

Finances

Section 1: The regular fiscal year of the Foundation will begin on July 1 and end on June 30 of each year.

Section 2: The Foundation may receive income, revenues, and property from any source that is acceptable to the Board.

Section 3: The funds received, together with the income, shall be held, retained, managed, conserved, administered, used, and applied by the Foundation in the sole discretion of the Board in accordance with the purposes and provisions of these Bylaws.

The Board may accept funds which are qualified, limited or restricted in their use; provided such qualifications, conditions, limitations and restrictions shall not conflict with the purposes of the Foundation as set forth in these Bylaws. Unless otherwise specifically required, restricted contributions or bequests may be mingled with other contributions to the Foundation.

Section 4: The Foundation shall hold, manage, invest and reinvest its funds, including but not limited to cash, securities, investments (stocks, bonds, and obligations) and shall collect and receive the income from these funds. After deduction of necessary expenses incident to the operation and administration of the Foundation, including the payment of any debt service on obligations of the Foundation, such funds and the income from those funds shall be utilized in accordance with the purposes and provisions set forth in these Bylaws.

Section 5: The Foundation shall be the sole entity or person responsible for the application and use of its funds, including payment of its administrative expenses. The Foundation shall operate as an independent and autonomous entity for the purpose of meeting its financial obligations.

ARTICLE XI

Amendments

These bylaws may be altered or amended and additional bylaws adopted by two-thirds (2/3) vote of the Directors present or voting by proxy at any regular meeting after written notice of such meeting has been given to each Director at least ten (10) days prior to the action.

ARTICLE XII

Indemnification

Section 1: To the extent not inconsistent with the South Carolina Code and other applicable law, no persons shall be liable to the Foundation for loss or damage suffered by the Foundation on account of any action taken or omitted to be taken by such person as a Director or Officer of the Foundation in good faith, if such person acted in accordance with his duties as set forth in these Bylaws.

Section 2: The Foundation may indemnify a Director or Officer of the Foundation made party to a proceeding because of their role as such against liability incurred in the proceeding if that person:

- a) Conducted themselves in good faith

- b) Reasonably believed
 - i. His/her conduct in an official capacity with the Foundation was in its best interest
 - ii. His/her conduct was at least not opposed to its best interest
- c) In the case of a criminal proceeding, had no reasonable cause to believe his/her conduct was unlawful.

Section 3: The Foundation may not indemnify any person:

- a) In connection with a proceeding by or in the right of the Foundation in which the person was adjudged liable to the Foundation
- b) In any other proceeding charging improper personal benefit, whether or not involving action in their official capacity, in which such person was adjudged liable on the basis that the personal benefit was improperly received by such person.

Section 4: The Foundation may also reimburse any Director or Officer for the reasonable cost of the final disposition of any action, suit, or proceeding, if such person:

- a) Furnishes the Foundation a written affirmation of their good faith belief that they have met the standards of conduct described above
- b) Furnishes the Foundation a written undertaking to repay the advance if it is ultimately determined that the person did not meet the standard of conduct.
- c) A determination is made that the facts then known to those making the determination would not preclude indemnification under South Carolina law.

Section 5: The rights of indemnification provided in this Article shall be in addition to any rights to which any Director or Officer may otherwise be entitled. Irrespective of the provisions of this Article, the Board may at any time approve indemnification of officers, Directors, employees or other persons to the full extent permitted by the law of the State of South Carolina, whether on account of past or future transactions.

Section 6: The Board is authorized and empowered to purchase insurance covering the Foundation's liabilities and obligations under this Article and insurance protecting the Foundation's Directors, Officers, and Employees.

ARTICLE XIII

Regulation and Law

Section 1: The regulation of the business and conduct of the affairs of the Foundation shall conform to Federal and State income tax laws and any other applicable Federal and State law, and such regulation shall be determined by these Bylaws as amended from time to time. In the interpretation of these Bylaws, wherever reference is made to the United States Code, the Internal Revenue Code, the South Carolina Code of Laws or any other statute, or to any section thereof, such reference shall be construed to mean such Code, laws, statutes, or sections, and

the regulations as the case may be as amended or supplemented or as superseded by laws covering equivalent subject matter.

Section 2: These Bylaws are executed and delivered in the State of South Carolina and they shall be governed by, construed and administered in accordance with the laws of the State of South Carolina.

I CERTIFY that these Bylaws of the University of South Carolina Educational Foundation, as amended, were duly adopted by the Board of Directors of the Educational Foundation at a Meeting of the Board of Directors held

Dated: _____

Secretary/Treasurer
University of South Carolina
Educational Foundation