



AMENDED AND RESTATED BYLAWS
OF
UNIVERSITY OF SOUTH CAROLINA EDUCATIONAL FOUNDATION
AS MADE EFFECTIVE ON February 29, 2024

ARTICLE I
Offices

Section 1.1. Registered Office. The registered office of University of South Carolina Educational Foundation, a South Carolina nonprofit corporation (the “*Foundation*”), shall be located in South Carolina.

Section 1.2. Principal Office. The principal office of the Foundation shall be located within the City of Columbia, South Carolina, as may be designated by the Board of Directors.

Section 1.3. Other Offices. The Foundation may have offices at such other places within or outside of South Carolina, as the Board of Directors may, from time to time, determine and as the activities of the Foundation may require.

ARTICLE II
Purpose and Objectives

Section 2.1. Purpose. The Foundation is organized exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future United States internal revenue law, and is organized, and shall at all times be operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the University of South Carolina, a South Carolina state agency and institution of higher learning (“*USC*”). In addition, more specifically, the purpose of the Foundation is:

- (a) To obtain private funds to assist in the expansion and improvement of academic endeavors of USC, the determination of such academic endeavors to be supported being ascertained after full coordination with USC’s administration;

- (b) To build an endowment fund, the net profits, including income and realized appreciation, to be utilized by the Foundation in accordance with established priorities and gift restrictions;
- (c) To implement a program of annual and deferred gifts the principal of which can be expended totally as received to support areas of greatest academic needs unless such gifts are otherwise restricted; and
- (d) To promote, support and aid any and all other activities and programs, which will further the mission and programs of USC.

Section 2.2. Authority: Except as may be limited by the Foundation’s Articles of Incorporation or these Bylaws, the Foundation will have such powers as are now or may hereafter be granted corporations under the South Carolina Nonprofit Corporation Act of 1994, as amended, Chapter 31, Title 33, S.C. Code (the “*Nonprofit Act*”), including the authority:

- (a) To sue and be sued, complain, and defend in its corporate name;
- (b) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;
- (c) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State for regulating and managing the affairs of the Foundation;
- (d) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located, for the benefit of USC;
- (e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interest in or obligations of any entity;
- (g) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 33-31-832 of the Nonprofit Act;
- (i) To be a promoter, partner, trustee, member, associate, or manager of any partnership, joint venture, trust, or other entity. When acting as a trustee of a trust

in which it has a beneficial interest, the corporation is not conducting a trust business with regard to that trust for purposes of Section 34-21-10 of the Nonprofit Act;

- (j) To conduct its activities, locate offices, and exercise the powers granted by the Nonprofit Act within or without South Carolina;
- (k) To elect or appoint Directors, officers, employees, and agents of the Foundation, define their duties, and fix their compensation;
- (l) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former Directors, officers, employees, and Agents;
- (m) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the interest of the Foundation;
- (n) To accept gifts, devises, and bequests on behalf of USC, subject to any conditions or limitations, contained in the gift, devise, or bequest so long as the conditions or limitations are not contrary to the Nonprofit Act or the purposes for which the Foundation is organized;
- (o) To carry on a business;
- (p) To construct buildings and other improvements to real property;
- (q) To establish investment policies and procedures and to establish endowment funds;
- (r) To acquire, construct and operate facilities for the benefit of USC;
- (s) To assist, collaborate, and work with any tax-exempt organization, which is established for the support and benefit of USC, on projects, activities, and endeavors for the benefit or support of USC; and
- (t) To have and exercise all other authorities necessary to carry out its purposes and to perform all other acts as permitted by law to a nonprofit corporation under the laws of the State of South Carolina; provided, however, that the Foundation shall not engage in any activity not permitted by a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

Section 2.3. Prohibition Against Private Inurement: No part of the net earnings of the Foundation shall inure to the benefit of or be distributable to its members, Directors, officers, or other persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

Section 2.4. Additional Limitations. No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

Section 2.5. Exempt Activities: Notwithstanding any other provision of these Bylaws, no Director, officer, employee or representative of the Foundation shall take any action or carry on any activity by or on behalf of the Foundation not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may be amended, or by an organization contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code and Regulations as they now exist or as they may be amended.

Section 2.6. Operating Policies, Procedures and Guidelines. From time to time, the Board of Directors may adopt, amend, or restate operating policies, procedures and guidelines to carry out the purposes and objectives of the Foundation.

ARTICLE III Board of Directors

Section 3.1. General Powers/Authority. Subject to the Articles, these Bylaws, and the Nonprofit Act, the business and affairs of the Foundation shall be governed by a board of directors (the “**Board of Directors**” or the “**Board**,” and each individual serving on the Board as provided in these Bylaws shall be referred to as a “**Director**,” and collectively as the “**Directors**”). Authority in, responsibility for, and governance of the affairs of the Foundation shall be vested in the Board of Directors.

Section 3.2. Number/ Composition. The number of Directors constituting the Board shall not be less than twenty-two (22), but in the event of a vacancy, the Board may act with a lesser number until such vacancy is filled. The Board shall be composed and appointed as follows:

(a) **Ex Officio Directors.** Each of the following Directors shall each be considered a “**Ex Officio Director**” of the Foundation’s Board, and shall serve as *ex officio* Directors, without the right to vote on any matter before the Board, but with the authority to otherwise address the Board and attend and participate in all meetings of the Board:

- (i) Chairman of the Board of Trustees of USC.
- (ii) President of USC.
- (iii) Vice President of Development of USC.
- (iv) President and Chief Executive Officer of the Foundation, as defined in Article V.

No individual appointed to serve pursuant to the foregoing subparagraphs may appoint any another person to serve in his or her place as an Ex Officio Director.

(b) At-Large Directors. Each of the remaining Directors, who shall comprise a minimum of eighteen positions as director, shall be each an individual, who may or may not have any direct affiliation, employment, or engagement with USC (“***At-Large Directors***”), and who shall be nominated, elected, and appointed to office by the Board. Such At-Large Directors shall have the right to vote on all matters before the Board, as well as all other powers and authority as conveyed to Directors pursuant to the Act, the Articles, and these Bylaws.

(c) Composition. The Foundation seeks to have representation on the Board from throughout USC to include a member of the USC Board of Trustees, a member of the faculty from the main campus, and a member of the faculty from a regional campus. Notwithstanding anything to the contrary, at all times, the composition of the Board shall be comprised of both a majority of Directors and a majority of At-Large Directors, who are neither affiliated, employed, nor engaged with USC. Since the primary function of the Board is to develop policies which will facilitate the generation, investment, and management of capital to meet priority needs of USC, Directors should additionally be individuals who have the interest, commitment, and special expertise to assist in these endeavors.

Section 3.3. Term of Office.

(a) At-Large Directors Term/ Term Limitations. Each At-Large Director shall hold office for a term of four (4) years (“***Term***”) or until his or her death, resignation, retirement, removal, or disqualification, and until his or her successor is elected. An At-Large Director elected pursuant to Section 3.2 shall be eligible for no more than two (2) consecutive Terms until a period of one year has elapsed following the completion of his or her second consecutive Term; provided, however, upon a finding of extraordinary circumstances by the Executive Committee or the Board, this Term limitation may be waived any number of times by the vote of a majority of the Board. Examples of extraordinary circumstances may include retention of an individual in a specific officer or committee role in order to preserve institutional knowledge, maintain continuity in a project, or address material issues at such time. After a lapse of one (1) year, any At-Large Director may be re-elected. From time to time, on a limited or general basis, the Board may, in its discretion, shorten the length of the Term of any At-Large Director position in order to accommodate or improve staggering of Term lengths among At-Large Directors to ensure better continuity of the Corporation’s leadership.

(b) Ex Officio Directors. Each Ex Officio Director shall serve during the period of his or her time in such office as identified in Section 3.2(a).

Section 3.4. Methods of Selection. Directors shall be selected as follows:

(a) The At-Large Directors shall be elected by majority vote of the voting Directors then in office.

(b) The Ex Officio Directors serve, *ex officio*, by virtue of their office at or within USC.

(c) An individual shall be elected as a Director Emeritus by a vote of two-thirds (2/3rds) of the At-Large Directors then in office.

Section 3.5. Directors Emeriti. Any person who has demonstrated significant support, dedication, or volunteer activities for the benefit of the Foundation may be elected to the position of Director Emeritus by a vote of 2/3rds of all of the Directors serving on the Board. Directors Emeriti shall be non-voting and shall serve until death, resignation, or removal. Each Director Emeritus shall be provided notice to all regular and special meetings of the Board and provided copies of all materials distributed to the Board in connection with any such notice. No Director Emeritus is to be counted toward the quorum requirement of a meeting of the Board. Each Director Emeritus shall have the right to address the Board and speak during general sessions at all regular and special meetings of the Board but may only participate in any executive session of the Board, if expressly invited by the Board. The Director Emeritus position is non-voting, and as such, no Director Emeritus is permitted to vote upon matters before the Board. A Director Emeritus may be appointed to any committee of the Foundation, except the Executive Committee and the Governance Committee. Directors Emeriti may be invited to participate in events of the Foundation as well as to participate in any opportunities to engage with stakeholders of the Foundation.

Section 3.6. Resignation of Directors. Any Director may resign at any time. Such resignation shall be made in writing, shall be submitted to the Secretary or the Chair, and shall take effect at such time as is specified in the instrument.

Section 3.7. Removal of Directors.

(a) Any At-Large Director may be removed from the Board of Directors by the affirmative vote of two-thirds (2/3rds) of the At-Large Directors then in office at any regular or special meeting called for that purpose with or without cause. Any At-Large Director proposed to be removed shall be entitled to at least ten (10) days-notice of the meeting, at which such removal is to be voted upon, and shall be entitled to appear before and be heard by the Board at such meeting.

(b) Each Ex Officio Director may only be removed by written notice to the Foundation from a duly authorized representative of USC except the CEO who may be removed by the Board of Directors or the Executive Committee.

(c) A Director Emeritus may only be removed by a vote of two thirds (2/3rds) of the At-Large Directors then in office.

Section 3.8. Vacancies.

(a) Any vacancy occurring among the At-Large Directors and any At-Large directorship to be filled by reason of an increase in the number of Directors may be filled by (i) a majority vote the Board at a duly called meeting for that purpose where a quorum is present or (ii) a majority of the remaining voting Directors, if the number remaining is less than a quorum.

(b) A vacancy of a Ex Officio Director may only be filled by the Ex Officio Director's successor in office.

(c) An At-Large Director elected to fill a vacancy shall be elected for the unexpired Term of his or her predecessor in office, and service during such unexpired or “short” Term shall not be counted towards the Term limitation provided in Section 3.3 for such Director.

Section 3.9. Compensation/ Expenses.

(a) No Director shall by reason of his or her office be entitled to receive any salary or compensation, but nothing herein shall be construed to prevent a Director from receiving any compensation from the organization for duties other than as a Director. Compensation paid to the CEO of the Foundation shall solely be by reason of his or her duties pursuant to Article IX of these Bylaws. By and through approval of the Board of Directors or the Executive Committee, the Foundation may provide reasonable compensation to the President of USC in connection with responsibilities and services for the Foundation or in support of USC, but not otherwise as consideration of his or her service as an Ex Officio Director of the Foundation.

(b) The Foundation may approve all reasonable expenses of Directors, including travel, lodging and meals, while traveling to, from, and attending the meetings of the Board.

Section 3.10. Exculpation of Directors. No Director shall be liable to anyone for any acts on behalf of the Foundation nor any admission with respect to the Foundation committed by such Director except for his or her own willful, wanton, or gross negligence pursuant to Section 33-31-834 of the Nonprofit Act.

Section 3.11. Conflict of Interest. The Foundation will maintain a Conflict of Interest Policy pursuant to Article X of these Bylaws. In accordance with that policy, any Director or officer shall declare himself or herself as “abstaining” from voting on any matter in which such Director or officer may be considered to have a conflict of interest. Such abstaining declaration shall be made for the record at the beginning of any such motion or discussion and shall be recorded in the official minutes of the meeting. The same conflict of interest procedures shall apply to any Director or officer participating in any committee vote.

Section 3.12. Membership. As provided in the Foundation’s Articles of Incorporation pursuant to S.C. Code § 33-31-603, the Foundation does not have members within the meaning of S.C. Code § 33-31-140(23). Any use of “member” or “membership” in these Bylaws should be understood in its immediate context, and not to refer to “members” within such statutory definition.

ARTICLE IV Meetings of the Board of Directors

Section 4.1. Regular Meetings. The Board shall hold regular meetings no fewer than two times per year according to such schedule and at such times and places as it may fix by resolution or as otherwise permitted by applicable law and these Bylaws.

Section 4.2. Special Meetings. Special meetings of the Board may be called by or at the request of the Chair of the Board or any three (3) Directors. Such meetings may be held at the time and place fixed by the person or persons calling the meeting.

Section 4.3. Notice of Meetings. Notice of the time, place, and purpose of any regular meeting shall be served either personally, by facsimile, electronic mail, mail, or private carrier, including specifically USC campus mail, not less than ten (10) nor more than forty (40) days before the meeting upon each person who is a member of the Board of Directors. 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 in accordance with the foregoing methods of delivery. Any Director may waive notice of any meeting by filing a written, signed objection with the minutes of the Foundation or the corporate records. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

Section 4.4. Quorum. At any meeting of the Board of Directors, the presence of a majority of the At-Large Directors then in office immediately before the meeting shall constitute a quorum for transaction of business at any meeting of the Board. In the absence of any quorum or when a quorum is present, a meeting may be adjourned from time to time by a vote of the majority of the Directors without notice other than by announcement at the meeting and without further notice to any absent Director.

Section 4.5. Participation by Videoconference, Telephone, and other Communication Means. Any one or more Directors may participate in a regular or special meeting of the Board of Directors by, or conduct the meeting through the use of, any means of videoconference, telephone or other communications device which allows all persons participating in the meeting to hear each other. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.6 Order of Business. At any meeting of the Board of Directors, the Chair may prescribe the order of business.

Section 4.7. Manner of Acting. Except as otherwise provided in these Bylaws or as required by South Carolina law, the act of the majority of the At-Large Directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors. No voting by proxy shall be permitted.

Section 4.8. Required Vote for Certain Actions. Notwithstanding anything herein to the contrary, the vote of 2/3rds of all the At-Large Directors then in office shall be required for the following actions:

(a) Authorizing the merger, consolidation, reorganization, restructuring, bankruptcy, liquidation or dissolution of the Foundation.

(b) Authorizing, agreeing or completing the sale, lease, exchange or mortgage of substantially all of the Foundation's properties or assets.

(c) Amending, deleting or otherwise changing the number of Directors or the manner of appointment, removal or filling of vacant Directorships pursuant to Article III of these Bylaws.

(d) Amending, deleting, or otherwise changing Sections 2.1 and 4.8, Articles X, XII, XIV or XV of these Bylaws, or the Conflict of Interest Policy attached hereto as Appendix A.

(e) Amending, restating, modifying, or otherwise changing paragraphs 6 or 8 of the Foundation's Articles of Incorporation.

Section 4.9. Informal Action by All Directors. Any action required by law to be taken at a meeting of the Board, or any action that may be taken at the meeting of the Board or of any committee of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors or committee members entitled to vote on the subject thereof. Such consent shall have the same force and effect as a unanimous vote of the Board and shall be recorded with the minutes of the Foundation.

ARTICLE V

Officers of the Board of Directors

Section 5.1. Officers and Duties. The officers of the Board of Directors of the Foundation shall be a Chair, a Vice Chair, a Secretary, a Treasurer, a Chair Emeritus, and President and CEO (the "**CEO**"). These officers shall perform the duties prescribed by these bylaws. The Chair and the Vice Chair shall at all times be an At-Large Director and the CEO, by virtue of his position, is an Ex Officio Director; however there is no requirement that the Secretary or Treasurer be a Director on the Board.

(a) Chair. The Chair shall have all the powers and shall perform all the duties conventionally associated with the office including, but not limited to, chairing all Board meetings, developing agendas for Board meetings, and working to ensure Board participation. The Chair may sign, with any other proper officer of the Foundation authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be delegated by the Board of Directors to some other officer or agent.

(b) Vice Chair. The Vice Chair shall assist the Chair, shall chair all Board meetings and fulfill all duties and responsibilities of the Chair in his or her absence or vacancy, and shall perform all the duties conventionally associated with the office.

(c) Secretary. The Secretary shall keep a correct record of all the proceedings of the meetings of the Board of Directors, and if necessary, any committee meetings. He or she shall attend to the giving of notices, have custody of the corporate seal and records, and affix the seal to all instruments required to be executed under seal as authorized by the Board of Directors. He or she shall perform such other duties as are incident to the office of Secretary and shall have such other powers and duties as may be conferred upon him or her by the Board of Directors.

(d) Treasurer. The Treasurer shall have oversight of all the monies and securities belonging to the Foundation, within the scope for any fiscal policy established by the Board. He

or she will work with the CEO and the Chair to develop an annual budget and shall also make periodic reports of the Foundation's financial status to the Board. The Treasurer will assist with all compliance requirements associated with the maintenance of the tax-exempt status of the Foundation as described in IRC section 501(c)(3). He or she shall perform such other duties as are incident to the office of Treasurer and shall have such other powers and duties as may be conferred upon him by the Board.

(e) Chair Emeritus. The immediate past Chair shall serve as the Chair Emeritus. The individual serving as the Chair Emeritus shall serve on the Board and have such powers and duties as the Board may confer upon him or her from time to time.

(f) President and Chief Executive Officer. The CEO shall serve as an officer in an *ex officio*, non-voting capacity. The Board shall appoint the CEO, who shall work under the direction of the Board and have general direction of the operations and programs of the Foundation. The CEO shall be responsible for the day-to-day operation of the business and affairs of the Foundation and shall, in concert with the Board, be responsible for the growth and development of the Foundation. The Board is responsible for the hiring, training, supervising, evaluating, and terminating the CEO. The CEO shall not have any voting rights on the Board. (g) Other Officers. The Board may create, from time to time, other positions of office as it deems necessary, one or more assistant Secretaries and assistant Treasurers.

Section 5.2. Election of Officers. Except for the CEO, officers shall be elected at the last Board meeting of the fiscal year to take office upon the first day of the following year of the Foundation.

Section 5.3. Officer Term: Except for the CEO and as otherwise specifically stated herein, each officer shall hold office for a term of two (2) years ("***Officer Term***") or until his or her death, resignation, retirement, removal, or disqualification, and until his or her successor is elected. A Director serving as Chair or Vice Chair shall be eligible to serve in such officer role for no more than two (2) consecutive Officer Terms. After a lapse of one year following the continuous service of two (2) Officer Terms as Chair or Vice Chair, any such Director may be re-elected to serve again in such specific officer role. Notwithstanding anything to the contrary above, there shall be no limitation to the number of Officer Terms that an individual may serve in either the role of Secretary or Treasurer. The CEO shall serve during the period of his or her time in office.

Section 5.4. Resignation of Officers. Any officer may resign at any time. Such resignation shall be made in writing, shall be submitted to the Secretary, and shall take effect at such time as is specified in the instrument.

Section 5.5. Removal of Officers. Except for the CEO, any officer may be removed from office at any time with or without cause by the affirmative vote of two-thirds (2/3rds) of the voting Directors present at a special meeting called for that purpose. Any such officer proposed to be removed shall be entitled to at least ten (10) days-notice in writing by mail of the meeting at which such removal is to be voted upon and shall be entitled to appear before and be heard at such meeting.

Section 5.6. Vacancies. A vacancy in any elected office may be filled by a majority vote of a quorum of the Board of Directors. An officer elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

ARTICLE VI Committees

Section 6.1. Committees. The Foundation shall have the following standing committees: Executive Committee, Finance Committee, Governance Committee and Investment Committee. The Board of Directors or the Chair may additionally establish any number of ad hoc committees for any duration and purpose consistent with the Articles and Bylaws of the Foundation. The Chair shall appoint all individuals to serve as members to any such committees on an annual basis, unless otherwise provided in these Bylaws or by resolution of the Board. The authority, responsibilities, and powers of the standing committees shall be as provided in these Bylaws and permitted by applicable law; the authority, responsibilities, and powers of the ad hoc committees may be limited or increased from time to time, as the Board or the Chair may so decide. Each committee shall have one or more Directors, and may include individuals who are not Directors, but who otherwise contribute some additional knowledge, expertise, or experience of value to such committee. Unless otherwise specified herein, each committee shall consist of two or more persons.

Section 6.2. Executive Committee. The Executive Committee shall consist of the Chair, the Vice Chair, the Chair Emeritus, the chair of the Finance Committee, the chair of the Governance Committee, the chair of the Investment Committee, and up to two At-Large Directors. The CEO shall serve, *ex officio*, on the Executive Committee in a non-voting capacity. The Chair shall be the chair of the Executive Committee. During the intervals between meetings of the Board, the Executive Committee shall have and may exercise all of the authority of the Board, except for those actions provided in Section 3.7, 4.8, and 5.5 and as otherwise limited by applicable law.

Section 6.3. Finance Committee. The Finance Committee shall oversee the funds of the Foundation. It shall receive and study proposals regarding the needs of USC, which might be met by this Foundation. This committee shall hire and set compensation for the independent auditors. The committee will meet with the auditors no less than annually to review the audit and to receive recommendations to strengthen internal controls. The Finance Committee shall consist of the Treasurer and at least four (4) additional Directors appointed by the Chair, subject to the consultation and oversight of the Board. In the event that the individual serving as Treasurer is not also a Director serving on the Board, such non-Director individual serving as Treasurer shall nevertheless serve as a member of the Finance Committee, but such individual shall not have the right to vote on matters before the Finance Committee. Additionally, the CEO shall serve, *ex officio*, as a member of the Finance Committee, but shall not have the right to vote on matters before the Finance Committee. All other individuals identified in this Section 6.3 to serve on the Finance Committee shall have the right to vote on matters before the Finance Committee, including any Treasurer that is also a Director serving on the Board. The Finance Committee shall advise the Board as to the annual budget, financial position, investment management of the Foundation, and its assets and operations. It shall also keep the Board advised of the general fiscal policy and management of the Foundation.

Section 6.4. Governance Committee. The Governance Committee shall consist of at least five (5) Directors, appointed by the Chair, subject to the consultation and oversight of the Board. Additionally, the CEO shall serve, *ex officio*, as a member of the Governance Committee, but shall not have the right to vote on matters before the Governance Committee. In consultation with the Chair, the Governance Committee shall be responsible to present to the Board of Directors nominations for Directors, officers, committee appointments, and chairpersons for such committees (except as provided otherwise in these Bylaws) for election by the Board of Directors. The Governance Committee shall furnish information relating to the background and qualifications of all such nominees within a reasonable period of time prior to the meeting at which an election is scheduled to take place. The Governance Committee shall, from time to time, offer recommendations regarding and review proposed revisions to the governing documents and policies of the Foundation, including its Articles of Incorporation and the Bylaws. Additionally, the Governance Committee shall assist the Board in connection with the Foundation's on-going compliance with applicable law and Board-approved policies and shall serve as a point of contact for individuals concerned with violations thereof.

Section 6.5. Investment Committee. The Investment Committee shall exist within the Foundation, but shall consist of at least one representative from each related entity, as set forth below, with assets held in the consolidated investment pool. The Investment Committee shall have no limitation on the number of members but shall consist of at least eight (8) Directors, including the Chair, subject to right of the Board to request replacements, on an annual basis. Up to three (3) other individuals may serve on the Investment Committee without the requirement that such individuals be Foundation Directors. The members of the Investment Committee shall be selected as follows:

- (a) USC Educational Foundation: Chair of the Foundation Board of Directors or his or her designee, provided that the designee is a Director of the Foundation, plus no more than eight (8) Directors of the Foundation Board.
- (b) USC Development Foundation: Chair of The University of South Carolina Development Foundation Board of Directors or his or her designee, provided that the designee is a director of the Development Foundation (the “***Development Foundation***”).
- (c) USC Business Partnership Foundation: Representative of the University of South Carolina-Business Partnership Foundation (“***USC BPF***”) who may, but is not required to be, a director of either the Foundation or the Development Foundation.
- (d) USC Alumni Association: Representative of the University of South Carolina Alumni Association (the “***Alumni Association***”) who may, but is not required to be, a director of either the Foundation or the Development Foundation.

The Chair of the Investment Committee shall be elected on an annual basis by a majority vote of all members then in office. Additionally, the CEO of the Foundation shall serve on the Investment Committee in an *ex officio*, non-voting capacity. It is the preference that individuals who are appointed to the Investment Committee shall have investment expertise and general business acumen. The Investment Committee shall advise the Board as to the general investment policy and investment

management of the Foundation, including (i) general oversight of the investment portfolio of the Foundation subject to the then-current investment policy of the Foundation, and (ii) periodic review of the performance of investment managers and professionals engaged by the Foundation in connection therewith.

Section 6.6. Ex officio Committee Members. The Chair and Vice Chair shall serve as *ex officio*, non-voting members of all committees on which they do not serve as regular members.

Section 6.7. Term of Office: Each member of a committee shall serve on such committee until the next annual meeting of the Board and until his or her successor is appointed unless the committee shall be sooner terminated.

Section 6.8. Chair. Except as otherwise specified in these Bylaws, on an annual basis, each committee shall elect its own chair, consistent with the procedures of these Bylaws and applicable law.

Section 6.9. Vacancies. Vacancies in the membership of any committee may be filled by the Chair.

Section 6.10. Quorum. A majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee, unless otherwise provided by the Articles, the Bylaws, or applicable law.

Section 6.11. Rules. Subject to the requirements of this Article 7, each committee may adopt rules for its own government not inconsistent with these Bylaws or with the rules adopted by the Board of Directors.

Section 6.12. Committee Minutes. Committees shall keep minutes of their proceedings and submit them to the next succeeding meeting of the Board for approval.

ARTICLE VII Finances and Reports

Section 7.1. Funds.

(a) The current funds of the Foundation shall be deposited in such bank or banks, in such types of accounts, and subject to such deposit and withdrawal procedures as may be directed by the Board of Directors by resolution. Reserve funds of the Foundation shall be invested in such kinds and types of securities as may be directed by the Board of Directors by resolution, subject to the provisions of these Bylaws.

(b) All gifts to the Foundation or other income not otherwise designated by the donor or by contract shall be used exclusively for the use and benefit of USC, as determined in the sole discretion of the Board of Directors and in accordance with the general purpose of the Foundation,

and for the operation of the Foundation. The Foundation may receive, manage, invest, and disburse conditional gifts only if such gifts are for the exclusive use and benefit of USC.

(c) The Board of Directors may from time to time, provide procedures for the establishment of special or designated funds to be administered by the Board of Directors under the condition of their creation in accordance with the Articles of Incorporation and these Bylaws.

Section 7.2. Income and Disbursements. All income, including contributions, received by the Foundation shall be deposited by the Treasurer, or his or her delegate, in a special account or accounts in such banks, trust companies, or other depositories as the Board may select. All disbursements shall be made under a proper authority of the Board. All contributions to and disbursements from the Foundation shall be recorded by the Treasurer, or his or her delegate, and such records shall be subject to examination at any reasonable time, upon request, by any Director.

Section 7.3. Budget. An itemized statement of the proposed operating income and expenditures for the following year shall be prepared by and for the Board, pursuant to the leadership of the Chair, the Treasurer and the CEO, prior to the commencement of each fiscal year of the Foundation. When approved by the Foundation's Board of Directors, such budget shall be the authorization for expenditures for operating expenses of the Foundation subject to subsequent changes made by the Board of Directors and the provisions of Section 7.4 below.

Section 7.4. Checks, Drafts, Etc. All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the Foundation shall be signed by such officer or officers, agent or agents of the Foundation and in such manner as shall from time to time be provided by resolution of the Board. In the absence of such provision by the Board such instrument shall be signed by the Chair or the Vice Chair.

Section 7.5. Audit. Pursuant to such policy of the Board, as determined and amended from time to time, a qualified firm of certified public accountants may be designated by the Board to audit and examine the books and records of account of the Foundation, and to certify and report in writing to the Board of Directors the annual balances and condition of such books as prepared at the close of the fiscal year. The compensation of the auditors shall be determined by agreement between the Board of Directors and the auditing firm at the time of its engagement. Alternatively, the Board of Directors may authorize that such audit be conducted through a consolidated audit of USC or some other USC supporting organization(s).

Section 7.6. Fiscal Year. The fiscal year of the Foundation shall be July 1 to June 30 of the succeeding year but may be altered by resolution of the Board of Directors.

Section 7.7. Reports; Other Information. A detailed annual report of the work and financial condition of the Foundation, including any audited financial statement and management letter, shall be made by the Chair annually and shall be transmitted to the Board of Directors, and to the President of USC.

ARTICLE VIII

Execution of Contracts and Deeds

Except as otherwise provided by resolution of the Board of Directors authorizing the execution thereof, all contracts, deeds, mortgages, pledges, transfers, and other written instruments binding upon the Foundation shall be executed on behalf of the Foundation by the Chair or the Vice Chair or other such officer or agent of the Foundation as the Board may designate. All agreements between the Foundation and any other person or entity, including between the Foundation and USC, regarding the provision of goods or services, or the transfer of assets, shall be in writing.

ARTICLE IX

Staff

Section 9.1. Staff. Staff will be recruited by the CEO, as needed, and shall report to the CEO.

Section 9.2. Compensation. The Board shall approve the compensation of the CEO and it shall be reasonable in amount. The CEO shall be responsible for all compensation decisions of staff within the budget limits established by the Board, and subject to the oversight of the Board.

ARTICLE X

Conflict of Interest

The Board of Directors shall implement and enforce the Conflict of Interest Policy attached to these Bylaws as **Appendix A**. No modification or amendment to such policy shall be made without complying with Section 4.8 of these Bylaws.

ARTICLE XI

Confidential Information

In accepting appointment as a Director, each Director agrees to hold in confidence information concerning USC and the Foundation activities, business, and relationships, or other information provided to each such Director, which is described orally or in writing as confidential, and is more fully described in a confidentiality agreement and conflict of interest disclosure statement to be executed annually by each Director.

ARTICLE XII

Indemnification

Section 12.1. Expenses and Liabilities. To the maximum extent permitted by the Nonprofit Act, the Foundation shall indemnify each of its Directors, officers and agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of the Foundation. For purposes of this Article, an “*agent*” of the Foundation includes any

person who is or was a Director, officer, employee, or other agent of the Foundation; or while a Director, officer, employee or agent of the Foundation, is or was serving at the request of the Foundation as a director, officer, partner, Director, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise.

Section 12.2. Advance of Expense. To the extent permitted by applicable law, the Foundation shall advance expenses incurred or to be incurred by a Director, officer, or agent in connection with any proceeding arising by reason of the fact that such person was or is a Director, officer, or Agent of the Foundation, provided such advance is authorized by the Board of Directors and permitted by law.

Section 12.3. Insurance. The Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Director, officer, or agent of the Foundation against any liability asserted against or incurred by such persons in such capacity or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify such persons against that liability under the provisions of this Article.

ARTICLE XIII Separate Organization

Although the intention of the Foundation is to cooperate, augment and aid, in the ways previously enumerated, the mission and programs of USC, and any other nonprofit exempt organization(s) within the meaning of Section 501(c)(3) of the Internal Revenue Code organized for the support and benefit of USC, it is here and now to be clearly stated that the Foundation is a separate organization to be operated under its own charter and certificate of incorporation as laid down in the law of South Carolina for this and similar eleemosynary and educational trusts and foundations.

ARTICLE XIV Dissolution

Dissolution of the Foundation must be approved in accordance with Section 4.8 of these Bylaws and in accordance with the Articles of Incorporation of the Foundation on file at the South Carolina Secretary of State.

ARTICLE XV Amendment

Except as otherwise provided in Section 4.8 and this Article XV, the Board of Directors shall have the power to make, alter, amend and repeal the Bylaws of the Foundation by affirmative vote of a majority of the Board of Directors at a regular or special meeting of the Board of Directors; provided that written notice of such meeting and purpose thereof has been given to all of the Directors at least ten (10) days prior to such meetings.

ARTICLE XVI

Restriction

The Foundation may receive as its sources of income, gifts, bequests from wills, and restricted and unrestricted use of monies or properties of any kind or description from any and all sources, but no gift, bequest or devise of any such property shall be received and accepted if it be for other than charitable purposes as limited to and including charitable, scientific, literary, or other educational purposes within the meaning of those terms as used in Section 501(c)(3) of the Internal Revenue Code or as shall, in the opinion of the Board of Directors, jeopardize the federal income tax exemption of the Foundation pursuant to Section 501(c)(3) of the Internal Revenue Code.

ARTICLE XVII

General Provisions

Section 17.1. Seal. The Foundation shall be authorized to adopt a seal in circular form for its use.

Section 17.2. General. The regulation of the business and conduct of the affairs of the Foundation will conform to federal and state income tax laws and any other applicable federal and state law, including, but not limited to, the Nonprofit Act. In the interpretation of these Bylaws, wherever reference is made to the United States Code (U.S.C.), the United States Internal Revenue Code, Internal Revenue Laws or Treasury Regulations thereunder, the Nonprofit Act, the South Carolina Code or any other statute, or to any section thereof, such reference will be construed to mean such Code, Act, Laws, Statutes, or section thereof, and the regulations thereunder, as the case may be, as heretofore or hereafter amended or supplemented or as superseded by laws or regulations covering equivalent subject matter.

Section 17.3. Governing Law. These Bylaws are executed and delivered in the State of South Carolina and they will be governed by, construed and administered in accordance with the laws of the State of South Carolina.

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APPENDIX A
TO THE BYLAWS
OF
UNIVERSITY OF SOUTH CAROLINA EDUCATIONAL FOUNDATION

CONFLICTS OF INTEREST POLICY

ARTICLE I
Purpose

The purpose of this conflicts of interest policy is to protect the interest of the University of South Carolina Educational Foundation (hereinafter the “*Foundation*”) when it is contemplating entering a transaction or arrangement that might benefit the private interest of an officer or director of the Foundation. This policy is intended to supplement but not replace Sections 33-31-831 or 33-31-832 of the South Carolina Code or other applicable state laws governing conflicts of interest applicable to the Foundation.

ARTICLE II
Definitions

1. Interested Person.

Any director, officer, or member of a committee with Board-delegated powers who has a direct or indirect Financial Interest, as defined below, is an Interested Person.

2. Financial Interest.

A person has a Financial Interest if the person has, directly or indirectly, through business, investment, or family:

- a. an ownership or investment in any entity with which the Foundation has a transaction or arrangement;
- b. a compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement; or

- c. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

For purposes of clarity, a Financial Interest shall not be deemed to include the acquisition or ownership by an Interested Party, solely as a passive investor with no involvement in the operation of the business, of no more than two percent (2%) of the ownership of a corporation, partnership, company, or other entity whose stock or ownership interest is publicly traded on a national securities exchange, the NASDAQ Stock Market or over-the-counter.

A Financial Interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a Financial Interest may have a conflict of interest only if the appropriate Board or committee decides that a conflict of interest exists.

ARTICLE III Procedures

1. Duty to Disclose.

In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of his or her Financial Interest and all material facts to the Directors and members of committees with Board-delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists.

After disclosure of the Financial Interest and all material facts, and after any discussion with the Interested Person, he or she shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest.

- a. An Interested Person may make a presentation at the Board or committee meeting, but after such presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b. The Chair of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. In the event that the Chair is in a position of conflict, the Vice-Chair will assume the foregoing responsibility.
- c. After exercising due diligence, the Board or committee shall determine whether the Foundation can obtain a more advantageous transaction or arrangement with

reasonable efforts from a person or entity that would not give rise to a conflict of interest.

- d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Foundation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Foundation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

4. Prohibited Transactions.

Notwithstanding, anything in this policy to the contrary, an Interested Person shall not, during his or her period of service as a director, officer or member of a committee with Board-delegated powers and for a period of 12 months thereafter, invest, or receive an ownership interest, through stock, options, phantom stock or otherwise, in any entity or venture in which the Foundation maintains an ownership interest excepting the Foundation's investments in publicly traded securities including mutual funds. Provided, however, the Board of Directors, upon a vote of two-thirds (2/3rds) of its members not counting the affected director, may waive the applicability of the above-described prohibition with respect to the 12-month period following a director's period of service as a director, officer, or member of a committee with Board-delegated powers.

5. Violations of the Conflicts of Interest Policy.

- a. If the Board or committee has reasonable cause to believe that a member has failed to disclose an actual or possible conflict of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE IV Records of Proceedings

The minutes of the Board and all committees with Board-delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the

proposed transaction or arrangement, and a record of any votes taken in connection therewith.

ARTICLE V

Compensation Committees

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

ARTICLE VI

Annual Statements

Each director, principal officer, and member of a committee with Board-delegated powers shall annually sign a statement which affirms that such person—

- a. has received a copy of the Conflicts of Interest Policy,
- b. has read and understands the policy,
- c. has agreed to comply with the policy, and
- d. understands that the Foundation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

ARTICLE VII

Periodic Reviews

To ensure that the Foundation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable and are the result of arm's-length bargaining.
- b. Whether transactions with parties are properly recorded, reflect reasonable payments for goods and services, further the Foundation's charitable purposes and do not result in inurement or impermissible private benefit.

ARTICLE VIII

Use of Outside Experts

In conducting the periodic reviews provided for in Article VII, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.